



Analysis of Domestic Laws related to Violence against Children: Philippines

Applying International Standards

Violence against children occurs on a substantial scale in every country in the world. It can threaten children in all spheres of their lives: at home; at school; at work; in the community; and within institutions. Legislation is a key component of any comprehensive strategy to prevent and address all forms of violence against children. Strong laws protecting children from violence sends a clear message to society about acceptable behavior towards children and legitimize actions required to safeguard children's safety and protection at all times. Furthermore, appropriate legislation is necessary to ensure appropriate redress and access to services for victims, and to hold perpetrators accountable.

A recently published legislative review* analyses domestic laws related to violence against children in the 10 ASEAN member States, in order to identify any gaps or weaknesses in protection afforded to children against all forms of violence. The review was commissioned by the UNICEF East Asia and Pacific Regional Office, and conducted by the CORAM Children's Legal Centre. It uses international standards as the yardstick against which all national legislation is measured, and identifies gaps where national laws are not compliant. These standards include international human rights treaties, such as the Convention on the Rights of the Child; as well as soft law, such as General Comments and Concluding Observations of treaty monitoring bodies. It provides recommendations for law reform that are specific to each state while also identifying common themes in the region.

A colour-coded "report card" indicates degree of compliance of legal frameworks with international standards:

- Largely compliant with international standards; requires little or no law reform
- Partially compliant, indicating the need to review and replace laws to close gaps
- Not compliant; requires significant reform or development of new laws

Violence against children in the home and family

Child abuse

Child abuse includes physical and non-physical violence, infanticide, neglect and sexual violence. Non-physical violence, which includes emotional violence, can take many forms including insults, ignoring, isolation, rejection, threats, emotional indifference and belittlement. It is more prevalent than other forms of violence and also often accompanies other types of violence. Neglect involves the failure to provide for the development of the child including leaving the child alone without appropriate care, not providing the child with adequate food, clothing, medicines or health care, or the failure to properly supervise or protect children from harm.

Report card: Child abuse

Emotional abuse defined in law	●
Legal provisions prohibit neglect	●
Legal provisions criminalise incest	●
Offences trigger child protection response	●

For consideration in the Philippines legal reform:

- Consider reviewing the laws on infanticide to remove any lawful excuse for infanticide, other than that of mental disturbance due to the birth or other external pressures.
- Consider enacting a provision on specific offence of incest.
- Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include sexual intercourse or sexual penetration by step-parents and adoptive parents.
- Consider reviewing existing provisions on incest with a view to expanding the definition to specifically include homosexual acts of penetration.

- Clarify in legislation that a child under age 18 who is the subject of incest shall not be considered to be either a principal or accessory to the offence.

Domestic Violence

Domestic violence is one of the most pervasive forms of violence affecting children and includes acts of violence perpetrated by one member of a family or household against another, including children. Domestic violence may include physical violence, verbal and emotional abuse, sexual coercion and rape, and other various controlling behaviours. Children who witness acts of domestic violence are regarded as victims of the violence.

Report card: Domestic violence

Domestic violence recognized by law as a distinct form of violence	●
All acts of domestic violence recognized by law	●
All relationships within which domestic violence occurs recognized by law	●
No exception for sexual violence directed at some intimate partners	●
No exception for physical violence directed at some intimate partners	●
No exception for physical violence directed at children in a care-giving relationship	●

For consideration in the Philippines legal reform:

- Consider establishing or strengthening specific legislation prohibiting violence perpetrated within the context of interpersonal and family relationships. Legislation should recognize that domestic violence is a form of gender-driven violence that is most commonly directed at women and girls. However, legislation should also recognize the circumstances of (young) boys who are survivors of domestic violence.
- Assure survivors of domestic violence maximum protection from all types of violence including physical, emotional and, critically, sexual violence and abuse.
- Afford recognition to all relationships within which domestic violence may occur, including all current and former partners (whether married, cohabiting or otherwise) and all children within the household (whether legitimate, illegitimate, related or not, including domestic workers).
- Consider abolishing all exceptions and defences to acts of physical, emotional and sexual violence directed at children in the context of an intimate partner or care-giving relationship.
- Consider specifically criminalizing marital rape within the law. Ensure that legislation provides that no marriage or other relationship status constitutes a defence against a charge of sexual assault.
- Consider removing any provisions allowing a defence of honour for the assault or murder of any family member, including intimate partners and children.

- Consider prohibiting within law, all forms of corporal punishment and physical assault of children within the home. Ensure that there is no exception in law to assault provisions that allows for 'reasonable chastisement' of children in the context of discipline or punishment.
- Define sexual assault, including within the context of legal marriage (or any other relationship status) as a violation of bodily integrity and sexual autonomy.
- Consider creating a wide range of flexible civil and penal remedies, including under special domestic violence legislation, to prevent domestic violence, and provide redress for survivors where such violence occurs.

Harmful Traditional Practices

Throughout the world, acts carried out as part of a particular tradition, custom, religion or culture that have the potential to result in physical or emotional harm to a child are considered harmful traditional practices. These practices often serve the purpose of expressing and reinforcing the subordinate role and diminished value and position of children, particularly girls, within a given culture or society.

This report addresses three harmful traditional practices: child marriage, forced marriage, and female genital mutilation/cutting (FGM/C).

Report card: Harmful traditional practices

Minimum age for marriage for boys and girls	●
Requirement to register marriages	●
Prohibition on forced marriage, remedies and preventative measures	●
Laws against FGM/C	●

For consideration in the Philippines legal reform:

- Consider non-punitive or civil law options for preventing forced marriage in the laws of ASEAN member States.
- Establish clear rules for verifying the age of marriage candidates.
- Mandate the compulsory registration of all marriages, including religious and customary marriages.
- Consider explicitly prohibiting forced marriage and underage marriage within the law.
- Consider developing a context appropriate, specialized set of legal provisions for forced and underage marriage (through revisions to the family, marriage or civil codes; through the development of a specialist Act; or within gender-based violence legislation) in line with the objective of providing the most effective protection for individuals subject to, or at risk of, forced and/or underage marriage.

- Consider criminalizing forced and underage marriage and introducing penalties within criminal law. This should be done with careful consideration of its potential to result in prosecutions leading to the elimination of these practices.
- Remove all provisions that absolve criminal responsibility for offenders of sexual violence in the circumstance that they are married to, or subsequently marry, their victim.
- Introduce provisions prohibiting and criminalizing female genital mutilation/cutting within primary legislation, while establishing a range of other civil procedures and initiatives aimed primarily at preventing the practice from continuing.

Violence against children in education settings

Protection of children from violence in education settings

Corporal punishment and non-physical forms of punishment that are cruel and degrading are often used in schools to discipline children for misbehaviour, poor academic performance, or for reasons outside the child's control, such as a parent's failure to pay school fees on time. It may include physical punishments such as hitting children with hands or objects, as well as non-physical punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

Report Card: Violence in education settings

Corporal punishment prohibited by law	●
Comprehensive definition of corporal punishment	●
Law provides penalties for corporal punishment	●
Law prohibits corporal punishment without exception	●

For consideration in the Philippines legal reform:

- Consider developing preventative measures, including awareness-raising and educational measures and enshrining them in legislation.
- Amend law and link prohibitions on corporal punishment to penalties and legal sanctions; including rehabilitative measures and remedies for survivors.
- Consider enacting a law based on the proposed Philippines act 'Prohibiting all Corporal Punishment and All Other Forms of Humiliating or Degrading Punishment of Children And Promoting Positive and Non-Violent Discipline of Children, Appropriating Funds Therefore, and for Other Purposes (2009)'.

Violence against children in the community

Protection against physical violence in the community

States should have laws addressing physical violence in all contexts and should ensure that appropriate penalties are attached to violent offences against children. The most protective legal frameworks stipulate higher penalties for physical violence, including homicide, against particularly vulnerable victims. International standards require that acts of torture, cruel, inhuman and degrading treatment or punishment are criminalized and appropriate penalties imposed on those who encourage, order, tolerate or perpetrate such acts. International law prohibits enforced disappearances in all circumstances, and requires States to criminalize persons who commit, order, solicit or induce the commission of, attempt to commit, are accomplice to, or participate in an enforced disappearance.

Report card: Physical violence in the community

Torture and other cruel, inhuman and degrading treatment	●
Enforced disappearances	●
Increased penalties for physical violence against children	●

For consideration in the Philippines legal reform:

- Consider raising the penalties for crimes of physical violence against children in order to afford them additional protection and strengthen deterrence.
- Have a blanket provision within Penal Codes providing that crimes committed against children count as an 'aggravated circumstance'.
- Contain specific provisions within relevant articles/sections that raise penalties for crimes of physical violence committed against children.
- Consider adding a provision that increases the penalty to be applied not only when a crime is committed against a child within a relationship (i.e. parent-child) but also when committed against non-family children.
- Consider removing from the law all justifications of physical violence against children (such as punishment).
- Consider becoming party to the International Convention for the Protection of All Persons from Enforced Disappearance.

Age of consent to sexual activity

States are required to set the 'age of consent', the age at which a child can consent to sexual activity. States may also have an offence of statutory rape or 'unlawful carnal knowledge' in their criminal laws, committed when an adult has sexual intercourse with a child below the age of consent. The average age of consent internationally appears to be 16 years.

for prostitution or attempting to commit such acts or complicity or participation in any of these acts.

Report Card: Age of consent to sexual activity

Age of consent at or above international average	●
Marriage does not reduce age of consent	●
Same age of consent for boys and girls	●
Law encompass full range of sexual acts	●

For consideration in the Philippines legal reform:

- Consider raising the age of consent to 16 years for sexual activity occurring between young people under 16 years and adults or persons more than five years older.
- Consider expanding the definition of sexual acts that are criminalized below the age of consent.

Protection against child sexual abuse

Sexual abuse is the inducement or coercion of a child to engage in any unlawful or psychologically harmful sexual activity. It includes any sexual activity imposed by an adult on a child, against which the child is entitled to protection by criminal law. It encompasses a wide range of acts, including acts involving physical contact, such as vaginal, anal or oral rape, touching or fondling. Sexual abuse also includes non-physical acts, such as showing children pornography, forcing children to engage in or watch sexual activities or encouraging children to behave in sexually inappropriate ways.

Report card: Protection against child sexual abuse

Definition of rape include all acts of penetration	●
Rape provisions protect boys	●
Rape constituted solely by a lack of consent	●
Other sexual offences comprehensively criminalized	●

For consideration in the Philippines legal reform:

- Ensure that all other acts of sexual violence, including both physical and non-physical acts of sexual violence, are criminalized.
- Provide clear definitions of consent within the criminal law.

Protection against child prostitution

The extent and nature of sexual exploitation of children in prostitution in the Asia-Pacific region is a great concern. Prostitution is the use of a child in sexual activities for remuneration of any other form of consideration and should be criminalized whether such offences are committed domestically or trans-nationally, or on an individual or organized basis.

At the very least, the acts to be criminalised should include offering, obtaining, procuring or providing a child

Report Card: Child prostitution

All acts (offering, obtaining, procuring, providing) are criminalized	●
All children up to age 18 are protected	●
Boys and girls are equally protected	●
Law provides comprehensive definition of child prostitution	●
Law exempts child victims of prostitution from penalty	●

The Philippines legal framework is fully compliant.

Protection against child sex tourism

Child sex tourism is the exploitation of children for sexual purposes by people who travel locally or internationally to engage in sexual activities with children. The clandestine nature of child sex tourism makes it difficult to gather data, arrest and prosecute offenders. It often involves the use of tourism infrastructure, including travel agencies, transport, accommodation and other tourist-related services, to facilitate contact with children. Child sex tourists may gain access to children directly in public areas, hotels, brothels, bars or schools. Children can also be accessed through parents, other family members or through other intermediaries, who may be connected to tourism services, including transport and accommodation.

To protect children from such exploitation, States should ensure that their laws hold foreigners accountable and hold nationals accountable for crimes committed abroad. States should also criminalize preparatory acts that lead up to child sex tourism.

Report card: Child sex tourism

Territorial jurisdiction	●
Extraterritorial jurisdiction	●
Criminalization of 'preparatory acts'	●

For consideration in the Philippines legal reform:

- Consider enacting or extending laws establishing extraterritorial jurisdiction for offences related to child prostitution, sale of children, sexual exploitation and other related sexual offences against children.

Protection against child pornography

Child pornography is a type of sexual exploitation involving the use of children in pornographic materials or performances. To protect children from such exploitation, legislation should provide a comprehensive definition of pornography inclusive of its many forms and means of production and distribution. It is recommended that

States criminalize all acts related to the production, offering, distribution/ dissemination and possession of child pornography, and impose reporting obligations on Internet service providers and other service providers who may become aware of clients exploiting children.

Report Card: Child pornography

Comprehensive definition of child pornography	●
All related acts (production, offering, distribution/ dissemination, possession) are criminalized	●
Law imposes reporting obligations	●

The Philippines legal framework is fully compliant.

Protection against child trafficking

Under international law States are required to criminalize human trafficking, inclusive of recruiting, transporting, transferring, harbouring and receiving victims. Where the victim of trafficking is a child (below age 18), the law should not require proof that force or coercion (referred to as 'means') to prosecute offenders.

Report card: Protection against child trafficking

All children (up to age 18; boys and girls) covered by trafficking provisions	●
All acts (recruiting, transporting, transferring, harbouring, receiving) criminalized	●
Can be an offence committed regardless of the means used to gain the child's consent	●
Law covers trafficking for all types of exploitation	●
Trafficking provisions have extraterritorial application	●

For consideration in the Philippines legal reform:

- Consider broadening the types of exploitation encompassed by child trafficking provisions.

Protection from child abduction

Child abduction, sometimes referred to as 'kidnapping', is the unauthorised removal of a child from the custody of the person with whom the child lawfully lives. Strangers may abduct a child from their place of habitual residence, or a parent may remove the child unlawfully from the custody of the other parent. Both kinds of abduction is prohibited under international law.

Report card: Criminalisation of child abduction

Abduction by force criminalized	●
Unlawful removal from care of parent/guardian criminalized	●
Inter-country abduction criminalized	●

For consideration in the Philippines legal reform:

- Ensure that laws explicitly criminalize unlawful removal of a child outside the territory of the State.

Protection of children in conflict with the law

Children in conflict with the law are highly vulnerable to suffering violence at each stage of the justice process, whether administrative, criminal or informal. The establishment of a juvenile justice system framed by the rights of the child is critical for safeguarding children's access to justice, enabling their participation in administrative and judicial proceedings in way that they can understand and effectively use, shaping a non-intimidating justice environment, and addressing incidents of violence, including when children are deprived of liberty.

This report focuses on whether the State has a juvenile justice legislative framework, the minimum age of criminal responsibility. It summarizes provisions related to key stages in the criminal process at which children are most at risk of violence, namely arrest, interrogation, conviction and detention.

Report card: Protection of children in conflict with the law

Legislative framework	●
Minimum age of criminal responsibility	●
Safeguards against violence by law enforcement	●
Safeguards against violent sentences	●
Safeguards in institutions	●
Safeguards against violent discipline/restraint in institutions	●

For consideration in the Philippines legal reform:

Violence in arrest of children

- Consider developing child-specific legislation for the administration of juvenile justice, or comprehensive child-specific sections within general legislation such as criminal or criminal procedural codes.
- Consider designating and training specialist law enforcement to handle cases involving children.
- Consider establishing effective, accessible complaints mechanisms for use by children in conflict with the law and their representatives, in order to hold perpetrators of violence to account, and to prevent the occurrence of violence where possible.
- Consider compulsory training on children's rights and handling children's cases for all law enforcers, judges, social workers, prosecutors, lawyers and corrections officers.

Violence in juvenile justice institutions

- Consider strengthening legislative recognition of the needs of the girl child and children with disabilities, or other special needs and vulnerabilities.
- Review current complaint mechanism and introduce or strengthen independent complaint mechanisms for children in institutions, taking particular care to

ensure the protection of the rights and welfare of children accessing these mechanisms.

- Develop or continue to develop alternatives to the criminal justice system (diversion and restorative justice options) in order to minimise the number of children who come into contact with law enforcement, and who are deprived of their liberty.

Violence against children in the workplace

Protection against the worst forms of child labour

Child labour deprives children of their childhood, their potential and their dignity, and that is harmful to physical and mental development. The difference between acceptable child work and child labour depends on the child's age, the types of work performed, the conditions under which it is performed and the objectives pursued by individual countries.

The International Labour Organization has identified the following categories of work as the worst forms of child labour: all forms of slavery or practices similar to slavery, such as debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in relevant international treaties; and work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children ('hazardous work'). States are obligated under international law to criminalize the worst forms of child labour.

Report card: Worst forms of child labour

Criminalization of slavery and practices similar to slavery	●
Criminalization of the use, procurement or offering of children for illicit activities	●
Provisions relating to hazardous work	●

The Philippines legal framework is fully compliant.

* This summary brief is extracted from the full report:

United Nations Children's Fund, *Legal Protection from Violence: Analysis of domestic laws related to violence against children in ASEAN member States*, UNICEF EAPRO, Bangkok, 2015.

The full report is available at:

http://www.unicef.org/eapro/12205_3602.html

Every attempt has been made to ensure that all legal references contained in this report were current on 1 September 2014. The reader is invited to consult the full report for the analysis that informed the preparation of "report cards" and recommendations.

Graphic downloaded from: <https://www.cia.gov/library/publications/the-world-factbook/docs/refmaps.html>

Minimum working age and light work

Work that is not likely to be harmful to the health or development of a child and does not prejudice their attendance at school, their participation in vocational orientation or training programmes approved by the competent authority or their capacity to benefit from the instruction received' – referred to as 'light work' – may be carried out by children from age 13, or age 12 where the economy and educational facilities are insufficiently developed. In such cases, the competent national authority must specify the activities in which employment/work is permitted, the number of working hours and the conditions in which employment/work may be undertaken.

Minimum working age and light work

Minimum working age	●
Provisions related to light work	●
Exceptions to minimum working age and/or age for light work	●
Criminal and civil sanctions	●

For consideration in the Philippines legal reform:

- Introduce or fix a minimum working age that is not less than the age of completion of compulsory schooling and, in any case, not less than 15 years.
- Narrow the scope of exceptions to minimum age rules relating to family undertakings in line with international standards.
- Specify the number of working hours permitted for light work, sufficiently explain the activities which children undertaking light work may perform and specify the requisite conditions for such work.
- Narrow the scope of or clarify the ambit of exceptions relating to: training; occupations or categories of employment which have been excluded from the minimum age rules due to difficulties in their implementation; and public entertainment, in line with international standards.
- Narrow the scope of the general exceptions to minimum age rules in line with international standards.