

**On the Discrimination Against
Lesbians, Bisexual Women, and Transgender People**

Lesbian Counseling Center in South Korea (LCC)

Discrimination against sexual minority women in South Korea—lesbians, bisexual women and transgender—is based on the androcentric biases, blood family oriented construction of society, conservative sexual norm, and hierarchical binary of gender norm which are deeply rooted throughout the society around the axes of Confucian patriarchy and heterosexism. LCC regards the foundation of discrimination against women is also the foundation of discrimination against lesbian, bisexual women, and transgender people and vice versa. Hence comes the report below.

Part 1 – Overview: Discrimination Against Sexual Minority Women in ROK and the Problem of the Government Report

1. Erasure-Invisibility, Stigmatization, and Discrimination that Lesbian, Bisexual Women, and Transgender People Experience

Since the year 1993 when the first movement of gay rights activism began in ROK, sexual minorities in ROK started to become more and more visible as LGBT organizations, community, social awareness raising practices, media coverage, and coming-outs of public figures have kept growing. However, 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." Without any more institutional support, sexual minorities in ROK have been living in the dead zone of basic rights needed for equal living. The strong tendency to consider only cis-gendered

heterosexual people as normal and to ignore and stigmatize all different kinds of gender non-conformity and sexuality does not let sexual minorities live as either subject of right or object of protection.

Furthermore, double standard for women which simultaneously deprives women of sexual subjectivity and objectifies women as men's sexual tool for their own satisfaction does not leave much leeway for women to be imagined out of the picture of hierarchical relationship of heterosexual monogamy. Underrepresentation and more invisibility of lesbians compared to gay men as homosexual in the ROK society is the one instance which elaborates this well. For example, whereas gay men have gained a lot more visibility while being unjustly stigmatized as the culprit of HIV/AIDS and thus become overrepresented, lesbians have been denied their being altogether by the phallic norm of sexuality. Ironically saying, the degree of invisibility of lesbians has been so serious that even lesbians' becoming the target of hatred has been impossible.

However, this serious invisibility has not worked as protection for sexual minority women. Sexual minority women of ROK have been tormented by multilayered discrimination and violence under sexism, homophobia and transphobia which have intensified one another. Moreover, this tendency has grown stronger as society in general has become more used to assuming diverse types of gender non-conforming women simply as lesbians (or just as perverts). Even regardless of self gender identification or expression (for example, even cis-gendered women not looking a bit masculine), people have been treated as erratic and deviant if they do not get married to opposite gender after certain age and/or are being involved in special relationship with person of their own gender. In this way, we can see the entanglement of issues of discrimination against women who go against the grain and the ones against lesbians.

Bisexual women have easily lacked proper recognition and support from both society more in general and LGBT community. Unjust charges of promiscuity (overabundance of sexual desire) and opportunism (have heterosexual normalcy

as their back to go back to whenever they want to) have burdened bisexual women in many ways. There have been not much discourse and practice focusing on bisexual women in LGBT activism in ROK either. Mostly, lesbian issues have subsumed the particular issues of bisexual women and thus not paid enough attention to the latter. We need more detailed and focused articulation and practice about the experience of discrimination which bisexual women have gone through.

Transgender people's experience as women issue also needs more comprehensive approach from diverse angles. Though transgender people themselves and allies have launched out researches and practices on the issue organizing its community, we still lack resources and infrastructures to depend on. There exist many transgender issues in need of attention: stigmatization of people who cannot easily pass as either gender, different types of suffering compared to cis-gendered people when they try to deal with their sexual orientation, difficulties of using gender segregated public spaces such as restroom, locker room, dormitory, schools which are not coed, and prison to name a few, serious inconvenience caused by inconsistency of their self-identified gender and the gender read in IDs, hardships of getting gender reassigned ID officially, lack of legal-medical support system for sex reassignment operation, hormone therapy, and ongoing counseling, to list a few. Unfortunately, we do not have enough pages to delve into transgender agenda here.

Therefore we would rather concentrate on the issues of sexual violence and hate violence which transgender people (both FTM people and MTF people) experience being regarded as imperfect, deviant women, women in need of correction, required to prove their ability and/or availability for male-centered heterosexual intercourse. These types of violence signal the patriarchal, androcentric and misogynist norm of ROK society which have long been the basis of discrimination and violence against women.

Not only self-identified transgender people but also other diverse gender

nonconforming people including lesbians, bisexual women and cis-gendered heterosexual women could experience similar kinds of hate violence as the former could. Traditionally required gender role, expression, and body for women in ROK constructed in the perspective of heterosexism and androcentrism have played as violent normativity imprisoning all women (and people regarded as women even against their self-identification) in the very narrow possibility of self realization. This signals that women issue is sexual minorities issue and vice versa. Enough reason for ROK as State Party to consider and include the experience of sexual minority women in serious manner on the process of implementing the Convention to the full scale.

2. Erasure-Invisibility of Sexual Minority Women on the ROK's Current Government Report

The current ROK report on implementation of the Convention does not cover the any issue of sexual minority women except for the mention on page 7 of National Human Rights Commission Act which states the prohibition of discrimination based on 'sexual orientation.'

As the goal of this Convention is to stop "any distinction, exclusion or restriction made on the basis of sex" as it reads in the Article 1, the Convention could and should be interpreted as the one which would also play the role of ending the discrimination against sexual minority women. However, according to the government report, it is obvious that ROK government has failed to consider sexual minority women as included in the category of women. This could be read as major symptom of sexual minority women's invisibility throughout ROK society and governmental perspective.

LCC calls for ROK government to include sexual minority women's agenda in discourse and practice on women rights. LCC also ask CEDAW to strongly recommend to ROK government to establish and implement relevant policies about sexual minority women's agenda. As ROK is not only a State Party of the

Convention but also one of the countries who voted for the resolution of UNHRC on ending the human rights violation based on the sexual orientation and gender identity on June 17th, 2011, it should take responsibility to actively work on sexual minority women's agenda.

The current government report comprises agendas such as raising social awareness, supporting victims of sexual violence, domestic violence and sex trafficking (prostitution, sex work), securing rights to making family, education, work, health and access to diverse social infrastructures. For ending discrimination against sexual minority women and guaranteeing rights to them, the above mentioned agendas should become more inclusive comprehending particular natures of experience sexual minority women have been through. Plus, special policies against hate violence should be come into practice.

In Part 2, LCC offers fundamental ideas both to ROK government and CEDAW according to the Articles of the Convention.

Part 2 - Remarks and Recommendations about the Convention on the Elimination of All Forms of Discrimination against Women (Henceforth the Convention)

1. Article 2: ROK government should put its effort to the full into establishing and implementing policies concerning sexual minority women.

ROK government has never established and implemented any policy on sexual minority women nor surveyed on actual living condition of the latter. Anxiety of sexual minority people concerning stigmatization and discrimination targeted towards them would make comprehensive survey difficult but the factor should not be the excuse for governmental neglect of the agenda. ROK government should take full responsibility as a State Party of both the Convention and the UNHRC resolution against violation of human rights based on sexual orientation

and gender identity.

ROK government has its shameful history of ruling out the “sexual orientation” clause from the list of individual causes of discrimination of the original version of Anti-Discrimination Bill when it first tried to establish the comprehensive Anti-Discrimination Act back in 2007, influenced by the strong protest against the Bill from some right wing conservative groups. This should never be repeated.

[Recommendations]

- 1) ROK government should acknowledge its official responsibility for ending discrimination against sexual minority women to the public as a State Party of both the Convention and the UNHRC resolution against violation of human rights based on sexual orientation and gender identity.
- 2) ROK government should remobilize its all 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 the ‘gender’ to make transgender people visible in the Anti-Discrimination Act.

2. Article 1, 13, 16: ROK government should put its effort to the full into taking measures concerning the diverse social rights of sexual minority women, e. g. rights to making family and to housing.

Social welfare system of ROK and relevant budget plan has been established mostly around the nuclear family unit based on heterosexual marriage. Therefore considerable number of people who live outside the frame of so-called normal family, e. g. single women, single parent families, same-sex couples, and others living in different forms of families, are marginalized from the institutional support. In this sense, most sexual minority women get much less benefit from the state about taxpaying, insurance, pension, loan, and housing than others who

live following the social norms of family and marriage. Many sexual minority people also suffer not being able to designate their closest person who is not one of their family members as their legal guardian in the situation of hospitalization and/or surgical operation.

Presently, ROK does not even acknowledge de facto marriage of same-sex couples not to mention any form of legal partnership of same-sex couples. This not only violates the rights to pursue happiness of many same-sex couples but also drives the people into socially and economically vulnerable status. Considering the tendency of feminization of poverty, this situation particularly impacts women couple among other sexual minorities.

[Recommendations]

- 1) ROK government should acknowledge and establish relevant policies for different forms of families not limited to the so-called normal family based on heterosexual marriage.
 - 2) ROK government should guarantee legal status of same-sex couples by any particular form which is considered most fit for the ROK society (may it be 'partnership,' 'civil union,' or 'marriage,' and so forth) after collecting diverse opinions from the people concerned and the relevant organizations.
 - 3) ROK government should be careful not to secure particular group of people in the expense of ignoring and excluding others social rights.
- 3. Article 5, 10, 11: ROK government should put its effort to the full into taking substantial measures to secure sexual minority women's rights to education and to work preventing and punishing any violation of those rights.**

Sexual minorities including lesbian, bisexual women, and transgender people who transgress gender norms are not protected in the system of education in ROK. ROK's educational system reproduces the cis-gender centered heterosexual normativity throughout all the aspects of pedagogy and does nothing about

violence against sexual minorities who have been tormented and humiliated by bullying based on hatred. Teachers and school authority even punish sexual minorities and thus deprive of the latter the right to education.

Work places are hostile to sexual minorities, too. Different types of gender nonconforming people, including lesbian, bisexual women, transgender people, unmarried single people are constantly harassed, undervalued in performance evaluation, discriminated against promotion opportunity based on their sexual and gender non-normativity. This severely violates the right to work of sexual minorities considering these people cannot even resort to any governmental support.

[Recommendations]

- 1) ROK government should make comprehensive anti-discrimination training including training against sexual harassment-violence and hate violence be mandatory for curriculum of all public/private education.
 - 2) ROK government should reexamine the discriminatory assumptions existing in educational contents and revise the contents completely so that it can deliver the value of diversity and equality.
 - 3) ROK government should make comprehensive anti-discrimination training including training against sexual harassment-violence and hate violence be mandatory for everybody in every workplace where there are employee(s).
 - 4) ROK government should establish concrete measures to support people who suffer from discrimination and to disadvantage the authorities who violated sexual minorities' rights in the field of education and work.
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- 4. Article 6: ROK government should put its effort to the full into supporting sexual minority women victims of sexual violence, domestic violence, sex trafficking (prostitution, sex work), and hate violence concerning the particular natures of these women's experience as stigmatized beings.**

Sexual minority women in ROK are vulnerable to violence against women including rape, domestic violence and sex trafficking (prostitution, sex work) and are also threatened by the hostility and hatred toward them. Violence against sexual minority women usually accompanies the threat to “out” their sexual and/or gender identity which sexual minorities would really want to avoid because of expected stigmatization against themselves. Under the certain threat, most sexual minority women could only suffer the violence against them and not even able to report the crimes dreading the disclosure of their identities as sexual minority. Many sexual minority women share this fear to be outed which does not let them to ask for help even under constantly tormenting environment.

Another two big issues are, first, there does not exist any particular addendum which could deal with same-sex rape, and second, there is no way of punishing hate violence which harms victim in multiple ways. Plus, traditional family value of ROK which gives older adults in the household a lot more moral authority makes domestic violence based on ignorance and hatred toward non-normative sexual and/or gender identity keep happening in the name of correction and love. ROK has reproduced biases and violence against sexual minority people leaving these serious problems untouched. Now it is time to change.

[Recommendation]

- 1) ROK government should expand the object of rape which has been limited to woman in ROK penal code to person so that punishment for rape could be applied to vaster range of crimes committed to sexual minority people.
- 2) ROK government should eliminate the ROK Military Penal Code Article 92 which regulates and punishes same-sex intercourse regardless of consent or coercion of the act so that reproduces the deeply rooted biases against homosexuality and take measures to distinguish the necessity of preventing and punishing sexual violence between same sex people and the necessity of acknowledging consented sexual practice between same sex people.

- 3) ROK government should provide support system for sexual minority victims who have suffered from confinement, beating, unwanted hospitalization at mental facility, coerced treatment intended for correction, coerced marriage, and deprivation of social networking including the opportunity of being educated in school by their family members.
- 4) ROK government should provide support system for victims of domestic violence in same sex partnership who cannot easily get help from outside the relationship because of the nature of their relationship as the one which could easily stigmatized.
- 5) ROK government should recognize the economically vulnerable status of sexual minority women who does not have many options for their living after being deprived of opportunity of education and work. This kind of vulnerability leads these women into sex industry (sex trafficking, prostitution, sex work) and easily harms their mental/physical health. ROK government should prevent this inflow of sexual minority women into sex industry by providing them proper opportunity to make living without losing or giving up their own sexual and/or gender identity.
- 6) ROK government should take concrete measures to let sexual minority victims of sexual violence, domestic violence and sex trafficking (prostitution, sex work) feel less afraid to report their suffering under violence concerning the “outing” of their identity.
- 7) ROK government should support NGOs which work for sexual minority women making them run without much worry of by actual funding and giving incentives. ROK government should also recognize that there is no shelter for sexual minority women currently in ROK compared to other types of shelters for victims and put its effort to support establishment and running of shelters particularly for sexual minority victims who are in need of those safe places.
- 8) ROK government should make comprehensive anti-discrimination training including training on sexual minorities’ rights be mandatory for mandatory both for current and prospective civil servant including police and prosecutor.

9) ROK government should sentence aggravated punishment to the perpetrators of hate violence against sexual minority people.

5. Article 12: ROK government should put its effort to the full into comprehensively guaranteeing sexual minority women the rights to health which would secure proper access to medical diagnosis, treatment, and support according to individual sexual minority women's own gender identity, health status and sexual practice.

Sexual minority women in ROK cannot easily get proper medical diagnosis and treatment because of the deeply rooted social norm has affect gynaecology to be heterosexist so that only work for cis-gendered heterosexual women who have sex with cis-gendered heterosexual men and function as reproductive body. This medical custom has badly affected the health of many sexual minority women who could not have dared to consult doctors dreading to be opened as lesbian, bisexual or transgender and thus to be ill-treated.

Also, ROK's medical situation in general does not provide proper diagnosis, counseling, treatment, therapy for sexual minority people who suffers from depression, manic-depression, and suicidal impulse to name a few because of the discrimination so unjustly committed against them. ROK's clinical approach to mental sufferings of sexual minority people is limited to attempts for correction rather than helping these people out to be more self-confident as they are.

Transgender people suffer from high cost of hormone therapy and sex reassignment surgery, lack of follow-up measures, medical malpractice, and humiliation from the medical staff who are supposed to support them on the process. This has resulted from the reality in that ROK lacks systematic supports for transgender people.

[Recommendations]

1) ROK government should make medical institutions educate their current

and prospective experts on diverse health issues of sexual minority women not limited to reproductive aspects of women's body.

- 2) ROK government should urge the education of clinical psychologist and psychiatrist should include training for understanding the sufferings of sexual minority people to help them in their position not to correct them according to the norm of society.
- 3) ROK government should examine the medical need of transgender people comprehensively and establish proper procedure for transgender people who want for example, hormone therapy, sex reassignment surgery, and counseling. Also, ROK government should find the way to lessen the burden of cost for transgender people who suffer so very high cost of all the procedures they are in need of desperately.