

A Gender-sensitive Analysis of Measures on Illegally Filmed, Sexually Explicit Photos or Videos

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1. Necessity of research and objectives

The gender violence of the digital age is changing from the gender violence of the past, showing completely different aspects. In the gender violence of the digital age, the perpetrator can be not just the person who filmed the material and who was the first perpetrator, but also all of the anonymous public who distribute and reproduce the material afterward. Victims of illegal filming continue to suffer damage through this process. For example, they may experience anxiety, trauma, and social isolation. The aspect of gender violence in the digital age that most differs from previous violence is that the victimization continues beyond the limits of time and space because the past experiences of victimization do not stop, but rather continue into the present through the online space: Victimization is reproduced beyond the place where the violence first occurred. In this study, conceptualizations of digital sexual violence were summarized against the background of hitherto conducted research. Through this, we classified the crime of illegal filming and examined

points that distinguish the crime of illegal filming from other types of crimes. We also examined the current status of victimization by illegal filming and the processes of investigation and prosecution, and conducted a gender-sensitive analysis to identify problems occurring at each stage. Finally, we examined current countermeasures against illegal filming and presented the policy direction needed for the future. This study is the first to attempt a gender-sensitive analysis of the investigation and prosecution of illegal filming incidents. In this study, detailed interviews were conducted with victims, victims' court-appointed attorneys, and investigators on the front lines who are in charge of incidents. Through this, the distinct characteristics of illegal filming incidents were identified. In addition, this study went a step further than previous research by including voices from the investigation site and presenting policies that are necessary from a practical point of view.

The contents of the research are as follows: First, we summarized types of digital sexual violence using communication media and conceptions about this kind of violence. Then we examined theoretical discussions and analyzed existing data to identify the current status of the production and distribution of illegally filmed materials. The first people we conducted in-depth interviews with were victims of illegal filming and victims' court-appointed attorneys. Through this, we analyzed female victims' experiences in the process of recognizing illegal filming, reporting it, and punishing perpetrators. Second, we conducted in-depth interviews with investigators in charge of incidents of illegally filmed materials. We examined the investigation process for incidents of illegally filmed materials and identified the limitations of the investigation process. Then we examined the investigators' understanding of the victims and perpetrators. Through this, the experience of

investigation was analyzed from a gender-sensitive perspective. Finally, we identified the current status of policy promotion related to illegally filmed materials and their problem points. Against the background of the results of the in-depth interviews, we derived implications for the future direction of policy.

If we examine recent changes in laws and systems related to illegally filmed materials, the main contents are as follows: They are for the purpose of strengthening punishment regarding illegal filming, distributing, etc. and supporting victims. Under the law revised in December 2018, the acts of filming and distributing were separated. Court sentences have also become stronger than they were previously; in the case of those who distribute video or copies with the goal of profit, they receive only prison terms.

2. In-depth interviews regarding victimization via illegally filmed materials and experiences with prosecution

In this study, in-depth interviews were conducted with three female victims of filming crimes using cameras, etc., who had gone through the experience of investigation and trial procedures. According to the content of the interviews, the victims were satisfied with the handling of the incidents of illegal filming at the time. For example, a female police officer was designated as the person in charge, and the interviewee stated that she felt comfortable while the case was proceeding. Even in a case where a male police officer was investigating, the interviewee stated that she felt secure when she was asked for her consent to a male police officer before the case proceeded. However, there were also cases where people felt that their experiences were unjustified. A typical example of

this would be when the victim felt discomfort because of inappropriate speech and behavior. Typical inappropriate questions were, "Why did you meet the perpetrator?" and "Did you know he was that kind of person?" etc. In addition, they complained of feeling discomfort when someone other than the person in charge saw evidence such as filmed material.

In some cases, this led to secondary victimization. To the victims, not only the distribution of filmed material, but also having it shown to male police officers was felt as a secondary victimization. Victims also reported that they felt victimized a second time because of the attitude of officers who spoke down to them in an informal way. Attempts by perpetrators to contact and reach an agreement with victims were also secondary victimizations. There were also some cases in which there was no recovery from damage. In most of the cases where damage was recovered, it was shown that these agreements were caused by the situation surrounding the victim. In other words, the victims said that they had made an agreement not because of the perpetrator's sincere apology or because they had forgiven the perpetrator, but because of the uncomfortable situation they found themselves in when there was no agreement. In addition, if the perpetrator was an acquaintance, they came to an agreement because of external factors, such as consideration of their relationships with other people who were also around the perpetrator.

Next, in-depth interviews were conducted with 10 attorneys who are engaged in activities to support victims or who have had experience supporting victims, including court-appointed attorneys who exclusively represent victims. According to the results of the interview analysis, many held the opinion that compared to the past, the police's recent attitude about investigating illegally filmed materials has improved.

Many responded that during the investigation process, when male police officers investigated, they showed consideration for the victim, for instance by obtaining her consent. Nevertheless, some responded that there was still an attitude in police investigation where they did not give guidance to victims during the course of investigation. There were also responses saying that there were sometimes unjustifiable situations when male police officers investigated or when victims were asked questions that were unrelated to the investigation. Many pointed out the prosecution's authoritative attitude in the prosecution stage. They said that they thought it was a problem if the investigation was conducted in an open situation and filmed material was exposed, and they said that attorneys' lack of smooth participation in the investigation was a problem. They also pointed out that if the crime victim is not specified, the victim is not thought of as important. What victims of illegally filmed materials are most afraid of is the circulation of footage taken of them, so they actively want search and seizure. However, many victims felt that the investigative agencies are still not active in searching for and confiscating filmed materials. Moreover, some said that especially if they previously had a romantic relationship with the perpetrator, or if there was only one victim, investigators are passive in search and seizure. Victims' attorneys presented their opinions on operating a search and seizure warrant system that would fit the characteristics of crimes committed using cameras, etc. to film. Some said it is necessary to introduce principles for warrants that fit the characteristics of digital sex crimes, as well as the principle of seizing filmed materials in the case of digital sex crimes.

Regarding the criminal mediation system, victims' attorneys expressed the following opinions: The prosecution does not give the victim an accurate and detailed explanation of criminal mediation. Therefore, it is

possible for the victim to agree to forward the case to a mediation procedure without sufficient understanding of it. It was pointed out that there have also been cases that were forwarded to mediation without even asking the victim's intention. Lastly, some said that it needs to be seriously considered whether digital sexual violence cases are suitable for criminal mediation. In addition, there have been cases where the victim's right to an attorney's aid was not properly guaranteed in criminal mediation. If a victim's attorney is unable to participate due to the schedule not being adjusted, etc., the result is a violation of the victim's rights, and that is a problem. Moreover, they strenuously pointed out cases where victims suffered secondary victimization at the hands of mediation committee members. For instance, after a case was forwarded to criminal mediation, in the process of mediation, the mediation committee members had no understanding of digital sexual violence such as the crime of filming with cameras, etc., and they thoughtlessly diminished the damage to the victim and referred to the victim's real name while pressuring the victim to reconcile with the perpetrator. As for the punishment of the accused, most of the victims' attorneys said that they felt that sentences seem to have risen compared to the past, but punishment is still weak. Some held the opinion that when victims' identities cannot be confirmed and there are no specifics, damage to the unspecified victims is not reflected in the perpetrator's punishment. Attorneys supporting victims of illegally filmed materials felt that real difficulties exist. For example, there are problems such as very unfair compensation for damages and unfair standards for damage compensation. As a result, legal support for victims of illegally filmed materials is not being properly realized. Victims suffer secondary victimization when they are induced to come to an agreement with the

perpetrator, when they receive criticism due to acquaintances around them, and when their cases are disclosed to the media. However, there have not been many cases of victims actively responding to this. Therefore, there was the opinion that secondary victimization will only be reduced if the court reflects the occurrence and extent of secondary victimization when determining sentences.

3. In-depth interviews with investigators who respond to illegally filmed materials

In this study, we conducted in-depth interviews with investigators in charge of illegal filming incidents. According to the result of the research, the most important part of the investigation of illegal filming is securing evidence to substantiate criminal charges. To sustain public prosecution and get a conviction, it is crucial to secure the mobile phone used for filming. Securing mobile phones also carries important meaning on the level of preventing the distribution of videos, which is what victims most fear. However, even after securing evidence such as mobile phones, there are several technical limitations. Among these limitations, the most frequently encountered difficulty is that it is hard to restore photos or videos from mobile phones as evidence. Moreover, the latest mobile phones have advanced security technology, making it considerably difficult to restore video once it has been deleted. In such cases, investigators utilize indirect methods to secure evidence to substantiate criminal charges. For example, they secure video surveillance footage from around the scene of the incident to closely analyze the suspect's behavior, and they confirm media log files from the mobile phone. The result of this study showed that the characteristics

of perpetrators who do illegal filming (as reported by investigators) can be summarized as follows: First, they are plain on the surface. An opinion expressed in common among investigators was that almost none of the criminals they had met appeared to be abnormal. Age groups were widely distributed, from young children to the elderly, and their jobs also varied, including office workers, civil servants, and university students. Second, the possibility of recidivism is high. Most of the criminals that investigators had met were people who had habitually illegally filmed over a period of time. Third, there is a lack of awareness that illegal filming is a grave crime. In many cases of illegal filming, the perpetrator appears to feel less guilty because he has targeted a stranger. Finally, many people are inclined toward being timid. Even when they are being investigated as suspects, many quietly go through the investigation and then meekly confess because of their timid personalities. In this regard, a definite difference is seen between them and violent criminals who respond harshly to the process of investigation. As for the cause of illegal filming, there was the opinion that it is a personal problem at the psychological level, such as the criminal's excessive sexual desire, sexual curiosity, voyeurism, or lack of self-control. There were conflicting opinions about the punishment of perpetrators who illegally film. On one hand, investigators think it is necessary to strictly punish perpetrators of illegal filming. However, at the same time, investigators also appeared to be warm-hearted. Those who emphasized the importance of severe punishment believed it is their natural responsibility as investigators to make sure that perpetrators are punished because the acts they commit are clearly crimes. In addition, due to the high risk of recidivism, which is a characteristic of sex crimes, it is important to stop the recurrence of the same crime through strict punishment. Considering the victim's

position, investigators had the perception that it is essential to establish criminal charges and also take measures so more victimization does not occur. On the other hand, they also revealed that due to the criminal process to be imposed on the perpetrator, they felt burdened because of the price the perpetrator would have to pay. If a person is revealed to have committed a crime, the actor as a member of society is fatally wounded, and it is difficult to lead a normal social life. Those who receive criminal punishment because of sex crimes are fired from their jobs and cannot continue their marital relationships. Because of this, investigators felt burdened regarding perpetrators. In particular, they said that during the course of the investigation, they often feel emotionally burdened as the investigator in charge when perpetrators expressed their thoughts about the difficulties they face because of their criminal acts.

Investigators see victims suffer from trauma caused by crime victimization and the difficulties they consequently face in their daily lives. This is because victims are afraid of video distribution, and they feel anxious that they might be filmed again. This kind of victimization trauma is more serious if the crime is committed by a person that the victim knows, as opposed to a person that the victim does not know. Investigators feel considerable pressure regarding the investigation of the victim because the victim can feel shame, especially when they are asked questions referring to parts of the body that were filmed. Investigators said that because of this, they are especially cautious whenever they choose a term to be included in a question.

In principle, female investigators are supposed to investigate female victims in sexual violence incidents, so a female investigator is assigned to each police station's investigation team for women and youth. However, if the victim agrees, a male investigator may investigate female

victims. Most victims feel less burdened if they are investigated by male investigators because if the investigation is targeting many, non-specific people, victims' faces are not exposed. However, in incidents where victims' faces are identified, victims are reluctant to be investigated by male investigators.

The investigators' perception of secondary victimization can be divided into cases where they perceived that secondary victimization had actually occurred vs. cases where they perceived that it did not occur, even though it had become known that there was secondary victimization. The former are cases where the investigator harmed the victim during the investigation process. For example, those are cases where there was a lack of sensitivity toward the victim or a lack of protection for the victim, or there was criticism of the victim. In the latter cases, exaggerated or biased media reports and malicious civil complaints made it seem like secondary victimization had occurred, although investigators say it did not. Investigators pointed out the lack of gender awareness sensitivity among investigators as the most important cause of actual secondary victimization. There have been cases where male investigators who have worked in criminal departments or investigative departments for a long time are less cautious in their words and actions toward female victims. Investigators who participated in in-depth interviews thought that the problem of secondary victimization is much different than what is known through media reports. The National Police Agency's guidelines on sexual violence investigations are frequently issued, and investigators receive related practical training. Therefore, the majority of investigators said they were already well-informed of the matters that need to be heeded in victim investigations. Nevertheless, regarding the issue of secondary victimization of victims of sexual violence, which sometimes

comes to a head, they said that they think it results from the victim's own problems and is not the investigator's problem. For example, there have been cases where people overreacted or filed a report even though there had not been a true victimization, or they filed a civil complaint because things did not go as they wanted. Investigators said that there have even been many cases where victims misused the civil complaint system to make the investigation of the case develop in their favor. Some victims file civil complaints when the handling of the case is not carried out in the direction they want. There was also a voice that criticized the media as having an excessively sensitive reaction to the issue of secondary violence by police officers, who are among the investigators. That person said that when the majority of investigators are trying to protect the human rights of victims, it is unfair for the media to focus on and deal with only a minimum number of cases where there have been violations. As a solution to prevent secondary victimization in the police investigation process, many suggested recruiting female investigators. It is also necessary to enhance investigators' capabilities so they can accurately identify victims' tendencies and effectively communicate with them.

4. Measures to improve the system to reduce illegally filmed materials

First of all, measures should be strengthened to protect the rights of victims who are undergoing investigation. For example, one way to do this is to reduce unnecessary exposure to illegally filmed material. For this, concrete methods are needed, such as designating a separate person to be in charge of confirming the video. Both police and prosecutors also need to increasingly strengthen job training for investigative agencies. An

authoritative attitude when dealing with victims or questions that are not related to the incident are inappropriate. Therefore, it is necessary to correct this through job training for investigators, and it is necessary to expand the number skilled female investigators in order to reduce concerns about secondary victimization in illegal filming incidents and improve the efficiency of investigation work. In addition, since female investigators are in charge of investigating victims, they should form organic cooperations with male investigators who are investigating perpetrators. A good way to do this would be to have the female investigator and the investigator in charge of the incident conduct a joint preliminary interview with the victim.

The standard investigation model for sexual violence investigations should be continuously supplemented to fit the current reality of investigation. Many held the opinion that the current standard investigation model simply provides theoretical guidance, and there is a limit to how much real help it provides in practice. Therefore, it is necessary to continuously supplement and revise the standard investigation model and include concrete guidelines for investigation. The gap that exists between principles and practice in investigation should be narrowed through various guidelines. In addition, it is necessary to raise the level of expertise at the stage of handling reports of illegal filming incidents. It is very important to secure evidence to substantiate allegations of illegal filming. Therefore, it is highly important to have necessary and appropriate measures for going to the crime scene and securing evidence. In order to do this, concrete procedures and guidance are needed. In addition, education and training should accompany these guidelines to ensure that police officers are sufficiently well-informed.

For these improvements, it is necessary to resolve overwork imposed on investigation departments in charge of women and youth, as the amount of work they have to handle is quantitatively excessive compared to other departments. In addition, the mental stress that investigators have to deal with in the course of handling an incident is another factor that causes difficulty for investigators. Such a heavy workload and stress lead to the inability to secure a sufficient number of competent investigators. The lack of competent investigators carries the risk of causing weak investigations and also increases the possibility of secondary victimizations.

Education has to be continually improved in order to raise the level of investigators' gender sensitivity awareness. Specifically, our recommendations are as follows: First, differentiated educational contents and methods of education should be prepared according to the position or duty of the person receiving the education. For example, the contents of the education needed by the director of the department for women and youth and the education required by the investigator directly in charge of investigating sex crimes are not the same. Second, it is desirable to deal with actual, concrete content that considers the job site since it is possible that gender sensitivity education conducted in a way that does not reflect the concrete reality of investigation, and that unilaterally emphasizes only imperatives at the normative level, may not achieve the intended educational effect. Third, it is necessary to reflect gender-sensitive perspectives all throughout job training. For example, the contents of classes in the curriculum should not contain prejudice against women or stereotypical gender roles. Fourth, it is necessary to standardize the contents and methods of teaching gender sensitivity education. For this, a standard curriculum for gender sensitivity education and a manual for lessons should be prepared. Finally, gender sensitivity

education should be strengthened so people can see the nature and cause of illegal filming from a gender-sensitive perspective. People have to be able to understand that all sex crimes, including illegal filming, are fundamentally male acts of domination and violence against women.

The following measures for improvement were presented for the stages of prosecution and punishment: In sentencing, it is necessary to actively review whether or not there are repeat offenses, the criminal record, the number of crimes, the number of victims, and the extent of victimization. In addition, special aggravating factors need to be considered in cases where people who are vulnerable to crime, such as minors and the intellectually disabled, have been groomed and filmed, or video of them has been distributed. If film has been distributed, it is necessary to reject excessively low sentences such as fines and probation, even if the victim and perpetrator say that they have reached an agreement. In the criminal mediation system, it is necessary to diversify the pool of expert personnel with gender sensitivity on the criminal mediation panel. A quota system in which a certain percentage of criminal mediation committee members are female should be considered, as well as prioritizing the reappointment of people who have completed education related to gender violence. In addition, a training and educational system for criminal mediation committee members has to be prepared. Respondents also said that developing customized education programs, such as step-by-step education and advanced education, could be a future task.

The perpetrator has the evidence of an illegal filming crime using a camera, etc., and it is difficult for the victim to know whether or not illegally filmed material exists or has been distributed. Due to the nature of these crimes, active search and seizure by investigative agencies is the most important task for securing evidence and punishing perpetrators.

Therefore, the most needed measure for victims of illegally filmed materials is active search and seizure, and investigators have to be more active in doing this. In addition to simple filming equipment, it is also necessary to track down connected storage media, and active search and seizure of them is also needed.

Victims suffer from secondary victimization when the perpetrator tries to induce an agreement, when acquaintances criticize them, when the case is disclosed to the media, etc. There have not been many cases where victims have actively responded to this secondary victimization with separate legal procedures, such as filing civil or criminal lawsuits. Therefore, secondary victimization can be reduced only if the court reflects the occurrence and extent of secondary victimization when determining sentencing.

In particular, even if the victim says that she reached an agreement with the perpetrator, it is necessary to scrutinize the situation in which the agreement was reached and its process, etc. There have been many times when victims have had no choice but to agree because they feared demands for agreement and retaliation. Therefore, it is necessary to establish regulations to make it possible to restrict any agreement reached by assaulting or threatening the victim. In addition, if the perpetrator's side continuously attempts to reach an agreement, even though the victim has clearly expressed her intention to not agree, it is necessary to consider this as a secondary victimization and an aggravating circumstance when determining sentencing of the perpetrator.



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