

# Human Rights Violations on the Basis of Sexual Orientation, Gender Identity, and HIV Status in the Republic of Korea



Joint Civil Society Submission to the Committee against Torture for State Compliance with the Convention against Torture

Suggestions for Sexual Orientation and Gender Identity and HIV-related Questions and Recommendations

Republic of Korea, for the 60th Session

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Submitted by the Rainbow Action against Sexual Minority Discrimination

Chingusai – Korean Gay Men’s Human Rights Group, Christian Solidarity for a World without Discrimination(Chasegiyeon), Daegu Queer Culture Festival, Deajeon LGBTQ Human Rights Group Solongos, GongGam Human Rights Law Foundation, Gruteogi : 30+ Lesbian community group, Korea Queer Culture Festival Organizing Committee, Korean Lawyers for Public Interest and Human Rights(KLPH), Korean Sexual-Minority Culture and Riughts Center(KSCRC), Labor Party Sexual Politics Committee, Minority Rights Committee of the Green Party, Lesbian Counseling Center in South Korea, Lesbian Human Rights Group ‘Byunna’ of Ewha Womans University, Lezpa : The Korean lesbian community radio group, Network for Glocal Activism, QUV: Korean LGBTQ University Student Alliance, Rainbow Solidarity for LGBT Human Rights of Daegu, Sexual Minority Committee of the Justice Party, Sinnaneuncenter : LGBT Culture, Arts & Human Rights Center, LGBTQ Youth Crisis Support Center “DDingDong”, Social and Labor Committee of Jogye Order of Korean Buddhism, Solidarity for HIV/AIDS Human Rights : Nanuri+, Solidarity for LGBT Human Rights of Korea, Pinks : Solidarity for Sexually Minor Cultures & Human Rights, The Korean Society of Law and Policy on Sexual Orientation and Gender Identity, Unninetwork, Yeohaengja : Gender non-conforming people’s community (total: 27 organizations and groups)

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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 the Republic of Korea’s compliance with the Convention against Torture. The Rainbow Action is a coalition of 27 NGOs in the Republic of Korea that advocate the human rights of LGBTI persons.
2. Through this document, the Rainbow Action seeks to provide the UN Committee against Torture with additional information on violations of rights related to the Covenant in terms of sexual orientation, gender identity, and HIV status.
3. This document has been created based on cases of human rights violations collected through the Rainbow Action’s activities, and the statistical data rely on data from sources including the National Human Rights Commission of Korea (NHRCK) and mass media.
4. This report is a collaborative effort by activists from various organizations within the Rainbow Action. The following activists drafted this report: Byung-kwon Chang, Joon-tae Philip Kim, In-seop Lee, Minhee Ryu, Hanhee Park and Da-rim Candy Yun. The report was translated by Yoo-suk Joseph Kim.

## 2. Executive Summary

5. The Committee has issued detailed recommendations on many LGBTI rights issues, including violence against LGBTI persons<sup>1</sup>, gender recognition<sup>2</sup> and sex characteristics<sup>3</sup>. However, the Committee has not made any prior recommendations related to rights of LGBTI persons and people living with HIV/AIDS in the Republic of Korea.

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1 UN Committee Against Torture (CAT), *Concluding observations on the fifth periodic report of Macao, China*, 3 January 2016, CAT/C/CHN-MAC/CO/5, at paras 24-25.

2 UN Committee Against Torture (CAT), *Concluding observations on the fifth periodic report of China with respect to Hong Kong, China*, 3 February 2016, CAT/C/CHN-HKG/CO/5, at paras 28-29.

3 UN Committee Against Torture (CAT), *Concluding observations on the combined sixth and seventh periodic reports of Denmark*, 4 February 2016, CAT/C/DNK/CO/6-7, at paras 42-43. Also, *Concluding observations on the sixth periodic report of Austria*, 27 January 2015, CAT/C/AUT/CO/6, at paras 44-45. *Concluding observations on the fifth periodic report of China with respect to Hong Kong, China*, 3 February 2016, CAT/C/CHN-HKG/CO/5, at paras 28-29. *Concluding observations on the seventh periodic report of Switzerland*, 7 September 2015, CAT/C/CHE/CO/7, para 20.

6. 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>4</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).*

7. In the Republic of Korea, LGBTI persons are often subjected to “conversion therapy”, which claims that homosexuality is “curable,” and transgender men and women are forced to undergo irreversible surgeries for legal gender recognition or the determination of their exemption from mandatory military service. Intersex infants and children undergo unnecessary medical interventions or surgeries without their or their parents’ informed consent. Transgender inmates of correctional facilities are not treated according to their gender identities within these facilities and are even punished for their gender expressions. Such practices amount to torture or unjust treatment as seen by the UN Committee against Torture and other UN human rights mechanism, and such acts violating the Convention inflict physical and mental harm on LGBTI persons in the Republic of Korea. The Rainbow Action proposes to the Committee the questions and recommendations below.

### **3. Legal Recognition of Transgender Persons**

#### **Related Article: Article 10, 12, 14, and 16**

8. The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment has discussed problems with several countries’ demand that transgender persons undergo unwanted sterilization surgeries as a precondition for being guaranteed the

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<sup>4</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.

right to be recognized legally in terms of their gender identity.<sup>5</sup> And the Committee noted that legal recognition of their gender is not dependent on whether or not [transgender persons] have undergone gender reassignment surgery in the concluding observations to Hong Kong, China.<sup>6</sup>

9. Since a 2006 Supreme Court decision,<sup>7</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>8</sup> 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. 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 reconstructive surgeries are not necessary for transgender men<sup>9</sup> and women<sup>10</sup>, it is unclear whether other jurisdictions would make the same ruling. In particular, the surgical requirement forces on transgender persons indiscriminate and invasive surgeries for gender recognition and restricts reproductive rights as well.

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5 UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, 1 February 2013, A/HRC/22/53. ("In many countries, transgender persons are required to undergo often unwanted sterilization surgeries as a prerequisite to enjoy legal recognition of their preferred gender.")

6 UN Committee Against Torture (CAT), *Concluding observations on the fifth periodic report of China with respect to Hong Kong, China*, 3 February 2016, CAT/C/CHN-HKG/CO/5, at para 28. ("the Committee is concerned about reports that transgender persons are required to have completed sex-reassignment surgery, which includes the removal of reproductive organs, sterilisation and genital reconstruction, in order to obtain legal recognition of their gender identity.")

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

8 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)

9 The Hankyoreh, "Landmark Legal Ruling for South Korean Transgenders." 16 March 2013. [http://english.hani.co.kr/arti/english\\_edition/e\\_national/578323.html](http://english.hani.co.kr/arti/english_edition/e_national/578323.html)

10 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](http://www.hani.co.kr/arti/society/society_general/782866.html)

#### **Suggested Questions**

- Does the State party have a plan to enact legislation that sets forth the requirements and procedure for legal recognition of gender that guarantee transgender persons' autonomy and physical integrity?
- Does the State party have a plan to revise the procedures for transgender persons' legal gender recognition, by removing surgery requirements, such as sterilization surgery and genital reconstructive surgery? Why is marriage status or parenthood with minor children a reason to exclude transgender persons' right to legal recognition? Does the State party have a plan to remove unnecessary documents, such as parents' consent, from the guidelines?
- How many transgender persons have their legal gender changed so far? Does the State party have a plan to conduct statistical surveys on legal gender recognition to improve the accessibility of the procedure?

#### **Suggest Recommendations**

- Take necessary measures by legislative, administrative or other means for prompt, clear and simple legal gender recognition procedures to ensure the transgender persons' autonomy and physical integrity.
- Revise the present Supreme Court guidelines to comply with international human rights standards, and establish a legal basis for gender recognition. Remove surgical preconditions, such as genital reconstructive surgery and sterilization surgery, from the legal gender recognition and military exemption requirements. Guarantee that those who are married or those who have minor children also have a right to legal gender recognition. Also, remove the clause that requires parental consent as a required submission.
- If a minor has the consent of a legal representative, allow him/her to get legal gender recognition.
- Guarantee that judges in charge of legal gender recognition are trained in transgender and gender identity education so that the judge can have a basic understanding and legal gender recognition procedures to prevent possible violations of human rights.
- Aggregate National statistics for legal gender recognition so that the court can make procedures quick, accessible, transparent, and rights-based.

## **4. Forced Irreversible Surgery by Military Manpower Service**

### **Related Article: Article 10, 12, 14, and 16**

10. In the Republic of Korea, where military service is mandatory (for a predetermined term) for males but voluntary (vocational) for females, preoperative transgender persons (transgender men) are classified as female and may not volunteer for the male sector of the armed forces. Additionally, postoperative transgender men are exempt from military service for being transsexuals and may not volunteer as career soldiers, either, according to the Regulations on Examination Such as Draft Physical Examination.

11. Transgender women are classified as having gender identity disorder (GID; gender dysphoria) according to the Regulations on Examination Such as Draft Physical Examination. The degree of these people's GID is evaluated as light/medium/severe according to the Global Assessment of Functioning (GAF).<sup>11</sup> In addition to the GAF, military physicians' personal judgments are used to make assessments. Objective data can replace such evaluation methods in the case of transgender persons according to Article 7 (Partial Omission of Examination)<sup>12</sup> and Article 8 (Examination Methods, Etc.) Clause 2 Subpara. 10 of the Regulations on Examination Such as Draft Physical Examination.<sup>13</sup> However, even though judgments on GID can be substituted by written psychiatric diagnoses, the GAF, which is deficient in objectivity, has been used.
12. In addition, the Military Manpower Administration, the government agency in charge of conscripting and managing soldiers, has deferred the enlistment<sup>14</sup> of transgender persons for the reason of suspicions of undue exemption from mandatory military service and suggested or demanded these people to undergo irreversible surgeries including orchiectomy (testicle

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11 Neuropsychiatric item no. 102 in the degree of and judgment criteria for diseases and mental and physical disorders in the Regulations on Examination Such as Draft Physical Examination: Personality disorders and behavioral disorders (habit and impulse disorders), gender identity disorder, sexual preference disorder

A. Cases where observation for a period in the future is necessary (grade 7)

B. Light (cases where there are minimal symptoms for diagnoses and they lead to minimal social and vocational disorders) (grade 3) [Note: Minimal social and vocational disorders refer to cases with overall Global Assessment of Functioning (GAF) scores exceeding 65 points.]

C. Medium (cases where, though the symptoms are between light and severe, there are functional disorders) (grade 4)

D. Severe (cases with a history of treatment for six months or more; cases with a confirmed history of hospitalization for one month or more; or, out of cases with socially maladjusted behavior proven by school records or other evidence materials, those with numerous symptoms sufficient for diagnoses or with several severe symptoms judged to cause considerable hindrance to military service) (grade 5).

12 Article 7 (Partial Omission of Examination) Cases where persons subject to physical examination clearly and visually have diseases or mental or physical disorders that fall under grade 5 or grade 6 or are objectively proven to have malignant tumors (malignant cancer), the physical grades may be determined with the omission of the physical examination of other parts.

13 Article 8 (Examination Methods, Etc.) ② 10. Dermatological and urological examinations are to be performed individually behind screens. However, in the case of transsexuals, these examinations are to be substituted by written court decisions, physical examination results indicating transsexuality, or radiological references.

14 Article 14 (Final Determination of Physical Grades) Clause 2. In the case of persons with grades 4, 5, or 6 who require verification of the history of their treatment of the relevant diseases or have received operations for reasons other than diseases or mental or physical disorders and require continued treatment, the determination of their physical grades may be deferred and their physical grades may be determined after verifying the history of their treatment of the diseases or through re-examination after the termination of the treatment.

removal) and gender reassignment surgeries, whose results are “externally visible.”<sup>15</sup> Consequently, surgeries have been forced on individuals, regardless of their bodily integrity, autonomy and self-determination, for the determination of lawful exemption from military service.

**Suggested Questions**

- What are the Military Manpower Administration’s criteria for determining exemption from military service for transgender persons and reasons for demanding irreversible surgeries from these people?
- Are there any efforts to create criteria regarding physical grades for military service that do not violate individuals’ physical integrity?

**Suggested Recommendations**

- Revise the current Regulations on Examination Such as Draft Physical Examination and the criteria of the Military Manpower Administration<sup>16</sup> so that the judgment of the military service is made on an objective basis, such as written psychiatric diagnoses, without infringing the body integrity of transgender persons.
- Take necessary measures, such as carrying out basic training on transgender to the MMA inspectors so that the transgender women who has already been exempted from military service should not be targeted as “draft evaders”.
- Conduct investigations whether any transgender women got abused or insulted during by the inspectors in the process of conscription medical examinations to prevent recurrence and remedy the victims.

## 5. Intersex Persons

### Related Article: Article 10, 12, 14, and 16

13. 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>17</sup>

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15 SOGILAW, Human Rights Situation of LGBTI in South Korea 2014, “A transgender person files a petition to the National Human Rights Commission of Korea in response to the surgery requirement by the Military Manpower Administration”. [http://annual.sogilaw.org/review/review\\_2014\\_en/509](http://annual.sogilaw.org/review/review_2014_en/509)

16 See Taiwan’s exemption levels.

1. A Person who have been diagnosed and have been confirmed as having a gender dysphoria. 2. A person who have undergone sex reassignment surgeries.

17 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,

14. 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>18</sup> 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.<sup>19</sup>
15. 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>20</sup>
16. 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>21</sup>

**Suggested Questions**

- Does the State party conduct statistical surveys on the Intersex infants and children? Is the State party aware of what medical interventions on intersex children are carried out and the impact of these interventions on their growing up experiences?
- What steps does the State party take to ensure that intersex infants and children do not have unnecessary surgery or medical intervention without their consent?

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causing severe mental suffering and contributing to stigmatization. In some cases, taboo and stigma lead to the killing of intersex infants."

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

19 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>.

20 Kyunghyung 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)

21 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>.

- How is education about intersex in current public education? Does the State plan to develop a curriculum that will allow teachers and children to learn about the diversity of human sexuality, not gender binarism?
- Does the State plan to improve the resident registration system so that the current birth registration system will not be only in the form of male or female?

**Suggested Recommendations**

- Take the necessary legislative, administrative and other measures to guarantee the respect for the physical integrity and autonomy of intersex persons and to ensure that no one is subjected during infancy or childhood to non-urgent medical or surgical procedures intended to decide the sex of the child.
- Provide health care personnel with training on the health needs and human rights of intersex people and the appropriate advice and care to give to parents and intersex children, being respectful of the intersex person's autonomy, physical integrity and sex characteristics.
- Guarantee impartial counselling services for all intersex children and their parents, so as to inform them of the consequences of unnecessary and non-urgent surgery and other medical treatment to decide on the sex of the child and the possibility of postponing any decision on such treatment or surgery until the persons concerned can decide by themselves.
- Undertake investigations of instances of surgical interventions or other medical procedures performed on intersex people without effective consent, and ensure that the persons concerned are adequately compensated.
- Revise the resident registration system so that the birth registration system will not be only in the form of male or female.

## 6. “Conversion Therapy”

**Related Article: Article 10, 12, 14, and 16**

17. Various UN human rights institutions<sup>22</sup> and medical communities has condemned so-called “conversion therapy” including this Committee.<sup>23</sup>

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22 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. “Likewise, regulations ... or requiring that they be “cured” by so-called “treatment”, are a clear violation of their right to sexual and reproductive health. 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.”

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. “Lesbian, gay, bisexual, transgender and intersex persons are frequently denied medical treatment and subjected to verbal abuse and public humiliation, psychiatric evaluations, forced procedures such as sterilization, “conversion” therapy, hormone therapy and genital-normalizing surgeries under the guise of “reparative therapies”. Also, see A/HRC/22/53. At para. 88. “The Special Rapporteur calls upon all States to repeal any

18. In 2016, the press and media reported an incident in which 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.”<sup>24</sup> Although religiously based, this facility is in fact operated for profit. In addition to this venue, there are organizations in the country that offer professional “conversion therapy” counselor programs and implement education. According to a 2016 survey, many LGBT 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.<sup>25</sup>
19. Certain religious circles have argued that “ex-gay (dehomosexualization) is a human right” in order to justify “conversion therapy” and that sexual orientation was “curable.” The Ministry of Health and Welfare and expert organizations have not expressed any opinions on this.
20. Although the Human Rights Committee recommended in 2015 that government/public buildings not be used for “conversion therapy” events,<sup>26</sup> such events<sup>27 28</sup> have continued to be held in the National Assembly building.

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law allowing ... “reparative therapies” or “conversion therapies”, when enforced or administered without the free and informed consent of the person concerned.”

23 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.”

24 Newsjoy, “Are transgender people cured if you beat them? Healing counselling by pastors without understanding of sexual minorities... Preposterous lectures given to exorcise evil spirits”, 2 March 2016. (in Korean). <http://www.newsjoy.or.kr/news/articleView.html?idxno=202241>.

25 TheHankyoreh, “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](http://english.hani.co.kr/arti/english_edition/e_national/784066.html)

26 “15. The State Party should ... avoid the usage of State-owned buildings by private organizations for so-called ‘conversion therapies’...” CCPR/C/KOR/4 at para. 15.

27 Gay Star News, “South Korean government slammed for hosting ‘conversion therapy’ seminars”, 8 April 2015. <http://www.gaystarnews.com/article/south-korea-government-slammed-hosting-conversion-therapy-seminars080415>

28 OutRight Action International, “Outright Letter to Officials about State Endorsement of Conversion Therapy for Gays and Lesbians in South Korea”, 7 April 2015. <https://www.outrightinternational.org/content/outright-letter-officials-about-state-endorsement-conversion-therapy-gays-and-lesbians-south>.

**Suggestion questions**

- What position does the State party have regarding so-called “conversion therapy”? What position does the State party have regarding the counselors suggesting “conversion therapy” in counselling for LGBTQ and gender non-conforming youth?
- Why does the State party allow the use of State-owned buildings, such as National Assembly Buildings, by private organizations for so-called “conversion therapies”?
- What measures has the State party taken to investigate the cases of “conversion therapy”? What measure has the State party taken to remedy the victims?

**Suggested Recommendations**

- Take the necessary legislative, administrative and other measures to guarantee respect for the autonomy and physical and personal integrity of LGBTI persons and prohibit the practice of so-called "conversion therapy", as well as other forced, involuntary or otherwise coercive or abusive treatments against them.
- Clearly and officially state that the State does not tolerate any form of social stigmatization and discrimination, including propagation of so-called “conversion therapies”. And prohibit the usage of State-owned buildings, such as the National Assembly Buildings, by private organizations for so-called “conversion therapies” or “de-homosexual human rights”.
- Undertake investigations of instances of forced, involuntary or otherwise coercive or abusive treatments of LGBTI persons and ensure adequate redress and compensation in such cases.

## 7. Medical Discrimination Against People Living with HIV/AIDS

**Related Article: Article 10, 12, 14, and 16**

21. In recent years, in private hospitals as well as public ones, stigma and discrimination against people living with HIV/AIDS are rampant.<sup>29</sup> This is an act in which a public official or an person entrusted public affairs intentionally engages in physical and mental suffering for an individual based on discrimination.

22. In March 2011, emergency personnel who were aware of the patient’s HIV status did not take any emergency measures while transporting the patient, despite the emergency. As a result, the patient died as soon as he/she arrived at the emergency room entrance of a

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29 Jessica Lee, *Social Stigma: HIV/AIDS in South Korea*, Stanford Journal of Public Health, 1 May 2015. Available at: <https://web.stanford.edu/group/sjph/cgi-bin/sjphsite/hivaids-in-south-korea-a-societal-stigma/>

university hospital. The AIDS shelter, in which the patient lived, petitioned to the National Human Rights Commission of Korea. However, the commission dismissed the complaint, saying it was difficult to find that the reason for the lack of first aid by the emergency personnel is because of the victim's HIV status, and it was also difficult to find objective evidence that the victim died because of the absence of first aid.<sup>30</sup>

23. In 2014, the Disease Control Center sent 10 HIV patients from the Sudong Yonsei Sanitarium Hospital to the National Police Hospital. However the nurses were expressing disgust, saying such things as "AIDS, dirty", "I cannot possibly treat this dirty" and the doctors also covered the entire face with transparent plastic, goggles, masks, and surgical caps and wore medical protective clothing when they were doing simple procedures of blood testing.<sup>31</sup> According to a survey on the medical discrimination based on HIV/AIDS status<sup>32</sup>, due to the discrimination in these medical institutions, people living with HIV/AIDS internalize HIV/AIDS as a "humiliating disease" and identify the stigma of HIV with themselves. Consequently, even if they are discriminated against, they often do not protest because of their own humiliation and shame.

#### **Suggested Questions**

- Is there a guideline to prevent persons living with HIV/AIDS from being discriminated against at medical institutions? What steps has the State party taken to establish guidelines and ensure its effectiveness?
- Are there any general curricular about HIV/AIDS in the curriculum for medical education and education for health professionals?
- How many sanatorium hospitals are available for persons living with HIV/AIDS? What kind of effort has the State party taken to secure such hospitals?

#### **Suggested Recommendations**

- Establish guidelines to prevent persons living with HIV/AIDS from being denied medical care and surgery at hospitals or receiving discriminatory treatment such as excessive infection prevention.
- Take the necessary legislative, administrative and other measures to guarantee that persons living with HIV/AIDS are not refused admission to sanatorium hospitals or are not discriminated against in the hospital for their HIV status.
- Ensure that HIV/AIDS education is compulsory in the curriculum of medical

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30 Newstown, "The death of an AIDS patients, due to the neglect of emergency rescue teams", 29 November 2011. <http://www.newstown.co.kr/news/articleView.html?idxno=108176>

31 Pressian, "AIDS patients do not have hospitals nor country. [AIDS patient and the health rights ③] The reason why sanatorium hospitals reject AIDS patients.", 11 July 2014. <http://www.pressian.com/news/article.html?no=118636>

32 National Human Rights Commission of Korea, "An investigation on the situation of medical discrimination of people living with HIV/AIDS", 2016. (in Korean.)

education institutions for health professionals to enhance their understanding of HIV/AIDS.

- Investigate and collect cases of discrimination such as denial of treatment for HIV status and ensure effective remedy for victims, including redress and compensation.

## 8. Domestic Violence, Gender-based Violence and Sexual Harassment

**Related Article: Article 2**

### 8.1 Domestic Violence and Gender-based Violence

24. The definition of “spouse” in the Special Act on the Punishment of Domestic Violent Crimes<sup>33</sup> is intended to substantially protect the violence that may arise from intimate relationships, including spouses of legal marriages as well as unmarried partners of heterosexual relationships. However, the Act does not explicitly include same-sex partners.
25. Domestic violence and sexual assault victims shelter facilities may be reluctant to take in transgender victims because of difficulties in supporting them. Currently, there are 30 sexual violence victims shelters and 6 domestic violence victims shelters in the country. However, there is no support for LGBTI victims in the guideline of the Ministry of Gender Equality and Family Affairs on the protection facilities.<sup>34</sup> As a result, there are no statistics on how many LGBTI residents are currently admitted to the facility and whether there are cases of discrimination in the admission process.
26. Also, the current definition of rape fails to afford equal protection to victims of assault by a person of the same-sex. The Criminal Act defines rape as penile-vaginal rape only.<sup>35</sup> A second,

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33 Act on special cases concerning the punishment, etc. of crimes of domestic violence. Article 2 (Definitions) 2. (a) A spouse (including persons in a de facto marital relationship; hereinafter the same shall apply) or former spouse.

34 Ministry of Gender Equality and Family, “2017 Guidelines for operations of women and children’s rights project”, 2017

35 Criminal Act. Article 297 (Rape) A person who, by means of violence or intimidation, has sexual intercourse with another shall be punished by imprisonment for a limited term of at least three years.

lesser crime of “imitative rape” under Article 297-2 refers to a person inserting a sexual organ into another person's body part, such as a mouth or anus, or by inserting fingers into a person's genitals or anus. Imitative rape attracts a lesser punishment.<sup>36</sup> As such, individuals who are assaulted by a person of the same sex are not afforded the same access to justice as victims of penile/vaginal assault.<sup>37</sup>

## 8.2 Sexual Harassment

27. LGBTI persons 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 National Human Rights Commission of Korea,<sup>38</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>39</sup> and sexual harassment, but also direct/indirect encouragement to retire and voluntary retirement have thus occurred.

28. Transgender persons face especially severe discrimination. According to the 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>40</sup> In March 2016, there occurred an incident in which an employee at Samsung SDS Co., Ltd.

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36 Criminal Act. Article 297-2 (Imitative Rape) A person who, by means of violence or intimidation, inserts his/her sexual organ into another's bodily part (excluding a genital organ), such as mouth or anus, or inserts his/her finger or other bodily part (excluding a genital organ) or any instrument into another's genital organ or anus shall be punished by imprisonment for a limited term of at least two years.

37 Kaleidoscope Australia Human Rights Foundation, *Shadow Report to the UN Human Rights Committee Regarding the Republic of Korea's Protection of the Rights of LGBTI Persons*, January 2015.

38 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. National Human Rights Commission of Korea, *An Investigation on Discrimination Based on Sexual Orientation and Gender Identity*, 2014. (in Korean.)

39 Bullying due to sexual orientation, threats of outing, repeated references, undue criticism, ridicule, damages to personal belongings, physical violence, sexual harassment, and sexual violence.

40 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).

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>41</sup>

29. However, out of the Government’s implementation<sup>42</sup> of CESCR recommendations regarding sexual harassment,<sup>43</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.

### 8.3 Sexual Violence in the Military

30. It is a violation of international human rights law to criminalize consensual sexual relations between adults of the same sex.<sup>44</sup> However, Article 92-6 of the Military Criminal Act<sup>45</sup> views such acts in the armed forces as criminal offenses and is the only legal clause in the country stipulating punishment for homosexual acts. Although this clause has been revised many times amidst controversy, the essence that it is a sodomy clause remains unchanged. In the Republic of Korea, military service is mandatory (for a predetermined term) for most males. Consequently, gay men are stigmatized during military service as “illegal” beings.<sup>46</sup>

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

42 Republic of Korea, *Fourth Periodic Report on the Implementation of the International Covenant on Economic, Social and Cultural Rights*, 21 July 2016, E/C. 12/KOR/4, at para. 64-65.

43 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. 17.

44 *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.

45 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.

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

31. The Military Criminal Act already has separate provisions for rape and sexual molestation. Contrary to the Government's defense, this anti-sodomy provision does not protect the victims from sexual violence, but rather punishes the victims. In 2011, there was a reported case when a straight superior perpetrator and a gay subordinate victim both got suspended of the sentence at the Navy Court under this article. The crime should be actually sexual assault since the perpetrator forced his gay subordinate to lick his genitalia. However, the Navy prosecutor indicted both of them under the consensual sodomy provision. Hence, the soldier who was a victim of sexual violence was punished for being gay and imprisoned.

**Suggestion questions**

- What protection do same-sex victims of domestic violence get under current Domestic Violence Act?
- Is the State party considering harmonizing the legal treatment of opposite-sex and same-sex rape ("imitative" rape) and rape victims?
- How many shelters exist for LGBTI victims of sexual or domestic violence? Is the State party providing shelter workers with education about LGBTI persons? How does the State party make efforts to prevent transgender persons from being rejected from shelters?
- What are remedial measures that can be applied to bullying and sexual harassment in the workplace due to sexual orientation and gender identity?
- Is there any case that victims of sexual violence in the army are punished by Article 92-6 of the Military Criminal Act? What measures does the State have taken to abolish this article?

**Suggested Recommendations**

- Include same-sex victims of domestic violence for the interpretation of "spouses" of the Domestic Violence Act.
- Ensure that sexual and domestic violence support framework, including shelters and support personnel should not discriminate LGBTI victims on the basis of sexual orientation and gender identity.
- Guarantee that mechanisms to protect from sexual violence is equally accessible to LGBTI persons.
- Repeal article 92-6 of the Military Criminal Act, so that same-sex victims of sexual violence in the military are not punished by it.

## 9. Hate Crimes

**Related Article: Article 12 and 13**

32. 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>47</sup> In 2011, in an area in the Jongno-gu district of Seoul where many bars for gay men are found, there occurred an incident in which a gay male couple was subjected one-sidedly to a mob attack by three men yelling insults such as “Faggot bastards.” In September 2013, an open wedding ceremony for the gay male couple Kim Seung-hwan and Kimjho Gwang-soo was held in Seoul. During the ceremony, a man in his 50s identifying himself as a church elder stormed on the stage and hurled feces. Subsequently, another man with a sign stating “Let’s smash gay marriage” attacked Kimjho as well. On August 16, 2016, again at the gay district of Jungno-gu, a member of the Korean gay men’s human rights group Chingusai’s gay choir G\_voice was assaulted his face by a passer-by yelling hate speech such as “Homo bastards.”

33. Hate crimes also took place on college campuses. In 2014, 2015, and 2016, there were a series of incidents where posters and banners for LGBTI-related events, welcoming newly incoming queer students, and coming out in celebration of IDAHOBiT, were unfairly pulled down, damaged, or vandalized in a number of universities, including Seoul National University, Pusan National University, and Sogang University.
34. There were even hate crimes in the pride events. In 2014, the parade of Seoul Queer Festival was blocked by anti-LGBT conservative Christian individuals and groups. After a confrontation that lasted nearly four hours, the parade can be finished at around 9:30PM, 4 hours after originally scheduled time.<sup>48</sup> In 2015, during the parade of Daegu Queer Cultural Festival in Daegu, a church elder threw excrement at a banner and participants. Daegu Jungbu Police Station booked this protester on suspicion of disturbing assemblies.
35. 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 teenager girl for her lesbian relationship and buried the dead body in secret in a year ago.<sup>49</sup>

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47 Money Today, “Police arrested teenagers who threatened ‘Namsan Transgender’ sex workers.” 30 April 2012. (in Korean.)

48 Human Rights Monitor South Korea, “Queer Parade blocked for hours by Christian Protesters”, 19 June 2014.

49 Seoul Shinmun, “a drug offender in 40s murdered a teenager 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>

#### **Suggested Questions**

- What measures has the State party taken to protect LGBTI persons from violence?
- Does the State party recognize violence based on sexual orientation and gender identity as a hate crime and aggregate hate crime statistics?
- How many cases of hate crimes against LGBTI persons have been registered by the State party over the last few years?
- What specific measures has the State party taken to train law the enforcement officials and the judges for the cases of homophobic and transphobic hate crimes?

#### **Suggested Recommendations**

- Collect separate statistics on crimes based on bias against sexual orientation and gender identity.
- Amend the Criminal Act to define hate crimes motivated by bias, such as homophobia and transphobia, as specific punishable offences and ensure that such incidents are thoroughly investigated and that perpetrators are brought to justice.
- Ensure that judges, prosecutors, the police and other law enforcement officials are adequately trained to recognize and effectively address hate crimes.

## **10. Detention Conditions for LGBTI and HIV-Affected Inmates**

**Related Article: Article 2, 10, 11, and 16**

### **10.1 HIV-related issues**

36. According to institutions such as the World Health Organization (WHO), the compulsory HIV testing of inmates must be prohibited, and voluntary HIV tests must be conducted only with sufficient pre-test and post-test counseling and informed consent. Test results must be transmitted to inmates by the medical personnel who must guarantee medical confidentiality and must not be disclosed to correctional facility managers. Tags, labels, stamps, or other visible signs must not be attached to inmates' files, cells, or papers to indicate these individuals' HIV infection. In addition, inmates must not be subjected to restrictions on vocational activities, sports, and recreation and to segregation and isolation. Although protective isolation may be demanded for inmates with AIDS-related immunodeficiency, it must be implemented only with inmates' informed consent.<sup>50</sup>

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<sup>50</sup> WHO Guidelines on HIV Infection and AIDS in Prisons (1999); UNODC/WHO/UNAIDS Policy Brief: HIV Testing and

37. However, the Ministry of Justice implements compulsory HIV testing on all new inmates of correctional facilities and segregated confinement (isolated confinement) those with HIV. Article 16 (Confinement, Etc. of New Inmates) Clause 3 of the Administration and Treatment of Correctional Institution Inmates Act (Act No. 14281) stipulates that “New inmates shall undergo medical checkups conducted by a warden,” thus making it impossible for new inmates to reject medical checkups. Article 3 (Medical Checkups of New Inmates) Clause 5 of the Guidelines on the Medical Management of Inmates (Ministry of Justice Established Rules No. 1109) stipulates that “syphilis and acquired immune deficiency syndrome tests are to be implemented” during medical checkups of new inmates in accordance with Article 16 of the above law.
38. In addition, Article 11 (Management of Acquired Immune Deficiency Syndrome Patients) Clause 1 stipulates that “A warden must report to the community health center in the jurisdiction when there are inmates who have been definitively diagnosed with acquired immune deficiency syndrome,” and Clause 2 stipulates that such inmates are to be subjected to segregated confinement (isolated confinement). Consequently, inmates are subjected to HIV tests unawares, the results of which are notified not only to inmates themselves but also to wardens, and to segregated confinement immediately.
39. Here, segregated confinement means not only solitary confinement but also separate engagement in activities such as sports, hairdressing, and showers/baths and exclusion from activities and gatherings such as religious assemblies, education, and vocational activities so that those living with HIV are segregated in all aspects of daily life.
40. Consequently, these inmates have felt extreme isolation or humiliation and even attempted suicide.<sup>51</sup> Regarding this incident, the National Human Rights Commission of Korea (NHRCK) recommended to the Ministry of Justice on January 16, 2013 that Clause 2 of the Management of Acquired Immune Deficiency Syndrome Patients, which stipulates that “Infectees or inmates suspected of infection are to be subjected to isolated confinement immediately,” be revised. The Ministry of Justice then revised the clause as “After hearing

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*Counselling in Prison and Other Closed Settings* (2009).

<sup>51</sup> National Human Rights Commission of Korea, 11-Petition-0571300, “Isolation of HIV Infectees in Correctional Facilities,” 10/10/2011; National Human Rights Commission of Korea, 12-Petition-0094800, “Isolation of HIV Infectees in Correctional Facilities,” 15 February 2012. (in Korean).

medical officers' opinions, appropriate measures such as segregated confinement must be taken" on December 5, 2013.<sup>52</sup>

41. However, the reality remains unchanged. Furthermore, segregated confinement has resulted in the disclosure of HIV infection to other inmates. At D Correctional Institution, "HIV" was written next to infectees' names on the inmate roster, visible even to visitors and interviewers. In addition, the health rights of inmates living with HIV are violated due to insufficient medical measures as well.
42. On March 28, 2015, the press confirmed that a transgender woman living with HIV arrested for violation of the Act on the Control of Narcotics, Etc. had not been supplied with anti-retroviral drugs (ARVs) in a timely manner following her confinement at a detention center. Her immunity drastically weakened due to prolonged confinement so that her lawyer submitted a request for the suspension of the execution of penalty, but public prosecutors dismissed it. Although a written diagnosis from a medical specialist in infectious diseases stating that this inmate could no longer continue prison life due to ailments such as herpes zoster (shingles) and skin eruptions (rashes) and required immediate hospitalization due to the danger of opportunistic infections and the side effects of medication was submitted, it was futile.<sup>53</sup> Moreover, Article 20 of the Guidelines on the Medical Management of Inmates (Hemodialysis Patients to Be Transported) excludes "persons who have contracted infectious diseases such as those infected with acquired immune deficiency syndrome" from hemodialysis patients who may be transported to institutions that operate hemodialysis rooms.

## 10.2 LGBTI inmates

43. On December 21, 2007, the Government revised wholesale the existing Criminal Administration Act as the Administration and Treatment of Correctional Institution Inmates Act. Though it has added "sexual orientation" as a prohibited ground of discrimination, the

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<sup>52</sup> Article 11 (Management of Acquired Immune Deficiency Syndrome Patients) Clause 2, Chapter 3. Patient Management, Guidelines on the Medical Management of Inmates (in Korean). [http://www.korealaw.go.kr/admRullInfoP.do;jsessionid=wxwFTOIY1MDm6U79RichhmFrDx4HhAwMuW47EY1JhQ5MxmWTqoXjBRsSa1t4eaKp.de\\_kl\\_a5\\_servlet\\_LSW2?admRulSeq=2000000026311](http://www.korealaw.go.kr/admRullInfoP.do;jsessionid=wxwFTOIY1MDm6U79RichhmFrDx4HhAwMuW47EY1JhQ5MxmWTqoXjBRsSa1t4eaKp.de_kl_a5_servlet_LSW2?admRulSeq=2000000026311).

<sup>53</sup> Money Today, "Transgender dying in court 'for the sin of love...': Person A on 'drug charges' 'fighting AIDS, condition worsened... because detention center didn't give medicine at the right time.'", 25 August 2015 (in Korean). <http://m.mt.co.kr/renew/view.html/?no=2015082413520830774&MVB&MVP>.

extensively revised Administration and Treatment of Correctional Institution Inmates Act has no stipulation whatsoever on the treatment of individual LGBTI persons. Stating that, “In the case of transgenders, individuals are grasped as transgenders through medical officers’ confirmation including their confinement history, genital removal surgeries, and drug administration,” the Government said that seven transgender persons were under confinement as of September 27, 2013.

44. In addition, “When persons whose sex is unclear for reasons such as sex change surgery newly enter facilities, their cells are assigned after receiving precise sex discernment from medical officers and medical specialists, and safe custody such as single-celling and the installation of partitions has been strengthened and counseling by demand has been implemented in order to prevent concerns such as sexual harassment and human rights violations.”<sup>54</sup> In other words, transgender inmates are assigned to prison compounds based on the genders on their respective resident registrations (i. e., legal genders assigned at birth), set apart from other inmates only through single-celling. Consequently, they suffer from stress and pain because they must engage in activities such as sports and showers/baths together with other inmates in the same compounds.

45. In such cases, transgender inmates are made to live in the same cells as or to shower and changes clothes in the presence of inmates of genders other than their chosen ones, thus leading to severe violations of these individuals’ physical autonomy. In relation to this, there was actually a case in 2006 where a transwoman attempted suicide after being incarcerated in an all-male correctional facility.<sup>55</sup> Although the state’s responsibility to make compensations was acknowledged in this particular case, the Government still has not been established any guideline on the confinement of transgender persons in correctional facilities in terms of how transgender inmates may be accommodated so that they can live in these facilities in a way that is appropriate for the genders of their wishes. Correctional facilities are operated according to uniform standards based on gender binarism so that transgender inmates’ individual demands are not accepted. There was a case where a transwoman

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54 Data submitted by the Ministry of Justice to legislator Seo Giho (Justice Party) during the 2013 inspection of state administration.

55 Newsis, “Prison not considerate of transgender inmate... state responsible for compensation,” 4 January 2011 (in Korean). [http://www.newsis.com/view/?id=NISX20110104\\_0007074879](http://www.newsis.com/view/?id=NISX20110104_0007074879).

inmate was punished with confinement in a solitary cell for refusing to have her long hair cut forcibly.<sup>56</sup>

#### **Suggested Questions**

- Is the State party following the WHO Guidelines on HIV Infection and AIDS in Prisons for voluntary testing and non-discriminatory detention conditions for prisoners with HIV/AIDS?
- How many transgender persons are currently detained in prisons? How many transgender persons are receiving medical treatment, such as hormone therapy?
- Is there a guideline in the prison that will allow transgender prisoners to be treated according to their gender identity?

#### **Suggested Recommendations**

- Follow the WHO Guidelines on HIV Infection and AIDS in Prisons, such as voluntary testing and non-discriminatory detention conditions for prisoners with HIV/AIDS.
- Establish specific guidelines to prevent discrimination against sexual orientation and gender identity within prisons. Guarantee that transgender inmates to be placed in facilities based on their gender identity. Ensure that transgender inmates should be provided with necessary medical measures such as hormone therapy.
- Ensure that police officers and prison guards receive training on respecting the human rights of LGBTI persons.
- Collect and investigate information on the number of transgender inmates placed in prisons and the cases of discrimination and take appropriate measures to remedy the victims.

## **11. LGBTI Asylum Seekers**

### **Related Article: Article 3**

46. There are increasing numbers of LGBTI applicants claiming asylum in the Republic of Korea. During the application process, immigration officials often ask unnecessary or invasive questions, such as questions about the applicant's sexual behavior.<sup>57</sup> Although UNHCR issued the Guidelines on International Protection No. 9: Claims to Refugee Status based on Sexual Orientation and/or Gender Identity within the context of Article 1A(2) of the 1951

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56 Gwangju District Court 2014Guhap10493; Gwangju High Court 2014Nu6530 (in Korean).

57 Public Interest and Human Rights Law Foundation: Gonggam, Suh-yeon Chang, "Is there a haven for LGBTI refugees?", 17 May 2014. (Invasive questions like "Homosexuality is usually divided into male and female roles. What about you?", "Have you ever actually had sex?", "What was the role of the applicant in the first sexual intercourse?", "Is there a way to wear jewelry or a hairstyle that reveals that you are gay?")

Convention and/or its 1967 Protocol relating to the Status of Refugees in 2012, there is no training program based on these guidelines for Korean immigration officials.

**Suggested Questions**

- What is the application process like for LGBTI asylum seekers?
- What measures has the State party taken to prevent interviewers from asking insulting and invasive questions about applicants' sexual behavior during the application process?

**Suggested Recommendations**

- Ensure specialized training on the particular aspects of LGBTI refugee claims for decision makers, interviewers, interpreters, advocates and legal representatives, according to the UNHRC Guidelines No. 9.