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# LGBTQ human rights in Japanese laws and policies

While there has been a global trend to promote LGBTQ human rights, Japan has been slow to do so, especially in terms of laws and policies at the national level. No progress has been made on amending the strict requirements set out in 2003 for legal gender alteration. Same-sex relationships continue to be placed outside of the legal framework. A draft bill that set forth the basic principles of human rights protections regarding sexual orientation and gender identity (SOGI) failed in 2021. Nevertheless, the public sector, including local governments, as well as the private sector and civil society, have made efforts to effect change in education and the workplace.

Despite pledging its commitment to protect human rights since the current Constitution was enacted in 1946, and to promote and protect LGBTQ human rights at the United Nations (UN) since the 2000s, Japan has failed to pass effective legislation. This paper will examine the function and limitations of human rights in Japan by reviewing the laws, policies, and court cases in relation to LGBTQ issues. It will highlight that a proper understanding of human rights, primarily international human rights law, is essential for advancing LGBTQ human rights protections in Japan.

## 1 Significant LGBTQ-related cases

There have been few LGBTQ-related lawsuits in Japan, partly because of Japanese customs, where it is rare to take problems to court when they arise. This section presents two significant cases concerning sexual orientation, gender identity, and human rights.

### 1.1 Blue Boy case, 1964–1970

The “Blue Boy case” involved a surgeon who was arrested for performing gender reassignment surgeries for trans women working in show business in 1964. He was convicted for performing surgeries to make a person sterile without cause, which is prohibited under Article 28 of the Eugenics Protection Law of 1948, because he

had conducted surgeries without adequate medical examinations and proper processes.

In addition to the legality of gender reassignment surgery, which was the main issue in this case, the relationship between gender reassignment and dignity was carefully discussed. Article 13 of the Constitution provides the right to pursue happiness and self-determination, similar to the right to privacy or respect for private life. According to the Tokyo District Court (1969):

Sexual freedom is fundamental to human instincts and deeply related to a person's innate right to pursue happiness. It therefore must not be oppressed unless it infringes on the fundamental human rights of others or is harmful to their own life or body.<sup>1</sup>

The court's reference to human rights potentially allows for an interpretation that directly links gender reassignment to a person's right to pursue happiness, since the court's decision was based on the premise that if a surgeon performs gender reassignment surgery through a careful process, it is not a violation of the Eugenics Protection Law. A similar argument for trans people's human rights first occurred in 1979, when the European Commission of Human Rights (1979) found a violation of the right to respect for private life in Belgian law, which prevented a trans man from changing his gender on his birth certificate.

## 1.2 Fuchu Youth Hostel case, 1991–1997

The “Fuchu Youth Hostel case” concerned a hostel run by the Tokyo Metropolitan Board of Education, which refused a booking from a gay rights activist group called OCCUR. The refusal was based on the principle of providing separate accommodations for men and women, as the facility insisted that it was impossible to allow people who had the potential to be sexually attracted to each other to stay in the same room, and allowing gay people to stay would conflict with its purpose of supporting the “sound upbringing of youths” (The Tokyo Youth Hostel Ordinance, Art. 1). As a part of its litigation strategy, OCCUR consciously cited the progressive efforts of other countries, such as having the then president of the San Francisco Board of Education, Tom Ammiano, who had come out as a gay man in the 1970s, appear as a witness.

The Tokyo High Court's (1997) judgment, which ruled in favor of OCCUR, included the following passage:

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<sup>1</sup> Translated by the author. Unless otherwise indicated, all translations from Japanese in this paper are the author's own.

The administrative authorities, including the [Tokyo] Metropolitan Board of Education, are required to give due consideration to homosexuals, who are a minority, in the performance of their duties and to protect their rights and interests fully. Indifference or lack of knowledge is unacceptable in the exercise of public authority.

The original judgment also said the refusal amounted to sexual orientation discrimination, which is illegal under Article 244 of the Local Autonomy Act of 1947 (Tokyo District Court, 1994). It is important to recall that in the same year the UN Human Rights Committee (1994) found sexual orientation discrimination under Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR) in the case of *Toonen v Australia* for the first time.

## 2 Legal gender alteration

While the above two cases offered opportunities to internationalize Japanese legal interpretations in regard to human rights, progress is yet to be made. Despite the potential advances for trans rights that could have been made based on the Tokyo District Court's interpretation of Article 13 in the Blue Boy case in 1969, every request to alter one's legal gender in Japan has since been rejected. The situation remained the same even after the official approval of gender reassignment surgery in the field of medicine in 1997. Article 113 of the Family Register Act of 1947 stipulates that changes can be made to one's family registry (*koseki*) only when there are mistakes or omissions, or if any entry is impermissible under law. In the case of a child with intersex features, the court allows for the alteration of gender because it deems the original registration was a mistake. However, once a person is registered as male or female without intersex features, there is no question of mistakes, omissions, or impermissibility.

### 2.1 Requirements of the GID Act (2003)

The Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (GID Act) was passed in 2003 and came into force the following year, which enabled the alteration of legal gender markers. As of the end of 2020, approximately 10,000 people have obtained permission to legally change their gender (gid.jp, 2020).

However, the GID Act is infamous for its requirements, which are arguably the strictest in the world (Norton, 2006; Taniguchi, 2013). In addition to diagnoses of

gender identity disorder from two or more physicians, the following five requirements must be fulfilled. The person must:

- have reached the age of majority (which, in Japan, was 20 years of age in 2003, and is now 18 years old since 2022)
- be unmarried at the time of the application
- have no minor children (the word “minor” was added in the 2008 amendment)
- be sterile
- have external genitalia resembling those of the opposite sex

The applicant must file the request with the family court, which decides whether the alteration is acceptable.

## 2.2 Constitutional challenges

Legal challenges to the constitutionality of the GID Act have been made since its enactment. In the early cases, there were several judgments that accepted the drafter’s intent in determining the constitutionality of the requirements. This section discusses two recent cases in which the Supreme Court of Japan ruled the GID Act constitutional.

In the first case, the requirement for sterility was disputed, as the plaintiff could not obtain permission to alter his legal gender because he had not removed the ovary from his body. The drafter’s intent behind this requirement was that it was not reasonable for the person to still be able to have children. The Supreme Court (2019) found the sterility requirement constitutional “at present,” but it acknowledged that it raised constitutional issues because it was an invasion of the body. This indicates the possibility of finding it unconstitutional in a future case. Further, the two judges concurred clearly that the “invasion of the body” itself might constitute a violation of the rights under Article 13 of the Constitution, which is a general provision on dignity and characterized as a residual provision that does not apply to other rights. They also referred to the judgment of the European Court of Human Rights (2017) and the joint statement by international bodies (World Health Organization [WHO], 2014).

In another case, an applicant was not able to change their legal gender due to the presence of a minor child. The drafter’s intent for this requirement was to prevent disruptions of the family order and avoid negative effects on the welfare of any children. The Supreme Court (2021) ruled that this requirement was constitutional, without even moderating it with the phrase “at present.” Yet, one judge, Uga Katsuya, presented a dissenting opinion and carefully acknowledged the unconstitutionality of this requirement. He indicated that the drafter’s justification based

on disruptions of the family order was weakened by the 2008 amendment. He also pointed out that the alleged anxiety of a child was based on vague and abstract concerns, because the legal gender alteration itself does not affect the child's acceptance of their parent's changes. He added that the possibility of discrimination at school or other places is not acceptable as a justification, since it is those who discriminate that should be condemned. He concluded that, although the reasons for this requirement can be justifiable, the means were not reasonable because it was solely based on the presence of a minor child.

## 3 Same-sex relationships

### 3.1 A legal system premised on the gender binary

As in other countries, the Japanese legal system relating to marriage and the family has traditionally been designed exclusively for opposite-sex partnerships. Article 24 of the Constitution provides that marriage is based solely on the consent of “both sexes.” The Civil Code and other laws and regulations on social security use gender-specific terms such as “husband-wife” and “father-mother” as basic units, which assume opposite-sex relationships.

This understanding is also evident in the registration form for marriage. It requires filling in the name of the “person who will be the husband” in the left column and the name of the “person who will be the wife” on the right. Article 3 of the GID Act stipulated the no-marriage requirement for legal gender alteration to prevent any existing married couples from becoming legally married same-sex couples (Taniguchi, 2013).

In June 2019, the four opposition parties submitted a draft bill to the Diet to amend some parts of the Civil Code to allow same-sex marriages. This bill proposed two amendments: adding the words “by parties of the opposite or same sex” to those who can enter a marriage in Article 739; and changing the gender-specific words to gender-neutral terms, such as “father–mother” to “parent” (e.g., Arts. 158, 711, 766) and “between husband and wife” to “between parties to a marriage” (e.g., Arts. 159, 728, 750). However, the ruling Liberal Democratic Party (LDP) has criticized and rejected the bill.

Some local governments now issue certifications for same-sex partnerships, starting with certain wards in Tokyo in 2015. More than 250 local governments have joined them as of late 2022, covering more than 60% of the population. Though the number is increasing drastically, this certification is not a form of legal protection since the marriage and family legislation falls under national ju-

risdiction. Its significance is only symbolic, not legal. However, these trends have stimulated litigation regarding the legal protection of same-sex couples.

### **3.2 De facto marriage as legal protection for same-sex couples**

Although there is no comprehensive legislation with regard to de facto marriages (*jijitsukon*), some laws and ordinances have offered protections to de facto partners with regard to public housing (Public Housing Act, Art. 27), domestic violence (Act on the Prevention of Spousal Violence and the Protection of Victims, Art. 1), and workers' compensation (Industrial Accident Compensation Insurance Act, Art. 16), though they do not make explicit provisions, such as for alimony in dissolution, residency permits, and tax deductions. However, these laws presuppose the de facto couple to be a man and a woman.

The courts have been divided in their interpretation of whether or not same-sex relationships should be included in the definition of de facto marriage. For example, the Utsunomiya District Court (2019) approved an alimony claim from a partner for infidelity after deciding that same-sex partners should be afforded the same legal protections as de facto (heterosexual) partners. This decision was based on the fact that the Constitution does not explicitly exclude same-sex relationships in its definition of marriage, and local authorities are increasingly implementing partnership certifications. The Tokyo High Court (2020) upheld the decision, setting a precedent for recognizing same-sex relationships as a form of de facto marriage.

The other example in which the result was the opposite concerns partners of victims of a crime, such as murder, who are eligible to receive benefits from the state to "help the surviving family members to lead a peaceful life again," whether they are married or in de facto relationships. When a man who lost his same-sex partner to murder claimed these benefits, the Public Safety Commission determined that their relationship did not constitute a de facto marriage in legal terms and denied payment. The Nagoya District Court (2020) upheld the commission's decision because "it cannot be said that a socially accepted notion had been formed that the [same sex] relationship could be regarded as a marriage."

Despite differences in the content of the two claims, and the amount of money involved, it is noteworthy that the interpretation of the legal concept of de facto marriage has differed. Without a clear indication of whether same-sex relationships are included in the legal definition of de facto marriage, it is left to the court's interpretation, and same-sex relationships continue to be placed in an ambiguous position.

### 3.3 “Freedom to Marry for All” litigation

In February 2019, several lawsuits were filed in four district courts, and in another district court in September, across the country to clarify the constitutionality of the current legal system, which does not allow same-sex couples to marry. These are collectively called the “Freedom to Marry for All” litigation, characterized as policymaking lawsuits within the LGBTQ movement.

In its first judgment in March 2021, the Sapporo District Court (2021) ruled that the current legal system, which “does not provide legal means to enjoy even some of the legal effects that arise from marriage” to same-sex couples, amounts to a violation of Article 14(1) of the Constitution. Though sexual orientation is not explicitly mentioned in Article 14(1), the court interpreted it to be one of the prohibited grounds of discrimination. The court also pointed out that the objections against same-sex relationships in society only need “limited consideration,” as discrimination based on sexual orientation is subject to strict scrutiny, which requires an inevitable and unavoidable reason to justify the different treatment. Also, it clarified that while Article 24 stipulates “both sexes” as a precondition for marriage, this does not mean that it prohibits same-sex marriage (Sapporo District Court, 2021). However, the court did not specify in its ruling what system would be appropriate for the legal protection of same-sex relationships. It could be the introduction of a specific legal framework, such as civil partnership laws or registered partnerships, or it could eliminate gender restrictions in marriage.

Similarly, in November 2022, the Tokyo District Court (2022) did not specify an ideal system either, when it ruled that the current laws do not allow for same-sex marriage. The court only admitted a violation of Article 24(2), which stipulates that “laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes” concerning “choice of spouse, ... and other matters pertaining to marriage and the family” (Ministry of Justice, 2023).

## 4 SOGI discrimination

### 4.1 Lack of SOGI-related legislations

Japanese laws make no direct reference to SOGI. Article 14 of the Constitution provides for “no discrimination” based on “race, creed, sex, social status or family origin,” but does not explicitly refer to SOGI. In addition, there is no legislation on anti-discrimination or human rights protection in general; nor is there any specific act on discrimination based on SOGI. As the Japanese legal system is primarily

based on codified rules, in which statutory regulations play the primary role, the absence of reference to SOGI has a more severe impact than in countries with Anglo-American legal systems based on common law.

Some administrative efforts have been made to make up for the legal deficiencies. The Ministry of Justice has been conducting an awareness-raising campaign according to the Act on the Promotion of Human Rights Education and Human Rights Awareness-Raising of 2000. This includes the prohibition of discrimination and prejudice against “sexual orientation” since 2002, and “gender identity disorder” (which was changed to “gender identity” in 2018) in 2004. The campaign is also being conducted at the local government level, and SOGI is explicitly included in some local ordinances and plans related to human rights and/or gender equality. However, the campaign focuses only on raising awareness and does not provide any compensation to victims of discrimination, investigate the alleged cases, or implement specific measures to address or prevent human rights violations. It must be pointed out that current efforts tend to be limited to individual awareness and do not question laws and policies or provide an effective solution for SOGI discrimination.

## 4.2 Failures in legislation

In 2016, a Draft Bill on the Elimination of Discrimination based on SOGI (LGBT Sabetsu Kaishō Hōan) was submitted to the Diet by four opposition parties. This was a basic law confirming the need for human rights protections for LGBTQ people. Similar legislation already existed in relation to persons with disabilities and those of *buraku* origin. However, this bill failed due to a lack of support from the ruling LDP, which instead announced its intention to submit a Draft Bill on the Promotion of Better Understanding of LGBT Issues (LGBT Rikai Zōshin Hōan) in 2018. While this was intended to cultivate acceptance toward LGBT people and contribute to the realization of a more tolerant society, no concrete proposals were developed and the bill was never submitted to the Diet.

In 2021, a nonpartisan caucus for discussing SOGI-related issues, LGBT Giren, which was composed of members from all the major political parties and had assumed a central role in the debate since 2015, reached a consensus on a new draft bill by incorporating the aims of the 2016 bill. Tokyo’s hosting of the 2020 Summer Olympics and Paralympics, which were postponed by one year, encouraged agreement on the bill, as the International Olympic Committee requires the host state to follow the non-discrimination provisions of the Olympic Charter, which explicitly refer to sexual orientation (Maree, 2020). The LDP was the only party that was unwilling to approve the bill, as its general council vehemently opposed one phrase

in particular – “discrimination shall not be tolerated” – owing to a concern that it would lead to increased lawsuits and contradict free speech principles. Ultimately, the draft bill was not submitted to the Diet due to a lack of support from the LDP.

## 5 Recommendations from international monitoring bodies

As described above, there has been no substantive progress on legal gender alterations, legal protections for same-sex relationships, and anti-discrimination legislation based on SOGI. Japan’s handling of these issues is subject to constant global scrutiny and criticism.

### 5.1 Treaty bodies’ recommendations

Japan has ratified most major human rights treaties and is subject to the state party reporting system, under which treaty bodies make recommendations to improve compliance with the obligations of each treaty.

For example, the UN’s Human Rights Committee, which monitors the implementation of the ICCPR, adopted recommendations relating to SOGI for the first time in 2008. It recommended that the Japanese government consider amending its legislation, such as public housing laws, to include sexual orientation among the prohibited grounds of discrimination. It also requested that equal treatment be ensured between unmarried cohabiting opposite-sex couples and unmarried cohabiting same-sex couples, to comply with Article 26 of the ICCPR (2008, para. 29). After there was no concrete progress, the Human Rights Committee made the following recommendation in 2014:

The State party should adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds, including sexual orientation and gender identity, and provides victims of discrimination with effective and appropriate remedies. The State party should intensify its awareness-raising activities to combat stereotypes and prejudice against lesbian, gay, bisexual, and transgender persons, investigate allegations of harassment against lesbian, gay, bisexual, and transgender persons, and take appropriate measures to prevent such stereotypes, prejudice, and harassment. (para. 11)

This observation indicates that Japan will inevitably need to explicitly include SOGI when it introduces anti-discrimination legislation in the future. In the most recently adopted recommendation, the Human Rights Committee (2022) suggested further

specific improvements: strengthening awareness-raising, ensuring the legal protection of same-sex relationships nationwide, amending the GID Act, and improving the treatment of trans inmates.

Other treaty bodies also adopted LGBTQ-related recommendations under their jurisdictions, especially in the context of anti-discrimination measures, legislation, and intersectional forms of discrimination, including the Committee on Economic, Social and Cultural Rights (CESCR, 2013), the Committee on the Elimination of Discrimination against Women (CEDAW, 2016), the Committee on the Rights of the Child (CRC, 2019), and the Committee on the Rights of Persons with Disabilities (CRPD, 2022).

## 5.2 Monitoring under the Human Rights Council

The UN's Human Rights Council (HRC) was established in 2006 with a new human rights monitoring procedure, the Universal Periodic Review (UPR), which is a state-driven peer-review system monitoring the human rights situation of each UN member state according to internationally recognized human rights standards. Each party can express its acceptance of a recommendation. It takes four and a half years to review all the member states in one cycle; the third cycle ended in late 2022.

In the first cycle, Canada recommended that Japan take measures to tackle SOGI discrimination (HRC, 2008), which the Japanese government accepted. In the second cycle, six countries made recommendations on SOGI issues (HRC, 2012). The government accepted four of them, which were similar to the recommendation in the first cycle, and noted the other two recommendations, which suggested enacting anti-discrimination laws that specifically refer to SOGI. In response to the stagnant legal situation, 13 countries submitted more precise recommendations in the third cycle (HRC, 2017). Interestingly, the Japanese government accepted the recommendation (from New Zealand) to strengthen the measures for eliminating discrimination and to revise the GID Act, while taking note of the other recommendations, including anti-discrimination legislation (from Germany, Honduras, Ireland, the Netherlands, Norway, and the USA), expansion of the hate speech act (from Australia and Mexico), and legal recognition of same-sex marriage (from Canada and Switzerland).

## 6 International human rights perspectives

Article 98(2) of the Constitution of Japan states that international law should be “faithfully observed,” which implies that international law as a whole has the effect of disciplining the conduct of the state. As a specific field of international law, international human rights laws, including human rights treaties and related practices and documents, has binding force in legal practice, such as the formation, conclusion, interpretation, and application of internal laws (Iwasawa, 1999).

### 6.1 Legal gender alteration

Treaty bodies are relatively silent on the issue of legal gender alteration. Though there has been some constructive dialogue, the concluding observation by CEDAW (2017, paras. 12, 21) does not refer to the GID Act. At the conclusion of the third UPR cycle, the only reference to the GID Act was the recommendation from New Zealand (HRC, 2017, para. 161.70). Japan has agreed to follow up on this recommendation (HRC, 2018, p. 4).

All of the GID Act requirements have been criticized internationally. For instance, five international organizations issued a joint statement on combating forced sterilization and abolishing the sterility requirement for legal gender alterations (WHO, 2014). The Independent Expert on Sexual Orientation and Gender Identity (2018), appointed by the HRC, called for the member states to exclude any third-party and institutional intervention, including medical surgery, from the requirements of legal gender alteration procedures and to respect each person’s gender identity as the highest priority. In addition, the European Court of Human Rights (2017) clearly stated that it is a human rights violation to compel surgery or bodily alteration by making it a condition for legal gender alteration.

Some of the private sector have also focused on the GID Act in Japan. Human Rights Watch (2019), a US-based international human rights organization, conducted research and a campaign to recommend a drastic amendment to the GID Act, and the BBC produced and aired programs focusing on the sterility requirement (“Trans in Japan,” 2021). Both reflected global trends in relaxing the conditions for altering one’s legal gender from human rights perspectives.

Each state report made by the Japanese government refers to the 2008 amendment of the GID Act, from requiring “no child” to “no minor child,” as an improvement of human rights with regard to gender identity (Human Rights Committee, 2020, para. 42). However, besides this minor revision, there have been no amendments to improve human rights protections for trans individuals. As mentioned

above, the concurring opinion of the Supreme Court in 2019 only referred to some of the global trends. They did not rely on, or even refer to, the fact that the Japanese government had agreed to follow up New Zealand's recommendation at the UPR third cycle to amend the GID Act in 2018.

## 6.2 Same-sex relationships

The recommendations relating to legal protections for same-sex relationships started in 2008. In its concluding observation on the fifth report, the Human Rights Committee (2008) called for amendments to laws to ensure the equal treatment of opposite-sex de facto marriages and same-sex relationships, mainly focusing on the Public Housing Act and the Act on the Prevention of Spousal Violence and the Protection of Victims. In 2013, the CESCR also expressed concern about laws against same-sex partner relationships (para. 10). Furthermore, in the third UPR cycle, Switzerland and Canada recommended legal protections for same-sex relationships at the national level, and Timor-Leste recommended including same-sex relationships in the Act on the Prevention of Spousal Violence and the Protection of Victims (HRC, 2017). Japan accepted the latter recommendation from Timor-Leste, but it only noted the former, stating that they "require careful consideration" (HRC, 2018).

International human rights standards are not always effective for the legal protection of same-sex relationships. For example, the Human Rights Committee (2002) and European Court of Human Rights (2010) interpret that the right to marry does not oblige state parties to legalize same-sex marriage, and they allow for a broad range of interpretations by each state party. However, they have also indicated that differences in the treatment of opposite-sex and same-sex couples cannot be justified in several cases (European Court of Human Rights, 2003; Human Rights Committee, 2003). Moreover, in recent years, some regional courts have interpreted that international human rights law obliges states to enact some legal frameworks for same-sex relationships (European Court of Human Rights, 2015; Inter-American Court of Human Rights, 2017).

In the ongoing "Freedom to Marry for All" litigation, some judgments resemble these interpretations, though they do not specifically refer to recommendations from international monitoring bodies. The Sapporo District Court's (2021) judgment indicates that the lack of legal protection for same-sex relationships is unconstitutional and that they are very similar to opposite-sex relationships. Furthermore, the Tokyo District Court (2022) stated that formal recognition of their relationships was needed to respect individual dignity.

### 6.3 SOGI discrimination

Most of the recommendations from international monitoring bodies are focused on SOGI discrimination – some recommend continuing and expanding existing measures, and others recommend enacting general anti-discrimination legislation, which includes SOGI or SOGI-specific anti-discrimination law. The recommendation from the Human Rights Committee in 2014 was the most comprehensive example. Concerning its reply to the UPR recommendations, the Japanese government accepted the expansion of existing measures to SOGI, but only took note to enact anti-discrimination legislation. This directly affected the failure of legislation on the basic laws on SOGI in 2021. The Constitution does not have a definition of discrimination, and restrictions on human rights are only permitted on the grounds of “public welfare,” which could be broadly interpreted. Several treaty bodies have also pointed out the need to clarify this vague wording (CEDAW, 2016, para. 11; Committee on the Elimination of Racial Discrimination, 2018, para. 8; Human Rights Committee, 2014, para. 22). Deep-seated opposition to the realization of human rights through legal norms can be seen on the part of the Japanese government.

Another factor in implementing human rights obligations in general is that Japan has no National Human Rights Institutions (NHRIs; Japan Federation of Bar Associations, 2020, p. 7). It is also recommended to introduce such institutions from every treaty body (CEDAW, 2016, para. 15; CESCR, 2013, para. 8; CRC, 2019, para. 12(b); Human Rights Committee, 2014, para. 7). In 1993, the UN General Assembly adopted a resolution, “Principles Relating to the Status of National Institutions,” known as the Paris Principles, as core institutional factors for realizing human rights. More than 110 countries complied with this resolution and established NHRIs, which are highly independent of government. A civil rights commissioner system has provided counseling and promoted human rights in Japan since 1949. However, it is under the jurisdiction of the Ministry of Justice, the commissioners do not initially have human rights expertise, and 80% of them are retired older adults.

In addition to these normative and systematic limitations, there are also significant limitations in recognizing human rights. In Japan, human rights tends to be synonymous with morality and compassion, partly due to the government’s awareness-raising campaign. Even human rights education in schools and society is about understanding others and fostering tolerance and attitudes toward diversity. The LDP’s Draft Bill on the Promotion of Better Understanding of LGBT Issues in 2018 was based on this concept, which provides no institutional protection for human rights violations. The fact that it was abandoned because of the insertion

of the phrase “discrimination shall not be tolerated” is symbolic of the human rights situation in Japan.

## 7 Conclusion

The groundbreaking arguments of international human rights law are rarely referred to as having legal significance, even though they are spoken of with admiration by the general public. This trend is not limited to LGBTQ issues but reflects the problematic nature of human rights protections in Japan.

Despite some precedents in domestic courts which suggest interpretations in line with international human rights standards, laws and policies on LGBTQ issues in Japan have not kept pace with international trends. There is a vital need to promote greater understanding of LGBTQ human rights, incorporating the points raised by the international human rights monitoring systems to further develop and revise SOGI-related laws and practices in Japan.

## References

Committee on Economic, Social and Cultural Rights. (2013). Concluding observation: Japan (3rd report), 10 June 2013, U.N. Doc. E/C.12/JPN/CO/3.

Committee on the Elimination of Discrimination against Women. (2016). Concluding observation: Japan (7th and 8th reports), 10 March 2016, U.N. Doc. CEDAW/C/JPN/CO/7-8.

Committee on the Elimination of Discrimination against Women. (2017). Summary record, 7 August 2017, U.N. Doc. CEDAW/C/SR.1376.

Committee on the Elimination of Racial Discrimination. (2018). Concluding observation: Japan (10th and 11th reports), 26 September 2018, U.N. Doc. CERD/C/JPN/CO/10-11.

Committee on the Rights of Persons with Disabilities. (2022). Concluding observation: Japan (initial report), 7 October 2022, U.N. Doc. CRPD/C/JPN/CO/1.

Committee on the Rights of the Child. (2019). Concluding observation: Japan (4th and 5th reports), 5 March 2019, U.N. Doc. CRC/C/JPN/CO/4-5.

European Commission on Human Rights. (1979). *Van Oosterwijck v. Belgium*, Report of 1 March 1979, Application no. 7654/76.

European Court of Human Rights. (2003). *Karner v. Austria*, Judgment of 24 July 2003, Application no. 40016/98.

European Court of Human Rights. (2010). *Schalk and Kopf v. Austria*, Judgment of 24 June 2010, Application no. 30141/04.

European Court of Human Rights. (2015). *Oliari and Others v. Italy*, Judgment of 21 July 2015, Applications nos. 18766/11 and 36030/11.

European Court of Human Rights. (2017). *A.P., Garçon and Nicot v. France*, Judgment of 6 April 2017, Applications nos. 79885/12, 52471/13 and 52596/13.

gid.jp. (2020). *Seidōitsu seishōgai tokureihō ni yoru seibetsu no toriatsukai no henkōsū chōsa (2020-nenban)* [Research on the number of people who correct their legal gender under the GID Act, 2020]. <https://gid.jp/research/research0001/research2021042201>.

Human Rights Committee. (1994). *Toonen v. Australia*, Views of 31 March 1994, U.N. Doc. CCPR/C/50/D/488/1992.

Human Rights Committee. (2002). *Joslin et al. v. New Zealand*, Views of 17 July 2002, U.N. Doc. CCPR/C/75/D/902/1999.

Human Rights Committee. (2003). *Young v. Australia*, Views of 6 August 2003, U.N. Doc. CCPR/C/78/D/941/2000.

Human Rights Committee. (2008). Concluding observation: Japan (5th report), 30 October 2008, U.N. Doc. CCPR/C/JPN/CO/5.

Human Rights Committee. (2014). Concluding observation: Japan (6th report), 20 August 2014, U.N. Doc. CCPR/C/JPN/CO/6.

Human Rights Committee. (2020). Japan: 7th report, 28 April 2020, U.N. Doc. CCPR/C/JPN/7.

Human Rights Committee. (2022). Concluding observation: Japan (7th report), 3 November 2022, U.N. Doc. CCPR/C/JPN/CO/7.

Human Rights Council. (2008). UPR (first cycle): Japan, 30 May 2008, U.N. Doc. A/HRC/8/44.

Human Rights Council. (2012). UPR (second cycle): Japan, 14 December 2012, U.N. Doc. A/HRC/22/14.

Human Rights Council. (2017). UPR (third cycle): Japan, 4 January 2018, U.N. Doc. A/HRC/37/15.

Human Rights Council. (2018). Replies by Japan, 1 March 2018, U.N. Doc. A/HRC/37/15/Add.1.

Human Rights Watch. (2019, March 19). *A really high hurdle: Japan's abusive transgender legal recognition process*. <https://www.hrw.org/report/2019/03/19/really-high-hurdle/japans-abusive-transgender-legal-recognition-process>.

Independent Expert on Sexual Orientation and Gender Identity. (2018). Report to the General Assembly, 12 July 2018, U.N. Doc. A/73/152.

Inter-American Court of Human Rights. (2017). Gender identity, and equality and non-discrimination of same-sex couples, Advisory opinion OC-24/15, 24 November 2017.

Iwasawa, Y. (1999). *International law, human rights, and Japanese law: The impact of international law on Japanese Law*. Clarendon Press.

Japan Federation of Bar Associations. (2020). *Report of JFBA regarding the seventh periodic report by the government of Japan based on article 40(b) of the International covenant on civil and political rights*. [https://www.nichibenren.or.jp/library/pdf/activity/international/library/human\\_rights/iccpr\\_7en.pdf](https://www.nichibenren.or.jp/library/pdf/activity/international/library/human_rights/iccpr_7en.pdf).

Maree, C. (2020). "LGBT issues" and the 2020 games. *The Asia-Pacific Journal: Japan Focus*, 18(4), <https://apjjf.org/2020/4/Maree.html>.

Ministry of Justice. (2023). *The constitution of Japan*. Japanese Law Translation Database System. <https://www.japaneselawtranslation.go.jp/en/laws/view/174>.

Nagoya District Court. (2020). Judgment of 4 June 2020, case no. H30-GyoU-76. *Hanrei jihō*, 2465, 13ff. [https://www.courts.go.jp/app/hanrei\\_jp/detail4?id=89615](https://www.courts.go.jp/app/hanrei_jp/detail4?id=89615).

Norton, L. H. (2006). Neutering the transgendered: Human rights and Japan's law no. 111. *Georgetown Journal of Gender and the Law*, 7(2), 187–216.

Sapporo District Court. (2021). Judgment of 17 March 2021, Case no. H31-Wa-267. *Hanrei jihō*, 2487, 3ff.

Supreme Court. (2019). Decision of 23 January 2019, Case no. H30-Ku-269. *Saikō saibansho saibanshū minji*, 261, 1ff.

Supreme Court. (2021). Decision of 30 November 2021, Case no. R2-Ku-638. *Saikō saibansho saibanshū minji*, 266, 185 ff.

Taniguchi, H. (2013). Japan's 2003 gender identity disorder act. *Asian-Pacific Law & Policy Journal*, 14(2), 108–117.

Tokyo District Court. (1969). Judgment of 15 February 1969, Case nos. S40-GoWa-307, S40-GoWa-339, and S40-TokuWa-927. *Keiji saiban geppō* 1(2), 133 ff.

Tokyo District Court. (1994). Judgment of 30 March 1994, Case no. H3-Wa-1557. *Hanrei jihō*, 1509, 80 ff.

Tokyo District Court. (2022). Judgment of 30 November 2022, H31-Wa-3465. [https://www.courts.go.jp/app/files/hanrei\\_jp/778/091778\\_hanrei.pdf](https://www.courts.go.jp/app/files/hanrei_jp/778/091778_hanrei.pdf).

Tokyo High Court. (1997). Judgment of 16 September 1997, Case no. H6-Ne-1580. *Hanrei taimuzu*, 986, 206 ff.

Tokyo High Court. (2020). Judgment of 4 March 2020, Case no. R1-Ne-4433. *Hanrei jihō*, 2473, 47 ff.

*Trans in Japan: "I can't change my gender unless I'm sterilised."* (2021, April 8). BBC News. <https://www.bbc.com/news/av/world-asia-56668349>.

United Nations General Assembly. (1993). Principles relating to the status of national institutions, 20 December 1993, U.N. Doc. A/RES/48/134.

Utsunomiya District Court. (2019). Judgment of 18 September 2019, Case no. H30-Wa-30. *Hanrei jihō*, 2473, 51 ff.

World Health Organization. (2014). *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement*, OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO. <https://apps.who.int/iris/handle/10665/112848>.