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# Policy directions and agenda for securing women's sexual and reproductive health and rights

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## Ⅰ. Research background and purpose

In 1995, the fourth World Conference on Women declared the right to reproductive health, including sexual health and its related rights, to be among women's fundamental human rights. It called for state parties to pursue active interventions to identify and correct issues that compromise women's sexual and reproductive health and rights. In South Korea, however, women's reproductive health, including abortion, has been discussed only in terms of policies for population and family planning and has not been considered among the human rights that guarantee women freedom from discrimination, intimation, and violence. Furthermore, although sexual conduct is clearly a prerequisite for reproduction, sex and reproduction are still handled as separate matters.

At the time of this writing, South Koreans are awaiting a ruling by the Constitutional Court regarding the constitutionality of making a crime

1) This report, published in April 2019, is a summary of the Korean language report titled "Policy Directions and Challenges on Sexual and Reproductive Health and Rights in Korean Women" in English.

of abortion. The current illegality of abortion has been illustrative of the harm to women's reproductive health inflicted by the country's legal system. Currently, an increasing number of people are asserting the need to prepare for post-ruling action. While the problems of control, discrimination, intimidation, and violence against women's bodies, including as they relate to abortion, are occurring in a multi-layered fashion across the entire area of women's sexuality and reproduction, the pertinent discussion has been greatly limited. Active discussions across the whole area of women's sexuality and reproduction will be critical in restoring women's status of being subject to their rights.

In this context, we have analyzed South Korean laws and institutions related to women's menstruation, contraception, safe sex, termination of pregnancy, and infertility from a gender perspective and discussed relevant issues and points for improvement. We have also reviewed the sexual and reproductive health and rights of women as promoted in the international community, including the United Nations, in an effort to suggest policy directions and contemplate the remaining challenges facing South Korean society.

# Ⅱ. A gender analysis of laws and institutions related to women's sexual and reproductive health and rights

## 1. The perspective taken by the Mother and Child Health Act and its limitations as a basis for policies on sexual and reproductive health

A. Limitations of a law focused on increasing the fertility rate

One of the critical flaws in the Mother and Child Health Act is the intrinsic limitation of its purpose and perspective. In Article 1, the law defines its goal to be promoting public health by protecting the life and health of mothers and infants and supporting sound childbirth and child-rearing. Support for childbirth and child-rearing moderated by the value-oriented qualifier “sound” reveals the viviparous limitations of this law that has been used by the government as a tool for population policy. The law’s stated goal has gone unchanged since its enactment in 1973. With national population policy shifting from population control to promoting fertility, the law has swung from a being base law for surgical sterilization and family planning programs to a base law for infertility treatment support programs. What has not changed is its role as a primary vehicle for population policy. Despite the critical importance of the health of women and infants, the Mother and Child Health Act has mainly been interpreted and implemented from the perspective of population control.

As discussed below, the provisions of the law clearly reveal its limitations in terms of purpose and perspective.

First, Article 3(2) declares the Day of Pregnant Women and describes raising awareness of the importance of pregnancy and childbirth as the purpose of this designation. If it were to truly serve the spirit of such a holiday, the main goal of the Day of Pregnant Women would be to prevent any discrimination and disadvantages stemming from pregnancy and childbirth and protect the health and rights of pregnant women. The fact that the prescribed goal of the day is to raise awareness of the importance of pregnancy reflects the government’s viewpoint of

considering women simply a lever for managing childbirth.

Although it can be understood as an inherent limitation of a law that was written from the perspective of population policy, the Mother and Child Health Act has a number of provisions that lack a gender perspective and conceive of women merely as a medium for population control.

Under Article 4, which stipulates the obligations of a mother, Clause 1 provides that a mother should strive to support her health by showing appropriate interest and concern for her health in relation to pregnancy, childbirth, nursing, and reproduction. Article 2 defines mothers as pregnant women and women of childbearing age. In sum, the state sets forth in this law that all women of childbearing age should strive to take care of their health for the purpose of pregnancy, childbirth, and nursing. This obsolete provision, which views women's bodies as a mere channel for childbirth and child-rearing, requires immediate repeal.

Among other matters, Article 10(3) prescribes the installation of breastfeeding stations. While support for the installation of breastfeeding stations itself (Article 10(3)(1)) poses no problem, Articles 10(2) and 10(3), which dictate that the central government and local autonomous bodies should actively promote breastfeeding, could be problematic in that the encouragement of breastfeeding at the state level is set forth by law and this could reinforce the ideology of motherhood. Women's right to choice should be respected regarding breastfeeding. Provision of knowledge and information on breastfeeding at birth centers, hospitals, and public clinics is certainly desirable, but it is inappropriate for the active promotion of breastfeeding to be mandated by law. The installation and support of breastfeeding stations should be approached from the perspective of maternal rights. What is needed is the introduction of a gender equality-based approach to childcare. The focus of support needs

to be not on the encouragement of breastfeeding, but on supporting women's access gender equality-based childcare when they choose breastfeeding: e.g. helping working women who choose breastfeeding with their need to balance between work and childcare and supporting men's participation in childcare when their wives choose breastfeeding.

The Mother and Child Health Act is also problematic from perspective of disability. Under Article 7(1), which mandates maternal-child health centers, Section 5 defines the prevention of the birth of disabled children and the health management of disabled children. While the health of disabled children clearly is worthy of promoting, the phrase "the prevention of the birth of disabled children" and the perspective it reflects are questionable.

Article 14(1) sets forth the occasions on which abortion is to be permitted. This article will be discussed in greater detail later, but Section 1 is particularly notable for how it views disability. Under this section, abortion is permitted if the pregnant woman or her partner has a eugenic or genetic mental or physical disability as defined in a presidential decree. This provision, which has existed since 1973 when act was legislated, puts on display the government's anti-human rights approach to disabled individuals (Hwang, 2018: 220).

The provision instructing the prevention of the birth of disabled children as part of the mandate for maternal health centers and the provision permitting abortion for eugenic reasons are clear examples of the state's lack of a human rights perspective regarding disabled individuals. The Mother and Child Health Act simply stipulates eugenics-based provisions without respect or protection for disabled women's maternity, sexual and reproductive rights, or right to self-determination in regard to sex and reproduction.

As discussed above, the Mother and Child Health Act views women's bodies and maternity through the frame of population policy, and this limited perspective is associated with the problems inherent in the law's basic purpose. This law consists of several different sections, including the intention of the law, definitions of pertinent terms and items, the state's duties, and provisions on government programs and policies (maternal health, infertility support, abortion prevention, and postnatal care services). A number of programs and facilities, including intensive care centers for high-risk pregnancies, the National Maternal-Child Medical Center, and support for pre- and post-natal depression, have recently been introduced in an effort to boost the health of pregnant and post-natal women, infants, and young children. However, these are mostly maternal-child health and infertility support programs implemented as part of the government's population policy. Furthermore, a significant portion of the law is dedicated to the regulation of postnatal care facilities. As long as the Mother and Child Health Act continues to serve as simply a base law for the fertility programs designed as part of national population policy, it will be difficult to actualize even the law's stated goal, which is the protection of and support for maternal and infant health.

B. Lack of a legal basis for policies on sexual and reproductive health

As a base law for the country's maternal-child health programs, the Mother and Child Health Act fails to encompass women's sexual and reproductive health. Currently, South Korea only maintains a base law for maternal-child health policy aimed at increasing its fertility rate, and has legislated nothing supporting sexual and reproductive health policy.

The fertility-focused approach to population policy has been criticized for using women simply as a device for population control. In response to a changing policy environment, which calls for a paradigm shift in the country's basic plans for managing a low-fertility aging society, the Mother and Child Health Act should no longer be applied as a base law for population policy but be re-established more in line with its actual purpose.

There can be two options in regard to protecting sexual and reproductive health and rights: The Mother and Child Health Act can be completely revised or a new law can be introduced to serve that goal and the Mother and Child Health Act can remain dedicated to maternal and infant health and integrated into health policy rather than population (fertility) policy.

## 2. Problems with laws and institutions regarding menstruation and menstrual hygiene supplies

### A. Insufficient legal provisions to guarantee menstruation-related health and rights

Menstruation is something most women experience over a considerable portion of their life. Outside of the unpaid menstruation leave provided in the Labor Standards Act, however, there is no law that defends women's menstrual rights.

Issues regarding women's menstruation and related health need to be actively translated into policy. The Mother and Child Health Act could be applied, or a separate law on sexual and reproductive health and rights could be introduced in order to implement pertinent programs, such as a survey of women's menstrual health (PMS, menopause, etc.) and the provision of related counseling and services.

In addition, the School Health Act needs to include provisions on menstrual health education, support, and counseling, all from a gender perspective. Given the lowering average age of menarche, menstrual health education is needed at least before children start the fifth grade. Taking a gender-sensitive approach, such education should be provided to both male and female students and include the implications of menstruation, menstruation in a social context, self-esteem, and respect for different forms of sexuality. Before most girls experience their first period, education on how to select and use safe menstrual supplies should be offered. Education and counseling on menstrual health issues, such as cramps and PMS, should be offered in a school setting. In particular, menstrual rights, such as the rights to rest and health services, need to be clearly defined in a school health law.

B. Problems regarding the price of menstrual hygiene supplies and provision of free hygiene supplies for underprivileged girls

With the issue of the high price of menstrual hygiene supplies and the related hardships experienced by underprivileged girls recently coming into a spotlight, progress has been made in relevant policies and laws. To address the price of menstrual hygiene supplies, a bill has been proposed to revise the related taxation.

Article 5(3) was introduced in the revision of the Juvenile Welfare Support Act (December 12, 2017), to provide a legal basis for the provision of menstrual hygiene supplies to underprivileged girls. The Seoul Metropolitan Government has also included in its Basic Ordinance on Gender Equality (revised on October 4, 2018) a legal basis for the provision of free menstrual supplies in public facilities including primary, secondary, and tertiary schools.

To mitigate the price of menstrual hygiene supplies, a bill proposing a partial revision[2] of the Value-Added Tax Act is pending in the National Assembly with the aim of reducing their taxation to zero.[3] Menstrual hygiene products have been exempted from VAT since 2004, but this applies only to the point of sale and not to the taxes imposed at the point of production and distribution. The pending bill will exempt them from the latter as well. South Korea is ahead of other countries in terms of its exemption of menstrual hygiene supplies from VAT. However, the price remains high due to the monopolistic market.[4] Apart from the provision of free hygiene materials, the pricing of those products should be addressed. The Seoul Metropolitan Government's recent adoption of a gender equality ordinance is a good practice that other local governments should consider.

C. Safety of menstrual hygiene products

Note # 2 of Article 4(8) of the Regulations on the Labels of Medical and Quasi-drug Products defines the additional information, such as ingredients and warnings, that needs to be displayed on the containers or packaging of medical and quasi-drug products, including menstrual hygiene supplies. However, the display of safety-related information is not required on menstrual hygiene supplies beyond tampons. For tampons, it is prescribed as: "5. Warnings about toxic shock syndrome shall be displayed as the following: Although it is rare, tampons can cause life-threatening toxic shock syndrome. If you experience a sudden

2) Searched by a bill number 2001324 (Submission date: 2016.8.1.) on the website of the National Assembly of the Republic of Korea. http://likms.assembly.go.kr/bill/main.do (searching: 2019.2.10.)

3) http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_U1U6W0G8X0Y1S1P5S3K4P3N3L6D1O9 (searching: 2019.2.10.)

4) http://biz.khan.co.kr/khan_art_view.html?artid=201805280600005&code=920401#csidxeecc6ba61ac562ab78ef41c724422ab (searching: 2019.1.30.)

high temperature, vomiting, diarrhea, sunburn-like rash, mucosal bleeding, and/or dizziness, consult your doctor immediately." Although the materials and ingredients of the absorbent are required to be displayed on tampons, the only additional information that must be displayed on packages of sanitary napkins is an advisement to users not to flush them down the toilet.

Given women's concerns about the safety of menstrual hygiene supplies, it is necessary to introduce legal provisions regarding the display of ingredients. In addition, continuous policy support is required in order to secure the safety of menstrual hygiene supplies by creating a legal basis for regular survey and research.

## 3. Problems in laws and institutions related to contraception and safe sex

### A. The issue of perspective in contraception-related laws and institutions

Article 12(2) of the Mother and Child Health Act sets out grounds for the provision of contraceptive drugs and devices by the central government and local autonomous bodies under the title of Programs Regarding the Prevention of Abortion and Etc.

Contraception should be approached in terms of the right to self-determination in safe sex and pregnancy rather than the prevention of abortion. Considering the country's closed sexual culture, public access to contraceptive products needs to be guaranteed. In this context, the outdated above-mentioned provision should be replaced with a new one guaranteeing access to contraceptive products.

B. Issues regarding laws on access to contraceptive products

Under Article 2(4) of the Juvenile Protection Act, Item (Na)(1) defines sex-related objects considered harmful to juveniles, such as sexual devices that could encourage indecent behaviors among juveniles, as determined by the Commission on Youth Protection and announced by the Minister of Gender Equality and Family based on standards defined by a presidential decree regarding the potential to impose grave physical and/or mental harm to juveniles if access is not prohibited. In addition, the Notification on Objects Harmful to Juveniles (Sex Toys) and Businesses Prohibited to Allow Entry to or Hire Juveniles (Ministry of Gender Equality and Family Notification No. 2013-51, partially revised on August 13, 2013) includes specialized condoms, including studded condoms (e.g. GAT-101), specially treated condoms (e.g. AMOR LONG LOVE), and Dokebi condoms (commonly known as 'Ae') in the list of Objects Harmful to Juveniles (Sex Toys). Due to this regulation, major condom vendors on the internet now classify all condoms as objects harmful to juveniles, without distinguishing between general and specialized condoms, thus preventing juveniles from accessing contraceptive products.[5)]

Two approaches are possible here: changing the notification regulation or introducing a way to allow access by juveniles to general condoms. An understanding that the prohibition of access to contraceptive methods can inflict direct harm on juveniles by increasing the chance of unwanted pregnancy and infection needs to be introduced in the Juvenile Protection Act.

C. Issues related to laws on sexuality education

Sexuality education is provided based on Article 7 of the Mother and

5) http://www.ddaily.co.kr/news/article.html?no=168709 (searching: 2019.1.30.)

Child Health Act, Article 9 of the School Health Act, and Article 5 of the Sexual Violence Prevention and Victims Protection Act. The problem remains that while such education has a legal basis, its content fails to be relevant to the needs of contemporary students and lacks human rights and gender sensitivity. When it comes to teenagers in particular, an abstinence-based approach will make the education divergent from reality. It is neither possible nor appropriate to determine the content of sexuality education by law. Currently, however, there are no minimal guidelines regarding the content of sexuality education, except in the Sexual Violence Prevention and Victims Protection Act. It may be worth considering clarifying through relevant provisions that sexuality education should reflect gender and human rights sensitivity and include content on sexual and reproductive rights, including contraception.

## 4. Problems in laws on abortion

### A. The criminality of abortion as defined in the Criminal Act

Article 269 of the Criminal Act defines abortion as a crime for the recipient of the abortion and also performing one upon request. Article 270 of the same law sets forth the crime of abortion for medical practitioners and the crime of non-consensual abortion. As causes for exclusion from illegality, Article 14 of the Mother and Child Health Act and Article 15 of the Act's Enforcement Decree list permitted ground for a legal abortion.

At the time of this writing, the Constitutional Court is deliberating a petition on the legality of Article 269(1) (the crime of abortion for the recipient of abortion) and Article 270(1) (the crime of abortion for medical practitioners) of the Criminal Act.

As for Article 269(1), the main issue in both the Constitutional Court's 2012 adjudication and the impending deliberation is whether the provision infringes on a woman's right to self-determination. Both the arguments for the 2012 Constitutional Court's deliberation and the existing academic discussion have focused on the principle of proportionality between a fetus's right to life and a woman's right to self-determination. In 2012, the Constitutional Court ruled that although a fetus must rely on its mother for life, it should be considered a subject with the right to life since it constitutes a life of its own separate from the mother and is likely to grow to be an independent human being.[6] Regarding the impending decision, the Minister of Justice has expressed a similar opinion. As to the proportionality-based argument in the mainstream criminal law community, those holding a feminist perspective criticize its assumption of an antagonistic relationship between the fetus and the mother (Yang, 2018: 224; 227). They argue that even though the question of when life begins is not a matter of ethical judgement but rather of biological and scientific analysis, previous decisions on the crime of abortion have gone in favor of the fetus's right to life (Kim, C., 2018: 225). The counter-argument in the 2012 Constitutional Court's ruling underlines this point.

When it comes to pregnancy and childbirth, women have not been considered the owners of their bodies but as perceived by the patriarchal state as containers for seeds or a medium for childbirth. In this context, the legal interest of the fetus, who has been considered a subject in its own right, has been placed above women's right to self-determination of their bodies. However, the state's contradictory stance toward the fetus

6) Searched by a case number '2010헌바402' (end date: 2012.8.23.) on the website of Constitutional Court of Korea. http://search.ccourt.go.kr/ths/pr/selectThsPr0101List.do (searching: 2019.1.31.)

is revealed by the fact that the state used to turn a blind eye to and even encourage abortion for the purpose of population control and the exceptions to its illegality permitted from the perspective of eugenics. Furthermore, the fetus's right to life, which was so strongly supported in the 2012 Constitutional Court's decision, conveniently loses its place in infertility treatment (Kim, J., 2018: 22). In the government's infertility support program, the fetus's right to life is simply overlooked in favor of selective abortion.

There is a need to create distance from the principle of proportionality and to take a gender-sensitive approach to examining if the Criminal Act has endangered all of us by criminalizing women's self-determination in reproduction.

The criminalization of abortion for women violates their reproductive rights, which are a part of the fundamental body of human rights. It infringes on women's right to determine whether and when to have children. In this regard, the provisions on the crime of abortion in the Criminal Act should be repealed.

In the meantime, Articles 270(2) and 270(3) of the Criminal Act, which define the crime of non-consensual abortion and the crime of injury or death due to non-consensual abortion, are criticized for their lenient penalties when compared to the level of punishment imposed on the general crime of injury or death (Park, 2018: 10). We argue that Articles 269(1) and 270(1) should be eradicated in order to abolish the crime of abortion for women and healthcare professionals. Furthermore, the punishments for the crime of injury or death from non-consensual abortion should be made equivalent to those for the general crime of injury or death (Park, 2018: 10).

B. Problems in the provisions limiting the range of legal abortion

Article 14 of the Mother and Child Health Act and Article 15 of the Act's Enforcement Decree define the allowed range for legal abortion. These provisions, which stipulate exceptions to the crime of abortion, constitute the exclusions of illegality and serve as grounds to dismiss the minimal possibility of infringement in the 2012 Constitutional Court's ruling (Park, 2018: 13).

Article 14(1) of the Mother and Child Health Act requires the consent of the spouse (including a de facto spouse) for an abortion. This provision makes women's choice and decisions about reproduction subject to their male partners, consequently subjugating women to men. In addition, since this requirement for consent is critical for the establishment of the crime, it further pushes women into a corner. Although Article 14(2) allows the exemption of spousal consent for justifiable reasons, the legality of abortion is compromised if the reasons are not considered justified or if the spouse is found not to be the fetus's biological father (Park, 2018: 14). Even in the case of pregnancy caused by rape, this requirement for spousal consent can bring disadvantageous results to women. In fact, this clause is sometimes used by an ex-spouse or ex-boyfriend as a way to intimidate a woman (Kim, J., 2018: 15).

We have already discussed how allowing abortion on the basis of a eugenic or genetic disability is controversial due to its lack of human rights sensitivity for disabled individuals. Considering that this provision allows abortion based on the indirect inference of the health of the fetus through the parents' health status, it has been criticized for not even meeting the "standard of the health risk for the fetus(Kim, J., 2018: 12)." Some healthcare professionals point out the contradiction that abortion

is not allowed for a pregnancy in which the survival of the fetus is impossible a due to grave condition such as anencephaly.[7)]

Article 15 of the Enforcement Decree of the Mother and Child Health Act dictates that legal abortion should be limited to within the first 24 weeks of pregnancy. There is a question of the obscurity of how to count the number of weeks (Yoon, 2018: 65). It is also a problem that abortion is not permitted after the 24 weeks of pregnancy even when the mother's life is in danger if the pregnancy is sustained. Currently in South Korea, abortion is illegal in principle even when the continuance of the pregnancy gravely compromises a woman's health and in the case of pregnancy following rape. The legality of abortion in these cases can only be determined through legal interpretation (Kim, J., 2018: 14).

There is also a problem with the exclusion of the illegality clause being only applied to surgical abortion. It is not pertinent for medication-based abortion.

Furthermore, the exclusion of social and economic reasons from the grounds for legal abortion fails to reflect the realities surrounding the procedure.

These problems in the Mother and Child Health Act have led to the violation of women's rights to health, life, and self-determination. For this reason, it has been argued that the law should be repealed or at the very least revised. The provisions about the crime of abortion in the Criminal Act and those that limit the range of legal abortion in the Mother and Child Health Act should be abolished, and provisions on the right to terminate pregnancy should be introduced.

7) http://www.yonhapnewstv.co.kr/MYH20180828015100038/ (searching: 2019.1.30.)

## 5. Issues regarding laws on infertility

Article 2(11) of the Mother and Child Health Act defines infertility as the state resulting when a married couple fails to become pregnant for over one year despite engaging in a normal sex life.

According to this provision, the government's infertility support program benefits only married couples. Recently, the government has announced that it would prepare procedures to enable de facto couples to undergo infertility treatment covered by medical insurance.[8] A bill proposing a partial revision of the Mother and Child Health Act to extend the coverage of infertility support programs to de facto couples is pending in the National Assembly.[9] These moves are positive, but limited. Reproductive rights include both the right to pregnancy and the right to non-pregnancy. If one requires support for pregnancy, there is no reason to discriminate single people from couples. This issue is also associated with the right to a family life.

The requirements over age, period, and frequency of infertility treatment also limits a woman's right to choose the timing of her pregnancy based on her needs over the course of her life. This similarly reflects lack of consideration of reproductive rights.

Infertility treatment involves a number of factors impacting women's health, including (excessive) egg retrieval, selective abortion, and stress and depression from failed attempts. However, the provisions regarding infertility in the Mother and Child Health Act lack any visible concern over about women's mental and/or physical health.

Article 11(6) of the Mother and Child Health Act provides for the

8) http://www.korea.kr/news/policyNewsView.do?newsId=148852575 (searching: 2019.2.20.)
9) http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_S1Q8I1S2P1Z0S1E6O3U7S3Y9A4W8Y5 (searching: 2019.2.20.)

collection and management of statistics on infertility treatment. This data is required to include the diagnosed causes of infertility, the procedures and results of infertility treatment, and health information on any baby born as a result of infertility treatment. However, there is no mention of collecting information on the mental or physical health of women who received treatment. This needs to be corrected and reflected in policy.

# III. Policy directions and agenda

## 1. A paradigm shift toward sexual and reproductive health and rights

### A. Perceiving sexual and reproductive health and rights to be a human right

The term ‘reproduction’ is becoming more common in South Korea due to increasing reports on the prosecution of abortion. However, many people seem to find it difficult to fully grasp what it means. Often, the term is narrowly defined in relation to the issue of abortion. If the term 'right' is added here, a dichotomic conflict structure is created between the right to life and the right to autonomy (self-determination) since a right is defined to be a power with which one can either execute something or demand it from others.[10] In this regard, a reproductive right can be defined as the power of a woman to decide whether, when, and how frequently she wishes to be pregnant without suffering any discrimination, coercion, or violence. If we combine it with the term ‘health’ here, the meaning of a reproductive right becomes more concrete and

10) Searched by ‘right’ on https://ko.dict.naver.com/#/search?query=%EA%B6%8C%EB%A6%AC (searching: 2019.2.14.)

clearer. It now covers the right of a woman to be a subjective decision-maker and to access safe and effective medical services related to reproduction (Kim-min, 2018: 39). Since reproduction is closely connected to sexual conduct and sexual relations, it is also linked to sexual rights and sexual health.

Sexual and reproductive rights are guaranteed in a number of international human rights treaties as the rights to enjoy the highest attainable standard of health and the rights to freely choose and make decisions without any discrimination. These treaties call for state parties to guarantee non-discrimination and gender equality by addressing the discrimination and gender inequality existing in laws, policies, and practices; taking comprehensive measures to eliminate the causes of gender discrimination; and ensuring equal access to human rights for both men and women (Amnesty International, 2012: 14). This concept of human rights is applied to sexual and reproductive health as well. For example, failure to address the issue of unsafe abortion in the prevention of unwanted pregnancy, as occurs in South Korea, is considered a violation of human rights by impeding women's choice and access (Amnesty International, 2012: 18). The international community emphasizes how a great number of women around the world lack equal access to the quality medical services, counseling, and information required to ensure their sexual and reproductive health (Amnesty International, 2012: 19). South Korea is no exception. For this reason, the International Conference on Population and Development held in Cairo, Egypt in 1994 declared reproductive rights to be a human right. The resulting program of action emphasized that women should be provided with the information they require without experiencing any discrimination, coercion, or violence and that this provision is part of respecting their human rights.

As confirmed in the survey conducted as part of this research, sexual and reproductive rights were acknowledged at the individual level, but less so at the level of the society. In other words, while individual citizens accept sexual and reproductive health as human rights, they believe that the level of acceptance in the society as a whole is relatively low. This gap in acceptance can be attributed to the complicated interactions between laws, institutions, social norms, and practices. Hence, efforts are needed to promote sexual and reproductive health and the related rights as human rights, and relevant laws, institutions, and norms should be amended accordingly.

B. Shifting from a government-led population policy toward policies on sexual and reproductive health and rights based on women's right to freedom

Although pregnancy and childbirth are unique experiences by individual women that occur within their bodies, these experiences are often understood simply as a gender difference. Let alone given respect, women's bodies have been controlled under the name of nationalism. We have witnessed both in the past and present how the state controls women's bodies, and it remains an ongoing phenomenon. When abortion was included as a crime in the Criminal Act in 1953, women's rights to autonomy and freedom for their body were dismissed. Twenty years later in 1973, a time when few South Koreans practiced contraception, the state established the Mother and Child Health Act, which included exclusions for the illegality of abortion, in an effort to expedite the reduction of the population (Yang et al., 2005: 64-65). Some argue that this law was designed to strictly prohibit abortion. In reality, however, abortion was used in combination with efforts to disseminate modern

contraceptive methods (tubal ligation) (Bae, 2012: 173). With the country's fertility rate now alarmingly low, the state is currently exploiting the law once again, but this time as a means to promote anti-abortion campaigns and persecute abortion clinics and healthcare professionals (e.g. healthcare professionals are punished with administrative dispositions for engaging in unethical medical conduct.)

As discussed above, a women's body is not receiving its due respect, but instead is being controlled as a tool for the development and maintenance of the state. We have seen from the case studies in other countries, including Romania, Poland, and Ireland, how state control of women's bodies is highly likely to inflict harm women's health and rights by, for example, forcing women to resort to unsafe abortions. The international community, including the United Nations, has proclaimed sexual and reproductive health to be a matter of basic human rights that needs to be protected to strengthen gender equality and women's empowerment.

Therefore, in order to achieve the gender equality that South Korea pursues, it is essential for the prolonged nationalistic population policy to be replaced by policies on sexual and reproductive health and rights based on women's right to freedom.

### C. Moving away from a focus on "normal" families and toward including all population groups at different stages of life

As for polices on sex and reproduction, the state has completely ignored sex and concentrated its focus on pregnancy and childbirth, and even then only in the case of legally married couples. Studies on contraception, sexual conduct, pregnancy, and abortion published since 2000 have shown that the issue of sexual and reproductive health and the related

rights is a serious concern not only among married women, but also among single women, women in de facto marriage, divorced/widowed women, and teenage girls. Reports related to the fourth World Conference on Women held in 1995 state that the right to enjoy the highest attainable standard of health should be guaranteed to women throughout the course of their life at an equal level as that for men (UN, 1996: 35)[11].

The inequalities that women experience in regard to sex and reproduction show a wide range of distinctions depending on age, marital status, socioeconomic status, nationality, race, disability, gender identity, and sexual orientation. However, there is insufficient awareness and attention to this aspect. Amnesty International purports that sexual and reproductive rights are human rights and should be provided to all women, including those who experience discrimination and inequality based on age, language, ethnicity, race, religion, disability, or gender identity (Amnesty International, 2012: 36).

No matter their personal circumstances and whether they are teenagers, single mothers, homeless, disabled, refugees, migrants, sexual minorities, HIV/AIDS patients, or incarcerated, all women are equal in their right to access the information, education, and medical services necessary to promote their sexual and reproductive health, including regarding menstruation, contraception, pregnancy (abortion) and childbirth, child-rearing, and menopause. The government should ensure the protection of these rights by eliminating obstacles and taking into account women's diversity and uniqueness.

11) United Nations(1996). Report of the Fourth World Conference on Women. A/CONF.177/20/Rev.1. United Nations, New York. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20A%20CONF177%2020%20REV1.pdf (searching: 2018.12.7.)

D. Promoting men's participation in guaranteeing women's sexual and reproductive health and rights

Men's participation in terms of perceptions, attitudes, and behaviors can bring about positive changes in promoting women's sexual and reproductive health and rights (Kato-Wallace and Foss, 2016: 3). Although there are differences by country and region, men's participation in this regard remains low and its importance is frequently overlooked around the world.

Why is men's participation important? It is because men have exerted greater power than have women across all of society. The area of sex and reproduction is no exception. Hence, the international community underlines the importance of the balancing of men's power, increased awareness of gender equality among men, and men's participation in eliminating gender discrimination.

In family planning, for instance, women should be able to choose their own contraceptive methods or ask their partner to use contraception and to decide when and how many children to have. What can men do here? In general, men are both directly involved and also positioned to help women with family planning. In other words, men as the partners of women need to participate in and assist women's sexual and reproductive processes, including contraception, prevention of HIV and other STDs, pregnancy, and childbirth. In effect, sexual and reproductive health programs designed for men reduce the occurrence of unwanted pregnancy and STDs and reduce women's physical and psychological stress from pregnancy and childbirth by improving men's awareness of modern contraceptive methods and minimizing sex-related risks (New Zealand Parliamentarians' Group on Population and Development, 2015: 13). They are also effective in reducing both violence against women and

gender inequality (New Zealand Parliamentarians' Group on Population and Development, 2015: 13). Comprehensive sexuality education is needed from childhood because it helps people understand and respect other genders and learn how to cooperate.

In addition to encouraging men's participation in the promotion of women's sexual and reproductive health and rights, the sexual and reproductive health of men and boys must also be protected as human rights. Support for men's sex and reproduction can in turn have a direct and positive impact on women's sexual and reproductive health and rights. However, the traditional social norm that men's sexual and reproductive capacity is a measure of masculinity often prohibits men with health problems from accessing needed information and medical services (Starrs et al., 2018: 2,682). In this regard, it is important to repeal outdated norms and practices for men and make efforts to promote men's sexual and reproductive health and rights alongside those of women.

## 2. Improving laws and institutions regarding sexual and reproductive health and rights

### A. Reviewing laws and institutions that violate women's sexual and reproductive health and rights

Sexual and reproductive rights are included in "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health" set forth in Article 12 of the International Covenant on Economic, Social and Cultural Rights (CESCR).[12] This right is accompanied by both freedoms and requirements. The former covers the right to independently

12) International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A(XXI) of 16 December 1966. https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf (searching: 2019.1.23.)

and freely make responsible decisions and choices in regard to one's sexual and reproductive health. The latter encompasses the right to freely access the health services, resources, and information necessary for ensuring sexual and reproductive health. Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) includes as women's reproductive rights the rights to decide freely and responsibly on the number and timing of children and to enjoy access to the information, education, and means to enable them to exercise these rights.[13] In this context, governments are obliged to respect and guarantee their citizens' sexual and reproductive freedom. They must make their utmost efforts to fulfill this role within their available resources (e.g. medical services and information).

Is South Korea guaranteeing its citizens the sexual and reproductive freedom advocated by international treaties, including the CESCR and CEDAW, and providing sufficient support? South Korea guarantees the right to pursue human dignity and happiness in Article 10 of its Constitution and the right to health in Article 36(2). The recently introduced Framework Act on Gender Equality also endorses the right to sexual and reproductive health through policies for the promotion of health throughout the different stages of women's life. However, there is no separate law that specifically defines sexual and reproductive health and rights. Instead, they are laid out in individual laws and regulations that have been periodically revised to reflect contemporary needs. The problem is that those laws, including Article 269 of the Criminal Act and Article 14 of the Mother and Child Health Act, contain a number of discriminatory and unequal elements that compromise women's sexual and reproductive rights.

13) General Assembly resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women. https://www.ohchr.org/documents/professionalinterest/cedaw.pdf (searching: 2019.2.13.)

For instance, the CEDAW recommended in 2011 that the South Korean government eliminate penalties for women who seek an abortion and provide medical services of the quality needed to manage complications that may occur from an unsafe abortion. As the South Korean government failed to implement its recommendation, the CEDAW recommended once again in 2018 that the government decriminalize abortion and eliminate all penal provisions against women who seek an abortion. Currently, the eradication of abortion is an international trend and should be mandatory for the South Korean government.

In this research, we have examined a number of laws, institutions, and policies, including the Criminal Act and the Mother and Child Health Act, connected to women's sexual and reproductive health and rights. From the time of menarche and throughout the entire childbearing period prior to menopause, women experience the infringement of their health and human rights due to discriminatory and unequal laws. Relevant laws, institutions, and policies need to be reviewed across the board, both for problems inherent in the individual laws and institutions and for those occurring from the intersections of different laws and institutions. Laws and institutions are based on a society's long-established customs, generally developed in a patriarchal past. Therefore, a gender-sensitive approach is critical in reviewing them and it must be ensured that people of one specific gender do not suffer from discrimination.

Laws and institutions, no matter how moral their intentions may be, must be revised or abolished if they do harm to the rights of individuals or erode gender equality. At the same time, efforts are needed to establish overarching laws and institutions that can protect sexual and reproductive health and rights.

B. Eradicating the criminality of abortion (Articles 269 and 270 of the Criminal Act) in order to promote women's rights to self-determination, health, life, and happiness

The elimination of the criminality of abortion is currently an international trend. The South Korean government should guarantee women's right to terminate a pregnancy and emplace a system to ensure safe and reasonable methods to do so. The findings of our survey suggest that the illegality of abortion prohibits women from seeking out abortion clinics and from pursuing remedies for complications from abortion. Among the 1,840 survey participants, 74.7% supported the eradication of the illegality of abortion. By gender, the proportion was 78.8% for women and 70.6% for men. These results are similar to the findings of a recent survey on abortion conducted by the Ministry of Health and Welfare in which 75.4% of 10,000 women believed that Articles 269 and 270 of the Criminal Act should be revised.[14)]

Our survey also reveals the major gap between the beliefs of individuals and the perceived social norm: While both men and women agree that women have the right to terminate pregnancy, many believe that this right is being denied by society. There are also generational gaps. Women of childbearing age, however, decry the irrationality of the current law that infringes on women's rights to self-determination, health, life, and pursuit of happiness. Through case studies on other countries, we have already confirmed that making abortion illegal violates women's human rights and other rights as well. One of the examples is Romania. The country's anti-abortion law, known as Decree 770, was used to force women to have children, and the number of abandoned children

14) https://www.kihasa.re.kr/web/news/report/view.do?menuId=20&tid=51&bid=79&ano=10778 (searching: 2019.2.14.)

subsequently increased dramatically. Furthermore, a great number of women who turned to unsafe abortions died of complications. The maternal death rate in 1965 immediately before the introduction of Decree 770 was 20 per 100,000 persons, but it quadrupled to 86 in 1966 when the law was implemented, and culminated at 170 in 1989 before its revocation.[15] Ireland, one of the countries we examined in our case studies, repealed its anti-abortion law through a public referendum in May 2018 after witnessing several cases of deaths caused by the state's strict control of women's bodies.

It is time for the South Korean government to eliminate the existing provisions on abortion and begin a legislative review of how to guarantee the right to terminate pregnancy.[16] One idea is to create a comprehensive law on sexual and reproductive health (or a law on the promotion of women's health) that includes the right to do so. Reviewing the precedents from other countries that have repealed anti-abortion laws will be greatly helpful.

### C. Promoting legislation guaranteeing the reproductive health and rights of women as the agents of their rights, not as subject to punishment and regulation for abortion

What was clearly affirmed in the Constitutional Court's ruling on April 11, 2019 was women's right to self-determination. Both the judges who submitted a "constitutional discordance" opinion and those who submitted an "unconstitutional" opinion agreed that women possess the right to

15) Wikipedia. Decree 770. https://en.wikipedia.org/wiki/Decree_770 (searching: 2019.1.25.)

16) Shortly after this paper was published, the Constitutional Court declared on April 11, 2019 that Articles 269(1) and 270(1) of the Criminal Act are unconstitutional, with four judges submitting a "constitutional discordance" opinion, three an "unconstitutional" opinion, and two a "constitutional" opinion. The court ordered the National Assembly to revise the law by December 31, 2020.

determine whether or not to continue a pregnancy throughout its entire period. Those who voted with the "unconstitutional" opinion further explained that if women are not given the choice of terminating pregnancy, it could bring about harmful effects on their quality of their life and dignity. They decided, therefore, that the choice to continue or terminate a pregnancy is a decision that women should make based on their own deep contemplation and drawing upon their perspective on life and society as well as their physical, psychological, social, and economic conditions. The judges also concurred that women's right to self-determination is an important basic entitlement that is at the center of a person's rights. For these reasons, they ruled that the existing provisions prohibiting abortion for the entire period of pregnancy, with only the exceptions stipulated in the Mother and Child Health Act, and punishing all those who violated the law without respecting women's decisions restrict women's right to self-determination. As a result, the Constitutional Court ordered the legislature to revise the pertinent laws by the end of 2020. This ruling reflects the reality of contemporary South Korean society. In surveys conducted by both the Korean Women's Development Institute (Kim et al., 2018) and the Ministry of Health and Welfare (Lee et al., 2019), about 75% of South Korean women of childbearing age supported the eradication (revision) of the abortion law. In the health ministry's survey, which also asked about the reasons behind the need of such a revision, over 62.5% of 10,000 women (multiple answers) responded that whether or not to have children is essentially a matter of personal choice. This result indicates the strength of women's demand for the right to self-determination. The Constitutional Court's decision is also in line with the decriminalization of abortion endorsed by the CEDAW (2018), Human Rights Committee (2018), and CESCR (2016).

The time appears to be ripe to open active discussions on how to incorporate women's right to self-determination regarding pregnancy into legislation. Through this process, it is important to refer to the sexual and reproductive rights emphasized by UN human rights bodies. In particular, the CESCR issued a General Comment dedicated to the right to sexual and reproductive health (2016), noting that sexual and reproductive health and rights, including the right to terminate pregnancy, are under threat throughout the world. This General Comment will be a helpful reference for legislators tasked with revising the country's abortion laws.

Following are several points that need to be considered in the legislative process. First, the criminality of abortion both for woman and healthcare professionals should be repealed. (As proposed by the Justice Party, the punishment for the crime of non-consensual abortion needs to be strengthened and should be covered in the Medical Act rather than in the Criminal Act.) Currently, the illegality of abortion is exploited by men as an avenue to threaten their female partners to continue in violent relationships (Kim et al., 2018). In the Ministry of Health and Welfare's 2018 survey of abortion, 66.2% of 10,000 women of childbearing age (multiple answers) stated that the existing law should be revised because it punishes only women. In our survey of 1,840 men and women, 61.6% replied that both women and medical practitioners should not be punished, and 30.7% responded that men should be punished as well. The findings of both surveys suggest that the existing punishment clauses discriminate against women and abortion cannot be prevented simply by punishing women. Above all, the existence of the crime of abortion itself is a violation of women's rights. According to a study by the Korean Women's Development Institute, about 45% of women who had an abortion experienced difficulty finding a clinic that provided surgical

abortion (due to the doctor's refusal, excessive cost, etc.), did not receive sufficient information and counseling from the doctor, and could not demand remedy for any physical and/or psychological problems experienced after the surgery (Kim et al., 2018).

When it comes to the duration of pregnancy allowed prior to abortion, a number of countries decide this by juxtaposing the length of pregnancy with the reason for abortion. Although it varies by county, abortion is generally allowed simply upon request by the woman within the first trimester of pregnancy, and in the second trimester in some countries. Even without the request of the woman, abortion is allowed within the second trimester or even for the whole period of pregnancy in some countries if there is a serious socioeconomic reason or if the continuance of the pregnancy could pose a grave danger to the woman's physical or mental health. In South Korea, the Constitutional Court judges who submitted the "unconstitutional" opinion stated that women should be able to decide upon the termination of pregnancy based on their judgment without the need to present any particular reasons during the first trimester (about 14 weeks from the date of the last period). The first trimester is an early stage of pregnancy and it is considered to be relatively safe to perform abortion with medication or surgery at this point. Given that the standards for safety can vary depending on individual women's health and circumstances, it is regretful that the Constitutional Court's ruling suggested a duration of pregnancy considered safe for abortion based simply on an average probability of risk. As mentioned in the ruling statement, most women decide upon the termination of a pregnancy after holistically reviewing her physical, psychological, social, and economic state. The "unconstitutional" opinion, therefore, argued that a sufficient amount of time should be allowed before making and

implementing the final decision. According to the 2019 survey by the Ministry of Health and Welfare, some women reported that they were forced to delay an abortion to after the first trimester due to economic, social (e.g. childcare and education), cultural (e.g. being unmarried), or other personal situations (e.g. conflicts with a partner or family) (Barry, 2018). No woman who seeks abortion would wish to delay it to the second or third trimester, a time when the risk of abortion significantly increases. When the timing of the decision is delayed it is because of complex factors beyond their control. While it is true that the risk of maternal death from abortion rises with the duration of pregnancy, a recent study shows 8.9 maternal deaths per 100,000 abortions at up to the 21st week of pregnancy. This is lower than the maternal death rate from childbirth, which is 12 maternal deaths per 100,000 births (Barry, 2018). Therefore, if abortion is permitted upon the woman's request only for pregnancies within the first trimester, those whose decision has to be delayed due to circumstances beyond their control may need to resort to unsafe means. For these women, existing problems such as conscientious objection by healthcare professionals or cost barriers will persist. Given that those who must turn to illegitimate methods are likely to be teenage girls, underprivileged women, and those who live in areas with insufficient medical services, the issue of inequality among social groups and regions may subsequently arise. Women should be able to make a decision about abortion based on adequate information and counseling. It is recommended that any limits on the length of pregnancy for legal abortion should be decided by prioritizing women's decision-making and safety. In this regard, we noted one supplementary opinion submitted in the ruling: a legislative measure is needed to allow women sufficient time for reflection on the termination of pregnancy and to receive a medically safe abortion.

The safety of this 'medically safe abortion' will be impacted by the quality of medical services, the level of training and competency of healthcare professionals, abortion techniques, related medical guidelines (including counseling), and patients' physical and mental conditions (Kim, J., 2019: 9). A medical system ensuring safe abortion should clearly be established.

Here, major issues related to the medical system may include approval or counseling on abortion, a reflection period and conscientious objection, insurance coverage, and medication (including morning-after pills). First, the introduction of an approval system to decide if a woman meets abortion standards (reasons, length of pregnancy, etc.) or to provide biased counseling in favor of childbirth and adoption should be avoided. This point has been clearly made by the CESCR as well. Rather, it is desirable to provide information and counseling services aimed at protecting women's rights to health and life based on individual women's physical, psychological, social, and other circumstances. For approval systems, countries have in place two- or three-person committees or a committee of a group of various professionals, depending on the medical system. If the goal of the approval system is to decide whether or not a woman qualifies for an abortion, however, it will prove a meaningless attempt. Any approval system should be considered only in terms of how to provide best possible medical services in a way that guarantees women's rights to health and life, especially for those who require an abortion in a later period of pregnancy when the health risk increases. As for a mandatory waiting period after counseling, studies have shown that it delays the execution of abortion by imposing psychological stress on women and consequently increases the health risk from the surgery or results in unwanted childbirths or women resorting to unsafe methods because they have passed the legal period for abortion (Joyce et al.

2009). UN human rights agencies and the WHO have made it clear that this practice should be restricted. In 2015, France abolished the mandatory 1-week waiting period on the grounds that it could delay the execution of abortion by imposing psychological stress on women. Conscientious objection is allowed in many countries. However, healthcare professionals cannot apply this right in emergency situations and under any circumstances are obliged to refer the woman to other clinics that provide abortion services. In South Korea, Article 15(1) of the Medical Act prohibits doctors from refusing to treat patients without legitimate cause. Due to Article 19 of the Constitution, which guarantees freedom of conscience, however, discussion is needed about healthcare professionals' conscientious objection. The next thing to be reviewed is the competency of healthcare professionals performing abortions. Due to the extended illegality of the procedure, there may be a lack of understanding and training among practitioners regarding the latest knowledge about abortion. Although more modern and safer medical techniques are available, many doctors have been found to rely on outdated techniques. The quality of medical services should be reviewed in terms of protecting women's right to health. For this reason, some may argue for the designation of medical clinics that can provide safe abortions. However, this idea has clear limitations in light of the need for universal accessibility by women. In the Netherlands, where abortion is provided only at twelve designated clinics, women suffer from regional inequalities and must wait for around three weeks to terminate a pregnancy (Woo-yu-nie-ge et al., 2018: 96). The potential timeline for changing the laws in accordance with the Constitutional Court's decision may mean that the laws are revised by next year and implemented in the following year. However, measures should immediately be put in place for improving the competency of

healthcare professionals, introducing ensuring the latest medical techniques and equipment are applied, training is provided, and relevant guidelines (including information on human rights) are provided. Considering the CEDAW's 2018 Concluding Observations to South Korea (CEDAW/C/KOR/CO/7,43), in which the UN women's body recommended the government "provide them with access to quality services for the management of complications arising from unsafe abortion," measures should be prepared through the legislative process regarding medical interventions not only before and at the time of abortion, but afterwards as well.

The legal introduction of medication such as mifepristone is also necessary in order to promote the safe termination of pregnancy in the early phases and to secure women's right to universal access. The latter will be discussed later in greater depth. According to recent abortion surveys conducted in South Korea, the United States, Sweden, and the United Kingdom, 90-95% of abortion is performed within the 12th-14th week of pregnancy (first trimester). However, the chance of complications varies depending on the competency of the health care professionals involved and the methods they apply. In this light, it is necessary to permit drugs such as Mifegyne that are on the WHO Model List of Essential Medicines so that the termination of pregnancy can also be managed through medicine. This list of medicines that has been proven to be safe and effective was first developed by the WHO in 2005 as a means to support people in developing countries and other remote regions where medical access is not always available. This can provide an important alternative for reducing inequality in access to abortion services between regions. There is no denying that there are controversies this regard, e.g. whether the medicine in question should be classified as prescription or over-the-counter medicine and what procedures should

be required in regard to diagnosis, administration, and purchase of the drug. In this regard, Wales can be a good reference. Modeling Scotland, Wales has made emergency contraceptive pills available at local pharmacies so that women within the first nine weeks of pregnancy can take it at home without visiting a doctor.[17] While addressing the issue of medicine-based abortion, it is necessary to resume the discussion of emergency contraceptive pills, which was left unresolved in discussions in 2016. The emergency contraceptive pill has a different purpose from general oral contraceptives, with the former only taken for emergency purposes. Although it contains a higher dose of hormones compared to general oral contraceptives, a number of countries have classified it as an OTC drug in order to increase its accessibility since it is the final method that can be used to prevent an unwanted pregnancy. In addition, a number of studies have reported that side effects and other safety issues can be prevented simply with proper instructions from a pharmacist on administration.

There may be many other related issues. However, it is important to remember that no woman wants a dangerous abortion. A safe medical system needs to be established in order to provide information, education, and counseling on safe abortions. This needs to be accompanied by efforts to eradicate social prejudices and stigmas against abortion. To this end, the criminal status of abortion should be reversed. In any revision of the Mother and Child Health Act or introduction of a new law (a sexual and reproductive health law), furthermore, it needs to be stipulated that sexual and reproductive health, including abortion, is a human right. A system to guarantee this right should also be implemented by law.

17) https://www.mk.co.kr/news/world/view/2018/06/411867/ (searching: 2019.2.14.)

D. Establishing a sexual and reproductive health law (or a women's health promotion law) and a national sexual and reproductive health plan (a comprehensive plan for the promotion of women's health)

As examined in this study, Ireland, Australia, and the US have in place sexual and reproductive health policies at the national level. Ireland has a national strategy for sexual health and Australia implemented a national policy on women's health for the first time in the world 30 years ago and has sustained the policy ever since. The US includes sexual and reproductive health in its national health plan and the Centers for Disease Control and Prevention (CDC) compiles a vast amount of information, resources, and data on relevant policies.

Considering its legal and policy environment, South Korea may choose to focus on sexual and reproductive health as in the case of Ireland by expanding the coverage of women's health in general and including sexual and reproductive health as a component. Alternatively, it may follow the US model and include sexual and reproductive health in the existing national health promotion plan as a major health index subject to regular monitoring.

The ideal and most effective strategy would be the establishment of a comprehensive plan for the promotion of women's health. As briefly discussed ahead, this is because sexual and reproductive health spans many other health areas, is a critical part of women's lives, and affects the health and quality of older women after menopause.

In regard to the establishment of the plan, the following principles should be considered. First, it needs to be women-centered. Women should participate and their experiences should be reflected in the plan. Women need to play a key role as the owner of their health. Respect

for women, safety, and health should be top priorities. Second, it must address diversity. Apart from the discrimination and inequality suffered by all women in society, the experiences of each woman differ by age, social status, race, language, sexual identity and orientation, and disability. These differences can prevent women from enjoying the highest attainable standard of health. Hence, the plan should take into account not only women as a whole, but also their diversity of experience. This is in line with the previous suggestion that, rather than focusing on "normal" families, sexual/reproductive health policy should be inclusive and cover all lifestyles and choices. The third principle is equality. While equality should be a universal standard in any government plan, gender equality is particularly important. Equality for all, including women, men, sexual minorities, and the disabled, should be pursued in the implementation and outcomes of a plan. Fourth is the consideration of sociocultural and economic aspects. In addition to diversity and equality, women's sexual and reproductive rights are affected by sociocultural and economic factors. Lastly, the plan should be based on the latest scientific evidence. As mentioned above, the needs of different groups should be identified, and for this, the latest data should be compiled through ongoing research and be used in establishing long-term plans.

### E. Establishing a comprehensive anti-discrimination law that includes sexual and reproductive health and rights

Article 11(1) of the Constitution stipulates that 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. In reality, however, women experience discrimination and inequality in a number of areas of their sexual and reproductive health, including

in legal, institutional, and sociocultural fields. The international community recognizes sexual and reproductive health as a human right and emphasizes that state parties should strive to eliminate all forms of discrimination and inequality that obstruct the realization of this right.

In this regard, a comprehensive anti-discrimination law needs to be established. The need for this law has been discussed and a bill proposed on a number of occasions, but it has failed to be adopted. Since 2007, multiple UN bodies, including the CEDAW, Committee on the Elimination of Racial Discrimination (CERD), Committee on the Rights of the Child (CRC), CESCR, and HRC, have recommended that the South Korean government adopt such a law.[18] In this context, it is appropriate for sexual and reproductive rights to be included in a future anti-discrimination law.

F. Reviewing and revising other laws, institutions, and regulations that conflict with sexual and reproductive rights.

As in the existing Criminal Act and the Mother and Child Health Act, discriminatory and unequal components may be found in other laws and institutions. The same goes with regulations and guidelines. Below, we will briefly discuss some recent issues and suggest points for improvement.[19]

Contraception is addressed in Article 12(2) of the Mother and Child Health Act. As discussed previously, contraception needs to be approached with a focus on the right to safe sex and pregnancy. The existing law, however, simply considers contraception from the perspective of the prevention of abortion. A number of circumstantial factors can lead to abortion, and the choice and availability of contraceptive methods is indeed

18) http://hotline.or.kr/policy_proposals/25145 (searching: 2019.2.14.)

19) Along with more detailed analyses in regard to the issues discussed here, further research is needed on the laws and regulations that are not covered in this paper.

one of them. According to a study, 16.2% of respondents failed to use contraception during intercourse because they did not have a contraceptive device handy (Kim et al., 2018). This result points to the issue of access to contraceptive methods. Following controversy over the use of the emergency contraceptive pill, it has been classified as a prescription drug requiring a doctor's approval prior to purchase. The requirement for a prescription for this medicine, which must be taken within 72 hours of sex, can be a socio-psychological barrier to not only married women, but also to girls and unmarried women. According to other research, 25% of women who used the pill purchased it without a prescription. This number includes those who procured it through the black market. In this study, the pills purchased through the black market were found to be more likely to fail at preventing pregnancy compared to those purchased with a prescription (Kim et al., 2014). This finding indicates that the classification of the emergency contraceptive pill as a prescription drug is restricting women's access to it. In our survey, over 85% of both male and female respondents stated that the emergency contraceptive pill should be available for purchase at local pharmacies without a prescription. Another issue that needs to be examined in terms of access to contraception is condoms for men. As discussed above, specialized condoms are classified as objects harmful to juveniles. However, teenagers often use online vendors in order to avoid social stigma, but many online vendors prohibit the access of minors to all condoms without differentiating between general and specialized condoms. Condoms are important not only as a contraceptive device, but also as a means to prevent STDs. Restricting teenagers' access to condoms is restricting their right to sexual health. In addition, restricting certain types of condom to adults infringes on teenagers' sexual rights. Such restriction can push teenagers further toward unsafe situations.

The next issue that we wish to discuss is menstrual hygiene materials. If the Korean Women's Environmental Network had not publicized the issue of harmful substances used in menstrual hygiene products in 2017, women's menstruation might still not have been socially recognized as a human right in South Korea. In regard to this issue, civil society has fought hard against the government in order to protect the right to health stipulated in the Constitution. Not only is listing all the ingredients used in the products a fundamental requirement, but so is disclosing relevant information about each ingredient in a way that general individuals can understand. Among the controversy over menstrual hygiene products, the demands for safer choices such as menstrual cups have increased. Women also demand that all the relevant information on the safety of menstrual hygiene supplies be displayed so that they can choose safe products based on their physical and circumstantial needs. By establishing strict safety standards to protect women's health rights, the government (Ministry of Food and Drug Safety, Ministry of Environment, etc.) should perform interventions, including safety assessment and monitoring, in the manufacturing of menstrual hygiene products. In our survey, over 96% of respondents in both male and female groups agreed that the safety of menstrual hygiene supplies needs to be overseen by the government. Another point regarding this issue is related to the story of a girl with "insole sanitary pads" reported in 2016. An underprivileged girl who could not afford to buy menstrual products used old shoe insoles as sanitary pads. Since this time, local autonomous bodies have introduced subsidies for menstrual materials. One of these programs is the provision of vouchers with which teenage girls can buy menstrual supplies. Despite such efforts, however, there remain gray areas. It is necessary to strengthen social security by placing free menstrual supplies in schools and public

offices and thus improve their availability for the underprivileged. Over 77% of our survey respondents in both the male and female groups agreed about the need for providing free menstrual supplies (and over 80% agreed with the need to reduce their prices). Menstrual hygiene supplies should also be placed in shelters and support centers for adolescents and facilities for the underprivileged, including for the disabled and homeless. Users of such facilities should be able to select from a diverse range of product types based on their needs and preferences. Given that most women experience menstruation and require menstrual hygiene supplies, the existing partial VAT exemption applied to menstrual supplies should be replaced by a full VAT exemption (zero tax rate). Price is a critical factor in accessibility. Menstrual hygiene products are daily necessities for women. Examining if it is reasonable to leave the pricing solely to the market and how price adjustments might affect product qualities in terms of women's health, the government will need to take an active role as a mediator between consumers and producers.

Next is assisted reproductive technology (ART), including artificial and in-vitro fertilization. As examined in the case studies of overseas countries in this research, the US CDC performs its National ART Surveillance and manages a list of fertility clinics around the country. It also provides consumer-oriented information that includes, but is not limited to what patients need to know before using such service, lists of fertility clinics around the country, and awareness on single-embryo transfer. Australia has a law regulating ART along with a supervisory organization and ethical guidelines. This supervisory body monitors the practices of fertility clinics through a reapproval system, regular reports, and field inspections. The country also maintains ethical guidelines for professionals and organizations in the ART field. Ireland is in the process

of establishing a law to regulate the ART sector as well. The pertinent bill includes a plan to establish an independent oversight body. South Korea is making an ongoing effort to standardize quality across fertility clinics through the Health Insurance Review and Assessment Service and to provide the public with related information through government websites, including bokjiro.go.kr. When it comes to information on applicant qualifications and support for government support programs, however, it is insufficient for fulfilling the information needs of users compared to what is being provided by overseas governments. Furthermore, there is no clear direction on how to guarantee patient health and rights. In this respect, an independent body should be established to oversee the practices of the ART field and the provision of information on infertility in general. A further issue that needs to be considered in relation to ART is single-embryo transfer. Australia has in principle a policy on single-embryo transfer in order to reduce the chance of multifetal pregnancy and subsequent potential health risks to the mother and the fetus. An increased number of embryos is allowed only in the case of repeated failures. For instance, the number of fresh embryos is restricted to one for women under 35 years old on the first attempt and maximum of two for women aged 38 or older. In addition, selective abortion is allowed in order to prevent super ovulation. The US CDC recommends single-embryo transfer and permits selective abortion. Sweden, Japan, and New Zealand also restrict the number of embryos to one or at most two. This restriction to single-embryo transfer is due to an emphasis on the safety and health of the mother and the fetus. Studies have shown that there is little difference in the success rate between single-embryo and multiple-embryo transfer (Hwang, 2015: 65-67). In 2015, South Korea reduced the allowed number of embryos to up to two for women

under 35 years old and three for those age 35 or older.[20] However, it continues to endorse multiple-embryo transfer. The goal of infertility treatment is successful pregnancy, and the number of embryos transferred is in fact not necessarily linked with the success rate. Rather, it can actually pose a health risk to the patient (Hwang et al., 2016: 172). The number of embryos transferred should be regulated in this regard, but a thorough review of the practice is needed in consultation with patients and relevant organizations.

Here, we have briefly discussed issues that can have a negative impact on women's sexual and reproductive health and rights, especially in the areas of contraception, menstrual hygiene supplies, and assisted reproductive technology. Since there may be similar problems in other areas, however, a thorough review of related laws and regulations are required. Drawing upon this review, it is hoped that gradual progress can be made in women's sexual, reproductive, and overall health rights across all laws, institutions, regulations, and guidelines.

### G. Establishing a cooperation system among ministries for the promotion of sexual and reproductive health and rights and as a channel for communication with citizens

As discussed above, South Korea has yet to establish a law on sexual and reproductive health. Currently, relevant policies are being implemented based on fragmented elements in laws. Various ministries, including the Ministries of Health and Welfare, Education, Justice, Employment and

20) http://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR_MENU_ID=04&MENU_ID=0403&page=1&CONT_SEQ=325206&SEARCHKEY=TITLE&SEARCHVALUE=%EC%B2%B4%EC%99%B8%EC%88%98%EC%A0%95+%EC%8B%9C+%EC%9D%B4%EC%8B%9D+%EB%B0%B0%EC%95%84+%EC%88%98+%EC%B5%9C%EB%8C%80+5%EA%B0%9C%EC%97%90%EC%84%9C+3%EA%B0%9C%EB%A1%9C+%EC%A4%84%EC%9D%B8%EB%8B%A4 (searching: 2019.2.13.)

Labor, and Gender Equality and Family, pursue policies on sexual and reproductive health. However, these ministries hold different perspectives on this issue. In regard to repealing the criminality of abortion, the Ministries of Justice, Health and Welfare, and Gender Equality and Family all take different standpoints. What is necessary is that all relevant laws, institutions, and policies be focused on the protection of sexual and reproductive health and rights as the human rights of women.

In this regard, it is recommended that a permanent cooperative body be established in order to promote cooperation among relevant ministries. Using this channel, ministries could collect opinions from the public, take part in discussions, and jointly create legal and institutional solutions. Such a government body would play an important role in devising the necessary measures to respond to the Constitutional Court's ruling and beyond, as well as ensuring communication with general citizens and civil society.

## 3. Provision of education and information on sexual and reproductive health and rights

### A. Creating an environment conducive to a mutually consensual and respectful culture of sexuality based on gender equality

When asked about men having sexual relations prior to marriage, over 80% of our survey respondents agreed that it was acceptable both at the personal and social levels. When it comes to women's sexual relations before marriage, however, the number dropped to 70% at the personal level and 60% at the society level. The number fell further among female respondents. As to the statement that women can decide on pregnancy and the number of children to have, over eight out of ten respondents agreed at the personal level but only 3-4 agreed at the society level. This

result indicates that women's sexual and reproductive rights are viewed more critically than men's at the society level. Social prejudices and negative perceptions can pressure women to make decisions counter to their own preferences. In the process of making this choice, women may also risk their safety and health.

The sexual and reproductive health of women is often not protected as a human right in a patriarchal society, and South Korea is no exception. A significant number of South Korean women, regardless of their age, marital status, or socioeconomic strata still experience discrimination and violent sexual relations from an intimate partner. According to our survey, two out of ten women had arguments with a partner over unwanted sex and one of ten women experienced emotional, verbal, and/or physical abuse from a partner or were compelled to participate in unwanted sex due to a partner's violence. While this kind of problem is caused by unbalanced power relations between men and women, it is not restricted to sexual relations. Unbalanced power affects women's autonomous decisions over the entire course of reproduction, including contraception, pregnancy, and infertility treatment.

Consent is a prerequisite for any kind of sexual activity between intimate partners, including married couples. Sex without mutual consent is violence, but this fact is often overlooked because of the social perception it is a marital duty to accept a spouse's request for sex even when it is unwelcome. In our survey, 41.3% agreed to the statement that intimate partners not having sex indicates a relationship problem. A reluctant "yes" means "no." "Yes" under the influence of alcohol or drug means "no" as well. Sexual consent is an autonomous verbal and/or behavioral expression of willingness to engage in sexual activities with the other person. It is important for women to protect themselves, to be respected

in their sexual autonomy, and to avoid unwanted pregnancy and STDs. According to a survey, women who engaged in unwanted sex due to strong gender stereotypes were more likely to contract STDs than those who did not (Kim et al., 2017: 274-276).

Therefore, it is important to create a gender-equal environment across all areas of society. In terms of sexual and reproductive health in particular, this can start with two intimate partners and then gradually expand to include their surrounding environment. A shift toward a society where sexual consent and communication take place based on gender equality will not be achieved simply through individual efforts. The entire society needs to become aware of its importance and proactively participate in the effort. Correcting inappropriate sexual perceptions should be part of the connected efforts. For this goal, gender-sensitive sexuality education, counseling, and information should be provided based on different life stages in a continuous and varied manner so that gender equality becomes part of daily life.

B. Securing the right to access evidence-based information as a means to strengthen women's rights to health and self-determination regarding sex and reproduction

Evidence-based information is critical for securing women's rights to choice and to make decisions in the area of sex and reproduction. It is also related to women's right to health.

According to our survey, the level of women's awareness of sex and reproduction was so low that, outside of menstruation and contraception, women did not know much about their body during childbearing age, including pregnancy, childbirth, abortion, and menopause. Those who did

have some information obtained it mainly from online channels such as online communities, social media, and YouTube. As for contraception, a significant number of men and women replied that they know of the available types and their effects. However, a number of them had inaccurate knowledge about contraception, such as the efficacy of the calendar and withdrawal methods, reporting that they frequently use these means for contraceptive purposes. Not all online sites provide accurate information, and they could mislead people into making an unsuitable choice.

In this sense, the provision of accurate evidence-based information seems essential. Our survey proved the positive effect of sexuality education in adulthood. Although the number of people who received sexuality education in adulthood was small, those who did so were more likely to use effective modern contraceptive methods compared to peers who relied on the calendar and/or withdrawal. Despite the importance of contraception in preventing unwanted pregnancy and STDs, a lack of awareness prohibits the full employment of sexual and reproductive rights. Proper knowledge and practice of correct contraception is critical to both men and women. In order for women to fully exercise their rights to sexual autonomy and reproductive decision-making, in particular, it is important to provide them with a basic level of education and evidence-based information regarding this issue. Information is a fundamental right that should be guaranteed in ways that meet the needs of different life stages.

### C. Providing mandatory, comprehensive, gender equality-based sexuality education over the entire life course

Here, we will discuss some details of comprehensive sexuality education as part of the right to access evidence-based information. As

shown in this study, the rate of young adults experiencing sexual relations has been increasing steadily, and the age of first sexual experience is lowering. Although the proportion of those who become pregnant is low, 80% of pregnant girls receive an abortion. The rate of those who use contraception is very low. However, over 90% of students reported that they had received sexuality education at school. This low rate of contraception and the problems of unwanted pregnancy and abortion indicate that the sexual and reproductive health and rights for adolescents are at risk. According to a recent survey of middle school students (Cho et al., 2018: 155-156), they already hold entrenched gender stereotypes. In the case of male students in particular, gender stereotypes were closely linked with sexual desire and misperceptions of sexual violence and prostitution. The researchers in the study concluded that sexuality education in schools should aim at promoting an understanding of gender and use gender-sensitive content and delivery methods.

The International Technical Guidance on Sexuality Education, which has been recently revised by UNESCO in cooperation with UNAIDS, UNFPA, UNICEF, UN Women, and WHO, underlines the importance of comprehensive sexuality education in preparing young people for a safe, productive, and fulfilling life in a society challenged by sexual and reproductive health issues including HIV/AIDS, STDs, early pregnancy, gender-based violence, and gender inequality (UNESCO et al., 2018: 12). The existing standards for sexuality education need to be replaced by comprehensive sexuality education aimed at helping male and female teenagers establish healthy relationships and respect each other's right to sexual consent and self-determination. They should focus on protecting the sexual and reproductive rights of those who use modern contraceptive methods from social prejudices and traditional gender norms. In addition,

counseling and education should be provided to young people outside the school setting so that they can learn to respect sexual consent in equal relations and use reliable contraceptive methods for safe and healthy sexual relations. For this goal, various community resources, such as sexuality centers for teens, OB-GYN clinics, pediatric clinics, and public clinics, can be utilized by strengthening their networks. These networks can be also useful for lowering potential barriers for teenagers outside the school environment in accessing necessary information.

Comprehensive sexuality education is required for adults as well. According to our survey, about 25% of total respondents received sexuality education during adulthood. The remaining 75% did not undergo any such education. Less than 10% received sexuality education within the past three years, and the rate was lower among older individuals. Statistically, 60-70% of those in their 20s, 90% of those in their 30s, and over 95% of those in their 40s experience sexual relations. In other words, most people engage in sexual relations in earnest after they enter adulthood, but few places offer sexuality education for adults. Some universities provide sexuality education as an elective course, but the number is declining.

Sexuality education is necessary and important for adults since although most of them experience sex, they still find it difficult to plan pregnancy and choose appropriate contraceptive methods. They are also not proficient in communicating about sex and unfamiliar with the concept of sexual consent. In addition, many women lack awareness of the fact that they can decide the timing and termination of pregnancy. In the case of those who received sexuality education in adulthood, the rate of those using modern contraceptive methods was highest among those who received such education within the past three years. They were

also more likely to exercise their sexual rights, respect their partner's sexual needs, and believe that women have the right to determine the timing and termination of pregnancy. This finding indicates the importance of sexuality education in adulthood. In our survey, 96.4% of respondents agreed that adults require sexuality education.

In that case, we need to discuss how such education should be delivered. For college students, colleges/universities may include education on sexual and reproductive health and rights in the curriculum and require new students to take sexuality education. With company workers, sexual and reproductive health and rights can be included in the training programs provided by the Korea Occupational Safety and Health Agency and the National Health Insurance Service. The subject can also be dealt with during the mandatory sexual violence prevention education for company workers. In this case, the subject may be appended to the program in a scaffolding manner. In our survey, about a quarter of respondents wanted sexuality education for adults to be provided in the workplace. When it comes to unemployed women and job seekers, community organizations such as public clinics, community centers, welfare centers, or corporate resources in partnership with local enterprises can be used. In the process of designing the program, it is important to take into account the right to equal access in different regions and demographic groups. Lastly, a dedicated website or YouTube channel can be created to provide sexuality education customized to different stages of life for those who prefer online access. According to our survey, the internet was the preferred channel for the delivery of sexuality education, with 37.7% selecting to it.

D. Reinforcing education on bodily integrity and sexual diversity and education on sexual and reproductive health for vulnerable groups

In regard to the comprehensive sexuality education discussed in the previous section, we suggest that greater attention should be paid to sexual consent and sexual diversity. According to our case studies, Ireland introduced high-quality sexuality education early on by establishing a national sexual health strategy based on the rights endorsed by the UN and WHO. The country is currently undertaking the development of a new curriculum with a focus on sexual content, contraception, and healthy and positive sexual relations. Australia includes content on sexual and reproductive health and rights, including contraception, sexual consent, and STD prevention, in its sexuality education curriculum. As a main subject of the revised International Technical Guidance on Sexuality Education, UNESCO highlights bodily integrity, which refers to the inviolability of the physical body, along with sexual consent. It also emphasizes the need to strengthen education on sexual and reproductive health (UNESCO, 2018: 35-36).

According to our survey, a great number of women had an experience with not being respected in their needs and decisions by their partners and of violation of their right to be free from intimidation and violence. For instance, 27.8% of women said that at least one attempt had been made to force them to have sex against their will. Seven percent had the experience of agreeing to sex because their partner had become angry with them. The experience of the violation of sexual rights was observed regardless of marital status. We also witnessed that vulnerable demographic groups, including adolescents, the disabled, sexual minorities, and prostituted women, are denied their sexual rights in South Korean society.

In this regard, it is necessary to raise awareness of the importance of sexual rights, including sexual consent, bodily integrity, and sexual diversity, by providing proper education from childhood and throughout the entire life course. However, the government's standards on sexuality education have been criticized for content that reinforces gender stereotypes and roles, excludes sexual diversity and diverse types of families, and strengthens misconceptions on sexual violence (Hwang et al., 2017: 110). The government recently announced a plan to revise the standards on school sexuality education. These criticisms should be reflected during this revision process.

E. Strengthening education on the practice of and the right to access contraception as a human right

The purpose of contraception is clear: the prevention of unwanted pregnancy. Unless pregnancy is planned, it is important to use contraceptive methods. However, the rate of practicing contraception in South Korea is very low compared to in other countries. A great number of people who experienced unwanted pregnancy stated that they did not know that they could get pregnant so easily if they did not use contraception (Kim et al., 2018: 63-64). This is not simply women's problem. In many cases, men are reluctant to use certain contraceptive methods. Survey respondents chose the calendar and withdrawal as the most common methods, but those are not contraceptive methods in the fullest sense (Kim et al., 2018: 64-65). Our survey also found that about 10-20% of women experienced unwanted sex with a partner due to a prevailing social conception that equates love with sex, and about half of the women felt they could not demand that their partner use condoms. These results show how women's rights to choose contraception and to request

their partner to use contraception are being violated. Practicing gender equality-based contraception is very important from the perspective of human rights, and this needs to be emphasized in sexuality education.

As examined in this study, a number of countries have established a policy to promote the continued and effective practice of contraception by providing information on various contraceptive methods and helping people make informed choices. In order to increase the accessibility of condoms, they are exempted from tax or provided free of charge through a variety of channels. Other contraceptive methods can only be used upon a doctor's prescription to ensure that they are applied in an accurate and safe manner. In order to promote affordable contraception for the underprivileged, subsidy programs are in place or private insurance can cover the cost of contraception. In the case of the US, contraception service is provided as part of family planning services. Information on various contraceptive methods is offered through counseling and education in order to help people make informed decisions on contraception. As suggested in these overseas cases, it is important to provide information on diverse contraceptive methods so that people can choose the methods that best suit their needs.

### F. Including counseling and education on menstruation and sex in the school medical check-up program

As quality of life improves, the rate of precocious puberty is rising among South Korean children (Rhie et al., 2015: 1,138). The age of menarche is lowering. In this regard, menstruation health needs to be included in the school health checkup program, which starts from the fourth grade. Education and counseling on menstruation can be offered to girls who have had their first period, while those who have not can

learn about the signs of the first period and how to manage it. At the same time, the educator needs to identify the needs of individual girls and provide support so that they do not suffer from internal or external prejudices. Items related to menstruation need to be included in the diagnosis questionnaire used by healthcare professionals. This will help raise awareness of the importance of menstruation and sex in the health management of children and adolescents among teachers, parents, communities (medical professionals), and governments. The questionnaire can also be used to identify at-risk groups in terms of menstruation-related health and knowledge and provide them with accurate information. The practice of the Department for Education of South Australia is a good example. On its website, the department sets menstrual health as a separate menu in order to provide both general information on menstrual management and education materials on menstrual management and endometriosis, menstrual cramps and endometriosis, PMS, sustainable period products, and health support. In addition, counseling and education on menstruation and sex, with an emphasis on contraception, sex, and other sex-related information, can also be provided to 12-year-old girls when they visit doctors for a free HPV vaccination.

G. Raising awareness of the need for sexual and reproductive health management and enhancing public campaigns to eradicate social prejudices against sex and reproduction

According to recent studies (Kim et al., 2017), the rates of diseases of the reproductive system and STDs are increasing among both men and women. However, the rate of those receiving treatment is relatively low due to a lack of awareness of its necessity. This has been confirmed in our survey as well. Those who agreed to the statement “One should

see a doctor even for a minor reproductive system disease or STD or when abnormal symptoms are experienced" were more likely than their counterparts to visit doctors when they had problems.

Among the reasons for not visiting the doctor is social prejudice. In our survey, the second-most common response as to reasons for not seeing a doctor for reproductive system diseases or STDs, after the answer that the symptoms were minor, was "due to social prejudices." Eradicating this social barrier will require public campaigns and education to correct erroneous perceptions. For instance, the US CDC runs the Get Tested campaign that encourages people to be tested and treated for STDs. This campaign has a number of programs, one of which is a national STD testing day that provides free testing for people 13-64 years of age.[21] This program, which encourages people to take the test together with their partners, appears to help people understand the importance of mutual respect and consent in their sexual relations and gain knowledge on how to establish safe and healthy relations.

## 4. Promotion of the quality of public health resources and accessibility in order to guarantee sexual and reproductive health and rights

### A. Providing medical services to secure women's right to safely terminate pregnancy

The right to terminate pregnancy is one of the major indicators used to compare countries on their level of respect for women's human rights. Over 80% of OECD member nations allow abortion for social and economic reasons, and about 70% permit abortion simply upon the

21) Centers for Disease Control and Prevention. https://npin.cdc.gov/nhtd (searching: 2018.2.27.)

pregnant woman's request (Kim et al., 2014: 32-34). South Korea is one of the few OECD countries that restrict legal abortion to limited cases. Guaranteeing women's right to terminate pregnancy is a general trend among developed countries based on the recognition that the criminalization of abortion prevents women from accessing safe abortion services and follow-up treatment. The stringent restriction of access to professional medical services is at odds with international human rights standards.

However, simply decriminalizing abortion is insufficient to fulfil the mandate of human rights as dictated by the international community. The government should take concrete measures to ensure the quality of abortion services, which would include the removal of legal, policy, financial, and other barriers (including a mandatory waiting period and permitting abortion based on a third party's request) that block women from receiving safe abortions. Women should also be able to access evidence-based scientific information on abortion. Safe abortion services need to be guaranteed in accordance with WHO abortion guidelines. Counseling should not be a prerequisite for abortion services, especially biased counseling intended to influence a woman's decision prior to abortion. Guidelines on counseling and medical services will need to be established based on careful reflection on these problems. The government should also review the idea of covering the medical costs involved through the national health insurance, as is practiced in some countries (Kim et al., 2014: 45-46).

Meanwhile, the international community advocates that conscientious objection by medical practitioners, particularly to sexual and reproductive treatment, can be restricted by law since it could pose a danger to the woman in the case of abortion. For instance, the European Court of Human Rights ruled that a pharmacist's refusal to sell contraceptives

based on religious beliefs cannot be justified since religious beliefs can be expressed in a number of ways outside of the profession and women's right to access sexual and reproductive health services should not be compromised due to medical professionals' refusal to provide treatment based on personal or religious beliefs (Hoctor et al., 2017: 60).

B. Expanding quality public health resources for the promotion of sexual and reproductive health and implementing a delivery system

Securing the right to health regarding sex and reproduction can mean taking various actions, ranging from engaging in mutual respect and communal practices at the individual level to the creation of conducive environments at the local and national levels. Given that medical intervention is essential for the promotion of sexual and reproductive health, expansion of quality health resources and implementation of a delivery system are critical.

Beginning from areas with insufficient health facilities and professionals, an effective and efficient system needs to be implemented at the regional and national levels in such a way that anyone can access public health resources regardless of their region or social status. For this, medical insurance coverage should be expanded by revising insurance fees. A system for emergency service is also needed in order to provide quality care to those in emergency situations.

A woman with an unwanted pregnancy needs to make a careful and difficult decision as to whether she is going to have the baby, hand over the baby for adoption, raise the baby herself, or terminate the pregnancy. If she decides on abortion, she needs to learn where she can receive the

service and what the implications are, including possible complications. Therefore, a reliable channel for information and counseling is needed (Yoon, 2013: 9). Countries with legalized abortion provide counseling and information to women through several different means including: mandatory professional counseling before abortion; requiring two or more medical practitioners to participate in the surgery; requiring one medical professional for counseling and another for surgery; or requiring non-medical practitioners such as social workers to become involved in the process (Yoon, 2013: 9; Kim et al., 2014: 40-43). What is important is that the goal of providing this information and counseling is to help the woman make an informed decision through a clear and careful reflection on her situation, not to further complicate her decision (Yoon, 2013: 9). As discussed previously, pre-abortion counseling should be made available upon the woman's request, not as a mandatory requirement. The international community makes it clear that counseling before abortion or biased counseling should not be required. This means that women's choice and decision should be prioritized and women should not be misdirected during the process of reflection. This must be taken into consideration when developing counseling and service delivery systems.

Some medical practitioners exercise their right to conscientious objection for sexual and reproductive services. However, international human rights standards call on them to ensure access to such services, including abortion. Since continued or repeated refusal of treatment could pose a health risk to the woman, the government should keep in place an effective medical system to minimize this risk. One idea is the installation of a call center to refer patients to clinics that provide the needed services. Public medical institutions should be banned from

exercising conscientious objection if possible in order to maximize the opportunities for women to directly access the services they require. The government can establish an oversight and monitoring system in this regard.

Furthermore, it is necessary to consider the training of abortion specialists. Due to the decades-long illegality of the process, abortion techniques are not included in the curriculum, training, and internships of medical schools. Hence, most OB-GYN specialists only obtain the required knowledge and techniques once they start practicing in the field. Regardless of the illegality of abortion, the right to health should be protected for all. In this regard, training on abortion (including medicine-based abortion) should be included in the curriculums of medical schools. Additionally, relevant laws and systems need to be revised in order to permit abortion through medicine, such as via mifepristone (Kim et al., 2018: 58-59). Because of Article 269(1) of the Criminal Act, which defines the criminalization of abortion by drugs and other means, medicine-based abortion is punished even if in the case of a legal exclusion as defined in the Mother and Child Health Act. Therefore, the Mother and Child Health Act needs to be revised to allow medicine-based abortion cases of exclusion. When revising the law, the Ministry of Food and Drug Safety needs to consider the introduction of mifepristone (which is currently banned) and prepare a system to manage the proper use of the medicine. The goal of the provision of various medical services, including medicine, is to further strengthen women's right to choice.

C. Respecting women's right to childbirth and improving the quality of maternal-child health services

The international community underscores the importance of respecting women's right to childbirth and providing quality medical services and asks state parties to guarantee high-quality healthcare to pregnant women, including pre- and post-natal health management and emergency services (Hoctor et al., 2017: 60). Toward this goal, state parties should strive to identify and remove barriers that discriminate against certain demographic groups accessing maternal-child health services and/or exclude them from certain medical treatment (Hoctor et al., 2017: 60). It is also necessary to ensure that measures implemented to address the pertinent barriers (e.g. cost reduction) do not negatively affect the quality of health management and that every woman who needs such services receives non-discriminatory and equal treatment from healthcare professionals (Hoctor et al., 2017: 61). Women should also be allowed to provide informed consent and decisions at all stages of pregnancy, in childbirth, and for related services, and medical interventions should not be made without a woman's full consent (Hoctor et al., 2017: 61). Lastly, all forms of discrimination, verbal abuse, or sexual harassment against women during pregnancy, childbirth, and the process of receiving maternal-child health services should be prohibited and eradicated.

# References

Bae, Eun-Kyung(2012). The reproduction of human beings in Korea. Time travel.

Cho, Young-Ju, Dong-Sik Kim, Yun-Young Nam-Gung and Hye-Kyong Lee(2018). A study on demand survey on sexuality education for youth. Korean Women's Development Institute.

Hwang, Jisung(2018), "A healthy stat and eugenic bodies," in Battleground: sexual and reproductive politics around the criminal codes on abortion in South Korea, Humanitas.

Hwang, Jung-Im, Dong-Sik Kim, Gawon Chung, Soo-yeon Jung and Hyeon-Seung Ko(2017). A study on reality and development plan for Youth Sexuality Culture Center. Ministry of Gender Equality and Family.

Hwang, Nami(2015). "Improving National Support Program for Infertile Couples for the Promotion of Maternal and Neonatal Health." in Health and welfare policy forum vol. 224. Korean Institute for Health and Social Affairs. pp.61-72.

Hwang, Nami, Suehyung Lee, Seungmi Park, In Sun Jang, and A-ram Kang(2016). An assessment of the national support program for infertile couples and analysis of the cause of infertility in 2015. Ministry of Health and Welfare·Korean Institute for Health and Social Affairs.

Kim, Chae-Youn(2018), "Termination of pregnancy as a women's right," in Ewha Journal of Gender and Law 10(2)(2018.8)., Ewha Women's University Institute for Gender and Law, pp.213-250.

Kim, Dong-Sik, Jung-Im Hwang and Cheyon Tong(2018). A survey on women's perception and experience of induced abortion. Korean Women's Development Institute.

Kim, Dong-Sik, Jung-Im Hwang, Young-Taek Kim, Young-Jee Woo and Da-Eun Jung(2017). Gender inequalities in health: focusing on sexual and reproductive health(Ⅰ). Korean Women's Development Institute.

Kim, Dong-Sik, Young-Taek Kim and Soo-Yeon Lee(2014). Debates and implications on contraception and abortion policy: focusing on women's reproductive health right. Korean Women's Development Institute.

Kim, Jeonghye(2018), "Legal issue and direction of the abortion rights," in An abortion criminal operation. Now, It's women's reproductive rights. : the discussion meeting on the improvements of the legal system for securing reproductive rights(2018.11.22.), Korean Women's Association United, pp.11-27.

_____(2019.5.16.). Meaning of abortion constitutional nonconformity and legislative tasks for securing sexual and reproductive health and rights. Policy committee and gender equality committee of Justice Party.

Kim-min, Moonjoung(2018), "Women's sexual and reproductive health and rights beyond abortion," in An abortion criminal operation. Now, It's women's reproductive rights. : the discussion meeting on the improvements of the legal system for securing reproductive rights(2018.11.22.), Korean Women's Association United, pp.40-50.

Lee, So-Young et al.(2019). 2018 survey of abortion. Ministry of Health and Welfare·Korean Institute for Health and Social Affairs.

Park, Sujean(2018), "Revision of the Mother and Child Health Law for Decriminalization of Abortion," in An abortion criminal operation. Now, It's women's reproductive rights. : the discussion meeting on the improvements of the legal system for securing reproductive rights(2018.11.22.), Korean Women's Association United, pp.8-15.

Rhie Young-Jun and Kee Hyoung Lee(2015). “Overview and treatment of precocious puberty.” in Journal of the Korean Medical Association 58(12), pp.1138-1144.

Woo-yu-nie-ge, Yiduru, Minkyung Lee and Hye Yoon Joung(2018). Journey for life. Baume â l'âme.

Yang, Hyun-ah(2018), “The Constitutional Decision on Abortion and the “Women’s Voice”: Relationship between Abortion Law and Women’s Decision,” in Korean journal of legal philosophy 21(1)., Korean Association of Legal Philosophy, pp.213-260.

Yang, Hyun-ah, Suk-gyung Lee, Young Mi Cho, In-Young Lee and Hee-Kyung Choi(2005). From abortion to reproductive rights. Think people.

Yoon Jungwon(2013). “The right to abortion and contraception as a health right is reconsidered.” Issue paper of the Center for Health and Social Change. http://chsc.or.kr/wp-content/uploads/2013/06/%EC%9C%A4%EC%A0%95%EC%9B%90_%ED%94%BC%EC%9E%84%EB%82%99%ED%83%9C%EA%B6%8C_20130605.pdf (searching: 2019.2.15.)

_____(2018). “Abortion from the View of Human Rights and Health Care,” in Battleground: sexual and reproductive politics around the criminal codes on abortion in South Korea, Humanitas.

Amnesty International(2012). Realizing sexual and reproductive rights: A human rights framework. Amnesty International Ltd. Peter Beneson House 1 Easton Street London, United Kingdom

Barry(2018). Abortion at or over 20 week’s gestation. Congressional Research Service.

Hoctor L, Lamackova A, Thomasen K.(2017). Women's sexual and reproductive health and rights in Europe. Council of Europe Commissioner for Human Rights.

Joyce et al.(2006). The impact of state mandatory counseling and waiting period laws on abortion: a literature review. Guttmacher Institute

Kato-Wallace, J., Foss, A.(2016). Engaging Men and Boys for Gender Equality and Sexual and Reproductive Health and Rights. UNFPA, MenEngage Alliance, Promundo.

New Zealand Parliamentarians' Group on Population and Development(2015). Engaging Boys and Men in Sexual and Reproductive Health.

Starrs AM, Ezeh AC, Barker G, Basu A, Bertand JT, Blum R, Coll-Seck AM, Grover A, Laski L, Roa M, Sathar ZA, Say Lale, Serour GI, Singh S, Stenberg K, Temmerman M, Biddlecom A, Popinchalk A, Summers C, Ashford LS(2018). Accelerate progress - sexual and reproductive health and rights for all: report of the Guttmacher-Lancet Commission. Lancet, 391: 2642-2692.

UNESCO(2018). International technical guidance on sexuality education: An evidence-informed approach. http://www.unaids.org/sites/default/files/media_asset/ITGSE_en.pdf (searching: 2018.11.27.)

UNESCO, UNAIDS, UNFPA, UNICEF, UN Women and WHO(2018). International Technical Guidance on Sexuality Education: An Evidence-Informed Approach. UNESCO.

United Nations(1996). Report of the Fourth World Conference on Women. A/CONF.177/20/Rev.1. United Nations, New York. https://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/WPS%20A%20CONF177%2020%20REV1.pdf (searching: 2018.12.7.)

Centers for Disease Control and Prevention. https://npin.cdc.gov/nhtd (searching: 2018.2.27.)

Constitutional Court of Korea. http://search.ccourt.go.kr/ths/pr/selectThsPr0101List.do (searching: 2019.1.31.)

General Assembly resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women. https://www.ohchr.org/documents/professionalinterest/cedaw.pdf (searching: 2019.2.13.)

http://biz.khan.co.kr/khan_art_view.html?artid=201805280600005&code=920401#csidxeecc6ba61ac562ab78ef41c724422ab (searching: 2019.1.30.)

http://hotline.or.kr/policy_proposals/25145 (searching: 2019.2.14.)

http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_S1Q8I1S2P1Z0S1E6O3U7S3Y9A4W8Y5 (searching: 2019.2.20.)

http://likms.assembly.go.kr/bill/billDetail.do?billId=PRC_U1U6W0G8X0Y1S1P5S3K4P3N3L6D1O9 (searching: 2019.2.10.)

http://www.ddaily.co.kr/news/article.html?no=168709 (searching: 2019.1.30.)

http://www.korea.kr/news/policyNewsView.do?newsId=148852575 (searching: 2019.2.20.)

http://www.mohw.go.kr/react/al/sal0301vw.jsp?PAR_MENU_ID=04&MENU_ID=0403&page=1&CONT_SEQ=325206&SEARCHKEY=TITLE&SEARCHVALUE=%EC%B2%B4%EC%99%B8%EC%88%98%EC%A0%95+%EC%8B%9C+%EC%9D%B4%EC%8B%9D+%EB%B0%B0%EC%95%84+%EC%88%98+%EC%B5%9C%EB%8C%80+5%EA%B0%9C%EC%97%90%EC%84%9C+3%EA%B0%9C%EB%A1%9C+%EC%A4%84%EC%9D%B8%EB%8B%A4 (searching: 2019.2.13.)

http://www.yonhapnewstv.co.kr/MYH20180828015100038/ (searching: 2019.1.30.)

https://ko.dict.naver.com/#/search?query=%EA%B6%8C%EB%A6%AC

(searching: 2019.2.14.)

https://www.kihasa.re.kr/web/news/report/view.do?menuId=20&tid=51&bid=79&ano=10778 (searching: 2019.2.14.)

https://www.mk.co.kr/news/world/view/2018/06/411867/ (searching: 2019.2.14.)

International Covenant on Economic, Social and Cultural Rights. Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A(XXI) of 16 December 1966. https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf (searching: 2019.1.23.)

National Assembly of the Republic of Korea. http://likms.assembly.go.kr/bill/main.do (searching: 2019.2.10.)

Wikipedia. Decree 770. https://en.wikipedia.org/wiki/Decree_770 (searching: 2019.1.25.)


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