

## Questionnaire on criminalization and prosecution of rape

### Definition and scope of criminal law provisions

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.

*\*attached below & refer to attached file\**

"CRIMINAL ACT"

"ACT ON SPECIAL CASES CONSERING THE PUNISHMENT, ETC. OF SEXUAL CRIMES"

"SEXUAL VIOLENCE PREVENTION AND VICTIMS PROTECTION ACT"

2. Based on the wording of those provisions, is the provided definition of rape:
  - a. Gender specific, covering women only YES/**NO** *\*it used to be only women until 2013(amended in dec. 2012 but applied in 2013), but not it's for all genders*
  - b. Gender neutral, covering all persons **YES**/NO
  - c. Based on the lack of consent of victim YES/**NO**
  - d. Based on the use of force or threat **YES**/ NO
  - e. Some combination of the above. YES / **NO** *\*for c,d,e : Korean law do not consider victim's consent as a crime factor for rape – it's a frequently discussed issue in Korea. In the past, many offenders were not charged for rape due to lack of force or threat – recently, the court expanded their perspective on the 'force and threat', so now it includes implicit force or threat as well as physical ones. But it all depends on the court cases and judges.(Case by case) So NGOs in Korea are arguing for changes in the legal definition of rape (from 'means of force or threat' to the 'lack of consent of victim')*
  - f. Does it cover only vaginal rape? **YES** /NO *\*for « rape » it only covers 'sexual intercourse' / for other penetration, « imitative rape » is applied*
  - g. Does it cover all forms of penetration? YES/**NO**. If yes, please specify.  
*\*explained above*
  - h. Is marital rape in this provision explicitly included? YES / **NO**
  - i. Is the law silent on marital rape? YES/**NO**
  - j. Is marital rape covered in the general provisions or by legal precedent even if it is not explicitly included? **YES**/NO
  - k. Is marital rape excluded in the provisions, or is marital rape not considered as a crime? YES /**NO** *\*\*EXPLAIN NEEDED for i,j,k : in Korean law, forced sexual intercourse was rarely defined as 'marital rape'. It was usually called a 'sexual abuse' in the domestic violence context, and was handled in the Family court instead of Criminal court. However, in 2009, the court considered a rape between husband and wife as a Quasi-rape for the first time. And in 2013, the Supreme court made an agreement on « marital rape » and admitted that a forced sexual intercourse between spouses should be considered as marital rape. But it is not formally stated in the law, and it depends on each case and court to decide whether the case can be sentenced as martial rape or not. (Many factors to be satisfied) So many victims still go to the Family court as a sexual abuse in domestic violence.*
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, there is no provisions excluding criminalization of such act. Because there was no wording in the definition of « rape » that excludes intimate partners (it just says*

'other' or 'person'), the Supreme court made an en banc agreement in 2013 regarding the « rape » between an intimate partner(married/de facto marriage). The court stated that « because there is no definition or provision that exclude wife from a victim in the legal content, it is reasonable to consider that even though he/she agreed to marry he/she, it does not mean that he/she consented to the forced sex. Thus, crime such as marital rape can be applied. »

4. What is the legal age for sexual consent?

It's currently 13 years old, but after the Nth room case, the government announced that the age will be increased to 16.

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

No, it mentions about sexual activity with minors, but does not specifically mention about sexual activity between peers.

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

All the laws included in the Criminal Act (attached below) states specific sanctions(punishments). And "Act on Special Cases Concerning the Punishment, etc. of Sexual Crimes"(attached file) states criminal sanctions for each specific crimes.

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?

I do not see any statement mentioning the reparation(money) to the victim. Since I am not a law professional, I cannot be 100 percent sure, but I believe whether to provide reparation fee to the victim & the amount of reparation is decided by the judge considering each case's nature(and if there is no financial damage by the sexual victimization, it is very rare to receive any economic reparation from the gov.). Please see the attached file "SEXUAL VIOLENCE PREVENTION AND VICTIMS PROTECTION ACT" (Other forms of reparation – social support, psychological treatment, etc. are provided according to this law)

#### **Aggravating and mitigating circumstances**

8. Does the law foresee aggravating circumstances when sentencing rape cases? If so, what are they?
- Is rape by more than one perpetrator an aggravating circumstance? **YES**/NO
  - 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**/NO
  - Is rape by spouse or intimate partner an aggravating circumstance? **NO**

\*for further details, please see the attached file "ACT ON SPECIAL CASES CONCERNING THE PUNISHMENT, ETC. OF SEXUAL CRIMES"

9. Does the law foresee mitigating circumstances for the purposes of punishment? YES/**NO** If yes, please specify.

\*It's NO and YES. I don't think there is a formal statement written in the law regarding the mitigating circumstances, however, I believe the sentencing guidelines includes some mitigating factors for punishment. And even if there is no guidelines for the mitigating factors, judges sometimes take consideration on certain factors such as apology letters, settlement between offender and victim, first-time-offense, family to support, etc. For example, the court considered Son Jong Woo, an offender responsible for W2V, to have several mitigating factors. He had no past criminal records and he had a wife and a child. So the court considered those as a mitigating factors – and the decision brought huge disagreements from the public.

\*I believe there is a short mentioning about the lack of judgement( ?) regarding the offender's mental illness and substance use.

10. Is reconciliation between the victim and the perpetrator allowed as part of a legal response? YES/NO If so, at what stage and what are the consequences?
- a. Regardless of the law, is reconciliation permitted in practice? YES/NO and what is the practice in this regard?

It can be a mitigating factor, but not a legal response. Sexual crime was excluded from the "offense subject to complaint(for prosecution, victim's complaint is required)" so the court can prosecute the offender even though reconciliation has been made. However, because reconciliation is considered to be a mitigating factor, it is often misused/abused (offender's family or sometimes offender himself visit/call/email the victim or victim's family repeatedly to earn the reconciliation and the letter of forgiveness. To end the solicitation, victims/victims' family give away the letter or make reconciliation. Even if the victim refuse to reconcile, still the victim is harmed and face secondary victimization.).

11. Is there any provision in the criminal code that allows for the non-prosecution of perpetrator? YES/NO If yes, please specify.
- a. if the perpetrator marries the victim of rape? YES/NO
- b. if the perpetrator loses his "socially dangerous" character or reconciles with the victim? YES/NO \*\*reconciliation may be a mitigating factor, but not a reason for non-prosecution. For sexual crimes, certain punishment must be sentenced – it's just a matter of amount and weight. \*\*\*And for a note, there is a provision in the entire Criminal Act that any perpetrators younger than 13(juvenile adjudication is available from 10 to 14) is not punishable in criminal court.

### **Prosecution**

12. Is rape reported to the police prosecuted ex officio (public prosecution)? YES/NO

13. Is rape reported to the police prosecuted ex parte (private prosecution)? YES/NO

14. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of women? YES/NO

Offenders often try to make a settlement with the victim(women) to lessen their punishment, but it cannot be more than just a mitigating factor. And plea bargain is

usually not made in rape cases, I believe.

15. Are plea bargain or "friendly settlement" of a case allowed in cases of rape of children? YES/NO

Plea bargain is not made in cases of rape of children. But friendly settlement is often made between offender and victim child's parents. But like mentioned above in the adult's case, the settlement cannot be more than just a mitigating factor.

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

Rape/Imitative rape/Quasi-rape: 10 years

Killing another or causing death of another by rape: 25 years

Inflicting or causing another's bodily injuries by rape: 15 years

Sexual intercourse with minors: no statute of limitations (amended in 2019 -> before it was 10 years but starting from the time that the child becomes adult)

17. Are there provisions allowing a child who was the victim of rape and to report it after reaching adulthood? YES/NO

18. Are there mandatory requirements for proof of rape, such a medical evidence or the need for witnesses? YES/NO If yes, please specify.

Victim's report is only requirement to proceed police report. And throughout the prosecution, victim's statement is recorded and sent to the judge/prosecutor to prevent secondary victimization.(but if judge wants to meet the victim, victim must cooperate – and usually judges ask for direct statement from the victim)

However, usually rape victims go to SunFlower center(One-stop support center for victims of sexual crimes) where they can get emergency medical treatment(with medical kit – collecting medical evidences such as semens, physical trace, offender's DNA from victim's clothes, etc.). And victim submit such evidence to the court to strengthen her/his statement and increase the level of punishment.

19. Are there rape shield provisions aimed at preventing judges and defense lawyers from exposing a woman's sexual history during trial? YES/NO

Please refer to "ACT ON SPECIAL CASES CONSERING THE PUNISHMENT, ETC. OF SEXUAL CRIMES" Article 29,31,34

20. Are there procedural criminal law provisions aimed to avoid re-victimizations during the prosecution and court hearings? YES/NO. If yes, please specify.

Please refer to "ACT ON SPECIAL CASES CONSERING THE PUNISHMENT, ETC. OF SEXUAL CRIMES" Article 29,31,34

## War and/or conflict

21. Is rape criminalized as a war crime or crime against humanity? YES/NO

It's a criminal offense

22. Is there a statute of limitations for prosecuting rape in war or in conflict contexts? YES/NO

Not include in the Criminal Act or other laws regarding sexual crimes.

23. Is there explicit provisions excluding statutes of limitation for rape committed during war and armed conflict? YES/NO

No explicit provision regarding rape committed during war. It is possible that such provision is mentioned in other parts of Korean law, but in sexual crime section, I do not see any.

24. Has the Rome Statute of the International Criminal Court (ICC) been ratified? YES/NO

## 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. \*refer to attached file[rape\_data]

		Criminal Disposal Result (# of peopl)				
		2014	2015	2016	2017	2018
Rape	Total	4858	4911	5227	5491	5590
Rape	Prosecuted	2066	2117	2080	2415	2307
Rape	formal trial_imprisonment	1012	1013	926	937	743
Rape	formal trial_no detention	933	1012	1053	1360	1424
Rape	informal trial	121	92	101	118	140
Rape	sent to Juvenile court (se	224	188	185	178	209
Rape	sent to Family court(dome	10	16	11	24	21
Rape	Prostitution protection	1	-	-	-	-
Rape	sent to child protection (s			-	6	1
Rape	Non-prosecuted	2231	2327	2599	2721	2860
Rape	suspension of indictment	309	284	233	185	147
Rape	Not guilty	1824	1974	2298	2455	2626
Rape	Not punishable	2	-	3	4	4
Rape	No right to appeal	96	69	65	77	83
Rape	stay of prosecution	281	227	319	122	176
Rape	suspension decision due	45	36	33	25	16

## Other

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.

Korea had many changes on treating sexual crimes in past many years. Legal system is well built for both protecting victims and prosecuting offenders; however, there are still some social norms and bias on victims and sexual crimes. Victims still hesitate to report (they still can get emergency treatment from the One-stop center for victims), and secondary victimization is frequently happened.

Due to lack of trust(I have to say) among prosecution, court, and police, they often request victim to testify again. It is written in law that victims must be protected and her/his statement must be recorded and shared so he/she doesn't have to repeatedly recall and mention the victimization. However, at each state of court proceeding, judge and prosecutor want to hear it directly from the victim for the clarification. So it cause a bit discomfort to the victim. But we have another law requiring the court to provide separate room and entrance for the victim – to make sure she/he can testify in comfortable circumstances.

Regarding rape of children, Korea had several huge cases recently, so now we are working on law amendments.

The most difficult barriers to fight the sexual crime is that sometimes people blame on victims for the crime. Depends on the nature of the victim(age, job, gender, socioeconomic status, way to dress, etc.), people can 'label' the victim as one who 'deserves' this to happen. (For example, if a victim is a prostitute or sexually active women or dressed very short skirt, people blame the victim). Such notion is disappearing slowly, but we still have many years to go.

## **\*\*CRIMINAL ACT\*\***

### **CHAPTER XXXII CRIMES CONCERNING RAPE AND INFAMOUS CONDUCT**

**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. [<Amended by Act No. 11574, Dec. 18, 2012>](#)

**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.

[This Article Newly Inserted by Act No. 11574, Dec. 18, 2012]

**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. [<Amended by Act No. 5057, Dec. 29, 1995>](#)

**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. [<Amended by Act No. 11574, Dec. 18, 2012>](#)

**Article 300 (Attempts)** Attempts to commit any of the crimes of Articles 297, 297-2, 298 and 299 shall be punished. [<Amended by Act No. 11574, Dec. 18, 2012>](#)

**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. [<Amended by Act No. 11574, Dec. 18, 2012>](#)

[This Article Newly Inserted by Act No. 5057, Dec. 29, 1995]

**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. [<Amended by Act No. 11574, Dec. 18, 2012>](#)

[This Article Newly Inserted by Act No. 5057, Dec. 29, 1995]

**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 means of fraud 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 five years, or by a fine not exceeding 15 million won. [<Amended by Act No. 5057, Dec. 29, 1995; Act No. 11574, Dec. 18, 2012>](#)

(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 seven years. [<Amended by Act No. 11574, Dec. 18, 2012>](#)

**Article 304** Deleted. [<by Act No. 11574, Dec. 18, 2012>](#) [<This Article deleted by Act No. 11574 on Dec. 18, 2012, following the decision on unconstitutionality made by the Constitutional Court on December 26, 2009>](#)

**Article 305 (Sexual Intercourse or Indecent Acts with Minor)** 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. [<Amended by Act No. 5057, Dec. 29, 1995; Act No. 11574, Dec. 18, 2012>](#)

**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. [<Amended by Act No. 11574, Dec. 18, 2012>](#)

[This Article Newly Inserted by Act No. 10259, Apr. 15, 2010]

**Article 306** Deleted. [<by Act No. 11574, Dec. 18, 2012>](#)