

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

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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.

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).