



Boston College

Lowering the Minimum Age of Criminal Responsibility in the Philippines:

The Wrong Fix to a Broken Juvenile Justice System

Audrey Mullen and Halina Tittmann

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Abstract

Currently, under President Duterte, there is a debate over whether or not to lower the minimum age of criminal responsibility in the Philippines from 15 to nine years old. This debate has emerged in the context of a massive drug war, as government officials fear that children under nine—who do not face the risk of criminal liability—are increasingly being used by drug syndicates as mules. These officials argue that lowering the minimum age will protect children; however, activists fight to keep the minimum age at 15, pointing to the Juvenile Justice and Welfare Act of 2006 (R.A. 9344), and arguing that its full implementation would be a more effective reform to protect Filipino youth. Using interviews with key stakeholders in the Philippines and various literature regarding the subject, this paper aims to evaluate this debate from various angles, including neurological development, international context, and current status of R.A. 9344. Our analysis suggests that lowering the minimum age of criminal responsibility would ultimately fail to protect children, and even create a multitude of problems that threaten the rights of Filipino youth and societal safety. Instead, the Philippines should fully implement R.A. 9344—primarily through increasing its funding—thereby creating a rehabilitative system that prioritizes the rights of Filipino children.

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Terms

ACAY

Association Compassion Asian Youth Missions

Beijing Rules

UN Standard Minimum Rules for the Administration of Juvenile Justice

BJMP

Bureau of Jail Management and Penology

BUCOR

Bureau of Corrections

CAR

Children / Child at Risk

CHR

Commission on Human Rights

CICL

Children / Child in Conflict with the Law

CLJIP

Comprehensive Local Juvenile Intervention Program

CCPCJ

Commission on Crime Prevention and Criminal Justice

CRC

UN Committee on the Rights of the Child

CRIN

Child Rights International Network

CRN

Child Rights Network

CFSP

Community and Family Services International

CFSPI

Child and Family Service Philippines, Inc

CWC

Council for the Welfare of Children

DCI

Defense for Children International

DepED

Department of Education

DILG

Department of the Interior and Local Government

DOJ

Department of Justice

DSWD

Department of Social Welfare and Development

Havana Rules

UN Rules for Juveniles Deprived of their Liberty

HDR

The United Nations Human Development Report

HUC

Highly Urbanized City

ICCPR

International Covenant on Civil and Political Rights

IJISC

Intensive Juvenile Intervention and Support Center

IRA

Internal Revenue Allotment

IRR

Implementing Rules and Regulations

JJA

India's Juvenile Justice Act of 2000

JJWA / R.A. 9344

Philippines Juvenile Justice and Welfare Act of 2006

JJWC

Juvenile Justice and Welfare Council

LCPC

Local Councils for the Protection of Children

LGU

Local Government Unit

LSWDO

Local Social Welfare and Development Officer

NYC

National Youth Commission

OJJDP

Office of Juvenile Justice and Delinquency Prevention

OMCT

World Organization Against Torture

PAO

Public Attorney's Office

PAP

Psychological Association of the Philippines

PAYO

Philippine Action for Youth Offenders

PNP

Philippine National Police

Riyadh Guidelines

UN Guidelines for the Prevention of Juvenile Delinquency

R.A. 8369

Family Courts Act

R.A. 9165

Comprehensive Dangerous Drugs Act of 2002

RJJWC

Regional Juvenile Justice and Welfare Committee

SDC

Social Development Center

SWS

Social Weather Stations

Tambay

An unemployed individual—often a youth—who tends to loiter in public places

UNCRC

UN Convention on the Rights of the Child

Vienna Guidelines

UN Guidelines for Action on Children in the Criminal Justice System

Interviewees

Brother Crispin Betita

Brother Crispin is a Marist Priest and the head of the Marcellin Foundation, the only NGO in General Santos City that addresses the problems of children in conflict with the law (CICL). Brother Crispin founded Marcellin in 1991 to provide housing and counseling and educational services for street children. Today it hosts approximately 60 youth a year, providing them an alternative to a detention center and serving children on suspended sentence. Marcellin has helped hundreds of CICL by providing a safe living environment, educational opportunities, and psychological support.

Sedfrey Candelaria

Sedfrey Candelaria was deeply involved in the drafting of the JJWA as well as the advocacy for its ratification. He currently serves as Dean of the Ateneo de Manila University Law School, one of the top law schools in the Philippines, and served for many years as the head of the Ateneo Law School Child Rights Advocacy Center (Adhikain Para Sa Karapatan Ng Bata). He was also deeply involved in the drafting of juvenile justice indicators for UNICEF.

Elita Herrero

Elita Herrero is a social worker and program director at Child and Family Service Philippines, Inc (CFSPI), an NGO founded in 1987 that promotes the development of children, women, and families. Her agency was one of the very first NGOs to start a juvenile justice advocacy program as early as 1993 and spearheaded setting up multi-sectoral Child Abuse Prevention & Intervention Networks all over the country.

Emma Ignacio

Emma Ignacio is the program manager of communication and advocacy at Consuelo Foundation. Consuelo is a foundation with the core mission of advocacy and intervention for abused and neglected youth. Consuelo Foundation was an original advocate for the drafting of the first juvenile justice bill that eventually led to the JJWA.

Steve Muncy

Steve Muncy founded Community and Family Services International (CFSI) in 1981 and currently serves as its executive director. CFSI is a humanitarian organization that aims to empower refugees and prevent people from being uprooted through promoting respect for human rights, peace, and equitable distribution of resources.

Albert Muyot

Albert Muyot is currently the Country Director at Save the Children, a worldwide humanitarian organization that fights to uphold child rights. Muyot is also a professor of law at the University of the Philippines. While the JJWA was being drafted, Muyot was a Child Protection Specialist of UNICEF, where he managed juvenile justice initiatives and advocated for the JJWA. He was instrumental in getting UNICEF to help fund and draft the JJWA. Before that, he served as Director of the University of the Philippines Center's institute of Human Rights.

Tricia Clare Oco

Atty. Tricia Oco is the Executive Director of the JJWC. Her office manages the five departments responsible for implementing the JJWA, including the Policy and Research Division, Advocacy and Communications Division, RJJWC Secretariat, National Coordination Monitoring and Information Management Division, and Finance and Administrative division.

Sister Sophie Renoux

Sister Sophie founded the Association Compassion Asian Youth Missions (ACAY) in 1997. At ACAY Missions, she works directly with at-risk youth to rehabilitate and uplift them through educational opportunities and emotional support programming. Sister Sophie has been awarded the Knight of the French Legion of Honor, the highest French order of merit.

Father Rocky

Father Rocky founded the Tuloy Foundation in 1993. Today, it is regarded as one of the best street children residential and treatment programs in Asia. His program is a model for child intervention and aims to reintegrate street children into mainstream society by providing them with housing, education, and other important resources. To date, Tuloy has helped over 10,000 children.

Ray Dean Salvosa

Ray Dean Salvosa is a lifelong juvenile justice advocate. He is currently the President of the University of the Cordilleras. It was during his term as the president of CFSPI, an organization that he helped establish in 1987, that he initiated the establishment of the Juvenile Justice Advocacy Program and pushed for the drafting and passage of the Juvenile Justice and Welfare Act in 2006. He became the Managing Director of the Consuelo Foundation in 2001 and which gave him the vantage point to help lead a national multisectoral effort to draft and pass the JJWA. He sat on the first JJWC as one of two NGO Representatives. Additionally, Salvosa helped conceptualize and commission the documentary "Bunso," a film which catalyzed the passage of JJWA.

Shirley Soriano-Pocsol

Shirley Soriano-Pocsol is a social worker at CFSPI in Baguio City. CFSPI is an NGO focused on promoting the development of children, women, and families. Shirley directly works with CICL in Baguio City and manages a program focused on empowering former CICL to continue their education.

Betty Lourdes Flores Tabanda

Betty Lourdes Flores Tabanda is a member of the Baguio City Council who has spent decades advocating for women and children. She is the chair of the Committee on Laws, Human Rights, and Justice, and a member of the Committee on Social Services, Women, and Urban Poor, and the Committee on Urban Planning, Lands, and Housing. Tabanda serves on the Board of Trustees for CFSPI.

Florecita Tul-an

Florecita Tul-an is a social worker at the Social Development Center (SDC) in Baguio City. The SDC is a residential care institution that rehabilitates CICL through preparing the child-in-care, his/her family, and community for eventual reintegration. Tul-an has been a social worker for 27+ years.

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Introduction

The Juvenile Justice and Welfare Act of 2006 (JJWA; R.A. 9344) can transform the life of a CICL; we saw this first hand from speaking with a former CICL who we will call Ben. This young man, now 19 years old, grew up in extreme poverty. With a father who was abusive and alcoholic, Ben went down a path not uncommon for those who grow up in extreme poverty, without proper nourishment and structure—he dropped out of school before eighth grade and became involved with a gang of boys from his neighborhood. Tempted by what he now calls “vices”—alcohol, tobacco, drugs—he found the life and camaraderie of this neighborhood gang much more appealing than academics. It was an escape from his family life and a space where he felt like he belonged. Between the ages of 14 and 15, while intoxicated, he was coerced by fellow gang members to murder a boy from a rival gang during a fight. He was caught and sent to a SDC, the substitute for a Bahay Pag-asa (tagalog for “house of hope,” a youth rehabilitation facility) in his city rather than a jail or prison, due to his young age.

During the first few months in the system, he was resistant to the rehabilitation programs. He escaped the SDC multiple times to visit his family, but each time his family surrendered him back. Soon after the attempts at escape, his life began to move in a new direction. With the help of trained staff in the SDC, his attitude began to change: he learned to pray, to communicate with those around him, to look introspectively at himself. He became more involved in the programs offered, including life skills workshops, managing money seminars, and prayer classes. With these new skills, his self image transformed—he began to see himself as worthy, as able to change and grow into a contributing member of society. He no longer felt defined by his experience in the gang. Despite his newfound purpose in life, he still suffered from depression, anxiety, and loneliness in the SDC—and he wanted his younger siblings to have a different fate.

Upon his release, he made it his purpose to become a good example for his younger siblings, the father figure that he lacked as a child. Today, he has returned to school as a 19 year old, entering class with 13 and 14 year olds. Understandably, this is a situation in which most people would feel uncomfortable. Yet Ben triumphs over these feelings of discomfort and instead

appreciates the opportunity to reclaim the childhood he lost. He demonstrates his limitless potential, obtaining a scholarship both from his social worker and from the school for his good grades.

And his efforts are not confined to the classroom. He spends his nights working small jobs, giving all of the money he earns to his mother, other than a small portion that he saves to give his little brother an allowance. He will go days without eating or sleeping solely because he does not want his siblings to starve, like he did growing up. He wants to create a stable home environment to which his younger sister, who has left to live with her boyfriend, can return. In the future, he wants to become a social worker to help children in the same situation he was in. He wants to save CICL just like the SDC saved him. Armed with the skills and knowledge he obtained from the SDC, this goal is attainable.

This young man is not only a product of a system of inequality in the Philippines, but a damaged global system in which poor children encounter the juvenile justice system at disproportionate rates. Since the 90s, juvenile justice systems have gained international attention as countries grapple with how to create a more humane system for children all over the world. Increasingly, countries have begun to recognize that children who commit crimes are not inherently bad—rather, they are the product of systemic inequality and societal dysfunction.

Moreover, countries have begun to shift their justice systems to reflect the fact that CICL, by nature of their age, must be handled in an approach that focuses on rehabilitation and societal reintegration, rather than punishment. Biologically, a child's brain is oriented to be predisposed toward risky behaviors. This risky behavior stems from a diminished ability to weigh consequences, a heightened sensitivity towards reward, and lessened self-regulatory functioning. Childhood delinquency is something that can be outgrown if treated properly. Incarcerating children has adverse effects and the negative environment often reinforces delinquent behavior.

Leading the charge to reform juvenile justice systems globally is the United Nations, who have outlined standards for juvenile justice in the Convention on the Rights of the Child (UNCRC), Standard Minimum of Administering Juvenile Justice (Beijing Rules), the Guidelines for the Prevention of Juvenile Delinquency (Riyadh Guidelines), and the Rules for Juveniles Deprived of their Liberty (Havana Rules). These agreements, treaties, and their stipulations have

almost unanimous support across the globe. As a result, many countries have signed and ratified the treaties and taken measures to implement the values and goals they outline.

However, in practice, this unanimous support has not translated into adequate action. Though on the surface many countries appear committed to fostering a more humane juvenile justice system, the reality is not as utopian. Many countries still commit the very injustices against children that the doctrines they ratified specifically condemn. Further, a lack of clear international standards regarding controversial issues—such as the minimum age at which children can be held criminally responsible (MACR), allow countries to remain uncommitted to changing their systems, with almost no consequences.

For example, the UN has set no minimum age at which a child can be held criminally responsible (MACR). The Philippines is one example of this phenomenon. Currently, the Filipino juvenile justice system operates under the JJWA—at least on paper. At its most foundational level, this law focuses on the rehabilitation and reintegration of a CICL, mandating that CICL be separated from incarcerated adults and that the MACR be set at 15 years old. Due to various inhibiting factors—including a mismanagement and scarcity of funding, a lack of public understanding and, by extension, support for the law, and a presence of abuse in centers for CICL—the Philippines is failing to properly implement the JJWA. The result is an ineffective juvenile justice system and a frustrated society that uses the JJWA as a scapegoat for a perceived rise in crime. Yet, in municipalities where the JJWA is given proper funding, the results are incredible and far reaching in terms of impact on the lives of CICL.

Currently, Filipino president Rodrigo Duterte is pushing to lower the MACR from 15 to nine years old. This is an ineffective, harmful, and misguided approach to combating crime amongst children in the Philippines. The negative ramifications of lowering the MACR are far reaching. The result will be a regression from the progress made toward implementing UN juvenile justice doctrines—including the UNCRC, Beijing Rule, Riyadh Guidelines, and Havana Rules. It will have a profound negative impact on the lives of poor children. Rather than lowering the MACR, the Philippines must allocate more resources and funding into ensuring the complete implementation of the JJWA. Indeed, lowering the MACR will only exacerbate existing inequality and injustice. It is the wrong fix to a broken juvenile justice system.

Child Development

To begin the conversation surrounding juvenile justice, one must first understand a child's neurological development and the impact that has on decision making, impulse control, and antisocial behavior. Adolescence is a transitional time of development, defined where physical maturation, drive for independence, heightened peer interactions, and brain development simultaneously coincide. Adolescence is commonly considered as the age range of 12-18 years old, but does not definitively start and end at those ages.¹ This period is characterized by an increased drive to commit risky behavior, including “experimentation with drugs and alcohol, criminal activity, and unprotected sex,” resulting in a significant rise in crime rates throughout the adolescent population.² This transient time of increased criminal activity warrants the need for youth-centric justice measures. Orienting the juvenile justice system towards rehabilitation has the potential to have a profoundly positive impact on the life of a CICL.

Conversely, punitive practices have costly consequences, as research indicates that detained youth “are more likely than non-detained youth to end up going ‘deeper’ into the system” and detention “interrupt[s] the natural process of ‘aging out of delinquency.’”³ Further, an early disposition towards delinquency may not be the sole indicator of future deviance; indeed, “a vast majority of teenagers do something during adolescence that is against the law, [but] very few young people develop criminal careers.”⁴ It is impossible to predict that antisocial and risky traits will endure into adulthood, given that “much adolescent involvement in illegal

¹ Spear, L.P. “The Adolescent Brain and Age-Related Behavioral Manifestations.” *Neuroscience and Biobehavioral Reviews*, vol. 24, no. 4, Elsevier Ltd, 2000, pp. 417–63, doi:10.1016/S0149-7634(00)00014-2.

² Casey, B J, and Rebecca M Jones. “Neurobiology of the adolescent brain and behavior: implications for substance use disorders.” *Journal of the American Academy of Child and Adolescent Psychiatry* vol. 49,12 (2010): 1189-201; quiz 1285. doi:10.1016/j.jaac.2010.08.017

³Holman, Barry, and Jason Zidenberg. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*.

⁴ Steinberg, Laurence, and Amanda Sheffield Morris. “Adolescent Development.” *Annual Review of Psychology*, vol. 52, no. 1, 2001, pp. 83–110, doi:10.1146/annurev.psych.52.1.83.

activity is an extension of the kind of risk taking that is part of the developmental process of identity formation, and most adolescents mature out of these tendencies.”⁵

Since delinquency is a natural part of development, juvenile justice must be approached in a rehabilitative manner that emphasizes reintegration. Through mitigating the negative impacts of the justice system, delinquency can remain a symptom of adolescence rather than a life trajectory. Neurological development and external influences are critical factors in juvenile delinquency and thus the connection between delinquency, age, and circumstance must not be overlooked. Countries must maintain a MACR that takes into account the developmental difference between adolescents and adults. Indeed, when the MACR is established at too low of an age, the justice system unnecessarily penalizes adolescents for actions that stem from brain development and circumstance—actions that are not indicative of criminal tendencies.

Neurological Development

The immature neurological development of the adolescent brain must be considered when developing juvenile justice practices. Since adolescents' cognitive functioning is less developed, their understanding of the consequences of their actions is reduced. This reduced capacity means that “adolescents are inherently less blameworthy than adults who commit the same crimes.”⁶ Thus, the juvenile justice system must be developed in a manner that distinguishes adolescents from adults and approaches juvenile justice in a rehabilitative rather than punitive approach.

Adolescents' pre-disposition towards risky behavior is partially attributed to their stage of neurological development. Behavioral studies indicate that “adolescents have poor self-control, are easily influenced by their peers, and do not think through the consequences of some of their actions.”⁷ Moreover, adolescents are statistically overrepresented in nearly every category of risky behavior; experts view this phenomenon as a common feature of the developmental period

⁵ National Research Council. 2013. *Reforming Juvenile Justice: A Developmental Approach*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14685>.

⁶ Haider, Aliya. "Roper v. Simmons: The Role of the Science Brief." *Ohio State Journal of Criminal Law*, vol. 3, no. 2, Spring 2006, p. 369-378. *HeinOnline*, <https://heinonline-org.proxy.bc.edu/HOL/P?h=hein.journals/osjcl3&i=375>.

⁷ National Research Council. *Reforming Juvenile Justice: A Developmental Approach*, 90

and not an indicator of psychopathology.⁸ This spike in risky behavior is rooted in the fact that adolescents, by nature, have less orientation towards the future, more sensitivity to rewards, and more drive for sensation-seeking experiences.

Researchers theorize that adolescents' heightened sensitivity to reward and diminished self-regulation are the result of "developmental changes in the dynamics of dopamine and oxytocin neurotransmission... [that] alters the sensitivity of a network of brain regions." These affected portions of the brain are known as the incentive processing system. Puberty increases sensitivity in the ventral striatum, a region of the brain that controls reward-related behavior, and the medial prefrontal cortex, a region responsible for social information processing. This increased sensitivity has the potential to "contribute to normative increases in sensation seeking and sensitivity to socio-emotional stimuli in early adolescence."⁹

Similarly, some researchers believe that the heightened disposition towards risky behavior is the result of an imbalanced dual system: one system responsible for "socioemotional incentive processing" and the other for "cognitive control." The socioemotional incentive processing system is made up of the limbic and paralimbic areas of the brain, which includes the ventral striatum. The cognitive control system is "composed of the lateral prefrontal and parietal cortices and those parts of the anterior cingulate cortex with which they are interconnected."¹⁰ The socioemotional incentive processing system develops more rapidly than the cognitive control system, thus leaving adolescents at a heightened influence to pleasure-seeking and emotional reactivity with immature self-control functioning.¹¹ This difference in structural maturation makes adolescence "a vulnerable time because this immaturity coincides with a period during which individuals are especially motivated to seek rewarding experiences."¹²

⁸ Arnett, Jeffrey. "Reckless Behavior in Adolescence: A Developmental Perspective." *Developmental Review*, vol. 12, no. 4, Elsevier Inc, 1992, pp. 339–73, doi:10.1016/0273-2297(92)90013-R.

⁹ Albert, Dustin, and Steinberg, Laurence. "Judgment and Decision Making in Adolescence.(Report)." *Journal of Research on Adolescence*, vol. 21, Blackwell Publishers Ltd., 2011.

¹⁰ Steinberg, Laurence. "The Neural Underpinnings of Adolescent Risk-Taking: The Roles of Reward-Seeking, Impulse Control, and Peers." *Self-Regulation in Adolescence*, Cambridge University Press, 2015, pp. 173–92, doi:10.1017/CBO9781139565790.009.

¹¹ Casey and Jones, "Neurobiology of the adolescent brain and behavior: Implications for substance use disorders", 1192

¹² Steinberg, Laurence, "The Neural Underpinnings of Adolescent Risk-Taking: The Roles of Reward-Seeking, Impulse Control, and Peers," 177

Furthermore, the slow development of the frontal lobe, more specifically the prefrontal cortex, plays a crucial role in driving adolescents towards risky behavior. The prefrontal cortex is involved in implementing “goal-directed behaviors by selecting, coordinating, and applying the cognitive skills necessary to accomplish the goal.” Neurodevelopmental MRI research reveals that this region of the brain is one of the last to fully mature. Throughout adolescence, the size of the frontal lobe does not necessarily grow; however, its composition changes. The lobe, consisting of gray and white brain matter, undergoes dynamic change while cognitive functioning improves. One significant difference is that gray matter thins.¹³ In the prefrontal region, during early and preadolescence, synaptic pruning of grey matter likely takes place, in which “unused neural connections are eliminated.” This process results in significant improvements in necessary information processing and logical reasoning. This is seen as a child grows up and is able to process increasing levels of information with each passing year.¹⁴

In late adolescence and early adulthood, there is an increase in white matter in the prefrontal regions that happens through a process called myelination, where myelin wraps around brain cell axons. This process “improves the connectivity of neural tracts by insulating the axon, thereby greatly speeding up the communication between cells, allowing the brain to process information more efficiently and reliably.”¹⁵ This myelination results in “the efficient recruitment of prefrontal and parietal circuits to support mature cognitive control and suppress impulse.”¹⁶ Myelination facilitates an increase in “connections not only among cortical areas but between cortical and subcortical regions.” These cortical and subcortical connections improve emotional regulation through facilitating connectivity between regions that process emotional and social information and regions that manage cognitive control.¹⁷ As the frontal lobe develops with age, the individual gains control over impulses, better reasoning, and improved judgement.

¹³ Sowell, E., et al. “Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation.” *Journal of Neuroscience*, vol. 21, no. 22, 2001, pp. 8819–29, <http://search.proquest.com/docview/17548717/>.

¹⁴ Steinberg, Laurence. “Should the Science of Adolescent Brain Development Inform Public Policy?” *The American Psychologist*, vol. 64, no. 8, 2009, pp. 739–50, doi:10.1037/0003-066X.64.8.739.

¹⁵ Forrest, David V. “The Executive Brain: Frontal Lobes and the Civilized Mind.” *American Journal of Psychiatry*, vol. 159, no. 9, American Psychiatric Publishing, 2002, pp. 1615–16, doi:10.1176/appi.ajp.159.9.1615.

¹⁶ Albert, Dustin, and Steinberg, Laurence. “Judgment and Decision Making in Adolescence,” 217

¹⁷ Steinberg, Laurence. “Should the Science of Adolescent Brain Development Inform Public Policy?” 743

Therefore, as the frontal lobe develops, so does the ability to regulate actions and make sound judgements.

Another factor in increased adolescent risk-taking is essential changes in dopaminergic activities. These changes “involve a proliferation and then reduction and redistribution of dopamine receptors in the paralimbic and prefrontal cortical regions.” This remodeling results in heightened dopaminergic activity in the prefrontal cortex during early adolescence that increases the brain's sensitivity to reward. Therefore, researchers believe that, for adolescents, “rewarding stimuli [is] experienced as even more rewarding, thereby heightening the salience of rewards in situations in which both rewards and costs are present.”¹⁸ Changes in dopaminergic activities further cause adolescents to participate in high risk activities as the fear of the risk is outweighed by the potential gains of the reward, further causing delinquent tendencies that are outgrown with age.

In addition to heightened sensitivity to reward, adolescents are less future-oriented and therefore less likely to consider the negative consequences of their actions. Compared to adults, studies reveal that “adolescents are less likely to consider alternative courses of action, understand the perspective of others, or restrain impulses.”¹⁹ This discrepancy is likely because adolescents have had less life experience and are therefore more likely to overestimate their understanding of a situation while underestimating the probability of a negative outcome. This overestimation results in rash judgment making based on incorrect or incomplete information, a factor that further decreases future orientation and changes risk perception.²⁰ Often, “direct experiences with the behavior in the absence of serious negative consequences” can directly contribute to a downward shift in risk perception.²¹ For example, “longitudinal research reveals that failing to experience a negative outcome is associated with a decreased risk perception for alcohol use, drug use, drinking and driving, and sexual activity.” This downward shift in risk can

¹⁸ Steinberg, Laurence. “Should the Science of Adolescent Brain Development Inform Public Policy?” 743

¹⁹ Cauffman, Elizabeth, et al. “(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*.” *Behavioral Sciences & the Law*, vol. 18, no. 6, John Wiley & Sons, Ltd., 2000, pp. 741–60, doi:10.1002/bsl.416.

²⁰ National Research Council. *Reforming Juvenile Justice: A Developmental Approach*, 95

²¹ Albert, Dustin, and Steinberg, Laurence. “Judgment and Decision Making in Adolescence,” 214

perpetuate delinquent behavior by giving adolescents a false sense of confidence when, initially, there are no adverse outcomes for their risky behavior.

Moreover, considerable research supports the relation between reckless behavior and adolescent egocentrism. Elkind's notion of adolescent egocentrism "confers the ability to consider thoughts as objects, both one's own thoughts and the thoughts of others." However, adolescents are likely to project their thoughts onto others. This attribution manifests an "imaginary audience that is constantly monitoring and evaluating their behavior." The perception of an "imaginary audience" leads adolescents to "a conviction that—by virtue of the fact that their lives are so exceptional—they are invulnerable to the consequences of reckless behavior."²² This egocentrism, paired with a heightened drive of sensation seeking, results in a high level of delinquency and reckless behavior in adolescents.

The evident neurological differences between adolescents and adults diminish an adolescent's culpability for committing a crime. The overrepresentation of adolescents in crime statistics can be attributed to biological development. In sum, adolescents are predisposed to risky and potentially illegal behavior because of their heightened sensitivity to reward, diminished logical reasoning, poor emotional regulation, reduced impulse control, inferior judgement, and diminished orientation toward the future. Thus, to create a fair and rehabilitative justice system, the MACR must account for the neurological gap between adolescents and adults.

External Influences

The family unit is the primary socializing institution for an adolescent and a key predictor of delinquency. Family units have the potential to provide socialization that encourages deviance through modeling. This socialization includes a "transmission of family attitudes that are favorable or prohibitive of risk taking, and communication about such topics as adolescent sexuality, drinking, and drug use."²³ Family attitudes are easily transferred and can fundamentally shape a youth's predisposition towards delinquency. Moreover, parenting style has a major impact on youth development and their perception of the world.

²² Arnett, Jeffrey. "Reckless Behavior in Adolescence: A Developmental Perspective," 349

²³ National Research Council. *Reforming Juvenile Justice: A Developmental Approach*, 104

The authoritative parenting style is characterized by both warm and firm parent-child interactions and produces higher competence and psychosocial maturity than those raised by permissive, authoritarian, or indifferent parents.²⁴ Authoritative parents are “demanding and provide clear rules and direction, but also are responsive, warm, and offer regular praise.” Authoritarian parenting involves high control but minimal support. Indulgent parenting is highly supportive but does not discipline or supervise. Finally, neglectful parenting is characterized by a lack of support and supervision. Studies have revealed that both indulgent and neglectful parenting styles put adolescents at a heightened risk of delinquency. However, “meta-analyses suggest that neglect is a stronger predictor than indulgence or permissiveness, and it leads to more serious long-term involvement in delinquency.”²⁵ Neglectful and disengaged parenting results in the absence of a child’s emotional attachment to parental figures. Disengaged parents often weaken their child’s ability to internalize positive socialization through failing “to provide a clear communication of parental values” and undermining their child’s “motivation...to attend and comply” with their parenting.²⁶ This weakened socialization increases a child’s susceptibility to antisocial behavior and delinquency.

Moreover, peers have a heightened importance in people’s lives during the time of adolescence. Adolescents begin to spend more time alone with friends while simultaneously decreasing time spent with parents. This shift results in a newfound sensitivity to peer influences.²⁷ Studies find that when in the presence of peers, people are more likely to “evaluate risky behavior more positively, and make more risky decisions.” This peer-influenced risky decision making occurs in people of all ages, but the effect is “more pronounced during middle and late adolescence than adulthood.”²⁸ Therefore, it is unsurprising that “adolescent risk-taking...is far more likely than that of adults to occur in groups.” Some researchers attribute this to the fact that

²⁴ Steinberg, Laurence, and Amanda Sheffield Morris. “Adolescent Development,” 88

²⁵ Krohn, Marvin D. “Parenting and Delinquency.” *The Handbook of Juvenile Delinquency and Juvenile Justice*, John Wiley & Sons, Inc., 2015, pp. 161–80, doi:10.1002/9781118513217.ch12.

²⁶ National Research Council. *Reforming Juvenile Justice: A Developmental Approach*, 103

²⁷ Larson, Reed, and Maryse H. Richards. “Daily Companionship in Late Childhood and Early Adolescence: Changing Developmental Contexts.” *Child Development*, vol. 62, no. 2, Blackwell Publishing Ltd, 1991, pp. 284–300, doi:10.1111/j.1467-8624.1991.tb01531.x.

²⁸ Gardner, Margo, and Steinberg, Laurence. ““Peer Influence on Risk Taking, Risk Preference, and Risk Decision Making in Adolescence and Adulthood: An Experimental Study”: Correction to Gardner and Steinberg (2005).” *Developmental Psychology*, vol. 48, no. 2, American Psychological Association, Inc., 2012.

adolescents, as compared to adults, simply spend more time with their peers. Alternatively, some believe that “the presence of peers activates the same neural circuitry implicated in reward processing,” encouraging adolescents “toward greater sensation seeking.”²⁹

Furthermore, adolescents bring qualities to their peer relationships that stem from early familial socialization. For instance, studies report that children from “warm, supportive families are more socially competent and report more positive friendships.”³⁰ Less supportive families leave an adolescent more susceptible to the influences of deviant peers: a lack of parental supervision and contact with deviant peers is a key facilitator of deviant behavior. Peer relationships also have many positive effects on character development. For example, peer relationships can “offer an adolescent the opportunity to explore intimacy, and groups offer opportunities for leadership, competition, conformity, and rebellion.” Moreover, as peers “provide feedback,” the adolescent is able to “experience the consequences of trial behaviors and develop a comfortable, stable identity.”³¹

Finally, youth maltreatment and neglect is a critical indicator of future delinquency. Though abuse occurs in all social classes, a child growing up in low socioeconomic status is more likely to experience maltreatment than one coming from a higher socioeconomic status. Early healthy development “establishes a crucial foundation upon which long term commitment [such as law-abiding behavior] to established societal norms and values can be built.”³² Studies have indicated that when a child does not grow up in a positive and healthy environment, he/she/they experience a heightened susceptibility to delinquency. Documentation from both direct observation and parent and teacher ratings indicate that abused children are more aggressive in comparison to their nonabused counterparts.³³ Further, research suggests that adolescents who were physically and/or sexually abused reported a heightened level of

²⁹ Steinberg, Laurence. “A Social Neuroscience Perspective on Adolescent Risk-Taking.” *Developmental Review*, vol. 28, no. 1, Elsevier Inc, 2008, pp. 78–106, doi:10.1016/j.dr.2007.08.002.

³⁰ Lieberman, Melissa, et al. “Developmental Patterns in Security of Attachment to Mother and Father in Late Childhood and Early Adolescence: Associations with Peer Relations.” *Child Development*, vol. 70, no. 1, Blackwell Publishers Inc., 1999, pp. 202–13, doi:10.1111/1467-8624.00015.

³¹ National Research Council. *Reforming Juvenile Justice: A Developmental Approach*, 105

³² Zingraff, Matthew T., et al. “Child Maltreatment and Youthful Problem Behavior*.” *Criminology*, vol. 31, no. 2, Blackwell Publishing Ltd, 1993, pp. 173–202, doi:10.1111/j.1745-9125.1993.tb01127.x.

³³ Salzinger, Suzanne, et al. “The Effects of Physical Abuse on Children's Social Relationships.” *Child Development*, vol. 64, no. 1, Blackwell Publishing Ltd, 1993, pp. 169–87, doi:10.1111/j.1467-8624.1993.tb02902.x.

symptoms of substance abuse.³⁴ Thus, studies identify maltreatment as a precursor to delinquency, meaning that the adolescent's actions are often not malicious but rather a reaction to circumstance. In addition to maltreatment and neglect, experts also point to poverty as a critical predictor of delinquency. Impoverished families are less able to provide "appropriate levels of cognitive stimulation in the home" and therefore "children raised in poverty are less likely to perform well academically, are more likely to report lower levels of self-confidence, and are less likely to be supervised effectively by parents." These factors all contribute to higher rates of delinquency for impoverished children.³⁵

Thus, though all adolescents are predisposed toward risk-taking behavior, critical external factors directly influence the likelihood of a child's potential to come in conflict with the law. A child's perception of the world is heavily impacted by parenting style, maltreatment, poverty, and peer relationships. Socializing factors that are beyond an adolescent's control have a major impact on his predisposition towards delinquency. Therefore, when countries seek to create a justice system aimed towards rehabilitation, it is crucial that they implement systems and practices that examine the external circumstances of children in the system to properly address the root causes of delinquency.

United Nations Standards

International Covenant on Civil and Political Rights

Proceedings to develop a universal standard of juvenile justice developed in the United Nations only within the past 60 years. The International Covenant on Civil and Political Rights (ICCPR), ratified in 1966, was the first UN doctrine that directly expressed international provisions for the administration of juvenile justice. The Covenant was ratified as part of a series of treaties that make up the International Bill of Human Rights, which includes the International

³⁴ Danielson, Carla Kmetz, et al. "Does Typography of Substance Abuse and Dependence Differ as a Function of Exposure to Child Maltreatment?" *Journal of Child & Adolescent Substance Abuse*, vol. 18, no. 4, Taylor & Francis Group, 2009, pp. 323–42, doi:10.1080/10678280902973310.

³⁵ Jarjoura, G. R., Ruth A. Triplett, and Gregory P. Brinker. "Growing Up Poor: Examining the Link between Persistent Childhood Poverty and Delinquency: [1]." *Journal of Quantitative Criminology*, vol. 18, no. 2, 2002, pp. 159-187. *ProQuest*, doi:http://dx.doi.org.proxy.bc.edu/10.1023/A:1015206715838.

Covenant of Economic, Social, and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). These UN doctrines recognize “the inherent dignity and of the equal inalienable rights of all humans as a foundation of freedom, justice, and peace in the world.”³⁶

The ICCPR provided a call to action and groundwork for future international standards of juvenile justice without defining specific guidelines. The ICCPR directly references juvenile justice practices in Articles 10 and 14. Specifically, Article 10 ensures that the humanity of a person deprived of liberty is maintained, juveniles are placed separately from adults, and the core value of the justice system is to rehabilitate and reform. In asserting these values, the ICCPR creates minimum conditions to ensure that going through the justice system is a constructive experience that upholds fundamental human rights. Similarly, Article 14 extensively defines the rights of people deprived of liberty and the protocol of running a justice system. The Article specifically references how youth in the justice system must be treated differently from adults. It emphasizes the importance of privacy in juvenile proceedings as well as creating procedures that take “account of their age and the desirability of promoting their rehabilitation.”

The ICCPR serves as a broad call to action for future UN standards that create reformed measures in juvenile justice.³⁷ The ICCPR began an international conversation aimed towards developing doctrines surrounding juvenile justice. Actions to implement the juvenile justice measures that the ICCPR calls for were expanded on in proceeding UN assemblies and congresses.

6th UN Congress on the Prevention of Crime and Treatment of Offenders

The Beijing Rules, was directly called for in the 6th UN Congress on the Prevention of Crime and Treatment of Offenders in 1980. 102 governments, 38 NGOs, and 920 participants came together in Caracas, Venezuela, to discuss crime under the theme “Crime Prevention and the Quality of Life.”³⁸ Preceding discussions on juvenile justice took place during the first three

³⁶ UN General Assembly, *Universal Declaration of Human Rights*. New York, 10 December 1948, *International Bill of Human Rights* <https://www.un.org/en/universal-declaration-human-rights/>

³⁷ United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³⁸ *United Nations Congresses on Crime Prevention and Criminal Justice 1955-2010 55 Years of Achievement*. United Nations Office on Drugs and Crime, 2010, *United Nations Information Service*, www.un.org/en/conf/crimecongress2010/pdf/55years_ebook.pdf.

Congresses on the Prevention of Crime and Treatment of Offenders but not addressed in the fourth or fifth. In the time between the 3rd Congress (1965) and the 6th Congress (1980) the international socio-economic and political circumstances in many countries had completely transformed as a result of wars, industrialization, and globalization.³⁹ The first three Congresses concentrated on post-war increase in delinquency throughout developed countries. But with a rapid rise in the world youth populations and the increase in Member States of the UN, for the 6th Congress, the juvenile justice debate shifted to center around the concerns of developing nations. This prioritization of developing nations ensured a newfound series of UN doctrines focused on creating a universal juvenile justice standard that focused around social welfare.⁴⁰

The topic “Juvenile Justice: Before and After the Onset of Juvenile Delinquency” was discussed and debated as item four in the second committee chaired by Mr. Atushi Nagashima of Japan.⁴¹ Initial moves were set out to define justice, social justice, juvenile delinquency, and responsibility, but the committee found no consensus. The Committee divided the topic into two perspectives: “juvenile justice *after* the onset of delinquency” and “juvenile justice *before* the onset of delinquency.” As defined by the members of the European Regional Preparatory Meeting and later accepted by the Secretariat, “juvenile justice *after* the onset of delinquency” refers to the judicial sense of justice operating within the courts. Conversely, “juvenile justice *before* the onset of delinquency” refers to social justice and ensures social provisions for all young people, especially those at risk.⁴²

³⁹ Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5 (Jun. 4, 1980) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/006_ACONF.87.5_Juvenile_Justice_-_Before_and_After_the_Onset_of_Delinquency.pdf

⁴⁰ Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders* A/CONF.87/BP/2 (Aug. 8, 1978) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/019_ACONF.87.BP.2_Asia_and_Pacific_Regional_Report.pdf

⁴¹ Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Canadian Delegation to the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, (Aug. 26, 1980)

⁴² Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/1 (Feb. 26, 1978) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/018_ACONF.87.BP.1_European_Regional_Report.pdf

Juvenile justice *before* the onset of delinquency maintains a holistic perspective on the safeguarding and wellbeing of youths as a whole.⁴³ The 6th Congress emphasized the need for developing “techniques to deal with endangered children and delinquent persons during their earliest years, while their future patterns of behavior were in the formative stages.”

Representatives from European and Asia Regional Preparatory Meetings especially stressed the importance of primary prevention. They explicitly called for more emphasis to be placed on primary prevention of juvenile delinquency over managing children post delinquency.⁴⁴

Every regional preparatory meeting highlighted the importance of the family’s role. The regions agreed that “juvenile justice in the sense of social justice for the child and his or her family was a priority goal.” Social juvenile justice policy was viewed as “both as an inherent good and [crucial for]... the prevention of delinquency.” Thus prevention strategies took to a method of providing social services that mitigate the negative impact of socio-economic, biophysical, and emotional factors that cause youth to offend.⁴⁵ Rapid societal transformations stemming from industrialization and urbanization, in both developing and developed nations, had diminished the role of the family as the primary tool of positive socialization. Though there was no consensus on the exact method to strengthen the family unit, representatives at every regional meeting called for further discussion. Indeed, there was a consensus that the government has a responsibility to provide social programming to deliver essential services to all families.

Urbanization caused a heightened sense of instability and was attributed to the perceived decrease in the importance of family values. Many countries believed that this rise of urbanization was responsible for the rise in delinquency. In response, many developed countries noted that vigilance, comprehensive family assistance programs, and educational activities had the potential to mitigate the negative impacts of urbanization. Countries agreed that juvenile justice legislation must work within the bounds of school, community, and family to protect and ensure full opportunity for every youth.⁴⁶ Through activating the youth to participate in society, the government can instill a sense of civic duty and community responsibility within them.

⁴³ Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Discussion Guide for the Regional Preparatory Meetings*, A/CONF.87/RM.1 (Jun. 28, 1977)

⁴⁴ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

⁴⁵ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

⁴⁶ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

Representatives from Africa, Latin America, Europe, and Asia all directly mentioned the importance of teaching these values to counteract antisocial behavior.

Different regions focused on various aspects of preventing delinquency and the issues of implementation. During their regional meeting, representatives from Africa stressed a decrease in the capacity of families to transmit social values due to changes in economic development. Representatives stressed the migration of youth away from their families to live in urban areas as a key cause. The benefits of migrating to urban cities were “nullified by the impossibility of providing opportunities and services to all those seeking advancement.” Thus, this rise of urban migration created social unrest while simultaneously straining government resources. As a result, Africa’s representatives stated that their primary goal for preventing juvenile delinquency was not creating a complex system, but fundamentally achieving “social justice for all and internalized value systems for each young person.” The representatives were left with difficulties that were different than more developed regions because basic government programming—such as public education and community services—were fraught with problems stemming from a lack of resources. Representatives felt that for Africa “the task of those charged with delinquency prevention was enormous” due to inadequate resources.⁴⁷ Latin America shared similar difficulties, with a large youth population and a lack of social services to uplift underprivileged population groups that “were seeking the attainment, by illegitimate means, of goals that were denied them.” Latin America especially had difficulties with adults who manipulated children to commit crimes. In some countries, adults would pressure children into committing criminal acts for which children would not be held criminally liable. However, representatives decided “it could not be considered justice to assign...blame to the youngsters who were victimized by [the] adult world.”⁴⁸

⁴⁷ Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Africa Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/4 (Jan. 16, 1979) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/021_ACONF.87.BP.4_African_Regional_Report.pdf

⁴⁸ Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Latin America Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/3 (Mar. 30, 1979) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/020_ACONF.87.BP.3_Latin_American_Regional_Report.pdf

Asia, in their preparatory meeting, noted that “the success of the overall efforts at delinquency prevention depended very much on public awareness and the capacity to develop community initiative.”⁴⁹ Representatives from Asia voiced the importance of collaboration throughout the community to create a holistic and effective system—representatives from Africa and Latin America further agree with this emphasis on societal coordination. The efforts to prevent youth crime broadly span over many different facets of a youth’s development, and thus widespread coordination must be ensured for prevention and intervention to be effective.

Pre-delinquency juvenile justice places responsibility on the state to comprehensively develop social programming to provide the basic needs for all youths. This form of legislation can prevent youths from experiencing an environment that drives them to commit crime. It attacks crime by its roots and promotes the positive development of an adolescent.

On the other hand, Juvenile justice *after* the onset of delinquency “focuses on the development and application of measures and procedures that can be effective and humane in handling children and young persons who are classified as needing care and protection.”⁵⁰ This form of intervention creates a profound impact on CICL; therefore the members of the 6th Congress endorsed a process in which “juvenile offenders should not be incarcerated in a correctional institution unless adjudicated of a serious act” and this incarceration should only occur if “it is necessary for their protection or unless there is no other appropriate response.”⁵¹

This topic was discussed far less than juvenile justice *before* the onset of delinquency within the regional preparatory meeting. Nonetheless, the Congress still analyzed the matter at length. There appeared to be differences between countries on what constitutes a criminal offense. In many developing countries in Asia, Africa, Latin America, Western Asia, and the Pacific, family, rather than the authorities, resolves delinquency issues. This management of CICL is similar to what many developed countries call the “diversion of delinquency cases from

⁴⁹ *Report of the Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/2

⁵⁰ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

⁵¹ Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *6th United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.87/14/Rev.1 (Aug. 25- Sept. 5, 1980) available from

https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/025_ACONF.87.14.Rev.1_Sixth_United_Nations_Congress_on_the_Prevention_of_Crime_and_the_Treatment_of_Offenders.pdf

the juvenile justice system to appropriate treatment agencies.” Regions debated if diversion was appropriately achieved in developing countries and if introducing a juvenile court could potentially “represent a retrogressive step.” This debate was left unresolved.⁵²

Further, issues arose particularly in Western systems over the dilemma of the faith in the State’s role to act in the best interest of the child and the individual rights of the child. In a system with the State as a decision maker for the child and while individual child rights are at play, has been challenged as a potential hindrance to the ability of the juvenile courts to ensure the provision of services aimed at meeting the needs of the children.”⁵³ The European Regional Preparatory Meeting addressed this conflict of ideology directly where representatives analyzed the family tribunal model, a model which benefits prescriptive functions, but at the potential cost of the offender’s legal rights of defense. They further explained the due process element where the youths were treated as adults, but “the focus tended to change from the offender to the offense” and the sanction often became punitive.⁵⁴ The dilemma of rectifying these two ideals inspired a call for further discussion.

Conversations surrounding the definition of delinquency differed due to complexities of individual countries' legislation. Therefore, the Congress established distinctions of delinquency. The first category includes any crime for which an adult would be tried. The second category comprises status offenses, or offenses that are considered illegal because of the age of the offender, including “classifications as 'incorrigible', or 'ungovernable', truancy, runaway, or sexual misbehaviour.” Under this distinction “the court may take actions in respect to a child's misbehaviour on the basis of age (being a child) rather than on the basis of the offence committed.”⁵⁵

In regards to defining the MACR, no consensus was found. Representatives at the European Regional Preparatory Meeting reflected on the broad span of ages and the difficulties of pinpointing a specific age within the context of different local customs. No other regional

⁵² *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

⁵³ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

⁵⁴ *Report of the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/1

⁵⁵ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

preparatory meeting referenced the MACR. The working paper prepared by the Secretariat on juvenile justice offers a vague response.

Vast individual differences in maturity can easily be discerned at any given age... therefore to specify a particular chronological age as the point which adult responsibility may be expected from all children, even within a specific cultural setting, must be an arbitrary step, though perhaps necessary if the legal structure is to protect younger children from the full force of criminal law and its associated sanctions.⁵⁶

This response left an open-ended declaration towards the 7th Congress to determine if it is possible to create a MACR. Thus it began the debate over whether or not the benefits of creating international consistencies outweigh the possibility of oversimplification and overbearing into a country's cultural context. The complexities of establishing a MACR proves to be a complicated issue to approach even before the drafting of any UN standard.

Members of the Congress were aware of the difficult road ahead of them in creating universal juvenile justice standards. Representatives from Europe best describe this challenge at their regional preparatory meeting, noting it "would be difficult for anyone in society to claim to have found a panacea for delinquency suitable for all other societies and cultures."⁵⁷ Creating a universal standard required in-depth analysis and international collaboration to find the roots of what an effective system entails. The Secretary-General noted that a "juvenile justice system will be meaningless without an initial examination of the historical fabric from which it emerged." This historical fabric includes "the values and norms of the society in which it functions and the overall complexities of the social, economic, and political structure of the society."⁵⁸

The 6th UN Congress began the contemporary conversation on creating a universal UN standard for the administration of juvenile justice. These initial conversations did not result in a completed draft of the Beijing Rules, but they were an important step towards addressing different complex aspects of the juvenile justice system. The 6th Congress left the approval and completion of the Beijing Rules to the 7th Congress.

⁵⁶ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

⁵⁷ *Report of the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/1

⁵⁸ *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5

7th UN Congress on the Prevention of Crime and Treatment of Offenders

The 7th UN Congress on the Prevention of Crime and Treatment of Offenders met in Milan in 1985. The theme of the conference was “crime prevention for freedom, justice, peace, and development.” The Congress drew 125 governments, 58 NGOs, and 1,396 participants and concluded with the adoption of 26 new resolutions. 1985 was proclaimed the International Youth year by the UN; therefore, there was a heightened sense of urgency and importance placed on ensuring all youth retain the right to fully participate in national development.⁵⁹ The Congress focused on creating the Milan Plan of Action. This plan determined that crime should be considered in the context of economic development, political systems, social and cultural values, and social change as well as in the context of new international economic order.⁶⁰ These same principles were applied to Beijing Rules. Following the recommendation of the 6th Congress’ fourth Resolution, the 7th Congress’ direct goal was to draft a universal standard of juvenile justice that ensures youth the “proper development and integration into the mainstream of social, economic, and cultural life of their societies” and creates “guidelines and procedures for the appropriate handling of the young in conflict with the law.”⁶¹ The standards drew upon the UDHR, ICESCR, ICCPR, the Draft UNCRC, and Draft Declaration on the Rights and Responsibility of the Youth.

There are three overarching international perspectives on juvenile justice. The first is rooted in due process, which focuses on the concept of legality with lawyers as the primary decision-makers. The second is a social welfare model that approaches crime from an economic and social justice perspective with people in the ‘helping services’ leading decision. The last is a participatory process model, used in developing countries, that serves to contain and handle

⁵⁹ *United Nations Congresses on Crime Prevention and Criminal Justice 1955-2010 55 Years of achievement*

⁶⁰ UN GAOR, 40th Sess., 21 plen. mtg., U.N. Doc A/C.3/40/SR.21 (Oct. 24, 1985), available from <https://undocs.org/en/A/C.3/40/SR.21>

⁶¹ Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Discussion Guide for the Regional and Interregional Preparatory Meetings for the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.121/PM.1 (April 4, 1983) available from https://www.unodc.org/documents/congress/Previous_Congresses/7th_Congress_1985/032_ACONF.121.PM.1_Discussion_Guide_for_the_Regional_and_Interregional_Preparatory_Meetings.pdf

conflict at the local level with limited intervention by the state. The Beijing Rules combined aspects of these three international perspectives.⁶²

Different regions had various explanations for the consistent rise in youth criminality. Universally, there was a consensus that a rise in youth population and a lack of opportunity led to a deficit of positive social participation, thus contributing to a rise in delinquency. Further notions of what catalyzes youth crime differed between developed and developing countries. Europe, for instance, did not view industrialization and urbanization as a cause for youth crime because of the belief that crime is not a consequence of progress. Conversely, developing countries who have yet to experience the economic and social benefits of industrialization—such as Asia and Africa—directly link a rise in urbanization with the increase in youth crime. However, a study conducted by the UN in 1985 states that “urbanization is not the cause of crime, but the social processes that accompany urbanization provide crime-prone opportunity structures.” Rapid urbanization that is not paired with social support shifts the degree of formal and informal social control over a child. Indeed, the rise of industrialization impedes the informal powers of the family and community because youths no longer spend as much time directly interacting with these entities.⁶³

Further, the draw of industrial cities mobilizes young people in rural areas to migrate to a metropolis without definitive employment. This surplus of workers results in a lack of productive employment, even for those who are educated. It has the potential to manifest itself in delinquent behavior as desperate youth turn towards crime as a means of income or entertainment. Paring urbanization with social policy and development initiatives reveals the positive and transformational effect urbanization can have on a society.⁶⁴ Collectively, developing and developed nations agree that an effective solution to combating urban youth crime is the

⁶² Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Interregional Preparatory Meetings for the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders on Topic IV: “Youth, Crime and Justice”*, A/CONF.121/IPM/1 (Jun. 27 1984) available from https://www.unodc.org/documents/congress//Previous_Congresses/7th_Congress_1985/040_ACONF.121.RPM.5_Topical_IV_-_Youth_Crime_and_Justice.pdf

⁶³ Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Youth Crime and Justice- research in juvenile delinquency Report of the Secretary-General*, A/CONF.121/11 (Apr. 15, 1985) available from https://www.unodc.org/documents/congress//Previous_Congresses/7th_Congress_1985/012_ACONF.121.11_Youth_Crime_and_Justice_Report_of_the_SG.pdf

⁶⁴ *Youth Crime and Justice- research in juvenile delinquency Report of the Secretary-General*, A/CONF.121/11

implementation of social programs that maintain the basic needs of the youth and offer all children an opportunity for positive socialization. This positive socialization prevents the development of an environment that drives a child to commit a crime in the first place.

The regions discussed external non-governmental influences on youth criminality, including mass media and family life. Every region agreed upon the harmful effects of the media. During the Asia Regional Meeting, representatives placed blame on the youth who have an unrealistically high expectation for the standard of living. They stated, “the explanation for the false expectation of youth was the influence of the media, particularly television, by portraying Western role models, excessive consumerism, and violence.”⁶⁵ The mass media in these developing countries sets an unattainable standard that drives children to commit crimes to either achieve wealth or to foster the appearance of power. Throughout the regional meetings, the media was pointed to as a potential catalyst of violent behavior. Representatives from Western Asia directly blamed the media for the decrease of morality throughout society, arguing the media was “often profit-oriented and exacted a tremendous social cost at the expense of the moral values of the young.” Some regions, especially Europe, Latin America, and Western Asia, highlighted the positive aspects of the media as well and viewed it as a tool that had the potential to spread social values and cultural integration if used correctly. Indeed, they believed the media could contribute to the full participation of youth in societal practices and ensure positive social acclimations. In a UN study, the Secretary-General found the media’s impact on youth crime as inconclusive. The study points to the media as being interpreted and perceived by the viewer according to their view of the world, a reality which renders it less able to influence the public’s attitudes or behavior. Countries blaming crime on the media reflect an “unfortunate predilection to seek causes of crime among factors which are considered “negative” of the social value of which it usually questions.”⁶⁶ As the media consistently challenges cultural norms, it often faces the brunt of the blame for criminogenic societal trends.

⁶⁵ Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders* A/CONF.121/RPM/1 (Jul. 29, 1983) available from https://www.unodc.org/documents/congress//Previous_Congresses/7th_Congress_1985/034_ACONF.121.RPM.1_European_Regional_Report.pdf

⁶⁶ *Youth Crime and Justice- research in juvenile delinquency Report of the Secretary-General*, A/CONF.121/11

The 7th Congress ended with an approved draft of the Beijing Rules that attempted to serve as a universal standard; importantly, this standard was vague enough that countries throughout the world were willing to adopt it. The Beijing Rules addressed concerns surrounding rising youth crime and created a plan on how to manage youth once they enter the justice system. The standards drew upon former UN doctrines and focused on the development and integration of CICL.⁶⁷ The Beijing Rules were sent to the 40th General Assembly for ratification.

40th General Assembly Meeting

The Beijing Rules were discussed and debated as agenda number 98 in the 3rd committee. In this committee, there was global consensus of support for the broad-based approach to crime that was discussed in the Milan Plan of Action and Beijing Rules. There was a shared sense of urgency and drive to push through juvenile justice legislation, especially in light of the International Youth Year.

Many countries, when discussing important agenda items, used it as a medium to push their agendas forward through the debate. For example, nearly every Soviet-bloc country directly references the benefits of socialism in eliminating inequity and strengthening their economies. The USSR noted that the US propagated arms race was going to hurt the youth in capitalist countries first because they were the primary victims to experience unemployment and did not have a government safety net.⁶⁸ Unlike every other state, the Philippines scarcely mentions any of the agenda points, and the speaker utilizes her time to reiterate its abiding faith and appreciation for the UN and its importance on maintaining international order. The speaker then moves on to speak upon the Philippines' commitment to participatory grass-roots democracy. The representative spoke all of this rhetoric while the Philippines was nine years into a Martial

⁶⁷ Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Discussion Guide for the Regional and Interregional Preparatory Meetings for the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.121/PM.1 (April 4, 1983) available from https://www.unodc.org/documents/congress/Previous_Congresses/7th_Congress_1985/032_ACONF.121.PM.1_Discussion_Guide_for_the_Regional_and_Interregional_Preparatory_Meetings.pdf

⁶⁸UN GAOR, 40th Sess., 18 plen. mtg., U.N. Doc A/C.3/40/SR.18 (Oct. 22, 1985), available from <https://undocs.org/en/A/C.3/40/SR.18>

law dictatorship.⁶⁹ These biases move to demonstrate the politically charged nature of presenting on these topics to the UN in pursuing a nation's personal agenda.

In terms of the actual juvenile justice debate, some countries shared concerns about the amount of criminal justice-related reforms that were to ensue. The German Democratic Republic representative stated that success should not be “measured by the quantity of norms adopted but the quality of their implementation.”⁷⁰ Similarly, the UK commended the reforms but emphasized the need for practical research to draft a detailed plan of action and the financial implications of each new standard.⁷¹ Sweden agreed with the UK and noted that crime policy must be based on systematic research to produce universal and consistent outcomes.⁷² This apprehension and skepticism towards the practical implementation of universal juvenile justice reform maintains a central role throughout the ratification of the Beijing Rules.

Canada proposed the notion that a young person must experience extended and intensive intervention because of their age is unjust because children “should not be punished under the guise of providing treatment for their special needs.” Canada also proposed that after a set amount of time after an offense, children are entitled to have their criminal records destroyed.⁷³ No nations commented on Canada's proposals.

Though some nations were apprehensive, a universal consensus arose surrounding the importance of creating a global standard. These nations felt the Rules could genuinely change and improve the quality of life for all children. The approach to reforming juvenile justice centered around addressing crime systematically, while maintaining the child's rights at the forefront of all matters.

Beijing Rules Overview

The Beijing Rules call for comprehensive social policy to promote juvenile welfare and minimize the need to intervene with the juvenile justice system. It urges Member States to

⁶⁹ UN GAOR, 40th Sess., 16 plen. mtg., U.N. Doc A/C.3/40/SR.16 (Oct. 18, 1985), available from <https://undocs.org/en/A/C.3/40/SR.16>.

⁷⁰ UN GAOR, 40th Sess., 20th plen. mtg., U.N. Doc A/C.3/40/SR.20 (Oct. 24th 1985), available from <https://undocs.org/en/A/C.3/40/SR.20>

⁷¹ 40th Sess., 21th plen. mtg., U.N. Doc A/C.3/40/SR.21

⁷² 40th Sess., 18th plen. mtg., U.N. Doc A/C.3/40/SR.18

⁷³ 40th Sess., 18th plen. mtg., U.N. Doc A/C.3/40/SR.18

provide conditions and social policies for children to have meaningful lives in the community. Through creating positive environments, States will “foster a process of personal development and education that is as free from crime and delinquency as possible.” But this type of social change is only through “the full mobilization of all possible resources,” including family, community, and school, “to promote the well-being of the juvenile.” This form of preventative intervention minimizes the need for intervention by the justice system itself through creating an environment where a child can thrive and does not have the opportunity and/or drive to act deviantly. The Rules call for every Member State to implement laws “specifically applicable to juvenile offenders and institutions and bodies entrusted with the functions of the administration of juvenile justice.” These laws must meet the needs specific to CICL and uphold their rights.

The provisions stated in the Rules are also applicable to a status offense where the “range of behaviour considered to be an offence is wider for juveniles than it is for adults.” Status offenses make it so a child can face ramifications for acts such as truancy and public drunkenness. The Rules are extended to juveniles dealt with in welfare proceedings as well as to young adult offenders.

The Rules define a “juvenile” as “a child or young person, who under the respective legal systems, may be dealt with for an offence in a manner which is different from an adult.” Further, the Rules set no MACR. They state that respective legal systems must determine an age that is “not [to] be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.” In defining both juvenile and the MACR ambiguously, the Beijing Rules are fully respecting the cultural and legal systems that impact a country’s designation of criminal responsibility. In leaving the MACR up to Member States to determine, there runs a risk of individual countries setting the age too low and thus rendering intervention meaningless because the child is too young to have discernment.

In Rule 5, Aims of Juvenile Justice, the most critical objectives of juvenile justice are stated: “juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.” This proportionality clause in its implementation leaves room for debate due to the ambiguity “proportional punishment.” Proportionality of punishment means

that the response to CICL should consider not just the seriousness of the crime itself but also of the personal circumstance of the offender. Summarily, Rule 5 calls for “a fair reaction in any given cases of juvenile delinquency and crime.”

Rule 6 calls for a humane and competent administration of juvenile justice that allows discretion at every step of the process to enable proceedings to vary on a case by case basis. This discretion provides personalized judicious experiences and ensures sufficient accountability. The rights of the juvenile defined in Rule 7 provide basic procedural safeguards. They include:

the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

The child's right to privacy is ensured in Rule 8. The publicity and media have negative impacts of labeling and stigmatization of CICL. Labeling a child as deviant, according to the labeling theory, “redirects a youth’s self-conception or personal identity toward a deviant self-concept, which is then self-fulfilling.” This theory reveals when a child is labeled as deviant, the child often internalizes it and orients his/her/their decisions to fulfill this perception of themselves. Studies reveal that labeled youth are more likely to “associate with deviant peers, withdraw from conventional pursuits, and ultimately engage in criminal offending at a higher rate.”⁷⁴ Protecting the youth's name from being released to the mass media, serves to prevent the societal labeling of the child and is imperative in preventing recidivism. Moreover, CICL are afforded the same rights as addressed in the UN Standard Minimum Rules for the Treatment of Prisoners.

The second part of the Beijing Rules states explicit guidelines on the investigation and prosecution process. Upon initial contact, the child is to be treated in a manner that respects the legal status of his/her/their age and promotes his/her/their well-being. The initial contact must “promote the well-being of the juvenile and avoid harm to her or him.” Initial contact has the potential to influence a child's attitude towards society and is essential for future intervention. Procedurally, the child's parents or guardians must be notified immediately upon apprehension, and a competent official should consider release immediately. To ensure that the youth receives the most specialized attention, police officers “who are primarily engaged in the prevention of

⁷⁴Liberman, Akiva M., et al. “Secondary Deviance and Secondary Sanctioning.” *Criminology*, vol. 52, no. 3, 2014, pp. 345–70, doi:10.1111/1745-9125.12039.

juvenile crime shall be specially instructed and trained. In large cities, special police units should be established for that purpose.” Since the police are the first point of contact with the system, they must be educated to act in a specific manner.

The act of handling “juvenile offenders without resorting to formal trial,” otherwise known as diversion, must always be considered and prioritized. The process of diversion must follow the criteria described within the respective legal systems by the police, prosecution, or other agencies dealing with the case. All diversion efforts must have the full consent of the CICL, and this decision is subject to review by a competent authority. The competent authority ensures that children do not agree to diversion out of sheer desperation or coercion. A crucial aspect of diversion is the integration of the child into community life. In the system, “efforts shall be made to provide for community programmes, such as temporary supervision and guidance, restitution, and compensation of victims.” This community-based diversion engrains the child within the structures of society.

Rule 13 describes a fundamental principle of juvenile justice: “detention pending trial shall be used only as a measure of last resort and for the shortest possible period of time.” This Rule was directly called for in the 6th Congress in Resolution 4. It calls to attention the impacts of “criminal contamination,” which refers to the negative influence that comes with the exposure of convicted criminals on a child pending trial. The same reasoning applies to the mandate that children should be kept separate from adults. The violation of these principles can result in an increased likelihood of juvenile delinquency. As a result of their age, youths have unique needs; therefore, while in custody, “juveniles shall receive care, protection and all necessary individual assistance-social, educational, vocational, psychological, medical and physical-that they may require.” This heightened sense of care has the potential to mitigate some of the damages done by pre-trial detention. Providing services can assist children who are especially vulnerable to negative influences. These same rules apply to youths under institutional care post-trial as well.

The third part of the Rules provide guidelines for court proceedings in cases where the child is not diverted. While a child is given a fair and just trial under a competent authority, to avoid over-punitive sentencing, “the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the

juvenile to participate.” Working within the “best interest of the juvenile” further serves as vague guidelines difficult to measure in actual practice. To create an atmosphere of understanding, before the “competent authority renders a final disposition prior to sentencing, the background and circumstances in which the juvenile is living or the conditions under which the offence has been committed shall be properly investigated.” This provision makes sure that relevant factors that cause a child to offend are all considered in determining a sentence. Throughout the trial, the child is guaranteed due process, otherwise known as fair treatment under the law, and therefore has the right to be represented by a legal advisor. The competent authority determines the role of the parent or guardian in the proceeding. In general, parents or guardians are “entitled to participate in the proceedings ... [unless] there are reasons to assume that such exclusion is necessary in the interest of the juvenile.” Determining judgment poses to be a complex issue, the Rules define a series of guiding principles for the adjudication and disposition of a child. The basic guidelines entail:

The reaction taken shall always be in proportion not only to the circumstances and the gravity of the offense but also to the circumstances and the needs of the juvenile as well as to the needs of the society; restrictions on the personal liberty of the juvenile shall be imposed only after careful consideration and shall be limited to the possible minimum; deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response

These guidelines seek to directly address the conflicting notions of rehabilitation versus punishment. In reiterating guidelines declared in the ICCPR, capital or corporal punishment must never be enforced upon a child. Though not bound to implement by treaty, UN Member States view the Beijing Rules as guidelines that ensure the baseline of effective juvenile justice practice regardless of State’s political, cultural, or historical background. The Rules emphasize that strictly punitive measures are not always appropriate. The promotion of safeguarding the future of the child through encouraging the use of noninstitutional processes is more important than strictly punishing.

The Rules state potential disposition measures that could be implemented instead of institutionalization. These dispositions maintain that a child should not be removed from parental supervision. The disposition measures include,

care, guidance and supervision orders; probation; community service orders; financial penalties, compensation, and restitution; intermediate treatment and other treatment orders; orders to participate in group counseling and similar activities; orders concerning foster care, living communities or other educational settings; other relevant orders.

These examples of reactions to crime were taken from socioeconomic diverse Member States as practices that have been proved successful and reveal promise in their replication. This list provides suggestions that are generally community-based. In the case a child is institutionalized, it should be a last resort for the shortest amount of time. The entire process of the case must be handled expeditiously with records kept confidential. These records “shall not be used in adult proceedings in subsequent cases involving the same offender,” connecting back to the child's right to privacy, stated in Rule 8.

Part four creates rules for how to handle a child in non-institutional treatment. A competent authority must implement the disposition, and this authority must have the power to modify the orders over time. A competent authority must also monitor the implementation of the disposition to mitigate the potential adverse effects such as abuse and over-punishment. While a child is going through non-institutional treatment, efforts must be made to provide “necessary assistance such as lodging, education or vocational training, employment or any other assistance, helpful and practical, to facilitate the rehabilitative process.” Maintaining the well-being of a child is paramount, and thus providing for their basic needs encourages a successful rehabilitation process. To have the proper rehabilitation and reintegration, the community must “contribute effectively to the rehabilitation of the juvenile in the community setting.” Creating an accepting environment for the child to return to encourages social integration and diminishes the drive to commit crimes.

Part 5 addresses institutional treatment. The objective of this form of treatment “is to provide care, protection, education, and vocational skills, with a view to assisting them to assume socially constructive and productive roles in society.” The same principles of pre-trial detention are maintained, children should not be jailed with adults and institutions must provide them with care based on their age. This care is contingent on the inter-departmental cooperation of various entities to provide adequate academic or vocational training. It is crucial to educate institutionalized children so that they do not leave the institution economically disadvantaged.

Moreover, in this section, females are referenced for the first time, the Rules emphasize that “young female offenders placed in an institution deserve special attention as to their personal needs and problems.” The 6th Congress addressed that female offenders typically receive less attention than their male counterparts. This Rule places a heightened responsibility of justice systems in handling female offenders. Moreover, parents or guardians have the right to always have the ability to access their child. In terms of release, a conditional release should be used to the greatest extent at the earliest time. Once the child is released conditionally, “an institution shall be assisted and supervised by an appropriate authority and shall receive full support by the community.” This monitoring promotes the positive reintegration for creating a probation-like system. The facilitation of this reintegration must be by semi-institutional arrangements like “half-way houses, educational homes, day-time training centres, and other such appropriate arrangements.”

The Rules conclude with a section regarding research, planning, policy formulation, and evaluation. This section is extremely important because it creates the basis for future developments in juvenile justice systems. A research-based justice system keeps its practices aligned with current studies and knowledge on adolescent development. It keeps the system up to date and as effective as possible. Calls were made to “establish a regular evaluative research mechanism built into the system of juvenile justice administration.” Importantly, “the delivery of services in juvenile justice administration shall be systematically planned and implemented as an integral part of national development efforts.” The process of implementing a comprehensive juvenile justice system requires extensive coordination and community support. To build an effective system, the justice system must be in the context of existing resources and social structures. In turn, this creates a system that is practical to implement in each respective Member State based on the resources they can allocate.

The Rules give specific yet universally applicable guidelines on how to take care of a CICL from the moment he/she commits the offense, that always emphasize the dignity of the offenders. The Beijing Rules were ratified without a floor vote on November 29th, 1985.⁷⁵ The

⁷⁵ General Assembly, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“Beijing Rules”), A/RES/40/33 (29 December 1985) available from undocs.org/en/A/RES/40/33

Beijing Rules were a major step for international juvenile legislation and served as a starting point for the drafting of additional doctrine.

8th UN Congress on the Prevention of Crime and Treatment of Offenders

The 8th Congress met in Havana, Cuba in 1990. Under the theme “international crime prevention and criminal justice in the twenty-first century,” 127 countries, 46 NGOs, and 1,127 participants came together to discuss and combat a global rise in crime.⁷⁶ At the time of the conference, international crime was rising at an alarming rate, thus driving a need for cooperation and action by the 8th Congress. The conference proved to be an incredible success, resulting in the adoption of 46 resolutions.

The 8th Congress adopted two critical juvenile justice-related resolutions: the Riyadh Guidelines and Havana Rules. These UN doctrines stemmed from multiple calls to action by General Assembly Resolution 40/35, Resolution 21 of the Seventh Congress, and Resolution 1986/10 section 2 of the Economic and Social Council. These two resolutions, alongside the Beijing Rules, cover the “prevention, processing, and safeguarding” of the rights of CICLs.⁷⁷ The adoption of the Riyadh Guidelines and the Havana Rules coincided the same year as the Convention of the Rights of the Child, further heightening global desire to implement social justice-based juvenile justice initiatives.

Riyadh Guidelines

The Riyadh Guidelines approach juvenile justice through early intervention by implementing policies that promote the welfare of children so that they do not feel the desire to participate in delinquent acts. The Riyadh Guidelines focus on children before the onset of delinquency. The Guidelines are a response to the 7th Congress’ call for the protection of youth that are “abandoned, neglected, abused, and in marginal circumstances and, in general those who

⁷⁶ *United Nations Congresses on Crime Prevention and Criminal Justice 1955-2010*

⁷⁷ Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, A/CONF.144/28 (Aug. 27- Sept. 7 1990) available from https://www.unodc.org/documents/congress//Previous_Congresses/8th_Congress_1990/028_ACONF.144.28.Rev.1_Report_Eighth_United_Nations_Congress_on_the_Prevention_of_Crime_and_the_Treatment_of_Offenders.pdf

are at social risk” by providing opportunities and services that support their development.⁷⁸ The issue of youth criminality often stems back to social factors such as a lack of opportunity and social support, factors that directly harm the prospects for the poor, and drive children to violate the law as a means of survival. Experts discussed the initial draft of the Guidelines at the International Meeting of Experts on the Development of United Nations Draft Standards for the Prevention of Juvenile Delinquency held between February 28th and March 1st in 1988 in Riyadh, Saudi Arabia.⁷⁹ The Guidelines take a child-centered approach that emphasizes the need for youth to feel a sense of autonomy and participation within society. This Congress covered many topics similar to those covered in the 7th in terms of youth crime; again, interregional meetings addressed societal values, media, urbanization, and drugs as key causes of delinquency.

The Congress elaborated on three delinquency prevention methods. The Riyadh Guidelines are rooted in primary prevention which focuses on creating policy that meets the basic needs of individuals and targets societal failings as a whole. This form of intervention emphasizes the positive social development of a child through transforming the circumstances that lead a child towards delinquency and thus negates the need for further intervention. The Riyadh Guidelines also focus on secondary prevention which includes programming targeted at high-risk groups such as those who are abandoned, abused, or in marginal circumstances. Primary and secondary prevention activates the family, school, and community and holds an important role in socially rehabilitating a child before he or she is institutionalized. These forms of prevention are long term approaches to combating delinquency.⁸⁰ Representatives at the West Asia Regional Preparatory Meeting best describe primary and secondary prevention, “prevention is better than treatment” and that “delinquent behavior [is] a reflection of the society and environment that a young person was raised in.”⁸¹ However, at the international level, these

⁷⁸United Nations General Assembly, *Development of Standards for the Prevention of Juvenile Delinquency*, A/RES/40/35 (Dec. 14 1985), available from undocs.org/en/A/RES/40/35

⁷⁹ Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions- Working paper prepared by the Secretariat*, A/CONF.144/16 (Jul. 2, 1990) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/020_ACONF.144.16_Working_Paper_Prevention_of_Delinquency_Juvenile_Justice_and_the_Protection_of_the_Young.pdf

⁸⁰*Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions- Working paper prepared by the Secretariat*, A/CONF.144/16

⁸¹Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Western Asia Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of*

progressive practices remain largely underutilized and as well as in the minority of Member State's juvenile justice legislation. Governments tend to focus on tertiary prevention: handling children after the onset of delinquency and institutionalization with the goal of preventing a relapse into crime. The UN standards of tertiary prevention are covered in both the Beijing and Havana Rules.⁸²

The marginalization of young people in developing countries manifests itself in many different capacities, including, but not limited to,

rapid population growth, inadequate shelter and housing, industrialization, urbanization, youth unemployment and underemployment, breakdown of the family unit, erosion of traditional values, internationalization of behavior patterns, growing influence of mass media, weakening of community support, inadequate social services, and inability of education system to respond to challenges.

Repeating sentiments addressed in the 6th Congress, developing regions, such as Latin America and Africa, primarily attribute the rise of youth crime to the high proportions of youth in the population that have no opportunity for work. This lack of opportunity results in many youth experiencing dire poverty, leaving them subject to marginalization and exploitation. The environments that children live in—especially street children—result in an increased drive to commit crimes to survive.

In developed countries, an increase in overall prosperity has led to increased opportunities for youth crime, including theft, vandalism, and destruction of property. The Representatives view these factors, paired with the fall of the nuclear family as well as the decline in informal control adults exercise over the young, as the most critical factors in the increase of delinquency in the past 50 years.⁸³ Still, within these countries, a high percentage of crime is poverty-related, often with insufficient social services which propels the poor towards crime as a means of survival.

Offenders, A/CONF.144/RPM.4 (Aug. 27 -Sept. 7, 1990) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/038_ACONF.144.RPM.4_Western_Asia_Regional_Report.pdf

⁸²*Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions-Working paper prepared by the Secretariat*, A/CONF.144/16

⁸³*Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions-Working paper prepared by the Secretariat*, A/CONF.144/16

Developed and developing countries also overlap in causes of delinquency, drugs and their relation to youth criminality were addressed at every interregional preparatory meeting except for Europe's. Internationally, people under 25 years old are the largest buyers and consumers of illicit drugs. The destructive pattern of drug abuse and sales often hinder young people from integrating into mainstream life and, in turn, can lead to a life of crime.⁸⁴ Western Asia's representatives called for comprehensive programs and strategies to combat drug and alcohol abuse.⁸⁵ Representatives from Latin America stressed how, when young people are introduced to drugs, they become dependent and forced into crime to support the addiction.⁸⁶ Representatives from Africa described the need to create educational programs to explain the danger of drugs to the youth and reinforce a positive moral landscape.⁸⁷ Regardless of the angle, representatives viewed drug use as a critical cause of crime, and stressed limiting its abuse and availability as a form of secondary intervention.

All regions agreed and supported measures to implement the Riyadh Guidelines.

Havana Rules

Experts drafted the Havana Rules in response to Resolution 21 of the 7th Congress, and Resolution 1986/10 section 2 of the Economic and Social Council to create a set of standards of how to maintain children deprived of their liberties. The draft rules were written with the assistance of prominent NGOs and experts at the Defense for Children International (DCI) headquarters in Geneva. The Secretariat and DCI both consulted many organizations and experts on children's rights and juvenile justice, including members of the Committee on Crime

⁸⁴ *Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions- Working paper prepared by the Secretariat*, A/CONF.144/16

⁸⁵ *Western Asia Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.4

⁸⁶ *Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Latin America and Caribbean Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.3 (May 8 - May 19, 1989) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/036_ACONF.144.RPM.3_Latin_American_and_Caribbean_Regional_Report.pdf

⁸⁷ *Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, African Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.5 (Aug. 14, 1989) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/039_ACONF.144.RPM.5_African_Regional_Report.pdf

Prevention and Control, the UN Institutes for Prevention of Crime and Treatment of Offenders, and the network of national correspondents. The final product was “a significant international human rights instrument that would frontally address the issues of the overuse of the detention of young persons and...help to humanize juvenile justice administration.”⁸⁸ This standard minimum is based on the philosophy of using deprivation of liberty as a last resort for the least possible amount of time.

Most countries agreed that detention and imprisonment were counterproductive to social reintegration, yet the countries noted that incarceration of children was still a widespread practice.⁸⁹ For the deprivation of liberty to not disastrously harm an incarcerated youth, it needs to follow a very set order of guidelines to protect and promote rehabilitation. The Rules cover the overuse of detention for CICL, specify conditions required to ensure the fair treatment of a young person deprived of liberty, cover all aspects of managing youth facilities, and attempt to counteract the detrimental effects of detention to foster integration into society.⁹⁰

The representatives at the Latin America and Caribbean Regional Preparatory Meeting believed that the most crucial development in juvenile justice policy for the region was the “abandonment of dogmatic attitudes that sought to impose penalties on minors similar to those imposed on adults.” A region-wide transformation towards viewing children as the victims of critical poverty was necessary to promote solutions that used the least amount of custodial measures. Latin American representatives emphasized the detrimental effect of incarcerating youth with adult offenders, but due to a lack of resources it was impossible to build adequate youth institutional facilities. The representatives from Latin America further agreed that the institutionalization of minors should be limited to only serious offenses. Children were the primary victims of critical poverty in the region; there was a need to create a new mentality to

⁸⁸Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Interregional Preparatory Meeting on Topic IV: "Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions"* A/CONF.144/IPM.3 (Apr. 18- 22, 1988) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/043_ACONF.144.IP.M.3_To_pic_IV_-_Prevention_of_Delinquency_Juvenile_Justice_and_the_Protection_of_the_Young.pdf

⁸⁹ *Report of the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, A/CONF.144/28

⁹⁰*Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions- Working paper prepared by the Secretariat*, A/CONF.144/16

stimulate solutions that involved the least possible use of custodial measures to respect their fundamental freedoms.⁹¹

The representatives from Western Asia felt that in the place of detention, family and school should intervene to perform rehabilitation. Further, they stressed the importance of specialized training for staff and the need for stress psychological care, artistic culture, and self-expression, with the provision of comprehensive social service.⁹² Europe's representatives discussed the need for specialized personnel, an effective training system, and coordination between governing bodies in their delinquency prevention systems.⁹³ Representatives from Africa talked about the traditional built-in mechanisms for handling crime that were diminished due to urbanization and colonialism. These traditional mechanisms were rooted in reparations and some participants felt corporal punishment was preferable to incarceration. Africa's representatives argued for a greater level of attention to be given to managing their respective countries' resources in order to create effective rehabilitation measures instead of succumbing to the "easy fix" of incarcerating the youth.⁹⁴

Though all regions agreed with the objectives stated by the Havana Rules, some representatives from Asia felt that various provisions were too utopian and impractical to be implemented. One representative went as far as to propose amendments—referencing Rules 4,7,8,32,34,43,49,53,74, and 80—but there was not enough time for them to reach a consensus on a reformulated text, and the specific revisions were not mentioned in the regional report. Therefore, Asia's representatives called for the Secretariat to prepare a new text to consider after interregional consultations were complete. They felt that the purpose of the Rules was to provide reference, encouragement, and guidance to professionals working in the juvenile justice system, making clear that the rules were intended to establish minimum standards

⁹¹Latin America and Caribbean Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, A/CONF.144/RPM.3

⁹²Western Asia Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, A/CONF.144/RPM.4

⁹³ Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *European Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.2 (Apr. 24-28, 1989) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/034_ACONF.144.RPM.2_European_Regional_Report.pdf

⁹⁴ African Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, A/CONF.144/RPM.5

accepted by the UN for the protection of CICL, in accordance with the economic, social, political and cultural conditions of each country.⁹⁵

Aside from their critiques, the attendees agreed on the basic purpose and principles of the Havana Rules and endorsed them.

In the final report on the implementation of the 8th congress' conclusions, the Secretary-General recommended that the General Assembly "intensify research on particular situations of social risk and on the exploitation of children with a view to developing comprehensive countermeasures, to issue a manual on juvenile justice standards and to report to the Ninth Congress." The Secretary-General, moreover, requested in the draft resolutions recommended to the General Assembly of the Havana Rules to "conduct comparative research to pursue the necessary collaboration and to devise strategies to deal with serious and persistent young offenders."

These doctrines both serve to address different aspects of the juvenile justice system in order to create holistic standards and norms that ensure that juvenile justice systems become a constructive experience that takes into account individual circumstances. The drafts of the Havana Rules and Riyadh Guidelines were sent to the 45th General Assembly for their ratification.⁹⁶

45th General Assembly Meeting

The 45th General Assembly met in 1990 under the theme of International Literacy Year. The Riyadh Guidelines and Havana Rules were discussed in the third committee under agenda item 100, crime prevention, and criminal justice. Due to the success of the Eighth Congress, thirteen of its drafted resolutions went before the General Assembly for approval; these resolutions were discussed throughout the third committee's 24th, 25th, 26th, 27th, 36th, 47th,

⁹⁵ Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Asia and The Pacific Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.1 (Apr. 10-14, 1989) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/031_ACONF.144.RPM.1_Asia_and_Pacific_Regional_Report.pdf

⁹⁶ UN GAOR, 45th Sess., *Implementation of the Conclusion of the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/45/629 (Oct. 23, 1990), available from <https://undocs.org/en/A/45/629>

51st, and 62nd meetings. There was a consensus that the Rules should be adopted and, therefore, countries did not spend much time discussing specifics of the resolutions.

The Riyadh Guidelines and Havana Rules were heavily supported regardless of political systems in place. The USSR stated, “there was no doubt that the implementation of those rules and guidelines would contribute to the protection of human rights of victims as well as offenders.” During the same meeting, Morocco argued “the fight against the spread of juvenile delinquency must be supported by social justice and equity in order to prevent arbitrary rule and despotism, the enemies of democracy and human rights.”⁹⁷ Dozens of other countries voiced their support for the transformative measures of the Havana Rules and the Riyadh Guidelines. The Philippines, which as of 1987 was no longer under the repressive dictatorship of Marcos, was working to restore its democratic institutions fully. Therefore, there was a heightened urgency to carry out “legal reform related to the treatment of offenders, juvenile justice and the independence of the judiciary.”⁹⁸

Canada approved and welcomed the resolutions proposed by the 8th Congress, yet Canada’s representative warned,

the United Nations did not have the resources necessary to make all the resolutions effectively operational, and that situation threatened to compromise its moral authority. In the future, Member States should concentrate more on adopting resolutions and undertaking activities that were practical and action-oriented.⁹⁹

The UK repeated this concern: they worried that the effects of passing all the resolutions would require an incredible increase of resources to implement them, ultimately placing a burden on the respective Member States. The UK representative suggested a task list to put the resolutions in the order of priority and tailored the program to existing resources. To determine the priorities, the General Assembly approved three criteria: “[the Resolution’s] importance to Member States, the Organisation’s capacity to achieve it, and the real usefulness of the results.”

⁹⁷UN GAOR, 45th Sess., 26 plen. mtg., U.N. Doc A/C.3/45/SR.26 (Oct. 31, 1990), available from <https://undocs.org/en/A/C.3/45/SR.26>

⁹⁸UN GAOR, 45th Sess., 27 plen. mtg., U.N. Doc A/C.3/45/SR.27 (Oct. 31, 1990), available from <https://undocs.org/en/A/C.3/45/SR.27>

⁹⁹ UN GAOR, 45th Sess., 24 plen. mtg., U.N. Doc A/C.3/45/SR.26 (Oct. 30, 1990), available from <https://undocs.org/en/A/C.3/45/SR.24>

Costa Rica shared the view that implementing all of the UN resolutions would be a financial burden, challenging without additional UN resources. Their representative stated, “the international community must work to ensure that the Eighth Congress proved to be more than a mere exercise in rhetoric, which could happen if the Secretariat was not provided with the resources.”¹⁰⁰ This sentiment further demonstrates the international agreement and support behind developing the criminal justice system, accompanied by apprehension regarding financial difficulties that come with transformation.

The only country that voiced a difference of opinion on the Havana Rules and Riyadh Guidelines was the United States. The US representative stated that the resolutions were “only recommendatory in nature.” The representative recommended edits to paragraph 13:

Juveniles deprived of their liberty shall not for any reason related to their status be denied the civil, economic, political, social or cultural rights to which they are entitled under national or international law, and which are compatible with the deprivation of liberty, such as social security rights and benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry.

The US asked to delete the portion that stated, “such as social security rights and benefits, freedom of association and, upon reaching the minimum age established by law, the right to marry.” The US argued that the rights of social security, association, and marriage are not guaranteed when a child is deprived of their liberty. The Committee supported this suggestion, and the Resolution was amended accordingly.¹⁰¹

The Riyadh Guidelines and Havana Rules were both adopted without a vote by the 3rd committee during the 51st meeting on November 20th, 1990, and by the General Assembly during its 68th meeting December 14th, 1990.¹⁰²

Riyadh Guidelines Overview

The final draft of the Riyadh Guidelines contains 65 universally applicable principles to prevent delinquency through preventative intervention modalities that focus special attention to

¹⁰⁰45th Sess., 27 plen. mtg., U.N. Doc A/C.3/45/SR.27

¹⁰¹ UN GAOR, 45th Sess., 45 plen. mtg., U.N. Doc A/C.3/45/SR.45 (Dec. 3, 1990), available from <https://undocs.org/en/A/C.3/45/SR.45>

¹⁰²UN GAOR, 45th Sess., 68 plen. mtg., U.N. Doc A/45/PV.68 (Dec. 14, 1990), available from <https://undocs.org/en/A/45/PV.68>

those at social risk. It emphasizes that young people must have an active role in their development rather than a passive one that considers them objects of control and socialization.¹⁰³ The Riyadh Guidelines “adopted a more expansive approach to children’s rights and urged a focus on the development of social policies and practices that avoided criminalizing and penalizing behaviors.”¹⁰⁴ The Guidelines were written under the framework of the UDHR, ICESCR, ICCPR, Declaration of the Rights of the Child, UNCRC, and in the context of Beijing Rules.

The Riyadh Guidelines are based on the practice of decreasing crime through preventative measures that engage youth “in lawful, socially useful activities and adopting a humanistic orientation towards society and outlook on life.” This central idea demonstrates that the responsibility for the prevention of delinquency lies with the entire society being child-oriented to ensure the positive development of the youth. Juvenile justice policy should “avoid criminalizing and penalizing a child for behaviour that does not cause serious damage to the development of the child or harm to others.” These policies should be rooted in a specialized child-centered approach that protects the best interest of the child. Policy must consider that youth behavior that does not conform to social norms is often a part of maturation and labeling a youth as “deviant”, “delinquent”, or “pre-delinquent” frequently has a self-fulfilling prophecy. The Guidelines call for the implementation of prevention plans to be instituted at every level of Government.

The Guidelines describe methods that facilitate positive socialization through the family, community, education system, and mass media. The Guidelines sought to increase the Government’s role in assisting each of these respective bodies of influence on a child’s life so that the child is positively socialized in every capacity. Family is determined to be the “central unit responsible for the primary socialization of children.” Since the family unit is so crucial to a child’s development, it is the Government’s role to “assist the family in providing care and protection and in ensuring the physical and mental well-being of children.” Governments should enact policy that assists the family, whether it be through “programmes developed to provide

¹⁰³45th Sess., 68 plen. mtg., U.N. Doc A/45/PV.68

¹⁰⁴ Levesque, Roger. “Future Visions of Juvenile Justice: Lessons from International and Comparative Law.” *Creighton Law Review*, vol. 29, pp. 1563-1586

families with the opportunity to learn about parental roles” or providing essential services to promote family well-being. The Government must discourage “the separation of children from their parents, unless circumstances affecting the welfare and future of the child leave no viable alternative.” When unsafe circumstances arise, it is the Government's role to protect children and provide alternative options, such as foster care or adoption.

Moreover, the education system is critical to the formation of a youth’s autonomy and public socialization. As the right to education is universal, public education must be guaranteed to all children. In addition to academics, schools should devote attention to teaching values; promoting the development of personality and talents; involving children as active participants; fostering a sense of identity; belonging to the community; preparing the youth for employment; supporting children emotionally; and avoiding harsh disciplinary measures.

The Guidelines maintain that school is more than a location for academic or vocational training; indeed, when properly managed, school is the vehicle through which a child fosters a sense of identity and involvement within the broader community. Further, school challenges students’ perspectives and allows them to develop into their identity. School systems should “extend particular care and attention to young persons who are at social risk” by developing specific prevention programs, including “provision of medical, counselling, and other services to young persons” as well as special policies for the prevention of drug and alcohol abuse. To encourage positive socialization, schools should also set up extracurriculars with members of the community to promote community integration.

Additionally, the Guidelines encourage the creation of community-based services to respond to the needs and concerns of children and to offer programming that uplifts them. They state that communities should provide a range of community-based support programming, including “community development centres, recreational facilities and services to respond to the special problems of children who are at social risk.” These programs provide opportunities for children to participate and have an active role in the community. It is further the community's role to create shelter for young people who do not have a place to live-- a provision with heightened importance due to the increased level of poverty-induced crime conducted by street children. However, it falls upon both the community and the government to “take special

responsibility and provide necessary services” for street children, including providing information surrounding local support facilities, housing accommodations, and employment opportunities.

Mass media was a controversial topic throughout the preparatory meetings. The Guidelines do not state if the media is consistently a causal factor of delinquency; instead, it provides provisions on how the media can be utilized best. The Guidelines stress that the mass media must deliver access to information from a diverse array of sources. Moreover, the Guidelines encourage the media to “portray the positive contribution of young persons to society” to create positive role models for youth to emulate. The Guidelines call for the minimization of “pornography, drugs, and violence portrayed” as well as a directive to “display violence and exploitation disfavorably, as well as to avoid demeaning and degrading presentations.” In a similar vein, the mass media should promote effective drug awareness campaigns. The Guidelines call for the media to mitigate their potential negative influences on the youth. Through limiting childrens’ exposure to anti-social media, the Riyadh Guidelines serve to shelter the youth from the romanticization of criminal practices.

Governments have a role in providing resources to enact social policy “for adequate medical and mental health care, nutrition, housing, and other relevant services, including drug and alcohol abuse prevention and treatment.” The Riyadh Guidelines reiterate the Beijing and Havana Rules through stating, “institutionalization of young persons should be a measure of last resort and for the minimum necessary period, and the best interests of the young person should be of paramount importance.” A child should only be institutionalized if he/she/they are suffering harm from their parents or guardians, or if “a serious physical or psychological danger to the child or young person has manifested itself in his or her own behaviour and [no one] can meet the danger by means other than institutionalization.” This directive further reiterates the potential adverse effects of institutionalization and works to mitigate them. In line with previous measures, all government programs created to prevent delinquency should be based on scientific research to foster the most accurate and useful policies.

Though not the main focus of the doctrine, the Riyadh Guidelines contain a section on legislation and juvenile justice administration. Specifically, the Guidelines state that all

procedures and laws must “promote and protect the rights and well-being of all young persons.” This directive entails legislation that prevents the “victimization, abuse, exploitation and the use for criminal activities of children.” This aspect is important as the exploitation of the youth to commit crimes is widespread. Calling for legislation that prevents this abuse addresses that children in these circumstances are victims, not perpetrators. In terms of status offenses,

to prevent further stigmatization, victimization and criminalization of young persons, legislation should be enacted to ensure that any conduct not considered an offence or not penalized if committed by an adult is not considered an offence and not penalized if committed by a young person.

This mandate holds that youths are not punished and tried for minor crimes. Over penalizing youth crime results in unnecessary exposure to the justice system that often serves to further cause a child to reoffend. In approaching status offenses from a lens of rehabilitation rather than retaliation, the Guidelines demonstrate the importance of limiting a child’s exposure to the harsh realities of the justice system. The Guidelines further urge the establishment of a government entity that guarantees the implementation of the Riyadh Guidelines, the Beijing Rules, and the Havana Guidelines, and continually report on progress and difficulties.

The Riyadh Guidelines conclude with a section on research, policy development, and coordination. This section encourages efforts to promote “interaction and coordination between economic, social, education and health agencies and services, the justice system, youth, community and development agencies and other relevant institutions.” This coordination is essential for creating a comprehensive and effective juvenile justice system: juvenile justice systems should involve exchanging information on experience and be updated and developed continually at the national, regional, and international levels. The UN has a further role to play in strengthening juvenile justice systems as the UN bodies, institutes, agencies, and offices should also “pursue close collaboration and coordination on various questions related to children juvenile justice.” Further, the UN Secretariat must be involved in the “conduct of research, scientific collaboration, the formulation of policy options and the review and monitoring of their implementation, and should serve as a source of reliable information on effective modalities for delinquency prevention.”¹⁰⁵

¹⁰⁵General Assembly, *United Nations Guidelines for the Prevention of Juvenile Delinquency* ("The Riyadh Guidelines"), A/RES/45/112 (14 December 1990) available from undocs.org/en/A/RES/45/112

Havana Rules Overview

The Havana Rules specify the conditions necessary to ensure the fair treatment of children deprived of liberty: to protect their rights, uphold their well-being, and to counteract the detrimental impacts of all types of detention. The Havana Rules cover the management of CICL in every aspect of their time deprived of liberty, from initial contact to release. The most fundamental principle of the Rules is that the juvenile justice system “should uphold the rights and safety and promote the physical and mental well-being of juveniles,” with imprisonment being “used as a last resort...for the minimum necessary period.” This stipulation reveals a child-centered approach that understands the detrimental impact that detention can have on the development of an adolescent and therefore utilizes detention as a last resort. The Rules maintain that, when a child is deprived of his/her/their liberty, his/her/their rights are upheld and the end goal is his/her/their positive reintegration back into society.

The Rules are “standards of reference” and thus “provide encouragement and guidance to professionals involved in the management of the juvenile justice system.” The contents of the Rules are intended to be incorporated into legislation, and its implementation is monitored by the State. The Rules define a juvenile as “every person under the age of 18,” and the deprivation of liberty as “any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will.” Deprivation of liberty should only occur in programs that promote meaningful activities and foster a sense of responsibility that facilitates a child’s development as a member of society.

Detaining a youth awaiting trial is unfavorable due to the potential negative impact it can have on a child’s development—it should only be done in the most exceptional circumstances. In cases of pre-trial detention, the child must be presumed innocent and kept separate from convicted children to negate influences that catalyze the cultivation of criminal attributes. While children are awaiting trial, they have a right to legal counsel, the opportunity to pursue work or education, and the ability to retain materials of leisure and recreation.

The Havana Rules give concrete details regarding the management of youth detention facilities. It emphasizes the importance of diligent and confidential record keeping to ensure that

a child's detention is in line with their sentencing and that he/she/they have the opportunity to contest the information on their file. The child's record must contain all essential details of their time while detained as well as details of any physical or mental health problems; based off of their information,

detention of juveniles should only take place under conditions that take full account of their particular needs, status and special requirements according to their age, personality, sex and type of offence, as well as mental and physical health, and which ensure their protection from harmful influences and risk situations.

Categorizing crimes committed by children and placing the child accordingly ensures that younger children who commit lower-level offenses are not influenced by older children who commit higher-level offenses.

Further, open detention facilities that have minimal security measures must be established and prioritized over closed detention centers. Closed detention centers must have an individualized treatment plan for all offenders through maintaining a small enough size to facilitate contact between the children and their families outside.

In addition, juvenile systems must provide a facility that promotes a positive development which holds regard for a child's need for "privacy, sensory stimuli, opportunities for association with peers and participation in sports, physical exercise and leisure-time activities." Providing these activities offers a CICL a sense of normalcy and therefore promotes proper development. Another crucial aspect of developing a child's well-being is "the right of every juvenile to possess personal effects and to have adequate storage facilities." This right to privacy includes, to the greatest extent possible, the child's right to use their own clothing.

To promote a child's reintegration back into society, youth detention facilities must allow for the opportunity of education or vocational training. As part of this, all detention facilities should provide access to an adequate library. Further, to enhance the possibility of finding work after incarceration, "juveniles should be provided with the opportunity to perform remunerated labour, if possible within the local community, as a complement to the vocational training." This opportunity to work in the community builds repertoire, connection, and self-autonomy for operating in typical community life. Contact with the wider community is key to a positive

reintegration; therefore, a child should have access to the news, be allowed to communicate with their family and friends, and be able to get special permission to leave detention.

Youth detention facilities must provide appropriate healthcare and the health and well-being of the children in care must be monitored consistently. The medical services should “seek to detect and should treat any physical or mental illness, substance abuse or other condition that may hinder the integration of the juvenile into society.” This promise of medical support ensures that the child will have a successful reintegration and will not be hindered by his/her/their health. To further maintain that the children are rehabilitated during their time in detention, the facilities must have drug abuse programs, directed by qualified personnel who are adapted to the age and sex of the children. Further, if a child gets sick, injured, or dies, his/her/their family has the right to be informed immediately.

Regarding the use of physical treatment, physical restraint “can only be used in exceptional cases” for the shortest period of time and must not cause humiliation. Personnel is prohibited from carrying or using a weapon in any facility where a child is detained. Disciplinary action on a child that is “cruel [or] inhuman,” as well as “degrading treatment shall be strictly prohibited.” This includes corporal punishment, solitary confinement, reduction of diet, restriction of contact with family, and labor. Finally, all disciplinary measures should be kept on record.

To ensure the safety of the child deprived of liberty, every facility should be consistently inspected by a constituted authority who is not part of the facility administration. Moreover, “every juvenile should have the right to talk in confidence to any inspecting officer.” In addition, medical officers or public health officials should participate in inspections to analyze the environment, food, hygiene, exercise, and medical service. Children have the right to make a request or complain to the administrative or judicial authority and to request help from outside sources to make a complaint.

When children are to return to the community, the facility must offer support through “arrangements designed to assist them in returning to society, family life, education or employment after release.” Authorities should develop services that support a child's

re-establishment of themselves into the community through assisting with housing, employment, clothing, and other essential factors in sustaining oneself.

To facilitate an effective and rehabilitative experience while detained, the personnel hired must be qualified to handle children. There must be a sufficient number of specialists, including educators, vocational instructors, counselors, social workers, psychiatrists, and psychologists that are all employed permanently. The selection of personnel should depend on “their integrity, humanity, ability and professional capacity to deal with juveniles, as well as personal suitability for the work.” The personnel must be trained, especially in handling children and the delicate stages of their development to create an environment that best suits their needs.

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The Riyadh Guidelines and Havana Rules serve as pillars of international juvenile justice doctrine and reflect immense global collaboration to combat youth crime and uphold the rights of children through the law. The ratification began a difficult yet important process of global implementation.

Guidelines for Action on Children in the Criminal Justice System

In 1991-1992 the restructuring of the UN Crime Prevention and Criminal Justice Program brought a new emphasis on the “implementation of existing international standards and norms, as well as technical cooperation.”¹⁰⁷ This restructuring was a response to the continuous requests from some Member States for technical help in establishing a juvenile justice system that aligned with the UNCRC, Beijing Rules, the Riyadh Guidelines, and the Havana Rules, all of which are referred to as UN standards and norms of juvenile justice.

In some States, no separate jurisdiction for juveniles exists; pre-conflict stage resolution is not effectively used; diversion from criminal justice systems cannot be practised because of the absence of adequate alternative programmes; the administration of juvenile justice is inefficient; investigation and prosecution procedures are deficient; placement of juveniles in pre-trial detention is used inappropriately and for too long; or deprivation of children's liberty is not used as a last resort but as a general reaction to

¹⁰⁶ General Assembly, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (“The Havana Rules”), A/RES/45/113 (14 December 1990) available from undocs.org/en/A/RES/45/113

¹⁰⁷ Economic and Social Council, *Children as victims and perpetrators of crime: report of the Secretary-General*, E/CN.15/1996/10 (Apr. 12, 1996) available from undocs.org/en/E/CN.15/1996/10

juvenile delinquency.¹⁰⁸

For example, some in Latin America believed that antisocial acts committed by minors were the manifestation of pathological inclinations instead of a result of societal failings. Even with the ratification of the Convention, Latin American countries were left in a “legal schizophrenia” due to the simultaneous existence of a punitive approach in their respective legal systems and international law based on rehabilitation.¹⁰⁹

Due to the discongruence between international law and actual implementation, the 7th Resolution of the 9th UN Congress on the Prevention of Crime and Treatment of Offenders recommended the Commission on Crime Prevention and Criminal Justice (CCPCJ) to consider ways of developing a program of action that applies of all relevant UN human rights instruments, standards, and norms effectively. The Resolution further requested the Secretary-General to continue advisory services and technical assistance programs for Member States in the administration of juvenile justice. Similar calls to action were made under General Assembly Resolution 50/181 in December 1995, Commission on Human Rights (CHR) Resolution 1996/85 in April 1996 and 1997/44 in April 1997 on the rights of the child.¹¹⁰

Economic and Social Council’s Resolution 1996/13, later amended by the CCPCJ, called for the creation of the Guidelines for Action on Children in the Criminal Justice System (Vienna Guidelines). In response to this Resolution, twenty-nine experts from eleven Member States, representatives of the Center for Human Rights of the Secretariat, the UN Children’s Fund and the CRC, as well as observers from NGOs concerned with juvenile justice participated in a meeting in Vienna from February 23rd- 25th.¹¹¹ The result of this meeting was an “elaboration of a programme of action to promote the effective use and application of international standards and norms in juvenile justice.” The CCPCJ at its 6th session called for the Secretary-General to strengthen system-wide coordination in juvenile justice activities. This strengthening entailed moves to improve research and training; establish a coordination panel on technical advice; and

¹⁰⁸*Children as victims and perpetrators of crime: report of the Secretary-General*, E/CN.15/1996/10

¹⁰⁹Economic and Social Council, *Expert group meeting on children and juveniles in detention: application of human rights standards*, E/CN.4/1995/100 (Apr. 16, 1995) available from undocs.org/en/E/CN.4/1995/100

¹¹⁰Economic and Social Council, *Commission on Crime Prevention and Criminal Justice: report on the 6th session*, E/CN.15/1997/21 (Apr. 28- May 9, 1996) available from undocs.org/en/E/CN.15/1997/21

¹¹¹Economic and Social Council, *United Nations Guidelines for Action on Children in the Criminal Justice System ("The Vienna Guidelines")*, E/RES/1997/30 (21 July 1997)

assess the juvenile justice system of requesting states through joint initiatives.¹¹²

The report of the Secretary-General pursuant of Economic and Social Council Resolution 1996/13 and in preparation for the 10th Congress provides an extensive overview of the information received by the Member States on their administration of juvenile justice and further facilitated the Twenty-two states elaborated on their juvenile justice system: Argentina, Austria, Belarus, Colombia, Cuba, Cyprus, Denmark, Finland, France, Guatemala, Holy See, Japan, Malta, Mexico, Paraguay, Poland, Philippines, Qatar, Slovakia, Spain, United States of America and Uruguay. All the countries, to varying extents, described their respective systems and discussed the need for an international programme of action. Though each country's approach to juvenile justice varied greatly, they all were rooted in the need to treat youth crime as a social issue, with the goal of reintegrating the child back into society.

For instance, Argentina stressed the importance of limiting custodial detention of children who were not in conflict with the law. Austria emphasized the dire need for close international cooperation to attack the issue of juvenile justice. France took government measures to prevent violence in school. Dozens of positive reforms were taking place, but there was a common theme of a lack of resources to implement the reforms effectively. The Philippines explained that the measures of juvenile justice in recent years had dissipated and resorted back to placing children in the adult criminal justice system. Belarus, Colombia, Cuba, and Poland all referenced their desires to reform the justice system but the difficulties in their economic situation to allocate funds to the juvenile justice system.¹¹³

Additionally, the CCPCJ division of the Secretariat provided services to elaborate on a programme of action on implementing international juvenile justice standards as well as provide specific technical assistance to Bangladesh, Bosnia and Herzegovina, Brazil, Burkina Faso, Romania, and South Africa. The Division offered many conferences, consultations, seminars, and workshops. These sessions intended "to train trainers in law enforcement and the judiciary with respect to the application of United Nations standards and norms in juvenile justice" as well as teach the "implementation of standards and norms in juvenile justice concerning trial,

¹¹²*Commission on Crime Prevention and Criminal Justice: report on the 6th session*, E/CN.15/1997/21

¹¹³Economic and Social Council, *Administration of juvenile justice: report of the Secretary-General*, E/CN.15/1997/13 (Mar. 13, 1997) available from undocs.org/en/E/CN.15/1997/13

alternatives to trial, imprisonment and alternative measures.” The Division further reviewed the Vienna Guidelines and identified possible elements for a programme especially in developing “efficient framework for undertaking joint technical assistance projects in juvenile justice” that provides an adequate way to follow up on recommendations of the Committee on the Rights of the Child (CRC).¹¹⁴

The Vienna Guidelines, Resolution 1997/30 was ratified July 21, 1997.

Vienna Guidelines Overview

Monitored by the CRC, the Vienna Guidelines apply to the Secretary-General, relevant UN agencies, and Member States and cover the practical implementation of the UNCRC and UN standards and norms of juvenile justice. Importantly, the Guidelines emphasize collaboration between “governments, relevant entities of the United Nations system, non-governmental organizations, professional groups, the media, academic institutions, children and other members of civil society” to eliminate incongruence in juvenile justice policy. In addition to collaboration, the Vienna Guidelines emphasize that all juvenile justice policies must respect the child’s human dignity and prioritize their best interests. To do so, juvenile justice initiatives must be proactive, interdisciplinary, and holistic-- all while focusing on the participation and empowerment of the child. The Guidelines maintain that the State under law and in practice must treat all children, regardless of race or socioeconomic status, equality. Importantly, for juvenile justice policy to be effectively and sustainably executed, the bureaus responsible for the implementation must be accountable and transparent without dependency on external non governmental organizations. To implement these considerations, the Guidelines explicitly call for the State’s allocation of adequate resources.

The goal of UN juvenile justice standards and norms are to develop a “comprehensive and consistent national approach in the area of juvenile justice” that respects the rights of the child. Therefore, it is the responsibility of Member States to ensure that the UNCRC and the UN standards and norms of juvenile justice are reflected in national and local policy. Reiterating

¹¹⁴ *Administration of juvenile justice: report of the Secretary-General*, E/CN.15/1997/13

actions described in the UN norms and standards in juvenile justice, the Vienna Guidelines explicitly call for States to establish concrete juvenile justice policy that:

guarantees the rights of children, prevents the violation of the rights of children, promotes children's sense of dignity and worth, and fully respects their age, stage of development and their right to participate meaningfully in, and contribute to, society.

To achieve this the State must actively educate the public and the media about the positive impacts and goals of a child-centered justice system.

The Guidelines express a series of specific measures that a State should take to implement the Convention and apply the international standards and norms of juvenile justice, primarily highlighting the importance of actual legislation. For instance, states should ensure the effectiveness of birth registration programmes so that justice systems can accurately know the age of the child. Moreover, states should maintain a child-centered juvenile justice system where no one under the MACR is ever subject to criminal charges. To maintain updated and effective policies, the Guidelines highlight the responsibility of the Government to frequently review and analyze new and existing juvenile justice laws. Another measure called for in the Guidelines emphasizes how the State must promote rehabilitation and social integration through offering diversion and educational opportunities at every stage of the justice proceedings. Importantly, to avoid harm done by the justice system, governments should utilize informal resolutions to conflict, such as mediation and restorative justice when appropriate.¹¹⁵ Finally, States should establish a set of juvenile courts that align with the guaranteed rights of the child as well as Articles 3, 37, and 40 of the Convention.¹¹⁶

The Guidelines offer insights into best practice of actual juvenile justice proceedings. Importantly, once a child is apprehended he/she/they must be given a prompt and thorough investigation. In cases that this investigation results in institutionalization (that only takes place within the provisions of Article 37 b of the Convention), it must be a last resort for the shortest amount of time. While a child is institutionalized, the procedure must follow the Havana Rules as well as Article 37 (d) of the Convention. To ensure the proper care of the CICL, all personnel must be properly trained in the importance of human rights as well as “the principles and

¹¹⁵ See *Trends in International Juvenile Justice* section for more information

¹¹⁶ See Annex Section 1

provisions of the Convention and other United Nations standards and norms in juvenile justice.” To keep international systems accountable, the Guidelines calls for the creation of an UN transparent independent body that monitors the custodial facilities regularly.

The Guidelines call the UN to act through collaboration between the Crime Prevention and Criminal Justice Division of the Secretariat, the Office of the United Nations High Commissioner for Human Rights/Centre for Human Rights, the Office of the United Nations High Commissioner for Refugees, the United Nations Children's Fund, the United Nations Development Programme, the CRC, the International Labour Organization, the United Nations Educational, Scientific and Cultural Organization, and the World Health Organization, the World Bank, NGOs, and academic institutions. This cooperation is especially necessary for research, information propagation, training, implementation, and monitoring. Further collaboration within key stakeholders is critical to create and provide technical advice and assistance in implementing justice policies within the Member States. Technical cooperation and advisory service programs should improve the application of international standards in multiple capacities through assisting in legal reform, strengthening national capacities, providing training programs for personnel, creating training manuals, preparing education material to inform children of their rights, and helping with developing information and management systems. Universal cooperation is a primary factor in adequately applying the Convention and UN standards and norms effectively and has the ability to dramatically improve global juvenile justice systems.

The mechanisms involved in implementing technical advice and assistance lie under the jurisdiction of Articles 43, 44, and 45 of the Convention. These Articles encourage international cooperation and create a committee that oversees the implementation of the Convention. Importantly, these articles mandate that Member States submit reports every five years that cover the State's implementation and failings of obligations defined under the Convention. In response to the reports, the Committee may make suggestions and refer the State to specialized agencies. To provide thorough assistance to all requests, the Vienna Guidelines calls for the creation of a coordination panel that gives technical advice and assistance on juvenile justice policy. This panel consists of key stakeholders in the UN juvenile justice initiatives as well as interested NGOs and intergovernmental organizations. The panel identifies trends and common problems

and compiles examples of good practice. This compilation allows for concerted advisory services and technical assistance that ensures the most effective and problem-oriented action.

To improve justice proceedings the panel will “take into account the possible introduction of diversion programmes and measures to improve the administration of juvenile justice” in order to “reduce the use of remands and pre-trial detention, to improve the treatment of children deprived of their liberty and to create effective reintegration and recovery programmes.” The panel further works to implement the prevention plans called for in the Riyadh Guidelines. Further, UN resident coordinators, as well as field offices of the Office of the UN High Commissioner for Human Rights, the UN Children's Fund, and the UN Development Programme play a significant role in delivering advisory services and technical assistance. The budget for the concerted coordination will come from regular UN budgets or extrabudgetary resources. Most resources for specific projects will come from external sources.

Long term change in juvenile justice trends happens “not only when symptoms are treated but also when root causes are addressed.” Through applying a comprehensive approach that entails communication and international collaboration among all key stakeholders in the field, real change can occur. To prevent further overreliance on criminal justice systems, the Guidelines calls for the creation of programs based on social assistance. To create these programs “it is necessary to foster close cooperation between the child justice sectors, different services in charge of law enforcement, social welfare and education sector.”

The Vienna Guidelines serve to complete the ratification of UN standards and norms of juvenile justice. It focuses on the actual implementation of UN doctrines to ensure that countries have the capacity to incorporate juvenile justice measures into their legislation. Though there is no universal justice system, the UN documents take into account variance throughout countries.

International Law in Practice

Background

Every UN member state has ratified the United Nations Convention of the Rights of the Child (UNCRC) except for the United States. However, the extent to which each party has complied with the UNCRC varies. In an attempt to ensure compliance, the United Nations established a committee, the United Nations Committee on the Rights of Child (CRC), whose function is to monitor each of the State Parties. This committee has 18 members, all of whom are elected in a democratic process every four years, from the 193 State Parties.

Regarding elections, the members must be nominated by a state party “in accordance with Article 43 of the Convention.”¹¹⁷ According to the Article, members are to “serve in their personal capacity” and “may be re-elected if nominated.”¹¹⁸ Article 43 states that when electing members, the Convention should give consideration “to equitable geographical distribution” and to “the principal legal systems.” The members of the Committee are then elected “by secret ballot from a list of persons nominated by States Parties,” with each party able to only “nominate one person from among its own nationals.” Those who “obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting” are then elected to the Committee.¹¹⁹ The Committee states that these members are “independent experts who are persons of high moral character and recognized competence in the field of human rights.”¹²⁰

The Committee convenes at least annually, and produces comments that serve to clarify the procedures countries should take to comply with specific aspects outlined in the UNCRC.¹²¹ Additionally, the Committee investigates the level of compliance each State Party has achieved and maintained concerning the implementation of the UNCRC.¹²² Though many countries have expressed their commitment to implementing the Convention, the Committee has found that countries often fail to effectively implement the UNCRC, with “human rights

¹¹⁷ “Committee on the Rights of the Child: Elections.” *United Nations Human Rights Office of the High Commissioner*, 1996, www.ohchr.org/EN/HRBodies/CRC/Pages/Elections.aspx.

¹¹⁸ “Committee on the Rights of the Child: Membership.” *United Nations Human Rights Office of the High Commissioner*, 1996, www.ohchr.org/EN/HRBodies/CRC/Pages/Elections.aspx.

¹¹⁹ *Convention on the Rights of the Child*, Article 43

¹²⁰ “OHCHR | Membership.” *United Nations Human Rights Office of the High Commissioner*, United Nations, 2017, www.ohchr.org/EN/HRBodies/CRC/Pages/Membership.aspx.

¹²¹ Goldson, Barry, and John Muncie. “Juvenile Justice: International Law and Children's Rights.” *International Encyclopedia of the Social & Behavioral Sciences: Second Edition*. Elsevier, 2015. p. 958, <https://doi.org/10.1016/B978-0-08-097086-8.86045-6>.

¹²² Goldson et al., p. 958.

obligations...frequently appear[ing] as little more than afterthoughts within juvenile justice reform.”¹²³

There are a range of factors that may impact a country’s willingness or ability to implement the Convention, from a general lack of priority to differences in culture. Many researchers conclude that, due to cultural relativity, both the “practical translation of universal children’s human rights standards and principles” and global inequalities—both social and economic—contribute to the lack of realization of the UNCRC.¹²⁴ Consequently, juvenile justice systems look different around the world. Even so, there are general trends that internationally many juvenile justice systems are following to some extent, particularly the idea that children and adults are inherently different and thus should be treated as such. The basis of this idea is that children are able to be rehabilitated and are often victims of societal problems and injustices. States that incorporate this ideology tend to lean towards rehabilitation over retribution when it comes to CICL.

For example, reflecting this ideology, India implemented the Juvenile Justice Act of 2000 (JJA), mandating that the priority of the juvenile justice system would be to rehabilitate and reintegrate children into society.¹²⁵ In Latin America, the UNCRC had a significant impact on reform and legislation, as all of the countries in the region ratified the Convention between 1990 and 1991.¹²⁶ The legislation that the UNCRC inspired in the region seeks to treat CICL as different from adult offenders. Adhering to Rule 18 of the Beijing Rules, which mandates the creation of various alternatives “allowing for flexibility so as to avoid institutionalization,”¹²⁷ as well as Article 37(b) of the UNCRC which emphasizes that confinement of children should only be utilized as a “last resort and for the shortest appropriate time,”¹²⁸ the region implemented rules

¹²³ Goldson et al., p. 959.

¹²⁴ Goldson et al., p. 961.

¹²⁵ Kumari, Ved. “Juvenile Justice in India.” *Juvenile Justice in Global Perspective*, by Franklin E. Zimring et al., New York University Press, 2015, pp. 145–198.

¹²⁶ Beloff, Mary, and Máximo Langer. “Myths and Realities of Juvenile Justice in Latin America.” *Juvenile Justice in Global Perspective*, by Franklin E. Zimring et al., New York University Press, 2015, p. 203.

¹²⁷ General Assembly resolution 40/33, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (“Beijing Rules”), A/RES/40/33 (29 December 1985) available from undocs.org/en/A/RES/40/33

¹²⁸ Beloff et al., p. 215.

that “included no confinement measures, ranging from caution to probation,”¹²⁹ for children held criminally responsible.

Both Latin America and India illustrate the general transition many countries and regions have made since ratifying UNCRC towards implementing the Convention’s principles into legislation. However, for many countries, disparities between what is written into law and what exists in practice demonstrates the limits of the UN Convention. Though the Committee exists as an attempt to ensure State compliance, a lack of formal sanctions allows countries to ignore aspects of the Convention without having major consequences.

International Minimum Age of Criminal Responsibility

A contentious aspect of international doctrines on juvenile justice is the definition of what the MACR means and represents. Even the way that legislators and individuals conceptualize the MACR can be contested. For our analysis, we will use this definition as a baseline:

In its basic sense, the minimum age of criminal responsibility is a simple concept: the age at which a person can be charged with a criminal offence and processed within the criminal justice system.¹³⁰

Therefore, the MACR is the absolute youngest age at which a child may be held responsible for any crime. In some countries, the MACR varies depending on the crime. For example, in Kazakhstan, any child over the age of 16 can be held criminally responsible; however, for more serious offenses like murder, children as young as 14 can be held criminally responsible. In this case, we would consider the MACR to be 14 years.

Currently, there is no accepted international standard for what the MACR should reasonably be, though there are vague guidelines.¹³¹ For example, Article 1 of the Convention defines a “child” as “every human being below the age of eighteen years.”¹³² Further, under section 4 of the Beijing Rules, it states that the MACR “shall not be fixed at too low an age

¹²⁹ Beloff et al., p. 215.

¹³⁰“Minimum Age of Criminal Responsibility.” *CRIN*, Child Rights International Network, 2020, home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility.

¹³¹Goldson et al., p. 960.

¹³² *Convention on the Rights of the Child*, United Nations

level.”¹³³ Though this ambiguous language may make countries more willing to ratify the UNCRC, it leaves far too much room for interpretation amongst countries to decide what age they find most appropriate. In 2007, the Committee stated that

a minimum age of criminal responsibility below the age of 12 years is considered by the Committee not to be internationally acceptable. States parties are encouraged to increase their lower MACR to the age of 12 years as the absolute minimum age and to continue to increase it to a higher age level...At the same time, the Committee urges States parties not to lower their MACR to the age of 12. A higher MACR, for instance 14 or 16 years of age, contributes to a juvenile justice system which, in accordance with article 40 (3) (b) of CRC, deals with children in conflict with the law without resorting to judicial proceedings, providing that the child’s human rights and legal safeguards are fully respected.¹³⁴

However, this recommendation is not enforced or widely recognized as the standard. The vague guidelines and lack of enforcement of a standard MACR results in little to no conformity between countries. This lack of cohesion exists even between countries in similar regions.

Europe

For example, Europe reflects the general absence of specification and agreement in the international community. Similar to the UNCRC and the Beijing Rules, the 2008 European Rules for juvenile offenders states that there should be a MACR, but does not clarify a specific age, noting only that the MACR “shall not be too low and shall be determined by law.”¹³⁵

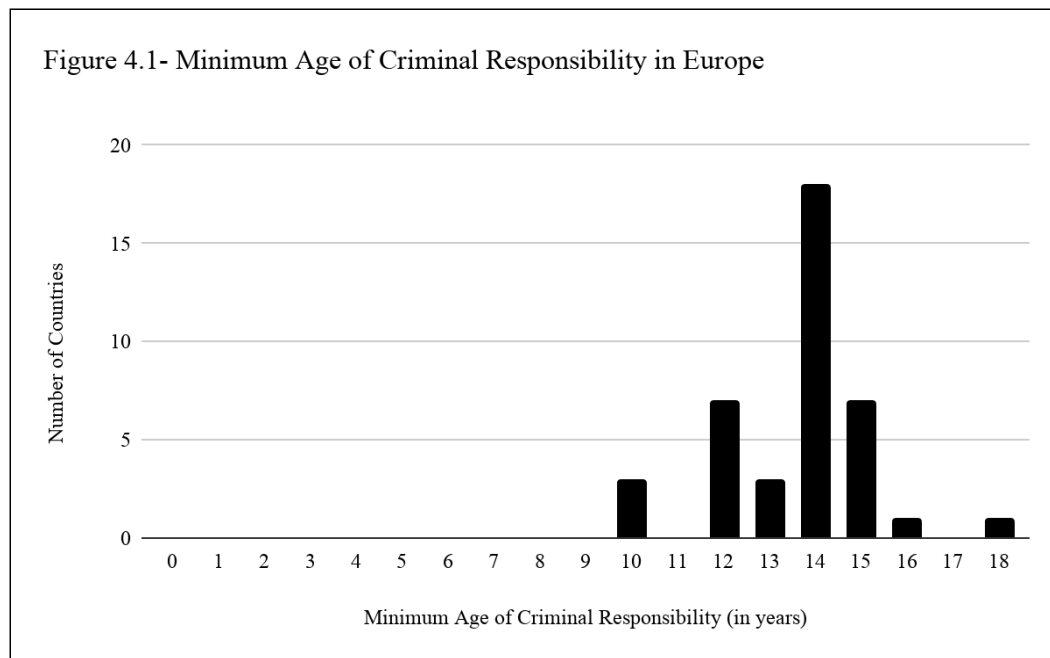
The MACR in Europe ranges between 12 and 18, with the most frequent age being 14. The oldest MACR is 18, in Luxembourg. Luxembourg is one of two countries in the world that has its MACR as high as 18. England / Wales, Northern Ireland, and Switzerland are tied at for

¹³³United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("Beijing Rules"), A/RES/40/33

¹³⁴UNCRC General Comment No. 10 ("Children's rights in juvenile justice"), CRC/C/GC/10, (Apr. 25,2007) available from <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

¹³⁵ Council of Europe. Recommendation CM/REC(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures. 5 November 2008, https://www.euromed-justice.eu/en/system/files/20090428164903_CouncilofEurope.RecommendationCM200811ontheEuropeanRulesforjuvenileoffenderssubjecttosanctionsormeasures.doc.pdf.

the youngest, and ten years old. Figure 4.1¹³⁶ demonstrates the distribution of the MACR for the countries in Europe.

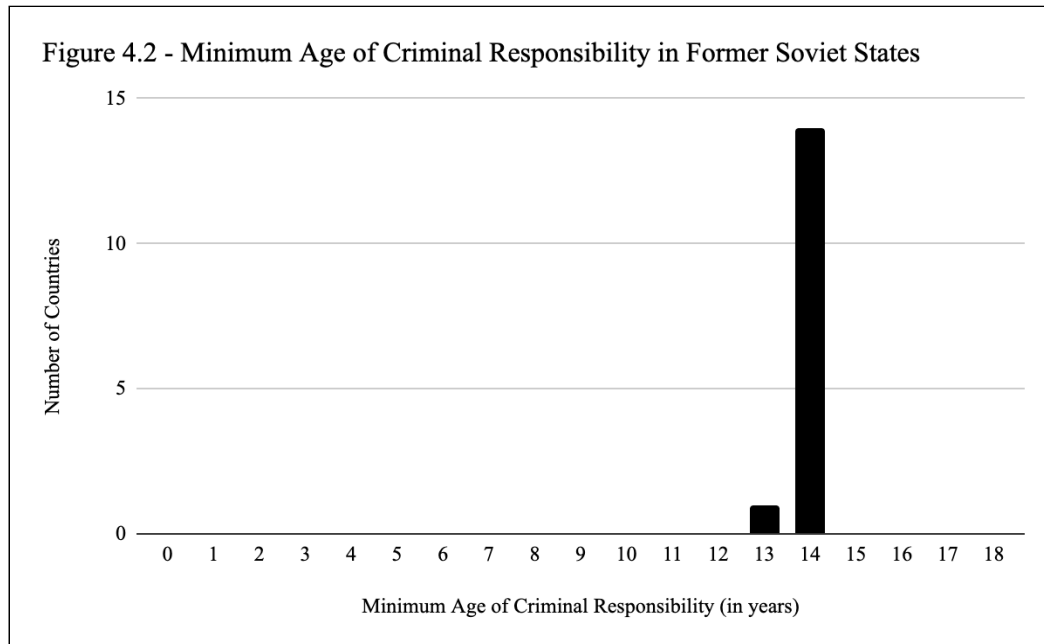


Former Soviet States

In contrast, the former Soviet States show the most conformity of any region. Strikingly, every country has set its MACR at either 13 or 14. Only one of 15 countries—Uzbekistan—has defined its MACR as 13. To clarify, Uzbekistan maintains that children can be held criminally responsible from the age of 13, but only in cases of intentional killing. Uzbekistani children can be held criminally responsible for other named offenses at age 14, and children can be held responsible for any offense by age 16. In fact, most of the former Soviet States define their MACR as 16 generally, but almost all of them state that children can be held criminally responsible at age 14 for certain named offenses. Figure 4.2¹³⁷ displays the spread of the MACR for former Soviet states.

¹³⁶ Countries included: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, England / Wales, Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Monaco, Montenegro, Netherlands, Northern Ireland, Norway, Poland, Portugal, Romania, San Marino, Scotland, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey

¹³⁷ Countries included: Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan

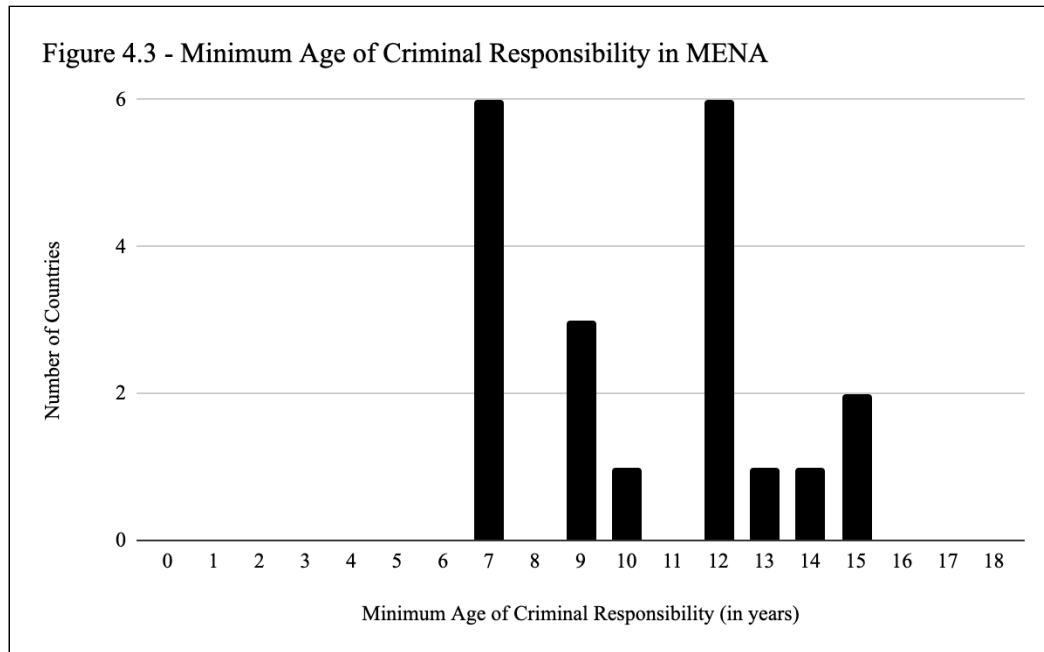


Middle East / North Africa (MENA)

The MACR in countries in the MENA region range between ages seven and 15. Ages seven and 12 are tied as the most frequent MACR, with six countries each. There appears to be a bit of conformity within each specific region; all of the countries in North Africa (Algeria, Egypt, Libya, Morocco, Tunisia) have set their MACR between ages 12 and 14; the majority of countries in the Middle East (Emirates, Iran, Iraq, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, Yemen) have set their MACR at or below age 10, with only four countries (Bahrain, Israel, Jordan, Palestine) above 10, at ages 14 and 16. Figure 4.3 displays the spread of the MACR for the countries in this region.

The most notable country in the region is Iran, as it has a different MACR for boys and girls. Influenced by Islamic principles, Iran bases the age at which children can be held criminally responsible on when children hit puberty. According to the Iranian Civil Code, girls hit puberty at age nine years old and boys hit puberty at age 15; therefore, the MACR is set at different years based on a child's gender. In Figure 4.3¹³⁸ below, Iran is displayed twice, once at 15 and once at nine, to account for this discrepancy.

¹³⁸ Countries included: Algeria, Bahrain, Egypt, Emirates, Iran, Iraq, Israel, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Palestine, Qatar, Saudi Arabia, Syria, Tunisia, Yemen



Another country worth pointing out is Saudi Arabia. The Child Rights International Network (CRIN) reports that Saudi Arabia has allegedly raised the MACR from seven years old to 12, but that “reports are inconsistent.” In addition, the shift from seven to 12 does not “apply to girls or in qisas cases [retributive justice].”¹³⁹ Therefore, we have kept the MACR for Saudi Arabia at seven.

Africa

The countries in Africa (excluding those in Northern Africa) display the least conformity of any region. African countries have the largest range of any region in the world, with the highest age being 16 years and the lowest being zero years. This inconsistency may be the result of vague language used in the African Charter on the Rights and Welfare of the Child. Much like the UNCRC, the African Charter for the African Union—which has 55 member states, including those in North Africa—establishes that there should exist “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law,”¹⁴⁰ but does not clarify a standard off of which countries can base the age. The majority of the countries—about 13—have

¹³⁹ “Minimum Ages of Criminal Responsibility in Asia: Saudi Arabia.” *CRIN*, Child Rights International Network, 2020, archive.crin.org/en/home/ages/asia.html.

¹⁴⁰ Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), p. 6, https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf.

set their MACR at 13 years. Interestingly, with nine countries, the second most common age is seven, an age which trends lower than most of the countries in the world.

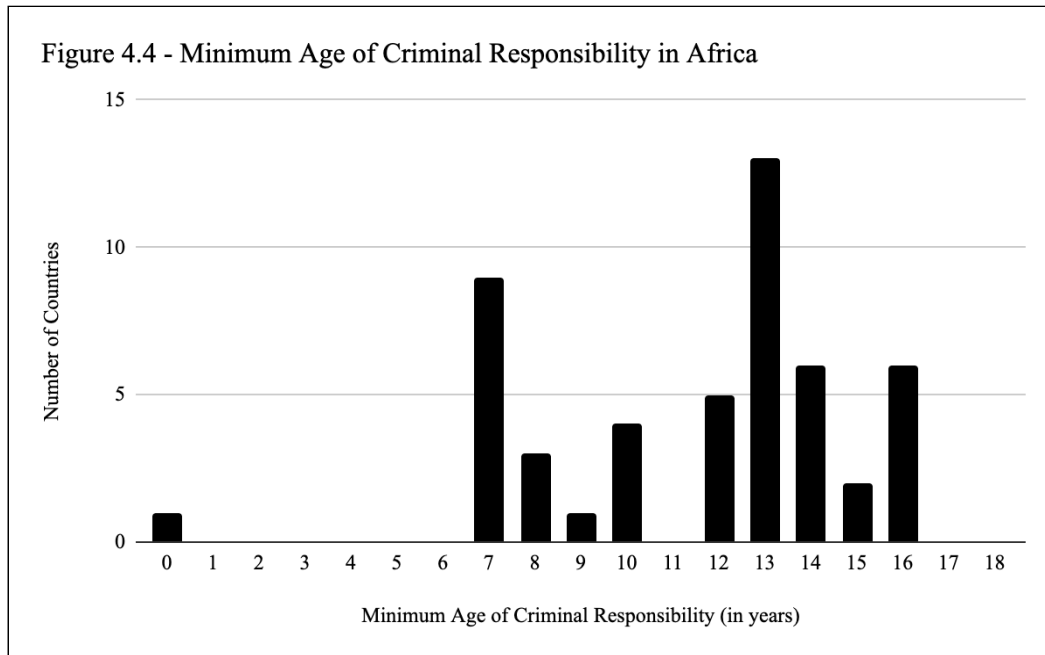
The only clear standout is Mauritius, as its MACR falls at zero. Articles 44 and 45 of the Mauritius criminal code state that children under the age of 14 may be held criminally responsible, but only if they acted with “discernment.”¹⁴¹ This vague language leaves a lot of grey area for the court to impose sanctions on CICL; arguably, proving that a child has acted with or without “discernment” is subjective. There is no clear definition or standard of what qualifies a child as having acted “with discernment,” allowing lawyers and judges to make the decision themselves, based on the evaluation of experts in various fields.

At the same time, to some extent, this caveat ensures the safety of children in extreme situations, such as if the CICL is a toddler. In these cases, it is easily arguable that the child did not act with discernment as his ability to act with discernment is greatly compromised due to the developmental stage in which toddlers fall. These cases become more complex the older a child is. Figure 4.4¹⁴² below demonstrates the distribution of the MACR for the countries in Africa.

¹⁴¹ Mauritius. Criminal Code. December 1838,

<http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%203/CRIMINAL%20CODE.pdf>.

¹⁴² Countries included: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Côte d’Ivoire, Democratic Republic of the Congo, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, South, Sudan, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, Zimbabwe. ***note that there is a difference between Somalia and Somalia South / Central**



*South America*¹⁴³

There appears to be unity among Latin American countries in South America: every MACR falls between 12 and 14, except for Argentina, whose MACR is set at 16. The countries in the region—Guyana and Suriname—whose MACR is 10, are not part of Latin America, perhaps indicating cultural influence.

In Latin America, CICL who are under the MACR “automatically [get] diverted to the administrative system of child protection.”¹⁴⁴ Additionally, numerous countries in this region mandate that children under the MACR may not be held in confinement.¹⁴⁵ There is also a gradual scale of punishment depending on age. Those who are above the MACR but still under eighteen are considered criminally liable, but face lesser consequences than adults because “they are presumed to have diminished responsibility due to their age.”¹⁴⁶ Finally, all the countries in the region complied with the principle of the UNCRC that confinement should be the last

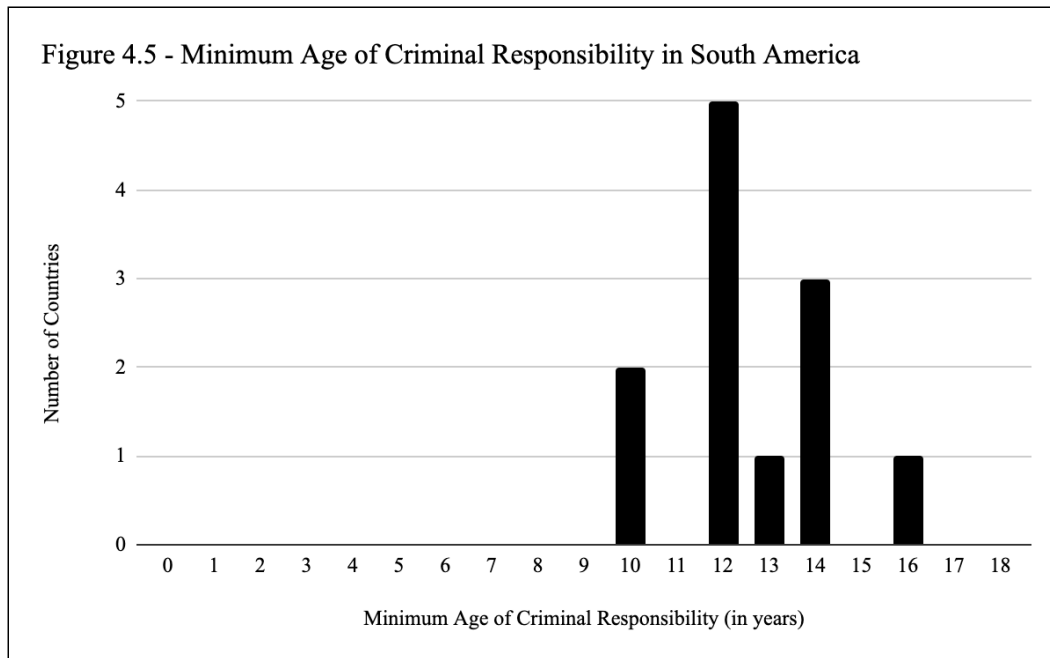
¹⁴³ For our analysis, we organized the countries in the Americas by region (North America, Central America, South America, and the Caribbean).

¹⁴⁴ Beloff et al., p. 212.

¹⁴⁵ Beloff et al., p. 212.

¹⁴⁶ Beloff et al., p. 213.

resort—in extreme cases, for a limited amount of time. Figure 4.5¹⁴⁷ below demonstrates the distribution of the MACR in South America.



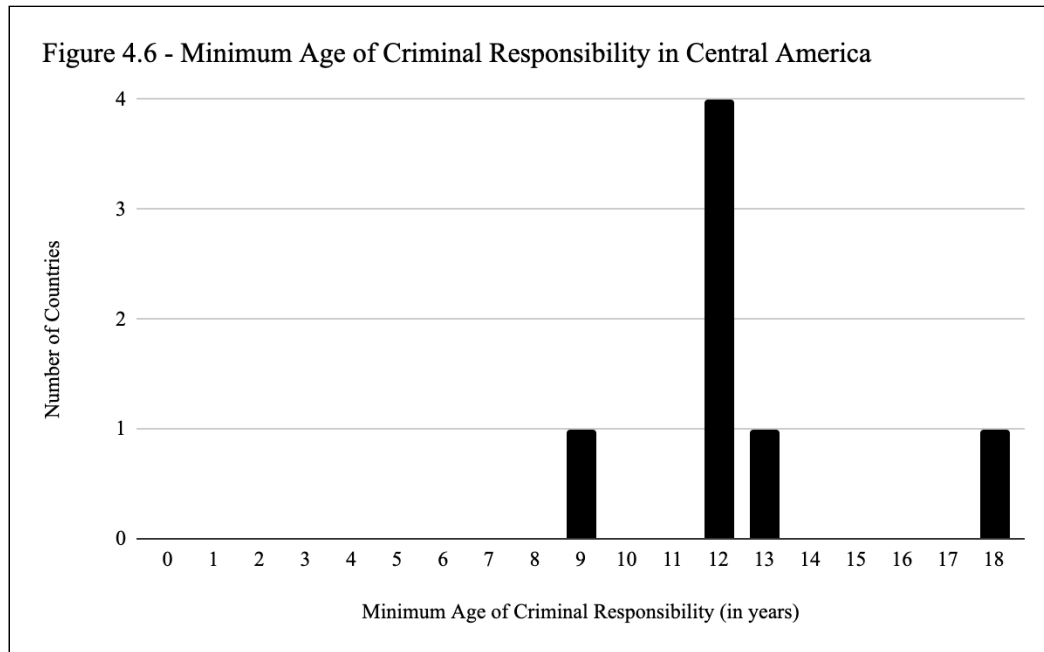
Central America

The most frequent age that Central American countries set their MACR at is 12, with four countries (Costa Rica, El Salvador, Honduras, and Panama). Nicaragua's MACR falls slightly above these countries at 13. The youngest MACR is in Belize, at nine. The oldest MACR is in Guatemala at 18. We left Guatemala at 18 because it explicitly states in its constitution that its MACR is 18; however, it clarifies that "children aged 13 to 18 can be detained in institutions."¹⁴⁸ Figure 4.6¹⁴⁹ illustrates the distribution of the MACR for the seven countries in Central America.

¹⁴⁷ Countries included: Argentina, Bolivia, Brazil, Chile, Colombia, Guyana, Paraguay, Peru, Suriname, Uruguay, Venezuela

¹⁴⁸ "Minimum Ages of Criminal Responsibility in the Americas." *Child Rights International Network*, archive.crin.org/en/home/ages/Americas.html.

¹⁴⁹ Countries included: Belize, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, Panama



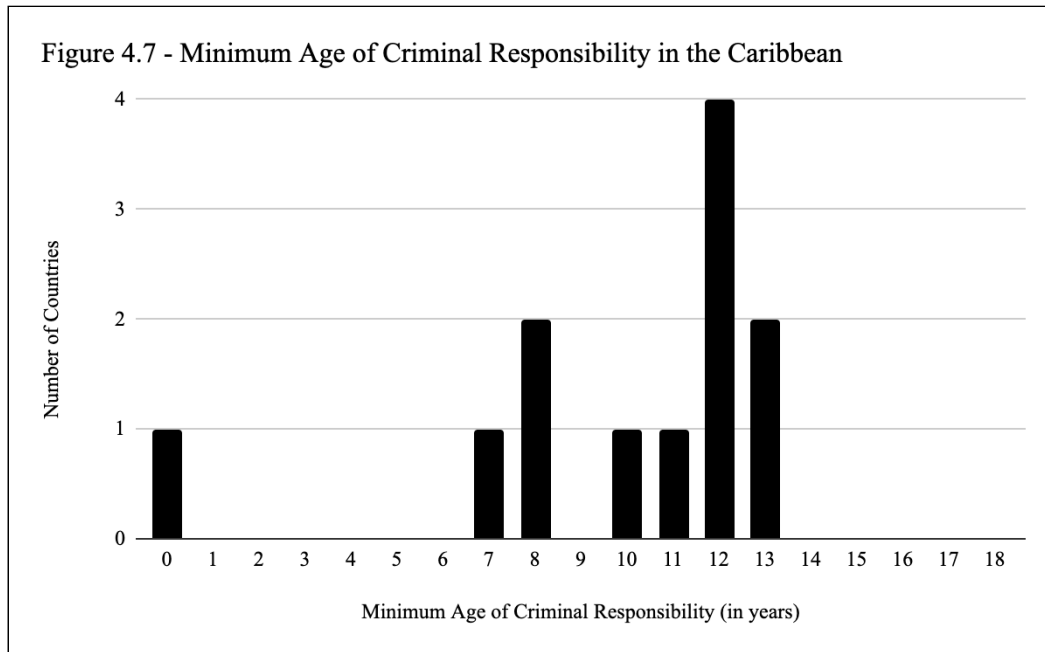
The Caribbean

Compared to its neighboring regions, the Caribbean trends a bit younger for the MACR in its countries. Similar to Central America, the most common age is 12, with four countries (Dominica, Grenada, Jamaica, Saint Lucia). The oldest MACR is 13, in Haiti and the Dominican Republic, and the youngest age is zero, in Cuba. The rest of the countries fall between seven and 11. Figure 4.7¹⁵⁰ demonstrates the distribution for the twelve countries in the Caribbean.

Cuba's language is complex: it states that "only people over the age of 16 can be held criminally liable," but fails to identify a MACR at which "children can be subject to penalties, including deprivation of liberty in re-education centres." This clarification essentially means that 16 represents the age of "criminal majority," or "the point at which children can be sentenced to adult penalties."¹⁵¹

¹⁵⁰ Countries included: Bahamas, Barbados, Cuba, Dominica, Dominican Republic, Grenada, Haiti, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago

¹⁵¹ "Minimum Ages of Criminal Responsibility in the Americas." *Child Rights International Network*, archive.crin.org/en/home/ages/Americas.html.



North America

North America contains three countries: Canada, Mexico, and the United States. Due to Mexico's geographical location, we grouped it in with North America; however, as Mexico is a part of Latin America, its political and cultural context lines up more closely to the countries in South America, Central America, and the Caribbean. Its MACR of criminal responsibility, 12, corroborates this reality. Canada's MACR is also set at 12. The standout in North America is the United States. The United States did not ratify the UNCRC, and leaves its MACR to be set at the state level.

Therefore, there is much variation between states. Currently, 33 states define no explicit MACR at all, including California, Maine, Florida, and Wyoming.¹⁵² The highest age at which children can be held criminally responsible is 10, in 11 states (Vermont, Pennsylvania, Wisconsin, Mississippi, Louisiana, Arkansas, Minnesota, South Dakota, Kansas, Texas and Colorado). The lowest explicit age stated is in North Carolina, at six years. The lack of uniformity in the United States reflects state autonomy as well as the fact that the United States did not ratify the UNCRC. Figure 4.8 displays the spread of the MACR between states and Figure 4.9 shows the breakdown of the MACR by state.

¹⁵² "Jurisdictional Boundaries." *Juvenile Justice, Geography, Policy, Practice & Statistics*, MacArthur Foundation, www.jjgps.org/jurisdictional-boundaries.

That 33 states have defined their MACR as zero is shocking, given the implications of this decision, particularly in the context of life sentences. The low MACR in the United States has had a significant impact on many CICL. For example, some children are sentenced to life in prison with no parole for some more serious crimes, such as first-degree murder.

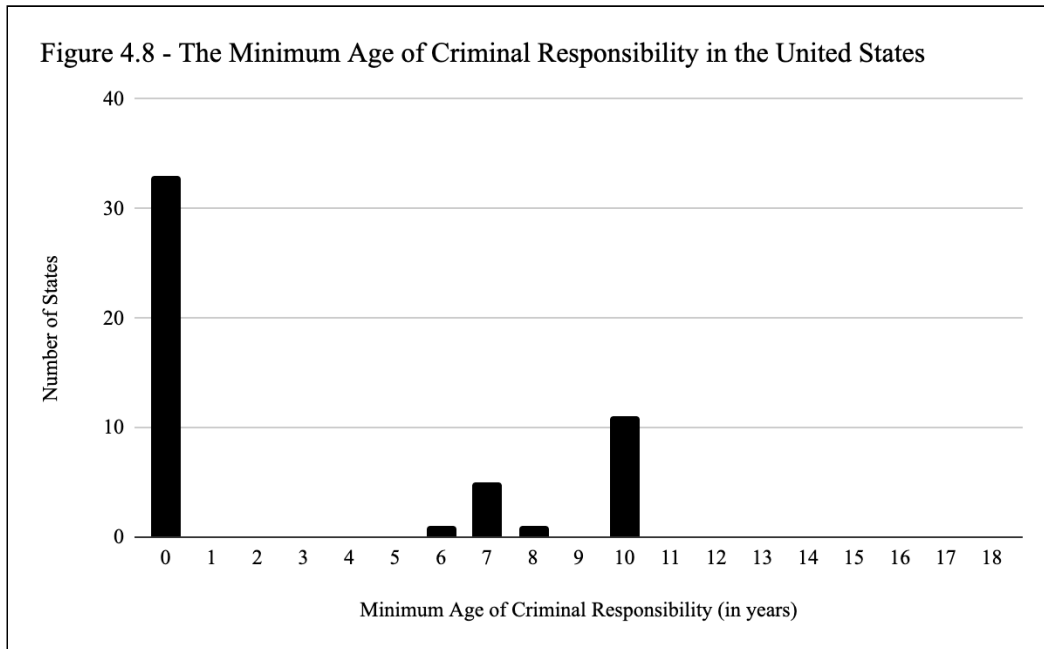
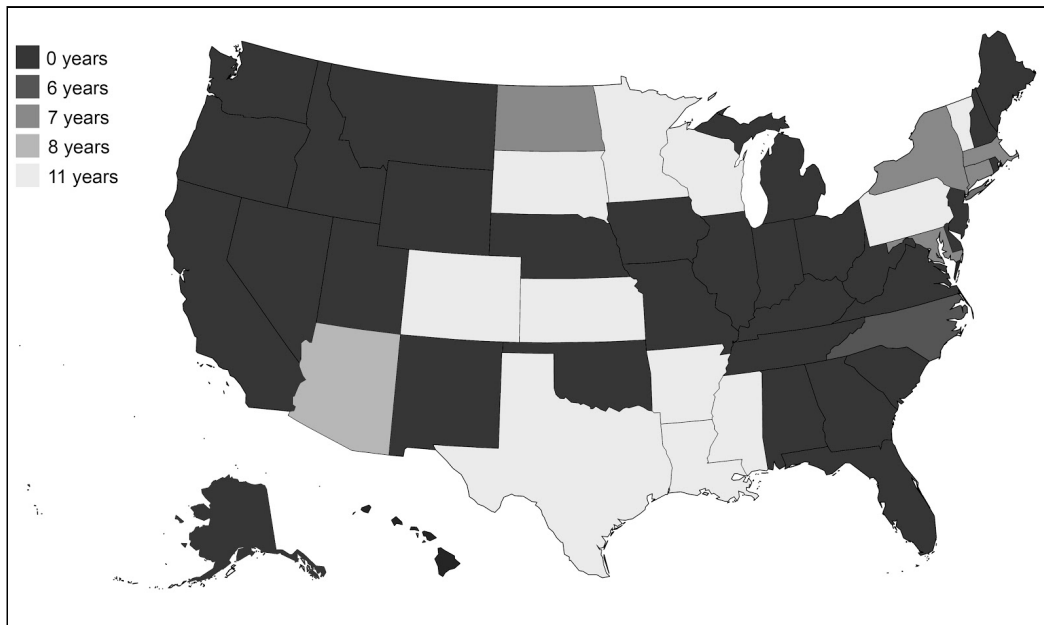
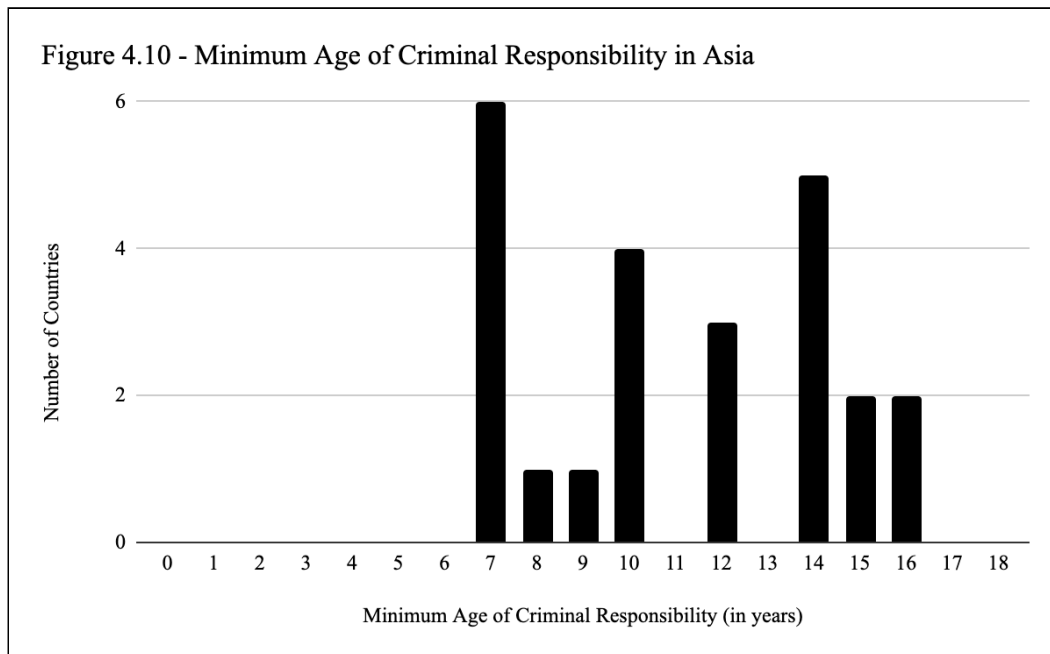


Figure 4.9 - The Minimum Age of Criminal Responsibility in the United States by State



Asia

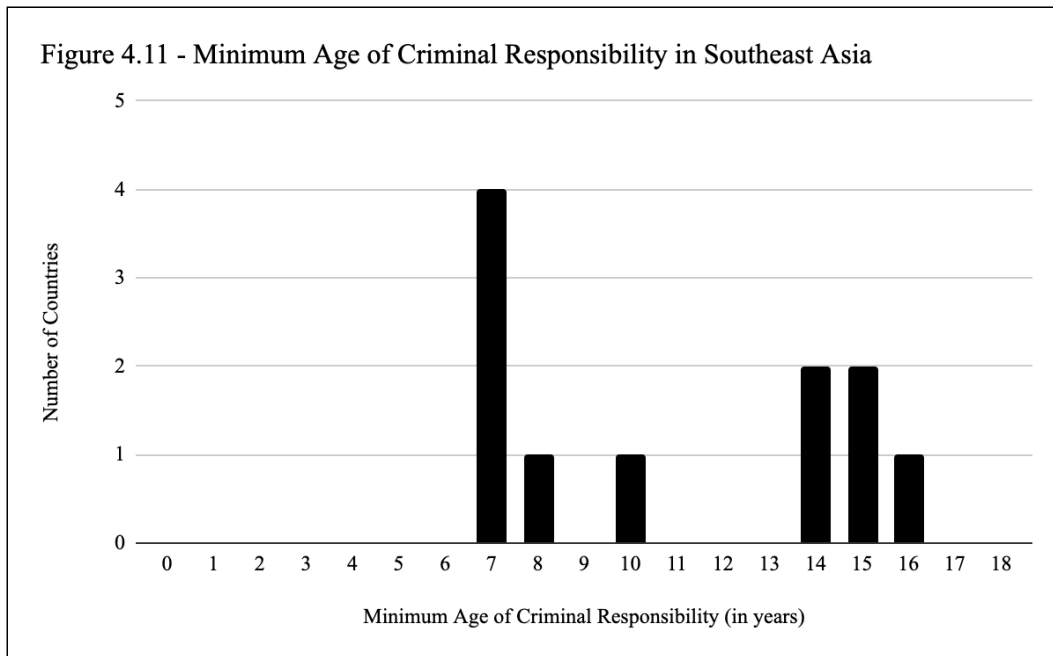
The countries in Asia show no uniformity on the MACR. The countries all fall between seven and 16. Five countries define their MACR at seven, and five at 14, making the two tied for the most frequent MACR in the region. With four countries, 10 is a close second. Figure 4.10¹⁵³ demonstrates the spread for the MACR in Asia.



Interestingly, four of the six countries with their MACR set at seven are in Southeast Asia (Brunei, Myanmar, Singapore, Thailand), the two others being in South Asia (India and Pakistan). The countries in Southeast Asia trend slightly below the rest of the regions, but have the largest range. It is important to note that in Malaysia, there exists a dual system of law, featuring secular law and Islamic law. As a result, the MACR shifts, depending on which part of the judicial system is relevant to a particular area. Under the secular law, the MACR is 10, as indicated in the graph below. However, under Syariah law, specifically the Syariah Criminal Offences (Federal Territories) Act 1997, children can be held criminally responsible if they have

¹⁵³ Countries included: Afghanistan, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, China, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Maldives, Mongolia, Myanmar, Nepal, North Korea, Pakistan, Philippines, Singapore, South Korea, Sri Lanka, Thailand, Timor-Leste, Vietnam

“attained the age puberty according to Islamic Law,” or *baligh*.¹⁵⁴ Figure 4.11¹⁵⁵ displays the spread of countries for Southeast Asia.

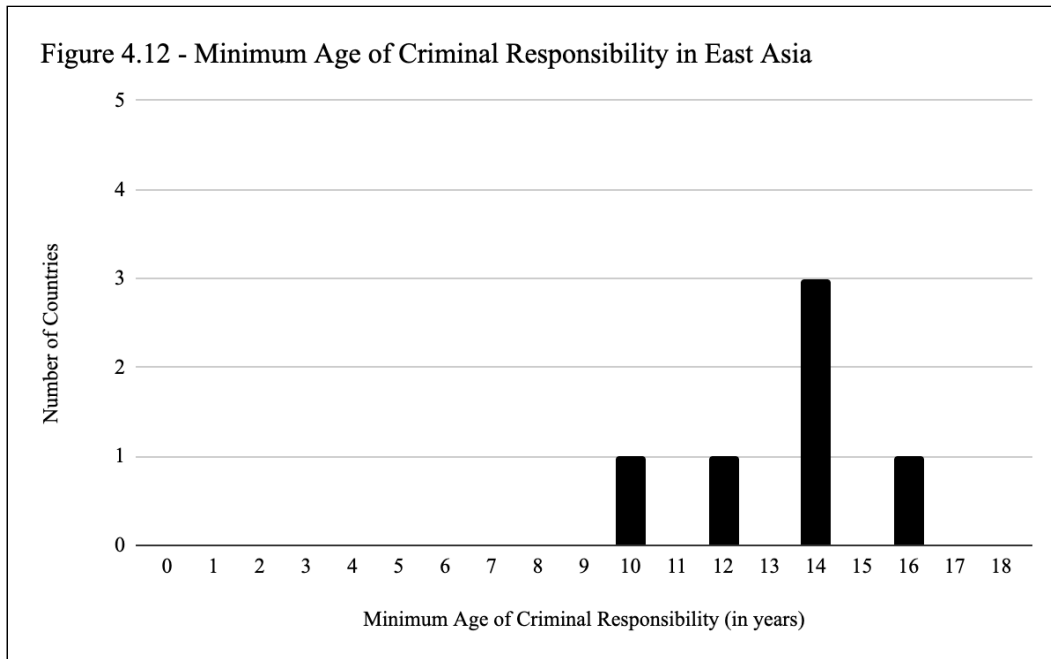


East Asia has the smallest range, with every country (China, Hong Kong, Japan, Mongolia, North Korea, South Korea) setting their MACR between ages 10 and 16. China’s MACR is the highest, at 16, and Hong Kong’s MACR is the lowest, at 10. Three of the countries have defined their MACR as 14—Japan, Mongolia, and South Korea—making it the most common age in the region. Figure 4.12¹⁵⁶ shows the spread for the MACR in East Asia.

¹⁵⁴ Malaysia. Act 559. Syariah Criminal Offences (Federal Territories) Act 1997. 31 March 1997, [agc.gov](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559%20-%20Syariah%20Criminal%20Offences%20(Federal%20Territories)%20Act%201997.pdf), [http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559%20-%20Syariah%20Criminal%20Offences%20\(Federal%20Territories\)%20Act%201997.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559%20-%20Syariah%20Criminal%20Offences%20(Federal%20Territories)%20Act%201997.pdf).

¹⁵⁵ Countries included: Brunei Darussalam, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Timor-Leste.

¹⁵⁶ Countries included: China, Hong Kong, Japan, Mongolia, North Korea, South Korea.



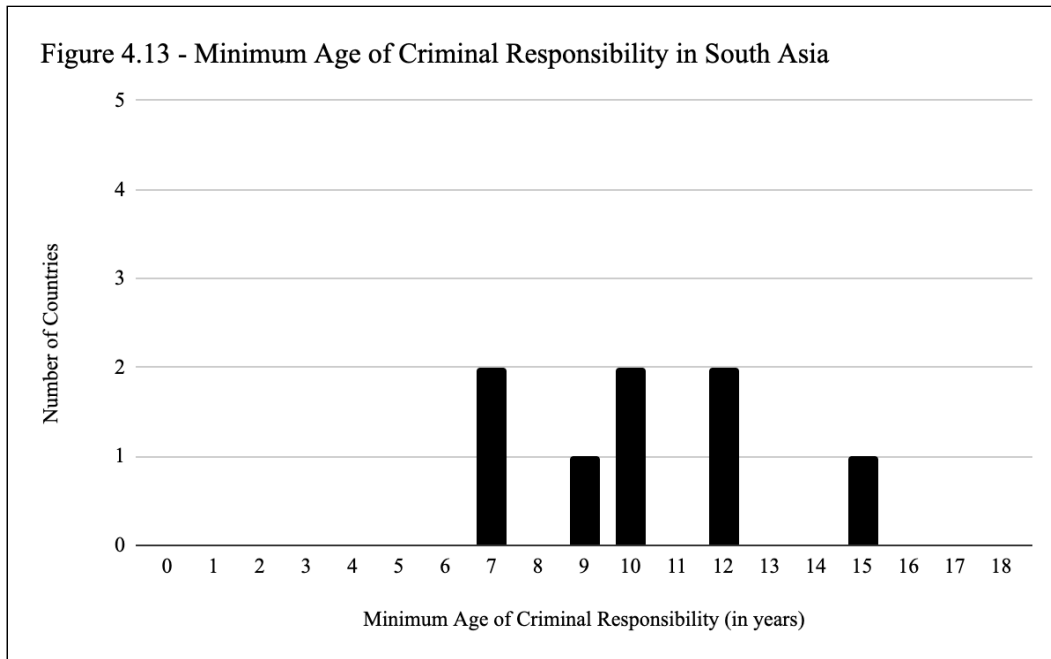
Finally, the MACR in South Asian countries (Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka) all fall between ages seven and 15. There is almost no uniformity among South Asian countries: three ages—seven, 10, and 12—tie for the most common, with two countries setting their MACR at each. There are some inconsistencies in the MACR in law versus in practice. For example, in 2011, the Committee on the Rights of the Child (CRC) condemned Afghanistan, finding that “a number of children under the age of criminal responsibility...[were] found in Juvenile Rehabilitation Centres.”¹⁵⁷

Both Pakistan and India clarify that children between the ages of seven and 12 can only be held criminally responsible if they have attained enough maturity that they know their action was wrong. Sri Lanka has this rule as well, but for children between the ages of 12 and 14.

Figure 4.13¹⁵⁸ shows the spread for the MACR in South Asia.

¹⁵⁷ UNCR, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: AFGHANISTAN.*, CRC/C/AFG/CO/1 (Feb. 4, 2011) available from <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.

¹⁵⁸ Countries included: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka



Oceania

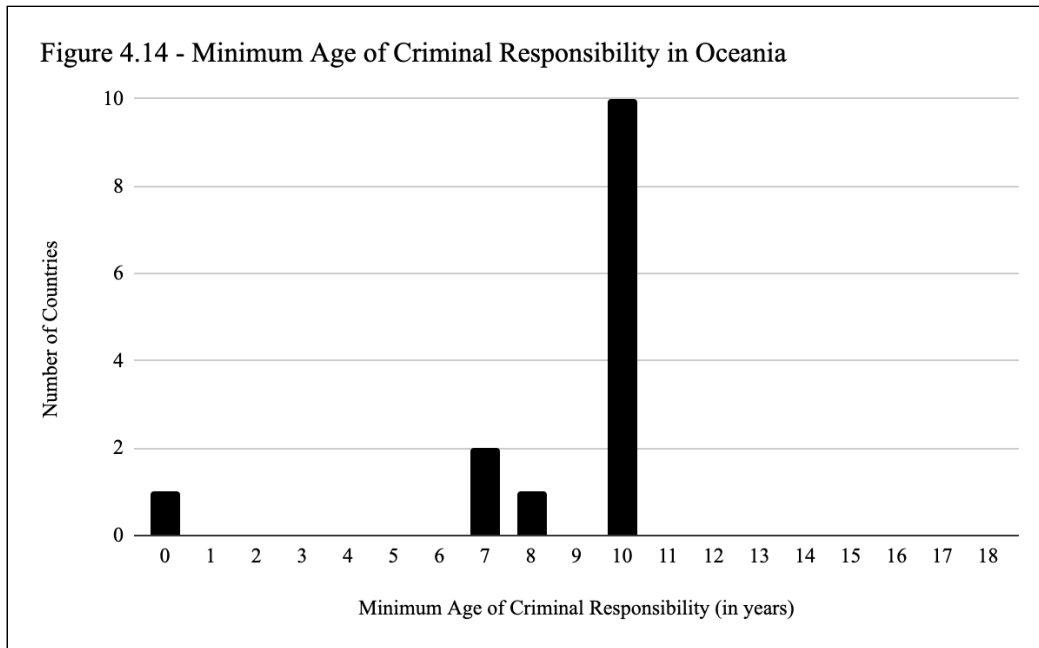
The countries in Oceania demonstrate the most regional consistency of all the regions in the world. 10 out of the 14 countries have set their MACR at 10 years old. Of the remaining four countries, two have set their MACR at seven years, one at zero years, and one at eight years.

Figure 4.14¹⁵⁹ demonstrates the distribution of the MACR for the countries in Oceania.

For the Federated States of Micronesia, we have only included the federal law, which sets the MACR at zero. However, the federal law's language is unclear. According to the CRIN, any child younger than 18 "accused of violating a Trust Territory or district law...can be sentenced to confinement,"¹⁶⁰ and there is no explicit lower age limit. Between the states—which we have not included—there are different laws. In Chuuk, the MACR is 10; in Kosrae and Yap, there is no minimum age; in Pohnpei, there is no clear information available to establish the MACR.

¹⁵⁹Countries / Territories included: Australia, Fiji, Kiribati, Marshall Islands, Micronesia, Nauru, New Zealand, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu

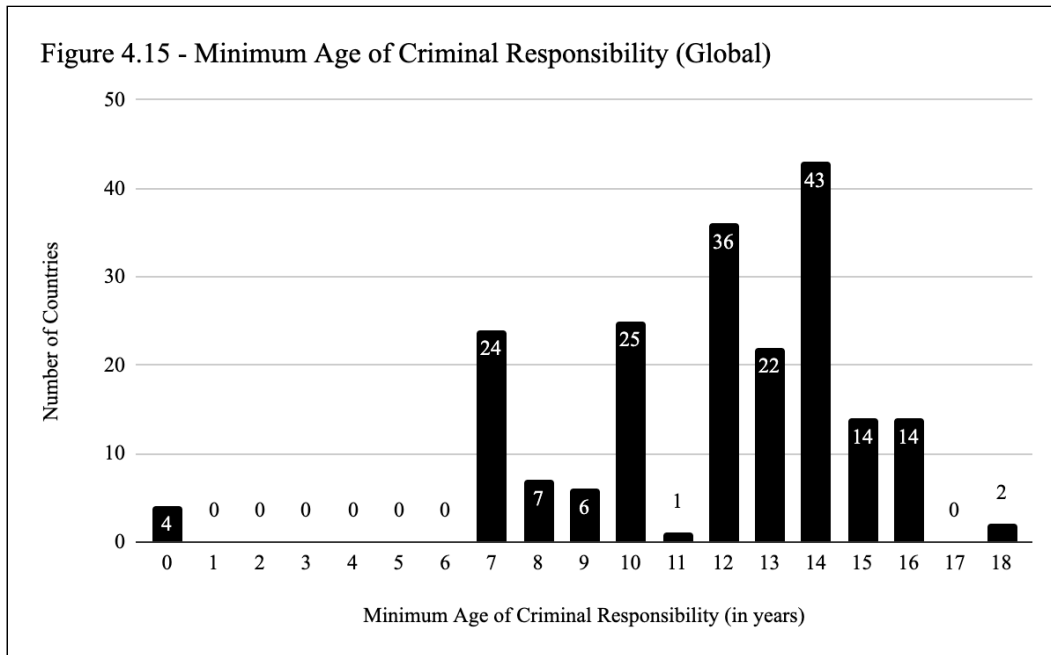
¹⁶⁰ "Minimum Ages of Criminal Responsibility in Oceania." *Child Rights International Network*, <https://archive.crin.org/en/home/ages/oceania.html>



Summary

Ultimately, these graphs demonstrate that the age at which children can be held criminally responsible is rather arbitrary among countries and regions of the world. In some cases, there is a slight indication of regional or cultural conformity—Former USSR states, Oceania, Europe, South America—perhaps revealing some influence between states in similar regions. Nevertheless, most regions do not present uniformity, a fact even more clear on the global stage.

As demonstrated in Figure 4.15, the most common age at which children can be held criminally responsible across all countries is 14. Still, over half of the world's countries have set their MACR at or below 12 years. Given the stage of neurological development that 12 year olds experience, this reality suggests that the UNCRC's choice to not define an explicit standard MACR results in major consequences. Indeed, the absence of a clear standard enables countries to set their MACR wherever they please, despite the fact that doing so may not be in the best interests of their children regarding their developing brains.



Member State Compliance

Unfortunately, the lack of a standard MACR is only one aspect of the UNCRC that enables noncompliance. In fact, the UNCRC is one of the “most ratified of all international human rights instruments,” but this success seems to have no significance when it comes to actual compliance. Especially in terms of juvenile justice, the UNCRC “appears to be the most violated” of all international human rights instruments. One of the biggest problems that continues to enable countries to violate the convention is that the UNCRC has no formal sanctions for violations, thereby allowing countries to disregard its stipulations “within a context of relative impunity.” The majority of countries seem to take advantage of this fact by either failing to prioritize the UNCRC or blatantly acting against it.¹⁶¹

Most countries have had almost thirty years to implement the UNCRC, yet the United Nations Committee on the Rights of Child continues to find failures, particularly in three areas: Articles 37, 39, and 40.

Article 37 stresses the humane treatment of children—that children (those under the age of 18) shall not be subject to “torture,” “capital punishment,” or “life imprisonment.” It further

¹⁶¹ Goldston et. al, p. 959.

emphasizes that children should not face unlawful or arbitrary deprivation of liberty and that, in cases wherein children are deprived of their liberty, they must be “separated from adults unless it is considered in the child's best interest not to do so,” and allowed continued contact with their families.¹⁶² Finally, Article 37 mandates that children deprived of liberty must have “prompt access to legal and other appropriate assistance,” and the right to “challenge the legality of the deprivation” in front of an unbiased court or authority.

Article 39 focuses on the rehabilitation and reintegration of children into society. It mandates that State Parties should take steps to promote the “physical and psychological recovery” of child victims and that this rehabilitation should take place in an environment that “fosters the [child’s] health, self-respect and dignity.”

Article 40 further elaborates the Convention’s guidelines for handling CICL. It mandates that State Parties should treat CICL in a way that promotes the “child's sense of dignity and worth.” It also emphasizes that a child’s age and a state’s desire to reintegrate that child into society should be factored into their treatment of any CICL. Article 40 then establishes various stipulations to guide State Parties closer to realizing their mentioned goals, including presumed innocence, clear communications of the charges the child faces, and protected privacy of the child. Finally, the article demands that a set of laws be created specifically for children.¹⁶³

Some of the most common concerns raised by the Committee focus on the maltreatment of children. The Committee has noted that various countries have failed to implement some of the most crucial juvenile justice aspects of the UNCRC, such as the neglect or failure to create “alternatives to incarceration,” overcrowding and other inhumane conditions in detention centers; and in some extreme cases, the continuation of the death penalty for CICL.¹⁶⁴ Furthermore, at least 40 countries—the majority of which have ratified the UNCRC—continue to permit intolerant treatment of CICL, including “whipping, logging, canning, or amputation,” and going as far as “death by lethal injection, hanging, shooting, or stoning.”¹⁶⁵

Beyond blatant violations of the UNCRC being written into law, however, there appears to be in many countries a “disturbing disjuncture between official juvenile justice policy and actual

¹⁶² *Convention on the Rights of the Child*, United Nations

¹⁶³ *Convention on the Rights of the Child*, United Nations

¹⁶⁴ Goldston et al., p. 960.

¹⁶⁵ Goldston et al., p. 961.

practice.”¹⁶⁶ In fact, many countries have in fact taken positive steps towards reforming their juvenile justice system. The real difficulty is ensuring that countries comply with their laws. For example, India—a country which has had a history of treating children and adults differently in the justice system—implemented the JJA so as to “further [consolidate]” the difference between and separation of their juvenile justice system and their criminal justice system. The JJA officially entered into law on April 1, 2001 and has since been amended—in 2006 and 2011—in order to include measures that “ensure inclusion of all children within its purview.”¹⁶⁷ Yet even so, in its concluding observations on India in 2004, the CRC found that some of their previous concerns with India’s compliance “[had] not been sufficiently addressed.” Notably, the Committee noted India’s failure to address “implementation of legislation,” “torture,” and “violence.”¹⁶⁸

In the Committee’s consolidated report of their third and fourth periodic reports of India, reports which occurred in 2013 and 2014, they noted an improvement in India’s implementation, but mentioned that “some of the recommendations...have not been fully addressed.”¹⁶⁹ These concerns included that there are both “loopholes” and “inconsistencies” in India’s Juvenile Justice system.

In 2015, India replaced the JJA 2000 with the Juvenile Justice (Care and Protection of Children Act) of 2015. The JJA 2015 states its goals as:

An Act to consolidate and amend the law relating to children alleged and found to be in conflict with law and children in need of care and protection by catering to their basic needs through proper care, protection, development, treatment, social reintegration, by adopting a child-friendly approach in the adjudication and disposal of matters in the best interest of children and for their rehabilitation through processes provided, and institutions and bodies established, hereinunder and for matters connected therewith or incidental thereto.

¹⁶⁶Levesque, pp. 1563-1586

¹⁶⁷ Kumari, p. 146.

¹⁶⁸ UNCRC, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: India*, CRC/C/15/ADD.228 (Feb. 2004) available from <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcy8%2f%2bFNoDHXU6AradMaQIO64B4%2bSxTRLzgGAXfq%2b6z2BG%2f15ChDz0GLBV2GdDrgFd8B8XQFh0Q%2f9WdEoBB8ss%2fuNGX0Uxn3>.

¹⁶⁹UNCRC, *Concluding observations on the consolidated third and fourth periodic reports of India*, CRC/C/IND/CO/3-4, (Jun. 13, 2014) available from <https://www.refworld.org/docid/541bee3e4.html>.

This act made it so that CICL between the ages of sixteen and eighteen may be tried as adults in the “case of a heinous offence.”¹⁷⁰ There have been no Committee reports on India since the implementation of the Juvenile Justice Act of 2015.

A possible explanation for India’s shortfalls is the goal or purpose that informs their Juvenile Justice system. Despite the fact that juvenile justice in India refers to “the adjudication, reformation, and rehabilitation process”¹⁷¹ for children, as Kumari notes, the “mind-set of many judges and the general public” especially in cases where children are found responsible for heinous offenses, seems to still center around retribution rather than rehabilitation.¹⁷² Thus, the fundamental principles behind the UNCRC—recognition of a child’s difference from an adult, as well as his rehabilitation and reintegration into society—seem to be lost or in conflict with India’s Juvenile Justice system.

Another system worth looking at is the juvenile justice system in Latin America. In 1919, Latin America adopted a juvenile justice system based on the United States system, referred to as the “tutelary system” in Latin America. This system radically changed Latin America’s approach to CICL; most importantly, youth crime was now treated “differently than adult crime,” with a goal of “rehabilitation [rather than] punishment.” However, in the past few decades, the majority of Latin American countries have introduced a set of reforms to replace the tutelary system. A major influence on these reforms was the UNCRC: every Latin American country ratified the UNCRC between 1990 and 1991. One of the arguments made for replacing the tutelary system was that “it did not meet the international human rights standards set by the CRC,” and thus the reforms include measures to protect children and promote their development.¹⁷³

Yet regardless of the intentions behind these reforms, the reality of implementing and creating reform in Latin America faces many challenges and barriers to success. For example, despite the relative consistency of these countries incorporating principles of the Convention in their reform, the differences in legislative models and culture meant these laws “did not follow one single coherent theory or model.” Ultimately, however, Latin American countries have

¹⁷⁰ India. Ministry of Law and Justice. The Juvenile Justice (Care and Protection of Children Act, 2015). No. 2 of 2016. 31 December 2015, <http://cara.nic.in/PDF/JJ%20act%202015.pdf>.

¹⁷¹ Kumari, p. 145.

¹⁷² Kumari, p. 170.

¹⁷³ Beloff et al., pp. 200-208

succeeded at least in the passing of some reforms that “have given more due process protections to juveniles” and mandated that CICL should only be deprived of liberty in extreme cases. Yet evaluating the efficacy of these reforms is difficult, as “almost no qualitative or quantitative empirical evaluations of their results” exist.¹⁷⁴

In a case study on the impact of the recent reforms in Chile, Beloff and Langer concluded that even though the reforms have “improved due process” for CICL through decreasing the number of CICL in pre-trial detention, they likely had the unintended consequence of increasing the “absolute and relative levels of juvenile confinement” in the country.¹⁷⁵ Indeed, their data demonstrate that since the implementation of the new reform, children have shown an increase in confinement rates.¹⁷⁶ For example, in 2003, the percentage of children in confinement in Chile was about 2.5%, a number which increased to 3.7% by 2012.¹⁷⁷ The percentage of children in confinement started to rise more substantially beginning in 2007, the year that the reforms “came into effect.”¹⁷⁸ Between the years 2006 and 2012, the percentage of children in confinement increased by 121%.¹⁷⁹ That the reforms should yield this result seems backwards, given the UNCRC’s stipulation that the “arrest, detention or imprisonment of a child...shall be used only as a measure of last resort and for the shortest appropriate period of time.”¹⁸⁰

These examples of India and Latin America—specifically Chile—show that despite eager participation from many countries in the UNCRC, countries either fail to properly implement all the articles of the Convention or experience adverse results. Such explains the inconsistencies between systems and the general concern that the Committee often expresses. It also exposes that many countries may ratify the Convention for appearances, rather than out of an actual desire to improve the lives of children. As a result, despite appearing to be committed to improving their juvenile justice systems, many countries fall short in key areas, hindering important change.

¹⁷⁴ Beloff et al., p. 208; 231.

¹⁷⁵ Beloff et al., p. 231.

¹⁷⁶ Beloff et al., p. 231.

¹⁷⁷ Beloff et al., p. 234.

¹⁷⁸ Beloff et al., p. 235.

¹⁷⁹ Beloff et al., p. 235.

¹⁸⁰ *Convention on the Rights of the Child*, p. 10

International Juvenile Justice Shortfalls

Critical failures of many countries to comply with the UNCRC can be attributed to various causes, including insufficiency of the infrastructure needed to implement changes; lack of available funding to invest in a country's youth; and cultures that generally support retribution, even in cases of children. One important possible influence over juvenile justice reform is public opinion.

More often than not, public opinion trends towards opposing the implementation of juvenile justice reform that is “seen as ‘soft’ on [child] offenders.”¹⁸¹ Especially in more developed countries, the support of the public is necessary for successful implementation of reform measures in accordance with the Convention. The media has a significant impact on public opinion, and often feature sensationalized stories on youth crime that incite fear within a population, encouraging individuals to oppose reforms that seem to let children “get away” with crime.¹⁸² In certain countries—the United States, Australia, European countries—this sensationalization has the strongest impact on minority communities due to the “racialization of juvenile justice.”¹⁸³ For example, the Survey of Youth in Residential Placement found that, despite comprising only 13% of the total United States population, Black youth accounted for about 32% of the population of youth in confinement.¹⁸⁴ The media can perpetuate these racialized views through selective reporting and sensationalizing the crime of certain racial groups over others. Moreover, people who view the justice system as allowing children to commit crimes without punishment have a misconception of the impact of these reforms—the purpose of the UNCRC is not to let CICT “get away” with crime, rather it recognizes that children have the potential to change and that it is important that the law serves foster positive change and rehabilitate children so that they can become positive contributing members of society.

¹⁸¹ Hamilton & Harvey - The Role of Public Opinion in the Implementation of International Juvenile Justice Standards (2004). p. 369.

¹⁸² Neale, Leslie, director. *Juvis*. A+E Networks, 2004.

¹⁸³ Goldson et al., pp. 956-62.

¹⁸⁴ Sedlak, A.J. and Bruce. *Survey of Youth in Residential Placement: Youth's Characteristics and Backgrounds*. SYRP Report. 2016. p.3, <https://www.ncjrs.gov/pdffiles1/ojdp/grants/250753.pdf>.

However, the media alone is not responsible for the misconception of juvenile justice reform. States often fail to “adequately...inform and educate their citizens about the level and nature of juvenile offending, the administration of juvenile justice, and the success and failure of attempts to address offending and rehabilitate offenders” thereby allowing the public to rely on media outlets to inform their views on the subject.¹⁸⁵ As Hamilton and Harvey note, it is important for states to account for public opinion and attempt to “encourage and carry public support” in order to adequately “implement the juvenile justice provisions of the Convention.”¹⁸⁶

Many citizens are unaware of accurate statistics representing youth crime. As a result, even statistics that display a decrease in child offenses rarely show direct correlation with a shift in public opinion. Therefore, even if crime committed by children accounts for a very small portion of a country’s overall crime rate and the majority of the crime children are found responsible for are misdemeanors, the public may continue to support “tough on crime” policies that focus significant resources into punishing children. A state’s failure to properly educate its population on the realities of child crime and “the administration of juvenile justice,” further exacerbates these misconceptions, continuing false narratives that inhibit systemic change.¹⁸⁷

Other factors that have an influence on public opinion include pressure groups, research bodies, opinion polls, “the effect of particular cases, and the impact of culture, tradition and demography.” Pressure groups—groups that seek to influence policy changes surrounding a particular issue—can have a significant impact on public opinion, especially when framed through the lens of morality. For example, pressure groups may form to represent victims of crime, pushing the view that the “rights and welfare” of the victim should always take precedence over that of the offender. Such a view discounts the reality that many offenders, especially those who are children, are victims themselves, in need of the proper care and attention that the state can provide.¹⁸⁸

If the public believes that their country’s juvenile justice system is insufficient, there is likely to be an increase in “public demand for tougher measures.” For example, a study conducted in the late nineties on a variety of western states—the United States, United Kingdom,

¹⁸⁵ Hamilton et al., p. 370.

¹⁸⁶ Hamilton et al., p. 369.

¹⁸⁷ Hamilton et al., p. 370.

¹⁸⁸ Hamilton et al., p. 370.

France, and Canada—revealed that public misconceptions about juvenile justice led citizens to support harmful “tough on crime” measures. The study, based on public opinion polls and research, found that in the late nineties, citizens in these countries “displayed an increased disillusionment and disenchantment” with their juvenile justice systems, believing systems were “unable to control violent young offenders and delinquents.” Much of the distrust in juvenile justice systems emerged as a result of a common misconception about non-traditional approaches to juvenile justice: these approaches focus too much on the “rehabilitation and the welfare of offenders, rather than on punishment and justice.”¹⁸⁹

There is substantial research that supports alternative measures to incarceration and punishment for CICL. Research reveals the general population maintains lack of awareness surrounding the creation of an effective justice system. Contrary to popular belief, many of the current systems in place are quite punitive, and actually have adverse effects on society’s youth and, by extension, society. These punitive systems also continue to exist in part because of beliefs that the “alternatives to prison [are] ineffective.”¹⁹⁰ When examining this claim, it is important to question what exactly people find “ineffective” about alternative systems, a question which fundamentally examines the goals behind a country’s juvenile justice system. Those who favor retribution over rehabilitation will find that alternative models, like restorative justice models, focus too much on the wellbeing of the incarcerated persons.

Alternatively, when lawmakers and the public are aware of the realities of the juvenile justice system, change does occur. For example, in 2010, United States Attorney General Eric Holder launched the Defending Childhood Initiative to address the problem of United States children being frequently exposed to violence. Benekos et al. suggest that Eric Holder’s release of this initiative “signalled that the Department of Justice was prioritising the victimisation and abuse of children and youth with federal initiative.”¹⁹¹ Section 6 of the Defending Childhood Initiative is entitled “Rethinking Our Juvenile Justice System.” In this section, the initiative elucidates the shortfalls of the previous juvenile justice system in the United States, offering an

¹⁸⁹ Hamilton et al., pp. 370-372.

¹⁹⁰ Hamilton et al., p. 372.

¹⁹¹ Benekos, Peter J., et al. “In Defence of Children and Youth: Reforming Juvenile Justice Policies.” *International Journal of Police Science & Management*, vol. 15, no. 2, 2013, pp. 125, doi:10.1350/ijps.2013.15.2.307.

alternative system in which the needs of children—especially those exposed to trauma—are properly addressed. It clarifies that:

The vast majority of children involved in the juvenile justice system have survived exposure to violence and are living with the trauma of those experiences. A trauma informed approach to juvenile justice does not require wholesale abandonment of existing programs, but instead it can be used to make many existing programs more effective and cost-efficient. By correctly assessing the needs of youth in the justice system, including youth exposed to violence, and matching services directly to those needs, the system can help children recover from the effects of exposure to violence and become whole.¹⁹²

In line with this aspect of the Defending Childhood Initiative, Benekos et al. noted a shift in the approach to juvenile justice in the United States following Holder’s movement—particularly, an “increasing awareness of youth as victims and the detrimental and counterproductive effects of punitive sanctions.”¹⁹³ In fact, the initiatives alongside a “definitive body of research demonstrating that youth violence is not inevitable,” motivated “a government wide shift in the approach to juvenile justice—from enforcement to public health.” Such a case demonstrates the capability for change that comes with government action and commitment.

In 2010, the US Office of Juvenile Justice and Delinquency Prevention (OJJDP) and the Office of Violence Against Women funded eight states as part of the Defending Childhood Initiative. These states were: Maine, Massachusetts, Montana, North Dakota, Ohio, Oregon, South Dakota, and Tennessee. Each of these sites had various accomplishments in advancing the goals of the Defending Childhood Initiative. For example, in Boston, Massachusetts, homicide rates decreased by 25% from 2014 to 2015, making it its lowest in 16 years. Memphis, Tennessee saw a decrease in violent crimes by 23% from 2006-2015, and an increase in after school programs and other youth opportunities for crime reduction. Grand Forks, North Dakota successfully reduced reported bullying by 35% and trained over 600 youth professionals.¹⁹⁴

It is also important to question what the public is actually using to form its opinion. A UK Home Office Study suggests that, when evaluating and responding to CICL, many people use

¹⁹² Boyle, Gregory, et al. *Report of the Attorney General’s National Task Force on Children Exposed to Violence*. U.S. Department of Justice, 2012, p. 21, *Report of the Attorney General’s National Task Force on Children Exposed to Violence*, www.justice.gov/sites/default/files/defendingchildhood/cev-rpt-full.pdf.

¹⁹³ Benekos et al., p. 126.

¹⁹⁴ *National Youth Violence Prevention Update*. Office of Juvenile Justice and Delinquency Prevention, 2010, p. 4, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/250083.pdf>.

their own experience in their communities to evaluate national crime. The crime that many people see in their own neighborhoods tends to be crime committed by the youth—like “low-level visible crime and disorder,” such as “graffiti and minor vandalism.”¹⁹⁵ This factor, paired with the far-reaching influence of the media, leads to and perpetuates a distorted perception of the threats of youth crime, especially in the western world.

The impacts of this false perception are widespread and combating misinformation is crucial to implementing a juvenile justice system that comprehensively addresses the needs of CICL. In fact, Hamilton and Harvey suggest that this harmful belief not only inhibits the proper implementation of the UNCRC, but may also negatively affect “all other aspects of children’s rights.”¹⁹⁶ Paulo Sérgio Pinheiro, the UN’s expert on violence towards children, reported that violence against children is a “global problem,” with children from both the developed and developing world experiencing widespread violence. Children experience violence in their homes and schools, but also in the justice system. In his report, Pinheiro notes that “millions of children, particularly boys, spend substantial periods of their lives under the control and supervision of care authorities or justice systems...[where they are]...at risk of violence from staff and officials responsible for their well-being.”¹⁹⁷ With this reality, it becomes even more necessary that governments and the media communicate the realities of the juvenile justice system as well as the benefits of alternative youth systems to their countries.

Another inhibiting factor that may contribute to the lack of widespread implementation of the UNCRC may have to do with the Convention itself. One study from the *Nordic Journal of Human Rights* suggests that the Convention contains many inherent contradictions, but there is an absence of literature that addresses this problem.¹⁹⁸ The literature that does exist suggests that contradictions and shortfalls in the Convention possibly emerged during the process of drafting the UNCRC. Among the studies that exist about the drafting process of the Convention, some “elucidated how...[drafting] deliberations led to partial agreements or compromises, how the

¹⁹⁵ Hamilton et al., p. 373.

¹⁹⁶ Hamilton et al., p. 377.

¹⁹⁷ United Nations General Assembly, *Report of the independent expert for the United Nations study on violence against children*, A/61/299 (Aug. 29, 2006) available from undocs.org/en/A/61/29

¹⁹⁸ Quennerstedt, Ann, et al. “The UNCRC: The Voice of Global Consensus on Children’s Rights?” *Nordic Journal of Human Rights*, vol. 36, no. 1, 1 May 2018, doi:10.1080/18918131.2018.1453589.

interest of various parties was balanced, and how some topics were left without being discussed.”

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Due to differences in culture and values between states, certain issues were not able to find resolution. Quennerstedt et al. highlight one study on the debate over abortion between drafters of the UNCRC. The issue was not resolved through compromise because the drafters were only able to agree on the “*concept* of childhood.” Beyond this definition, value-based discord emerged over when life begins, leaving any “consensus...extend[ing] to questions concerning [the] boundaries” of childhood open-ended. Thus, due to compromises over some of the most polarizing issues in the Convention, Quennerstedt et al. argue that research demonstrates that “vagueness and ambiguity...were built into the text of the UNCRC from its inception.”²⁰⁰

This vagueness likely makes available even more room for state parties to interpret the articles of the Convention as they see fit within their own cultural context. The Convention, therefore, transforms into guidelines by which States can choose to not abide without any significant repercussions. Some scholars have suggested that states were aware of this flexibility when signing the Convention. For example, Dr. A. Glenn Mower Jr. theorized that certain states may have signed the UNCRC “to avoid the appearance of being unconcerned about children,” with the belief or understanding that “the convention contained so many loopholes” that would allow the states freedom to essentially not follow the guidelines.²⁰¹

Ultimately, shortfalls exist at all levels—from widespread public belief and government inaction to the Convention itself. It appears that to properly implement the UNCRC and address the needs and rights of all children, change will have to occur at every level. No one factor is responsible for the failure of states to comply with the UNCRC; rather, it is a collective inattention to detail, lack of commitment, and unwillingness to truly change that inhibits progress and just action. Thus, juvenile justice on the international stage requires more accountability, transparency, and collectivity.

¹⁹⁹ Quennerstedt et al., p. 43.

²⁰⁰ Quennerstedt et al., p. 43-44.

²⁰¹ Quennerstedt et al., p. 40.

International Juvenile Justice Trends

Despite a general lack of uniformity across countries—e.g. the MACR, opinions on juvenile justice—there are various trends that are gaining traction across the world. One of the most important and relevant movements is the restorative justice movement.

Restorative Justice

Restorative justice is an alternative approach to understanding crime and administering justice that is gaining traction globally. Restorative justice began in the late 1970s and increasingly gained influence throughout the world beginning in the late 1980s and early 1990s. It started as “an effort to rethink the needs and roles implicit in crimes,” focusing on smaller crimes such as burglary.²⁰² Its purpose was mainly to address the shortfalls of the western criminal justice system, particularly the limited number of parties, often referred to as “stakeholders” involved in justice procedures.²⁰³ Instead of limiting the stakeholders to offender, victim, and state, restorative justice expands stakeholders to include other community members that might not have been directly and immediately affected by the crime. Restorative justice focuses on the wider consequences of individual acts, seeking to address the needs of all parties involved, including the victim, offender, and wider community.

Restorative justice has expanded to have different definitions to different people, but one of the most common definitions comes from American criminologist Howard Zehr. Zehr defines restorative justice as “a process to involve, to the extent possible, those who have a stake in a specific offense to collectively identify and address harms, needs and obligations in order to heal and put things as right as possible.”²⁰⁴ Zehr elaborates that there are five basic principles of restorative justice. According to him,

Restorative Justice...

1. Focuses on harms and consequent needs. (victims', but also communities' and offenders').
2. Addresses obligations resulting from those harms. (offenders' but also families', communities' and society's).

²⁰² Zehr, Howard. *The Little Book of Restorative Justice*. Good Books, 2016, UNICEF, www.unicef.org/tdad/littlebookrjpakaf.pdf, p. 11.

²⁰³ Zehr, p. 11.

²⁰⁴ Zehr, p. 40.

3. Uses inclusive, collaborative processes.
4. Involves those with a legitimate stake in the situation. (victims, offenders, families, community members, society).
5. Seeks to put right the wrongs.

The three pillars of restorative justice are generally considered as follows:

1. **Harms, needs, and amends:** offenders are called to acknowledge the harm that they have caused and make amends to the victims.
2. **Obligations:** offenders are called to put to right the situation as much as possible and, by so doing, restore balance and rebuild the victim's sense of security and self-control.
3. **Engagement:** all stakeholders (victims, offenders, and community) are invited to take part in and engage in the process of healing.²⁰⁵

The UN offers a definition that puts the above elements together in its *Handbook of Restorative justice programmes*. According to the UN, restorative justice:

refers to a process for resolving crime by focusing on redressing the harm done to the victims, holding offenders accountable for their actions and, often also, engaging the community in the resolution of that conflict. Participation of the parties is an essential part of the process that emphasizes relationship building, reconciliation and the development of agreements around a desired outcome between victims and offender.²⁰⁶

The UN also notes the adaptability of restorative justice, suggesting that it can thrive in and benefit “various cultural contexts” while holistically addressing “the needs of different communities.”²⁰⁷

The practice is connected with the concept of shame—shame as the vehicle through which an individual can come to terms with his/her/their responsibility in a criminal act—but it utilizes an individual's shame to promote proactive change. This type of shaming is referred to as *reintegrative shaming*, a term coined by Professor John Braithwaite in 1989. Braithwaite's reintegrative shaming theory distinguishes reintegrative shaming from stigmatic shaming by “rejecting the idea that stigmatization is an inevitable product of social disapproval, and its

²⁰⁵ Ferguson, Therese, and Pauletta Chevannes. “The Change From Within Program: Bringing Restorative Justice Circles for Conflict Resolution to Jamaican Schools.” *Childhood Education* 94.1 (2018): p. 57. Web.

²⁰⁶ Dandurand, Yvon, and Curt T. Griffiths. *Handbook on Restorative Justice Programmes*. United Nations, 2006, UNODC, p. 6, www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf.

²⁰⁷ Dandurand et al., p. 6.

corollary that the application of social control is a fraught exercise.”²⁰⁸ Braithwaite argues that reintegrative shaming is a good alternative to traditional shaming and will reduce crime rates as “there are many occasions and social contexts in which disapproval of behavior occurs while preserving the identity of the offender as essentially good.”²⁰⁹ Braithwaite’s theory finds basis in the idea that “justice is best achieved when an offender repairs the harm caused by an offense, rather than punishing the offender.”²¹⁰ As Braithwaite’s theory exemplifies, many researchers and criminologists believe that restorative justice has the capacity to reduce rates of recidivism through effectively addressing the needs of the offenders themselves, helping them recognize the harm they have done, and instilling in them practices that are helpful for reintegrating into society.

Practices of restorative justice manifest in different ways, but the most common are victim-offender mediation, group conferencing, and circles. Restorative justice practices can also be referred to broadly as restorative processes. The UN offers a definition of ‘restorative process’ useful to the international community for their implementation of restorative justice : “any process in which the victim and the offender and, where appropriate, any other individuals or community members affected by a crime participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator.”²¹¹ To ensure that all parties get the most out of a restorative justice practice, they must all consent to participate.

In general, victim-offender mediation describes a practice in which victims and offenders come “in direct mediation,” in the presence of one or two facilitators and often “support persons for victims and/or offenders,” such as relatives or close friends.²¹² Victims are sometimes not directly involved in the act. For example, in cases of murder, the “victim” may be the murder-victim’s family, or someone who has gone through a similar situation. Group

²⁰⁸ Harris, Nathan. “Braithwaite, John: Reintegrative Shaming Theory.” *Encyclopedia of Criminological Theory*, by Francis T. Cullen and Pamela Wilcox, SAGE Publications, Inc., 2010, sk-sagepub-com.proxy.bc.edu/reference/download/criminologicaltheory/n31.pdf, p. 2.

²⁰⁹ Harris, p. 2.

²¹⁰ Harris, p. 5.

²¹¹ Dandurand et al., p. 6.

²¹² Umbreit, Mark S, and Marilyn Peterson Armour. “Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community.” *Washington University Journal of Law & Policy*, vol. 36, 2011. *Gale Academic Onefile*, go-gale-com.proxy.bc.edu/ps/i.do?id=GALE%7CA275849595&v=2.1&u=mmln_m_bostcoll&it=r&p=AONE&sw=w

conferencing is essentially an expanded version of victim-offender mediation, including support members for both the victim and the offender and the addition of members of the community. These conferences usually “rely on a script,” though they sometimes are more free-form. Restorative justice circles are similar to group conferences, but the number of community members present can include an even wider range. Examples of these community members include “interested persons, as representatives of the criminal justice system, or as additional circle-keepers or facilitators.” In these circles, there is usually an object used as a “talking piece,” that gives a member of the circle the stage when he/she possesses the object.²¹³

Due to an increasing awareness about the harms of a punitive justice system and the potential benefits of restorative justice, the practice has become increasingly present in global criminal and juvenile justice systems and beyond. In 2000, it gained formal attention when the UN released the *Vienna Declaration on Crime and Justice*, encouraging states to develop “restorative justice policies, procedures and programmes that are respectful of the rights, needs and interests of victims, offenders, communities and all other parties.”²¹⁴ For example, today practices of restorative justice systems are “found in school settings, workplaces, faith communities, and even in the context of deeply-entrenched political violence, such as in Israel and Palestine, and in post-conflict societies such as Northern Ireland, South Africa, Liberia, and Rwanda,”²¹⁵ making its influence and relevance widespread.

Currently, the development of restorative justice is perhaps the most notable in European countries who seem to have “clearly outpaced American policy development and implementation in support of restorative justice practices.”²¹⁶ New Zealand is also widely recognized for its efforts in restorative justice as it implemented family group conferencing in its legislation in 1989.²¹⁷ A report from 1998 on the development of the international restorative justice movement illustrated a budding global movement. Among many developments, it points out:

²¹³ Umbreit et al.

²¹⁴ Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, A/CONF.187/4/Rev.3 (Apr. 15 2000) available from <https://www.un.org/ruleoflaw/files/4r3e.pdf>.

²¹⁵ Umbreit et al.

²¹⁶ Umbreit et al.

²¹⁷ Van Ness, Daniel W. “Restorative Justice: International Trends.” 07 Oct. 1998, Victoria University, Wellington, New Zealand. Speech. p. 4, <http://restorativejustice.org/10fulltext/vanness13.pdf>.

2. *victim-offender encounters* in prison are taking place in the US, Canada, England, Belgium and the Netherlands
3. *circles of support* are a new program developed in Canada for serious sexual offenders (often guilty of paedophilia) who are being released into fearful communities at the conclusion of their sentences
4. *Unique prison regimes* have developed in Latin America in which prisoners come to facilities that are run by volunteers and other prisoners...these have now spread into Ecuador, Argentina, Chile, Peru, and the US
- 6.f.(2) The European Union has just funded creation of the European Forum on Victim Offender Mediation and Restorative Justice²¹⁸

These examples elaborate early instances of restorative justice, a movement which, at the time, was still “relatively young.”²¹⁹

Aligning with the goals of restorative justice, literature surrounding juvenile justice emphasizes that a justice system’s ability to increase the “capacity [of children in conflict with the law] to empathize and understand the consequences of their actions” is crucial to the reduction of recidivism rates. This emphasis paired with a growing anxiety, particularly among populations in western nations, about crime rates among children led many nations in the early 2000s towards action. For instance, as a direct result of this developing worry and pressure from citizens, in 2001, the European Union Council “declared an initiative to increase strategies to encourage crime prevention.”²²⁰ Many European countries had already initiated restorative justice practices in their own countries, but this official declaration signified a more collective and far-reaching commitment towards creating alternative systems to the punitive ones in place for CICL.²²¹

Later, European countries adapted their systems to align with the recommendations outlined by the United Nations: according to the UN *Handbook on Restorative justice programmes*, in 2002, the United Nations Economic and Social council “adopted a resolution calling upon Member States that are implementing restorative justice programmes to draw on a set of Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters,

²¹⁸ Van Ness, p. 4-8.

²¹⁹ Van Ness, p. 9.

²²⁰ Reyes-Quilodran, Claudia Andrea, et al. “A Path to Peace: A Comparative Study of Practitioners’ Views of Juvenile Restorative Justice in Chile, England, Italy, and Sweden.” *International Social Work*, vol. 62, no. 1, 2019, p. 256. *Sage Publications*, doi:10.1177/0020872817725136.

²²¹ Reyes-Quilodran et al., p. 257.

developed by an Expert Group.”²²² A few years later, in 2005, the Eleventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders re-emphasized the value of restorative justice through encouraging Member States to “recognize the importance of further developing restorative justice policies, procedures and programmes that include alternatives to prosecution.”²²³ The declarations from these UN groups as well as the *Handbook on Restorative justice programmes* further indicates a growing international movement towards replacing—or at least incorporating—retributive justice with restorative justice.

Restorative justice continues to be a growing movement today with a significant impact on juvenile justice systems globally. However, what appeared to be a movement mostly in the developed world has now expanded to the developing world. For example, the practice of victim-offender mediation for children has been documented in Indonesian courts, where the practice’s approach of incorporating “indigenous cultures,” and its compatibility with Islamic teachings has garnered support.²²⁴ Within the developing world, restorative justice tends to be “applied through traditional practices and customary law,” a move which can “serve to strengthen the capacity of the existing justice system.”²²⁵

Furthermore, in some countries, both developed and developing, practices of restorative justice have made their way into schools in the form of prevention and healing. Within the past decade, for instance, the rampant violence in Jamaica, as well as the high “level of violence against and among children” even in schools which are “increasingly becoming sites of violence and discipline issues,”²²⁶ prompted the implementation of restorative justice practices in Jamaican schools. Restorative justice circles serve as a vehicle through which teachers can “gain further insights into student activities outside of school and to hear from students who would not feel free to speak in the formal classroom setting.”²²⁷ The schools report that:

Restorative Justice fosters and allows participants to consider wider ESD [education for sustainable development] and GCED [global citizen education] values, such as justice,

²²² Dandurand et al., p. 2.

²²³ Dandurand et al., p. 2.

²²⁴ Abdul Syukur, Fatahillah, and Dale Margaret Bagshaw. "Victim-Offender Mediation with Youth Offenders in Indonesia." *Conflict Resolution Quarterly*, vol. 32, no. 4, Summer 2015, p. 389. *HeinOnline*, <https://heinonline-org.proxy.bc.edu/HOL/P?h=hein.journals/cfltrq32&i=389>.

²²⁵ Dandurand et al., p. 6.

²²⁶ Ferguson et al., 61.

²²⁷ Ferguson et al., 58.

equity, respect, and dignity. Circle members develop social skills and communication skills as they engage in dialogue, listening, negotiation, and more. The Circles also foster community connections; when one member of the school community suffers, all members suffer, thus emphasizing and enhancing compassion, empathy, and care.

This practice is still in its early stages; however, the schools expect that its continuation will “minimize violence and discipline issues among school students, as all school stakeholders, including students, learn new ways of working with one another.”²²⁸

Restorative justice in schools is not confined to Jamaica; many other nations internationally have chosen to implement various practices of restorative justice in their own schools, beginning in Australia in the 1990s. This move to restorative justice is particularly useful in countries like the United States, where overly punitive measures in schools have led to a stark increase in incarcerated children. Some schools in the United States, therefore, use restorative justice as a means through which “to address the far-reaching negative impacts of punitive discipline policies.” Research indicates that these harsh measures both “deprive students of educational opportunities...fail to make schools safer places” and increase the chances that the offending student will have “future disciplinary problems” and “contact with the juvenile justice system.” Over the past two decades, restorative justice practices have grown exponentially in United States schools.²²⁹

Generally, school-based restorative justice practices contribute to the greater practice of juvenile justice that occurs beyond the justice system itself. Restorative justice in schools appears to be more easily exercised and provides a unique microcosm of the greater practice. In line with the practice as a whole, school-based restorative justice uses the models of “conferences, mediations, and circles” to mend relationships between members of the school community: administrative members, staff, students, teachers, and the greater community itself. The practice serves the purpose of reintegrating students into the broader school community rather than “removing the student and increasing the potential for separation, resentment, and recidivism.” Evaluation on the impact of restorative justice practices in schools shows that the practice has

²²⁸ Ferguson et al., 61.

²²⁹ González, Thalia. "Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline." *Journal of Law and Education*, vol. 41, no. 2, 2012, pp. 282-283. *ProQuest*, <https://proxy.bc.edu/login?url=https%3A%2F%2Fsearch.proquest.com%2Fdocview%2F1008167526%3Faccountid%3D9673>.

yielded many positive results in terms of reducing suspension and expulsion rates, a fact which can be translated into a reduction in youth incarceration rates. It is important to note, however, that the overall evidence on restorative justice practices is not as conclusive and still developing.

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As within any practice, restorative justice has shortfalls. Restorative justice experiences limitations in juvenile justice due to the fundamental aspects of the practice that fall short of addressing the complexities of child crime. A “critical reading” of restorative justice in the realm of juvenile justice suggests that the

‘inclusionary’ mechanisms of restoration may allow ‘State Parties’ to claim adherence to ‘best interests’ principles and compliance with the UNCRC, while simultaneously accommodating coercive, responsabilizing, and unaccountable interventions on the one hand and failing to disturb the hegemony of retribution and punishment, on the other.

Therefore, restorative justice may have unintentional negative consequences that undermine its benefits when applied to juvenile justice. Another critique of restorative justice is the emphasis on accepting responsibility for a crime and experiencing reintegrative shame as a result. In countries where the MACR is below the age in which children have formed their ability to determine right from wrong and act with discernment, forcing them to accept responsibility for a crime they commit without full agency is inherently problematic.²³¹ In this aspect, restorative justice is more applicable to and clearly effective for adults whose brains are more developed.

Finally, Goldston and Muncie point out the stagnant definitions of “victim” and “offender” in practices of restorative justice. This aspect of restorative justice is once again more applicable to adults, given the realities of CICL. Often CICL are victims themselves, experiencing trauma in their early lives that serves to inform their decisions and compromise their agency. Thus, forcing a child to accept the role as an ‘offender,’ while he/she are simultaneously a ‘victim,’ raises fundamental questions of the effectiveness of the restorative justice approach: Goldston asks, “how certain can we be that such processes will produce

²³⁰ González, p. 333.

²³¹ Goldson, Barry, and John Muncie. “Towards a Global ‘child Friendly’ Juvenile Justice?” *International Journal of Law, Crime and Justice*, vol. 40, no. 1, Elsevier Ltd, 2012, p. 59, doi:10.1016/j.ijlcj.2011.09.004.

‘reintegrative’ as distinct from ‘disintegrative’ (overtly harmful) ‘outcomes?’”²³² Thus, the benefits of restorative justice may not be as clear for CICL.

Other Trends

Beyond restorative justice, there is an absence of literature that unifies the world in terms of trends in juvenile justice systems. The most clear data that does exist on juvenile justice trends and trajectories exist mostly in the western world—in the United States and Europe. There is a significant lack of information on the developing world as a whole, other than a few small case studies on specific countries. The literature that does exist on the subject is extremely polarized, offering two distinct narratives in contrast with one another. On one side of the narrative on juvenile justice is bright and optimistic: it focuses on restorative justice and international treaties such as the UNCRC, arguing that the world is moving towards catering to the needs of children and protecting their futures. On the other side of the narrative is pessimism; according to Goldson and Muncie, this narrative

conceives a process whereby ‘hegemonic neoliberalism’ (Wacquant, 2009b: 5) is steadily giving rise to diversifying and intensifying ‘cultures of control’ (Garland, 2001) within which: the special status of childhood is diminishing; welfare protectionism is retreating; children are increasingly ‘responsibilised’ through processes of ‘adulteration’ and ‘adultification’; children’s human rights are systemically violated and the global population of child prisoners continues to grow.

However, Goldson and Muncie argue that, while both arguments are “plausible,” neither are adequate in capturing the true picture of juvenile justice today.²³³ Perhaps, these arguments both choose to see one side of a complex picture. In many countries, legislation is changing to address the needs of children; but in even more countries, the actual implementation of these policies does not reflect a commitment to the protection of CICL.

In line with the first narrative, restorative justice appears to be one aspect of a greater trend towards implementing a more humane juvenile justice system. What followed the harsh “tough on crime” movement in the eighties and nineties was a steady move towards rehumanizing the justice system so as to protect those who come in contact with it. This

²³² Goldson, et al., p. 59.

²³³ Goldston et al. p. 61.

movement is likely a result of the UNCRC and the restorative justice movement, as emerging evidence continues to reaffirm the idea that justice systems are doing more harm than good. The United States was at the forefront of the “tough-on-crime” era.

Beginning in the late 1980s, under the public eye within a context of increasing concern over child crime rates, many states across the country adjusted their legislation in hopes to reduce crime among children. In many states, one of the results of this trend was an expansion of the provisions for transferring children to adult court. This expansion led 38 states to adopt automatic transfer laws which dictate certain ages or offenses as grounds for automatically sending a child to adult court.²³⁴ In more recent decades, however, various states have begun to reverse this move, shifting policy to reduce the number of children that get sent to adult court.²³⁵ This example characterizes a general move towards reducing the negative impacts of the justice system on American children.

In general, in America youth crime has been decreasing noticeably since the height of it in the 1990s. Even so, the majority of the laws implemented during the period to “get-tough” on child crime still remain in practice, perpetuating a negative cycle for children—often marginalized children—in conflict with the law.²³⁶ But the efforts towards reducing the harms of the justice system in the United States are notable, and perhaps signify the beginning of a new era for juvenile justice in a country with a strikingly punitive justice system.

Some studies suggest that imprisonment rates and punitivity trends among children are decreasing in Europe. Indeed, in 1995, 25 per 100,000 children were incarcerated, a number which has since decreased to 16 per 100,000 in 2010.²³⁷ Interestingly, conviction rates appear to be increasing as a result of a trend towards handling youth deviance through the judicial system. The disparity between these two can be accounted for the fact that these convictions tend to not result in the incarceration of a child, suggesting the presence of “increasing parajudicial responses, such as community sanctions or treatment.”²³⁸ Therefore, Europe appears to be taking

²³⁴ Lane, Jodi. “Juvenile Delinquency and Justice Trends in the United States.” *The Handbook of Juvenile Delinquency and Juvenile Justice*, John Wiley & Sons, Inc., 2015, p. 4, doi:10.1002/9781118513217.ch2.

²³⁵ Lane, p. 4.

²³⁶ Lane, pp. 4-5.

²³⁷ Krohn, Marvin D. “Juvenile Delinquency and Juvenile Justice Trends in Europe.” *The Handbook of Juvenile Delinquency and Juvenile Justice*, John Wiley & Sons, Inc., 2015, p. 21, doi:10.1002/9781118513217.ch2.

²³⁸ Krohn, p. 25

into account the values of the UNCRC, such as using imprisonment only in the most extreme circumstances.

Concrete analysis of trends in other parts of the world are scarce. What does exist in most of the world is a shell of a trend that makes predicting the future nearly impossible. However, the general trend seems to be towards implementing, in some form, the articles of the Convention. The ways in which different countries do so, under different judicial systems and cultural contexts, are hardly uniform. In the next section of our paper, we evaluate one system—the Philippine Juvenile Justice System—and its approach to juvenile justice. The Philippines is one case study of a developing country that, despite having positive legislation for handling CICL, is failing in its implementation of a more humane juvenile justice system.

The Philippines

Historic Western Influences and Colonization

The Philippines' political development is an interesting case study due to its distinct history and culture. The Philippines never had the opportunity to develop “either a centralized government ruling over a large territory or a dominant culture” before the Spanish imposed colonial rule, with Spain establishing their first settlement in the province of Cebu in 1565. Soon after that, the Spanish converted a large percentage of Filipinos to Roman Catholicism, a practice which became—and remains today—the dominant religion in the country.²³⁹ The only regions that escaped Roman Catholic influences were those in the south—Mindinao and Sulu—who remained Muslim. Nevertheless, Catholicism proved “instrumental for the Spanish colonization of the islands,”²⁴⁰ and continues to be a major force in the lives of many Filipinos today.

The Philippines gained independence from Spain on June 12, 1898, only to be subject to American colonization from the years 1898-1946. During this time, the United States developed an Americanized education system that resulted in an increase in the rates of Filipinos who had a

²³⁹ Borlaza, Gregorio C., et al. “Philippines: The Spanish Period.” *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 24 Apr. 2020, www.britannica.com/place/Philippines/The-Spanish-period.

²⁴⁰ Rivera, Roberto E. N. “Philippine Catholicism as Disruptive Public Religion: A Sociological Analysis of Philippine Catholic Bishops' Statements, 1946 to 2000.” *Philippine Sociological Review*, vol. 58, Philippine Sociological Society, Inc., 2010, pp. 75–96.

formal education, and enforced English as the primary language of instruction. These two periods of colonization created a culture in the Philippines that integrates elements from both Western and indigenous forces.²⁴¹ Along with an Americanized school system and the strong presence of Catholicism—both in private and public life—the Philippines legal system “reflects a blend of the indigenous, Roman, and Anglo-American systems.”²⁴² Together, these periods of colonial rule created systems and structures that informed Filipino culture and societal structure.

Current Socioeconomic Situation

The influences of Spanish and American colonialism remain prevalent in the Philippines today. It is one of the most Catholic countries in the world—the only Christian country in Southeast Asia—with Roman Catholicism accounting for at least 83 percent of the population’s religious affiliation.²⁴³ As such, Catholicism strongly impacts the lives of many Filipinos, as well as the political climate in the Philippines.²⁴⁴ The main languages spoken in the Philippines are English and Tagalog, reflecting the history of United States colonialism.

The population in the Philippines is estimated at over 109 million people.²⁴⁵ Currently, the Philippines ranks 106th on the United Nations’ Human Development Index (HDI), with an index of 0.712—a statistic calculated based on a country’s life expectancy at birth, mean and expected years of schooling, and GNI per capita.²⁴⁶ Norway, which is ranked first, has a HDI of 0.954. The Philippine Statistics Authority study on multidimensional poverty—education, health and nutrition, employment, proper living conditions—in the Philippines found that Filipino families are the most deprived in education. Further, it reported that, in 2016 and 2017, “educational attainment consistently had the highest incidence deprivation among families.” In

²⁴¹ Maxwell, Sheila Royo. “A Focus on Familial Strain: Antisocial Behavior and Delinquency in Filipino Society.” *Sociological Inquiry*, vol. 71, no. 3, Blackwell Publishing Ltd, 2001, p. 270, doi:10.1111/j.1475-682X.2001.tb01113.x.

²⁴² Maxwell, p. 270.

²⁴³ “People and Religion.” *Department of Tourism-Philippines*, The Philippine Government, 2020, www.tourism.gov.ph/people_religion.aspx.

²⁴⁴ Bouma, Gary D., et al. “Philippines.” *Religious Diversity in Southeast Asia and the Pacific: National Case Studies*

²⁴⁵ “Philippines Population (LIVE).” *Worldometer*, www.worldometers.info/world-population/philippines-population/. Date accessed: 27 April 2019.

²⁴⁶ “About Human Development.” *Human Development Reports*, United Nations Development Programme, hdr.undp.org/en/humandev.

2016, incidence of educational attainment deprivation was at 59.3%, decreasing to 49.4% in 2017, meaning that “6 out of 10 families had at least one family member aged 18 years old and above who did not complete basic education in 2016 and 5 out of 10 in 2017.”²⁴⁷

In recent decades, jobs in urban areas—such as Manila, the capital of the Philippines—have drawn many citizens into cities. Indeed, Metro Manila’s population increased from 2.6 million in the 1970s to 12.8 million in 2015 and continues to grow today.²⁴⁸ However, this increase in urban population outpaced expansions in relevant job industries, such as the manufacturing and service sectors, resulting in high levels of unemployment, underemployment, and extreme poverty.²⁴⁹ The United Nations Human Development Report (HDR) estimates that about 23.3% of Filipinos fall under the label of the “working poor,” and about 5.8% experience multidimensional poverty.²⁵⁰ However, the Fourth Quarter 2019 Social Weather Stations (SWS) survey reported that 54% of Filipino families consider themselves poor.²⁵¹ The HDR is a comparative analysis between countries of the world; therefore, the SWS report is likely a better indicator of poverty in the Philippines due to subjective cultural understanding within the Filipino context.

The conditions that low-income families live in, especially those in urban areas, tend to be unhealthy and dangerous. This reality can be attributed to a lack of affordable housing for poor citizens, and the failure of the Philippine government to implement meaningful housing policies or urban planning.²⁵² As a result, many citizens live in slum areas,

characterized by makeshift, crude and unsecure shanties, overcrowding, visibly depressed and dilapidated surroundings, lack of roads and utilities, and other forms of physical disorder...poor access to social services like safe water, electric and mail utilities, health

²⁴⁷ “Filipino Families Are Most Deprived in Education.” Philippine Statistics Authority, Republic Of The Philippines, 14 Nov. 2018, psa.gov.ph/poverty-press-releases/nid/136930.

²⁴⁸ “Population of the National Capital Region (Based on the 2015 Census of Population).” *Philippine Statistics Authority*, The Philippine Government, 31 May 2016, psa.gov.ph/content/population-national-capital-region-based-2015-census-population-0.

²⁴⁹ Narag, Raymund, and Maxwell, Sheila. *Mitigating Crime in a Slum Community: Understanding the Role of Social Structures, Social Processes, and Community Culture in a Neighborhood Intervention Program*. Vol. 74, no. 08, 2014, <http://search.proquest.com/docview/1520314637/>.

²⁵⁰ “Human Development Reports: Philippines.”

²⁵¹ Social Weather Stations. “Fourth Quarter 2019 Social Weather Survey: Self-Rated Poverty Rises by 12 Points to 5-Year-High 54%.” Social Weather Stations, Social Weather Stations, 23 Jan. 2020, 2:04 PM, www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190710213339.

²⁵² Narag, p. 27.

and childcare, sanitation and garbage collection, education, transportation and other basic necessities.

These conditions lead to a heightened risk of disease for all residents as well as “malnutrition, stunted growth and delayed psychosocial developments among infants and children.”²⁵³

Poor living conditions also breed antisocial behavior. In the absence of employment opportunities, many residents turn to illegal activity as a source of income or to pass the time. For example, residents may

...“work” as kobradores or collectors of bets in illegal gambling called jueteng or maintain home-based pasugalan (another form of gambling based on cards)...Other slum residents are involved in “professional squatting” where they buyout other residents off their shanties and rent this out to newly arrived squatters. These “professional squatters” also illegally tap electrical, telephone and television cable wires and share these with other residents for a fee...Some residents become part of an illegal drug distribution by working as kabayo or mules in shabu (methamphetamine hydrochloride) businesses...Some residents make use of the unnumbered homes and narrow alleys as a protective cover when they engage in “snatching” (theft/robbery) and other street crimes.²⁵⁴

Moreover, children who grow up in these conditions of overcrowding and low economic opportunity have a higher chance of dropping out of school. This issue is exacerbated by the fact that many adults and police in the community are less able to supervise the actions of youths, thereby allowing other forces—such as older adolescents—to socialize youths and encourage antisocial behavior.²⁵⁵ One study found that many unemployed youths, or *tambay*, in slums and other impoverished areas were often unsupervised, and even “encouraged to [not] go to school due to lack of resources” in some cases. Of those who did attend school, some “went to school with half-empty stomachs which compromised their performance.”²⁵⁶ Thus, the conditions that children in impoverished areas endure compromise their agency and increase their chances of delinquent behavior. This compromised agency is particularly problematic in poor communities where drug use and distribution are high, especially against the backdrop of increasingly forceful government efforts to eradicate drugs.

²⁵³ Narag, p. 30.

²⁵⁴ Narag, p. 32.

²⁵⁵ Narag, p. 76.

²⁵⁶ Narag, pp. 97-98.

President Duterte's Anti-Drug Campaign

On June 30, 2016, Rodrigo Duterte became the 16th President of the Philippines. One of his first initiatives, and perhaps his most notable, was his establishment of an anti-drug campaign. At the time, according to the Dangerous Drugs Board in the Philippines, there were “1.8 million...drug users in the Philippines, and 4.8 million Filipinos [had reported] having used illegal drugs at least once in their lives.”²⁵⁷ Committed to ending the country's drug problem, Duterte began a war on drugs that has resulted in thousands of deaths, many of which occur outside the bounds of the law. These extra-judicial killings most significantly impact the poor: according to a study conducted through Ateneo de Manila University's School of Government, around 47% of the victims are “alleged by the police to be small-time drug dealers,” and 40% of the killings occur in areas with higher rates of poverty, such as the City of Manila and Quezon City.²⁵⁸

President Duterte's anti-drug campaign has raised a great deal of concern among human rights advocacy groups, including Human Rights Watch. These groups argue that Duterte's method for eradicating the Philippines' drug problem is a blatant human rights violation, unfairly targeting the poor, and murdering thousands of people. The narrative that these groups use contrasts with that of Philippine officials, such as the Philippine National Police (PNP). For example, Human Rights Watch asserts that the government “either directly or tacitly” sanctions many of the killings, a stance that government officials strongly deny.²⁵⁹

Whether or not the government is involved in or responsible for these killings greatly impacts the severity of the situation. As the Philippine Drug Enforcement Agency reports, between July 1, 2016 and September 30, 2018, about 4,948 “suspected drug users and dealers died during police operations.” This number, however, does not account for the extrajudicial

²⁵⁷ Simbulan, Nymia, et al. “The Manila Declaration on the Drug Problem in the Philippines.” *Annals of Global Health*, vol. 85, no. 1, 5 Mar. 2019, doi:10.5334/aogh.28.

²⁵⁸ *The Philippine Government's Anti-Drug Campaign: Emerging Evidence and Data*. Ateneo School of Government, 2018, *The Philippine Government's Anti-Drug Campaign: Emerging Evidence and Data*, <https://drive.google.com/file/d/19v90c5CNH5HNfFd5CSWFuUeGj9BobMmA/view>.

²⁵⁹ Billing, Lynzy, and Regine Cabato. “This Is Manila.” *The Washington Post*, 2019, https://www.washingtonpost.com/graphics/2019/world/philippines-manila-body/?utm_term=.d9e4e80c6ab4.

killings, a death toll that the Philippines National Police estimates to be as high as 22,983 since the start of Duterte's anti-drug campaign.²⁶⁰

These deaths occur at the hands of masked gunmen, many of whom are said to work closely with the police, though the police blame the deaths on rival gangs and vigilante groups.²⁶¹ The police classify these deaths as "homicides under investigation," and, reportedly, rarely ever bring the cases to prosecutors. Moreover, those who are responsible for some of the deaths use them as a warning sign to other drug users and dealers. Corpses are sometimes found in bodies of water with "bound limbs, taped faces, [and] cardboard signs reading 'I am a drug addict.'" This reality, paired with the anti-drug rhetoric of President Duterte, has created a situation in which—according to Human Rights Watch researcher Carlos Conde—extrajudicial killings are enabled.²⁶²

A frequent tactic utilized by the president is fear. Among many statements, Duterte has likened the three million drug users in the Philippines to victims of the holocaust, claiming he'd happily "slaughter them"; threatened to "dump" drug users and pushers into the Manila Bay in order to "fatten all the fish there"; and questioned whether "the lives of 10 criminals really matter."²⁶³ Moreover, Duterte employs fear tactics through creating a narrative about drug use in the Philippines as inherently criminal, and thus influences the perspectives of average Filipinos. In doing so, he is able to justify the dramatic actions he takes to eradicate crime. Polomarkakis argues that Duterte's drug war provides yet another example of government abuse towards its citizens through the lens of eradicating crime. He says,

In times of welfare state crisis, a new narrative was needed, which was provided by the notions of crime and fear that accompanies it, two powerful notions in justifying state intervention and letting a state authority to govern (Shiner, 2013). For those in power, law enforcements can be proven a valuable ally, adding some covert benefits into the game. These relate to the reinforcement of state power via crime and fear narratives of policy elites (Simon, 2008); the ancient saying of divide and conquer was transformed to terrify

²⁶⁰ Roth, Kenneth. "World Report 2019: Rights Trends in Philippines." Human Rights Watch, Human Rights Watch, 22 Jan. 2019, www.hrw.org/world-report/2019/country-chapters/philippines#1ff4dc.

²⁶¹ Roth, Kenneth. "World Report 2019: Rights Trends in Philippines."

²⁶² Billing, Lynzy, and Regine Cabato. "This Is Manila."

²⁶³ "Philippines President Rodrigo Duterte in Quotes." *BBC News*, BBC, 30 Sept. 2016, www.bbc.com/news/world-asia-36251094.

and govern. The fearsome rhetoric of the “war on drugs” has enabled further state intervention, to the point of coercion, in people’s everyday lives.²⁶⁴

These fear tactics work hand in hand. A SWS poll conducted in 2018 found that 78% of adult Filipinos “are worried that they, or anyone they know, will be a victim of extrajudicial killings.”

²⁶⁵ In 2019, a SWS survey concluded that 76% of adult Filipinos believe there have been “many human rights abuses” in Duterte’s anti-drug campaign. Even so, the president seems to garner a great deal of support, allowing him to continue his campaign.

Indeed, a recent report by the SWS rated the net satisfaction among Filipino citizens with Duterte’s presidency as “very good.” In June 2019, about “80% of adult Filipinos [were] satisfied, 9% undecided, and 12% dissatisfied with the performance of Rodrigo R. Duterte as President.”²⁶⁶ These stats perhaps offer some insight into the values and priorities of Filipino citizens. For nearly 80% of the country to be satisfied with a president who has attracted the attention of many advocacy groups for violating human rights indicates a prioritization of values or at least a willingness to overlook human rights violations. It is unclear exactly why Filipinos remain in support of Duterte, but various Filipino scholars have offered their opinions. For example, in an opinion piece for the *Philippine Daily Inquirer*, Filipino sociologist, journalist, and public intellectual Randy David wrote:

...what is perhaps most astonishing to the liberal sensibility is that the Filipino public’s response to these killings has generally been one of awe, rather than of outrage. That is what sets them apart from other forms of murder, and even from the classic cases of extrajudicial killings. In the latter, the public typically calls for justice in the name of the victims. In the case of the drug killings, the call for justice, if there is any at all, is drowned out by an expressed readiness to believe that these executions are in fact a form of justice. The reasoning is that drug users and pushers destroy many lives, including their own. Therefore, they don’t deserve to live.²⁶⁷

²⁶⁴ Alexandris Polomarkakis, Konstantinos. “Drug Law Enforcement Revisited: The “War” Against the War on Drugs.” *Journal of Drug Issues*, vol. 47, no. 3, SAGE Publications, 2017, pp. 398, doi:10.1177/0022042617697017.

²⁶⁵ Social Weather Stations. “Fourth Quarter 2018 Social Weather Survey: 78% of Pinoys Worry about Becoming Victims of Extrajudicial Killings or EJK.” Social Weather Stations, Social Weather Stations, 1 Mar. 2019, 8:16:52 PM, www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190301201652.

²⁶⁶ Social Weather Stations. “Social Weather Stations: Second Quarter 2019 Social Weather Survey: Pres. Duterte's Net Satisfaction Rating at New Record-High.” Social Weather Stations, Social Weather Stations, 8 July. 2019 2:28 PM, tcsyscode=ART-20190708142248.

²⁶⁷ David, Randy. “The War on Reason.” *Philippine Daily Inquirer*, 7 Jan. 2018, <https://opinion.inquirer.net/110072/the-war-on-reason>.

According to Vladymir Joseph Licudine, the SWS Deputy Director for Survey Design, Analysis, and Training, support for Duterte continues despite his anti-drug campaign because Filipinos believe that Duterte is succeeding in eradicating the drug trade and drug addiction in the country. He elaborated, “[Filipinos] don’t think holistically, in my opinion. We can compartmentalize things,” thereby suggesting that Filipinos overlook human rights violations in the hopes that Duterte’s campaign will successfully extirpate the country’s drug problem.²⁶⁸

These reports indicate that Filipinos view drug use through a lens of criminality rather than addiction or mental health. Their response to Duterte’s anti-drug campaign suggests that many Filipinos believe that retributive approaches to criminality are necessary and effective. This mentality among the general populace prevents a collective response against Duterte’s human rights violations, leaving such to scholars and human rights advocacy groups. Thus, this mentality likely enables—if not exacerbates—Duterte’s brutal campaign.

Though drug use has taken the forefront, Duterte’s ambitions stretch to eradicating all crime. Duterte claims that there is a rise in crime as a result of the JJWA, due to its restorative principles that emphasize rehabilitating over punishing children. In his view, the JJWA created “five or six generations of people who commit crimes,” arguing that this result is what makes it difficult to “stop the drug problem now.”²⁶⁹ As a result of this rhetoric, the JJWA has become a heavily debated piece of legislation in recent years, especially with regard to the MACR. Yet many of the issues with the JJWA emerge from the government’s failure to implement it, rather than any inherent problems within its legislation. In the next few sections, we attempt to paint a picture of the law itself, the debate over it, its inherent problems, and potential solutions. Though the law is contentious today, many in the Philippines and the international community viewed its passage as a fundamental win for children in the Philippines, as well as the UNCRC.

History of Juvenile Justice Legislation

Before the passage of the JJWA, the 1974 Child and Youth Welfare Code (Presidential

²⁶⁸ Talabong, Rambo. “Why Are Filipinos Supporting Duterte's Drug War?” *Rappler News*, 14 Oct. 2017, <https://www.rappler.com/newsbreak/iq/185271-majority-filipinos-support-duterte-drug-war>.

²⁶⁹ Sabillo, Kristine. “Duterte blames Pangilinan for Juvenile Justice Act, Rise of ‘Criminal Minds.’” *Inquirer*, 3 Apr. 2017, <https://newsinfo.inquirer.net/886037/duterte-blames-pangilinan-for-juvenile-justice-act-rise-of-criminal-minds>

Decree No.603) determined juvenile justice in the Philippines. Proceeding the UNCRC by 25 years, the 1974 Child and Youth Welfare Code outlined the responsibilities of Filipino institutions to promote the welfare of Filipino children. Within just 15 articles, the Child and Youth Welfare Code set parameters for managing youth offenders from the time of apprehension through the termination of the case. This Code set the MACR at nine years old, stating,

Children nine years of age or under at the time of the commission of the offense shall be exempt from criminal liability and shall be committed to the...[guardian] at the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under 15 years of age at the time of the commission of the offense unless he acted with discernment.²⁷⁰

Further, as explained in the 1993 CRC report on the Philippines, the Codes mandated examination of the youth upon arrest; prohibited the youth from being detained with adult offenders; and encouraged release on recognizance to the custody of parents. The Codes generally in most cases promoted the suspension of sentence and commitment of youth to the Department of Social Welfare and Development (DSWD) or a rehabilitation center.²⁷¹ In the same report, the Committee expressed that “despite the existence of laws in favor of youth offenders, a number of difficulties preclude their full implementation. For example, there are still only a few separate detention centers or cells for youth offenders.” Limited space in facilities was “aggravated by the slow resolution of cases by the courts” which “delayed the rehabilitation process through either the child’s release on recognizance, or the suspended sentence.” As a response, the UN committee called for the Philippines to establish a comprehensive juvenile justice system with restored juvenile and family courts, increased coordination with the Philippine justice system, and intensified community programs for rehabilitation and the prevention of delinquency by 1997.²⁷²

In response, to uphold the implementation of the UNCRC, the Family Courts Act (R.A. 8369) was ratified in 1997. This law mandated the establishment of family courts in every

²⁷⁰ Philippines, Executive Office of the President Ferdinand E. Marcos. Executive Order 603: *The Child Youth and Welfare Code*. 10 Dec. 1974.

²⁷¹ UNCRC, *Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: initial report of States parties due in 1992: Philippines*, CRC/C/3/Add.23 (Nov. 3, 1993)

²⁷² UNCRC, *Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: initial report of States parties due in 1992: Philippines*, CRC/C/3/Add.23 (Mar. 20, 2009)

province and city throughout the country and granted them “original jurisdiction over child and family cases.” The judges in these courts are specially equipped to handle cases involving CICL and are responsible for promulgating a “sentence and ascertain[ing] any civil liability which the accused may have incurred.”²⁷³ A CICL’s sentence is automatically suspended without the need for “application by the accused and contingent to rehabilitation.”

Though the UN consistently reviewed juvenile justice practices in the Philippines, the actual implementation of the UNCRC, Beijing Rules, and Riyadh Guidelines, as well as the Child and Youth Welfare Code, was severely lacking. For example, CICL, then known as “youth offenders,” were frequently placed in overcrowded adult jails. From 1995 to 2000, 52,576 children were “deprived of their liberty in detention placement, under custodial setting through suspended sentence.”²⁷⁴ Records from 2005 reveal that approximately 60-70% of delinquent acts were minor and victimless crimes. A lack of resources resulted in long periods of pre-trial waiting and the detainment of children in facilities for far longer than the offense merited. For example, “a 14-year old boy from Quezon Province who was arrested for stealing P100 [\$2] worth of food...waited over six months for a trial.” The system incarcerated children as a first resort and it left disastrous impacts on the lives of impoverished CICL as children who experience incarceration “may carry the trauma for the rest of [their lives].”²⁷⁵

Moreover, the unstructured nature of these prisons allowed for free interaction between CICL and adult criminals, making these jails “schools of crime.” Unable to compete with older and stronger inmates, CICL struggled to acquire limited resources, such as food and sleeping space. Further, these institutions left children vulnerable to abuse and gang recruitment. The toxic jail environment caused CICL to emotionally mature with the potent influences of criminality, detrimentally affecting their moral development and resulting in the cultivation of criminal attributes. Indeed, the CICL became indoctrinated into a culture of criminality that made it difficult for them to reintegrate back into society.²⁷⁶ Viewing these atrocities, in 2004,

²⁷³ Philippines. Congress. Juvenile Justice and Welfare Act of 2006. *Congress.gov.ph*, https://lawphil.net/statutes/repacts/ra2006/ra_9344_2006.html. 13th Congress, 2nd session, Republic Act 9344, passed 25 Jul. 2005.

²⁷⁴ UNCRC, *UN Committee on the Rights of the Child: Second Periodic Reports of States Parties Due in 1997*, Philippines, CRC/C/65/Add.31 (Nov. 5 2004)

²⁷⁵ Philippines, Senate, “Journal No. 28.” *Senate Journal*, 2005, pp. 309–321.

²⁷⁶ Carolino, Ditsi, director. *Bunso*. 2005.

UNICEF argued that “creating a juvenile justice system that meets the special needs of CICL is one of the Philippines’ unfinished pieces of business as a signatory of the Conventions of the Rights of the Child.”²⁷⁷ Thus, an international pressure on the Filipino government to promote the rights of its children in line with the UNCRC became more pronounced.

Senate and House Juvenile Justice Reform Bills

In 1997, NGOs and key juvenile justice signatories drafted a law to reform the juvenile justice system and proposed it during the 12th Congress as an organized push to pressure the Philippine government into passing laws that were in line with the UNCRC. The Philippine Council for the Welfare of Children (CWC), as well as the DSWD, actively pursued a legislative agenda to implement the UNCRC. These agencies worked with Unicef, ILO, Philippine Action on Youthful Offenders, Save the Children, Child Child Rights Center of the Philippine, CHR, Ateneo Human Rights Center, Consuelo Alger Foundation, a Cebu-based child rights advocacy group, and other NGOs to draft and advocate for the passage of juvenile justice reform.²⁷⁸ Yet the Philippine government never viewed the Bill proposed in the 12th Congress as urgent. Therefore, in 2005, the “Comprehensive Juvenile Justice System and Delinquency Prevention Programme ha[d] been pending in Congress since 1999.”²⁷⁹

In July 2004, Francis Pangilinan filed Senate Bill 1402, titled “Juvenile Justice and Delinquency Prevention Act of 2004” during the 13th Congress. Many child rights activists considered this bill long overdue. Still, it was the media and international pressures that evoked a public sense of urgency to pass this comprehensive policy reform. Specifically, a series of searing media documentation of the brutal conditions children suffered through in adult jails increased pressure to act. One particularly impactful film was *Bunso*, a documentary sponsored by UNICEF and the Consuelo Foundation. *Bunso* was released in 2004, after four years of filming, and was used as an advocacy tool to build support for juvenile justice reform. *Bunso* follows three boys’ journey of navigating the intricacies of life as a youth in the overcrowded

²⁷⁷ Nwankwo, Peter O. *Criminology and Criminal Justice Systems of the World: A Comparative Perspective*. Trafford On Demand Pub, 2011.

²⁷⁸ Sedfrey, Candelaria. Interview. Conducted by Audrey Mullen and Halina Tittmann, 5 May 2020.

²⁷⁹ UNCRC, *Consideration of reports submitted by States parties under article 44 of the Convention Convention on the Rights of the Child: concluding observations: Philippines*, CRC/C/15/ADD.259 (Sept. 21st 2005)

Cebu Provincial Detention and Rehabilitation Center. The film directly documents how jails become “an arena of struggle where the children who are less strong end up getting overpowered, hence suffering immensely far more than what they actually deserve or are capable of enduring.” *Bunso* is a visual depiction of the disastrous impacts incarceration has on the young.²⁸⁰ This powerful documentary elevated the conversation surrounding juvenile justice from an overlooked issue that predominantly impacted the poor to a nationwide crisis.

The film was played before the Senate on October 5th, 2005. In its conclusions, Senator Pangilinan delivered an impassioned speech utilizing the raw documentation in *Bunso* to evoke a sense of empathy and passion, inspiring a call to action for lawmakers. Pangilinan eloquently spoke,

how many more stories similar to those in “Bunso” must be shown before we respond?... Whenever a minor commits an act of wrongdoing, it should be considered as an indication that his environment failed to provide him the attention and guidance he needs to become a productive and effective member of society.²⁸¹

A CNN report prepared by British ITV, called “Horrific Philippine Prison Conditions” aired on August 9th, 2005, further strengthening feelings of empathy and the push for change. The reporter, Chris Rogers described what he documented as

prison cell after prison cell of broken lives and broken promises. We found young faces still behind bars hungry, exhausted, and terrified. The children were staked like farm animals onto shelves three stories high. There wasn’t enough room to stand up, and even sitting down, they had to crouch.²⁸²

This report created international outrage and pressure on unpopular President Macapagal-Arroyo. By September 19, 2005, a month after the release of the CNN report, Macapagal-Arroyo certified the Senate Bill 1402 for its immediate enactment.

The initial proposed bill defined the MACR as 12 years old, an age determined to be consistent with international standards. At the time of the bill's proposal, the global average MACR was 12.5 years old. The goal of the bill was to come into compliance with the standards of the region. In Malaysia, the MACR was 10, in Singapore it was seven, and in Thailand it was

²⁸⁰ Paculdar, Agnes A. “Bunso (The Youngest).” *Kasarinlan Philippine Journal of Third World Studies*, vol. 19, no. 1, 2004, pp. 250–254., <https://journals.upd.edu.ph/index.php/kasarinlan/issue/view/121>. Accessed 11 May 2020.

²⁸¹ Philippines, Senate, “Journal No. 28.” *Journal No. 28*, 2005, pp. 309–321.

²⁸² Smith, Danny. *Shouting Into the Silence: One Man's Fight for the World's Forgotten*. Lion Books, 2013. pp 191

12.²⁸³ However, a study conducted in 1998 by the *Pamantasan ng Lungsod ng Maynila* surveyed 1,368 children from ages seven to 15 and concluded that Filipino children develop the ability to discern at 15 years old.²⁸⁴

The Philippine Action for Youth Offenders (PAYO) conducted a similar study, but targeted “out of school” Filipino youth. This study found the age of discernment to be 18 years old.²⁸⁵ During the interpellation period, the MACR was moved up to 15 to align with the recommendation of the *Pamantasan ng Lungsod ng Maynila* and PAYO study. The MACR was also increased as a compromise with vocal child advocate, Senator Defensor Santiago, who aimed to increase the MACR to 18. She also pushed for other reforms to make the Philippine juvenile justice system more “welfare- and human rights oriented” as well as “restorative and protective.”²⁸⁶ The draft committee had been in a bind on “whether to accept the international standard or put in a higher age as a result of the local study.” However, eventually, Senator Pangilinan stated that the PAYO and *Pamantasan ng Lungsod ng Maynila* studies were the “basis for setting the age of criminal liability.”²⁸⁷ Therefore, the Committee amended the MACR, raising it from 12 to 15 years old for the final version of the bill, a bill which was passed with a unanimous vote.

Juan Edgardo Angara filed a Congress Bill, “Child Protection Through a Comprehensive Juvenile Justice System Act of 2005,” on February 1st, 2006. Macapagal-Arroyo wrote to the Speaker of the House on February 6th, 2006,

I hereby certify to the necessity of the immediate enactment of House Bill No. 5065... to urgently address youth delinquency, a worsening social problem that threatens the future of our nation, by instituting a paradigm shift in dealing with youth offenders accenting restorative justice consistent with the UN Convention on the Rights of the Child.²⁸⁸

The Congress bill also initially defined the MACR as 12, but at the third reading of the bill, representative Datumangong proposed to raise it to 15, an amendment which was later approved.

²⁸³Philippines, Senate, “Journal No. 28.” *Senate Journal*, 2005, pp. 309–321.

²⁸⁴Philippines, Senate, “Journal No. 29.” *Senate Journal*, 2005, pp. 323–341.

²⁸⁵Philippine Action for Youth Offenders. *Position Paper of the Philippine Action for Youth Offenders on Senate Resolution 28*. Philippines: Manila, 2008.

²⁸⁶Philippines, Senate, “Journal No. 35.” *Senate Journal*, 2005, pp. 420–431.

²⁸⁷ Philippines, Senate, “Journal No. 39.” *Senate Journal*, 2005, pp. 463–460.

²⁸⁸ Macapagal-Arroyo, Gloria. “To the Committee on Rules” Received by Jose C. De Venecia Jr., 6 February 2006.

²⁸⁹ The declaration of the urgency of the bill prompted a rapid approval within the Congress with a vote on February 21st, 2006, that passed with unanimous support.

The bill went to the conference committee on March 22nd, 2006. The House and Senate representatives utilized the Senate bill as the working draft to amend throughout the bicameral proceedings. Representatives renamed the legislation as the “Juvenile Justice and Welfare Act of 2006,” or Republic Act No. 9344, and determined the scope of the law covers “different stages involving children at risk and children in conflict with the law, from prevention to rehabilitation and reintegration.”²⁹⁰ The conference committee only lasted a day as the Senate and House bills were very similar in content and the Senate and House approved the consolidated version of the law on March 22nd.

The most significant difference between the Senate and House bills was which department was tasked with implementing the law. In the Congress bill, the OJJDP was placed under the jurisdiction of the Department of Justice (DOJ), while the Senate placed it under the DSWD. Originally, the Senate placed the OJJDP under the DOJ as well, but shifted it to the DSWD after hearing the words of Senator Miriam Defensor Santiago. She stated that a “system is needed where the main concern is the child’s welfare and best interest, and not criminal justice,” and contended that to create this type of system, “paradigm shift should be made from criminal justice to child welfare and restorative justice.”²⁹¹ The conference committee reconciled these two ideas through creating a Juvenile Justice and Welfare Council (JJWC) to replace the OJJDP. As a compromise, the JJWC was formed and attached to the DOJ but was chaired by an undersecretary of the DSWD. However, the division of responsibility between the DOJ and DSWD created issues in collaboration and perpetuated serious structural issues with the implementation of the JJWA that we will address later in this paper.

President Macapagal-Arroyo approved the JJWA on April 28th, 2006. The JJWA had immediate effects, leading to the release of hundreds of CICL. Specifically, children under the age of 15 were released from jail, resulting in the immediate reduction of children in detention centers by “50 percent from more than 2,000 to just around 1,000.” Moreover, the number of

²⁸⁹ Philippines, Congress, “Record of Plenary Proceedings No. 50.” *Congress Journal*, 2006, pp.636-8[49](#)

²⁹⁰ Philippines, Senate, “Journal No. 76.” *Senate Journal*, 2006, pp. 890-9[00](#)

²⁹¹ Philippines, Senate, “Journal No. 35.” *Senate Journal*, 2005, pp. 420-43[1](#)

CICL decreased “from 5,297 in December 2006 to 1,392 in June 2007.”²⁹² Yet interestingly, and perhaps unsurprisingly, an inventory done by the JJWC revealed that children were still in detention over a year after the law’s enactment. In response, President Macapagal-Arroyo released Presidential Decree No. 633 on July 16th, 2007, that effectively called for the release of CICL who remained incarcerated. The Decree stated that if the child is detained on the judgment of a court or pending trial, the DOJ must “file immediately the necessary Petition to the court for the release of the child” and upon this petition the “warden of the detention facility shall release the child within forty-eight hours.”²⁹³

The long overdue passage of the JJWA was incredibly significant and marked a major feat in aligning the Philippines juvenile justice system with international doctrine. The JJWA established a holistic rehabilitation-based system dedicated to uplifting CICL. Ultimately, the law comprehensively addresses the nuances of the juvenile justice system and attempts to connect the Philippines’ national institutions with international standards.

Juvenile Justice and Welfare Act Overview

The JJWA is rooted in rehabilitation and principles of restorative justice; therefore, the central goal of the law is to create a juvenile justice system that maintains the best interest of the child, in accordance with international standards of child protection. The DOJ viewed the JJWA as an opportunity to put the Philippines in full compliance with the UNCRC—particularly Articles 37 and 40—as well as the Beijing Rules, Riyadh Guidelines, Havana Guidelines, Vienna Guidelines, and UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime.²⁹⁴ The law aims for CICL and children at risk (CAR) to be treated “in a manner

²⁹²UNCRC, *Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: initial report of States parties due in 2007: Philippines*, CRC/C/PHL/3-4 (Mar. 20, 2009)

²⁹³ Philippines, Executive Office of the President Gloria Macapagal- Arroyo. Executive order 663: *Providing for the Immediate Release of Detained Children in Conflict With the Law (CICL) as Declared Under R.A. 9344, Entitled “Juvenile Justice and Welfare Act of 2006*. 16 July 2007.

²⁹⁴ Philippines, Department of Justice. *Annual Report CY 2007*, June 30, 2007. The Planning Staff Management Services Office 2007

consistent with the promotion of the child's sense of dignity and worth,” and to do this effectively, the child’s age must be taken into account.²⁹⁵

The JJWA specifies unique provisions for CAR, whom it defines as “a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances.” A CAR could be a child who faces abuse, exploitation, or abandonment, as well as children who are out of school, in a dysfunctional family, living on the street, in a gang, living in a community with high levels of drug abuse or criminality, or living in an armed conflict. Moreover, Committing a status offense—an offense that would not be penalized if committed by an adult— would also identify a child as “at risk.” Similarly, a child is considered a CAR for engaging in vagrancy, prostitution, or inhalant use. Without proper intervention, a CAR is likely to become a CICL. The JJWA defines a CICL as a child “who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.” The law provides for a system that handles CICL and CAR through providing child appropriate proceedings, including programs and services for “prevention, diversion, rehabilitation, reintegration, and aftercare.”

The second chapter of the law defines the principles of administering juvenile justice in the Philippines. The rights of CICL align with those specified in the Beijing Rules, UNCRC, and Havana Rules, including the prohibition of torture, capital punishment, life in prison without parole, and arbitrary detention under no uncertain terms. Further, the JJWA bans the practice of detaining children with adults: “a child deprived of liberty shall be separated from adult offenders at all times.” This definitive language is a response to the international outcry that the CNN report and *Bunso* documentary of the abysmal conditions children face in adult prisons evoked. Additionally, the law explicitly states that a CICL has the right to diversion (if qualified), to privacy, to probation (if qualified), to be free from liability for perjury, to detention as a last resort, and to automatic suspension of sentence. Consistent with restorative justice practices, the “child has the right to be imposed a judgment in proportion to the gravity of the

²⁹⁵ Philippines. Congress. Juvenile Justice and Welfare Act of 2006. *Congress.gov.ph*, https://lawphil.net/statutes/repacts/ra2006/ra_9344_2006.html. 13th Congress, 2nd session, Republic Act 9344, passed 25 Jul. 2005.

offense where his/her/their best interest, the rights of the victim and the needs of society are all taken into consideration by the court.”

As described above, the MACR is set at 15 years, meaning that at the time of the commission of the offense, if the child is below 15 years old, he/she/they will not face criminal liability but will still be subject to the appropriate civil liability. When the age of the CICL is in question, he/she/they shall have the presumption of minority. The law further set parameters for those in their late teens, as a child

above 15 years but below 18 years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The Philippine Supreme Court defines discernment as “the ability to distinguish between right and wrong,” and the JJWA did not set up specific guidelines to determine if a child acted with discernment. Though, when asked how discernment could be proven in court, Senator Pangilinan explained that “that testimonies from social workers and child psychologists when entered into the record during trial would be used as testimonial evidence to establish whether the accused acted with discernment.”²⁹⁶ This unstructured and unspecified approach to determining if one acted with discernment has resulted in discrepancies in the implementation of the law. In 2014, the JJWC set out to define discernment its *Revised Rules and Regulations on Implementing R.A. 9344*. This revision will be addressed further into the paper.

The JJWA mandates that children below the MACR are to be released immediately to the custody of their parent, guardian, closest relative, or a competent authority. The DWSD or local social welfare and development officer (LSWDO) must file a petition for involuntary commitment if the child is neglected or abused or the parents will not be allowed to comply with the prevention program. Children above 15 and below 18 who acted with discernment are subject to a diversion program.

Title II defines the structures for administering juvenile justice and welfare, specifically the creation of the JJWC. As part of the compromise during the bill’s conference committee, the JJWC is chaired by the undersecretary of the DSWD, but attached to the DOJ. This Council

²⁹⁶ Philippines, Senate, “Journal No. 39.” *Senate Journal*, 2005, pp. 463–460.

ensures coordination among the CWC, Department of Education (DepEd), Department of the Interior and Local Government (DILG), Public Attorney's Office (PAO), Bureau of Corrections (BUCOR), Parole and Probation Administration, National Bureau of Investigation, PNP, Bureau of Jail Management and Penology (BJMP), CHR, Technical Education and Skills Development Authority, National Youth Commission (NYC); and other institutions focused on juvenile justice. The Council is made up of the members from the DOJ, DSWD, CWC, DepED, DILG, CHR, NYC, one NGO representative designated by the Secretary of Justice, and one NGO representative designated by the Secretary of Social Welfare and Development.

The JJWC holds a multifaceted role that oversees the specific implementation of the JJWA. The Council serves as an advisor to the president through creating and recommending policies on all topics related to juvenile justice and welfare. To ensure effective policy use, the JJWC consistently collects data on the JJWA's implementation and conducts regular inspection of detention and rehabilitation facilities. The Council is also responsible for coordinating training of personnel and agencies involved in juvenile justice. Moreover the Council periodically develops a "comprehensive 3 to 5-year national juvenile intervention program, with the participation of government agencies concerned, NGOs and youth organizations." The JJWC further drafts and publishes implementing rules and regulations (IRR) for practical implementation of the provisions of the Act that are applicable to government agencies. The JJWA allocated ₱50,000,000 or approximately \$1,000,000 to the JJWC for its initial set up. After that initial allocation, funding is the responsibility of the Office of the President, and therefore included in the General Appropriation Act.

Title 3 of the Law, similar to the Riyadh Guidelines, covers prevention of delinquency, including the role of the family, education system, media, and community in a child's development and socialization. The JJWA defines family as the central medium for socialization; therefore, in "accordance with the procedures of this Act, a child in conflict with the law shall be maintained in his/her family." Moreover, to prevent delinquency, the education system must prepare "adequate, necessary and individualized educational schemes" for both CAR and CICL. The education system must also provide the opportunity for continued learning, even while a child is detained. Further, the media has the duty "to maintain the highest critical and

professional standards in reporting and covering cases of children in conflict with the law,” including the explicit ban of the sensationalization of cases involving CICL. The media, as well as authorities, cannot label CICL as “young criminals, juvenile delinquents, [or] prostitutes” or “[attach] to them in any manner any other derogatory names.” Labeling can serve to create a self-fulfilling prophecy; therefore, it must be mitigated through using language that does not have negative associations.

The JJWA calls for the establishment of Local Councils for the Protection of Children (LCPC) in all levels of local government. These councils are made up of responsible members from the community and to coordinate with local government units (LGUs) to develop and implement a comprehensive plan on preventing delinquency. Every LGU must have a licensed social worker as its LSWDO who is responsible for assisting CICL throughout their experience in the justice system. Juvenile justice initiatives of the LCPC are funded by “one percent (1%) of the internal revenue allotment of barangays, municipalities and cities... provided, that the disbursement of the fund shall be made by the LGU concerned.” The internal revenue allotment (IRA) is the portion of revenue LGUs receive from the national government. Projects and activities funded by the 1% IRA of LCPCs include:

The Preparation of the Local Development Plan for Children, Local Investment Plan for Children, Local Code for Children and Local State of Children’s Report; assistance to children in need of special protection; development of advocacy materials on children; installation of a local information system on children’s situation; documentation of good practices on children; and monitoring of the enforcement of national and local laws on children by LGUs, among others.²⁹⁷

This clause in the JJWA leaves the responsibility of managing local juvenile justice and child rights initiatives to LGUs. At the local level, the JJWA does not prompt any additional mandatory funding from the national government. As an unfunded mandate, this increases the possibility of LGU noncompliance with the provisions of the law, as well as discrepancies in funding between poor and rich LGUs.

Charged with implementing the law, LGUs “shall set aside an amount necessary to implement their respective juvenile intervention programs in their annual budget.” Each LGU

²⁹⁷ “DILG to LGUs: Allocate 1% of your IRA for local councils for children.” Official Gazette, 19 July 2012

must institute community-based programs that approach juvenile justice from the primary, secondary, and tertiary intervention methods. Primary intervention involves the implementation of measures to promote social justice and approach the root causes of offending. Secondary interventions are measured by assisting CAR. Tertiary intervention includes avoiding “unnecessary contact with the formal justice system and other measures to prevent re-offending.” The programs implemented by the LGUs in coordination with the LCPC are subject to review by the JJWC.

The fifth title of the JJWA covers the actual juvenile justice and welfare system, beginning with initial contact between a police officer and a child. Upon contact, the officer must inform the child of the reason for his/her/their arrest without harassment, including use of vulgar words, sexual abuse, and a weapon or restraint unless absolutely necessary. After this contact, the officer must notify the child’s parents of the arrest and turn the child over to the Social Welfare and Development Office or an accredited NGO. A health officer then must immediately examine the child both physically and mentally.

Diversion is a “child-appropriate process of determining the responsibility and treatment of a CICL on the basis of his/her/their social, cultural, economic, psychological or educational background without resorting to formal court proceedings.” Diversion is available for CICL older than 15, but younger than 18 years old who acted with discernment. Diversion is immediately recommended for crimes with a penalty of less than six years in jail. With crimes that warrant over six years of incarceration, diversion can only occur with the court’s recommendation. The diversion programs are conducted outside of the criminal justice system and consist of conferencing, mediation, and conciliation. The court formulates a diversion program once the child admits to the commission of the act during mediation, however, the court cannot use this admission against the CICL in future proceedings. The diversion program is binding, overseen by the LSWDO, and can be no longer than 45 days. When determining a diversion program, the court takes into account the circumstance, severity and frequency of the act, parental influences, child’s living circumstance, injury to the victim, evidence against the child, and the best interest of the child. The court further incorporates restorative justice practices through considering the child’s remorse, feelings of the victim, and the safety of the community.

Following the Beijing Rules, the law mandates release on recognizance to ensure that pre-trial detention is used as last resort. To implement release on recognizance the court must order either release on bail or release to the child's family. If neither of those options are appropriate the youth may be transferred to a youth detention home, the DSWD, or a rehabilitation center.

In case the CICL is found guilty, the courts must announce its judgement as a suspended sentence without need for application. In this context, "suspended sentence" means that the official sentence of the crime does not need to be served, instead CICL must complete a diversion program for their charges to be dismissed. Suspended sentence applies to all crimes, even heinous acts, committed by CICL. Moreover, it is important to note that a suspended sentence does not apply to civil liability, only criminal liability. After the child's charges are dismissed records of the crime cannot be used against the CICL in future court proceedings.

The objective of rehabilitation is to provide the CICL with "approaches and strategies that will enable them to improve their social functioning," tools which will, in turn, support the "reintegration to their families as productive members of their communities." Rehabilitation facilities should provide a home environment with quality counseling and treatment and must separate CICL from adults. The Family Courts Act mandates that LGUs must set aside funds to build youth detention homes that may also be established by "private and NGOs licensed and accredited by the DSWD, in consultation with the JJWC." However, the JJWA mandates the DSWD to establish 24-hour youth rehabilitation centers in every region "where residents are cared for under a structured therapeutic environment with the end view of reintegrating them in their families and communities as socially functioning individuals."

Another option for rehabilitation is community-based, wherein the CICL is released to his/her/their guardians under the guidance of the LSWDO in order to participate in community-based programming. These programs rely on the family as active participants in their child's rehabilitation and reintegration process. Community-based programming is utilized to prevent the disruption of education or means of livelihood, prevent separation of children from their guardians "to maintain the support system fostered by their relationship," facilitate integration into community life, and minimize stigmatization of CICL by avoiding detention.

Once a child completes his/her/their programming and is dismissed of his/her/their charges, the LSWDO shall provide counseling and community-based services for at least six months. The goal of this continuous contact is to promote reintegration, prevent recidivism, and transform children into productive members of society.

The concluding provisions call for the immediate implementation of the law. Cases of children 15 and below at the time of the commission of a crime are to “immediately be dismissed, and the child shall be referred to the appropriate LSWDO.” Children who are already convicted and serving a sentence are entitled to the “benefit from the retroactive application of this Act.” Those with a suspended sentence who are going through rehabilitation or residing in a youth rehabilitation center are also to be released, unless doing so is not in the child’s best interest.²⁹⁸

Immediate Impacts of R.A. 9344

The impacts of the law’s passage were swift, but many functions of the legislation had yet to be implemented. According to Ray Dean Salvosa, NGO representative from the first JJWC, the writers of the original bill placed the MACR at 12 years old even though “it should really be 15” because they “felt that the country was not ready” with regard to the “resources [and] agencies” necessary to “handle a 15-year-old.” After the passage of the bill, Salvosa’s insights were proven correct: there was immediate disarray in attempts to implement the law. The original bill called for the creation of the OJJDP, an entity which would have been under the control of one department and would have the efficiency of being its own office. However, the compromises made during conference committee fostered incongruence within the JJWC and rendered the Council inefficient and thus ineffective in the immediate implementation of the law. Moreover, the money allocated to the JJWC took months to process; thus, according to Salvosa, “the committee had no staff and, because the bill was passed, it called for immediate implementation. The Council was not prepared to undergo and create the training programs for the different agencies.”²⁹⁹

²⁹⁸Philippines, Congress. RA 9344. *Juvenile Justice and Welfare Act*. 28 April 2006.

²⁹⁹ Salvosa, Ray Dean. Interview. Conducted by Audrey Mullen and Halina Tittmann, 11 May 2020.

According to the DOJ, one of the most crucial aspects of implementing the JJWA related to public education:

public education on the philosophy and principle of restorative justice must be undertaken with the active involvement of mass media, the church, and civil society... In sum, this should contribute to the promotion of a caring and protective environment for children and a child-friendly Philippine society.³⁰⁰

Yet unfortunately, the JJWC's lack of resources prevented them from effectively pursuing this nationwide campaign to shift the view of CICL. In 2009, three years after the passage of the JJWA, "information on and proper understanding of the law ha[d] yet to be widely disseminated not only to the general public but especially to the major implementers of the law, some of whom are not yet fully aware of its provisions and its implementing rules and regulations." For example, at the time of the 2,195 state prosecutors, only 13% had been trained on the provisions of R.A. 9344. Moreover, "Only 58 percent of provinces, 49 percent of cities, 34 percent of municipalities, and 17 percent of barangays have functional LCPCs," thus further putting more strain on the underfunded JJWC to coordinate the implementation at the LGU level.³⁰¹

The disarray of implementing the law left many frustrated with the state of juvenile justice in the Philippines. Against the backdrop of an inadequate implementation, within four years of the passage of R.A. 9344, representatives from the House proposed four bills, all "seeking to revert to the old regime where children over nine (9) years old may be held criminally liable." In addition, politicians proposed two bills to "address the implementation gaps rather than attempt to demolish with a mere stroke of the pen one of the cornerstones of juvenile justice."³⁰² None of these bills never made it far in the legislative process, but were indicative of the lack of support at the national government level in the law's capabilities for success. It was evident that a shift was necessary to properly implement the law.

³⁰⁰ Philippines, Department of Justice. *Protecting Filipino Children From Abuse, Exploitation and Violence*, December, 2006. Special Committee for the Protection of Children 2006

³⁰¹ UNCRC, *Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: initial report of States parties due in 2007: Philippines*, CRC/C/PHL/3-4 (20 March 2009) available from <https://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-PHL-CO4.pdf>

³⁰² Philippine Action for Youth Offenders. *Position Paper of the Philippine Action for Youth and Offenders (Payo) on the Proposed Amendments to Republic Act No. 9344*. Philippines: Manila, 2011.

Reforms to R.A. 9344

Senate Bill No. 3324, titled *Amending R.A. NO. 9344, Creating the Juvenile Justice and Welfare Council Under DSWD*, gained traction in 2012. This bill was filed on November 7th, 2012 by Vincente Sotto III, Ramon Revilla Jr, Francis Pangilinan, Manny Villar, Miriam Defensor Santiago, Francis G. Escudero, and Pia Cayetano. The bill aimed not to “change the substance of the said Act but rather to improve it so that it [could] be implemented better.”³⁰³ According to Senator Sotto, “Republic Act 9344 had very good intentions; however interpretation and enforcement were wrong or different from the intention of the lawmakers, hence the proposed amendments.” The Senate approved the bill with a unanimous vote on January 28th, 2013.

The Congress bill, House Bill No. 6052 titled, *An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose Republic Act No. 9344, Otherwise Known as the ‘Juvenile Justice and Welfare Act of 2006,’* was filed on March 21st, 2012. It was approved on June 4th, 2012, with 214 votes in favor of the bill and nine votes against the bill. The bill went to conference on June 5th, and it was signed into law on October 3rd, 2013. The final title of the law, R.A. 10630, was *An Act Strengthening the Juvenile Justice System in the Philippines, Amending for the Purpose Republic Act No. 9344, Otherwise Known as the Juvenile Justice and Welfare Act of 2006*.

Some of the most critical amendments to R.A. 9344 were the additions to Section 20, *Children Below the Age of Criminal Responsibility*. The law calls for the creation of Bahay Pag-asa, which translates to “house of hope.” A Bahay Pag-asa is a 24-hour child-caring institution that is managed and funded by LGUs or accredited NGOs. These institutions provide “short-term residential care for CICL who are above 15 but below 18 years of age who are awaiting court disposition of their cases or transfer to other agencies or jurisdictions.” Children under age 15 are to go to community based intervention instead of a Bahay Pag-asa, unless the child the LSWDO deems the child to be “dependent, abandoned, neglected or abused by his/her parents” and at least 12 years old. The law appropriates ₱400,000,000 for the construction of

³⁰³ Philippines, Senate, “Journal No. 38.” *Senate Journal*, 2012, pp. 1106–1043

Bahay Pag-asa in provinces with high amounts of CICL. LGUs are also appropriated ₱5,000,000 per rehabilitation center.

In addition, Bahay Pag-asa are also for the institutionalization of children between ages 12 and 15 who have committed serious crimes but are exempt from criminal responsibility. This includes children who are convicted of:

parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under Republic Act No. 9165 (Comprehensive Dangerous Drugs Act of 2002) punishable by more than 12 years of imprisonment.

For children convicted of these crimes, it is mandatory that they be placed in a Bahay Pag-asa within the Intensive Juvenile Intervention and Support Center (IJISC) for at least one year. Children between 12 and 15 who are repeat offenders that have already gone through community-based intervention shall also be placed in a youth care facility of Bahay Pag-asa. As described by Senator Pangilinan, the original JJWA serves to protect CICL, 90% of whom are first time offenders who were “thrown in the same cells as hardened criminals, dooming these children to a life of crime and rendering them victims of a judicial system that inadvertently breeds criminals.” The amended law was proposed to “address the 10% who are recidivists or repeat offenders as well as the 20% who are involved in more serious offenses.”³⁰⁴

Thus the addition of Bahay Pag-asa effectively allow for children starting at age 12 to be detained. Some argue that this addition is a step backward with regard to the conversation surrounding raising the MACR. For example, some advocates for a higher MACR commented that the amendment “retained the MACR at 15, yet imposed automatic detention for children above 12 to 15 who committed serious crimes or were repeat offenders,” thus in some sense, “the law lowered the MACR to 12.”³⁰⁵

Importantly, the law highlights the punishment for those who take advantage of children. It states that anyone who abuses children or uses children to commit crimes “shall be imposed

³⁰⁴ Philippines, Senate, “Journal No. 38.” *Senate Journal*, 2012, pp. 1106–1043

³⁰⁵ Estorninos, Klarise Anne. “Batang Bata Ka Pa:1 An Analysis of the Philippine Minimum Age of Criminal Responsibility in Light of International Standards.” *Ateneo Law Journal*, vol. 62, no. 258, 2017, pp. 260–273.

the penalty prescribed by law for the crime committed in its maximum period.” This statement attempts to remove the blame of the crime from the child to the adult perpetrator.

The amended law placed the JJWC completely under the jurisdiction of the DSWD. The transfer from the DOJ to the DSWD addressed the fragmentation issues that arose from having the chair and the Secretariat in different departments. The law further augmented the JJWC with the creation of the Regional Juvenile Justice and Welfare Committees (RJJC). These committees are chaired by the director of the regional office of the DSWD and are responsible for implementing the Act at the local and LGU level. The RJJC is made up of representatives from the DOJ, DSWD, DepED, DILG, CHR, DOH, two NGOs operating in the region, a sectoral representative from the children sector, and a member from the League of Provinces/Cities/Municipalities/Barangays of the Philippines. Thus the JJWC must work with the RJJC as well as various leagues of local government officials to implement the JJA at the local level.

In terms of local ordinances, the amended law clarifies its intentions of R.A. 9344. Rules created by the local government concerning status offenses are not to invoke legal penalties for children who violate them. Instead, the child should be brought to his residence or to any Barangay hall to be released to the custody of his parents. In these scenarios, the child is recorded as a CAR, not a CICA. Finally, these ordinances must provide intervention programs.

Revisions to R.A. 9344

The JJA saw various revisions in the years following its passage in 2006. In 2007, the JJWC published the first IRR. In the coming years, the JJWC produced “various department circulars, orders, guidelines, and manuals were promulgated to guide duty-bearers.” The JJWC also continues to formulate a CJIP that “incorporates the principles of restorative justice and emphasizes rehabilitation and reintegration, rather than retribution.”³⁰⁶

In 2014, the JJWC produced a Revised IRR to analyze more specifically how each section of the R.A. 9344, as amended by R.A. 10630, should be used in practice. The Revised

³⁰⁶ Yang, Sadie. *Evaluation of the Intervention and Rehabilitation Program in Residential Facilities and Diversion Programs for Children in Conflict with the Law*. Universalis, June 2015, <https://www.universalis.com/en/projects/evaluation-intervention-and-rehabilitation-program-residential-facilities-and-diversion>

IRR “strengthened coordination among stakeholders” and increased implementation of R.A. 10630. The document was drafted with the help of NGO leaders who gave their input on the realities of fully implementing the act.³⁰⁷ Importantly, this document defines discernment and gives specific guidelines on how to determine if a child acted with discernment when he/she/they committed a crime. The assessment of discernment is done by the LSWDO, using a tool developed by the DSWD. The 2008 tool on discernment is based on:

facts and circumstances surrounding the case; education level and performance of the child in school; appearance, attitude and the child’s demeanor before, during and after the commission of the offense; and the assessment of a psychologist or psychiatrist which the social worker may request.³⁰⁸

Today there is an official manual titled “Self-Instructional Manual for Social Workers in Assessing Discernment of CICL.” This Revised IRR further provides explicit details on the process of diversion, from general principles to the specifics on managing it at the Barangay, law enforcement, and LSWDO level. The JJWC provides roughly seven pages of the exact way to manage a CICL through the different aspects of the diversion process.

Though the JJWA has been reformed over the years, controversies surrounding it remain today. These debates tend to center around the implementation of the law, and the age at which to set the MACR. In fact, a national debate over the MACR has consumed many political discussions in recent years, as Duterte hopes to lower the age, and activists fight to maintain it at 15. The continued debate on the JJWA since its ratification reveals an unintended divisiveness, as well as its constant vulnerability of reform that is contingent on political will.

Modern Debate on Lowering the Minimum Age of Criminal Responsibility

Amid the drug war in the Philippines, President Duterte identified the involvement of children as young as nine years old in the drug trade as a major issue to be addressed. As the MACR is currently 15, officials believe that drug lords have started using young children to traffic drugs, knowing that these youths will not face the same consequences as older members

³⁰⁷ Yang, Sadie. *Evaluation of the Intervention and Rehabilitation Program in Residential Facilities and Diversion Programs for Children in Conflict with the Law*.

³⁰⁸ Philippines, Department of Social Welfare and Development. *Guidelines for Social Workers in Handling and Treatment of Children in Conflict with the Law*, June 28, 2007.

of society.³⁰⁹ Partly as a response to this problem and partly as a desire to eradicate all crime, Duterte has stated that he intends to lower the MACR from 15 to nine years old.³¹⁰ The Duterte administration has since clarified that they would also accept lowering the MACR to 12, the current age at which children can be admitted to a youth care facility or *Bahay Pag-asa*.³¹¹ One of President Duterte's spokesmen, Salvador Panelo, stated that the decision to lower the MACR is the result of Duterte's desire to "protect the children" from the abuses of drug lords.³¹²

Duterte's call to lower the MACR has attracted many critics, domestically and internationally. For example, the World Organization Against Torture (OMCT) issued a response to Duterte in an open letter in January 2019, writing,

The OMCT is gravely concerned about the draft Bill tabled which seeks to lower the Minimum Age of Criminal Responsibility for approval by the House of Representatives. International human rights bodies have repeatedly encouraged the Philippines to not lower the minimum age of criminal responsibility currently set at 15 years old. The United Nations Committee on the Rights of the Child specifically urged the Philippines to "take all necessary measures to ensure that the age of criminal responsibility is not lowered."³¹³

Similarly, in response to Duterte's decision, Dr. Bärbel Kofler, the Federal Government Commissioner for Human Rights Policy and Humanitarian Aid at the Federal Foreign Office, argued:

The UN Convention on the Rights of the Child explicitly and rightfully recommends a higher minimum age. As a state party to the UN Convention on the Rights of the Child, the Philippines would take a significant step backwards by adopting this new legislation. When children commit acts of violence or other serious crimes, they are always victims

³⁰⁹ Candelaria, Sedfrey. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

³¹⁰ Oco, Tricia. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.

³¹¹ "Statement by Federal Human Rights Commissioner Bärbel Kofler on a Possible Lowering of the Minimum Age of Criminal Responsibility in the Philippines." *States News Service*, 30 Jan. 2019. *Gale General OneFile*, https://link-gale-com.proxy.bc.edu/apps/doc/A571917969/ITOF?u=mlln_m_bostcoll&sid=ITOF&xid=99286b54. Accessed 29 Apr. 2020.

³¹² Gutierrez, Jason. "Philippine Law Would Make 9-Year-Olds Criminally Liable." *The New York Times*, 22 Jan. 2019, <https://www.nytimes.com/2019/01/22/world/asia/philippines-juvenile-justice-law.html>.

³¹³ "Philippines: Minimum Age of Criminal Responsibility Must Not be Lowered." *States News Service*, States News Service, 2019.

themselves as a result of psychological stress or malicious manipulation. Punishment does bring about improvement, but instead heightens social problems further.³¹⁴

Duterte's commitment to prosecuting children suggests that crime rates among children are a cause for major economic commitment and policy change in the Philippines. However, the statistics on child crime illustrate a different story: crime committed by children accounts for less than 2% of the total crime rate in the Philippines, with the majority of these crimes being "petty crimes," such as theft or minor shoplifting.³¹⁵ In a recent study conducted between January and March 2019, the Juvenile Justice and Welfare Committee (JJWC) found that children 11 years and below commit only 4.5% of the total youth crime.³¹⁶ It also establishes that children between the ages of 15-18 are those "more inclined to commit crimes," accounting for about 58% of youth crime in early 2019.³¹⁷ The contrast between these numbers and Duterte's prioritization elucidates a drastic sensationalism of a problem that appears to be minor on the grand scale of criminal behavior in the Philippines. These numbers, in comparison to Duterte's depiction of the situation as drastic and urgent, call into question why Duterte is prioritizing such a minor aspect of a big problem, and what he hopes to accomplish.

Our interviewees elaborated their views on the matter. Though Duterte claims that he is lowering the MACR to protect children, experts disagree. For example, Albert Muyot—CEO of Save the Children UK in the Philippines and one of the spearheaders of the movement to pass R.A. 9344—argued that Duterte's decision came from the President's punitive vision of how justice systems should work. Muyot noted that the President's method for combating crime, particularly drug use, is to "kill adults and jail children." Muyot argued that this method is highly ineffective and has an adverse outcome: dealers are still selling narcotics, just through more extreme methods at an increased price. Referencing a situation in which drug syndicates hid narcotics in a two-year-old's diaper, he alluded to the lack of logic behind Duterte's decision to

³¹⁴ "Statement by Federal Human Rights Commissioner Bärbel Kofler on a Possible Lowering of the Minimum Age of Criminal Responsibility in the Philippines." *States News Service*, 30 Jan. 2019. *Gale General OneFile*, https://link-gale-com.proxy.bc.edu/apps/doc/A571917969/ITOF?u=mlin_m_bostcoll&sid=ITOF&xid=99286b54. Accessed 29 Apr. 2020.

³¹⁵ Oco, Tricia. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.

³¹⁶ *Ipatupad Ang Juvenile Justice Law Para Sa Lahat Ng Batang Pilipino*. Juvenile Justice and Welfare Committee, 2019, p. 20.

³¹⁷ *Ipatupad Ang Juvenile Justice Law Para Sa Lahat Ng Batang Pilipino*. Juvenile Justice and Welfare Committee, 2019, p. 69.

lower the MACR to 9, rhetorically questioning, “what [is the Philippine Government] going to do? Lower the minimum age to one?”³¹⁸

Sedfrey Candelaria, former dean of Ateneo Law School who helped draft and pass R.A. 9344, pointed out that “children are prey to syndicates and the notion is to punish the children because they are easier to catch.” Through sensationalizing child crime, Duterte is able to twist the narrative to create a panic about youth crime, even though youth crime is a relatively small piece of crime in the Philippines. If the public believes that child crime is a real and imminent threat, then Duterte’s move to combat it will appear necessary and beneficial to the country. Therefore, Duterte may be targeting children to give the illusion that he is successfully combating crime in the Philippines.³¹⁹

Offering a different perspective, Baguio City Councilwoman Betty Tabanda suggested that the move to lower the MACR to nine emerged from the fact that the MACR in the Philippines was originally nine before being amended to 15 in R.A. 9344. She pointed out that “there is a compromise being arrived at where they are lowering [the MACR] to 12, because there [are] cases of minors below 15 years old who are accused of heinous crimes and being used as drug mules.” She elaborated that people believed that these children were not being held accountable for such acts, thus prompting a desire to lower the MACR so that this age group will face more severe consequences. Yet she does not agree that the solution to this worry is to lower the MACR; rather, she argues that the government should invest in the “proper interventions” and “proper facilities” necessary to rehabilitate CICL.³²⁰

In recent years, Duterte’s pressure to lower the MACR has gained traction in congress. On September 24th, 2018, Senate president Vincente Sotto III filed Senate Bill No. 2026, *Lowering the Minimum Age of Criminal Responsibility*. This bill proposed to lower the age of criminal responsibility to nine years old, later through committee debate and bill consolidation, the age was raised to 12 years old.³²¹ The bill failed to pass during the 17th Congress due to a lack of time for debate. Sotto filed the same bill again on July 1st, 2019, three weeks before the opening of the Congress, as one of his “pet bills.” He stated, “due to continuing challenges in the

³¹⁸ Muyot, Albert. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

³¹⁹ Candelaria, Sedfrey. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

³²⁰ Tabanda, Betty. Interview. Conducted by Audrey Mullen and Halina Tittmann, 13 June 2019.

³²¹ Philippines, Senate, “Committee Report No. 622 .” Senate Report, 2019.

implementation of R.A. 9344, as amended, the aforesaid law must be further amended to lower the minimum age of criminal liability in order to adapt to the changing times.” As of August 2020, this bill is pending its second reading.

The House Bill No. 8858, titled *Expanding The Scope Of The Reformation And Rehabilitation Of Children In Conflict With The Law And Strengthening The Social Reintegration Programs, Amending For The Purpose Republic Act No. 9344, As Amended*, was proposed during the 17th congress and filed on January 1st, 2019. The bill was fiercely debated in the House, especially during the interpellations period, with representatives passionately arguing if the MACR should be lowered for five hours straight.³²² The bill later moved the MACR from the original age of nine up to 12 years old as a result of debate and the consolidations of bills during committee meetings. The bill was approved in the House on January 24th, 2018, with 146 affirming and 34 against.³²³

The bill has been approved in the House but remains stagnant in the Senate; therefore, the MACR currently remains at 15.

R.A. 9344 Failings

Political conflict over R.A. 9344 emerges, in part, because of misconceptions about its effectiveness; however, arguments against the bill fail to consider that the law has yet to be adequately implemented nationwide, fourteen years after its original passing. Therefore, the law is failing to realize its intended purpose because of a piecemeal implementation. The JJWC identifies four areas that contribute to the failure of a full implementation of R.A. 9344: low LGU compliance; lack of awareness about the capacity of the pillars of the justice system; lack of awareness of the general public on the juvenile justice and welfare system; and insufficient personnel of the JJWC to monitor the implementation of the law.³²⁴ Compliance from LGUs and sufficient resources dedicated to these four areas are crucial to realizing and accessing the

³²²Philippines, Congress, House, *Plenary Proceedings of the 17th Congress, Third Regular Session*, vol. 3 No.46, 2019

³²³Philippines, Congress, House, *Plenary Proceedings of the 17th Congress, Third Regular Session*, vol. 3 No.45, 2019

³²⁴ *Ipatupad Ang Juvenile Justice Law Para Sa Lahat Ng Batang Pilipino*. Juvenile Justice and Welfare Committee, 2019, pp. 26-27.

benefits of the JJWA. Factors beyond these four areas relate to low government prioritization of implementing the law, and government values that conflict with the qualities and purposes of the JJWA.

As referenced above, R.A. 9344 mandates that LGUs appoint a licensed social worker as its LSWDO specifically to manage the cases of CAR and CICL. It also establishes that LGUs should allocate at least 1% of the IRA of barangays, municipalities, and cities to strengthen the LCPC. Further, each province or highly urbanized city (HUC) is required to establish a youth care facility (Bahay Pag-asa) for CAR and CICL. Finally, LGUs are responsible for designing a Comprehensive Local Juvenile Intervention Program (CLJIP).

LGU Compliance

Almost every interviewee noted low LGU compliance as one of the main factors preventing the full realization of R.A. 9344. The JJWC report from early 2019 found that of 42,000 LGUs, only 4% had appointed a social worker specifically to manage the cases of CAR and CICL. It also noted that only 31% of the LGUs had allocated the mandated 1% of their IRA to strengthening the LCPC. Moreover, nearly half (47%) of the provinces and HUCs had failed to establish a Bahay Pag-asa for local CAR and CICL. Finally, only 47% of LGUs had received the technical support necessary to start designing the CLJIP.³²⁵

The failure of LGUs to comply has various roots, but the main hindrance comes from a lack of funding. LGUs are at the forefront of implementing R.A. 9344, so their compliance or noncompliance has a significant impact on the progress of the law.³²⁶ LGUs struggle to get adequate funding and are reliant on the IRA—and, by extension, the National Government—and thus do not have autonomy when making economic decisions. As LGUs have many issues to handle, the obligation to utilize the 1% of the IRA to implement the stipulations of R.A. 9344 has become relatively relaxed. Policymakers responsible for economic decisions prioritize other issues over R.A. 9344. The only major group encouraging the JJWA's implementation is the JJWC, a body that is too small to enforce implementation on a large scale. Candelaria believes

³²⁵ *Ipatupad Ang Juvenile Justice Law Para Sa Lahat Ng Batang Pilipino*. Juvenile Justice and Welfare Committee, 2019, pp. 26.

³²⁶ Oco, Tricia. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.

that increasing funding for LGUs is imperative, as, without it, youth intervention programs will continue to be reliant on NGOs and inconsistent donations.³²⁷

Furthermore, according to Muyot, very few LGUs actually want to set up Bahay Pag-asa. In many areas, the provided funding only covered the initial building of the Bahay Pag-asa, leaving very little to pay for staff and maintenance. When Bahay Pag-asa lack proper maintenance, good programming, and trained personnel, they function essentially as a youth detention center, not a center for rehabilitation. Insufficient Bahay Pag-asa, in turn, yield negative or ineffective results and increase public dissatisfaction with the juvenile justice system. Currently, only 55 of the 114 Bahay Pag-asa that exist are not up to the JJWC's standards.³²⁸ Moreover, there is a strong divide in quality of facilities between provinces or HUCs in the Philippines due to wealth disparities. The IRA is very small in poor communities, offering LGUs little financial support to foster beneficial, rehabilitative programs.³²⁹

Steve Muncy, the executive director at Community and Family Services International, elaborated on the complexities between national politics and local implementation:

I think we make great laws. [We're] even great [at] implementing rules. But some of the expectations on local government units are way too high, and they're never going to be realized, unfortunately. Some of the state commitments to government [and] national government commitments are very short term in nature. Everybody gets worked up and excited, commits 'X' amount of money within [a short period of time], and after a few years, it fades away.

Muncy believes the national government should either increase funding to LGUs or subsidize programs for the LGUs that lack capital to combat this failure. He also pointed out that creating incentives for LGUs to increase funding and focus towards implementing R.A. 9344 could foster progress within the system, as "convincing [LGUs] to give their limited resources to CICL is a hard sell."³³⁰

³²⁷ Candelaria, Sedfrey. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

³²⁸ Oco, Tricia. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.

³²⁹ Betita, Crispin. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019. ; Muyot, Albert. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

³³⁰ Muncy, Steve. Interview. Conducted by Audrey Mullen and Halina Tittmann, 20 June 2019.

Lack of Awareness about the Capacity of the Pillars of the Justice System / Lack of Awareness of the General Public on the Juvenile Justice and Welfare System

Another issue pointed to in the JJWC's report is the lack of awareness, both in the general public and at the government level. Due to misunderstandings and a lack of commitment from the Philippine government, aspects of the JJWA have still yet to be realized. According to the report, "procedures and programs on juvenile justice and welfare [are] still very low despite some initiatives to train police officers, prosecutors, PAO lawyers, judges, correction and probation officers, awareness of the law." Moreover, perhaps as a reflection of the government, the general public also appears to lack a clear understanding about the juvenile justice system, leading to public disapproval of the system. Some of the most common misconceptions of the Philippine juvenile justice system, as elaborated in the JJWC's report are:

1. **R.A. 9344 as amended allows children who commit offenses go scot-free**, even as the law requires that these children undergo mandatory intervention programs that may include confinement in the Bahay Pag-asa and other rehabilitation institutions.
2. **All children are exempt from criminal responsibility** when the law exempts only children who are 15 years old and below.
3. **The law does not work and will not prevent juvenile delinquency and reoffending** when there have been documented success stories of children who went through diversion and rehabilitation, and who now live exemplary lives.³³¹

These views reflect a popular "tough on crime" rhetoric in the Philippines. In our interview, Oco noted that President Duterte shares some of these beliefs, particularly the idea that R.A. 9344 allows children to go scot-free—a point which she counters, elaborating that "the law allows children to learn what is just and right."³³² Similarly, Candelaria argued that politicians should "shift their mindset from being 'tough on crime' to looking at the future of [the] country," as CICL, if properly educated, have the potential to "drive change in the future."³³³

Yet this shift appears to be unlikely. According to Candelaria, the political environment in the Philippines has returned from more progressive efforts to embody a "right wing perspective on how to combat criminality in [the Philippines]" that desires to process "heavy crimes for purposes of law and order." This right wing mentality presented an initial roadblock in the late

³³¹ *Ipatupad Ang Juvenile Justice Law Para Sa Lahat Ng Batang Pilipino*. Juvenile Justice and Welfare Committee, 2019, p. 26.

³³² Oco, Tricia. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.

³³³ Candelaria, Sedfrey. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

1990s, when advocates were attempting to reform the youth justice system. On the general ideology among politicians during this time, Candelaria elaborated:

I can only surmise and recall that legislators were generally not appreciative of the lowering of the age of criminal responsibility because they think that children in modern times are more "aware" of what they...commit and therefore cannot be presumed not to know the consequences of their actions. I must admit that it was difficult to sell the juvenile justice bill unlike other earlier bills on children's rights. Many legislators are of the old school view of discipline using the "stick", ie, punitive rather than restorative in character. It took quite some time to build the legislative "champions" for juvenile justice.

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This view of the justice system—particularly the purpose it serves—prevents positive change and avoids alternative methods of justice. At its core, such an ideology is in direct conflict with rehabilitative measures of combating crime and bringing about justice.

A lack of understanding about the juvenile justice and welfare system may also explain why many support lowering the MACR. In a country where right-wing views on criminality are common, the misconception that the juvenile justice system as it stands allows CICL to go “scot-free” will naturally demand a more punitive system. Indeed, most citizens remain unaware of the benefits of restorative systems of justice. In an opinion piece for *Rappler*, Filipino criminologist Raymund Narag discusses the attitudes in the Philippines toward youth crime and Duterte:

The consistency and resoluteness of [Duterte’s] acts will earn him more admiration. Filipinos understand and share these philosophies of punishment. They concur with the idea that pain is the only thing that a Filipino criminal will understand, that civility and decency are currently immaterial...They also concur to the view that the Philippine criminal justice system is slow, inefficient and corrupt. To trust this liberal elitist system, with its trappings of niceties, will only perpetuate an iniquitous system.³³⁵

Public support, in turn, may further incentivize Duterte’s lower the MACR from 15 to 9—and later, 12—years.

³³⁴ Candelaria, Sedfrey. Interview. Conducted by Audrey Mullen and Halina Tittmann, 05 May 2020.

³³⁵ Narag, Raymund. “Explaining Duterte’s Views on Filipino Criminality.” *Rappler*, 30 July 2017, <https://www.rappler.com/thought-leaders/176624-duterte-understanding-filipino-criminality>.

Insufficient JJWC Personnel

The final gap in implementation that the JJWC identifies in their report is the insufficiency of JJWC personnel to monitor the implementation of R.A. 9344. In the report, the JJWC clarifies its core functions as:

- Policy, plan and program development
- Monitoring
- Coordination
- Information management
- Advocacy
- Capacity building

It also states that within each regional office, there is only “[one] social worker and [one] administrative staff...to assist the RJJWCs in monitoring and providing technical assistance and capacity-building activities to all LGUs and local duty-bearers within their jurisdiction.”³³⁶

As we mentioned briefly under the LGU section, the absence or deficiency of properly trained staff and Bahay Pag-asa in many of these regions greatly impacts the local CAR and CICL. For example, in some cases, children will qualify for diversion, but the staff responsible for managing CICL are “underpaid and lack the competence to understand the complexities...of taking care of CICL.”³³⁷ In many cases, this leaves CICL subject to abuse and prejudice, with care that is not personalized.³³⁸ Without a prominent presence of JJWC personnel to monitor the progress of juvenile justice programs in each province or HUC, these abuses go largely unnoticed or unaddressed.

These failings in key areas of the JJWA make it impossible for the bill to function as intended. Therefore, the expected benefits—rehabilitation of CICL, reduction of crime, decreases in recidivism, etc.—occur unevenly across different areas of the country, depending on resources and government funding. The result is a weak and broken juvenile justice system that conservative politicians leverage to pass draconian reforms and measures. However, their solutions neglect a glaring reality: fixing the juvenile justice system must begin with the JJWA and focus on addressing these failures through committed implementation.

³³⁶ *Ipatupad Ang Juvenile Justice Law Para Sa Lahat Ng Batang Pilipino*. Juvenile Justice and Welfare Committee, 2019, p. 27.

³³⁷ Herrero, Elita. Interview. Conducted by Audrey Mullen and Halina Tittmann, 10 June 2019.

³³⁸ Ignacio, Emma. Interview. Conducted by Audrey Mullen and Halina Tittmann, 06 June 2019.

Lowering the MACR: the Wrong Fix to a Broken Juvenile Justice System

Children are the future. That they receive the chance to grow into active members of society is crucial to sustaining a healthy and progressive country. No child is destined to be a criminal. Rather, outside forces—parenting, socializing, environment—lead children to adopt lives of crime and antisocial behavior to survive. The purpose of any effective juvenile justice system must be to offer CAR and CICL the necessary materials to become productive members of society, to ensure the rehabilitation of these children. Such was the foundation of the JJWA, but 14 years later, it still has yet to be realized. The youth justice system in the Philippines is failing—failing to rehabilitate every CICL, failing to protect the country’s youth, and failing to live up to its promises. There is no question that action should be taken to create a more effective system. However, the right course of action is not lowering the MACR. Instead, the Philippine Government should focus its resources towards the full implementation of R.A. 9344. Doing so will align the Philippines’ juvenile justice system with international standards, promote the best interests of Filipino youth, and move towards a more safe and productive society.

The argument against lowering the MACR is multifaceted. It considers when children’s brains develop, what demographic the “typical” CICL is, what impact lowering the MACR will have on children and society, and where scarce resources may better be directed. The first piece has to do with childhood development. Every adolescent brain, regardless of the child’s environment and history, is constantly developing. Regions of the brain responsible for “impulse control, decision-making, long-term planning, emotion regulation, and evaluation of risks and rewards” are still evolving and do not reach full maturity until young adulthood. Children are more susceptible to peer pressure, have less of an ability to conceptualize the long term impact of their actions, and “place relatively less weight on risk.” As a result, children, especially those between ages 12-16, become more “vulnerable to risky and reckless behavior.” This decreased capacity of understanding differentiates child behavior from adult behavior.³³⁹

Children under 15 are committing crimes—though at far lower rates than those above 15. Duterte’s government believes that lowering the MACR will curb this crime rate and protect

³³⁹ “On the Amendment to the Juvenile Justice and Welfare Act.” *Psychological Association of the Philippines*, Jan. 2017, www.pap.org.ph/position-paper/amendment-juvenile-justice-and-welfare-act.

children. However, Emma Ignacio of the Consuelo Foundation believes that lowering the MACR will be ineffective in preventing drug lords from using young children to push their products. In fact, she believes quite the opposite: that even if they lower the MACR to nine, it will not stop drug syndicates from abusing these children and will even push drug syndicates to involve children younger than nine in the drug trade. Ignacio noted that this unintended consequence is one of the main reasons advocates oppose lowering the minimum age.³⁴⁰ Such an outcome would defeat Duterte's purpose for lowering the MACR in the first place—it would not protect young children; it would just expand the pool for those who are at risk.

Moreover, many of the children used to traffic drugs are poor, young, and have compromised agency.³⁴¹ According to Ray Dean Salvosa,

40-50% of those [living beneath the poverty level] are children under the age of 25; one in 20 infants will die before age five; one in 11 children before age five are underweight; one in three drop out [of school] before grade six; one in six below age six will suffer from neglect; and one out of every three children is an abused child.

In a speech at the University of the Cordilleras, where Salvosa is president, he presented these shocking figures to illustrate just how many Filipino children live in unhealthy conditions. This data, compounded with the fact that a “childhood spent in a violent, abusive, or neglectful home dramatically increases [a child's] likelihood of the arrest,” calls to attention the necessity of building a system that serves to help children rather than incapacitate them more.

Statistics on CICL reinforce this reality. The *Child Rights Network (CRN)* established that at least 57.7% of CICL are from families who are “poor or without stable income”; 28.6% have parents who are separated; and 23.8% have families “characterized by family or domestic violence.”³⁴² Salvosa argued that crime and incarceration are key issues that many children in the Philippines face, and the “culprit is [the country's] failure to address poverty.”³⁴³ Therefore, tackling the environmental results of poverty—malnutrition, dangerous neighborhoods, inability

³⁴⁰ Ignacio, Emma. Interview. Conducted by Audrey Mullen and Halina Tittmann, 06 June 2019.

³⁴¹ Quinto, Patrick. “Poor Filipinos Most Vulnerable in Duterte's Drug War: Study.” *ABS-CBN News*, 25 June 2018, <https://news.abs-cbn.com/focus/06/25/18/poor-filipinos-most-vulnerable-in-dutertes-drug-war-study>.

³⁴² Alhambra, Anna Marie V. “Intersect Quick Facts- Children and the Minimum Age of Criminal Responsibility (MACR): Why the MACR Should Not Be Lowered.” *Child Rights Network*, September 2016. p. 1. <https://childrightsnetwork.ph/download/intersect-quick-facts-children-and-the-minimum-age-of-criminal-responsibility-pdf/>

³⁴³ Salvosa, Ray Dean. Speech. University of the Cordilleras, Baguio City. 13 June 2019.

for parents to focus on their children due to economic strain—would be more effective in protecting children and reducing crime than lowering the MACR. Many of the children who end up in prison do not need discipline—they need guidance, education, healthcare, and nutrition.

Moreover, poor children are often in desperate need of basic resources and therefore become more prone to enticement from adults who promise them money and food. According to the Psychological Association of the Philippines (PAP), children in these situations are powerless “because they fear retribution, do not have or are not aware of alternative actions, or look up to or are emotionally attached to the criminal proponents.”³⁴⁴ Advocates for children’s rights—such as UNICEF’s Lotta Sylwander—argue that these children are “victims of circumstance, mostly because of poverty and exploitation by adult crime syndicates,” and that these children “need to be protected, not further penalized.”³⁴⁵ In our interview with Father Rocky of the Tuloy Foundation, he elaborated on the connection between crime and poverty, especially for children. The youths that Father Rocky works with in his foundation are poor street children, many of whom have a great deal of trauma and a history of antisocial behavior. Having seen first hand in his work the impact that a healthy environment has on children’s social and emotional development, Father Rocky expressed that many of the children who turn to crime do so because of the unhealthy environment in which they were raised.³⁴⁶

Poor children tend to be exposed to violence at higher rates, an exposure which, in turn, socializes children into believing antisocial behavior is the norm. Whether motivated by hunger, peer pressure, or the influence of older member’s in the community who engage in criminal activity, many poor children do not see participating in crime as a choice but as an inevitable part of life. This phenomenon can be elaborated through the general strain theory, a theory that links “negative life events” or conditions with the use of “coping strategies,” such as crime, as a method through which to “alleviate the effects of such strains.”³⁴⁷ Barrera et al. conclude that

³⁴⁴ “On the Amendment to the Juvenile Justice and Welfare Act.” *Psychological Association of the Philippines*

³⁴⁵ “Lowering the Age of Criminal Responsibility Is against Child Rights: UNICEF.” *UNICEF Philippines*, UNICEF, 18 Jan. 2019, www.unicef.org/philippines/press-releases/lowering-age-criminal-responsibility-against-child-rights-unicef.

³⁴⁶ Evangelista, Marciano “Rocky.” Interview. Conducted by Audrey Mullen and Halina Tittmann, 18 June 2019.

³⁴⁷ Barrera, Dan, et al. “Negative Life Events and Maladaptive Behaviors Among Filipino Adolescents: An Empirical Test of the General Strain Theory.” *Asian Journal of Criminology*, vol. 11, no. 4, Springer Netherlands, 2016, pp. 266, doi:10.1007/s11417-016-9230-9.

general strain theory is “applicable in Asian countries including the Philippines,” with violent experiences being the most common strain linked with maladaptive behaviors among Filipino youth.³⁴⁸ Reflecting this theory—and expanding it beyond youth—Father Rocky believes that when one is “pushed into survival mode, whether...six or 20 [years old], [one] will commit a crime.”³⁴⁹

One manifestation of this theory within the context of impoverished Filipino youth is the phenomenon of *jumper boys*. “Jumper boy” refers to a young boy—typically one who resides in urban areas of the Philippines—who climbs onto trucks in traffic to steal goods. The truck drivers, unaware of the children on their vehicles, continue to drive, often resulting in children risking their lives as they jump on and off moving vehicles. A *CNA Insider* video on jumper boys features an 11 year old boy who dropped out of school and became a jumper boy to help his struggling family financially. His father, whose income is the main source for the family, only makes about 353 PHP (approximately seven USD) a day. After selling the stolen goods, he gives his earnings to his mother to buy rice. Though the boy’s mother is morally against his criminal activities, she ultimately accepts the money because her family of eight desperately needs food. Children who become involved in criminal activity to support their families sometimes transition into more significant crimes, such as drug trafficking, major theft, and gang-related criminal activities. These more serious crimes can be mitigated with proper preventative intervention, such as social services aimed towards alleviating the effects of poverty.³⁵⁰

If these children go to prison, there will be an adverse impact on their development and growth. As children are deeply impressionable, the environments they experience during their formative years can determine their futures. Prison—especially those in which convicted children and adults come in contact with one another—tend to influence children towards antisocial behavior, essentially “breeding” future criminals. Indeed, evidence suggests that the criminal justice system “curtails [CICL’s] future prospects, and pushes them further towards a negative life trajectory.”³⁵¹ In the Philippines, where prisons are “globally notorious for their

³⁴⁸ Barrera et al., p. 284.

³⁴⁹ Evangelista, Marciano “Rocky.” Interview. Conducted by Audrey Mullen and Halina Tittmann, 18 June 2019.

³⁵⁰ “Kids Jump On Moving Trucks To Steal To Feed Families.” *YouTube*, CNN Insider, 24 May 2019, www.youtube.com/watch?v=fS1dTKOqvkk.

³⁵¹ “On the Amendment to the Juvenile Justice and Welfare Act.” *Psychological Association of the Philippines*

subhuman living conditions,” lowering the age at which children can be detained could create “juvenile hells,” even if children and adults are separated.³⁵² The PAP warns that

exposure to the criminal justice system, where the child will be labeled a criminal and where he or she is exposed to criminal models, will more likely establish the “criminal identity” of the young person. Studies have shown that encounters with the adult justice system results in greater subsequent crime, including violent crime, for the juvenile.³⁵³

In our interview, Muyot pointed out that the proposed age of 12 is especially problematic because most 12 year olds have not attained puberty and are vulnerable to suffer major abuses in the justice system.³⁵⁴ Therefore, decreasing the age threshold at which children can be processed through the criminal justice system will not only harm the child himself, but also make society as a whole less safe through producing more criminals.

As mentioned above, prisons in the Philippines are already overcrowded and are becoming increasingly so with the heightened level of drug arrests occurring under Duterte. In 2017, the BJMP released data that showed that a total of 143,467 incarcerated persons were being held in 466 jails. Each of these jails are designed to accommodate 20,773 individuals, meaning these jails are housing 7x the intended amount of incarcerated persons. Of these incarcerated persons, 97% are “awaiting trial, undergoing trial, or awaiting final judgement.”³⁵⁵ Therefore, the vast majority of people have not been officially sentenced to jail time and are subject to inhumane conditions as a result of the inefficiency and inhumanity of the Filipino prison system. The CRN warns that lowering the MACR in this context “will require the infusion of a substantial amount of public funds into a system that will more likely create chronic criminals out of [Filipino] children.”³⁵⁶ Thus, expanding the population that can be held in Filipino prisons will only exacerbate an already damaged system.

Rather than lowering the MACR and increasing funding to accommodate more incarcerated persons, the Philippine government should invest in the proper and complete implementation of R.A. 9344. All of our interviewees identified a lack of funding as a key factor

³⁵² Tan, Michael L. “Child, Criminal.” *Philippine Daily Inquirer*, 25 Jan. 2019, opinion.inquirer.net/119099/child-criminal.

³⁵³ “On the Amendment to the Juvenile Justice and Welfare Act.” *Psychological Association of the Philippines*

³⁵⁴ Muyot, Albert. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

³⁵⁵ Marella, Jose Maria L. “Philippine Detention Centers and the Price of Criminal Justice.” *Rappler*, 9 Apr. 2018, www.rappler.com/views/imho/199374-jails-price-criminal-justice-philippines.

³⁵⁶ Alhambra, p. 3.

inhibiting the realization of the JJWA. Increasing funding for this act will create a more sustainable and effective system that not only protects children, but rehabilitates them for positive integration and success in society. In practice, an increase in funding would mean strengthening programs for community intervention, facilitating the construction and maintenance of Bahay Pag-asa, ensuring holistic training for all personnel involved with CICL and CAR, and equalizing the quality of LCPCs in every province or HUC.

The Importance of Funding

In general, our interviewees concluded that R.A. 9344 as it stands is a well thought out law that has the potential to create a just system that addresses the needs of Filipino youth. The problem lies within the lack of commitment of the government in seeing its implementation to fruition. The public maintains that the current juvenile justice system is “ineffective” and allows children who commit crimes to go “scot-free.” This view is a misconception, and more funding will increase the capacity of the JJWA to hold children accountable in a productive manner. Many with this view confuse the terms “criminal liability” and “civil liability.” Under the JJWA, among other consequences, children must “pay for the damages resulting from the offense [and] undergo an intervention program supervised by a social worker.” Further, the JJWA “provides sufficient measures to hold children accountable for their wrongdoings,” while focusing on the needs of children, specifically in these areas: prevention, intervention, diversion, rehabilitation, and reintegration.³⁵⁷ Therefore, facilitating the full implementation of the JJWA will create the “effective” system that the public desires.

Furthermore, Muyot argued that the best way to curb crime is to create “better intervention at the community level,” as a means of socializing children and creating structure that diverts them from deviant behavior.³⁵⁸ The CRN notes that these interventions are far less expensive than “placing a child in detention or in an institution,” an option which costs 8,1792.85 PHP (1,610.74 USD) per child per year.³⁵⁹ Yet many areas of the country are not creating strong intervention and diversion programs, according to Brother Crispin, because of a

³⁵⁷ Alhambra, p. 3.

³⁵⁸ Muyot, Albert. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.

³⁵⁹ Alhambra, p. 3.

misuse of the 1% of the IRA allotted for the JJWA.³⁶⁰ In order to create stronger intervention programs as well as effective diversion programs, LGUs and LCPCs need far more resources and capital.

Another challenge that a lack of funding creates is the absence of facilities for diversion and support services following diversion programs. Candelaria explained that these facilities are crucial to R.A. 9344's success. Without them, CICL are unable to get the necessary attention and instruction that fosters good habits. Further, the lack of support services that children need after leaving diversion programs increases the likelihood of reoffending, as children return to poor conditions and communities where crime is prevalent. This issue can manifest in different ways—for example, a child may return to his home which still lacks food, leading him to steal in order to eat, or he may fall back into the company of misbehaved peers. Ensuring that these programs and support systems exist can help guide former CICL towards good choices and aid their reintegration into society.

On a similar note, Ignacio emphasized the discrepancy that exists between many of the Bahay Pag-asa that exist, in terms of facilities and training. Some Bahay Pag-asa are exceptional, with properly trained staff, healthy living conditions, and abundant programs that build self worth in children and provide them with tools to avoid future crime. Yet many more lack all of these aspects, instead abusing their children and setting them up to reoffend quickly after reentering into society. She thinks the law needs to be “given a chance,” that with appropriate funding, many of the issues facing youth justice and Filipino society as a whole can be fixed.³⁶¹ Tabanda offered similar sentiments, adding in the necessity of strengthening parental participation and instruction in these efforts. She further elaborated that these programs need to be strengthened in their ability to handle the needs of poor children.³⁶²

Muncy identified two issues—underfunding of LGUs and LGU noncompliance—as important areas to address. As we noted before, Muncy believes that the best way to combat these issues is through an increase in financial help from the national government, either directly or through subsidizing programs for impoverished LGUs. However, he believes that intervention

³⁶⁰ Betita, Crispin. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.

³⁶¹ Ignacio, Emma. Interview. Conducted by Audrey Mullen and Halina Tittmann, 06 June 2019.

³⁶² Tabanda, Betty. Interview. Conducted by Audrey Mullen and Halina Tittmann, 13 June 2019.

in the juvenile justice system should go even further: he would like to see the creation of a better educational system—specifically the creation of alternative schooling options for street children—an increase in the prevalence of social services, and the facilitation of community programs that focus on sexual health.³⁶³ Thus, a general increase in funding and commitment to implementing the JJWA in its entirety has the potential to reduce rates of crime and recidivism while providing the Philippines’ most at risk children with the opportunity for a better life.

Conclusion

Right now, the futures of the Philippines’ most vulnerable population lie on the shoulders of Filipino lawmakers. The path lawmakers choose now will impact the lives of generations of Filipino children. If lawmakers choose the “tough on crime” route, in line with President Duterte’s philosophy, crime rates will not decrease, CICL will not be rehabilitated, the drug problem will not be solved. If, on the other hand, lawmakers opt to give R.A. 9344 the opportunity to succeed, numerous children will be set on a path towards healthy lives as active, positive members within the greater Filipino society. We have seen first-hand the capabilities this law has when properly enacted: it has the power to drastically change the lives of countless individuals, as well as the general population. It can not only transform, but save the lives of the children that society overlooks.

The young man, Ben, whose story we told, is the perfect example of what R.A. 9344 can provide for CICL: rehabilitation and a second chance. Five years ago, one could argue that he was going nowhere—that he would spend time in and out of prison, live his entire life in poverty, and perhaps even die young. However, he is now the walking emblem of what the JJWA produces when properly funded. Ben transformed from a member of a gang to an important socializing figure for his younger siblings. From the positive relationship he developed with his social worker, he now hopes to become a social worker himself so that he can offer children in similar circumstances the guidance he was given. Children are not adults—they can be reformed and made into productive contributors to society.

³⁶³ Muncy, Steve. Interview. Conducted by Audrey Mullen and Halina Tittmann, 20 June 2019.

This young man was never a threat to society at his core, but rather a victim of circumstance. Children in these conditions are often exposed to abuse, violence, and extreme poverty that can lead them to poor choices, though oftentimes these are choices of survival. It is easy to disregard and blame children who commit crimes—especially such violent crimes—but until the public understands the absolute destitute environment that these children endure, they will be ill-equipped to form a relevant opinion.

No one seems to act when thousands of children are born into unhealthy environments and subject to a life that compromises their chances of upward mobility or survival. Yet when these children respond in a natural way to their environment—through participating in criminal behavior—the system that handicaps them in the first place destroys their lives further.

This story of a former CICL who accessed his full potential when given a second chance demonstrates why the Philippines has to fully implement R.A. 9344. It shows why it is crucial that these children are treated as victims themselves, and not only perpetrators. It shows why it is crucial the age of criminal responsibility remains at 15.

The time is now to reverse a system that perpetuates economic inequality and further handicaps the Philippines' most vulnerable citizens. The dangerous threats that lowering the MACR pose for children, prisons, and society as a whole—as compared to the benefits that the JJWA offers—indicates that the most humane approach to protecting children and reducing crime is to fund and enforce the JJWA's complete implementation. As the CRN attests, “difficulties in implementing the law cannot be used to justify lowering the MACR. This would compromise children's rights merely on the basis of expediency. Lowering the MACR violates the right of the child to genuine protection.”³⁶⁴ R.A. 9344 addresses the majority of the stipulations established in international documents on children's rights. Lowering the MACR will plunge the Philippines deeper into a state of abusing children's rights, harming the poor, and pushing an ineffective and detrimental justice system.

³⁶⁴ Alhambra, p. 3.

Annex

Section 1

ARTICLE 3: 1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

ARTICLE 37: (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

ARTICLE 40: States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Bibliography

- Abdul Syukur, Fatahillah, and Dale Margaret Bagshaw. "Victim-Offender Mediation with Youth Offenders in Indonesia." *Conflict Resolution Quarterly*, vol. 32, no. 4, Summer 2015, p. 389. *HeinOnline*, <https://heinonline-org.proxy.bc.edu/HOL/P?h=hein.journals/cfltrq32&i=389>.
- "About Human Development." Human Development Reports, United Nations Development Programme, <hdr.undp.org/en/humandev>.
- Albert, Dustin, and Steinberg, Laurence. "Judgment and Decision Making in Adolescence.(Report)." *Journal of Research on Adolescence*, vol. 21, Blackwell Publishers Ltd., 2011.
- Alexandris Polomarkakis, Konstantinos. "Drug Law Enforcement Revisited: The "War" Against the War on Drugs." *Journal of Drug Issues*, vol. 47, no. 3, SAGE Publications, 2017, pp. 398, doi:10.1177/0022042617697017.
- Alhambra, Anna Marie V. "Intersect Quick Facts- Children and the Minimum Age of Criminal Responsibility (MACR): Why the MACR Should Not Be Lowered." *Child Rights Network*, September 2016. p. 1. <https://childrightsnetwork.ph/download/intersect-quick-facts-children-and-the-minimum-age-of-criminal-responsibility-pdf/>
- Arnett, Jeffrey. "Reckless Behavior in Adolescence: A Developmental Perspective." *Developmental Review*, vol. 12, no. 4, Elsevier Inc, 1992, pp. 339–73, doi:10.1016/0273-2297(92)90013-R.
- Barrera, Dan, et al. "Negative Life Events and Maladaptive Behaviors Among Filipino Adolescents: An Empirical Test of the General Strain Theory." *Asian Journal of Criminology*, vol. 11, no. 4, Springer Netherlands, 2016, pp. 266, doi:10.1007/s11417-016-9230-9.
- Beloff, Mary, and Máximo Langer. "Myths and Realities of Juvenile Justice in Latin America." *Juvenile Justice in Global Perspective*, by Franklin E. Zimring et al., New York University Press, 2015, p. 203.
- Benekos, Peter J., et al. "In Defence of Children and Youth: Reforming Juvenile Justice Policies." *International Journal of Police Science & Management*, vol. 15, no. 2, 2013, pp. 125, doi:10.1350/ijps.2013.15.2.307.
- Betita, Crispin. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.
- Billing, Lynzy, and Regine Cabato. "This Is Manila." *The Washington Post*, 2019, https://www.washingtonpost.com/graphics/2019/world/philippines-manila-body/?utm_term=.d9e4e80c6a4.
- Blackwell Publishers Inc., 1999, pp. 202–13, doi:10.1111/1467-8624.00015.
- Borlaza, Gregorio C., et al. "Philippines: The early republic" *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 24 Apr. 2020, <https://www.britannica.com/place/Philippines/The-early-republic>.
- Borlaza, Gregorio C., et al. "Philippines: The Marcos and early post-Marcos era" *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 24 Apr. 2020, <https://www.britannica.com/place/Philippines/The-early-republic#ref23720>.
- Borlaza, Gregorio C., et al. "Philippines: The Spanish Period." *Encyclopædia Britannica*, Encyclopædia Britannica, Inc., 24 Apr. 2020, www.britannica.com/place/Philippines/The-Spanish-period.
- Bouma, Gary D., et al. "Philippines." *Religious Diversity in Southeast Asia and the Pacific: National Case Studies*, Springer Netherlands, 2010, pp. 91–95, doi:10.1007/978-90-481-3389-5_9.
- Boyle, Gregory, et al. *Report of the Attorney General's National Task Force on Children Exposed to Violence*. U.S. Department of Justice, 2012, p. 21, *Report of the Attorney General's National Task Force on Children Exposed to Violence*, www.justice.gov/sites/default/files/defendingchildhood/cev-rpt-full.pdf.
- Candelaria, Sedfrey. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.
- Carolino, Ditsi, director. *Bunso*. 2005.
- Casey, B J, and Rebecca M Jones. "Neurobiology of the adolescent brain and behavior: implications for substance use disorders." *Journal of the American Academy of Child and Adolescent Psychiatry* vol. 49,12 (2010):

- 1189-201; quiz 1285. doi:10.1016/j.jaac.2010.08.017
- Cauffman, Elizabeth, et al. "(Im)maturity of Judgment in Adolescence: Why Adolescents May Be Less Culpable Than Adults*." *Behavioral Sciences & the Law*, vol. 18, no. 6, John Wiley & Sons, Ltd., 2000, pp. 741–60, doi:10.1002/bsl.416. Childhood and Early Adolescence: Associations with Peer Relations." *Child Development*, vol. 70, no. 1,
- Collins, Andrew and Steinberg, Laurence. "Adolescent development in interpersonal context." *Handbook of child psychology*, W. Damon & R. Lerner, 2006, pp. 1003–1067
- "Committee on the Rights of the Child: Elections." *United Nations Human Rights Office of the High Commissioner*, 1996, www.ohchr.org/EN/HRBodies/CRC/Pages/Elections.aspx.
- "Committee on the Rights of the Child: Membership." *United Nations Human Rights Office of the High Commissioner*, 1996, www.ohchr.org/EN/HRBodies/CRC/Pages/Elections.aspx.
- Council of Europe. Recommendation CM/REC(2008)11 of the Committee of Ministers to member states on the European Rules for juvenile offenders subject to sanctions or measures. 5 November 2008, https://www.euromed-justice.eu/en/system/files/20090428164903_CouncilofEurope.RecommendationCM200811ontheEuropeanRulesforjuvenileoffenderssubjecttosanctionsormeasures.doc.pdf.
- Dandurand, Yvon, and Curt T. Griffiths. *Handbook on Restorative Justice Programmes*. United Nations, 2006, UNODC, p. 6, www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf.
- Danielson, Carla Kmett, et al. "Does Typography of Substance Abuse and Dependence Differ as a Function of Exposure to Child Maltreatment?" *Journal of Child & Adolescent Substance Abuse*, vol. 18, no. 4, Taylor & Francis Group, 2009, pp. 323–42, doi:10.1080/10678280902973310.
- David, Randy. "The War on Reason." *Philippine Daily Inquirer*, 7 Jan. 2018, <https://opinion.inquirer.net/110072/the-war-on-reason>.
- "DILG to LGUs: Allocate 1% of your IRA for local councils for children." *Official Gazette*, 19 July 2012
- Economic and Social Council, *Administration of juvenile justice: report of the Secretary-General*, E/CN.15/1997/13 (Mar. 13, 1997) available from undocs.org/en/E/CN.15/1997/13
- Economic and Social Council, *Children as victims and perpetrators of crime: report of the Secretary-General*, E/CN.15/1996/10 (Apr. 12, 1996) available from undocs.org/en/E/CN.15/1996/10
- Economic and Social Council, *Commission on Crime Prevention and Criminal Justice: report on the 6th session*, E/CN.15/1997/21 (Apr. 28- May 9, 1996) available from undocs.org/en/E/CN.15/1997/21
- Economic and Social Council, *Expert group meeting on children and juveniles in detention: application of human rights standards*, E/CN.4/1995/100 (Apr. 16, 1995) available from undocs.org/en/E/CN.4/1995/100
- Economic and Social Council, *United Nations Guidelines for Action on Children in the Criminal Justice System ("The Vienna Guidelines")*, E/RES/1997/30 (21 July 1997)
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *African Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.5 (August 14th, 1989) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/039_ACONF.144.RPM.5_African_Regional_Report.pdf
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Asia and The Pacific Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.1 (Apr. 10-14, 1989) available from https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/031_ACONF.144.RPM.1_Asia_and_Pacific_Regional_Report.pdf
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *European Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of*

- Offenders*, A/CONF.144/RPM.2 (Apr. 24-28, 1989) available from https://www.unodc.org/documents/congress//Previous_Congresses/8th_Congress_1990/034_ACONF.144.RPM.2_European_Regional_Report.pdf
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Latin America and Caribbean Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.3 (May 8 - May 19, 1989) available from https://www.unodc.org/documents/congress//Previous_Congresses/8th_Congress_1990/036_ACONF.144.RPM.3_Latin_American_and_Caribbean_Regional_Report.pdf
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions- Working paper prepared by the Secretariat*, A/CONF.144/16 (Jul. 2, 1990) available from https://www.unodc.org/documents/congress//Previous_Congresses/8th_Congress_1990/020_ACONF.144.16_Working_Paper_Prevention_of_Delinquency_Juvenile_Justice_and_the_Protection_of_the_Young.pdf
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the 8th United Nations Congress on the Prevention of Crime and the Treatment of Offenders*, A/CONF.144/28 (Aug. 27-Sept. 7 1990) available from https://www.unodc.org/documents/congress//Previous_Congresses/8th_Congress_1990/028_ACONF.144.28.Rev.1_Report_Eighth_United_Nations_Congress_on_the_Prevention_of_Crime_and_the_Treatment_of_Offenders.pdf
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Interregional Preparatory Meeting on Topic Iv: "Prevention of Delinquency, Juvenile Justice and the Protection of the Young: Policy Approaches and Directions"* A/CONF.144/IPM.3 (Apr. 18- 22, 1988) available from https://www.unodc.org/documents/congress//Previous_Congresses/8th_Congress_1990/043_ACONF.144.1PM.3_Topic_IV_-_Prevention_of_Delinquency_Juvenile_Justice_and_the_Protection_of_the_Young.pdf
- Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Western Asia Regional Preparatory Meetings for the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.144/RPM.4 (Aug. 27 -Sept. 7, 1990) available from https://www.unodc.org/documents/congress//Previous_Congresses/8th_Congress_1990/038_ACONF.144.RPM.4_Western_Asia_Regional_Report.pdf
- Estorninos, Klarise Anne. "Batang Bata Ka Pa:1 An Analysis of the Philippine Minimum Age of Criminal Responsibility in Light of International Standards ." *Ateneo Law Journal* , vol. 62, no. 258, 2017, pp. 260–273.
- Evangelista, Marciano "Rocky." Interview. Conducted by Audrey Mullen and Halina Tittmann, 18 June 2019.
- Ferguson, Therese, and Pauletta Chevannes. "The Change From Within Program: Bringing Restorative Justice Circles for Conflict Resolution to Jamaican Schools." *Childhood Education* 94.1 (2018): p. 57. Web.
- "Filipino Families Are Most Deprived in Education." Philippine Statistics Authority, Republic Of The Philippines, 14 Nov. 2018, psa.gov.ph/poverty-press-releases/nid/136930.
- Forrest, David V. "The Executive Brain: Frontal Lobes and the Civilized Mind." *American Journal of Psychiatry*, vol. 159, no. 9, American Psychiatric Publishing, 2002, pp. 1615–16, doi:10.1176/appi.ajp.159.9.1615.
- Gardner, Margo, and Steinberg, Laurence. "'Peer Influence on Risk Taking, Risk Preference, and Risk Decision Making in Adolescence and Adulthood: An Experimental Study": Correction to Gardner and Steinberg (2005)." *Developmental Psychology*, vol. 48, no. 2, American Psychological Association, Inc., 2012.
- General Assembly resolution 45/112, *United Nations Guidelines for the Prevention of Juvenile Delinquency* ("The Riyadh Guidelines"), A/RES/45/112 (14 December 1990) available from undocs.org/en/A/RES/45/112
- General Assembly resolution 45/113, *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* ("The Havana Rules"), A/RES/45/113 (14 December 1990) available from undocs.org/en/A/RES/45/113

- General Assembly resolution 40/33, *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* ("Beijing Rules"), A/RES/40/33 (29 December 1985) available from undocs.org/en/A/RES/40/33
- Goldson, Barry, and John Muncie. "Juvenile Justice: International Law and Children's Rights." *International Encyclopedia of the Social & Behavioral Sciences*: Second Edition. Elsevier, 2015. p. 958,
<https://doi.org/10.1016/B978-0-08-097086-8.86045-6>.
- Goldson, Barry, and John Muncie. "Towards a Global 'child Friendly' Juvenile Justice?" *International Journal of Law, Crime and Justice*, vol. 40, no. 1, Elsevier Ltd, 2012, p. 59, doi:10.1016/j.ijlcrj.2011.09.004.
- González, Thalia. "Keeping Kids in Schools: Restorative Justice, Punitive Discipline, and the School to Prison Pipeline." *Journal of Law and Education*, vol. 41, no. 2, 2012, pp. 282-283. *ProQuest*,
<https://proxy.bc.edu/login?url=https%3A%2F%2Fsearch.proquest.com%2Fdocview%2F1008167526%3Faccountid%3D9673>.
- Gutierrez, Jason. "Philippine Law Would Make 9-Year-Olds Criminally Liable." *The New York Times*, 22 Jan. 2019,
<https://www.nytimes.com/2019/01/22/world/asia/philippines-juvenile-justice-law.html>.
- Haider, Aliya. "Roper v. Simmons: The Role of the Science Brief." *Ohio State Journal of Criminal Law*, vol. 3, no. 2, Spring 2006, p. 369-378. *HeinOnline*,
<https://heinonline-org.proxy.bc.edu/HOL/P?h=hein.journals/osjcl3&i=375>.
- Hamilton & Harvey - The Role of Public Opinion in the Implementation of International Juvenile Justice Standards (2004). p. 369.
- Harris, Nathan. "Braithwaite, John: Reintegrative Shaming Theory." *Encyclopedia of Criminological Theory*, by Francis T. Cullen and Pamela Wilcox, SAGE Publications, Inc., 2010,
sk-sagepub-com.proxy.bc.edu/reference/download/criminologicaltheory/n31.pdf, p. 2.
- Herrero, Elita. Interview. Conducted by Audrey Mullen and Halina Tittmann, 10 June 2019.
- Holman, Barry, and Jason Ziedenberg. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*.
<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/491/05/PDF/N0649105.pdf?OpenElement> pg 16
- "Human Development Reports: Philippines." *Human Development Reports*, United Nations Development Programme, 2020, www.hdr.undp.org/en/countries/profiles/PHL.
- Ignacio, Emma. Interview. Conducted by Audrey Mullen and Halina Tittmann, 06 June 2019.
- India. Ministry of Law and Justice. The Juvenile Justice (Care and Protection of Children Act, 2015). No. 2 of 2016. 31 December 2015, <http://cara.nic.in/PDF/JJ%20act%202015.pdf>.
- Jarjoura, G. R., Ruth A. Triplett, and Gregory P. Brinker. "Growing Up Poor: Examining the Link between Persistent Childhood Poverty and Delinquency: [1]." *Journal of Quantitative Criminology*, vol. 18, no. 2, 2002, pp. 159-187. *ProQuest*, doi:<http://dx.doi.org.proxy.bc.edu/10.1023/A:1015206715838>.
- "Jurisdictional Boundaries." *Juvenile Justice, Geography, Policy, Practice & Statistics*, MacArthur Foundation,
www.jjgps.org/jurisdictional-boundaries.
- "Kids Jump On Moving Trucks To Steal To Feed Families." *YouTube*, CNN Insider, 24 May 2019,
www.youtube.com/watch?v=fS1dTKOqvkk
- Krohn, Marvin D. "Juvenile Delinquency and Juvenile Justice Trends in Europe." *The Handbook of Juvenile Delinquency and Juvenile Justice*, John Wiley & Sons, Inc., 2015, p. 21, doi:10.1002/9781118513217.ch2.
- Krohn, Marvin D. "Parenting and Delinquency." *The Handbook of Juvenile Delinquency and Juvenile Justice*, John Wiley & Sons, Inc., 2015, pp. 161-80, doi:10.1002/9781118513217.ch12.
- Kumari, Ved. "Juvenile Justice in India." *Juvenile Justice in Global Perspective*, by Franklin E. Zimring et al., New York University Press, 2015, pp. 145-198.
- Lane, Jodi. "Juvenile Delinquency and Justice Trends in the United States." *The Handbook of Juvenile Delinquency and Juvenile Justice*, John Wiley & Sons, Inc., 2015, p. 4, doi:10.1002/9781118513217.ch2.

- Larson, Reed, and Maryse H. Richards. "Daily Companionship in Late Childhood and Early Adolescence: Changing Developmental Contexts." *Child Development*, vol. 62, no. 2, Blackwell Publishing Ltd, 1991, pp. 284–300, doi:10.1111/j.1467-8624.1991.tb01531.x.
- Levesque, Roger. "Future Visions of Juvenile Justice: Lessons from International and Comparative Law." *Creighton Law Review*, vol. 29, pp. 1563-1586
- Liberman, Akiva M., et al. "Secondary Deviance and Secondary Sanctioning." *Criminology*, vol. 52, no. 3, 2014, pp. 345–70, doi:10.1111/1745-9125.12039, https://www.unodc.org/documents/congress/Previous_Congresses/8th_Congress_1990/028_ACONF.1_44.28.Rev.1_Report_Eighth_United_Nations_Congress_on_the_Prevention_of_Crime_and_the_Treatment_of_Offenders.pdf
- Lieberman, Melissa, et al. "Developmental Patterns in Security of Attachment to Mother and Father in Late M.1 Discussion Guide for the Regional and Interregional Preparatory Meetings.pdf"
- "Lowering the Age of Criminal Responsibility Is against Child Rights: UNICEF." *UNICEF Philippines*, UNICEF, 18 Jan. 2019, www.unicef.org/philippines/press-releases/lowering-age-criminal-responsibility-against-child-rights-unicef
- Macapagal-Arroyo, Gloria. "To the Committee on Rules" Received by Jose C. De Venecia Jr., 6 February 2006.
- Malaysia. Act 559. Syariah Criminal Offences (Federal Territories) Act 1997. 31 March 1997, [agc.gov, http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559%20-%20Syariah%20Criminal%20Offences%20\(Federal%20Territories\)%20Act%201997.pdf](http://www.agc.gov.my/agcportal/uploads/files/Publications/LOM/EN/Act%20559%20-%20Syariah%20Criminal%20Offences%20(Federal%20Territories)%20Act%201997.pdf).
- Marella, Jose Maria L. "Philippine Detention Centers and the Price of Criminal Justice." *Rappler*, 9 Apr. 2018, www.rappler.com/views/imho/199374-jails-price-criminal-justice-philippines.
- Mauritius. Criminal Code. December 1838, <http://attorneygeneral.govmu.org/English/Documents/A-Z%20Acts/C/Page%203/CRIMINAL%20CODE.pdf>.
- Maxwell, Sheila Royo. "A Focus on Familial Strain: Antisocial Behavior and Delinquency in Filipino Society." *Sociological Inquiry*, vol. 71, no. 3, Blackwell Publishing Ltd, 2001, p. 270, doi:10.1111/j.1475-682X.2001.tb01113.x.
- "Minimum Age of Criminal Responsibility." *CRIN*, Child Rights International Network, 2020, home.crin.org/issues/deprivation-of-liberty/minimum-age-of-criminal-responsibility.
- "Minimum Ages of Criminal Responsibility in Asia: Saudi Arabia." *CRIN*, Child Rights International Network, 2020, archive.crin.org/en/home/ages/asia.html
- "Minimum Ages of Criminal Responsibility in Oceania." *Child Rights International Network*, <https://archive.crin.org/en/home/ages/oceania.html>
- "Minimum Ages of Criminal Responsibility in the Americas." *Child Rights International Network*, archive.crin.org/en/home/ages/Americas.html.
- Muncy, Steve. Interview. Conducted by Audrey Mullen and Halina Tittmann, 20 June 2019.
- Muyot, Albert. Interview. Conducted by Audrey Mullen and Halina Tittmann, 17 June 2019.
- Narag, Raymund E. *Mitigating Crime in a Slum Community: Understanding the Role of Social Structures, Social Processes, and Community Culture in a Neighborhood Intervention Program*, 2014. ProQuest, <https://search.proquest.com/docview/1520314637?accountid=9673>
- Narag, Raymund. "Explaining Duterte's Views on Filipino Criminality." *Rappler*, 30 July 2017, <https://www.rappler.com/thought-leaders/176624-duterte-understanding-filipino-criminality>.
- National Research Council. 2013. *Reforming Juvenile Justice: A Developmental Approach*. Washington, DC: The National Academies Press. https://doi.org/10.17226/14685.National_Youth_Violence_Prevention_Update. Office of Juvenile Justice and Delinquency Prevention, 2010, p. 4, <https://ojjdp.ojp.gov/sites/g/files/xyckuh176/files/pubs/250083.pdf>.
- Neale, Leslie, director. *Juivies*. A+E Networks, 2004.

- Nwankwo, Peter O. *Criminology and Criminal Justice Systems of the World: A Comparative Perspective*. Trafford On Demand Pub, 2011.
- Oco, Tricia. Interview. Conducted by Audrey Mullen and Halina Tittmann, 07 June 2019.
- “OHCHR | Membership.” *United Nations Human Rights Office of the High Commissioner*, United Nations, 2017, www.ohchr.org/EN/HRBodies/CRC/Pages/Membership.aspx.
- “On the Amendment to the Juvenile Justice and Welfare Act.” *Psychological Association of the Philippines*, Jan. 2017, www.pap.org.ph/position-paper/amendment-juvenile-justice-and-welfare-act.
- Organization of African Unity (OAU), *African Charter on the Rights and Welfare of the Child*, 11 July 1990, CAB/LEG/24.9/49 (1990), p. 6, https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf.
- Paculdar, Agnes A. “Bunso (The Youngest).” *Kasarinlan Philippine Journal of Third World Studies*, vol. 19, no. 1, 2004, pp. 250–254., <https://journals.upd.edu.ph/index.php/kasarinlan/issue/view/121>. Accessed 11 May 2020
- “People and Religion.” *Department of Tourism-Philippines*, The Philippine Government, 2020, www.tourism.gov.ph/people_religion.aspx.
- Philippine Action for Youth Offenders. *Position Paper of the Philippine Action for Youth Offenders on Senate Resolution 28*. Philippines: Manila, 2008.
- Philippine Action for Youth Offenders. *Position Paper of the Philippine Action for Youth and Offenders (Payo) on the Proposed Amendments to Republic Act No. 9344*. Philippines: Manila, 2011.
- Philippines, Congress, House, *Plenary Proceedings of the 17th Congress, Third Regular Session*, vol. 3 No.45, 2019
- Philippines, Congress, House, *Plenary Proceedings of the 17th Congress, Third Regular Session*, vol. 3 No.46, 2019
- Philippines, Congress, “Record of Plenary Proceedings No. 50.” *Congress Journal*, 2006, pp.636-849
- Philippines, Congress. RA 9344. *Juvenile Justice and Welfare Act*. 28 April 2006.
- Philippines, Department of Justice. *Annual Report CY 2007*, June 30, 2007. The Planning Staff Management Services Office 2007
- Philippines, Department of Justice. *Protecting Filipino Children From Abuse, Exploitation and Violence*, December, 2006. Special Committee for the Protection of Children 2006
- Philippines, Department of Social Welfare and Development. *Guidelines for Social Workers in Handling and Treatment of Children in Conflict with the Law*, June 28, 2007.
- Philippines, Executive Office of the President Ferdinand E. Marcos. Executive Order 603: *The Child Youth and Welfare Code*. 10 Dec. 1974.
- Philippines, Executive Office of the President Gloria Macapagal- Arroyo. Executive order 663: *Providing for the Immediate Release of Detained Children in Conflict With the Law (CICL) as Declared Under R.A. 9344, Entitled “Juvenile Justice and Welfare Act of 2006*. 16 July 2007.
- “Philippines: Minimum Age of Criminal Responsibility Must Not be Lowered.” *States News Service*, States News Service, 2019.
- “Philippines Population (LIVE).” *Worldometer*, www.worldometers.info/world-population/philippines-population/. Date accessed: 27 April 2019.
- “Philippines President Rodrigo Duterte in Quotes.” *BBC News*, BBC, 30 Sept. 2016, www.bbc.com/news/world-asia-36251094.
- Philippines, Senate, “Committee Report No. 622.” *Senate Report*, 2019
- Philippines, Senate, “Journal No. 28.” *Senate Journal*, 2005, pp. 309–321.
- Philippines, Senate, “Journal No. 29.” *Senate Journal*, 2005, pp. 323–341.
- Philippines, Senate, “Journal No. 35.” *Senate Journal*, 2005, pp. 420–431
- Philippines, Senate, “Journal No. 38.” *Senate Journal*, 2012, pp. 1106–1043

- Philippines, Senate, "Journal No. 39 ." *Senate Journal* , 2005, pp. 463–460.
- Philippines, Senate, "Journal No. 76 ." *Senate Journal*, 2006, pp. 890-900.
- Philippines. Congress. Juvenile Justice and Welfare Act of 2006. *Congress.gov.ph*, https://lawphil.net/statutes/repacts/ra2006/ra_9344_2006.html. 13th Congress, 2nd session, Republic Act 9344, passed 25 Jul. 2005.
- "Population of the National Capital Region (Based on the 2015 Census of Population)." *Philippine Statistics Authority*, The Philippine Government, 31 May 2016, psa.gov.ph/content/population-national-capital-region-based-2015-census-population-0.
- Quennerstedt, Ann, et al. "The UNCRC: The Voice of Global Consensus on Children's Rights?" *Nordic Journal of Human Rights*, vol. 36, no. 1, 1 May 2018, doi:10.1080/18918131.2018.1453589.
- Quinto, Patrick. "Poor Filipinos Most Vulnerable in Duterte's Drug War: Study." *ABS-CBN News*, 25 June 2018, <https://news.abs-cbn.com/focus/06/25/18/poor-filipinos-most-vulnerable-in-dutertes-drug-war-study>.
- Reyes-Quilodran, Claudia Andrea, et al. "A Path to Peace: A Comparative Study of Practitioners' Views of Juvenile Restorative Justice in Chile, England, Italy, and Sweden." *International Social Work*, vol. 62, no. 1, 2019, p. 256. *Sage Publications*, doi:10.1177/0020872817725136..
- Rivera, Roberto E. N. "Philippine Catholicism as Disruptive Public Religion: A Sociological Analysis of Philippine Catholic Bishops' Statements, 1946 to 2000." *Philippine Sociological Review*, vol. 58, Philippine Sociological Society, Inc., 2010, pp. 75–96.
- Roth, Kenneth. "World Report 2019: Rights Trends in Philippines." Human Rights Watch, Human Rights Watch, 22 Jan. 2019, www.hrw.org/world-report/2019/country-chapters/philippines#1ff4dc.
- Sabillo, Kristine. "Duterte blames Pangilinan for Juvenile Justice Act, Rise of 'Criminal Minds.'" *Inquirer*, 3 Apr. 2017, <https://newsinfo.inquirer.net/886037/duterte-blames-pangilinan-for-juvenile-justice-act-rise-of-criminal-minds>.
- Salvosa, Ray Dean. Interview. Conducted by Audrey Mullen and Halina Tittmann, 11 May 2020.
- Salvosa, Ray Dean. Speech. University of the Cordilleras, Baguio City. 13 June 2019.
- Salzinger, Suzanne, et al. "The Effects of Physical Abuse on Children's Social Relationships." *Child Development*, vol. 64, no. 1, Blackwell Publishing Ltd, 1993, pp. 169–87, doi:10.1111/j.1467-8624.1993.tb02902.x.
- Sedlak, A.J. and Bruce. *Survey of Youth in Residential Placement: Youth's Characteristics and Backgrounds*. SYRP Report. 2016. p.3, <https://www.ncjrs.gov/pdffiles1/ojdp/grants/250753.pdf>.
- Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Discussion Guide for the Regional and Interregional Preparatory Meetings for the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.121/PM.1 (April 4 1983) available from https://www.unodc.org/documents/congress//Previous_Congresses/7th_Congress_1985/032_ACONF.121.P
- Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders* A/CONF.121/RPM.1 (Jul. 29, 1983) available from https://www.unodc.org/documents/congress//Previous_Congresses/7th_Congress_1985/034_ACONF.121.RPM.1_European_Regional_Report.pdf
- Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Interregional Preparatory Meetings for the Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders on Topic IV: "Youth, Crime and Justice"*, A/CONF.121/IPM/1 (June 27 1984) available from https://www.unodc.org/documents/congress//Previous_Congresses/7th_Congress_1985/040_ACONF.121.RPM.5_Topic_IV_-_Youth_Crime_and_Justice.pdf
- Seventh United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Youth Crime and Justice- research in juvenile delinquency Report of the Secretary-General*, A/CONF.121/11 (Apr. 15, 1985)

- available from https://www.unodc.org/documents/congress//Previous_Congresses/7th_Congress_1985/012_ACONF.121.11_Youth_Crime_and_Justice_Report_of_the_SG.pdf
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *6th United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/CONF.87/14/Rev.1 (Aug. 25- Sept. 5, 1980) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/025_ACONF.87.14.Rev.1_Sixth_United_Nations_Congress_on_the_Prevention_of_Crime_and_the_Treatment_of_Offenders.pdf
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Discussion Guide for the Regional Preparatory Meetings*, A/CONF.87/RM1 (Jun. 28, 1977)
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Juvenile Justice Before and After the Onset of Delinquency*, A/CONF.87/5 (Jun. 4, 1980) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/006_ACONF.87.5
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Africa Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/4 (Jan. 16, 1979) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/021_ACONF.87.BP.4_African_Regional_Report.pdf
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Asia and Pacific Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/2 (Aug. 8, 1978) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/019_ACONF.87.BP.2_Asia_and_Pacific_Regional_Report.pdf
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Canadian Delegation to the Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, (Aug. 26, 1980)
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the European Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP1 (Feb. 26, 1978) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/018_ACONF.87.BP.1_European_Regional_Report.pdf
- Sixth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Report of the Latin America Regional Preparatory Meeting on the Prevention of Crime and the Treatment of Offenders*, A/CONF.87/BP/3 (Mar. 30, 1979) available from https://www.unodc.org/documents/congress//Previous_Congresses/6th_Congress_1980/020_ACONF.87.BP.3_Latin_American_Regional_Report.pdf
- Smith, Danny. *Shouting Into the Silence: One Man's Fight for the World's Forgotten*. Lion Books, 2013. pp 191
- Social Weather Stations. "Fourth Quarter 2018 Social Weather Survey: 78% of Pinoys Worry about Becoming Victims of "Extrajudicial Killings or EJK." Social Weather Stations, Social Weather Stations, 1 Mar. 2019, 8:16:52 PM, www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190301201652.
- Social Weather Stations. "Fourth Quarter 2019 Social Weather Survey: Self-Rated Poverty Rises by 12 Points to 5-Year-High 54%." Social Weather Stations, Social Weather Stations, 23 Jan. 2020, 2:04 PM, www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190710213339.
- Social Weather Stations. "Social Weather Stations: Second Quarter 2019 Social Weather Survey: Pres. Duterte's Net Satisfaction Rating at New Record-High." Social Weather Stations, Social Weather Stations, 8 July. 2019 2:28 PM, [artcsyscode=ART-20190708142248](http://www.sws.org.ph/swsmain/artcldisppage/?artcsyscode=ART-20190708142248).
- Sowell, E., et al. "Mapping Continued Brain Growth and Gray Matter Density Reduction in Dorsal Frontal Cortex: Inverse Relationships During Postadolescent Brain Maturation." *Journal of Neuroscience*, vol. 21, no. 22, 2001, pp. 8819–29, <http://search.proquest.com/docview/17548717/>.
- Spear, L.P. "The Adolescent Brain and Age-Related Behavioral Manifestations." *Neuroscience and Biobehavioral Reviews*, vol. 24, no. 4, Elsevier Ltd, 2000, pp. 417–63, doi:10.1016/S0149-7634(00)00014-2.

- "Statement by Federal Human Rights Commissioner Bärbel Kofler on a Possible Lowering of the Minimum Age of Criminal Responsibility in the Philippines." *States News Service*, 30 Jan. 2019. *Gale General OneFile*, https://link-gale-com.proxy.bc.edu/apps/doc/A571917969/ITOF?u=mlln_m_bostcoll&sid=ITOF&xid=99286b54. Accessed 29 Apr. 2020. ;
- Ipatupad Ang Juvenile Justice Law Para Sa Lahat Ng Batang Pilipino*. Juvenile Justice and Welfare Committee, 2019
- Steinberg, Laurence, and Amanda Sheffield Morris. "Adolescent Development." *Annual Review of Psychology*, vol. no. 1, 2001, pp. 83–110, doi:10.1146/annurev.psych.52.1.83.
- Steinberg, Laurence. "A Social Neuroscience Perspective on Adolescent Risk-Taking." *Developmental Review*, vol. no. 1, Elsevier Inc, 2008, pp. 78–106, doi:10.1016/j.dr.2007.08.002.
- Steinberg, Laurence. "Should the Science of Adolescent Brain Development Inform Public Policy?" *The American Psychologist*, vol. 64, no. 8, 2009, pp. 739–50, doi:10.1037/0003-066X.64.8.739.
- Steinberg, Laurence. "The Neural Underpinnings of Adolescent Risk-Taking: The Roles of Reward-Seeking, Impulse Control, and Peers." *Self-Regulation in Adolescence*, Cambridge University Press, 2015, pp. 173–92, doi:10.1017/CBO9781139565790.009.
- Tabanda, Betty. Interview. Conducted by Audrey Mullen and Halina Tittmann, 13 June 2019.
- Talabong, Rambo. "Why Are Filipinos Supporting Duterte's Drug War?" *Rappler News*, 14 Oct. 2017, <https://www.rappler.com/newsbreak/iq/185271-majority-filipinos-support-duterte-drug-war>.
- Tan, Michael L. "Child, Criminal." *Philippine Daily Inquirer*, 25 Jan. 2019, opinion.inquirer.net/119099/child-criminal.
- Tenth United Nations Congress on the Prevention of Crime and Treatment of Offenders, *Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-first Century*, A/CONF.187/4/Rev.3 (Apr. 15 2000) available from <https://www.un.org/ruleoflaw/files/4r3e.pdf>.
- The Philippine Government's Anti-Drug Campaign: Emerging Evidence and Data*. Ateneo School of Government, 2018, *The Philippine Government's Anti-Drug Campaign: Emerging Evidence and Data*., <https://drive.google.com/file/d/19v90c5CNH5HNff45CSWFuUeGj9BobMmA/view>.
- Umbreit, Mark S, and Marilyn Peterson Armour. "Restorative Justice and Dialogue: Impact, Opportunities, and Challenges in the Global Community." *Washington University Journal of Law & Policy*, vol. 36, 2011. *Gale Academic Onefile*, go-gale-com.proxy.bc.edu/ps/i.do?id=GALE%7CA275849595&v=2.1&u=mlln_m_bostcoll&it=r&p=AONE&sw=w.
- UNCRC, *Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: initial report of States parties due in 1992: Philippines*, CRC/C/3/Add.23 (Nov. 3,1993)
- UNCRC, *Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: initial report of States parties due in 2007: Philippines*, CRC/C/PHL/3-4 (Mar. 20, 2009)
- UNCRC, *Committee on the Rights of the Child: consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: initial report of States parties due in 1992: Philippines*, CRC/C/3/Add.23 (Mar. 20, 2009)
- UNCRC, *Concluding observations on the consolidated third and fourth periodic reports of India*, CRC/C/IND/CO/3-4, (13 June 2014) available from <https://www.refworld.org/docid/541bee3e4.html>.
- UNCRC, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations of the Committee on the Rights of the Child: AFGHANISTAN*. 04 February 2011, CRC/C/AFG/CO/1, <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.
- UNCRC, *Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding*

- Observations: India*, CRC/C/15/ADD.228 (Feb 2004) available from <http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsgnXZ0ChBsrwmcv8%2f%2bFNoDHXU6AradMaQIO64B4%2bSxT RLzgGAXfq%2b6z2BG%2f15ChDz0GLBV2GdDrgFd8B8XQFh0Q%2f9WdEoBB8ss%2fuNGX0Uxn3>.
- UNCRC, *Consideration of reports submitted by States parties under article 44 of the Convention on the Rights of the Child: concluding observations: Philippines*, CRC/C/15/ADD.259 (Sept. 21st 2005)
- UNCRC, *General Comment No. 10 ("Children's rights in juvenile justice")*, CRC/C/GC/10, (25 April 2007) available from <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.10.pdf>.
- UNCRC, *UN Committee on the Rights of the Child: Second Periodic Reports of States Parties Due in 1997, Philippines*, CRC/C/65/Add.31 (Nov. 5 2004)
- UN GAOR, 40th Sess., 16 plen. mtg., U.N. Doc A/C.3/40/SR.16 (Oct. 18, 1985), available from <https://undocs.org/en/A/C.3/40/SR.16>.
- UN GAOR, 40th Sess., 18 plen. mtg., U.N. Doc A/C.3/40/SR.18 (Oct. 22, 1985), available from <https://undocs.org/en/A/C.3/40/SR.18>
- UN GAOR, 40th Sess., 20th plen. mtg., U.N. Doc A/C.3/40/SR.20 (Oct. 24th 1985), available from <https://undocs.org/en/A/C.3/40/SR.20>
- UN GAOR, 40th Sess., 21 plen. mtg., U.N. Doc A/C.3/40/SR.21 (Oct. 24, 1985), available from <https://undocs.org/en/A/C.3/40/SR.21>
- UN GAOR, 45th Sess., 24 plen. mtg., U.N. Doc A/C.3/45/SR.26 (Oct. 30, 1990), available from <https://undocs.org/en/A/C.3/45/SR.24>
- UN GAOR, 45th Sess., 26 plen. mtg., U.N. Doc A/C.3/45/SR.26 (Oct. 31, 1990), available from <https://undocs.org/en/A/C.3/45/SR.26>
- UN GAOR, 45th Sess., 27 plen. mtg., U.N. Doc A/C.3/45/SR.27 (Oct. 31, 1990), available from <https://undocs.org/en/A/C.3/45/SR.27>
- UN GAOR, 45th Sess., 45 plen. mtg., U.N. Doc A/C.3/45/SR.45 (Dec. 3, 1990), available from <https://undocs.org/en/A/C.3/45/SR.45>
- UN GAOR, 45th Sess., 68 plen. mtg., U.N. Doc A/45/PV.68 (Dec. 14, 1990), available from <https://undocs.org/en/A/45/PV.68>
- UN GAOR, 45th Sess., *Implementation of the Conclusion of the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders*, A/45/629 (Oct. 23, 1990), available from <https://undocs.org/en/A/45/629>
- United Nations General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, <https://www.ohchr.org/documents/professionalinterest/crc.pdf>
- United Nations General Assembly, *Development of Standards for the Prevention of Juvenile Delinquency*, A/RES/40/35 (Dec. 14, 1985), available from undocs.org/en/A/RES/40/35
- United Nations General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- United Nations, General Assembly, *Report of the independent expert for the United Nations study on violence against children*, A/61/299 (Aug. 29, 2006) available from undocs.org/en/A/61/29
- United Nations General Assembly, *Universal Declaration of Human Rights*. New York, 10 December 1948, *International Bill of Human Rights* <https://www.un.org/en/universal-declaration-human-rights/>
- United Nations Congresses on Crime Prevention and Criminal Justice 1955-2010 55 Years of Achievement*. United Nations Office on Drugs and Crime, 2010, *United Nations Information Service*, www.un.org/en/conf/crimecongress2010/pdf/55years_ebook.pdf.
- Van Ness, Daniel W. "Restorative Justice: International Trends." 07 Oct. 1998, Victoria University, Wellington, New Zealand. Speech. p. 4, <http://restorativejustice.org/10fulltext/vanness13.pdf>.

- Yang, Sadie. *Evaluation of the Intervention and Rehabilitation Program in Residential Facilities and Diversion Programs for Children in Conflict with the Law*. Universalialia, June 2015, <https://www.universalia.com/en/projects/evaluation-intervention-and-rehabilitation-program-residential-facilities>
- Zehr, Howard. *The Little Book of Restorative Justice*. Good Books, 2016, *UNICEF*, www.unicef.org/tdad/littlebookrjpakaf.pdf, p. 11.
- Zingraff, Matthew T., et al. "Child Maltreatment and Youthful Problem Behavior*." *Criminology*, vol. 31, no. 2, Blackwell Publishing Ltd, 1993, pp. 173–202, doi:10.1111/j.1745-9125.1993.tb01127.x.