

Korea's Legislations to Eradicate Sexual Exploitation of Children and Youth

*Choi Young Hee
Chairperson of the Committee on Gender Equality and Family
National Assembly of the Republic of Korea*

I. Foreword

Good morning/afternoon.

I am Choi Young-Hee, Chairperson of the Committee on Gender Equality and Family of the National Assembly of the Republic of Korea.

It is a great pleasure for me to have this opportunity to share with you the legislations Korea has enacted for the combat of sexual exploitation of children and Youth at the Fifth ECPAT International Assembly. Throughout my life, I have been actively engaged in labor movements, advocacy for women and NGO activities for children and Youth. Based on my experience in these fields, I previously served as the President of the Government Youth Commission and now serving as a congresswoman of the Korean National Assembly.

In South Korea, NGOs have continuously called for the improvement of irrational legislations on sexual crimes against children and Youth. Unfortunately, neither the Ministry of Justice nor the National Assembly has moved as quickly as we had hoped they would. Sometimes, they even became obstacles, claiming the priority of legal logic. However, the ongoing recurrence of sexual crimes against children and Youth has fueled public anger and as the government and legislative body increasingly became the center of public criticism as a result, gradual changes have been made to the law.

The laws of South Korea I will be introducing to you are varied, but they have yet to be fully applied on field. We are still working to make them fully applicable and effective. It is my sincere hope that by sharing our experiences with you today, we will open the way for the establishment of better laws and infrastructures, and above all, a change of perception. With these words, I would now like to begin my presentation.

II. Korea's Legislations to Eradicate Sexual Exploitation of Children and Youth

Korea ratified the UN Convention on the Rights of the Child in 1991 and signed its annex document, the Optional Protocol to the Convention on the Rights of the Child on the Sales of Children, Child Prostitution and Child Pornography in 2000 and ratified it in 2004. As these activities show, we are active participants in the efforts of the international society to eliminate sexual exploitation of children and Youth.

With the enactment of the Act on the Prevention of Prostitution in 1961, prostitution was made illegal in South Korea. But it only penalized the arrangers of sexual trafficking without punishing its "purchaser". Only in 2004 was the Act on the Punishment of Acts of Arranging Sexual Trafficking adopted to punish both arrangers and purchasers of sexual trafficking, and the Act on the Prevention of Sexual Trafficking and Protection of Victims Thereof introduced to protect and provide support for the rehabilitation of victims.

To address the increase of sex trafficking and sexual violence and crimes targeting minors, more specifically children and Youth, Korea passed the Act on the Protection of Youth from Sexual Exploitation in February 2000. At the time, I was serving as Chairperson of Tacteen Naeil, which today operates as ECPAT Korea. This law was finally enacted two, three years after the proposal was made by several NGOs that shared the cause. We demonstrated with pickets in the streets outside the National Assembly and declared we would initiate a rejection movement against lawmakers opposing to make the bill into law. It has since undergone numerous amendments, one of which was to change its title to the Act on the Protection of Children and Youth from Sexual exploitation.

1. Punishment of Child or Youth Sex-offenders (adult "purchaser", pimps)

1) Broader definition of "act of purchasing children or Youth sex"

The Act on the Protection of Children and Youth from Sexual Exploitation punishes the act of purchasing child or Youth sex. The definition of the act itself is broader than the definition of the term "sexual trafficking" provided in the Act on the Punishment of Acts of Arranging Sexual Trafficking.

In its definition of the "act of purchasing child or Youth sex", the former includes not only "sexual intercourse" and "pseudo-sexual intercourse using parts of the body or implements", but also "touching or exposing the whole or part of the body which causes sexual humiliation or repugnance of ordinary people" and "masturbation".

Act on the Protection of Children and Youth from Sexual Exploitation

Article 2. Definition

4. The “term of act of purchasing child or Youth sex” means doing any of the following acts to a child or Youth or compelling them to do such an act, in return for offering or promising to offer money and valuables or other property gains, services or convenience to those who arrange the purchase of child or Youth sex, or those who actually protect and supervise the child or Youth, or any other person:
- (a) Sexual intercourse;
 - (b) Pseudo-sexual intercourse using parts of the body, such as mouth and anus, or implements;
 - (c) Touching or exposing the whole or part of the body, which causes sexual humiliation or repugnance of ordinary people;
 - (d) Masturbation

Act on the Punishment of Acts of Arranging Sexual Trafficking

Article 2. Definition

1. The term “sexual trafficking” means performing the act falling under any of the following items in return for providing and receiving money and goods as well as property interest or for promising the provision and receipt of money and goods as well as property interest for unspecified persons or acting as their counterparts:
- (a) The act of having sexual intercourse; and
 - (b) The act of performing similar sexual intercourse by making use of part of body, including mouth and anus, etc. or devices

2) Strong punishment

In addition, any person who purchases child or Youth sex, traffics or transports a child or Youth overseas with knowledge that they will be used to produce obscene material will be punishable by life imprisonment or penal servitude of no less than five years. This punishment is much harsher than that provided in the Act on the Punishment of Acts of Arranging Sexual Trafficking.

3) Production, sale or possession of child or Youth pornography

Watching obscene materials using children or Youth lead to the instillation of a sexual fascination of minors, which places younger children in danger of becoming victims of sexual exploitation. The following provisions are an effort to prevent it:

- Any person who produces, imports or exports child or Youth pornography shall be punishable by imprisonment for not less than five years

- Any person who sells, lends or distributes child or Youth pornography for commercial purposes, or possesses or transports child or Youth pornography for the said purposes, or publicly exhibits or shows child or Youth pornography shall be punishable by imprisonment for not more than seven years
- Any person who distributes, publicly exhibits or shows child or Youth pornography shall be punishable by imprisonment for not more than three years or by a fine not exceeding 20 million won
- Any person who recruits a child or Youth for a child or Youth pornography producer shall be punishable by imprisonment for not more than ten years

Furthermore, through the amendment of the Act on the Protection of Children and Youth from Sexual Exploitation in February 2008, we introduced a new provision to punish the simple “possession” of child or Youth pornography by a fine not exceeding 20 million won.

Since the law came into effect, we have imprisoned three representatives of file sharing websites that distributed child pornography materials in 2010, but, still, too little effort is made to crackdown on such acts.

4) Adoption of system to punish coercive conduct (“grooming”) against children or Youth

More than 80% of sex trafficking of children and Youth is conducted through the internet. But the law only penalizes cases in which the act of sexual intercourse has been carried out. A negative result of such a law was that even though the circumstances were evident that sex trafficking was about to happen through a chatting website, we could not punish the perpetrator prior to the act. This only made Youth more vulnerable. We needed to take matters into our own hands and make some necessary improvements.

The Act on the Punishment of Grooming was adopted in 2008, which enabled the punishment of compelling a child or Youth to become a partner in an act of purchasing child or Youth sex, even before the action took place.

In fact, this was a law that was inspired by the British Sexual Offense Act enacted in 2003, which I learned about during my visit to the United Kingdom as President of the Government Youth Commission. We wish the Korean government would also allow agents to disguise as minors and expose perpetrators through online chatting, but unfortunately, entrapment is not permitted in my country.

Instead, we have developed a program called “Youth Keeper”. This is a program which enables the child or Youth user to capture the computer screen real-time in the event they receive any enticement towards sexual trafficking during online chatting and use it to make a report. Currently, it is recommended that this program be installed in PC rooms nationwide.

So, when a proposal for sex trafficking is made online, the user can activate the report program and capture the evidence on the screen, write a report and submit the case to the Cyber Counseling Report Center of the National Police Agency.

However, not many people are aware of this program, and the reporting procedure is complicated. In case of internet sex trafficking, many cases are voluntary sexual trafficking by Youth, which is why the number of cases reported until today, already two years since the law came into effect, stands at a meager 54 cases. We, therefore, need to really come up with measures to promote the effectiveness of the law.

5) Suspension of prosecution prescription until child or Youth becomes an adult

In case of children and Youth, they often become victims at a stage when their understanding of sexual exploitation has not been fully established. This is why when they do report a case of sexual exploitation years after it actually happened, many often find that the short prosecution prescription period has expired, leaving them with no way to punish the offender. To prevent this from happening in case of sexual exploitation of children and Youth, we have amended the law so that the prosecution prescription will begin when the victim becomes an adult. In Korea today, there is an increasing voice to completely eliminate the prosecution prescription.

6) Additional penalty for persons with the obligation to report a sexual offense

In the event the head or employee of an institution related to children and Youth, including schools, kindergartens and child welfare facilities, commits a sexual offense against a child or Youth under his or her protection, supervision or treatment, they will be subject to additional penalty of up to 50% of the relevant punishment.

7) Elimination of Offense Subject to Complaint Policy

In the past, sexual crime in Korea was an offense subject to complaint because it was thought that many victims did not wish for the case to be known by another person. Therefore, only when the victim pressed charges could the offender be punished. But the victim was vulnerable to secondary damages, not only because the offender relentlessly pleaded or threatened the victim to drop the charges, but also because the offender was not adequately punished when the charges were dropped. This has now been corrected and the policy eliminated. Now, in case the victim is a child or juvenile, the case can be investigated and the offender punished regardless of a complaint by the victim.

2. Prevention of child or Youth sexual exploitation

1) Restriction of employment of sex offenders

Sex exploitation of children and Youth are cases that have high repetition rates. In order to prevent this, any person sentenced to a penalty or higher punishment for committing a sex offense against a child or Youth shall be restricted from operating or working for a related institution, including schools, kindergartens and child welfare facilities, for ten years since the termination or exemption of the sentence.

Accordingly, the head of the related institution must check for any track record of sexual offense of any employment candidate from the district police station.

Currently, the government conducts regular examination on some 240 thousand institutions nationwide to monitor the implementation of related laws. If a sexual offender is found to be employed in such an institution, the relevant institution will be subject to legal sanctions, including request for dismissal, closure, cancellation of registration and authorization of the institution, and the levying of fines.

Recently, we are witnessing a rise in sexual offense cases by medical personnel. We have submitted a bill to amend the law so that we can restrict the employment of sexual offenders in medical institutions. We will be discussing the bill during the regular session of the National Assembly this year.

2) Disclosure of sexual offender's personal information on the internet

In case of sexual offenders of minors under the age of thirteen who are considered likely to recommit the offense, their personal information, including name, age, address (limited to such administrative district units as *Eup*, *Myeon* and *Dong*), height, weight, and photograph, and summary of the offense are disclosed on the internet. This information can be accessed today through the related website. Since the law came into effect on April 14, 2011, the personal information of a total of 1,023 offenders has been disclosed.

The persons subject to disclosure of information are any person who commits a sexual offense against a child or juvenile, such as sexual violence or sex trafficking, and are deemed likely to recommit the sexual offense. Their personal information will be disclosed for five to ten years, according to the penalty.

3) Education to prevent the repetition of an offense

In conjunction with the judgment of conviction on persons committing sexual offense against a child or juvenile, an order will be issued to undertake courses necessary to prevent the repetition of an offense or program to treat sexual violence of up to 300 hours.

4) Policy enabling prosecutors to request for divestment of parental rights

In case the person who traffics children or Youth for sexual exploitation or forces them to take part in such an act is a person with parental rights of the victimized child, it is important to separate the offender from the victim as soon as possible in order to prevent additional offenses or secondary damages. Therefore, the law empowers the investigating prosecutor to request the court to render an adjudication of divestment of parental rights. Protection measures will be taken in respect of the opinions of the victimized child or juvenile, who may be delivered to another person with parental rights or relation or to an institution or facility.

5) Amendment of the Passport Act to eradicate overseas sex trafficking

In an effort to eradicate overseas sex trafficking, the Passport Act was amended in 2009 to clarify the provision restricting the issuance of passports to nationals who commit sex offenses against children or Youth outside the country and introduced a provision that can order the submission of their passports.

However, this law only limits the issuance of passports to offenders of overseas sex trafficking that have been deported from another country and it is not a truly effective measure. We need to install more diverse sanctions, including the restriction of issuance of passports and submission of passports of offenders of overseas sex trafficking that have not been deported.

3. Protection and support for victims of child or Youth sexual exploitation

1) Protection and support for rehabilitation of victims of child or Youth sex trafficking

○ One-stop Support Center, Sunflower Children's Center

Today, we are nurturing professionals who can investigate cases of sexual exploitation of children. The One-stop Support Center and Sunflower Children's Center are facilities that offer one-stop integrated services of medical treatment, counseling, investigation and legal advice for the victimized child.

○ Education, counseling and support for the victim's independence

Furthermore, in order to prevent children or Youth victims of sexual trafficking falling into the trap of sexual trafficking again, we are operating an education program of up to forty hours in a facility entrusted by the Ministry of Gender Equality and Family since 2006 for those who are judged to require protection or rehabilitation by the prosecutor. The program includes psychological treatment, sex education, and career counseling.

We also provide victims of child or Youth sex trafficking with homes and meals, and facilities that offer support for their rehabilitation. The children and Youth that have deviated from formal school education are also referred to education institutions. In some cases, we operate alternative schools which are recognized as alternative formal school education.

2) Protection from criminal procedures

o Accompaniment by a trusted person

When a victimized child or Youth is questioned as a witness in a court or during investigations conducted by an investigative agency, they cannot help but become extremely nervous and apprehensive. Upon the request of the prosecutor, victim or legal representative, it is obligatory for a person trusted by the victim, such as an employee of the counseling office, to accompany the victim on such occasions.

o Video recording

During investigation of the police and prosecutor and at court, the victimized child or Youth must repeat painful testimonies, often leading to secondary damage during criminal procedures. In order to minimize such testimonies, the investigative agency is obligated to record the investigation of victimized children or Youth on video.

In addition, if there is a significant difficulty for the victimized child or Youth to appear in court as a witness, the video recording can act as a substitute. However, there are many cases where the victim is summoned to court based on a claim to respect the right of defense of the accused. Ensuring that established laws be applied on site and in reality is a continuing task for us.

o Right to legal assistance

In the past, the Korean Criminal Procedure Law only recognized the right of the suspect or the accused to appoint an attorney. As a consequence, the legal rights of the victims were not actively protected during investigations and trials. The mother of a sexual violence victim appealed the difficulty of the situation, and the law was amended so that the victims could also appoint an attorney.

The law that will come into effect in March will ensure the appearance of the prosecutor or police officer who investigates the relevant case in front of an investigative agency or public trial procedure. In particular, if the victim is not represented by a lawyer, the victim will have the right to request for a public defender.

III. In Closing...

This is the outline of legislations Korea has adopted to punish sexual offenders, prevent the repetition of sexual offenses, and protect and provide support for victims in order to combat commercial sexual exploitation against children and Youth.

In addition, in order to strengthen the punishment for sexual offenses besides commercial sexual exploitation, including rape and sexual molestation, Korea is operating a system of electronic anklets, medication, and disclosure of personal information and summary of sexual crimes to residents of local autonomies.

As mentioned in the outset, although we have adopted a number of laws, I am afraid that we cannot say with confidence that we are providing enough support to victims so that they are properly protected and can return to society without the trauma of secondary damages, and that the sexual offenders are being subjected to harsh punishment.

The most important thing, however, is the establishment of a sound and healthy culture which does not give any room for the possibility of sexual exploitation of children or Youth and a change of perception of the society in this regards. In order to fully implement the related laws, we also need to acquire the necessary budget.

South Korea has thus far been committed to the protection of children and Youth from sexual exploitation, but this has only come after the sacrifice of many children. Regrettably, even today, too many children and Youth are being sacrificed to sexual exploitation.

Going forward, South Korea will work harder in order to establish systems that will fundamentally prevent the sacrifice of innocent young children and Youth, and readily take part in the endeavors of the international society.

It is my hope that our legislations and experiences can contribute to the achievement of the goal of combat child and Youth sexual exploitation. I also look forward to studying the best practices of other countries so that we can improve our own laws as well.

Thank you.