

## THE AGE OF CONSENT (1997)

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When is a child old enough to give meaningful consent to sexual activity? Most countries set an “age of consent”, meaning that children below this age are considered to lack the maturity to understand the full implications of sexual intercourse. In other words, below a certain age, consent to sexual intercourse is no defence to a charge of rape or sexual assault.

In terms of the draft rape legislation recently released for comment by the Ministry of Justice, any form of sexual penetration of a child under the age of twelve will be rape, regardless of consent, provided that there is an age difference of three or more years between the perpetrator and the complainant. The age gap is intended to ensure that sexual activity between boys and girls who are in roughly equal positions is not criminalised, while still protecting children from exploitation by those who are older, stronger and more mature.

Some people have expressed concern that the age of 12 is too low, and that a three year age gap may be too broad to prevent sexual exploitation. In order to stimulate informed public debate, here are some important facts about sex, children and the law.

### THE EXISTING LAW

At present, the age of consent in respect of rape or other sexual activity under the Roman-Dutch common law inherited from South Africa is twelve for girls and *seven* for boys. The common law has been supplemented by a statute called the Combating of Immoral Practices Act which gives increased protection to girls below the age of 16, but provides no extra protection for boys.

In brief, sexual contact with girls under the age of 16 constitutes “statutory rape”, regardless of consent. Statutory rape is considered to be a far less serious crime than rape, with a maximum penalty of six years imprisonment, compared to the maximum of life imprisonment for rape.

If a girl victim is under the age of 12, the prosecutor can charge the accused with rape without having to prove the absence of consent. If she is 12 or older, the prosecutor must prove absence of consent to get a conviction for rape.

Sodomy with a male of any age is illegal, regardless of consent – a position which is likely to be challenged in future as discrimination against homosexuals. Bestiality (sex with animals) and “unnatural sexual acts” (a vague offence largely dependent on social attitudes) are also illegal for persons of any age, regardless of consent. Other sexual activity with boys aged seven or older is illegal only if there is no consent.

The draft Combating of Rape Bill does not affect the Combating of Immoral Practices Act. The two laws taken together would preserve the offence of “statutory rape” alongside the offence of rape for girls, but not for boys.

## SEXUAL ACTIVITY AMONG ADOLESCENTS

When do Namibian children actually become sexually active? There are three recent studies which shed some light on this question.

A 1992 Demographic Health Survey commissioned by the Ministry of Health & Social Services involved nationwide interviews with a representative sample of girls and women, who were asked to state the age at which they became sexually active. This study found that girls in the Northeast typically begin sexual activity at about 17 years, women in the South at about 19 years, and women in the Northwest at about 21 years of age. Only about 7% of the girls and women interviewed were sexually active by age 15.

A second source of information is a 1995 survey on sexual knowledge, attitudes and practices among Namibian youth commissioned by the Namibian Network of AIDS Service Organisations (NANASO). One of the study components was a questionnaire administered to a nationwide sample of persons between the ages of 18 and 25. For the purposes of this study, the nation was divided up into four broad categories: (1) the Caprivi area and the portions of Okavango near the Trans-Caprivi Highway (which are considered especially high-risk areas for HIV transmission) (2) other urban areas (3) other peri-urban areas and (4) other rural areas. A representative sample of 510 males and females aged 18-25 was interviewed in each area.

This survey found that sexual activity typically begins at age 15-16, with boys tending to begin sexual activity at younger ages than girls. There were significant numbers of boys who first engaged in sexual intercourse while under the age of 14 – as many as 20% of males in rural and peri-urban areas and 25% of males in the Caprivi/Trans-Caprivi Highway area. However there were very few girls in any location who engaged in sex before reaching the age of 14.

What is particularly shocking is the high number of both boys and girls who said that they had been *forced* to engage in sex – as many as 20% of the female respondents in urban areas stated that they were forced into sex, with 10-11% of girls in other areas reporting forced intercourse. Even more saddening is the fact that the vast majority of girls who said that they had been forced to have sex stated that their *first* sexual experience was a forced one.

Boys also reported a high incidence of forced sex, although not so high as among girls. About 8% of the boys in peri-urban areas reported forced sex, along with 4-5% of boys in other areas. Boys were less likely than girls to have been forced into their first sexual encounter, although this did sometimes occur.

The boys and girls in the survey reported that they were the victims of both physical and psychological pressure. Both boys and girls were most often forced by someone who was older than they were at the time. Unfortunately, no details about the exact age gap were collected.

A 1996 Youth Health Development Survey conducted under the auspices of UNICEF studied youth in school hostels in Omusati and Caprivi. This study found that large percentages of boys begin sexual activity at a very early age. A surprising 38% of boys aged 12 and below had already had sex, along with 45% of 13-year-old boys and

40% of 14-year-old boys. By age 15, about half of the boys surveyed were sexually active.

The girls in this survey were much less likely to begin sexual activity so young. Very few girls aged 14 and below said that they had already has sex, and only 21% of the girls aged 15 were sexually active. Even by age 18, only 31% of the girls had engaged in sexual intercourse. were sexually experienced.

These youths may not be typical of all Namibian youths. For one thing, the two regions which were chosen for the survey were selected because of their particularly high rate of HIV infection. Also, the sexual behaviour of young people living in school hostels may be affected by the lack of parental supervision. Nevertheless, the differences in sexual experience between boys and girls in the same age groups are striking.

A significant number of the students in the survey reported that they had been raped – or had raped someone. The answers to these two questions could not be separated out after the survey, meaning that the data in respect of boys is unclear. But 12% of the 15-year-olds girls said that they had been raped, along with 2-4% of girls in the other age groups. For boys, although the statistics are ambiguous, it is still relevant to note that 5% of boys under the age of 12 stated that they had been involved in forcible sexual intercourse in some respect, as well as 13-16% of boys in the age groups 13-15. Whether the boys are the victims or the perpetrators, these percentages point to the need for serious action on the problem of forced sex among children.

What conclusions can we draw from all these figures? Broadly speaking, boys typically engage in sexual intercourse for the first time at age 15-16, although large numbers of boys are sexually active at ages 14 and under. Girls tend to begin sexual activity somewhat later, typically not before age 17 or older. A fair number of girls do engage in sexual activity at ages 15 and 16, but very few are sexually active at younger ages. This means that, below the age of about 17, boys are more likely to be sexually experienced than their female counterparts – a fact which is highly relevant to the question of the appropriate age gap in the law on rape. Most importantly, forced sex is a serious problem for disturbing numbers of both boys and girls.

Law can guide behaviour, but it is unlikely to have any impact unless it bears some relation to social reality This factual information will hopefully provide the background for an informed debate on what policy Namibia should adopt to best protect its children.

*Next column: Other age milestones, the age of consent in other countries and recommendations for Namibia.*