



Summary of Recommendations for the Republic of Korea (Sexual Orientation, Gender Identity, and HIV Status) Universal Periodic Review, 28th Session, 2017



Joint Submission by Rainbow Action Against Sexual Minority Discrimination
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Brief Assessment of the Implementation of the 2nd Cycle UPR Recommendations

In 2012, during the UPR 2nd Cycle, the Republic of Korea received four recommendations from Czech Republic, Spain, Argentina, and USA that were focused on LGBTI issues. The Republic of Korea only accepted a recommendation by Argentina (“Study the possibility of intensifying measures aiming at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity”), while three recommendations (two on the enactment of an anti-discrimination law, one on the repeal of Article 92-6 of the Military Criminal Act¹) were only noted. Nevertheless, no concrete legislative or public policy measures have been implemented based on these UPR recommendations.

Issues and Recommendations

Discrimination, Hate speech and Hate Crimes: According to a 2016 survey on hate speech by National Human Rights Commission of Korea, the respondents who experienced the most **hate speech** were LGBTI persons. During the 2016 general election, a political party backed by a particular religious group which opposed LGBTI persons earned 2.63% of the total vote, a significant figure to receive government subsidies. A **comprehensive anti-discrimination law** has not been enacted on the ground of persistent social controversies. An **LGBTI association** named ‘Beyond the Rainbow Foundation’ was denied legal recognition by the Ministry of Justice for years. The police force obstructed the 2015 Korea Queer Festival in Seoul, a **parade** celebrating the pride of LGBTI persons. Recently, a congressman from the conservative party insisted that “if we start to recognize LGBTI persons, we might as well recognize incest, paedophilia, necrophilia, and bestiality.” More recently, seventeen congressmen from the conservative party proposed a bill to delete sexual orientation from the anti-discrimination clause of the National Human Rights Commission Act of Korea. **Hate crimes** against LGBTI take place in gay districts, university campuses, and even at Pride events.

Recommendations

- Include sexual orientation and gender identity in the equality and non-discrimination clause of the Constitution.
- Take all administrative, legislative, and judicial measures to prohibit discrimination based on sexual orientation and gender identity at the central and local levels, including the establishment of a National Action Plan for LGBTI persons.
- Take all necessary measures to prevent, investigate and prosecute homo/transphobic hate speech and hate crimes through the creation of a specialised complaints mechanism.
- Develop human rights education programmes on sexual orientation, gender identity and HIV/AIDS in consultation with civil society, and encourage government officials, judges, counselling specialists, and health professionals to undertake such training.
- Ensure the freedom of assembly for LGBTI persons (e.g. hosting Korean Queer Culture Festival and pride march without obstruction), freedom of association (e.g. registration of LGBTI organization and foundation), and ban the restriction put on LGBTI related contents in the media in terms of freedom of expression.

Anti-discrimination Law: There is no comprehensive anti-discrimination law that includes sexual orientation and gender identity. The government stated, “Legislative procedures have been delayed due to continuing social controversies”. It was the government, however, which caused a controversy in the first place by excluding seven categories, including sexual orientation, from the Anti-discrimination Bill in 2007. While the enactment of the law is being delayed, the government neither disclosed its research for the legislation nor proceeded with the public campaigns.

Recommendations

- Enact an anti-discrimination law that prohibits all forms of discrimination, including based on sexual orientation and gender identity.
- Disclose specific contents and a timeline of research that is being conducted to develop a comprehensive anti-discrimination law and implement an immediate and effective nationwide public education campaign to increase awareness of the necessity to have a comprehensive anti-discrimination law.

Criminalization: Article 92-6 of the Military Criminal Act views consensual sexual relations between same-sex adults as a criminal offense, whether or not those relations take place in or outside the military compounds. 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, known as Captain A, was prosecuted and sentenced to 6 months of imprisonment and 1 year of probation.

Recommendations

- Abolish Article 92-6 of the Military Criminal Act which criminalizes consensual same-sex acts.

Comprehensive Sex Education and LGBTI Youth: In 2015, the Ministry of Education distributed a ‘**National-level Sex Education Guidelines**’, which prohibited any mention of diverse sexual orientations and deny the rights of LGBTI persons, with this instruction: “The use of the term ‘A variety of sexual orientations’ is prohibited and demanded to be deleted from the ‘National-level Sex Education Policy’”. And LGBTI adolescents constitute a vulnerable group, at the greatest risk of being exposed to **hate speech and bullying** and of prematurely terminating their studies.

Recommendations

- Ensure that LGBTI rights are guaranteed in the curriculum and educational policies, including the provision of comprehensive sex education.
- Prevent and address homophobic and transphobic bullying in the school system including but not limited to students, teachers, counsellors, and nurses.

Legal Gender Recognition of Transgender Persons / Rights of Intersex Persons: Since a 2006 Supreme Court decision, **legal gender recognition for transgender persons** has been presented to the court in accordance with the established rules of the Supreme Court. According to these established rules, only non-married adults without minor children who have also been diagnosed with ‘transsexualism’, received psychiatric/hormone therapy, and underwent the sterilization surgeries are eligible for legal gender recognition. And parents of **intersex infants** decide on the legal gender of their children without the latter’s consent and impose irreversible surgeries on the youngsters.

Recommendations

- Exclude forced sterilization surgery, genital reconstructive surgery, and other surgical procedures as the preconditions of legal gender recognition of transgender persons.
- 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.

Recognition of Same-sex Relationships: In 2014, Seodaemun-gu Office, the local government, rejected a gay male couple’s application to register their marriage. In addition, the government has failed to apply rights acknowledged for non-married opposite-sex couples to non-married same-sex couples. 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.

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.

Right to Health: Compared to the general population, **suicidal ideation** was 7.51 times and suicide attempts were about 9.25 times more prevalent among LGB adults. And LGBTI persons often experience so called “conversion therapy” counseling, said “homosexuality can be cured”. The Government has not given a clear stance on “conversion therapy”, and certain religious circles continue to hold a “**conversion therapy**” event as name of “ex-gay” in the National Assembly buildings. Hospitals, have refused or discriminated against **people living with HIV/AIDS**.

Recommendations

- Include LGBTI persons as one of the vulnerable groups in national level suicide prevention plan.
- Develop appropriate guidelines on how to ban conversion therapy and sanction practitioners of conversion therapies.
- Take necessary measures to prevent infringement of health rights and discrimination such as denying people living with HIV and AIDS patients their access to medical institutions.

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