

Dear Political Parties

Written Request

14 March 2022
Human Rights Now

I Summary

With the lowering of the legal age of adulthood, consent agreements for appearing in Adult Pornographic videos, and so on, with a person of 18- and 19-years are no longer subjected to the rescission rights of minors, which will cause a significant setback in remedies against serious damages and will lead to a significant increase in the number of sexual filming victims because of gaps in the law. To prevent such serious damages, necessary legislation should be made as follows.

- We request to establish a system for retroactive rescission of consent agreements for appearing in Adult Pornographic videos, and so on, with a person of 18- and 19-years.
- We request to establish a rescission system not only for authorization to appear in Adult Pornographic videos in commercials but also for authorization to take photos and films of sexual posture and posture with sexual acts.
- Fundamentally, we request comprehensive legislation that prevents Digital Sexual Violence, such as being coerced into appearing in Adult Pornographic videos, and rescues victims.

II Reasons for the request

1. The problem of forced pornography performances

There has been a series of serious damages to victims forced to appear in Adult Pornographic videos. As porn talent agencies scout people in the street by saying, “Why don't you become a model?”, some people misunderstand that they can be television personalities or models and sign a contract, which results in coerced filming of Adult Pornographic videos. We, Human Rights Now (HRN), released a report **“Human Rights Violations against Women and Girls Manifesting from the Adult Pornographic Film Industry in Japan”** on March 3, 2016. (See attachment) ¹

Our investigation revealed that there have been many cases in which young women, who never intended to appear in pornographic videos, were forced to participate in the industry after signing contracts with their production companies. These companies threatened them with remarks such as “you can't refuse the work since it's required under the contract,” “if you refuse the work, you have to pay penalty charges for defaulting,” or “we'll inform your parents about your work (if you don't take the job).”

Once the video filmed under duress is released, it continues to spread indefinitely on the internet, which causes suffering to women for a long time. Some women cannot work or get married and as a result stay at home due to fear of being intimated; other women commit suicide. Many victims suffer from mental pain because they were mentally scarred by their brutal experiences while shooting pornographic videos.

It is violence against women and a grave human rights violation to coerce victims

¹ <https://hrn.or.jp/wpHN/wp-content/uploads/2016/03/c5389134140c669e3ff6ec9004e4933a.pdf>

into performing unconsented sexual acts in the public display (in front of the filming crew) by taking advantage of young women who are uninformed of the responsibilities and risks entailed in their contracts and/or in financial difficulties, and to film them and to continue selling these pornographic videos.

The investigation by the Cabinet Office in 2016² revealed that about one-fourth (26.9%) of those contracted by scouting models had been asked to appear in the filming of sexual acts that they had never heard about or consented to when they concluded a contract. Additionally, out of those who had been asked to appear in the filming of sexual acts that they had never heard about or consented to when they concluded a contract, about one-third (32.1%) performed what they were asked to, most of whom were in their teens and twenties³, which is recognized as severe violence against women, especially young women.⁴

2. The problem of gaps in the law

There is no authority to regulate the production of Adult Pornographic videos. Under the Worker Dispatching Act, if the Adult Pornographic videos are “harmful to public health or morals,” the Adult Pornographic video makers should be subjected to punishment. However, there are not many cases where the Act is applicable, since the contract is written as a "business outsourcing agreement".

It has been interpreted that the Anti-Prostitution Law does not apply to pornographic performances. Moreover, since the pornographic actress is not the consumer, the framework for consumer protection is not applicable even if the victims were taken advantage of due to their lack of knowledge and forced to appear in the video. Consequently, significant legal protection is lacking. Further, it is difficult to punish producers with Penal Code as filming is done behind closed doors.

3. The Japanese Government's response

Following the publication of the HRN’s 2016 report, which triggered a social debate, the Government of Japan decided at a Cabinet meeting in June 2016 to launch a study on the issue. Following the study, a director-general-level meeting of ministries and government agencies was established in March 2017⁵ to decide on measures to prevent damage, raise awareness⁶, and enforce laws and regulations.⁷

In particular, the National Police Agency decided that “they would promote strict enforcements by applying the various laws like the Act for Securing the Proper Operation of Worker Dispatching Undertakings and Improved Working Conditions for Dispatched Workers”. There were also prosecution cases for inducement in illicit intercourse, etc.

4. The reality of countermeasures’ lack in effectiveness

In reality, punishment is not commensurate with the actual damage victims have faced. It is extremely difficult to prove compulsion behind closed doors, as actresses went to filming locations by themselves or signed contracts even if they were forced. Moreover,

² <http://www.gender.go.jp/kaigi/senmon/boryoku/houkoku/pdf/bo0314s-07.pdf>

³ <http://www.gender.go.jp/kaigi/senmon/boryoku/houkoku/pdf/bo0314s-07.pdf>

⁴ http://www.gender.go.jp/kaigi/senmon/boryoku/houkoku/pdf/honbun17_0314.pdf

⁵ <http://www.gender.go.jp/kaigi/sonota/avjkkaiji.html>

⁶ http://www.gender.go.jp/policy/no_violence/avjk/

⁷ http://www.gender.go.jp/kaigi/sonota/pdf/avjkkaiji_03_02.pdf

rigidity is necessary for judgments about entities associated with employment for the premise of applying Acts like the Worker Dispatching Act. As a result of this, even malicious cases have not been established or prosecuted.

Though the porn industry has been self-regulating, the claim of coercion persists. In particular, the number of cases of unexpected filming by individuals or groups not belonging to the industry is increasing. (“Unexpected filming” means that the producers trick victims into going to the filming location and force them to film under fear, embarrassment, and confinement conditions without informing them in advance that they will be filming sexual acts or nudity. The producers also distribute or sell the films on the internet to gain a large amount of profit.)

5. The problems with lowering the legal age of adulthood

Under such a situation, HRN insists on the necessity of effective legislation to protect the young from the damages of forced appearances in porn, etc. It has been five years since a director-general-level meeting of ministries and government agencies was established in March 2017, but today, the comprehensive legislation for damage prevention and remedies has not been enacted. No regulatory agency or effective remedial measures have yet to be identified.

The lowering of the legal age of adulthood from 20 years of age to 18 years of age without a drastic way for damage prevention or laws protecting victims significantly lacks protection for the young. Further, there is concern that the damage could be even more severe.

Until now, even if 18- and 19-year-old victims appeared in Adult Pornographic videos, they could stop the sales and distribution of those videos since minors have the right to rescind contracts. However, from now on, unless victims are 17 years of age, they will not have the right. (Though if the victim is 17 years of age, it is a criminal offense in the first place as this is considered child pornography.) It will be difficult to suspend sales and distribution of the videos.

It has been held in court cases that it is possible to terminate a contract to perform in an adult film against one's will on the same day and be released from future obligations. Nonetheless, once performers finish filming without being able to say no and are forced to sign consent agreements for appearing, it is impossible to stop the sales and distribution unless the performance agreement is invalid or revoked (rescission is retroactive to the time of consent).

The requirements of rescission for Fraud or Duress in the Civil Code are extremely strict and may not be asserted against a third party. The rescission of the Consumer Contract Act also may not be asserted against a third party. Therefore, this legislation is not effective for injunctions on footage that is distributed from scouts to makers to distribution and sales points.

Once sexual videos are online, they spread endlessly, are difficult to delete, and victims continue to be subject to what is known as “digital sexual violence,” which has serious repercussions for the rest of their lives. In reality, many sexual videos that lack genuine consent are often transferred or transmitted abroad, distributed, and streamed domestically and internationally.

Article 91(2) of the Copyright Act stipulates that if a performer gives permission for

a “sound or visual recording of his performance,” the performer may not subsequently object to any secondary or tertiary use of the recording (the one-chance principle). Once a young person agrees to appear and be filmed, the recording can be re-used forever.

Hitherto, 18- and 19-year-olds at least had a path to redress for damage due to a minor’s right to rescind. But now victims will lose even such a measure.

6. Urgent correspondences and comprehensive legislation

Considering the above, Human Rights Now urgently calls for legislative measures to prevent the harm caused by lowering the legal age of adulthood.

Currently, in addition to coerced filming of Adult Pornographic videos related to major manufacturers, the number of cases of unexpected filming by individuals or groups not belonging to the industry is increasing. This is why rescission systems should be introduced not only for authorization to appear in Adult Pornographic videos, but also for authorization to take photos and films of sexual posture and posture with sexual acts.

At the same time, comprehensive legislation is necessary as a fundamental solution.

Believing that legislation is needed to allow for effective remedies, Human Rights Now has asked for the following comprehensive responses from the Ministry of Justice and related ministries since 2016, but legislation has not been enacted.

Because of the Covid-19 pandemic, the prevalence of damage is increasing and victims are getting younger. We demand immediate legislation.

1. Establishment of regulatory agencies
2. Strict applications of the Employment Security Act and the Worker Dispatching Act
3. Prohibition of solicitation without telling the truth, solicitation through false advertising, and unreasonable inducement and solicitation
4. Prohibition of making a person appear against his/her will (Prohibition of making a person appear through bewilderment or deception)
5. Prohibition against stipulating penalties
6. Criminal penalties for violation of prohibitions
7. Allowing rescission of the contract at any time in case of violation of prohibitions
8. Allowing injunction against the sale of videos that performers appear in against their will
9. Publication of company names, instructions, orders, suspension of business, and other measures for the malicious enterprises, and sanctions against the malicious individual vendors
10. Deprivation of illegal profits
11. Education and awareness
12. Establishment of consultation and support system

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