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Around the World:
**How Much Responsibility Can We Give Twelve-Year-Olds?
An Analysis of the Philippines' Proposed Lowering of the Minimum Age of
Criminal Responsibility**

By: Olivia Alden

**I. INTRODUCTION: THE PROPOSED LOWERING OF THE MINIMUM AGE OF CRIMINAL
RESPONSIBILITY IN THE PHILIPPINES**

In several parts of Southeast Asia, children can be held responsible for crimes at ages as young as seven or eight. Recently, the Philippine House of Representatives passed a bill to lower the minimum age of criminal responsibility (“MACR”) from fifteen to twelve years of age. This bill aims to amend the Juvenile Justice Act of 2006, which currently places the minimum age of criminal responsibility at fifteen. The bill is now pending before the Philippine senate. This move has been part of the Philippine government’s larger plan to crackdown on crime in what some have called the Philippines’ “War on Drugs” or “War on the Poor.” Children’s advocates across the Philippines and internationally have denounced this proposed change as a violation of children’s human rights. Advocates argue that this is a policy that will endanger the lives of children, particularly those of children that are already members of marginalized populations.

In contrast, in Indonesia, the MACR for many years was eight years old. A recent change in the law raised the MACR to twelve. This article will address the work of advocates in Indonesia that lead to the raising of the MACR and the impact this has had on children’s rights. It will then compare the process and strategies used to raise the MACR and how they can be utilized by both Philippine lawmakers and by the international community to prevent the lowering of the MACR in the Philippines. While the MACR in Indonesia was only raised to twelve, which would be the MACR in the Philippines if the bill passes, it is important for children’s rights internationally that countries like the Philippines follow the trend of raising rather than lowering their MACR. While Indonesian advocates were successful in raising the MACR, the Philippine bill was drafted as part of the government’s war on drugs and war on the poor, and by lowering the MACR children will get caught in the middle of the political crisis in the Philippines.

II. A CASE STUDY: INDONESIA’S PROGRESSIVE UPDATES TO JUVENILE JUSTICE

In Indonesia, since the country’s new Juvenile Criminal System law was enacted in 2014, increasing numbers of children have been diverted from the criminal justice system to more informal restorative justice practices or mediation. Government wide efforts have been made to advance a national strategy on access to justice for children in conflict with the law. According to the United Nations Children’s Fund (UNICEF), the Indonesian government’s efforts are now focused on standardizing other laws related to juvenile justice in order to strengthen the juvenile justice sector in Indonesia as a whole. The passage and subsequent enactment of the Juvenile Criminal System Law was part of the government’s larger plan to improve child welfare across the archipelago. As a result, there was widespread support for this legislation across the Indonesian population, Indonesian civil society, and the international community. As the legislation continues

to go into effect and the long-term results are yet to be seen, there is a general sense of optimism surrounding the juvenile justice reform in many parts of Indonesia.

Problems with the Juvenile Criminal System Law in Indonesia, which are paralleled in the Philippines, appear in the law's enforcement. Many Indonesians are still unaware that this law exists and that children are subject to special protections under the law. Advocates are concerned that there is still a punitive approach to enforcing the Juvenile Criminal System Law of 2014, which eventually raised the minimum age of criminal responsibility to twelve. There are both optimistic and pessimistic views of this law and the uniformity in its enforcement, but advocates agree that the passage of the law and its provision which raised the MACR is a step in the right direction to a more just and equitable juvenile justice system in Indonesia.

III. INTERNATIONAL LAW AND HOW TO PREVENT THE LOWERING OF THE MINIMUM AGE OF CRIMINAL RESPONSIBILITY IN THE PHILIPPINES

With the Indonesian framework in mind, we must now answer the question of what advocates can and should do in order to prevent the lowering of the age of criminal responsibility to twelve in the Philippines. The purported purpose of lowering the minimum age of criminal responsibility is to support the government's efforts to prevent crime across the country. However, there is no evidence that children are responsible for the increase in crime within the Philippines. Studies conducted by children's rights organizations and criminal justice authorities within the Philippines have consistently found that only approximately two percent of crimes in the Philippines are committed by children. The numbers of criminal cases involving children aged eleven and under in the Philippines have gone down steadily within the past three years. In fact, in 2018 alone, crimes involving nine to eleven-year-olds decreased by fifty-two percent from 2017 numbers. Law enforcement data has consistently shown that the number of child criminals or children in conflict with the law has gone down significantly since 2016.

UNICEF and Filipino children's rights organizations have stated that children in conflict with the law are already victimized. This is because oftentimes the reason children are in conflict with the law is due to poverty and exploitation by adults. Detaining and penalizing children will only serve to further victimize them and will not teach them accountability or provide them with an opportunity for rehabilitation.

There is strong resistance within the Philippines on lowering the minimum age of criminal responsibility to twelve. Psychologists in the Philippines are warning lawmakers that young children do not have the capacity to act on their knowledge of right from wrong, if they are even mature enough to discern it. Because the decision-making and impulse control centers of the brain are some of the last to develop, children and teenagers do not have the cognitive capacity to make reasoned decisions the way adults can. Further, the label of criminal at a young age can shape a young child's sense of identity which can set them on a lifelong negative trajectory. Psychologists recommend an ideal disciplinary system for children in conflict with the law as something closer to the new Indonesian model of juvenile justice. In August 2016 the Psychological Association of the Philippines ("PAP") released a statement against lowering the minimum age of criminal responsibility. The position paper described the Filipino child in conflict with the law as generally one that is victimized and disadvantaged as a result of poverty, lack of education, or a combination

of these factors and others. The PAP indicates that this will negatively influence the child's long-term mental health and stability as a result of the children's pre-existing trauma combined with their label as a criminal during critical stages of their socio-emotional development.

Under the Convention on the rights of the Child ("CRC"), to which the Philippines is a signatory, the arrest, detention, or imprisonment of a child as a form of punishment should only be used as a last resort. The Philippines passed the Juvenile Justice and Welfare Act ("JJWA") in 2006, which prompted the creation of a child-friendly justice system focused on rehabilitation. This law upholds a critical principle of the CRC: a child must not be treated as an adult and they need appropriate and specialized legal protections. Children's rights organizations and UNICEF indicate that for the Philippines to be in compliance with its obligations under the CRC, there must be a separate juvenile justice system and the detention of children should be avoided. The enactment of the JJWA has given many Filipino children in conflict with the law a second chance in life through a meaningful opportunity for rehabilitation. Lowering the MACR will undermine the purpose and the impact of the JJWA.

Lowering the minimum age of criminal responsibility is not a solution to address the JJWA's shortcomings. The law's shortcomings are the result of a lack of law enforcement knowledge and appropriate enforcement practices, as is the case in Indonesia. Child protection and restorative justice measures are only functional when they are enforced appropriately and uniformly. The ultimate goal of these measures should be that those with the power of enforcement should seek to rehabilitate the child in conflict with the law rather than to seek purely punitive measures in conflict with the JJWA and the CRC.

As the Philippine government continues its "tough on crime" approach to governing, it is important to note again that only two percent of crimes in the Philippines are committed by children. Under the JJWA the goal is for children to be held accountable for their offenses, but in a manner that is different than adults. The law is premised on the notion that children's accountability for their actions should be focused on holistic practices of restorative justice. There are difficulties to fully implementing and appropriately enforcing the JJWA, but that is not a justification for lowering the minimum age of criminal responsibility in the Philippines. Lowering the minimum age of criminal responsibility would violate the purpose of the JJWA and the Philippines' obligations under the CRC. It would also violate the JJWA's purported goal of implementing restorative justice practices for children in conflict with the law. The JJWA attempts to execute restorative justice practices through prevention, intervention, diversion, rehabilitation, and reintegration into the community. These measures are aimed to serve as a way to hold child offenders accountable for their actions, but without labeling them as criminals before they reach the age of majority. The full and appropriate implementation of these measures would prevent the revictimization of many marginalized and already victimized children within the Philippines.

IV. CONCLUSION

It is clear from looking what occurred in Indonesia after raising rather than lowering the minimum age of criminal responsibility that there is a huge impact that can be made on the lives of children through restorative and rehabilitative measures. This proves that the JJWA that is already in place in the Philippines can be an effective tool for rehabilitating children in conflict

with the law. Lowering the minimum age of criminal responsibility in the Philippines would not be an effective strategy to curb crime in the country because children only account for two percent of the crime committed across the nation. If the bill to lower the MACR were to pass it would only serve to revictimize children of already marginalized populations. Lowering the MACR would also contradict the Philippines' obligations under the CRC. While the bill to lower the MACR in the Philippines would make the MACR the same as it is currently in Indonesia, it is crucial that governments throughout the world can see the benefits Indonesia has incurred by raising its own MACR. In order to improve conditions for juvenile offenders in the Philippines and reduce crime throughout the country, the government should focus its efforts on revitalizing the JJWA to promote uniformity in its enforcement as Indonesia did with its comparable Juvenile Criminal System Law.

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