

JAPAN: Discrimination against Lesbians, Bisexual Women and Transgender Persons

A Shadow Report

May 2009

Submitted by:

GayJapanNews

with support from the International Gay and Lesbian Human Rights Commission
(IGLHRC)

**to the Committee on the Elimination of Discrimination Against Women
(CEDAW) for consideration at the 44th session, 2009.**

1. Executive Summary

The situation faced by lesbians, bisexual women and transgender persons in Japan is characterized by invisibility, marginalization, silent prejudice and stigmatization. To date, issues facing lesbian and bisexual women and transgender persons have received little attention from the Japanese Government or society at large. Lesbians, bisexual women and transgender persons are subjected to discrimination in all fields of life such as education, employment, housing, and health care. This discrimination is based upon sex and/or sexual orientation, gender identity and gender expression. Unfortunately, neither the Government nor civil society organisations have adequately documented specific cases of such discrimination. Ignoring these problems will only allow them to grow worse. Thus, the Japanese Government should adopt anti-discrimination legislation and an independent national institution to protect the human rights of lesbians, bisexual women and transgender persons¹ as set out by the Paris Principles.

Japan's Constitution guarantees fundamental human rights² and prohibits discrimination on the basis of, "race, creed, sex, social status or family origin." However, substantive equality is not guaranteed to lesbians, bisexual women or transgender persons. Nor does Japanese law protect them from discrimination and abuse. For example, the Law for the Prevention of Spousal Violence and the

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). Document available at http://lib.ohchr.org/HRBodies/UPR/Documents/Session2/JP/A_HRC_8_44_Japan_E.pdf. Website last viewed 12 May 2009.

² Art. 14

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 couples.³ Denying these basic protections to LBT women 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 all forms of violence, including domestic violence.

Another example is that transgender persons 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 genders.⁴ 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.

Japan has also refused to grant asylum to those seeking it based upon discrimination and violence they face in their own country based upon sexual orientation and/or gender identity and expression.

Treating lesbian, bisexual and transgender people differently amounts to treating them unequally. In order for full equality to exist in Japan, LBT people must have the same rights and benefits which are granted to heterosexual women.

Recommendations to the Japanese Government:

In order to protect its lesbian, bisexual and transgender citizens, and also to meet their needs, the Japanese Government ought to adopt an antidiscrimination law and establish a national human rights institution to enforce it, which will be independent from the Government and should comply with the Paris Principles.⁵ This institution should include among its goals filling the data gap by conducting thorough research on violence and discrimination against lesbians, bisexual women and transgender persons. The institution should also review current legislation dealing with people with Gender Identity Disorder and should recommend amendments the Government can make to this legislation in order to ensure that no person with GID is denied their rights as set out in the Convention.⁶ The Government should also consider introducing a definition of discrimination into Japanese criminal law.⁷

2. Substantive Violations of the Convention

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

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/p1>. Website last viewed 12 May 2009. GayJapanNews et al., Joint Submission of the Shadow Report on the International Covenant on Civil and Political Rights on: Japan, October 2008.

⁵ GayJapanNews et al., Joint Submission of the Universal Periodic Review on: Japan., E/CN.4/2006/16/Add.2 (para 79), Report of the Working Group on the Universal Periodic Review, Japan (30 May 2008) at para 16. A/HRC/8/44

⁶ Id.

⁷ GayJapanNews et al., Joint Submission of the Universal Periodic Review on: Japan., UPR report

A. Violence

Violence against Women: General Recommendation No. 19

Cases of reported and investigated domestic violence between same-sex partners are hardly recognized because heteronormativity⁸ predominates in Japanese society.⁹ The Law for the Prevention of Spousal Violence and the Protection of Victims applies only to opposite-sex couples (either married or unmarried).

There are very few shelters which lesbians, bisexual women and transgender persons may access without fear of discrimination or ill treatment based upon their sexual orientation, gender identity and/or gender expression. According to the survey conducted by the Cabinet Office in 2004, only 13.4% of the private shelters in the country have ever served clients who were suffering from domestic violence between same-sex partners¹⁰.

LBT women have also been victims of domestic violence on the part of their husbands and other family members. In November 2001, the Kobe district court found that a man had abused his wife physically, sexually and psychologically, because she was having a same-sex relationship outside of their marriage. This is one of the rare specific cases, which has revealed that a woman in a heterosexual marriage was suffering domestic violence at the hands of her husband because of her sexual orientation. However, there are likely numerous unreported cases similar to this one.

Discrimination and Violence against Lesbian, Bisexual and Transgender Human Rights Defenders: Article 8

Ms. Aya Kamikawa, a male-to-female transgender person and representative of the Setagaya City Assembly has continuously been harassed on the basis of her gender

⁸ The term "heteronormativity" refers to the belief that heterosexuality is the only "normal" and legitimate expression of sexual desire, intimacy and family life. It is institutionalized in societies around the world through laws, practices and cultural traditions, and enforces a gender dichotomy that degrades femininity and fosters homophobia. As a result, non-heterosexual relations as well as heterosexual non-procreative sexual practices are stigmatized and often criminalized.

⁹ Takafumi Suzuki and Sumie Asatori. "Domestic Violence – What is help? How should the help provider think and act? Third Edition" (in Japanese) PP. 143-144. Kyoiku Shiryo Syuppankai. Tokyo, Japan. February 2008.

¹⁰ The media report by Delta-G. 13.4% of the private shelters for women have answered that they have dealt with the clients involved in same-sex domestic violence. 49.3% of them have answered that they have never dealt with the clients involved in same-sex domestic violence but are willing to take such cases if such cases are brought to them. 35% have answered that they have never dealt with the clients involved in same-sex domestic violence and cannot take such cases.

<http://www.delta-g.org/v/2008/02/-2007-in.html>. Website last viewed 13 May 2009.

The research by the World Health Organisation has shown that 13% of ever-partnered women in Japan have experienced violence by their partners at least once in their lives. Only 14% of them sought help from official services or authorities such as the police and public counselors. 32% never told anyone about their experiences of violence. The report does not specifically mention the experiences of lesbians, bisexual women and transgender persons, however, it is likely that such women face the same situation or worse because of both their sex and sexual orientation and/or gender identity. The report is available at

http://www.who.int/gender/violence/who_multicountry_study/summary_report/summary_report_English2.pdf Website last viewed 13 May 2009.

identity since she publicly declared her candidacy for the City Assembly in 2003. This harassment includes defamatory posters put up on the streets, hate faxes, phone calls, and letters, and on-line comments against her, her family and friends. When posters calling her a sinner and claiming that changing genders was against nature and God were found by a city officer, the City took them down and reported the case to the police. However, the police failed to investigate the case because there was no law on which the police could take action regarding harassment clearly based upon a person's gender identity.¹¹

Recommendation to the Japanese Government:

The government ought to review current legislation on domestic violence and amend it in order to extend protection to lesbians, bisexual women, and transgender persons.

B. Societal Pressure to Conform

Forced Marriage and Discrimination on the Grounds of Marital Status: Article 1, 2 (f), 5 (a) and 16

Much pressure comes from family and society for women, including lesbians, bisexual women and transgender persons, in their 30s or older to get married. Unmarried women without any children are sometimes called “make inu (loser).” As the case mentioned in Section A under the Violence against Women heading shows, there are some lesbian women who have practically no choice but to marry a man in order to avoid further pressure from their family and society and possible speculation over their sexual orientation and/or gender identity.

Recommendation to the Japanese Government:

The Government ought to work towards changing public opinion regarding non-heteronormative identities, so that lesbians, bisexual women, and transgender persons will be accepted by their families and by society.

C. Discrimination in Economic, Social and Cultural Rights

Right to Health: Article 11 (f), 12 and General Recommendations No. 19 and No. 24

Transgender persons who are diagnosed with Gender Identity Disorder but do not meet the conditions set forth 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 Rules regarding Sex Status of a Person

¹¹ Aya Kamikawa, “Courage for Change – Messages from me with “gender identity disorder”” (in Japanese) PP. 143 – 144. Iwanamishoten. Tokyo, Japan. February 2007.

with Gender Identity Disorder requires transgender persons who wish to change their legal gender to undergo major surgical interventions, including genital surgery and sterilization, 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 lesbians 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 mean revealing their sexual orientation and potentially facing homophobia from the doctor.

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

Right to Housing: Article 13 and 16 [1] [h]

Article 23(1) of the Public Housing Law applies only to married and unmarried opposite-sex couples and effectively bars lesbians, bisexual women and transgender 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.¹²

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 accurately depict their gender identity.¹³

Employment Discrimination: Article 11

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 the Osaka District Court in January 2008.¹⁴

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 recognize her as a woman. In March 2002, she began wearing women's clothing to the office. Her

¹² 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)

¹³ Aya Kamikawa. Edited by Satoru Ito and Masae Torai, "A book by which you can understand diverse "sexuality" – Gender Identity Disorder, Gay and Lesbian" (in Japanese) PP. 18. Koubunken. Tokyo, Japan. September 2002.

¹⁴ "Gender identity Transformed from 'Freak' into Rights Issues," The Japan Times (23 January 2007) available at <http://search.japantimes.co.jp/cgi-bin/fl20070123zg.html>.

employer ordered her not to wear this clothing. However, the woman 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.

Right to Education: Article 10

Lesbian students have left school because they cannot seek help from the school, their parents or other institutions¹⁵ when they are confused about their sexual orientation. Although the Government, school, their parents or other actors around them have not actively discriminated against the young lesbians, they have effectively denied them the right to education by failing to provide information on lesbian, bisexual and transgender issues and help for these students in schools.

Recommendation to the Japanese Government:

The Government should enact anti-discrimination legislation prohibiting discrimination based on sexual orientation and gender identity in housing, social security, health services, employment and education. The Government should also ensure that all schools provide students with information on diverse sexual orientation and gender identity. Schools should also be required to provide help and support services for lesbian, bisexual and transgender students. Further, the Government ought to establish an independent national human rights institution to defend the rights of LBT women.

C. Discrimination in Asylum

Right to Asylum: Article 9

Japan has denied asylum to those seeking it based upon discrimination and violence they face in their own country based upon sexual orientation and/or gender identity and expression.

Recommendation to the Japanese Government:

The government ought to grant asylum to anyone facing unjust persecution in her home country, including if she faces this persecution because of her sexual orientation and/or gender identity.

3. Concluding Notes

- There is a significant lack of documentation by the State and civil society organisations regarding violence and discrimination against lesbian, bisexual women and transgender persons because of their non-heteronormative sexual

¹⁵ Yoko Ogawa. Edited by Satoru Ito and Masae Torai, "A book by which you can understand diverse "sexuality" – Gender Identity Disorder, Gay and Lesbian" (in Japanese) PP. 104 - 106. Koubunken. Tokyo, Japan. September 2002.

- orientation, gender identity and/or expression in Japan.
- Lesbians, bisexual women and transgender persons not only face discrimination under laws and policies such as public housing laws, but are also subject to discrimination in health care, education, 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. Lesbians, bisexual women and transgender persons lack redress from discrimination.
 - Lesbians, bisexual women and transgender persons can experience physical, sexual and psychological violence at the hands of their opposite-sex or same-sex partners, but receive no protection from the law. Same-sex partners are excluded from the Law for the Prevention of Spousal Violence and the Protection of Victims and lack safe places where they can seek help and support.

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

The International Gay and Lesbian Human Rights Commission (IGLHRC)'s mission is advancing human rights for everyone, everywhere to end discrimination based on sexual orientation, gender identity and gender expression. www.iglhrc.org