

JAPAN: Discrimination and Violence Against Lesbians, Bisexual Women and Transgender Persons on the Basis of Sexual Orientation and Gender Identity

Shadow Report

Presented to the 63rd Session of
**The Committee on the Elimination of All Forms of Discrimination Against Women
(CEDAW)**

February 2016 — Geneva

SUBMITTED BY:



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I. EXECUTIVE SUMMARY

Discrimination against women and girls on the basis of sexual orientation, gender identity and gender expression pervades Japanese society. In the absence of comprehensive anti-discrimination legislation and explicit recognition of sexual orientation and gender identity as prohibited grounds for discrimination, lesbians, bisexual women and transgender (LBT)¹ persons are vulnerable to and adversely affected by stigma, stereotyping and patriarchal gender norms. At the same time, they are denied protections from gender-based discrimination and violence available to heterosexual and gender normative women.

During the 2008 and 2012 Universal Periodic Review, Japan was urged to adopt national legislation that includes protections from discrimination on grounds of sexual orientation and

¹ In this report, the term “LBT persons” refers to lesbians, bisexual women and transgender women. The terms gender variant and gender non-conforming persons are also used when referring to women whose appearance does not conform to gender norms—for instance, tomboy girls and butch or masculine appearing lesbians.

gender identity.² Also, the Human Rights Committee, in 2008 and 2014, recommended that Japan enact comprehensive anti-discrimination legislation that prohibits discrimination on all grounds, including sexual orientation and gender identity.³ These recommendations have not been implemented yet.

Where the government has amended discriminatory laws, implementation has been uneven and discriminatory. Where revisions to laws are being considered, the government's narrow understanding of sexual violence of lesbians, bisexual women and transgender persons will prevent proper protections and redress.

- In January 2014, the Act on the Prevention of Spousal Violence and the Protection of Victims was expanded to include protections for partners in violent cohabiting and dating relationships. Lower court judges who hear domestic violence cases and grant protection orders are reluctant to allow the law to be used by lesbians experiencing violence in same sex relationships because they believe that the law should only apply to heterosexual relationships.
- Revision of the Japanese Penal Code is currently under consideration. Parliament will likely expand the current definition of rape in Article 177 of the Criminal Code to integrate a broader definition of sexual crimes.⁴ The Consultation Committee on Penalties for Sex Crimes, which is presenting expert opinions and recommendations to the Ministry of Justice for amendments to the Penal Code, including on Article 177, does not recognize non-genital penetration as rape. This means that the new definition of rape will only include penile penetration and not recognize bodily invasive acts such as rape with objects—hence failing to integrate a broader understanding of sexual violence.⁵
- In July 2014, the Ministry of Health, Labor and Welfare revised the definition of workplace sexual harassment under the Equal Employment Opportunity Law and issued guidelines to business owners for inclusion of harassment between persons of the same sex. While LBT persons could potentially rely on this new definition of workplace sexual harassment, it does not go far enough. The definition must explicitly include sexual harassment on the basis of sexual orientation and gender identity. Furthermore, there is no law or policy prohibiting hiring discrimination on

² Report of the Working Group on the UPR: Japan. A/HRC/8/44 (May 30, 2008) and Report of the Working Group on the UPR: Japan. A/HRC/22/14/Add.1 (March 8, 2013).

³ Para 29, Concluding Observations. CCPR/C/JPN/CO/5 (October 30, 2008) and para 11, Concluding Observations. CCPR/C/JPN/6 (October 20, 2014).

⁴ The Consultation Committee on Penalties for Sex Crimes met from October 2014 to August 2015.

⁵ On November 28, 2014, the Consultation Committee on Penalties for Sex Crimes met with Miho Okada, founder of the Amori Rape Crisis Network. The meeting focused on whether sexual violence against transgender persons and same-sex sexual violence could be classified as rape because the committee “could not picture it,” and had not dealt with such rape cases. The Committee also felt that sexual assault that did not involve penile penetration was not as psychologically damaging.

the basis of sexual orientation and gender identity, and no law prohibiting workplace and employment discrimination after LBT people are hired.

- Since 2015, Japan has widely promoted increased participation of women in the work force to stimulate the economy. However, the commitment to increase women in the workforce must come with safe working environments for all women, including LBT women, which are not being enforced.

This NGO shadow report submitted by OutRight Action International, Gay Japan News, and Rape Crisis Network highlights Japan's failure to uphold Articles 1, 2, and 11 of the CEDAW Convention, General Recommendation No. 28 on Article 2, and General Recommendation 19 on Violence Against Women. The information in this report is based on documented evidence collected by Gay Japan News and Rape Crisis Network.

II. BACKGROUND INFORMATION

Japan consistently votes in favor of United Nations resolutions recognizing the human rights of LGBT people.⁶ It is in fact one of two countries in Asia to regularly support UN initiatives on sexual orientation and gender identity.

The government of Japan accepted the 2008 Universal Periodic Review recommendations and stated that it would take measures to eliminate discrimination on the basis of sexual orientation and gender identity.⁷ Although there have been subsequent positive policy decisions⁸ that acknowledge LBT vulnerability and suffering, the government has not taken adequate actions to address discrimination of LBT people.

Despite positive policy decisions, public awareness and understanding about lesbians, bisexual and transgender people are low. LBT people are forced to remain invisible in their places of employment and fear making complaints about discrimination and sexual harassment. Media to this day caricature and ridicule lesbians and gays, and portray transgender people as defective and pitiful.

⁶ For instance, Human Rights Council Resolutions. A/HRC/RES/17/19 (June 17, 2011) and A/HRC/RES/27/32 (September 26, 2014); General Assembly Resolution. A/RES/69/182 (December 18, 2014).

⁷ Human Rights Council Report. A/HRC/8/52 (September 1, 2008).

⁸ For instance, in the Fourth Basic Plan on Gender Equality (2015) the government includes "people who are in difficult situation because of sexual orientation or people with Gender Identity Disorder." The 2012 Outline of Policies for Suicide Prevention Measures states that sexual minorities have a higher rate of suicidal thoughts because they experience prejudice and misunderstanding.

III. DISCRIMINATION AGAINST LBT PERSONS (Arts. 1, 2 and Gr. Recommendation 28 on Article 2)

Many lesbians, bisexual women and transgender persons end up internalizing prejudice directed at them and view it as something that LBT persons have to accept. This is due to negative attitudes and statements by family, co-workers, the public and media about LBT persons.⁹ Without a comprehensive national anti-discrimination law that prohibits discrimination on all grounds, including sexual orientation and gender identity, LBT people are not protected from discrimination and forced into a cycle of silence to avoid more layers of discrimination.¹⁰

In General Recommendation 28, the Committee has called on state parties to the CEDAW Convention to look at the links between discrimination based on sex and gender and other factors in women's lives, including sexual orientation and gender identity.¹¹ The government of Japan must use General Recommendation 28 when incorporating a definition of discrimination against women into domestic legislation. In other General Recommendations,¹² the Committee has recognized discrimination to be intersectional, multidimensional and compounding for vulnerable groups of women, including lesbians, bisexual women, transgender women and intersex persons, making it difficult for them to gain access to justice. The government of Japan must rely on the Committee's wisdom and expertise when considering Japan's measures to eradicate discrimination against women.

Proposed Questions for State Party

We request the Committee to ask the government of Japan the following questions:

- What measures will the government take to ensure a comprehensive definition of discrimination that includes all grounds of discrimination, including sexual orientation and gender identity?
- What measures will the government take to adopt comprehensive national anti-discrimination legislation that includes protections on grounds of sexual orientation and gender identity?
- What measures will the government take to provide disaggregated information about discrimination faced by lesbians, bisexual women and transgender persons in employment, public housing, education, and when seeking social benefits?

⁹ The 2003 Gender Identity Disorder (GID) Act allows transgender persons to legally change their gender but does not prevent discrimination in employment or stereotyping in the media. Further, transgender people who do not wish to be labeled with the diagnosis of GID face many barriers in various spheres of daily life.

¹⁰ "Striving For Dignity And Respect: Experiences of Violence and Discrimination As Told by LBT Persons in Japan," is a 2014 report by Gay Japan News based on their interviews with 50 Japanese lesbians, bisexual and gender variant individuals who had experienced violence because of their sexual orientation and non-conforming gender.

¹¹ General Recommendation 28 (adopted December 2010).

¹² General Recommendation 27 (adopted December 2010), General Recommendation 33 (adopted July 2015).

IV. EMPLOYMENT (Art. 11)

Although Prime Minister Shinzo Abe has been promoting increased participation of women in the workforce, there has been no visible outreach to LBT communities to facilitate the participation of lesbians, bisexual women and transgender persons in this effort to stimulate the economy.

There is no labor law or policy that prohibits hiring discrimination or employment discrimination on the basis of sexual orientation and gender identity. Research in Japan and other countries in Asia¹³ shows that the greater the visibility of non-conforming sexual orientation or gender, the more likely and frequently LBT people suffer discrimination, especially in employment—during job interviews, hiring, and in the workplace. For instance, a lesbian was ostracized for three years by co-workers and supervisor after her sexual orientation was discovered when she revealed she did not have a male partner. Two transgender persons were denied employment after they had to explain during their job interviews why their gender was different from official documents such as school records.¹⁴

Workplace harassment of LBT workers in Japan takes the form of verbal harassment such as sexualized and verbally abusive language and demeaning comments that at times escalates to unwanted touching by co-workers.¹⁵ Fear of discrimination compels lesbians and bisexual women to hide their sexual orientation to avoid attention that would compound the workplace discrimination they already face as women—which contributes to the “invisibility” of discrimination and sexual harassment of LBT employees and gives an incomplete picture of women’s working environments.

Different motivations exist for workplace sexual harassment of LBT people. Lesbians and bisexual women reported being harassed by male co-workers “for being women.” Male to female transgender women reported sexual harassment by workplace colleagues because the violators “perceived them as women.” Female to male transgender men felt that their changed gender was disregarded, and that they were targeted for sexual harassment in the workplace as women. Transgender individuals also reported that it was difficult for them to know how to perceive and report sexual violence because sexual harassment policies tend to narrowly define sexual harassment, making it onerous to hold perpetrators accountable.¹⁶

The CEDAW Committee in previous Concluding Observations has urged the Japan government to establish sanctions for sexual harassment of women in both public and private sector jobs and

¹³ *Violence: Through The Lens Of Lesbians, Bisexual Women And Trans People In Asia*, May 2014. www.outrightinternational.org

¹⁴ The 2003 Gender Identity Disorder Act allows transgender persons to legally change their gender but does not protect them from employment discrimination.

¹⁵ LBT interviews conducted by Gay Japan News between November 2011 and March 2012 in six regions of Japan: Tohoku, Kanto, Chubu, Kansai, Chungoku and Kyushu/Okinawa. English language report at www.outrightinternational.org.

¹⁶ LBT testimonies provided to Gay Japan News.

create effective monitoring and enforcement mechanisms so that women have timely access to redress, including legal aid.

In July 2014, the Ministry of Health, Labor and Welfare directed business owners to recognize sexual harassment between people of same-sex sexual orientation. In order for workplace sexual harassment of LBT persons to be taken seriously, the government must call for language that explicitly includes sexual harassment on the basis of sexual orientation and gender identity so that reporting procedures and complaints mechanisms can be safely accessed and used by LBT employees.

Proposed Questions For State Party

We request the Committee to ask the Japan government the following questions:

- What measures will the government take to prevent and redress sexual harassment in the workplace on the basis of sexual orientation, gender identity and gender expression?
- Given low overall public awareness and understanding of LBT issues, and the low visibility of LBT realities in most workplace environments, how will the government ensure that business owners and employers develop and enforce redress mechanisms that take into consideration LBT concerns?
- What measures will the government take to ensure that sexual harassment reporting procedures are accessible to all women in the workforce, including LBT persons?

V. VIOLENCE AGAINST WOMEN (Gr. Recommendation No. 19)

The Japanese government expanded the Act on the Prevention of Spousal Violence and the Protection of Victims in January 2014 to include protections for partners in violent cohabiting and dating relationships. This is a step forward. However, LBT persons face great difficulties obtaining protection orders from lower court judges¹⁷ and making domestic violence reports to police. For instance, a lesbian, who was being sexually abused by her same-sex partner with whom she lived, reported to a police station in Tokyo, and was told by the police officer taking her complaint, “Since your case is between women, it doesn’t constitute rape. Plus, you don’t get pregnant (by being sexually assaulted by a woman.) You should talk to the partner and reconcile.”¹⁸

Intimate Partner Violence in same-sex relationships has been a blind spot and reinforces exclusion of lesbians, bisexual women and transgender persons from state-funded sheltering

¹⁷ Hideki Muramatsu from the Civil Affairs Bureau of the Ministry Justice has publicly stated in *Civil Affairs Monthly* that the domestic violence law refers to marriage and relationships between a man and woman. Given Mr. Muramatsu’s career as a prosecutor and judge, his opinions are influential to members of the judiciary.

¹⁸ Documented by Rape Crisis Network.

programs, counseling services, legal aid, and delays or denies redress and remedies for domestic violence.

In General Recommendation No. 33, the Committee recognized that being lesbians, bisexual women, transgender women and intersex persons makes it more difficult for individuals in these groups to gain access to justice for gender-based discrimination and gender-based violence.¹⁹

Revision of the Japanese Penal Code is currently under consideration. The Consultation Committee on Penalties for Sex Crimes is responsible for advising the Ministry of Justice and making recommendations regarding the definition of rape in Article 177 of the Criminal Code. Based on discussions²⁰ that the Consultation Committee held with activists who are working to end sexual violence of LBT persons, there is great concern that the Committee will limit the definition of rape in Article 177 to genital penetration and will not recognize bodily invasive acts involving objects and non-penile penetration as rape. A narrow definition of rape will not impose proper sanctions and provide redress for rape, leaving LBT persons without justice.

In order for Japan to improve protections for gender-based violence, it must intentionally and explicitly take into consideration the particular vulnerabilities and concerns of LBT persons.

In the August 2015 List Of Issues, the Committee asked the government of Japan to expand the definition of rape and to indicate what measures were taken to ensure high-quality support services for women in vulnerable groups who are experiencing domestic and sexual violence so they bring complaints and seek protection and redress.

The government's 2015 Fourth Basic Action Plan on Gender Equality²¹ acknowledges that women face intersecting hardships due to discrimination on the basis of sexual orientation and gender identity. This positive step must be accompanied by concrete policies and guidelines to prevent and redress violence in the home and ways to intervene when same sex partners and parents are the perpetrators of violence against LBT family members. The Fourth Basic Action Plan currently mentions children, the elderly, people with disabilities, and foreigners as those who face difficulty accessing one-stop centers. The Plan must include access to one-stop centers for LBT victims and survivors of gender based violence. The Plan must also include training of police and the judiciary to sensitize them to violence against LBT persons and how to support victims.

¹⁹ General Recommendation 33 (July 2015).

²⁰ On November 28, the Committee met with Miho Okada, founder of the Amori Rape Crisis Network. Committee members questioned the veracity of same-sex rape and rape claims of transgender persons. One Committee member, a prosecutor, said he could not picture such acts and had not dealt with such rape cases. Another Committee member, a professor of criminal law, questioned whether rape that did not involve penile penetration could be categorized as rape because it was not as psychologically damaging to the victim. The Committee suggested that sexual violence of sexual minorities could be categorized as obscenity and not as rape. Obscenity is a lower offense and carries a lesser penalty.

²¹ http://www.gender.go.jp/english_contents/about_danjo/lbp/basic/index.html

Proposed Questions For State Party

In keeping with the August 2015 List Of Issues adopted by the Committee, we request the Committee to ask the government of Japan the following questions:

- What measures will the government take to ensure that lesbians, bisexual women and transgender persons can get timely protections, safety and redress for intimate partner violence?
- Does Japan intend to expand the definition of domestic violence so that victims and survivors of domestic violence can receive support services regardless of their sexual orientation and gender identity?
- How does Japan intend to redefine rape in Article 177 of the Criminal Code to include all bodily invasive acts in order to improve protections and redress for all victims of sexual violence regardless of sexual orientation and gender identity?
- Does Japan intend to change the requirement for prosecuting sexual violence of LBT persons so that this form of violence can be prosecuted even without a victim's complaint?
- What measures will the government take to ensure training of judges and prosecutors so that they can provide better support to LBT persons seeking safety and redress for domestic violence and sexual violence?

VI. KEY POLICY RECOMMENDATIONS

We request the Committee to urge the government of Japan to

- Take measures to enact national laws (civil and penal) that include language explicitly prohibiting discrimination on grounds of sexual orientation and gender identity.
- Take measures to ensure that legislation prohibiting gender-motivated violence (such as rape and domestic violence) extends protections and redress to LBT persons, and be properly enforced.
- Take measures to ensure that programs to eliminate gender inequality and gender-motivated violence must intentionally and explicitly be LBT-sensitive and inclusive.