



HUMAN RIGHTS LAW AND DISCRIMINATION AGAINST LGBT PEOPLE IN JAPAN

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GLOSSARY

| WORD | DESCRIPTION |
|--------------------------------------|--|
| GENDER EXPRESSION | Refers to the means by which individuals express their gender identity. This may or may not include dress, make-up, speech, mannerisms, surgical or hormonal treatment |
| GENDER IDENTITY | Refers to a person's deeply felt internal and individual experience of gender, which may or may not correspond with the sex assigned at birth, including the personal sense of the body. |
| GENDER CONFIRMATION TREATMENT | Range of medical or non-medical treatments which a transgender person may wish to undergo. Treatments may include hormone therapy, sex or gender reassignment surgery including facial surgery, chest surgery, genital or gonad surgery, and can include (voluntary) sterilisation. |
| LGBT | Lesbian, gay, bisexual and transgender |
| SEXUAL ORIENTATION | Refers to each person's capacity for profound emotional, affectional and sexual attraction to, and intimate and sexual relations with, individuals of a different gender or the same gender or more than one gender. |
| TRANSGENDER PEOPLE | Individuals whose gender expression and/or gender identity differs from conventional expectations based on the physical sex they were assigned at birth. Not all transgender people identify as male or female; transgender is a term that includes members of third genders, as well as individuals who identify as more than one gender or no gender at all. |

1. INTRODUCTION

“When I asked a friend who is gay about challenges and needs in an email, he responded that he hasn’t encountered any problems as he hasn’t disclosed his same-sex relationship in his local community. The only safe and realistic option was for him to conceal his sexual orientation in order not to face the fear of losing his job or accommodation and avoid interpersonal friction in a rural community where protecting privacy is a challenge. He therefore did not consider the inability to disclose the truth as a ‘problem’”.

Yamashita Azusa, from a LGBT support group established after the Great East Japan Earthquake in 2011 based in Iwate, Iwate Rainbow Network, 2015¹

At first glance, the situation for lesbian, gay, bisexual and transgender (LGBT)² people in Japan may seem satisfactory. Japan does not criminalize same-sex sexual acts between consenting adults, and known violent attacks against individuals as well as those who work to protect LGBT rights are rare.³ One of the largest Pride Parades in Asia is hosted in the capital city, Tokyo. Transgender people can change their gender in the Family Registry if certain conditions are met. Although same-sex marriage is not recognized at the national level, five local municipalities recognize same-sex partnerships as “equivalent to marriage”. Practices are changing due to persistent efforts by activists and rights holders, for instance Taga city in Sendai Prefecture removed a section for gender classification on library cards following advocacy by residents.⁴ An increasing number of companies have expanded their employee benefits – extending benefits to same-sex relationships that are provided for married couples. In the international arena, in 2011 and 2014, Japan voted in favour of the UN Human Rights Council resolutions on Human Rights, Sexual Orientation and Gender Identity and Japan also accepted a number of UPR recommendations in 2008 and 2012 to enhance LGBT rights.⁵

¹ 山下梓 (Azusa Yamashita), “多様な性を生きることが岩手から考える (Exploring ways to live diverse sexuality from Iwate)”, *現代思想 (Gendai Shisou)*, 2015 vol.43-16, pp.96-99.

² The abbreviation ‘LGBTI’ is also in common use, referring to lesbian, gay, bisexual, transgender and intersex people. This briefing does not address the situation of intersex people and thus we use ‘LGBT’.

³ There is a lack of comprehensive data by authorities regarding the number of attacks based on sexual orientation or gender identity.

⁴ Amnesty International interview with Sexualities and Human Rights Network ESTO in Iwate Prefecture on 4 June 2016.

⁵ Human Rights Council, *Report of the Working Group on the Universal Periodic Review – Japan (addendum)*, A/HRC/22/14/Add.1., 8 March 2013; Human Rights Council, *Report of the Working Group on the Universal Periodic Review -Japan - Addendum - Conclusions and/or recommendations*, A/HRC/8/44/Add.1, 25 August 2008.

However, the reality is that LGBT people face pervasive discrimination in their daily lives and the established cultural and community frameworks in which they live lead many to simply hide their identity and dissuades them from claiming their rights. According to a survey by the Dentsu Diversity LAB, which undertakes various activities to promote diversity within Japanese advertising agency the Dentsu Group, one in 13 Japanese people identify themselves as LGBT – about 7.6% of the population – but rarely is this diversity recognized.⁶ For instance, individuals are reluctant to disclose their sexual orientation or gender identity in the workplace, to their relatives, or in their social life, often leading to a sense of social and emotional displacement.

LGBT people are among those identified as being at high risk for suicide.⁷ One tragic example of this occurred in 2016 when a gay student at the Graduate School of Law, Hitotsubashi University in Tokyo committed suicide after he was “outed” and bullied. His parents later filed a lawsuit against the university and another student for accountability and compensation.⁸ The lack of understanding in society and within personal relationships, including among family members, results in some LGBT people taking the blame on themselves and can result in self-harm.

While individuals whose gender identity differs from the physical sex they were assigned at birth have been allowed to officially change their sex under the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (Act on GID), the recognition depends upon criteria that violate their human rights, including requiring the individual to be sterilized or otherwise being unable to reproduce, to undergo gender confirmation surgery, and be unmarried.

Japan, as the host country of the 2020 summer Olympics and Paralympics, has not taken sufficient measures to combat discrimination in line with its commitments under international law and respond to Article Six of the Olympic Charter which states, “The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status.”⁹

In order to better address the needs and concerns LGBT people face in Japan from a human rights perspective, Amnesty International began working with stakeholders to identify and collaborate on ways to best address these issues, including interviews with academics and legal and medical professionals carried out in Tokyo and Tohoku in May and June 2016 and a consultative workshop held with organizations supporting LGBT rights which took place in Tokyo in August 2016. Additional information is from NGOs and other institutions’ surveys including from Japan’s largest broadcasting organization NHK, the Japan Alliance for Legislation to Remove Social Barriers based on Sexual Orientation and Gender Identity, Nijjiro Diversity, the Center for Gender Studies at International Christian University and the Japanese Trade Union Confederation. Other information comes from academic publications, news articles, national laws, and international human rights law.

NGOs and other institutions have undertaken surveys and other consultations that have documented the types of discrimination that LGBT people face in various aspects of public and private life including at work, accessing health services, in their family life, in detention and during emergency situations. A large portion of the information came from four comprehensive nationwide surveys conducted during 2015 and 2016;

- NHK, “Questionnaire to LGBT people: from voices of 2600 participants” (NHK Questionnaire)
- Japan Alliance for Legislation to Remove Social Barriers based on Sexual Orientation and Gender Identity (also known as “J-ALL”), “Second edition of the challenges we faced due to sexual orientation and gender identity” (J-ALL Survey)
- Nijjiro Diversity and the Center for Gender Studies at International Christian University, “2016 Questionnaire regarding the working environment of LGBT” (Nijjiro Diversity Questionnaire)

⁶ 電通ダイバーシティ・ラボ (Dentsu Diversity Lab), 電通ダイバーシティ・ラボが「LGBT 調査 2015」を実施 (Dentsu Diversity LAB conducted ‘LGBT survey 2015’), 23 April 2015, available at www.dentsu.co.jp/news/release/2015/0423-004032.html

⁷ Cabinet Office, Japan, Suicide comprehensive measures meeting (13th) agenda, 28 August, 2012, available at www8.cao.go.jp/jisatsutaisaku/sougou/taisaku/kaigi_13/index.html

⁸ Life Letibee, 一橋大学ロースクールでのアウトティング転落事件～原告代理人弁護士に聞く、問題の全容 (Case of outing and death from a fall at Hitotsubashi University Law School: Hearing about the whole picture from the attorney for the plaintiff), 8 August 2016, available at life.letibee.com/hitotsubashi-suicide/

⁹ International Olympic Committee, Olympic Charter, available at stillmed.olympic.org/Documents/olympic_charter_en.pdf

- Japanese Trade Union Confederation (JTUC), “Survey on awareness regarding LGBT in the workplace in 2016” (JTUC Survey).¹⁰

This briefing outlines the day-to-day human rights violations occurring at a personal level, which put LGBT people at a disadvantage in the workplace, school and in other settings.¹¹ The objective of presenting these examples is to inform policy decisions, which need to be taken by the Japanese authorities and other actors to prevent, diminish, and eliminate the conditions and attitude that contribute to substantive or de facto discrimination, in line with their obligations under international human rights law. While the current domestic legal framework in Japan fails to protect LGBT people from discrimination, the necessary changes include, but is not limited to a comprehensive non-discrimination law. Beyond this most urgent step, other changes such as enabling greater unrestricted access to gender recognition must also be in place so that persons of different sexual orientation and gender identity can enjoy equal rights. Detailed recommendations are given towards the end of this briefing.

¹⁰ 日本放送協会 (NHK), LGBT 当事者アンケート: 2600 人の声から (Questioner to LGBT people: from voiced of 2600 participants), 2015, available at www.nhk.or.jp/d-navi/link/lgbt/#hajime; 性的指向および性自認等により困難を抱えている当事者等に対する法整備のための全国連合会 (Japan Alliance for Legislation to Remove Social Barriers based on Sexual Orientation and Gender Identity), 性的指向および性自認を理由とするわたしたちが社会で直面する困難のリスト 第2版 (Second edition of the challenges we faced due to sexual orientation and gender identity), 2 September 2015, available at lgbtetc.jp/pdf/list_20150830.pdf; 虹色ダイバーシティ、共同研究: 国際基督教大学ジェンダー研究センター (Nijiirō Diversity and Center for Gender Studies at International Christian University), LGBT に関する職場環境アンケート (2016 Questioner regarding the working environment of LGBT), 2016, available at ad115d5sri.smartrelease.jp/wp3/wp-content/uploads/2016/08/932f2cc746298a4e76f02e3ed849dd88.pdf; 日本労働組合総連合会 (Japanese Trade Union Confederation), “LGBT に関する職場の意識調査 (Survey on awareness regarding LGBT in the workplace)”, 25 August 2016, available at www.jtuc-rengo.or.jp/info/chousa/data/20160825.pdf

¹¹ Human Rights Watch report details bullying of LGBT students in schools. Human Rights Watch, *The Nail That Sticks Out Gets Hammered Down: LGBT Bullying and Exclusion in Japanese Schools*, 5 May 2016, available at www.hrw.org/report/2016/05/06/nail-sticks-out-gets-hammered-down/lgbt-bullying-and-exclusion-japanese-schools

2. NON-DISCRIMINATION

“We reaffirm the principle of non-discrimination which requires that human rights apply equally to every human being regardless of sexual orientation or gender identity”

UN declaration on sexual orientation and gender identity, presented to the United Nations General Assembly on 18 December 2008

Under international law and standards, everyone has the right to be free from discrimination, including on the basis of their sexual orientation or gender identity. Prohibition of discrimination on grounds of “race, sex, language, religion, political or other opinion, national or social origin, birth or other status” are enshrined in Article 2 of the Universal Declaration of Human Rights (UDHR), as well as in other core international human rights treaties including the International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social and Cultural Rights (ICESCR).¹²

While sexual orientation and gender identity are not mentioned explicitly, these Articles conclude with the words “other status.” The use of the phrase “other status” shows that the lists were intended to be open-ended and illustrative: in other words, the grounds of discrimination are not exhaustive and have in practice been interpreted to include other types of discrimination. For instance, ICCPR Article 2 and Article 26 that prohibit discrimination and contain a generally inclusive ‘other status’ clause have been interpreted by the Human Rights Committee as including sexual orientation.¹³ In addition, Article 26 of the UDHR provides that everyone is equal before the law and is entitled without discrimination to the equal protection of the law.

Other binding UN instruments provide additional protection against discrimination for specific groups or on specific grounds. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), and the Conventions on the Elimination of All Forms of Discrimination against Women (CEDAW) and on the Rights of Persons with Disabilities (CRPD) all contain free-standing provisions prohibiting discrimination in all areas on the grounds of respectively, “race, colour, descent, or national or ethnic origin”, “gender” and “disability”.¹⁴ The Convention on the Rights of the Child (CRC) prohibits discrimination against children in respect of the rights it contains on the same grounds as the ICCPR and the ICESCR.¹⁵ As a state party to all the human rights treaties mentioned above, Japan has a binding obligation to ensure that the right to be free from discrimination is enjoyed by everyone within its jurisdiction.

The Human Rights Committee and the Committee on Economic, Social and Cultural Rights (ESCR Committee) have repeatedly urged States to tackle both direct and indirect discrimination against all persons, including LGBT and intersex persons. States have an obligation to ensure that laws, policies and programmes executed by State authorities do not discriminate against individuals. They also have an obligation to address discriminatory practices, including by private actors, and to take action to prevent, diminish and eliminate the conditions and attitudes that contribute to substantive or de facto discrimination.

¹² ICCPR, Article 2(1); ICESCR, Article 2(2).

¹³ UN Human Rights Committee, CCPR General Comment No. 18: Non-discrimination.

¹⁴ ICERD, Article 1(1); CEDAW, Article 2; CRPD, Article 5.

¹⁵ CRC, Article 2.

International law defines discrimination as any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on a prohibited ground of discrimination and that has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of rights guaranteed under international law. Differences in treatment based on prohibited grounds are considered discriminatory, unless a state can show that there is a justification for the difference in treatment that is reasonable and objective.

Article 14 of the Constitution of Japan promotes equality based on political, economic or social relations because of race, creed, sex, social status or family origin.¹⁶ While sexual orientation and gender identity are not specifically mentioned in the Constitution, some argue that it is included in this list. For instance, the Panel on Issues Related to Sexual Orientation and Gender Identity of the ruling Liberal Democratic Party unveiled its basic position in June 2016, stating that the promotion of equality of sexual orientation and gender identity is included in the principle of this Article.¹⁷ However, laws or mechanisms allowing individuals or groups to seek legal redress for discrimination is lacking and Japan does not have a national human rights commission in line with the Paris Principles¹⁸ to allow for individual claims based on discrimination of sexual orientation and gender identity to be investigated.¹⁹

Marginalized through the absence of protections against discrimination, LGBT people face discrimination at work, education, in access to health services, family life and in other settings such as detention centres and disaster affected areas. In addition, some politicians and government officials continue to make explicitly homophobic statements which likely encourages discrimination against LGBT people.²⁰ For instance, Masumi Tsuruhashi, Member of the City Council of Ebina City, Kanagawa Prefecture, tweeted to media organization the Asahi Shimbun in response to their report on an attitude survey regarding same sex marriage, "If abnormal people increase, human beings will become extinct. ... Homosexuality is abnormal. Media should be more responsible than to report abnormal activities."²¹ The prevalence of homophobic and transphobic views result in many LGBT people feeling compelled to conceal their sexual orientation or gender identity from employers, public officials and even their families. According to the NHK Questionnaire their fear of stigmatization and isolation results in an inability to reach appropriate services through which their needs can be met.

¹⁶ Article 14 of the Constitution states, "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin."

¹⁷ The panel calls for legislation to be drawn up that would deepen understanding of sexual orientation and gender identity but doesn't legally ban discrimination against LGBT people. 自由民主党政務調査会 性的指向・性自認に関する特命委員会 (Policy Research Council of the Liberal Democratic Party, Panel on Issues Related to Sexual Orientation and Gender Identity), 性的指向・性同一性(性自認)の多様性って? ~自民党の考え方 (What's diversity based on sexual orientation and gender identity? Liberal Democratic Party's position), 16 June 2016, available at www.jimin.jp/news/policy/132489.html

¹⁸ The Paris Principles set out internationally agreed upon standards designed to guide the work of national human rights institutions in a credible, independent and, effective manner. Crucially, the Paris Principles define the role, composition, status, and functions of these bodies, which include engaging with the UN and regional institutions and states' obligation to ensure their real independence through a broad mandate, adequate funding, and an inclusive and transparent appointment process.

¹⁹ For instance, in May 2016 the Diet passed the first national law to condemn the advocacy of hatred towards residents of overseas origin and their descendants. While a Supplementary Resolution passed along with this law states that "it is not correct to believe that certain form of discriminatory speech and behaviour may be allowed as long as it is not the unfair discriminatory speech and behaviour against persons originating from outside Japan" thus possibly allowing other groups to claim discrimination, including discrimination based on sexual orientation and gender identity, this resolution is not legally binding, provides for not criminal or civil penalties and is ineffective protection against discrimination. Ministry of Justice, Japan, The Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (Provisional Translation), available at www.moj.go.jp/content/001199550.pdf; Ministry of Justice, Japan, Supplementary Resolution for the Act on the Promotion of Efforts to Eliminate Unfair Discriminatory Speech and Behavior against Persons Originating from Outside Japan (Provisional Translation), available at www.moj.go.jp/content/001199555.pdf

²⁰ On few separate occasions in December 2010, Shintaro Ishihara, Governor of Tokyo at the time, made comments criticizing the representation of homosexuals in the media and categorizing lesbians and gay men as "deficient". 日本弁護士連合会 会長 村越進 (President of Japan Federation of Bar Associations, Susumu Murakoshi), 警告書 (Warning statement), 22 April 2014, available at www.nichibenren.or.jp/library/ja/opinion/hr_case/data/2014/complaint_140422.pdf

²¹ Masumi Tsuruhashi later apologies for series of inappropriate tweets, and City Assembly issued a warning for these discriminatory remarks. The Japan Times, City assembly member in hot water over discriminatory tweets about same-sex marriage, 30 November 2015, available at www.japantimes.co.jp/news/2015/11/30/national/social-issues/city-assembly-member-in-hot-water-over-discriminatory-tweets/

3. EMPLOYMENT

“The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.”

Article 6, ICESCR

The ESCR Committee has stated that the Covenant “prohibits discrimination in access to and maintenance of employment on grounds of ... sexual orientation.”²² This principle of non-discrimination applies to all aspects of the right to work. States thus have an immediate obligation to guarantee that the right to work will be exercised without discrimination of any kind. States must respect the right to work by refraining from denying or limiting access to decent work for all persons and especially for “disadvantaged and marginalized groups and individuals.”²³ According to the ESCR Committee, any discrimination in access to the labour market or to means and entitlements for obtaining employment “constitutes a violation of the Covenant.”

With regards to employment benefits, a state should not differentiate between heterosexual and same-sex unmarried couples. In the case of *X v. Colombia*, the Human Rights Committee found that the state failure to extend pension benefits to an unmarried same-sex partner, when such benefits were granted to unmarried heterosexual couples, was a violation of rights guaranteed by the Covenant.²⁴ In the case of *Young v. Australia*, which concerned broadly similar facts, the Committee stated:

“The State party provides no arguments on how this distinction between same-sex partners, who are excluded from pension benefits under law, and unmarried heterosexual partners, who are granted such benefits, is reasonable and objective, and no evidence which would point to the existence of factors justifying such a distinction has been advanced. In this context, the Committee finds that the State party has violated article 26 of the Covenant by denying the author a pension on the basis of his sex or sexual orientation.”²⁵

Under Article 3 of the Japan Labor Standards Act, “discriminatory treatment” of workers based on nationality, creed or social status is prohibited.²⁶ Similarly to the interpretation of the Constitution, the grounds of discrimination are not exhaustive and therefore do not exclude other categories including gender identity and sexual orientation. While the “Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment” only specifically prohibits discrimination or harassment based on

²² ESCR Committee, General Comment No. 18: The Right to Work (Art. 6 of the Covenant), Paragraph 12(b)(1).

²³ ESCR Committee, General Comment No. 18: The Right to Work (Art. 6 of the Covenant), Paragraph 23.

²⁴ Human Rights Committee, VIEWS Communication No. 1361/2005, CCPR/C/89/D/1361/2005, 14 May 2007, Paragraph 7.2.

²⁵ Human Rights Committee, VIEWS Communication No. 1361/2005, CCPR/C/89/D/1361/2005, 14 May 2007, Paragraph 10.4.

²⁶ Article 3 of the Labor Standards Act states “Employers shall not use the nationality, creed or social status of any Workers as a basis for engaging in discriminatory treatment with respect to Wages, working hours or other working conditions.”.

gender, the Health, Labour and Welfare Ministry stated in 2016 that harassment of LGBT people is also included in this category.²⁷

However, discrimination against LGBT people remains routine in the workplace, from applying for a position to facing day-to-day hostility. Many same-sex couples are denied employment benefits routinely provided to different-sex couples. It could also appear as gender-based harassment, for instance, questions about plans for marriage, or the existence of a partner, as well as comments such as “act more like a man/woman” as shown in the Nijjiro Diversity Questionnaire.

Hiding one’s sexual orientation or gender identity is still common, due to a fear of losing one’s job or facing discrimination, both in the public and the private sector. The Nijjiro Diversity Questionnaire indicates that 56.1% of the LGBT people surveyed have not disclosed their sexual orientation or gender identity in the workplace. The same survey also shows that this tendency is stronger in smaller cities with 69.5% failing to disclose sexual orientation in rural areas. Even in cases where individuals attempt to be open about their sexual orientation or gender identity, there are instances when LGBT people have been advised to conceal it by the human resources department due to potential or existing hostility of other colleagues, according to the NHK Questionnaire. The inability to disclose sexual orientation or gender identity at work, school and in other settings results in the misunderstanding of LGBT representation in the population. The Nijjiro Diversity Questionnaire notes that some individuals overheard colleagues make remarks such as “there’s no LGBT in this office”.

Discrimination also limits working opportunities. For instance, the J-ALL Survey indicates that job applications are particularly challenging for transgender individuals if their gender does not match the gender their identification document. For example, they undergo job interviews that can include discriminatory questions which many of them consider as painful and discouraging.

Day to day experience at the work place can also be challenging: in the JTUC Survey 38.1% of transgender people responded they are not able to freely dress in accordance with their gender identity. Also, according to the list of challenges due to sexual orientation or gender identity compiled by J-ALL, some transgender individuals are unable to use company’s changing rooms, uniforms and dormitories based on their gender identity when the gender registered in their official documents does not match their gender identity.

While the right to health of LGBT people is detailed in the next section, there is also an issue of access to health care in the workplace, for instance, the Nijjiro Diversity Questionnaire indicates that 20.5% of transgender people were reluctant to access regular health check-ups as it is one of the occasions when their gender identity attracts attention. The Japan Industrial Safety and Health Act requires employers to provide medical examinations to workers conducted by a physician.²⁸ The same survey also documents a case where a transgender individual’s gender and name under the family registry were revealed to colleagues since the list of those who had health check-ups was made public and included gender information. One of the respondents to the NHK Questionnaire said, “If the physical and psychological gender do not match, it is not easy to go to the hospital or receive health check-ups. That leads to further health problems”. Increasing numbers of mostly multinational companies are taking measures to extend welfare packages to same-sex couples such as providing wedding cash gifts, and childbirth and nursing care leave that were previously only provided to married couples. Electronics companies Sony and Panasonic announced in 2016 that employees with same-sex partners now have the same family benefits.²⁹ A cosmetic

²⁷ At the session meeting of the Labour Policy Council held by the Health, Labour and Welfare Ministry in 20 December 2013, Department Chief of the Equal Employment Policy Division at the time stated that “We consider as sexual harassment at the workplace even if the act is targeted to sexual minorities if it is against Article 11 of the Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment or Guidelines Concerning Measures to be Taken by Employers in terms of Employment Management with Regard to Problems Caused by Sexual Harassment in the Workplace”. 岡芹健夫 (Takeo Okazeri) and 帯刀康一 (Kenichi Taitou), 職場における LGBT への対応 (Responding to LGBT in the workplace), 労働事情 (Roudoujijou), No.1318, 産労総合研究所 (SANRO Research Institute), 2016, p.9.

²⁸ Article 66 (1) of the Industrial Safety and Health Act states “The employer shall, as provided for by the Ordinance of the Ministry of Health, Labour and Welfare, have medical examinations of workers conducted by a physician.”

²⁹ Those benefits include wedding cash gifts, childbirth and nursing care leaves, as well as family separation allowances when assigned to a job away from home. Nikkei Asian Review, Panasonic, Sony moves advance diversity trend in corporate Japan, 19 February 2016, available at asia.nikkei.com/Life-Arts/Japan-Trends/Panasonic-Sony-moves-advance-diversity-trend-in-corporate-Japan

company Shiseido also introduced similar practice in January 2017 in hopes of attracting more talented employees by increasing diversity.³⁰

³⁰ 産経ニュース (Sankei News), 資生堂、同性婚も平等に 多様性重視 新制度スタート 手当・休暇、配偶者扱い (Shiseido treats same-sex marriage equally by respecting diversity. New system introduced to extend benefit and holiday by treating as spouse), 10 January 2017, available at dd.hokkaido-np.co.jp/news/economy/economy/1-0356340.html

4. HEALTH

“The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation.”

General Comment on Article 12, the ESCR Committee

In its General Comment on Article 12, the ESCR Committee stated:

“The right to health is not to be understood as a right to be healthy. The right to health contains both freedoms and entitlements. The freedoms include the right to control one’s health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation. By contrast, the entitlements include the right to a system of health protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”³¹

In General Comment No. 14, the ESCR Committee stated that the Covenant “proscribes any discrimination in access to health care and the underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of ... sexual orientation”.³²

In General Comment No. 20, the Committee explained that the “other status” ground in Article 2 of the Covenant includes both sexual orientation and gender identity.³³ Ensuring the “right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups” is an immediate obligation of States.³⁴

Human rights standards also call for quality health care information to be available, accessible and acceptable, including for transgender and gender non-confirming people. They also require that all those seeking services should be treated with respect and dignity and without discrimination.³⁵ European regional standards specifically call for the consideration of the specific needs of transgender people in the development of national health plans, including suicide prevention measures, health surveys, medical

³¹ CESCR, General Comment No. 14 (Article 12 of the ICESCR), Paragraph 8.

³² CESCR, General Comment No. 14 (Article 12 of the ICESCR), Paragraph 18.

³³ CESCR, General Comment No. 20 (Article 2 Paragraph 2 of the ICESCR), Paragraph 32.

³⁴ CESCR, General Comment No. 14 (Article 12 of the ICESCR), Paragraph 43(a).

³⁵ CESCR, General Comment 14 (Article 12 of the ICESCR); CRC, General Comment 15 (Article. 24 of the CRC); CESCR, General Comment 20 (Article 2, Paragraph. 2 of the ICESCR); CEDAW, General Recommendation 28 (Article 2 of the CEDAW).

curriculums, training courses and materials, and when monitoring and evaluating the quality of health services.³⁶

The suicide rate among LGBT people in Japan which is higher than average is seen as the most pressing problem by organizations supporting LGBT rights as according to them it is seen as a matter concerning the right to life.³⁷ States' positive obligations with respect to the right to life will require states to take positive measures to protect vulnerable individuals from risks to their lives and health, including the provision of appropriate resources and to take reasonable measures to prevent deaths. While the 2012 revision of the national suicide prevention policy specifically mentions LGBT people, the exact figure on the number of suicides claimed as a result of discrimination based on sexual orientation or gender identity are unknown as the true reason for suicide is often hidden.³⁸ According to Minata Hara, who works for the suicide prevention hotline for LGBT, individuals often internalize discrimination as a personal problem and end up harming themselves.³⁹ Hara also elaborates that the root causes of the challenges faced by LGBT people go beyond their sexual orientation or gender identity, are multifaceted and can intersect with other issues such as poor communication skills, mental disability, domestic violence, poverty, having no parents to rely on and to the lack of access to education.⁴⁰

The number of medical facilities with LGBT expertise are limited. An organization working on the mental health of LGBT people, Colourful @Heart, says that the majority of medical professionals lack sufficient knowledge and basic terminology of LGBT issues, and make discriminatory remarks without noticing.⁴¹ They further elaborated that many became practitioners before "homosexuality" was removed by the World Health Organization from the list of "mental disorders" in the International Statistical Classification of Diseases and Related Health Problems 10th revision published in 1993 (which was adopted by the Japanese Ministry of Health, Labour and Welfare the following year) and often have difficulties changing their attitudes.⁴² Many LGBT people who cannot disclose their sexual orientation or gender identity are often unable to obtain appropriate services where their needs could be addressed. When accessing mental health support, patients often feel unable to disclose their sexual orientation or gender identity because they do not trust their sexuality will be understood or accepted.⁴³

The Act on GID took effect in 2004, allowing individuals who do not identify with their gender of birth to officially change their gender. The process however can result in human rights violations as it requires gender confirmation surgery as well as other conditions before the gender change is officially recognized. Fees for gender confirmation surgery can be exorbitant as the surgery as well as hormone treatments are not usually covered by National Health Insurance which is a medical insurance system where the national government, local governments and individuals share the medical expenses. Other required conditions for legal gender recognition include: (1) being over 20 years old, (2) unmarried at the time he or she wishes to legally change his or her gender, (3) no minor children⁴⁴ and (4) being deprived of their reproductive organs or reproductive ability.⁴⁵ Making such recognition dependent upon criteria such as the incapacity to reproduce (implying sterilization), gender confirmation surgeries and single status (implying divorce if

³⁶ Council of Europe, *Discrimination on grounds of sexual orientation and gender identity in Europe (2nd edition)*, 2011, available at www.refworld.org/docid/4eb8f53f2.html

³⁷ Amnesty International interview with Kyosei-Net in Tokyo Prefecture on 16 May 2016 and Colourful @ Heart in Tokyo Prefecture on 17 May 2016. Regarding the higher rate, 2015 annual report of Yoriso Hotline which provides free telephone consultation to LGBT people, 34.1% of "sexual minorities" had suicidal thoughts which is 2.5 times higher than the group that does not identify themselves as such which was 14.4%. 社会的包摂サポートセンター (Support Centre for Social Inclusion), *よりそいホットライン 平成 27 年報告書 (Yoriso Hotline annual report 2015)*, December 2016, available at 279338.jp/houkoku/

³⁸ Cabinet Office, Japan, Suicide comprehensive measures meeting (13th) agenda, 28 August 2012, available at www8.cao.go.jp/jisatsutaisaku/sougou/taisaku/kaigi_13/index.html

³⁹ Amnesty International interview with Kyosei-Net in Tokyo Prefecture on 16 May 2016.

⁴⁰ Amnesty International interview with Kyosei-Net in Tokyo Prefecture on 16 May 2016. Also, regarding the issue of education, many children and adolescents perceived as LGBT or gender non-conforming experience discrimination, harassment and, in some cases, violent abuse both in and outside of school. Such abuse can force students to skip or drop out of school, and can lead to feelings of isolation and depression, even suicide. The United Nations High Commissioner for Human Rights, *Discrimination and violence against individuals based on their sexual orientation and gender identity*, A/HRC/29/23, 4 May 2015, available at www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session29/Pages/ListReports.aspx

⁴¹ Amnesty International interview with Colourful @ Heart in Tokyo Prefecture on 17 June 2016.

⁴² Amnesty International interview with Colourful @ Heart in Tokyo Prefecture on 17 June 2016; After Ministry of Health, Labour and Welfare of Japan adopted the International Statistical Classification of Diseases and Related Health Problems 10th revision in 1994, the Japanese Society of Psychiatry and Neurology endorsed it in 1995.

⁴³ Amnesty International interview with Colourful @ Heart in Tokyo Prefecture on 17 June 2016.

⁴⁴ Revision of the Act on Special Cases in Handling Gender for People with Gender Identity Disorder resulted to changing the wording from "no children" to "no minor children".

⁴⁵ Act on Special Cases in Handling Gender for People with Gender Identity Disorder, Article 3, Paragraph 1.

married) violates the right to be free from inhuman and degrading treatment, the right to the highest attainable standards of health, the right to private and family life and the right to equality before the law.

5. RIGHT TO RESPECT FOR FAMILY LIFE

“Human rights are for everyone, no matter who you are or whom you love. ... As Secretary-General of the UN, I believe in and strive to achieve the world promised in the Universal Declaration of Human Rights, a world rooted in tolerance, freedom and equality.”

Ban Ki-moon, Secretary-General of the United Nations at the time, 2014⁴⁶

The obligation to protect individuals from discrimination on the basis of sexual orientation extends to ensuring that unmarried same-sex couples are treated in the same way and entitled to the same benefits as unmarried different-sex couples.⁴⁷ The Human Rights Committee has welcomed measures to address discrimination in this context.

While Japan does not ban adult consensual same-sex conduct, it has no official recognition of same-sex marriage. As noted above, this results in same-sex partners being discriminated against when accessing health-care and welfare benefits provided to married couples of different-sex. Article 24 of the Constitution defines marriage as a legally binding union between two people who mutually agree to enter into that union.⁴⁸ Although English translations of the Constitution typically describe marriage as involving “both sexes,” some scholars and lawyers argue that the word *ryōsei* (両性) in the original text can also be interpreted to mean simply “two parties,” and does not imply gender.⁴⁹ When the Supreme Court made a ruling regarding this Article in 2015, it didn’t expressly limit marriage to a man and a woman.⁵⁰

When two lesbian couples, one in Aomori, in northern Japan, in 2014, and another in Tokyo in 2015, filed marriage papers at city halls, both were rejected based on the Article 24 of the Constitution.⁵¹ On 7 July

⁴⁶ UN News Centre, UN widens its same-sex marriage policy to include all legally-married staff, 8 July 2014, available at www.un.org/apps/news/story.asp?NewsID=48222#.WNtBMm994dU

⁴⁷ Mr. Edward Young v. Australia, Communication No. 941/2000, U.N. Doc. CCPR/C/78/D/941/2000, 2003, Paragraph 10.4.

⁴⁸ Article 24 of the Constitution states, “Marriage shall be based only on the mutual consent of both sexes and it shall be maintained through mutual cooperation with the equal rights of husband and wife as a basis.”

⁴⁹ A constitutional scholar 木村草太 (Souta Kimura) provides interpretation of the Article 24 of the Constitution in an 沖縄タイムズ (Okinawa Times) article, “【木村草太の憲法の新手】(7) 現行法は異性婚だけを保護 差別されない権利侵害 (Souta Kitamura’s new method of the Constitution (7) Current law protecting only straight married couple is the violation of the right not to be discriminated)”, 3 May 2015, available at www.okinawatimes.co.jp/articles/-/50175; A lawyer with expertise in LGBT rights echoes this point in 南和行 (Kazuyuki Minami), *同性婚: 私たち弁護士夫婦です (Same-sex marriage: we are same sex lawyer couple)*, 祥伝社 (Shodensha), 2015, pp. 116-176.

⁵⁰ The Japan Times, Different-names ruling leaves door open to possibility of same-sex marriages, 9 January 2016, available at www.japantimes.co.jp/news/2016/01/09/national/media-national/different-names-ruling-leaves-door-open-possibility-sex-marriages/#.WLOMdG994dU

⁵¹ 一ノ瀬文香 (Fumika Ichinose), *ビアン婚 (Bian-kon / Lesbian marriage)*, 双葉社 (Futabaya-sha), 2016, pp.176-184.

2015, 456 individuals from 41 prefectures nationwide submitted a request to the Japan Federation of Bar Associations (JFBA) under the Human Rights Relief Program arguing that denying the right to marriage to same-sex couples violates Article 14 of the Constitution that guarantees equality and deprives them of the rights and privileges that a married different-sex couple would have under the current legal system.⁵² The result was still pending at the time of writing.

According to the Equal Marriage Alliance Japan, the current practice of prohibiting marriage of same-sex couples results in issues such as inability to access partner's health insurance or to request family care leave when taking care of a partner, to give consent to partner's medical treatment or to request partner's medical record disclosure at the hospital, to claim tax exemption for spouses and to have joint custody of an adopted child.⁵³ For instance, J-ALL documented cases where same-sex couples were not able to adopt a child because as a general rule only married couples could adopt.

In 2015, Tokyo's Shibuya Ward Assembly introduced an ordinance issuing a certificate to those who applied recognizing same-sex unions as "equivalent to marriage". While this certificate is not legally binding, it will allow local same-sex couples to rent apartments together and grant them hospital visitation rights as family members. Beyond that, if hospitals, real estate firms and other businesses are found in breach of the ordinance by discriminating against the same-sex couples, their names will be publicized on the ward's website.⁵⁴ A Shibuya Ward Councillor Mari Okada refers to the significance of this ordinance as follows.

"This ordinance does not aim to achieve same-sex marriage, and the number of couples that request certificates may not be substantial. However, the fact that LGBT people are included in the ordinance and became entitled to actual administrative services is indeed meaningful."⁵⁵

Following Shibuya ward, Setagaya Wards in Tokyo, the cities of Iga in Mie Prefecture, Takarazuka in Hyogo Prefecture, Naha in Okinawa Prefecture and Sapporo in Hokkaido Prefecture also introduced ordinances or guidelines that acknowledge same-sex unions in 2015 and 2016.⁵⁶

The right to marry and to found a family is protected under international and regional human rights laws including in the Article 23 of the ICCPR recognizing right to marry and to found a family, and the Article 17 of the same Covenant which protects the right to respect for private and family life.

The current requirements of the legal change of gender under the Act on GID have various implications for family life. For instance, the requirement discriminates against transgender people who are married and/or have children and wish to remain so, as they are bound to choose between their rights to marry and to found a family and respect for private and family life, and their right to recognition before the law.

Furthermore, absolute denial of legal gender recognition to individuals under a given age is not consistent with existing international standards regarding the rights of children. Legal gender recognition should be accessible to children on the basis of their best interest and taking into account their evolving capacities

CRC requires states to respect the right of children to be heard and to duly take into account their views. A key requirement of the CRC is that: "in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."⁵⁷ The UN Committee on the Rights of the Child has highlighted that the identity of the child includes characteristics such as sexual orientation and gender

⁵² 同性婚人権救済弁護士 (Lawyer seeking human rights remedy for same-sex marriage), 人権救済申立書【概要版】 (Digest version of the written motion for human rights remedy), 7 July 2015, available at douseikon.net/?p=537; Upon receiving request by victims of human rights infringements, JFBA's Human Rights Protection Committee establishes a case committee and charges it with investigating the facts of the specific case as necessary and determining whether there is a human rights violation. If this committee determines that an infringement of human rights has taken place, it refers the matter to the Board for decision, and the JFBA issues a warning, recommendation, or request to the infringing institution or organization seeking the elimination and rectification of the infringement. JFBA, Protection of Human Rights, available at www.nichibenren.or.jp/en/about/activities/protection.html

⁵³ Equal Marriage Alliance Japan, 婚姻できない同性カップルが直面する諸問題の実例 (Examples of various challenges unmarried same-sex couples encounter), available at <http://bit.ly/2bBn3e8>

⁵⁴ The Guardian, Tokyo's Shibuya Ward is first in Japan to recognize same-sex marriage, 31 March 2015, available at www.theguardian.com/world/2015/mar/31/tokyos-shibuya-ward-same-sex-marriage

⁵⁵ エスメラルダ (Esmeralda) and KIRA, 同性パートナーシップ証明、はじまりました。 (Same-sex partnership certificate started to be issued.), ポット出版 (Potto Shuppan), 2015, p.54.

⁵⁶ The Japan Times, Sapporo to join other cities in recognizing same-sex partnerships as marriages, 22 December 2016, available at www.japantimes.co.jp/news/2016/12/22/national/sapporo-join-cities-recognizing-sex-partnerships-marriages/#.WKZgGG994dU; Details of the practices differ among cities for instance, such as documents required to submit application and the extent of protection whether if it is an ordinance or a guideline. エスメラルダ (Esmeralda) and KIRA, 同性パートナーシップ証明、はじまりました。 (Same-sex partnership certificate has started.), ポット出版 (Potto Shuppan), 2015, pp.112-117.

⁵⁷ Article 3.1. of the CRC.

identity, and that “[...] the right of the child to preserve his or her identity is guaranteed by the Convention (Article 8) and must be respected and taken into consideration in the assessment of the child’s best interests.”⁵⁸ The requirements in Japan for change of gender include an age limit over 20 years old and therefore to do not fulfil the requirements set out by the Committee on the Rights of the Child.⁵⁹

⁵⁸ Committee on CRC, General Comment 14 (Article 3, Paragraph 1 of the CRC), Paragraph 55.

⁵⁹ Act on Special Cases in Handling Gender for People with Gender Identity Disorder, Article 3, Paragraph 1.

6. DISCRIMINATION IN DETENTION FACILITIES

“Within detention facilities, there is usually a strict hierarchy, and those at the bottom of this hierarchy, such as children, the elderly, persons with disabilities and diseases, gays, lesbians, bisexuals and transgender persons, suffer double or triple discrimination.”

Report of the Special Rapporteur on Torture, 2010

The increased vulnerability of LGBT people in detention means that they should be protected not only from violence, harassment and abuse but from other discrimination.⁶⁰ In a 2010 report the UN Special Rapporteur on torture reflected on the strict hierarchy that frequently exists within detention settings and how those at the bottom of the hierarchy often include transgender persons who suffer double or triple discrimination as a result.⁶¹ The Special Rapporteur also highlighted the increased rates of physical and sexual abuse that transgender women face in detention if placed within the general prison population in men’s prisons.⁶²

International human rights law is clear that there can be no justification for torture or other cruel, inhuman or degrading treatment on any grounds.⁶³ The prohibition against torture and other ill-treatment is absolute and cannot be derogated from at any time.⁶⁴ States are obliged as a matter of international law to take measures to prevent this kind of treatment, to investigate and prosecute perpetrators,⁶⁵ and to provide adequate

⁶⁰ UN General Assembly, *Report of the Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/56/156, 3 July 2001 (‘Torture and discrimination against sexual minorities’, paras. 17-25), para. 23.

⁶¹ Report of the Special Rapporteur on torture, UN Doc. A/HRC/13/39/Add.5, 2010, para. 231.

⁶² Report of the Special Rapporteur on torture, UN Doc. A/56/156, 2001, para. 23.

⁶³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Articles 2, 15, 16; UDHR, Article 5; ICCPR, Article 7.

⁶⁴ ICCPR, art. 4.2; the UN Committee Against Torture has said that the obligations contained in articles 2.15 and 15 of the Convention Against Torture may not be derogated from under any circumstances (Declaration of the Committee Against Torture, adopted 22 November 2001, UN Doc CAT/C/XXVII/Misc. 7).

⁶⁵ Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OP-CAT), General Assembly resolution A/RES/57/199, adopted 18 December 2002, entered into force 22 June 2006; Declaration on Torture, Article 4; Human Rights Committee (HRC), General Comment No. 20: Replaces General Comment 7 concerning prohibition of torture and cruel treatment or punishment (art. 7), 10 March 1992, paras. 8 and 11. See also *Rodriguez v Uruguay*, UN Doc CCPR/C/51/D/322/1988 (1994), adopted 14 July 1994; *Blanco v Nicaragua*, UN Doc CCPR/C/51/328/1988 (1994), adopted 20 July 1994; *Kurbanov v Tajikistan*, 1096/2002, UN Doc CCPR/C/79/D/1096/2002 (2003), adopted 6 November 2003.

redress and compensation for victims.⁶⁶ Failure to prevent abuse of this kind is a gross violation of human rights.⁶⁷

LGBT people in detention are frequently at particular risk of violence, harassment and abuse – both from officials such as police and prison guards and other inmates, however the measures taken by the detention centres in Japan to counter them are limited. Transgender detainees are routinely subjected to a host of abusive practices.

Japan's Act on Penal Detention Facilities and Treatment of Inmates and Detainees (Act on Penal Detention) does not have specific clauses that cover the treatment of detainees based on sexual orientation or gender identity. Current practice is that if a gender change under the Act on GID has not been recognized in the Family Registry, transgender people are sent to detention based on their gender of birth even in the case where gender confirmation surgery has been completed. The Asahi Shimbun reported a case where a transgender woman faced both physical and mental abuses when she was placed in a male detention facility and had her hair shaved off because her gender identity was not recognized.⁶⁸

Yet, there are some instances where the law is interpreted flexibly. For instance, the Article 34.2 of Act on Penal Detention requires that the examination of female detainees be conducted by female prison officers, and this practice was extended to transgender women regardless of whether they have undergone gender confirmation surgery.⁶⁹

There was some progress for instance, in October 2015, in response to the request of a lawyers group, the Ministry of Justice circulated a non-binding circular note to all detention centres and prisons requiring that monitoring during showers and examination of transgender female detainees be conducted by female prison officers even in case where the gender identity was not recognized in the Family Registry.⁷⁰ However, this does not include transgender men detainees and the treatment of individual detainees is often at the discretion of each detention centre and prison.

In addition, prisons and detention centres often do not allow transgender detainees to continue hormone treatment, with potentially serious consequences for their health.⁷¹ In June 2016, a transgender woman filed a lawsuit against the state after she was refused hormone injections while imprisoned. She had been receiving hormone treatment for more than 10 years. The detention centre explained that this cannot be provided because it is beyond what is considered "treatment for disease" which is required by law to be provided in detention.⁷²

⁶⁶ HRC, General Comment No. 20: Replaces General Comment 7 concerning prohibition of torture and cruel treatment or punishment (Article 7), 10 March 1992, paras. 14 and 15; UN General Assembly, Interim report of the Special Rapporteur of the Commission on Human Rights on the question of torture and other cruel, inhuman or degrading treatment or punishment, UN Doc. A/55/290, 11 August 2000, para. 28.

⁶⁷ Velásquez Rodríguez Case, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988), Inter-American Court of Human Rights, 29 July 1988, available at www.unhcr.org/refworld/docid/40279a9e4.html

⁶⁸ 朝日新聞 (The Asahi Shimbun), 性同一性障害、刑務所はどちらに? 受刑者が見直し訴え (Where to place detainees with Gender Identity Disorder in prison? Detainee requests condition review), 4 August 2016, available at digital.asahi.com/articles/ASJ7P4H1FJ7PPTIL00L.html

⁶⁹ 産経新聞 (Sankei Shimbun), LGBTに厳しい塀の向こう側 個々の事情に対応進まぬ拘置所・刑務所 (Harsh reality for LGBT behind bars. No progress in dealing with individual needs with flexibility), 3 January 2016, available at www.sankei.com/premium/news/160103/prm1601030029-n2.html

⁷⁰ 産経新聞 (Sankei Shimbun), LGBTに厳しい塀の向こう側 個々の事情に対応進まぬ拘置所・刑務所 (Harsh reality for LGBT behind bars. No progress in dealing with individual needs with flexibility), 3 January 2016, available at www.sankei.com/premium/news/160103/prm1601030029-n2.html

⁷¹ 朝日新聞 (The Asahi Shimbun), 「女性ホルモン剤認められず苦痛」 受刑者が国を提訴 ("Suffering due to rejection of hormone treatment", a prisoner sues the state), 10 June 2016, available at digital.asahi.com/articles/ASJ695749J69UTIL01Y.html#

⁷² 朝日新聞 (The Asahi Shimbun), 性同一性障害、刑務所はどちらに? 受刑者が見直し訴え (Where to place detainees with Gender Identity Disorder in prison? Detainee requests condition review), 4 August 2016, available at digital.asahi.com/articles/ASJ7P4H1FJ7PPTIL00L.html

7. DISCRIMINATION IN RESPONSE TO NATURAL DISASTERS AND OTHER EMERGENCIES

“The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”

Article 12(1) of the ICESCR

All relief, recovery and reconstruction efforts should include a gender analysis to ensure that the rights of women and girls, among other groups that face discrimination, are protected and that they receive appropriate support. Priority in the provision of international medical aid, distribution and management of resources, such as safe and potable water, food and medical supplies, and financial aid should be given to the most vulnerable or marginalized groups of the population.⁷³

Particular attention should be given to groups whose experience of discrimination may put them at particular risk of being further marginalized and given less attention from any emergency relief. The elderly, persons with disabilities,⁷⁴ LGBT people, persons living with HIV/AIDS, ethnic, religious or linguistic minority groups, Indigenous Peoples, migrants, refugees and asylum seekers require the particular attention of the state to ensure that there is no discrimination in the provision of assistance and in the recovery effort. Special attention must also be paid to the needs of people living in poverty who are usually disproportionately impacted by the disaster, cutting across and exacerbating any particular characteristic which may be a basis for discrimination.

⁷³ CESCR, General Comment 14 (Article 17 of the ICESCR), Paragraph 40.

⁷⁴ CRPD, Article 11.

Due to natural conditions and location, Japan is a country that is prone to various large scale natural disasters; not only earthquakes and tsunamis, but also volcanic eruptions, typhoons, floods and mudslides. Though Japan's disaster prevention technology is now among the most advanced in the world, disasters can result in catastrophic damage including the Great East Japan Earthquake in 2011 which left more than 18,000 dead or missing.⁷⁵

LGBT people are particularly susceptible to discrimination when they are displaced as a result of these disasters and other emergencies, and deprived of privacy and occasionally experience difficulties accessing essential supplies including food, water, and medicine due to lack of effective mechanisms to identify gaps and cater to their specific needs. This challenge is faced not only by LGBT people but also persons with disabilities, elderly, children and persons that require special care and attention. For instance, a community based organization working on HIV/AIDS, Place Tokyo, and an organization based in Sendai providing information on HIV, Yakkoro, also noted the difficulty HIV-positive patients have accessing medicine during emergency situations as 85% of them require regular medication and about 50% require monthly doctor visits.⁷⁶

Challenges LGBT people encounter can surface over time. According to the analysis conducted by Iwate Rainbow Network, throughout the evacuation phase which is during or shortly after the disaster, transgender people face problems such as accessing temporary public toilets, showers and gender-specific relief supplies such as sanitary products and underwear. Simply requesting access to facilities and supplies can be challenging for them because it means disclosing their gender identity or their gender expression.⁷⁷

Individuals in same-sex relationships can have challenges accessing partners' vital information such as their whereabouts or status because they are not registered as a family member under the law, unlike married different-sex couples.⁷⁸ During the reconstruction phase when the risk level is lower, same-sex couples face challenges in obtaining temporary shelter or public shelter designed for family use.

While government initiatives to mitigate discrimination based on sexual orientation or gender identity during natural disasters and emergencies are often inadequate, there is increasing grassroots support for such initiatives. For instance, when the Kumamoto Earthquake occurred in April 2016, Pray for Rainbow was established to gather donations to provide material support, empower rights holders and conduct research for LGBT people.⁷⁹ Many symposiums to share experiences and discuss LGBT challenges during the earthquakes were held,⁸⁰ and dedicated telephone counselling lines were available for LGBT people.⁸¹ Some manuals for disaster prevention have started to include sections on LGBT needs. For instance, a "Disaster prevention handbook from a gender-equality perspective" written for the government and local leaders by Tochigi Gender Equality Foundation includes a section on challenges encountered by "sexual minorities" during disasters, which should be further strengthened in the future.⁸²

⁷⁵ Ministry of Foreign Affairs, Japan, Disaster Prevention: Japan's Cooperation with Global Disaster Prevention Efforts and Disaster Relief Operations, available at www.mofa.go.jp/policy/disaster/21st/3.html; BBC, Japan tsunami remembered five years on, 11 March 2016, available at www.bbc.com/news/world-asia-35781593

⁷⁶ 日本放送協会 (NHK), 被災地で生活する LGBT の人々への支援 (Support for LGBT people living in disaster affected area)", 13 May 2011, available at www.nhk.or.jp/heart-net/lgbt/kijii/entry/article_029.html

⁷⁷ 岩手レインボーネットワーク (Iwate Rainbow Network), にじいろ防災ガイド (Rainbow Disaster Risk Reduction and Management Guide), March 2016, available at media.wix.com/ugd/02695b_c89cca0b31c0472f8dcd93d69732ba99.pdf

⁷⁸ 山下梓 (Azusa Yamashita), "東日本大震災における性的マイノリティの経験と世界とのつながり (Experience of sexual minorities during Great East Japan Earthquake and connection to the world)", 国際人権ひろば (Kokusai Jinken Hiroba), No.108, March 2013, available at www.hurights.or.jp/archives/newsletter/section3/2013/03/post-205.html

⁷⁹ Pray for Rainbow プロジェクト (Pray for Rainbow Project), available at www.facebook.com/PrayforRainbow/

⁸⁰ Just to name a few, talk event was held to learn from challenges encountered by LGBT during Great East Japan Earthquake in March 2016 hosted by Out in Japan Tohoku Project and a symposium "Kumamoto earthquake and LGBT" was held in November 2016 co-hosted by Pray for Rainbow Project and Rainbow Soup. 毎日新聞 (Mainichi Shinbun), LGBT: 配慮を 東日本大震災からの教訓考える 仙台でイベント (LGBT: Require special attention, event to think about learnings from Great East Japan Earthquake), 22 March 2016, available at mainichi.jp/articles/20160322/ddl/k04/040/058000c#csidxadec4912fe01e0beb748b567493d03; Pray for Rainbow Project and Rainbow Soup, Kumamoto earthquake and LGBT, 13 November 2016, available at www.facebook.com/events/333733736963864/

⁸¹ Dedicated telephone counseling lines available – Yoriso Hotline by General Incorporated Association Social Inclusion Support Center and LGBT telephone counselling by Yodo Ward, Osaka Prefecture. 毎日新聞 (Mainichi Shinbun), LGBT 悩み打ち明けて 大阪の NPO、避難所生活を懸念 (Share your worries on LGBT, NPO based in Osaka concerns about the evacuation life), 17 May 2016, available at mainichi.jp/articles/20160517/ddn/010/040/038000c (accessed 1 March 2017).

⁸² とちぎ男女共同参画財団 (Tochigi Gender Equality Foundation), 男女共同参画の視点から考える防災ハンドブック (Disaster prevention handbook from a gender-equal perspective), available at www.parti.jp/ouhou/data/03_bousai_shien_4.pdf

8. CONCLUSION AND RECOMMENDATIONS

Thanks to tireless and persistent efforts by activists and rights holders, changes in practices are occurring whether through seeking legal remedies, establishing ordinances and guidelines at the municipality level or talking to the individual staff at the counter for social services at city halls.

Nevertheless, these efforts and small advances do not guarantee the right to non-discrimination on the grounds of sexual orientation or gender identity in the daily lives of LGBT people. Whatever form it takes, discrimination results from the failure to respect the inherent dignity and equal worth of all human beings, which is based on the denial or denigration of difference.

Amnesty International believes that implementation of the following recommendations, in cooperation as appropriate with LGBT rights groups, would contribute significantly to building a robust institutional and legislative framework in Japan to respect, protect and promote the right to live free from discrimination, including on grounds of sexual orientation and gender identity.

Amnesty International calls on the Japanese government to undertake the following measures:

NON-DISCRIMINATION

- Introduce comprehensive anti-discrimination legislation to provide equal protection against discrimination in all areas, including sexual orientation and gender identity;
- Define discrimination in national legislation in line with international standards, and prohibit all forms of direct or indirect discrimination, including on the basis of age, sex, gender, sexual orientation, gender identity, religion or belief, ethnicity or nationality;
- Ensure that all human rights, including the rights to privacy and freedom of expression, are effectively and equally enjoyed, including by being free from direct or indirect discrimination in any area and on any ground such as race, age, sex, gender, sexual orientation, gender identity or expression, religion or belief, political or other opinion, ethnicity, national or social origin, disability, or other status; that distinctions and differences in treatment are based on reasonable, objective, legitimate and overriding grounds; and that no blanket distinctions and differences in treatment between citizens and non-citizens, residents and non-residents, or persons located within the state's territory and persons located abroad are applied;
- Provide effective training to public service personnel in the application of non-discrimination standards and where relevant in inter-cultural understanding, and ensure that prejudice and discriminatory behaviour or language by public officials are addressed, and discriminatory practices corrected;
- Develop and implement adequate training on the principle of equal treatment and non-discrimination on the basis of sexual orientation and gender identity, as well as on human rights for teachers and other educational staff;
- Put in place a consistent approach to providing data about human rights protection in Japan that is disaggregated including by sexual orientation or gender identity. As a first step, the government

should prioritize developing a system that gathers accurate statistical data about violence against LGBT people.

- Establish a National Human Rights Institution independent from the Government in compliance with the Paris Principles with the power to investigate and recommend redress for individual claims of human rights violations.

EMPLOYMENT

- Monitor the impact of discrimination based on sexual orientation and gender identity in the area of employment. Where appropriate, use the conclusions of this monitoring process to develop and promote proposals aimed at addressing multiple forms of discrimination;
- Monitor companies' practices to ensure that non-discrimination measures are put in place and ensure that same-sex couples can enjoy all available company benefits;

HEALTH

- Remove gender identity from the classification of mental diseases and reclassify aspects relevant to the provision of health care in a non-stigmatizing health category;
- Abolish requirements to undergo psychiatric assessment and receive a diagnosis for obtaining legal gender recognition;
- Abolish requirements to undergo surgeries or sterilization, in order to obtain legal gender recognition;
- Abolish any requirement of single status as a prerequisite to obtain legal gender recognition and eliminate the provision that does not permit individuals from remaining married to their same-sex spouses who they married as different-sex spouses;
- Abolish blanket age restrictions to legal gender recognition procedures and ensure that legal recognition is accessible to minors, taking into account the child's freely expressed views regarding their own best interests, in light of their evolving capacities;
- Ensure that trans-specific health treatments and gender confirmation procedures, such as hormone treatment, surgery and psychological support, are accessible to transgender persons, subject to informed consent, and ensure that they are included in health insurance schemes and public health systems.
- Implement training for health professionals and administrators highlighting their obligation to treat all patients with respect, including LGBT patients.

RIGHT TO RESPECT FOR FAMILY LIFE

- Recognize marriages between couples of the same sex, on the same basis and conferring all the same rights, as marriages between different-sex couples;
- Ensure that where other forms of recognized partnerships exist, that they are available to same-sex and different-sex couples;
- Allow individuals to change their legal name and gender, including the gender markers on official documents issued by the state, through a quick, accessible, and transparent procedure and in accordance with the individual's sense of gender identity;

DISCRIMINATION IN DETENTION FACILITIES

- Ensure that people are not discriminated against or ill-treated in custody because of their sexual orientation or gender identity;
- Ensure that transgender people are placed in facilities appropriate for their gender identity, and that they are not further marginalized while in detention, for example by being detained in solitary confinement, or placed with detainees where violence is a high probability;
- Ensure that transgender people have prompt access to hormone therapy as required, that they are detained in a facility consistent with their gender identity and are not searched by male officers if they request a search by a female officer;

DISCRIMINATION IN RESPONSE TO NATURAL DISASTERS AND OTHER EMERGENCIES

- Monitor and identify instances of discrimination, in particular of persons with special needs, in providing access to durable solutions after disasters and in emergency situations including adequate housing, basic services and livelihoods;
- Consult widely with civil society, including LGBT organizations, when developing disaster prevention measures to make sure their views and needs are reflected;
- Ensure persons affected by natural disasters and other emergencies have access to safe and culturally appropriate shelter; water, basic health services and education; livelihoods and employment; markets; etc. without discrimination.

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HUMAN RIGHTS LAW AND DISCRIMINATION AGAINST LGBT PEOPLE IN JAPAN

At first glance, the situation for lesbian, gay, bisexual and transgender (LGBT) people in Japan may seem satisfactory. Japan does not criminalize same-sex sexual acts between consenting adults. Although same-sex marriage is not recognized at the national level, five local municipalities recognize same-sex partnerships as “equivalent to marriage”. However, the reality is that LGBT people face pervasive discrimination in their daily lives and the established cultural and community frameworks in which they live lead many to simply hide their identity and dissuades them from claiming their rights. This briefing outlines the day-to-day human rights violations occurring at a personal level, which put LGBT people at a disadvantage in the workplace and in other settings. The objective of presenting these examples is to inform policy decisions, which need to be taken by the Japanese authorities and other actors to prevent, diminish, and eliminate the conditions and attitude that contribute to substantive or de facto discrimination, in line with their obligations under international human rights law.