

**Questionnaire on the Criminalization and Prosecution of Rape  
in the Republic of Korea (ROK)**

Submitted to

**Ms. Dubravka Šimonovic**

**UN Special Rapporteur on violence against women, its causes and consequences**

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Submitted by

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<b>Definition and scope of criminal law provisions</b>
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**1. Please provide information on criminal law provision/s on rape (or analogous forms of serious sexual violence for those jurisdictions that do not have a rape classification) by providing full translated transcripts of the relevant articles of the Criminal Code and the Criminal Procedure Code.**

See attached.

**2. Based on the wording of those provisions, is the provided definition of rape**

- |   |            |
|---|------------|
| <b>a. Gender specific, covering women only:</b>   | <b>NO</b>  |
| <b>b. Gender neutral, covering all persons:</b>   | <b>YES</b> |
| <b>c. Based on the lack of consent of victim:</b> | <b>NO</b>  |
| <b>d. Based on the use of force or threat:</b>    | <b>YES</b> |
| <b>e. Some combination of the above:</b>          | <b>NO</b>  |
| <b>f. Does it cover only vaginal rape?</b>        | <b>NO</b>  |
| <b>g. Does it cover all forms of penetration?</b> | <b>YES</b> |

However, separate provisions exist for genital and non-genital rape (Criminal Code, Articles 297 (Rape), 297-2 (Imitative Rape).

Non-genital rape is also covered separately in the *Military Criminal Act*, Article 92-2 (Quasi-Rape), *Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 6 (Rape of, or Commission of Indecent Acts by Compulsion on, Persons with Disabilities), Article 7 (Rape of, or Commission of Indecent Acts by Compulsion on, Minors under Age of 13), *Act on the Protection of Children and Youth Against Sex Offences*, Article 7 (Rape, Indecent Act by Force, etc. of Children or Youth) [See attached.]

- |  |            |
|--|------------|
| <b>h. Is marital rape in this provision explicitly included?</b>   | <b>NO</b>  |
| <b>i. Is the law silent on marital rape?</b>   | <b>YES</b> |
| <b>j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included?</b> |            |

**YES**, marital rape is covered by legal precedent (Supreme Court decision 2012do14788).

**k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime?**

Marital rape is neither explicitly included nor excluded in legislation but may qualify as a crime.

**3. Are there any provisions excluding criminalization of the perpetrator if the victim and alleged perpetrator live together in a sexual relationship/have a sexual relationship/had a sexual relationship? If so, please submit it.**

**NO**

**4. What is the legal age for sexual consent?**

**16 years old.** (On April 29, 2020, the National Assembly passed an amendment to the Criminal Code (Article 305), raising the legal age of sexual consent from 13 years old. The amendment came into effect on 19 May 2020.)

**19 years old for children or youth with disabilities.** (*Act on the Protection of Children and Youth Against Sex Offenses*, Article 8)

**5. Are there provisions that differentiate for sexual activity between peers? If so, please provide them.**

**YES**, given the recent amendment (above in Question #4) now recognizing the statutory rape of minors between ages 13 and 16 by anyone over the age of 19; this thus implicitly differentiates mutually agreed sexual activity between teenage peers from 13 to 18 years of age. (*Criminal Code*, Article 305)

**6. Provide information on criminal sanctions prescribed and length/duration of such criminal sanctions for criminalized forms of rape.**

Punishments are distinguished according to the victim's age and the nature of the crime (as of 1 June 2020).

**I. Sexual crimes against adults over the age of 19**

- 1) A person who, by means of violence or intimidation, has sexual intercourse with another shall be punished by imprisonment for a limited term of at least three years. (*Criminal Code*, Article 297)
- 2) A person who, by means of fraudulent means or by the threat of authority, has sexual intercourse with another who is under his/her protection or supervision for his/her business, employment or other relationship, shall be punished by imprisonment for not

more than seven years, or by a fine not exceeding 30 million won. (*Criminal Code, Article 303*)

## II. Sexual crimes against minors between 16 and 19 years of age

- 1) Any person who rapes a child or youth by assault or threat shall be punished by life imprisonment with labor or for a limited term of at least five years. (*Act on the Protection of Children and Youth Against Sex Offences, Article 7*)  
See attachment for the full Article 7 on penalties for lesser forms of sexual crimes.
- 2) A person who, through fraudulent means or by the threat of force, has sexual intercourse or commits an indecent act on a minor or feeble-minded person, shall be punished by imprisonment for not more than five years. (*Criminal Code, Article 302*)

## III. Sexual crimes against minors aged 13 to 16 years old

Same as #6(II) above and also:

- 1) Where a person aged 19 or older has illicit sex with a child or youth aged 13 to under 16 (excluding a disabled child or youth prescribed in Article 8 who is aged under 16; hereafter the same shall apply in this Article) by taking advantage of his/her destitute conditions or makes such child or youth have illicit sex with any third person, he/she shall be punished by imprisonment with labor for a limited term of at least three years. (*Act on the Protection of Children and Youth Against Sex Offences, Article 8-2, paragraph 1*)
- 2) Where a person aged 19 or older commits an indecent act against a child or youth aged 13 to under 16 by taking advantage of his/her destitute conditions or makes such child or youth commit an indecent act against any third person, he/she shall be punished by imprisonment with labor for not more than 10 years or by a fine not exceeding 15 million won. (*Act on the Protection of Children and Youth Against Sex Offences, Article 8-2, paragraph 2*)
- 3) *Criminal Code, Article 305, paragraph 2* has been newly inserted to state 'a person who has sexual intercourse or commits an indecent act with another who is aged 13 to under 16 or commits an indecent act on such person shall be punished,' regardless of the provision in Article 8-2 that states 'taking advantage of his/her destitute conditions'. Related provisions will be revised in the future.

## IV. Sexual crimes against minors under 13 years of age

- 1) A person who commits a crime prescribed in Article 297 (Rape) of the Criminal Code on a minor under the age of 13 shall be punished by imprisonment for life or for at least ten years. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes, Article 7*)  
See attachment for the full Article 7 on penalties for lesser forms of sexual crimes.

- 2) A person who has sexual intercourse with another who is under 13 years of age or commits an indecent act on such person shall be punished under Article 297 (rape). (*Criminal Code*, Article 305)
- 3) Any person who rapes a child or youth by assault or threat shall be punished by life imprisonment with labor or for a limited term of at least five years. (*Act on the Protection of Children and Youth Against Sex Offences*, Article 7)  
See attachment for the full Article 7 on penalties for lesser forms of sexual crimes.

#### V. Sexual crimes against persons with disabilities

- 1) A person who commits a crime prescribed in Article 297 (Rape) of the Criminal Act on another person with a physical or mental disability shall be punished by imprisonment for life or for at least seven years. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 6, paragraph 1)
- 2) If the head or a staff member of a facility for the protection, education, etc. of persons with disabilities commits any of the crimes listed in paragraphs (1) through (6) on a disabled person who is under his/her protection or supervision, the penalty shall be raised by up to one half of the prescribed one. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 6, paragraph 7)
- 3) Where a person aged 19 or older has illicit sex with a disabled child or youth (referring to a child or youth with a disability defined in Article 2 (1) of the Act on Welfare of Persons with Disabilities, who is aged 13 or older and lacks judgment or decision-making capacity due to a physical or mental disability; hereafter the same shall apply in this Article) or makes a disabled child or youth have illicit sex with any third person, he/she shall be punished by imprisonment with labor for a limited term of at least three years. (*Act on the Protection of Children and Youth against Sex Offenses*, Article 8)

#### VI. Provisions governing aggravation with respect to forms of behavior

- 1) A person who commits a crime prescribed in Article 297 (Rape) of the Criminal Act, carrying any weapon or other dangerous object or jointly with any other persons, shall be punished by imprisonment for life or for at least seven years. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 4)
- 2) A person who commits a crime prescribed in Article 297 (Rape) of the Criminal Act in the course of committing a crime under Article 319 (1) (Intrusion upon Habitation, Refusal to Leave), 330 (Compound Larceny), 331 (Special Larceny), or 342 (Attempts, limited to an attempt to commit a crime under Article 330 or 331) of the same Act shall be punished by imprisonment for life or for at least seven years. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 3)
- 3) A person who commits any of the crimes of Articles 297 (Rape), 297-2 (Imitative Rape), 298 (Indecent Act by Compulsion), 299 (Quasi-Rape, Quasi-Indecent Act by

Compulsion), 300 (Attempts), thereby inflicting or causing the injury of a victim of such crime, shall be punished by imprisonment for life or for at least five years. (*Criminal Code*, Article 301)

- 4) A person who inflicts a bodily injury on another person in the course of committing a crime prescribed in Article 3 (1) (Special Robbery and Rape), 4 (Aggravated Rape), 6 (Rape of Persons with Disabilities), 7 (Rape of Minors under Age of 13), or 15 (limited to an attempt to commit a crime under Article 3 (1), 4, 6, or 7), or leads to a bodily injury on another person by committing such crime, shall be punished by imprisonment for life or for at least ten years. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 8, paragraph 1)
- 5) A person who inflicts a bodily injury on another person in the course of committing a crime prescribed in Article 5 (Rape through Abuse of Consanguineous or Marital Relationship) or 15 (Attempts, limited to an attempt to commit a crime under Article 5), or leads to a bodily injury on another person by committing such crime, shall be punished by imprisonment for life or for at least seven years. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 8, paragraph 2)
- 6) A person who murders another person in the course of committing a crime prescribed in any of Articles 3 through 7 (Special Robbery and Rape, Aggravated Rape, Rape through Abuse of Consanguineous or Marital Relationship, Rape of Persons with Disabilities, and Rape of Minors under Age of 13) and 15 (Attempts, limited to an attempt to commit a crime under any of Articles 3 through 7) of this Act or a crime prescribed in any of Articles 297 (Rape), 297-2 (Imitative Rape), 298 (Indecent Act by Compulsion), 299 (Quasi-Rape, Quasi-Indecent Act by Compulsion), 300(Attempts) of the Criminal Act shall be punished by death or imprisonment for life. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 9, paragraph 1)

**7. What does the legislation in your country provide in terms of reparation to the victim of rape and/or sexual violence after conviction of the perpetrator?**

The victim may claim compensation against the perpetrator under a civil suit.

The State and local governments shall provide support for victims generally, such as through facilities providing counseling, legal aid, medical services, treatment recovery; protective facilities; and rehabilitation for victims (e.g., residential assistance, occupational training). *Sexual Violence Prevention and Victims Protection Act* (Article 3)

## Aggravating and mitigating circumstances

**8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?**

**a. Is rape by more than one perpetrator an aggravating circumstance?**

**YES**, under the *Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 4(1): Aggravated Rape.

**b. Is rape of a particularly vulnerable individual an aggravating circumstance, or the imbalance of power between alleged perpetrator and victims? (for example, doctor/patient; teacher/student; age difference)**

**YES**, in terms of increased penalty (not by legislative definition) for rape or indecent acts against

- 1) persons with physical or mental disability,
- 2) minors under the age of 13,
- 3) persons under guardianship or supervision by reason of business, employment, or other relationship, and
- 4) detainees under supervision

(*Act on Special Cases Concerning the Punishment, Etc. of Sexual Crime*, Articles 6, 7, 10)

Specifically, the head or staff of a facility for the protection, education, etc. of persons with disabilities who commits rape or indecent acts against one under his/her supervision shall be charged up to an additional one-half of the original prescribed penalty. (*Act on Special Cases Concerning the Punishment, Etc. of Sexual Crime*, Articles 6(7))

A teacher who rapes a student, or a doctor who rapes a patient under 19 shall be charged up to an additional one-half of the original prescribed penalty under the *Act on the Protection of Children and Youth Against Sex Offences* (Article 18: Aggravated Punishment for Sex Offenses of Persons Liable to Report: "Where the head of an institution, facility, or organization prescribed in the subparagraphs of Article 34 (2) or an employee thereof commits a sex offense against a child or youth under his or her protection, supervision, or medical treatment, the punishment for such offense shall be increased by up to 1/2 of that prescribed for such offense.")

The *Sentencing Guidelines of Sex Crimes by the Supreme Court's Sentencing Commission* takes 'victims who are vulnerable to the crimes', and 'use of personally reliable relationship' into account as aggravating circumstances in sentencing, though these factors are not stipulated under the relevant statutes.

**c. Is rape by spouse or intimate partner an aggravating circumstance?**

**NO**

Rape by a relative is an aggravating circumstance under the *Act on Special Cases Concerning the Punishment, Etc. of Sexual Crime* (Article 5, para. 4). A spouse is also considered a relative under Article 777 of the *Civil Code*. However, there is no legal precedent that has applied this interpretation according to a Supreme Court official.<sup>1</sup>

**9. Does the law foresee mitigating circumstances for the purposes of punishment? If yes, please specify.**

**YES**, a judge can reduce the sentence if there are more “reduction” factors than “weighting” factors according to the *Sentencing Guidelines of Sex Crimes by the Supreme Court's Sentencing Commission*.

Special reduction factors for rape crimes are where

- 1) the offender is deaf-mute,
- 2) the offender was mentally weak,
- 3) the offender turned himself/herself in, or
- 4) the victim does not want to punish the offender.

General reduction factors are where

- 1) the offender passively participated,
- 2) the offender was involved in the crime due to coercion or threats from another person,
- 3) the offender deposits compensation,
- 4) the offender seriously reflects on himself/herself, or
- 5) the offender has no previous criminal record.

**10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? If so, at what stage and what are the consequences?**

**NO** in terms of the charge itself, but **YES** in terms of possible reduction of the penalty under the court's discretion during the trial.

**a. Regardless of the law, is reconciliation permitted in practice? And what is the practice in this regard?**

**YES**, sometimes victims of sex crimes receive compensation for damages, with the victim then withdrawing the complaint. In such case, the perpetrator is punished regardless of the agreement because sex crimes are no longer offenses subject to complaint since 2013 (meaning that prosecution can proceed without a victim's

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<sup>1</sup> Jwa, Yeong-gil. 2013. “부부강간죄’ 대법원 판례 변경 의미와 파장은” (‘Marital Rape’ The meaning and impact of the Supreme Court's change of precedent) *Beomyul sinmun*. May 15, 2013. <https://m.lawtimes.co.kr/Content/Case-Curation?serial=75126>



complaint). But the fact that the agreement was reached in practice often serves as a requirement for a sentence reduction (see Question #9 above). However, if such an agreement is made by force or by persuading the victim with money, such an agreement should not be allowed.<sup>2</sup>

**11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? If yes, please specify.**

**NO**, not specifically in the case of rape or sexual crimes.

However, in general, the prosecutor has the discretion to prosecute or not, considering the following in determining punishment under the *Criminal Procedure Code*, Article 247, *Criminal Code*, Article 51:

1. The age, character and conduct, intelligence and environment of the offender;
2. Offender's relation to the victim;
3. The motive for the commission of the crime, the means and the result;
4. Circumstances after the commission of the crime.

Prosecutors may decide not to pursue prosecution for reasons such as being cleared of suspicion, innocence, lack of prosecutor's right, or dismissal.

**a. if the perpetrator marries the victim of rape? NO**

**b. if the perpetrator loses his "socially dangerous" character or reconciles with the victim? NO**

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<sup>2</sup> Source: Telephone inquiry to the victim support office of the Public Prosecutor's Office

<b>Prosecution</b>
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**12. Is rape reported to the police prosecuted ex officio (public prosecution)?**

**YES**

Also, after the amendment in 2013, prosecution can proceed without the victim's complaint.

**13. Is rape reported to the police prosecuted ex parte (private prosecution)?**

**NO**

**14. Are plea bargains or “friendly settlements” of a case allowed in cases of rape of women?**

**PARTIALLY NO / YES**

There is no plea bargain in the ROK legal system. However, adjustments to sentencing may be possible in terms of prosecution or verdict in accordance with the prosecutor's decision when the defendant reflects and cooperates throughout the investigation process.

A “friendly settlement” is possible in the sense that the perpetrator can compensate to the victim who in turn submits an “impunity” document to the court. The court may then reduce the sentence under the special sentencing factors mentioned in Question #9 above. However, this is not specifically legislated.

**15. Are plea bargains or “friendly settlements” of a case allowed in cases of rape of children?**

See Question #14 above as the same principles would apply.

**16. Please provide information on the statute of limitations for prosecuting rape.**

The statute of limitations is 10 years. (*Criminal Code*, Article 249)

It may extend another 10 years if scientific evidence such as DNA is available. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Article 21(2))

The statute of limitations would not apply for commission of rape against a minor under 13 years old or a person with a physical or mental disability. (*Act on Special Cases*)

*Concerning the Punishment, etc. of Sexual Crimes, Article 21(3)), or for murder after rape (Article 21(4))*

**17. Are there provisions allowing a child who was the victim of rape to report it after reaching adulthood?**

**YES**, a 10-year statute of limitations begins when the minor becomes an adult. (*Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes, Article 21(1)*)

**18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? If yes, please specify.**

**NO**, but if (a) credibility is acknowledged in the victim's statement and (b) lack of credibility in the defendant's statement, case precedent exists where the victim's statement was the only evidence to overturn a non-guilty verdict.<sup>3</sup>

**19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial?**

**NO**, while the *Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes, Article 29*, obligates the investigative agency, the court, and other persons involved in litigation not to damage the victim's privacy, defense lawyers are not prohibited from disclosing the victim's sexual history.

**20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? If yes, please specify.**

**YES**, under the *Act on Special Cases concerning the Punishment, etc. of Sexual Crimes*, protections include:

- Prohibition against divulging victims' identity and privacy (Article 24)
- Officers and persons involved in litigation shall endeavor not to damage the character or honor of the victim of a sexual crime or infringe upon the victim's privacy (Article 29(1))
- An investigative agency and a court shall "prepare an environment in which the victim may make a statement in a relaxed state, and the frequency of the investigations, hearing, and trials shall be limited to the minimum necessary." (Article 29(2))
- Court's discretion to not disclose a trial to the public to protect the victim's privacy (Article 31)
- Upon request, the presiding judge may decide the methods and place for witness examination. (Article 31)
- Appropriate facilities so as to keep a victim from encountering the accused or his/her family before or after trial (Article 32)

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<sup>3</sup> Supreme Court of Korea, Case 2018do7709 (October 25, 2018).

- Allowing the appearance of a person in a relationship of trust with the victim during court examination (Article 34)
- Participation of intermediaries in proceedings for victims under 13 years old or with difficulty understanding or communicating due to any physical or mental disability (Article 37)
- Also similar protective measures as provided under the *Criminal Procedure Act*, *Crime Victim Protection Act*, *Act on Protection of Specific Crime Informants*, and *Act on Special Cases concerning the Punishment of Specific Violent Crimes* apply.

<b>War and/or conflict</b>
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**21. Is rape criminalized as a war crime or crime against humanity?**

**NO**, commission of rape in a combat zone is punishable by death under the *Military Criminal Act*, Article 84, but it is not explicitly defined as a war crime or a crime against humanity. However, rape is recognized as a crime against humanity or a war crime under the jurisdiction of the International Criminal Court under the *Act on Punishment, etc. of Crimes under Jurisdiction of the International Criminal Court*, Articles 9, 10.

**22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts?**

**YES**, 25 years for offenses punishable by death penalty (of which “Rape in Combat Zone” qualifies). *Military Court Act*, Article 291

**23. Are there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict?**

**NO**, only for the crime of genocide, which does not explicitly list rape, under the *Act on Punishment, Etc. of Crimes under Jurisdiction of the International Criminal Court*, Article 6 (Non-Applicability of Statute of Limitations), Article 8 (Crime of Genocide).

**24. Has the Rome Statute of the International Criminal Court (ICC) been ratified?**

**YES** (8 November 2002)

**Data**

**25. Please provide data on the number of cases of rape that were reported, prosecuted and sanctioned, for the past two to five years.**

<b>Year</b>	<b>Incidents</b>	<b>Prosecutions</b>	<b>Prosecution rate</b>
2014	5,154	2,207	42.8%
2015	5,194	2,251	43.3%
2016	5,531	2,215	40.0%
2017	5,783	2,572	44.5%
2018	5,938	2,448	41.2%

Source: Prosecution Service, Crime Analysis Report

While incidents have risen, rapes and sex crimes are generally underreported. Furthermore, it is difficult to compile accurate statistics due to the lack of a single statistical institution related to sex crimes.

**26. Please explain any particular and additional barriers to the reporting and prosecution of rape and to the accountability of perpetrators in your legal and social context not covered by the above.**

Reporting of rape and other sex crimes continue to be difficult due to factors such as:

1. Shame, stigma, and trauma
2. Consent not being the central determinant factor. Instead, physical force or threat/intimidation has to be such that resistance is impossible or nearly impossible for it to qualify as rape.
3. Assumptions that the rape or sex crime is less serious if the woman already has sexual experience, or is in or has been in a relationship with the perpetrator, or has consented to a sexual relationship with the perpetrator in the past (sometimes leading to a sentence reduction)
4. Difficulty of punishment for sex crimes involving alcohol or psychotropic drugs (such as GHB, more commonly known and used as a "date-rape" drug)
5. Lack of gender sensitivity among law enforcement and judicial officers

6. Legal institutional passivity toward recognizing the “threat of authority” in the commission of rape or a sex crime
7. Secondary victimization by investigative and law enforcement agencies (e.g., some police deferring or not taking claims seriously)
8. Light sentencing of perpetrators
9. Victims’ fear of facing counterclaims of defamation or false accusation
10. Insufficient protection of the victim’s personal information
11. Biased reporting in the media contributing to victim-blaming
12. Increased difficulties in reporting for migrant (including North Korean) women due to cultural shame, language barrier, distrust of police and judicial authorities, fear of retribution, and undocumented status
13. Problems regulating and punishing digital sex crimes also speak to the larger issue of not taking violence against women, girls, minors, and sexual minorities seriously in the Republic of Korea (e.g., illicit filming, distribution without consent, “revenge porn”, blackmailing for sex acts, organized gang rape). Extreme cases in the past year have led to legislative amendments in April 2020 (e.g., raising the legal age of sexual consent to 16; punishing illicit filming, distribution, and viewing).

## ATTACHMENTS FOR REFERENCE ONLY

**NOTE:** These are English translations provided by the Korea Legislation Research Institute (KLRI). Underlined portions reflect the latest amendments not currently noted in the KLRI version.

1. Relevant provisions of the *Criminal Act* [*Criminal Code*], Act No. 15163 (2017 translation)
2. Relevant provisions of the *Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes*, Act No. 15977 (2018 translation)
3. Relevant provisions of the *Military Criminal Act*, Act No. 14183 (2016 translation)
4. Relevant provisions on the *Act on the Protection of Children and Youth Against Sex Offenses*, Act No. 16275 (2019 translation)



## **CRIMINAL ACT [CRIMINAL CODE]**

### **Article 297 (Rape)**

A person who, by means of violence or intimidation, has sexual intercourse with another shall be punished by imprisonment for a limited term of at least three years.

### **Article 297-2 (Imitative Rape)**

A person who, by means of violence or intimidation, inserts his/her sexual organ into another's bodily part (excluding a genital organ), such as mouth or anus, or inserts his/her finger or other bodily part (excluding a genital organ) or any instrument into another's genital organ or anus shall be punished by imprisonment for a limited term of at least two years.

### **Article 298 (Indecent Act by Compulsion)**

A person who, through violence or intimidation, commits an indecent act on another shall be punished by imprisonment for not more than ten years or by a fine not exceeding 15 million won.

### **Article 299 (Quasi-Rape, Quasi-Indecent Act by Compulsion)**

A person who has sexual intercourse with another or commits an indecent act on another by taking advantage of the other's condition of unconsciousness or inability to resist shall be punished in accordance with Article 297, 297-2, or 298.

### **Article 300 (Attempts)**

Attempts to commit any of the crimes of Articles 297, 297-2, 298, and 299 shall be punished.

### **Article 301 (Inflicting or Causing Another's Bodily Injury by Rape, etc.)**

A person who commits any of the crimes of Articles 297, 297-2, and 298 through 300, thereby inflicting or causing the injury of a victim of such crime, shall be punished by imprisonment for life or for at least five years.

### **Article 301-2 (Killing Another or Causing Death of Another by Rape, etc.)**

A person who commits any of the crimes of Articles 297, 297-2, and 298 through 300 and kills a victim of such crime shall be punished by death or imprisonment for life. If the commission of such crime results in the death of the victim, the perpetrator shall be punished by imprisonment for life or for at least ten years.

### **Article 302 (Sexual Intercourse with Minor, etc.)**

A person who, through fraudulent means or by the threat of force, has sexual intercourse or commits an indecent act on a minor or feeble-minded person, shall be punished by imprisonment for not more than five years.

**Article 303 (Sexual Intercourse by Abuse of Occupational Authority, etc.)**

(1) A person who, by fraudulent means or the threat of authority, has sexual intercourse with another who is under his/her protection or supervision for his/her business, employment or other relationship, shall be punished by imprisonment for not more than seven years, or by a fine not exceeding 30 million won.

(2) A person who has sexual intercourse with another held in his/her custody according to an Act shall be punished by imprisonment for not more than ten years.

**Article 305 (Sexual Intercourse or Indecent Acts with Minor)**

(1) A person who has sexual intercourse with another who is under 13 years of age or commits an indecent act on such person shall be punished under Article 297, 297-2, 298, 301, or 301-2.

(2) A person who has sexual intercourse with another who is aged 13 to under 16 years of age or commits an indecent act on such person shall be punished under Article 297, 297-2, 298, 301, or 301-2.

**Article 305-2 (Habitual Offenders)**

A person who habitually commits any of the crimes of Articles 297, 297-2, 298 through 300, 302, 303, and 305 shall be punished by aggravating the penalty by up to one half of the penalty specified for the crime committed.

**Article 305-3 (Preparations, Conspiracies)**

A person who makes preparations or conspires with intent to commit the crimes of Article 297, 297-2, 299 (only quasi-rape), 301 (only inflicting another's bodily injury by rape), and 305 shall be punished by imprisonment for not more than three years.

# **ACT ON SPECIAL CASES CONCERNING THE PUNISHMENT, ETC. OF SEXUAL CRIMES**

## **Article 3 (Special Robbery and Rape)**

(1) A person who commits a crime prescribed in Article 297, 297-2, 298, or 299 of the Criminal Act in the course of committing a crime under Article 319 (1), 330, 331, or 342 (limited to an attempt to commit a crime under Article 330 or 331) of the same Act shall be punished by imprisonment for life or for at least seven years.

(2) A person who commits a crime prescribed in Article 297, 297-2, 298, or 299 of the Criminal Act in the course of committing a crime under Article 334 or 342 (limited to an attempt to commit a crime under Article 334) of the same Act shall be punished by death or by imprisonment for life or for at least ten years.

## **Article 4 (Aggravated Rape)**

(1) A person who commits a crime prescribed in Article 297 of the Criminal Act, carrying any weapon or other dangerous object or jointly with any other persons, shall be punished by imprisonment for life or for at least seven years.

(2) A person who commits a crime prescribed in Article 298 of the Criminal Act in the manner as prescribed by paragraph (1) shall be punished by imprisonment for a fixed term of at least five years.

(3) A person who commits a crime prescribed in Article 299 of the Criminal Act in the manner prescribed by paragraph (1) shall be punished according to the provisions of paragraph (1) or (2).

## **Article 5 (Rape through Abuse of Consanguineous or Marital Relationship)**

(1) A person who, through violence or intimidation, has sexual intercourse with another person in a consanguineous or marital relationship shall be punished by imprisonment for a fixed term of at least seven years.

(2) A person who, through violence or intimidation, commits an indecent act on another person in a consanguineous or marital relationship shall be punished by imprisonment for a fixed term of at least five years.

(3) A person who commits a crime prescribed in Article 299 of the Criminal Act on another person in a consanguineous or marital relationship shall be punished according to the provisions of paragraph (1) or (2).

(4) The scope of persons in a consanguineous or marital relationship referred to in paragraphs (1) through (3) shall be limited to relatives by blood or marriage within the fourth degree or residing together.

(5) A consanguineous or marital relationship under paragraphs (1) through (3) shall include a de facto relationship.

## **Article 6 (Rape of, or Commission of Indecent Acts by Compulsion on, Persons with Disabilities)**

(1) A person who commits a crime prescribed in Article 297 of the Criminal Act on another person with a physical or mental disability shall be punished by imprisonment for life or for at least seven years.

(2) A person who, through violence or intimidation, commits any of the following acts on another person with a physical or mental disability shall be punished by imprisonment for a fixed term of at least five years:

1. Inserting the genitals into the inner part of the other person's body (excluding genitals), such as the mouth or anus;

2. Inserting a part of the body (excluding genitals), such as fingers, or implements into the other person's genitals or anus.

(3) A person who commits a crime prescribed in Article 298 of the Criminal Act on another person with a physical or mental disability shall be punished by imprisonment for a fixed term of at least three years or by a fine of at least thirty, but not more than fifty million won.

(4) A person who has sexual intercourse with or commits an indecent act on another person by taking advantage of the latter's condition of inability to resist or difficulty in resisting due to physical or mental disability shall be punished according to the provisions of paragraphs (1) through (3).

(5) A person who, through fraudulent means or by a threat of force, has sexual intercourse with another person with a physical or mental disability shall be punished by imprisonment for a fixed term of at least five years.

(6) A person who, through fraudulent means or by a threat of force, commits an indecent act on another person with a physical or mental disability shall be punished by imprisonment for a fixed term of at least one year or by a fine of at least ten, but not more than thirty million won.

(7) If the head or a staff member of a facility for the protection, education, etc. of persons with disabilities commits any of the crimes listed in paragraphs (1) through (6) on a disabled person who is under his/her protection or supervision, the penalty shall be raised by up to one half of the prescribed one.

## **Article 7 (Rape of, or Commission of Indecent Acts by Compulsion on, Minors under Age of 13)**

(1) A person who commits a crime prescribed in Article 297 of the Criminal Act on a minor under the age of 13 shall be punished by imprisonment for life or for at least ten years.

(2) A person who, through violence or intimidation, commits any of the following acts on a minor under the age of 13 shall be punished by imprisonment for a fixed term of at least seven years:

1. Inserting the genitals into the inner part of the minor's body (excluding genitals), such as the mouth or anus;

2. Inserting a part of the body (excluding genitals), such as fingers, or implements into the minor's genitals or anus.

(3) A person who commits a crime prescribed in Article 298 of the Criminal Act on a minor under the age of 13 shall be punished by imprisonment for a fixed term of at least five years.

(4) A person who commits a crime prescribed in Article 299 of the Criminal Act on a minor under the age of 13 shall be punished according to the provisions of paragraphs (1) through (3).

(5) A person who, through fraudulent means or by a threat of force, has sexual intercourse with or commits an indecent act on a minor under the age of 13 shall be punished according to the provisions of paragraphs (1) through (3).

### **Article 8 (Bodily Injury Associated with, or Resulting from, Rape)**

(1) A person who inflicts a bodily injury on another person in the course of committing a crime prescribed in Article 3 (1), 4, 6, 7, or 15 (limited to an attempt to commit a crime under Article 3 (1), 4, 6, or 7), or leads to a bodily injury on another person by committing such crime, shall be punished by imprisonment for life or for at least ten years.

(2) A person who inflicts a bodily injury on another person in the course of committing a crime prescribed in Article 5 or 15 (limited to an attempt to commit a crime under Article 5), or leads to a bodily injury on another person by committing such crime, shall be punished by imprisonment for life or for at least seven years.

### **Article 9 (Murder Associated with Rape, or Rape Resulting in Death)**

(1) A person who murders another person in the course of committing a crime prescribed in any of Articles 3 through 7 and 15 (limited to an attempt to commit a crime under any of Articles 3 through 7) of this Act or a crime prescribed in any of Articles 297, 297-2, and 298 through 300 of the Criminal Act shall be punished by death or imprisonment for life.

(2) A person who commits a crime prescribed in Article 4, 5, or 15 (limited to an attempt to commit a crime under Article 4 or 5), thereby causing the death of another person, shall be punished by imprisonment for life or for at least ten years.

(3) A person who commits a crime prescribed in Article 6, 7, or 15 (limited to an attempt to commit a crime under Article 6 or 7), thereby causing the death of another person, shall be punished by death or by imprisonment for life or for at least ten years.

### **Article 15 (Attempts)**

Attempts to commit a crime under Articles 3 through 9 and 14, 14-2, 14-3 shall be punished.

**Article 15-2 (Preparations, Conspiracies)**

A person who makes preparations or conspires with intent to commit the crimes of Article 3 through 7, shall be punished by imprisonment for not more than three years.

## **Military Criminal Act**

### **Article 92 (Rape)**

A person who, by violence or threat, rapes a person falling under any provision of Article 1 (1) through (3) shall be punished by imprisonment with labor for a limited term of not less than five years. <Amended by Act No. 11734, Apr. 5, 2013>

[This Article Wholly Amended by Act No. 9820, Nov. 2, 2009]

### **Article 92-2 (Quasi-Rape)**

A person who, by violence or threat, penetrates mouth, anus, or any other part of the body (excluding genital organ) of any person prescribed in Article 1 (1) through (3) with his or her genital organ, or who penetrates genital organ or anus with any part of his or her body, such as fingers, (excluding genital organ) or with any object shall be punished by imprisonment with labor for a limited term of not less than three years.

[This Article Newly Inserted by Act No. 11734, Apr. 5, 2013]

## **Act on the Protection of Children and Youth Against Sex Offences**

### **Article 7 (Rape, Indecent Act by Force, etc. of Children or Youth)**

(1) Any person who rapes a child or youth by assault or threat shall be punished by imprisonment for life or for a limited term of at least five years.

(2) Any person who commits any of the following acts by assaulting or threatening a child or youth shall be punished by imprisonment with labor for a limited term of at least five years:

1. Putting genitals into a part of the body of the child or youth (excluding genitals), such as the mouth or anus;

2. Putting a part of the body (excluding genitals), such as fingers, or implements into the genital or anus of the child or youth.

(3) Any person who commits an offense prescribed in Article 298 of the Criminal Act against a child or youth shall be punished by imprisonment for at least two years or by a fine of at least ten, but not more than thirty million won.

(4) Any person who commits an offense prescribed in Article 299 of the Criminal Act against a child or youth shall be punished in the same manner as prescribed in paragraphs (1) through (3).

(5) Any person who has sex with or commits an indecent act against a child or youth by fraudulent means or the threat of authority shall be punished in the same manner as prescribed in paragraphs (1) through (3).

(6) Any person who attempts to commit an offense prescribed in paragraphs (1) through (5) shall be punished.

### **Article 7-2 (Preparations, Conspiracies)**

A person who makes preparations or conspires with intent to commit the crimes of Article 7, shall be punished by imprisonment for not more than three years.

### **Article 8 (Illicit Sex, etc. with Disabled Children or Youth)**

(1) Where a person aged 19 or older has illicit sex with a disabled child or youth (referring to a child or youth with a disability defined in Article 2 (1) of the Act on Welfare of Persons with Disabilities, who is aged 13 or older and lacks judgment or decision-making capacity due to a physical or mental disability; hereafter the same shall apply in this Article) or makes a disabled child or youth have illicit sex with any third person, he/she shall be punished by imprisonment with labor for a limited term of at least three years.

(2) Where a person aged 19 or older commits an indecent act against a disabled child or youth or makes a disabled child or youth commit an indecent act against any third person, he/she shall be punished by imprisonment with labor for not more than ten years or by a fine not exceeding 15 million won.



## **Article 8-2 (Illicit Sex with Children or Youth Aged 13 to under 16)**

(1) Where a person aged 19 or older has illicit sex with a child or youth aged 13 to under 16 (excluding a disabled child or youth prescribed in Article 8 who is aged under 16; hereafter the same shall apply in this Article) by taking advantage of his/her destitute conditions or makes such child or youth have illicit sex with any third person, he/she shall be punished by imprisonment with labor for a limited term of at least three years.

(2) Where a person aged 19 or older commits any indecent act against a child or youth aged 13 to under 16 by taking advantage of his/her destitute conditions or makes such child or youth commit any indecent act against any third person, he/she shall be punished by imprisonment with labor for not more than ten years or by a fine not exceeding 15 million won.

## **Article 34 (Reporting on Sex Offenses against Children or Youth)**

(1) Any person who becomes aware of the occurrence of a sex offense against a child or youth may report such offense to an investigative agency.

(2) When the head of any of the following institutions, facilities, or organizations and any employee thereof becomes aware of the occurrence of a sex offense against a child or youth in the course of performing his/her duties, he/she shall immediately report such offense to an investigative agency:

1. Kindergartens defined in subparagraph 2 of Article 2 of the Early Childhood Education Act;
2. Schools defined in Article 2 of the Elementary and Secondary Education Act and schools defined in Article 2 of the Higher Education Act;
3. Medical institutions defined in Article 3 of the Medical Service Act;
4. Child welfare facilities defined in subparagraph 10 of Article 3 of the Child Welfare Act;
5. Welfare facilities for persons with disabilities under Article 58 of the Act on Welfare of Persons with Disabilities;
6. Child-care centers defined in subparagraph 3 of Article 2 of the Infant Care Act;
7. Private teaching institutes defined in subparagraph 1 of Article 2 and teaching schools under subparagraph 2 of the same Article of the Act on the Establishment and Operation of Private Teaching Institutes and Extracurricular Lessons;
8. Supporting institutions for victims, etc. of sexual traffic under Article 5 of the Act on the Prevention of Commercial Sex Acts and Protection, etc. of Victims and counseling centers for victims, etc. of sexual traffic under Article 10 of the same Act;
9. Single-parent family welfare facilities under Article 19 of the Single-Parent Family Support Act;
10. Counseling centers related to domestic violence under Article 5 of the Act on

the Prevention of Domestic Violence and Protection, etc. of Victims and protection facilities for victims of domestic violence under Article 7 of the same Act;

11. Counseling centers for the victims of sexual violence under Article 10 of the Sexual Violence Prevention and Victims Protection Act and protective facilities for the victims of sexual violence under Article 12 of the same Act;

12. Facilities for youth activities defined in subparagraph 2 of Article 2 of the Youth Activity Promotion Act;

13. Youth counseling and welfare centers under Article 29 (1) of the Youth Welfare Support Act and youth shelters under subparagraph 1 of Article 31 of the same Act;

14. Centers for the protection and rehabilitation of youth under Article 35 of the Youth Protection Act.

(3) Except as otherwise expressly provided for in other Acts, no person shall publish any information or material that may identify reporters, etc., such as their personal information or pictures, in publications, or disclose them through broadcasting or any information and communication network.