



**Human Rights Watch Submission to  
the United Nations Committee on  
the Rights of the Child concerning  
Japan**

***Pre-Sessional Working Group for the 79<sup>th</sup> Session***

*February 2018*

Human Rights Watch writes in advance of the 79<sup>th</sup> pre-sessional working group of the Committee on the Rights of the Child and its review of Japan’s compliance with the Convention on the Rights of the Child (CRC). This submission focuses on children in alternative care; lesbian, gay, bisexual, and transgender (LGBT) rights and sex education in schools; and the protection of students, teachers, and schools during armed conflict, and relates to Articles 2, 19, 20, 24, 28, 29, and 38 of the CRC. It proposes issues and questions that Committee members may wish to raise with the government.

**Children in Alternative Care in Japan (Article 20)**

Human Rights Watch is deeply concerned about the over-institutionalization of children in Japan’s “alternative care” system. Around 39,000 children in Japan are currently separated from their parents because authorities have determined that their parents are either unable or unwilling to care for them properly. Japan’s child guidance centers, the local administrative authority that determines the placement of children needing care, remain mostly predisposed to institutionalizing children rather than placing them in adoption or foster care.

Approximately 85 percent of children in alternative care settings are in child-care institutions, infant care institutions, and similar institutional arrangements. Fewer than 15 percent of children in alternative care are cared for by foster parents or adoptive parents. Japan’s foster care system also faces severe problems; the government does not provide foster parents with adequate training, programmatic support, or monitoring. For further details on alternative care in Japan, please see Human Rights Watch’s 2014 report titled *Without Dreams: Children in Alternative Care in Japan*.<sup>1</sup>

*Amendment of the Child Welfare Act*

In May 2016, the Japanese Diet, under the leadership of the then-minister of health, labour and welfare, Yasuhisa Shiozaki, passed a groundbreaking amendment to the Child Welfare Act, a significant step in improving Japan’s alternative care system. The amendment for the first time

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<sup>1</sup> Human Rights Watch, *Without Dreams: Children in Alternative Care in Japan*, May 1, 2014, <https://www.hrw.org/report/2014/05/01/without-dreams/children-alternative-care-japan>.

explicitly refers to children as “rights holders.” The Child Welfare Act now lays out a new principle for family-based care, guaranteeing life in a family-setting, including adoption and foster care, for all children. Institutionalization is limited only to cases when family-based care is “not appropriate,” and even in such cases, the law now obligates the placement of children into institutions that can provide “the best possible family-like settings.”<sup>2</sup>

In June 2017, Japan’s parliament amended the Child Welfare Act again to strengthen the ability of the judicial authorities to intervene more effectively in child abuse cases. The amendment made family court approval necessary for extensions past the initial two-month temporary protection period.<sup>3</sup> However, further reforms are still needed, including judicial review at the time when a child is separated from his or her parents, instead of leaving this decision to local administrators.

*“New Vision for Alternative Care” in August 2017*

In August 2017, the Ministry of Health, Labour and Welfare, under the leadership of the then-Welfare Minister Shiozaki, endorsed a “New Vision for Alternative Care,” which stated that children younger than pre-school age should not be institutionalized, in line with the “family based care” principle in the amendment of the Child Welfare Act in May 2016.<sup>4</sup>

Some of the goals of the New Vision for Alternative Care include: 75 percent of pre-school age children in alternative care will be transitioned to foster care within seven years, and no new children will be placed in institutions; within five years, the number of special adoption cases will double to 1,000 cases a year; and a fostering agency structure will be created throughout Japan by 2020.

However, many child care institutions feel their *raison d’être* is challenged and have reacted negatively to the above goal of 75 percent de-institutionalization. Many of Japan’s municipalities, the main players in the execution of alternative care, have voiced their opposition to this goal as well. Now that Welfare Minister Shiozaki, who had shown strong leadership against such negative reactions, has left office, it remains to be seen whether this goal will be implemented.

In 2017, the Ministry of Health, Labour and Welfare revised its Foster Parent Placement Guidelines after the 2016 amendment to the Child Welfare Act.<sup>5</sup> Currently, 78 percent of child guidance centers state that children are placed in institutions instead of foster care due to the preference of their birth parents.<sup>6</sup> This revision has resulted in some improvements regarding the level of birth parents’ control in the placement of their children. Unfortunately, it fails to explicitly instruct child guidance centers to bring cases to family court when the decision of the birth parents’ is not in the best interests of the child. Instead, the revised Guidelines only instruct child guidance centers to

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<sup>2</sup> Ministry of Health, Labour and Welfare, “Amendment of the Child Welfare Act - comparison (2016),” art. 3.2, <http://www.mhlw.go.jp/topics/bukyoku/soumu/houritu/dl/190-34.pdf> (accessed October 30, 2017).

<sup>3</sup> House of Councillors, the National Diet of Japan “Amendment of the Child Welfare Act,” June 2017, <http://www.sangiin.go.jp/japanese/joho1/kousei/gian/193/pdf/so31930481930.pdf> (accessed October 30, 2017).

<sup>4</sup> Ministry of Health, Labour and Welfare, “New Vision for Alternative Care,” August 2, 2017, <http://www.mhlw.go.jp/stf/houdou/0000173868.html> (accessed October 30, 2017).

<sup>5</sup> Ministry of Health, Labour and Welfare, “Foster Parent Placement Guidelines,” 2017, <http://www.mhlw.go.jp/file/06-Seisakujouhou-11900000-Koyoukintoujidoukateikyoku/0000161321.pdf> (accessed November 9, 2017).

<sup>6</sup> National Childhood Counseling Managers, “Child Guidance Centers Survey,” July 1, 2011, <http://www.zenjiso.org/816> (accessed November 9, 2017).

“consider” such legal options. Human Rights Watch is aware of only a few cases in which child guidance centers have resorted to legal recourse to ensure children are placed in foster care and not in institutions.

De-institutionalization requires changes to many systems and practices. One of the most important reforms will be the prompt introduction and improvement of high-quality agencies—which are to be called “fostering agencies”—to provide a comprehensive support structure for foster parents. This system will provide foster parents with ongoing recruitment, training, support, and other necessary services. Organizations that can provide quality support to foster parents are essential for new foster parents, and above all, for children who should be guaranteed high quality foster care without abuse, and placement with foster parents who are able to provide proper care.

Unfortunately, there are not enough organizations in Japan able to provide these services. To increase the number of such organizations, it is critical that both national and local governments provide political support, as well as sufficient funding and other resources, to enable existing child care institutions and nongovernmental organizations (NGOs) to provide high-quality foster care support services. The New Vision for Alternative Care calls for developing these support services nationwide by 2020.

The New Vision for Alternative Care suggests not only developing policies for agencies to support foster families, but also establishing a social work structure, developing a third-party evaluation system, and creating a system of advocates for children. It also requires promoting special adoption as an effective solution to assure permanency, foster care system reform, reform of child guidance centers and the temporary custody system, and supporting children’s independence.

*Human Rights Watch recommends the Committee ask the government of Japan:*

- How much financial resources will be put into the new fostering agency system?
- How does the government plan to overcome the current situation whereby institutions have a financial interest against de-institutionalization, as subsidies are allocated to institutions based on the number of institutionalized children?
- How many pre-school children have been institutionalized since August 2, 2017, when the New Vision for Alternative Care was provided to the Minister of Health, Labour and Welfare? How many pre-school age children have been placed with foster parents or adopted since then?

*Human Rights Watch asks the Committee to:*

- Call upon the government of Japan to publicly promise and ensure the swift and effective enforcement of the New Vision for Alternative Care endorsed in August 2017, including the achievement of the 75 percent foster care placement rate within seven years and the assured establishment of fostering agencies.

- Call upon the government of Japan to amend the Foster Parent Placement Guidelines to clearly instruct child guidance centers to bring cases to family court when the birth parents' decision on children's placement is against the best interest of the child, as well as to bring the guidelines completely in line with the UN Guidelines for the Alternative Care of Children, which require that institutional care is limited to "cases where such a setting is specifically appropriate, necessary and constructive for the individual child concerned and in his/her best interests."<sup>7</sup>
- Call upon the government of Japan to ensure that all foster parents, including kinship-based foster parents and adoptive foster parents, receive adequate training, monitoring, and sufficient financial support for foster parents.

### **LGBT Rights and Sex Education in Schools (Articles 2, 19, 24, 28, and 29)**

Japan has experienced dramatic changes in public attitudes toward LGBT rights over the past few years. Some municipalities now recognize same-sex partnerships, and the national government has taken some steps toward bringing its policies in line with its international human rights obligations. Japan has also emerged as a leader on LGBT rights issues internationally. Japan, along with the United States and the Netherlands, co-chaired a UNESCO conference on LGBT student bullying in 2016, and the Japanese mission to the United Nations represents the government in the UN "Core Group," a coalition of countries that support LGBT rights initiatives at the UN. Japan supported the 2011 and 2014 Human Rights Council resolutions on ending violence and discrimination on the basis of sexual orientation and gender identity.

However, Japan has no legislation protecting LGBT people from discrimination and does not grant legal recognition to same-sex couples. It also treats transgender people requesting legal recognition as having "Gender Identity Disorder" and coerces them into undergoing unnecessary and invasive medical procedures.

The Ministry of Education, Culture, Sports, Science and Technology (MEXT) has taken some important steps toward protecting LGBT students in Japanese schools. In its April 2016 "Guidebook for Teachers," the ministry signaled a promising move toward inclusive education, stating: "It is possible that gender identity and sexual orientation are dealt with as part of human rights education." In March 2017, MEXT revised the Basic Policy for the Prevention of Bullying to include specific mention of LGBT students for the first time—a major step toward protecting the right to education for LGBT youth in Japan. However, that same month MEXT failed to include information about sexual and gender minority students in its once-in-a-decade review of the national educational curriculum. As a result, the national curriculum still only references heterosexuality.<sup>8</sup> This means that Japan's elementary school physical education curriculum will continue to instruct teachers to help students understand that "when in puberty...young people develop an interest in

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<sup>7</sup> UNICEF, "Guidelines for the Alternative Care of Children," February 10, 2010, [http://www.unicef.org/protection/alternative\\_care\\_Guidelines-English.pdf](http://www.unicef.org/protection/alternative_care_Guidelines-English.pdf) (accessed November 2, 2017).

<sup>8</sup> "Japan's Missed Opportunity to Support LGBT Children," Human Rights Watch news release, April 27, 2017, <https://www.hrw.org/news/2017/04/27/japans-missed-opportunity-support-lgbt-children>.

the opposite sex.”<sup>9</sup> And the curriculum for junior high school also notes “interest in the opposite sex increases along with the maturation of body functions.”<sup>10</sup>

Law 111 of 2003 (the Gender Identity Disorder Law) contains a number of requirements for transgender people to obtain legal recognition according to their gender identity that violate fundamental human rights protections and affect transgender children. National law mandates adults to obtain a mental disorder diagnosis and other medical procedures, including sterilization, to be legally recognized according to their gender identity—an abusive and outdated procedure. For transgender students in Japan, simply attending school can be an ordeal, and the pressure to conform to strict gender norms in anticipation of undergoing surgical procedures when they are adults severely impacts their lives and mental health.<sup>11</sup>

*Human Rights Watch recommends the Committee ask the government of Japan:*

- What steps has the government of Japan taken to revise Law 111 of 2003 (the Gender Identity Disorder Law), to replace abusive procedures such as mandatory sterilization with a system of self-identification criteria for legal gender recognition?
- What steps has the government of Japan taken to enact legislation prohibiting discrimination based on sexual orientation and gender identity, including in education?

*Human Rights Watch asks the Committee to:*

- Congratulate the government of Japan for adding LGBT students to the Basic Policy for the Prevention of Bullying.
- Call upon the government of Japan to develop a comprehensive sexuality education program, based on international public health and human rights standards, for primary and secondary education, that includes information about sexual and gender minority students.

### **Protecting Students, Teachers, and Schools in Situations of Armed Conflict (Articles 28, 38)**

Human Rights Watch encourages Japan to endorse the Safe Schools Declaration, an international commitment to better protect students, educational staff, schools, and universities during armed conflict.<sup>12</sup> It was drafted through a consultative process led by Norway and Argentina in 2015. The Declaration includes a commitment to use the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict.<sup>13</sup>

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<sup>9</sup> Ministry of Education, Culture, Sports, Science and Technology, “Section 9: Physical Education,” [http://www.mext.go.jp/component/a\\_menu/education/micro\\_detail/\\_icsFiles/afieldfile/2009/04/21/1261037\\_10.pdf](http://www.mext.go.jp/component/a_menu/education/micro_detail/_icsFiles/afieldfile/2009/04/21/1261037_10.pdf) (accessed November 2, 2017).

<sup>10</sup> Ministry of Education, Culture, Sports, Science and Technology, “Section 7: Health and Physical Education,” [http://www.mext.go.jp/component/a\\_menu/education/micro\\_detail/\\_icsFiles/afieldfile/2011/04/11/1298356\\_8.pdf](http://www.mext.go.jp/component/a_menu/education/micro_detail/_icsFiles/afieldfile/2011/04/11/1298356_8.pdf) (accessed November 2, 2017).

<sup>11</sup> Human Rights Watch, “*The Nail That Sticks Out Gets Hammered Down*”: *LGBT Bullying and Exclusion in Japanese Schools*, May 5, 2016, <https://www.hrw.org/report/2016/05/05/nail-sticks-out-gets-hammered-down/lgbt-bullying-and-exclusion-japanese-schools>.

<sup>12</sup> Safe Schools Declaration, May 28, 2015, [https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe\\_schools\\_declaration.pdf](https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf) (accessed November 2, 2017).

<sup>13</sup> Global Coalition to Protect Education from Attack, Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict, March 18, 2014, [http://protectingeducation.org/sites/default/files/documents/guidelines\\_en.pdf](http://protectingeducation.org/sites/default/files/documents/guidelines_en.pdf) (accessed November 2, 2017).

In June 2015, at the Security Council Open Debate on Children and Armed Conflict, Yoshifumi Okamura, the Representative of Japan to the United Nations said:

Japan would like to pay tribute to the efforts made by all stakeholders in drafting the Lucens Guidelines [now known as the Guidelines for Protecting Schools and Universities from Military Use during Armed Conflict]. We welcome the fact that the international community's recognition of the issue of protecting schools and education is expanding. Japan will continue keeping an eye on the development of the discussion on the issue.<sup>14</sup>

As of November 13, 2017, 70 countries—representing more than one-third of all UN member states—have already endorsed the Safe Schools Declaration.

On October 31, 2017, the President of the UN Security Council issued a statement during an open debate on children and armed conflict, indicating that the Security Council, on which Japan is currently a member,

expresses deep concern at the military use of schools in contravention of applicable international law, recognizing that such use may render schools legitimate targets of attack, thus endangering children's and teachers' safety as well as children's education and in this regard ... encourages Member States to consider concrete measures to deter the use of schools by armed forces and armed non-State groups in contravention of applicable international law.<sup>15</sup>

*Human Rights Watch recommends the Committee ask the government of Japan:*

- What “concrete measures to deter the use of schools by armed forces” has the government of Japan taken?

*Human Rights Watch asks the Committee to:*

- Call upon the government of Japan to endorse and implement the Safe Schools Declaration.

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<sup>14</sup> Permanent Mission of Japan to the United Nations, “Statement by H. E. Ambassador Yoshifumi Okamura Deputy Permanent Representative of Japan to the United Nations,” June 18, 2015, <http://www.un.emb-japan.go.jp/statements/okamurao61815.html> (accessed November 2, 2017).

<sup>15</sup> UN Security Council, “Issuing Presidential Statement, Security Council Expresses Deep Concern over Scale, Severity of Violations against Children in Armed Conflict,” October 31, 2017, <https://www.un.org/press/en/2017/sc13050.doc.htm> (accessed November 8, 2017).