

| | |
|--|----|
| I. Introduction..... | 1 |
| II. Lack of Domestic Protection..... | 2 |
| A. Anti-discrimination Act..... | 2 |
| B. Hate Crimes..... | 2 |
| III. Criminalization..... | 3 |
| IV. Freedom of Assembly and Association..... | 4 |
| V. Labor Rights..... | 5 |
| VI. “Conversion Therapy”..... | 6 |
| VII. LGBTI Youth..... | 8 |
| A. Right to Education and Right to Health..... | 8 |
| B. Comprehensive Sex Education..... | 10 |
| C. Transgender Youth..... | 11 |
| VIII. Rights of Transgender people..... | 12 |
| A. Forced Sterilizations of Transgender people..... | 12 |
| IX. Rights of Intersex people..... | 14 |
| X. Recognition of Same-sex Relationships..... | 14 |
| XI. Rights of People living with HIV/AIDS..... | 16 |
| A. Medical discrimination against people living with HIV/AIDS..... | 16 |
| B. HIV/AIDS in Detention Facilities..... | 18 |
| C. HIV Criminalization..... | 19 |
| Recommendations..... | 20 |

I. Introduction

- 1 The Rainbow Action against Sexual Minority Discrimination (henceforth “Rainbow Action”) has created and submits this report to the United Nations Human Rights Council on the 42nd Session. The Rainbow Action is a coalition of 43 NGOs in the Republic of Korea (henceforth “ROK”) that has advocated the human rights of LGBTI people since 2007.

- 2 Despite this widespread discrimination against LGBTI people, the ROK failed to provide equal protection to LGBTI people. In the last 3rd UPR, there were 23 recommendations related to LGBTI rights, but the ROK only noted all 23 recommendations.¹

¹ Statement by the International Lesbian and Gay Association, 37th Human Rights Council Session, 19 March 2018.

II. Lack of Domestic Protection

A. Anti-discrimination Act

3 UN human rights institutions²³⁴⁵⁶⁷⁸ and the UPR in 2nd and 3rd cycle⁹¹⁰ have recommended the ROK to legislate a comprehensive anti-discrimination act. However, 15 years after the first attempt to legislate the bill in 2007, the comprehensive Anti-discrimination Act has not yet been enacted. Currently, four bills have been proposed in the National Assembly. In addition, a public petition, signed by 100,000 people, demanding the enactment of the bill has also been submitted to the National Assembly. Nevertheless, the NA continues to delay the legislative process on the bill. Even though the two activists fought a hunger strike for 46 days to urge the enactment, the NA has not started any specific legislative process except for one public hearing.

B. Hate Crimes

4 Hate crimes took place in such places as college campuses or pride events. In 2014,

² UN Committee on Economic, Social and Cultural Rights (CESCR), Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: concluding observations of the Committee on Economic, Social and Cultural Rights: Republic of Korea, 17 December 2009, E/C.12/KOR/CO/3, at para. 9.

³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations of the Committee on the Elimination of Discrimination against Women - Republic of Korea, 1 August 2011, CEDAW/C/KOR/CO/7, at para. 15.

⁴ UN Committee on the Rights of the Child (CRC), Concluding observations: Republic of Korea, 2 February 2012, CRC/C/KOR/CO/3-4, at para. 29.

⁵ UN Human Rights Committee (HRC), Concluding observations on the fourth periodic report of the Republic of Korea, 3 December 2015, CCPR/C/KOR/CO/4, at para. 12-13.

⁶ UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations on the fourth periodic report of the Republic of Korea, 19 October 2017, E/C.12/KOR/CO/4, at para. 23.

⁷ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the eighth periodic report of the Republic of Korea, 14 March 2018, CEDAW/C/KOR/CO/8, para 13

⁸ Committee on the Elimination of Racial Discrimination (CERD), Concluding observations on the combined 17th to 19th periodic reports of Republic of Korea, 14 December 2018, CERD/C/KOR/CO/17-19, para 43

⁹ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea, 12 December 2012, A/HRC/22/10, at para. 124.24, 124.33. “124.24. Adopt the Anti-discrimination Act as a matter of priority while encompassing also grounds for discrimination on the basis of sexual orientation (Czech Republic); Include in the Anti-discrimination Law a specific prohibition on discrimination on the basis of sexual orientation (Spain); 124.33. Study the possibility of intensifying measures aiming at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity (Argentina).”

¹⁰ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: Republic of Korea, 13 November 2017, A/HRC/WG.6/28/L.8, Twenty-four countries have recommended the enactment of anti-discrimination laws

2015, and 2016, there were a series of incidents where posters and banners for LGBTI-related events, such as welcoming newly incoming queer students, were damaged. Also, in 2018, at the 1st Incheon Queer Culture Festival, homophobic groups systematically blocked the march, swearing at the participants or using physical violence.¹¹ In 2020, there was a case where a banner that read “LGBTI people are in your daily life” posted in the subway station in Seoul was damaged,¹² In 2022, a gay singer who came out was assaulted by an unknown perpetrator.¹³

III. Criminalization

- 5 Article 92-6 of the Military Criminal Act¹⁴ views consensual sexual acts between adults of the same-sex in the armed forces as criminal offenses and is the only legal clause in the country stipulating punishment for same-sex acts. Although this clause has been revised many times amidst controversy, the essence that it is a sodomy clause remains unchanged. In the ROK, military service is mandatory (for a predetermined term) for most males. Consequently, gay men are stigmatized during military service as “illegal” beings.¹⁵
- 6 In April 2017, it was reported that the army tracked down and punished gay soldiers based on Article 92-6.¹⁶ There was also suspicion that the military had used entrapment tactics against gay soldiers.¹⁷ As a result of such targeted investigations, over 20 gay soldiers were charged and some of them convicted of violations of the 92-6. A soldier known as ‘Captain A’ was brought into custody less than a month before discharge from the army and was sentenced to 6 months in prison with a stay of execution for 1 year.

¹¹ The Diplomat, “Anti-LGBT Protesters Derail Incheon’s First-Ever Queer Culture Festival”, 11 September 2018 <https://thediplomat.com/2018/09/anti-lgbt-protesters-derail-incheons-first-ever-queer-culture-festival/>

¹² The Dankook Herald, “Conflict Over the Protection of Human Rights for LGBTQ”, 8 September 2020 <http://dkherald.dankook.ac.kr/news/articleView.html?idxno=12136>

¹³ Teen Vogue, “K-Pop Star Holland Said He Was Attacked and Called “A Dirty Gay””, 5 May 2022 <https://www.teenvogue.com/story/k-pop-star-holland-said-he-was-attacked-and-called-a-dirty-gay>

¹⁴ Article 92-6 (Disgraceful Conduct) A person who commits anal sex or other disgraceful conduct on a person falling under any provision of Article 1(1) through (3) shall be punished by imprisonment with prison labour for not more than two years.

¹⁵ The Korean Herald, “Gay conscientious objector gets Canada asylum”, 15 December 2011. <http://www.koreaherald.com/view.php?ud=20111215000521>

¹⁶ The New York Times, South Korea Military Is Accused of Cracking Down on Gay Soldiers, 26 April 2017

¹⁷ The Korea Herald, “Global petition launched against alleged gay soldier crackdown”, 22 June 2017 <https://m.koreaherald.com/amp/view.php?ud=20170622000784>

7 On July 28, 2016, the Constitutional Court of Korea ruled that Article 92-6 was constitutional (five judges: constitutional; four judges: unconstitutional). This decision was the third review of the sodomy clause in the Military Criminal Act over the past 14 years.¹⁸ In April 2022, the Supreme Court acquitted the two military officers charged for consensual sexual acts outside the barracks.¹⁹ However, the many organizations argued that the entire provision of Article 92-6 violates international human rights standards and the Constitution. The 4th unconstitutionality review case is pending at the Constitutional Court of Korea from 2017.²⁰

IV. Freedom of Assembly and Association

8 The Seoul Queer Culture Festival Organizing Committee applied to establish of a non-profit corporation under the Seoul Metropolitan Government in October 2019, the SMG did not respond for two years, exceeding the standard processing deadline of two weeks. In August 2021, the Seoul Metropolitan Government denied the application, stating that “it is judged that there are factors that will hinder the public interest due to social conflicts” as the reason.²¹ The SMG also cited the fact that there were opposition groups present every year during the event, and large-scale administrative forces were mobilized to prevent physical conflict. Furthermore, in administrative appeal proceedings, the SMG argued that “the purpose of the organization to guarantee the human rights of LGBTI people violates the Constitution Article 36 Paragraph 1 of the Constitution states that marriage and family life.” On June 15, 2022, the Central Administrative Tribunal made a decision to cancel the disposition of the SMG but rejected the request to carry out the establishment of a corporation. ”²²

¹⁸ Hankyoreh, “Constitutional Court upholds military’s ban on sodomy”, 8 August 2016.

http://english.hani.co.kr/arti/english_edition/e_national/755208.html

¹⁹ The Guardian, “South Korea’s highest court overturns military convictions of two gay soldiers”, 22 April 2022 <https://www.theguardian.com/world/2022/apr/22/south-koreas-highest-court-overturns-military-convictions-of-two-gay-soldiers>

²⁰ There are two cases in which the court have requested adjudication on the constitutionality of the statute to the Constitutional Court, ex officio (2017 heon-ga 16, 020 heon-ga 3)

²¹ Yonhap News, “Seoul city rejects queer festival organizer's application to set up non-profit foundation”, 26 August 2021 <https://en.yna.co.kr/view/AEN20210826009700315>

²² Yonhap News, “Seoul city rejects queer festival organizer's application to set up non-profit foundation”, 26 August 2021 <https://en.yna.co.kr/view/AEN20210826009700315>

- 9 The local governments also interrupted many local queer culture festivals or pride events, such as in Daegu, Incheon, and Jeju. The queer culture festival in Busan was even canceled.²³
- 10 In September 2017, Queer Women's Network applied for rental at Dongdaemun-gu Gymnasium to hold the 1st Queer Women's Games. the Dongdaemun-Gu Facilities Management Corporation canceled its authorization to use a gymnasium after receiving hateful complaints, even though it had initially granted approval.²⁴ The QWN filed a complaint with the NHRCK, and the Commission recommended that the incident was 'discrimination on the basis of sexual orientation.' But DFMC didn't implement the recommendations. The QWN filed a civil claim for damages against Dongdaemun-gu, the DFMC, and public officials. The claim was rejected in the first trial; however, the apparent court ruled that it was illegal to discriminate based on sexual orientation, etc., and that compensation should be paid.

V. Labor Rights

- 11 LGBTI persons in the ROK experience discrimination based on aspects such as physical appearances, attire, and mannerisms that differ from their sex assigned at birth in working conditions and environments including the job-seeking and hiring processes and daily life at the workplace. According to a 2014 survey conducted by the NHRCK,²⁵ 41%, 11.4%, 14.1%, and 7.4% of the total respondents had experienced workplace harassment, sexual harassment, recommended resignation/dismissal, and voluntary retirement, respectively.
- 12 Even among LGBTI persons, transgender persons face especially severe discrimination. According to a survey, 57.1% of respondents have ever given up applying for a job due

²³ Haps, "3rd Busan Queer Culture Festival Canceled", 20 August 2019

<https://www.hapskorea.com/3rd-busan-queer-culture-festival-canceled/>

²⁴ The Hankyoreh, "[Exclusive] LGBTI people continued to be denied from facility rental... Cancellations made after initial authorization for reasons of 'construction work', 29 September 2017

²⁵ 41%, 11.4%, 14.1%, and 7.4% of the total respondents had experienced workplace harassment, sexual harassment, recommended resignation/dismissal, and voluntary retirement, respectively. NHRCK, An Investigation on Discrimination Based on Sexual Orientation and Gender Identity, December 2014. (In Korean).

to their transgender identity among those who have done job-seeking activity during the past five years.²⁶ In the same survey, 43.6% of transgender workers reported experiences of workplace discrimination and harassment.²⁷

- 13 Also, there have also been several incidents highlighting the discrimination and violence experienced by LGBTI persons in the military.
- 14 January 2020, staff sergeant Byun Hui-su (or Byun Hee-soo) was discharged after being diagnosed with a grade 3 mental and physical disability due to the loss of the penis and testicles after she underwent gender reassignment surgery in Thailand in November 2019. The army denied her request for reinstatement in July 2020. In March 2021, she was found dead in her home.²⁸ On 7 Oct, the Daejeon district court ruled that the military discharge was unlawful and canceled the discharge.²⁹
- 15 In March 2022, the Supreme Court delivered mixed judgments against two male navy superiors charged with sexually assaulting a lesbian navy officer in 2010. The 3rd division of the Supreme Court announced on the 31st that it would confirm the innocence of Major A, accused of sexually assaulting the victim twice and forcibly molesting her. On the other hand, the 1st Division of the Supreme Court ruled that Lieutenant Colonel B was guilty of threatening and sexually assaulting the victim. The two superiors were sentenced to 10 years in prison and 8 years in prison, respectively, in the first trial at the Naval Headquarters General Military Court, but both were overturned to acquittal in the second trial at the Higher Military Court.³⁰ The joint action committee in the civil society is preparing a civil lawsuit against two perpetrators following the criminal case.

VI. “Conversion Therapy”

²⁶ National Human Rights Commission of Korea, Survey on the situation of hatred and discrimination on transgender people, 2020.

²⁷ National Human Rights Commission of Korea, Survey on the situation of hatred and discrimination on transgender people, 2020.

²⁸ The Guardian, “South Korea's first transgender soldier found dead.”, 4 March 2021.

²⁹ “S Korean court: Discharge of late transgender soldier unjust”

³⁰ The Korea Times, Row arises over not guilty verdict for 2 naval officers for raping female subordinate, 20 November 2018.

- 16 Various UN human rights institutions³¹ and medical communities have condemned so-called “conversion therapy”.³² However, some organizations in the ROK offer professional “conversion therapy” counselor programs and implement education. In 2016, the press and media reported an incident where a transgender woman escaped from a religious “conversion therapy” facility after being committed to it by her family and being subjected to violence under the pretext of “conversion therapy.” Although religiously based, this facility is operated for profit.
- 17 According to a 2016 survey, many LGBTI youth suffer from unprofessional counseling, told “*homosexuality*” “can be cured”. Nearly 40% of 1,072 respondents reporting experiences with homophobic statements and other human rights violations by counselors they turned to for psychological help.³³ Since 2015, 24 cases of “conversion therapy”-related consultations have been received by the LGBTQ Youth Crisis Support Center DDing Dong, a non-profit organization. The Ministry of Health and Welfare and expert organizations have not expressed any opinions on this.
- 18 In February 2019, A psychological counselor who defined homosexuality as a mental illness such as ‘abnormal sexual desire’ and publicly promoted conversion therapy as a medical subject was permanently expelled from the Korean Counseling Psychological Association. In the group chat room with about 800 second-class members of the Korean Counseling Psychological Association, the expelled psychological counselor said, ‘There are homosexuals who absolutely need counseling or treatment’ ‘Through the seminar, I will reveal the most appropriate psychotherapy technique for homosexuals’ the person said.³⁴ Also, in 2022, a doctor who is famous as a children's expert was criticized for pointing out the need for intervention to develop ‘masculinity’ for boys

³¹ CESCR, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), 4 March 2016, E/C. 12/GC/22. at para. 23.

UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016, A/HRC/31/57. At para. 48. Also, see A/HRC/22/53. At para. 88.

³² UN Committee Against Torture (CAT), Concluding observations on the fifth periodic report of China, 3 February 2016, CAT/C/CHN/CO/5. At paras 55-56. “Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of lesbian, gay, bisexual, transgender and intersex persons and prohibit the practice of so-called “conversion therapy”, and other forced, involuntary or otherwise coercive or abusive treatments against them.”

³³ The Hankyoreh, “Depressed LGBT youth told by counselor, ‘Choose not to be gay.’”, 24 February 2016. http://english.hani.co.kr/arti/english_edition/e_national/784066.html

³⁴ <https://m.khan.co.kr/national/national-general/article/201902080600085>

who display feminine gender expressions on her TV programs.³⁵

- 19 On May 11, 2022, Kim Seong-hoe, who was appointed as the secretary for religious and multiculturalism in the Presidential Secretariat after President Yoon Suk-Yeol took office in 2022, posted on his Facebook page, “Personally, I am against homosexuality. Rather than seeing homosexuality as desirable, I think it can be changed to a certain treatment, just as a smoker receives treatment for quitting smoking.”³⁶. After his hate speech against the comfort women was also known, he resigned voluntarily, but he did not apologize for his hateful remarks, and the president, who had the authority to appoint him, did not express any position.
- 20 Studies reported that a considerable number of LGBT people in Korea are experiencing “conversion therapy” and those experiences are associated with negative mental health outcomes of those who underwent “conversion therapy.” In a study of LGB adults, the prevalence of having undergone “conversion therapy” was 2.5%.³⁷ The study showed that LGB adults who had undergone “conversion therapy” showed a 1.44- and 2.35-times higher prevalence of suicidal ideation and suicide attempts than those without such experiences.³⁸ Another study of 566 transgender adults reported that 11.5% had undergone “conversion therapy”, and those with such experiences showed 1.34-, 2.52-, and 1.73-times higher prevalence of depression, panic disorder, and suicide attempts than those without such experiences³⁹

VII. LGBTI Youth

A. Right to Education and Right to Health

- 21 According to a 2014 NHRCK survey, 80.0% and 92.0% of LGBTI adolescents had been

³⁵ Should a feminine boy be told to take up martial arts to be more manly? - Top psychiatrist sparks debate after giving advice to ‘correct’ gender-nonconforming children, <https://www.koreaherald.com/view.php?ud=20220317000522>

³⁶ Senior South Korean official lands in hot water for endorsing conversion therapy, <https://www.independent.co.uk/asia/east-asia/south-korea-president-outrage-conversion-therapy-b2077450.html>

³⁷ Lee, H., Streed, C. G., Yi, H., Choo, S., & Kim, S. S. (2021). Sexual orientation change efforts, depressive symptoms, and suicidality among lesbian, gay, and bisexual adults: A cross-sectional study in South Korea. *LGBT health*, 8(6), 427-432.

³⁸ Lee, H., Streed, C. G., Yi, H., Choo, S., & Kim, S. S. (2021). Sexual orientation change efforts, depressive symptoms, and suicidality among lesbian, gay, and bisexual adults: A cross-sectional study in South Korea. *LGBT health*, 8(6), 427-432.

³⁹ Lee, H., Operario, D., Restar, A. J., Choo, S., Kim, R., Eom, Y. J., Yi, H., & Kim, S. S. (2022). Gender Identity Change Efforts Are Associated with Depression, Panic Disorder, and Suicide Attempts in South Korean Transgender Adults. *Transgender Health*. <https://doi.org/10.1089/trgh.2021.0171>.

subjected to hate speech from their teachers and other students, respectively. In September 2016, the media reported an incident in which a teacher at a middle school in Seoul had denigrated, expressed hatred for, and presented distorted images of LGBTI persons in the class. According to a Human Rights Watch report on LGBTI students in Korea from February 2019 to May 2021, Korea has yet to make significant progress in promoting an inclusive and supportive school environment. The report also pointed out that anti-LGBTI groups oppose the enactment of the Student Human Rights Ordinance by the local government on the grounds that they recognize the human rights of LGBTI people, and the enactment is often canceled.⁴⁰

- 22 According to the NHRCK survey, out of LGBTI respondents who had experienced discrimination and harassment, 58.1% had experienced depression, 46.2% had experienced a decrease in the motivation to learn, 19.4% and 16.1% had attempted suicide and self-harm, respectively. In addition, some had been forced to relinquish school activities by teachers and other students, a considerable number of respondents who had experienced discrimination and harassment had missed school, relinquished advancement to higher-level schools, withdrawn from school, or transferred to other schools. In another survey in 2014, 45.7% and 53.3% of LGBTI adolescents reported experiences of attempting suicide and self-harm, respectively.⁴¹ In February 2014, Busan High Court ruled that the school was not responsible for having violated its duty to perform protection and supervision with respect to the suicide in a case regarding suicide of an LGBTI adolescent who had suffered homophobic bullying at school.
- 23 In the Comprehensive Student Human Rights Plan II (2021-2023) of the Seoul Metropolitan Office of Education, there are no specific contents and budget allocation on the protection and support for LGBTI students. Meanwhile, anti-LGBTI groups constantly attacks on protective measures of the city such as the Comprehensive Student Human Rights Plan and the Student Human Rights Ordinance. After the draft of the Comprehensive Student Human Rights Plan was released, anti-LGBTI groups demanded the withdrawal of the plan, arguing that 'gender-awareness education

⁴⁰ Human Rights Watch, "I Thought of Myself as Defective" - Neglecting the Rights of LGBT Youth in South Korean Schools, 14 September 2021.

⁴¹ Korean Gay Men's Human Rights Group Chingusai, South Korean LGBTI Community Social Needs Assessment Survey, 14 June 2014.

promotes homosexuality and instills feminist ideas into students'. The opposition group collected about 11,000 online petitions arguing that the Student Human Rights Ordinance violates the right to education of parents.

- 24 During a government audit of the Ministry of Gender Equality and Family in 2020, it was found that in the past five years, youth support organizations had never provided job training related to sexual minorities, and the counseling performance for LGBT youths was less than half of that of private organizations. In a survey of LGBTI youth, 47.4.% of transgender youth who have experienced leaving home cannot be respected for their gender identity or They answered that they could not go to the shelter because it was impossible to enter.⁴² Any government-led research has been conducted on the experiences of LGBTQ youths for the past 10 years.
- 25 In 2020, at a meeting of the National Assembly Education Committee, Rep. Kim Byeongwook of the Future United Party (currently the People Power Party) argued that some of the picture books selected by the MOGEF for gender equality education and distributed to elementary schools and libraries 'express homosexuality as natural', rebuking the Minister of Education. The <Naeum Children's Book Education and Culture Project> by MOGEF is aimed to promote children's book which help children and adolescents find 'being myself' rather than gender-stereo type. The day after the issue was raised, the MOGEF recalled 10 books from the selection distributed to elementary schools and announced that they would be recalling them in consideration of the controversy surrounding cultural acceptability.

B. Comprehensive Sex Education

- 26 States have an obligation to provide age-appropriate, evidence-based, scientifically valid, and comprehensive education on sexual and reproductive health for everyone.⁴³

⁴² LGBTQ Youth Crisis Support Center DDingDong (2021), Preliminary Study on the Experiences and Concerns of LGBTI Youths Leaving Home.

⁴³ "States must develop and enforce evidence-based standards and guidelines for the provision and delivery of sexual and reproductive health services, and such guidance must be routinely updated to incorporate medical advancements. At the same time, States are required to provide age-appropriate, evidence-based, scientifically accurate comprehensive education for all on sexual and reproductive health." CESCR, General Comment No. 22: On the Rights to Sexual and Reproductive Health (art. 12, para. 47, Mar. 4, 2016, E/C.12/GC/22). Also, see CESCR, General Comment No. 14; CEDAW, General Recommendation No. 30, para. 52(c); and CRC, General Comment No. 15, para. 54.

In distributing the *National-level School Sex Education Standards* in February 2015, the Ministry of Education conveyed to the sex education personnel and schools across the country its policy of prohibiting allusions to homosexuality, diverse sexual orientations, and human rights of LGBTI persons. The training material to be transmitted to teachers and other sex education personnel included the instruction “The term ‘A variety of sexual orientations’ is prohibited from use and demanded to be deleted from the [National-level School] Sex Education Standards” and, moreover, stipulated the policy of “Human rights of sexual minorities: Contents on sexual minorities are demanded to be deleted.”

- 27 In September 2016, the Ministry of Education retracted its prescheduled support to the Seoul Metropolitan Office of Education on grounds that sex education training for teachers including contents on LGBTI persons’ human rights did not agree with the *School Sex Education Standards*. The organ that had created this training disclosed through the press that “The MOE [had] requested the lecture to be stopped.”⁴⁴
- 28 When social controversy ensued, the MOE made small revisions for approximately one year. However, in January 2017, it once again stated that contents on LGBTI persons could not be included in the *School Sex Education Standards*.⁴⁵

C. Transgender Youth

- 29 Many middle and high schools in the ROK, depending on the sex, are divided into male and female schools, and even in the coeducation setting, classes are divided by sex. In this educational setting, transgender youths should spend their daily school life in school and class assigned by their sex assigned at birth, which is different from their gender identity. This sex-segregation is problematic even after graduation from school. For example, a transgender man who graduated from an all-girls' school might give up

⁴⁴ Human Rights Watch, “Letter to the Government of South Korea on the Need to Recognize Sexual Orientation and Gender Identity in Sex Education”, 3 May 2015. <https://www.hrw.org/news/2015/05/03/letter-government-south-korea-need-recognize-sexual-orientation-and-gender-identity>; Human Rights Watch, “Letter to the Government of South Korea on Human Rights and Comprehensive Sexuality Education”, 21 July 2015. <https://www.hrw.org/news/2015/07/21/letter-government-south-korea-human-rights-and-comprehensive-sexuality-education>.

⁴⁵ The Korea Times, “Homosexuality missing from sex education”, 18 January 2017. http://www.koreatimes.co.kr/www/news/nation/2017/01/181_222534.html.

for a job opportunity because he has all-girls school in his resume. Transgender students have difficulties in wearing gender-divided uniforms and using gender-divided facilities such as restroom. In a 2014 survey of transgender youth, 62% of the respondents reported that forced gender stereotypes is the most challenging thing in school, 42% reported wearing skirts, trousers, and 28% reported using the restroom.

- 30 After the Supreme Court decision in 2006, the legal gender recognition is possible by the Supreme Court's guidelines. According to the guidelines, one must be legally capable and should be 19 years or older. Therefore, under 18 years of age cannot be recognized for their gender. There are limited cases for minors, but still, in this case, many invasive requirements must be met. An only unmarried person with no underage children, a psychiatric/hormonal treatment after a diagnosis of gender identity dysphoria, and sterilization surgery. There is a lower court precedent that does not require external genital surgery, but sometimes it is not generally applicable to other jurisdictions.

VIII. Rights of Transgender people

A. Forced Sterilizations of Transgender people

- 31 Since a 2006 Supreme Court decision,⁴⁶ matters to be investigated with respect to legal gender change have been presented according to the Supreme Court's established rules instead of laws in the ROK.⁴⁷ Despite the use of the expression "matters to be investigated," which connotes discretion, courts have accepted this as a de facto precondition. According to these established rules, out of non-married adults without legally minor children, only those who have been diagnosed with '*transsexualism*', received psychiatric/hormone therapy, and undergone sterilization surgeries are eligible for legal gender change. While there is a legal precedent from a lower court that

⁴⁶ Supreme Court of Korea, 2004Su42 Decision, 22 June 2006.

⁴⁷ Guidelines on the Clerical Processing of Cases of Transsexuals' Application for Legal Sex Reassignment (revised on Jan. 8, 2015 [Established Rules on Family Relationship Registration No. 435; implemented on Feb. 1, 2015]; in Korean). English translation by Korean Society of Law and Policy on Sexual Orientation and Gender Identity is available at http://annual.sogilaw.org/review/law_list_en

external genital reconstructive surgeries are not necessary for transgender men⁴⁸ and women⁴⁹, it is unclear whether other jurisdictions would make the same ruling.

- 32 In 2020, it became known that a transgender female soldier who underwent gender reassignment surgery while serving as a staff sergeant in the army is in danger of being forced to discharge from the military. She appealed that she wanted to continue serving in her military service, revealing her own name, Byun Hee-soo and face to the public, but the Army Headquarters decided on her discharge on January 23, 2020. The reason the military put forward was that the loss of the penis and testicles due to gender reassignment surgery was a mental and physical disorder.⁵⁰ In the end, while the lawsuit through the court continued, Sgt Byun Hee-soo died by suicide on February 28, 2021. On October 7, 2021, the Daejeon District Court ruled that the decision to be discharged from the army was illegal and canceled the decision.⁵¹ However, despite the court's ruling, there is no regulation on the service of transgender soldiers in the military so far.
- 33 In ROK, all gender-affirming care for transgender people is not covered by the National Health Insurance. As a result, transgender people have to bear the costs of up to tens of millions of won on their own, and eventually give up on getting gender-affirming care. According to the NHRCK survey in 2020, 71.0% of transgender respondents who did not undergo gender reassignment surgery said that they did not have surgery because of the cost burden.⁵² In response, the UN Committee on the Elimination of Discrimination against Women in 2018 recommended to the Korean government guarantee the right of transgender people to access medical services, including the National Health Insurance.⁵³ Nevertheless, the government has not even considered insurance coverage for gender reassignment-related medical care.

⁴⁸ The Hankyoreh, "Landmark Legal Ruling for South Korean Transgenders." 16 March 2013. http://english.hani.co.kr/arti/english_edition/e_national/578323.html

⁴⁹ The Hankyoreh, "The court first grants legal gender change for a transwoman without genital reconstructive surgery." 16 February 2017. (in Korean) http://www.hani.co.kr/arti/society/society_general/782866.html

⁵⁰ Yonhap News, "S. Korean transgender soldier pleads to serve after military orders discharge", 22 January 2020 <https://en.yna.co.kr/view/AEN20200122010500320>

⁵¹ Korea Joongang Daily, "Court rules in favor of late transgender soldier, Sgt. Byun Hee-soo", 7 October 2021 <https://koreajoongangdaily.joins.com/2021/10/07/national/socialAffairs/transgender-army-lgbt/20211007192033291.html>

⁵² National Human Rights Commission of Korea, Survey on the situation of hatred and discrimination on transgender people, 2020.

⁵³ UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the eighth periodic report of the Republic of Korea, 14 March 2018, CEDAW/C/KOR/CO/8, para 41

IX. Rights of Intersex people

- 34 In ROK, intersex people have been largely invisible. Statistically, newborns in the country amount to approximately 450,000 per year, out of whom 0.1%, or some 450, are presumed to have Klinefelter syndrome.⁵⁴ There are additionally many other intersex variations, affecting estimates of up to 1.7% of the population. Consequently, the number of intersex newborns could be as many as 7,650 a year.⁵⁵
- 35 For parents to register the birth of a child, they must select the legal gender of the child between male and female and record it in the reporting form according to the Resident Registration Act. To change this gender later, one must undergo legal gender change application procedures. In addition, it is general for adults including parents and teachers to educate children based on gender binarism even during socialization and public education processes. For these reasons, parents decide on the legal gender of their children without the latter's consent and impose irreversible surgeries on the youngsters as well.⁵⁶

X. Recognition of Same-sex Relationships

- 36 In 2014, Seodaemun-gu Office, the local government of a ward in Seoul, rejected a gay male couple's application to register their marriage. Stating, "Even if diverse circumstances surrounding the institution of marriage have changed in this age, society, and international community, 'same-sex unions' cannot be seen as being allowed as 'marriages' based solely on the theory of legal interpretation under the current laws

⁵⁴ Asan Medical Center, An Encyclopedia of Diseases (in Korean).

<http://www.amc.seoul.kr/asan/healthinfo/disease/diseaseDetail.do?contentId=32375>.

⁵⁵ Number of intersex people who claimed medical expenses from the National Health Insurance Service in 2015 - Healthcare Bigdata [sic] Hub (operated by the Health Insurance Review and Assessment Service; in Korean).

<http://opendata.hira.or.kr/op/opc/olap3thDsInfo.do>.

⁵⁶ Medical Today, "'Is it a boy or a girl?' What's the sex of [physically] ambiguous newborns?"; 28 June 2007. (in Korean). <http://bit.ly/2jsYKDG>.

without separate legislative measures,” the court dismissed the couple’s application for objection to the rejection in May 2016 and dismissed the appeal in the appellate trial in December of the same year.⁵⁷

- 37 Consequently, same-sex couples cannot obtain rights enjoyed by legally married opposite-sex couples including inheritance, medical self-determination, and pensions. As a result, surviving same-sex partners are at times subjected even to criminal prosecution on charges such as theft and fraud by family members who have inherited the property of deceased same-sex partners. According to the Civil Act, non-married persons are ineligible for full adoption. Also, lesbian couples are restricted in the right to access assisted reproductive technology.
- 38 In addition, the Government has not applied to non-married same-sex couples’ rights that are acknowledged for non-married different-sex couples by laws and legal precedents. Consequently, same-sex couples in the country have experienced discrimination in the enjoyment of economic, social, and cultural rights including pensions, housing, and National Health Insurance.
- 39 In 2021, a gay couple has sued the national health insurance corporation for canceling its coverage of one of the partners as a dependent. So Seong-wook and his partner Kim Yong-min filed the administrative lawsuit against the National Health Insurance Service (NHIS) with the Seoul Administrative Court. The NHIS first granted So coverage under Kim's employer-based health insurance program in February 2020 but reversed the decision in October citing their same-sex marriage. In January 2021, Seoul administrative Court ruled against the couple, saying matrimony in South Korea is still considered a union between a man and a woman.⁵⁸ "The union of a man and a woman is still understood as the core element of marriage based on existing civic law, Supreme Court and Constitutional Court ruling precedent," the court said in the ruling. The couple and the activists’ group filed the appeal in 2022.

⁵⁷Yonhap news, “S. Korean court rejects gay couple's appeal over same-sex marriage”, 6 December 2016. <http://english.yonhapnews.co.kr/news/2016/12/06/0200000000AEN20161206010400315.html>

⁵⁸ Human Rights Watch, South Korean Court Declines to Recognize Same-Sex Partners, 10 January 2022

40 The Life Partnership Bill, which would grant to two non-married persons sharing housing and livelihood the right to access social welfare including property issues before and after cohabitation, the right to medical self-determination, public housing, and National Health Insurance, and addresses issues of domestic violence in cohabiting relationships, was prepared.⁵⁹ However, this draft bill was not proposed in the National Assembly.

XI. Rights of People living with HIV/AIDS

A. Medical discrimination against people living with HIV/AIDS

41 Refusal to perform operations on and medical discrimination against people living with HIV/AIDS have occurred at higher-level general hospitals and municipal hospitals as well. Even standard precautions created after recommendations that the Government devise and implement plans for the systematic implementation of education on the human rights of people living with HIV/AIDS for physicians and employees at clinics and medical institutions⁶⁰ have been ineffective. Consequently, cases of refusal to examine and treat these people due to concern for HIV infection have continued to occur.⁶¹ However, it is very difficult for patients or their families individually to petition to the NHRCK or to file a lawsuit in the court afterwards. Moreover, exclusion of and discrimination against people living with HIV/AIDS at medical institutions are far too rampant to be overcome through patients' individual efforts.

42 Furthermore, employees at medical institutions do not differ from the public in

⁵⁹ SOGILAW, Human Rights Situation of LGBTI in South Korea 2015 "Continued discussion to establish the Life Partnership Act". http://annual.sogilaw.org/review/review_2015_en/1525

⁶⁰ National Human Rights Commission of Korea, February 2007.

⁶¹ In July 2011, tertiary referral hospital A did not perform total hip replacement (artificial joint surgery) on a person living with HIV/AIDS for the reason that it did not have "special gloves" for operations. In December 2015, tertiary referral hospital B refused to perform mastoidectomy and tympanoplasty (otitis media surgery) on a person living with HIV/AIDS for the reason that it did not have "screens" for operations. Seoul municipal hospital C refused to perform dental scaling on a person living with HIV/AIDS for the reason that "foam" could splatter. When this person protested, the hospital performed scaling after wrapping the dental chair and a screen approximately 1 m away completely with large plastic sheets, as is done when painting furniture or the home. In September 2016, tertiary referral hospital A refused to perform renal dialysis on a person living with HIV/AIDS who was in the final stage of chronic renal failure.

misconceptions of HIV/AIDS. According to “Development and Simulation of Routine HIV Testing System in Dental Clinic,”⁶² 44% (209 persons) of the 475 dentists surveyed responded, “Infection is possible when bitten by a mosquito that has [already] bitten an AIDS patient.” This is nearly identical to the results of a survey of 910 members of the public conducted in the same period (44%; 403 persons). In other words, the levels of misconceptions of HIV/AIDS are almost the same for dentists and the public alike.

- 43 In addition, when people living with HIV/AIDS including men who have sex with men (MSM) use medical institutions, 21.6% have experienced hate speech or discriminatory attitudes toward their sexual identities from the medical personnel and no less than 40.5% have experienced discriminatory acts of having to use separate equipment or spaces for the reason of preventing infection during treatments, operations, and hospitalization.⁶³
- 44 Hospital-level medical institutions, too, have refused or discriminated against people living with HIV/AIDS. In the Republic of Korea, the medical system is divided into acute-phase diseases and long-term care. The Ministry of Health and Welfare revised Article 36 of the Enforcement Rule of the Medical Service Act so that people living with HIV/AIDS would not be included among those who were restricted from hospitalization at sanitarium hospitals and promulgated this rule in December 2015, thus allowing people living with HIV/AIDS to be hospitalized at such institutions. However, the Korean Association of Geriatric Hospitals “absolutely oppose[s] the hospitalization of AIDS patients at all sanitarium hospitals.”⁶⁴ Out of over 1,300 sanitarium hospitals, 75 are public ones (as of 2015). But even these are all consigned to the private sector, being “public” only in the form of their establishment. Consequently, it is difficult to realize the Government’s policies through public sanitarium hospitals.

⁶² Centers for Disease Control and Prevention, 25 August 2010. Study was conducted by the Chung-Ang University Industry-Academic Cooperation Foundation. (in Korean).

⁶³ NHRCK, An Investigation on Medical Discrimination against People Living with HIV/AIDS, November 2016. (in Korean).

⁶⁴ (1) Because AIDS patients requiring medical care have complications such as tuberculosis, an infectious disease, there is concern about contagion to elderly patients, whose immunity is weak. (2) Safety problems including cases where the medical personnel have been bitten by AIDS patients are causes for concern as well. (3) The absolute majority of AIDS patients are male homosexuals and can sexually assault unconscious male patients in the same hospital rooms. (4) AIDS/homosexual organizations’ malicious petitions can lead to instability and anxiety in hospital management and patients.

B. HIV/AIDS in Detention Facilities

- 45 Rights violation of people with HIV/AIDS in detention facilities has been occurring, such as compulsory HIV/AIDS testing without consent, solitary confinement, and invasion of privacy.⁶⁵ Despite the CSOs continuous raise the issues, Article 3, Paragraph 2 of the Guidelines for Medical Treatment of Correctional Institution Inmates stipulates that new inmates should be “quickly commissioned to conduct the test for syphilis and acquired immunodeficiency syndrome”, which allowing compulsory testing for HIV/AIDS.⁶⁶ In addition, in this process, problems such as not notifying of the HIV testing to the inmates are occurring.⁶⁷
- 46 In 2019, it was reported that, in a prison, HIV-positive inmates were kept in solitary confinement, their seropositive status were disclosed by prison officers, their rooms were marked as “particular patients.” In July 2019, the NHRCK acknowledged that the solitary confinement of HIV-positive inmates is an infringement of human dignity in violation of the principle of excess prohibition, and that the exposure of seropositive status is a violation of the privacy of the Constitution. However, there has been no improvement in practice, and HIV-positive inmates are still facing discriminatory treatments in prison.
- 47 In July 2020, an asylum seeker who complained of chest pain and other complaints at the Hwaseong foreigner detention center was ‘temporarily lifted from special protection’ but was later detained again after being tested positive for pulmonary tuberculosis and HIV. Afterwards, despite completing treatment for tuberculosis, he was detained alone for a year in a windowless isolation room due to his HIV-positive status.⁶⁸
- 48 Article 20 of the Medical Treatment Guidelines for Inmates explicitly limits the number

⁶⁵ HIV/AIDS Human Rights Activists’ Network (2019), Detention Facilities and Human Rights of LGBTI People and People Living with HIV/AIDS. <https://bit.ly/3P93spw>

⁶⁶ The Kyunghyang Shinmun, “Civil Society Organizations ‘Mandatory HIV Testing in Prison is Human Rights Infringement.’”, 22 August 2011 <https://www.khan.co.kr/national/health-welfare/article/201108221341101> (in Korean).

⁶⁷ HIV/AIDS Human Rights Activists’ Network (2019), Detention Facilities and Human Rights of LGBTI People and People Living with HIV/AIDS. <https://bit.ly/3P93spw>

⁶⁸ Voice of America, “South Korean Activists Urge Better Treatment of Asylum Seekers”, 2 January 2022 <https://www.voanews.com/a/south-korean-activists-urge-better-treatment-of-asylum-seekers/6378557.html>.

of hemodialysis patients who can be transferred to a hemodialysis room operating institution to “those who do not have an infectious disease,” depriving the HIV-positive person of the right to receive treatment, which is a restriction of medical accessibility without scientific ground.⁶⁹

C. HIV Criminalization

49 UNAIDS repeatedly asserted that laws criminalizing HIV transmission are counterproductive because they undermine, rather than support, efforts to prevent new HIV infections.⁷⁰ Criminalizing HIV transmission also breach human rights, including the rights to equality and non-discrimination.⁷¹ However, South Korea’s AIDS Prevention Act includes an Article 19 stating ‘a person living with HIV must not perform any acts which may transmit HIV through blood or bodily fluids’ and failure to comply is punishable by up to three years’ imprisonment. Moreover, despite HIV has already become a medically manageable condition, and continuous use of treatment can completely suppress the viral load,⁷² in the application of this provision in practice, authorities and judges solely focus on whether the HIV-positive person actually used a condom in sexual intercourse.

50 In 2018, the Seoul Central District Court sentenced an HIV-positive person who had sex with a partner without notifying the person of HIV status to six months in prison and two years of probation⁷³ for violating the Article 19 of Prevention of Acquired Immunodeficiency Syndrome Act.⁷⁴ The defendant argued that there was no possibility of infection because the HIV virus was suppressed by taking the drug, and in fact, the other party was not infected with HIV. Nevertheless, the court found guilty, saying,

⁶⁹ Kim et al., (2010), Infection Control Guideline for Hemodialysis Room, Korean Journal of Nosocomial Infection Control, Vol. 15 No. 2, pp. 65-77.

⁷⁰ Global Commission on HIV and the Law, Risks, Rights & Health, 2012, and 2018 supplement.; UNAIDS, Guidance Note on Ending Overly Broad HIV Criminalisation: Critical Scientific, Medical and Legal Considerations, 2013.

⁷¹ Global Commission on HIV and the Law, Risks, Rights & Health, 2012, and 2018 supplement.; UNAIDS, Guidance Note on Ending Overly Broad HIV Criminalisation: Critical Scientific, Medical and Legal Considerations, 2013.

⁷² U=U taking off in 2017, The Lancet HIV, EDITORIAL, VOL.4, ISSUE 11, E475, 1 November 2017.

[https://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018\(17\)30183-2/fulltext](https://www.thelancet.com/journals/lanhiv/article/PIIS2352-3018(17)30183-2/fulltext)

⁷³ Seoul Central District Court, 14 August 2018, 2017 Go-dan 6412 Decision

⁷⁴ Prevention Of Acquired Immunodeficiency Syndrome Act

Article 19 (Prohibition against Carrying and Spreading AIDS) No infected person shall perform any act of carrying and spreading AIDS to another person through blood or body fluids.

Article 25 (Penalty Provisions) Any of the following persons shall be punished by imprisonment with labor for not more than three years:

2. A person who performs an act of carrying and spreading AIDS, in contravention of Article 19.

"Just because the HIV virus is suppressed does not mean it has disappeared, and the risk of infection during sexual intercourse while the virus is suppressed is close to zero, not zero." In 2018, the Eastern Branch of the Busan District Court sentenced an HIV-positive woman with intellectual disability to one year in prison and two years of probation.⁷⁵ The Seoul Western District Court ex officio filed a constitutional complaint against article 19 to the Constitutional Court in 2019. The court ruled that the target of punishment was unclear, and the article violated the right to pursue happiness of people living with HIV.⁷⁶

⁷⁵ B-Minor, "Busan HIV-positive woman with intellectual disability receives higher sentence than 'prostitution broker'" 16 May 2018.

<http://www.beminor.com/news/articleView.html?idxno=12188>

⁷⁶ Constitutional Court 2019 heon-ga 30

Recommendations

1. Clearly and officially state that it does not tolerate any form of social stigmatization of, or discrimination against, persons based on their sexual orientation or gender identity/expression.
2. Include questions on sexual orientation and gender identity in the census and national statistics to identify social experiences and health status of LGBT people in Korea
3. Enact a comprehensive Anti-Discrimination Act that prohibits all forms of discrimination, including sexual orientation and gender identity.
4. Abolish article 92-6 of the Military Criminal Act which criminalizes consensual same-sex sexual acts between adults.
5. Ensure the freedom of expression, assembly, and association of LGBTI persons.
6. Provide all administrative, legislative, and judicial measures to prohibit discrimination on the basis of sexual orientation, gender identity/expression, and HIV/AIDS status at the central and local levels, including the establishment of a National Action Plan for LGBTI people.
7. Take all necessary measures to prevent and investigate of homo/transphobic hate speech and hate crimes.
8. Ensure that LGBTI rights are guaranteed in curriculum and educational policies, including comprehensive sex education. Ensure that LGBTI youth are free from discrimination and bullying in school.
9. Mandate government officials, judges, social workers, health professionals, and counseling specialists to undertake cultural competency and human rights education on sexual orientation, gender identity/expression, and HIV/AIDS.
10. Take all legal and administrative measure to ban conversion therapy, in particular, to children and adolescents.
11. Investigate the housing situation of LGBT youth homeless and provide safe and non-discriminatory housing with support.
12. Exclude forced sterilization surgery, genital reconstructive surgery, and other abusive requirement such as divorce, having no minor child, age requirement for precondition of legal gender recognition of transgender persons.
13. Ensure that transgender persons have a right of access to medical services, including national health insurance coverage for gender affirming care services.

14. Ensure the bodily integrity of intersex persons, especially infants, children, and adolescents, by prohibiting unnecessary medical interventions carried out without their free and fully informed consent.
15. Take steps to ensure that same-sex couples are not discriminated in terms of economic, social rights and benefits, such as reproductive health, pensions, national health insurance.
16. Legalize same-sex marriage.
17. Take necessary measures to prevent infringement of the right to health and discrimination against people living with HIV and AIDS, especially those in detention facilities.
18. Abolish the criminalization of potential HIV transmission by repealing the Article 19 of Prevention of Acquired Immunodeficiency Syndrome Act.