

**Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls**

Ref.: OL KOR 6/2022  
(Please use this reference in your reply)

25 January 2023

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 44/3, 51/21, 50/10 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **attempts to abolish Student Human Rights Ordinances and Basic Human Rights Ordinances in the Seoul Metropolitan Council and the Chungcheongnam-do Council, which prohibit discrimination based on sexual orientation and gender identity. Information was also received regarding announced plans to remove references to 'sexual minority', 'gender equality' and 'reproductive rights' from the school curriculum.**

Concerns regarding attempts by some conservative and religious groups in the Republic of Korea to challenge and weaken protection from discrimination based on sexual orientation and gender identity by abolishing Human Rights Ordinances was the subject of a previous communication sent by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, dated 5 April 2018 (case OL KOR 1/2018). We thank your Excellency's Government for its response (KGV/143/2018) dated 21 June 2018.

According to the information received:

- 1) *Attempts to abolish Student Human Rights Ordinances and Basic Human Rights Ordinances*

The Seoul Student Human Rights Ordinance specifies human rights that are guaranteed to students and establishes a comprehensive system for counselling, investigation, and victim relief. In particular, it is one of only two Student Human Rights Ordinances that expressly prohibits discrimination based on sexual orientation and gender identity and provides for the protection of children and juveniles facing such discrimination.

On 18 August 2022, a Residents' Claims Bill to Abolish the Student Human Rights Ordinance, the "Pan-citizen Solidarity for Abolishment of Seoul Student Human Rights Ordinance", which was supported by more than 25,000 Seoul residents, was submitted to the Seoul Metropolitan Council, requesting the

abolition of the Student Human Rights Ordinance. Reasons for the call to abolish the Ordinance included removing protections against discrimination based on sexual orientation and gender identity and allowing schools and teachers to educate students about the so-called harmful effects of homosexuality, gender transitions, and premarital sex.

According to the information received, the Seoul Student Human Rights Ordinance is likely to be abolished at the Seoul Metropolitan Council's regular plenary session to be held in February 2023. Information received also indicates that the Seoul Metropolitan Council has already scrapped the entire budget for student human rights projects in 2023.

Furthermore, two other bills on the abolition of the Chungcheongnam-do Basic Human Rights Ordinance and Student Human Rights Ordinance were also introduced by residents' request. Both of these bills reportedly focus on removing protections from discrimination against LGBTI individuals. On 6 September 2022, the Chungcheongnam-do Provincial Council referred to the resident ordinance of the Chungcheongnam-do Student Human Rights Ordinance Abolition Bill and the Chungcheongnam-do Basic Human Rights Ordinance Abolition Bill, opening both for signature until 25 February 2023. It is reported that the Chungcheongnam-do Council will decide on these Bills at its 2023 plenary session if the required number of residents' signatures are met. Information received indicates that if the Basic Human Rights Ordinance is abolished, the Chungcheongnam-do Human Rights Committee, Human Rights Centre, and human rights protection officer who investigates human rights violations will no longer have legal grounds for operating.

On 26 September 2022, the National Human Rights Commission of Korea issued a statement expressing concern over the attempts by local governments to abolish Human Rights Ordinances, considering that such attempts are highly regrettable in that they are retrogressive steps against the human rights values that have been pursued by society.

We express serious concern about projects to abolish the Student Human Rights Ordinances and Basic Human Rights Ordinances, in an attempt to diminish protection against discrimination based on sexual orientation and gender identity, which would be in contravention of international human rights standards, especially the non-discrimination principle. We fear, in particular, that the abolition of the Seoul Student Human Rights Ordinance would pave the way for the abolition of other Human Rights Ordinances.

In this regard, we wish to refer your Excellency's Government to the jurisprudence, general comments and concluding observations of United Nations treaty bodies that consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law. In addition, the special procedures of the Human Rights Council have long recognized discrimination on these grounds.

The right to non-discrimination, equality before the law and the equal protection of the law is protected by articles 2 and 7 of the Universal Declaration of Human Rights

as well as the non-discrimination provisions of core international human rights treaties acceded to by the Republic of Korea.

The UN Human Rights Committee, supervisory and interpretative body of the International Covenant on Civil and Political Rights (ICCPR), ratified by the Republic of Korea on 10 April 1990, found that States have a legal obligation to ensure to everyone the rights recognized by the Covenant without discrimination on the basis of sexual orientation or gender identity (for example, CCPR/C/89/D/1361/2005: *X v. Colombia*. (2007). It has often welcomed the enactment of legislation that includes sexual orientation and gender identity among the prohibited grounds of discrimination (for example, CCPR/C/SWE/CO/7, para. 3).

In 2015, in its Concluding observations on the fourth periodic report of the Republic of Korea, the Human Rights Committee recommended the adoption of comprehensive anti-discrimination legislation explicitly addressing all spheres of life and defining and prohibiting discrimination on any ground, including sexual orientation and gender identity. In addition, it expressed concerns about the widespread discrimination against LGBTI persons, including violence and hate speech and recommended that the Republic of Korea 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 (CCPR/C/KOR/CO/4, para. 12-15).

In its General Comment No. 20 (2009) on the crosscutting principle of non-discrimination, the UN Committee on Economic, Social, and Cultural Rights, supervisory and interpretative body of the International Covenant on Economic, Social and Cultural Rights (ICESCR), ratified by the Republic of Korea on 10 April 1990, observed that “gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace” (para. 32) a position reiterated in its General Comment No. 22 (2016) on the right to sexual and reproductive health (E/C.12/GC/22, paras. 23 and 40). The Committee explained that non-discrimination: “[...] encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. [...] State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health (Ibid., para. 23).” In concluding observations, the Committee has urged the adoption of legislation to protect LGBT and intersex persons from discrimination (for example, E/C.12/HND/CO/2, para. 22).

In 2017, the Committee on Economic, Social and Cultural Rights recommended that the Republic of Korea take effective measures to eliminate *de jure* and *de facto* discrimination against LGBTI persons, including by ensuring that the comprehensive anti-discriminatory law to be adopted also prohibits discrimination on the grounds of sexual orientation and gender identity (E/C.12/KOR/CO/4, para. 25). The Committee on the Elimination of Discrimination Against Women made a similar recommendation in 2018 (CEDAW/C/KOR/CO/7, para. 13). The Committee on Economic, Social and Cultural Rights also recommended to the Republic of Korea to conduct awareness-raising campaigns to counter prejudices regarding LGBTI persons (E/C.12/KOR/CO/4, para. 25).

The UN Committee on the Rights of the Child likewise interprets the right to non-discrimination in article 2 of the Convention on the Rights of the Child, ratified by the Republic of Korea on 20 November 1991, to include sexual orientation (General Comments No. 4 on Adolescent health and development, para. 6; and No. 3 on HIV/AIDS and the rights of the child, para. 8), as well as gender identity (General Comments No. 13 on freedom from all forms of violence, and No. 15 on the right to the enjoyment of the highest attainable standard of health). In concluding observations, the Committee has raised concerns about legislation that does not protect individuals from discrimination on the grounds of sexual orientation or gender identity and about inadequate efforts to combat such discrimination (for example, CRC/C/POL/CO/3-4, paras. 16-17).<sup>1</sup> The Committee also acknowledged that transgender adolescents face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support, or access to sexual and reproductive health services and information. In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness (General comment No. 20 on the implementation of the rights of the child during adolescence, para. 33). In light of this, the Committee urged States to take effective action to protect transgender adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures (Ibid., para. 34).

In its General Comment No. 28 (2010) on core obligations of State parties, the UN Committee on the Elimination of Discrimination Against Women, supervisory and interpretative body of the International Convention on the Elimination of Discrimination Against Women, ratified by the Republic of Korea on 27 December 1984, emphasized that States must recognize, prohibit, and adopt policies and programmes to eliminate intersectional forms of discrimination, including, explicitly, on the basis of gender identity (para. 18). The Committee further emphasized that the Convention applies to both gender and sex-based discrimination (Ibid., paras. 5, 16, 17, 19). The UN Working Group on discrimination against women and girls, in its thematic report on discrimination in cultural and family life, has similarly highlighted the dangers of leaving rights in relation to gender identity and diversity unprotected: it has observed that women who do not conform to gender stereotypes, including some who may identify as lesbians, bisexual and trans women, are particularly vulnerable to discrimination, violence and criminalization (A/HRC/29/40, para. 21).

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity stressed that trans and gender diverse people are subject to various forms of violence, discrimination or social exclusion (A/HRC/38/43, paras. 40-44). In this regard, he urged States to adopt all measures necessary to eliminate the social stigma associated with gender diversity, including the development, implementation and evaluation of an education and sensitization campaign, and in particular, all measures necessary to protect trans and gender-diverse children from all forms of discrimination and violence, including bullying, by raising public awareness and implementing safety and support measures (Ibid., paras. 96, 97 (a)-(d), A/73/152, para. 79 (b)).

---

<sup>1</sup> CRC/C/GUY/CO/2-4, CRC/C/AUS/CO/4, CRC/C/NZL/CO/3-4, CRC/C/SVK/CO/2, CRC/C/MYS/CO/1, CRC/C/CHN/CO/2, CRC/C/15/Add.134.

We would also like to recall resolution 32/2 of the Human Rights Council, where the Council reaffirmed that all human beings are born free and equal in dignity and rights and that everyone is entitled to all the rights and freedoms set forth in the Universal Declaration of Human Rights and strongly deplored acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity. In this connection, the United Nations High Commissioner for Human Rights has issued recommendations that, inter alia, States enact hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing; and ensure that anti-discrimination legislation includes sexual orientation and gender identity among prohibited grounds (A/HRC/29/23, para. 78(a) and 79(c)).

2) *Deletion of the terms “sexual minority”, “gender equality,” and “reproductive rights” from the 2022 Curriculum Revision by the Ministry of Education*

On 9 November 2022, the Ministry of Education announced a plan regarding the 2022 Curriculum Amendment Bill, which intends to delete terms such as “sexual minority,” “gender equality” and “reproductive rights” (to be replaced by the much narrower terms “sex and procreation health and rights”) from school textbooks and educational policies, applying to all elementary, middle and high school curriculum. The decision was confirmed on 22 December 2022 to be implemented as of 1 January 2024. The rationale put forward for such reform is that these terms would be confusing for adolescents' gender identity and create unnecessary controversy.

We express our serious concern that such plans appear to be in contravention of the right to education and the right to health as enshrined in international human rights instruments.

In this regard, article 12 of ICESCR provides for the right of everyone to the enjoyment of the highest attainable standard of mental and physical health, without discrimination. This includes an obligation on the part of all States parties to refrain from interfering directly or indirectly with the enjoyment of the right to health. The Committee on Economic, Social and Cultural Rights stressed that reproductive health is an integral part of the right to health and that States have the obligation to respect this right. It stressed that “violations of the obligation to respect occur when the State, through laws, policies or actions, undermines the right to sexual and reproductive health”, which includes “State interference with an individual’s freedom to control his or her own body and ability to make free, informed and responsible decisions in this regard” and “also occur when the State removes or suspends laws and policies that are necessary for the enjoyment of the right to sexual and reproductive health” (General Comment No. 22, paras. 1, 45 and 56).

We would like to also stress that article 13 of ICESCR, recognizes the right of everyone to education. It provides that education should be aimed at the full development of the human personality and the sense of its dignity and should strengthen respect for human rights and fundamental freedoms.

The Committee on Economic, Social and Cultural Rights stated that the right to sexual and reproductive health, combined with the right to education and the right to non-discrimination and equality between men and women, entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age-appropriate (General Comment No. 22, para. 9). All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health (Ibid., para. 18). Such information must be provided in a manner consistent with the needs of the individual and the community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation, gender identity and intersex status (Ibid., para. 19). States violate the obligation to fulfil when they fail to take measures to ensure that up-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their required curricula (Ibid., para. 63).

In his report on sexual education, the former Special Rapporteur on the right to education stressed that international human rights standards clearly establish the human right to comprehensive sexual education, which is indivisible from the right to education and is key to the effective enjoyment of the right to life, health, information and non-discrimination, among others. States must ensure that they respect, protect and implement the human right to comprehensive sexual education, by acting with due diligence and taking all measures necessary to ensure its effective enjoyment, without discrimination, from the early stages of life. The absence of planned, democratic and pluralist sexual education constitutes, in practice, a model of sexual education (by omission) which has particularly negative consequences for people's lives and which uncritically reproduces patriarchal practices, ideas, values and attitudes that are a source of many forms of discrimination. The right to sexual education is particularly important to women's and girls' empowerment and to ensuring that they enjoy their human rights. It is therefore one of the best tools for dealing with the consequences of the system of patriarchal domination by changing social and cultural patterns of behaviour that affect men and women and tend to perpetuate discrimination and violence against women. Since broad segments of the population are excluded from sexual education policies, States need to make a greater effort to reach the people who, in principle, are excluded from the educational system. (A/65/162, para. 75-77 and 82).

The Committee on the Rights of the Child observed that LGBTI adolescents commonly face a lack of access to sexual and reproductive health services and information (General Comment No. 20, para. 33). It underscored that there should be no barriers to commodities, information and counselling on sexual and reproductive health rights, and that particular efforts need to be made to overcome barriers of stigma and fear experienced by, inter alia, lesbian, gay, bisexual transgender, and intersex ("LGBTI") adolescents, in gaining access to such services (Ibid., para. 60). All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person (Ibid., para. 59). Therefore, the Committee urged States to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination (Ibid.). It further

noted that age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards and developed with adolescents, should be part of the mandatory school curriculum and reach out-of-school adolescents (Ibid., para. 61).

Similarly, the former Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health stressed that lack of access to safe reproductive health services and information contributes to adolescent girls being among the most at risk of dying or suffering from serious or lifelong injuries associated with early pregnancies and childbirth (A/HRC/32/32, para. 5). He recommended States to introduce measures to raise adolescents' awareness of their rights to sexual and reproductive health and to services and goods at the family, school and community levels and insisted that age-appropriate, comprehensive and inclusive sexuality education, based on scientific evidence and human rights, should be part of the mandatory school curriculum, with special attention given to relationships, sexuality, gender equality and identity and sex characteristics, including non-conforming gender identities, responsible parenthood and sexual behaviour, and preventing early pregnancy and sexually transmitted infections (Ibid., para. 91).

The Working Group on Discrimination against Women and Girls highlighted the need for access to unbiased, quality education, including evidence-based, comprehensive sexuality education, to ensure access to health care (A/HRC/32/44, para. 95). The Working Group emphasized that States have an obligation to allow information about health matters to flow freely, without State interference on moral or other grounds, and to allow non-State actors to disseminate information, including in relation to sexuality and sexual and reproductive health services (Ibid., para. 96).

The Convention on the Elimination of All Forms of Discrimination against Women guarantees women and girls' right to access specific educational information to help to ensure the health and well-being of families, including information and advice on family planning (article 10 (h)). The Committee on the Elimination of Discrimination against Women recommended States to develop and introduce age-appropriate, evidence-based, scientifically accurate mandatory curricula at all levels of education covering comprehensive information on sexual and reproductive health and rights in order to curtail violence against girls and women associated with educational institutions and schooling thereby protecting their right to be treated with respect and dignity (General Comment No. 36 on The right of girls and women to education, para. 69 (i)).

Furthermore, the United Nations High Commissioner for Human Rights highlighted that States have obligations to address discrimination against LGBT children and young persons (A/HRC/29/23, para. 17). Therefore, he recommended States to support public education campaigns to counter homophobic and transphobic attitudes (Ibid., para 79 (j)). He further acknowledged that limiting or obstructing information related to sexuality or using materials that contain stereotypes and prejudices can contribute to violence and expose young lesbian, gay, bisexual, and transgender ("LGBT") persons to health risks. Therefore, he recommended States to provide comprehensive age-appropriate sexuality education, since it is part of the right to education and can be a tool for combating discrimination (A/HRC/29/23, paras. 57 and 79 (f); A/HRC/19/41, para. 61).

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all the situations brought to our attention, we would be grateful for your comments on the following matters:

1. Please provide any additional information or comments in relation to the above-presented analysis.
2. Please provide clarifications on how the reported developments, if confirmed, are compatible with your Excellency's Government's obligations under the provisions cited above, and about the steps Your Excellency's Government plans to undertake to remediate the inconsistencies with the international human rights standards.
3. Please indicate how the Government is ensuring protection from discrimination and remedy for victims of discrimination, including discrimination based on gender identity and sexual orientation, for all students at the national level.
4. Please indicate how the Government is ensuring reproductive rights of all members of the population without discrimination.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting website after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We would be grateful to Your Excellency's Government if the present letter could be shared with the Seoul Metropolitan Council as well as the Chungcheongnam-do Provincial Council.

Please accept, Excellency, the assurances of our highest consideration.

Farida Shaheed  
Special Rapporteur on the right to education

Tlaleng Mofokeng  
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Victor Madrigal-Borloz  
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Dorothy Estrada-Tanck  
Chair-Rapporteur of the Working Group on discrimination against women and girls