HUMAN RIGHTS WATCH

"A Really High Hurdle"

Japan's Abusive Transgender Legal Recognition Process

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Summary

The procedure in Japan for changing an individual's legal gender is regressive and harmful. It rests on an outdated and pejorative notion that a transgender identity is a mental health condition, and requires transgender people who want legal recognition to undergo lengthy, expensive, invasive, and irreversible medical procedures. The relevant legislation—known as the "Gender Identity Disorder Special Cases Act"—is contrary to international human rights law and international medical best practices. And while some trans people in Japan desire a diagnosis of "Gender Identity Disorder" (性同一性障害) (GID) and to undergo the medical procedures listed in the law, many do not—and should not be required to do so.

"Transgender" is an inclusive term for anyone whose sex assigned to them at birth does not conform to their lived or perceived gender. It refers to people for whom the designation as "female" or "male" on their birth certificate does not align with the gender that they are most comfortable expressing or would express, if given a choice.

Human Rights Watch interviewed transgender people in Japan who described their struggles to fit into rigid school systems designed around strict gender binaries, to seek and obtain employment, to engage healthcare providers, and to raise families in accordance with their basic rights. The existence of a law in Japan allowing transgender people to change their legal gender signals the government's willingness to engage with and support transgender people. But Japan's government needs urgently to address and fundamentally revise the legal recognition process that remains anchored to a diagnostic framework that fails to meet international standards and has been roundly criticized and discredited worldwide. The requirement that a transgender person not have underage children if they wish to secure legal recognition of their gender identity violates transgender people's right to private and family life. Mandatory surgical interventions amount to coercion. And legal gender recognition is an essential element of other fundamental rights—including the right to privacy, the right to freedom of expression, rights related to employment, education, health, and the ability to move freely.

Those interviewed for this report also described how the GID Special Cases Act itself is a barrier to self-respect and acceptance by society. "It is definitely a system that is wrecking people's dignity as a human being," one said. Another transgender man said he believed

the law was designed to exclude trans people “in order not to admit the exceptions and so as to keep homogeneity.”

Japan’s national government and courts, including the Supreme Court in 2019, have in recent years repeatedly used pejorative myths and stereotypes in their analysis of transgender peoples’ rights. For example, the government and Supreme Court have expressed concerns related to trans men becoming pregnant, saying they “may cause confusion in society ” as justification to uphold the law’s sterilization requirement.

Japan’s GID Special Cases Act was drafted in 2003 and came into force in 2004. For that era, it is not unique. Other legal regimes around the world from that period contain similar discriminatory and abusive provisions. Legislatures, domestic courts, and regional human rights courts and bodies have in recent years found that such requirements violate human rights law. Medical expert bodies have, similarly, urged governments to remove medical requirements from legal gender recognition procedures. Most recently, the World Health Organization (WHO) published its new International Classification of Diseases, which removes “gender identity disorders” from the “mental disorders” section much like the American Psychological Association did in 2012. This progress, as well as international human rights standards, gives Japan a roadmap for reforming its own law.

Achieving the right to legal gender recognition is crucial for transgender people to leave behind a life of marginalization and enjoy a life of social equality and dignity. A simple shift toward allowing people autonomy to determine how their gender is expressed and recorded is gaining momentum. The law should not force people to carry an identity marker that does not reflect who they are. It should also not force transgender people to undergo unwanted medical procedures to be recognized or achieve any of the other associated rights.

The Japanese government should urgently reexamine its law and revise it according to its international human rights obligations and medical best practices to allow transgender people a transparent and quick administrative procedure to change their legal gender.

Recommendations

The government of Japan should work urgently across ministries to realize the recommendation put forward by the United Nations independent expert on sexual orientation and gender identity during his 2018 address to the UN General Assembly. The independent expert called for the elimination of abusive requirements as prerequisites for change of legal sex or gender, including:

- Forced, coerced or otherwise involuntary sterilization;
- Medical procedures related to transition, including surgeries and hormonal therapies;
- Undergoing medical diagnosis, psychological appraisals or other medical or psychosocial procedures or treatment;
- Requirements relating to economic status, health, marital, family or parental status; and
- Any third-party opinion.

To the Ministry of Justice

- Revise Law 111 of 2003, the GID Special Cases Act, to bring it into accordance with international human rights standards and medical best practices so that individuals' gender marker in the family registry can be changed without having to satisfy any medical conditions. In particular, abolish the current conditions of sex reassignment surgery and irreversible infertility, as well as the requirement that applicants have no underage children.
- Ensure that legal recognition of transgender people's gender identity applies to all aspects of people's lives.
- Recognize that it may be in the best interest of some transgender children and young adults to change their legal gender before the age of majority (currently age 20 and beginning April 1, 2022, age 18), and ensure that transgender children are not excluded from the possibility of applying for legal recognition of their gender identity. Procedures for the consideration of transgender children's applications should include a mechanism for the transgender child to give their opinion on the need to change their legal gender. The child's freely expressed opinion needs to be given due weight. In line with Japan's obligation

under the Convention on the Rights of the Child, the relevant procedures should be designed in such a way as to acknowledge that as children grow and acquire capacities, they are entitled to an increasing level of responsibility for the regulation of matters affecting them.

- Ensure that the revised legal gender recognition law does not require trans people to be single in order to be legally recognized according to their self-declared gender identity.

To the Ministry of Foreign Affairs

- Invite the UN independent expert on sexual orientation and gender identity to visit Japan and meet with transgender people, service providers, and government interlocutors.

To the Ministry of Health, Labor and Welfare

- As a matter of urgency, issue a public statement indicating that the ministry will adopt the World Health Organization's new category of "gender incongruence" and work with the Ministry of Justice to ensure that the GID Special Cases Act is revised in accordance with the WHO's International Classification of Diseases, version 11.
- With the Ministry of Justice, launch a process of revising the GID Special Cases Act to institute a legal gender recognition procedure based on an administrative act of self-declaration of gender identity.
- Ensure that transgender people have access to the medical and psychological assistance and support they require, and that such support and assistance is available to transgender individuals within a reasonable time.
- In consultation with transgender people, ensure that all medical interventions related to gender transition for transgender people are covered by health insurance schemes.
- Ensure that training is available to health service professionals, including psychologists, psychiatrists and general practitioners, as well as social workers, with regard to the specific needs and rights of transgender persons and the requirement to respect their dignity.

Methodology

Human Rights Watch conducted the research for this report between August and December 2015 and additional research between July and November 2018 with individuals from 14 prefectures in Japan. During the time period that elapsed between the phases of research, Human Rights Watch engaged UN Special Procedures regarding Japan's legal gender recognition procedure, eliciting a response from the government. The law and its implementation has not changed since 2015, when the initial interviews were conducted, so the facts presented remain relevant to analysis of the law today.

Researchers conducted interviews with 48 transgender people, as well as interviews with lawyers, health providers, and academics.

Human Rights Watch researchers obtained informed consent from all interview participants, and provided explanations in Japanese about the objectives of the research and that interviewees' accounts would be used in a report and related materials. Interviewees were informed that they could stop the interview at any time or decline to answer any questions they did not feel comfortable answering.

No compensation was paid to either survey respondents or those who participated in face-to-face interviews. Human Rights Watch reimbursed public transportation fares for interviewees who traveled to meet researchers in safe, discreet locations. The interviews were conducted in Japanese, or with Japanese-English interpretation. All interviews were conducted privately, with participants interviewed alone.

In this report, pseudonyms are used for all transgender interviewees except those who expressed a strong preference that their real names be used.

Human Rights Watch engaged the United Nations Office of the High Commissioner for Human Rights Special Procedures branch and two UN experts wrote to the Japanese government following our submission. That correspondence, and the government's response, is analyzed in this report.

Human Rights Watch wrote to Japan's Ministry of Justice in October 2018 to share our research findings and preliminary recommendations for this report.

I. Gender Identity and Legal Recognition

"Transgender" is an inclusive term for anyone whose sex assigned to them at birth does not conform to their lived or perceived gender. It refers to people for whom the designation as "female" or "male" on their birth certificate does not align with the gender that they are most comfortable expressing or would express, if given a choice.

Everyone has a gender identity. Most people identify as either female or male, in line with what they were assigned on their birth certificates. Some may identify as a gender that is different from the one they were assigned at birth, and some may identify as both, or neither. If someone is labeled "female" at birth but identifies as male, he is a transgender man (or transman). If someone is labeled "male" at birth but identifies as female, she is a transgender woman (or transwoman). In Japan, the identity term "x-gender" is used by some people. It roughly translates to "non-binary" or "genderqueer" in English, signifying a neutral gender identity that is neither male, nor female. The term "cisgender" (i.e., non-transgender) is used for someone who identifies with the same gender, male or female, as the sex they were assigned at birth.

Historically, many medical systems, including those supported by the World Health Organization (WHO), have categorized being transgender as a mental health condition. However, this has been gradually changing, and the WHO has updated its standards—as discussed later in this report.

There is widespread consensus among medical and psychological experts, consistent with the views of transgender communities around the world, that experiencing gender as different from that which was assigned at birth is not a disorder or a disease—but rather a natural variation of human experience.[1]

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[1] American Psychiatric Association. Gender Dysphoria Fact Sheet, 2012. http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf (accessed January 9, 2019); WPATH. WPATH Identity Recognition Statement, November 15, 2017, https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf. (accessed January 9, 2019)

Transgender people, in Japan and elsewhere, experience mental health problems like everyone else. Research suggests that transgender populations experience higher rates of some mental health problems. Transgender people incur mental health problems from stigma, discrimination, bullying, and harassment that are not inherent in gender non-conformity. These conditions may require diagnoses in order to receive treatment, but they are separate from the experience of gender identity as such.

Transgender people, as per the usage in this report, are not experiencing a form of mental health condition; rather, they experience a deep sense of identification with a gender different from the sex assigned to them at birth. They may or may not take steps to physically alter their bodies, such as undergoing hormone replacement therapy (HRT) or sex reassignment surgery (SRS). They may or may not seek mental health care related to their transition or associated anxieties.

Gender identity is not the same thing as sexual orientation. Like cisgender people, transgender people may identify as heterosexual, homosexual, bisexual, or asexual. Transgender people, like anyone else, can form relationships with people of all other genders.

While there have been some changes in national laws recognizing and protecting transgender people in recent years,[2] many countries, like Japan, still enforce outdated, discriminatory, and coercive policies. As this report details, legal gender recognition procedures such as Japan's, which mandate medical procedures with irreversible consequences and construe gender identity as a "disorder," run afoul of international human rights law. Requirements of a minimum age, parental status, and relationship status for undergoing processes to change legal gender are discriminatory.

Changing such laws to respect transgender people's right to self-declared legal recognition is a human rights imperative. Due to upcoming changes in global diagnostic systems, as set by the WHO, it is also important for Japan to update its legal gender recognition system to come in line with modern medicine. As detailed below, a simple shift toward allowing

[2] As discussed later in this report, Sweden, the Netherlands, Ireland, Colombia, Malta, and Denmark in recent years changed their legal recognition procedures to remove invasive medical requirements; Denmark and Malta, along with Argentina, do not require a medical diagnosis for legal gender recognition. Argentina and Malta are widely considered to set best standards in legal gender recognition procedures.

people autonomy to determine how their gender is expressed and recorded is gaining momentum globally. The law should not force people to carry an identity marker that does not reflect who they are. It should also not force transgender people to undergo unwanted medical procedures to be recognized or achieve associated rights. And it should not construe gender identity as a medical condition in need of diagnosis.

Japan's Legal Gender Recognition System

Legal gender recognition in Japan is regulated by Law No. 111 of 2003, the "Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder"—or the GID Special Cases Act. The law came into effect on July 16, 2004.[3]

The law requires a diagnosis of "Gender Identity Disorder" (GID) before any transgender person can apply to secure legal recognition of their appropriate gender. "GID" is defined in the law as:

A person, despite his/her biological sex being clear, who continually maintains a psychological identity with an alternative gender, who holds the intention to physically and socially conform to an alternative gender.[4]

The process requires the person to receive "concurrent diagnoses on such identification with the opposite gender from two or more physicians equipped with the necessary knowledge and experience to give accurate diagnoses on this matter, based on generally accepted medical knowledge."[5]

The legal gender recognition decision is made by the Family Court. In addition to providing a certificate attesting to the fact that the individual has been diagnosed with GID, an applicant to the court must meet the following qualifications:

- Be 20-years-old or older;
- Be presently unmarried;

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[3] Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder, Act No. 111 of July 16, 2003. 性同一性障害者の性別の取扱いの特例に関する法律.
http://www.japaneselawtranslation.go.jp/law/detail/?id=2542&vm=04&re=02 (accessed January 9, 2019).

[4] Ibid.

[5] Ibid.

- Not presently have any underage children;
- Not have gonads or permanently lack functioning gonads; and
- Have a physical form that is "endowed with genitalia that closely resemble the physical form of an alternative gender."[6]

The GID Special Cases Act is the first legal gender recognition procedure Japan has ever had, and its adoption represented a pivotal moment in the Japanese government's treatment of sexual and gender minorities.[7] However, the procedure established under the law violates the rights of Japanese people who wish to be legally recognized as having a different gender from the one they were assigned at birth.

In 1980, when the American Psychological Association published the third edition of the Diagnostic and Statistical Manual (DSM-III), psychiatrists in Japan embarked on translating it into Japanese. Karen Nakamura, an anthropologist, explained that there were "debates over what the proper Japanese term might be for the word 'disorder' which was used consistently through the DSM. The chief candidates were *byô, shô*, and *shôgai*."[8] *Shogai* can be translated as "disorder" or disability" – an ambiguity that transgender advocates embraced in 1982 when the DSM-III Japanese version was published. According to Nakamura:

> Part of the difficulty is that Japanese medical terminology does not always differentiate between impairment, injury, disorder, disturbance, pathology, and disability when translating these terms as shôgai. In any case, the obfuscation was a happy one for Japanese transsexuals as the DSM-III category of "gender-identity-disorder" became 性同一性障害, *seidoitsusei-shogai*.[9]

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[6] Ibid.

[7] Thomasina Larkin, "Gender identity transformed from 'freak' into rights issue," *Japan Times,* January 23, 2007, https://www.japantimes.co.jp/community/2007/01/23/issues/gender-identity-transformed-from-freak-into-rights-issue/#.W_LFDpNKiUk (accessed January 9, 2019).

[8] Karen Nakamura, "Trans/Disability: Disability, Queer Sexualities, and Transsexuality from a Comparative Ethnographic Perspective," *University of Tokyo* paper, http://www.p.u-tokyo.ac.jp/cbfe/activity/doc/05_doc1_20120119.pdf (accessed January 9, 2019).

[9] Ibid.

As the concept of GID entered Japanese medical practice and society, it provided an explanatory framework for transgender people to discuss and disclose their identity and access services. The GID diagnosis also became the basis for related legal developments, which culminated in the GID Special Cases Act. And while there was an emancipatory element in the law's recognition of the experience of a gender identity that does not correspond with the sex one is assigned at birth, the law itself is inconsistent with international human rights law and medical best practices.

The GID Special Cases Act, while serving to acknowledge the existence of a population and allowing for their legal recognition, is a formidable barrier for transgender people in Japan. The requirement of a GID diagnosis is unscientific; the requirement of single marital status and not having minor children is discriminatory; and the requirement of surgeries that sterilize amounts to coerced sterilization. As legal scholar Hiroyuki Taniguchi noted in a 2013 article, "the Act reinforces gender binary not only in social contexts, but also at the physical level by requiring surgical intervention when it is not medically necessary."[10]

Some transgender people may indeed want to undertake all or some of these actions as part of their transition. However, requiring all transgender people to do so is contrary to international law and a violation of transgender people's basic rights. The law's requirements are also regressive with regard to international medical and diagnostic standards. As analyzed later in this report, now that neither of the major international medical diagnostic systems acknowledge "GID" or "transsexualism" as a mental disorder, Japan legally mandating that transgender people obtain such a diagnosis amounts to coercion.

Such a shift may not be insignificant for individuals. As one transgender woman in Tokyo told Human Rights Watch:

> I don't think gender incongruency is a mental disease. However, many have their identity accepted by admitting they have some disorder. If gender

[10] Hiroyuki Taniguchi, "Japan's 2003 Gender Identity Disorder Act: The Sex Reassignment Surgery, No Marriage, and No Child Requirements as Perpetuations of Gender Norms in Japan," Asian-Pacific Law & Policy Journal, Vol. 14:2, 2013, http://blog.hawaii.edu/aplpj/files/2013/02/APLPJ_14.2_Taniguchi.pdf (accessed January 23, 2019).

> incongruence no longer is a disorder, I think there are some who are afraid of losing the way to justify who they are.[11]

Dr. Jun Koh, a psychiatrist in Osaka who works with transgender patients, said:

> In Japan, there is a background that social recognition advanced along with the spread of the medical model, in which treatments are carried out based on the diagnosis of a hospital or a clinic. If the medical model is denied, people think it's about taste and preference – so then there is a chance of not being able to ensure the understanding of transgender being a diversity in gender seen everywhere in the world.[12]

However, while the framework may indeed provide a functional and preferred method for some transgender people to seek care and legal status, the requirements in the current law should not be applied to everyone.

In a 2016 report, the United Nations special rapporteur on torture said that the refusal of transgender people's legal recognition in their appropriate gender "leads to grave consequences for the enjoyment of their human rights, including obstacles to accessing education, employment, health care and other essential services."[13] The special rapporteur noted that,

> In States that permit the modification of gender markers on identity documents abusive requirements can be imposed, such as forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures.[14]

The legal requirements for transgender people in Japan to obtain a GID diagnosis often involves unnecessary, arbitrary, and burdensome tests. The mandatory psychiatric evaluation and the law's requirements that applicants be unmarried, sterile and lacking

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[11] Human Rights Watch interview with Marina K. D., Wakayama Prefecture, November 15, 2018.

[12] Human Rights Watch interview with Dr. Jun Koh, professor of psychiatry, Osaka Medical College, August 8, 2015.

[13] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/31/57, January 5, 2016.

[14] Ibid.

any minor children are inherently discriminatory. These conditions—and in particular the maltreatment many transgender people must accept in order to meet them— also amount to cruel and inhuman treatment and to a violation of transgender people's right to health. The law forces all transgender people who want to secure legal recognition of their appropriate gender to secure diagnosis of a psychological disorder, to refrain from having children at any point during the two decades prior to securing recognition and to be unmarried. It forces many would-be applicants—including those who would not otherwise choose to take these steps— to undergo physically transformative surgical interventions, undergo sterilization, and contemplate the breakup of existing marriages.

Japan's legal requirements are particularly harmful for transgender children. It sets a mandatory minimum age of 20 for achieving legal gender recognition. Legal recognition can only be given if the individual holds "the intention to physically and socially conform to an alternative gender,"[15] which sets children up to understand surgeries as inevitable and puts intense pressure on them to conform to gender stereotypes about what "male" and "female" bodies and behavior should look like.

These requirements cannot be squared with the principle that the best interests of children be a primary consideration in all administrative and legal decisions that impact them.[16] The GID Special Cases Act negatively impacts children's rights to physical integrity, privacy, and autonomy. These problems are also reflected in how the government has interpreted the GID Special Cases Act with regard to gender non-conforming children in

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[15] Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder, Act No. 111 of July 16, 2003. 性同一性障害者の性別の取扱いの特例に関する法律.
http://www.japaneselawtranslation.go.jp/law/detail/?id=2542&vm=04&re=02.

[16] 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. In determining the child's best interest, the child itself should be heard, in accordance with article 12 of the convention:

> States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Convention on the Rights of the Child, Art 3, 12.

statements issued by the Ministry of Education[17], and the guidance issued to psychiatrists on GID patients.[18]

Japan's current legal gender recognition procedure violates the basic rights of transgender people. It treats the fact of being transgender as a disorder that does not exist—one that transgender people are required to certify that they suffer from as a prerequisite to securing legal recognition. It forecloses legal recognition to transgender people who are married, who have underage children or who have the capacity to reproduce. Not only is this discriminatory, but it forces many transgender people who want to secure legal recognition of their gender identity to contemplate invasive surgical procedures they may not want and, in some cases, requires the breakup of their families.

As one transgender man in Kanagawa Prefecture told Human Rights Watch: "It is definitely a system that is wrecking people's dignity as a human being."[19]

Mandatory Psychiatric Evaluation

The GID Special Cases Act requires transgender people in Japan who seek legal recognition of their gender identity to obtain a diagnosis of GID as a prerequisite. Some people in Japan consider their gender identity to be a mental health condition and seek services accordingly.[20] However, such a framework can also stigmatize transgender people. Many of the people whom Human Rights Watch interviewed, including psychiatrists who work with transgender people, discussed this stigma. Our research also found that the process associated with obtaining a medical certificate for GID was itself burdensome and abusive in some cases.

Transgender people Human Rights Watch interviewed reported a variety of experiences in obtaining the GID diagnosis. For example, one was able to obtain the diagnosis certificate

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[17] Ministry of Education, Culture, Sports, Science, and Technology (MEXT), Government of Japan, "Regarding the Careful Response to Students with Gender Identity Disorder," April 30, 2015, http://www.mext.go.jp/b_menu/houdou/27/04/1357468.htm

[18] The Japan Society for Psychiatry and Neurology, Diagnosis and treatment guidelines for gender identity disorder (4th edition), 2012, https://www.jspn.or.jp/uploads/uploads/files/activity/journal_114_11_gid_guideline_no4.pdf

[19] Human Rights Watch interview with Saburo N., Kanagawa Prefecture, September 2, 2018.

[20] Lester Feder, "Why Transgender People in Japan Prefer To Be Told They Have a Disorder," *Buzzfeed News,* https://www.buzzfeednews.com/article/lesterfeder/transgender-in-japan.

on their first visit to a psychiatrist,[21] while in other instances clinic staff and psychiatrists forced applicants to undergo a lengthy and humiliating procedure.

The 4th edition of the Diagnosis and Treatment Guidelines for "Gender Identity Disorder," published by the Japan Society for Psychiatry and Neurology and last revised in January 2018, recommend three tests for a GID diagnosis:

> 1) A gender identity test, which is based on the testimony of the individual;
>
> 2) A biological gender test, which can contain an examination of chromosomes, an examination of hormonal action, an inspection of internal and external genitals, and "other examinations that doctors find necessary"; and
>
> 3) An exclusion of other diagnoses test to "confirm that the denial of gender identity/request for the surgery is not coming from schizophrenia nor other cultural, social, or occupational reasons."[22]

The only test that contains a reference to the time it can take is test 1, which "may last until enough information will be collected."[23] Our research found that for some applicants, the process can take an excessive amount of time.

Kiyoshi M., a 24-year-old transgender man in Tokyo, told Human Rights Watch of his year-long effort to obtain the GID diagnosis four years earlier, when he was 20-years-old. On his first visit to a gender clinic in Tokyo, the psychiatrist told him to write his personal history, then return a few weeks later with a series of photos of himself from when he was a toddler through to the present day. "At every session I had to fill out a 100-question questionnaire," Kiyoshi M. said. According to him, the questions on the survey queried stereotypical understandings of gender-specific behaviors and appearances:

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[21] For example, one interviewee said he was able to obtain a preliminary GID diagnosis certificate after a 10-minute conversation with a psychiatrist, even though he was under the legal age for gender recognition at the time. Human Rights Watch interview with Akemi N., 18, Okinawa, November 10, 2015.

[22] Japan Society for Psychiatry and Neurology, Diagnosis and treatment guidelines for gender identity disorder (4th revised edition), 2018, https://www.jspn.or.jp/uploads/uploads/files/activity/gid_guideline_no4_20180120.pdf(accessed February 7, 2019).

[23] Ibid.

> "All of them were open ended questions about gender, such as 'when I was little, people told me I was____' or 'if my parent died, I would react by ____.'"

Kiyoshi M. continued to visit that hospital for six months. "On my first time at the hospital, I told the doctor I wanted the diagnosis as soon as possible," he said. "But the doctor said to come every two weeks, then even after six months they needed more time and said they couldn't give [the diagnosis] to me so they told me to keep coming back." After six months, he gave up and started going to a second hospital in Tokyo, where the psychiatrist at the gender clinic tested him through verbal therapy sessions and interviews for an additional six months before giving him the GID diagnosis. "Clinic staff constantly asked me at every step of the process, 'Are you sure?'" he said.[24]

Yasuhiro D., a 30-year-old transgender man, traveled to a gender clinic 520 kilometers away from his home for six appointments over the course of two months, where he was subjected to psychiatric tests. "They showed me drawings and I had to talk to the therapist about them many times, it was extremely time consuming and repetitive," Yasuhiro said. "The drawings were of several people and they asked me which ones looked like my family members." Once he obtained the GID diagnosis certificate, he went to a clinic closer to Kyoto to request hormone therapy, but they told him he would have to redo all of the tests. "They said it was for a second opinion," he said. "Then after that second opinion was affirmative, they sent me to an external psychiatrist for a third opinion."[25]

Hanae T., a 29-year-old transgender woman living in the Ishikawa Prefecture, told Human Rights Watch that it took her nearly a year to get the diagnosis. "I saw the psychiatrist almost the whole year. I kept seeing the psychiatrist until right before the beginning of 2011. It was in December 2010 that I got the diagnosis of GID," she said.[26]

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[24]Human Rights Watch interview with Kiyoshi M., Tokyo, August 18, 2015.
[25]Human Rights Watch interview with Yasuhiro D., Osaka, August 8, 2015.
[26]Human Rights Watch interview with Hanae T., Kanazawa, September 27, 2015.

Coerced Sterilization and Compulsory Surgery

> The surgery requirement itself feels wrong. It feels a lot like a surgery to maintain order. Why do we have to put a scalpel through our healthy bodies just for sake of the country's order? The requirements being incorporated like that into the system—that itself feels as though I am severely insulted or my human rights being neglected. It is humiliating.
>
> —Transgender man in Kanagawa Prefecture, September 2018

> I don't want to [have surgery], to be honest. However, I have to just because it is a requirement for marrying in Japan. I feel pressured to be operated on—so terrible.
>
> —Transgender man in Tokyo, August 2018

Legal requirements that transgender people undergo surgeries to alter the appearance and function of their bodies amount to coercion. That someone is forced to undergo surgical procedures to obtain legal recognition is itself coercive. And that someone is only afforded access to other rights, such as marriage, after having undergone surgery, is also coercive. Transgender people told Human Rights Watch they found Japan's surgical requirement to be a substantial burden. Even those who wanted some of the procedures felt rushed onto the operating table by the law requiring them.

"Of course I want to change the gender on my official family register, and have relationships with my significant other," explained a transgender woman in Tokyo. "But the walls that I have to overcome are just too big. Why do I have to go through so much struggles and challenges just by living?"[27] She said that once she considered the risks associated with the surgeries, she decided not to have them. "Once you start, there's no going back. The surgery itself also has too many complications, and I would have to keep maintenance for life."

For some, the surgery was the only gateway toward other rights—for example, the right to marry and enjoy the benefits that come with marriage. Takayuki G., a 24-year-old transgender man in Tokyo, explained: "When we get married, we can receive spousal [tax]

[27] Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

deductions."[28] He said that while he wanted to change his gender in the family register, he had not yet undergone the requisite surgeries because he did not want to. "I feel I am forced to be operated on to get a tax benefit. There are many advantages for marrieds, for example, tax deductions."[29]

For many, the physical risks and impacts associated with the surgeries were a major barrier. "Another big thing is that I will become infertile if I get the procedure done," said a 25-year-old transgender man in Tokyo who had not undergone any surgeries. "I am forced to choose between having kids and being lawfully recognized as the gender I associate myself with," he said. "I am always wondering why this surgery must be part of the requirements. It's not even like we live our everyday life exposing our genitals to the public."[30]

A transgender man in Kanagawa Prefecture said he felt that his transition went smoothly because he had his family's support and he knew what he wanted. However, he told Human Rights Watch, had it not been for the law requiring surgery in order for him to change his legal gender, he would have not undergone the operations. "It was a surgery that I underwent, questioning why I had to put a scalpel to my healthy body," he said. "I was not able to accept my gender being female on the family register and with that being my top concern, I was inevitably forced to undergo surgery in order to change my gender marker."[31]

He explained:

> If there had not been the requirement of having to undergo surgery, I would have given more thought to it, collecting data and comparing. I would have made a decision when everything had really made sense to me. However, because it was a necessary requirement and because it was an urgent

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[28] Human Rights Watch interview with Takayuki G., Tokyo, September 15, 2018. this tax deduction can amount to a reduction of taxable income by JPY380,000 ($3,500 USD), https://ufe-japon.org/wp-content/uploads/pdf/Japan-Tax-Update-Deloitte-23-11-2017.pdf.

[29] Human Rights Watch interview with Takayuki G., Tokyo, September 15, 2018.

[30] Human Rights Watch interview with Ikumi C., Tsukuba, September 13, 2018.

[31] Human Rights Watch interview with Saburo N., Kanagawa Prefecture, September 2, 2018.

> matter due to the fact that I was working, I wanted to change it as soon as possible.[32]

A transgender man in Fukuoka said:

> I myself had decided to remove [my uterus] because I don't want to get the female menstrual cycle. However, my friends around me, their parents are really against them having the surgery. Doing the surgery is a big matter. You could be risking your life. I want there to be an environment where it is possible for people to talk about wanting to change their gender on the family register, without having to do it. From our parents' perspectives, it must be difficult to understand why we should have a scalpel put to our healthy bodies.[33]

Human Rights Watch interviewed transgender people in Japan who told us that they would not have chosen sterilization if they had had the option to have their gender legally recognized without doing so.

For example, Yasuhiro D., a 30-year-old transgender man in Osaka, said that the recent birth of his brother's second daughter made him reflect on how his reproductive rights were compromised in his quest to be legally recognized as a man. "Since I had my ovaries when my first niece was born, I even thought about stopping the hormones to make my body able to have children," Yasuhiro said. He explained:

> I thought about this issue of having a child even as I sat waiting in the hospital for the SRS [sex reassignment surgery]. I didn't have any doubt that I wanted to live as a man, but I also wanted to preserve my ability to have a baby. I had to choose between being legally recognized for who I am and keeping my body the way I wanted it.

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[32] Ibid.

[33] Human Rights Watch interview with Futoshi Y., Fukuoka, September 4, 2018.

He added, "I think a lot of transgender people want to have the surgery; however, having it as a prerequisite for LGR [legal gender recognition] means our reproductive rights are stripped away."[34]

As Yasuhiro's account illustrates, compulsory surgery requires transgender individuals who seek legal gender recognition to make an unacceptable choice between exercising their right to recognition as a person before the law and their right to bodily autonomy.

A transgender man who had undergone surgery that sterilized him said:

> Back then, I was just really caught up with changing [the gender on] the family register that I could not think about that. But thinking about it now, if it was possible to leave the possibility of having children open, I would have. I really did not have the time to think everything through.[35]

Another transgender woman who has not undergone any surgeries said: "It's my dream to have my own children. Of course, there are ways to get an adoption, but there's still the significance of having your own genetic babies." She explained that she had chosen to carry her documents marked "male," which had resulted in hardship and discrimination, because she did not want to undergo the legally required surgeries to be recognized as female. "If I had to change my gender, then that would mean giving up all means of reproduction," she said. "I'm a woman, but I'm not allowed to call myself the mother of my own children. To get the surgery or have children. This is a decision that none of us should be forced to take. It is a despair."[36]

Others who were contemplating undergoing the law's required procedures expressed a desire to change their gender, but trepidation about the procedures. For example, Tamaki I., a 27-year-old transgender woman in Osaka, said:

> The hurdle is really high. I read that in America you don't need to have surgery to change your gender; you can just change your gender on the

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[34] Human Rights Watch interview with Yasuhiro D., Osaka, August 8, 2015.
[35] Human Rights Watch interview with Saburo N., Kanagawa Prefecture, September 2, 2018.
[36] Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

> family register.[37] If that becomes true in Japan, I would want to change my gender right now. I can't understand why the government is asking for such high conditions. I do want to change my legal gender, but surgery has such a high risk, so I don't know yet.[38]

Noriko R., 22, said: "I want to get my identification card changed. To change it on the family register, we have to get surgery. It's really a lot of pressure for me." She worried about the financial burdens: "It costs a lot, and I can't rely on my parents for help. My transgender friends are waiting for surgery, but I can't do that, so I feel like I'm becoming isolated, falling behind them." Noriko said that everyone in her local transgender support group "has some level of pressure about the surgery. Everyone thinks we'll have to undergo surgery in the future. That's very tough for us."[39]

Kiyoshi M., who obtained the GID diagnosis after he spent a year visiting two clinics, and was on hormones when Human Rights Watch interviewed him, but had not undergone surgery, said, "Ideally I would want to just change my legal gender right now. All of these procedures are putting a lot of strain on my body that I don't want."[40]

Others highlighted that the surgery requirement does not reflect the lived reality of trans people in Japan. A transgender woman in Tokyo said: "It's not like getting the surgery will ensure that your life will be better. It's also not like you show your crotch while you walk around everywhere, so it's not that terrible."[41]

Age Restrictions

The GID Special Cases Act bars all transgender people who are younger than 20, Japan's age of majority (which will be 18 in April 2022), from securing legal recognition of their gender identity. People under 20 can obtain a diagnosis or in some cases a "preliminary diagnosis" of GID. Interviewees told Human Rights Watch they used their GID diagnosis

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[37] The procedure for legal gender recognition in the United States differs by state and by type of document—there is no one centralized policy or process. See: Transgender Law Center, "Trans Legal Clinic Calendar," https://transgenderlawcenter.org/resources/id/trans-legal-clinic-calendar (accessed December 18, 2018).

[38] Human Rights Watch interview with Tamaki I., Osaka, August 8, 2015.

[39] Human Rights Watch interview with Noriko R., Osaka, August 8, 2015.

[40] Human Rights Watch interview with Kiyoshi M., Tokyo, August 18, 2015.

[41] Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

certificates to successfully advocate for access to education according to their gender identity—including through restroom access and school uniforms according to their gender identity.

People who have reached Japan's age of majority can independently pursue legally required surgical procedures without parental consent. After obtaining a GID diagnosis, a process that varies in length, the subsequent requisite medical procedures can take years and carries considerable costs. As a result, legal gender recognition is sometimes not possible until people have reached their mid-20s even though they have expressed their gender identity and desire to legally transition more than a decade earlier.

But without eliminating the mandatory GID diagnosis and medical interventions, simply reducing the age at which applicants can pursue legal gender recognition will be inadequate. Gender non-conforming children lack access to legal recognition and suffer abuses as a result. In addition, the rigid medical requirements for legal recognition as an adult creates significant anxiety for young people, evident in the accounts of individuals whom Human Rights Watch interviewed.

Japan's legal age limit is discriminatory and does not allow for the best interests of the child to be considered. This can have a harmful impact on children who are exploring and questioning their gender. A strict age limit can also violate the right to education for those transgender children who desire to attend school according to their gender identity. As discussed below, in its 2015 statement on gender recognition, the World Professional Association for Transgender Health (WPATH) stated that "appropriate legal gender recognition should be available to transgender youth."[42]

In the context of Japan's education system, the state's failure to accord legal recognition of transgender children's gender identity contributes to their discrimination and degrading treatment. Both the age restriction and the rigid medical criteria are harmful to young people who instead need information, support, and safe spaces to explore and express gender—all elements of inclusive and supportive schools. Furthermore, the current

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[42] WPATH Identity Recognition Statement. November 15, 2017, https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf.

requirement of mandatory medical procedures can cause gender non-conforming children to feel intense pressure to pursue otherwise unwanted medical procedures at a young age.

Japan's schools feature deeply engrained gender separation based on stereotypes. Nearly all junior high and high school students are required to wear gender-specific uniforms, and school activities are often gender-segregated.[43] For children exploring their gender identity or those who identify as transgender, such an environment can be harsh. Itsuki Dohi, a transgender high school teacher, said:

> The Japanese school system is really strict with the gender system. It imprints on students where they belong and don't belong. In later years, when gender is firmly tracked, transgender kids really start suffering. They either have to conceal and lie or act like themselves and invite bullying and exclusion.[44]

Additionally, the GID Special Cases Act mandate of psychiatric and surgical intervention for transgender people who wish to secure legal recognition of their gender identity can cause anxiety for young people. Dozens of interviewees said that their negative experiences in school when they were forced to dress and present as their birth-assigned sex instead of their gender identity informed their anxieties about the future, including university life and employment. Transgender children as young as 14 looked to the future with trepidation. Some children explained that while they do not necessarily want to undergo the medical procedures required by the GID Special Cases Act, it is currently their only route to social recognition, and—they hope—an end to years of abuse, discrimination and exclusion.

In 2015, the Ministry of Education sent a directive to all school boards titled "Regarding the Careful Response to Students with Gender Identity Disorder."[45] The Education Ministry directive sends a serious message from the ministry about schools' responsibility to care for transgender children. However, the directive focusses on diagnoses and medical

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[43]Peter Cave, *Primary School in Japan: self, individuality and learning in elementary education*, (Abingdon: Routledge, 2007).

[44]Human Rights Watch interview with Itsuki Dohi, Osaka, August 8, 2015.

[45]Government of Japan, Ministry of Education, Science, Sports, Science, and Technology, "For detailed of fine-grained response to students according to gender identity disorder," April 30, 2015, http://www.mext.go.jp/b_menu/houdou/27/04/1357468.htm

institutions as the primary source of information about gender and sexuality. For example, the directive states: "The diagnosis and advice from medical institutions is a very crucial opportunity for the school to get a professional knowledge." This reflects the government's continued reliance on the harmful, pathological model of understanding transgender people's gender identity as enshrined in the GID Special Cases Act.

The 2015 Education Ministry directive is official advice, and so its examples of support for schools to follow are nonbinding recommendations. Human Rights Watch interviews with transgender children in Japan revealed that school officials issue varied responses to transgender students' requests to use facilities according to their gender identity. Enshrining a right to legal recognition of gender based on their self-declared identity alone would substantially improve the situation for transgender children.

Japan should recognize that it may be in the best interest of many transgender children to change their legal gender before they reach age 20. The law should set no absolute minimum age for legal recognition of a transgender person's gender identity. Instead, the individual circumstances of each child should be assessed by appropriate authorities to determine whether it is in that child's best interest to change their legal gender. The government should also amend its school-based policies and directives for transgender children to clarify that no child should be required to provide a diagnosis of GID in order to wear uniforms, or access school facilities or activities according to their gender identity.

Relationship Status and Parental Status Discrimination

Japan's requirement that all applicants for legal gender recognition are single implies mandatory divorce for married transgender people who wish to be recognized. This is because Japan does not recognize same-sex marriages, which a gender transition would create. Such a requirement is discriminatory, and has been condemned by major human rights bodies, including the United Nations Human Rights Council in 2011 and 2014 reports.

The requirement that a transgender person not have underage children (under 20) if they wish to secure legal recognition of their gender identity violates transgender people's right to private and family life and the right to found a family, and discriminates on those grounds.

The revision of the GID Special Cases Act in 2008 to clarify that transgender people seeking legal gender recognition must not have any children under 20 (previously the law mandated no children whatsoever), demonstrated that the government is willing to consider changes to the law, but it was an insufficient step.[46]

[46] "The 'no-child' policy was mitigated in June 2008 when the House of Councilors voted in favour of a Bill that proposed allowing gender identity disorder (GID) patients with children to change their sex registration in their family registries. However, this was conditional on their children being adults at the time of the change." See Mark McLelland & Katsuhiko Suganuma (2009) Sexual minorities and human rights in Japan: an historical perspective, The International Journal of Human Rights, 13:2-3, 329-343, DOI: 10.1080/13642980902758176.

II. Impact of Japan's Legal Gender Recognition System

The GID Special Cases Act is the first legal gender recognition procedure Japan has ever had, and its adoption represented a pivotal moment in Japan's public debate on sexual and gender minority issues.[47] And while some activist groups and individuals support the mandatory procedures featured in the law, these have caused significant problems for others.

The diagnostic label of "GID" helped, in some cases, to explain gender identity to families. For example, one transgender man told Human Rights Watch that he pursued a medical certificate for a "GID" diagnosis in an effort to legitimize his transition in the eyes of his parents:

> I came out to my parents during New Year's, but they greatly opposed me. Even if my parents are reluctant to give me approval, I felt as though the certificate to indicate my gender would become beneficial when trying to persuade them. I am still going to the clinic, and the process has prolonged this long, unable to get the certificate. I am very worried that I won't receive it [soon].[48]

However, for those who do not undergo the requisite diagnosis and procedures—or those who attempt to, but face barriers such as long delays, failures to obtain a diagnosis—operating in daily life with documents that do not match their identity and appearance causes significant hardship.

"I always try to hide this part of the paperwork whenever I hand it in," said Aki T., a transgender woman in Tokyo. "Because there is a difference in my body and heart, many

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[47] According to the Science Council of Japan: "Ever since the 'Blue boy trial' (1969), in which a doctor was prosecuted for performing sex reassignment surgical operations, sex reassignment surgery has been considered illegal. Transgender people were forced to have their sex reassignment surgeries performed in other countries until the 'Japanese Society of Psychiatry and Neurology' established requirement guidelines for sex reassignment surgery, and was first operated in 1998." Science Council of Japan, Committee Board of Law, "Proposal Towards ensuring the rights of sexual minorities," September 29, 2017, http://www.scj.go.jp/ja/info/kohyo/pdf/kohyo-23-t251-4.pdf. Also see: Satako Itani, "Sick but Legitimate? Gender Identity Disorder and a New Gender Identity Category in Japan," in *Advances in Medical Sociology Volume 12: Sociology of Diagnosis,* PJ McGann and David Hutson, eds., (Emerald Publishing, 2011).

[48] Human Rights Watch interview with Ikumi C., Tokyo, September 13, 2018.

people around me get thrown. My heart sinks every time I have to submit any legal documentation, anywhere I go.[49]

Like in Aki's experience, legal gender recognition is an essential element of other fundamental rights—including the right to privacy, the right to freedom of expression, rights related to employment, education, health, and the ability to move freely.

Access to Education

In 2016, Human Rights Watch published a report that documented bullying and exclusion of lesbian, gay, bisexual, and transgender students in Japanese schools.[50] The report noted significant barriers to accessing education experienced by transgender students, as well as several directives the Ministry of Education had issued in that regard in recent years. While the ministry's attention to the issues facing transgender students is undoubtedly helping young people thrive, the policies and directives remain grounded in the current law—that is, they refer to trans students as "students with GID."

In addition to this policy barrier, Japanese school culture, while undergoing important shifts in recent years,[51] remains rigid when it comes to gender norms. Most Japanese schools insist on conformity to strict gender norms as a matter of school policy with regard to uniforms, restroom access, information imparted in classrooms, and other mechanisms of gender norm enforcement.

Student activities are typically gender-segregated, though the degree to which schools enforce gender roles appears to vary. The anxieties this standard system causes transgender and gender-nonconforming students are intense. As one junior high student said, "Gender segregation is everywhere in school—roll call, uniforms, seating arrangement, and hair length are all dictated by gender."[52] Peter Cave, an anthropologist

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[49] Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

[50] Human Rights Watch, *The Nail That Sticks Out Gets Hammered Down,* May 5, 2016, https://www.hrw.org/report/2016/05/05/nail-sticks-out-gets-hammered-down/lgbt-bullying-and-exclusion-japanese-schools.

[51] Human Rights Watch, "Japan's School Uniform Shift Will Help LGBT Students," June 20, 2018, https://www.hrw.org/news/2018/06/20/japans-school-uniform-shift-will-help-lgbt-students.

[52] Human Rights Watch interview with Rei N., Okayama, August 13, 2015.

who studies Japanese education, has documented how even in primary schools, gender differences in the treatment and social conditioning of students are apparent.[53]

Itsuki Dohi, a transgender high school teacher told Human Rights Watch:

> The Japanese school system is really strict with the gender system. It imprints on students where they belong and don't belong. In later years when gender is firmly tracked, transgender kids really start suffering. They either have to conceal and lie or act like themselves and invite bullying and exclusion.[54]

Kaoru M., a 19-year-old transgender woman in Setagaya, said that her school's "firmly tracked" gender segregation left her isolated: "I expected in high school that there would be more mixing of boys and girls but there was complete social separation." Kaoru was not allowed to wear a female uniform in high school but wore long hair and had what she described as a "feminized appearance." She was able to join all-girls extracurricular activities but faced aggressive and scrutinizing questions and teasing from classmates. "I was isolated from both boys and girls," she said. "There was nowhere to go for me."[55]

A transgender woman in Tokyo said that the negative experiences she had in school impacted his life:

> The disgrace I felt during school had discouraged me so much to the point where I wasn't able to attend school any longer. In terms of education, I always believed that everything that adults say are always correct. But now, I know that whatever adults [like that] say is almost always incorrect. I had lived my life without hope.[56]

Some students told Human Rights Watch that their schools, to their credit, sought and followed guidance on ensuring transgender students' rights. A lawyer in Tokyo said that

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[53] Cave, *Primary School in Japan: Self, Individuality and Learning in Elementary Education*.
[54] Human Rights Watch interview with Itsuki Dohi, teacher, Osaka, August 8, 2015.
[55] Human Rights Watch interview with Kaoru M., Tokyo, November 13, 2015.
[56] Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

several schools in the city had consulted with him on issues such as uniforms and restroom access when they became aware that they had transgender students, and as a result agreed that students would be able to wear uniforms and have access to lavatories and school activities according to their gender identity.[57] Such approaches by schools appear to be the exception rather than the norm.

School Uniforms

Most of Japan's junior high and high schools require students to wear uniforms. The attire is gender-specific and the two options, male or female, are dispensed to students according to the sex they were assigned at birth. "The dress codes are usually very strict," said Mameta Endo, a transgender man who has worked on issues facing LGBT youth in Japan. "The idea behind the uniform is that if you can't wear it properly, you're a bad student. It makes you an outcast."[58]

In some instances that Human Rights Watch documented, students were able to request alterations to their uniforms; in a few cases, students were able to request a full switch of the uniform according to their gender identity. "Schools are really starting to be flexible," a Tokyo-based lawyer said.[59]

Human Rights Watch, however, identified many agreements to alter uniform requirements that were not the result of consistently applied policies designed to respect students' right to free expression of their gender identity, but rather due to the compassion of school officials, assiduous advocacy by parents, or in some cases the student's presentation of their diagnosis with GID. For some transgender students and other children exploring gender identity, the strict uniform policy was an acute source of anxiety, leading to extended school absences and even dropouts. Said the Osaka-based psychiatrist Jun Koh:

> Since middle schools and high schools typically require uniforms, this results in the coercion of transgender students, who have questions about their birth-assigned gender, to wear school uniforms that differ from their gender identity. Wearing uniforms result in the complete separation of

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[57] Human Rights Watch interview with lawyer, Tokyo, October 1, 2015.

[58] Human Rights Watch interview with Mameta Endo, activist, Saitama Prefecture, October 5, 2015.

[59] Human Rights Watch interview with lawyer, Tokyo, October 1, 2015.

> genders, provoking feelings of gender denial. This leads kids thinking that their feelings are never respected, and it becomes difficult for them to have good self-esteem. It is around this time [when transgender students start entering middle or high schools] that the number of transgender students seeking counselling increases.[60]

For example, Takeshi O. said that his anxieties about the female gender of his school uniform increased over time. "When I first started junior high school I didn't question the uniform initially," he said. "I progressively started to question it and by the third year I dreaded every school day because it meant I would have to put the skirt on."[61]

All of these challenges facing transgender and gender non-conforming youth in Japan's schools underscore the need to revise the GID Special Cases Act to accommodate and support transgender people regardless of their age.

University Education

In July 2018, news broke that some women's universities in Japan were revising their admissions policies to admit transgender women. According to an article in the *Nikkei Asian Review*,

> A panel of experts under the Science Council of Japan's law committee pointed out last year that denying transgender students' admission to girls' schools and women's universities constitutes "an encroachment on their rights to learn." The panel includes representatives from women's colleges.[62]

Human Rights Watch reached out to Ochanomizu University in Tokyo regarding their stated intent to admit trans women. We inquired about their planned criteria for determining gender identity among applicants. The public relations manager of the university, an all-women's institution in Tokyo, replied explaining:

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[60]Human Rights Watch interview with Dr. Jun Koh, Osaka, August 8, 2015.

[61]Human Rights Watch interview with Takeshi O., November 15, 2015.

[62] Atsuko Sano, "Transgender students in Japan break barriers to women's colleges," *Nikkei Asian Review,* July 12, 2018, https://asia.nikkei.com/Life-Arts/Life/Transgender-students-in-Japan-break-barriers-to-women-s-colleges.

> Regarding the admission of trans women, we have adopted the method of receiving requests prior to the entrance examination application period, and confirming the eligibility of requirement. Then, after explaining the measures that will be taken upon entering the student life and receiving consent, they will be eligible to take the entrance exam. For those who have made the request, they will be asked to submit their self-declaration of their own gender disparity and gender identity, and if they possess one, a document confirming their gender identity (certificate from a medical doctor, documents written by high school teachers or parents, etc.). Then, the eligibility of application will be considered.[63]

That the medical certificate appears to not be a requirement for admissions to Ochanomizu University is a promising step towards a rights-based self-declaration procedure for trans people to secure official recognition.

Implications for Health Care, Employment, and Travel

Absent identity documents that match their gender presentation, transgender people who seek health care may be subjected to invasive questioning and humiliation. For example, a 30-year-old trans man in Osaka told Human Rights Watch that before he had changed his legal gender, he avoided getting medical care:

> Before, I hated going to the hospital because my insurance card was marked as female. So my health was at risk because of that fear. Once I had such bad pain in my stomach and my partner forced me to go to the hospital. I hesitated for several days, but she forced me to go. Otherwise I would have died.[64]

Transgender people in Japan who do not—or cannot—undergo the requisite procedures to change their legal gender risk harmful exposure when seeking employment or in the workplace. The legal regime can even impact how young people think about their future. For example, an 18-year-old trans man university student in Okinawa said:

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[63] Correspondence with Motohashi, public relations manager at Ochanomizu University. On file with Human Rights Watch.
[64] Human Rights Watch interview with Daiji N., Osaka, August 9, 2015.

> I'm happy like this [without surgery]. But I think I might have to do more operations and fully transition before applying for a job because that's what people expect of me – the full GID procedure. That's the pressure on me right now. I'm happy, but the future feels horrible already.[65]

Others told Human Rights Watch that revealing their gender identity led to pejorative and discriminatory treatment. "Job hunting is a really big deal. I went to my college career center and came out to them," a 22-year-old x-gender person in Tokyo said. "They told me 'You're the minority, you can't expect all of these things to work out for you.' Because of that I decided to take time off from college and see a psychiatrist."[66]

Simply moving from one place to another can be a dangerous and humiliating experience for people whose documents do not match their expression. The stakes are high, particularly for international travel, and range from fraud accusations and exposure to intense scrutiny and humiliation. United Nations human rights experts have condemned such targeting of transgender people in security processes.[67]

"Being legally recognized is good because I have my documents and I no longer have to explain to anybody about myself," a trans man in Osaka said. "I had always dreamed of living smoothly – like nothing was wrong and that's what I have now. For work, travel, all administrative interactions."[68]

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[65] Human Rights Watch interview with Kento T., Okinawai, November 10, 2015.

[66] Human Rights Watch interview with Komako D., Tokyo, August 10, 2015.

[67] Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, "Protection of human rights and fundamental freedoms while countering terrorism," A/64/211, August 3, 2009, https://www2.ohchr.org/english/issues/terrorism/rapporteur/docs/A-64-211.pdf.

[68] Human Rights Watch interview with Yasahiro D., Osaka, August 8, 2015.

III. Japan's Legal System's Treatment of Transgender People

In a 2004 legal volume written to help interpret the GID Special Cases Act, Nouno Chieko, the leader of the Members of Parliament group when the law was adopted in 2003 and who served as Japan's justice minister from 2004-2005, wrote:

> Having "to not have gonads or to permanently lack functioning gonads" as a requirement is due to the fact that it was decided that after the legal sex reassignment was admitted, it was not appropriate to remain having reproductive organs of the original sex, or for the gonads to be releasing hormones of the original sex. Thereby, if after legal sex reassignment is carried out, there happens to be a case in which an offspring is born from the remaining reproductive organs, it could cause various [kinds of] confusion and problems. In addition, the possibility of unfavorable effects is not deniable if hormones are released from the gonads of the original sex.[69]

This analysis is based on hypothetical fears of negative social outcomes if transgender people were to retain their reproductive capacity. It does not have a basis in science and runs contrary to human rights standards and medical best practice guidelines. Unfortunately, while this explanation of the law was written over a decade ago, the same ill-informed and discriminatory ideas about trans people remain at the root of the Japanese government's analysis today.

In 2016, Human Rights Watch wrote to the United Nations special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the UN special rapporteur on torture and other cruel, inhuman or degrading treatment or punishment regarding Japan's legal gender recognition law.[70] The Special Rapporteurs exchanged letters with Japan's Ministry of Health in Japan.[71]

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[69] Nouno Chieko, "Interpretation: Gender Identity Disorder Act," September 16, 2004.

[70] Human Rights Watch allegation letter to UN Special Procedures regarding Japan's Legal Gender Recognition System, April 1, 2016, https://www.hrw.org/news/2016/04/01/hrw-allegation-letter-un-special-rapporteurs.

[71] See Appendix 1; Appendix 2.

The Special Rapporteurs critiqued several aspects of Japan's legal gender recognition law as being in violation of international human rights law. They found that the sterilization requirement in Japan's law especially abusive and discriminatory:

> [S]ubjecting transgender persons to forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures is abusive, is rooted in discrimination, and violates the rights to physical integrity and self-determination of individuals and amount to ill-treatment or torture, and recommends that forced and coerced sterilization be outlawed in all circumstances, that special measures be adopted to protect individuals belonging to marginalized groups from such forced or coercive sterilization, that other abusive requirements for legal recognition of gender identity be abolished, and that transparent and accessible legal gender recognition procedures be adopted.[72]

While the government responded that the GID Special Cases Act is "exercised appropriately, taking into consideration international humanitarian [sic] laws and universal standards,"[73] the government's defense of the GID Special Cases Act indicates several fundamental misunderstandings of gender identity as it is understood in international medical and legal standards.

Regarding the requirement of a diagnosis of "GID," the government said: "The requirement also aims to prevent claims by persons claiming gender identity disorder for a change in gender status without having obtained a diagnosis."

The government emphasized that,

> In order to ensure that recognition of Gender Identity Disorder be made objectively and certainly, concurrent diagnoses from two or more physicians are required, and those diagnoses should be made "based on generally accepted medical knowledge."

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[72] See Appendix 1, paras. 49, 72.

[73] See Appendix 2.

Generally accepted medical knowledge with regard to gender identity has changed substantially since the GID Special Cases Act was passed. As analyzed in the following section, it is not generally accepted medical knowledge that a diagnosis should be required for legal recognition; in fact, global transgender health expert bodies have called for the complete separation of medical and legal processes.[74] Furthermore, the diagnosis of "transsexualism" or "Gender Identity Disorder" is no longer recognized in either of the two major international diagnostic manuals, the Diagnostic and Statistical Manual (DSM) and the International Classifications of Diseases (ICD).

Regarding the criticism of the sterilization requirement as a human rights violation, the government responded:

> When a person, after having had a change in legal gender status recognized, procreates using the reproductive function of the former gender, it may give rise to confusion and various problems.

This argument suggests that transgender men who wanted to provide eggs or get pregnant, or transgender women who wanted to provide sperm to conceive a child, should have their rights to do so curtailed in order to prevent "confusion." While it is reasonable to expect that some people may be confused by a pregnant man, for example, such hypothetical social fears do not justify the coerced sterilization of a person.

Regarding the requirement that the applicant have no minor children, the government wrote:

> The requirement that the person "currently has no child who is a minor" is stipulated, taking into consideration the arguments that this system could give rise to confusion within the family, including between parent and child, or influence the child's welfare.

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[74] WPATH statement (June 16, 2010), https://amo_hub_content.s3.amazonaws.com/Association140/files/Identity%20Recognition%20Statement%206-6-10%20on%20letterhead.pdf (accessed December 18, 2018).

Chieko's legal analysis mirrored this claim, arguing that a "child may get psychological confusion or anxiety, or it may affect the parent-child relationship."[75] This assertion is based on pejorative and unfounded assumptions that transgender people cannot be good parents. In fact, research has shown that transgender people can be—and are—good parents, and their relationships with their children are good.[76]

Unfortunately, courts in Japan have followed similarly flawed logic in their judgments regarding transgender people's rights.

Court Cases

Human Rights Watch is only aware of one case in which an individual directly challenged the sterilization requirement of Japan's legal gender recognition law in court (a case in 2005 challenged the no-child requirement only). In February 2018, a High Court in Okayama ruled on the case of Takakito Usui, a 43-year-old transgender man who had brought a case to the court challenging the GID Special Cases Act on the grounds that the requirement of surgery violated Japan's constitution.

In the case, the Hiroshima High Court ruled that the GID Special Cases Act existed to avoid confusion, contending:

> If there is an incidence where a child is born based on the reproductive capabilities of the previous gender after the parent undergoes a gender change under the procedure of the special case act, there are issues where the current legal system is unable to deal with, which may cause confusion in the legal order of personal status.[77]

The court further ruled that "it is not appropriate for an individual to maintain the reproductive capabilities of their previous gender."[78] The court's decision in this case runs

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[75] Nouno Chieko, "Interpretation: Gender Identity Disorder Act," September 16, 2004.

[76] Rebecca L. Stotzer, Jody L. Herman, Amira Hasenbush, "Transgender Parenting: A Review of Existing Research," *The Williams Institute,* October 2014, https://williamsinstitute.law.ucla.edu/wp-content/uploads/transgender-parenting-oct-2014.pdf.

[77] Hiroshima High Court, Okayama Branch, February 8, 2018, 2018WLPCA02096001.

[78] Ibid.

counter to international human rights law, and serves to uphold a harmful, discriminatory, and outdated paradigm.

In January 2019, the Supreme Court issued its judgment in Usui's case, upholding the GID Special Cases act as constitutional at this time, stating that there is a "need to avoid abrupt changes in a society where the distinction of men and women have long been based on biological gender."

However, the four-judge bench noted that, "It cannot be denied that [this law] impinges on freedom from invasion of bodily [integrity]."

Two of the justices in a concurring opinion wrote of the urgency of Usui's case, and the need to reform Japan's law: "The suffering that [transgender people] face in terms of gender is also of concern to society that is supposed to embrace diversity in gender identity." They noted that "because gender is treated as one of the attributes of an individual in social life and in personal relationships, it can be said that gender is inseparable from the existence as a person of an individual." They concluded that for transgender people, being "able to receive rulings of changes in recognition of gender status…is an important, perhaps even urgent, legal benefit."[79]

Other Japanese court decisions in recent years demonstrate the complexities of interpreting a law that recognizes a population of people—the transgender population—as people who have rights, but also construes them as suffering from an illness, "GID," that does not in fact exist. Nevertheless, within this framework, transgender individuals have challenged instances of discrimination in courts and in many instances, won. The list of cases below is illustrative, not comprehensive, and some of the cases are still pending, so publicly available information about them is limited.

[79] Heisei 30 nen (2018)(ku) No. 269 Tokubetsu-koukoku Appeal Case Against the Koukoku Dismissal Decision Against the Decision to Dismiss the Application to Change the Treatment of Sex, Heisei 31 nen (2019) Decision by the Second Petty Bench of the Supreme Court, http://www.courts.go.jp/app/files/hanrei_jp/274/088274_hanrei.pdf; See Appendix 4

June 2002: Tokyo District Court Workplace Discrimination Case

An employee working for a company that published travel guidebooks had obtained a "GID" diagnosis. The employee demanded that the company respect the employee's right to be able to work as a woman. However, after the employee came to work dressed in female clothing, the company enacted a disciplinary dismissal of the employee for having "disturbed order."

The court decided that the disciplinary dismissal ordered by the company was invalid. The court acknowledged the company's argument that dressing as a woman results in confusion among other employees. However, the court stated that if the employee "is suppressed of being able to behave as a woman, the employee will have to go through incredible mental distress," and with more time and effort on behalf of the company to try to understand the situation, it will be possible to ease the confusion.[80]

[80] Hifumi Okunuki, "Japan's courts don't share Mio Sugita's views on supporting LGBT people, precedents show," *Japan Times*, July 30, 2018, https://www.japantimes.co.jp/community/2018/07/30/issues/japans-courts-dont-share-mio-sugitas-views-supporting-lgbt-people-precedents-show/#.W3q6rtgzZAZ.

August 2014: Shizuoka District Court Golf Course Discrimination Case

A golf course in the city of Shizuoka refused membership to a 59-year-old transgender woman who had legally changed her gender from male to female. She sued the golf course for damages due to wrongful conduct, a violation of Japan's civil code.

The court, ruling in the petitioner's favor, stated that it "clearly condemns discrimination against LGBT people" and "the psychological damage the plaintiff suffered is immense and can't be ignored."[81] However, the court also said that, "Society understands quite well that being LGBT is not a matter simply of a hobby or predilection, but rather an illness that they suffer regardless of their will. The intolerability of irrational treatment based on the reason of gender dysphoria or on its treatment is the same as the intolerability of irrational treatment for the reason of other illnesses."[82]

The court ordered the golf course to pay ¥1.1 million ($9,800) in damages.

April 2014: Osaka Family Court Adoption Case

The Osaka Family Court ordered that a transgender woman be allowed to adopt a child through "special adoption." While this procedure has been technically allowed since Law 111 came into force in 2003, according to the Japan Society of Gender Identity Disorder (the GID Society), this was the first case in which special adoption was granted to a transgender woman, meaning she was the first trans woman to attain legal status as a "mother" in Japan.[83]

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[81] "Sex change plaintiff wins damages over golf course snub," *Japan Times,* September 9, 2014, https://www.japantimes.co.jp/news/2014/09/09/national/crime-legal/sex-change-plaintiff-wins-damages-golf-course-snub/#.XANhAJNKhPa.

[82] Ibid.

[83] *Jinken,* "Gender identity disorder After adopting sex change "Special consideration" for mothers," April 4, 2014, http://www.jinken.ne.jp/flat_topics/2014/04/post_1623.html.

November 2015: Tokyo District Court on Workplace Bathroom Access and Harassment

An employee of the Ministry of Economy, Trade and Industry filed a lawsuit against her agency for forbidding her to access bathrooms according to her gender identity and her supervisor harassing her about her transition.[84] The case is ongoing.

November 2015: Nagoya District Court on Forced Workplace Outing of Transgender Employee

A company employee who adopted a female name filed a damages suit against a subsidiary of beverage maker Yakult Honsha Co., claiming she was forced to come out and suffered depression.[85]

June 2016: Kyoto District Court settlement in Case of Denial of Access to a Fitness Club

A transgender woman in the city of Kyoto sued Konami Sports Club Co., a fitness club operator, saying she was forced to use its facility in Kyoto Prefecture as a man before undergoing sex reassignment surgery. A compromise settlement was reached in the case, although details have not been released to the public.[86]

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[84] Tomohiro Osaki, "Transgender bureaucrat sues METI over sex discrimination," *Japan Times,* https://www.japantimes.co.jp/news/2015/11/13/national/crime-legal/transgender-bureaucrat-sues-meti-over-sex-discrimination/.

[85] *Japan Times,* "Transgender worker sues Yakult group after being forced to come out," June 29, 106, https://www.japantimes.co.jp/news/2016/06/29/business/transgender-worker-sues-yakult-group-firm-forced-revelation/#.W3rPOdgzZAY.

[86] *Japan Times,* "Transgender woman sues gym over changing-room use," December 25, 2015, https://www.japantimes.co.jp/news/2015/12/25/national/crime-legal/transgender-woman-sues-gym-over-changing-room-use/#.W3rVT9gzZAY; *Asahi Shimbun,* "Transgender woman suing gym for ordering her to use men's locker room," December 21, 2015, https://www.msn.com/en-sg/news/world/transgender-woman-suing-gym-for-ordering-her-to-use-mens-locker-room/ar-BBnMfaZ.

IV. International Law, Best Practices for Gender Recognition

International human rights standards are increasingly understood to require the separation of legal and medical processes of gender reassignment for transgender people. During the 2017-2018 cycle of Japan's Universal Periodic Review at the United Nations Human Rights Council in Geneva, New Zealand issued a recommendation that Japan "[t]ake steps to address discrimination based on sexual orientation and gender identity, including revising the Gender Identity Disorder Law."[87] The government of Japan responded "supporting" the recommendation, indicating its commitment to implement the recommendation before its next review, which will take place in 2022.[88]

In his report to the UN General Assembly in 2018, the independent expert on sexual orientation and gender identity, Victor Madrigal-Borloz, stated:

> [L]ack of legal recognition negates the identity of the concerned persons to such an extent that it provokes what can be described as a fundamental rupture of State obligations. As expressed by one scholar, when States deny legal access to trans identities, what they are actually doing is messaging a sense of what is a proper citizen.[89]

Transgender people whom Human Rights Watch interviewed in Japan felt similarly. Asked what he thought of the justification for the surgical requirement in Japan's legal gender recognition law, Takayuki G., a trans man in Tokyo, said:

> Japan is cold to even slightly exceptional people, so this provision should be it. They use the word 'not proper' in order not to admit the exceptions

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[87] United Nations Human Rights Council, Draft Report on the Working Group of the Universal Periodic Review, Japan, November 23, 2017, A/HRC/WG.6/28/L.12, https://www.upr-info.org/sites/default/files/document/japan/session_28_-_november_2017/a_hrc_wg.6_28_l.12.pdf.

[88] *UPRinfo,* Japan, Third Review, Session 28, March 19,2018, https://www.upr-info.org/sites/default/files/document/japan/session_28_-_november_2017/responses_to_recommendations_upr28_japan.pdf.

[89] Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152

> and so as to keep homogeneity…The law is created in order not to give rise to exceptions and that's why it's 'not proper' that people who have male genitals marry men.[90]

The International Covenant on Civil and Political Rights (ICCPR) provides for equal civil and political rights for all (article 3), the right to recognition for everyone before the law (article 16), the right to one's privacy and family (article 17), and the right of people of marriageable age to marry and to start a family (article 23(2)).

Governments are obligated under the ICCPR to ensure equality before the law and the equal protection of the law of all persons without discrimination on any ground, including sex (article 26). The UN Human Rights Committee, the international expert body that monitors state compliance with the ICCPR, has specifically recommended that government should guarantee the rights of transgender persons including the right to legal recognition of their gender, and that states should repeal abusive and disproportionate requirements for legal recognition of gender identity.[91]

Several countries have adopted best practices that reflect this. Sweden, the Netherlands, Ireland, Colombia, Malta, and Denmark in recent years changed their legal recognition procedures to remove invasive medical requirements; Denmark and Malta, along with Argentina, do not require a medical diagnosis for legal gender recognition.[92] Argentina and Malta are widely considered to set best standards in legal gender recognition procedures.[93] In some countries, legislatures have adopted these standards in laws and policies; in other countries, courts have required the application of these principles.

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[90] Human Rights Watch interview with Takayuki G., Tokyo, September 15, 2018.

[91] CCPR/C/IRL/CO/4, CCPR/C/UKR/CO/7

[92] Government of Denmark, Parliamentary Gazette, Law 182, Motion to Law amending the Law on the Central Office (Assigning new personal number for people who experience themselves as belonging to the other sex), April 30, 2014; for Malta see: http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=26805&l=1; Government of Ireland, Oireachtas, Act No. 25 of 2015, Gender Recognition Act of 2015, http://www.oireachtas.ie/documents/bills28/acts/2015/a2515.pdf.

[93] IDENTIDAD DE GENERO Ley 26.743 Establécese el derecho a la identidad de género de las personas. Available online at: http://tgeu.org/argentina-gender-identity-law/; Republic of Colombia, Ministry of Justice and Law, Decree 1227, June 4, 2015, http://www.minjusticia.gov.co/Portals/0/Ministerio/decreto%20unico/%23%20decretos/1.%20DECRETO%202015-1227%20sexo%20c%C3%A9dula.pdf; Kingdom of the Netherlands, Law of December 18, 2013 amending Book 1 of the Civil Code Act and the municipal personal records database in connection with the changing conditions and the competence of amending the entry of sex in the birth certificate, http://wetten.overheid.nl/BWBR0034670/2014-07-01.

In 2013, the UN special rapporteur on torture stated that, "In many countries transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender."[94] The special rapporteur noted a trend of finding such compulsory sterilization a violation of human rights, including non-discrimination rights and physical integrity, and called upon governments "to outlaw forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups."[95]

A 2012 Office of the High Commissioner for Human Rights (OHCHR) report, prepared in response to a 2011 Human Rights Council resolution calling for an end to violence and discrimination on the basis of sexual orientation and gender identity, noted that "[r]egulations in countries that recognize changes in gender often require, implicitly or explicitly, that applicants undergo sterilization surgery as a condition of recognition. Some States also require that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married."[96]

In a 2014 joint statement, the WHO, OHCHR, UN Program on HIV/AIDS (UNAIDS), the UN Development Programme, UNICEF, and UNFPA said: "States parties' obligation to respect the right to health requires that they abstain from imposing discriminatory practices. This includes an obligation to respect the rights of persons with disabilities and transgender and intersex persons, who also have the right to retain their fertility."[97] The agencies called on governments to "[p]rovide legal guarantees for full, free and informed decision-making and the elimination of forced, coercive and otherwise involuntary sterilization, and review, amend and develop laws, regulations and policies in this regard."[98] In 2017, the Board of Directors of the Japanese Society of Gender Identity Disorder, the first and the largest Japanese organization founded in 1999 for professionals working on GID, adopted a statement in support of this report, noting that "it can be assumed that if the requirements

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[94]Report of the Special Rapporteur on Torture, A/HRC/22/53, para. 78.

[95]Ibid., para. 88.

[96]UN Human Rights Council, Discriminatory Laws and Practices and Acts of Violence against Individuals Based on Their Sexual Orientation and Gender Identity: Report of the United Nations High Commissioner for Human Rights, UN Doc. A/HRC/19/41 (November 17, 2011), para. 72.

[97]OHCHR et al., Eliminating Forced, Coercive and Otherwise Involuntary Sterilization, p. 10.

[98]Ibid., p. 13.

stated in Article 3 Section 1 of the Special Cases Act, especially the "surgery requirement," did not exist, the situation would have been vastly different."[99]

In a 2015 report, mandated by a 2014 Human Rights Council resolution on sexual orientation and gender identity, OHCHR recommended that states begin immediately "[i]ssuing legal identity documents, upon request, that reflect preferred gender, eliminating abusive preconditions, such as sterilization, forced treatment and divorce."[100]

The 2015 *Blueprint for the Provision of Comprehensive Care for Trans People in Asia and the Pacific*, co-published by WHO, UNDP, USAID, PEPFAR, the Asia-Pacific Transgender Network, and the Health Policy Project, recommended that governments "[t]ake all necessary legislative, administrative, and other measures to fully recognize each person's self-defined gender identity, with no medical requirements or discrimination on any grounds."[101]

Similarly, principle 3 of the Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity states that:

> Everyone has the right to recognition everywhere as a person before the law. Persons of diverse sexual orientations and gender identities shall enjoy legal capacity in all aspects of life. Each person's self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity, and freedom. No one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity. No status, such as marriage or parenthood, may be invoked as such to prevent the legal recognition of a

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[99] See Appendix 3.

[100] UN Human Rights Council, Discrimination and Violence against Individuals Based on Their Sexual Orientation and Gender Identity: Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/29/23 (May 4, 2015), para. 79(i).

[101] Health Policy Project, Asia Pacific Transgender Network, United Nations Development Programme, Blueprint for the Provision of Comprehensive Care for Trans People and Trans Communities in Asia and the Pacific (Washington, DC: Futures Group, Health Policy Project, 2015), p. 112, http://www.healthpolicyproject.com/pubs/484_APTBFINAL.pdf (accessed January 12, 2016).

> person's gender identity. No one shall be subjected to pressure to conceal, suppress, or deny their sexual orientation or gender identity.[102]

Regional bodies have followed the logic of these principles.

In June 2013, the Parliamentary Assembly of the Council of Europe, a regional body comprised of 47 member states, passed Resolution 1945, calling for an end to coercive sterilization and castration. Transgender people are listed as one of the groups in the Council of Europe countries disproportionally affected by coercive sterilization.[103] Similarly, in January 2018 the Inter-American Court of Human Rights issued an advisory opinion which maintained that states are obligated under the American Convention to establish efficient, inexpensive, and straightforward legal gender recognition procedures based solely on the "the free and autonomous decision of each person" and that forcing transgender people to argue for a change in gender markers before a judge would constitute an "excessive limit" on their rights.[104]

International health expert bodies have in recent years strengthened their positions against medical models for legal gender recognition. The WPATH, an international multidisciplinary professional association aimed at promoting evidence-based care, education, research, advocacy, public policy, and respect in transgender health and comprised of over 700 members worldwide, called for removal of any sterilization requirements as part of legal gender recognition in a 2010 statement.[105] WPATH stated:

> No person should have to undergo surgery or accept sterilization as a condition of identity recognition. If a sex marker is required on an identity document, that marker could recognize the person's lived gender, regardless of reproductive capacity. The WPATH Board of Directors urges

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[102] Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity, http://www.yogyakartaprinciples.org/principles_en_principles.htm, principle 3.

[103] Parliamentary Assembly of the Council of Europe, Resolution 1945 (2013), June 2013.

[104] Inter-American Court of Human Rights, Consultative Opinion OC-24/17, November 24, 2017, http://www.corteidh.or.cr/docs/opiniones/seriea_24_esp.pdf.

[105] WPATH statement (June 16, 2010), https://amo_hub_content.s3.amazonaws.com/Association140/files/Identity%20Recognition%20Statement%206-6-10%200n%20letterhead.pdf (accessed December 18, 2018).

> governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.[106]

In 2015 the WPATH updated the statement, reiterating its condemnation of forced sterilization, and expanding its critique of arduous and medicalized procedures for legal gender recognition, saying: "No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone's gender identity, so these should not be requirements for legal gender change"; and, "Marital status and parental status should not affect legal recognition of gender change, and appropriate legal gender recognition should be available to transgender youth."[107]

And in 2017, WPATH updated their position statement again, reiterating that:

> WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status…. Transgender people, regardless of how they identify or appear, should enjoy the gender recognition all persons expect and deserve. Medical and other barriers to gender recognition for transgender individuals may harm physical and mental health. WPATH opposes all medical requirements that act as barriers to those wishing to change legal sex or gender markers on documents.[108]

Implementation around the World

The Science Council of Japan, an independent organization under the ministry of cabinet, representing Japanese scientists in social sciences, life sciences, natural sciences, and engineering, according to a report published in September 2017, recommends removing "GID" terminology, and suggests there have been conversations underway inside the Japan Society of Psychology and Medicine to adopt "gender incongruence" terminology

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[106] Ibid.

[107] WPATH. WPATH Statement on Legal Recognition of Gender Identity, January 19, 2015. https://amo_hub_content.s3.amazonaws.com/Association140/files/WPATH%20Statement%20on%20Legal%20Recognition%20of%20Gender%20Identity%201-19-15.pdf (accessed December 1, 2018).

[108] WPATH. WPATH Identity Recognition Statement, November 15, 2017,https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf (accessed January 23, 2019).

instead.[109] The council also recommends removing the surgical, divorce, and no-children requirement from the law, saying:

> Upon the establishment of the Special Cases Act, the law makers were aware that gender has a direct connection to personal identity, and therefore has issues to the 13th Article of the Constitution of Japan, is a persons' right to pursue happiness and dignity. Taking into consideration the trends of the world, including the joint statement by the World Health Organization (2014), it is now the time to reconsider the requirements in order to secure the unalienable rights to pursue happiness and human dignity.[110]

To reach its conclusions, the council cited legal and medical changes that have taken place in recent years around the world, many of which are explored in this report.

As the special rapporteur on torture noted in his 2013 report, national courts in several countries have begun to reflect these standards in their decisions as well. The special rapporteur's report refers to the following domestic cases:

- In 2009, the Austrian Administrative High Court ruled that mandatory gender reassignment, as a condition for legal recognition of gender identity, was unlawful.[111]
- In 2011, the Constitutional Court in Germany found that the requirement of gender reassignment surgery violated the rights to physical integrity and self-determination.[112]
- In 2012, the Swedish Administrative Court of Appeals ruled that forced sterilization could not be seen as voluntary.[113]

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[109] Science Council of Japan, Committee Board of Law, "Proposal Towards ensuring the rights of sexual minorities," September 29, 2017, http://www.scj.go.jp/ja/info/kohyo/pdf/kohyo-23-t251-4.pdf.

[110] Ibid.

[111] Austrian Administrative Court Cases (VwGH) 2008/17/0054 (decided on 27 January 2009); Austrian Constitutional Court (VfGH) Case B 1973/08-13 (decided on 3 December 2009). Cited in Transgender Europe (2013).

[112] Federal Constitutional Court of Germany, 1 BvR 3295/07, 28.01.2011., http://www.icj.org/sogicasebook/1-bvr-3295-07-federal-constitutional-court-germany-11-january-2011/

[113] Mål nr 1968-12, Kammarrätteni Stockholm, Avdelning 03, 19 December 2012., http://tgeu.org/administrative-court-ofappeal-in-stockholm-on-sterilisation-requirement-in-gender-recognitionlegislation-19-dec-2012/

- In September 2014 the Norwegian Equality Body ruled that the Ministry of Health had provided no justification for the sterilization requirement in its gender recognition law, and thus the sterilization requirement was deemed to contravene the Anti-Discrimination Act.[114]

Courts in some Asian countries have demonstrated a similar commitment to medical non-interference in legal gender recognition processes, including in the following cases:

- In a 2007 judgment, the Nepal Supreme Court's definition of a third gender category situated it as a minority encompassing a broad range of identities for transgender and gender non-conforming people.[115] A 2014 study found that respondents wrote in 16 different terms for their gender identities.[116] The court made clear that the sole criterion for being legally recognized as third gender on documents and in government registers was an individual's "self-feeling."[117] The judgment cited the right to recognition before the law, guaranteed under article 16 of the ICCPR, as well as the Yogyakarta Principles.
- In 2013, India's Supreme Court stated that undertaking medical procedures should not be a requirement for legal recognition of gender identity. The court said: "Few persons undertake surgical and other procedures to alter their bodies and physical appearance to acquire gender characteristics of the sex which conform to their perception of gender, leading to legal and social complications since official record of their gender at birth is found to be at variance with the assumed gender identity." It continued: "Gender identity, therefore, refers to an individual's self-identification as a man, woman, transgender or other identified category." The court made it clear that mandatory sterilization was not acceptable: "no one shall be forced to undergo

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[114]Transgender Europe, Norwegian Ombud decides forced sterilisation is discrimination, September 13, 2013, http://tgeu.org/tgeu-statement-norwegian-ombud-decides-forced-sterilisation-isdiscrimination/

[115]Michael Bochenek and Kyle Knight, "Establishing a Third Gender Category in Nepal: Process and Prognosis," *Emory International Law Review*, Vol. 26, Issue 1, 2012: http://law.emory.edu/eilr/_documents/volumes/26/1/recent-developments/bochenek-knight.pdf (accessed January 12, 2016).

[116]Kyle Knight, Andrew Flores, and Sheila Nezhad, "Surveying Nepal's Third Gender," Transgender Studies Quarterly, Vol 2. No. 2, 2015; The Williams Institute, "Surveying Nepal's Sexual and Gender Minorities: An Inclusive Approach," October 2014: http://williamsinstitute.law.ucla.edu/research/international/surveying-nepals-sexual-and-gender-minorities/ (accessed January 12, 2016).

[117]*Pant v. Nepal*, Writ No. 917 of the Year 2064 BS (2007 AD), translated in Nat'l Jud. Acad. L.J., 2008, p. 262. http://www.gaylawnet.com/laws/cases/PantvNepal.pdf (accessed January 12, 2016).

medical procedures, including SRS, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity."[118]

- In 2015, the Delhi High Court reinforced that, "Everyone has a fundamental right to be recognized in their gender" and that "gender identity and sexual orientation are fundamental to the right of self-determination, dignity and freedom."[119]

Rights of Trans Children

The right to recognition as a person before the law is articulated in the Universal Declaration of Human Rights and guaranteed in the ICCPR and the Convention on the Rights of the Child (CRC).[120] The right to preserve one's identity is guaranteed by article 8 of the CRC, which specifies three aspects of identity—nationality, name, and family relations—but that list is not exhaustive. Together with the right to protection from arbitrary interference in privacy, such as ICCPR article 17, the right to preserve one's identity extends to the way one's identity is reflected on state-issued documents—including for children.

As the CRC makes clear, "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."[121] This includes decisions about legal recognition of the gender identity of transgender children.

Article 12 of the CRC provides that in determining the child's best interest, the child itself should be heard and taken into account:

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[118] *National Legal Services Center v. Union of India and Others*. WRIT PETITION (CIVIL) NO.400 OF 2012, http://www.lawyerscollective.org/wp-content/uploads/2014/04/Transgender-judgment.pdf (accessed January 12, 2016).

[119] *Bhat v. State of NCT of Delhi and Others.* W.P.(CRL) 2133/2015, http://lobis.nic.in/ddir/dhc/SID/judgement/05-10-2015/SID05102015CRLW21332015.pdf (accessed January 12, 2016).

[120] Universal Declaration of Human Rights, art. 6, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948); see also Convention on the Rights of the Child (CRC), adopted November 20, 1989, G.A. Res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force September 2, 1990, ratified by Japan on April 22, 1994, see also CRC, arts. 7–8, opened for signature Nov. 20, 1989, 1577 U.N.T.S. 3 (entered into force Sept. 20, 1990); International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), art. 16. Japan ratified the ICCPR on June 21, 1979.

[121] CRC, art. 3.

1. Governments should assure to the child who is capable of forming their own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.[122]

Diagnostic Shifts

Psychiatrists in Japan use both the International Classification of Diseases (ICD), which is published by the UN WHO, and the Diagnostic and Statistical Manual (, which is published by the American Psychiatric Association (APA). Both the DSM and the ICD have removed the diagnoses for "GID" and "transsexualism" from "mental disorders" sections altogether.

In 2012 the APA board's changes to the latest DSM removed the term "Gender Identity Disorder." APA instead added the term "Gender Dysphoria" with the specific definition that it refers to emotional distress over "a marked incongruence between one's experienced/expressed gender and assigned gender." The APA specifically clarified: "It is important to note that gender nonconformity is not in itself a mental disorder. The critical element of gender dysphoria is the presence of clinically significant distress associated with the condition."[123]

The WHO published a revised version of the ICD in June 2018.[124] The new WHO guidelines reframe "gender identity disorders" as "gender incongruence," and move the diagnostic codes from the chapter on mental disorders to one on sexual health—an important gain for transgender adolescents and adults, who may soon be able to seek medical care without being viewed as "mentally disordered." The World Health Assembly, the governing body of

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[122] Ibid.

[123] American Psychiatric Association. Gender Dysphoria Fact Sheet, 2012. http://www.dsm5.org/documents/gender%20dysphoria%20fact%20sheet.pdf

[124] World Health Organization ICD-11, https://icd.who.int/.

the WHO, which features representatives from 194 member states, will likely approve ICD-11 in 2019. Governments will then have until 2022 to change their diagnostic coding systems. According to the WHO, "evidence is now clear that [gender identity] is not a mental disorder, and indeed classifying it in this can cause enormous stigma for people who are transgender."[125] As one member of the ICD-11 working group that undertook the revisions process explained,

> WHO, a United Nations agency, has a human rights mission, and there is substantial evidence that the stigma associated with the intersection of transgender status and mental disorders contributes to precarious legal status, human rights violations, and barriers to appropriate health care for this population.[126]

The SOGI Independent Expert noted that this change signaled clearly that "there is no reason to assign a diagnosis to trans people who do not seek gender-affirming medical treatment or some sort of bodily change."[127]

Japan's legal recognition procedure is out of step with that recommended model on multiple levels, including because it requires transgender people to undergo medical procedures to secure legal recognition of their gender identity. This has contradictory effects. To some extent the fact that gender-affirming medical procedures are available in Japan reflects advances in medical practices and the medical community's embrace of care for transgender people. But it also reinforces a pathological model that contributes to stigmatization of transgender people.

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[125] World Health Organization, "Coding Disease and Health," June 18, 2018, http://www.who.int/health-topics/international-classification-of-diseases.

[126] Jack Drescher, "Gender Diagnoses and ICD-11," *Psychiatric News—a publication of the American Psychiatric Association,* August 15, 2016, https://psychnews.psychiatryonline.org/doi/full/10.1176/appi.pn.2016.8a15.

[127] Protection against violence and discrimination based on sexual orientation and gender identity, A/73/152, July 12, 2018, http://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152.

Acknowledgments

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We wish to thank the trans people who shared their stories with us.

Appendix 1

HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND

Mandates of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
OL JPN 3/2016 :

23 May 2016

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 24/6 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the existing Law No.111 of 2003, which allegedly contains a number of abusive restrictions and provisions that discriminate against transgender adults and children in Japan and unduly restrict their human rights, including the rights to health, physical integrity, equality before the law, respect for private and family life, education and the right not to be subjected to torture or ill-treatment.**

According to the information received:

Legal gender recognition in Japan is regulated by Law No. 111 of 2003, which came into effect on 16 July 2004. While this constitutes a positive attempt to provide access to legal gender recognition, it is alleged that the procedure established under Law No.111 violates the human rights of transgender adults and children in Japan. The Law reportedly stipulates various abusive and discriminatory criteria that transgender persons are required to meet before they can file an application with the family court for the legal recognition of their preferred gender. Only cases of those applicants who fulfil all of the law's criteria are adjudicated by the family court.

In 2016, a bi-partisan group of Japanese Members of Parliament will reportedly consider amendments to Law No. 111. It is expected that the revision of the Law will conclude with the end of the current parliamentary session in June 2016.

Mandatory medical certification

Law No. 111 obliges transgender persons in Japan, who seek legal recognition of their gender identity, to obtain a medical diagnosis of "Gender Identity Disorder" (GID) as a prerequisite. The Law defines GID as disorder of a person who, despite his/her biological sex being clear, "continually maintains a psychological identity with an alternative gender" and who "holds the intention to physically and socially conform to an alternative gender". Applicants are required to obtain a medical certificate confirming the GID diagnosis by two or more physicians "generally recognized as holding competent knowledge and experience necessary for the task".

The process for obtaining a medical certificate for GID is allegedly cumbersome and lengthy as it involves a number of unnecessary and arbitrary tests. While legally binding guidelines for diagnosing GID do not exist, the 2012 Diagnosis and Treatment Guidelines for Gender Identity Disorder recommend physicians to undertake the following three tests: (1) a gender identity test based on the testimony of the individual; (2) a biological gender test, which can entail an examination of chromosomes and hormonal actions as well as an inspection of internal and external genitals, or any "other examinations that doctors find necessary"; (3) a test excluding other diagnoses in order to ensure that "the denial of gender identity/ request for surgery is not coming from schizophrenia nor other cultural, social, or occupational reasons." The Guidelines do not reference a timeframe within which these tests should be conducted.

This procedure is considered stigmatising and humiliating for the applicant since it bases legal recognition of gender identity on medical certification of a "disorder" and not on self-declaration and it restricts the autonomy and physical and psychological integrity of the persons concerned. In contrast, a human rights based approach to legal gender recognition is based on self-identification and self-declaration free of any unnecessary, disproportionate and abusive barriers imposed by pathological models. UN and other international mechanisms have called for national medical classifications to be reviewed to stop treating transgender adults and children as ill or disordered based on their gender identity, and to remove such abusive requirements for legal recognition of gender identity.

Coercive medical procedures

As per the provisions contained in law No.111, only those transgender persons who intend to undergo surgery and treatment to modify their body, including their genitals, can obtain legal recognition of their gender identity, as this is a requirement for a GID diagnosis. This effectively forces or coerces transgender persons seeking legal recognition of their gender identity to undergo physically transformative treatment and surgical interventions, even if, as is the case for many transgender persons, they do not desire such surgery or treatment.

In addition, Law No. 111 stipulates that transgender persons applying for legal recognition should "not have gonads or permanently functioning gonads". Hence, transgender persons could be forced or coerced into undergoing often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender, in absence of any medical necessity. This abusive requirement directly affects the bodily integrity of transgender persons and has been condemned by UN human rights mechanisms as amounting to a violation of their right to be free from torture and ill-treatment, as well as of their right to the full enjoyment of the highest attainable standard of physical and mental health.

Age restrictions

Law No. 11 prevents all transgender persons under the age of 20, Japan's age of majority, to secure the legal recognition of their gender identity. People under the age of 20 can obtain a GID diagnosis with two signatures from physicians. The GID certificate can reportedly be used by transgender persons to advocate for access to education according to their gender identity, including restroom access and school uniforms. However, only those who reached the age of majority can independently pursue the hormone treatment and surgical procedures required for legal gender recognition. As this process is long and costly, legal gender recognition is often not possible until the mid- 20s.

While Japan's current model for transgender legal recognition only applies to people over the age of 20, it can have a detrimental impact on transgender children and their families. It is reported that the lack of access to legal gender recognition for persons under 20 and the rigid medical requirements for obtaining legal recognition as an adult causes anxiety and pressure among transgender children and young adults. Reports also indicate that transgender children are led to understand that future surgeries are obligatory and inevitable, which puts intense pressure on them to conform to gender stereotypes. Instead, transgender children and young adults need information, support and safe spaces to explore and express their gender. Particularly, in educational settings transgender persons experience discrimination, stigmatisation and social exclusion, often to the cause of extended and repeated absence from school, and even dropouts. These difficulties are unnecessarily prolonged and exacerbated by the requirement to wait until the age of 20 to seek legal gender recognition.

While safeguarding the rights of children and minors is a legitimate aim, restrictions on the rights of children and minors should not be disproportionate to the aim pursued, and should fully respect and protect the rights of children enshrined in international law. Concerns are expressed that a blanket prohibition on the rights of persons under the age of 20 to recognition of their gender identity could amount to a disproportionate interference with their right to freedom from discrimination, recognition of their gender identity, their right to be heard, and their right to their best interests being the primary consideration in the determination of all actions or decisions that concern them, which could have

serious effects on their right to health, privacy, recognition before the law, and education, and that it may also expose the child to intolerable pressure and family conflict.

Discrimination on the basis of relationship status and parental status
Law No. 111 requires that those seeking legal recognition of a change in gender be unmarried, implying mandatory divorce in cases where the individual is married. In addition, the Law stipulates that applicants must not have any underage children. Such requirements have also been condemned as abusive and disproportionate by UN and international human rights mechanisms.

Finally, it is reported that while Law No.111 provides for the full legal transition from one gender to the other, even transgender persons whose gender identity has been legally recognized face discrimination, for example, with respect to adopting children or obtaining life insurance.

While acknowledging that Law No.111 is a positive attempt to provide access to legal gender recognition for transgender people, serious concern is expressed that the Law, in its current form, contains a number of provisions that are abusive, are in conflict with international human rights norms, and discriminate against transgender persons in Japan. Concern is particularly expressed about provisions forcing or coercing transgender persons to undergo mandatory medical certification and coercive medical procedures, which affect their bodily integrity and could amount to torture or ill-treatment. Further serious concern is expressed at provisions precluding transgender persons who are under the age of 20, are married, or have underage children from seeking legal gender recognition. We express concern that such provisions could be disproportionate and unnecessarily restrict the human rights of transgender adults and children, including the right to be free from torture and ill-treatment, the right to the enjoyment of the highest attainable standards of physical and mental health, as well as the rights to equality before the law, physical integrity, respect for private and family life, and education, and the rights of the child.

We trust that the current revision of Law No. 111 will be conducted in a way that is consistent with Japan's international human rights obligations and in accordance with international best practices for legal gender recognition, which clearly advocate for a simple administrative process for legal recognition of the gender identity of transgender persons, the separation of the legal recognition process from any medical certification or GID diagnosis, the removal of any abusive requirements of sterilization or other forced or coerced medical interventions, the removal of other abusive requirements such as divorce or restrictions based on parental or family situations, and the establishment of a pathway for transgender children to have their gender identity recognized, without disproportionate, discriminatory or abusive restrictions.

In connection with the above alleged facts and concerns, please refer to **the Reference to international law Annex** attached to this letter which cites international human rights and standards relevant to these allegations.

4

It is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. We would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and comment you may have on the above-mentioned allegations.

2. Please provide information on measures taken to ensure the compliance of Law No. 111 with Japan's obligations under international human rights law and standards.

3. Please provide detailed information on measures taken to prohibit and combat discrimination against transgender adults and children, in compliance with Japan's obligations under international human rights law and standards. In particular, please indicate what measures have been taken to ensure that transgender persons in Japan have equal and non-discriminatory access to the effective legal recognition of their gender identity without disproportionate or abusive requirements including forced or coercive sterilization and other surgery or medical procedures, stigmatizing, humiliating and pathologizing medical certification, divorce, and discriminatory restrictions based on age, parental and relationship status.

4. Please provide information on measures taken to protect the rights of transgender children to have their gender identity recognized and respected, and to be protected from discrimination, including in the context of the exercise of their right to education and health.

5. Please provide information on training measures provided to professionals working in health care and education regarding the rights of transgender persons, including access to appropriate, respectful and gender-sensitive healthcare services without discrimination or pathologization.

6. Please provide information on the proposed amendments to Law No. 111 and the current status of its review. In Particular, please provide information on any measures that are being taken to include transgender adults and children and civil society organizations that work on the rights of transgender persons in meaningful consultations prior to the consideration of the proposed amendments by Members of Parliament.

We would appreciate receiving a response within 60 days.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the

investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Juan Ernesto Mendez
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Annex
Reference to international human rights law

In connection with the above alleged facts and concerns, we would like to remind your Excellency's Government of the principle of non-discrimination as set forth in articles 2 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Japan in 1979; the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by Japan in 1979; and the Convention on the Rights of the Child (CRC), ratified by Japan in 1994. Various treaty bodies have reiterated that the prohibition of discrimination includes discrimination on the ground of gender identity.

We would like to refer your Excellency's Government to the ICCPR, which provides for equal civil and political rights for all men and women (article 3), the right to recognition for everyone before the law (article 16), the right to one's privacy and family (article 17), and the right of right of men and women of marriageable age to marry and to found a family (article 23(2)). Furthermore, the ICCPR obliges States parties to ensure equality before the law and the equal protection of the law of all persons without discrimination. In this regard, the law must prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground, including sex (article 26). We would like to recall the recommendations made by the UN Human Rights Committee (CCPR/C/IRL/CO/4, CCPR/C/UKR/CO/7) that States should guarantee the rights of transgender persons including the right to legal recognition of their gender, that States should consult with transgender persons and their representatives in the elaboration of legislation that concern them, and that States should repeal abusive and disproportionate requirements for legal recognition of gender identity.

We also deem it pertinent to refer your Excellency's Government to the CRC, which stipulates, *inter alia*, that in all actions concerning children, including legislative measures, the best interest of the child should be a primary consideration (article 3(1)). The best interest must thereby be determined on a case-by-case basis, taking into account the child's personal context, situation and needs, the child's right to be heard (GC 14). Moreover, the CRC obliges States to ensure to the maximum extent possible the survival and development of the child (article 6), which is interpreted as a holistic concept including physical, mental, spiritual, moral, psychological, and social development (GC 5). The Convention also enshrines the obligation of States to respect the right of children to preserve their identity (article 8) and to ensure the right of children express their views in all matters affecting them, with due consideration to those views in accordance with age and maturity of the children (Article 12). Finally, the Convention reiterates that children, like adults, have the rights to privacy (article 16), health (24(1), and education (article 28).

Furthermore, we would like to bring to the attention of your Excellency's Government the right of everyone to the enjoyment of the highest attainable standard of physical and mental health as set forth in article 12 of the ICESCR and article 24(1) of the CRC. In this context, we recall that the Committee on the Rights of the Child stressed that in order to fully realize the right to health for all children, States have an obligation

to ensure that children's health is not undermined as a result of discrimination which is a significant factor contributing to vulnerability (GC 15). The Committee on the Rights of the Child has further emphasized that discrimination on the basis of gender identity is prohibited under the Convention (GC 15).

We would also like to refer to the Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity, specifying that "[e]ach person's self-defined [...] gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom" (principle 3). The Principles further stipulate in principle 6 that "[e]veryone, regardless of [...] gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family [...]", and in principle 24 that "[e]veryone has the right to found a family, regardless of [...] gender identity. Families exist in diverse forms. No family may be subjected to discrimination on the basis of the [...] gender identity of any of its members".

With respect to coercive medical procedures, the Principles reiterate "[...] no one shall be forced to undergo medical procedures, including sex reassignment surgery, sterilization or hormonal therapy, as a requirement for legal recognition of their gender identity [...].

In this connection, we would also like to refer to report A/HRC/31/57, in which the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment noted that subjecting transgender persons to forced or otherwise involuntary gender reassignment surgery, sterilization or other coercive medical procedures is abusive, is rooted in discrimination, and violates the rights to physical integrity and self-determination of individuals and amount to ill-treatment or torture, and recommends that forced and coerced sterilization be outlawed in all circumstances, that special measures be adopted to protect individuals belonging to marginalized groups from such forced or coercive sterilization, that other abusive requirements for legal recognition of gender identity be abolished, and that transparent and accessible legal gender recognition procedures be adopted (paras. 49, 72).

Finally, we recall that that the Committee on Economic, Social and Cultural Rights stressed that laws and policies which prescribe or indirectly perpetuate involuntary, coercive or forced medical interventions, including surgery or sterilization requirements for the legal recognition of one's gender identity, constitute a violation of the obligation to respect the right to sexual and reproductive health (General Comment 22, paras. 56-57).

Appendix 2

Response to the request for information from Special Procedures
from the Government of Japan

Regarding the request for information about the existing Law No. 111 of 2003 (the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder, hereinafter referred to as the "Special Cases Act") by the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, which was sent on May 23, 2016 to the Permanent Mission of Japan to the United Nations Office and other international organizations in Geneva, the response from the Government of Japan is as follows.

1. Please provide any additional information and comment you may have on the above-mentioned allegations.
2. Please provide information on measures taken to ensure the compliance of Law No.111 with Japan's obligations under international human rights law and standards.
3. Please provide detailed information on measures taken to prohibit and combat discrimination against transgender adults and children, in compliance with Japan's obligations under international human rights law and standards. In particular, please indicate what measures have been taken to ensure that transgender persons in Japan have equal and non-discriminatory access to the effective legal recognition of their gender identity without disproportionate or abusive requirements including forced or coercive sterilization and other surgery or medical procedures, stigmatizing, humiliating and pathologizing medical certification, divorce, and discriminatory restrictions based on age, parental and relationship status.
6. Please provide information on the proposed amendments to Law No.111 and the current status of its review. In particular, please provide information on any measures that are being taken to include transgender adults and children and civil society organizations that work on the rights of transgender persons in meaningful consultations prior to the consideration of the proposed amendments by Members of Parliament.

Additional information on measures taken to protect the human rights of transgender persons

1. In Japan, everyone can equally enjoy their human rights, free of discrimination under any circumstances. Violence, discrimination and discriminatory criminal penalties, including death penalties, based on sexual orientation or gender identity are unacceptable, and to this extent, in opposition to human rights violations based on sexual orientation or gender identity, Japan continues to actively engage in efforts for solving international issues surrounding LGBT persons. On 29 September 2015, Japan participated in the High Level LGBT Core Group Event during the UN General Assembly as a member of the Core Group. Japan also cosponsored the resolution on the protection against violence and discrimination based on sexual orientation and gender identity (A/HRC/32/L.2/Rev.1), adopted at the 32nd session of the Human Rights Council.

2. Nationally, discussions regarding the protection of the rights of LGBT persons have been advancing, following the establishment of the Nonpartisan Parliamentary Group on the rights of LGBT persons in March 2015, and the Special Mission Committee on sexual orientation and gender identity (hereinafter referred to as the "Special Mission Committee") by the Liberal Democratic Party (LDP) in February 2016. The LDP's Special Mission Committee compiled a report titled "LDP's basic stance towards a society accepting diversity in sexual orientation and gender identity," in which it is stated that upon applying the Special Cases Act, the LDP will take action when necessary, listening carefully to requests for improvement.

Additional information and comments on the point that legal gender recognition should be based on self-identification and the call to stop treating transgender persons as disordered

3. The Special Cases Act requires that Persons with Gender Identity Disorder receive "concurrent diagnoses on such identification with the opposite gender from two or more physicians equipped with the necessary knowledge and experience to give accurate diagnoses on this matter, based on generally accepted medical knowledge." This provision aims to ensure that such persons receive recognition of gender status from the family court in an appropriate and prompt manner, by assuring that the person has received an appropriate, objective and certain judgment by two or more physicians, and by also ensuring that such judgment be a prior condition for the ruling by the family court. The requirement also aims to prevent claims by persons claiming gender identity disorder for a change in gender status without having obtained a diagnosis.

4. The recognition of Person with Gender Identity Disorder is a basic condition for changes in legal gender status, which gives rise to fundamental consequences, and at the same time psychological gender is an internal issue that cannot be perceived physically. In order to ensure that recognition of Gender Identity Disorder be made objectively and certainly, concurrent diagnoses from two or more physicians are required, and those diagnoses should be made "based on generally accepted medical knowledge."

5. The Diagnosis and Treatment Guidelines for Gender Identity Disorder compiled by the Japanese Society of Psychiatry and Neurology, which was compiled before the enforcement of the Special Cases Act, also provides in principle that concurrent judgment from two or more physicians make the diagnoses determinable.

Additional information and comments on the point that legal gender recognition should be based on self-identification and self-declaration, not on medical certification

6. As mentioned above, the recognition of Person with Gender Identity Disorder is a basic condition for changes in legal gender status, which gives rise to fundamental consequences, and at the same time psychological gender is an internal issue that cannot be perceived physically. In order to ensure that it is recognized be made objectively and certainly, concurrent diagnoses from two or more physicians are required, and those diagnoses should be made "based on generally accepted medical knowledge."

Additional information and comments on the point that the requirement that the person "not have gonads or permanently functioning gonads" amounts to a violation of their right to be free from torture and ill-treatment, as well as their right to the full enjoyment of the highest attainable standard of physical and mental health

7. The Special Cases Act stipulates the inability to reproduce as a requirement based on the judgment that, upon recognizing a change in legal gender status, it is inappropriate that the reproductive capability of the former gender is maintained, or that the reproductive gland is functioning, secreting gender hormones of the former gender. In other words, when a person, after having had a change in legal gender status recognized, procreates using the reproductive function of the former gender, it may give rise to confusion and various problems. At the same time, the possibility that the secretion of gender hormones by the reproductive gland of the former gender may

have undesired physical and psychological influences cannot be denied.

Additional information and comments on the concern over the requirements that the person be over the age of 20, unmarried, and not have any underage children

8. The requirement that the person "is not less than 20 years of age" is stipulated in consideration of the following matters.

(1) Japanese Civil Law stipulates that the age at which a person obtains sufficient capability to manage one's own affairs is the age of 20.

(2) The decision on change in recognition of legal gender status must be made carefully by the persons themselves, given that gender is an important matter that affects the person's personality, and a change in gender is irreversible in nature.

(3) The Diagnosis and Treatment Guidelines for Gender Identity Disorder issued by the Japanese Society of Psychiatry and Neurology requires that in order to begin 3rd phase treatment (surgery of the reproductive organs), the person should be no less than 20 years of age.

9. The requirement that the person "is not currently married" is due to the fact that a change in legal gender status of a married person will result in a situation of same-sex marriage, which will give rise to various issues in the current legal order.

10. The requirement that the person "currently has no child who is a minor" is stipulated, taking into consideration the arguments that this system could give rise to confusion within the family, including between parent and child, or influence the child's welfare. At the time of the enactment of the Special Cases Act, the requirement was that the person "currently has no child." However, the requirement was amended to read "currently has no child who is a minor" in 2008, considering that in the case that the child is an adult, the impact of the change in legal gender status on the parent-child relationship or the welfare of the child would not be as strong in comparison to cases where the child is a minor.

Additional information and comments on the comment regarding support for transgender child in schools

11. On lines 15 through 18 of page 3 of the joint communication it is written that "the GID certificate can reportedly be used by transgender persons to advocate for access to education according to their gender identity, including restroom access and school uniforms." We would like to elaborate on this.

12. The Ministry of Education, Culture, Sports, Science and Technology (MEXT) issued a directive in 2015 to prefectural boards of education. The directive illustrates examples of support in schools for students with sexual orientation or gender identity issues, such as permitting the students to wear school uniforms in line with their actual or perceived gender identity and permitting the use of faculty or multipurpose lavatories.

13. In order to allow support for students with anxieties and insecurities, the directive states that such support does not require the diagnosis of medical institutions. Such support does not require a GID certificate.

Additional information and comments on the point that Japan should amend the Special Cases Act to remove discriminatory provisions

14. As mentioned above, the Special Cases Act is exercised appropriately, taking into consideration international humanitarian laws and universal standards. With that in mind, Japan recognizes the need to consider the possibility of amending the Special Cases Act, taking into consideration national debate including that mentioned above in paragraph 2.

4.	Please provide information on measures taken to protect the rights of transgender children to have their gender identity recognized and respected, and to be protected from discrimination, including in the context of the exercise of their right to education and health.

15. MEXT promotes appropriate measures by indicating ways to address matters related to gender identity concerning students, such as the following which were compiled in the 2015 directive:

(1) Promote appropriate education that prohibits discrimination and bullying under any circumstances;

(2) Encourage school faculties to endeavor to become good listeners for students who suffer from anxiety or insecurity;

(3) Advance efforts in accordance with the individual circumstances of students, families and schools;

(4) Create/maintain an environment in which students feel comfortable seeking help;

(5) Enhance appropriate understanding of school faculty through training.

16. The directive illustrates examples of support in schools for students with sexual orientation or gender identity issues, such as permitting the students to wear school uniforms in line with their actual or perceived gender identity and permitting the use of faculty or multipurpose lavatories.

5.	Please provide information on training measures provided to professionals working in health care and education regarding the rights of transgender persons, including access to appropriate, respectful and gender-sensitive healthcare service without discrimination or pathologization.

17. MEXT notified prefectural boards of education in 2015 to promote appropriate understanding of transgender issues amongst faculty through training on issues such as appropriate ways of addressing students with gender identity issues.

18. MEXT compiled an informative document in 2016 to be used by the prefectural board in training sessions, aimed at promoting understanding amongst faculty on appropriate ways of addressing issues with gender identity issues.

19. MEXT also promotes the understanding of transgender issue amongst faculty by explaining directives and informative documents at prefectural boards of education meetings.

Appendix 3

GID（性同一性障害）学会理事会 2017（平成 29）年 3 月 19 日提出

国連諸機関による「強制・強要された、または非自発的な断種の廃絶を求める共同声明」を支持する声明文（案）

OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and O . *Eli minating forced, coercive and otherwise in- voluntary sterilization: An inter- agency statement*. World Health Organization: May 30 2014.

WHO をはじめとする国連諸機関注 1 ）は、2014（平成 26）年 5 月 30 日
「強制・強要された、または非自発的な断種の廃絶を求める共同声明」を発表した。この共同声明は、特定の集団（HIV 陽性者、障がいのある人々、先住民族、民族的マイノリティ、トランスジェンダーおよびインターセックスの人々 など）において、不均衡に、不妊手術などの断種が行われている実態について述べ、本人の同意に基づかない医療処置が、健康・情報・プライバシーに関する権利、生殖に関する権利、差別されない権利、拷問と残酷及び非人道的又は侮辱的取り扱い又は処罰からの自由に関する権利など、国内外の様々な公文書が保障する人権を侵害するものであるとして、強く非難している。
特にトランスジェンダーについては、「出生証明書および他の法的文 書における性別記載を望みの性に変更するために、断種を含む、様々な 法的・医学的要件を満たさなければならない」（2 頁）ことを人権侵害の例として挙げ、「手術要件は、身体の完全性・自己決定・人間の尊厳の 尊重に反するものであり、トランスジェンダーおよびインターセックス
の人々に対する差別を引き起こし、また永続させるものである。」（7 頁）と非難している。本学会理事会は、この共同声明を支持するとともに、以下の意見表明を行なうこととした。

国内においては、「性同一性障害者の性別の取扱いの特例に関する法律」（2004 年 7 月 16 日施行）の施
行から 12 年が経過し、最高裁発表で 2015（平成 27）年 12 月末までに 6,021 名が戸籍上の性別を変更している。一方で、全国の主要医療機関を対象とした日本精神神経学会「性同一性障害に関する委員会」 調査によれば、同年 12 月末までに性別違和を主訴に

受診したのは 22,435 例で、戸籍を変更した割合はその 20.8%に過ぎない注２）。全員ではないにせよ、受診者の大多数が戸籍変更を希望している実態からすれば、この数値は明らかに低い。特例法 3 条 1 項に規定された要件、特に「手術要件」がなければ、状況はかなり異なったものになると考えられる。
さらに重要な問題がある。意思決定の自律性は医療倫理の中核を成すものであり、十分で自由かつ情 報に基づいた同意（the full, free and informed consent）の表明によって担保される。「性同一性障害に関する診断と治療のガイドライン」注３）においても、「当事者の生活の質の向上を目的とした手段」である 治療について、「医療現場では当事者の自己決定と自己責任を最大限に尊重しながら、個々のケースに 応じたよりきめ細かい判断が必要である」と述べられている（1255 頁）。しかし、法的な性別変更に「手術要件」が規定されている状況では、医療現場で意思決定の自律性を担保することはできない。
2010（平成 22 年）年にいち早く学会の立場表明をしていた WPATH 注４）は、今回の共同声明が発表された後の 2015（平成 27 年）年に再び声明を発表し、「いかなる医学的・外科的・精神保健的治療および

診断の有無も、個人のジェンダー・アイデンティティの的確な指標（an adequate marker）になるものではない。したがって、法的な性別変更の要件にしてはならない」と勧告している注５）。こうした学会組 織、国連諸機関、国際的人権団体などによる度重なる勧告を踏まえ、世界にはすでに「手術要件」のな い法律の制定や法改正を行った例がある。実質的に性別適合手術をすることなく性別変更できる国も含 めれば、欧州地域 18 か国（オーストリア、ベラルーシ、デンマーク、エストニア、フランス、ドイツ、ハンガリー、アイスランド、アイルランド、イタリア、マルタ、モルドバ、オランダ、ノルウェー、ポーランド、ポルトガル、スペ
イン、スウェーデン、英国）、南米地域 2 か国（アルゼンチン、ウルグアイ）、北米地域 2 か国（ただし州による）、
アフリカ地域 2 か国（ボツワナ、南アフリカ）、アジア・オセアニア地域 5 か国（オーストラリア、ニュージーランド、インド、ネパール、台湾）など、「手術要件」撤廃の動きは広がりをみせている注６）。
共同声明は「不妊化処置など、避妊に関するサービスを含めた保健医療サービスは、トランスジェン ダーやインターセックスの人々にとっても利用可能なものでなければならないが、他の人々と等しく、 強要・差別・暴力がない状態でなければならない。」（8 頁）と勧告している。世界に先駆けて 1972（昭和 47）年に「性の転換に関する法律」を公布したスウェーデンでは、2013（平成 25）年の議会で「手術要件」撤廃を可決した後、1970 年代までの優生政策のもとで断種を強いられた人々と要件撤廃前に手

術を受けたトランスジェンダーを等しく扱い、損害賠償請求があった場合はこれに応じるとした注７）。

日本で「性同一性障害」への対応が始まったのは 1990 年代半ばのことである。国内固有の事情と経 緯があるとはいえ、国際的潮流に反して特例法 3 条 1 項に規定された要件、特に「手術要件」をそのままにしておくことは、当事者にとってはもとより、「門番」の責を担わされる臨床家（医）にとっても、 けっして望ましいことではない。自己決定の主体が他者の意向や都合に過度な影響を受けることなく、 インセンティブや強要から自由であるためには、環境の調整を図る必要がある。トランスジェンダーの健康に関わる専門職者は、自由に、かつ十分な情報に基づいた意思決定を保障することに、無知・無関 心であってはならない。

国内外で積み重ねられてきた議論と最新の科学的知見に基づき、当事者のウェルビーング（well-being） を最大限に保障していくこと、そのための専門的見解を広く社会に公開していくことが、本学会の存在 意義であり、社会的使命である。本学会は、ここに改めてそのことを確認し、「強制・強要された、ま たは非自発的な断種の廃絶を求める共同声明」を支持することを表明する。

注１） 国連人権高等弁務官事務所（UNHCHR）、国連ウィメン（UN Women）、国連合同エイズ計画（UNAIDS）、国連開発計画（UNDP）、国連人口基金（UNFPA）、国連児童基金（UNICEF）、世界保健機構（WHO）

注２） 針間克己他（2017）「性同一性障害に関する委員会」による性別違和が主訴の症例数と国内外性別適合手術例数の推定調査. 第 19 回 GID（性同一性障害）学会研究大会（札幌市 2019 年 2 月 18-19 日）.

注３） 日本精神神経学会・性同一性障害に関する委員会（2012）性同一性障害に関する診断と治療のガイドライン（第 4
版）. 精神神経学雑誌 114 (11): 1250-1266.

注４） World Professional Association for Transgender Health（旧 Harry Benjamin International Gender Dysphoria
Association）はトランスジェンダーの健康に関する世界最古にして最大の専門職集団である。

注 ５） WPATH (2015) WPATH Statement on Identity Recognition, 19 January 2015. Retrieved from http://www.wpath.org/

注６） 各国の状況については、Open Society Foundation (2014) License to be yourself: Forced sterilization (A Legal
Gender Recognition Issue Brief). および TGEU (2016) Trans Rights Europe Index 2016.に加えて、台湾についてはメディア情報を参照した。
注７） TGEU (2016) Trans people to receive compensation for forced sterilisation in Sweden. Retrieved from http://tgeu.org/

The Board of the Japanese Society of Gender Identity Disorder
Submitted on March 19, 2017

(Draft) Statement supporting "Eliminating forced, coercive and otherwise involuntary sterilization: An inter-agency statement" proposed by the various United Nations agencies

Several agencies of the United Nations[128] including the World Health Organization (WHO), issued the statement "Eliminating forced, coercive and otherwise involuntary sterilization: An inter-agency statement" on May 30, 2014. The inter-agency statement condemns the state in which people belonging to certain population groups (people living with HIV, persons with disabilities, indigenous peoples and ethnic minorities, and transgender and intersex persons) have been disproportionately subjected to sterilization without their full, free and informed consent, as a violation of fundamental human rights that many national and international official documents guarantee, including the right to health, the right to information, the right to privacy, the right to decide on the number and spacing of children, the right to be free from discrimination, and the right to be free from torture and other cruel, inhumane or degrading treatment or punishment.

[128] The United Nations High Commissioner for Human Rights (UNHCHR), The United Nations Women (UN Women), The United Nations AIDS Program (UNAIDS), The United Nations Development Program (UNDP), The United Nations Population Fund (UNFPA), The United Nations Children's Fund (UNICEF), The World Health Organization (WHO)

Particularly for transgender persons, the inter-agency statement raises the example of human rights violation "in the various legal and medical requirements, including for sterilization, to which transgender persons have been subjected in order to obtain birth certificates and other legal documents that match their preferred gender" (p.2). The inter-agency statement condemns that "These sterilization requirements run counter to respect for bodily integrity, self-determination and human dignity, and can cause and perpetuate discrimination against transgender and intersex persons" (p.7) The Board of the Japanese Society of Gender Identity Disorder supports inter-agency statement and expresses its opinion as follows.

OHCHR, UN Women, UNAIDS, UNDP, UNFPA, UNICEF and WHO. *Eliminating forced, coercive and otherwise involuntary sterilization: An interagency statement.* World Health Organization: May 30 2014.

In Japan, it has been twelve years since "Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder" was enacted on July 16, 2004. According to The Supreme Court, there were 6,021 individuals who changed their sex on the family register until the end of December 2015. On the other hand, according to a survey conducted by the Japanese Society of Psychiatry and Neurology's Gender Identity Disorder Committee which targeted major medical clinics throughout Japan, out of 22,435 consultations for gender dysphoria until the end of December 2015, only 20.8%[129] changed their sex on family register. Considering the actual number of patients who wish to change their sex on the family register, even if not all patients, this number is far too low. Therefore, it can be assumed that if the requirements stated in Article 3 Section 1 of the Special Cases Act, especially the "surgery requirement," did not exist, the situation would have been vastly different.

There is a problem of even greater importance. Autonomy in decision-making, which is secured through full, free and informed consent, shapes the core of medical ethics. "The Guideline regarding the Diagnosis and Treatment of Gender Identity Disorder"[130] states that regarding treatments that "aim to improve individual's quality of life, it is important that at medical sites, decisions are based on each individual case, while respecting individual's autonomy and self-responsibility to its maximum extent" (p.1255). However, under current

[129] Katsuki Harima et al. (2017) Committee on Gender Identity Disorder "to estimate the number of cases with complaints of gender disagreement and number of surgical cases compatible with domestic and foreign sex. Presented at the 19th Annual Meeting of Japan Society of Gender Identity Disorder. Sapporo: February 18-19.

[130] The Japanese Society of Psychiatry and Neurology (2012) Japanese Guideline for the Diagnosis and Medical Treatment of Gender Identity Disorder [Version 4], *Psychiatria et Neurologia Japonica*, 114 (11): 1250-1266.

circumstances where the “surgery requirement” is necessary to legally change one’s sex, it is not possible to secure autonomy in decision-making at medical sites.

WPATH[131], which had expressed its academic position on the subject in 2010, released another statement in 2015 after the current inter-agency statement was released. It recommends that “WPATH continues to oppose surgery or sterilization requirements to change legal sex or gender markers. No particular medical, surgical, or mental health treatment or diagnosis is an adequate marker for anyone’s gender identity, so these should not be requirements for legal gender change.”[132]

Considering the numerous recommendations from academic societies, the United Nations agencies, as well as international human rights organizations, there are countries that have established or revised laws not to include the “surgery requirement”. Countries where an individual can change their sex without having to undergo sexual reassignment surgery include: 18 European countries (Austria, Belarus, Denmark, Estonia, France, Germany, Hungary, Iceland, Ireland, Italy, Marta, Moldova, the Netherlands, Norway, Poland, Portugal, Spain, Sweden, Great Britain), 2 South American countries (Argentina, Uruguay), 2 North American countries (varies by state), 2 African countries (Botswana, South Africa), 5 countries in the Asia-Pacific region (Australia, New Zealand, India, Nepal, Taiwan). These countries demonstrate a growing trend of the abolishment of the ”surgery requirement[133].

The inter-agency statement cites and supports that “Human rights bodies have condemned the serious human rights violations to which transgender and intersex persons are subjected and have recommended that transgender and intersex persons should be able to access health services, including contraceptive services such as sterilization, on the same basis as others: free from coercion, discrimination and violence. They have also recommended the revision of laws to remove any requirements for compulsory sterilization of transgender persons (39, para 21; 163, para 32; 164; 165; 166).” (p.8). In 1972, Sweden

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[131] The World Professional Association for Transgender Health（Formerly known as the Harry Benjamin International Gender Dysphoria Association）is the world's oldest and largest professional organization on transgender health

[132] WPATH (2015) WPATH Statement on Legal Recognition of Gender Identity, 19 January 2015. Retrieved from https://www.wpath.org/policies

[133] Regarding the situation of each country, we referred to *License to be yourself: Forced sterilization (A Legal Gender Recognition Issue Brief)* (Open Society Foundation, 2014); Trans Rights Europe Index 2016 (TGEU, 2016); and for Taiwan we deferred.

took the lead by implementing "Sex Determination Law (om fastställande av könstillhörighet i vissa fall)". After the Swedish Parliament voted to remove the mandatory legal requirement of sterilization in 2013, the Swedish government announced to pay economic compensation to trans victims of forced sterilization if requested[134], treating them equally with those who were forced to undergo sterilization in the 1970s due to the eugenic policy.

Japan began to respond to "Gender Identity Disorder" in the middle of 1990s. Even though Japan has had its own domestic situations, keeping the Article 3 Section 1 of the Special Cases Act, especially the "surgery requirement", against the international trend, is undesirable not only for the concerned individuals but also for the clinicians that have the burden of acting as "gatekeepers". It is necessary to change the environment, so that an individual's autonomy is respected without the excessive influence of others, incentives or coercion. Professionals involved in the health of transgender people should never be ignorant or unconcerned about guaranteeing the full, free and informed consent of the individual.

Based on the most scientific knowledge as well as domestic and international discussions, it is the Japanese Society of Gender Identity Disorder's purpose and mission to disseminate professional opinion throughout society to guarantee the well-being of transgender people. The society once again affirms this mission and expresses its support towards "Eliminating forced, coercive and otherwise involuntary sterilization: An inter-agency statement".

[134] TGEU (2016) Trans people to receive compensation for forced sterilization in Sweden. Retrieved from http://tgeu.org/

Appendix 4

平成３０年（ク）第２６９号　　性別の取扱いの変更申立て却下審判に対する抗告棄却決定に対する特別抗告事件 平成３１年１月２３日　　第二小法廷決定

主　　文

本件抗告を棄却する。

抗告費用は抗告人の負担とする。

理　　由

抗告代理人大山知康の抗告理由について

性同一性障害者につき性別の取扱いの変更の審判が認められるための要件として「生殖腺がないこと又は生殖腺の機能を永続的に欠く状態にあること」を求める性同一性障害者の性別の取扱いの特例に関する法律3条1項4号の規定（以下「本件規定」という。）の下では，性同一性障害者が当該審判を受けることを望む場合には一般的には生殖腺除去手術を受けていなければならないこととなる。本件規定は，性同一性障害者一般に対して上記手術を受けること自体を強制するものではないが，性同一性障害者によっては，上記手術まで望まないのに当該審判を受けるためやむなく上記手術を受けることもあり得るところであって，その意思に反して身体への侵襲を受けない自由を制約する面もあることは否定できない。もっとも，本件規定は，当該審判を受けた者について変更前の性別の生殖機能により子が生まれることがあれば，親子関係等に関わる問題が生じ，社会に混乱を生じさせかねないことや，長きにわたって生物学的な性別に基づき男女の区別がされてきた中で急激な形での変化を避ける等の配慮に基づくものと解される。これらの配慮の必要性，方法の相当性等は，性自認に従った性別の

取扱いや家族制度の理解に関する社会的状況の変化等に応じて変わり得るものであり，このような規定の憲法適合性については不断の検討を要するものというべきであるが，本件規定の目的，上記の制約の態様，現在の社会的状況等を総合的に較量すると，本件規定は，現時点では，憲法

13条，14条1項に違反するものとはいえない。

このように解すべきことは，当裁判所の判例（最高裁昭和28年（オ）第389 号同30年7月20日大法廷判決・民集9巻9号1122頁，最高裁昭和37年
（オ）第1472号同39年5月27日大法廷判決・民集18巻4号676頁，最高裁昭和40年（あ）第1187号同44年12月24日大法廷判決・刑集23巻12号1625頁）の趣旨に徴して明らかというべきである。論旨は採用することができない。
よって，裁判官全員一致の意見で，主文のとおり決定する。なお，裁判官鬼丸かおる，同三浦守の補足意見がある。
裁判官鬼丸かおる，同三浦守の補足意見は，次のとおりである。
1 性同一性障害者の性別の取扱いの特例に関する法律（以下「特例法」という。）は，生物学的には性別が明らかであるにもかかわらず，心理的にはそれとは別の性別であるとの持続的な確信を持ち，かつ，自己を身体的及び社会的に他の性別に適合させようとする意思を有する者であって，そのことについて2人以上の医師の診断が一致しているものを対象として，その法令上の性別の取扱いの特例について定めるものである。これは，性同一性障害者が，性別の違和に関する苦痛を感じるとともに，社会生活上様々な問題を抱えている状況にあることから，その治療の効果を高め，社会的な不利益を解消するために制定されたものと解される。そして，特例法により性別の取扱いの変更の審判を受けた者は，変更後の性別で婚姻をすることができるほか，戸籍上も，所要の変更等がされ，法令に基づく行政文書における性別の記載も，変更後の性別が記載されるようになるなど，社会生活上の不利益が解消されることになる。
また，性別は，社会生活や人間関係における個人の属性の一つとして取り扱われているため，個人の人格的存在と密接不可分のものということができ，性同一性障害者にとって，特例法により性別の取扱いの変更の審判を受けられることは，切実ともいうべき重要な法的利益である。

本件規定は，本人の請求により性別の取扱いの変更の審判が認められるための要件の一つを定めるものであるから，自らの意思と関わりなく性別適合手術による生殖腺の除去が強制されるというものではないが，本件規定により，一般的には当該手術を受けていなければ，上記のような重要な法的利益を受けることができず，社会的な不利益の解消も図られないことになる。

さらに，性別適合手術については，特例法の制定当時は，原則として，第1段階（精神科領域の治療）及び第2段階（ホルモン療法等）の治療を経てなおその身体的性別に関する強い苦痛等が持続する者に対する最終段階の治療として行うものとされていたが，その後の臨床経験を踏まえた専門的な検討を経て，現在は，日本精神神経学会のガイドラインによれば，性同一性障害者の示す症状の多様性を前提として，この手術も，治療の最終段階ではなく，基本的に本人の意思に委ねられる治療の選択肢の一つとされている。

したがって，生殖腺を除去する性別適合手術を受けていない性同一性障害者としては，当該手術を望まない場合であっても，本件規定により，性別の取扱いの変更を希望してその審判を受けるためには当該手術を受けるほかに選択の余地がないことになる。

2 性別適合手術による卵巣又は精巣の摘出は，それ自体身体への強度の侵襲である上，外科手術一般に共通することとして生命ないし身体に対する危険を伴うとともに，生殖機能の喪失という重大かつ不可逆的な結果をもたらす。このような手術を受けるか否かは，本来，その者の自由な意思に委ねられるものであり，この自由は，その意思に反して身体への侵襲を受けない自由として，憲法13条により保障されるものと解される。上記1でみたところに照らすと，本件規定は，この自由を制約する面があるというべきである。

そこで，このような自由の制約が，本件規定の目的，当該自由の内容・性質，その制約の態様・程度等を総合的に較量して，必要かつ合理的なものとして是認されるか否かについて検討する。

本件規定の目的については，法廷意見が述べるとおり，性別の取扱いの変更の審判を受けた者について変更前の性別の生殖機能により子が生まれることがあれば，親子関係等に関わる問題が生じ，社会に混乱を生じさせかねないことや，長きにわたって生物学的な性別に基づき男女の区別がされてきた中で急激な形での変化を避ける等の配慮に基づくものと解される。しかし，性同一性障害者は，前記のとおり，生物学的には性別が明らかであるにもかかわらず，心理的にはそれとは別の性別であるとの持続的な確信を持ち，自己を身体的及び社会的に他の性別に適合させようとする意思を有する者であるから，性別の取扱いが変更された後に変更前の性別の生殖機能により懐妊・出産という事態が生ずることは，それ自体極めてまれなことと考えられ，それにより生ずる混乱といっても相当程度限られたものということができる。また，上記のような配慮の必要性等は，社会的状況の変化等に応じて変わり得るものであり，特例法も，平成15年の制定時の附則2項において，「性別の取扱いの変更の審判の請求をすることができる性同一性障害者の範囲その他性別の取扱いの変更の審判の制度については，この法律の施行後3年を目途として，この法律の施行の状況，性同一性障害者等を取り巻く社会的環境の変化等を勘案して検討が加えられ，必要があると認めるときは，その結果に基づいて所要の措置が講ぜられるものとする。」と定めていた。これを踏まえて，平成20年，特例法3条1項3号の「現に子がいないこと」という要件に関し，これを緩和して，成人の子を有する者の性別の取扱いの変更を認める法改正が行われ，成人の子については，母である男，父である女の存在があり得ることが法的に肯定された。そして，その改正法の附則3項においても，「性同一性障害者の性別の取扱いの変更の審判の制度については，この法律による改正後の特例法の施行の状況を踏まえ，性同一性障害者及びその関係者の状況その他の事情を勘案し，必要に応じ，検討が加えられるものとする。」旨が定められ，その後既に10年を経過している。

特例法の施行から14年余を経て，これまで7000人を超える者が性別の取扱

いの変更を認められ，さらに，近年は，学校や企業を始め社会の様々な分野において，性同一性障害者がその性自認に従った取扱いを受けることができるようにする取組が進められており，国民の意識や社会の受け止め方にも，相応の変化が生じているものと推察される。

以上の社会的状況等を踏まえ，前記のような本件規定の目的，当該自由の内容・性質，その制約の態様・程度等の諸事情を総合的に較量すると，本件規定は，現時点では，憲法13条に違反するとまではいえないものの，その疑いが生じていることは否定できない。

3 世界的に見ても，性同一性障害者の法的な性別の取扱いの変更については，特例法の制定当時は，いわゆる生殖能力喪失を要件とする国が数多く見られたが，２０１４年（平成26年），世界保健機関等がこれを要件とすることに反対する旨の声明を発し，２０１７年（平成29年），欧州人権裁判所がこれを要件とすることが欧州人権条約に違反する旨の判決をするなどし，現在は，その要件を不要とする国も増えている。

性同一性障害者の性別に関する苦痛は，性自認の多様性を包容すべき社会の側の問題でもある。その意味で，本件規定に関する問題を含め，性同一性障害者を取り巻く様々な問題について，更に広く理解が深まるとともに，一人ひとりの人格と個性の尊重という観点から各所において適切な対応がされることを望むものである。

（裁判長裁判官　三浦　守　裁判官 鬼丸かおる　裁判官 山本庸幸　裁判官 菅野博之）

Heisei 30 nen (2018)(ku) No. 269 *Tokubetsu-koukoku* Appeal Case Against the *Koukoku* Dismissal Decision Against the Decision to Dismiss the Application to Change the Treatment of Sex
Heisei 31 nen (2019) Decision by the Second Petty Bench of the Supreme Court

Main text of the judgment

The *koukoku*-appeal is dismissed.
The costs of *koukoku*-appeal shall be borne by the appellant.

Reasons
Regarding the reasons for *koukoku*-appeal filed by the counsel for the *koukoku*- appeal, OYAMA Tomoyasu

Under Article 3(1)(4) of the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (hereinafter "the provision in question") which requires that a person requesting a ruling of change in the recognition of gender status "has no gonads or permanently lack functioning gonads," as a general matter if a person with gender identity disorder requests such a ruling, that person needs to have had surgery to remove his/her gonads. The provision in question does not specifically force a person with gender identity disorder to undergo such surgery, but it is possible that some persons with gender identity disorder may be compelled to undergo such surgery in order to receive a ruling of change in the recognition of gender status even when they do not desire such surgery, and thus it cannot be denied that [this law] impinges on freedom from invasion of bodily freedom. That said, the provision in question is understood to be based on the possibility of problems arising with regard to parent-child or other relationships that may cause confusion in society if a child is born from the reproductive functions of the former gender of a person who has received a ruling of change in recognition of gender status, as well as on the consideration for, among other things, the need to avoid abrupt changes in a society where the distinction of men and women have long been based on biological gender. The need for these considerations, the adequacy of the method, and other circumstances may change in relation to shifts in social conditions regarding the handling of gender status in accordance with a person's gender identity as well as the understanding of the family system, and it should be said that the constitutionality of such

a provision requires constant examination. However, after comprehensive consideration of the purpose of the provision in question, the state of the aforementioned restriction, the current social condition and other circumstances, the provision in question, at this time, cannot be said to be in violation of Article 13 and Article 14(1) of the Constitution.

It should be said that it is clear that such an interpretation is warranted in light of the purport of the precedents of this court (Supreme Court Showa 28nen (1953) (0) No.389, July 20 1955 Grand Bench decision・Civil precedent Volume 9 Chapter 9 page1122, Supreme Court Showa 37nen (1962)(0) No.1472, May 27 1964 Grand Bench decision・Civil precedent Volume 18 Chapter 4 page 676, Supreme Court Showa 40nen (1965) (a) No.1187, December 24 1969 Grand Bench decision・Criminal precedent Volume 23 Chapter 12 page 1625). The reasons of appeal are not acceptable.

Therefore the Supreme Court unanimously decides as set forth in the main text. There is a concurring opinion by Justices ONIMARU Kaoru and MIURA Mamoru.

The concurring opinion by Justices Kaoru Onimaru and Mamoru Miura is as follows.

1 The Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (hereinafter "the Special Cases Act") provides for special cases in handling the gender status under laws and regulations of a person, despite his/her biological sex being clear, who continually maintains a psychological identity with an alternative gender, who holds the intention to physically and socially conform to an alternative gender, and has received concurrent diagnoses on such identification with the opposite gender from two or more physicians.

It is understood that the Special Cases Act was enacted in order to increase the effect of treatment and to remove social disadvantages for persons with gender identity disorder, who experience pain regarding gender incompatibility and are in a situation where they face various problems in their social lives. Those who have received a ruling of change in recognition of gender status are able to marry as a person of the reassigned gender. Necessary changes are made in the family registry, and disadvantages in social lives are removed through measures such as the reassigned gender being entered as their gender in administrative documents based on laws and regulations.

Furthermore, because gender is treated as one of the attributes of an individual in social life and in personal relationships, it can be said that gender is inseparable from the existence as a person of an individual, and for persons with gender identity disorder, that they are able to receive rulings of changes in recognition of gender status under the Special Cases Act is an important, perhaps even urgent, legal benefit.

Because the provision in question sets one of the requirements for a ruling of change in recognition of gender status at the request of a person, it is not that the removal of gonads by sex reassignment surgery is forced without regard to the will of the person, but under the provision in question, as a general matter, without having undergone such surgery, a person is not able to receive the abovementioned important legal benefit, and disadvantages in social lives will not be removed.

In addition, at the time when the Special Cases Act was enacted, as a general rule, sex reassignment surgery was regarded as something to be performed as the final stage of treatment for a person whose severe pain and other symptoms related to his/her physical gender persist after the first stage (treatment in the psychiatric domain) and the second stage (treatment such as hormone therapy) of treatment. However, after consideration by experts based on subsequent clinical experience, currently, according to the guidelines of the Japanese Society of Psychiatry and Neurology, given the diversity of symptoms shown by persons with gender identity disorder, sex reassignment surgery is regarded not as the final stage of treatment but as one treatment option that is basically left to the person to choose.

Therefore, for persons with gender identity disorder who have not had sex reassignment surgery, even when they do not desire such surgery, under the provision in question, they have no choice but to undergo such surgery if they desire changes in recognition of gender status in order to receive a ruling in their favor.

2 The removal of the ovary and testicles by sex reassignment surgery is itself not only a severe invasion of the physical body but as with surgery in general poses a risk to life or the physical body, and brings about the serious and irreversible consequence of the loss of reproductive functions. Whether or not to undergo such surgery is a decision normally left to the person's free will, and it is understood that this freedom is secured by Article 13 of the Constitution as the freedom from invasion of the physical body against one's will. In light of 1 above, it should be said that the provision in question in one respect restricts this freedom.

Therefore, we consider whether the restriction of this freedom can be affirmed as necessary and reasonable upon comprehensive consideration of the purpose of the provision in question, the content and nature of the freedom in discussion, the state and degree of the restriction and other factors.

As the opinion of the court states, the purpose of the provision in question is understood to be based on the possibility of problems arising with regard to parent-child or other

relationships that may cause confusion in society if a child is born from the reproductive functions of the former gender of a person who has received a ruling of change in recognition of gender status, as well as on the consideration for, among other things, the need to avoid abrupt changes in a society where the distinction of men and women have long been based on biological sex.

However, as stated above, because a person with gender identity disorder is someone who, despite his/her biological sex being clear, continually maintains a psychological identity with an alternative gender, who holds the intention to physically and socially conform to an alternative gender, it can be reasoned that it would be extremely rare for a person to become pregnant and give birth through his/her former gender after his/her gender status is changed, and it can be said that the confusion that such a situation might cause would be considerably limited.

In addition, the necessity for such considerations and other circumstances as stated above may change in relation to shifts in social conditions and the like, and Article 2 of the Supplementary Provision of the Special Cases Act as of its enactment in 2003 duly provided: "The range of Persons with Gender Identity Disorder who may request a ruling of change in recognition of gender status, and other aspects of the system regarding rulings of change in recognition of gender status are to be reviewed approximately three years after this Act comes into effect, taking into consideration matters such as the status of the enforcement of this Act and changes in the social environment surrounding Persons with Gender Identity Disorder, etc.; and measures are to be taken as required based on the result of such review, if said measures are found to be necessary." Based on this, in 2008, the requirement under Article 3(1)(iii) of the Special Cases Act that a person requesting a change in the recognition of gender status "currently has no child" was relaxed through an amendment so that the gender of a person who has an adult child may be changed, and it was legally affirmed that an adult child may have a man as his/her mother and a woman as his/her father. Further, Article 3 of the Supplementary Provisions also stated: "The system regarding rulings of change in recognition of gender status for Persons with Gender Identity Disorder is to be reviewed as required, based on the status of the enforcement of the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder as revised by this Act, and taking into consideration the status of Persons with Gender Identity Disorder and persons concerned therewith, along with other circumstances." Ten years have already passed since then.

Since the enforcement of the Special Cases Act more than14 years ago, over 7000 persons have been granted changes in the recognition of their gender status, and in the

recent years, in various fields in society including schools and corporations, efforts are being made to enable persons with gender identity disorder to be treated according to their gender identity. It can also be inferred that a corresponding shift is occurring in public consciousness and social acceptance.

Based on the social conditions and other factors described above, after comprehensive consideration of the aforementioned purpose of the provision in question, the content and nature of the freedom in discussion, the state and degree of the restriction and other circumstances, while it cannot be said that the provision in question is in violation of Article 13 of the Constitution at this time, it cannot be denied that doubts are emerging on that point.

3 Internationally, too, regarding changes in legal gender recognition of persons with gender identity disorder, at the time of the enactment of the Special Cases Act, many countries required the loss of reproductive functions, but in 2014, the World Health Organization issued a statement that opposed such a requirement, and in 2017, the European Court of Human Rights ruled that such a requirement was in violation of the European Convention on Human Rights. Presently, the number of countries that do not demand such a requirement is on the increase.

The suffering that persons with gender identity disorder face in terms of gender is also of concern to society that is supposed to embrace diversity in gender identity. In that regard, it is hoped that the understanding of the various problems surrounding persons with gender identity disorder including those related to the provision in question deepens even more broadly, and that appropriate measures are taken all around from the perspective of respect for the personality and individuality of each person.

23 January 2019
Second Petty Bench of the Supreme Court

Justice MIURA Mamoru, Justice ONIMARU Kaoru, Justice YAMAMOTO Tsuneyuki, Justice KANNO Hiroyuki

“A Really High Hurdle”

Japan’s Abusive Transgender Legal Recognition Process

The government of Japan requires transgender people who want to be legally recognized according to their gender identity to undergo surgical procedures that sterilize them.

Japan’s legal gender recognition law, which came into effect in 2004, also requires applicants to be single and without children under age 20, and undergo a psychiatric evaluation to receive a diagnosis of “Gender Identity Disorder.” Such requirements are regressive and harmful: they rest on an outdated and pejorative notion that a transgender identity is a mental health condition, and require transgender people who want legal recognition to undergo lengthy, expensive, invasive, and irreversible medical procedures.

“A Really High Hurdle” documents the impact of Japan’s legal gender recognition law on transgender people’s rights to physical integrity, privacy, health, and autonomy. Some transgender people want to undergo various procedures to affirm their gender identity. However, legally requiring all transgender people to do so violates Japan’s international human rights obligations and global medical consensus.

In recent years, Japan’s national government has taken positive steps toward recognizing and protecting lesbian, gay, bisexual, and transgender (LGBT) people. Revising the legal gender recognition law is urgently needed as part of this change.

Fumino Sugiyama, a transgender man, holds his Japanese ID card, which reads “female,” at his home in Tokyo.

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