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# “The Law Undermines Dignity”

Momentum to Revise Japan’s Legal Gender Recognition Process



# **“The Law Undermines Dignity”**

**Momentum to Revise Japan’s Legal Gender Recognition Process**

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## Momentum to Revise Japan’s Legal Gender Recognition Process

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## Summary

[The gender recognition law] is definitely a system that is wrecking [transgender] people’s dignity as a human being.

—Saburo N., a transgender man, Kanagawa Prefecture, September 2018

Despite increasingly vocal domestic and international criticism, the procedure in Japan for changing an individual’s legal gender remains anachronistic and harmful. It rests on an outdated and pejorative notion that a transgender identity is a “mental disorder” and requires transgender people who want legal recognition to undergo lengthy, expensive, invasive, and irreversible medical procedures.

The relevant law—known as the Gender Identity Disorder Special Cases Act—is contrary to international human rights law and international medical best practices, violating fundamental human rights. And while some trans people in Japan want 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. What is more, the continuance of these medical requirements underpins extensive prejudice against trans people.

“Transgender” is used as 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.

This is Human Rights Watch’s third report since 2016 to cover transgender issues in Japan. In our 2016 and 2019 reports, we documented the stories of transgender people 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. And the law has provided transgender people with the opportunity—albeit a restricted one—for

legal recognition. Over time, an increasing number of people in Japan have taken the legally prescribed steps and changed their legal gender. In 2019, a record high 948 people were approved for legal gender change, making it a total of 9,625 people who have received the approval during the 15 years since the law came into force.

But Japan's government needs to urgently 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 privacy 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, and rights related to employment, education, health, and the ability to move freely.

For this report, Human Rights Watch interviewed experts and activists who described the momentum behind reforming the GID Special Cases Act, and their frustrations with the government's perceived inaction. "I would like to see a legal system that is not an embarrassment under international human rights standards," one said.

Pervasive stereotypes and myths about transgender people continue to influence how various Japanese entities consider transgender people's fundamental rights. For example, Japan's government and Supreme Court have expressed concerns related to transgender 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. Governments around the world have removed sterilization requirements, or drafted laws without surgery requirements at all, in recent years. Some—such as Sweden and the Netherlands—have recognized compulsory sterilizations of transgender people that took place in the past as rights violations and have compensated survivors.

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 “transsexualism” and “gender identity disorder” as “mental disorders,” much like the American Psychiatric Association did with “Gender Identity Disorder” in 2012. This progress, and international human rights standards, gives Japan a mandate and 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. As Itsuki Dohi, a transgender woman and teacher in Kyoto said: “The five requirements of the GID Law all narrow down the life choices that transgender people have. This undermines our dignity.”

The Japanese government should urgently re-examine 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

## To Members of the Diet

- Introduce legislation to amend the Gender Identity Disorder (GID) Special Cases Act, removing the five criteria for changing legal gender, and replacing them with a self-declaration model that respects the rights of transgender individuals.

## To the Ministry of Justice

- Introduce legislation to amend the GID Special Cases Act, removing the five criteria for changing legal gender, and replacing them with a self-declaration model that respects the rights of transgender individuals.
- Publicly support revision of the GID Special Cases Act to bring it into accord 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, and the requirement that applicants have no underage children.
- Ensure that legal recognition of transgender people's gender identity applies to all aspects of their 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 transgender 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 United Nations 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**

- Issue a public statement as a matter of urgency 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.
- Launch, with the Ministry of Justice, 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 need regardless of whether they pursue medical steps or a legal gender change, and that such support and assistance is available to transgender individuals within a reasonable time.
- Ensure, in consultation with transgender people, that health insurance programs cover all medical interventions related to gender transition for transgender people.
- Ensure that training is available to health service professionals, including psychologists, psychiatrists, general practitioners, and social workers, with regard to the specific needs and rights of transgender persons and the requirement to respect their dignity.

## Methodology

This report updates the research Human Rights Watch has conducted on human rights violations against transgender people in Japan since 2015. Since Japan’s legal gender recognition law has not changed since then, some of the cases we documented in our 2016 report on school bullying and in our 2019 report on legal gender recognition are referenced here. Additional research carried out in 2020 and 2021 documents court cases and the perspectives of experts on law, politics, and gender in Japanese society.

This report draws heavily on and includes excerpts from the 2019 Human Rights Watch report *“A Really High Hurdle”: Japan’s Abusive Transgender Legal Recognition Process*. Whereas that report examined the experiences of transgender children and adults under the abusive and discriminatory legal gender recognition procedure, this report focuses on the momentum underway to change the law and foregrounds voices of activists, experts, and analysts who observe changes that have occurred and that appear to be on the horizon in Japan. In preparing this report, we interviewed additional experts and consulted further secondary sources, such as recently published peer-reviewed medical journal articles, and updated policy and court documents.

During our research, 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.

## I. Impact of Japan’s Gender Recognition Law

The surgery requirement itself feels wrong. Why do we have to put a scalpel through our healthy bodies just for [the] sake of the country’s order?

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

In 2003, when the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (“GID Special Cases Act”) was introduced in the Diet, and in 2004 when it became Japan’s first-ever legal gender recognition procedure, it mirrored other legal regimes around the world.<sup>1</sup>

It resulted in an immediate, if modest, update: according to government data, 97 people changed their gender in the family registry in the law’s first year.<sup>2</sup>

In the ensuing 17 years, legislatures, domestic courts around the world, as well as regional human rights courts and bodies have found that requirements, such as those for psychiatric evaluation and surgery found in Japan’s law, violate fundamental human rights.

For example, when originally written in 1980, section 8(1) of Germany’s Transsexuals Act required that a person be “permanently infertile” and have “undergone surgery which has changed his or her external sexual characteristics and which has resulted in clearly

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<sup>1</sup> Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (“GID Special Cases Act”), 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 April 8, 2021).

<sup>2</sup> Supreme Court of Japan, Fiscal Year 2019 Annual Judicial Statistics Report (最高裁判所 令和元年度 司法統計年報 家事編), 2020, <https://www.courts.go.jp/app/files/toukei/258/011258.pdf> (accessed April 8, 2021).

approaching the person's appearance to that of the other gender.”<sup>3</sup> In 2011, Germany's Constitutional Court struck down the surgery requirement, saying:

The permanent nature and irreversibility of transsexual persons' perceived gender cannot be assessed against the degree of the surgical adaptation of their external genitals but rather against the consistency with which they live in their perceived gender. The unconditional prerequisite of a surgical gender reassignment ... constituted an excessive requirement because it requires of transsexual persons to undergo surgery and to tolerate health detriments even if this is not indicated in the respective case.<sup>4</sup>

Other governments have, in recent years, not only repealed their surgery requirements for transgender people, but also acknowledged the suffering that took place under those legal requirements. In 2017, Sweden offered approximately US\$26,000 to transgender people who had been sterilized under its law that previously required it.<sup>5</sup> This move made Sweden not only the first government in the world (in the 1970s) to institute a legal gender recognition law, but also the first to recognize that those sterilized under the law were entitled to compensation. The government of the Netherlands began requiring sterilization for legal gender recognition in the 1980s, rescinded the requirement in 2014, and announced it would compensate affected individuals in 2020.<sup>6</sup>

Medical expert bodies have similarly urged governments to remove medical requirements from legal gender recognition procedures. In May 2019, the World Health Organization (WHO) published its new International Classification of Diseases (ICD-11), which removes “transsexualism” and “gender identity disorder” as “mental disorders” and introduces a

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<sup>3</sup> Government of Germany, Federal Law Gazette, Law on Changing First Names and Determining Gender in Special Cases (Transsexual Law), September 10, 1980, [https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBl&jumpTo=bgbl180s1654.pdf#\\_bgbl\\_\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl180s1654.pdf%27%5D\\_\\_1617118272178](https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl180s1654.pdf#_bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl180s1654.pdf%27%5D__1617118272178) (accessed April 8, 2021).

<sup>4</sup> Federal Constitutional Court of Germany, “Prerequisites for the Statutory Recognition of Transsexuals According to § 8.1 nos. 3 and 4 of the Transsexuals Act are Unconstitutional,” January 28, 2011, <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2011/bvg11-007.html> (accessed April 8, 2021).

<sup>5</sup> Johan Ahlander, “Sweden to Offer Compensation for Transgender Sterilizations,” Reuters, March 27, 2017, <https://www.reuters.com/article/us-sweden-transgender-sterilisation/sweden-to-offer-compensation-for-transgender-sterilizations-idUSKBN16Y1XA> (accessed April 8, 2021).

<sup>6</sup> Kyle Knight, “Netherlands Apologizes for Transgender Sterilizations,” Human Rights Watch dispatch, December 1, 2020, <https://www.hrw.org/news/2020/12/01/netherlands-apologizes-transgender-sterilizations>.

new chapter on sexual health.<sup>7</sup> Governments have until 2022 to change their diagnostic coding systems, a process Japan’s Ministry of Health has already begun.

Human Rights Watch met with officials at the Ministry of Health on March 19, 2019, to discuss amending the GID Act in accordance with ICD-11 standards. They indicated that the process of updating Japan’s diagnostic codes was underway. However, at time of writing, the Ministry of Health had not issued a public statement regarding its affirmation of the new diagnostic codes and the removal of “GID.” The Health Ministry is not able to change the GID Act, however, as that responsibility falls to the Ministry of Justice or to the Diet.

As Fumino Sugiyama, a transgender man and co-chair of Tokyo Rainbow Pride, wrote of the WHO policy change: “The WHO says I don’t have a mental disorder, but in Japan my government says I do.” He added:

Despite my appearance and my identity, I am still legally recognized as female in Japan. This means my documents get extra scrutiny whenever officials inspect them. I was once denied entry to a country because my female passport did not match my male appearance. But perhaps the most painful thing for me to grapple with is that I am not a legal guardian of my children. My girlfriend gave birth to [our first child in 2018 and to our second child in 2020], and we are raising the kids in our house. But it doesn’t matter how many times I change diapers or feed the baby, I have no legal rights—legally I’m just a “roommate” helping out.

[Japan’s] law is now fundamentally outdated and a barrier to us enjoying equal rights. The fact that the World Health Organization has now nullified the GID diagnosis means it’s time for Japan to reform.... For the very name of the law refers to a diagnosis that now officially no longer exists.<sup>8</sup>

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<sup>7</sup> “New Health Guidelines Propel Transgender Rights,” Human Rights Watch news release, May 27, 2019, <https://www.hrw.org/news/2019/05/27/new-health-guidelines-propel-transgender-rights>.

<sup>8</sup> Fumino Sugiyama, “The WHO Says I Don’t Have a Mental Disorder, but in Japan my Government Says I Do,” *Thomson Reuters Foundation*, May 28, 2019, <https://news.trust.org/item/20190528094737-3iouw> (accessed April 8, 2021).

Over time, an increasing number of trans people in Japan have taken the legally prescribed steps and changed their legal gender. In 2019, 948 people were approved for legal gender change.<sup>9</sup>

Japanese public opinion has outpaced Japan's legal situation as well. In November 2019, a Japanese television program outed and mocked a transgender woman.<sup>10</sup> The program, billed for families, features a host conducting impromptu interviews with unassuming "strange" people. In one episode, a host discussed a trans woman's gender identity without her permission, referring to her as "unusual." After a public outcry erupted on social media, the company apologized for the humiliating incident.<sup>11</sup>

In a 2016 report comparing public opinion of transgender people across 23 countries, scholars at the University of California, Los Angeles documented how public opinion in Japan puts it on the brink of joining countries where laws allow for much more rights-based legal gender recognition.<sup>12</sup> Of the approximately 1,000 respondents in Japan:

- Only 13 percent thought surgery should be required to change legal gender.
- 56 percent indicated general support for transgender people to be able to change their legal gender; 18 percent opposed.
- 50 percent supported trans people being allowed to give birth; 21 percent opposed.
- 54 percent indicated they disagree with the assertion that transgender people have some sort of "mental illness;" 21 percent agreed.

In 2017, the Board of Directors of the Japanese Society of Gender Identity Disorder, founded in 1999 and the first and largest Japanese organization for professionals working on "GID," adopted a statement in support of the position against mandatory medical interventions for legal recognition that the WHO and other United Nations (UN) agencies

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<sup>9</sup> The Supreme Court of Japan, Fiscal Year 2019 Annual Judicial Statistics Report (最高裁判所 令和元年度 司法統計年報 家事編), <https://www.courts.go.jp/app/files/toukei/258/011258.pdf>.

<sup>10</sup> Daniel Villarreal, "A TV Station Outed a Trans Woman & Humiliated Her on Air," *LGBTQ Nation*, November 15, 2019, <https://www.lgbtqnation.com/2019/11/tv-station-outed-trans-woman-humiliated-air> (accessed April 13, 2021).

<sup>11</sup> Kanae Doi and Kyle Knight, "Outcry as Japanese TV Show Mocks Transgender Woman," Human Rights Watch dispatch, November 21, 2019, <https://www.hrw.org/news/2019/11/21/outcry-japanese-tv-show-mocks-transgender-woman>.

<sup>12</sup> Andrew R. Flores, Taylor N.T. Brown, and Andrew S. Park, "Public Support for Transgender Rights: A Twenty-three Country Survey," The Williams Institute and Ipsos, December 2016, <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Public-Opinion-Trans-23-Countries-Dec-2016.pdf> (accessed April 8, 2021).

had articulated in 2014.<sup>13</sup> Writing in 2017, the GID Society board noted that 12 years had passed since the GID Special Cases Act had been passed. The board stated:

The Supreme Court announced that by the end of December 2015, 6,021 people had changed their gender in the family register. On the other hand, according to a survey by the Japan Psychiatry and Neurology Society “Committee on Gender Identity Disorder” targeting major medical institutions nationwide, by the end of December of the same year, 22,435 patients had a complaint of gender dysphoria.... The changed rate is only 20.8%. This figure is clearly low, given the fact that the majority of, if not all, of the examinees want to change their [gender in the] family register.

The GID Society statement noted that “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” because “in situations where surgical requirements are stipulated for legal gender changes, decision-making autonomy cannot be guaranteed on the ground at medical sites.”

In September 2020, the Science Council of Japan released a detailed recommendation titled “Protection of Sexual Minority Rights (II) — Development of Laws Seeking to Ensure Dignity of Transgender.” The council noted that in order to protect human rights of transgender people, it is necessary to guarantee a gender transition process based on a “human rights model” focusing on the individual’s own gender recognition, and recommended the abolishment of the Special Cases Act and establishment of a new law “Act to Change Legal Gender” (provisional name).<sup>14</sup>

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<sup>13</sup> 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.” 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.” OHCHR et al., *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization*, 2014, [https://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325\\_eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325_eng.pdf?sequence=1&isAllowed=y) (accessed April 8, 2021), p. 10.

<sup>14</sup> Science Council of Japan, *Protection of Sexual Minority Rights (II) — Development of Laws Seeking to Ensure Dignity of Transgender*, September 2020, <http://www.scj.go.jp/en/sdgs/index.html> (accessed April 8, 2021).

In addition to transgender people and rights organizations in Japan speaking out against the law's requirements, experts in law, medicine, and academia have also increasingly criticized the government for not changing the law. Those Human Rights Watch interviewed for this report expressed dismay and frustration that the government had failed—despite its diplomatic peers, international medical standards, and Japanese advocacy and science bodies evolving on the issue—to update the GID Act.

Junko Mitsuhashi, a transgender woman and scholar of gender and sexuality history and lecturer at Meiji University, said: “I would like to see a legal system that is not an embarrassment under international human rights standards.”<sup>15</sup>

Dr. Katsuki Harima, Director of Harima Mental Clinic said that, “The [GID] law is solely based on the medical model, or more specifically, on the past medical concept of transsexualism. It may hurt the dignity of transgender people as the law was not enacted from a perspective of respecting an individual's self-identification.”<sup>16</sup> He argued that eliminating the surgical requirement “would, in part, signify a transition from a medical model to a model that respects transgender people's human rights.”<sup>17</sup>

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

Due to the surgery requirement for a legal change of gender, there are transgender men that undergo a hysterectomy and hormone therapy even though they have no discomfort in retaining their uterus and ovaries in their daily lives. This means that they are forced to undergo surgery.<sup>18</sup>

Of the required psychiatric diagnosis, Dr. Koh said: “This imposes requirements that inflict physical and financial burdens. This does not respect the will of transgender individuals.”<sup>19</sup> According to Dr. Koh, change is on the horizon because “there is a growing understanding that transgender people are not ‘peculiar’ (特殊).”

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<sup>15</sup> Human Rights Watch interview with Junko Mitsuhashi, Tokyo, December 18, 2019. Junko Mitsuhashi (Oct 2019) “LGBT and Law – Issues around legal change of gender in Japan.” In Hiroyuki Taniguchi (Ed) *Law and Society surrounding LGBT*. Nihon Kajo Publishing, chapter 3.

<sup>16</sup> Human Rights Watch interview with Katsuki Harima, Tokyo, January 30, 2021.

<sup>17</sup> Ibid.

<sup>18</sup> Human Rights Watch interview with Jun Koh, Osaka, January 23, 2021.

<sup>19</sup> Ibid.

Itsuki Dohi, a high school teacher at Kyoto Prefectural High School, a transgender woman and activist, and the caretaker of the transgender student exchange, said: “The five requirements of the GID Law all narrow down the life choices that transgender people have.”<sup>20</sup> She explained that the existence of the sterilization surgery requirement significantly curtails what transgender people in Japan think is possible:

Transgender individuals who are seeking to change their gender legally have come to think that surgery is natural, and as a result, the option to not undergo surgery does not cross their mind. The decision to undergo surgery should be made by transgender people themselves and is a separate matter from legal gender change.<sup>21</sup>

Hiroyuki Taniguchi, professor of law at Aoyama Gakuin University, condemned Japan’s legal gender recognition law and called for its reform while putting it in Japan’s historical context. He said: “Severe human rights violations of forced infertility were recognized in the trials related to leprosy in Japan [in the 1950s and 1960s]. Not eliminating the surgical requirement [in the GID Act] would be a repetition of the same mistake.”<sup>22</sup>

Taniguchi argued that “To protect the dignity of transgender people, it is necessary to reconsider making changes to the legal system from the perspective of guaranteeing human rights, not for institutional consistency.” He added: “The GID law itself is designed to force transgender people into the existing legal system rather than ensuring their ability to live according to their preferred gender identity.” According to Taniguchi, “indifference and irresponsibility of lawmakers contributes to the lack of progress in revising the law.”<sup>23</sup>

Miho Mitsunari, a professor in the Faculty of Human Life and Environment and vice president of Nara Women’s University, said that “Being transgender is not a disability, but an individuality.”<sup>24</sup>

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<sup>20</sup> Human Rights Watch interview with Itsuki Dohi, Kyoto, January 22, 2021.

<sup>21</sup> Ibid.

<sup>22</sup> Human Rights Watch interview with Hiroyuki Taniguchi, Tokyo, January 21, 2021.

<sup>23</sup> Ibid.

<sup>24</sup> Human Rights Watch interview with Miho Mitsunari, Nara, January 31, 2021.

Mitsunari said that, regarding the GID Act, “it is necessary to amend the laws that serve no actual use.” The law underpins prejudice against trans people in Japan because “[t]he five requirements are based on the idea of changing transgender people’s sexes from ‘deviations’ to ‘normal.’ It promotes prejudice against transgender people who cannot, or do not want to, change their body.”<sup>25</sup> She added:

The continuation of the five requirements would very likely be used as justification for prejudice against transgender people. It would justify sentiments that “transgender people are a potential threat” or “transgender people have no right to become parents” and become an incentive for imposters. Even now, that kind of hate speech is overflowing social media.<sup>26</sup>

But while criticism of the current law mounts, the government continues to make only limited progress to updating diagnostic systems while the law remains intact.

Japan’s Supreme Court suggested the law would need to change in the future. In January 2019, it issued its judgment in the case of Takakito Usui, a 43-year-old transgender man who had challenged the GID Special Cases Act on the grounds that the surgery requirement violated Japan’s constitution.

The court upheld the GID Special Cases Act as constitutional, stating a “need to avoid abrupt changes in a society where the distinction of men and women have long been based on biological gender.” But both the judgment and a concurring opinion written by two justices suggested the need for urgent change. Even in upholding the law, the four-judge bench noted: “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

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<sup>25</sup> Human Rights Watch interview with Miho Mitsunari, Nara, January 31, 2021.

<sup>26</sup> Ibid.

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.”<sup>27</sup>

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<sup>27</sup> 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](http://www.courts.go.jp/app/files/hanrei_jp/274/088274_hanrei.pdf) (accessed April 8, 2021).

## II. Japan's Legal Gender Recognition Law

Legal gender recognition in Japan is regulated by the Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (the GID Special Cases Act). The law came into effect on July 16, 2004.<sup>28</sup>

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.<sup>29</sup>

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.”<sup>30</sup>

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;
- Not presently have any underage children (under 20);
- 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.”<sup>31</sup>

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<sup>28</sup> Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (“GID Special Cases Act”), 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>.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

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.<sup>32</sup> 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 Psychiatric 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 consistently used in the DSM. The chief candidates were *byō*, *shō*, and *shōgai*.”<sup>33</sup> *Shōgai* 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 *shōgai*. 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- shōgai*.<sup>34</sup>

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 contrary to international human rights law and medical best practices.

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<sup>32</sup> 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](https://www.japantimes.co.jp/community/2007/01/23/issues/gender-identity-transformed-from-freak-into-rights-issue/#.W_LFDpNKiUk) (accessed April 8, 2021).

<sup>33</sup> 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/o5\\_doc1\\_20120119.pdf](http://www.p.u-tokyo.ac.jp/cbfe/activity/doc/o5_doc1_20120119.pdf) (accessed April 8, 2021).

<sup>34</sup> *Ibid.*

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 underage 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.”<sup>35</sup>

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 incongruence no longer is a disorder, I think there are some who are afraid of losing the way to justify who they are.<sup>36</sup>

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

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<sup>35</sup> 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* 14, no. 2 (2013), [http://blog.hawaii.edu/aplpj/files/2013/02/APLPJ\\_14.2\\_Taniguchi.pdf](http://blog.hawaii.edu/aplpj/files/2013/02/APLPJ_14.2_Taniguchi.pdf) (accessed January 23, 2019).

<sup>36</sup> Human Rights Watch interview with Marina K. D., Wakayama Prefecture, November 15, 2018.

consequences for the enjoyment of their human rights, including obstacles to accessing education, employment, health care and other essential services.”<sup>37</sup> The special rapporteur also 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.”<sup>38</sup>

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 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 “mental 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 has “the intention to physically and socially conform to an alternative gender,” which sets up children 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.<sup>39</sup>

These requirements cannot be squared with the principle under the UN Convention on the Rights of the Child that the best interests of children be a primary consideration in all

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<sup>37</sup> UN Human Rights Council, Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, A/HRC/31/57, January 5, 2016, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/000/97/PDF/G1600097.pdf?OpenElement> (accessed April 8, 2021).

<sup>38</sup> Ibid.

<sup>39</sup> Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder (“GID Special Cases Act”), 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>.

administrative and legal decisions that impact them.<sup>40</sup> 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 statements issued by the Ministry of Education,<sup>41</sup> and the guidance issued to psychiatrists on GID patients.<sup>42</sup>

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.”<sup>43</sup>

## 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

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<sup>40</sup> Under the Convention on the Rights of the Child, 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 (CRC), 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, arts. 3 and 12. Japan ratified the CRC in 1994.

<sup>41</sup> Government of Japan, Ministry of Education, Culture, Sports, Science, and Technology (MEXT), “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](http://www.mext.go.jp/b_menu/houdou/27/04/1357468.htm) (accessed April 8, 2021).

<sup>42</sup> Japan Society for Psychiatry and Neurology, *Diagnosis and Treatment Guidelines for Gender Identity Disorder* (Fourth Edition), 2012, [https://www.jspn.or.jp/uploads/uploads/files/activity/journal\\_114\\_11\\_gid\\_guideline\\_no4.pdf](https://www.jspn.or.jp/uploads/uploads/files/activity/journal_114_11_gid_guideline_no4.pdf) (accessed April 8, 2021).

<sup>43</sup> Human Rights Watch interview with Saburo N., Kanagawa Prefecture, September 2, 2018.

Japan consider their gender identity to be a mental health condition and seek services accordingly.<sup>44</sup> 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 whom Human Rights Watch interviewed reported a variety of experiences in obtaining the GID diagnosis. For example, one was able to obtain the diagnosis certificate on their first visit to a psychiatrist, while in other instances clinic staff and psychiatrists forced applicants to undergo a lengthy and humiliating procedure.<sup>45</sup>

The fourth 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.”<sup>46</sup>

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<sup>44</sup> J. Lester Feder and Nikki Tsukamoto Kininmonth, “Why Transgender People in Japan Prefer To Be Told They Have a Disorder,” *Buzzfeed News*, August 7, 2016, <https://www.buzzfeednews.com/article/lesterfeder/transgender-in-japan> (accessed April 8, 2021).

<sup>45</sup> 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.

<sup>46</sup> Japan Society for Psychiatry and Neurology, *Diagnosis and Treatment Guidelines for Gender Identity Disorder (Fourth Revised Edition)*, 2018, [https://www.jspn.or.jp/uploads/uploads/files/activity/gid\\_guideline\\_no4\\_2018o120.pdf](https://www.jspn.or.jp/uploads/uploads/files/activity/gid_guideline_no4_2018o120.pdf) (accessed April 8, 2021).

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.”<sup>47</sup> Our research found that for some applicants, the process can take an excessive amount of time, sometimes several months.

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:

“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. “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.<sup>48</sup>

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.

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<sup>47</sup> Ibid.

<sup>48</sup> Human Rights Watch interview with Kiyoshi M., Tokyo, August 18, 2015.

“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.”<sup>49</sup>

Hanae T., a 29-year-old transgender woman living in the Ishikawa Prefecture, said 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.<sup>50</sup>

## Coerced Sterilization and Compulsory Surgery

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 able to enjoy 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 many struggles and challenges just by living?”<sup>51</sup> 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] deductions.”<sup>52</sup> He said that while he wanted to change his gender in the family register, he

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<sup>49</sup> Human Rights Watch interview with Yasuhiro D., Osaka, August 8, 2015.

<sup>50</sup> Human Rights Watch interview with Hanae T., Kanazawa, September 27, 2015.

<sup>51</sup> Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

<sup>52</sup> 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). Deloitte Tohmatsu Tax Co., “Recent Income Tax Updates Including 2017 Tax

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.”<sup>53</sup>

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.”<sup>54</sup>

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 not have 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.”<sup>55</sup> He said:

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 matter due to the fact that I was working, I wanted to change it as soon as possible.<sup>56</sup>

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Reform Changes,” 2017, <https://ufe-japon.org/wp-content/uploads/pdf/Japan-Tax-Update-Deloitte-23-11-2017.pdf> (accessed April 8, 2021).

<sup>53</sup> Human Rights Watch interview with Takayuki G., Tokyo, September 15, 2018.

<sup>54</sup> Human Rights Watch interview with Ikumi C., Tsukuba, September 13, 2018.

<sup>55</sup> Human Rights Watch interview with Saburo N., Kanagawa Prefecture, September 2, 2018.

<sup>56</sup> Ibid.

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.<sup>57</sup>

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.

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.

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."<sup>58</sup>

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<sup>57</sup> Human Rights Watch interview with Futoshi Y., Fukuoka, September 4, 2018.

<sup>58</sup> Human Rights Watch interview with Yasuhiro D., Osaka, August 8, 2015.

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.<sup>59</sup>

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 surgeries legally required 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 despairing.”<sup>60</sup>

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 family register.<sup>61</sup> 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

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<sup>59</sup> Human Rights Watch interview with Saburo N., Kanagawa Prefecture, September 2, 2018.

<sup>60</sup> Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

<sup>61</sup> 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 April 8, 2021).

high conditions. I do want to change my legal gender, but surgery has such a high risk, so I don't know yet.<sup>62</sup>

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."<sup>63</sup>

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."<sup>64</sup>

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."<sup>65</sup>

## Age Restrictions

The GID Special Cases Act bars all transgender people who are younger than 20, Japan's age of majority (which will be reduced to 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 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.

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<sup>62</sup> Human Rights Watch interview with Tamaki I., Osaka, August 8, 2015.

<sup>63</sup> Human Rights Watch interview with Noriko R., Osaka, August 8, 2015.

<sup>64</sup> Human Rights Watch interview with Kiyoshi M., Tokyo, August 18, 2015.

<sup>65</sup> Human Rights Watch interview with Aki T., Tokyo, August 16, 2018.

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.”<sup>66</sup>

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. As documented in our 2016 report, governments such as Malta have instituted rights-based legal gender recognition policies that include children, and the government has provided robust guidance for schools. Furthermore, the current 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.

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<sup>66</sup> 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 April 8, 2021).

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.<sup>67</sup> 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.<sup>68</sup>

Additionally, the GID Special Cases Act's 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."<sup>69</sup> The Education Ministry directive sends a serious message from the ministry about schools' responsibility to care for transgender children. However, the directive focuses on diagnoses and medical 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

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<sup>67</sup> Peter Cave, *Primary School in Japan: Self, Individuality and Learning in Elementary Education*, (Abingdon: Routledge, 2007).

<sup>68</sup> Human Rights Watch interview with Itsuki Dohi, Osaka, August 8, 2015.

<sup>69</sup> Government of Japan, Ministry of Education, Science, Sports, Science, and Technology, "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](http://www.mext.go.jp/b_menu/houdou/27/04/1357468.htm).

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 privacy 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.<sup>70</sup>

## Enforced Social Conformity

Itsuki Dohi, the teacher and community leader, told Human Rights Watch, “I believe that one of the causes of social change is due to transgender people speaking up and other people who amplified their voices.”<sup>71</sup> She cited international trends toward identity-based legal recognition as influential in Japanese policy discussions, but said:

I think the reason why legal change is not happening is related to Japan’s low Gender Gap index, as well as to the fact that Japan still does not allow couples to have separate surnames. Japanese society has very strong gender binary system, heterosexual standard, as well as patriarchal authority. Ruling lawmakers and their supporters tend to have that tendency.<sup>72</sup>

Education institutions have garnered particular attention.

Over the past few years, both national women’s universities and two private women’s universities in Japan (Ochanomizu University, Nara Women’s University, Miyagi Gakuin Women’s University, and Japan Women’s University) have announced that they will begin to allow transgender students to matriculate at their institutions. In June 2020, Satoko Shinohara, president of Japan Women’s University—the oldest and largest women’s university in Japan—said that “We’ll contribute to the realization of a society that embraces differences, where no one is treated unfairly” as her university became the most recent addition to the progress on including trans women students.<sup>73</sup>

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<sup>70</sup> “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 and Katsuhiko Suganuma, “Sexual Minorities and Human Rights in Japan: An Historical Perspective,” *The International Journal of Human Rights* 13, no. 2-3 (2009): 329-343, DOI: 10.1080/13642980902758176.

<sup>71</sup> Human Rights Watch interview with Itsuki Dohi, Osaka, August 8, 2015.

<sup>72</sup> Ibid.

<sup>73</sup> Nippon, “Japan Women's University to Accept Transgender Students,” June 19, 2020, <https://www.nippon.com/en/news/yjj2020061900743/japan-women%27s-university-to-accept-transgender-students.html> (accessed April 8, 2021).

By passing policy that respects the right to education of transgender women, these universities are acknowledging that transgender women have equal rights and should have the same opportunities to pursue higher education as everyone else.

In 2016, Human Rights Watch published a report that documented bullying and exclusion of lesbian, gay, bisexual, and transgender students in Japanese schools.<sup>74</sup> 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, remains rigid when it comes to gender norms.<sup>75</sup> 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."<sup>76</sup> Peter Cave, an anthropologist who studies Japanese education, has documented how even in primary schools, gender differences in the treatment and social conditioning of students are apparent.<sup>77</sup>

As documented in our 2016 and 2019 reports, schools also uphold strict uniform and appearance policies. Some schools have, in recent years, begun relaxing these policies.

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<sup>74</sup> 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>.

<sup>75</sup> Kanae Doi and Kyle Knight, "Japan's School Uniform Shift Will Help LGBT Students," Human Rights Watch dispatch, June 20, 2018, <https://www.hrw.org/news/2018/06/20/japans-school-uniform-shift-will-help-lgbt-students>.

<sup>76</sup> Human Rights Watch interview with Rei N., Okayama, August 13, 2015.

<sup>77</sup> Cave, *Primary School in Japan: Self, Individuality and Learning in Elementary Education*.

In 2021, a court in Osaka ruled that a brown-haired teen should receive compensation after her high school, where black hair is ubiquitous, penalized her for allegedly violating the school's policy forbidding dyed hair. Though the girl maintained her hair was naturally brown, school authorities inspected her hair's roots, declared it dyed, and demanded she dye it black. Initially, she complied. But when she stopped dyeing and returned to her natural color, the school literally removed her desk from the classroom and erased her name from the school roster. She sued and won compensation, but the court left the school's hair policy intact.<sup>78</sup> While this case is not transgender-specific, it mirrors the experience many transgender students face and exposes the price paid for imposing conformity.

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<sup>78</sup> Graeme Reid, "Japan Hair Controversy Highlights Harmful School Policies," Human Rights Watch dispatch, February 22, 2021, <https://www.hrw.org/news/2021/02/22/japan-hair-controversy-highlights-harmful-school-policies>.

### III. Japan’s Evolving Legal Treatment of Transgender People

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 court in Okayama ruled on the case of Takakito Usui, a 43-year-old transgender man who had brought a case 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.<sup>79</sup>

The court further ruled that “it is not appropriate for an individual to maintain the reproductive capabilities of their previous gender.”<sup>80</sup> The court’s decision in this case runs counter to international human rights law, and serves to uphold a harmful, discriminatory, and outdated paradigm.

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.

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<sup>79</sup> Hiroshima High Court, Okayama Branch, February 8, 2018, 2018WLPCA02096001.

<sup>80</sup> Ibid.

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.

<p><b>June 2002</b></p>	<p><b>Tokyo District Court Workplace Discrimination Case</b></p>	<p>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.”</p> <p>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 would be possible to ease the confusion.<sup>81</sup></p>
<p><b>April 2014</b></p>	<p><b>Osaka Family Court Adoption Case</b></p>	<p>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.<sup>82</sup></p>
<p><b>September 2014</b></p>	<p><b>Shizuoka District Court Golf Course Discrimination Case</b></p>	<p>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.</p>

<sup>81</sup> 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> (accessed April 8, 2021).

<sup>82</sup> “Gender Identity Disorder After Adopting Sex Change ‘Special Consideration’ for Mothers,” *Jinken*, April 4, 2014, [http://www.jinken.ne.jp/flat\\_topics/2014/04/post\\_1623.html](http://www.jinken.ne.jp/flat_topics/2014/04/post_1623.html) (accessed April 8, 2021).

		<p>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.”<sup>83</sup> 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.”<sup>84</sup></p> <p>The court ordered the golf course to pay ¥1.1 million (US\$9,800) in damages.</p>
<p><b>November 2015</b></p>	<p><b>Tokyo District Court on Workplace Bathroom Access and Harassment</b></p>	<p>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.<sup>85</sup> In 2019, the court ruled in favor of the woman, ordering the ministry to pay her ¥1.32 million (US\$12,000), in what is believed to be the first positive ruling on sexual orientation or gender identity workplace discrimination in Japanese history. “The restriction is illegal because it constrains people’s benefits of living their lives in accordance with their self-identified genders,” Kenji Ebara, a judge in the case, said.<sup>86</sup></p>

<sup>83</sup> “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-snob/#.XANhAJNKPa> (accessed April 8, 2021).

<sup>84</sup> *Ibid.*

<sup>85</sup> Tomohiro Osaki, “Transgender Bureaucrat Sues METI Over Sex Discrimination,” *Japan Times*, November 13, 2015, <https://www.japantimes.co.jp/news/2015/11/13/national/crime-legal/transgender-bureaucrat-sues-meti-over-sex-discrimination> (accessed April 8, 2021).

<sup>86</sup> “Tokyo Court Rules Limit on Washroom Use for Transgender METI Official was Illegal,” *Japan Times*, December 13, 2019, <https://www.japantimes.co.jp/news/2019/12/13/national/social-issues/court-rules-limit-toilet-use-transgender-government-official-illegal> (accessed April 8, 2021).

<p><b>June 2016</b></p>	<p><b>Nagoya District Court on Forced Workplace Outing of Transgender Employee</b></p>	<p>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.<sup>87</sup></p>
<p><b>June 2017</b></p>	<p><b>Kyoto District Court settlement in Case of Denial of Access to a Fitness Club</b></p>	<p>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 settlement was reached in the case, although details have not been released to the public.<sup>88</sup></p>

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<sup>87</sup> “Transgender Worker Sues Yakult Group After Being Forced to Come Out,” *Japan Times*, June 29, 2016, <https://www.japantimes.co.jp/news/2016/06/29/business/transgender-worker-sues-yakult-group-firm-forced-revelation/#.W3rPOdgzZAY> (accessed April 8, 2021).

<sup>88</sup> “Transgender Woman Sues Gym over Changing-room Use,” *Japan Times*, December 25, 2015, <https://www.japantimes.co.jp/news/2015/12/25/national/crime-legal/transgender-woman-sues-gym-over-changing-room-use/#.W3rVT9gzZAY> (accessed April 8, 2021).

## IV. Gender Identity, Legal Recognition, and International Human Rights Standards

International human rights standards 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."<sup>89</sup> 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.<sup>90</sup>

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.<sup>91</sup>

The International Covenant on Civil and Political Rights (ICCPR), to which Japan is a party, provides for equal civil and political rights for all (article 3), the right to recognition for

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<sup>89</sup> 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](https://www.upr-info.org/sites/default/files/document/japan/session_28_-_november_2017/a_hrc_wg.6_28_l.12.pdf) (accessed April 8, 2021).

<sup>90</sup> 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](https://www.upr-info.org/sites/default/files/document/japan/session_28_-_november_2017/responses_to_recommendations_upr28_japan.pdf) (accessed April 8, 2021).

<sup>91</sup> UN General Assembly, 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](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/152) (accessed April 8, 2021).

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)).<sup>92</sup>

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 governments 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.<sup>93</sup>

A 2012 Office of the UN 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.”<sup>94</sup>

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.”<sup>95</sup> 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

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<sup>92</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976. Japan ratified the ICCPR in 1979.

<sup>93</sup> UN Human Rights Committee, Concluding Observations on the Fourth Periodic Report of Ireland, August 19, 2014, CCPR/C/IRL/CO/4, <https://undocs.org/CCPR/C/IRL/CO/4> (accessed April 9, 2021); UN Human Rights Committee, Concluding Observations on the Seventh Periodic Report of Ukraine, August 22, 2013, CCPR/C/UKR/CO/7, <https://undocs.org/CCPR/C/UKR/CO/7> (accessed April 9, 2021).

<sup>94</sup> 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, A/HRC/19/41, November 17, 2011, [https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41\\_english.pdf](https://www.ohchr.org/documents/issues/discrimination/a.hrc.19.41_english.pdf) (accessed April 9, 2021), para. 72.

<sup>95</sup> UN Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E. Méndez, A/HRC/22/53, February 1, 2013, [https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session22/a.hrc.22.53\\_english.pdf](https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session22/a.hrc.22.53_english.pdf) (accessed April 9, 2021), para. 78.

forced or coerced sterilization in all circumstances and provide special protection to individuals belonging to marginalized groups.”<sup>96</sup>

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.”<sup>97</sup> 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.”<sup>98</sup>

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.”<sup>99</sup>

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.”<sup>100</sup>

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:

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<sup>96</sup> Ibid., para. 88.

<sup>97</sup> OHCHR et al., *Eliminating Forced, Coercive and Otherwise Involuntary Sterilization*, [https://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325\\_eng.pdf?sequence=1&isAllowed=y](https://apps.who.int/iris/bitstream/handle/10665/112848/9789241507325_eng.pdf?sequence=1&isAllowed=y), p. 10.

<sup>98</sup> Ibid., p. 13.

<sup>99</sup> 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, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/088/42/PDF/G1508842.pdf?OpenElement> (accessed April 9, 2021), para. 79(i).

<sup>100</sup> 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), [http://www.healthpolicyproject.com/pubs/484\\_APTBFINAL.pdf](http://www.healthpolicyproject.com/pubs/484_APTBFINAL.pdf) (accessed April 9, 2021), p. 112.

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 person's gender identity. No one shall be subjected to pressure to conceal, suppress, or deny their sexual orientation or gender identity.<sup>101</sup>

International health expert bodies have in recent years strengthened their positions against medical models for legal gender recognition. The World Professional Association for Transgender Health (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.<sup>102</sup> 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 governments and other authoritative bodies to move to eliminate requirements for identity recognition that require surgical procedures.<sup>103</sup>

In 2015, 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 "[m]arital status and parental status should

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<sup>101</sup> 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](http://www.yogyakartaprinciples.org/principles_en_principles.htm) (accessed April 9, 2021), principle 3.

<sup>102</sup> WPATH statement (June 16, 2010), [https://amo\\_hub\\_content.s3.amazonaws.com/Association140/files/Identity%20Recognition%20Statement%206-6-10%200n%20letterhead.pdf](https://amo_hub_content.s3.amazonaws.com/Association140/files/Identity%20Recognition%20Statement%206-6-10%200n%20letterhead.pdf) (accessed April 9, 2021).

<sup>103</sup> Ibid.

not affect legal recognition of gender change, and appropriate legal gender recognition should be available to transgender youth.”<sup>104</sup>

And in 2017, WPATH updated its 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.<sup>105</sup>

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<sup>104</sup> 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](https://amo_hub_content.s3.amazonaws.com/Association140/files/WPATH%20Statement%20on%20Legal%20Recognition%20of%20Gender%20Identity%201-19-15.pdf) (accessed April 9, 2021).

<sup>105</sup> WPATH, “WPATH Identity Recognition Statement,” <https://www.wpath.org/media/cms/Documents/Web%20Transfer/Policies/WPATH%20Identity%20Recognition%20Statement%2011.15.17.pdf>.

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# Appendix: WPATH Letter to Government of Japan



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May 28, 2019

Your Excellencies:

The World Professional Association for Transgender Health (WPATH) is the only international, interdisciplinary professional association dedicated to the scientific study of gender dysphoria and the evidence-based best practices in transgender health. We are a non-profit association with over 2200 members in the fields of medicine, mental health, law and ethics, and scientific research. Formed in 1979 for the purpose of bringing scientists and medical providers together to exchange knowledge about the field, we are the creators of the internationally accepted Standards of Care for the Health of Transsexual, Transgender, and Gender-nonconforming People, now in its 7th edition (SOC v7), and available in a Japanese translation<sup>1</sup> on our website: www.wpath.org. We have also advised governments around the world with respect to transgender health and human and civil rights. Our mission is to encourage education and research to ensure that the highest possible standards of health, social services, and justice are available to transgender people around the world.

We, WPATH's leadership, write to encourage Japan to urgently amend the "Gender Identity Disorder Special Cases Act"<sup>2</sup> as it contains some harmful and unscientific elements, and is not in line with international consensus on protecting and promoting the health of transgender people.

In writing this letter, we use the term *transgender* as an adjective to describe all those who identify in a gender other than the one that matches the sex they were assigned at birth. The term, used in this simple way, includes persons who seek gender affirming medical services,

<sup>1</sup> [https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20v7\\_Japanese.pdf](https://www.wpath.org/media/cms/Documents/SOC%20v7/SOC%20v7_Japanese.pdf)

<sup>2</sup> 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>



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as well as those who do not. It includes persons who identify using labels other than transgender, and who are described by others by way of other terms (for example, by way of the term transsexual or gender-diverse). It includes persons who identify as male or female, as well as those who identify as both or neither, and who therefore find male and female gender markers inadequate in describing who they are.

As you are aware, Japan's law regulating legal recognition for transgender people 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.*

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;
- 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."

All of the above provisions require revision—most urgently, WPATH encourages the government of Japan to eliminate the sterilization requirement and update the diagnosis requirement in line with APA and WHO standards. 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 and is no longer in use in the medical or mental health care fields in either clinical or research settings. The requirement of single marital status and not having minor children amounts to discrimination; and the requirement of surgeries that sterilize amounts to coerced sterilization—a widely-recognized human rights violation, including in Japan.

As the world's peak professional organization concerned with transgender health, WPATH is aware of the importance that gender recognition can play in facilitating the health and wellbeing of transgender people. We share here the official WPATH Identity Recognition Statement.



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#### WPATH Identity Recognition Statement:

*The World Professional Association for Transgender Health (WPATH) recognizes that, for optimal physical and mental health, persons must be able to freely express their gender identity, whether or not that identity conforms to the expectations of others. WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status. Such documents are essential to the ability of all people to enjoy rights and opportunities equal to those available to others; to access accommodation, education, employment, and health care; to travel; to navigate everyday transactions; and to enjoy safety. 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. These include requirements for diagnosis, counseling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors. WPATH argues that marital and parental status should not be barriers to recognition of gender change, and opposes requirements for persons to undergo periods living in their affirmed gender, or for enforced waiting or 'cooling off' periods after applying for a change in documents. Further, court and judicial hearings can produce psychological, as well as financial and logistical barriers to legal gender change, and may also violate personal privacy rights or needs.*

*WPATH advocates that appropriate gender recognition should be available to transgender youth, including those who are under the age of majority, as well as to individuals who are incarcerated or institutionalized. WPATH recognizes that there is a spectrum of gender identities, and that choices of identity limited to Male or Female may be inadequate to reflect all gender identities. An option of X, NB (non-binary), or Other (as examples) should be available for individuals who so choose. WPATH urges governments to eliminate barriers to gender recognition, and to institute transparent, affordable and otherwise accessible administrative procedures affirming self-determination, when*



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*gender markers on identity documents are considered necessary. These procedures should be based in law and protect privacy.*

We are aware that in January 2019, the Supreme Court of Japan issued its judgment in 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. While the court upheld the GID Special Cases act as constitutional at this time, the justices also stated 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 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."<sup>3</sup>

WPATH recognizes that, for optimal physical and mental health, persons must be able to freely express their gender identity, whether or not that identity conforms to the expectations of others.

WPATH further recognizes the right of all people to identity documents consistent with their gender identity, including those documents which confer legal gender status. Such documents are essential to the ability of all people to enjoy rights and opportunities equal to those available to others; to access accommodation, education, employment, and health care; to travel; to navigate everyday transactions; and to enjoy safety. Transgender people, regardless of how they identify or appear, should enjoy the gender recognition all persons expect and deserve.

Some transgender people want to undergo hormonal treatment, surgical procedures, or other medical interventions as part of their transition. Others do not. Access to gender-affirming healthcare is important;

<sup>3</sup> 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](http://www.courts.go.jp/app/files/hanrei_jp/274/088274_hanrei.pdf); See Appendix 4



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however mandatory use of medical services as part of the legal recognition process is not recommended on the basis of science or human rights. The decision to undergo invasive medical or surgical procedures of any kind should remain with the individual in consultation with their physician(s).

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. These include requirements for diagnosis, counseling or therapy, puberty blockers, hormones, any form of surgery (including that which involves sterilization), or any other requirements for any form of clinical treatment or letters from doctors. People experience their lives under many different circumstances and may lack the means or the opportunity to overcome these barriers, yet their gender identity is an innate characteristic that they deserve to have recognized.

Although WPATH acknowledges that age restrictions are subject to local jurisdiction, we wish to point out that many countries do allow individuals younger than age 20 to transition and to receive identity documents that support their gender identity. Also, most countries that do acknowledge transgender individuals also do not restrict marriage or enforce divorce, nor do they demand that any children of a transgender person must reach the age of majority before a transgender parent may be legally recognized. Clinical and practical experience has shown that requirements such as these imposed by Japan's current law do not serve to protect parties who may be in relationship with a transgender person, but instead interfere with the rights of all parties to enjoy the support of their family members. Further, the physical form of an individual's genitalia in no way describes or defines the individual's gender. Variation in human bodies, whether congenital, accidental, or deliberately achieved should not limit any individual's integrity with respect to their gender identity or their humanity.

Japan has taken some important steps in recent years to respect the rights and protect the health of sexual and gender minorities, including by the Tokyo Metropolitan Government passing a non-discrimination law



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with protections for gender identity.<sup>4</sup> The 2020 Olympic Games in Tokyo will be an important moment for the government of Japan to demonstrate to the world that it respects the rights of all people, and WPATH encourages urgent reform of the GID Special Cases act in order to do so. These are complex components of human experience, and we urge Your Excellencies to consider them with due diligence. Please contact us if we may be of assistance in the process of reforming this law.

Sincerely and respectfully,

Vin Tangpricha, MD  
President  
on behalf of the WPATH Board of Directors

<sup>4</sup> Human Rights Watch, "Tokyo: New Law Bars LGBT Discrimination," October 5, 2018, <https://www.hrw.org/news/2018/10/05/tokyo-new-law-bars-lgbt-discrimination>.

# “The Law Undermines Dignity”

## Momentum to Revise Japan’s Legal Gender Recognition Process

Japan’s procedure for changing a person’s legally recognized gender requires sterilization surgery and an outdated psychiatric diagnosis. It is anachronistic, harmful, and discriminatory. A growing number of transgender people in Japan as well as domestic medical, legal and academic experts, and international health and human rights bodies, have said that Japan’s law should be revised.

“*The Law Undermines Dignity*” documents the persistent barriers transgender people face in Japan under the 2004 Gender Identity Disorder (GID) Special Cases Act, and the increasing public momentum to revise the law.

The act’s discriminatory and abusive provisions are not unique for the era when it was drafted. But in recent years, legislatures, domestic courts, and regional human rights courts and bodies around the world have found that such requirements violate international human rights law and undermine the dignity of transgender people. Japan’s government should join the global and domestic momentum to remove outdated and harmful requirements and instead start recognizing legal gender based on self-identification.



*Itsuki Dohi, a transgender woman and teacher in Japan, at her school in Kyoto Prefecture.*

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