



**Submission to the Universal Periodic Review of the Republic of Korea**

Human Rights Watch

July 2022

## Introduction

1. This submission highlights concerns about the compliance of the Republic of Korea (South Korea) with recommendations it accepted through its previous Universal Periodic Review (UPR) in 2017, and information about additional international human rights obligations and issues not addressed then. The submission focuses on problems related to the rights of women and girls, children, lesbian, gay, bisexual and transgender (LGBT) people, and older people, as well as sex education in schools, and freedom of expression.

2. South Korea has an established democracy that largely respects civil, political, economic, social, and cultural rights, although significant human rights concerns remain. Discrimination against groups including women, LGBT people, children, older people, people with disabilities, and racial and ethnic minorities is severe. Access to justice by members of these groups is limited. Although South Korea has a relatively free media and lively civil society, the South Korean government continues to use draconian criminal defamation laws and sweeping intelligence and national security laws to restrict speech. Implementation of these laws creates a chilling effect that limits critical scrutiny of the government and corporations.

## Women's and Girls' Rights

3. During the 2017 UPR process, South Korea accepted numerous recommendations to further promote and protect women's rights, including combating discrimination against women and girls and promoting equality, (recommendations 130.17 through 130.21, 130.23, 130.24, 130.48, 130.49, 130.50, 130.66 through 130.71, 132.37, 132.113, and 132.127),<sup>1</sup> and preventing and responding to violence against women and girls (130.27 through 130.36, and 130.72). However, discrimination, violence, sexual harassment and online gender-based violence against women and girls remain widespread in South Korea.<sup>2</sup> The gender pay gap, at 31 percent, is the widest among countries that belong to the Organisation for Economic Co-operation and Development (OECD).<sup>3</sup> South Korea has been consistently ranked by *The Economist* as having the worst working environment for women among the 29 advanced economies it analyzes.<sup>4</sup>

4. In a 2015 survey of 2,000 South Korean men by the Korean Institute of Criminology and Justice, nearly 80 percent said they had physically or psychologically abused a girlfriend.<sup>5</sup> In 2019, reports of violence against girlfriends increased by 41 percent compared to 2017 and Korea Women's Hot Line's analysis of crimes found at least one woman was killed or nearly

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<sup>1</sup> All paragraph cites are to United Nations General Assembly, Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea, A/HRC/37/11 (December 2017).

<sup>2</sup> Human Rights Watch, *World Report 2022*, South Korea chapter, <https://www.hrw.org/world-report/2022/country-chapters/south-korea>.

<sup>3</sup> Ibid., Organisation for Economic Co-operation and Development (OECD) (2022), Gender wage gap (indicator), <https://data.oecd.org/earnwage/gender-wage-gap.htm> (accessed June 28, 2022).

<sup>4</sup> Human Rights Watch, *World Report 2022*; The Economist's Glass-Ceiling Index, *The Economist*, March 7, 2022, <https://www.economist.com/graphic-detail/glass-ceiling-index> (accessed June 20, 2022).

<sup>5</sup> Human Rights Watch, *World Report 2022*; <https://www.koreaherald.com/view.php?ud=20170817000805> (accessed June 22, 2022); [https://www.kic.re.kr/cmm/fms/FileDown.do?atchFileId=FILE\\_000000960057194&fileSn=10&browser=Opera#:~:text=43.9%25EB%A1%9C%20EA%B0%80%EC%9E%A5%20EB%86%92%EC%95%98%EA%B3%A0%2C%20EB%8B%A4%EC%9D%8C,33.2%25EC%9D%98%20EC%88%9C%EC%9C%BC%EB%A1%9C%20EB%82%98%ED%83%80%EB%82%AC%EB%8B%A4](https://www.kic.re.kr/cmm/fms/FileDown.do?atchFileId=FILE_000000960057194&fileSn=10&browser=Opera#:~:text=43.9%25EB%A1%9C%20EA%B0%80%EC%9E%A5%20EB%86%92%EC%95%98%EA%B3%A0%2C%20EB%8B%A4%EC%9D%8C,33.2%25EC%9D%98%20EC%88%9C%EC%9C%BC%EB%A1%9C%20EB%82%98%ED%83%80%EB%82%AC%EB%8B%A4) (accessed June 22, 2022)

killed by her male partner every 1.8 days in 2019.<sup>6</sup> Digital sex crimes, crimes involving digital images – almost always of women and girls – that are captured without the victim’s consent, shared non-consensually, or sometimes manipulated or faked, are widespread in South Korea.<sup>7</sup> Despite legal reforms in South Korea, women and girls targeted in digital sex crimes – acts of online and tech-enabled gender-based violence – face great difficulty in pursuing criminal cases and civil remedies. South Korea’s deep gender inequity and harmful gender norms normalize discrimination and violence against women and girls and consumption of non-consensual intimate images. This is exacerbated by South Korea’s provision of sexuality education, which is cursory, incomplete, dangerous, and riddled with discriminatory and sexist stereotypes. It also violates children’s right to education, information, and health.

5. South Korean laws prohibit sexual harassment and bullying at work but authorities are largely failing to address violations against women at work, in part because of gaps in the law and weak enforcement.<sup>8</sup> A 2021 study by Workplace Abuse 119 showed that only 4 out of 10 survivors of sexual violence at work filed formal complaints. Among those, 9 out of 10 experienced retaliation.<sup>9</sup> There are also increasing reports of employers sexually harassing migrant workers on farms.<sup>10</sup> South Korea voted in favor of, but has not ratified, the International Labour Organization (ILO) Convention on Violence and Harassment (No. 190), which calls for a holistic approach toward protecting workers against violence and harassment, including gender-based violence and sexual harassment, that integrates criminal laws and civil laws, such as labor laws, which can promote prevention, monitoring, and remedies.

6. In 2018, South Korea rejected two recommendations on abortion (recommendations 132.114 and 312.115), but South Korea was compelled to decriminalize abortion by a January 2021 court order.<sup>11</sup> Due to the legislature’s failure to act to implement the court ruling, there remains little clarity on how, when, or where an abortion can be obtained.

7. The South Korean government should:

- Increase women’s participation in the judiciary and law enforcement sectors.
- Prioritize making access to services available to survivors of violence against women.

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<sup>6</sup> Cho, Hae-Ram, Dating Violence Increases 41% in 2 years... 4 out 10 Women Get Married Even After Being Abused, *Kyungghyan Shinmun*, September 28, 2020, <https://m.khan.co.kr/national/national-general/article/202009281546011> (accessed June 22, 2022); Kim, Arin, Most Victims of Dating Violence in Korea are Women: Police, *The Korea Herald*, June 29, 2020, <https://www.koreaherald.com/view.php?ud=20200629000695> (accessed June 22, 2022).

<sup>7</sup> Human Rights Watch, “My Life is Not Your Porn”: *Digital Sex Crimes in South Korea* (New York: Human Rights Watch, 2021), <https://www.hrw.org/report/2021/06/16/my-life-not-your-porn/digital-sex-crimes-south-korea>.

<sup>8</sup> Workplace Harassment in Korea: What is workplace harassment?, April 5, 2021, Seoul Law Group Blog, <https://seoullawgroup.com/workplace-harassment-in-korea/> (accessed June 30, 2022); Goh, Da-sol, “Law fails to protect Koreans from Workplace Bullying,” *Asia Times*, January 23, 2020, <https://asiatimes.com/2020/01/south-korea-fails-to-stamp-out-workplace-bullying/> (accessed June 30, 2022).

<sup>9</sup> Ock Hyun-ju, “9 in 10 Workplace Sexual Harassment Victims Experience Retaliation: Study,” February 1, 2021, *The Korea Herald*, <http://www.koreaherald.com/view.php?ud=20210201000913> (accessed June 30, 2022).

<sup>10</sup> Shin, Ji-hye, “Migrant Workers Report More Claims of Sexual Assault on Farms,” March 30, 2021, *The Korea Herald*, <https://www.koreaherald.com/view.php?ud=20210330000855> (accessed June 30, 2022).

<sup>11</sup> Human Rights Watch, South Korea’s Constitutional Right to Abortion, June 9, 2022, <https://www.hrw.org/news/2022/06/09/south-koreas-constitutional-right-abortion>.

- Conduct a major reform of its sexuality education curriculum to remove gender stereotypes, provide scientific information about healthy sexuality and include inclusive teaching about consent, gender-based violence, healthy relationships, and digital citizenship, including teaching about the harm and illegality of digital sex crimes.
- Ratify and make reforms in alignment with the ILO Violence and Harassment Convention including comprehensive measures to promote prevention, monitoring, and remedies to ensure a world of work free from violence and harassment.
- Reform its law and policies to ensure full access to abortion, issue compatible guidance for health professionals, and provide information about sexual and reproductive health and rights, including abortion, to the public.

### Children’s Rights

8. In the 2017 UPR, South Korea supported all recommendations regarding the protection of children’s rights (recommendations 103.195, 106.166, and 116.154). However, access to education in South Korea is discriminatory. Children with disabilities face significant difficulties obtaining an education.<sup>12</sup> Access to education is also discriminatory based on origin. North Korean children living in South Korea, despite receiving automatic citizenship, face discrimination in accessing education and employment opportunities.<sup>13</sup> All South Korean citizen children have a right to nine years of compulsory education, including six years of elementary education and three of secondary education.<sup>14</sup> Although non-Korean migrant children may have the right to attend school, they do not benefit from compulsory education.

9. At the beginning of the Covid-19 pandemic in 2020, the Education Ministry suspended in-person learning and committed to providing online classes. A global investigation by Human Rights Watch into the education technology (EdTech) endorsed by 49 governments during the Covid-19 pandemic found that eight EdTech products recommended by South Korea’s Education Ministry surveilled or had the capacity to surveil children in ways that risked or infringed on their rights.<sup>15</sup>

10. For example, within seconds of a child opening up the government-recommended website of the national public broadcaster, Korea Educational Broadcasting System (EBS), 24 ad trackers begin to record the child’s every movement and interaction within the virtual classroom

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<sup>12</sup> You Soo-sun, “Disabled Children Struggle with Schooling,” *Korea Times*, August 9,

2017, [https://www.koreatimes.co.kr/www/nation/2017/08/181\\_234459.html](https://www.koreatimes.co.kr/www/nation/2017/08/181_234459.html) (accessed June 29, 2022)

<sup>13</sup> 2020 Settlement Survey of North Korean Refugees in South Korea, Korea Hana Foundation, March 2021, <https://koreahana.or.kr/home/eng/resources/research/index.do?act=detail&idx=11&searchKeyword=Settlement%20Survey%20of%20North%20Korean%20Refugees%20in%20South%20Korea&menuPos=20&searchValue1=D&searchValue3=0> (accessed June 29, 2022).

<sup>14</sup> Framework Act on

Education, [https://elaw.klri.re.kr/eng\\_mobile/viewer.do?hseq=49091&type=sogan&key=2](https://elaw.klri.re.kr/eng_mobile/viewer.do?hseq=49091&type=sogan&key=2) (accessed June 29, 2022), arts. 1 & 6.

<sup>15</sup> Human Rights Watch, “How Dare They Peep into My Private Life?”: *Children’s Rights Violations by Governments that Endorsed Online Learning During the Covid-19 Pandemic* (New York: Human Rights Watch, 2022), <https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments>

and transmit this information to 15 advertising companies.<sup>16</sup> EBS also surreptitiously captures text typed by children even before they hit send, using an invasive tracking technique called key logging. Human Rights Watch also observed EBS sending data about children to Google and to Meta through two tracking technologies that would allow these companies to target children with ads across the internet.

11. EBS' privacy policy does not disclose these technologies.<sup>17</sup> Responding to Human Rights Watch, EBS noted that "while it offers some paid subscription services such as health sciences and cooking classes for adults, mainly functions as a gateway to various Internet education websites of EBS." EBS also stated that it does not send information that would identify children to advertising companies.<sup>18</sup>

12. The South Korean government should:

- Ensure all children have a right to free and compulsory primary education, and access to all other education, including further compulsory education, on a non-discriminatory basis.
- Strengthen and enforce child-specific data protection laws that address the significant child rights impacts of the collection, processing, and use of children's personal data.

### **Sexual Orientation and Gender Identity**

13. In the 2017 UPR, several states urged the South Korean government to end discrimination based on sexual orientation, but South Korea rejected all recommendations mentioning the rights of lesbian, gay, bisexual, transgender and intersex individuals. While supporting six recommendations to enact comprehensive anti-discrimination laws (recommendations 132.28, 132.29, 132.31, 132.33, 132.34, 132.37, 132.41, 132.42, and 132.45), it rejected 14 making reference to prohibition of discrimination based on sexual orientation or gender identity (recommendations 132.26, 132.27, 132.32, 132.36, 132.38, 132.39, 132.40, 132.43, 132.44, 132.57, 132.60, 132.62, 132.64, and 132.65). Activists and legislators have actively advocated for the National Assembly to pass a broad-based national anti-discrimination law protecting LGBT persons, women, children, people with disabilities, older people, and foreigners. But the government did not make meaningful progress on such a law, citing anti-LGBT opposition by vocal Christian conservative groups.

14. In schools, LGBT children and young people experience severe isolation and mistreatment including bullying and harassment, a lack of confidential mental health support, exclusion from school curricula, and gender identity discrimination.<sup>19</sup>

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<sup>16</sup> Analysis conducted by Human Rights Watch. More details on our methodology available at <https://www.hrw.org/report/2022/05/25/how-dare-they-peep-my-private-life/childrens-rights-violations-governments#6460>.

<sup>17</sup> EBS, "Privacy Policy" ("개인정보처리방침"), February 8, 2021, <https://web.archive.org/web/20210804035422/https://sso.ebs.co.kr/policy/privacy?date=20210208&tab=2&ver=%2Fpolicy%2Fprivacy%3Fdate%3D20210208&fsdc=> (accessed June 29, 2022).

<sup>18</sup> Human Rights Watch email correspondence with Suh Dong Won, Policy Planning Center Public Relations Manager of EBS, May 20, 2022.

<sup>19</sup> Human Rights Watch, "I Thought of Myself as Defective": Neglecting the Rights of LGBT Youth in South Korean Schools, September 14, 2021, <https://www.hrw.org/report/2021/09/14/i-thought-myself-defective/neglecting-rights-lgbt-youth-south-korean-schools>.

15. Article 92-6 of the Military Criminal Act prohibits same-sex activity among soldiers with possible punishments of up to two years in prison.
16. The South Korean government should:
- Enact a comprehensive anti-discrimination law that prohibits discrimination based on sexual orientation and gender identity, sex, age, and origin.
  - Ensure that all young people—regardless of sexual orientation or gender identity—are safe, healthy, and able to receive an education, that addresses bullying and harassment, violations of privacy, mental health stressors, withholding of relevant information, and discrimination.
  - Redesign the national sexuality education curriculum to include affirming materials about varied sexual orientations and gender identities and expressly address the sexual health concerns of LGBT students, including accurate, objective information on prevention and treatment for HIV and other sexually transmitted diseases.
  - Repeal Article 92-6 and drop all cases against soldiers charged for consensual same-sex activity.

### **Older People's Rights**

17. Although South Korea accepted all recommendations referring to income and poverty among older people (recommendations 130.55 to 130.62), research by the OECD found that over 40 percent of older people in South Korea live in relative poverty, the highest rate among OECD countries.<sup>20</sup>
18. Discrimination against older people in South Korea is also pervasive and limits their access to income.<sup>21</sup> In a 2018 survey of 1000 older people by the National Human Rights Commission of Korea, 59 percent of respondents had difficulty finding jobs because of age restrictions, while 44 percent experienced ageism in their workplaces.<sup>22</sup>
19. The Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion sets a mandatory retirement age of 60 years or older.<sup>23</sup> The UN Independent Expert on the enjoyment of all human rights by older persons and the OECD called for the abolition of the mandatory retirement system.<sup>24</sup>

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<sup>20</sup> OECD, *Pensions at a Glance 2019*, <https://read.oecd.org/10.1787/b6d3dcfc-en?format=pdf> (accessed June 28, 2022), p. 186.

<sup>21</sup> Bridget Sleap, "Time is Running Out for South Korea to End Age Discrimination," Human Rights Watch Dispatch, November 19, 2021, <https://www.hrw.org/news/2021/11/19/time-running-out-south-korea-end-age-discrimination>.

<sup>22</sup> National Human Rights Commission of Korea, Survey for the drafting of the Older People's Rights General Report, uploaded 2018, [https://www.humanrights.go.kr/site/inc/file/fileDownload?fileid=1068133&filename=in\\_BB2017112015081403361491.pdf](https://www.humanrights.go.kr/site/inc/file/fileDownload?fileid=1068133&filename=in_BB2017112015081403361491.pdf) (accessed October 19, 2021), p. 132.

<sup>23</sup> Act on Prohibition of Age Discrimination in Employment and Elderly Employment Promotion (enacted 2019), [https://elaw.klri.re.kr/eng\\_service/lawView.do?hseq=37583&lang=ENG](https://elaw.klri.re.kr/eng_service/lawView.do?hseq=37583&lang=ENG) (accessed June 30, 2022), art. 19 (1).

<sup>24</sup> Report of the Independent Expert on the enjoyment of all human rights by older persons, UN Doc. A/HRC/48/53, 2021, paras. 65 and 81; OECD, *Ageing and Employment Policies, Working Better with Age: Korea*, <https://read.oecd.org/10.1787/9789264208261-en?format=read#page1>, p. 100.

20. The South Korean government should:
- Raise the Basic Pension to provide older people with sufficient income for an adequate standard of living.
  - Abolish mandatory retirement on the basis of age.

### **Freedom of Expression**

21. In the 3rd UPR cycle, South Korea rejected all four recommendations referring to the National Security Law (recommendations 132.25, 132.90, 132.08 and 132.109), which criminalizes dissemination of anything that the government classifies as North Korean “propaganda,” as well as creating, joining, praising, or inducing others to join any political association considered an undefined “anti-government organization.”<sup>25</sup> The law imposes significant restrictions on the rights to freedom of expression and the freedom of South Koreans to create and join political associations, or to meet with other people.

22. In December 2020, the South Korean government amended the National Intelligence Service (NIS) Act using broad, vague language and authorizing the authorities to continue collecting information under the National Security Law, instead of constraining the authority of the NIS.<sup>26</sup>

23. In the same month, the South Korean government adopted an amendment to the Development of the Inter-Korean Relations Act, widely known as the anti-leaflet law. The amendment imposes strict limitations on North Korean escapees and civil society organizations that work to send information and ideas from South Korea to the North Korean people.<sup>27</sup> The special rapporteurs on freedom of expression, peaceful assembly, human rights defenders, and on the situation of human rights in North Korea, raised concerns regarding its vague wording, its possible disproportionate penalization of some forms of political expression and legitimate activities of some civil society members with sentences of up to three years in prison or fines of up to 30 million won (US\$25,000), and the effects it may have on access to information inside North Korea.

24. During the last UPR, South Korea rejected a recommendation to replace criminal defamation and libel laws with civil ones (recommendation 132.108). South Korea continues to use draconian criminal defamation laws.<sup>28</sup> Human Rights Watch opposes all criminal defamation laws as a disproportionate and unnecessary response to the need to protect reputations, and notes that such criminal laws chill freedom of expression, silencing media and civil society activists. Criminal defamation law in South Korea focuses solely on whether what was said or written was in the public interest, meaning that truthful statements can be the basis of criminal liability, with a possible sentence of up to three years in prison or a fine of up to 20 million won (US\$15,300) if the court finds that they were not “in the public interest,” and not whether it was factually true or not. Defamation using “openly false facts” can result in a prison

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<sup>25</sup> “South Korea: Cold War Relic Law Criminalizes Criticism,” Human Rights Watch news release, May 28, 2015, <https://www.hrw.org/news/2015/05/28/south-korea-cold-war-relic-law-criminalizes-criticism>.

<sup>26</sup> “South Korea: Revise Intelligence Act Amendments,” Human Rights Watch news release, December 22, 2020, <https://www.hrw.org/news/2020/12/22/south-korea-revise-intelligence-act-amendments>.

<sup>27</sup> Human Rights Watch Submission to the Ministry of Unification, February 15, 2021, <https://www.hrw.org/news/2021/02/18/human-rights-watch-submission-ministry-unification>.

<sup>28</sup> “South Korea: Stop Using Criminal Defamation Laws,” Human Rights Watch news release, December 14, 2014, <https://www.hrw.org/news/2014/12/14/south-korea-stop-using-criminal-defamation-laws>.

sentence of up to seven years or fines up to 50 million won (US\$38,600). Human Rights Watch recommends use of civil defamation laws, which should only apply to false statements and prioritize non-pecuniary remedies such as apology, rectification and clarification and ensure that pecuniary damages are strictly proportionate to harm actually suffered.

25. The South Korean government should:

- Abolish or amend the National Security Law.
- Revise the National Intelligence Service (NIS) Act to exclude violations of the National Security Law from the matters subject to NIS investigation. Better define the offenses subject to surveillance by the NIS, and limit the scope of its work, linking it more closely to countering serious external security threats to limit the possibility for abuse.
- Repeal or revise the amendment to the Development of the Inter-Korean Relations Act, to be respectful of freedom of expression with limitations that are necessary, specific, and with penalties that are proportionate.
- Revoke all criminal defamation laws; ensure its civil defamation and criminal incitement laws are written and implemented in ways that provide protections for freedom of expression.