

In this report to the OHCHR, Tacteennaeil_ECPAT Korea intends to argue for children' right to initiate reporting on their own without any interruption to the law enforcement, and for introducing strict liability in sex crimes against children for the best interest of the child.

1. Children' right to initiate reporting on their own without any interruption to the law enforcement

With technological advancements lowering communication barriers ever more for all, children are increasingly exposed to and affected by sexual violence in Korean society. Systems are put in place in the country for affected children with complaint mechanisms allowing them to file complaints and having evidence collected in a timely manner. The problems arise, however, when child victims wish to proceed on their own, without the knowledge of their legal guardians.

The police make it a rule to notify legal guardians when their victimized children are to initiate the reporting process. It often leads child victims to forgo complaint as they often find it difficult to share their victimization with the legal guardians. Indeed, the child sexual victim counseling team of Tacteennaeil_ECPAT Korea has met such child victims as clients.

In 2020, a Tacteen counselor accompanied a child client to the police upon finding out how she was receiving threat of doxing by a stranger online. The police responded that reporting should be notified to her legal guardian, which thwarted her will to file complaint at all. It was only when the Tacteen counseling team invoked the Paragraph 4 of Article 204 of the Crime Investigation Regulations to the police that they admitted the reporting without informing her legal guardian; the provision – removed since 2021 – stipulated the exception of notification when it is deemed against the benefit of the child involved.

In 2021, a Tacteen counselor planned on visiting a one-stop center for sexual victims with a child rape victim. The one-stop center requested the victim to make a police reporting in advance, and the victim went to the police only to experience the same frustration as the above victim. Tacteen had difficulty persuading the police to postpone the notification as late as they could.

In the same year, a 17-year-old victim tried to make a police report against her boyfriend for rape. However, learning the notification rule, the child gave up on reporting; she had been abused by the father, and the mother was not the person who went against him. She was fearful that her parents would be angered finding out her victimization.

The police argue that the notification measure is to abide by the Criminal Investigation Regulations under the National Police Agency. It is ideal that legal guardians become supportive of their children in case they become victimized. However, when the rule of notification discourages child victims from initiating a reporting process, it apparently is not in the best interest of the child. To prevent such cases, therefore, children should be given an option to relying on trusting adults such as counselors, other than their legal guardians.

Given the fact that reporting can be a mighty tool for victim empowerment, the law enforcement should provide child victims with an option to enable reporting by, for example, designating a trustworthy adult as proxy for their legal guardian. This way, child victims may be encouraged to make police report and have relevant evidence collected in a timely manner, promoting access to justice by children, which may contribute to creating a society where child sexual exploitation becomes completely unacceptable.

2. Introducing strict liability for the best interest of the child

There are national laws in place to protect children from sex crimes, with not a few loopholes:

perpetrators often go under-punished with a defense of being unaware of the minor status of their victims thanks to the Korean law that unfairly lays the burden of proving the perpetrators' awareness of the victims' minority on the side of victims, instead of offenders. One keyword 'sex offender' in Naver, the leading search portal in Korea, provides plentiful resources for the sex offenders who seek a way out. They include law firms showcasing their success record of 'saving' child sex offenders by coaching them with the defense of ignorance or belief as to the victim's age in the court of law.

Besides, national sex offense laws require that violence or intimidation be elements of a sex crime. They imply that victims must have exhibited strong resistance against sex offenders to be recognized as 'real' victims in the eye of the law. Even when perpetrators are eventually brought to justice, the punishments are barely sufficient compared to the gravity of their misdeeds.

Hence, introducing strict liability and taking into consideration the actual age of victims at court should promote the eradication of sexual exploitation of children and better protect children.