

Increasing the Age of Statutory Rape to Provide Stronger Protection for Children



A policy brief on statutory
rape in the Philippines

#END Child Rape

WARNING: SENSITIVE MATERIAL

• • •

A true account of child rape is presented on page 13 and may be disturbing to some readers.

If you or anyone you know is a victim of assault, harassment, rape, or any other kinds of sexual violence, please get in touch with the following hotlines:

• • •

**Department of Social Welfare and Development (DSWD)
☎ (02) 931-8101 to 07**

**DSWD-NCR Ugnayan Pag-asa Crisis Intervention Center
☎ (02) 734-8639/ 734-8654/
734-8626 to 27**

**Philippine National Police (PNP)
☎ 723-0401 to 20**

**PNP-Women and Children Protection Center
☎ 410-3213**

**NBI-Violence Against Women and Children Desk (VAWCD)
☎ 523-8231 to 38 / 525-6028**

All calls are confidential.



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Increasing the age of statutory rape is a priority for legislation of Council for the Welfare of Children and Child Rights Network.

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DISCLAIMER

The children featured in the images used are not rape victims. The photos are for illustration purposes only.

Tracing the origins of statutory rape laws

1275

Edward I of England issues the Statute of Westminster of 1275 which classified sexual intercourse with females under 12 as a crime. The crime was eventually called “statutory rape.” The idea behind this was less about an individual’s capacity to give consent, but more on protecting chastity, which was regarded as a property that belongs to and is shared by a married couple.¹

1576

The minimum age for statutory rape in England was even lowered to 10, and was soon adopted in colonial America.²

1890s

Statutory rape laws begin transforming, with the working class in Europe pushing to increase the age of consent due to the prevalence of kidnapping and forcing of children above 10 into prostitution. By 1895, England raised the age of consent to 16, with the United States quickly following suit, with some states even raising the age to 21.³

1990s in the ASEAN

1996 - Cambodia imposes a 10- to 20-year imprisonment on anyone found to have indulged in sexual activities with a minor below 15 years old, even if the minor “consented.”⁴

1990s in the ASEAN

1999 - The Criminal Code of Indonesia prohibits sex outside of marriage with minors under the age of 15, and in certain circumstances, under the age of 18 under the Child Protection Law.⁵

Statutory rape laws in the Philippines

The age to determine statutory rape in the Philippines at 12 years old is the lowest in Asia and one of the lowest in the world. Despite calls to increase this age to respond to international standards, Philippine legislators have not amended the provision for 88 years.



1930

The Philippines adopts the 1930 Revised Penal Code (RPC), which viewed rape as a private act or a crime against chastity patterned after the outdated measures of Europe in the 1200-1800s. Chapter II Article 335 of the 1930 RPC has a very limited definition of rape which entails “having carnal knowledge of a woman” under the following circumstances:

1. By using force or intimidation
2. When the woman is deprived or otherwise unconscious and
3. When the woman is under twelve years of age, even though neither of the circumstances mentioned in the two next preceding paragraphs shall be present.”⁶

1990

Congressman Raul Roco of Camarines – challenging the outdated definition of rape that persisted for 6 decades – makes the very first attempt at filing a Bill that specifically tackled rape and defined it as a crime against a person where chastity of the victim is not a precondition.⁷

1996

The Anti-Rape bill passes through the committee level. Endorsed to second reading by the Committee on Revision of Laws and the Committee on Women and Gender Equality, the bill contains several major changes but retains the provision in the 1930 RPC on statutory rape which applies only when victim is a woman “below 12 years of age or is demented.”⁸

1997

The Anti-Rape Bill reaches the bicameral conference committee level. Records show that one of the contested points was on 12 or 14 as the “age of discernment.” One of the main reasons legislators used to retain 12 was the controversial Baluyot case that involved a 12-year-old girl from Olongapo City who died after a vibrator was inserted into her genitalia by a certain Austrian Dr. Heinrich Ritter.⁹

In that case, Ritter was acquitted by the High Court due to failure on the part of the defense to prove that Baluyot was only 12 years old. Using this case as reference point, members of the bicameral conference committee opted for the original 12 years old. The Anti-Rape Bill, thus, was eventually passed on September 30, 1997.

Are Filipino children safe from sexual abuse?

LET THE NUMBERS SPEAK: the National Baseline Study on Violence Against Children (NBS-VAC), a 2015 study by the government supported by UNICEF Philippines of 3,866 children and young people (13 to 24 years old), revealed that one in five Filipino children aged 13 to below 18 have experienced sexual violence. Of the 13 to below 18 years old, 4.2% reported that they were raped.¹⁰ The study found that the perpetrators are often family members. It further revealed that of the 13 to 24 years old, boys (26.4%) are as vulnerable as girls (18.2%) to sexual violence.¹¹

At face value, Philippine laws and regulations may quickly pass scrutiny for protecting and ensuring that the rights of children are neither curtailed nor violated. The welfare of children is enshrined in Article XV Section 3 of the 1987 Philippine Constitution and states that children have the right to assistance, including

“proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation and other conditions prejudicial to their development.”

The Philippines is also a signatory to the United Nations Convention on the Rights of the Child, and should thus make efforts to “protect the child from all forms of sexual exploitation and sexual abuse.”¹²

But while the Philippine government has had numerous gains and milestones in child protection legislation such as the Juvenile Justice and Welfare Act, the Anti-Child Pornography Law, and Anti-Trafficking in Persons Act, there are still gaps in the legal framework that leave Filipino children vulnerable to abuse and exploitation.

A prime example is the age of consent to sex in relation to the age to determine statutory rape. Under Article 266-A of the Revised Penal Code, rape is committed even without the presence of elements of force, threat, intimidation, fraudulent machinations, etc. as long as the victim is under the age of 12 or is demented. This crime is known as “statutory rape,” wherein consent of the victim to engage in sex – even if present or was presumed given – cannot be used as a defense on account of the victim’s age.

In *People v. Garcia*,¹³ the Supreme Court explained how statutory rape is committed. (see *next column, emphasis added*)



“Statutory rape is committed by sexual intercourse with a woman below 12 years of age regardless of her consent, or the lack of it, to the sexual act. Proof of force, intimidation or consent is unnecessary as they are not elements of statutory rape, considering that the absence of free consent is conclusively presumed when the victim is below the age of 12. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. Thus, to convict an accused of the crime of statutory rape, the prosecution carries the burden of proving: (a) the age of the complainant; (b) the identity of the accused; and (c) the sexual intercourse between the accused and the complainant.”

However, setting the limit to age 12 is far below international standards. A 2015 report released by the United Nations Children’s Fund (UNICEF) East Asia and Pacific Regional Office revealed that the minimum age of 12 set by the Philippines for sexual consent is the lowest among Association of Southeast Asian Nations (ASEAN) member states.¹⁴













A 2015 government study of 3,866 young Filipinos revealed that one in five children aged 13 to below 18 have experienced sexual violence.

TABLE 01

Age of Sexual Consent in ASEAN Region

Source: Table 29. Age of consent in ASEAN member States¹⁵

COUNTRY	FEMALE	MALE	COUNTRY	FEMALE	MALE
 Brunei	16	-	 Thailand	15	15
 Malaysia	16	-	 Laos	15	15
 Indonesia	15	19	 Myanmar	14	-
 Singapore	16	16	 Vietnam	13	13
 Cambodia	15	-	 Philippines	12	12

This policy brief seeks to:

- 1 Discuss the history and importance of increasing age of statutory rape;
- 2 Identify the gaps in the Philippines' current laws, legal procedures, and government action to address statutory rape; and
- 3 Propose recommendations and amendments to pertinent policies and laws that the government should undertake, primarily raising the age of statutory rape from 12 to at least 16.

12 years old is too low

MORE THAN 740 YEARS AGO, the first law concerning the age of consent to sexual relations was passed in England and set the minimum age at 12 years old. By the 19th century, amid new and progressive views on childhood development, many countries in Europe increased the minimum age, with countries around the world following suit.

At present, the Philippines is the only country in the ASEAN keeping 12 as the age of consent against the international standard of 16 years old.

Why is 12 years old problematic?

A 12-year-old is typically in 6th grade and has barely gone through puberty. Various studies have proven that the rational thinking part of a person's brain – the part that responds to situations with sound judgment – will not fully develop until age 25.¹⁶ During adolescence, the emotional and decision-making centers of the brain are still developing.

The part of a child's brain that processes his or her understanding of the consequences of his or her decisions, has not yet developed at 12, and in fact, continues to develop at 18. Therefore, setting 12 as the age of consent to sex goes against scientific evidence around brain development as well as physical and emotional maturity.

Existing Reproductive Health Law restricts access of young children to services

Another reason for the problematic age is the conflicting laws on the ages of consent in relation to sex and sexual health. Under the implementing rules and regulations of Republic Act No. 10354 or the Reproductive Health Law, minors are prohibited from accessing contraceptives or family-planning services from barangay clinics without parental consent.¹⁷ Therefore, the inconsistency is that one law says that the age of sexual consent is at 12, yet another says access to reproductive health services without parental consent begins at 18.

Current age of consent to sex in the Philippines is against international conventions

By keeping the age of consent at 12, the Philippines is neglecting its international obligations. The Philippines is a signatory to the Convention on the Rights of the Child¹⁸ and the Convention on the Elimination of Discrimination Against Women¹⁹, among others.

Committees of both Conventions have already recommended to the Philippine Government to increase the age of sexual consent from 12 to 16 years old, noting that the low age of 12 endangers children and makes them more

12 years old is too low

vulnerable to sexual violence—including prostitution, trafficking, and online sexual exploitation and abuse.

Data from the Department of Social Welfare and Development (DSWD) show that from 2015 to 2017, most of the victims of rape and child incest were between the ages of 14 to below 18, way above the minimum age set by RA 8353 (see Tables 2 and 3).

If this is the age range of the usual victims, why is 12 not within this range? Clearly, there is a need to amend the law and widen the scope of protection it affords children, especially for ages where sexual abuse is more prevalent. Increasing the minimum age for sexual consent will provide

greater protection for children against predators that seek to exploit their vulnerability.

Aside from scientific proof and actual data available, increasing the age of statutory rape also widens the shield of the law in protecting children from suffering the horrendous and oftentimes long-lasting effects of sexual violence on children. These effects include trauma, self-blame, depression, suicide, delinquency, risk-taking behavior, sexually-transmitted infections, teenage pregnancy and sometimes, even death. According to the National Youth Commission²⁰, raising statutory rape coverage will not only help protect children, but also decrease the high incidence of teen pregnancy in the country.

TABLE 03

Child rape cases assisted by DSWD (2015-2017)

AGE	2015		2016		2017	
	BOYS	GIRLS	BOYS	GIRLS	BOYS	GIRLS
0 to below 1	0	11	0	4	0	6
1 to below 5	0	13	0	10	0	5
5 to below 10	2	99	4	57	2	48
10 to below 14	3	209	6	156	4	146
14 to below 18	1	301	9	262	3	256
TOTAL	6	633	19	489	9	461

TABLE 03

Child incest cases assisted by DSWD (2015-2017)

AGE	2015		2016		2017	
	BOYS	GIRLS	BOYS	GIRLS	BOYS	GIRLS
0 to below 1	0	0	0	3	0	2
1 to below 5	0	6	1	6	0	7
5 to below 10	0	64	2	45	0	46
10 to below 14	0	149	2	154	1	155
14 to below 18	0	236	1	234	0	212
TOTAL	0	455	6	442	1	422

Gaps in legal protection

Apart from the issue of a very low age of statutory rape, there are also other gaps, disparities, and conflicts in how Philippine law defines child rape and sexual abuses.

In the current law:



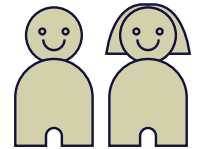
Rape committed against boys is only considered as rape by sexual assault, which carries a lesser penalty (6-12 years imprisonment) as opposed to if the victim was a girl child (life imprisonment).



Amending the law will equalize protection for both boys and girls.

12 years old is too low

Equal protection for boys and girls



One of the problems concerns the classification of rape against a boy child (against a person of the same sex) as rape by sexual assault, which carries a lower punishment of prison mayor (6-12 years), unlike the punishment of reclusion perpetua (20-40 years) if the victim is a girl child. There is no logical basis for differentiating the trauma of rape according to the sex of the child. Sexual violence is sexual violence, whether the victim is a boy or a girl. Consider the data presented by the NBS-VAC: For respondents aged 13 to 17, more boys have reported forced consummated sex at 5.8% as opposed to girls at 3.7%. The study provides that while both boys

and girls are equally vulnerable to rape at home, data suggest that boys are more vulnerable than girls in school, the community and in the workplace.

Given the facts, the current vulnerabilities of boy children need to be addressed in the amendment of the Anti-Rape law where they can enjoy equal protection with the girls. If overlooked, the society - especially the child victims - will face a tremendous challenge of reconciling the gap in how perpetrators are punished according to the sex of the victim. This gender inequity should be addressed.



Inconsistent legal ages of consent

There are also several disparities that exist as regards minimum age or age legislation. The Philippine legal age is 18 – the age when one can legally marry, enter into contracts, purchase alcohol and cigarettes, and vote. The age one can drive is 17. At 15, a child can work subject to labor standards and can also be held criminally liable. Yet, the minimum age for sexual consent is 12.

The Philippine government has readily admitted, in its response to the questionnaire of the United Nations in a study it conducted in 2006,²¹ that a “comprehensive review of the implementation or enforcement of the various legislations that address violence against children has yet to be undertaken.” It further stated that:

There are sufficient protective laws for Filipino children. The implementation/enforcement of these laws is, however, seriously undermined by limited resources that may be reflective of the need for intensified advocacy so that the concerns of children are given due priority that will manifest in increased resource allocation.

In this response to the UN, which became the basis for the issuance of the paper “Promotion and protection of the rights of children” by the UN Secretary-General during their 62nd session last August 2007, the Philippine government readily admitted how it is lagging behind funding and the proper utilization of said funds for child rights protection. Such observation was also explicitly stated in the landmark NBS-VAC released in 2016. According to the Council for the Welfare of Children, local government units in the Philippines have “low capacity to prevent and respond to violence against children.”

There are actually government instrumentalities that should be at the forefront of creating and maintaining a protective environment for children, such as the Local Councils for the Protection of Children, created under the Local Government Code.²² However, these structures are often not functional. Because of this, even if 1% of the Internal Revenue Allotment is reserved for children, these funds are mostly spent on activities other than combatting child abuse and neglect.²³ As such, many LGUs do not face head-on, much less implement, the much-needed information, education, and communication program for the protection of minors.

**At 12 years old,
an adult can have
sex with you and
claim it was
consensual.**



Barriers in the judicial system

Oftentimes, child sexual abuse victims choose not to report the crimes to authorities due to social stigma, fear of revenge from perpetrators²⁴, fear of being blamed for the offense,²⁵ and feelings of indebtedness to their offenders, especially when the offender is member of the family in a guardianship role²⁶ “Secondary victimization” is also often experienced by victims when reporting to law enforcers who are not trained to handle cases of sexual abuse.

Often, when the victims go to court and testify, the process becomes inadvertently traumatic, since he or she is forced to recount the crime in a public setting.²⁷

In a correspondence between the Philippine government and the UN,²⁸ the government elaborated the Supreme Court’s Rule on Examination of Child Witnesses, which aims to

“create and maintain an environment that will allow children to give reliable and complete evidence, minimize trauma to children, encourage children to testify in legal proceedings and facilitate the ascertainment of truth.”²⁹

The application of said procedures has varying degrees of effectiveness given that only family court judges have access to training on child-sensitive rules.

Therefore, because there are only few family courts, and where courts of general jurisdiction are often designated to be family courts, the Rule on Examination of Child Witness may not be faithfully followed.

Also, and this is true even of family courts, access to video conferencing technology is very limited and often judges are left to their own initiatives on how to set up a child-friendly environment in their court rooms.

While the Philippine Judicial Academy’s Competency Enhancement Trainings of family court judges and personnel have been evaluated to be a good practice in administration of justice to and for children, limitation in resources and long delays in the court process often pose challenges for child victims.

Aside from the court environment, the questions that the victims themselves need to answer are traumatic. Even excerpts from Supreme Court jurisprudence prove how difficult it is for victims to testify. Below is an excerpt from *People v. Reyes*, one of the few jurisprudence tackling statutory rape in the Philippines, as example (see *box on the next page*):³⁰



Relative to the rape incident in May of 2002, the affidavit executed by AAA (victim) while she was in Calapan City Police Station, and which was offered as part of the prosecution's evidence, categorically indicated that the accused-appellant inserted his penis into the victim's vagina:

T: Noon bang una kang hindutin ng iyong Daddy ay pumasok ang titi nito sa iyong ari?

S: Opo[,] pumasok po iyon.

T: Ano naman ang naramdaman mo ng ipasok ng iyong Daddy ang kanyang titi sa iyong ari?

S: Labis po akong nasaktan.

X X X X

T: Maari mo bang isalaysay ang mga pangyayari kung iyong matandaan pa?

S:...pilit niyang ipinasok ang kanyang uten sa aking maliit na puki na ako nga po ay halos mawalan ng malay o ulirat sa ginawa niyang pagpasok ng kanyang uten sa aking puki...

In the Philippine government's response to the UN's question on "information on the usual outcome of complaints of violence against children," the government had this to day:

"The information requested will require a special study of voluminous cases filed before the lower courts.

There are appealed cases that have reached the Supreme Court, which may also be surveyed. This will also require quite considerable period for research."³¹



Reforming the law

As state party to the UNCRC, it is a state obligation of the Philippines to enact measures to ensure the protection of children against violence. In fact, the UN Committee on the Rights of the Children, has repeatedly recommended that the Philippines “take all necessary measures to ensure the full and effective implementation of its domestic laws in order to better protect the rights of the child and to harmonize its legislation fully with the provisions and principles of the Convention, including through the expeditious adoption of the Age of Statutory Rape bill.”³² The CEDAW Committee specifically recommended that the Philippines “expedite the amendment of the Anti-Rape Law of 1997, putting lack of consent as the primary element of the definition of rape and raising the minimum age of sexual consent, currently set too low at 12 years, to at least 16 years.”³³

Currently, there are five pending bills in the House of Representatives, and four in the Senate to follow the UN’s recommendation. There is also a draft bill prepared by UNICEF and the Child Rights Network, which include more provisions that address gaps in existing laws.

In summary, these bills seek to primarily amend Article 266-B of the Revised Penal Code and raise the age of statutory rape from 12 to at least 16 years old, and seek to emphasize that consent is immaterial to commit statutory rape.

The pending bills also seek to address the gaps in existing laws, including:

1. The consolidation of the definition of rape through sexual intercourse and rape through sexual assault to address the disparity between crimes committed against girl and boy children³⁴
2. Dubbed as the “close in age exemption,” this is the exemption of “consensual, non-abusive and non-exploitative sexual activity between partners whose difference of age is four years from being considered as statutory rape³⁵
3. Removal of marriage as forgiveness exemption³⁶
4. Inclusion of a clear definition of consent which is “the unequivocal and voluntary agreement to engage in the sexual acts as provided in Article 266-A, provided that:
 - The person consenting fully understands what the sexual act entails
 - The person consenting enters into the relationship or engages in the sexual act voluntarily
 - The person consenting is mentally competent at the time of the sexual act.”

It further provides that “there shall be no valid consent when the offended party is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim.”³⁷

For statutory rape, the child only needs to prove two things:

- 1
His or her age
- 2
The sexual act
happened



The road ahead

In summary, the current minimum age for sexual consent pegged at 12 years is too low because:

1

Studies show that this age is far from the age when the emotional and decision-making centers of the brain reaches full maturity.

3

It doesn't follow the UN recommendation for increasing the age of sexual consent to at least 16 years old.

2

This outdated minimum age stands in conflict with laws related to sex and sexual abuse, which prohibits minors from accessing contraceptives, family-planning services, and undergoing tests for HIV without parental consent. It is also inconsistent with other laws on consent such as marriage, voting, entering into contracts, purchasing cigarettes and alcohol, and the minimum ages of work and criminal responsibility.

4

Government data reveal that ages 14 to 18 are most vulnerable to rape and child incest.

5

The amendment of the law will also look towards addressing the asymmetrical treatment of boys and girls against sexual violence by providing equal protection to all children against rape.

Advocating for the increasing of the age of consent is only one of the many challenges that child rights advocates face. Delivery of justice, care for victims, including their complete rehabilitation and re-integration to society, implementation of programs – all these have big rooms for improvement. The passage of amendments with regard to rape alone could prove to be a daunting task. Yet this is no reason to stop on our tracks.

**The road to ending child rape is still long,
but we need to march head-on!**

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CRC30 YEARS
CONVENTION ON THE
RIGHTS OF THE CHILD

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