

Summary Translation of the Petition for Human Rights Relief

Petition made by the Lawyers for the Equal Marriage Petition

Translated by LGBT Lawyers & Allies Network (LLAN)

[The entire petition is 98 pages, excluding the list of parties]

Petition for Human Rights Relief (Summary)

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To: Japan Federation of Bar Associations

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Purpose of Petition

[We hereby petition that] the Federation:

1. makes a recommendation (*kankoku*) to the Respondents, the Prime Minister and Minister of Justice, to submit a same-sex marriage bill to the National Diet; and
2. demands the provision of human rights relief to the effect of recommending to the Respondents, the Speaker of the House of Representatives and the Speaker of the House of Councilors, to enact the same-sex marriage bill.

Reasons for Petition

I. Outline of the Case

Same-sex marriage is currently not permitted in Japan and, as this is an infringement on the human rights of those who are seeking same-sex marriage, such as homosexuals and bisexuals, we have made this petition seeking that [the Federation] makes a recommendation to the Prime Minister and Minister of Justice to submit a same-sex marriage bill to the National Diet and that [the Federation] demands the provision of human rights relief to the effect of recommending to the Respondents, the Speaker of the House of Representatives and the Speaker of the House of Councilors, to enact the same-sex marriage bill.

II. Petitioners

Petitioners are lesbians (female homosexuals), gays (male homosexuals), and bisexuals, etc. who believe that if same-sex marriage were to become legalized in Japan, they may desire to conduct a same-sex marriage.

III. Sexual Orientation

1. Sexual orientation means the tendency to have inclinations in emotional feelings and desires for intimacy, such as love and sexuality.
2. In terms of the population within society, heterosexuals are the majority while homosexuals and bisexuals are the minority. Therefore, there are times when the “cause” of homosexuality becomes a subject of interest, but ultimately, the “cause” of homosexuality is unknown. However, sexuality is, as long as people are alive, an incredibly vital element intimately tied into the core of a person’s personality. On this point, many of the Petitioners discuss in their statements the importance and meaning of their same-sex partners to them.

“Their existence is more important than my own family. They give me a reason to live. Their existence is vital. ...When we suffer through emotional hardships, we cheer each other on and their existence makes me want to continue to provide support.” and more.

Of course, there are also cases in which this close intimacy with another person has negative effects (such as domestic violence), however, on the whole, an intimate relationship with another person is treated as something important in the case of heterosexual love and even societally, put into a legally protected position as epitomized in the marriage system.

3. According to a survey of sexual orientations conducted by the Research Division of the Ministry of Health, Labour and Welfare, gay and bisexual men are estimated to be between 3 and 5% of all men in Japan. In other words, this means that there would be one [gay male] per school class. It was reported that lesbian and bisexual women are around the same figure.

However, in a society in which heterosexuality is considered the norm and where there is discrimination and bigotry toward homosexuality, there are many cases in which homosexuals must pretend to be heterosexual and experience a great deal of psychological conflict. As a result of this, it's been reported that sexual minorities, including homosexuals, exacerbate their own mental health [issues] and have a relatively high rate of suicidal thoughts and suicide attempts. Even in the government's Outline of General Suicide Countermeasures the relatively high rate of suicidal thoughts among sexual minorities, including homosexuals, is mentioned. At an all-party parliamentary group formed in March 2015 aiming to eliminate discrimination against sexual minorities, attention was placed on the relatively high rates of suicidal thoughts.

Even among the Petitioners, there are many cases to be seen in which they feel that their feelings of love toward the same sex is a denial of themselves and which have even been tied to suicidal thoughts and suicide attempts.

"I've liked girls ever since I was a child. As soon as I became aware of that, my inner 'common sense' tried to kill me. That was the first time I attempted suicide. I was nine years old." and more.

4. If one hides their homosexuality, they internally exacerbate their own mental health [issues] while, on the other hand, even if they openly announce their homosexuality, they bear the risk of encountering discrimination and bigotry. Thus, the invisibility and discrimination/bigotry toward homosexuality is two sides of the same coin, and it has been difficult for those in the minority to live, with the situation making it difficult for their voices to be heard continuing on.

IV. Current Situation of Homosexuality in Japan

1. The parents of sexual minorities are, in nearly all cases, in the sexual majority. For example, in the case of ethnic discrimination or racial discrimination, at the very least the family (such as parents and siblings) are in the same situation and, therefore, could be said to be an ally. However, at the time when many homosexuals become aware of their sexual orientation, they are often isolated from their families. It is easy for sexual minorities, such as homosexuals, to become isolated by their very nature.

Sexuality is something which, as long as people are alive, fosters intimate relationships with others within society and provides emotional support to oneself. In that respect, there is no difference between heterosexuals and homosexuals or bisexuals. However, for homosexuals, there was a period in which it was difficult to have a continuous romantic relationship with another person. Even nowadays, while the circle of those who understand homosexuals and bisexuals is expanding, the roots of discrimination and bigotry are still strong, and so it's necessary to take note that such difficulties have not been resolved.

2. There have been times when homosexuality was subject to "treatment" or "delinquency," and though the American Psychiatric Association and the WHO no longer [treat homosexuality] as an abnormality, perversion, illness, or otherwise, the Japanese Society of Psychiatry and Neurology follows this position. Further, in 1994 the then-Ministry of Education, Science and Culture removed homosexuality as an item under "sexual misconduct." What's more, on April 30, 2015, the Ministry of Education, Culture, Sports, Science and Technology provided boards of education, etc. with a notice that [they] should provide a satisfactory counseling system, etc. for juvenile students in the sexual minority (including homosexuals and bisexuals) and greatly changed its way of thinking from them being delinquent children in need of correction to being juvenile students in need of care.
3. Until now, homosexuality has been subject to discrimination and bigotry, but in recent years these situations have been changing.

There have been increasing activities, including advisory services from self-help groups run by those who have been involved and NPOs with the objective of supporting sexual minorities, events such as parades and LGBT coming-of-age ceremonies being held, support from local governments, and support from companies, among others. Further, on the rights advocacy front as well, through events such as the precedent in the Fuchu Youth House trial and the petition for human rights relief against the discriminatory words of Governor Shintaro Ishihara, [society] has become aware of this as a human rights issue.

4. In particular, over the past two to three years, the existence of same-sex couples wishing to get married is becoming more obvious and visible. There are even same-sex couples who have held wedding ceremonies and same-sex couples who have submitted a notification of marriage (*kon'in todoke*) (which have all been rejected on the grounds that it is a violation of Article 24(1) of the Constitution of Japan).

Further, on March 31, 2015, an ordinance was adopted in Shibuya ward which [allowed for] the issuance of same-sex partnership certificates. It is incredibly significant for the government to recognize the existence of same-sex couples and to certify such relationships. However, compared to a notification of marriage, this requires time and money, and has no special legal effect. It is necessary to legalize same-sex marriage in order to resolve the varied legal issues of same-sex couples.

5. As for relatively recent survey data for same-sex couples, in 2004 the “Survey of Needs for Legal Protections for Persons in Same-Sex Partnerships” (“Government Policy Proposal Research Group Regarding Relationships Extending Beyond Blood-Relations and Marriage” volunteer needs survey project) was conducted.

From the results of this survey, it’s apparent that same-sex couples feel the need for legal protections (like [those for] opposite-sex couples) such as: treatment as a dependent in health insurance; tax exemptions for dependents; family benefits ancillary to salary; time off in the workplace for caregivers; residency rights in public housing; receipt of life insurance; and inheritance rights. With regard to protections related to the life and death of a partner, over 80% said that caregiving and visitation rights during hospitalization and consent [rights] in medical matters were “incredibly necessary” and, when combined with [those who said they were] “necessary,” reached approximately 95%.

V. Exclusion of Same-Sex Couples From Marriage and the Disadvantages and Importance Therefrom

1. Summary

At this point in time, there are no legal provisions which protect or respect partnerships among same-sex partners. Same-sex couples, unlike opposite-sex couples, are subject to unfair treatment in a variety of ways. Despite that there are many homosexuals and bisexuals who wish to share their lives, if they have a specific partner, in the same way as heterosexuals, there are a variety of problems that arise when compared to opposite-sex couples simply by being a homosexual couple.

2. Provisions Under the Current Civil Code

The Civil Code, as requirements for the establishment of marriage, requires that there is an intention to marry between the “parties” and that the “parties” lodge a notification (Article 739, Article 740, and Article 742 of the Civil Code) and “man and woman” is not provided therein. Further, being same-sex partners is not one of the impediments to marriage clearly written in the text (Article 740 and Articles 731 through 737 of the Civil Code).

Despite that, there is an interpretation from scholars that, as grounds for why same-sex marriage is being rejected, it is because same-sex couples essentially lack the intention to marry.

Due to the fact that same-sex couples are excluded from marriage, as we will discuss in detail below, the parties suffer a variety of serious disadvantages.

3. Individual Arguments

(1) Death of a Partner

Excluding cases in which a partner writes a will while they are still alive, the surviving party after the death of their partner cannot inherit the property which, therefore, gives rise to the situation in which the surviving party is unable to inherit in any way the assets, despite that these are assets which they had built up together.

“I’m worried that, in the event that the account holder of the real estate and savings, etc., and even the assets that we built up together, were to die, the right to live there would be ripped away. We’ve made arrangements, through wills and otherwise, to be able to continue living [in the residence] and to leave behind the assets, but because we are legally strangers it will be treated as a donation, and I feel that this is unfair for all the work needed and disadvantageous tax treatment compared to opposite-sex spouses. ... I feel that this current situation in which even something such as comfort in a time of crisis is something I can’t obtain unless I personally bear the efforts and struggle of coming out and, at times, risks, is one thing piled on top of another and is incredibly inconvenient.”

“If I die first, there is no survivor pension for my same-sex partner. Even if we were to put in the effort to enter the national pension fund, etc., [my partner] will not receive a survivor lump sum payment. Since this is a system structured only on the premise of opposite-sex spouses, I feel that we are constantly being demanded to make a high level of self-help efforts as singular units, despite the fact that we are actually living together” and more.

In addition to the legal and systematic disadvantages, what’s more, there are many cases in which [the surviving partner] cannot sit in the family section at the funeral. To say nothing of being the chief mourner, they are not allowed to even sit in the family section, and they are not even sufficiently allowed to have a proper goodbye with the deceased.

(2) Hospitalization of a Partner

In the event that a partner has fallen and has lost consciousness, it is rare that the hospital will grant visitation to a same-sex partner who is not legally “family,” and it is often the case that they are reluctant to provide information on the medical status. Medical consent is not sought from a same-sex partner.

“When I was 30, my lover (whom I was living with) had an asthma attack at home. She told me to call an ambulance and was put inside. The paramedic asked me ‘what’s your relationship with her?’ and it took all my strength to answer ‘we’re friends.’ We arrived at the hospital and my lover was taken away by the paramedics. I asked one of the paramedics who was heading back out about her condition, but he replied that ‘we can’t tell you if you’re not a relative’ and left. I waited in front of the reception desk for three hours, but no one would

tell me about her condition. I even asked the receptionist, but I was told that they 'cannot tell anyone who is not a relative.' After that, I heard her voice calling me from somewhere and, when I went in the direction I heard the voice coming from, there she was, connected to IVs, waving me over. However, I said that "I can't enter, since I'm not a relative." If she hadn't told me 'don't worry about that,' all the while suffering through the asthma, or even worse, if she hadn't called out my name, I would have not known where she was or what kind of treatment she was getting, and I feel a chill up my spine just thinking that even if the worst case had happened at that time, I may not have known." and more.

(3) Separating from a Partner

In the case of a same-sex couple, it is difficult for them to demand repayment of assets which are not in their own name even if they had been living together jointly, contrary to the case of opposite-sex couples. Particularly in the case of those who support the household as a housewife or a househusband, even if they had contributed to the property accumulation after the couple began living together, it is unclear if a demand for distribution of assets would be permitted.

(4) Physical Abuse from a Partner

DV leads to extreme emotional and physical harm and, in particularly extreme cases, can even take the victim's life. Of course, domestic violence doesn't only occur with opposite-sex couples. However, interpretation on whether relationships between same-sex partners are subject to the protection of domestic violence prevention laws is split.

(5) Cohabitation with a Partner

In the event that a same-sex couple intends to purchase a home, partners who are not connected by marriage cannot receive a pair loan from nearly any financial institution.

"I want to buy a house, but we can't enter into a loan under both names. Even if we were to buy it, we could not leave the assets to our respective partner even if the person in whose name the loan was were to die. There is the notarized deed method, but it costs money to issue a notarized deed, and it definitely isn't cheap." and more.

Further, in the case of same-sex couples, there are difficulties in even leasing rental properties in order to cohabitate.

"When my same-sex partner and I were looking to sign a contract for a rental house, nearly half of the landlords of the prospective properties rejected the rental agreement [on the grounds of being] same-sex partners, which surprised me. The houses we could choose from were limited, which I felt was inconvenient."

“It was difficult to find a room to rent. Even for those which were listed as okay for two people, there were many cases in which that was limited to spouses or to male and female couples, and friends were unwelcome. Well, we are a couple, but I didn’t have the courage to say that... We were turned down by many landlords. Whenever I think about moving again, I think about whether I’ll have to go through all that hardship again, which saddens me.” and more.

(6) Relationship with a Partner’s Child

There are also cases in which female homosexuals and bisexuals have children and raise the children together as a female couple. In such cases, the same-sex partner is legally unable to build a familial relationship as if the child were their own, which is greatly disadvantageous.

“Ever since the twins were born in 2012, we have been facing a great deal of unreasonable facts. Specifically:

- At the time of the caesarean section operation at the hospital, they asked my blood relatives to sign the consent, and not my girlfriend.
- At the time of the birth, there was a “husband’s seat” off to the side of the operating room, but my same-sex girlfriend couldn’t enter.
- In Spain, children are formally registered together with their parents’ names, but in the Japanese family registry, only the one who gave birth is listed.
- What’s more, the children are registered as a ‘child born out of wedlock.’
- My girlfriend and I love both of the children dearly and are raising them together. However, under the current laws of Japan, we cannot have joint parental custody and even if I were to prepare a will for the worst-case scenario, my girlfriend would not be the parental guardian, but ultimately the ‘legal guardian’ under the law.” and more.

(7) Nationality and Residence Permit with a Partner

In order for a foreigner to reside in Japan, they need to obtain a status as resident issued by the Minister of Justice. Of those statuses as resident, there are matters which put focus on familial relationships as with “Spouse or Child of Japanese National,” “Spouse or Child of Permanent Resident,” and “Dependent” (spouse or child dependent upon a foreigner residing in Japan with a status as resident), but in the case of same-sex couples, it is provided that they do not fall under a “spouse or child” of a Japanese national.

“The biggest problem for me was the issue of [obtaining] a permit to stay in Japan for my foreign partner. I met my current partner while I was living in France, and we registered a PACS there. I was able to extend my permit to stay in France thanks to that. When I returned to Japan my partner also came to live together

with me, but in Japan, which doesn't offer same-sex marriages or even PACS, there was no method for obtaining a permit to stay in Japan other than for the person themselves for find a job in Japan and have your employer apply for one on your behalf. We searched for a job from the time when we decided to relocate to Japan, but there's no way that my partner (who can't speak Japanese) would quickly find a job, so my partner entered Japan on a tourist visa. Those were days of uncertainty of having no visa or job and really not knowing where to go from there, but thanks to a truly wonderful stroke of luck [my partner] quickly found a job, obtained a work visa, and was able to obtain a permit to stay [in Japan]. If we were not able to find a job at that time, my partner would have had to quickly return to France, and even now I don't know what would have happened to us. Even now, we're in a state in which my partner would not be able to reside in Japan if they were to lose their job." and more.

(8) Miscellaneous

When purchasing a life insurance policy, many life insurance companies will refuse putting a same-sex partner as the beneficiary of death benefits. Further, in most cases [same-sex couples] cannot make use of "family discounts," "spouse discounts," or "family services" offered to customers by private companies. What's more, in the case of most companies, even the applicability for benefits offered to employees by the workplace are premised upon a legal marriage.

"Several years ago, there an offer from my company about sending someone as an expatriate [employee] and, since both my partner and I wanted to live abroad, I made up my mind and requested a family relocation with my partner as a dependent, but unfortunately this didn't work out and I gave up on the opportunity to transfer abroad. I was told that in my case, the company could not provide support for visa applications and health insurance, etc. for the family of expatriate [employees] (e.g., spouse, children) since we're not married. ... At the time, my boss (who had recommended the expatriate [position] to me) also supported the family relocation of my partner and me, and I remember crying in front of my boss over the 'difficulties of living.'"

"Married people were not transferred, but since I was unmarried from the point of view of my employer, they brought transfers up several times. I consulted with my boss who knew my reasons on multiple occasions, saying that I wanted to make it public and that I wanted to talk in order for people to understanding why I can't transfer and that there are also people [like myself] around, but I was refused on the grounds that it would be a disturbance within the company." and more.

(9) List of Disadvantages Due to Exclusion of Same-Sex Couples from Marriage

In addition to those matters described thus far, the following is a list of those main disadvantages same-sex couples [bear] from being excluded from marriage:

Civil Code	Assets	
		Inheritance is not permitted unless there is a will (it is unclear if succession to lessee's rights in the case of a <i>de facto</i> marriage (Article 36(1) of the Act on Land and Building Leases) applies to same-sex couples).
		The presumption of joint ownership of property which does not clearly belong to either party (Article 762(2) of the Civil Code) does not directly apply and it is unclear if it applies <i>mutatis mutandis</i> .
		Unclear if a demand for distribution of assets would be permitted when separating.
		There are many cases in which residency in public housing is not permitted.
		No petitioning rights for a ruling for commencement of guardianship for an adult (Article 7 of the Civil Code).
	Social Status	
		Unclear if a demand for reparations (<i>isharyou</i>) would be permitted when separating.
		Unclear if a demand for compensation for damages to a third party by the spouse of a person whose life was taken (Article 711 of the Civil Code) would be permitted.
		No obligations for cohabitation, cooperation, or support (Article 752 of the Civil Code).
		Shared parental custody is not permitted for the actual child of one partner.
		Unclear if the Act on the Prevention of Spousal Violence and the Protection of Victims (the domestic violence law) applies.
	Medical	
		There are cases in which [a person] cannot receive an explanation of the status of their same-sex partner's illness and cases in which a demand for disclosure of medical charts is not granted.
	There are cases in which [a person] is not allowed visitation with a hospitalized same-sex partner when unconscious.	
Penal Code		The right to appoint counsel is not permitted (Article 30(2) of the Code of Criminal Procedure).
		Visitation with a sentenced person is, as a rule, not permitted (Article 111(1) of the Act on Penal Detention Facilities and Treatment of Inmates and Detainees).
		Unclear if able to receive survivor benefits (crime victims benefit plan) (Article 5(1)(i) of the Act on Support for Crime Victims, etc. Such as Payment of Crime Victims Benefit).
Tax System		Unable to receive exemptions for spouses or special exemptions for spouses for income tax (Article 83 and Article 83(2) of the Income Tax Act).
		No applicability of the inheritance tax system of reducing the amount of inheritance taxes for spouses (Article 19-2 of the Inheritance Tax Act)
		Cannot gross medical expenses for medical expense exemptions (Article 73 of the Income Tax Act)
Social Security		Unclear if [a same-sex partner] falls under a "Dependent" under the Health Insurance Act (Article 3(7) of the Health Insurance Act).
		Unclear if [a same-sex partner] can become a tertiary insured in the national pension (Article 5(8) of the National Pension Act).

		Unclear if a basic pension for surviving family or employee's pension for surviving family will be distributed [to a same-sex partner] (Articles 37 through 42 of the National Pension Act; Article 59 of the Employees' Pension Insurance Act).
		As a general rule, survivor compensation and survivor benefits for work-related death compensation are not permitted (Article 16-2(1) of the Industrial Accident Compensation Insurance Act).
Foreign ners		Entrance into Japan is not permitted through a status as resident from "Spouse or Child of Japanese National," or "Dependent."
		Special exceptions for naturalization for spouses are not permitted (Article 7 of the Nationality Act).
		A Special Permission to Stay in Japan is not granted to a foreign same-sex partner who has over stayed, unlike the case for a male and female couple who had later gotten married.
Civil Servic es		Currently, it is generally impossible to indicate a same-sex partner as the insurance beneficiary for life insurance.
		Currently, it is generally impossible to make use of a pair loan for home loans (separate loans by two people for one property).
		Practical difficulties when leasing a rental property.

4. In order to remove the disadvantages, such as those listed above, there are those among same-sex couples who are seeking to remove them through substitutive means.

For example, in order to make inheritance possible, adoption is a possibility. However, as the intention for adoption to enter into an adoptive relationship is required for adoption, even if a same-sex couple were to carry out an adoption in order to overcome the legal issues they face, there is the possibility that an inheritor will later file a suit to invalidate the adoption.

Actually, there are those among the Petitioners who have actually carried out adoption, but they explain frankly their feelings that the adoption system is not a substitute for same-sex marriage.

“(Since the notification of marriage was rejected) we then separately consulted [with each other] and ultimately decided to carry out an adoption. ... I was happy that this would solve the asset issues, but emotionally I felt uneasy. In other words, even if there is a difference in age, in reality we are in a relationship of equals and not a hierarchical relationship. Adoption is the only thing which society makes available for same-sex couples like us to use at present, so we have no choice but to adopt in order to feel a sense of relief, but if we were able to choose marriage, which more faithfully reflects our relationship, that would be more appropriate and preferable. It's not only inconvenient that at present our true relationship isn't formally recognized, but I strongly feel that it is unfair.” and more.

Further, though [same-sex partners] are able to leave behind assets to their partner as a legacy through wills, since they cannot use the system of special exceptions for small-scale building lots or system of exemptions for spouses for inheritance taxes in

addition to the registration and license tax being relatively high, this does not completely eliminate the disadvantages. In addition to [adoption and wills], the number of same-sex couples who make a notarized deed of their agreement regarding such things like rights and inheritance of mutual assets, consent rights for medical actions, and more are increasing year by year, but it's unclear how effective these are in everyday life and it doesn't resolve all of the issues mentioned above.

5. As mentioned above, there are multiple substitutive options [available to same-sex couples] in order to receive the same advantages enjoyed by opposite-sex couples, but none of these methods can be said to be a completely satisfactory strategy. The current legal system is unable to resolve the legal-issues faced by same-sex couples. Further, when attempting to resolve the legal issues faced by same-sex couples, it becomes apparent that the strategies being taken using the current system itself inflicts disadvantages upon same-sex couples, and is a sign of the needs of those involved for same-sex marriage.

[omitted]

The Lawyers for the Equal Marriage Petition

The group consists of 31 members (as of July 2016) and organized to file a petition for equal marriage to the Japan Federation of Bar Associations. In their petition, the Lawyers for the Equal Marriage Petition assert that it is violation of human rights and against the Constitution of Japan not to legally approve equal marriage in Japan.

LGBT Lawyers & Allies Network (LLAN)

LLAN is an incorporated network of lawyers from top-tier domestic and international firms, including Anderson Mori & Tomotsune, Davis Polk & Wardwell, Freshfields Bruckhaus Deringer, Herbert Smith Freehills, Hogan Lovells, Linklaters, Mori Hamada & Matsumoto, Morrison Foerster, Nagashima Ohno & Tsunematsu, and Nishimura & Asahi. These firms organized the Equality Gala, the first of its calibre legal venue to discuss the current status of and share foreign legal experiences about the LGBT rights.

