

Mandates of the Special Rapporteur on the right to education; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls

Ref.: OL KOR 3/2024
(Please use this reference in your reply)

17 December 2024

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 53/7, 50/10 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the repeal of the Student Human Rights Ordinances and Basic Human Rights Ordinances in the Seoul Metropolitan Council and the Chungcheongnam-do Council, which prohibited discrimination based on sexual orientation and gender identity.**

Concerns regarding attempts to abolish Human Rights Ordinances was the subject of a previous communication sent by the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, dated 5 April 2018 (OL KOR 1/2018). We thank your Excellency's Government for its response (KGV/143/2018) dated 21 June 2018. Further concerns were raised in OL KOR 6/2022 on 23 January 2023. No reply has been received to this communication to date.

According to the information received:

The Seoul and Chungcheongnam-do Student Human Rights Ordinances specify human rights that are guaranteed to students, including freedom from corporal punishment, and establishes a comprehensive system for counselling, investigation and victim relief. The Seoul Ordinance in particular expressly prohibits discrimination based on sexual orientation and gender identity, providing protection for children and juveniles facing such discrimination.

The respective local governments passed bills abolishing the Chungcheongnam-do Student Human Rights Ordinance on 24 April 2024, and the Seoul Student Human Rights Ordinance on 25 June 2024.

The execution of these bills has been suspended due to appeals. In case of Chungcheongnam-do, the Chungnam Provincial Superintendent of Education filed a lawsuit and requested the suspension of execution to the Supreme Court on 13 May 2024. The Supreme Court suspended the execution on 30 May 2024. In case of Seoul Metropolitan City, the superintendent of the Seoul Metropolitan Office of Education filed a lawsuit and requested the suspension of execution to the Supreme Court on 11 July 2024. The Supreme Court

suspended execution on 23 July 2024. A final decision on the merits of either case has not been made yet.

In this regard, we would like to share some observations about the bills that seek to abolish the Student Human Rights Ordinances, which might undermine the enjoyment of human rights of students.

Non-discrimination obligations

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

The right to non-discrimination, equality before the law and the equal protection of the law is protected by articles 2 and 7 of the Universal Declaration of Human Rights as well as the non-discrimination provisions of core international human rights treaties ratified or acceded to by the Republic of Korea.

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

In 2015, in its concluding observations on the fourth periodic report of the Republic of Korea, the Human Rights Committee recommended the adoption of comprehensive anti-discrimination legislation explicitly addressing all spheres of life and defining and prohibiting discrimination on any ground, including sexual orientation and gender identity. In addition, it expressed concerns about the widespread discrimination against lesbian, gay, bisexual, and transgender persons, including violence and hate speech and recommended that the Republic of Korea clearly and officially state that it does not tolerate any form of social stigmatization of, or discrimination against persons based on their sexual orientation or gender identity (CCPR/C/KOR/CO/4, para. 12-15).

In its general comment No. 20 (2009) on the crosscutting principle of non-discrimination, the UN Committee on Economic, Social, and Cultural Rights, supervisory and interpretative body of the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded to by the Republic of Korea on 10 April 1990, observed that "gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the workplace" (para. 32) a position reiterated in its general comment No. 22(2016) on the right to sexual and reproductive health (E/C.12/GC/22, paras. 23 and 40). The Committee explained that non-discrimination: "[...] encompasses the right of all

persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. [...] State parties also have an obligation to combat homophobia and transphobia, which lead to discrimination, including violation of the right to sexual and reproductive health (Ibid., para. 23).” In its concluding observations, the Committee has urged the adoption of legislation to protect LGBT and intersex persons from discrimination (for example, E/C.12/HND/CO/2, para. 22).

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

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

In its general comment No. 28 (2010) on core obligations of State parties, the UN Committee on the Elimination of Discrimination Against Women, supervisory and interpretative body of the International Convention on the Elimination of Discrimination Against Women, ratified by the Republic of Korea on 27 December 1984, emphasized that States must recognize, prohibit, and adopt policies and programmes to eliminate intersectional forms of discrimination, including, explicitly, on the basis of gender identity (para. 18). The Committee further emphasized that the Convention applies to both gender and sex-based discrimination (Ibid., paras. 5, 16, 17 and 19). The UN Working Group on discrimination against women and girls, in its thematic report on discrimination in cultural and family life, has similarly highlighted

the dangers of leaving rights in relation to gender identity and diversity unprotected: it has observed that women who do not conform to gender stereotypes, including some who may identify as lesbians, bisexual and trans women, are particularly vulnerable to discrimination, violence and criminalization (A/HRC/29/40, para. 21).

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

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

Discrimination based on sexual orientation and gender identity

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

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

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

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

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

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

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

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

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

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

combating discrimination (A/HRC/29/23, paras. 57 and 79(f); A/HRC/19/41, para. 61).

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

1. Please provide any additional information and/or comment(s) you may have on the above-presented analysis.
2. Please provide clarifications on how these bills, if confirmed, are compatible with your Excellency's Government's obligations under the provisions cited above, and about the steps Your Excellency's Government plans to undertake to remediate the inconsistencies with the international human rights standards.

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

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

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

Farida Shaheed
Special Rapporteur on the right to education

Graeme Reid
Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity

Laura Nyirinkindi
Chair-Rapporteur of the Working Group on discrimination against women and girls