

Joint Submission of the Universal Periodic Review on: Japan

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This document provides information on human rights situations surrounding lesbian, gay, bisexual, transgender/transsexual and intersex (LGBTI) persons in Japan.

I. Human Rights Violations based on Sexual Orientation and Gender Identity

Social Situation and Hate Crimes

1) BULLYING, HARASSMENT AND DISADVANTAGES BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

People with gender identity disorder (GID) who do not meet certain conditions set in the GID Law¹ cannot change their gender on the family registry and are forced to follow their physical gender specifically at workplace. A study² shows that about 70% of all patients who have suspected that they have GID have considered committing suicide.

According to Hidaka et al (2005), among gay and bisexual men, 64%³ have considered committing suicide and 15% have attempted suicide. Research⁴ conducted in 1999 shows that 83% of gay and bisexual men experienced school bullying and 60% were verbally harassed because of being perceived by other students as homosexual. As these findings imply, there is widespread bullying and harassment based on sexual orientation in Japanese society.

2) HATE CRIMES

Violence and crimes motivated by hatred toward particular forms of sexual orientation and gender identity have been reported in Japan. The 'Shinkiba Gay Murder Case' is one example of such crimes:

In February 2000, a gay man was murdered in Shinkiba Park, Koto-ku, Tokyo. Those who were arrested for the murder told police that they intentionally targeted homosexuals and they believed gay men would not report a case because of fear of being outed by reporting. The case has been recognised as a hate crime.

Legal and Administrative Violation of Human Rights

3) NO HUMAN RIGHTS LEGISLATION EXPLICITLY PROHIBITS DISCRIMINATION BASED ON SEXUAL ORIENTATION AND GENDER IDENTITY

Japan does not criminalize homosexuality. However, there is no legislation to combat discrimination

¹ Law concerning special Cases in Handling Gender for People with Gender Identity Disorder (Law No. 111 of 2003). The Law enables people with GID to change their gender on legal documents with five conditions; 1) he/she should be 20 or over, 2) he/she should be single, 3) he/she should not have any child, 4) he/she should not have reproductive function and 5) he/she should have genitalia with similar appearance of his/her new sex by sex reassignment surgery.

² Research by Professor Mikiya NAKATSUKA et al. Professor NAKATSUKA teaches at Graduate School of Health Science, Okayama University. His research targeted 661 patients who suspected that they had GID from 1994 to 2006 focusing on suicidal attempt and self injury.

³ 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.

⁴ Research by Dr. Hidaka and Dr. Operario as attached.

based on sexual orientation and gender identity that would protect LGBTI people from discrimination in different areas of their lives such as employment, housing, social security, health care system and so forth.

LGBTI citizens often face direct and/or indirect discrimination and are forced to hide their sexual orientation and gender identity in society where patriarchy, sexism and traditional family values are still deep-rooted.

The United Nations Special Rapporteur on Racism, in his report on his mission to Japan, has recommended:⁵

*“79. A national commission for equality and human rights should be established, in conformity with the Paris Principles, in particular with the requirement of its independence. Given the interlinkage between all forms of discrimination, and for the purposes of efficiency and empowerment, this Commission’s mandate should bring together in a holistic way the most important and indeed related fields of contemporary discrimination, namely: race, colour, gender, descent, nationality, ethnic origin, disability, age, religion **and sexual orientation**.”*

4) NO RIGHTS GIVEN TO ASYLUM SEEKERS ON THE BASIS OF SEXUAL ORIENTATION

In 2000, an Iranian man applied for refugee status on the basis of his sexual orientation. He was afraid of returning to Iran and being punished due to his homosexuality and because of his participation in the gay movement since his arrival in Japan in 1991.

His application was rejected by Japan and he was held in detention facilities for 19 months. He was recognised as a legitimate refugee by the Office of the UN High Commissioner for Refugees in 2001.

He filed a lawsuit seeking recognition as a refugee but the Tokyo District Court rejected it. His trial lasted for more than five years and he had no choice but to seek refugee status in another country.

5) NO ACCESS TO RIGHTS DERIVING FROM MARRIAGE AND NO RECOGNITION OF SAME-SEX PARTNERSHIPS

Same-sex couples are not granted the right to marry. They do not have any of the rights that heterosexual married couples are guaranteed under current legislation, which makes life for same-sex couples quite difficult in many ways.

Some same-sex couples prepare notary deeds stipulating their agreement to hospital visitation, inheritance, and to make evidence of their cohabitation.

There are other couples in which one adopts the other as a child. Same-sex couples who enter an adoptive relationship are not legally recognised as a couple, but as in a parent-child relationship. Entering such a legal relationship grants them some rights, including inheritance rights, pension, and health benefits. However, they would not be able to enjoy the right to marry when a same-sex marriage or same-sex partnership law is enacted.

Bi-national same-sex couples cannot obtain a visa for the foreign partner based on their relationship, and entering an adoptive relationship does not give this immigration right, which makes it impossible for bi-national same sex couples to live as a couple in Japan.

⁵ E/CN.4/2006/16/Add.2 at para. 79 (mission to Japan).

6) DISADVANTAGEOUS CONDITIONS SET IN THE LAW ON GENDER CHANGES ON THE FAMILY REGISTRY

Article 3-1-3 of the Law on People with GID says that only people with no children are allowed to change their gender on the family registry. It was added to the Law on the basis of child welfare, on the assumption that there is a danger that children may be confused when their parent changed their gender on the family registry. However, it is pointed out by transgendered people and their family that there are children who hope their parents are allowed to change their gender and children will be disadvantaged when their parents are not permitted to do so.

Getting permission for gender change has a big influence on one's family life, office and social environment⁶, which implies that not being able to change one's gender on the family registry has a huge impact on one's life and surroundings. There is an obvious gap between those who benefit from the Law and those who do not meet the conditions set out in the Law and cannot change their gender. For example, a person with GID who is not allowed to change their gender on the family registry has difficulties being employed or getting their health insurance card while those who are allowed their gender change on the registry will have less difficulties in employment or health care.

7) REDUCTION OF RESOURCES FOR HIV/AIDS PROGRAMMES

Resources provided for HIV/AIDS prevention, care, research and education programmes have gradually been reduced in recent years. For instance, the Tokyo Metropolitan Government drastically cut its funding from about 6 million US Dollars in 1997 to 2.2 million in 2006 over ten years despite the acute rise in the number of those who contracted HIV. In Osaka Prefecture, approximately 490,000 dollars were spent for these initiatives in 1997, yet it was reduced to 380,000 in 2007. The same tendency is observed in other cities including Kanagawa Prefecture, Chiba Prefecture and Aichi Prefecture to name a few.

II. State Obligations

The United Nations High Commissioner for Human Rights has welcomed⁷ the Yogyakarta Principles on Sexual Orientation and Gender Identity as a 'timely reminder of basic tenets' of non-discrimination. In a statement, she said 'excluding lesbian, gay, bisexual, transgender and intersex persons from equal protection violates international human rights law as well the common standards of humanity that define us all.'

The Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity (**Yogyakarta Principles**, 2007), a well-documented set of international principles pertaining to sexual orientation and gender identity, was adopted by a distinguished group of international human rights experts in Yogyakarta, Indonesia.

Principle 1 of Yogyakarta Principles confirms the right to the universal enjoyment of human rights of all people including 'human beings of all sexual orientations and gender identities' and says that the State should 'undertake programmes of education and awareness to promote and enhance the full enjoyment of all human rights by all persons, irrespective of sexual orientation or gender identity' and 'integrate within State policy and decision-making a pluralistic approach that recognises and affirms the interrelatedness and indivisibility of all aspects of human identity including sexual orientation and gender identity.'

Principles 12–18 confirm the importance of non-discrimination in the enjoyment of economic, social

⁶ Opinion by Professor Syuhei Ninomiya, School of Law, Ritsumeikan University.

⁷ Ms. Louise Arbour, UN High Commissioner for Human Rights. November 7, 2007 in N.Y, the US.

and cultural rights including employment, housing, social security, education and health and calls for States to take 'all necessary legislative, administrative and other measures to ensure equal access, without discrimination' based on sexual orientation or gender identity to 'social security and other social protection measures.'

Principle 23 confirms the right to seek asylum from persecution, including persecution related to sexual orientation or gender identity. It also confirms that the State 'may not remove, expel or extradite a person to any State where that person may face a well-founded fear of torture, persecution, or any other form of cruel, inhuman or degrading treatment or punishment' based on sexual orientation or gender identity. It calls for State to 'review, amend and enact legislation to ensure that a well-founded fear of persecution on the basis of sexual orientation or gender identity is accepted as a ground of the recognition of refugee status and asylum.'

Principle 24 confirms the right to form a family irrespective of sexual orientation or gender identity, and diversity of families. It also confirms that 'no family may be subjected to discrimination on the basis of the sexual orientation or gender identity of any of its members' and calls for the State to 'take all necessary legislative, administrative and other measures to ensure the right to found a family.'

III. Recommendations

Japan is a party to many of the international human rights treaties, including the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

The Japanese Government should demonstrate its commitment to the human rights of all people, including lesbian, gay, bisexual, transgender and intersex persons, by taking the following measures:

- 1) Adopt legislation to combat hate crimes in order to protect the lives of LGBTI people and prohibit violence and harassment based on sexual orientation and gender identity**
- 2) Enact Anti-Discrimination legislation prohibiting discrimination based on sexual orientation and gender identity in employment, housing, and the social security, education and health services**
- 3) Establish a national human rights institution, independent from the Government, based on 'Principles relating to the Status of the National Human Rights Commission'⁸ (Paris Principles).**
- 4) Provide equality and human rights training for teachers and staff in schools, governmental officials at all levels, and law enforcement officers.**
- 5) Secure a safe space and environment in schools for LGBTI pupils**
- 6) Review and amend current legislation to ensure that a well-founded fear of persecution based on sexual orientation or gender identity is accepted as a ground for asylum**
- 7) Review current legislation to recognise same-sex partners as a family and legislate the right of same-sex couples to marry and found a family**
- 8) Review and amend current legislation on people with Gender Identity Disorder (GID) to make sure that no person with GID or any of family members including their children are disadvantaged from conditions set out in the Law.**
- 9) Ensure that the issues, needs and rights of LGBTI people to HIV/AIDS, STI prevention, care, support and treatment are addressed and sufficiently resourced in consultation with HIV/AIDS and LGBTI organisations.**

⁸ Adopted by General Assembly. Resolution 48/134 on December 1993.

This document is submitted jointly by:

- **Asia-Japan Women's Resource Center (AJWRC)**, an organisation with the UN Special Consultative Status for the rights of women;
- **ARC-International**, an NGO with a full-time presence in Geneva which engages with the UN Human Rights Council and related mechanisms to advance respect for human rights, including on the grounds of sexual orientation and gender identity ;
- **Center for Gender Studies, International Christian University**, an academic institute on the issues of gender and sexuality;
- **FTM Nihon**, a non-profit organisation which publishes magazines for transgendered people and delivers lectures for students and public officers;
- **Gay Friends for AIDS, PLACE TOKYO**, a group of members who belong to PLACE TOKYO, a Tokyo-based non-profit organisation which advocates and promotes human rights of people with HIV/AIDS;
- **GayJapanNews**, a non-profit organisation, with full membership of the International Lesbian and Gay Association, which publishes LGBTI-related news from all over the world and advocates LGBTI human rights;
- **ILGA-ASIA**, which brings together 26 Asia-based LGBTI organisations and recently elected a board of representatives from five sub-regions (East, South East, South, Central and West): Bangladesh, China, Indonesia, Kyrgyzstan, Mongolia and Sri Lanka;
- **International Gay and Lesbian Human Rights Commission (IGLHRC)**, a US-based NGO working to secure the full enjoyment of the human rights of all people and communities subject to discrimination or abuse on the basis of sexual orientation or expression, gender identity or expression, and/or HIV status;
- **Kanagawa Rainbow Center SHIP**, a community centre for gay, lesbian and people with GID;
- **KANTO GAKUIN UNIVERSITY RAINBOW STAGE**, a group of LGBTI students at Kanto Gakuin University which is a member of a national inter-college LGBTI group, Rainbow College which provides safe space for LGBTI students and advocates human rights of LGBTI persons including LGBTI students;
- **Light Hearts**, a group of LGBTI students at Chuo University in Tokyo;
- **Office ZEN nature**, a Tokyo-based independent organisation which organises lectures and other programmes to promote human rights of all people including transgendered people;
- **PA/F SPACE**, an organisation which provides safe space for LGBTI community;
- **P-Flag Japan**, a non-profit organisation which supports LGBTI persons, their families and friends;
- **Rainbow Pride Ehime**, a non-profit organisation in Matsuyama City, Ehime Prefecture which promotes and advocates human rights of people of sexual minorities;
- **rainbow support net**, a group of public notaries which supports LGBT people by providing legal aid, legal counseling and general information;
- **Sexuality=Humanrights Est Organization**, an Akita-based LGBTI organisation which organises peer meetings and advocates LGBTI human rights with a goal to create a society in which all people are accepted and respected regardless of their sexuality;
- **Shin-Osaka Counseling Room**, an organisation which provides counseling service for gay and lesbian clients;
- **STN21**, a national organisation of LGBT teachers and their supporters;
- **Waseda University Sexual Minority Network**, a group of LGBTI students at Waseda University;
- **Yokohama Cruise network**, a group of gay men which works for gay men's health and security.

Attachment: Y, Hidaka and D, Operario(2006) Attempted suicide, psychological health and exposure to harassment among Japanese homosexual, bisexual or other men questioning their sexual orientation recruited via the internet, *Journal of Epidemiology and Community Health*