

PRIMER
CHILD ABUSE

I. OVERVIEW

A. Status of child maltreatment in the Philippines

Child abuse cases in the Philippines rose significantly in the recent years. According to studies¹ of UNICEF, 2 in Filipino kids are vulnerable to child abuse, particularly the trafficking of children through online sexual exploitation where the traffickers are their cash-strapped parents or close family members.

B. Who is a child?

"Children" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.

C. What are the rights of children?

All children shall be entitled to the rights herein set forth without distinction as to legitimacy or illegitimacy, sex, social status, religion, political antecedents, and other factors:

1. Every child is endowed with the dignity and worth of a human being from the moment of his conception, as generally accepted in medical parlance, and has, therefore, the right to be born well.
2. Every child has the right to a wholesome family life that will provide him with love, care and understanding, guidance and counseling, and moral and material security. The dependent or abandoned child shall be provided with the nearest substitute for a home.
3. Every child has the right to a well-rounded development of his personality to the end that he may become a happy, useful and active member of society.
4. Every child has the right to a balanced diet, adequate clothing, sufficient shelter, proper medical attention, and all the basic physical requirements of a healthy and vigorous life.
5. Every child has the right to an education commensurate with his abilities and to the development of his skills for the improvement of his capacity for service to himself and to his fellowmen.

¹ Philippine Kids Online Survey and the National Study on Online Sexual Abuse and Exploitation of Children.

6. Every child has the right to protection against exploitation, improper influences, hazards, and other conditions or circumstances prejudicial to his physical, mental, emotional, social and moral development.
7. Every child has the right to the care, assistance, and protection of the State, particularly when his parents or guardians fail or are unable to provide him with his fundamental needs for growth, development, and improvement.
8. Every child has the right to grow up as a free individual, in an atmosphere of peace, understanding, tolerance, and universal brotherhood, and with the determination to contribute his share in the building of a better world.

D. What is child abuse? (RA 7610)

"Child abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

1. Psychological or physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;
2. Any act by deeds or words which debases, degrades, or demeans the intrinsic worth and dignity of a child as a human being;
3. Unreasonable deprivation of his/her basic needs for survival such as food and shelter; or
4. Failure to give medical treatment to an injured child resulting in serious impairment of his/her growth and development or in his/her permanent incapacity or death.

E. Kinds of child abuse

1. Physical abuse - Infliction of physical harm
2. Sexual abuse - Includes fondling a child's genitals, penetration, incest, rape, sodomy, indecent exposure and exploitation through prostitution or the production of pornographic materials
3. Emotional or mental abuse - Impairs a child's emotional development or sense of self-worth, includes constant threats, rejection or withholding of love, support and guidance
4. Child neglect - Failure to provide for a child's basic needs
5. Child labor - Participation of children in a wide variety of work situations
6. Commercial sexual exploitation of children - Practices that are demeaning and comprises sexual abuse by the adult and remuneration in cash or kind to the child or a third person

F. Who may file a complaint?

Under Sec. 27 of the Special Protection of Children Against Abuse, Exploitation and Discrimination Act (R.A. No. 7610), complaints on cases of unlawful acts committed against

children may be filed with the Regional Trial Court duly designated as Juvenile and Domestic Court by the following:

1. Offended party;
2. Parents or guardians;
3. Ascendant or collateral relative within the third degree of consanguinity;
4. Officer, social worker or representative of a licensed child-caring institution;
5. Officer or social worker of the Department of Social Welfare and Development;
6. Barangay chairman; or
7. At least three (3) concerned, responsible citizens where the violation occurred.

The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development.

QUESTION: What are the safeguards against child abuse and maltreatment in the Philippines?

II. CHILD PROTECTION LAWS IN THE PHILIPPINES

A. Special Protection of Children Against Abuse, Exploitation and Discrimination Act (R.A. No. 7610)

1. Defines what is “child abuse”
2. Includes “child trafficking”
 - a) trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter.
 - b) Acts which constitute child trafficking (Art. IV, Sec. 8)
3. Provides sanctions to establishments or enterprises which promote, facilitate, or conduct activities constituting child prostitution and other sexual abuse, child trafficking, obscene publications and indecent shows, and other acts of abuse.

B. The Child and Youth Welfare Code (P.D. No. 603)

1. Includes rights of the child (Art. 3)
2. Responsibilities of the child (Art. 4)
3. When does the civil personality of the child commence? (Art. 5)
4. Art. 22 talks about the remedy of a dependent, abandoned, or neglected child to be transferred to the DSWD or a duly licensed child-caring institution or individual.
5. Procedure for adoption
6. Also talks about the rights, duties, and liabilities of parents towards their children
7. Sanctions to parents in case of neglect to children

C. Solo Parents Welfare Act (R.A. No. 8972)

1. Provides for benefits and privileges to solo parents and their children.

D. Early Childhood Care and Development Act (R.A. No. 8980)

1. Establishes Early Childhood Care and Development (ECCD) System which refers to the full range of health, nutrition, early education and social services programs that provide for the basic holistic needs of young children from birth to age six (6), to promote their optimum growth and development.

E. An Act Providing For The Elimination Of The Worst Forms Of Child Labor And Affording Stronger Protection For The Working Child (R.A. No. 9231)

1. Provides for prohibition on child labor for children below 15 years old and exceptions to such prohibition subject to conditions enumerated therein.
2. Provides rules on hours of work of a working child and the ownership, usage and administration of the working child's income.
3. Provided for prohibition against worst forms of child labor and employment in certain advertisements.

F. Anti-Trafficking in Persons Act (R.A. No. 9208)

1. Declares as trafficking the recruitment, transportation, transfer, harboring, adoption or receipt of a child for the purpose of exploitation or when the adoption is induced by any form of consideration for exploitative purposes even if it does not involve any of the means set forth in the said law.

G. Anti-Violence Against Women and Their Children Act of 2004 (R.A. No. 9262)

1. Penalizes any act or series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child which result in or is likely to result in physical violence, sexual violence, psychological violence, or economic abuse.
2. Gives protection to women and her children suffering from domestic abuse by providing legal representation, availability of protection orders and the corresponding sanctions in case of their violation.

H. Anti-Child Pornography Act (R.A. No. 9775)

1. Penalizes and prohibits any representation of a child engaged or involved in real or simulated explicit sexual activities.
2. Concept of child under this law includes:
 - a) a person regardless of age who is represented, depicted or portrayed as a child;
 - b) a person who pretended to be mentally, physically disable to protect himself/herself from abuse and exploitation;
 - c) computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child.

I. Rule on Examination of a Child Witness (A.M. NO. 004-07-SC)

1. Governs the examination of child witnesses who are victims of crime, accused of a crime, and witnesses to crime. The rule applies in all criminal proceedings and non-criminal proceedings involving child witnesses.

III. JURISPRUDENCE IN RELATION TO CHILD ABUSE

A. Caballo vs. People, G.R. No. 198732, [June 10, 2013]

A child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion or influence of any adult. There is no need of engaging the child in actual prostitution (for profit) as long as there is compulsion to commit sexual relations. There is sufficient “coercion” enough for conviction: (1) AAA’s minority — a child is not capable of fully understanding or knowing the import of her actions. Hence, whether or not she consented is immaterial, the law considers the consent of a child as not being validly given; and (2) Caballo’s seniority — he is 6 years older, hence in a position to force her against her will. His repeated assurance of his love for her, and promises of marriage, was seen by the court as actions which compelled her to have sex with him, given her minority.

B. Sanchez vs. People, G.R. No. 179090, [June 5, 2009]

Child abuse includes physical abuse of the child, whether the same is habitual or not. The act of the accused in striking VVV, a sixteen (16) year old minor, with the piece of wood three (3) times, twice on the left thigh and once below her right buttocks falls squarely within this definition.

C. Encinares y Ballon v. People, G.R. No. 252267, [January 11, 2021]

Section 5 (b) of RA 7610 specifically applies in cases of sexual abuse committed against children, which includes lascivious conduct; whereas, Section 10 (a) thereof punishes other forms of child abuse not covered by particular provisions of RA 7610. The term "lascivious conduct" was given a specific definition in the Implementing Rules and Regulations of RA 7610, viz.: "the intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast, inner thigh, or buttocks, or the introduction of any object into the genitalia, anus or mouth, of any person, whether of the same or opposite sex, with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person."

D. People v. Bueza y Ranay, G.R. No. 242513, [November 18, 2020]

[T]he absence of hymenal laceration does not exclude the existence of rape. Such explanation is also consistent with the well settled rule that in rape cases, the absence of lacerations in complainant's hymen does not prove that she was not raped. Neither does the lack of semen belie sexual abuse as it is equally settled that “the absence of sperm samples in the vagina of the victim does not negate rape, because the [presence] of spermatozoa is not an element thereof.”

An intact hymen does not negate a finding that the victim was raped, and a freshly broken hymen is not an essential element of rape. The presence or absence of injuries would depend on different factors, such as the forcefulness of the insertion, the size of the object inserted, the method by which the injury was caused, the changes occurring in a female child's body, and the length of healing time, if indeed injuries were caused.

“[F]orce, threat or intimidation” is the element of rape under the RPC, while 'due to coercion or influence of any adult, syndicate or group' is the operative phrase for a child to be deemed 'exploited in prostitution or other sexual abuse,' which is the element of sexual abuse under Section 5(b) of R.A. 7610. Therefore, there could be no instance that an Information may charge the same accused with the crime of rape where 'force, threat or intimidation' is the element of the crime under the RPC, and at the same time violation of Section 5(b) of R.A. No. 7610 .

Assuming that the elements of both violations of Section 5 (b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610.

E. People v. XXX, G.R. No. 225781, [November 16, 2020]

The gravamen of the crime of Rape is carnal knowledge of a woman against her will. The following elements must be proven beyond reasonable doubt for the conviction of the accused in the crime of Rape: (i) that the accused had carnal knowledge of the victim; and (ii) the act was accomplished (a) through the use of force or intimidation; or (b) when the victim is deprived of reason or otherwise unconscious; or (c) when the victim is 12 years of age, or is demented. As a rule, courts view unfavorably affidavits of desistance or a recantation of a victim's testimony, especially in rape cases, since "they can be easily obtained for monetary consideration or through intimidation."

People v. Tulagan explains the ratio for a correct designation of offenses under Article 266-A, Paragraph 1 (a) and Article 266-B of the RPC and not under RA 7610:

Assuming that the elements of both violations of Section 5(b) of R.A. No. 7610 and of Article 266-A, paragraph 1(a) of the RPC are mistakenly alleged in the same Information — e.g., carnal knowledge or sexual intercourse was due to "force or intimidation" with the added phrase of "due to coercion or influence," one of the elements of Section 5(b) of R.A. No. 7610; or in many instances wrongfully designate the crime in the Information as violation of "Article 266-A, paragraph 1 (a) in relation to Section 5(b) of R.A. No. 7610," although this may be a ground for quashal of the Information under Section 3(f) of Rule 117 of the Rules of Court — and proven during the trial in a case where the victim who is 12 years old or under 18 did not consent to the sexual intercourse, the accused should still be prosecuted pursuant to the RPC, as amended by R.A. No. 8353, which is the more recent and special penal legislation that is not only consistent, but also strengthens the policies of R.A. No. 7610. Indeed, while RA. No. 7610 is

a special law specifically enacted to provide special protection to children from all forms of abuse, neglect, cruelty, exploitation and discrimination and other conditions prejudicial to their development, We hold that it is contrary to the legislative intent of the same law if the lesser penalty (reclusion temporal medium to reclusion perpetua) under Section 5(b) thereof would be imposed against the perpetrator of sexual intercourse with a child 12 years of age or below 18.

Article 266-A, paragraph 1(a) in relation to Article 266-B of the RPC, as amended by R.A. No. 8353, is not only the more recent law, but also deals more particularly with all rape cases, hence, its short title "The Anti-Rape Law of 1997." R.A. No. 8353 upholds the policies and principles of R.A. No. 7610, and provides a "stronger deterrence and special protection against child abuse," as it imposes a more severe penalty of reclusion perpetua under Article 266-B of the RPC.

F. People v. Talmesa y Bagan, G.R. No. 240421, [November 16, 2020]

Besides, inaccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is oftentimes not remembered in detail. Such an offense is not analogous to a person's achievement or accomplishment as to be worth recalling or reliving; rather, it is something which causes deep psychological wounds and casts a stigma upon the victim, scarring her psyche for life and which her conscious and subconscious mind would opt to forget. Thus, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.

Furthermore, testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and immaturity are generally badges of truth and sincerity. No young woman would admit that she was raped, make public the offense and allow the examination of her private parts, undergo the troubles and humiliation of a public trial and endure the ordeal of testifying to all the gory details, if she had not in fact been raped.

G. Cristobal v. Cristobal, A.C. No. 12702, [November 10, 2020]

Let it be stressed that physical violence is never a normal occurrence when couples argue. Violence is violence. To justify the same is egregious and goes against the very essence of a civilized society.

H. People v. XXX, G.R. No. 218277, [November 9, 2020]

The elements of Qualified Rape are: "(1) sexual congress; (2) with a woman; (3) done by force and without consent; (4) the victim is under [eighteen] years of age at the time of the rape; and (5) the offender is a parent (whether legitimate, illegitimate or adopted) of the victim."

Testimonies of child victims are given full weight and credit, because when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape was committed. Youth and immaturity are generally badges of truth and sincerity.

Withal, the Court reiterates that "a young girl's revelation that she had been raped, coupled with her voluntary submission to medical examination and willingness to undergo public trial where she could be compelled to give out the details of an assault on her dignity, cannot be so easily dismissed as mere concoction."

I. People v. XXX, G.R. No. 246194 , [November 4, 2020]

The behavior and reaction of every person cannot be predicted with accuracy. It is an accepted maxim that different people react differently to a given situation or type of situation, and there is no standard form of behavioral response when one is confronted with a strange or startling experience. Not every rape victim can be expected to act conformably to the usual expectations of everyone. Some may shout; some may faint; and some be shocked into insensibility, while others may openly welcome the intrusion. Behavioral psychology teaches us that people react to similar situations dissimilarly. There is no standard form of behavior when one is confronted by a shocking incident. The workings of the human mind when placed under emotional stress are unpredictable. This is true specially in this case where the victim is a child of tender age under the moral ascendancy of the perpetrator of the crime.

To stress, there is no standard form of behavior for a rape victim, more so for a minor such as private complainant, who was just eight (8) years old and who was under the moral ascendancy of accused-appellant, a distant relative who she considers her lolo or grandfather.

The Court had previously declared that "[i]n the absence of evidence of any improper motive, it is presumed that no such motive exists" and "that it is wholly unnatural for a mother to sacrifice her own daughter, a child of tender years at that, and subject her to the rigors and humiliation of a public trial for Rape if she were not motivated by an honest desire to have her daughter's transgressor punished accordingly."

J. People v. ZZZ, G.R. No. 226144, [October 14, 2020]

Premarital relationships do not necessarily entail sexual intimacy. Neither can the sexual behavior of a rape victim reverse her violator's criminal culpability. It must always be remembered that the lack of consent is the line crossed in non-Statutory Rape. Romantic affairs voluntarily engaged into by a rape victim, whether before, during, or after the rape incident, will not overwrite the established fact that her violator forcibly obtained carnal knowledge of her without her consent.

It is not physically impossible for the rapist to sexually abuse the victim even in the presence of another person. Criminal lust does not discriminate. Undaunted by age, sex, relationship, place, distance, time, aesthetic preferences, or moral considerations, sexual predators attack with reckless abandon and surprising ingenuity, always impelled by the sole aim of having their worldly fill. Perverse desires find ways. A mere arm-span distance from the victim or a lack of privacy will not deter a rapist who has been consumed entirely by lust. Ill motive becomes inconsequential in the face of an affirmative and credible declaration from the rape victim, who had already clearly established the liability of the accused.

K. People v. XXX, G.R. No. 248370 (Resolution), [October 14, 2020]

To hold a conviction for Statutory Rape, the prosecution must establish the following: (1) the offended party is under 12 years of age; and (2) the accused had carnal knowledge of the victim, regardless of whether there was force, threat or intimidation; whether the offended party was deprived of reason or consciousness; or whether it was done through fraudulent machination or grave abuse of authority. The victim's age and fact of intercourse shall sustain a conviction, provided they are alleged in the information and proven in trial.

The absence of external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration not being, to repeat, an element of the crime of rape. The foremost consideration in the prosecution of rape is the victim's testimony, which alone, if credible, is sufficient to convict. The conviction or acquittal of one accused of rape most often depends almost entirely on the credibility of the complainant's testimony. By the very nature of this crime it is generally unwitnessed and usually the victim is left to testify for herself. Her testimony is most vital and must be received with the utmost caution. When a rape victim's testimony, however, is straightforward and marked with consistency despite grueling examination, it deserves full faith and confidence and cannot be discarded. Once found credible, her lone testimony is sufficient to sustain a conviction.

There is no standard form of behavior can be anticipated of a rape victim following her defilement, particularly a child who could not be expected to fully comprehend the ways of an adult.

L. People v. Estonilo y De Guzman, G.R. No. 248694, [October 14, 2020]

For a successful prosecution of Trafficking in Persons, the following elements must be shown: (a) the act of "recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders"; (b) the means used which include "threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another"; and (c) the purpose of

trafficking is exploitation which includes "exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs." In addition, Section 6 of RA 9208 provides that the crime is qualified when, inter alia, the trafficked person is a child.

IV. CURRENT PROGRAMS IN THE PHILIPPINES

A. Child 21

1. A strategic framework for planning programs and interventions which promotes and safeguards the rights of Filipino children with the ultimate goal to achieve good health for all Filipino children by the year 2025.

B. National Plan of Action for Children

1. Special protection for children who experience violence, abuse and exploitation; children in situations of commercial sexual exploitation; and children in emergency and difficult circumstances;
2. Comprehensive Programme on Child Protection.

V. GOVERNMENT AGENCIES PROVIDING SERVICES TO VICTIMS OF CHILD ABUSE

A. Department of Social Welfare and Development

Batasan Pambansa Complex, Batasan Road, Quezon City, 1100 Metro Manila, Philippines

Telephone Number: 8931- 8101

B. Department of Justice

Padre Faura Street, Ermita, Manila, 1000 Metro Manila, Philippines

Telephone Number: 8523-8481 to 98

C. Department of Health

San Lazaro Compound, Tayuman, Sta. Cruz, Manila

Philippines 1003

Telephone Number: 8651-7800

D. Department of the Interior and Local Government

DILG-NAPOLCOM Center, EDSA, corner Quezon Avenue, West Triangle

Quezon City, Philippines 1104

Telephone Number: 925-0330 or 925-0331

E. National Bureau of Investigation

NBI Building, Taft Avenue, Ermita

Manila, Philippines 1000

Telephone Number: 8523-8231 to 38

F. Philippine National Police (PNP)

Camp Crame, Quezon City

G. Child Rights Center – Commission on Human Rights

IBP Building, Doña Julia Vargas Ave, Ortigas Center, Pasig, Metro Manila

H. Department of Labor and Employment (DOLE)

DOLE Building, Muralla Wing cor. General Luna St.,

Intramuros, Manila, 1002, Philippines

DOLE Hotline: 1349