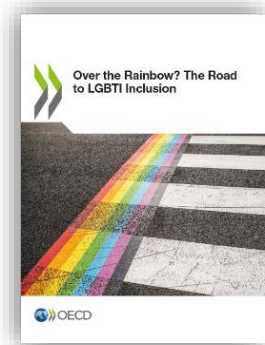


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider society. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labour market. It reduces economic output by excluding or under-valuing LGBTI talents in the labour market and impairing their mental and physical health, hence their productivity. The report **Over the Rainbow? The Road to LGBTI Inclusion** provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion.



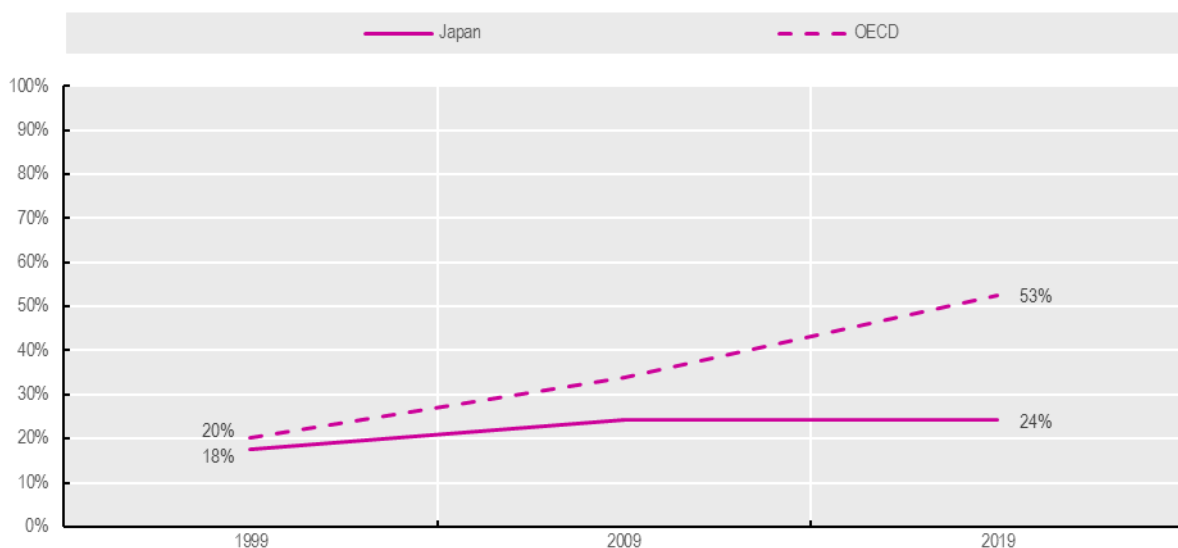
Legal LGBTI inclusivity in Japan

Levels and trends in legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of laws that are in force among those critical to ensure equal treatment of LGBTI people. Japan is one of 14 countries in the OECD where this share is still moderate. These countries are characterised by a below-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019 (Figure 1).

Figure 1: Legal inclusion of LGBTI people in Japan has only modestly improved over the past two decades

Evolution of legal LGBTI inclusivity between 1999 and 2019 in Japan and OECD-wide



Legal LGBTI inclusivity refers to the percentage of LGBTI-inclusive laws that have been passed, among a basic set of laws defined based on international human rights standards.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

Legal LGBTI inclusivity in Japan has improved over the past two decades, but at a modest pace (Figure 1). As of 2019, Japan performs as well as the OECD average concerning equal treatment of consensual same-sex and different-sex sexual acts, and legal gender recognition (Figure 2). Since 1882, the *Penal Code* does not criminalise consensual same-sex sexual acts, and it sets an equal age of consent for consensual same-sex and different-sex sexual conducts. Moreover, since 2004, transgender individuals are allowed to change their gender marker in the civil registry, following the *Act on Special Cases in Handling Gender Status for Persons with Gender Identity Disorder*. However, legal gender recognition is conditioned on sterilisation and sex-reassignment surgery, noting that these medical requirements were upheld by the *Japanese Supreme Court* as recently as January 2019. This situation stands in sharp contrast with the current trend OECD-wide that consists in depathologising this process: in the past ten years, 15 OECD countries have abolished medical requirements initially attached to legal gender recognition.

As of 2019, Japan is falling behind regarding other LGBTI-inclusive laws such as legal provisions explicitly protecting LGBTI individuals against discrimination and violence, or laws addressing the unique challenges faced by same-sex couples (Figure 2).

How could Japan further improve legal LGBTI inclusivity?

Japan does not prohibit discrimination explicitly based on sexual orientation, gender identity or sex characteristics/intersex status, neither in employment nor in other fields. Additionally, Japan does not explicitly protect LGBTI individuals against violence, while hate crime and hate speech at least based on sexual orientation is criminalised in a majority of OECD countries. Moreover, Japan does not legally recognise same-sex partnerships, meaning that same-sex couples are deprived of many of the pecuniary rights to which married couples are entitled. Same-sex partners are not given equal access to joint adoption and medically assisted insemination either (Figure 2). Therefore, further improving legal LGBTI inclusivity in Japan could entail: (i) explicitly criminalising discrimination in a broad range of fields, as well as hate crime and hate speech explicitly based on sexual orientation, gender identity and sex characteristics; and (ii) treating same-sex couples on an equal footing relative to different-sex couples concerning access to civil marriage, adoption and assisted reproductive technology.

Policies to foster LGBTI inclusion in Japan, beyond LGBTI-inclusive laws

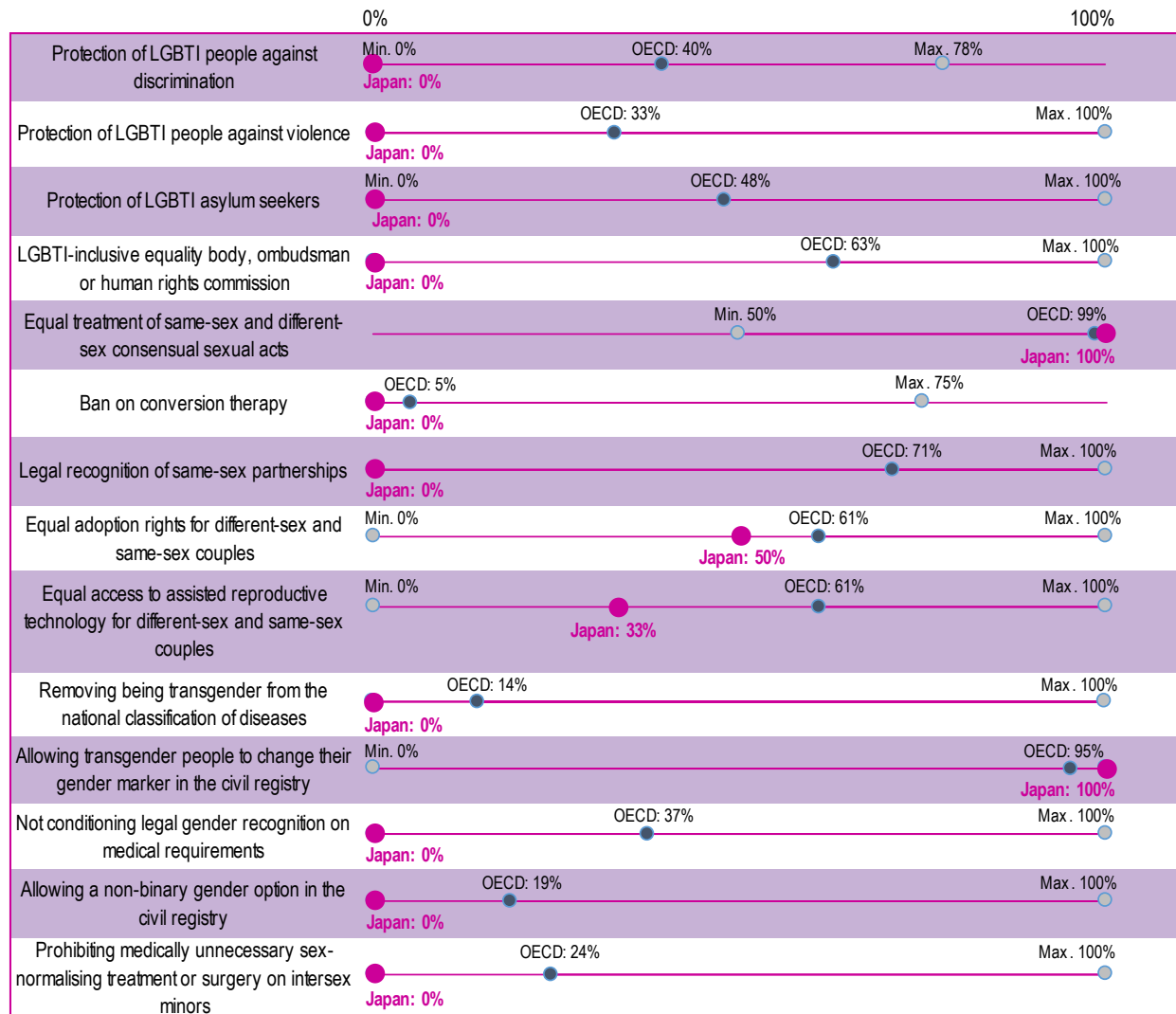
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, Japan does not include questions on self-identification as heterosexual, homosexual, or bisexual in nationally representative surveys. It does not collect information on the share of transgender and intersex people among the adult population either.

It would also be important that Japan be or remain active in the following complementary policy areas that are viewed as key by ongoing national actions plans aimed at strengthening LGBTI inclusion:

Policy #1	Policy #2	Policy #3
Enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people	Fostering a culture of equal treatment in education, employment and healthcare, beyond enforcing laws prohibiting discrimination in these fields, e.g. through a whole-school approach to tackle LGBTI-phobic bullying	Creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Figure 2: How Japan compares

Legal LGBTI inclusivity as of 30 June 2019 in Japan and OECD-wide, by component



Note: Figure 2 presents the components that serve to compute the average level of legal LGBTI inclusivity reported in Figure 1 as of 30 June 2019. The component “Protection of LGBTI people’s civil liberties” is missing since it shows no cross-country variation: no legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. Legal LGBTI-inclusivity attached to each component can vary between 0% and 100%. For instance, a level of legal LGBTI inclusivity in Japan equal to 0% regarding the protection of LGBTI people against discrimination means that none of the nine antidiscrimination provisions critical to protect LGBTI people is in force in Japan as of 2019. “Min.” refers to the score of the bottom-performing OECD country(ies) while “Max.” refers to the score of the top-performing OECD country(ies). These values are specified except when they coincide with the score of Japan.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

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