



Human Rights Watch Submission on South Korea to the Committee on the Elimination of Discrimination against Women

June 2017

We write in advance of the 69th pre-sessional working group of the Committee on the Elimination of Discrimination against Women and its review of South Korea's compliance with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). This submission focuses on restrictions on women's reproductive rights, LGBT rights and sex education in schools, ongoing discrimination against women, and addresses articles 3, 5, 10, 11, 12, 13, 15, and 16 of the Convention.

Restrictions on Women's Reproductive Rights Article 12

In a 2014 statement on sexual and reproductive health and rights, the CEDAW Committee affirmed that unsafe abortion is a leading cause of maternal mortality and morbidity, and that state parties should remove punitive measures for women who undergo abortion.¹

South Korea's laws on abortion are punitive and harmful to women and girls. Abortion is considered a crime, and any woman who undergoes an abortion is subject to up to one year of imprisonment or fines up to 2 million won (US \$1800). Healthcare workers who provide abortions can face up to two years in prison.²

Exceptions are permitted only in cases of rape or incest, if the parents cannot marry legally, if continuation of the pregnancy is likely to jeopardize the pregnant woman's health, or when the pregnant woman or her spouse has one of several hereditary disorders or communicable diseases that are designated by government decree. Women who are married must have their spouse's permission to obtain an abortion, and all abortions, for any reason, are prohibited after 24 weeks of pregnancy.³

The criminalization of abortion means that many abortions are illegally performed in South Korea. Because of this, abortion care is unregulated, clandestine, and far more dangerous for women and

¹ CEDAW Committee, "Statement of the Committee on the Elimination of Discrimination against Women on sexual and reproductive health and rights: Beyond 2014 ICPD review," 57th Session (Feb. 10-28, 2014), <http://www.ohchr.org/Documents/HRBodies/CEDAW/Statements/SRHR26Feb2014.pdf> (accessed on May 1, 2017).

² Republic of Korea Criminal Act, 1995, arts. 269-270; see also Heather Barr (Human Rights Watch), "Abortion Should Not be a Crime," commentary, *The Korea Times*, November 10, 2016, <https://www.hrw.org/news/2016/11/10/abortion-should-not-be-crime>.

³ Republic of Korea Mother-Child Health Act of 1986, art. 14.

girls who seek abortions, than if the procedure were legal. Restrictive abortion policies are associated with higher numbers of unsafe abortion worldwide.⁴

In 2016, the South Korean government threatened to restrict access to abortion further by toughening penalties on medical providers who perform abortions illegally. Public protests opposing these changes took place in Seoul in October 2016 and at the time of this writing, no amendments had been adopted.⁵

The government has expressed concern about the country's falling birth rate, but further restricting abortion is not a response in line with international human rights law. To accomplish policy goals related to population, the government should respect women's rights to make their own reproductive decisions, and instead consider adopting measures that make it easier for people to have children, or have more children.

Human Rights Watch recommends the Committee ask the government of South Korea:

- What changes in abortion policy will President Moon Jae-in request and implement?
- What steps does the government intend to take to remove punitive measures against women who undergo abortions and medical personnel who provide abortions?
- What steps does the government intend to take to protect the rights of mothers to be free from gender discrimination, such as ensuring equality in parental care leave?

Human Rights Watch recommends to the Committee that it call upon the government of South Korea to:

- Immediately amend its laws to decriminalize abortion and remove all penalties for women who seek abortions, and for doctors and other medical personnel involved in providing abortions.
- Adopt regulations and policies that make it easier for people to choose to be parents, promote equality in the use of parental leave by women and men, and eliminate stigma and discriminatory provisions in law and policy that disadvantage a single parent, or parents who are not officially married, and their children.

LGBT Rights and Sex Education in Schools

Article 10, 12

Accurate and inclusive sexuality education is integral to upholding the fundamental rights to health, education, and information, and can help reduce unwanted pregnancy, maternal mortality, and HIV.⁶ In February 2014, the CEDAW Committee said that adolescents should have access to accurate information about their sexual and reproductive health and rights, including responsible sexual behavior, prevention of early pregnancies, and sexually transmitted diseases.⁷

⁴ Susan A. Cohen, "Facts and consequences: Legality, incidence and safety of abortion worldwide," *Guttmacher Policy Review*, November 20, 2009, <https://www.guttmacher.org/gpr/2009/11/facts-and-consequences-legality-incidence-and-safety-abortion-worldwide> (accessed May 31, 2017).

⁵ Amnesty International, "South Korea: Stop Criminalization of Abortion," October 28, 2016,

<https://www.amnesty.org/en/latest/news/2016/10/south-korea-stop-criminalization-of-abortion/> (accessed May 15, 2017).

⁶ United Nations Population Fund, "Comprehensive Sexuality Education," September 30, 2016, <https://www.unfpa.org/comprehensive-sexuality-education> (accessed June 6, 2017); UNESCO, "Comprehensive Sexuality Education: A Global Review," 2015,

<http://unesdoc.unesco.org/images/0023/002357/235707e.pdf> (accessed June 7, 2017).

⁷ "Beyond 2014 ICPD review," supra. note 1.

Education ministry officials in Seoul confirmed in February 2017 that South Korea's new national sex education curriculum will not mention homosexuality. This continues a backsliding that began in 2015, when the government began training district education officials country-wide on new sex education guidelines that made no mention of sexual minorities.⁸

This policy discriminates against lesbian, gay, bisexual, and transgender (LGBT) youth and violates their rights to health, education, and information. Human Rights Watch believes the policy also violates South Korea's international human rights commitments, and could be harmful to young people and negatively affect public health. HIV infections have increased sharply in South Korea since 2000, and infections are increasing fastest among men in their 20s.⁹

The South Korean government has at times attempted to clarify that the curriculum's silence should not be taken as exclusionary, with an involved government official stating, "The fact that the guideline does not contain sexual minorities does not necessarily mean that teachers should not do the related lessons."¹⁰ Human Rights Watch believes a curriculum that neglects inclusion of information about sexual orientation and gender identity fails students, and ad hoc or optional training programs for teachers are not an adequate substitute.

Local governments remove LGBTI protections

In August 2015, South Korea's Gender Ministry sent the municipal government of Daejeon an order to delete articles in its charter that would protect LGBTI rights as part of gender equality. The Daejeon municipal government later removed those articles from the city charter.¹¹

Restrictions on LGBT organizations

In February 2015, the government denied to allow an LGBT support group, the Beyond the Rainbow Foundation, to officially register in a discriminatory denial of equal protection of the law and freedom to assemble and associate. The foundation raises funds to support the LGBT movement in South Korea. It documents discrimination against LGBT people, advocates for their rights, and aims to make civic space safer for LGBT people and their families. Denying official registration to the Beyond the Rainbow Foundation curtails this group's ability to receive tax-deductible donations and operate in full compliance with the law.¹² In March 2017, the Beyond the Rainbow Foundation won its

⁸ Kyle Knight, "South Korea Backslides on Sex Education," commentary, Human Rights Watch dispatch, February 17, 2017, <https://www.hrw.org/news/2017/02/17/south-korea-backslides-sex-education>; Human Rights Watch, "Letter to the Government of South Korea on Human Rights and Comprehensive Sexuality Education," July 20, 2015, <https://www.hrw.org/news/2015/07/21/letter-government-south-korea-human-rights-and-comprehensive-sexuality-education>.

⁹ Korea Centers for Disease Control and Prevention, Division of HIV and Tuberculosis Control, "HIV/AIDS Control in the Republic of Korea." 2011, http://www.unaids.org/sites/default/files/country/documents/ce_KR_Narrative_Report%5B1%5D.pdf (accessed June 7, 2017); Hae-Wol Cho, "What's next for HIV/AIDS in Korea?" *Osong Public Health and Research Perspectives*, December 2013: 4(6), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3922106/#bib2> (accessed May 1, 2017), pp. 291–292,

¹⁰ Kyle Knight, "South Korea Backslides on Sex Education," commentary, Human Rights Watch dispatch, February 17, 2017.

¹¹ "South Korea's Gender Ministry blasted for denying LGBTI rights," *The Korea Herald*, October 7, 2015, <http://www.koreaherald.com/view.php?ud=20151007001092> (accessed May 31, 2017).

¹² Kyle Knight (Human Rights Watch), "LGBT group deserves an answer," commentary, *Korea JoongAng Daily*, April 22, 2016, <https://www.hrw.org/news/2016/04/22/lgbt-group-deserves-answer>.

registration case at the appellate court. The Ministry of Justice appealed to the Supreme Court on April 6th, and at the time of this writing, the case was pending at the Supreme Court.¹³

Human Rights Watch recommends the Committee ask the government of South Korea:

- What steps have been taken to ensure that accurate, affirming, and age-appropriate information about sexual orientation and gender identity is available and accessible to students in the South Korean schools?

Human Rights Watch recommends to the Committee that it call upon the government of South Korea to:

- Immediately reverse the decision to exclude mention of homosexuality in the national sex education curriculum to ensure the rights to information, education, and health for all persons in South Korea and include appropriate, nondiscriminatory teacher training on this topic;
- Permit the Beyond the Rainbow Foundation to file its application for registration with the Ministry of Justice, or another appropriate government department, and ensure the application is considered promptly and without discrimination.

Ongoing Discrimination against Women Articles 3, 5, 11, 13, 15, 16

Human Rights Watch shares the concerns raised by the UN Human Rights Committee in December 2015 relating to ongoing discrimination against women, including patriarchal attitudes and gender-based stereotypes concerning the role of women in the family and in society; the particularly small proportion of women in decision-making positions; the high rate of women in irregular employment and the markedly high wage gap between men and women; and the widespread social stigma and discrimination against unmarried mothers, including their unequal treatment with respect to the provision of child allowance compared to adoptive parents.¹⁴

Human Rights Watch recommends to the Committee that it calls upon the government of South Korea to:

- Develop measures to eliminate existing patriarchal attitudes and gender stereotypes, by implementing comprehensive awareness-raising programmes to foster equality between women and men in the family and in society; and develop comprehensive and inclusive sexuality education programs for schools and the general public;
- Ensure equal pay, and eliminate discrimination in irregular employment;
- Eliminate discrimination against unmarried mothers in all areas of government services and aid.

¹³ Jang-Ho Lee, “[판결](단독) ‘법무부, 성소수자 인권재단 허가해야,’” *Law Times Korea*, March 20, 2017, <https://www.lawtimes.co.kr/Legal-News/Legal-News-View?serial=108730> (accessed May 17, 2017); Min-Hee Ryu, counsel of the case, informed Human Rights Watch that as of May 10, 2017, the case is pending at the Supreme Court of South Korea.

¹⁴ HRC, “Concluding observations on the fourth periodic report of the Republic of Korea,” U.N. Doc CCPR/C/KOR/CO/4, December 3, 2015, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR/C/KOR/CO/4&Lang=En (accessed May 18, 2017).