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Korean Women's Development Institute

Legal system revision and improvement for the complete decriminalization of children and juveniles who are selling sex

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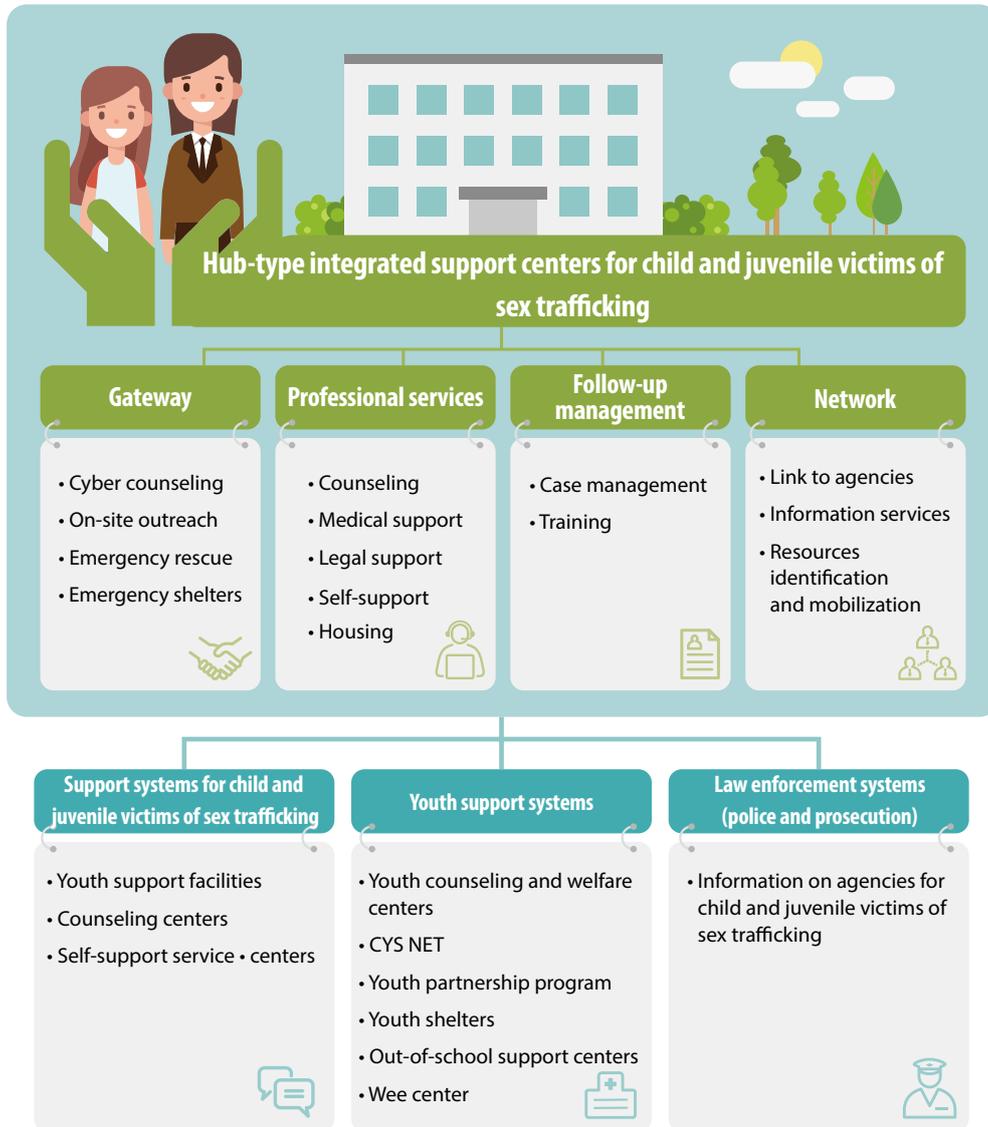


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Abstract

- This paper is designed to identify the status and issues of Korean laws and policies regarding children and juveniles subjected to sex trafficking, analyze foreign laws and policies concerning such children and juveniles, change target children and juveniles specified in the Act on the Protection of Children and Juveniles from Sexual Abuse into child and juvenile victims, delete provisions on protective dispositions for target children and juveniles, and present plans to establish integrated support systems for child and juvenile victims of sex trafficking.

Hub-type integrated support systems for child and juvenile victims of sex trafficking onsets



This paper aims to identify the status and issues of Korean laws and policies regarding children and juveniles subjected to sex trafficking, analyze foreign laws and policies concerning such children and juveniles, and present ways to improve such laws and policies.

In accordance with the Act on the Protection of Children and Juveniles from Sexual Abuse, child and juvenile victims of rape, indecent assaults, forced sex trafficking, and the production and distribution of youth pornography are considered as victims while children and juveniles subjected to sex trafficking are regarded as target children and juveniles, being treated differently than victims.

The government takes the position that children and juveniles subjected to sex trafficking are not subject to punishment but to protective disposition for their protection and rehabilitation. Protective dispositions are not deemed to be punishments but legal measures as stipulated in the Juvenile Act for the protection of children and juveniles. However, in reality, they have been recognized as punishments and used as a tool to prevent children and juveniles subjected to sex trafficking from reporting sex buyers to the police and for sex buyers to threaten such children and juveniles.

Legally, protective dispositions for children and juveniles are used to deal with young sex offenders who are 10 years old or older but younger than 14 (Articles 40 and 44 of the Act on the Protection of Children and Juveniles from Sexual Abuse). Therefore, they clearly belong to the category of legal measures against offenders. Against this backdrop, it is questionable whether such a position corresponds to the purpose of the Act on the Protection of Children and Juveniles from Sexual Abuse, which is to protect children and juveniles from sex crimes and to help them grow to become healthy members of our society.

Analyzing the problems of current laws and policies seeking a compromise between the victim and offender status of children and juveniles subjected to sex trafficking and reviewing reasons for them to acquire the complete status of victims and integrated support systems for the treatment and rehabilitation of such children and juveniles, this paper examines local and foreign laws and policies, identifies their implications, and presents ways to improve them.

Victim status of children and juveniles subjected to sex trafficking

Sex trafficking-related policies and the victim status of children and juveniles

- ▶ pursuant to the Act on the Punishment of the Arrangement, etc. of Sex Trafficking, target children and juveniles do not belong to sex workers as stipulated therein and are subjected to protective disposition. Protective dispositions are devised based on the premise that their acts belong to the category of crime.
- ▶ In terms of the current policies for target children and juveniles, the word 'target' implies that the law is not based on any understanding of children and juveniles subjected to sex trafficking, neither taking into account their victim status meaning that their healthy growth is destroyed nor reflecting their opinions.

Policies for children and juveniles that are subjected to sex trafficking and are victims thereof

- ▶ The superficial problem facing the legal system as a whole is that in the context of protecting children and juveniles from sexual abuse, the government does not focus on children and juveniles but on criminals when devising principles and guidelines. However, the fundamental issue is that the government fails to feel the need for protecting child and juvenile prostitutes from sexual abuse.
- ▶ Protective dispositions prescribed in the Juvenile Act are clearly part of the criminal punishments. However, the legal system leaves open the possibility of protective dispositions applying to children and juveniles as a favorable measure that exempts them from criminal punishments in terms of eradicating sex trafficking.
- ▶ Measures to eradicate sex trafficking should be implemented, targeting adults paying for sex with children and juveniles while top priority should be given to the protection of children and juveniles from sexual abuse, considering the objectives of the Act on the Protection of Children and Juveniles from Sexual Abuse.

The victim status of children and juveniles subjected to sex trafficking

- ▶ The current policies for the protection of children and juveniles from sexual abuse should be revised to focus on child and juvenile-centered measures

Status and issues of laws and policies regarding children and juveniles subjected to sex trafficking

Status and issues of protective dispositions for children and juveniles subjected to sex trafficking

- ▶ The number of children and juveniles subjected to protective disposition (, etc.) is small, with criteria for training orders from the police and the prosecution being vague.
 - The purpose of protective dispositions for children and juveniles subjected to sex trafficking is to ensure the protection and rehabilitation of children and juveniles through probation or the use of probation, training, and counseling. This is deemed to be reasonable but there are few cases where such measures are carried out. Therefore, plans to improve such a system need to be crafted.

- ▶ Different types of children and juveniles participate in training programs.
 - In accordance with the Act on the Protection of Children and Juveniles from Sexual Abuse, training and counseling programs for children and juveniles should operate for less than 40 hours. Pursuant to provisions stipulated therein, children and juveniles are sent to a Juvenile Court, receiving an order to participate in training programs. Or in case it is deemed to be inappropriate to send them to the Juvenile Court, prosecutors order them to take part in the programs or children and juveniles subjected to sex trafficking found and reported by the Police are led to participate in training programs. However, in reality, children and juveniles subjected to sex trafficking found and sent by the training centers for children and juveniles in crisis also take part in the programs.

- ▶ The effectiveness of training programs in which children and juveniles are led to participate via the police' report to the Ministry of Gender Equality and Family is found to be low.
 - The number of children and juveniles that the police report to the Ministry of Gender Equality and Family jumped from 117 in 2014 and 142 in 2015 to 223 in 2016. However, those completing the programs numbered 25 in 2014, 30 in 2015, and 57 in 2016. As a result, it is questionable whether the programs are effective.

<Table> Children and juveniles subjected to treatment and rehabilitation training in 2016

(unit: persons)

Classification	Sum	Mandatory training			Non-mandatory training					
		Sub-total	Court	Prosecution	Sub-total	Police	Training centers for children and juveniles in crisis	Counseling centers	Shelters	Schools
Reported	551	28	9	19	523	235	104	29	100	55
Participants	385	28	9	19	357	69	104	29	100	55
Completed programs	377	28	9	19	349	67	99	29	100	54

*In the case of the police and the prosecution, the number of those reported in the previous year is also included.

Source: p.187, Settlement report for the fiscal year 2016 managed by the Ministry of Gender Equality and Family, Gender Equality and Family Committee, National Assembly, August 2017.

Status and issues of protection and support systems for children and juveniles subjected to sex trafficking

- ▶ Pursuant to related laws, in terms of the protection of and support for children and juveniles subjected to sex trafficking, existing support systems for sex trafficking victims and children and juveniles should be used, rather than setting up separate protection and support systems. Moreover, child and juvenile victims are distinguished from target children and juveniles, with support agencies for each of the two groups being clearly prescribed in legal provisions.
- ▶ Low effectiveness of the protection of and support for children and juveniles subjected to sex trafficking set forth in the Act on the Protection of Children and Juveniles from Sexual Abuse
- ▶ Lack of comprehensive and professional support systems for children and juveniles subjected to sex trafficking
 - Imbalance in regional distribution, focus on living facilities, and lack of infrastructure for general support consisting of 'identification – initial involvement – counseling – protection – self-support'
- ▶ Lack of access to systems for the protection of and support for children and juveniles subjected to sex trafficking, which is attributed to differentiation between target children and juveniles and child and juvenile victims

Sub-conclusion

- ▶ Protective dispositions for children and juveniles subjected to sex trafficking
 - The number of cases of the court's orders for protective dispositions, the prosecution's orders for participation in training programs, or the police's reporting to the Ministry of Gender Equality and Family is small, with children and juveniles frequently failing to take part in and complete the programs in spite of the police's reporting to the Ministry. It's because of the vague system that recognizes both the offender and victim status of target children and juveniles.
 - To improve such a system, children and juveniles subjected to sex trafficking should be considered not as target children and juveniles but as victims, setting up necessary legal grounds.

- ▶ Systems for the protection of and support for children and juveniles subjected to sex trafficking
 - Pursuant to the Act on the Protection of Children and Juveniles from Sexual Abuse, in terms of the protection of and support for children and juveniles subjected to sex trafficking, existing support systems for sex trafficking victims and children and juveniles are used, rather than setting up separate protection and support systems. Moreover, child and juvenile victims are distinguished from target children and juveniles, with support agencies for each of the two groups being clearly prescribed in legal provisions.
 - Legally, existing systems should be used to protect and support children and juveniles. However, whether services for children and juveniles subjected to sex trafficking are sufficiently and properly delivered via such protection and support systems has yet to be carefully reviewed, exposing lack of policy interest therein.
 - Because children and juveniles subjected to sex trafficking can be regarded as either victims or adolescents, protection and support systems are deemed to operate via connection with existing infrastructure. However, each delivery system has its own service recipients, requiring related expertise (experience and knowledge) and operating limited human and financial resources. Therefore, in reality, existing systems have difficulties in offering professional and concentrated support to children and juveniles subjected to sex trafficking.
 - Since 2016, the Ministry of Gender Equality and Family has test-operated counseling and self-support service centers for children and juveniles subjected to sex trafficking. However, in reality, the test operation based on existing human resources and projects is expected to have limitations.

- Even though separate support systems for children and juveniles subjected to sex trafficking have been continuously asked to be set up, current services are based on existing systems, failing to come up with active follow-up measures including the disclosure and sharing of test operation results and system improvements for such children and juveniles.
- Responding to diverse and complicated circumstances relating to the period of adolescence and experiences in sex trafficking, more active studies and measures, in connection with support systems for children and juveniles subjected to sex trafficking, should be implemented in order to help such children and juveniles escape from sex trafficking and to prevent them from re-entering the sex trafficking world.

Foreign laws and policies regarding children and juveniles subjected to sex trafficking

U.S.

- ▶ In accordance with Article 3509, Paragraph A (6) of the Federal Criminal Procedure Act revised in 1994, 'exploitation' means paying for sex with children and juveniles younger than 18. This is a concept that is used to recognize the rights of children and juveniles. Moreover, pursuant to the US Federal Criminal Act, having sex with those younger than 12 is considered as serious exploitation, which is punished accordingly. (Article 2241, Paragraph C of U.S.C Title 18)
- ▶ Exempting children and juveniles younger than a certain age and subjected to sex trafficking from criminal obligations is deemed to be a trend. As of 2017, nineteen states and Washington D.C. carried out related provisions.

Canada

- ▶ Rather than unconditionally regarding those younger than 16 and subjected to sex trafficking as sexual exploitation victims, they are deemed not to have any sexual self-determination rights including sex trafficking. In this context, this issue is deemed not to relate to sex trafficking but statutory rape.
- ▶ Canada's Criminal Act stipulates that in case children and juveniles younger than 16 are subjected to sex trafficking, they are deemed to be too young to agree to prostitution.

U.K.

- ▶ The Serious Crime Act (2003) had provisions specifying child and juvenile sex trafficking, which were replaced by those on the sexual exploitation of children and juveniles when it was amended in 2015.
- ▶ The U.K released a policy paper to apply the concept of sexual exploitation of children and juveniles to the law enforcement field.

Sweden

- ▶ The Serious Crime Act (2003) had provisions specifying child and juvenile sex trafficking, which were replaced by those on the sexual exploitation of children and juveniles when it was amended in 2015.
- ▶ The U.K released a policy paper to apply the concept of sexual exploitation of children and juveniles to the law enforcement field.

Sub-conclusion

- ▶ Any sexual relationships with those younger than 15 are subjected to criminal punishment. Even sexual relationships between those who are 15 years old or older but younger than 18 and their guardians are also subjected to punishment.
- ▶ In principle, paying for sex (buying sex) is stipulated as a crime, punishing sex buyers. Therefore, in Sweden, there is no concept of target children and juveniles.
- ▶ In the UK, it has been exposed that sexual exploitation is behind running-away from home and sex trafficking, forcing the government to reflect it into national policies.
- ▶ Explicit provisions on sexual exploitation have been prepared
- ▶ Provisions on exempting children and juveniles subjected to sex trafficking from criminal obligations have been prepared.
- ▶ There are foreign laws not based on the concept of target children and juveniles. The following policies for the protection of children and juveniles from sex trafficking have been carried out: 1) identify the status of children and juveniles subjected to sex trafficking, training working-level staff to change their awareness of such children and juveniles; 2) prepare special protection programs for children and juveniles subjected to sex trafficking; 3) establish guidelines for judging harmful sexual acts belonging to sexual exploitation, and so forth.
- ▶ Children and juveniles as old as or younger than the age of statutory rape are recognized as victims of sexual exploitation.
- ▶ Policy implications
 - In the US criminal justice system, child and juvenile victims are newly recognized, thereby exempting children and juveniles as old as or younger than a certain age subjected to sex trafficking from criminal obligations.
 - Child and juvenile prostitutes are not considered as juvenile delinquents or adult prostitutes but are regarded as crime victims who should receive comprehensive and special services.

Proposal 1) Decriminalize children and juveniles' acts to sell sex

Delete provisions on target children and juveniles

- ▶ The current legal system considers that having sex with children and juveniles is something that can be bought, regarding their sexual self-determination as their rights to decide on whether to sell sex. This is deemed to be a wrong premise.
- ▶ Target children and juveniles should be regarded as victims and be given the status of child and juvenile victims of sexual exploitation. In other words, teen sex trafficking needs to be considered as the sexual exploitation of children and juveniles.
- ▶ Children and juveniles should not be subjected to sex trafficking, not being thought of as equal partners for concluding a contract. Based on this, they should be protected from sexual abuse.
- ▶ Taking into account that children and juveniles are not subjected to criminal punishment, they can be understood to be exempted from legal obligations. However, protective dispositions as stipulated in the Juvenile Act have been used as one of the criminal punishments. Therefore, provisions that classify them as target children and juveniles should be deleted to fully exempt them from any criminal responsibilities.

Expected counter-arguments

- ▶ Misunderstanding that sex trafficking is decriminalized.
 - Even though children and juveniles subjected to sex trafficking are fully exempted from criminal obligations, sex trafficking is still considered as crime and therefore both sex buyers and sellers are subject to legal punishment.
- ▶ Worries about the rise in the number of children and juveniles subjected to sex trafficking
 - Elements that make children and juveniles be subjected to sex trafficking should be identified and eliminated. Sex buyers should take responsibility for an increase in the number of children and juveniles subjected to sex trafficking.

Proposal 2) Alternatives: policies for child and juvenile victims

Need for strengthening the status of victims

- ▶ In reality, a significant number of target children and juveniles have experiences in maltreatment including domestic and sexual violence, failing to be normally protected and taken care of at home and not being given the necessities of life due to financial difficulties. As a result, they are deemed to be very vulnerable economically and psychologically. These structural problems should be handled effectively.
- ▶ On the other hand, adult sex buyers are superior to children and juveniles subjected to sex trafficking in every area including age, information, and intellectual and economic capabilities, thereby easily taking advantage of the weaknesses of such children and juveniles.
- ▶ In order to eradicate the purchase of sex that exploits the vulnerabilities of children and juveniles subjected to sex trafficking and to help them escape from sex trafficking and grow to become healthy members of our society, such children and juveniles should be exempted from criminal obligations and effectively protected and supported. To this end, appropriate measures should be quickly taken.
- ▶ To this end, Article 38 (Investigations into target children and juveniles, etc.), Article 39 (Delivery to a Juvenile Court), and Article 40 (Protective dispositions for target children and juveniles, etc.) of the Act on the Protection of Children and Juveniles from Sexual Abuse should be deleted, considering children and juveniles subjected to sex trafficking not as target children and juveniles but as victims.
- ▶ As a result, Article 2 thereof (Definition of target children and juveniles) should also be deleted, newly establishing integrated support systems for child and juvenile victims of sex trafficking.
- ▶ To prevent them from drifting into sex trafficking via smart phone chatting applications, application developers and operators should be more thoroughly controlled, supervising the process of offering information via applications. At the same time, legal systems should be revised to control the environment for cybersex trafficking.

System reinforcement plans

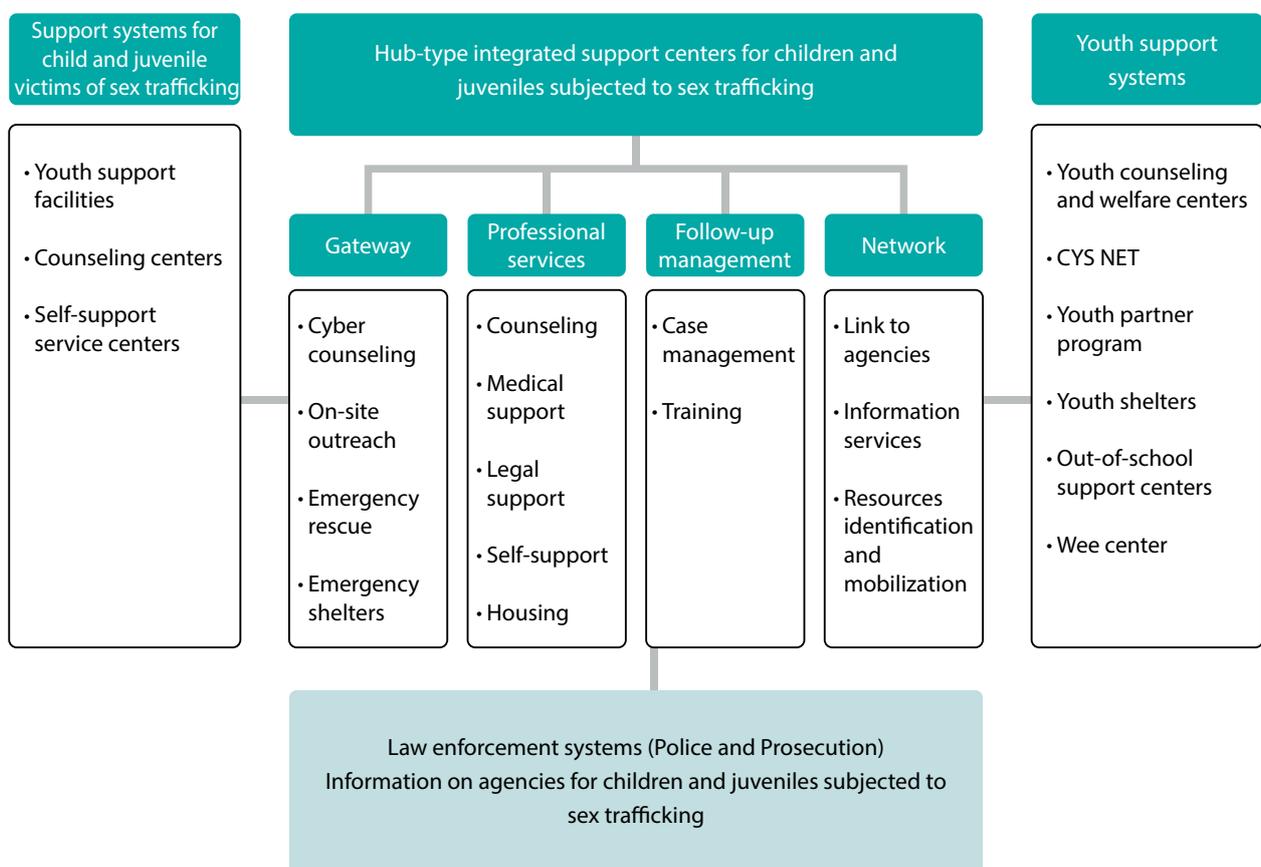
- ▶ Introduce a voluntary training participation system based on integrated support systems.
- ▶ Make it mandatory for law enforcement agencies to offer related information
- ▶ Make it mandatory for assistants to provide support when the police report children and juveniles to the Ministry of Gender Equality and Family

Proposal 3) Establishment and operation of integrated support systems for child and juvenile victims of sex trafficking

Establishment and operation of hub-type integrated support systems

- ▶ To react to various and complicated circumstances facing children and juveniles subjected to sex trafficking, help them escape from sex trafficking, and prevent them from reentering sex trade markets, the establishment of separate service delivery systems for the protection of and support for such children and juveniles should be actively reviewed.
- ▶ General support systems for children and juveniles subjected to sex trafficking should carry out the following roles: 1) early discovery – rescue (gateway); 2) counseling services – medical services – legal services – self-support services (education, employment, etc.) - housing services (service delivery); 3) training – case management (follow-up management); and 4) network – information services – monitoring (hub).
- ▶ To implement the roles of a gateway, child and juvenile victims of sex trafficking should be discovered in an omnidirectional manner, offering counseling services and related support in online and offline environments.
- ▶ At this time, not only professional counselors but also children and juveniles' colleagues should participate in the initiative, improving children and juveniles' access thereto. Moreover, the function of temporary protection (drop-in centers) should be implemented to offer support for children and juveniles who have no fixed residence and to deal with emergency situations facing them.
- ▶ Thereafter, professional services that meet the needs of children and juveniles subjected to sex trafficking should be provided.
- ▶ The roles of training and case management should also be carried out to prevent children and juveniles from reentering sex trafficking markets.
- ▶ Moreover, to enable related agencies to take part in the protection of and support for children and juveniles subjected to sex trafficking, cases should be discovered via the establishment of networks, promoting resource mobilization and connection with services, monitoring the seriousness of teen sex trafficking and related harmful environments and reporting related incidents.

- ▶ Legal grounds should be set up in related laws to enable such functions to be carried out. To this end, the following measures can be taken: 1) Include new provisions in the Act on the Protection of Children and Juveniles from Sexual Abuse in order to set up and operate separate agencies, preparing legal grounds for the establishment of training centers for children and juveniles in crisis and converting such institutes into integrated support organizations; 2) Include new provisions in the Act on the Prevention of Sexual Trafficking and Protection, etc. of Victims thereof in order to set up separate agencies for children and juveniles subjected to sex trafficking; and 3) Operate sex trafficking counseling centers for which specific guidelines for the achievements in protecting and supporting children and juveniles subjected to sex trafficking are crafted.
- ▶ As well as legal grounds, human and financial resources should also be secured. The quantity and quality of projects directly relate to basic business systems. Therefore, using human and financial resources properly, test operation should be conducted to identify the needs for and feasibility of such projects by checking their contents, quantity, quality, and operation. Then, such projects should expand by phase.
- ▶ Considering that such organizations build and operate networks with related agencies to discover cases and to enable connection to and the mobilization of resource; they should be established by metropolitan local government or region across the nation.



<Figure> Hub-Type Integrated Support System (Plan)

Strengthen connection and cooperation for supporting children and juveniles subjected to sex trafficking

- ▶ Pursuant to the existing Act on the Protection of Children and Juveniles from Sexual Abuse, the following agencies should deliver services for the protection of and support for children and juveniles subjected to sex trafficking: 1) youth support facilities, and counseling centers (the Act on the Prevention of Sexual Trafficking and Protection, etc. of Victims Thereof); 2) youth counseling and welfare centers and youth shelters (the Juvenile Welfare Support Act); 3) hospitals for victims of sexual violence (the Act on the Prevention of Sexual Assault and Protection, etc. of Victims Thereof); and 4) youth protection and rehabilitation centers (the Juvenile Protection Act). More specifically speaking, in case hub-type integrated support systems for child and juvenile victims of sex trafficking are established, the aforementioned agencies should implement their own functions and roles, discovering and connecting child and juvenile victims of sex trafficking to the integrated support systems and delivering their own professional services and support in connection with cases sent via such systems.
- ▶ The capabilities of such agencies for supporting children and juveniles subjected to sex trafficking should be strengthened. Practical knowhow should be shared by developing manuals and guidelines for employee training and support and presenting and learning the cases of children and juveniles subjected to sex trafficking via workshops or seminars. Quantitative and qualitative data should be produced to check the status of support for such children and juveniles. These can be used as basic data for identifying the current status and improving the quality of services.
- ▶ Cooperating with more diverse support systems, as well as agencies as stipulated in the Act on the Protection of Children and Juveniles from Sexual Abuse, more thorough support systems for children and juveniles subjected to sex trafficking can be set up. To help related parties learn how to support children and juveniles subjected to sex trafficking, training services should be delivered, producing and distributing manuals and guidelines and operating workshops for sharing and learning practical cases.
- ▶ In accordance with the Act on the Support for Out-of-School Juveniles, 202 out-of-school juvenile support centers have been operating across the nation. Cooperating with such centers, out-of-school children and juveniles subjected to sex trafficking can be discovered, offering diverse support services and thereby helping related issues be resolved.
- ▶ Youth partner programs based on the Juvenile Welfare Support Act are designed to enable youth partners to directly contact juveniles in crisis and offer psychological and emotional support to them and help them grow to become healthy members of our society. Focusing on children and juveniles belonging to mid-to-high-risk groups exposed to running-away

from home, delinquency, violence, school drop-out, sex trafficking, and so forth, the programs promote the psychological stability of such children and juveniles, helping resolve complicated issues and thereby managing cases on a long-term basis. Such systems are deemed to be beneficial to child and juvenile victims of sex trafficking who need long-term treatment and comprehensive support.

- ▶ Taking into account that even enrolled students are exposed to sex trafficking, cooperation with Wee is also deemed to be necessary.
- ▶ In the system for supporting victims of sex trafficking, cooperation with self-support service centers should be strengthened. Considering that children and juveniles subjected to sex trafficking have a strong desire for independence, services for their self-support should also be delivered.

4

Expected benefits

Offer the legal ground for children and juveniles to fully acquire the status of victims for the decriminalization of their acts to sell sex.

Present the need for raising the age for the application of statutory rape laws stipulated in the Criminal Act, offering legislation plans.

Offer plans to set up integrated support systems and to promote connection and cooperation for the purpose of supporting children and juveniles subjected to sex trafficking.

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