RAISING THE ALARM
A POLICY BRIEF ON INCREASING THE AGE OF STATUTORY RAPE
ABOUT CONSUELO FOUNDATION

We are a U.S.-based private foundation that works for the prevention and treatment of abuse, neglect and exploitation of children, women, and their families in Hawai‘i and the Philippines. We are named after Doña Consuelo Zobel Alger, Founder and Benefactress, whose generosity and genuine love for children paved the way for us to “renew hope to those who have lost it and give hope to those who never had it.”

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Approximately one in five children aged 13 to below 18 years experienced some form of sexual violence in any setting, occurring in the following:

These startling statistics on the prevalence of sexual violence against children were reported in the National Baseline Study on Violence against Children (NBS-VAC), a landmark study conducted by the Philippine government supported by UNICEF Philippines and Consuelo Foundation, involving 2,866 children and young people (13 to 24 years old).¹

The study further revealed that the home is the most common setting for the occurrence of sexual violence. The common perpetrators identified as the child’s brother and cousins.

Records from the Philippine National Police’s Women and Children Protection center showed that 76.9% of rape cases from January to October 2015 involved victims who were minors.²

**SEXUAL VIOLENCE COMPRIS ES ANY SEXUAL ACTIVITIES IMPOSED BY AN ADULT ON A CHILD WHEREIN THE CHILD IS ENTITLED TO PROTECTION BY CRIMINAL LAW. SEXUAL ACTIVITIES ARE ALSO CONSIDERED AS ABUSE WHEN COMMITTED AGAINST A CHILD BY ANOTHER CHILD IF THE OFFENDER IS SIGNIFICANTLY OLDER THAN THE VICTIM OR USES POWER, THREAT OR OTHER MEANS OF PRESSURE. CONSENSUAL SEXUAL ACTIVITIES BETWEEN CHILDREN ARE NOT CONSIDERED AS SEXUAL ABUSE IF THE CHILDREN ARE OLDER THAN THE AGE LIMIT DEFINED BY THE STATE PARTY.³**

¹ Child Protection Network Annual Report 2018
² https://www.philstar.com/headlines/2014/12/02/1398300/pnp-majority-rape-victims-are-children
AGES OF VICTIMS WHO HAD AN EXPERIENCE OF SEXUAL VIOLENCE

DEPARTMENT OF SOCIAL WELFARE AND DEVELOPMENT (DSWD)

[AGED 13-15] 295,448 TEENS EXPERIENCED SEXUAL ABUSE
5% WERE FORCED SEX/RAPE
ONLY 0.1% WERE REPORTED TO AUTHORITIES
EXTRAPOLATED ESTIMATE FROM THE DEPARTMENT OF HEALTH (DOH) BASELINE STUDY ON THE NATIONAL OBJECTIVES OF HEALTH IN 2000

Cases are made harder to prosecute because the age of statutory rape is set at below 12 years of age. Children above the age of sexual consent are afforded less protection under the law, as perpetrators are punished below the penalties for statutory rape.
IMPACT OF SEXUAL VIOLENCE ON CHILDREN

Rape is the most horrendous of all forms of sexual violence and is one of the most heinous crimes that can be committed against a person. The effects on victims often result in life-long trauma and dire consequences. These include but are not limited to:  

- Poor psychosocial development
- Lower self-esteem
- Negative view of others and the world
- Self-harming behavior such as depression, anxiety and suicide
- Drinking & substance problems
- Increased risk-taking behavior
- Sexually transmitted diseases
- Teenage pregnancy

THE PHILIPPINES CURRENTLY HAS THE HIGHEST RATE OF TEENAGE PREGNANCY IN SOUTH EAST ASIA

DARKER SIDE OF TEENAGE PREGNANCIES

Many early pregnancies may also be attributed to sexual abuse and rape.  

APPROX. 100K OF 150K BIRTHS TO TEENAGE MOTHERS WERE FATHERED BY SIGNIFICANTLY OLDER PARTNERS [AGED 15-19]  

Supplemental analysis suggested that 4-5 out of 10 pregnant adolescents may had have a prior history of child sexual abuse.  

5 NBS-VAC Systematic Literature Review  
7 Ibid  
WHY IS 12 YEARS OLD ALARMINGLY LOW?

At 12 years old, children are still biologically and mentally underdeveloped.

**Biological development**
- First menses (menarche) is not an indicator of the readiness of the girl’s body for sexual intercourse
- The average age of menarche in the Philippines is 12-13 years old

**Mental development**
- The area of the brain responsible for cognitive development and control inhibitions reaches maturity only at around age 25.
- The center on decision-making and understanding consequences and risk, have not yet fully developed at 12 years and continues to develop at 18 years.

A higher age would allow more time for the child’s brain and body to develop and contribute to his/her capacity to make an informed decision regarding sexual activity.

Too low by international conventions

The 2016 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) Concluding Observations on the Philippines’ Combined 7th and 8th Periodic Reports raised concerns that the minimum age of sexual consent is set too low at 12 years and recommended that the age should be raised to at least 16 years old. Similarly, the UN CRC advised the Philippine government to “set a clearly defined minimum age of sexual consent at an internationally acceptable level in its domestic law”.

The Philippines has the 2nd lowest minimum age of sexual consent in the world.

A comparative observation of countries’ laws shows that the Philippines has the second lowest minimum age for determining statutory rape in the world.

<table>
<thead>
<tr>
<th>AGE OF CONSENT</th>
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<tbody>
<tr>
<td>16 YEARS OLD</td>
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<tr>
<td>21 YEARS OLD</td>
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<tr>
<td>14-18 YEARS OLD</td>
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<tr>
<td>WORLD WIDE AVERAGE</td>
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</table>

11 YEARS OLD NIGERIA 12 YEARS OLD PHILIPPINES 12 YEARS OLD ANGOLA

While the UN CRC Committee did not specify a specific age, its Concluding Observations provided some guidance on unacceptable lower limits. For instance, it found some country’s minimum age of sexual consent of 13 years to be “very low”.

AT 12, CHILDREN ARE PHYSICALLY AND EMOTIONALLY NOT READY YET TO DEAL WITH THE CONSEQUENCES OF SEXUAL ACTIVITY, SUCH AS EARLY PREGNANCY AND SEXUALLY TRANSMITTED INFECTIONS.
POLICY
ENVIRONMENT

What is the minimum age of sexual consent?

It is the minimum age used to determine whether a sexual act with a person is considered a crime. The age of sexual consent is important because it is the minimum age at which a child is considered to lack the maturity to deal with or to say no to sexual acts and therefore they are not legally capable of giving consent.\(^{15}\) It applies regardless of whether the child “consented” to the sexual act/s.

**Laws Establish This Age to Protect Children from Sexual Abuse and Exploitation, Especially by Adults, Rather Than to Criminalize Consensual, Non-Exploitative, Sexual Activity Between Young People.**\(^{15}\)

Law Governing the Age of Sexual Consent in the Philippines

The UN Committee on the Rights of the Child (2009), the body which monitors the implementation of the Convention on the Rights of the Child, observed that the Philippines did not have a legal definition of the minimum age of sexual consent and recommended establishing one. The closest thing is found in the country’s statutory rape law.

Statutory rape is governed by two laws.
- Revised Penal Code, Article 266-A
- The crime of rape was amended by the anti-rape law of 1997 R.A. 8353. The age of 12 was retained.

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<tr>
<th>AGE</th>
<th>HOUSE OF REPRESENTATIVES</th>
<th>SENATE</th>
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<tbody>
<tr>
<td>15</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>16</td>
<td>8</td>
<td>2</td>
</tr>
<tr>
<td>18</td>
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</tr>
</tbody>
</table>

For statutory rape, the child only needs to prove two things: 1) his or her age and 2) the sexual act happened.

In People v. Garcia, the Supreme Court specified how statutory rape is committed:

“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.”\(^{17}\)

**Policy Proposals**

This 18th Congress, there are ten (10) bills in the House of Representatives (HRep) on increasing the age to determine while there are five (5) bills in the Senate.\(^{16}\) The policy proposals recommend different ages for sexual consent.


\(^{11}\) [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4560573/)

\(^{12}\) [https://www.ageofconsent.net/world](https://www.ageofconsent.net/world)

\(^{13}\) Ibid

\(^{14}\) UN CRC Concluding Observations (2009)

\(^{15}\) UNICEF, 2015 in NBS-VAC Systematic Literature Review

\(^{16}\) House Bill Nos. 210, 480, 1689, 2707, 3735, 4160, 6073, 4449, 6215; Senate Bill Nos. 163, 305, 739, 762, 1652

\(^{17}\) People v. Garcia, G.R No. 200529, September 19, 2012; 681 SCRA 465, citing People v. Mingming, 594 Phil. 170, 185-186 (2008)
4 FACTORS TO CONSIDER IN SETTING THE MINIMUM AGE

Given the differing ages in the policy proposals, this policy brief provides information that legislators may use in their deliberations and decision-making to set the specific age of sexual consent to be legislated.

1. Balancing protection and recognizing sexual rights of children

Minimum ages should not be too low to offer adequate protection but not too high to impede children’s agency and fulfillment of rights. Determining the minimum age of sexual consent must balance the desire to promote a wider coverage of protection for children than already accorded in current laws yet, at the same time, without restricting their sexual rights.

Setting minimum ages do not seek to restrict children’s ability to exercise their rights. Rather, they aim to enhance their protection by making sure that children will not have to make choices with consequences that they do not have the capacity yet to fully understand or which they may be taken advantage of due to power imbalance. The process of setting legal minimum ages must be focused on the best interests of adolescents.18

The primary reason for increasing the age of sexual consent is to protect children from abuse and manipulation by adults. By virtue of the age difference and power imbalance, children are more vulnerable to manipulation and coercion of adults.

The concept of evolving recognizes that adolescents are right holders with capacities that evolve with age and maturity. This approach recognizes that the capacity to take responsibility and recognize the consequences of decisions happens at different ages for children and adolescents.19 In light of Philippine cultural norms wherein sex is taboo, acknowledging the sexual rights and agency of adolescents means that consensual sexual activity between them should not be automatically penalized.
Old enough to have sex but too young to access contraceptives: A child as young as 12 years of age in our current laws can give consent to sex, but they are prohibited from accessing safeguards that would protect them from the risks of unplanned pregnancy or sexually transmitted infections.

The Responsible Parenthood and Reproductive Health Law (Republic Act 10354) states that adolescents are prohibited from accessing contraceptives or family planning services without parental consent.

In 2019, the Philippines has been ranked as the country with the fastest growing HIV epidemic in the world and alarmingly, 80 percent of cases are among the youth aged 15 to 24 years old.20 A welcome development regarding this matter is the amended Philippine HIV and AIDS Policy Act of 2018 (RA 11166) allows persons aged 15 to 17 years old to undergo HIV testing even without the consent of a parent or guardian.

The harmonization of the law on age of sexual consent with other related to sex and sexual health of young people is critical in protecting them from abuse, recognizing their sexuality and curbing the rise of teenage pregnancies and sexually transmitted diseases.
3. Drawing the line on the implications

The age difference and comparative maturity between the sexual partners should also be considered in determining the age of sexual consent and possible exceptions to the law. In cases where there is a relatively small difference in age, as determined by the law, between the partners, it may be argued that consent was not constrained by the imbalance in power.

SEX WITH ADULTS

Protecting children from any form of manipulation or coercion leading to exploitation is the utmost priority. Charging the offence of statutory rape (over other sex offences which would merit a lower penalty) is important because it sets the line that sexual activity of adults with children is automatically prohibited.

Providing the full protection for children from possible abuse or coercion from adults should be the higher priority than protecting the smaller minority who may be falsely accused. Some opponents may argue that even if a child consents, it is unfair that an adult will still be guilty of rape.

“The higher minimum age should serve as a clear deterrent for predators. In the current situation, a 50 year-old man adult can repeatedly have sex with a 12 year old child and claim that the child gave consent. A judge who sees the same way would dismiss that case of sexual abuse. This legal environment may be a contributory factor to the reputation of the Philippines as a hotspot for sex tourism with children and sex trafficking.”

SEX WITH PEERS

Legislation should ensure that it does not lead to overcriminalization of adolescent sexual activity. By making sexual activity illegal below an age where adolescents have already been observed to be sexually active may incur the risk of preventing them from accessing sexual and reproductive healthcare and information.

“According to the Philippine Young Adult Fertility Survey 4, 23% of youth have begun sexual activity before age 18. The proportion of young people engaging in early sexual initiation has increased steadily in the past two decades.”

GROOMING: A Pathway to Statutory Rape

Children are vulnerable to online grooming which may escalate to sexual relations between adults and children. Trust of young people is gained through empathy and emotions through interactions in online platforms. In the Philippines, 50% of its 44 million internet users are children aged 17 years old and below. However, according to the Department of Education, 50% of children lacked awareness of the risks they face on the internet.

RA 9975 (Anti-Child Pornography Act): Grooming refers to the act of preparing a child by an adult offender to engage in sexual activity by communicating through any form of child pornography.
4. Making the case for including close-in age exemptions

The close-in age exemption means that the law will allow sexual acts with minors under the age of consent if their peer is close in age to them. This exemption is created to protect young people from the harsh consequences of violating the age of consent law such as being labelled as a sex offender simply for having consensual sex with their peer.²³

This exemption also protects young people from being victims of false accusations from parents of their partners who want to file cases of statutory rape against them for defiling their child’s innocence and reputation.

Two bills in the 18th Congress includes a provision for close-in age exemptions.

“When the victim is under (18) years of age, even though none of the circumstances mentioned above be present, Provided, that there shall be no criminal liability on the part of the perpetrator if the victim is between fourteen and eighteen years of age; the age difference between the perpetrator and the victim is not more than 4 years; the sexual act in question is proven to be consensual, non-exploitative, and non-abusive.”

The salient elements of this provision highlights the importance of including close-in age exemptions:

**REMOVING THE CRIMINAL RESPONSIBILITY FROM BOTH PARTNERS:** This factor avoids overcriminalization of adolescent sexual behavior. Since both policy proposals include ages above the MACR, the exemption will ensure that adolescents above the minimum age of criminal responsibility (15 years old) will not be criminally liable for engaging in consensual, non-exploitative and non-abusive sex with fellow adolescents. Although both discernment related to criminal responsibility and consent to sex involve the understanding of possible consequences, the former deals with internal decisions with oneself while the latter involves another person. Discernment deals with legal capacity to act and not legal capacity to consent because consent implies being asked to make a decision by someone else.

**AGE DIFFERENCE:** The specification of four years to include the age range of 14 to under 18 years old recognizes the reality of adolescent sexual behavior wherein the age of sexual initiation among Filipino youth is at a median age of 17.8 for males and 18.2 for females.²⁴ The age difference should not be too wide to include ages of children wherein they cannot consent due to developmental immaturity, such as below 13 years old.

**SEXUAL ACT IS PROVEN TO BE CONSENSUAL, NON-EXPLOITATIVE, AND NON-ABUSIVE:** This qualifying condition emphasizes that any unwanted sexual act regardless of the ages of victims will still be considered as an offence yet consensual acts between close-in age partners will not be penalized. The rationale for consent is mediated by the lack of power imbalances that are inherently present in adult-child sexual relations that make children more vulnerable to exploitation and coercion and considers the consent by given in these situations to be constrained.

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²¹ Interview with Dr. Sylvia Estrada-Claudio, MD., PhD
²² https://www.preda.org/the-philippine-age-of-consent-12-years-old/
²³ https://www.ageofconsent.net/close-in-age-exemptions
²⁴ Young Adult Fertility Survey 4
Countries which have a close-in age exemption in their laws\textsuperscript{25} include:

**CANADA.** Age of consent is 16 years old. There are two close in age exemptions. One allows a minor aged 12 or 13 to consent to sexual activity with an individual less than two years older. The other allows 14 and 16 year olds to consent to partners less than 5 years older.

**ITALY.** Age of consent is 14 years old. 13 year olds can consent to partners less than 3 years older.

**SWEDEN.** Age of consent is 15 years old. This applies if there is a small difference in age between the person who carries the act and the child.

**AUSTRALIA.** The age of consent is 16 or 17 depending on the state or territory. For example, in New South Wales, the amendments to the Criminal Legislation is the introduction of similar age defense. The defense will apply if the alleged victim is 14 years or older and the age difference between the accused person and the alleged victim is no more than two years.\textsuperscript{26}

**UNITED STATES.** The age of consent is 16 to 18 years old depending on the state. 30 states have close-in age exemptions. For instance, in Missouri, the age of consent is 17. The close-in age exemption is 4 years for minors aged 14-16 but no exception for those aged 13 and below.\textsuperscript{27}

\textsuperscript{25} \url{http://worldpopulationreview.com/countries/age-of-consent-by-country/}
\textsuperscript{27} \url{https://health.mo.gov/living/families/adolescenthealth/pdf/MissouriMinorConsentLaws1-4-19.pdf}
\textsuperscript{28} \url{https://www.ecpat.org/what-we-do/online-child-sexual-exploitation/}
POLICY RECOMMENDATIONS

Aside from raising the age to determine statutory rape, other policy reforms are necessary for a comprehensive approach to protecting children and promoting their developmental rights.

1. APPLICATION OF CLOSE-IN AGE EXEMPTIONS

It is proposed that a close-in age exemption is considered in the amendment of the law on increasing the statutory rape to recognize the sexual rights of young people. Nevertheless, young people’s decisions when engaging in sex with their peers must consider age differences which span in different development ranges:

**Early adolescence: 10-13 YEARS OLD**
**Middle adolescence: 14-17 YEARS OLD**

The important elements of close-in age exemptions will be adhered to:
- a) removing criminal responsibility from both partners;
- b) specification of age difference; and
- c) sexual act is proven to be consensual, non-exploitative, and non-abusive.

2. APPLYING STRONGER PENALTIES TO GROOMING

Grooming is an act of developing a relationship with a child to enable their sexual exploitation, either online or offline. It is proposed that the act of grooming should be charged with a corresponding penalty as statutory rape. This will serve as a strong deterrent to predators and pedophiles so that they will not engage in online conversations with minors which may lead to sexual relations.

The close-in age exemption to be proposed will only apply if the age of the partner falls within specific conditions.
3. REPEAL ANTIQUATED LAWS AND IMPOSE OTHER SEX OFFENCES AGAINST MINORS

A woman over 12 years old but below 18 years old who consented to sexual intercourse may be considered as a victim of the crime of seduction the crimes of simple seduction or qualified seduction under Articles 337 and 338 of the Revised Penal Code depending on the circumstances surrounding the crime committed.

The qualifying elements of this crime depends on the circumstances of the special relationship between the victim and offender and the presence of deceit.

The liability of the offender also hinges on the reputation of the victim. A victim of qualified seduction must be a woman who is a virgin while a victim of simple seduction must be a single or a widow of good reputation. It may be observed that the crime of seduction is considered as a crime against chastity wherein the protection is focused more on the character of the victim rather than the sexual abuse committed.29

In fact, the Anti-Rape law has already gone against this notion, classifying rape as a crime against persons and not against chastity. In the amendment of the rape provisions, however, it seems that other provisions such as seduction were left behind. A more comprehensive law on statutory rape can address this issue and the crimes of seduction can be held repealed.

If the age of consent will be set at 16 years old, it is therefore recommended that a new type of sex offence against minors for children above the age of consent but below the age of majority will be instituted. This will ensure that children will still be afforded protection even if they are above the age of consent.
4. PROVIDE EQUAL PROTECTION FOR CHILDREN REGARDLESS OF SEX

The current statutory rape law penalizes rape of boys as a lesser crime due to a lower penalty than rape of women. Rape by sexual assault carries a lower penalty (6-12 years imprisonment) than statutory rape (life imprisonment). The difference lies in the commission of the sexual act. In statutory rape, the sexual abuse contemplates the 'traditional' act of carnal knowledge meaning penetration of the penis into the woman's vagina while rape by sexual assault contemplates the 'non-traditional' act of committing sexual abuse.

The disparity in the law is particularly troubling in light of the results of the NBS-VAC which demonstrated that more boys than girls are victims of sexual violence. This further justifies a more comprehensive review and amendment of the rape law when it comes to not only age but also gender biases.

5. CREATE A STRONGER ENABLING ENVIRONMENT FOR PROMOTING ADOLESCENT SEXUALITY, SEXUAL HEALTH AS WELL AS PROTECTION FROM SEXUAL ABUSE

The full implementation of the comprehensive sexuality education is critical in improving capability of young people in making informed decisions about sexual activity and more importantly, recognizing signs of sexual abuse or exploitation as well as the actions they can take to seek help. This entails including in the curriculum the concept of consent, recognizing sexual violence in all settings, healthy relationships and sexual and reproductive health services options.

The extent that the young person has gained the relevant knowledge and experience to make informed decisions determines their competence. This relates to the knowledge they have gained through sex education and interactions with the adults in their lives.30

Clearly, 12 years old is too young for children to make informed decisions given their limited exposure to information and experiences.

It is further recommended that ages in other laws such as access to contraceptives and sexual and reproductive health services should also be harmonized to provide further protection for children from teenage pregnancies and sexually transmitted diseases.

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30 Minimum Age of Sexual Consent in the Philippines: Legal Research and Legal Opinion (September 2007) by Tricia Clare a. Oco (UNICEF Philippines)
ANALYSIS OF POLICY OPTIONS

Scientifically, selecting 16 or 18 as the age of sexual consent both have their merits. This policy brief proposes the following ages with respective supporting arguments for the consideration and adoption of legislators:

BELOW 16 IF THERE IS NO CLOSE-IN AGE EXEMPTION
- Conforms to international averages
- Follows the recommendation of the UN CEDAW Committee in its 2016 Concluding Observations on the Philippines’ Combined 7th and 8th Periodic Report
- 77 countries in the world set their age of consent at 16 years old including: Taiwan, Malaysia, Indonesia, Singapore

BELOW 18 WITH APPLICABLE CLOSE-IN AGE EXEMPTIONS
- Ensures maximum protection for all children
- The close-in age exemption will address concerns on restrictions on adolescent sexual behavior by not penalizing consensual, non-exploitative and non-abusive sex with peers
- 41 countries in the world set their age of consent at 18 years old including: India, Lebanon, Vietnam

4 FACTORS TO CONSIDER IN DECIDING ON THE MINIMUM AGE OF SEXUAL CONSENT
- Balancing protection and recognizing sexual rights of children
- Harmonizing minimum ages in laws related to sex and sexual health
- Drawing the line on the implications
- Making the case for including close-in age exemptions

12 YEARS OLD IS TOO LOW. #ENDCHILDRAPE
RAISE THE ALARM!
INCREASE THE AGE OF STATUTORY RAPE
SIGN THE PETITION: HTTP://BIT.LY/ENDCHILDRAPE