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Using Law to Combat Sexual Harassment in Japan 日本如何用法律抵制性骚扰

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Founder & Vice President of Human Rights Now
日本HRN创始人兼副会长

【Report】 Japan’s Draft Revision to the Sex Crimes Penal Code Proposed by the Legislative Council on January 17, 2023

February 7, 2023

Child rights, girls, pornography, sexual violence, Women's Rights

Introduction

On January 17, 2023, Japan’s Legislative Council further modified its draft plan to revise the existing sex crimes penal code. Most notably, the January 2023 draft revision changed the October 2022 draft revision provision defining the punishable crime of forced sexual intercourse from “making it difficult [for the victim] to refuse” to “making it difficult for the victim to form, express, or fulfill the intention not to consent.” [1]

While Human Rights Now (hereafter referred to as “HRN”) commends the Legislative Council’s willingness to modify the existing sex crimes penal code to more effectively uphold the human rights of survivors of sex crimes in Japan, the January 2023 draft revision provision defining the punishable crime of forced sexual intercourse still fails to meet international rape legislation standards that Japan is obligated to as a State Party to the Convention on the Elimination of All Forms of Discrimination Against Women (hereafter referred to as “CEDAW”), and is guaranteed to continue excluding victims of rape who do not actively demonstrate non-consent to unwanted sexual intercourse from accessing the justice they deserve.

So as to prevent gaps in the legal system that allow offenders of sex crimes to evade punishment; to ensure that Japanese rape legislation meets international rape legislation standards as required under CEDAW; and to uphold the human rights of survivors of sex crimes currently unable to access justice, HRN demands that the Legislative Council both clarify and expand the scope of forced sexual intercourse in Japan by defining the crime of rape as all non-consensual sexual intercourse.

Background

According to the Japanese government’s 2017 Cabinet Office survey, 1 in 14 Japanese women and 1 in 100 Japanese men have experienced forced sexual intercourse in their lives,[2] equating to around 4.64 million Japanese women and 610,000 Japanese men. However, only 1,405 cases of forced sexual intercourse in Japan were recognized in 2019, and only 470 of these cases, equivalent to 33.6%, were actually prosecuted.[3] A major reason for the significant disparity between the number of cases of forced sexual intercourse that occur in Japan, the number of cases of forced sexual intercourse that are recognized in Japan, and the number of cases of forced sexual intercourse that are prosecuted in Japan is the strict requirements, such as proof of “assault or intimidation,” insanity, and inability to resist, that survivors must prove to fulfill the current Japanese penal code’s definition of punishable forced sexual intercourse.

The most recent revision to Japan’s sex crimes penal code occurred in 2017, the first time the penal code was revised in 110 years. This 2017 revision effectively replaced a gendered title of rape to a gender-neutral title; expanded the scope of forced sexual intercourse to include more sexual acts; removed the requirement that the victim of forced sexual intercourse must be female, thereby excluding male and nonbinary victims; increased the minimum prison term for forced sexual intercourse from three years to five years; allowed public prosecutors to charge sex offenders with or without the filing of complaints by victims; and imposed new punishable penalties for sexual offenses without intimidation or violence against minors below the age of 18 by their parents or other guardians.[4]

Despite these commendable and necessary revisions to Japan’s sex crimes penal code, the 2017 revision received much criticism from survivors of sex crimes and survivors’ advocacy groups, including HRN [5], for failing to raise the

age of consent above 13; impose new penalties for cases with power imbalances besides a parent or guardian; and remove the “through assault or intimidation” requirement for punishable cases of forced sexual intercourse.^[6] In an effort to promote access to justice for survivors of sex crimes, HRN released a survey report in 2018 documenting the trend in international rape legislation conventions towards a consent-based model ^[7] and initiated a signature campaign in 2019, which has since received over 130,000 signatures, requesting that the Ministry of Justice further revise the sex crimes penal code.^[8]

As a direct result of HRN's joint-activism with survivors and other survivors' advocacy groups to promote access to justice for survivors of sex crimes in Japan, the Ministry of Justice established a study group on criminal law concerning sex crimes to discuss issues in the 2017 revision. The study group concluded that it was necessary to establish a Sub-Committee to propose and deliberate additional revisions to the sex crimes penal code. In response, a Legislative Council Criminal Law (sex-crime related) Sub-Committee (hereafter referred to as “Legislative Council”) was successfully established in October 2021, and draft revisions to the sex crimes penal code were proposed by the Legislative Council in October 2022 and most recently in January 2023. HRN has closely monitored all thirteen of the Legislative Council's meetings that have been held,^[9] and actively works with Sub-Committee members to realize a legal system that will comprehensively and effectively protect the human rights of all survivors of sex crimes in Japan.

October 2022 Draft Revision Content

In October 2022, the Legislative Council proposed a draft plan to revise the existing sex crimes penal code. This October 2022 draft revision would effectively: widen the range of punishable sexual acts through raising eight specific cases considered a punishable crime, including actions taking advantage of a “physical or mental disability,” “the influence of alcohol or drugs,” and “the misuse of economic or social status;” harshen penalties for sexual violence against children including raising the age of consent from 13 years to 16 years, and imposing new punishable penalties for luring children to places to sexually assault them and for “grooming;” extend the statute of limitations for forced sex crimes by five years for victims of all ages, plus the period until the victim turns 18 for victims who are minors; impose new punishable penalties for camera voyeurism and sending images and videos to multiple people; and replace the “assault and intimidation” requirement with “making it difficult [for the victim] to refuse.” ^[10] While HRN commends the Legislative Council's efforts to modify the existing sex crimes code, this draft plan continues to fail to meet survivors' calls for a simple and clear provision defining the punishable crime of forced sexual intercourse as all non-consensual sexual intercourse. The “assault and intimidation” requirement in the current sex crimes penal code requires that assault and intimidation be present in order for an offender to be punished for committing the crime of forced sexual intercourse. Consequently, sex crimes prosecutions in Japan currently revolve around the subjective assessment of determining if a survivor demonstrated sufficient resistance. ^[11] It is imperative to acknowledge that the October 2022 definition of forced sexual intercourse will still require prosecutors to prove that victims were in no condition to form or express their rejection to the sexual act, systematically excluding cases of rape, such as the case of Ayumi Ikeda's, in which the survivor does not fight back or physically demonstrate refusal to the sexual intercourse.^[12] As HRN founder and Tokyo-based human rights lawyer Kazuko Ito has stated, the October 2022 draft revision will continue to “question the circumstances of the victim” and “will be just like the existing one that forces victims to prove they fought back.”^[13]

January 2023 Draft Revision Content

Most recently on January 17, 2023, the Legislative Council further modified its draft plan to revise the sex crimes penal code as a result of ongoing criticism from survivors and survivors' advocacy groups. Modifying the October 2022 draft revision, the January 2023 draft revision removes the “coping ability” requirement in the provision raising the age of consent from 13 years to 16 years, a modification HRN considers a positive step forward for protecting children's rights, and changes the provision defining the punishable crime of forced sexual intercourse from “making it difficult [for the victim] to refuse” to “making it difficult for the victim to form, express, or fulfill the intention not to consent.” ^[14] HRN reiterates that the January 2023 draft revision provision defining the punishable crime of forced sexual intercourse is guaranteed to continue excluding victims of rape who do not actively demonstrate non-consent to unwanted sexual intercourse, such as Ayumi Ikeda, from accessing the justice they deserve. Additionally, the January 2023 draft revision not only proposes a definition of rape that lags far behind the consent-based models of rape legislation currently utilized in the legal systems of other industrialized States, ^[15] but it fails to meet international rape legislation standards that Japan is obligated to as a State Party to CEDAW.

Evolving International and Conventional Rape Legislation Standards

In a 2010 opinion on *Karen Tayag Vertido v. the Philippines*, the Committee on the Elimination of Discrimination against Women (hereafter referred to as “the Committee”) proposed two models of rape legislation acceptable under international rape legislation standards: one which “requires the existence of ‘unequivocal and voluntary agreement,’”

known in legal theory as the “consent-based model,” and one which “requires that the act take place in ‘coercive circumstances,’” known in legal theory as the “coercion-based model.” [16] Despite the technical differences between these two legal theories, the Committee stated that it has “clarified time and time again that rape constitutes a violation of women’s right to personal security and bodily integrity, and that its essential element was lack of consent.” [17] Committee member Dr. Yoko Hayashi of Japan submitted a concurring individual opinion to the *Vertido v. the Philippines* opinion recognizing the potential for this decision to universalize rape laws through establishing two models, both of which retain “lack of consent” as the essential element. [18]

Citing the *Vertido v. Philippines* opinion, the Committee further clarified in the *R.P.B v. the Philippines* opinion that “there should be no assumption in law or in practice that a women gives her consent because she has not physically resisted the unwanted sexual conduct, regardless of whether the perpetrator threatened to use force or used physical violence.” [19] To formally codify the aforementioned case opinions into international rape legislation standards, in 2017 the Committee updated General Recommendation No. 19 and released General Recommendation No. 35 on gender-based violence against women, requiring that States Parties ensure that “the definition of sexual crimes... is based on the lack of freely given consent and takes into account coercive circumstances.” [20] Consequently, while CEDAW States Parties are free to choose whether to utilize a consent-based model, a coercion-based model, or a combination of both in the development of their rape legislation, it is absolutely necessary that the rape legislation both 1) involve the concept of “lack of consent,” and 2) not require women to physically resist in order for States Parties to meet international rape legislation standards that they are obligated to under CEDAW.

It is also important to note that the conventional rape legislation standard, particularly among industrialized States in parity with Japan, is evolving towards a consent-based model. As previously cited, HRN’s 2018 investigative survey of 10 industrialized countries in both the “West” and in Asia demonstrated a trend in conventional rape legislation standards towards a consent-based model. [21] In Europe, this trend has likely been a result of the European Court of Human Rights’ 2003 opinion on *M.C. v. Bulgaria* and the 2011 Istanbul Convention. *M.C. v. Bulgaria* groundbreakingly established that since “victims of sexual abuse—in particular, girls below the age of majority—often provide no physical resistance because of a variety of psychological factors or because they fear violence on the part of the perpetrator... any rigid approach to the prosecution of sexual offenses, such as requiring proof of physical resistance in all circumstances, risks leaving certain types of rape unpunished and thus jeopardizing the effective protection of the individual’s sexual autonomy.” [22] The 2011 Istanbul Convention, which has been signed by all European Union Member States, [23] built upon *M.C. v. Bulgaria*’s legal theory that physical resistance is not required for sexual acts to be considered rape by explicitly putting forth a consent-based model which requires all States Parties to take the necessary legislative or other measures to ensure that “engaging in non-consensual vaginal, anal, or oral penetration of a sexual nature of the body of another person with any bodily part or object” is criminalized. [24] The European Court of Human Rights has also cited that the *M.C. v. Bulgaria* opinion built upon judgements affecting populations in conflict made by the International Criminal Tribunal for the former Yugoslavia, particularly the 2002 *Kunarac, Kovac, and Vukovic* decision, which established that “force or threat of force provides clear evidence of non-consent, but force is not an element per se of rape.” [25] Research has shown that this transition to a consent-based model of rape legislation that does not require resistance in Europe has coincided with a significant increase in survivors’ access to justice; for example, it was found that conviction rates for rape rose 75% in Sweden after transitioning to a consent-based model. [26]

Lastly, it is apparent that the conventional rape legislation standard is evolving towards a consent-based model among legal experts and survivors’ advocacy groups around the world. Legal experts Eithne Dowds (2019) [27] and Camilla Koljonen (2019) [28] both find in their comparative studies of rape legislation that the consent-based model is preferable to coercion-based model because it more accurately reflects rape as a violation of personal integrity and sexual autonomy, and clearly prohibits all non-consensual sexual activity. In 2021, the UN Special Rapporteur on violence against women Dubravka Simonovic, arguably the ultimate legal expert on international rape legislation standards, attached an addendum to the Special Rapporteur’s report on rape, which presented a Framework for Model Legislation on Rape, including a Model Rape Law. Simonovic’s framework defines rape as “an act of a sexual nature committed without consent” and stipulates that “definitions of rape should explicitly include lack of consent and place it at its center.” [29] Japanese survivors’ rights organizations such as HRN, Spring, and VoiceUp Japan have also voiced support for use of a consent-based model to ensure that no survivor is unable to access the justice they deserve simply because they did not demonstrate resistance or say “no.”

HRN’s Concerns Regarding the January 2023 Draft Revision

Given the evolving international rape legislation standards, HRN is deeply concerned that the Legislative Council’s January 2023 draft revision, particularly the provision defining the punishable crime of forced sexual intercourse as “making it difficult for the victim to form, express, or fulfill the intention not to consent,” fails to meet international rape

legislation standards that Japan is obligated to under CEDAW. There is a significant legal distinction between “lack of consent,” which CEDAW establishes as an essential element to the crime of rape, and “the intention not to consent,” as included in the provision defining the punishable crime of forced sexual intercourse in the Legislative Council’s January 2023 draft revision. While “lack of consent” is a passive term that does not require the victim of a sex crime to present any specific actions or behaviors for an unwanted sexual act to be non-consensual, “intention not to consent” is an active term that does require the victim of a sex crime to present specific actions or behaviors for an unwanted sexual act to be non-consensual. As a result, despite the Legislative Council first removing the “assault and intimidation” requirement in its October 2022 draft revision, and subsequently changing “difficult to refuse” to “intention not to consent” in its January 2023 draft revision, rape legislation in Japan will continue to require survivors of sex crimes to prove to prosecutors that they actively presented specific actions or behaviors, which will likely continue to be actions or behaviors demonstrating resistance, violating CEDAW’s requirements that rape legislation both 1) involve the concept of “lack of consent,” and 2) not require women to physically resist.

HRN accepts and supports both the experiences of survivors of forced sexual intercourse who testify that they were unable to present specific actions or behaviors demonstrating their intention not to consent to unwanted sexual acts, and of scientific research that provides psychological reasons behind this reaction. Survivors of forced sexual intercourse commonly express that they were unable to present their intentions not to consent during the unwanted sexual act due to fear of reprisals if they demonstrated resistance, particularly if the offender is someone with whom they have a personal relationship or power relationship with; worry that demonstrating resistance will anger the offender and make the offender even more violent, which sometimes results in the victim “friending” the offender; and involuntary bodily paralysis, which prevents the victim from reacting at all. HRN stands by survivors and reaffirms that the failure not to consent to unwanted sexual acts does not negate the sexual acts from being considered forced sexual intercourse. Rather than proving lack of the survivor’s refusal, HRN believes the offender must prove the presence of the survivor’s consent, since “women do not walk around in a state of constant consent to sexual activity unless and until they say ‘no’, or offer resistance to anyone who targets them for sexual activity. The right to physical and sexual autonomy means that they have to affirmatively consent to sexual activity.” [30]

Advanced scientific research has established a variety of common reactions when the human body is subjected to an attack, known as the “5 F’s,” including Fight, Flight, Freeze, Flop, and Friend. [31] While humans have conscious control over the fight, flight, and friend reactions, freeze and flop reactions tend to occur unconsciously as instinctive survival responses and can prevent a victim of an attack from reacting consciously or in any way at all. Instructor of Psychology at Harvard Medical School Dr. James Hopper has conducted extensive research validating these bodily reactions, and has groundbreakingly concluded that freezing “happens in a flash, automatically, and beyond conscious control” and “occurs when the amygdala—a crucial structure in the brain’s fear circuitry—detects an attacker and signals the brainstem to inhibit movement.” [32] As a result, survivors of sex crimes who “freeze” and therefore fail to present non-consent do so not because they are consenting to the unwanted sexual acts, but because they physically are unable to react due to unconscious, uncontrollable bodily paralysis. At HRN’s March 2022 Webinar, Dr. Azusa Saito, a full-time lecturer of Psychology at Mejiro University and a clinical psychologist, certified psychologist, and doctor of psychology, also described in detail the various reactions that can occur when a human being is subjected to an attack, including the commonly known “fight or flight” responses, in addition to the “freeze,” “friend,” or “dissociation, tonic mobility, and pseudo-death” responses that Japanese rape law completely fails to consider. [33]

Given the reality that victims of forced sexual intercourse often “freeze” or “flop” and are therefore unable to present specific actions demonstrating their intention not to consent to unwanted sexual acts, there exists a major gap in the January 2023 draft revision that is guaranteed to continue excluding a significant portion of victims of rape and allow offenders of sex crimes to evade punishment. At HRN’s April 2022 Webinar, Ms. Junko Nakayama, a lawyer and a member of HRN’s Women’s Rights Project, demonstrated that applying a coercion-based model similar to the January 2023 draft revision provision defining the punishable crime of forced sexual intercourse to a variety of actual Japanese sex crimes court cases in which the offender was acquitted still legally results in acquittals of the offenders. [34] HRN therefore concludes that the January 2023 draft revision is merely a wording modification that, in practice, will not increase the protection of survivors’ human rights or provide them with significantly greater access to justice than they possess under the flawed sex crimes penal code as it currently exists. This is not only morally unacceptable on behalf of survivors, but it is a violation of Japan’s legal obligations as a State Party to CEDAW.

HRN’s Recommendation

HRN calls for the Legislative Council to further amend its draft plan to revise the sex crimes penal code to both clarify and expand the scope of forced sexual intercourse in Japan by defining the crime of rape as all non-consensual sexual intercourse.

References

1. Nippon, "Japan Amends Sex Crime Requirement in Draft Law Revision." January 17, 2023. <https://www.nippon.com/en/news/yjj2023011700471/>
2. Japan's Cabinet Office survey on "Experience of forced sexual intercourse from the opposite sex." 2017. https://www.gender.go.jp/policy/no_violence/e-vaw/chousa/pdf/h26danjokan-8.pdf
3. Human Rights Now, "Aiming to Realize a Better System to Protect Victims of Sexual Violence." 2020. <https://hrn.or.jp/activities/project/women/womensrights-2020/>
4. Nippon, "Japan's Revised Penal Code Goes into Force." July 13, 2017. <https://www.nippon.com/en/behind/110380/> & Ayşe Haruka Açıkbaş Oshima, VoiceUp Japan, "Age of Consent in Japan: Are the Youth Protected and Empowered by the Current Laws and Guidelines?" <https://www.voiceupjapan.org/en/age-of-consent-in-japan-are-the-youth-protected-and-empowered-by-the-current-laws-and-guidelines/>
5. Human Rights Now, "Statement on the Proposed Amendment to the Sexual Offenses Provisions of the Penal Code." March 8, 2017. https://hrn.or.jp/activity_statement/10262/
6. Ayşe Haruka Açıkbaş Oshima, VoiceUp Japan, "Age of Consent in Japan: Are the Youth Protected and Empowered by the Current Laws and Guidelines?" <https://www.voiceupjapan.org/en/age-of-consent-in-japan-are-the-youth-protected-and-empowered-by-the-current-laws-and-guidelines/> & Brooke Larsen, Savvy Tokyo, "4 Japanese Laws That Desperately Need To Be Amended For Women." October 4, 2019. <https://savvytokyo.com/4-japanese-laws-that-desperately-need-to-be-amended-for-women/>
7. Human Rights Now, 10-country research study on "Punishment for sex crimes: What's going on in the world?" 2018. http://hrn.or.jp/2019_sex_crime_comparison/#sec01
8. Change.org Campaign, "Call on Minister of Justice to Amend Criminal Law on Sex Crimes." 2019. <http://chn.g.it/Jhtb2hJp>
9. Japan's Ministry of Justice, "Legislative Council – Criminal Law (Sex Offenses) Subcommittee" meetings list. https://www.moj.go.jp/shingi1/housei02_003011
10. Mainichi, "Japan's legal penalties for sex crimes need further review." October 29, 2022. <https://mainichi.jp/english/articles/20221029/p2a/00m/0op/010000c> & Huffington Post, "New draft proposal for revision of penal code for sex crimes Ministry of Justice." January 17, 2023. https://www.huffingtonpost.jp/entry/story_jp_63c10c6ce4b0b2e150701561
11. The Asahi Shimbun, "Law must make clear all sex crimes deserve punishment." October 27, 2022. <https://www.asahi.com/ajw/articles/14753298>
12. The Asahi Shimbun, "Rape victims outraged over legal proposals for sex crimes." October 25, 2022. <https://www.asahi.com/ajw/articles/14751681>
13. Ibid.
14. Nippon, "Japan Amends Sex Crime Requirement in Draft Law Revision." January 17, 2023. <https://www.nippon.com/en/news/yjj2023011700471/>
15. Human Rights Now, 10-country research study on "Punishment for sex crimes: What's going on in the world?" 2018. http://hrn.or.jp/2019_sex_crime_comparison/#sec01
16. Vertido v. the Philippines, Communication No. 18/2008, Committee on the Elimination of Discrimination against Women. July 2010. Para 8.9 (b)(ii)(a). <https://digitallibrary.un.org/record/791502?ln=en>
17. Ibid, Para 8.7
18. Dr. Eithne Dowds, "Submission to the United Nations Special Rapporteur on violence against women's thematic report on rape as a grave and systematic human rights violation and gender-based violence against women." <https://www.ohchr.org/sites/default/files/Documents/Issues/Women/SR/RapeReport/Others/013-general.pdf>
19. R.P.B v. the Philippines, Communication No. 34/2011, Committee on the Elimination of Discrimination against Women. February 2014. Para 8.10. <https://digitallibrary.un.org/record/773056?ln=e>
20. General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19 (1992), Committee on the Elimination of Discrimination against Women, July 2017. Para A(29) (e). <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based>
21. Human Rights Now, 10-country research study on "Punishment for sex crimes: What's going on in the world?" 2018. http://hrn.or.jp/2019_sex_crime_comparison/#sec01
22. M.C. v. Bulgaria, Appl. No. 39272/98, Council of Europe: European Court of Human Rights. December 3, 2003. Para 164-166. https://www.coe.int/t/dg2/equality/domesticviolencecampaign/resources/M.C.v.BULGARIA_en.asp
23. Council of Europe, "What is the Istanbul Convention? Who is it for? Why is it important?" <https://ec.europa.eu/justice/saynostopvaw/downloads/materials/pdf/istanbul-convention-leaflet-online.pdf>
24. Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210). 2011. Article 36(1)(a). <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=210>

25. Prosecutor v. Dragoljub Kunarac, Radomir Kovac, and Zoran Vukovic, Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, June 12, 2002. Para 129. <https://www.icty.org/x/cases/kunarac/acjug/en/>
26. Emma Batha, Thomson Reuters Foundation, "Rape conviction rates rise 75% in Sweden after change in the law." <https://www.reuters.com/article/us-sweden-crime-rape-law-trfn-idUSKBN23T2R3>
27. Dr. Eithne Dowds, The Modern Law Review 83(1), "Towards a Contextual Definition of Rape: Consent, Coercion and Constructive Force." 2019. https://pureadmin.qub.ac.uk/ws/portalfiles/portal/167466033/Towards_a_Contextual_Definition_of_Rape.pdf
28. Camilla Koljonen, "How is consent-based legislation on rape providing more protection for individuals in comparison to coercion-based legislation? Comparison between Finland and Sweden." Maastricht University. July 15, 2019. https://www.researchgate.net/publication/335397291_How_is_consent-based_legislation_on_rape_providing_more_protection_for_individuals_in_comparison_to_coercion-based_legislation_-_Comparison_between_Finland_and_Sweden
29. Dubravka Simonovic, "A framework for legislation on rape (Model Rape Law) : report of the Special Rapporteur on Violence against Women, Its Causes and Consequences." 2021. Para IV(D). <https://digitallibrary.un.org/record/3929055?ln=en>
30. Submission of Interights to the European Court of Human Rights in the case of M.C. v Bulgaria, Appl. No. 39272/98, Council of Europe: European Court of Human Rights. December 3, 2003. Para 12.
31. Rape Crisis England and Wales, "The 5 Fs: fight, flight, freeze, flop and friend." <https://rapecrisis.org.uk/get-help/tools-for-victims-and-survivors/understanding-your-response/fight-or-flight/>
32. James W. Hopper, The Washington Post, "Why many rape victims don't fight or yell." June 23, 2015. <https://www.washingtonpost.com/news/grade-point/wp/2015/06/23/why-many-rape-victims-dont-fight-or-yell/>
33. Human Rights Now Webinar, "Seeking the Realization of Yes Means Yes! International Women's Day Event." March 9, 2022. <https://humanrightsnow.hatenablog.com/entry/20220309eventreport#f-ce760847>
34. Human Rights Now Webinar, "Is this enough? Questioning the current status of revisions to criminal sexual offenses: Articles 177 and 178 of the Penal Code." April 9, 2022. <https://humanrightsnow.hatenablog.com/entry/20220409eventreport>

Japan Changes Its Rape Laws to Require Consent

Japan's previous laws on sexual assault did not mention permission and required that the crime include physical force. The new law also raises the age of consent to 16, from 13.



By **Motoko Rich**

Reporting from Tokyo

June 16, 2023

Japan changed its definition of rape and raised the age of consent to 16, from 13, on Friday, bringing the country's sex crimes laws closer in line with those in the United States and Europe.

The new law — passed unanimously by the Upper House of Parliament and therefore now fully adopted — defines rape as “nonconsensual sexual intercourse” and removes a previous requirement that the crime include physical force. Until now, Japan's laws on sexual assault did not mention consent, reflecting skepticism that anyone could be forced into sex without violence.

Japan previously had one of the lowest ages of consent among wealthy countries, leaving children vulnerable to sexual abuse by adults. Still, under the new law, for victims between the ages of 13 and 15, sex would be considered a crime only if the partner is five or more years older than the child. The new law, which had been approved by the House of Representatives in May, is the first time Japan has changed its age of consent in more than 100 years.

The new law outlines various conditions under which a person might be afraid to say no to sex, even if not directly threatened with violence. Those situations include when a victim has consumed alcohol or drugs or when an offender “frightens or startles” them.

Laws in the United States and some European countries have already taken into account that a person may not be able to provide consent because of illness or intoxication, or that an offender could exploit a situation of authority.

Until now, because of the high bar for a sexual assault to be officially classified as rape in Japan, few victims have brought criminal charges. When Shiori Ito, a journalist, alleged that a prominent television journalist had raped her when she was unconscious and unable to give consent, prosecutors declined to file charges. Ms. Ito later won damages in a civil case against Noriyuki Yamaguchi, a former Washington bureau chief of the Tokyo Broadcasting System, when a judge accepted her account of the assault.

Activists for victims of sexual assault had long argued that Japan's rape laws were antiquated because of the absence of any mention of consent and the low age of consent.

Earlier this year, Meiko Sano unsuccessfully sued her former professor for sexual harassment, alleging he had taken advantage of his supervisory position to groom her for a relationship that she said she could not consent to. Lawyers and activists who support sexual assault victims have long argued that the law should account for the fact that people who fear reprisals from teachers, bosses or others with authority cannot freely consent to sex.

At a news conference after the bill's passage on Friday, Kazuko Ito, a lawyer who has represented sexual assault victims, said it was a "great step forward."

"It is highly significant that the victims who have been excluded from justice are now within the scope of legal remedies and punishments," Ms. Ito said.

The new law also addresses acts of groping or incidents where adults "psychologically control" children on social networking sites. It also extended the statute of limitations for filing rape charges to 15 years, from 10.

Hikari Hida contributed reporting.

Motoko Rich is the Tokyo bureau chief, where she covers Japanese politics, society, gender and the arts, as well as news and features on the Korean peninsula. She has covered a broad range of beats at The Times, including real estate, the economy, books and education. More about Motoko Rich



Japan redefines rape and raises age of consent in landmark move

🕒 16 June



By Kelly Ng

BBC News

Japan has passed laws that redefine rape and raise the age of consent in a landmark overhaul of sex crime laws.

The definition of rape was broadened to "non-consensual sexual intercourse" from "forcible sexual intercourse", aligning Japanese law's definition with other countries.

The legal age of consent, previously at only 13, has been raised to 16 years.

Previous laws did not protect those coerced into having sex and deterred reporting of such attacks, critics say.

They have also led to inconsistent court decisions, fuelling calls for change.

The new laws were passed by the upper house of the Diet - Japan's parliament - on Friday. They explicitly outline eight scenarios where it is difficult for a victim to "form, express, or fulfil an intention not to consent" to sexual intercourse.

These include situations where the victim is intoxicated with alcohol or drugs; or subject to violence or threats; or is "frightened or astonished". Another scenario appears to describe an abuse of power, where the victim is "worried" of the consequences of refusal.

This is only the first time Japan has changed its age of consent since its enactment in 1907.

- **The women fighting Japan's sexual violence stigma**
- **Catching the men who sell subway groping videos**

Previously, Japan had one of the lowest age of consent among developed nations. However, a person who has had sex with a minor aged 13 to 15 will be punished only if the person is five or more years older than the minor.

Meanwhile, the statute of limitations or legal window for reporting rape will be extended to 15 years from 10 years, to give survivors more time to come forward.

The changes also ban "photo voyeurism" which includes upskirting and secret filming of sexual acts, among other things.

It follows multiple rape acquittals in 2019 that caused national outcry and helped spur a nationwide Flower Demo campaign against sexual violence. On

the 11th day of every month since April 2019, activists have gathered throughout Japan to demand justice and show solidarity with sexual assault survivors.

But some activists have told the BBC that these legal reforms address only one part of the problem.

"Distorted ideas" about sex and consent that have pervaded for generations must be addressed, says Kazuko Ito, vice-president of the Tokyo-based Human Rights Now.

Survivors of sexual assault who go public also often receive threats and nasty comments online.

Even if the reforms are enacted, survivors must feel empowered to report their attacks, activists say.

In Japan, survivors of sexual violence are often reluctant to come forward because of stigma and shame. A 2021 survey by the government showed that only about 6 per cent of women and men reported an assault half of the women polled felt they couldn't do so because of "embarrassment".

"Nationwide learning and educational effort is essential for this norm to be embedded in the society. This is only way to prevent actual sexual violence along with ending culture of impunity," Ms Ito says.

Japan should also offer more financial and psychological help for sexual assault survivors, lawyer and rights advocate Sakura Kamitani told the BBC.

Attackers too should receive support to prevent recidivism, she added.

The fight for consent in Japan

Tessa Wong, BBC News

The biggest and most significant change to the laws is the one that redefines rape from "forcible sexual intercourse" to "non-consensual sexual intercourse" - effectively making legal room for consent in a society where the concept is still poorly understood.

Activists argue that Japan's narrow definition has led to even narrower interpretations of the law by prosecutors and judges, setting an impossibly high bar for justice and fostering a culture of scepticism that deters survivors from reporting their attacks.

In a 2014 Tokyo case, for instance, a man had pinned a 15-year-old girl to a wall and had sex with her while she resisted. He was acquitted of rape as the

court ruled his actions did not make it "extremely difficult" for her to resist. The teenager was treated as an adult.

"The actual trial processes and decisions vary - some defendants were not convicted even if their acts were proven to be non-consensual, as they did not meet the case of 'assault or intimidation'," says Yuu Tadokoro, a spokesman for Spring, a sexual assault survivor group.

But the reforms address only one part of the problem, say activists, whose call for change stretches well beyond the courtroom.

Sexual assault is still a taboo subject in Japan and has gained national attention only in recent years in the wake of high-profile cases such as Shiori Ito's court battle, former member of the Self Defence Force and sexual assault survivor Rina Gono's public statements, and the Johnny Kitagawa expose.

[Read more of our story](#) on why Japan finally reformed its sex assault laws.

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The women fighting Japan's sexual violence stigma

11 June



【性犯罪大幅修改】2023年6月23日日本国刑法修正简介及修改后相关章节全文翻译

Original Teetrition Teetrition小站 2023-06-23 00:02 Posted on 北京

2023年6月16日，日本国会通过了《部分改正刑法及刑事诉讼法的法律》并于今日（2023年6月23日）公布，有关《刑法》修改的部分于公布之日起起算20日后施行。

该法律将强制猥亵罪、强制性交罪修改为不同意猥亵罪、不同意性交罪，通过概括加列举的方式较为全面地处罚了受害人处于不能同意状态或被他人陷于不能同意的状态下的猥亵、性交行为，明确规定无论婚姻关系的有无均能构成前述犯罪，并将性同意年龄由13岁提高到16岁（如受害人满13岁但不满16岁，仅处罚加害人比受害人年龄大5岁以上的情况）。此外，处罚以猥亵为目的而通过威逼、提供财产利益等方式或被拒绝后，要求与受害人会面的行为，以及要求受害人发送与性相关的视频等的行为（即“隔空猥亵”）。

本公众号全文翻译并发布修改后的性犯罪章节，并附修改前的同章以供对比参考。由于本次修改幅度过大，不以新旧对照表的形式发布，不以加粗、标红等方式标明具体修改字词。

修改后的《刑法》条文中，刑罚按2022年修改但尚未施行的拘禁刑体系。本文提供参考的修改前的《刑法》条文按旧的惩役、禁锢体系。拘禁刑体系尚未施行，尚祈注意。拘禁刑体系施行前，本章“拘禁刑”可全部替换为“惩役”。

本文及所有法条译文在CC BY-SA 4.0下发布。以链接形式转发本文可以不遵循前述许可证。

阅读本公众号翻译的《刑法》全文，请访问teetrition.top。

第二十二章 猥亵、不同意性交及重婚的犯罪

（公然猥亵）

第一百七十四条 公然行猥亵行为的，处六个月以下的拘禁刑或三十万日元以下的罚款，或处拘留或科料。

（发布猥亵物品等）

第一百七十五条 发布或公然陈列猥亵性质的文书、图画、以电磁记录记录的媒体或其他物品的，处二年以下的拘禁刑或二百五十万日元以下的罚款或科料，或并处拘禁刑和罚金。通过电气通信发送猥亵性质的

电磁记录或其他记录的，亦同。

2 以有偿发布为目的，持有前项中的物品的，或是保管同项中的电磁记录的，同同项规定。

(不同意猥亵)

第一百七十六条 以下列行为、事由或其他与之类似的行为或事由，使受害人形成、表明或实现不同意的意思处于困难的状态，或是利用其处于该状态而行猥亵行为的，无论婚姻关系的有无，处六个月以上十年以下的拘禁刑。

一 使用暴行、胁迫或受到暴行、胁迫。

二 使其产生身心障碍或其存在身心障碍。

三 使其摄取酒精、药物或其存在酒精、药物的影响。

四 使其处于睡眠或其他意识不清的状态或其处于该状态。

五 无暇形成、表明或实现不同意的意思。

六 使其面对与预想不同的事态进而使产生恐怖或惊愕心理，或是其面对该事态产生了恐怖或惊愕心理。

七 使其产生因虐待而生的心理反应或其存在该心理反应。

八 因经济或社会关系上的地位而产生的影响力，使其担忧将会受到的不利或其担忧前述情况的。

2 使受害人误认其行为不是猥亵行为，或使其认为行为人是其他人，或是利用前述误认或误认为是其他人的状态，行猥亵行为的，同前项规定。

3 对不满十六岁的人行猥亵行为的（该不满十六岁的人满十三岁时，限于行为人出生日在其五年以上之日的情况），同第一项规定。

(不同意性交)

第一百七十七条 以前条第一项各号所列行为或事由或其他与之类似的行为或事由，使受害人形成、表明或实现不同意的意思处于困难的状态，或是利用其处于该状态，行性交、肛门性交，口腔性交或是将身体的一部分（阴茎除外）或物体插入阴道或肛门等猥亵行为（以下本条及第一百七十九条第二项称“性交”）的，无论婚姻关系的有无，处五年以上的有期拘禁刑。

2 使受害人误认其行为不是猥亵行为，或使其认为行为人是其他人，或是利用前述误认或误认为是其他人的状态，行性交行为的，同前项规定。

3 对不满十六岁的人行性交行为的（该不满十六岁的人满十三岁时，限于行为人出生日在其五年以上之日的情况），同第一项规定。

第一百七十八条 删除

(监护人猥亵及监护人性交)

第一百七十九条 对不满十八岁的人，利用其当前为其监护人的身份的影响力行猥亵行为的，按照第一百七十六条第一项的规定处理。

2 对不满十八岁的人，利用其当前为监护人的身份的影响力行性交行为的，按照第一百七十七条第一项的规定处理。

(未遂罪)

第一百八十条 处罚第一百七十六条、一百七十七条及前条犯罪的未遂。

(不同意猥亵等致死伤)

第一百八十一条 犯第一百七十六条或第一百七十九条第一项的犯罪或前述犯罪的未遂罪，因而致人死伤的，处无期或三年以上的拘禁刑。

2 犯第一百七十七条或第一百七十九条第二项的犯罪或前述犯罪的未遂罪，因而致人死伤的，处无期或六年以上的拘禁刑。

(要求与不满十六岁的人会面)

第一百八十二条 以猥亵目的对不满十六岁的人行下列各号所列任一行为的（该不满十六岁的人满十三岁时，限于行为人出生日在其五年以上之日的情况），处一年以下的拘禁刑或五十万日元以下的罚款。

- 一 威逼、使用诡计或诱惑，要求会面。
- 二 不顾受害人已经拒绝，反复要求会面。
- 三 提供金钱或其他利益，或是提出、约定前述事项，要求会面。

2 犯前项犯罪，进而以猥亵目的与该不满十六岁的人会面的，处二年以下的拘禁刑或一百万日元以下的罚款。

3 对不满十六岁的人要求其行下列各号所列任一行为（第二号所列行为，限于使其行该行为系猥亵性质）的（该不满十六岁的人满十三岁时，限于行为人出生日在其五年以上之日的情况），处一年以下的拘禁刑或五十万日元以下的罚款。

一 拍摄并发送性交、肛门性交或口腔性交的姿态。

二 除前号所列情形外，拍摄并发送身体的一部分（阴茎除外）或物体主动或被动插入阴道或肛门的姿态，触摸或被他人触摸与性有关的部位（指性器官、肛门及其周边部位，臀部或胸部。以下各号同）的姿态，露出与性有关的部位的姿态等姿态。

（淫行劝诱）

第一百八十三条 以营利为目的，劝诱不以淫行为常习的女子行奸淫行为的，处三年以下的拘禁刑或三十万日元以下的罚金。

（重婚）

第一百八十四条 有配偶的人再次结婚的，处二年以下的拘禁刑。与该重婚者结婚的，亦同。

附：修改前相关章节条文

第二十二章 猥亵、强制性交及重婚的犯罪

（公然猥亵）

第一百七十四条 公然行猥亵行为的，处六个月以下的惩役或三十万日元以下的罚金，或处拘留或科料。

（发布猥亵物品等）

第一百七十五条 发布或公然陈列猥亵性质的文书、图画、以电磁记录记录的媒体或其他物品的，处二年以下的惩役或二百五十万日元以下的罚金或科料，或并处惩役和罚金。通过电气通信发送猥亵性质的电磁记录或其他记录的，亦同。

2 以有偿发布为目的，持有前项中的物品的，或是保管同项中的电磁记录的，同同项规定。

（强制猥亵）

第一百七十六条 对十三岁以上的人，以暴行或胁迫手段行猥亵行为的，处六个月以上十年以下的惩役。对不满十三岁的人，行猥亵行为的，亦同。

（强制性交）

第一百七十七条 对十三岁以上的人，以暴行或胁迫手段性交、肛门性交或口腔性交（下称“性交”）的，是强制性交的犯罪，处五年以上的有期惩役。对不满十三岁的人行性交的行为的，亦同。

（准强制猥亵及准强制性交）

第一百七十八条 利用他人心神丧失或无法抗拒的状态，或使其心神丧失、进入无法抗拒的状态，行猥亵行为的，按照第一百七十六条的规定处理。

2 利用他人心神丧失或无法抗拒的状态，或使其心神丧失、进入无法抗拒的状态，行性交的行为的，按照前条的规定处理。

（监护人猥亵及监护人性交）

第一百七十九条 对不满十八岁的人，利用其当前为其监护人的身份的影响力行猥亵行为的，按照第一百七十六条的规定处理。

2 对不满十八岁的人，利用其当前为监护人的身份的影响力行性交的行为的，按照第一百七十七条的规定处理。

(未遂罪)

第一百八十条 处罚第一百七十六条至前条犯罪的未遂。

(强制猥亵等致死伤)

第一百八十一条 犯第一百七十六条、第一百七十八条第一项或第一百七十九条第一项的犯罪或前述犯罪的未遂罪，因而致人死伤的，处无期或三年以上的惩役。

2 犯第一百七十七条、第一百七十八条第二项或第一百七十九条第二项的犯罪或前述犯罪的未遂罪，因而致人死伤的，处无期或六年以上的惩役。

(淫行劝诱)

第一百八十二条 以营利为目的，劝诱不以淫行为常习的女子行奸淫行为的，处三年以下的惩役或三十万日元以下的罚金。

第一百八十三条 删除

(重婚)

第一百八十四条 有配偶的人再次结婚的，处二年以下的惩役。与该重婚者结婚的，亦同。

Modified on 2023-06-23