



JAPAN: Human Rights Violation against Lesbian, Gay, Bisexual and Transgender Persons

A Shadow Report
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Submitted by **Gay Japan News and Rainbow ACTION**
to **the Human Rights Council for consideration at the 14th session, 2012.**

1. Executive Summary

We welcome the inclusion of lesbian, bisexual women and transgender people in the Third Basic Plan for Gender Equality, government's sponsorship for the Yoriso Hotline where a LGBT-specific line is included, and possible consideration of including of LGBT perspective in the coming Policy of Suicide Prevention.

Having said that, the situation faced by lesbian, gay, bisexual and transgender (LGBT) persons in Japan is characterised by invisibility, marginalisation, silent prejudice and stigmatization. To date, issues facing LGBT individuals have received little attention from the Japanese Government or society at large. LGBT persons are subjected to human rights violation including discrimination in all aspects of life such as education, employment, housing and health care. These human rights violation and discrimination are based on sex, sexual orientation, gender identity and gender expression. Unfortunately, neither the Government nor civil society organisations have adequately documented specific cases of such human rights violation and discrimination. Ignoring these problems will only allow them to grow worse. Thus, the Japanese Government should adopt anti-discrimination legislation and an independent national human rights institution to protect and promote the human rights of LGBT persons¹ as set out by the Paris Principles.

Japan's Constitution guarantees fundamental human rights² and prohibits discrimination on the basis of "race, sex, social status or family origin." Substantive equality, however, is not guaranteed to LGBT persons. Nor does Japanese law protect them from discrimination and abuse. For example, the Law for the Prevention of Spousal Violence and the Protection of Victims and the Public Housing Law apply only to opposite-sex couples (either married or unmarried) and do not extend to same-sex couples³. Denying these basic protections to LGBT people sends a message to society that these people are not valuable. Equality can only be achieved through equal treatment, so the Government must afford protection from discrimination in all aspects of our lives.

¹ See the conclusions and recommendations of the Report of the Working Group on the Universal Periodic Review on Japan, paragraphs 2 and 3 (A/HRC/8/44, 30 May 2008.)

² Art. 14

³ Law for the Prevention of Spousal Violence and the Protection of Victims; Public Housing Law Article 23(1). Gay Japan News et al., Joint Submission of the Shadow Report on the International Covenant on Civil and Political Rights on Japan, October 2008.

Another example is that transgender people who would like their gender identity to be reflected on the family registry have to meet specific discriminatory conditions under the law regulating the process by which people with Gender Identity Disorder (GID) may change their legal genders⁴. These conditions form barriers that prevent people from changing their documented gender identity and they must be combated by providing appropriate health services, access to information and guaranteeing rights to identity expression.

2. Substantive Violations of the Convention

Employment Discrimination

A 50 year-old transgender woman, “K” was fired by her employer, a social welfare corporation in Osaka because she was diagnosed with GID in 2006. She filed a lawsuit against her former employer, seeking compensation of two million yen. According to the Japanese media, K told the employer about her GID when she applied for the job. Though she was hired, she was banned from using women’s washrooms and from wearing make-up at work. In March 2006, the employment contract was terminated without any clear reasons. K and her employer reached reconciliation in Osaka District Court in January 2008.⁵

A male-to-female transgender woman was working for a publisher when she was diagnosed with GID. In January 2002, she requested that her employer recognise her as a woman. In March 2002, she began wearing women’s clothing to the office. Her employer ordered her not to wear this clothing. However, the women continued to dress this way. Her employer fired her in April 2002. The woman subsequently filed a lawsuit. In June 2002, the Tokyo District court found that the initial dismissal of the case was unjust.

The above-mentioned cases are the tip of the iceberg and rare in a sense that these trans plaintiffs could bring the cases to the court. Transgender people face discrimination in employment on the basis of their gender identity and/or gender expression, but many of them do not report because they are afraid of loss of job or further discrimination or abuse as a result of reporting. Plaintiffs in the above-mentioned cases either reached reconciliation or won, but it was only fortunately because there is no legislation which clearly prohibits workplace discrimination on the basis of sexual orientation, gender identity or gender expression.

Denial of Social Benefits

Same-sex couples are not recognised by any legislation, thus rights granted to opposite-sex couples are denied to them including their right to public housing⁶, inheritance and spousal pension benefit. As is noted above, Article 3 of the Law Concerning Special Cases in Handling Gender for People with Gender Identity Disorder sets five conditions for transgender individuals to change their sex legally. One of these conditions requires that a transgender individual who wishes to change his or her sex be unmarried at the time of application, and another condition requires that the applicant have no children below the age of 19 at the time of application. A transgender person who has undergone sex reassignment surgery may marry a new partner who is of the opposite sex, but cannot remain married to a partner whom they were

⁴ Law concerning Special Rules regarding Sex Status of a Person with Gender Identity Disorder (Law No. 111, enacted in July 2004, amended in June 2008.) English translation of the law available at <http://d.hatena.ne.jp/annojo/20030716/pl>. Gay Japan News et al., Joint Submission of the Shadow Report on the International Covenant on Civil and Political Rights on Japan, October 2008.

⁵ “Gender identity Transformed from ‘Freak’ into Rights Issues,” The Japan Times (23 January 2007.)

⁶ Article 23 (1) of the Public Housing Law applied only to married and unmarried opposite-sex couples and effectively bars LGBT persons in a same-sex relationship from renting public housing. The UN Human Rights Committee has expressed its concern on this issue and recommended ensuring that benefits granted to unmarried cohabiting opposite-sex couples are equally granted to unmarried cohabiting same-sex couples. Concluding observations of the Human Rights Committee. Para 29. HUMAN RIGHTS COMMITTEE Ninety-fourth session, Geneva, 13-31 October 2008. (CCPR/C/JPN/CO/5)

with prior to their application.

Transgender persons with Gender Identity disorder who are not allowed to change their gender on the family registry face difficulties with housing because they often must submit official documents in order to rent housing and their gender on these documents does not reflect accurately depict their gender identity.

Right to Physical and Mental Health

Transgender persons who are diagnosed with GID but do not meet the conditions set fourth by the law cannot have their gender identity reflected on the family registry. Since most important official documents including the residency certificate and public insurance card are issued based on the family registry, transgender persons often face difficulties accessing health care with their insurance card on which their legal gender and actual gender seemingly do not match.

Article 3 (4) of the Law concerning Special Cases regarding Sex Status of a Person with Gender Identity Disorder requires transgender persons who wish to change their legal gender to undergo major surgical interventions, including genital surgery and sterilisation, so as to be able to change their gender on the family registry. This practically takes away the choice to keep their reproductive organs. It violates not only their reproductive rights but also their integrity.

Insensitive health care personnel, including gynecologists, alienate lesbian and bisexual women by presuming them to be heterosexual women. This makes it difficult to talk about health problems that may need medical attention because to do so would means revealing their sexual orientation and potentially facing homophobia from the doctor.

The Government's projects on HIV/AIDS tend to focus only men who have sex with men and have failed to recognise the related issues faced by lesbian, bisexual women and transgender persons.

Mental health of gay, bisexual men and transgender persons is worth attention. According to Hidaka et al⁷, among gay and bisexual men, 64% have considered committing suicide and 15% have attempted suicide. A study also shows that about 70% of all respondents who have suspected that they have HIG have considered committing suicide⁸.

Hate Speech

In 2010, Tokyo Governor Shintaro Ishihara made homophobic remarks twice. His first comments was on December 3, discussing a revision to the Tokyo Metropolitan Ordinance Regarding the Healthy Development of Youths. "[The bill] is not just about the kids," he said. "We have got homosexuals casually appearing even on television. Japan has become far too untamed." On December 7, in response to a journalist's question about his earlier statement, Ishihara said, "I think homosexuals have something missing from them somehow. It may be something genetic. I feel sorry for them being a minority." He spoke of watching a gay parade in San Francisco: "I saw a parade made up of gays, and I really felt sorry for them. There were pairs of men and women, but it certainly did feel like they were deficient somehow." The statements were made just before and during Japan's Human Rights Awareness Week, which enlisted discrimination based on sexual orientation as one of the emphasized issues. Governor still has not retracted his comments yet.

⁷ Research by Dr. Yasuharu HIDAHA et al., Graduate School of Medicine, Kyoto University. In 2005, he surveyed 5,731 gay and bisexual men regarding their HIV testing behaviour, experience of being bullied, suicidal attempt and mental health.

⁸ Research by Dr. Mikiya NAKATSUKA et al. The research targeted 661 patients who suspected that they had GID from 1994 till 2006 focusing on their suicidal attempt and self-injury.

3. Concluding Notes

- LGBT persons not only face discrimination under laws and policies such as public housing, but are also subject to discrimination in health care, housing and employment.
- There is no anti-discrimination law, which includes sexual orientation and gender identity as protected statuses, and no national human rights institution to enforce such a law. LGBT people lack redress from discrimination.

4. Recommendations

Treating LGBT people differently amounts to treating them unequally. In order for full equality to exist in Japan, LGBT people must have the same rights and benefits which are guaranteed to heterosexual and gender conforming people.

The Japanese Government should:

1. Enact Anti-Discrimination Legislation prohibiting discrimination and hate speech based on sexual orientation and gender identity in employment, housing and the social security, and health services.
2. Establish a national human rights institution, which will be independent from the Government in compliance with the Paris Principles. This institution should review lack of legislation on the rights of LGBT individuals and also current legislation dealing with people with GID and should recommend establishment and amendments the Government can make to these legislation in order to ensure that no LGBT individuals are denied their rights
3. Reviews current legislation to awards to unmarried same-sex couples that same rights awarded to unmarried opposite-sex couples.
4. Review and amend current legislation on people with GID to make sure that no person with GID is disadvantaged from conditions set out in the law.
5. Work towards changing public opinion regarding non-heteronormative identities, so that LGBT persons will be accepted by society.

Gay Japan News' mission is to empower lesbian, gay, bisexual and transgender (LGBT) people in Japan and achieving human rights of all people including LGBT people everywhere.
www.gayjapannews.com

Rainbow ACTION's mission is to visiblise everyday lives and beings of sexual minorities and their friends.
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