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SENATE
S. No. **2462**

RECEIVED BY: 

Introduced by Senator Miriam Defensor Santiago

AN ACT
STRENGTHENING REPUBLIC ACT NO. 8353,
OTHERWISE KNOWN AS THE "ANTI-RAPE LAW OF 1997"

EXPLANATORY NOTE

In the case of *Karen Tayag Vertido v. Republic of the Philippines*¹, the Committee on the Elimination of Discrimination against Women, established under the United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Article 17 emphasized that rape violates a woman's right to personal security and bodily integrity and that lack of consent is its essential element. The Committee recommended the Republic of the Philippines to:

- (i) Review the definition of rape in the legislation so as to place the lack of consent at its centre;
- (ii) Remove any requirement in the legislation that sexual assault be committed by force or violence, and any requirement of proof of penetration, and minimize secondary victimization of the complainant/survivor in proceedings by enacting a definition of sexual assault that either:
 - (i) requires the existence of "unequivocal and voluntary agreement" and requiring proof by the accused of steps taken to ascertain whether the complainant/survivor was consenting; or

¹ CEDAW/C/46/D/18/2008

- (ii) requires that the act take place in “coercive circumstances” and includes a broad range of coercive circumstances.

Although the circumstances that qualify sexual intercourse and sexual assault as rape are indicative of lack of consent, they are not always broadly construed by our courts so as to include other coercive circumstances. Hence, as in the case of *Vertido*, perpetrators of the crime are able to evade criminal liability. This bill seeks to remedy this problem as well as to comply with the pronouncements made by the CEDAW Committee.

This bill likewise addresses the other shortcomings of the Anti-Rape Law. One, it increases the age for determining statutory rape. According to the Philippine National Police Criminal Investigation and Detection Group’s Women and Children’s Protection Unit, recorded victims of sexual abuse are mostly children at ages 13-15.² Increasing the age for determining statutory rape to 15 years old and below will contribute to protecting our minors against sexual abuse. Two, it provides for more aggravating/qualifying circumstances under the Penal Code, Article 266-B such as when rape is documented through any kind of media, and the documented act has been disseminated to the public, and when it is committed by two or more persons, acting together. Three, it repeals the Penal Code, Article 266-C so as to be consistent with the amendment made by the Anti-Rape Law of 1997 classifying rape as a crime against persons rather than against private individuals. According to the Philippine Commission on Women, Article 266-C fails to take into account the issue of gender-based violence. It permits the possibility of “violence against women under the shroud of marriage, keeping women in violent and abusive relationships rather than freeing them.”³

² Philippine Commission on Women, “Amending the Anti-rape Law”, Policy Brief No. 11, <<http://pcw.gov.ph/wpla/rape>>.

³*Id.*

This bill is based on House Bill No. 821 filed in the First Regular Session of the Sixteenth Congress by Representatives Emmi A. De Jesus, Luzviminda Ilagan, Fernando Hicap, Carlos Zarate, Neri Colmenares, James Mark Terry Ridon, and Antonio Tinio.

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO
RP

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SENATE
S. No. 2462

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Introduced by Senator Miriam Defensor Santiago

Be it enacted by the Senate and the House of the Representative of the Philippines in Congress assembled:

1 AN ACT
2 STRENGTHENING REPUBLIC ACT NO. 8353,
3 OTHERWISE KNOWN AS THE ANTI-RAPE LAW OF 1997

4 SECTION 1. Act No. 3815, otherwise known as the Penal Code, Title Eight, Chapter
5 Three on Rape, is hereby amended to read as follows:

6 Chapter Three

7 Rape

8 ~~Article 266-A. Rape: When And How Committed. Rape is committed:~~

9 ~~1) By a man who shall have carnal knowledge of a woman under any~~
10 ~~of the following circumstances:~~

11 ~~a) Through force, threat, or intimidation;~~

12 ~~b) When the offended party is deprived of reason or otherwise~~
13 ~~unconscieous;~~

14 ~~c) By means of fraudulent, machination or grave abuse of~~
15 ~~authority; and~~

16 ~~d) When the offended party is under twelve (12) years of age~~
17 ~~or is demented, even though none of the circumstances~~
18 ~~mentioned above be present.~~

19 ~~2) By any person who, under any of the circumstances mentioned in~~
20 ~~paragraph 1 hereof, shall commit an act of sexual assault by inserting his~~
21 ~~penis into another person's mouth or anal orifice, or any instrument or~~
22 ~~object, into the genital or anal orifice of another person.~~

23 **ARTICLE 266-A**

24 **SECTION 1. RAPE: WHEN AND HOW COMMITTED.**

25 **RAPE IS COMMITTED:**

- 26 **1. BY ANY PERSON WHO SHALL HAVE SEXUAL**
27 **INTERCOURSE WITH ANOTHER PERSON**
28 **WITHOUT THE LATTER'S CONSENT;**

1 2. BY ANY PERSON WHO SHALL COMMIT UPON
2 ANOTHER PERSON WITHOUT THE LATTER'S
3 CONSENT ANY OF THE FOLLOWING SEXUAL
4 ACTS:

- 5 a) INSERTING HIS PENIS INTO ANOTHER
6 PERSON'S MOUTH OR ANAL ORIFICE;
7 b) INSERTING ANY OTHER PART OF THE
8 BODY INTO THE VICTIM'S GENITAL OR
9 ANAL ORIFICE; OR
10 c) INSERTING AN INSTRUMENT OR OBJECT
11 INTO THE VICTIM'S GENITAL OR ANAL
12 ORIFICE

13 SECTION 2. PRESUMPTION OF LACK OF CONSENT.
14 - LACK OF CONSENT IS PRESUMED UNDER ANY OF THE
15 FOLLOWING CIRCUMSTANCES:

- 16 a) WHEN THE ACT IS ATTENDED BY FORCE,
17 THREAT, OR INTIMIDATION;
18 b) WHEN THERE IS FRAUDULENT
19 MACHINATION, GRAVE ABUSE OF
20 AUTHORITY OR MORAL ASCENDANCY;
21 c) WHEN THE VICTIM IS DEPRIVED OF REASON
22 OR IS OTHERWISE UNCONSCIOUS;
23 d) WHEN THE VICTIM IS INCAPABLE OF
24 GIVING CONSENT DUE TO HIS OR HER
25 MENTAL CAPACITY;
26 e) WHEN THE VICTIM IS FIFTEEN (15) YEARS
27 OLD AND BELOW OR IF ABOVE FIFTEEN (15)
28 YEARS OLD, BUT HE OR SHE HAS A MENTAL
29 CAPACITY OF THAT OF A FIFTEEN (15) YEAR
30 OLD OR BELOW AND THE OFFENDER IS OF
31 LEGAL AGE; OR
32 f) WHEN THE OFFENDER IS A BIOLOGICAL
33 PARENT, ADOPTIVE PARENT, FOSTER CARE
34 PARENT, A DE FACTO PARENT OR A PERSON
35 WHO HAS RAISED THE OFFENDED PARENT
36 WITHOUT THE BENEFIT OF LEGAL
37 ADOPTION, ASCENDANT, STEP-PARENT, DE
38 FACTO OR LEGAL GUARDIAN, RELATIVE BY

1 CONSANGUINITY OR AFFINITY WITHIN THE
2 THIRD CIVIL DEGREE, OR THE COMMON-
3 LAW SPOUSE OR LIVE-IN PARTNER OF THE
4 PARENT OF THE VICTIM.

5 SECTION 3. WHEN IS RAPE DEEMED
6 CONSUMMATED. – RAPE IS DEEMED CONSUMMATED
7 WHEN THE VICTIM'S GENITAL, MOUTH, OR ANAL
8 ORIFICE IS TOUCHED BY THE SEXUAL ORGAN, OR ANY
9 PART OF THE BODY OR ANY OBJECT USED TO COMMIT
10 RAPE AS DEFINED IN SECTION 1, NUMBER 2.

11 Article 266-B. Penalty. - Rape under paragraph 1 of the next preceding
12 article shall be punished by *reclusion perpetua*.

13 Whenever the rape is committed with the use of a deadly weapon or by
14 two or more persons, the penalty shall be *reclusion perpetua to death*.

15 When by reason or on the occasion of the rape, the victim has become
16 insane **OR HAS DEVELOPED A PSYCHOLOGICAL DISORDER**
17 the penalty shall become *reclusion perpetua to death*.

18 When the rape is attempted and a homicide is committed by reason or on
19 the occasion thereof, the penalty shall be *reclusion perpetua to death*.

20 When by reason or on the occasion of the rape, homicide is committed, the
21 penalty shall be *death*.

22 The death penalty shall also be imposed, if the crime of rape is committed
23 with any of the following aggravating/qualifying circumstances:

24 ~~1) When the victim is under eighteen (18) years of age~~
25 ~~and the offender is a parent, ascendant, step-parent, guardian,~~
26 ~~relative by consanguinity or affinity within the third civil degree,~~
27 ~~or the common-law spouse of the parent of the victim;~~

28 **1) WHEN THE OFFENDER IS A BIOLOGICAL**
29 **PARENT, ADOPTIVE PARENT, FOSTER CARE**
30 **PARENT, A DE FACTO PARENT OR A PERSON WHO**
31 **HAS RAISED THE OFFENDED PARTY WITHOUT THE**
32 **BENEFIT OF LEGAL ADOPTION, ASCENDANT, STEP-**

1 PARENT, DE FACTO OR LEGAL GUARDIAN,
2 RELATIVE BY CONSANGUNITY OR AFFINITY
3 WITHIN THE THIRD CIVIL DEGREE, OR THE
4 COMMON-LAW SPOUSE OR LIVE-IN PARTNER OF
5 THE PARENT OF THE VICTIM;

6 2) When the victim is under the custody of the police or
7 military authorities or any law enforcement or penal institution;

8 3) When the rape is committed in full view of the spouse,
9 parent, any of the children or other relatives within the third civil
10 degree of consanguinity;

11 4) When the victim is a religious engaged in legitimate
12 religious vocation or calling and is personally known to be such
13 by the offender before or at the time of the commission of the
14 crime;

15 5) When the victim is a child below ~~seven~~ (7) **TWELVE**
16 **(12)** years old;

17 6) When the offender knows that he is afflicted with the
18 Human Immuno-Deficiency Virus (HIV)/Acquired Immune
19 Deficiency Syndrome (AIDS) or any other sexually
20 transmissible disease and the virus or disease is transmitted to
21 the victim;

22 ~~7) When committed by any member of the Armed Forces~~
23 ~~of the Philippines or para-military units thereof or the Philippine~~
24 ~~National Police or any law enforcement agency or penal~~
25 ~~institution, when the offender took advantage of his position to~~
26 ~~facilitate the commission of the crime;~~

27 **7) WHEN COMMITTED BY PERSONS OF**
28 **PUBLIC OR MORAL AUTHORITY SUCH AS:**

29 a) **ANY MEMBER OF THE ARMED FORCES**
30 **OF THE PHILIPPINES OR**
31 **PARAMILITARY UNITS THEREOF OR**
32 **THE PHILIPPINE NATIONAL POLICE**
33 **OR ANY LAW ENFORCEMENT AGENCY**
34 **OR PENAL INSTITUTION, WHEN THE**
35 **OFFENDER TOOK ADVANTAGE OF HIS**
36 **POSITION TO FACILITATE THE**
37 **COMMISSION OF THE CRIME;**

1 b) ANY ELECTED OFFICIAL OR
2 APPOINTED OFFICIAL PERFORMING A
3 PUBLIC FUNCTION, WHEN THE
4 OFFENDER TOOK ADVANTAGE OF HIS
5 POSITION TO FACILITATE THE
6 COMMISSION OF THE CRIME;

7 c) ANY PERSON WITH MORAL
8 ASCENDANCY OR POSSESSING
9 SIGNIFICANT POLITICAL OR
10 RELIGIOUS INFLUENCE, WHEN THE
11 OFFENDER TOOK ADVANTAGE OF HIS
12 POSITION OR INFLUENCE TO
13 FACILITATE THE COMMISSION OF
14 THE CRIME;

15 8) When by reason or on the occasion of the rape, the
16 victim has suffered permanent physical mutilation or disability;

17 9) When the offender knew of the pregnancy of the
18 offended party at the time of the commission of the crime;

19 10) When the offender knew of the mental disability,
20 emotional disorder and/or physical handicap of the offended
21 party at the time of the commission of the crime;

22 **11) WHEN THE ACT OF RAPE IS DOCUMENTED**
23 **THROUGH ANY KIND OF MEDIA, AND THE**
24 **DOCUMENTED ACT OF RAPE HAS BEEN**
25 **DISSEMINATED TO THE PUBLIC; AND**

26 **12) WHEN THE ACT OF RAPE IS COMMITTED**
27 **BY TWO OR MORE PERSONS, ACTING TOGETHER.**

28 ~~["Rape under paragraph 2 of the next preceding article shall be punished~~
29 ~~by prison mayor.~~

30 ~~"Whenever the rape is committed with the use of a deadly weapon or by~~
31 ~~two or more persons, the penalty shall be prison mayor to reclusion~~
32 ~~temporal.~~

33 ~~"When by reason or on the occasion of the rape, the victim has become~~
34 ~~insane, the penalty shall be reclusion temporal.~~

1 ~~"When the rape is attempted and a homicide is committed by reason or on~~
2 ~~the occasion thereof, the penalty shall be reclusion temporal to reclusion~~
3 ~~perpetua.~~

4 ~~"When by reason or on the occasion of the rape, homicide is committed, the~~
5 ~~penalty shall be reclusion perpetua.~~

6 ~~"Reclusion temporal shall be imposed if the rape is committed with any of~~
7 ~~the ten aggravating/qualifying circumstances mentioned in this article.~~

8 **THE PENALTIES IMPOSED IN THIS SECTION SHALL BE**
9 **SUBJECT TO THE PROVISIONS OF REPUBLIC ACT NO. 9346,**
10 **OTHERWISE KNOWN AS AN ACT PROHIBITING THE**
11 **IMPOSITION OF DEATH PENALTY IN THE PHILIPPINES.**

12 ~~"Article 266-C. Effect of Pardon. — The subsequent valid marriage between~~
13 ~~the offended party shall extinguish the criminal action or the penalty~~
14 ~~imposed.~~

15 ~~"In case it is the legal husband who is the offender, the subsequent~~
16 ~~forgiveness by the wife as the offended party shall extinguish the criminal~~
17 ~~action or the penalty: Provided, That the crime shall not be extinguished or~~
18 ~~the penalty shall not be abated if the marriage is void ab initio.~~

19 ~~"Article 266-D. Presumptions. — Any physical overt act manifesting~~
20 ~~resistance against the act of rape in any degree from the offended party, or~~
21 ~~where the offended party is so situated as to render her/him incapable of~~
22 ~~giving valid consent, may be accepted as evidence in the prosecution of the~~
23 ~~acts punished under Article 266-A." (As amended by Republic Act No.~~
24 ~~8353, 30 September 1997)~~

25 SECTION 2. *Separability Clause.* - If any provision or part hereof, is held invalid or
26 unconstitutional, the remainder of the law of the provision not otherwise affected shall remain
27 valid and subsisting.

28 SECTION 3. *Repealing Clause.* - All laws, decrees, orders, proclamation, rules and
29 regulations or parts thereof inconsistent with the provisions of this Act are hereby repealed,
30 amended, or modified accordingly.

1 SECTION 4. *Effectivity Clause.* - This Act shall take effect fifteen days (15) days after its
2 publication in at least two (2) newspapers of general circulation.

Approved,

/tmdp7Nov2014