

# Human Rights Violations against Lesbian, Bisexual Women, Transgender and Intersex People on the Basis of Sexual Orientation, Gender Identity, and HIV Status in the Republic of Korea



Joint Civil Society Submission to the Committee on the Elimination of Discrimination against Women (CEDAW) for State Compliance with the Convention on the Elimination of All Forms of Discrimination against Women

The Republic of Korea

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Submitted by the Rainbow Action against Sexual Minority Discrimination

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## 1. Introduction

1. The Rainbow Action against Sexual Minority Discrimination (henceforth “Rainbow Action”) has created and submits this report for the review of the Republic of Korea’s compliance with the Convention on the Elimination of All Forms of Discrimination against Women. It is a coalition of 27 NGOs in the Republic of Korea that advocate the human rights of LGBTI persons.

## 2. Executive Summary

2. In 2015, UN Human Rights Committee pointed out through the concluding observations that there is widespread discrimination against LGBTI persons in the Republic of Korea, including:<sup>1</sup>

*(a) The widespread discrimination against lesbian, gay, bisexual, transgender and intersex persons, including violence and hate speech;*

*(b) The punishment of consensual same-sex sexual conduct between men in the military, pursuant to article 92-6 of the Military Criminal Act;*

*(c) The authorization of the use of the buildings of the National Assembly and of buildings of the National Human Rights Commission to host so-called “conversion therapies” for lesbian, gay, bisexual and transgender persons;*

*(d) The lack of any mention of homosexuality or sexual minorities in the new sex education guidelines;*

*(e) The restrictive requirements for legal recognition of gender reassignment (arts. 2, 17 and 26).*

3. Also, in 2017, UN Committee against Torture recommended the concluding observations including:<sup>2</sup>

*35. (...) It is also concerned as about repeated crackdowns against gay soldiers on grounds of violating article 92-6 of the Military Criminal Act, which criminalises consensual sexual relations between same sex adults (arts. 2, 4, 11, 12, 13, 14 and 16).*

*36. The State party should: (...)*

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1 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

2 UN UN Committee against Torture (CAT), *Concluding observations on the third to fifth periodic reports of the Republic of Korea*, May 2017, CAT/C/KOR/CO/3-5

*(f) Consider repealing article 92-6 of the Military Criminal Act and take all necessary measures to make punishable violent actions against LGBTI persons in the military; (...)*

4. Lastly, in 2017, UN on Economic, Social and Cultural Rights Committee recommended the concluding observations including:<sup>3</sup>

*Discrimination on the grounds of sexual orientation and gender identity*

24. *The Committee is concerned at the criminalization of same-sex acts in the military criminal act. The Committee is also concerned that the persons involved in same-sex relationships are exposed to discrimination in the enjoyment of several Covenant rights. Moreover, it is concerned at reports of discriminatory attitudes and acts against lesbian, gay, bisexual, transgender and intersex persons in many fields of public life (art. 2 (2)).*

25. *The Committee recommends that the State party take effective measures to eliminate de jure and de facto discrimination against lesbian, gay, bisexual, transgender and intersex persons. In particular, it recommends that the State party:*

*(a) Abrogate the provision of the military criminal act, which criminalizes same-sex acts;*

*(b) Revise legal and regulatory provisions that are discriminatory or have a discriminatory effect, such as those relating to social security, reproductive health and housing;*

*(c) Ensure that the comprehensive anti-discriminatory law to be adopted also prohibits discrimination on the grounds of sexual orientation and gender identity;*

5. In the Republic of Korea, LB women and TI persons have limited access to education, healthcare institutions and employment opportunities due to intersecting discrimination and social stigmatization. The Rainbow Action proposes to the Committee the questions and recommendations below.

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<sup>3</sup> 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

### 3. Anti-Discrimination Act

6. UN human rights institutions including this Committee (2011)<sup>4</sup>, Committee on Economic, Social and Cultural Rights Committee (2009 and 2017)<sup>56</sup>, Committee on the Rights of the Child (2011)<sup>7</sup>, Universal Periodic Review (2012 and 2017)<sup>8</sup>, and Human Rights Committee (2015)<sup>9</sup>

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<sup>4</sup> 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. "15. The Committee calls on the State party to take urgent steps towards the adoption of a comprehensive Anti-Discrimination Act, in line with articles 1 and 2 of the Convention and the Committee's general recommendation No. 28 (2010), that includes a clear prohibition of all forms of discrimination, both direct and indirect, and takes into account article 2 (4) of the National Human Rights Commission Act (Korea, 2005), which prohibits discrimination on the grounds of sexual orientation."

<sup>5</sup> 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. "9. The Committee is concerned that a comprehensive anti-discrimination law has still not been adopted by the State party owing to the fact that the anti-discrimination bill submitted to the seventeenth National Assembly in December 2007 was discarded without consideration. The Committee is also concerned that the present version under assessment by the task force does not exclusively enumerate anti-discrimination grounds, but rather stipulates a list of typical anti-discrimination grounds as an example, and that it only contains certain grounds for discrimination, excluding others that had been indicated in the original bill, such as nationality and sexual orientation (art. 2). The Committee urges the State party to adopt expeditiously a comprehensive anti-discrimination law that clearly spells out all the grounds for discrimination, as set out by article 2.2 of the Covenant and in line with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights (art. 2, para. 2)."

<sup>6</sup> 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.24. "22. The Committee is concerned at the delay in the adoption of comprehensive anti-discrimination legislation, especially in view of the fact that the State party's Constitution prohibits discrimination only on the grounds of sex, religion and social status. It is further concerned that the State party has not taken sufficiently proactive and effective steps to build consensus around the prohibited grounds of discrimination among the population (art. 2 (2)). 23. The Committee reiterates the urgency of adopting comprehensive anti-discrimination legislation and recommends that the State party raises awareness among the population and legislators about the harmful effect of discrimination on the protection of human dignity and the equal enjoyment of human rights. The Committee refers the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights."

<sup>7</sup> 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. "29. The Committee urges the State party to: (a) Expeditiously enact anti-discrimination legislation with the objective of adopting legislation that is in full compliance with article 2 of the Convention."

<sup>8</sup> 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)."

<sup>9</sup> 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. "...The State party should adopt comprehensive anti-discrimination legislation, explicitly addressing all spheres of life and defining and prohibiting discrimination on any ground, including race, sexual orientation and gender identity. The legislation should impose appropriate penalties for direct and indirect discrimination committed by both public and private entities, and should provide for effective remedies."

have recommended the government to legislate a comprehensive anti-discrimination law so that rights in all of these conventions and covenants can be enjoyed without discrimination.

7. First proposed in 2007, the Anti-Discrimination Act has not been passed in the National Assembly despite three attempts to legislate it. Most recently, in 2013, legislators Kim Han-gil and Choi Won-shik led the introduction of two Anti-Discrimination Bills that included sexual orientation. However, these proposers themselves retracted the draft bills after organized opposition from anti-LGBTI and conservative Protestant organizations.<sup>10</sup>
8. While the enactment of the law was thus being delayed, the Republic of Korea government neither disclosed its research for the legislation nor implemented public campaigns. Attempts to forge a cooperative relationship with civil society for the enactment were not made, either.

**Suggested Questions**

- Submit information on the efforts openly to legislate a comprehensive anti-discrimination law that includes sexual orientation and gender identity and on its methods, in this process, to guarantee the participation of groups against whom discrimination is to be prohibited.

**Suggest Recommendations**

- Reiterates the urgency of adopting comprehensive anti-discrimination legislation that prohibits all forms of discrimination, including sexual orientation and gender identity.
- Raise awareness among the population and legislators about the harmful effect of discrimination on the protection of human dignity and the equal enjoyment of human rights.

## 4. Stereotypes

9. It is a violation of international human rights law to criminalize consensual sexual relations between adults of the same sex.<sup>11</sup> However, Article 92-6 of the Military Criminal Act<sup>12</sup> views such acts in the armed forces as criminal offenses and is the only legal clause in the country

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10 Human Rights Monitor South Korea, "Comprehensive Anti-discrimination Act Withdrawal: Korea human rights situation back tracks", 5 May 2013. <http://www.humanrightskorea.org/2013/comprehensive-anti-discrimination-act-withdrawal-korea-human-rights-situation-back-tracks/>

11 *Toonen v. Australia* (CCPR/C/50/D/488/1992), UN Human Rights Committee, 4 April 1994.; 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.

12 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.

stipulating punishment for homosexual acts. In 2017, the press and media reported a crackdown on gay soldiers for violating the Military Criminal Act in the army. The military investigators tracked down gay soldiers using gay dating apps and/or social media. One soldier, which known as Captain A was prosecuted and was sentenced to 6 months of imprisonment and 1 year of suspension of the sentence. This symbolic provision fuels homophobia and transphobia prevalent in the country.

10. At a confirmation hearing held on July 7, 2015, Kim Hyun Woong, then nominated by the President as the Minister of Justice, was questioned by one legislator regarding his stance on the Korea Queer Festival (LGBTI pride festival). He responded, “Though the freedom of expression must be respected, it may be restricted for the maintenance of order or public duties” and “It [the festival] must be restricted because it does not agree with the traditional values or norms of Korean society.”<sup>13</sup>
11. A political party whose platform consists of discrimination against minorities, the Christian Liberal Party, emerged in the National Assembly elections (general elections) held in April 2016. It spread the hate speech of “Re-criminalization of adultery, opposition to the legislation of homosexuality (Anti-Discrimination Act), opposition to privileges to Islam” to the public through campaign bulletins and television commercials. In the end, the Christian Liberal Party won 2.63% of total votes in the party vote, thus failing to reach 3%, the lowest requirement for obtaining one seat in the legislature. Nevertheless, this was a high figure compared to other minor parties. On May 24, 2016, LGBTI human rights organizations and migrant workers’ labor unions filed a petition to the NHRCK regarding this party’s activities.
12. On August 4, 2015, the Ministry of Gender Equality and Family requested the deletion of the clause that “Sexual minorities, too, must be guaranteed human rights equally and participate and be treated equally in all fields” from the Daejeon Basic Ordinance on Gender Equality, stating that it was outside the legislative purpose of the Framework Act on Gender Equality. Subsequently, the Daejeon Metropolitan Council complied with the request. In other words, the Ministry’s stance was that the Framework Act on Gender Equality “[did] not include or stipulate concepts or policies related to sexual minorities.” However, this goes against UN agencies’ position on intersectionality among women.

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13 The Korea Herald, “Justice minister nominee opposes same-sex marriage”, 7 July 2014.

**Suggested Questions**

- Submit information on its efforts to prevent discriminatory attitudes and hate speech against LGBTI women and persons that are rampant in the State party, especially discrimination by the government's ministries and civil servants.

**Suggest Recommendations**

- Counter stereotypical attitudes toward LGBTI women and girls, who experience intersecting discrimination.

## 5. Gender-based Violence

13. A number of transwomen sex workers were robbed and assaulted by teenage boys in Namsan area in 2012. Police investigators said the perpetrators committed crimes because they thought that victims are not likely to report to the police.<sup>14</sup> Because the law enforcement authority doesn't aggregate hate crimes statistics based on sexual orientation and gender identity, only a few cases can be known through the media. In 2016, it was revealed that a drug offender in 40s murdered a teenage girl for her lesbian relationship and buried the dead body in secret in a year ago.<sup>15</sup>
14. Article 2(2) of The Act on the Prevention of Spousal Violence and the Protection of Victims defines "the members of household" but the definition does not cover the relationships beyond marital relationship and de facto. While the law is not explicitly confined to different-sex couples, law enforcement officials don't apply the antiviolence provisions to non-married same-sex couples.

**Suggested Questions**

- Provide information about gender-based violence against LGBTI women.
- Provide information whether anti-domestic violence framework is available to victims by same-sex partners.

**Suggest Recommendations**

- Ensure the LGBTI women to have access to gender-based and domestic violence protection framework.

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14 Money Today, "Police arrested teenagers who threatened 'Namsan Transgender' sex workers." 30 April 2012. (in Korean.)

<sup>15</sup> Seoul Shinmun, "a drug offender in 40s murdered a teenage girl for her lesbian relationship and buried the dead body", 7 March 2016. (in Korean) <http://www.seoul.co.kr/news/newsView.php?id=20160307500201>

## 6. Education

15. According to a survey conducted by the Seoul Metropolitan Government in 2014, the ratios of LGBTI adolescents who responded that they had heard hate speech against LGBTI persons amounted to approximately 80% depending on the type of hate speech, which are high figures. In addition, according to a 2014 survey conducted by the NHRCK, 80.0% and 92.0% of LGBTI adolescents had been subjected to hate speech from their teachers and other students, respectively. Indeed, 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 class.
16. According to a 2014 survey conducted by the NHRCK, 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% had attempted suicide, and 16.1% had attempted self-harm, respectively. In addition, some had been forced to relinquish school activities by teachers and other students, and 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 conducted in 2014, 45.7% and 53.3% of LGBTI adolescents (aged 18 or below) responded that they had attempted suicide and self-harm, respectively.<sup>16</sup> Regarding an incident in which an LGBTI adolescent had committed suicide due to a homophobic group bullying at school, Busan High Court ruled in February 2014 that the school was not responsible for having violated its duty to perform protection and supervision with respect to the suicide.
17. A study conducted by LGBTQ Youth Crisis Support Center DdingDong reported an incident at a high school in Seoul where a sexual minority student had posted a handwritten poster protesting against hate speech directed at LGBTI persons at school, in response to which the school had threatened to track down the person who had posted the poster on grounds that it had not obtained permission in advance. In September 2014, the Ministry of Education

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<sup>16</sup> Korean Gay Men's Human Rights Group Chingusai, South Korean LGBTI Community Social Needs Assessment Survey (Jun. 14, 2014).

transmitted a textbook-related civil petition raised by anti-LGBTI organizations to the Korea Authorized and Approved Textbook Association. In the process, it ordered the Association to collect and send a report on review results from the publisher of the textbook in question. Kyohaksa, a textbook publisher, considerably revised contents on LGBTI persons in its *Daily Life and Ethics*, a high school textbook, in 2014 due to demands made by anti-LGBTI organizations and conservative Protestant groups in 2013.

18. LGBTI adolescents constitute a vulnerable group, at the greatest risk of being exposed to hate speech and bullying and of prematurely terminating their studies. Also, mental health and suicidality of LGBTI adolescents is also worth attention.

**Suggested Questions**

- Submit information on the plans regarding homophobic and transphobic harassment, discrimination, and violence against LGBTI girls and gender non-conforming youth committed at schools by people including fellow students and teachers.

**Suggest Recommendations**

- Ensure that LGBTI rights are guaranteed in the curriculum and educational policies.

## 7. Employment

19. LGBTI women in the Republic of Korea 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,<sup>17</sup> 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. Not only difficulty in job-seeking, workplace harassment,<sup>18</sup> and sexual harassment but also direct/indirect encouragement to retire and voluntary retirement have thus occurred.

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<sup>17</sup> 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*, Dec. 2014. (In Korean).

<sup>18</sup> Bullying due to sexual orientation, threats of outing, repeated references, undue criticism, ridicule, damages to personal belongings, physical violence, sexual harassment, and sexual violence.

20. On the other hand, according to the Government<sup>19</sup>, *Workplace Sexual Harassment Prevention Guidebook for Employers* published by the Ministry of Employment and Labor and *Collection of Cases of Recommendations for the Correction of Sexual Harassment* published by the NHRCK do not at all address cases involving sexual orientation and gender identity and appropriate responses to them.
21. Even among LGBTI persons, transgender persons face especially severe discrimination. According to a survey, 22.0% and 73.2% of those whose sex assigned at birth and gender identity did not agree experienced employment refusal and workplace discrimination/harassment, respectively.<sup>20</sup> In March 2016, there occurred an incident in which an employee at Samsung SDS Co., Ltd. who had applied for a sick leave to receive gender reassignment surgeries was rejected on grounds that “There were no data that would allow [the request for] the sick leave to be accepted” and consequently retired.<sup>21</sup>

**Suggested Questions**

- Provide information on whether remedial means for unjust dismissal, disadvantages during personnel evaluations/measures, and harassment/discrimination in hiring and working conditions for LGBTI women exist in labor laws including the Labor Standards Act and the Equal Employment Opportunity and Work-Family Balance Assistance Act and, if not, how such means will be applied.

**Suggest Recommendations**

- Promote access to labor market and provide fair working conditions for LGBTI women and persons by addressing discrimination and social stigma against them.

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19 Republic of Korea, Fourth Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights (Jul. 21, 2016, E/C. 12/KOR/4, para. 64, 65).

20 Criticism of physical appearances based on gender binarism (54%), difficulty in using gender-segregated spaces (48.8%), retirement due to gender reassignment surgeries and hormone therapy (40%), and initiation of gender reassignment surgeries and hormone therapy after retirement (31.4%). NHRCK, *An Investigation on Discrimination Based on Sexual Orientation and Gender Identity* (Dec. 2014).

21 “Why did he change his profile picture to a ‘cross-dressed’ picture?” (Sisa Journal, Mar. 24, 2016; in Korean). <http://www.sisapress.com/journal/article/148605>.

## 8. Health

### 8.1 *Legal Recognition of Gender Identity of Transgender Persons*

22. Since a 2006 Supreme Court decision,<sup>22</sup> 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 Republic of Korea.<sup>23</sup> Despite the use of the expression "matters to be investigated," which connotes discretion, courts have accepted this as a de facto condition. 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. Other materials such as parents' written consent, too, are included in the "matters to be investigated." On the other hand, while there is a legal precedent from a lower court that external genital modification surgeries are not necessary for transgender men, it is unclear whether this applies to transgender women as well. In particular, the operation requirement forces on transgender persons indiscriminate and invasive surgeries for gender recognition and restricts reproductive rights as well.
23. Even when transgender persons seek to receive gender reassignment surgeries, medical specialists and information on the surgeries are scarce. In addition, the surgeries are excessively costly because none of the related examination and treatment processes are covered by the National Health Insurance system. Because there are few choices in medical services, it is difficult actually to raise issues even when there are side effects or medical measures are unsatisfactory.
24. Although the NHRCK recommended<sup>24</sup> the National Health Insurance to include in the *NAP* the expansion of the per stage coverage of medical measures, this has not been reflected in the

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

23 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](http://annual.sogilaw.org/review/law_list_en)

24 "Consider the phased application of the National Health Insurance to sex change-related surgeries." NHRCK, *Recommendations for the National Action Plan for the Promotion and Protection of Human Rights* (phase 1: 2007-2011; phase 2: 2012-2016; in Korean).

actual NAP at all. Consequently, transgender persons' right to access medical services has been severely restricted.<sup>25</sup>

#### Suggested Questions

- Provide information on efforts to create criteria regarding physical grades for military service that do not violate or demand individuals' physical modification.
- Provide information on efforts to improve transgender persons' right to access medical services including the application of the National Health Insurance to these people and to create medical curricula on transgender persons.

#### Suggest Recommendations

- Exclude forced sterilization surgery, genital reconstructive surgery, and other surgical procedures for precondition of legal gender recognition of transgender persons and the Military Manpower Administration's criteria for determining exemption from military service.
- Ensure transgender persons' right to access medical services including the application of the National Health Insurance.

## 8.2 Intersex Persons

25. Children who are born with intersex variations are often subject to irreversible sex assignment, involuntary sterilization, or involuntary genital normalizing surgery, performed without their informed consent, or that of their parents.<sup>26</sup>

26. In the Republic of Korea, intersex persons 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.<sup>27</sup> There are additionally many other intersex

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25 Yi Horim, et al., "Transgender People's Access to Health Care in Korea," *Health and Social Welfare Review* 35.4 (2015; in Korean). <https://www.kihasa.re.kr/common/filedown.do?seq=33746>.

26 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. 50. "In many States, children born with atypical sex characteristics are often subject to irreversible sex assignment, involuntary sterilization and genital normalizing surgery, which are performed without their informed consent or that of their parents, leaving them with permanent, irreversible infertility, causing severe mental suffering and contributing to stigmatization. In some cases, taboo and stigma lead to the killing of intersex infants."

27 Asan Medical Center, *An Encyclopedia of Diseases* (in Korean). <http://www.amc.seoul.kr/asan/healthinfo/disease/diseaseDetail.do?contentId=32375>.

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.<sup>28</sup>

27. In 2014, the press reported an incident in which a mother killed both her one-month-old infant born with Klinefelter syndrome and herself out of despair.<sup>29</sup>
28. In order 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 in the country 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. In such cases, the physical sex of children is known to be "corrected" before 12 months for females and before school age for males, respectively.<sup>30</sup>

**Suggested Questions**

- Provide information on the current status of unnecessary operations or medical measures that violate intersex persons' physical and mental integrity, autonomy, and self-determination and on the provision of sufficient information and counseling to intersex persons and their families.

**Suggest Recommendations**

- 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.

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28 Number of intersex persons 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>.

29 Kyunghyang Shinmun, "Incumbent female police officer found dead at home with month-old son", 23 December 2014. (in Korean). [http://news.khan.co.kr/kh\\_news/khan\\_art\\_view.html?code=940100&artid=201412230908381](http://news.khan.co.kr/kh_news/khan_art_view.html?code=940100&artid=201412230908381)

30 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>.

### **8.3 Medical Discrimination Against Women Living with HIV/AIDS**

29. 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 institutions<sup>31</sup> have been ineffective. Consequently, cases of refusal to examine and treat these people due to concern for HIV infection have continued to occur.<sup>32</sup> However, it is very difficult for patients or their families individually to petition to the NHRCK or to file a lawsuit in the court afterward. 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.
30. Furthermore, employees at medical institutions do not differ from the public in misconceptions of HIV/AIDS. According to "Development and Simulation of Routine HIV Testing System in Dental Clinic,"<sup>33</sup> 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.
31. According to a consultant for Korean Network for People living with HIV/AIDS (KNP+), more research was required into women with HIV, who faced some specific issues. "Women with HIV face serious stigma and the government's policies have nothing that addresses women

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31 NHRCK (Feb. 2007).

32 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.

33 Centers for Disease Control and Prevention (Aug. 25, 2010; service study conducted by the Chung-Ang University Industry-Academic Cooperation Foundation; in Korean).

with HIV specifically,” she said. “There are no communities for women to share their experiences and support each other and they are isolated.”<sup>34</sup>

#### Suggested Questions

- Submit information on specific data and statistics on women living with HIV/AIDS and their access to health care and counseling.

#### Suggest Recommendations

- Take necessary measures to prevent infringement of health rights and discrimination such as women living with HIV and AIDS patients being denied access to medical institutions.

## 8.4 Right to Comprehensive Sex Education

32. 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 [i. e., LGBTI persons’]: Contents on sexual minorities are demanded to be deleted.” 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 Ministry of Education [had] requested the lecture to be stopped.”<sup>35</sup>

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<sup>34</sup> The Korea Herald, “Discrimination against people with HIV rampant: UN study”, 22 June 2017.

<sup>35</sup> Human Rights Watch, “Letter to the Government of South Korea on the Need to Recognize Sexual Orientation and Gender Identity in Sex Education” (May 3, 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” (Jul. 21, 2015). <https://www.hrw.org/news/2015/07/21/letter-government-south-korea-human-rights-and-comprehensive-sexuality-education>.

33. When social controversy ensued, the Ministry of Education made 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*.<sup>36</sup>

**Suggested Questions**

- Submit information on whether the State party provides comprehensive sex education on sexual and reproductive health that is LGBTI-inclusive, age-appropriate, evidence-based, and scientifically accurate.

**Suggest Recommendations**

- Provide comprehensive sex education on sexual and reproductive health that is LGBTI-inclusive, age-appropriate, evidence-based, and scientifically accurate.

## 9. Marriage and Family Relations

34. **Discrimination against Same-sex couples:** 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 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.<sup>37</sup>
35. 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.

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36 The Korea Times, "Homosexuality missing from sex education", 18 January 2017. [http://www.koreatimes.co.kr/www/news/nation/2017/01/181\\_222534.html](http://www.koreatimes.co.kr/www/news/nation/2017/01/181_222534.html).

37 Yonhap 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>

36. 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 rights including pensions, housing, and National Health Insurance.<sup>38</sup>
37. 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.<sup>39</sup> However, this draft bill was not proposed in the National Assembly.

**Suggested Questions**

- Submit information on measures to enable same-sex couples to enjoy rights including access to health care, social security, and housing on an equal footing with opposite-sex couples.

**Suggest Recommendations**

- Take steps to ensure that same-sex couples are not discriminated in terms of economic, social rights and benefits, including legal recognition of same-sex marriage or civil union.

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38 Rights recognized for non-married different-sex couples include: endowment of eligibility to enter senior welfare housing together (Article 1(2) of the Welfare of the Aged Act); succession to the right of lease of house (Article 9 of the Housing Lease Protection Act); endowment of eligibility to receive pensions (Article 3 of the National Pension Act, Article 3 of the Veterans' Pension Act, Article 2 of the Pension for Private School Teachers and Staff Act); inclusion in the scope of surviving family members (Article 5 of the Act on the Honorable Treatment and Support of Persons, Etc. of Distinguished Services to the State, Article 5 of the Act on the Honorable Treatment of Persons of Distinguished Services to Independence, Article 3 of the Act on Support for Persons Eligible for Veteran's Compensation, Article 15(3) of the Enforcement Decree of the National Sports Promotion Act, Article 48 of the Enforcement Decree of the Labor Standards Act, etc.); and application of exceptions to restrictions on permission for interviews (Article 38 of the Enforcement Decree of the Treatment of Protected Juveniles, Etc. Act). In addition, spouses in de facto or common-law marriages are included among "family members," who are eligible for both punishment and support with respect to the crime of domestic violence (Article 2(2) of the Act on Special Cases Concerning the Punishment, Etc. of Crimes of Domestic Violence).

39 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](http://annual.sogilaw.org/review/review_2015_en/1525)