

REPUBLIC OF KOREA

SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

86TH PRE-SESSIONAL WORKING GROUP, 27 FEBRUARY – 3 MARCH
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1. INTRODUCTION

Amnesty International makes this submission ahead of the adoption of the list of issues for the Republic of Korea (South Korea) by the UN Committee on the Elimination of Discrimination against Women Pre-Sessional Working Group 86 (27 February-3 March 2023).

The South Korean government has taken positive steps to combat the increase in online gender-based violence, including revisions to existing laws to increase protections against and punishment for digital sex crimes. Amnesty International is deeply concerned, however, that the current administration is attempting to roll back decades of progress towards the advancement of women's rights. The President denying the existence of structural discrimination against women and proposing a plan to abolish the Minister of Gender Equality and Family are worrying developments.

In this briefing Amnesty International provides information on the implementation by South Korea of the Convention and sets out ways in which the South Korean government could better comply with its obligations under the Convention. Amnesty International highlights six areas of concern. They include the lack of comprehensive anti-discrimination legislation; lack of access to safe abortion; government plans to abolish the Ministry of Gender Equality and Family; online gender-based violence; justice for survivors of Japanese military's sexual slavery; and rights of transgender persons. It should not be seen as an exhaustive list of concerns but draws on Amnesty International's ongoing research and advocacy on South Korea.

2. ANTI-DISCRIMINATION LAW (ARTICLES 1 AND 2, SDGs 5.1)

Despite a concerted effort by civil society and repeated calls from the international community during the reporting period, South Korea has failed to adopt meaningful and enforceable comprehensive anti-discrimination legislation which includes explicit protections for cis-, LGBTI, and transgender women. Discrimination against LGBTI people in South Korea continues to persist in various forms, some of which are institutionalized. Same-sex relationships are not legally recognized and consensual same-sex activity between men continues to be criminalized in the military, even though it is not outlawed for the general public.

During his election campaign in early 2021, President Yoon Suk-yeol made several anti-feminist remarks; blamed the country's low birthrate on feminism; and claimed that systemic gender discrimination does not exist in South Korea, despite statistical evidence suggesting that the country has a long way to go to achieve gender equality.¹

Women continue to face multiple legal, social and economic barriers and discrimination across all spheres.² For example, women continue to face a pronounced gender wage gap, earning an average of 31.5% less than men. Women also remain highly

¹ Amnesty International, 'Yoon Suk-yeol needs to change the way South Korea treats women', 11 May 2021, <https://www.amnesty.org/en/latest/news/2022/05/yon-suk-yeol-needs-to-change-the-way-south-korea-treats-women/>

² Amnesty International, 'South Korea: Lawmakers must seize chance to pass landmark anti-discrimination act', 9 August 2021, <https://www.amnesty.org/en/latest/news/2021/08/south-korea-lawmakers-must-pass-landmark-anti-discrimination-act/>

underrepresented in the country's leadership positions, making up 19% of parliamentarians and less than 5% of executives in the 100 companies with the highest sales figures in the country.

South Korea has repeatedly voted in favour of UN Human Rights Council resolutions calling for an end to discrimination and other expressions of support for such international statements of intent. However, the National Assembly has failed to enact numerous comprehensive anti-discrimination laws on that have been proposed over the last 15 years, including recommendations by the government and the National Human Rights Commission of Korea. Four proposed anti-discrimination bills were added to the agenda at a Legislation and Judiciary Committee meeting in May 2022, yet there has been no progress on passing these bills.

Amnesty International recommends that the South Korean authorities:

- Promptly enact comprehensive, meaningful and enforceable anti-discrimination legislation that prohibits discrimination based on, among others, sex, gender, sexual orientation, gender identity, expression and sex characteristics.

3. ACCESS TO SAFE ABORTION (ARTICLES 5 AND 12, SDGs 5.6)

Despite abortion being decriminalized in January 2021, following an earlier Constitutional Court decision of 2019 which declared the previous abortion ban unconstitutional, Parliament did not take action to revise the law as ordered by the Constitutional Court in 2020.

Several bills remain pending in the National Assembly, including those prescribing specific time limits for abortion access as well as some calling for full decriminalization. This prolonged legislative vacuum has caused confusion among medical providers, creating legal uncertainty and negatively impacting access to safe abortion.

Amnesty International is concerned that despite the decriminalization of abortion, access to safe abortion continues to be limited by a number of unnecessary hurdles and restrictions on access to information and services related to abortions. The National Health Insurance Service has provided coverage for abortion consultations since August 2021, but no oral abortion pills have yet been approved by the Ministry of Food and Drug Safety.

The Korea Communication Standards Commission issued a ruling in 2019 blocking domestic access to the website of Canadian nonprofit organization Women on Web, which provides access to information about reproductive health and access to abortion medication, following a request by Korea's Food and Drug Agency.

Amnesty International recommends that the South Korean authorities:

- Swiftly reform the Criminal Act to decriminalize abortion in line with the Constitutional Court order of 2019.
- Ensure universal access to quality and affordable sexual and reproductive health information, services and goods, including abortion, through concrete legislative, policy and administrative measures.
- Ensure that abortion and all sexual and reproductive health services and goods are affordable, subsidized by public health insurance schemes, or provided free of charge to those who otherwise cannot afford them.

4. ABOLITION OF THE MINISTRY OF GENDER EQUALITY AND FAMILY (ARTICLE 3, SDGs 5.5, 5.c)

The government announced plans to abolish the Ministry of Gender Equality and Family as part of a reorganization effort in October 2022. The ministry had served as an overarching body for setting and monitoring gender equality policies for all other ministries, but the reorganization would separate the functions of the Ministry of Employment and Labour, the Gender Equality Committee of the Prime Minister, and the new Population and Family Gender Equality Headquarters of the Ministry of Health and Welfare.

It is worrying that there will be no coordinating mechanism to advise on the impact of all government policies on women's rights; monitor the situation of women comprehensively and help formulate new policies; and effectively carry out strategies and measures to eliminate discrimination against women. Furthermore, Amnesty International is deeply concerned that replacing gender equality with population, family affairs and welfare may directly or indirectly reinforce discriminatory and longstanding stereotypes about the roles and responsibilities of women and men in the family and in society.

Amnesty International is concerned that the proposed plan will severely weaken the effectiveness of the national mechanisms for the

advancement of women.

Amnesty International recommends that the South Korean authorities:

- Halt plans to close the Minister of Gender Equality and Family and take concrete measures to strengthen the national machinery for the advancement of women and ensure that it is equipped with the necessary human, financial and technical resources.

5. ONLINE GENDER-BASED VIOLENCE (ARTICLES 2 AND 5, SDGs 5.2, 5.b)

There has been a noticeable increase in digital sex crimes as digital technology rapidly develops. The perpetrators use cloud links and cryptocurrencies on closed overseas platforms such as Telegram to distribute and purchase illegally filmed content and sexually exploitative materials faster and more easily than before these technologies. On 23 April 2020, South Korea announced measures to address digital sex crimes in response to one such case on Telegram, the so-called “Nth Room” incident, which included a number of legal revisions under what was termed the Nth Room Prevention Act.³

These included a commitment to establish a government-led victim support centre to ensure continued support system for survivors. A Digital Sex Crimes Task Force Team’s Expert Committee was also established under the Ministry of Justice. The Committee was established in August 2021 with the mandate of preparing policies to respond to digital sex crimes.

However, the government did not put in place a sustainable emergency response system for digital sexual violence. As a result, survivors continue to be exposed to prolonged physical and mental harm including the constant fear that the content may be distributed again.

The Digital Sex Crimes Task Force Team’s Expert Committee was officially disbanded on 15 June 2022, with two months remaining in its mandate. The disbandment of the committee came after 17 members of the task force resigned under pressure from the newly inaugurated administration of President Yoon Suk-yeol, which stated that the task force had already fulfilled its intended purpose.

Amnesty International recommends that the South Korean authorities:

- Promote gender equality through holistic measures, including by eliminating the drivers of discrimination against women, such as harmful gender stereotypes.
- Ensure that online platforms within its jurisdiction, and encourage those outside, take all appropriate measures to prevent and end online discrimination and violence they are facilitating, causing or are contributing to.
- Establish measures such as a comprehensive inter-agency mechanism which includes appropriate allocation of resources to create an enabling environment for women to access justice; report crimes and actively participate in criminal justice processes; and take measures to prevent retaliation against or the revictimization of women seeking recourse in the justice system.

6. SURVIVORS OF JAPANESE MILITARY SEXUAL SLAVERY (ARTICLE 2, SDGs 5.2)

In a landmark ruling on 8 January 2021, the Central District Court in the capital, Seoul, ordered the Japanese government to compensate 12 women who had been forced into the Japanese military’s sexual slavery system before and during World War II. In a separate ruling in April 2021, however, another chamber of the same district court dismissed similar claims brought against Japan by another group of survivors.

The second ruling in effect denied the survivors an effective remedy, including by allowing Japan to use procedural hurdles such as

³ Amnesty International, ‘South Korea: Online sexual abuse content proliferates as survivors blame Google failings’, 8 December 2022, <https://www.amnesty.org/en/latest/news/2022/12/south-korea-online-sexual-abuse-content-proliferates-as-survivors-blame-google-failings/>

state immunity to hamper efforts of survivors and their families to obtain full and effective reparations.⁴

Amnesty International recommends that the South Korean authorities:

- Refrain from allowing the invocation of procedural hurdles such as state immunity to hamper efforts of survivors and their families to obtain full and effective reparation through judicial procedures.
- Work with the government of Japan and other affected countries to ensure that effective systems are put in place to implement reparation measures for survivors and their families that take into account their views and needs.

7. RIGHTS OF TRANSGENDER PERSONS (ARTICLE 12, SDGs 5.1)

Transgender people in South Korea continue to face widespread discrimination. In February of 2021, the results of a survey commissioned by the National Human Rights Commission of Korea (NHRCK) into the situation faced by transgender people were published. They revealed that transgender people are “exposed to hatred and discrimination in all places”. The report criticized the lack of laws, institutions and policies guaranteeing the rights of transgender individuals and called on the government to enact a comprehensive law banning discrimination against them.

Authorities continued to prevent transgender individuals from serving in the military. Former staff sergeant Byun Hui-su, a transgender woman, died in March 2021 in Cheongju, North Chungcheong province. Her death was treated as a suicide. Byun Hui-su’s gender affirmation surgery was classified by the military as a “disability”, and she was discharged from the military after requesting a transfer to the female corps. After her death, a district court ruled in October of 2021 that there were “no mental or physical disability grounds for dismissal” and ordered her discharge to be posthumously cancelled.

In November of 2022, the Supreme Court decided that having children who are under 19 should not immediately be the reason to refuse to recognize the legal gender of transgender persons in the case of a transgender woman who had originally had her application for legal recognition of gender rejected.⁵

However, transgender individuals seeking legal gender recognition through the courts are still required to meet excessive and disproportionate conditions such as undergoing sterilization. Without legal gender recognition, transgender individuals cannot change their gender marker to match their gender identity on their national identification cards, which is required to obtain official documents and access essential services. These official documents are also necessary to obtain employment and when purchasing housing. The authorities continue to pathologize gender dysphoria as a mental disorder.

Amnesty International recommends that the South Korean authorities:

- Stop basing legal gender recognition for transgender individuals upon unreasonable and discriminatory requirements such as undertaking psychiatric diagnosis, seeking medical treatment (including forced sterilization or genital reconstruction), or the prohibition of marrying or having children. Gender recognition should be made available through swift, accessible and transparent administrative procedures based on individual self-declaration.
- Stop treating gender dysphoria as a mental health disorder by implementing without delay the WHO ICD-11, which no longer classifies gender dysphoria as a mental disorder.
- Ensure that all gender-affirming treatments are included in the national health insurance system.

⁴ Amnesty International, ‘South Korea: Disappointing Japan ruling fails to deliver justice to “comfort women”’, 21 April 2021, <https://www.amnesty.org/en/latest/press-release/2021/04/south-korea-disappointing-japan-ruling-fails-to-deliver-justice-to-comfort-women/>

⁵ Amnesty International, ‘South Korea: Supreme Court ruling on legal gender recognition an important step forward for transgender rights’, 24 November 2022, <https://www.amnesty.org/en/latest/news/2022/11/south-korea-supreme-court-ruling-on-legal-gender-recognition-an-important-step-forward-for-transgender-rights/>; Amnesty International, South Korea: Amicus curiae brief in the Supreme Court of Korea on legal gender recognition, Index: Index Number: ASA 25/6246/2022, <https://www.amnesty.org/en/documents/asa25/6246/2022/en/>