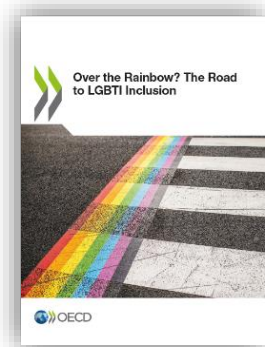


Ensuring that LGBTI people – i.e. lesbians, gay men, bisexuals, transgender and intersex individuals – can live as who they are without being discriminated against or attacked should concern us all. Discrimination against LGBTI people remains pervasive. It harms the LGBTI population, but also the wider society. It lowers investment in human capital due to bullying at school, as well as poorer returns on educational investment in the labour market. It reduces economic output by excluding or under-valuing LGBTI talents in the labour market and impairing their mental and physical health, hence their productivity. The report **Over the Rainbow? The Road to LGBTI Inclusion** provides a comprehensive overview of the extent to which laws in OECD countries ensure equal treatment of LGBTI people, and of the complementary policies that could help foster LGBTI inclusion.



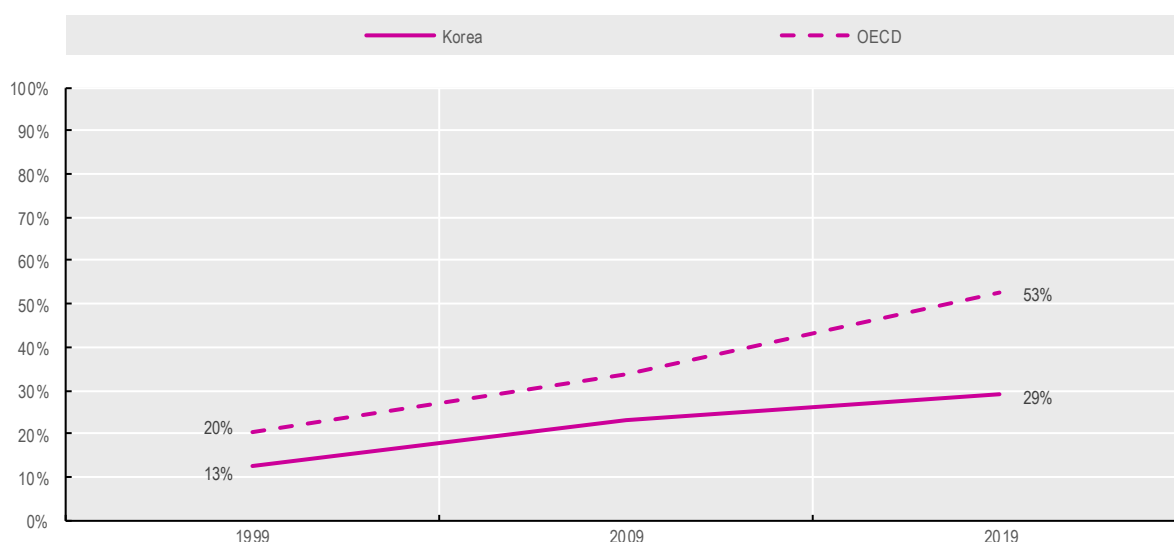
Legal LGBTI inclusivity in Korea

Levels and trends in legal LGBTI inclusivity

Legal LGBTI inclusivity is defined as the share of laws that are in force among those critical to ensure equal treatment of LGBTI people. Korea is one of 14 countries in the OECD where this share is still moderate. These countries are characterised by a below-average performance regarding both their level of legal LGBTI-inclusivity as of 2019 and their progress in legal LGBTI-inclusivity between 1999 and 2019 (Figure 1).

Figure 1: Legal inclusion of LGBTI people in Korea has only moderately improved over the past two decades

Evolution of legal LGBTI inclusivity between 1999 and 2019 in Korea and OECD-wide



Legal LGBTI inclusivity refers to the percentage of LGBTI-inclusive laws that have been passed, among a basic set of laws defined based on international human rights standards.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

Legal LGBTI inclusivity in Korea has improved over the past two decades, but at a moderate pace (Figure 1). As of 2019, Korea performs as well as the OECD average concerning equal treatment of consensual same-sex and different-sex sexual acts, and legal gender recognition (Figure 2). Consensual same-sex sexual acts are not criminalised since at least 1953, and ages of consent for consensual same-sex and different-sex sexual conducts were explicitly equalised in 2012. That said, Korea is one of two OECD countries that ban same-sex conduct in the military, a provision that was upheld as recently as 2016 by the *Korean Constitutional Court* in a 5-4 ruling. Moreover, since 2006, transgender individuals are allowed to change their gender marker in the civil registry. However, legal gender recognition is conditioned on sterilisation and sex-reassignment surgery, which stands in sharp contrast with the current trend OECD-wide that consists in depathologising this process.

As of 2019, Korea is falling behind regarding other LGBTI-inclusive laws such as legal provisions explicitly protecting LGBTI individuals against discrimination and violence, or laws addressing the unique challenges faced by same-sex couples (Figure 2).

How could Korea further improve legal LGBTI inclusivity?

In 2001, the *National Human Rights Commission Act* established the *National Human Rights Commission of Korea* (NHRCK), Korean national equality body. This Act explicitly includes sexual orientation as an anti-discrimination ground in a broad range of fields (employment, education, the provision of and access to goods and services including housing, etc.). Moreover, the NHRCK is also explicitly in charge of considering complaints from transgender individuals since 2019. However, NHRCK's decisions are not binding. In other words, discrimination explicitly based on sexual orientation and gender identity is still not criminalised in Korea *stricto sensu*. Additionally, Korea does not explicitly protect LGBT individuals against violence. Finally, Korea does not legally recognise same-sex partnerships, meaning that same-sex couples are deprived of many of the pecuniary rights to which married couples are entitled, noting that they are not given equal access to adoption and assisted reproductive technology either (Figure 2). Therefore, further improving legal LGBTI inclusivity in Korea could entail: (i) explicitly criminalising discrimination in a broad range of fields, as well as hate crime and hate speech explicitly based on sexual orientation and gender identity; and (ii) treating same-sex couples on an equal footing relative to different-sex couples concerning access to civil marriage, adoption and assisted reproductive technology.

Policies to foster LGBTI inclusion in Korea, beyond LGBTI-inclusive laws

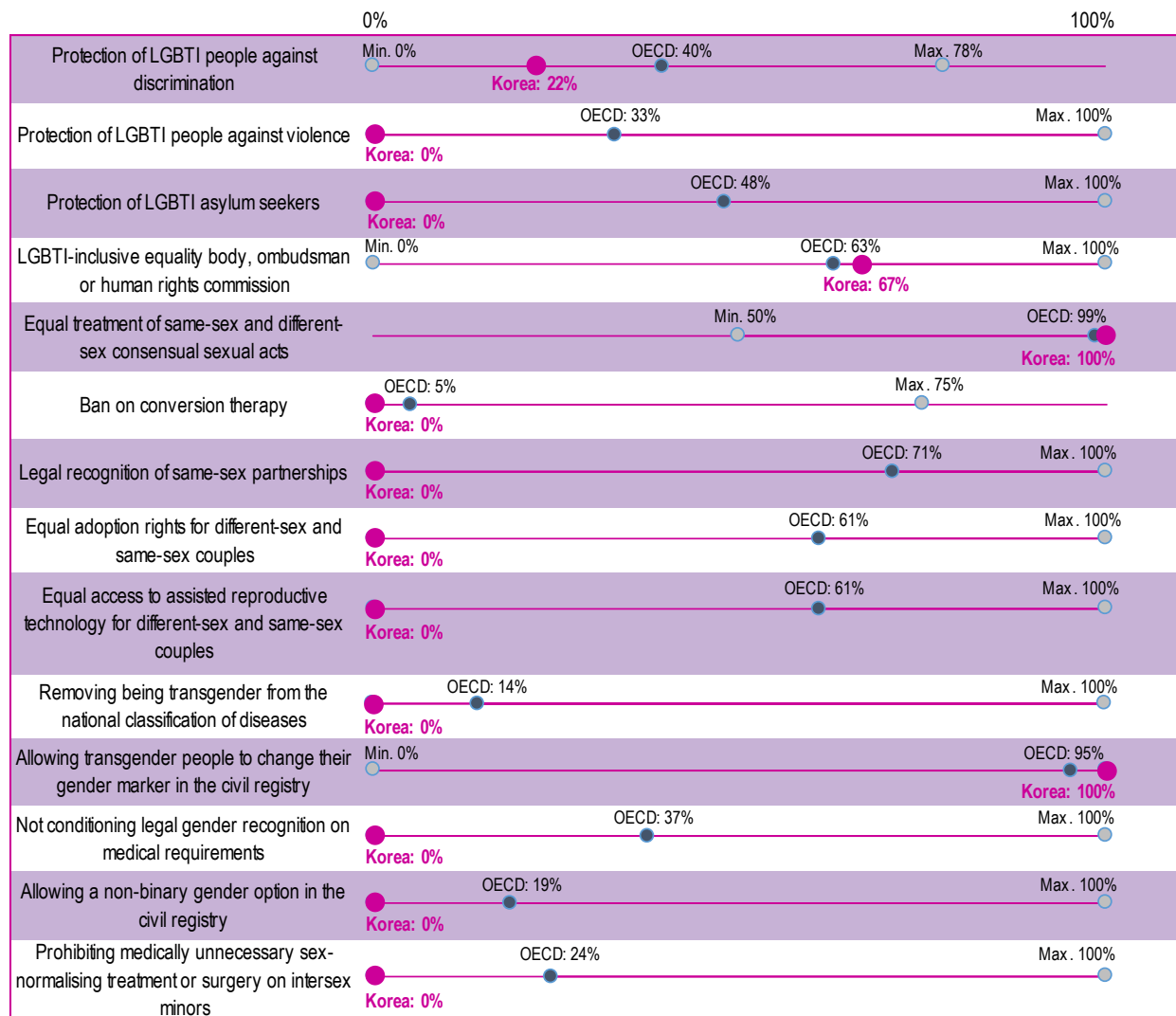
LGBTI-inclusive laws should come along significant efforts to make LGBTI individuals better represented and visible in national statistics. Without appropriate data collection, policymakers aiming to improve LGBTI inclusion will continue to do so with little if any relevant information. As of 2018, Korea does not include questions on self-identification as heterosexual, homosexual, or bisexual in nationally representative surveys. It does not collect information on the share of transgender and intersex people among the adult population either.

It would also be important that Korea be or remain active in the following complementary policy areas that are viewed as key by ongoing national actions plans aimed at strengthening LGBTI inclusion:

Policy #1	Policy #2	Policy #3
Enforcing LGBTI-inclusive antidiscrimination, hate crime/hate speech and asylum laws, e.g. through training police officers on properly dealing with hate crimes targeting LGBTI people	Fostering a culture of equal treatment in education, employment and healthcare, beyond enforcing laws prohibiting discrimination in these fields, e.g. through a whole-school approach to tackle LGBTI-phobic bullying	Creating and maintaining popular support for LGBTI inclusion, e.g. through well-designed awareness-raising activities among the general public.

Figure 2: How Korea compares

Legal LGBTI inclusivity as of 30 June 2019 in Korea and OECD-wide, by component



Note: Figure 2 presents the components that serve to compute the average level of legal LGBTI inclusivity reported in Figure 1 as of 30 June 2019. The component “Protection of LGBTI people’s civil liberties” is missing since it shows no cross-country variation: no legal provision in OECD countries explicitly restricts the rights to freedom of expression, peaceful assembly, and association of sexual and gender minorities. Legal LGBTI-inclusivity attached to each component can vary between 0% and 100%. For instance, a level of legal LGBTI inclusivity in Korea equal to 22% regarding the protection of LGBTI people against discrimination means that two of the nine antidiscrimination provisions critical to protect LGBTI people are in force in Korea as of 2019. “Min.” refers to the score of the bottom-performing OECD country(ies) while “Max.” refers to the score of the top-performing OECD country(ies). These values are specified except when they coincide with the score of Korea.

Source: OECD (2020), *Over the Rainbow? The Road to LGBTI Inclusion*, Chapter 3. [Download data from [Statlink](#)]

Contact:

Marie-Anne Valfort, +33 (0)1 45 24 98 65, Marie-Anne.VALFORT@oecd.org

Directorate for Employment, Labour and Social Affairs/Social Policy Division ([@OECD_Social](#))