

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
OL JPN 4/2021

23 August 2021

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the lack of necessary legislation to protect lesbian, gay, bisexual, trans and gender diverse (LGBT) persons from discrimination based on their sexual orientation or gender identity.**

According to the information received:

Discussions on anti-discrimination legislation to protect LGBT persons in Japan have been developing since 2016. While opposition parties sought to introduce a bill to eliminate discrimination based on sexual orientation and gender identity, the ruling Liberal Democratic Party (LDP) presented a bill that aims to increase an understanding of LGBT issues in Japanese society.

In April 2021, the Special Committee on Sexual Orientation and Gender Identity of the LDP ("the Special Committee") announced that it would pass the "Bill for the Promotion of Public Awareness Regarding the Diversity of Sexual Orientation and Gender Identity" prior to the Tokyo Olympics. The purpose of this bill is to promote an understanding of diverse sexual orientations and gender identities within Japanese society. For instance, the bill sets out that the government should develop a basic strategy to promote an understanding of diverse sexual orientations and gender identities within the society. Also, under the bill, the State and local municipalities should make an effort in disseminating knowledge about the diversity of sexual orientation and gender identity. However, it failed to mention the protection of LGBT persons from discrimination.

In May 2021, Japanese LGBT activists opposed the bill, arguing that the bill would not offer any protection. The Special Committee, therefore, added the wording "discrimination based on sexual orientation or gender identity is unacceptable" in the "Purpose" and "Fundamental Principles" sections in the bill, although in the bill, there are no clear operational provisions to protect LGBT persons from discrimination.

However, some politicians expressed their concern that the suggested wording would increase lawsuits based on accusations of discrimination. Also, during the discussion of the bill, some argued that LGBT persons "go against the

preservation of the species”, or it was “absurd” that transgender women were “demanding” to use women’s bathrooms or were winning track-and-field medals.

On 28 May 2021, the LDP gave up on tabling the bill to the 204th Diet session (which ended on 16 June 2021) due to the opposition within the party.

We wish to recall your Excellency’s Government the principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Under Articles 1 and 2 of the Universal Declaration of Human Rights, “[a]ll human beings are born free and equal in dignity and rights”, and “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

This principle is reaffirmed by other human rights treaties, including Articles 2 (1) and 26 of the International Covenant on Civil and Political Rights (ICCPR) (ratified by Japan on 21 June 1979), Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) (ratified by Japan on 21 June 1979), Article 2 (f) of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (ratified by Japan on 25 June 1985), and Article 2 of the Convention on the Rights of the Child (CRC) (ratified by Japan on 22 April 1994). The jurisprudence, general comments and concluding observations of United Nations treaty bodies have consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law (see, for example, CCPR/C/50/D/499/1992, para. 8.7; E/C.12/GC/20, para. 32; CRC/C/GC/13, paras. 60, 72(g); CAT/C/GC/2, para. 21, and CAT/C/GC/3, paras. 32, 39; CEDAW/C/GC/28, para. 18).

In this regard, we would like to recall Concluding Observations of 5 March 2019 of the Committee on the Rights of the Child, in which it expressed concerns at the absence of comprehensive anti-discrimination law and the persistence of societal discrimination against children of various marginalized groups (CRC/C/JPN/CO/4-5, paras. 17 (a) and (c)), and urged Japan to (i) enact comprehensive anti-discrimination legislation, and (ii) strengthen the measures, including awareness-raising programmes, campaigns and human-rights education, to reduce and prevent discrimination in practice, particularly against LGBTI children, among others (Ibid., paras. 18 (a) and (c)).

We further wish to draw attention to the Concluding Observations of 10 March 2016 of the Committee on the Elimination of Discrimination against Women, in which it expressed its concerns at reports that lesbian, bisexual and transgender (LBT) women continue to experience multiple and intersecting forms of discrimination and have limited access to health, education and employment (CEDAW/C/JPN/CO/7-8, para. 46), and called upon Japan to vigorously pursue efforts aimed at eliminating multiple and intersecting forms of discrimination experienced by LBT women, which affect their access to health, education and employment and their participation in public life, as well as their experiences with health and education services and at the workplace.

Furthermore, we would like to refer to the Concluding Observations of 20 August 2014 of the Human Rights Committee, in which it expressed its concern

about reports of social harassment and stigmatization of LGBT persons, and recommended that Japan adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds, including sexual orientation and gender identity, and provides victims of discrimination with effective and appropriate remedies. The Committee also recommended that Japan intensify its awareness-raising activities to combat stereotypes and prejudice against LGBT persons, investigate allegations of harassment against LGBT persons and take appropriate measures to prevent such stereotypes, prejudice and harassment (CCPR/C/JPN/CO/6, para. 11).

The Human Rights Council, in its resolutions 17/19, 27/32, 32/2 and 41/18, expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. The government of Japan should reaffirm its commitments to protecting the rights of LGBTI persons from violence and discrimination, which was expressed when it voted for both Human Rights Council resolutions 17/19 and 27/32 on human rights, sexual orientation and gender identity.

The United Nations High Commissioner for Human Rights echoed this concern and emphasized that States have an obligation to ensure equal protection before the law, freedom from discrimination, to prohibit and prevent discrimination in private and public spheres and to diminish conditions and attitudes that cause or perpetuate such discrimination (A/HRC/29/23, para. 16). He further stated that to this end, States should enact comprehensive anti-discrimination legislation that includes sexual orientation and gender identity among protected grounds, that States should review and repeal discriminatory laws and address discrimination against LGBT and intersex (LGBTI) persons, including in the enjoyment of the rights to health, education, work, water, adequate housing and social security (Ibid., paras. 16 and 79 (c), A/HRC/19/41, para. 84 (e)).

In addition, 12 UN entities (ILO, OHCHR, UNAIDS Secretariat, UNDP, UNESCO, UNFPA, UNHCR, UNICEF, UNODC, UN Women, WFP and WHO) called for an end to violence and discrimination against LGBTI people. In their joint statement, they expressed their concerns that LGBTI people face widespread discrimination and exclusion in all contexts - including multiple forms of discrimination based on other factors such as sex, race, ethnicity, age, religion, poverty, migration, disability and health status. They also drew attention to the acts of widespread physical and psychological violence that they have documented against LGBTI persons in all region, noting that LGBTI youth, and lesbian and bisexual and transgender women are at a particular risk of physical, psychological and sexual violence in family and community settings. In light of this, they called on State to uphold international human rights standards on non-discrimination, including by prohibiting discrimination and violence against LGBTI adults, adolescents and children in all contexts – including in education, employment, healthcare, housing, social protection, criminal justice and in asylum and detention settings.¹

States' obligation to combat discrimination against LGBT persons is directly linked to their obligation to prevent and combat gender-based violence. In this context, we wish to recall the Declaration on the Elimination of Violence against Women, which was adopted by the United Nations General Assembly and states that women are entitled to the equal enjoyment and protection of all human rights and

¹ https://www.ohchr.org/Documents/Issues/Discrimination/Joint_LGBTI_Statement_ENG.PDF

fundamental freedoms in the political, economic, social, cultural, civil or any other field. These rights include, inter alia, (a) the right to life; (b) the right to equality; (c) the right to liberty and security of person; and (d) the right to equal protection under the law (Article 3). Additionally, we wish to recall that the Committee on the Elimination of Discrimination against Women in its General Recommendation No. 19 (1992), updated by General Recommendation No. 35 (2017) (CEDAW/C/GC/35) defines gender-based violence against women as impairing or nullifying the enjoyment by women of human rights and fundamental freedoms, and constitutes discrimination within the meaning of article 1 of CEDAW, whether perpetrated by a State official or a private citizen, in public or private life.

The Special Rapporteur on violence against women, its causes and consequences, has equally highlighted the targeting, violence against and killings of women based on their sexual orientation and gender identity, as well as the fact that discrimination against women based on different factors including sexual orientation and gender identity exacerbate violence against them (A/HRC/20/16).

In this context, we respectfully urge your Excellency's Government to take the necessary measure to ensure that the legislation is in place to protect LGBT persons from discrimination.

As 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 be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above.
2. Please provide your consideration of how the existing legal framework in its current state protects LGBT persons from discrimination and complies with Japan's obligations under the international human rights law and standards, including, among others, ICCPR, ICESCR, CEDAW, and CRC.
3. Please provide information on any measures that your Excellency's Government has taken or intends to take in order to implement the recommendations by UN human rights mechanisms referred to above and to bring all aspects of its current legislative framework, including any new law, into compliance with international human rights law.

This communication, as a comment on legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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.

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

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orientation and gender identity

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