

ADVOCACY PAPER



AGE OF SEXUAL CONSENT: A FOCUS ON BOYS



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This paper is based on a legal analysis prepared by Dentons' lawyers worldwide. ECPAT International wishes to acknowledge and thank Dentons for their expert contribution and for their commitment to advancing justice for children subjected to sexual exploitation and abuse.

The Dentons logo consists of the word "DENTONS" in white, uppercase, sans-serif font, centered within a dark purple arrow-shaped graphic pointing to the right.

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INTRODUCTION

The age of sexual consent is the legally defined age at which a person is considered mature enough to agree to sexual activities. Sexual activities with a person below this age is legally defined as statutory rape. The age of sexual consent varies across jurisdictions, with national legislation around the world establishing a minimum age under which engaging in sexual activities with a child is considered a criminal offence.¹

There is no international legal instrument establishing a specific age or age range for sexual consent. Often national provisions related to the age of sexual consent include an exception, known as a close-in-age exemption, making consensual sexual activities between older children/adolescents lawful if the partners are of similar ages and the age difference is not higher than a certain number of years.

The concept of the age of sexual consent plays a key role in the protection of children against sexual exploitation as in some jurisdictions the applicability of legal provisions criminalising sexual exploitation and/or the related punishments vary depending on whether the children are below or above the age of sexual consent. In addition, the lack of a close-in-age exemption may also lead to the prosecution of older children engaging in consensual sexual activities with peers.

Provisions on the age of sexual consent may apply differently to children depending on their gender. Indeed, in some countries, no age of sexual consent is provided for boys, leaving them potentially unprotected or less protected in cases of sexual abuse and exploitation. In some countries, legal provisions do protect boys if they are subjected to a “significant sexual act” or similar, but these do not include penetration and are less severely punished than “rape”.

The lack of provisions on age of sexual consent for boys and the existing challenges in sexual consent legislation may lead to the impunity or reduction of punishment for perpetrators of crimes of

¹ The lowest age for sexual consent is 13 years old in Argentina. (The Argentine Republic. (1984). [Codigo Penal de la Nacion Argentina](#). Articles 119 and 120.) However, some countries allow sexual intercourse of younger children if within marital relationships. For example, in Sri Lanka sexual intercourse with 12 years old girls is allowed if “not judicially separated from the man”. (The Democratic Socialist Republic of Sri Lanka. (1991). [Penal Code](#). Article 363).

sexual exploitation.

These legal shortcomings are both influenced by and a translation of rigid social and gender norms that contribute to boys' vulnerabilities and silence their needs. In this context, ECPAT Global Boys Initiative aims to explore how sexual exploitation and abuse of boys is collectively addressed, and how better response activities can be provided to prevent these crimes. The initiative stands for gender equity and equality and recognises that violence against women and girls is rooted in patriarchal gender hierarchies, powers imbalances and discrimination. It recognises that decreasing the sexual violence of children necessitates an understanding and deconstruction of gender norms.

ASSESSMENT OF NATIONAL PROVISIONS ON THE AGE OF SEXUAL CONSENT

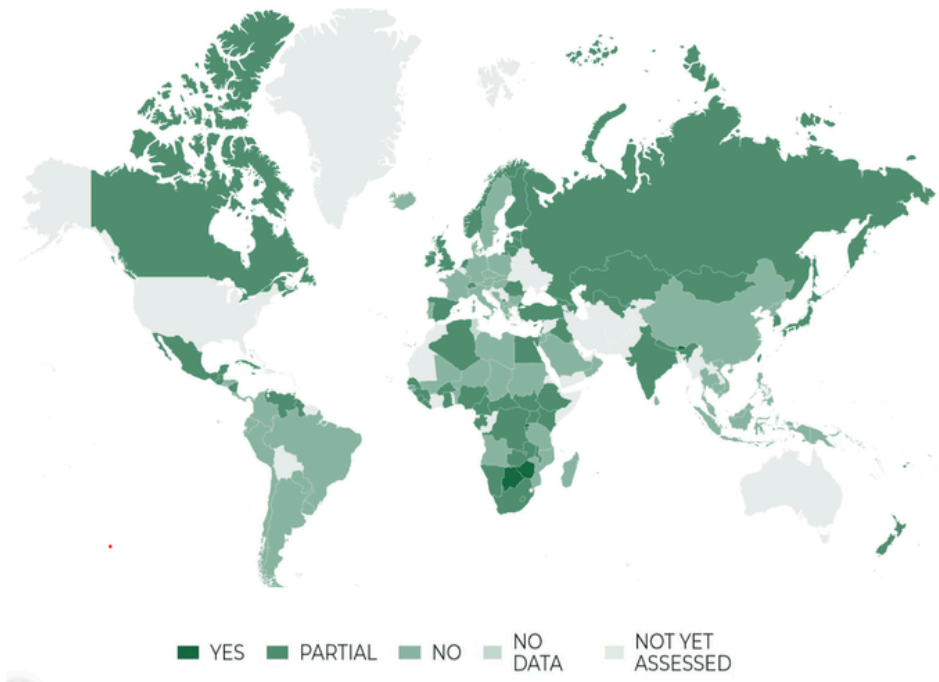
Recognising the key role of sexual consent legislation to address the sexual exploitation of children, ECPAT International in collaboration with lawyers from Dentons and PayPal offices across the world, have collected data on sexual consent legislation across **158 countries**, with a particular focus on whether such provisions equally apply to both girls and boys.

ECPAT considers legislation on the age of sexual consent to **fully** ensure protection to children when the national legislation explicitly indicates that the age of sexual consent unequivocally is 18 for all children, with a close-in-age exemption for sexual acts between peers (of up to 3 years) being provided by law. The age from which the exemption applies should be established by states but often begins for young people somewhere between 12 and 16 years of age.

State legislation is regarded by ECPAT as **partially** in line with its standards when the national legislation explicitly indicates that the age of sexual consent unequivocally is 18, but a close-in-age exemption is not provided for, or, the national legislation establishes an age of sexual consent, but it is below 18 (but equal to/above 16), for all children.

Lastly, ECPAT considers legislation on sexual exploitation of children to **not** protect children appropriately when it is set below 16 or is only established for either girls or boys.

Map of the countries assessed by ECPAT International



Based on this assessment, ECPAT concluded that **only five (3%)** out of 158 countries were qualified as a “yes” and fully respecting the above criteria, by setting the age of sexual consent at 18 years old and providing a three-year close-in-age exemption. These countries are Bhutan, Botswana, Rwanda, Trinidad and Tobago and Zimbabwe. The small number of countries that fully met the criteria is surprising and highlights the importance and urgency of legal changes at the national legislative levels to protect all children against sexual violence.

Most of the countries (**52% or 83 countries**) were qualified as “partially in line”, with a majority being countries in Africa (30%) and Europe (25%). Among these 83 countries, 25 have set the age of sexual consent at 18 years old but do not provide a close-in-age exemption (75% of these are in Africa).

Finally, **45% - or 70 countries** - do not meet the criteria set by ECPAT. Among these, eight countries have set the age of sexual consent at 16 or above but only for girls,² 60 countries under the age of 16 and two – Oman and Saudi Arabia - do not provide for age of sexual consent at all as people are required to be legally married to have sex.

Out of these 70 countries, 16 have provisions which do not equally apply to girls and boys, by not providing an age of sexual consent for boys, or by providing a different age compared to girls.³ In some cases, only girls are protected against rape. The case of Brunei can be used as an example:

*“A man is said to commit “rape”, who, except in the case hereinafter excepted, has sexual intercourse with a woman (...)”.*⁴

Legislation thus assumes that only girls can be raped, leaving boys out of protection in cases of exploitation. While a few of these countries have included boys as potential victims of other “significant sexual acts”, these crimes are usually not defined and have penalties lower than those prescribed for statutory rape.

Close-in-age exemptions

In cases where countries do not provide a close-in-age exemption and have set the age of sexual consent at 18, older children engaging in consensual sexual activities risk to be criminalised. This has been the case for example in India, since the adoption of the Protection of Children from Sexual Offences Act (POCSO), in 2012.⁵ While the Act was enacted to protect children from sexual offences, it also led in practice to criminalising sexual acts between adolescents that were consensual and non-exploitative.⁶

In a relevant case, the Madras High Court indicated that “adolescent romance” is an important developmental marker for adolescents’ self-identity, functioning and capacity for intimacy”.⁷ In most of the 2022 reported convictions, girls are presented as the victims while

² These are Benin, Brunei, Guinea Bissau, Jordan, Kuwait, Palau, Papua New Guinea and Sudan.

³ These are Benin, Brunei, China, Guinea Bissau, Jordan, Kuwait, Malaysia, North Korea, Palau, Papua New Guinea, Saint Vincent, Solomon Islands, Sri Lanka, Sudan, Tanzania, Tuvalu.

⁴ Brunei Darussalam. (2021). [Penal Code](#). Article 375.

⁵ The Republic of India. (2012). [The Protection of Children from Sexual Offences Act](#).

⁶ Chawla V. (2024). [De-criminalising romantic adolescent relationships under the POCSO Act](#).

⁷ See the case: [Madras High Court Vijayalakshmi vs State Rep. By on 27 January, 2021](#).

boys are discriminatorily treated as children in conflict with the law, and can even be tried as adults.⁸

The accused boys are predominantly charged with non-bailable offences such as rape and penetrative sexual assault, although the cases are “romantic”, and consent was given for the intercourse.⁹ The lack of close-in-age exemptions has therefore been used to allow for the prosecution of boys within romantic and consensual relationships.

In addition, if a close-in-age exemption is not provided in countries where the age of sexual consent is set below 18, it creates a legal loophole that allows adults to engage in consensual sexual relationships with children without facing criminal charges. This could pose significant risks to the protection of children, as it undermines safeguards intended to prevent exploitation and abuse. According to ECPAT’s findings, 13 out of 23 European countries with a sexual consent age of 14 or 15 lack such exemptions, highlighting a critical gap in child protection laws.¹⁰

In cases where countries provide a close-in-age exemption, it is important that it does not exceed an age difference of 3 years. ECPAT’s findings have found cases where no age difference is specified for teenagers engaging in sex or, even though the close-in-age exemption is three years old, these can go until a very young age. In Trinidad and Tobago for example, while the age of sexual consent is set at 18 years, close-in-age exemptions allow a person of twelve years old but under fourteen to have sex with a person less than two years younger.¹¹ This means that a child just above 10 would legally be allowed to have sex with a 12-year-old.

Finally, some countries do not specify the maximum years of age difference, but a “comparable mental and developmental level” or a “comparable age”. This is the case of Montenegro for example.¹² Such approach could be problematic as it leaves a large margin of maneuver to judges and is left open to argumentation.

8 Raha and Ramakrishnan. (2022). [Implication of the POCSO Act in India on Adolescent Sexuality: A Policy Brief](#).

9 Ibid.

10 These are Albania, Andorra, Bosnia and Herzegovina, Bulgaria, Czech Republic, Denmark, Germany, Greece, Hungary, Italy, Slovakia, Poland and North Macedonia.

11 Republic of Trinidad and Tobago. (2012). [Children Act](#). Article 20 (3).

12 Republic Montenegro. (2018). [Criminal Code of Montenegro](#). Article 206 (4).

Exceptions to sexual consent provisions in cases of child marriage

Another important challenge is the existence of legal exceptions to sexual consent provisions, when the sexual act is carried out within marriage. Some laws explicitly state that consent is not needed within marriage or that acts that can be considered sexual offences within the law will not be considered as such when carried out within a marital relation.

For example, in Papua New Guinea, despite the age of sexual consent being 16,¹³ adults having sex with children above the age of 14 are not prosecuted if they are married to the child.¹⁴ Similarly, in Brunei the age of sexual consent is set at 14 (only for girls),¹⁵ but if the girl is at least 13, sexual intercourse with the man she is married to cannot qualify as rape.¹⁶ In the Maldives, sexual offences with a child will not be considered criminal offences if the offender has entered marital relations with the child “as per Islamic principles”.¹⁷

These provisions are problematic as they in practice allow perpetrators to sexually abuse and exploit children. When the law permits or overlooks marital rape, it not only normalises sexual abuse of women but also creates the circumstances for perpetrators to “legally” sexually abuse and exploit children.

13 The Independent State of Papua New Guinea. (2013). [Criminal Code Act 1974](#). Article 229.

14 Ibid. Article 229 G.

15 Negara Brunei Darussalam. (2022). [Penal Code](#). Article 375(e).

16 Ibid.

17 The Republic of Maldives. (2009). [Act number 12/2009 Special Provisions Act to Deal with Child Sex Abuse Offenders](#). Section 14.

IMPACT OF AGE OF SEXUAL CONSENT PROVISIONS ON THE SEXUAL EXPLOITATION OF BOYS

ECPAT's analysis reveals that many countries failing to fulfil the criteria, do so because of their different legal applications between boys and girls. As highlighted before, **16 out of the 70 countries that do not meet the criteria, do not provide a minimum age of sexual consent for boys or provide different ages for boys and girls.**¹⁸

Without clear legal protection, boys may be exposed to sexual harm potentially causing long-term psychological, emotional, and physical consequences. This lack of legislation can also perpetuate harmful societal myths and biases, such as the idea that boys are less affected by sexual abuse or that they should be "proud" of such experiences, which can discourage them from seeking out help or reporting abuse.

Furthermore, without an age of sexual consent, boys are left unprotected in cases where adults exploit power imbalances or coercion in relationships. The lack of protection for boys reinforces gender inequality in the legal system, as it implies that their experiences of abuse are less important or less likely to occur, perpetuating stigma and silence, as well as rigid ideas of masculinity, around the issue. Comprehensive age of sexual consent laws and provisions against sexual abuse and exploitation of boys are essential to safeguard the well-being and rights of all children, regardless of their gender identity.

No or different age of sexual consent provided for boys

In eleven countries¹⁹ out of the 158 assessed, the national legislation only protects girls in cases of rape, whereas boys are not protected at all, or only protected in cases of sexual assault or serious injury, which are considered less serious crimes and less severely punished.

¹⁸ These are Benin, Brunei, China, Guinea Bissau, Jordan, Kuwait, Malaysia, North Korea, Palau, Papua New Guinea, Saint Vincent, Solomon Islands, Sri Lanka, Sudan, Tanzania, Tuvalu.

¹⁹ Benin, Brunei, China, Guinea, Israel, Jordan, Kuwait, Saint Vincent, the Solomon Islands, Sudan and Tuvalu.

In some cases, the language used within legal provisions on age of sexual consent is explicitly not gender-neutral, implying that perpetrators can only be men and that only girls can be victims. In Israel, for example, only girls are protected by the rape provision, sanctioned up to 16 years of prison.²⁰ Since boys cannot be victims of rape according to the law, they can only be protected under the “forbidden intercourse by consent” article, with a maximum sanction up to 5 years of imprisonment.²¹ In China, boys are only protected through the “serious injury” provision, which carries a sentence of a maximum of 3 years imprisonment, in comparison with rape, sentenced with up to 10 years.²² In Kuwait the rape provision only applies to girls, with those perpetrating this crime facing life imprisonment if the girl is below 15, and imprisonment up to 15 years.²³ Boys (under 21) are only covered within the provision on indecent assault which provides for a lower penalty of up to 10 year of imprisonment.²⁴ In Malawi, rape provisions only apply to girls as well.²⁵ This is problematic given the fact that in cases where a boy is sexually abused, the only crime to which the perpetrator would be charged for is “indecent assault” which provides for a significantly lesser penalty than statutory rape.²⁶

A case was identified by Dentons where an instance of a boy sexually abused by a woman, was dismissed in Malawi:

“There was a case four years ago involving a certain woman who was sleeping with a child. The case was lost at first because the prosecutor had to charge the woman with ‘defilement.’ But when the victims went to court, it was dismissed, because the jury said, that upon [the] definition, it is this boy who was raped. For ‘defilement,’ there must be penetration. So, in this process, who penetrated whom? Men cannot be penetrated; it is women who can be penetrated. So, the charges were wrong.”²⁷

20 The State of Israel. (2013). [Penal Law 5737-1977](#). Article 345 (3).

21 The State of Israel. (2013). [Penal Law 5737-1977](#). Article 346.

22 The People's Republic of China. (1997). [Criminal Code](#). Articles 235 and 236.

23 The State of Koweit. (2023). [Kuwait – Law no. 16 of 1960 promulgating the Penal Code](#). Articles 187 and 188.

24 Ibid. Article 192.

25 The Republic of Malawi. (2014). [Penal Code](#). Articles 132 and 155.

26 Ibid. Article 155.

27 Liu, M. (2021). [“The Failure of Malawi’s Sexual Offense Laws to Protect ...”](#) *Suffering in Silence: The Failure of Malawi’s Sexual Offense Laws to Protect Children - A Human Rights Report and Proposed Legislation*, p. 587. And, Interview by Amy Uihlein with a Child Protection Officer at a One Stop Centre in a hospital, in Malawi (Mar. 13, 2020).

In its analysis of case law, Dentons also found another case where a woman was found guilty of sexually abusing a boy, but was charged with indecent assault, and received a sentence of seven years, although the crime of rape is punishable with death or life imprisonment.²⁸

Another case in Jordan illustrates the complexity of the lack of statutory-rape provisions for boys:

“The State Security Court sentenced a 27-year-old man to 15 years in prison with hard labor for kidnapping and sexually abusing a 10-year-old boy. The man abducted the child on his way to a bakery, took him to his home, and tied him up, gagged him, and assaulted him. Although the man was convicted of unwanted sexual contact and kidnapping, he was not charged with rape, as Jordanian law only defines rape as sexual intercourse with a female”.²⁹

Similarly, as shown by the case law analysis conducted by Dentons in Sri Lanka, boy victims of sexual violence struggle to bring forward their claims due to the lack of legislation protecting them from rape. Some have turned to the Torture Act, which includes sexual abuse within its definition of torture, making it a potential avenue for such reporting.³⁰ However, even then, “the prospects of success in obtaining redress under that Act (or indeed under any other legislation) by male survivors of sexual violence are currently low”.³¹

In some countries different ages of sexual consent are provided for girls and boys. In Guinea Bissau for example, girls are protected until the age of 16 years in cases of sexual intercourse, while boys only until the age of 12 years, in cases of a “significant sexual act”, which the law does not define.³² The sanctions provided for these crimes are also different, with perpetrators having sexual intercourse with a girl facing up to eight years in prison, and those engaging in sexual acts with boys, up to five years.³³

²⁸ Ibid. and, The Republic of Malawi. (2014). Penal Code. Section 14 (3), Article 133.

²⁹ Roya News. (2017). Man Sentenced to 15 Years in Prison after Kidnapping and Raping a Child. And, Hashemite Kingdom of Jordan. Jordanian Penal Code No. 16 of 1960. Article 292.

³⁰ Democratic Socialist Republic of Sri Lanka. (1994). Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment.

³¹ All Survivors Project. (2017). Sexual Violence against Men and Boys in Sri Lanka and Bosnia & Herzegovina.

³² These acts usually exclude penetration, examples can be fellatio, cunnilingus, masturbation, etc.

³³ The Republic of Guinea Bissau. (1993). Decreto-Lei no. 5/93 : Aprova o Código do Processo Penal. Article 134.

These findings highlight how gender-based stereotypes and patriarchal-influenced societies prevent the full and equal protection between boys and girls. Across all contexts, the sexual exploitation and abuse of boys is not considered or taken seriously because of the specific gender norms, roles and behaviours that are expected from them – in addition to conscious and unconscious biases about boyhood and boys. These prevent boys from recognising they have been victimised and/or impact the ways they show they need help, and conversely, make it hard for others to recognise boys are also affected, even though to a lesser extent, by sexual exploitation.³⁴ With increasingly extensive data and insights on the prevalence of boys being sexually abused and exploited, legal provisions should be amended or introduced to ensure all children are protected equally, regardless of their gender identity.

Discriminatory legislation between same-sex and heterosexual consensual sexual acts

Interestingly, in some countries, the age of sexual consent differs depending on whether referring to same-sex or heterosexual sexual acts, with the former allowed at an earlier age. The punishment for same-sex sexual acts with persons below the age of sexual consent is also often lower than for heterosexual sex. This is the case of Madagascar for example that establishes the age of sexual consent at 14 for heterosexual sexual acts and at 21 for same-sex sexual acts.³⁵

Any person engaging in a heterosexual sexual act with a child under the age of 14 is criminalised between five to 10 years of imprisonment, in comparison with same-sex sexual acts with an individual under the age of 21, criminalised with two to five years imprisonment.³⁶ The same has been found in Vanuatu, where 15 years is the minimum age for heterosexual sexual acts and 18 years for same-sex sexual acts.³⁷ Heterosexual sexual intercourse with a child under the age of 15 is sanctioned with 5 years of imprisonment, in comparison with two years of imprisonment in case of same-sex sexual act with a person under the age of 18.³⁸

³⁴ ECPAT International. (2021). [Global Boys Initiative: A global review of existing literature on the sexual exploitation of boys](#). ECPAT International.

³⁵ The Republic of Madagascar. (2005). [Penal Code. Article 331.](#)

³⁶ Ibid.

³⁷ The Republic of Vanuatu. (2003). [Penal Code. Article 97.](#)

³⁸ Ibid. Articles 97 A and 99.

In these cases, the absence of a close-in age-exemption and the higher ages prescribed for same-sex relationships, have the increased potential to criminalise boys within consensual relationships. In Saudi Arabia for example, while death penalty on children has been prohibited, the Saudi Court of Appeal has still been sentencing younger convicted offenders to death for their crimes, including same-sex sexual acts.³⁹ A similar situation exists in Niger.⁴⁰

Lower penalties provided for same-sex sexual acts imply that abuse against boys by men, is less serious, further discouraging boys from seeking justice and allowing abusers to evade accountability. These discrepancies often stem from stereotypes that view boys as less vulnerable to sexual abuse or as inherently capable of "enjoying" or "welcoming" such acts. In addition, in contexts where homosexuality is banned, laws against homosexuality can potentially subject boys, regardless of their sexual orientation, reporting abuse by male offenders to legal jeopardy, even as victims.

In addition, some countries have only been criminalising same-sex sexual acts between men.⁴¹ While not directly related to sexual age of consent provisions, these findings highlight and illustrate the large pressure and expectations put on boys and men, who are supposed to conform to hetero/masculinity-dominated standards, roles and norms. Across these diverse contexts, the challenge remains how to create a legal and social environment where children, especially boys victimised by man perpetrators or involved in incidents that could implicate them under current laws, feel safe and supported in reporting concerns and abuses.

To ensure equality and effective protection for all children, penalties for sexual abuse must be consistent and based on the nature of the crime, not the gender identity of the victim. This helps dismantle rigid gender stereotypes and biases, provides boys with the protection they need, and fosters a legal system that can progressively become more gender-transformative and uphold the dignity and rights of all children equally.

39 Human Rights Watch. (2024). [Saudi Arabia: Halt Executions of Child Offenders Death Penalty for Alleged Crimes Committed as Children.](#)

40 Beyond Bars. (2023). [The Illegality of Imposing the Death Penalty on Minors in Nigeria.](#)

41 These are for example Guyana (maximum penalty of life imprisonment), see Human Dignity Trust. (2024). [Guyana](#); Egypt (maximum three years of imprisonment and a fine), see Human Dignity Trust. (2024); South Sudan and Papua New Guinea (maximum 14 years of prison) and Ghana (three years of prison), see The Republic of South Sudan. (2008). [The Penal Code Act](#). Article 248; The Independent State of Papua New Guinea. (1974). [Criminal Code Act 1974](#). Article 336; The Republic of Ghana. (1960). [Criminal Code](#). Article 140.



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