

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.

<p>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.</p>
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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.