

**Bahamas Rape Laws: An Exploration of Gaps in the Protection of Victims**

**Introduction**

This paper is prepared by Global Rights for Women (GRW) to supplement its submission to the Special Rapporteur on violence against women, its causes and consequences, in response to a questionnaire regarding domestic sexual violence laws. This paper explores gaps in the laws of the Bahamas which hinder the protection of victims of sexual violence. GRW is currently engaged in research in the Bahamas in partnership with Bahamian organizations that support survivors of gender based violence.

In Bahamas, the primary legislation addressing violence against women and girls (VAWG) includes: (1) The Domestic Violence (Protection Orders) Act of 2007; (2) The Sexual Offences Act of 1991; (3) Chapter 84 of the Penal Code; (4) Chapter 91 of the Criminal Procedure Code; and (5) Chapter 65 of the Evidence Act. Provisions found within the Domestic Violence Act and the Sexual Offences Act are meant to supplement, rather than replace, provisions within the penal code. Other relevant legislation includes the Constitution, the Child Protection Act of 2007, the Trafficking in Persons Prevention and Suppression Act of 2008 and the Persons with Disabilities Act of 2014.

The Sexual Offences Act is the primary source of law protecting rape victims. The sections explore several provisions of the rape laws that hinder protections for rape victims, and analyze these gaps in an international context.

**The Sexual Offences Act Lacks Key Provisions enabling Proper Enforcement Against Sexual Violence**

The Sexual Offences Act creates several gaps that undermine enforcement of the law. The following are significant gaps: (1) Failure to Recognize Marital Rape Leaves Spouses Unprotected from Non-Consensual Sex, (2) Age Distinction of Minors Creates an Age Gap for Enforcement of Sexual Violence Against Minors, (3) Age Distinction of Perpetrators at the Discretion of the Attorney General Impedes Enforcement Efforts and the Protection of Victims, and (4) A Lack of Reporting Requirements and Protection for Victims Against Pressure or Maltreatment from Law Enforcement.

1. *Failure to Recognize Marital Rape Leaves Spouses Unprotected from Non-Consensual Sex*

As noted in the most recent country report by the Special Rapporteur on violence against women, its causes and consequences,[[1]](#footnote-1) the Bahamas Sexual Offences Act explicitly fails to recognize marital rape as a crime, providing that:

Rape is the act of any person not under fourteen years of age having sexual intercourse with another person *who is not his spouse* —

(a) without the consent of that other person;

(b) without consent which has been extorted by threats or fear of bodily harm;

(c) with consent obtained by personating the spouse of that other person; or

(d) with consent obtained by false and fraudulent representations as to the nature and quality of the act. (*Sexual Offences Act, 3 (emphasis added)).*

Adding the emphasized provision above indicates that if one spouse engages in sexual intercourse with the other partner without their consent, this is not considered rape merely because they are part of a legally-recognized relationship. This provision removes any protection that a victim might have against being raped by their spouse.

 Historically in the United States, similar provisions existed in law. However, due to the alarming statistic that approximately 10-14% of women admitted to having been raped by their spouse, and approximately 33% of women admitted to having unwanted sexual relations with their spouse, these laws have since been changed. *(Raquel Kennedy Bergen Elizabeth Barnhill,*

*Marital Rape: New Research and Directions (2006),* [*https://vawnet.org/material/marital-rape-new-research-and-directions*](https://vawnet.org/material/marital-rape-new-research-and-directions)*).*

 A 2019 article from the UN indicated that “[n]early 1 in 5 women aged 15 to 49 globally experienced physical or sexual abuse from a former or current partner or spouse in the previous year,” and “only 4 in 10 countries criminalize marital rape.” *(Ellen Wulfhorst, UN Urges Countries to End Marital Rape and Close Legal Loopholes (2019)* [*https://www.globalcitizen.org/en/content/un-women-marital-rape-laws/*](https://www.globalcitizen.org/en/content/un-women-marital-rape-laws/)*).* These statistics demonstrate that marital rape is a global problem, and that those in martial relationships need to be protected from sexual violence committed against them by their partner.

Section 15 of the Bahamas Sexual Offences Act does allow for prosecution of a spouse in certain circumstances, but the provision falls short of providing adequate enforcement methods to protect a victim from rape by a spouse. Section 15 states:

(1) Any person who has sexual intercourse with his spouse without the consent of the spouse —

(a) where there is in existence in relation to them —

(i) a decree nisi of divorce;

(ii) a decree of judicial separation;

(iii) a separation agreement; or

(iv) an order of a court for the person not to molest or co-habit with his spouse, or any other order made under Part II; or

(b) where the person has notice that a petition for judicial separation, divorce or nullity of marriage has been presented to a court,

*is guilty of the offence of sexual assault by spouse* and liable to imprisonment for a term of fifteen years. (*Sexual Offences Act, 15 (emphasis added)).*

This section, although it allows for some liability, falls short of providing adequate protection for a marital rape victim. This provision only allows for a finding of sexual assault by a spouse in the context of divorce or separation.

 Therefore, the Bahamas Sexual Offences Act fails to protect victims of marital rape both while in a legally binding marital relationship, or when divorced or separated. Given the statistics that indicate marital rape is a continuing global problem, the marital rape exclusion should be removed from the law, and marital rape in the context of divorce or separation should be recognized for what it is—rape, and not sexual assault.

1. *Age Distinction of Minors Creates an Age Gap for Enforcement of Sexual Violence Against Minors*

The Bahamas Sexual Offences Act creates a distinction between ages of minors who are victims of sexual offences, leaving certain ages of minors without the additional protection of minor rape laws. The Bahamas Sexual Offences Act defines an adult as “a person eighteen years of age or more,” and defines a minor as “a person under eighteen years of age.” (Sexual Offences Act, 2). Rape is defined as

[T]he act of any person not under fourteen years of age having sexual intercourse with another person who is not his spouse —

(a) without the consent of that other person;

(b) without consent which has been extorted by threats or fear of bodily harm;

(c) with consent obtained by personating the spouse of that other person; or

(d) with consent obtained by false and fraudulent representations as to the nature and quality of the act.

The Sexual Offences Act further distinguishes rape of minors who are under age fourteen, and those ages fourteen through sixteen.

Any person who —

(a) has unlawful sexual intercourse *with a person under fourteen years of age*, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or

(b) attempts to have unlawful sexual intercourse with a person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse,

is guilty of an offence and liable to imprisonment for life. *Sexual Offences Act, 10 (emphasis added).*

Any person who —

(a) has unlawful sexual intercourse *with any person being of or above fourteen years of age and under sixteen years of age*, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or

(b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,

is guilty of an offence and liable to imprisonment for life. (*Sexual Offences Act, 11 (emphasis added)).*

It is important to note in the above provisions that although a minor is defined as a person under the age of eighteen, rape of a minor is defined as either rape of a person under the age of fourteen, or of the ages fourteen or fifteen. Minors who are ages sixteen or seventeen lack special protections as vulnerable minors and are therefore, by default, included in the weaker general rape provisions.

A similar issue of minor vulnerability has been raised in regard to rape laws in France. Until a recent change in French law, “it [was] illegal for an adult to have sexual contact with a minor under the age of 15. But the charge of sexual contact with a child is not the same as the charge of rape; it is a lesser crime with a lesser penalty.” (*NYT, In the #MeToo Era, France Struggles With Sexual Crimes Involving Minors,* [*https://www.nytimes.com/2018/04/13/world/europe/france-minors-sex-consent-rape.html*](https://www.nytimes.com/2018/04/13/world/europe/france-minors-sex-consent-rape.html)*).* Not only did France lack protection for minors ages fifteen through seventeen, it did not define forced sexual contact with a minor as rape. *(*[*https://www.protection-of-minors.eu/en/country/FR*](https://www.protection-of-minors.eu/en/country/FR)).

This gap in protection for minors led to societal outrage in France in 2018. In 2018, two cases entered the public eye where 11-year-olds were forced to have sex with perpetrators, and the laws did not adequately protect them. *(NYT, In the #MeToo Era, France Struggles With Sexual Crimes Involving Minors,* [*https://www.nytimes.com/2018/04/13/world/europe/france-minors-sex-consent-rape.html*](https://www.nytimes.com/2018/04/13/world/europe/france-minors-sex-consent-rape.html)*).*

In both the Bahamas and France, gaps in the language of the law regarding enforcement of criminal consequences for rape of minors of certain ages can undermine protection and justice for minor victims.

1. *Age Distinction of Perpetrators at the Discretion of the Attorney General Impedes Enforcement Efforts and the Protection of Victims*

The Bahamas Sexual Offences Act creates a distinction between perpetrators of certain ages, specifically differing the liability for perpetrators between the ages of eighteen and twenty-one. Referencing the same law as stated above, in section 11 of the Bahamas Sexual Offences Act, the provision creates an age distinction for perpetrators under the age of twenty-one.

(1) Any person who —

(a) has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse; or

(b) attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse,

is guilty of an offence and liable to imprisonment for life.

(2) It shall be a sufficient defence to a charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of twenty-one years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.

*(3) No prosecution of a person under the age of twenty-one years for an offence under this section shall be commenced without the consent of the Attorney-General.* (*Sexual Offences Act, 11 (emphasis added)).*

In plain language, this law clearly states that if a twenty-year-old perpetrator rapes a fourteen-year-old victim, that perpetrator cannot be prosecuted unless the Attorney-General consents to this prosecution. This language is concerning given the power imbalance between adults and minors, and the fact that perpetrators between the ages of eighteen and twenty-one are adults.

Age distinction of perpetrators is a common practice in many countries’ rape laws. However, where the age distinction differentiates among perpetrators who have reached the age of majority, these distinctions undermine the purpose of special provisions intended to protect minors. In most states of the United States, when a perpetrator rapes a person under the age of consent, it is considered statutory rape - a crime in which additional elements such as lack of consent or use of force or coercion need not be proven. “Statutory rape is based on the notion that a person under a certain age cannot consent to sexual contact or activity because he or she lacks the maturity or judgement necessary to make a knowing choice about sexual activity.” Under United States law for this type of rape, the “underage person’s consent is irrelevant and the intentions of the defendant and what they believed about the age of the other person usually do not matter.” (Lauren Baldwin, *Statutory Rape Laws and Charges,* [*https://www.criminaldefenselawyer.com/resources/criminal-defense/sex-crimes/statutory-rape-charges-punishment-defense*](https://www.criminaldefenselawyer.com/resources/criminal-defense/sex-crimes/statutory-rape-charges-punishment-defense)*).*

Similar to the law in the Bahamas, many states in the Unites States have laws that protect perpetrators who are under a certain age, or when the perpetrator is close in age to the victim. When these laws apply to perpetrators who are also minors or who are very close in age to the victim, they may serve to avoid unintended consequences of criminalizing the actions of both minors. The law in the Bahamas, however, is distinguishable in that it applies to adults between the ages of 18 and 21. This distinction discounts the power imbalance (reinforced by law and social norms) inherent between minors and adults.

Of particular concern in the section of law noted above is the required consent of the attorney general to enforce rape laws against perpetrators who are under the age of twenty-one. A law which enables one person to determine when it should be enforced allows for gender bias to undermine the protections of the law, promotes impunity for rape, and limits the ability to protect rape victims. Inconsistency in application of the law is also likely.

An explicit legal provision that allows a person to stand as a human obstacle to law enforcement opens the door to allow perpetrators to escape their appropriate sentence. Additionally, a specific provision that distinguishes between adult perpetrators discounts the power imbalance inherent between minors and adults, undermining the intent to protect minors.

1. *A Lack of Reporting Requirements and Protection for Victims Against Pressure or Maltreatment from Law Enforcement*

The Bahamas Sexual Offences Act lacks any provision requiring accountability for law enforcement officers or others involved in rape enforcement. Neglecting to have accountability provisions or reporting requirements leaves open the possibility of lax reporting, altered reporting, or maltreatment of victims to alter reporting.

A similar problem existed in Baltimore, Maryland in the United States. In 2010, a reporter exposed that Baltimore had been under-reporting rapes and mistreating victims into recounting rape statements. *(Justin Fenton, City rape statistics, investigations draw concern (2014)* [*https://www.baltimoresun.com/news/bs-md-ci-rapes-20100519-story.html*](https://www.baltimoresun.com/news/bs-md-ci-rapes-20100519-story.html)*).* The reporter “exposed the Baltimore Police Department’s practice of substantially undercounting reported rapes in the data it submitted to the Federal Bureau of Investigation (“FBI”) as part of the Uniform Crime Report (“UCR”) program.” The report ultimately exposed this long-term problem occurring within the reporting and enforcement of rapes.

From 1995 until 2009, the Baltimore Police Department provided UCR numbers that indicated that the rate of rape had declined by a remarkable 74% in the city. The investigation by The Baltimore Sun ultimately demonstrated that the incredible reported reduction in rape was the product of police providing inaccurate crime statistics creating the illusion of success in fighting crime. *(Corey Rayburn Yung, How to Lie with Rape Statistics: America’s Hidden Rape Crisis (2014)* [*https://ilr.law.uiowa.edu/print/volume-99-issue-3/how-to-lie-with-rape-statistics-americas-hidden-rape-crisis/*](https://ilr.law.uiowa.edu/print/volume-99-issue-3/how-to-lie-with-rape-statistics-americas-hidden-rape-crisis/)*).*

On top of these statistics, the same report also exposed that victims were often interrogated and threatened into revoking their statements about being raped. Considering Maryland law includes provisions guiding law enforcement officers on the appropriate response to rape allegations, the situation described above demonstrates that further accountability is needed beyond simply outlining what an officer should do. These provisions should be combined with further accountability ensuring the protection of rape victims and proper enforcement.

**Conclusion**

When certain provisions are included in, or missing from rape laws, it creates gaps in enforcement which reduces protections for rape victims. The gaps identified by an examination of the Bahamas Sexual Offences Act include: (1) Failure to Recognize Marital Rape Leaves Spouses Unprotected from Non Consensual Sex, (2) Age Distinction of Minors Creates an Age Gap for Enforcement of Sexual Violence Against Minors, (3) Age Distinction of Perpetrators at the Discretion of the Attorney General Impedes Enforcement Efforts and the Protection of Victims, and (4) A Lack of Reporting Requirements and Protection for Victims Against Pressure or Maltreatment from Law Enforcement. Amending rape laws to fill these gaps will increase protections for rape victims and allow for proper enforcement of perpetrators.

Authors:

Jane Blaney, J.D., GRW Volunteer Attorney

Laura Wilson, J.D., GRW Staff Attorney

Cheryl Thomas, GRW Executive Director

1. A/HRC/38/47/Add.2 [↑](#footnote-ref-1)