

MINIMUM AGE OF CRIMINAL RESPONSIBILITY

The Convention on the Rights of the Child (CRC) requires States Parties to establish "a minimum age below which children shall be presumed to not have infringed the penal law".

The minimum age of criminal responsibility (MACR): the age under which a child¹ cannot be held criminally responsible for his or her actions, and cannot therefore be brought before a criminal court.

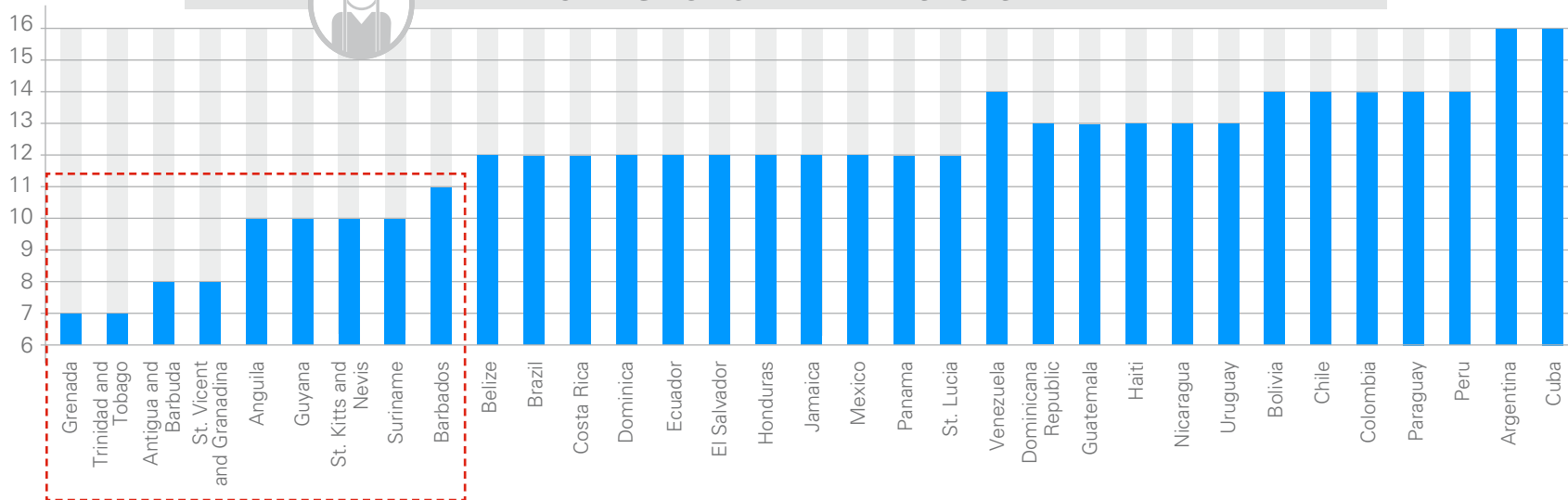
While many States have established juvenile justice systems, these systems sometimes set an upper age limit below the age of 18. The upper-age limit – or age of penal majority – or the age for the applicability of juvenile justice provisions –refers to the age until which someone in conflict with the law is dealt with under the juvenile justice system. In order to comply with the CRC, a juvenile justice system should cover all children who are alleged as, accused of or recognized as having infringed the penal law who are over the age of criminal responsibility, and up to at least the age of 18.

MACR ----- 18 YEARS

Special protective measures	Juvenile justice system	Adult penal system
Children who commit an offence at an age below the MACR cannot be formally charged and held responsible in the juvenile justice system.	Children at or above the minimum age of criminal responsibility at the time of the offence can be held accountable for his/her actions and subject to the juvenile justice system in accordance with international human rights standards.	In accordance with the CRC, juvenile justice law should apply to all children under 18, regardless of the nature of the offence. Hence countries should ensure that children under 18 are not subject to the adult criminal system.



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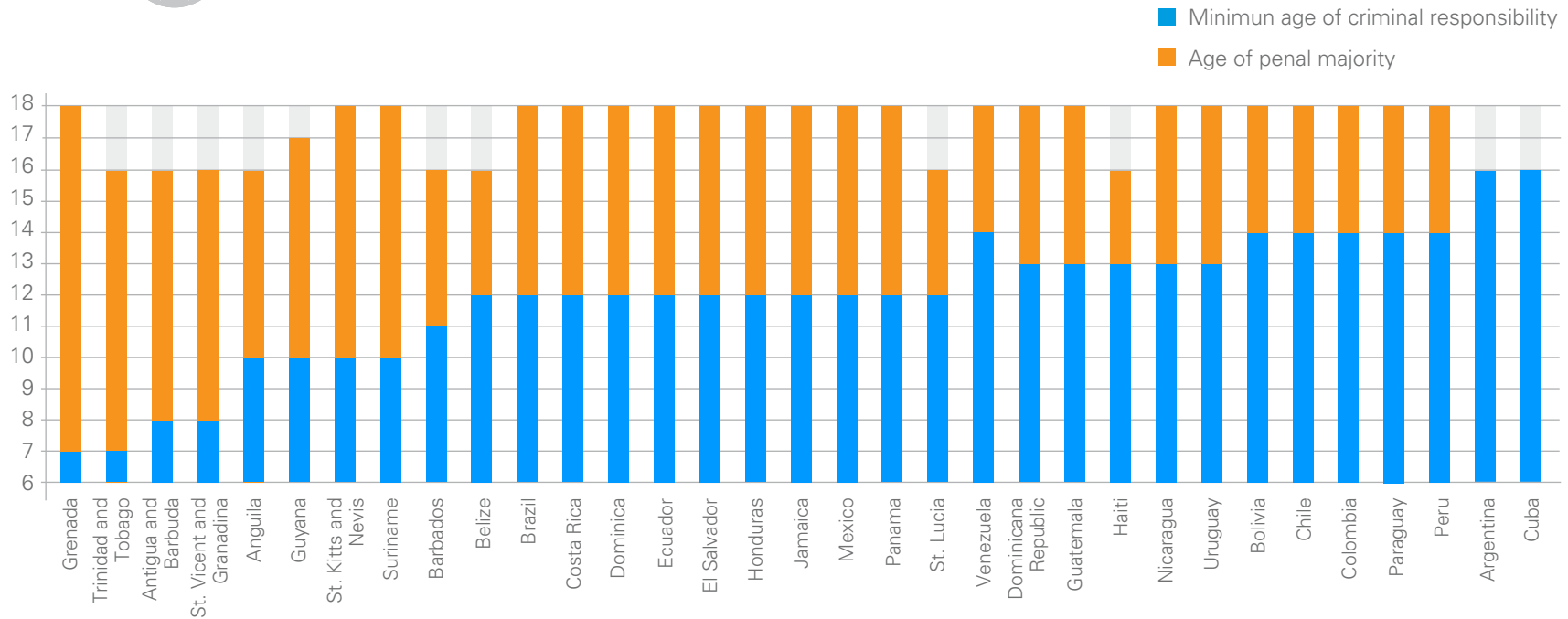
¹ Child: every human being below the age of 18 years old (article 1 of the CRC).

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MINIMUM AGE OF CRIMINAL RESPONSIBILITY AND AGE OF PENAL MAJORITY



In most countries in the Caribbean, children from the age of 16 can be subject to the adult criminal justice system, in contravention with the spirit and provisions of the CRC.

MINIMUM AGE OF CRIMINAL RESPONSIBILITY – A SIGNIFICANT ISSUE IN LAC

Despite the dramatic impact of crime and violence on children, in many countries, adolescents are perceived as the main cause of violence rather than as victims. Across Latin America and the Caribbean, this negative perception of adolescents continues to pave the way for harsher juvenile justice legislation and prompts debates aiming to dismantle the protection guaranteed to adolescents in contact with the law.

In the past few years, several governments in the region, in particular Brazil, Colombia, Dominican Republic, Ecuador, Guatemala, Honduras, Nicaragua, Panama and Uruguay, have promoted law reforms or policies exclusively based on a security agenda, and consisting in measures to increase the severity of

sanction, reduce the age of criminal responsibility and/or remove procedural guarantees for children and adolescents in conflict with the law. These policies not only result in the flagrant violation of the CRC but also do not result in meeting the objectives of fighting crime and violence.

An additional concern is the tendency to award some discretionary power to judges in assessing the child's maturity to decide on the applicable system – or to use a lower minimum age of criminal responsibility in cases where the child is accused of committing a serious offence.

Brazil: Possible legal reform has been under debate in National Congress since 1999. Different proposals are currently being discussed, the most radical implying lowering the age of penal majority (i.e. upper age limit) from 18 to 16 years old. This proposal would imply amendment to the Constitution which sets the age at 18.

Colombia: Different proposals of reform have been discussed since 2009 - suggesting among others incarceration in adult prisons from the age of 16 and deprivation of liberty for almost all penalties outlined in the Penal Code. Thanks to strong advocacy, UNICEF and its partners were able to counter the reform.

Dominican Republic: Since its adoption, the 136-03 Law has been subject to controversy and proposed reforms that suggest in particular to increase the severity of sanctions for adolescents in conflict with the law.

Uruguay: 2014 referendum over proposed lowering age of penal majority. The voting was negative by a small margin and the proposal was contained.

Panama: There have been more than 15 attempts to change the Law 40 of 1999. The 2007 reform (Law 15) raised the maximum penalty from 7 to 12 years of imprisonment for the crime of aggravated murder, and introduced a scale of prison penalties for other crimes that so far had not been considered like abduction, extortion and illicit association. The duration of maximum pre-trial detention was extended. Law 6 lowered the age of criminal responsibility from 14 to 12.

JUVENILE JUSTICE SYSTEMS IN LATIN AMERICA AND THE CARIBBEAN

The 2011, Inter-American Commission on Human Rights/UNICEF study on “Juvenile Justice and Human Rights in the Americas” found that “juvenile justice systems on the continent are characterized by discrimination, violence, lack of specialization and overuse of measures of deprivation of liberty.”² According to the study, law enforcement officials frequently deal with adolescents with brutality, often arresting them and treating them on the basis of discriminatory prejudices. Children and adolescents are often held in preventive detention and deprived of contact with their families.

Lack of alternative measures to detention means that deprivation of liberty is not exclusively used as a last resort. Furthermore, conditions of detention often violate numerous children’s rights. Dire material conditions, violence, absence of recreation, and lack of access to education among others, affect children in detention’s daily lives and opportunities for reintegration and rehabilitation. The situation is compounded by the inexistence or inadequacy of monitoring and reporting mechanisms.

RECOMMENDATIONS

- Ensure that the minimum age of criminal responsibility is over 14 and continue to be increased.
- Ensure that all children and adolescents under 18 in conflict with the law enjoy the protection of the juvenile justice system in line with international standards.
- Exclude provisions that allow for lowering protection standards for certain offences or give discretionary powers to judges in deciding whether the juvenile justice system applies.

² Juvenile Justice and Human Rights in the Americas, Inter-American Commission on Human Rights/UNICEF, 2011