

MINIMUM AGE OF SEXUAL CONSENT

- The minimum age of sexual consent is the age from which someone is deemed capable of consenting to sexual activity.
- The objective of the minimum age of sexual consent is to protect adolescents from sexual abuse and from the consequences of early sexual activity on their rights and development.
- Young adolescents may be lured into sexual activity by older adults in exchange for goods and favours, making those from disadvantaged settings and poor background particularly at risk. Underage sexual activity presents a number of risks in relation to sexual and reproductive health, including unwanted or early pregnancy and exposure to sexually transmitted diseases. Early pregnancy and motherhood is in turn a primary determinant of school drop out for adolescent girls.
- International standards do not indicate what the minimum age for sexual consent should be. The CRC Committee has considered 13 years to be "very low". The age should however avoid the over-criminalization of adolescents' behaviours and prevent access to services. Accordingly, it should respect the evolving capacities of the child and not be set too high. It should also consider as a criterion the age difference between the partners involved as one indication of the balance of power between them and address cases in which two underage adolescents are involved.
- Across the region, the overwhelming majority of countries have established the minimum age for sexual consent between 14 and 16 years. Yet a few countries have an age lower than 14 years or over 16.
- In several countries, discriminatory legislation persists, on the basis of gender and sexual orientation.

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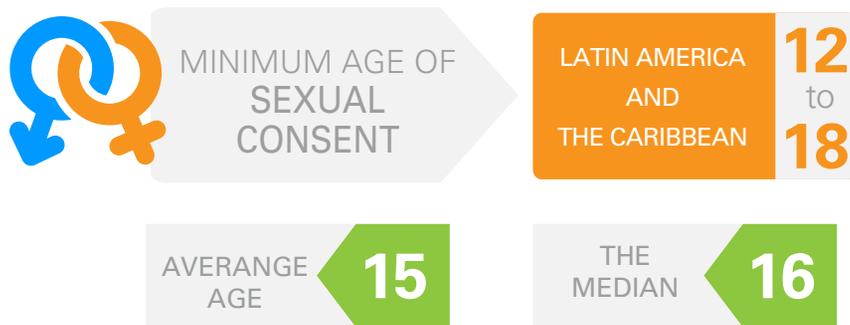


The minimum age of sexual consent aims to protect adolescents from abuse and from the consequences they may not be fully aware of when engaging in early sexual activity. Sexual activity with a person under the age of sexual consent is considered sexual abuse and is criminally sanctioned.

EARLY SEXUAL INITIATION – A SIGNIFICANT ISSUE FOR ADOLESCENTS’ RIGHTS IN LAC

Available data indicates that sexual initiation of girls and women is more likely to be forced if it occurs at younger ages,¹ when peer pressure and coercion may be more difficult to resist. The Latin America and the Caribbean region features the world’s highest rates in terms of girls’ early sexual initiation. Over 22 per cent have had their first sexual intercourse before the age of 15. In some countries, the rate reaches 25 per cent.²

Due to lack of information, adolescents are particularly vulnerable to sexually transmittable diseases including HIV and AIDS. Early sexual activity also increases the risk of early pregnancy, a major preoccupation in the region. Young adolescent girls may not have access to the sexual and reproductive health information and services needed to use contraceptive methods.



Three countries in the region have set the minimum of sexual consent below 14 years old. They comprise Argentina, Costa Rica and Uruguay. Ten more have established that age at 14 years old. Most Caribbean countries have set the minimum age at 16. In the Dominican Republic and Ecuador, the age is set at 18. This may be considered particularly high, given that in the Dominican Republic for example, data indicates that 28.4 per cent of adolescents are mothers by the age of 18³ and girls can get married as early as 15 years old with parental consent.

An important dimension in relation to adolescents’ rights concerns situations in which both persons involved in underage sexual activity are under the age of majority. As asserted in international standards, criminalizing such acts could lead to overly criminalizing adolescents’ behaviours. It can also bear significant

risks in terms of access to health services. At the same time, it is important to protect adolescents, especially adolescent girls, against peer pressure and unwanted sexual activity.

Various domestic laws in the region feature different levels of presumption of consent depending on the age of the person concerned. Accordingly, they set a minimum age under which consent cannot be given. In these cases, the question of consent is irrelevant and any sexual activity represents a form of rape.

While this is an area where laws in the region do not generally feature discriminatory provisions, there are some notable exceptions in relation to gender and to homosexual sexual activity. As seen in the case of Trinidad and Tobago, the law makes some distinction on the basis of gender. In Jamaica sexual activity between two underage children is also punishable with the presumption of culpability usually falling on the male child.

In Paraguay and Chile, the law distinguishes between homosexual and heterosexual sexual activity. In Chile, the age of consent is 14 for heterosexual sex and 18 for homosexual sex. In some countries, including Belize,⁴ Guyana,⁵ Jamaica,⁶ Trinidad and Tobago⁷ and various Eastern Caribbean⁸ countries homosexual sex is completely banned and constitutes a criminal offence, presumably equally for adults and adolescents.

RECOMMENDATIONS

- The legal minimum age for sexual consent should neither be too low nor too high and should contain provisions taking due account of limited age difference between the two partners – three years for example.
- Laws should avoid criminalizing consensual sexual activity between underage adolescents, taking into consideration the age difference and possible balance of power in determining the validity of consent.
- Discriminatory provisions, in particular on the basis of gender and sexual orientation, should be removed.

¹ UNICEF, Hidden in plain sight, 2014.

² UNICEF, Guía regional sobre adolescentes, 2014.

³ Demographic and Health Survey, Preliminary Report (2013).

⁴ Criminal code, sect. 53.

⁵ Criminal code, art. 352-354.

⁶ Offences Against Persons Act (1864), art. 76 to 79.

⁷ Sexual Offences Act.

⁸ Barbados, Sexual Offence Act (2002), Sec. 9