

NGO Report :
**Regarding Deficiencies in Legal Standards for Defining
Rape and in Victim Rights Protection**

**The UN Committee
on the Elimination of Discrimination against Women (CEDAW)**

Republic of Korea(RoK)

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Provisions of relevant convention and related documents

- Convention on the Elimination of All Forms of Discrimination against Women
- CEDAW General Recommendation No. 19, General recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19 (1992)
- Report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/47/26, A/HRC/47/26/Add.1)
- Recommendations for the Republic of Korean government (CEDAW/C/KOR/CO/7, 21, CEDAW/C/KOR/CO/8, 23, CCPR/C/KOR/CO/5, 18(c), CCPR/C/KOR/CO/4, 19, CAT/C/KOR/CO/2, 17, A/HRC/37/11, 130.35, A/HRC/53/11, 138.50, 138.53, CCPR/C/79/Add.114, 11)

1. Current Situation and Issues

- The present situation of rape victims and the issues with legal standards (Article 297 of the Criminal Act)
 - According to the Korea Association of Sexual Violence Relief Center(KASVRC)¹, which analyzed 4,765 cases of rape counseling in 2022, 62.5% of rape victims experienced rape without explicit physical violence or intimidation. Instead, coercion (19.9%), persuasion (17.6%), abuse of authority (11.0%), deception (9.7%), grooming (7.9%), verbal abuse (4.6%), and harassment (2.9%) were reported.
 - According to the 2022 Sexual Violence Safety Survey by the Ministry of Gender Equality and Family(MOGEF), cases of rape due to 'coercion' (41.1%) and 'deception' (34.3%) by the perpetrator were more prevalent than those resulting from physical violence or intimidation. physical assault or threats.
 - However, Article 297 of the Criminal Act stipulates 'violence or intimidation' as constituting elements of rape, and legal precedents and theories define rape only to the incidents 'when the victim's resistance is significantly difficult', leading to many rape cases not being subject to prosecution.
 - Defining rape based on significant physical violence or intimidation is a relic of past legal frameworks whose legal interest was to protect women's 'chastity', and further excludes women who are not perceived to fiercely resist to protect their chastity. Under this law, investigative agencies and courts still determine sexual assault based on the victim's resistance, leading to further secondary victimization of rape survivors.
 - 19.3% of rape cases that were not transferred and 17% of cases that were not prosecuted did not even proceed to trial due to the lack of evidence for "physical violence or intimidation."(KASVRC, 2022).
- The present situation of drug-facilitated sexual violence and the issues with legal standards (Article 299 of the Criminal Act)

¹ Korea Association of Sexual Violence Relief Center 2022 Analysis on Rape Victim Counseling, <https://change297.tistory.com/51>

- 29.4% of all rape cases occurred under the influence of alcohol or drugs(KASVRC, 2022).
 - Currently, rape facilitated by alcohol or drugs falls under Article 299 of the Criminal Act as quasi-rape, defined as “taking advantage of the other's condition of unconsciousness or inability to resist”. Due to its narrow definition and additional criteria, which consider whether the perpetrators intentionally took advantage of this condition, prosecuting perpetrators becomes very difficult when victims have lost complete memory and control.
 - In actual cases of quasi-rape, perpetrators often claim that the victim was conscious at the time but merely experienced a "blackout" where they lost memory. The police, prosecution, and courts view "blackout" differently from "passing out," seeing it as unrelated to a states of unconsciousness or inability to resist. The dilemma arises: If the victim, even under the influence of alcohol, retains memory of the crime, Article 297 of the Criminal Act applies, but without evidence of physical violence or intimidation, it is deemed not to meet the definition of rape; Conversely, if the victim has no memory of the crime due to a blackout, but is considered to have been conscious at the time, it is deemed not to meet the definition of quasi-rape. According to data from 2019 provided by KASVRC, out of 511 victims who pressed charges against their perpetrators for quasi-rape, only 44.8% (229 individuals) resulted in the perpetrator being indicted, with only 21% (112 individuals) receiving guilty verdicts.
 - In 2017, a woman intoxicated and taken to an out-of-town lodging facility by four men after being driven in a car with her upper body folded in half and in a disheveled state, accused one of the men of raping her two days later. However, in 2023, the Supreme Court rendered a final verdict of innocence. This was because the accused unilaterally claimed to have obtained consent from the victim before she became intoxicated, and legally, the perpetrator's intent was not proven.²
- The present situation and insufficient reporting and punishment in cases of rape within intimate relationships and marriages.
 - According to the 2021 survey on violence against women, 13.5% of the perpetrators of ‘lifetime sexual harassment’ experienced by women are their spouses. In a 2022 survey by KASVRC, it was found that in instances of sexual violence without direct physical violence or intimidation, the perpetrator was typically someone the victim had encountered online, followed by individuals met at school, acquaintances, coworkers, and current or former intimate partners, in descending order of frequency.
 - However, reporting rape and ensuring perpetrators to be punished are challenging for victims of IPV. Although the Supreme Court set a legal precedent recognizing marital rape in 2012, data from the 2022 Korea Women's Hotline counseling reveals

² “Woman Taken Away Unconscious, 'Not Guilty' Confirmed to the Perpetrators”
https://imnews.imbc.com/replay/2023/nwtoday/article/6478500_36207.html

that only one case of sexual violence in marital relationships was reported to the police.³

- The prosecution frequently dismisses cases of sexual violence occurring within marital or intimate relationships, arguing that such incidents do not constitute rape. In a case of quasi-rape between former partners in 2021, the prosecution decided not to prosecute, but the court ordered a retrial, resulting in multiple media reports.

2. Government and political parties' discord regarding the amendment of the rape provision in the criminal act

- Blatant interference by the current administration.
 - In 2021, the Yoon Suk-yeol administration campaigned on the pledge to enhance penalties for false accusations of sexual assault, arguing that young men were not receiving fair treatment, and subsequently won the presidential election in 2022.
 - *The 3rd Basic Plan for Gender Equality Policy*, released on January 26, 2023, included a policy task to review of the amending constituent elements of rape under Article 297 of the Criminal Act. Nevertheless, the Ministry of Justice and the Ministry of Gender Equality and Family promptly revoked the plan on the same day due to objections raised by online male communities regarding the risk of false accusations.⁴
- Intensification of gender discrimination and interference by the major parties in the National Assembly.
 - Before the 2024 general election, the party that secured President Yoon Suk-yeol's election has divided into two factions: the People Power Party and the New Reform Party. Both parties are against the proposed amendment that seeks to redefine rape based on consent. On March 26, 2024, Han Dong-hoon, the head of the People Power Party, voiced opposition, expressing concerns about potential unjust accusations. The following day, Cheon Ha-ram, the head of the New Reform Party, affirmed, "We will oppose the revision of the rape law to ensure a future free from fear."
 - The Democratic Party of Korea which is the primary opposing party, eliminated numerous female legislators with specialized experience in addressing sexual violence from the 2024 general election. On March 27, 2024, the Democratic Party retracted its proposal to redefine rape based on consent, acknowledging it as "an mistake" after facing opposition from the aforementioned two parties.
 - South Korean parliamentary elections took place on April 10, 2024, where the three main parties dominated the majority of seats, yet only a minority of elected candidates and parties supported the proposal to redefine rape based on consent in the Criminal Act.

³ "Prosecution drops charges" in Former intimate partner sexual assault case... Guilt recognized after application for adjudication. https://www.hani.co.kr/arti/society/society_general/1135065.html

⁴ KBS, "MOGEF changes stances in 9 hours. Why the Debate over 'Non-Consensual Rape' offense? 27 January, 2023 (in Korean) "<https://news.kbs.co.kr/news/pc/view/view.do?ncd=7591665>

3. List of issues and questions regarding the government of Republic of Korea

- What specific measures has the Korean government taken to effectively protect victims, prevent sexual violence cases, and prevent the recurrence of rape without explicit physical violence or intimidation?
- What specific measures has the Korean government taken to ensure that rape cases lacking physical violence or intimidation, which occur within intimate or marital relationships, workplace or school relationships, encounters with individuals met online, or instances of sex trafficking, are not automatically dismissed or dropped during the investigation and prosecution stages?

4. Recommendations regarding the government of Republic of Korea

- Revise Article 297 of the Criminal Act to redefine rape based on the victim's consent.
- Clearly define marital rape as a crime and establish a comprehensive framework to ensure no gaps in punishment for rape within intimate relationships with current or former partners.
- Establish detailed protocols for thorough investigation and prosecution to prioritize the absence of the victim's consent, of cases involving quasi-rape, statutory rape, sexual violence in sex trafficking, and retaliatory counterclaims accusing victims of falsely claiming rape.
- Improve relevant legislation and frameworks to guarantee victims substantive access to information, opportunities to voice their perspectives, and sufficient safeguarding of their confidentiality throughout investigation inquiries and legal proceedings in sexual violence cases.