



UNIVERSITY OF TORONTO
FACULTY OF LAW

INTERNATIONAL
HUMAN RIGHTS
PROGRAM

South Korea

Country report for use in Canadian refugee claims based on persecution on the basis of sexual orientation or gender identity

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By: Sexual Orientation and Gender Identity Working Group

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DIRECTOR

Renu Mandhane, J.D., LL.M.
39 Queen's Park
Room 106
Toronto, Ontario M5S 2C3
Tel: 416.946.8730
Fax: 416.978.8894
renu.mandhane@utoronto.ca



Table of Contents

Introduction.....	2
Legislation.....	3
Case Law.....	10
Government Reports.....	12
Reports from International Agencies and Non-Governmental Organizations.....	14
Newspaper and Media Reports.....	25
Scholarship.....	27

I. Introduction

South Korean legislation contains antidiscrimination provisions, but does not provide specific protection for LGBT individuals. There is a Human Rights Commission in place to investigate and remedy human rights issues, but it can only protect rights set out in the Constitution, legislation, or in international treaties South Korea has entered into.

Recent changes to the Criminal Code have removed gender-specific language in the provisions against rape and other sexual crimes, thereby increasing the legal protections potentially available to LGBT persons who have been victims of sexual offences. However, the Military Criminal Act treats homosexuality as a crime. Any homosexual act in the military is treated as sexual assault regardless of consent. All Korean males must serve two years of mandatory military service.

Most Non-Governmental and International Agency reports have focused on the country's failed attempts at passing national anti-discrimination legislation. Media reports show a general trend towards supporting LGBT rights. Seoul hosts one of the largest pride parades in Asia. Multiple Korean celebrities have openly come out as LGBT individuals. There is still a large opposition towards LGBT rights among the country's large Christian base.

Because South Korea is currently listed on the Designated Country of Origin (DCO) list and because of the recent reforms to laws on sexual assault and evidence of increasing acceptance of LGBT rights, it will likely be very difficult for



a South Korean refugee making a claim based on their LGBT status to be successful. The only successful claim to date was from a transgendered claimant unwilling to undergo phalloplasty, which at the time was mandatory for a person's gender to be changed on official documents. In light of a recent Seoul District Court ruling that sexual reassignment surgery is not legally necessary to change the gender on legal documents, future claims on the same grounds may have reduced chances of success.

II. Legislation

A great deal of South Korean Legislation can be found in English at www.moleg.go.kr/english

1. Constitution of the Republic of Korea (English revised 2010)
Online:
<http://www.moleg.go.kr/english/korLawEng?pstSeq=54794&rctPstCnt=3&searchCondition=AllButCsfCd&searchKeyword=constitution>
 - **Article 11(1) states that there shall be no discrimination on account of sex, religion or social status.**
 - **Article 36(1) provides that marriage shall be entered into on the basis of human dignity and equality of the sexes. It makes no mention of same sex marriages.**
 - **LGBTQ rights and protections are never explicitly mentioned in the Constitution, and the only section that may extend some protection to them from discrimination is Article 11 ("social status").**
 - **Article 39(1) states that all citizens have the duty of national defence. The ramifications of this will be set out below under the *Military Criminal Act*.**

Article 11

(1) All citizens shall be equal before the law and there shall be no discrimination in political, economic, social, or cultural life on account of sex, religion, or social status.

Article 36



(1) Marriage and family life shall be entered into and sustained on the basis of individual dignity and equality of the sexes, and the State shall do everything in its power to achieve that goal.

Article 39

(1) All citizens shall have the duty of national defense under the conditions as prescribed by Act.

(2) No citizen shall be treated unfavourably on account of the fulfillment of his obligation of military service.

2. Criminal Act (English revised 2012)

Online:

http://elaw.klri.re.kr/eng_service/lawView.do?hseq=28627&lang=ENG

- **The Criminal Code does not criminalize sodomy or same sex sexual conduct.**
- **Sex related crimes are found in Part 2, Chapter 22: Crimes Concerning Sexual Morals, and Part 2, Chapter 32: Crimes Concerning Rape and Infamous Conduct.**
- **Until late 2012, rape was exclusively defined as against a female under Article 297. It has since been amended to be gender neutral, meaning that rape of a male is now criminalized.¹**
- **The majority of articles concerning rape and sexual conduct are found in Chapter 32 and include rape, imitative rape, quasi-rape and indecent act by compulsion. None of these articles on their face discriminate against homosexual relations, though 'indecent act' is not defined in the Criminal Code.**
- **Sexual intercourse or indecent acts committed by fraud or threat of force against minors is criminalized under articles 302 and 305.**

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.

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),

¹ http://koreanlii.or.kr/w/index.php/Sex_crimes



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.

Article 298 (Indecent Act by Compulsion)

A person who, through violence or intimidation, commits an indecent act on another shall be punished by imprisonment for not more than 10 years or by a fine not exceeding fifteen million won.

Article 299 (Quasi-Rape, Quasi-Indecent Act by Compulsion)

A person who has sexual intercourse with another or commits an indecent act on another by taking advantage of the other's condition of unconsciousness or inability to resist shall be punished in accordance with Article 297, 297-2 or 298.

Article 302 (Sexual Intercourse with a Minor, etc.)

A person who, by fraudulent means or by the threat of force, has sexual intercourse or commits an indecent act on a minor or feeble-minded person, shall be punished by imprisonment for not more than 5 years.

Article 305 (Sexual Intercourse or Indecent Act with a Minor)

A person who has sexual intercourse with another who is under thirteen years of age or commits an indecent act on such a person shall be punished in accordance with Articles 297, 297-2, 298, 301 or 301-2.

3. Civil Act (English revised 2009)

Online:

<http://www.moleg.go.kr/english/korLawEng?pstSeq=52674&rctPstCnt=3&searchCondition=AllButCsfCd&searchKeyword=civil>

- **Chapter 3 of the Civil Act sets out South Korean Marriage law. Same sex marriage is not legal under the act. Whilst the act does not specifically state that marriage is between a man and a woman, all rights and duties in the act describe marriage as between a husband and wife.**
- **Article 819 specifically names one of the parties as “the female” suggesting that there will always be a female party and not more than one female party. Section 4 of Chapter 3 lays out the duties of husband and wife, under article 826.**



- Chapter 4 of the Civil Act sets out the law on adoption. Article 866 states that any person who has achieved the age of majority may adopt and, while Article 874 of the act states that a married person who adopts a child to do so jointly with their spouse, there is no explicit requirement that a person be married to adopt.
- There are further restrictions for adoption of children under the age of 15 under article 908-2, which requires the adoptive parents of children under 15 to be married for three years or more. This would exclude LGBT individuals, as they cannot marry.
- Therefore LGBT persons face discrimination in the context of adoption as they are effectively prohibited from adopting children under the age of 15.

Article 819 (Extinguishment of Right of Claim for Annulment of Marriage without Consent)

In the case of a marriage in violation of the previous Article 808, no claim for annulment of the marriage may be made, if three months have elapsed from the day the minor party had attained the age of 20 or the adjudication of incompetency of the party concerned had been cancelled, or if *the female* party has become pregnant during the marriage. (emphasis added)

Article 826 (Duties of Husband and Wife)

- (1) Husband and wife shall live together, and shall support, and aid each other: *Provided*, That both parties must tolerate, if they do not live together temporarily for due reason.
- (2) The place where husband and wife reside, shall be determined by an agreement between them: *Provided*, That if they fail to reach an agreement, the place shall be determined by the Family Court upon request of either party.

Article 866 (Capacity for Adoption)

Any person who has attained majority may adopt another as his child.

Article 874 (Joint Adoption of Husband and Wife)

- (1) When a person who has a spouse adopts a child, he or she shall do it jointly with his or her spouse.
- (2) When a person who has a spouse, is adopted, he or she shall obtain the consent of the other party.

Article 908-2 (Requisites, etc. for Full Adoption)



(1) Any person who intends to make the full adoption of a child shall make a request to the Family Court for such full adoption after meeting the following requirements:

1. The adoption shall be made jointly by husband and wife who are married for three years or more: *Provided:* That where either of the husband and wife who are married for one year or more makes the full adoption of the other spouse's child as his or her own, the same shall not apply.

4. Military Criminal Act (No English version available)

Online (in Korean):

<http://www.law.go.kr/%EB%B2%95%EB%A0%B9/%EA%B5%B0%ED%98%95%EB%B2%95>

- **Article 39 of the Constitution of South Korea sets out that all citizens have the duty of national defence.**
- **Article 92 of the Military Criminal Act considers same-sex sexual relations to be sexual harassment punishable by a sentence of up to one year in prison.**
- **The act does not distinguish between consensual and non-consensual acts, labelling same-sex relations as reciprocal rape. Consent is not deemed possible in homosexual situations, so all acts are seen as rape despite the willingness of both parties to perform them.**
- **The military court ruled in 2010 that Article 92 is unconstitutional as sexual orientation is a personal issue.² This ruling is under appeal and a decision has still not been made. In 2011 Constitutional courts ruled that laws punishing homosexual acts in the barracks were constitutional.³**

5. *National Human Rights Commission Act* (English revised 2012)

Online:

<http://www.humanrights.go.kr/english/information/legalMaterials02.jsp>

- **The act exists to give inviolable human rights to all individuals.**
- **The act will promote human rights guaranteed under the Korean Constitution and statute, as well as those rights**

² Ji-Sook, Bae. Will Homosexuality be Allowed in the Barracks. The Korea Times. June 6, 2010.

³ http://www.koreatimes.co.kr/www/news/nation/2011/03/113_84251.html



guaranteed under international treaties entered into by Korea. As the Korean Constitution and statutes do not specifically mention LGBTQ rights it is unclear whether the commission will have the power to protect these rights.

- **The duties of the Human Rights Commission under the act include investigating and remedying human rights violations and discrimination, as well as educating the public on human rights.**

Article 1 (Purpose)

The purpose of this Act is to contribute to the embodiment of human dignity and worth as well as to the safeguard of the basic order of democracy, by establishing the National Human Rights Commission to ensure that inviolable, fundamental human rights of all individuals are protected and the standards of human rights are improved.

Article 2 (Definitions)

The definitions of terms used in this Act shall be as follows:

1. The term "human rights" means any of human dignity, worth, liberties and rights which are guaranteed by the Constitution and Acts of the Republic of Korea or recognized by international human rights treaties entered into and ratified by the Republic of Korea and international customary law

Article 19 (Duties)

The Commission shall perform duties falling under the following subparagraphs:

- (1) Investigation and research with respect to statutes (including bills submitted to the National Assembly), legal systems, policies and practices related to human rights, and recommendation for their improvement or presentation of opinions thereon;
- (2) Investigation and remedy with respect to human rights violations;
- (3) Investigation and remedy with respect to discriminatory acts;
- (4) Survey on human rights conditions;
- (5) Education and public awareness on human rights;



- (6) Presentation and recommendation of guidelines for categories of human rights violations, standards for their identification and preventive measures therefor;
- (7) Research and recommendation or presentation of opinions with respect to the accession of any international treaty on human rights and the implementation of the treaty;
- (8) Cooperation with organizations and individuals engaged in any activity to protect and promote human rights;
- (9) Exchange and cooperation with international organizations related to human rights and human rights institutions of other countries; and
- (10) Other matters deemed necessary to protect and improve human rights.

6. *Transgender Rights*

- **Transgender rights have developed predominantly through case law and not legislative changes.**
- **In 2006, the Korean Supreme Court ruled that transgender individuals have the right to change their gender on legal documents if they have undergone sexual reassignment surgery.⁴**
- **In 2013, the Seoul District Court ruled that it is not necessary to have external sexual reassignment surgery to change one's gender on legal documents.⁵**
- **Transgender people may undergo sexual reassignment surgery provided that they are of the age of majority, have no children and in the case of males have either completed or been exempted from military service.⁶**
- **In 1996, courts ruled that the rape of a male to female transgender person was not a rape as the Criminal Code defines rape as only against a woman (see above).⁷**
- **In 2008, a minister suggested changing legislation to include men and transsexual people under the definition of rape.⁸**

⁴ <http://archive.globalgayz.com/asia/south-korea/gay-south-korea-news-and-repor-4/#article18>

⁵ http://www.gaylawnet.com/news/2008/cr080712.htm#new_rape

⁶ <http://ilga.org/country/south-korea/law/>

⁷ http://www.gaylawnet.com/news/1996/cr960406.htm#gendersexual_attack

⁸ http://www.gaylawnet.com/news/2006/tr06.htm#gender_victory



Gender neutral wording was applied to the rape provisions under the Criminal Code in late 2012.

7. HIV/AIDS

- **In June 2010, travel restrictions on HIV/AIDS positive individuals were lifted.⁹**

III. Case Law

Immigration and Refugee Board of Canada Decisions

1. X, Re, 2006 CarswellNat 4097

Holding: Claim for refugee protection rejected.

- Claimant is a homosexual man from South Korea.
- Claimant did not satisfy the burden of establishing a serious possibility of persecution on a Convention ground.
- Claimant did not satisfy court that it is more likely than not he would personally be subjected to torture, that he faced a risk to his life, or that he would risk cruel and unusual punishment/treatment if he returns to South Korea.

The claimant feared persecution in South Korea on three grounds: his sexual orientation, his objection to compulsory military service based on his Buddhist faith, and the consequences of being a homosexual man in the military. He feared being discharged from the military for his sexual orientation, which could negatively affect his employment prospects. He also feared the military would treat homosexuality as a mental illness. The IRB held that he was not a Convention refugee. While admitting that he would face discrimination in South Korea due to his sexuality, it did not qualify as persecution. This was based on evidence of increasing numbers of LGBT persons living openly in South Korea. There are also few, if any, reports of any serious or violent incidents against openly LGBT persons. South Korea is a democratic country in which human rights organizations freely operate. The claimant had not lived in South Korea since 1997, so he did not have any recent experiences of what it is like to be homosexual in South Korea.

⁹ http://www.gaylawnet.com/news/2010/hi10.htm#un_lauds



Compulsory military service was not found to amount to persecution. Normally a person who objects to general laws of their country or fears a penalty for violation of such a law will not meet the requirements to be a protected person in Canada. They found South Korea's military conscription law was a law of general application, and there was no evidence that its application or its penalties were imposed discriminatorily based on Convention grounds. They also found that though conscientious objectors face some employment discrimination, they are not prevented from earning a livelihood.

There was insufficient evidence to show on a balance of probabilities that homosexual men in the military are vulnerable to treatment pursuant to ss. 96 or 97: there is no reason for a well-founded fear of persecution and it is not more likely than not that he will be subjected to the danger of torture, or face risk to his life or a risk of cruel and unusual punishment or treatment if he were to return to South Korea.

The panel also considered the claimant's situation cumulatively: his LGBT status, his opposition to military service, and his concerns regarding the treatment of LGBT persons in the military. They found that it all together it does not amount to a serious possibility of persecution or to cruel and unusual punishment or treatment if he returns to South Korea. His claim was rejected.

2. X, Re, 2013 CarswellNat 4258

Holding: Claim as a Convention refugee accepted.

- Claimant is a homosexual female-to-male transgender person.
- Claimant established that there is a "serious possibility" that he would be persecuted if he returned to South Korea.

The claimant is a homosexual female-to-male transgender person who claimed a well-founded fear of persecution if he were to return to South Korea. He began the process of gender reassignment, after identifying as male, while studying in the U.S. He did hormone replacement therapy and had a male chest reconstruction. He was, however, required to continue using his Korean identity documents that identified him as female. He had difficulties renewing his Korean passport while still in the U.S. and after finishing school resumed a female appearance to avoid problems with the Korean authorities and to conceal his transgender status. His mother is supportive but his father does not know. He is afraid of his father finding out, as his father is violent and might harm him. He feared for his safety and remained home most of the time. Finding employment was not possible as employment is very gender specific in South Korea. He attempted to reach out to the transgender community but was ignored as homosexual transgender persons are marginalized even within the LGBT



community. For the ten months that he was in South Korea, he lived in almost complete isolation.

The panel accepted his identity and concluded that if he returns to South Korea as a homosexual transgender person, the significant level of societal discrimination he would face would amount to persecution. They assessed his claim in light of the 2006 Supreme Court of South Korea decision that laid out the steps required for a person to change their gender identity. The claimant is not willing to undergo the phalloplasty procedure, because of his concerns with surgical complications, restricting him from being able to complete the five steps of gender reassignment and thus preventing him from being able to legally change his gender in South Korea. Gaining the consent of both of his parents is also an issue. The panel found that there is a lack of understanding regarding transgender individuals who are homosexual in South Korea.

The panel found the requirement to undergo a medical procedure, in this case phalloplasty, to be persecutory. The level of discrimination that impedes a person's chances of being employed was also found to amount to persecution. The claimant rebutted the presumption of state protection because South Korea has been unable to pass anti-discrimination legislation and because there is evidence that the transgender community is a target of hate crimes. The panel found that there are not any internal flight alternatives as there is no objective evidence to suggest that there is an area within South Korea that would be safer for a female-to-male transgender person. The claimant was thus found to have established that there is a "serious possibility" he would be persecuted if he returned to South Korea. His claim was accepted.

IV. Government Reports

Immigration and Refugee Board of Canada

1. "Korea, Republic of: Treatment of Homosexuals, including legislation, availability of state protection and support services," 30 November 2009
Online: <http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=publisher&docid=4b7cee8137&skip=0&publisher=IRBC&querysi=korea&searchin=title&sort=date>
 - **Even though homosexuality is not illegal in South Korea, the LGBT community faces discrimination and many choose to conceal their sexuality**



- **Nevertheless, LGBT rights news sources indicate some movement towards acceptance of same-sex relationships and the IGLHRC reports that South Korean governmental policies towards same-sex relationships are “relatively progressive.”¹⁰**
- **“Legislation and State Protection” (paragraphs 5-7)**
 - **The report states that neither the South Korean constitution nor the civil penal code “technically” criminalizes same-sex relationships.¹¹**
 - **There is a strong conservative Christian influence in South Korean politics and society that opposes legal protections for the LGBT community.**
- **“Support Services” (paragraphs 8-9)**
 - **There is a robust LGBT advocacy movement in South Korea. These groups include: Chingusai, a human rights organization for homosexual men; Korean Sexual-Minority Culture and Rights Center; Lesbian Counseling Center in South Korea.**

United States Department of State, Bureau of Democracy, Human Rights and Labor

1. “Country Reports on Human Rights Practices 2013: Republic of Korea 2013 Human Rights Report,” 2013

Online: <http://www.state.gov/documents/organization/220416.pdf>

- The report cites the absence of a comprehensive antidiscrimination law and societal discrimination towards the LGBT community as human rights problems in South Korea.
- Section 6 (p.16) attributes the failure to pass a comprehensive antidiscrimination law in October 2012 to “aggressive lobbying primarily from religious groups” that oppose protections for the LGBT community.
- Article 2 subsection 3 of the National Human Rights Commission Act¹² states that a “discriminatory act violating the right to equality” applies to an act “committed without reasonable cause based on...sexual orientation...” but does not include gender identity.
- The National Human Rights Commission Act grants the Commission the authority to review cases of discriminatory acts,

¹⁰ This quotation is from the last line of paragraph three of the report. The report cites *Fridae* and *Pink News* for this claim.

¹¹ The report uses the term “technically” because there are no legally enforceable protections for the community.

¹² For text of Act, see above legislation section.



and a victim of a discriminatory act can petition the NHRC to review their case, but the Commission can only recommend disciplinary action under Article 45 subsection 2.

- The NHRC reported four cases of discrimination against LGBT persons in the first half of the year.
- The Ministry of National Defense reports that 13 homosexual men were confined to a guardhouse for 10-15 days during the year.
- Christian lawmakers protested against a textbook for the 2013-14 school year that states:
 - **Sexual minorities in South Korea face bullying and discrimination.**
 - **Discrimination against LGBT community violates basic human rights.**

The report provides several examples of discrimination against the LGBT community. The Mapo District office in Central Seoul refused to allow the Mapo [sic] Rainbow Coalition to hang two banners designed to raise awareness of LGBT issues after parents and church groups requested that they not be displayed. One entertainer who was “outed” claimed that media organizations fired him as a result (p. 23). Otherwise, the LGBT community keeps a low profile because same-sex relationships are not widely accepted.

V. Reports from International Agencies and Non-Governmental Organizations

ARC International¹³

1. “Republic of Korea: 2nd Cycle,” 14th UPR session, Date of review: 25 October 2012; Date of report adoption: 14 March 2013. Working Group report A/HRC/22/10

Online: <http://arc-international.net/global-advocacy/universal-periodic-review/o-r/republic-of-korea/republic-of-korea-2nd-cycle>

- Recommendations: “(1) Anti-Discrimination Law should include specific prohibition on discrimination on the basis of sexual orientation; (2) Study the possibility of intensifying measures aiming

¹³ ARC International is a “project-driven” Canadian organization founded in 2003. From the website: “ARC plays a unique role in facilitating strategic planning around LGBT issues internationally, strengthening global networks, and enhancing access to UN mechanisms. We are the only organization with a full-time presence in Geneva committed to advancing LGBT issues within the UN human rights system, and have played a key role in the development of the Yogyakarta Principles on the application of International Human Rights Law in relation to Sexual Orientation and Gender Identity” <http://arc-international.net/>



at eliminating all discriminatory treatment on the basis of sexual orientation or gender identity; (3) Review the possibility of repealing laws that criminalize on the basis of sexual orientation within the military. Status: Pending to HRC22 (March 2013).”

- Report summarized key issues identified by NGOs, including: the need to include sexual orientation and gender identity within anti-discrimination legislation; equal treatment for homosexual members of the military; education and increasing public awareness.

Asia Pacific Forum¹⁴

1. “National Human Rights Commission of Korea (NHRCK) Activities in relation to Sexual Orientation and Gender Identity,” Workshop on the Role of National Human Rights Institutions in the Promotion and Implementation of the Yogyakarta Principles, 7 May 2009
Online: <http://www.asiapacificforum.net/support/issues/sexual-orientation/downloads/apf-regional-workshop-may-2009/south-korea-nhri-background-paper>
 - LGBT people “remain ‘invisible’ members of Korean society” and awareness of LGBT issues “is in its infancy” (p.1-2).
 - **National Human Rights Commission Act (2001):**
 - **“Human rights issues that relate to sexual orientation and gender identity are mainly dealt with by the Anti-discrimination Investigation Division” (p.2)**
 - **The Act: guarantees the rights and equal treatment of persons in relation to sexual orientation in an explicit and comprehensive manner” (p.3)**
 - **The National Human Rights Commission submitted recommendations on the “Anti-discrimination Bill’ to the Prime Minister.**
 - **According to the article, the Commission ought to give special attention to LGBT rights and the military. In 2006, the Commission heard a human rights violation complaint of a member of the military who alleged “officers responsible for the management of personal information had widely disseminated information about his homosexuality throughout the camp.” To grant early discharge, a senior officer required him to “submit evidence of his homosexuality.” He was required to undergo a psychiatric examination and HIV and syphilis testing (p.5).**

¹⁴ <http://www.asiapacificforum.net/>



- **Report includes a number of cases that the Commission has heard. Including one in 2005, where a municipal government employee was barred from participating in a “leadership program because the activist was associated with homosexual groups” (p. 6).**
- **Seminar on the Human Rights of Transgender Persons (February 2007): participants of the seminar put on by the NHRCK called for the revision of the Supreme Court Administrative Guideline No.716, “which only allows people who underwent sexual reassignment surgery, reached legal age and have no children to change their official documentation in order to reflect the sex with which they identify” (p. 6-7)**

Asylumlaw.org

1. “Mujigae Korea,” 3 August 2009¹⁵

Online:

http://www.asylumlaw.org/docs/sexualminorities/KoreaMujigae_Korea080309.pdf

- Academic paper provides thorough overview of LGBT rights in South Korea from 1990-2009.
- Until 1998, “depiction[s] of homosexuality was prohibited.” After 1998, the restriction was lifted to ban only “excessive representation of homosexuality”
- LGBT is still a taboo subject in Korea, as it conflicts with family values and expectations: “...most Korean homosexuals consistently see family as the biggest problem troubling them. Moreover, they see the discovery of their homosexual identity by their family as the greatest possible calamity threatening their future”¹⁶ (p.10)
- LGBT organizations started to appear in South Korea in 1991-93 (p. 17), first university LGBT groups in 1995 (p. 22).
- In the late 1990s, during Kim Dae Jung’s presidency, there was an increase in social activism over a range of issues, including LGBT issues.
- In 2001, the national assembly passed the Human Rights Commission Law, which permits individuals and organizations the

¹⁵ Professor Emeritus, Douglas Sanders, Faculty of Law, University of British Columbia, Vancouver, Canada, LL.M. Professor, Faculty of Law, Chulalongkorn University, Bangkok, Thailand. The title of the report “Mujigae Korea” means “rainbow Korea,” a term used by Korean LGBT activists.

¹⁶ Seo Dong-Jin, Mapping the Vicissitudes of Homosexual Identities in South Korea, in Gerard Sullivan, Peter A. Jackson, Gay and Lesbian Asia, Harrington Park Press, 2001, 65 at 77.



right to file complaints on, among other things discrimination on the basis of sexual orientation (p. 34). On LGBT issues, the Commission has proposed reforms in “at least the following five cases:”

1. Amending language in dictionaries: “According to the result of the Commission’s probe, most dictionaries currently published in Korea – including Korean dictionaries, English-Korean dictionaries, and Korean-English dictionaries – have defined homosexuality as ‘sexual perversion’ or ‘abnormal sexuality,’ using similarly disparaging terms.”
 2. Censorship of LGBT websites: “Amnesty International considers the blanket censorship of gay and lesbian websites as a violation of the fundamental human rights of individuals to be protected against all forms of discrimination, as guaranteed by the South Korean Constitution. ... The censorship also violates freedom of expression guaranteed under Article 19 of the ICCPR [the International Covenant on Civil and Political Rights] to which the South Korean government is a signatory. Moreover it violates freedom from discrimination guaranteed under Article 2 of the ICCPR” (p. 38)
 3. Sexual violence in the military: “A 2004 report said sexual violence in the military, among other things, led younger males to develop a hatred for gays and anxieties about not being sufficiently masculine”.
 4. **Discriminatory practices in blood donation services:** Commission condoned the practice of LGBT screening of potential donors.
 5. **The *Health Families Basic Act*:** in 2007 the UN Committee on the Elimination of Discrimination Against Women (CEDAW) criticized the *Act*, “which has implications for social services, limits its application for families based on marriage, blood ties or adoption” (p.36).
- **Recognizing same-sex relationships (p. 42):**
 - 2003: District court judge ruled against the plaintiff, a lesbian asking the court to recognize her and her partner’s relationship of 21 years (for property and alimony purposes).
 - 2004: small public gay wedding took place (no family attended).
 - **Military Issues from 2004 (p. 43-44):**
 - “Homosexuals were barred from compulsory military service on the basis that they suffer a mental disorder” (p. 43). In 2005, eight gay soldiers were discharged.
 - **The Anti-Discrimination Law:**



- The commission proposed “a general anti-discrimination law covering employment and services.” An anti-discrimination bill was drafted, that “included twenty categories for which discrimination was prohibited, including sexual orientation (but not gender identity).” The bill faced strong opposition, which “seemed to flow from conservative Christians.”¹⁷ In response to the opposition, the “Minister of Justice dropped the reference in the draft bill to ‘sexual orientation’ (responding to religiously based objection).” The bill has since been withdrawn (pp. 44-46)
- **Transgender issues:**
 - First sex reassignment surgery took place in 1991, triggering “intense publicity” (p. 47)
- **2007/8: “A conservative shift”**
 - Conservative Lee Myung Hak assumed presidency in 2008. In his campaign, he “stated his opposition to homosexuality as “abnormal,” while at the same time identifying himself as a “feminist” ¹⁸(p. 49)
 - Despite UN opposition, the government “clipped the wings of the National Human Rights Commission”, cutting 21% of its staff and cutting its bureaus from five to three (p.49-51).

Human Rights Monitor South Korea¹⁹

1. “Comprehensive Anti-Discrimination Act Withdrawal: Korean human rights situation backtracks,” 5 May 2013
Online: <http://www.humanrightskorea.org/2013/comprehensive-anti-discrimination-act-withdrawal-korea-human-rights-situation-back-tracks/>
- **April 21, 2013: Two anonymous members of the National Assembly withdrew support for the Comprehensive Anti Discrimination Act.**
 - **This represents the third failed attempt at passing comprehensive anti-discrimination legislation in the country.**

¹⁷ “The Congressional Missionary Coalition, a coalition of Christian right members of the National Assembly, plans to hold forums in November to oppose the law. A petition, spearheaded by an organization called the Assembly of Scientists against Embryonic Cloning, was sent to all branches of government claiming that if the bill becomes law, “homosexuals will try to seduce everyone, including adolescents; victims will be forced to become homosexuals; and sexual harassment by homosexuals will increase.” Human Rights Watch, South Korea: Anti-Discrimination Bill Excludes Many, New York, November 6, 2007.

¹⁸ Action Alert: South Korea-Presidential Candidate condemns homosexuality, International Gay and Lesbian Human Rights Commission, May 29, 2007.

¹⁹ <http://www.humanrightskorea.org/>



- **Religiously affiliated groups lobbied against the act because it would prohibit discrimination against sexual minorities.**
- **The assemblymen did not want to be labeled as “gay.”**

Human Rights Watch²⁰

2. “UN: Landmark Resolution on Anti-Gay Bias,” 26 September 2014
Online: <http://www.hrw.org/news/2014/09/26/un-landmark-resolution-anti-gay-bias>
 - **South Korea supported the UN Human Rights Council resolution to “combat violence and discrimination based on sexual orientation and gender identity.”**
3. “Seoul’s Broken Promises on HIV Testing,” 29 June 2013²¹
Online: <http://www.hrw.org/news/2013/06/29/seoul-s-broken-promises-hiv-testing>
 - **At the 19th International AIDS Conference held in South Korea, the South Korean Deputy Minister for Multilateral and Global Affairs, Kim Bong-Hyun announced South Korea “had eliminated immigration regulations that discriminated against people living with HIV and prevented them from entering, living, and working in the country.”**
 - **This acknowledgement, according to the author, does not match the reality on the ground, where “xenophobia, stigma and discrimination get precedence.” According to the article, “to nationalistic audiences within South Korea, [the government] blames foreigners as the source of HIV.”**
 - **Prior to AIDS conference, the UN Committee that monitors the International Convention on the Elimination of All Forms of Racial Discrimination, received and accepted a complaint on the government’s mandatory HIV testing for foreign teachers. In their response, the government “said nothing about the testing of foreign teachers upon entry, and countered that the Education Ministry guidelines no longer require re-testing upon renewal of annual contracts”**
 - **Author suggests if the South Korean is “sincere” about its promise, “it could start by ending its own discrimination**

²⁰ <http://www.hrw.org/>

²¹ Joseph Amon, published in *The Diplomat* (http://thediplomat.com/2013/06/seouls-broken-promises-on-hiv-testing/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A%20the-diplomat%20%28The%20Diplomat%20RSS%29)



against people living with HIV,” including foreign teachers, who claim that the practice of mandatory testing continues.

- HIV-positive individuals living in South Korea face “considerable stigma” leading “many ethnic Koreans ... to forego testing due to fear of prejudice.”

4. “Blaming Foreigners,” 12 March 2009²²

Online: <http://www.hrw.org/news/2009/03/12/blaming-foreigners>

- At time of publication, estimated 13,000 people living in South Korea were HIV-positive. Since 2001, the number of people living with HIV doubled.
- Despite public awareness and education efforts, “the view persists that HIV is a problem of “others” and that it can be controlled by testing all who try to enter South Korea and barring those living with HIV from coming, or staying.”
- In 2008, the “practice of deporting people living with HIV got fresh attention...when “Heo,” a Chinese citizen of Korean descent who was visiting his mother in Korea, was tested for HIV, found to be positive, detained and ordered to be deported. . . .The National Human Rights Commission represented ‘Heo.’ and the Seoul High Court (upholding the Seoul Administrative Court) prevented the deportation.”
- In contrast to pronouncements, such as the op-ed article “Breaking Down Walls of Discrimination” by the Minister of Justice Kim Kyung-han, where he describes a commitment for a “proactive immigration policy that shifts the focus from regulation and control to openness and exchange,” the government passed a parliamentary bill in December 2008, permitting immigration officials to require “drug and HIV testing for any foreigner seeking a visa”.

International Gay and Lesbian Human Rights Commission²³

1. “South Korea: Shadow Report on Discrimination against Women in South Korea Based on Sexual Orientation and Gender Identity” 29 November 2011.

Online: <http://iglhrc.org/content/south-korea-shadow-report-discrimination-against-women-south-korea-based-sexual-orientation>

Report: http://iglhrc.org/sites/iglhrc.org/files/Lesbian_Counseling_Center_CEDAW49_Shadow_Report.pdf

²² Joesph Amon, Director of the Health and Human Rights Division. Published in *Korea Times* (http://www.koreatimes.co.kr/www/news/opinon/2009/03/137_41158.html)

²³ <http://iglhrc.org/region/republic-korea>



- **This report was prepared by the Lesbian Counseling Centre in South Korea for submission to the Committee for the Elimination of All Forms of Discrimination Against Women (CEDAW) for its “review of South Korea’s compliance with the Convention for the Elimination of All Forms of Discrimination against Women.”**
- **It calls for adoption of a comprehensive Anti-Discrimination Act that includes clear prohibition against all forms of discrimination and urges the State to take into account Article 2(4) of the National Human Rights Commission Act (South Korea 2005), prohibiting discrimination on basis of sexual orientation.**
- **In CEDAW’s Concluding Observations to the government of South Korea, called on the State Party to “Take urgent steps towards the adoption of a comprehensive Anti-Discrimination Act, in line with articles 1 and 2 of the Convention and General Recommendation 28 (2010), which includes a clear prohibition of all forms of discrimination, covering both direct and indirect discrimination, and also taking into account article 2(4) of the National Human Rights Commission Act (Korea 2005), which prohibits discrimination on the grounds of sexual orientation.”**

According to the authors, discrimination against minority women in South Korea is rooted in “androcentric biases,” “blood family oriented construction of society,” and conservative sexual and gender norms which are “deeply rooted” in Korean society (p.1).

Despite the growing gay movement in South Korea, the report notes there remains limited legal protection for sexual minorities: “ROK’s only legal basis for securing sexual minorities rights is the one term in the National Human Rights Commission Act which articulates the prohibition of discrimination based on ‘sexual orientation.’” The report criticizes the scope of protection within the Act, and notes that “without any more institutionalized support, sexual minorities in ROK have been living in the dead zone of basic rights needed for equal living” (p.1)

Lesbian women are less visible in society than gay men. However, this invisibility has not resulted in protection. Sexual minority women are “tormented by multilayered [sic] discrimination and violence under sexism, homophobia and transphobia [sic] which have intensified one another” (p.2). Discrimination towards bisexual women stems from society generally, as well as from the LGBT community. The authors describe “[u]njust charges of promiscuity (overabundance of sexual desire) and opportunism (have heterosexual normalcy



as their back up to go back to whenever they want)” as contributing to the burden facing bisexual women (p.2-3).

Transgendered members of society face stigmatization, obstacles to their full and equal participation in society (e.g. gender segregated public spaces and prisons); and legal and medical barriers (high cost obstructs access to hormone treatment and sexual reassignment procedures). The report describes sexual and hate-based violence towards self-identified transgendered people, as well as “other diverse gender nonconforming people, including lesbians, bisexual and cis-gendered heterosexual women.” (p.2-3)

The report condemns the current South Korean report on “implementation of the Convention” for its lack of treatment of sexual minority women, “except for the mention on page 7 of the National Human Rights Commission Act which states the prohibition of discrimination based on ‘sexual orientation.’” (p.3). The authors suggest the lack of recognizing sexual minority women within the category of women, may be “read as a major symptom of sexual minority women’s invisibility throughout ROK society”

Recommendations (based on the Articles of the Convention) include:

- **Article 2:**
 - South Korean government “should acknowledge its official responsibility for ending discrimination against sexual minority women ... as a State Party of both the Convention and the UNHRC resolution against violation of human rights based on sexual orientation and gender identity”
 - South Korean government should remobilize ... efforts to legislate comprehensive Anti-Discrimination Act which includes the items of sexual orientation (sexual identity) and gender identity on the list of individual causes of discrimination. ‘Gender identity’ as an individual item should be included in the list along with ... ‘gender’ to make transgender people visible in the Anti-Discrimination Act” (p.6).
- **Articles 1, 13, 16:**
 - South Korean government “should put its effort ... into taking measures concerning the diverse social rights of sexual minority women, e.g. rights to making family and to housing” (p.6). The authors note that same-sex individuals cannot name their partner as their legal guardian when they are hospitalized.
- **Articles 5, 10, 11:**
 - South Korean government “should put its effort ... into taking substantial measures to secure sexual minority women’s rights to education and to work [by] preventing and punishing any violation of those rights” (p.7). The report describes



“hostile” work and educational environments for sexual minorities living in South Korea.

- **Article 6:**

- South Korean government “should put its effort... into supporting sexual minority women victims of sexual violence, domestic violence, sex trafficking (prostitution, sex work), and hate violence” (p. 8). Sexual minority women are at greater risk of violence, rape, domestic violence, and trafficking. Fear of being “outed” stops many women from seeking help.

- **Article 12:**

- South Korean government “should put its effort... into comprehensively guaranteeing sexual minority women the rights to health which would secure proper access to medical diagnosis, treatment, and support” (p.11). Authors describe lack of emotional/psychological/mental and physical health support for sexual minority women. While sex reassignment and hormone therapy are available, albeit at a high financial cost to the individual, medical staff are described as humiliating patients, and system.

2. “Update: Victory! Seoul Student Rights Ordinance Passed With Sexual Orientation Gender Identity Clauses Included,” 26 December 2011

Online: <http://iglhrc.org/content/update-victory-seoul-student-rights-ordinance-passed-sexual-orientation-gender-identity>

- **Student Rights Ordinance with language protecting LGBT students from discrimination passed the Seoul Metropolitan Council.**
- **The ordinance is the first ever in South Korea to protect students’ LGBT rights.**

Refworld²⁴

1. “Korea, Republic of: Treatment of homosexuals, including legislation, availability of state protection, and support services.” 30 November 2009.²⁵

Online: <http://www.refworld.org/docid/4b7cee8137.html>

²⁴ <http://www.refworld.org/>

²⁵ Canada: Immigration and Refugee Board of Canada, *Korea, Republic of: Treatment of homosexuals, including legislation, availability of state protection and support services*, 30 November 2009, KOR103306.E.



- While homosexuality is not criminalized in South Korea, many sources assert LGBT people living in South Korea face discrimination
- After an openly gay actor “appeared to have committed suicide” in October 2008, “police stated the actor’s death reflected negative public attitudes towards homosexuals.”
- According to gay rights sources, “there has been some movement towards acceptance of homosexuals in recent years.” In 2009, the annual Korea Queer Culture Festival celebrated its 10th anniversary, attended by approximately 1500 participants, “many ...[of whom] used pseudonyms and made it clear that they did not want to be photographed.”
- LGBT rights groups are reported to exist in South Korea include the Lesbian Counselling Centre, Chingusai (Between Friends), Korean Sexual-Minority Culture and Rights Centre, Lesbian Institute for Lesbians, Rateen (Rainbow Teen), Queer Junior²⁶

UN News Centre ²⁷

1. “Republic of Korea: UN rights experts urges adoption of anti-discrimination law,” 9 October 2014.

Online:

<http://www.un.org/apps/news/story.asp?NewsID=49038#.VGklUdNdVOR>

- Special Rapporteur on racism, Mutuma Ruteere “urged the Republic of Korea to enact a comprehensive anti-discrimination law” at the end of his official visit. No explicit mention in the article of LGBT issues.

United Nations, General Assembly, Human Rights Council

1. “National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Republic of Korea,” 22 October-5 November 2012

Online:

<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/160/24/PDF/G1216024.pdf?OpenElement>

²⁶ Unable to confirm the existence of these groups

²⁷ <http://www.un.org/News/>



- **In section 45, the report describes South Korea's unsuccessful efforts to enact an Anti-discrimination Act encompassing gender, race, sexual orientation, and religion. The bill died on the floor of the National Assembly in May 2012.**
2. "Report of the Working Group on the Universal Periodic Review," 12 December 2012
Online:
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/186/83/PDF/G1218683.pdf?OpenElement>
- **The Constitutional Court has twice ruled that the Military Criminal Act provision prohibiting sexual acts between men is necessary to sustain combat capabilities but is only valid if the acts take place in the barracks.**
 - **Although the report says that the South Korean government is taking steps to protect the rights of homosexual males in the military, no specific steps are mentioned.**

VI. Newspaper and Media Reports

1. "Seoul Mayor Park Won-soon Wants Same-sex Marriage in Korea as First in Asia" Joel Engardio. The Examiner. 12 October 2014.
Online: <http://www.sfexaminer.com/sanfrancisco/seoul-mayor-park-won-soon-wants-same-sex-marriage-in-korea-as-first-in-asia/Content?oid=2908905>
- **The mayor of Seoul and 2017 presidential contender Park Won-soon wants same-sex marriage to be legalized in Korea.**
 - **The biggest barrier to same-sex marriage rights are the protestant churches which label same-sex relations as sinful. Members of these churches make up one third of the population. Protesters from these churches blocked the 2013 Seoul pride parade.**
2. "US, French German Embassies Take Part in Korea Queer Cultural Festival" Korea Herald. 17 June 2014.
Online: <http://gayasianews.com/2014/06/17/us-french-german-embassies-take-part-in-korea-queer-cultural-festival/>



- South Korea hosts one of Asia's largest LGBT events. It takes place yearly.
 - In 2014 between 7,000 and 30,000 people attended the event.
 - The event was protested by Korea's conservative Christian lobby who stated "(gays) do not belong in this Country" and "(Gays) cause AIDS in Korea."
 - The event was supported by the US, French and German embassies. This support was protested by the People's Solidarity for Healthy Society, who accused the US of exporting same-sex relations to Korea.
3. "South Korea's LGBT Community is Fighting for Equal Rights" Steven Borowiec. Time. 11 February 2014.
Online: <http://time.com/6575/south-koreas-lgbt-community-is-fighting-for-equal-rights/>
- An LGBT couple held South Korea's first gay wedding in September of 2013.
 - The wedding holds no legal weight but the couple's legal advisors are moving forward with a legal challenge. The couple plans to take the challenge to the constitutional courts.
 - Korean Christians protested the wedding, with one man trying to douse the couple in fermented soybean paste and human excrement.
 - Well-funded Christian groups pushed lawmakers to withdraw a bill that would have prohibited discrimination on the basis of sexual orientation.
4. "Korean Star Supporting Trans Youth Faces Vile Attacks" Derek Yiu. Gaystar News. 21 December 2013.
Online: <http://www.gaystarnews.com/article/korean-star-supporting-trans-student-faces-vile-attacks211213>
- The lead singer of Korea's leading boy band, SHINEee, switched his twitter profile picture to a message supporting a transgender Korean youth.
 - This move was criticized by a right wing online community called Ilbe. The group left offensive messages and nude pictures on the boy band's fan site.
 - In 2008, a Korean actor Kim Ji Hoo came out as gay and as a consequence lost his management contract and months later



committed suicide.

5. "Suicide of Gay Soldier Brings to Surface Militaries Indifference to Sexual Minorities" Soo Yon Suh. Human Rights Monitor South Korea. 18 January 2013.

Online: <http://www.humanrightskorea.org/2013/suicide-of-gay-soldier-brings-to-surface-militarys-indifference-to-sexual-minorities>

- **A South Korean homosexual soldier committed suicide after struggling with his sexual identity. He reached out for help multiple times but the military provided no assistance.**
- **The soldier had attempted suicide multiple times previously while on leave but received no assistance.**
- **All Korean males must partake in military service.**
- **All Korean media relating to this incident was removed from the Internet.**

VII. Scholarship

1. Youngshik D. Bong, "The Gay Rights Movement in Democratizing Korea," Korean Studies, Volume 32, 2008.
 - **The influence of Confucianism in South Korea's history led to homosexuality being viewed as a foreign and un-Korean value.**
 - **The end of military authoritarian regimes in 1987 allowed sexual minorities to start working together to build solidarity.**
 - **The gay rights movement (GRM) in South Korea in the form of political activism began in the early 1990s.**
 - **The GRM consisted of internal community building and an external campaign to correct the collective image and help improve the legal status of LGBT persons.**
 - **The GRM targeted the military to protect gay military members' right to privacy and equal treatment and launched campaigns targeting mass media, schools and churches.**
 - **The GRM has focused on correcting prejudice and stereotyping and gaining equal protection under the law, to which there have been visible achievements.**
 - **In 2005 interviewed participants of the GRM agreed that political representation of the LGBT population has improved drastically (though there are still many hurdles).**



- **The main concerns regarding the direction and sustainability of the movement: whether it should continue relying on pan-human rights solidarity, the persistency of patriarchic culture, and the clash between individual and collective interests as the oppressive conditions are largely invisible and there is low public interest.**

The article highlights the struggle of sexual minorities and their fight in the military, mass media, education and the courts in South Korea since its democratization began. It concludes that “despite the hostile initial conditions and remaining obstacles, the gay rights movement in Korea appears to have made a number of significant achievements in enhancing the legal, social, and political status of the homosexual population in public spheres” (p. 98).

2. Brian W. King, “‘Being Gay Guy, That is the Advantage’: Queer Korean Language Learning and Identity Construction,” *Journal of Language, Identity, and Education*, Volume 7, 2008.

- **The participants, self-identified gay men, are dissatisfied with gay identity construction in Korean language and culture.**
- **Queer Koreans frequently identify as “gay” yet a vast majority of homosexuals find it hard to consciously reflect on and attain homosexual identity as a cultural and political identity.**
- **Powerful Korean familial bonds serve as a deterrent for “coming out.”**
- **The “West” is seen to be a place where homosexual identity is less complicated.**
- **Participants find trying to construct gay identity in Korean to be unsatisfying and therefore invest in imagined gay communities in English-speaking countries.**

This article is about a study that focuses on the interaction between gay identity construction, investment, and the access to language learning. It works against heteronormative discourses. While it is a very limited study with only three participants, it is interesting for its insight on the dissatisfaction gay men tend to have with constructing gay identity in Korean.

3. Ye-Jong Lee and Hwa-Jin Lee, “Perceptions of the Sexual Minority Among Korean University Students,” *Advances in Information Sciences and Service Sciences*, Volume 5, Number 15, October 2013.

- **Many students who are a sexual minority end up committing suicide due to the prejudice and discrimination surrounding it.**
- **Korean society divides gender into only two possibilities, male and female.**



- **83% of the students in the study responded they were aware of sexual minorities and the majority of these students became aware through mass media. This suggests visibility of sexual minorities.**
- **60.5% said that individuals become sexual minorities due to psychological causes.**
- **54.4% responded that sexual orientation was acquired and could be changed.**
- **44.1% supported sexual minorities with 40.6% not sure and 15.3% against.**
- **77.4% responded that they would worry most about social perceptions if they were a sexual minority.**
- **85.4% responded that society needs to understand sexual minorities.**
- **8.8% responded that they had sexual minorities among their acquaintances or friends.**
- **56.8% responded that they would encourage or comfort a friend or acquaintance that admitted to being a sexual minority while 37.5% responded that they would continue to see them but not feel the same about them.**
- **1.5% said that they had an experience of being attracted to the same sex.**
- **42.6% responded that they would never change their sexual identity.**
- **Most students had no experience of receiving, or even had the opportunity to receive, any type of education about sexual minorities. This was attributed to the stigma attached to being a sexual minority in South Korea.**
- **Women were found to be more supportive and more tolerant of sexual minorities than men.**
- **Students' perceptions were found to be heavily influenced by mass media and celebrities.**

This article details a research study of 261 questionnaires given to university students. The aim was to provide understanding about South Korean students' perceptions of sexual minorities. It concluded that perceptions among university students are changing as there is a movement to understand sexual minorities. Previously, sexual minorities were considered "perverted" and "insane" and open discussion about sexual minorities were taboo. This article suggests that advocacy and criticism should be preceded by discussions about how to understand sexual minorities through education reform as education will allow young persons of sexual minorities to live productive lives in society without prejudice and discrimination.