



Legal minimum ages and the realization of adolescents' rights

A review of the situation in Latin America and the Caribbean

unite for
children

unicef 

This document was prepared by **Vanessa Sedletzki**, consultant to United Nations Children's Fund Latin America and Caribbean Regional Office (UNICEF LACRO), Child Protection Section, coordinated by **Nadine Perrault**, Regional Child Protection Advisor at UNICEF LACRO.

The opinions expressed in this document, which has not been submitted to and editorial review, are the exclusive responsibility of the author and may not coincide with those of the organization.

It is important to note that this research collect information until January 2015, considering at the moment of its publication that some approvals for legal reforms were done.

This publication may be reproduced for use in research, advocacy and education only, provided the source is acknowledged (UNICEF).

ISBN: 978-92-806-4827-0

Published January 2016

Copyright © United Nations Children's Fund (UNICEF)



Legal minimum ages and the realization of adolescents' rights

A review of the situation in Latin America and the Caribbean

unite for
children

unicef 

Table of contents

| | |
|---|-----------|
| Introduction | 7 |
| Objective and scope of the study | 9 |
| Methodology | 10 |
| Presentation | 10 |
| The importance of legal minimum ages for the realization of adolescents' rights | 11 |
| Setting legal minimum ages: A requirement under international standards | 11 |
| The rationale: Protecting adolescents' rights, not limiting them | 11 |
| Legal minimum ages: An avenue for equity and social inclusion | 13 |
| A holistic approach to the realization of adolescents' rights | 13 |
| Minimum age for marriage | 15 |
| Child marriage – A significant issue for adolescents' rights in LAC | 15 |
| Minimum age for marriage in international standards | 17 |
| Minimum age for marriage in LAC countries | 18 |
| Intersection with other minimum ages | 21 |
| Key points | 21 |
| Recommendations | 21 |
| Minimum age of sexual consent | 22 |
| Early sexual initiation – A significant issue for adolescents' rights in LAC | 22 |
| Minimum age of sexual consent in international standards | 23 |
| Minimum age of sexual consent in LAC countries | 24 |
| Intersection with other minimum ages | 27 |
| Key points | 27 |
| Recommendations | 27 |
| Minimum age of medical consent (without parental consent) | 28 |
| Age of medical consent – A significant issue for adolescents' rights in LAC | 28 |
| Minimum age of medical consent in international standards | 32 |
| Minimum age of medical consent in LAC countries | 33 |
| Intersection with other minimum ages | 35 |
| Key points | 35 |
| Recommendations | 35 |
| Minimum age for admission to employment | 36 |
| Minimum age for admission to employment– A significant issue for adolescents' rights in LAC | 36 |
| The minimum age for the end of compulsory education in international standards | 38 |
| Minimum age for admission to employment in LAC countries | 41 |
| Intersection with other minimum ages | 42 |
| Key points | 43 |
| Recommendations | 43 |

| | |
|---|-----------|
| Minimum age for the end of compulsory education | 44 |
| Minimum age for the end of compulsory education – A significant issue for adolescents’ rights in LAC | 44 |
| The minimum age for the end of compulsory education in international standards | 46 |
| Minimum ages for the end of compulsory education in LAC | 46 |
| Intersection with other minimum ages | 47 |
| Key points | 48 |
| Recommendations | 48 |
| Minimum age of criminal responsibility | 49 |
| Minimum age of criminal responsibility – A significant issue for adolescents’ rights in LAC | 50 |
| The minimum age of criminal responsibility in international standards..... | 51 |
| The minimum age of criminal responsibility in LAC countries | 52 |
| Intersection with other minimum ages | 54 |
| Key points | 55 |
| Recommendations | 55 |
| Intersection among minimum ages | 56 |
| Minimum age for marriage and minimum age of sexual consent | 56 |
| Minimum age of medical consent (without parental consent) and minimum age of sexual consent | 57 |
| Minimum age of admission to employment and minimum age for the end of compulsory education | 58 |
| Minimum age for marriage and minimum age for the end of compulsory education | 59 |
| Minimum age of criminal responsibility and minimum age for the end of compulsory education | 59 |
| Minimum age of criminal responsibility and minimum age for bringing a case to court without parental consent (access to justice/legal capacity) | 60 |
| Key points | 61 |
| Recommendations | 61 |
| Conclusions | 62 |
| Recommendations | 65 |



Introduction

Age is the primary element defining the end of childhood. In its very first article, the Convention on the Rights of the Child (CRC) defines a child as “every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier”. This provision therefore also recognizes that in some circumstances a child can attain majority before reaching the age of 18.

Age considerations are present throughout the CRC in provisions dealing with a wide array of issues. The possibility to set different minimum ages acknowledges that, as they develop, children acquire the ability to make a number of informed decisions. However, it should not be understood as allowing ages that might be contrary to the principles and provisions of the Convention.¹

The question of legal minimum ages is particularly relevant for adolescents’ rights – and for policy and programming approaches supporting their realization. As the Committee on the Rights of the Child has pointed out, adolescence is a period characterized by rapid evolutions and the progressive acquisition of the capacity to assume adult behaviours and increased responsibilities. While adolescence is a time of positive change and learning, it also bears a number of risks, owing to specific vulnerabilities, pressure from society including peers, the construction of one’s own identity and dealing with sexuality.² The second decade of their lives is when children are most at risk of making mistakes and taking risks that may affect the course of their existence.³

Age considerations precisely represent one expression of the Convention’s delicate balance between children’s right to be protected and the recognition that they also have evolving capacities and should therefore have progressive autonomy in making decisions about their lives. Minimum ages do not seek to restrict children’s ability to exercise their rights. Rather, they aim to enhance their protection. They keep children from having to make choices which consequences they do not have the experience or capacity to fully understand, or for which they risk being taken advantage of due to uneven balance of power and authority.

Reference to the age of the child is mentioned in the CRC and its Optional Protocols in relation to issues ranging from the right to be heard, to provisions dealing with employment, criminal responsibility, compulsory education, and recruitment into armed forces among others. The Convention on All Forms of Discrimination Against Women (CEDAW) also refers to State Parties’ obligation to set a minimum age for marriage. However, these instruments do not always specify how the age should actually be defined, leaving States Parties to decide on the appropriate age. Additional treaties, such as the International Labour Conventions, as well as interpretations by treaty bodies have further defined standards for acceptable ages in specific areas.

Setting minimum ages is part of States Parties’ obligations under Article 4 of the CRC, which requires to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized” therein.

¹ M. Santos Pais in *Manual on Human Rights Reporting*, UN High Commissioner for Human Rights, 1997, p. 416.

² CRC Committee General Comment No. 4 (2003), *Adolescent health and development in the context of the Convention on the Rights of the Child*, CRC/GC/2003/4, para 2.

³ UNICEF *State of the World’s Children: Adolescence, An Age of Opportunities*, 2011.

Concerns arise when ages set are considered too low to offer adequate protection or too high to respect children's agency and capacities. Yet considerations on what age is too low or too high can be elusive. Perceptions of children's capacities vary according to time and place. Furthermore, individual children of the same age within the same context may demonstrate different levels of maturity depending on their life experiences.⁴

Does a child under 18 fully understand the lifelong implications of marriage and early parenthood? At what age can someone fully consent to engaging in sexual activity with another person who may be much older, in a position of authority, and/or promising costly gifts? At what age can an adolescent work without compromising her or his education, health, and development? When has a child reached the age at which he or she has acquired the minimum knowledge and skills in the education system to act as a responsible citizen and economically contribute to society? At what age can a child grasp the full consequences of her or his actions in relation to criminal law?

The inclusion of minimum age(s) in the law is ultimately the legal translation of what a society deems children capable of and entitled to. For this reason, in many countries in Latin America and the Caribbean, the definition of minimum ages in various areas has prompted heated social and political debates.

Far from the usual complexities of legal provisions, age is also in appearance a very palpable and clear notion, summarized in one number. Yet, as this study shows, the picture is much more complex. One age actually often conceals an intricate system of conditions and exceptions, which affect its applicability and effects. Legal minimum age provisions can either significantly strengthen, or drastically undermine adolescents' rights.

Adequate legal provisions for minimum ages at which adolescents are deemed able to make certain choices are therefore critical to their protection. They are integral to a comprehensive approach to adolescent programming.

⁴ G. Lansdown, *The Evolving Capacities of the Child*, Innocenti Insight, 2005.

Objective and scope of the study

The present study aims to support the capacity of UNICEF and its partners to advocate for legal minimum ages that guarantee adolescents' rights, in particular their protection against all forms of violence and their development to their full potential. The analysis concentrates on legislative provisions concerning minimum ages and how they play out in the broader context.

The study provides an analytical overview of selected minimum ages contained in domestic legislation across the region in various areas. It focuses on six minimum ages of specific relevance to adolescent development. They comprise: the minimum age for marriage, the minimum age for sexual consent, the minimum age for medical consent, the minimum age for admission to employment, the legal age of end of compulsory education, and the minimum age of criminal responsibility.

Building on international standards, the study offers a critical examination of the relevance of the age in light of the challenges affecting adolescents in LAC. It further examines the consistency - or lack thereof - among various minimum ages in domestic legislation, and the impact this has on the fulfillment of adolescents' rights.

Related issues, especially birth registration and age determination, fall beyond the scope of this study. They are however critical accompanying measures for the implementation of legislation and the CRC in general and are integral to UNICEF's strategy for the realization of children's rights in the region.



Methodology

The study combines quantitative and qualitative analysis of the minimum ages contained in domestic legislations and their implications for the rights of adolescents.

The six minimum ages selected are of specific relevance to adolescents' development, in particular with respect to their right to be protected from harm and their right to education. While ages are present in a wide range of areas of law, the Study concentrates on those identified by UNICEF LACRO in line with regional priorities for its work with adolescents.

The data on minimum ages was systematically collected in collaboration with UNICEF country offices in the region, and verified against additional sources, including State Party Reports to the CRC Committee, CRC Concluding Observations, studies issued by UNICEF and other UN agencies, and review of legislation. One challenge has consisted in reconciling possibly diverging provisions from various texts

and assessing the implications of exceptions and provisions from different legal sources. Additionally, this is an area where reforms are frequent and data relates to the situation as of end 2014.

An analysis of international instruments and treaty body recommendations has aimed to determine, to the extent possible, the prevailing international norms or guidance in terms of age range in various areas and assess the conformity of minimum ages set by individual countries with these standards.

A review of existing data and relevant literature and studies has enabled to put into perspective the minimum ages with the main challenges adolescents are confronted with in the region for the realization of their rights, in order to shed light on the intersection between ages and critical outcomes for adolescents.

Presentation

The Study first reviews key arguments for setting minimum ages in legislation for the realization of adolescents' rights. It analyzes existing legislation in LAC for each of the six selected minimum ages, building on international standards and highlighting its relevance in the LAC context for adolescents' rights.

It then explores how minimum ages intersect, highlighting inconsistencies among legal minimum ages in various areas and their implications. The Study finally draws conclusions and recommendations from the analysis for adolescent programming.



The importance of legal minimum ages for the realization of adolescents' rights

Adolescence is an age of major changes, marked by exposure to a number of risks exacerbating existing vulnerabilities. It is also a time of physical, emotional and intellectual growth, increased autonomy, and opportunities. Legal minimum ages represent a tool that can concomitantly empower adolescents, protect their rights, and prepare them to be responsible and active adult citizens. A number of arguments call for clear and sound legal provisions for minimum ages.

Setting legal minimum ages: A requirement under international standards

The establishment of minimum ages in legislation is an obligation under the CRC. Article 4 of the Convention requires States Parties to “undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognized” therein.

The CRC Committee has explicitly stated the importance of setting legal minimum ages. It has emphasized that these ages should reflect the recognition of the status of persons under 18 years of age as rights holders and their evolving

capacity, age and maturity.⁵ The Committee consistently addresses issues related to minimum ages in its Concluding Observations upon review of States Parties' reports.

Other international instruments, which most Latin American and Caribbean States have subscribed to, including CEDAW and the ILO Convention No. 138 on Minimum age for admission to employment, contain provisions related to minimum ages in specific areas.

The rationale: Protecting adolescents' rights, not limiting them

The primary objective of setting minimum ages in legislation is to protect adolescents from harm. Legal minimum ages aim to protect adolescents from making choices and/or from taking responsibility for actions that they do not have the capacity to understand in their entirety and comprehend the full consequences. The rationale is not to limit the exercise of adolescents' rights, but to ensure that adolescents are protected from actions that can potentially impair the current or future realization of their rights. It is not about protecting society from adolescents, but about ensuring that adolescents can develop to their full potential in a protective environment. For this reason, it is essential that the process of setting minimum ages be adolescent-centered and focused on the best interests of adolescents.

A decisive dimension of any discussion around minimum ages relates to the notion of consent. The establishment of a minimum age to undertake certain acts or to be responsible for certain actions is the legal recognition of the child's ability to consent – hence the validity of this consent. Adolescence is a time when children are more likely to look for new experiences and take risks. Adolescents may be subject to various forms of pressure, from their peers, older persons, their parents, and from the community and society.

Legal minimum ages recognize that for some actions, implications for adolescents' rights and their lives are so important that their consent cannot be considered valid under a certain age. This is the case for marriage for example, to

⁵ CRC Committee General Comment no. 4 (2003), Adolescent health and development in the context of the Convention on the Rights of the Child, CRC/GC/2003/4, para. 9.

which children should not be legally able to consent before 18 years of age – or under strict review and exceptional circumstances. Sexual consent is another area where older persons may lure adolescents into sexual activity they may not genuinely want or that may lead to unwanted pregnancies or sexual transmitted disease, with repercussions for the rest of their lives. Similarly, compulsory education and minimum age for admission to employment protects adolescents from ending schooling before they have reached a certain level of knowledge and skills.

When considering the notion of consent in relation to minimum ages, one crucial question is whether someone else can give consent in the name of the child. While the Convention recognizes the right of children to be heard in all matters affecting them, it also acknowledges that others will make decisions on their behalf. As the child's legal representatives, parents and legal guardians are entitled to take a number of actions on behalf of the child. While decisions are in principle to be based on children's best interests, in practice the weight of social norms, beliefs and other considerations may compromise children's

rights and lead to decisions that jeopardize children's development. For this reason, exceptions to legal minimum ages providing for the possibility for others to give consent on behalf of the adolescent usually undermine the protection legal minimum ages provide. As this study demonstrates, in some areas the very requirement of parental consent may put children at risk, for example with respect to marriage and in relation to sexual and reproductive health.

There are however topics for which adolescents may demonstrate increased maturity and ability to make informed choices. This is the case in relation to medical treatment, in particular for sexual and reproductive health, where consent can be deemed valid at a lower age following an assessment of the child's maturity and understanding. Yet here it is about transferring the ability to consent from parents or legal guardians to the child, therefore increasing the adolescent's autonomy in exercising rights. The approach is very different from opposite situations, in which legal minimum ages can be waived to transfer consent from the child to parents, thereby weakening the protection the law offers.



Legal minimum ages: An avenue for equity and social inclusion

The establishment of legal minimum ages in legislation is an important tool for equity. Available evidence shows that adolescents in situations or at risk of exclusion are the most vulnerable to having their rights violated and be exposed to risky situations. Child marriage disproportionately affects adolescents in rural areas, including indigenous girls. Children most at risk of dropping out of school or entering to employment at an early age are those from the most marginalized backgrounds. Adolescents from disadvantaged backgrounds may be more vulnerable to sexual abuse and to sexual exploitation in exchange for gifts or out of pressure from peers and families.⁶ Similarly, children in contact with the justice system are disproportionately from excluded groups, typically because the justice system tends to be harsher on them.

Age represents an objective, universal, criterion protecting adolescents from the rights violations

that disproportionately affect the most excluded. It safeguards adolescents from the effects of the norms, influences, and socio-economic conditions that may lead to actions and choices – forced or so-called voluntary – that impair their development and perpetuate the cycle of exclusion.

The establishment of a minimum age in legislation also constitutes an important protective mechanism against discretionary power and discriminatory perceptions. When assessment of the capacity of a child is left to the discretion of a judge or other professionals, there is a high risk that perceptions of that capacity be influenced by a set of assumptions based on the ethnic and social background of the child or their level of physical development for example. Setting minimum ages in legislation helps ensure the equal protection of adolescents from various walks of life – and therefore represents a significant tool for equity.

A holistic approach to the realization of adolescents' rights

Legal minimum ages are integral to a comprehensive and holistic framework for the realization of adolescents' rights. Because children's rights are interdependent and indivisible, legal provisions related to a minimum age in one field have significant implications on a range of rights. For instance, when the minimum age for marriage is lower than 18, there are direct implications on the right to health, education, and an adequate standard of living among others. Similarly, the minimum age for admission to employment affects the right to education, health, and the child's right to recreational activities among others.

Setting different ages for marriage for boys and girls constitutes gender discrimination. Furthermore, as mentioned above, some legal provisions concerning minimum ages, in particular exceptions enabling to waive the minimum age, are likely to disproportionately affect some

groups and may lead to indirect discrimination. In deciding on an appropriate minimum age and envisaging possible exceptions, consideration needs to be given to the far-reaching impact of legal provisions on the realization of the full range adolescents' rights and on their future lives as adults.

Examining legal minimum ages in relation to one another reveals how a given national legal system tackles adolescents' rights. Minimum ages are one explicit way in which these perceptions translate into legal provisions and affect adolescents' rights. It helps uncover contradictions in how adolescents are perceived. For example, jointly considering the minimum age of criminal responsibility and the minimum age for the end of compulsory education sheds light on the balance between the punitive and the developmental approach of adolescent policies in a given country.

⁶ See e.g. UNICEF, *Sexual abuse against children in the Caribbean*, 2013.

The indivisibility of children's rights further requires coherence among minimum ages in order to ensure the effectiveness of the protection provided by legal age provisions. For instance, if the minimum age for marriage is lower than the minimum age of sexual consent, the protection the age of sexual consent offers is seriously weakened. It may even pave the way for situations in which child marriage is used to cover and avoid prosecution for sexual abuse. Another contradictory situation arises when the minimum age for medical consent for treatment without parental consent is higher than the minimum age of sexual consent, meaning that

adolescents meet with barriers in accessing needed treatment. Likewise, when the minimum age for the end of compulsory education is higher than the minimum age of admission into full-time employment, children may refrain from attending school in order to work. The section on intersections among minimum ages provides further examples and details on the importance of the consistency among legal minimum ages for the realization of adolescents' rights. Importantly, the establishment of minimum ages needs to be grounded in a holistic approach to adolescents' rights.

Key points

- The establishment of legal minimum ages is a requirement under international standards.
- Minimum ages aim to enhance adolescents' protection from rights violations; they do not seek to limit the exercise of their rights nor hinder their increased autonomy.
- Discussion around minimum ages should tackle the question of consent – and who can give it – with great care in order to ensure that transfer of consent to parents or legal guardians does not undermine adolescents' legal protection.
- By representing objective and universal criteria, minimum ages protect adolescents from marginalized groups from early choices and from discriminatory practices. They therefore constitute important tools for equity.
- In light of the indivisibility of children's rights, consistency among minimum ages in different areas is critical and calls for holistic approaches.

Minimum age for marriage

The minimum age for marriage defines the age at which a person is legally permitted to get married. All countries in the region have set a minimum age for marriage in their legislation. While the inclusion of a legal minimum age for marriage could appear as a simple and straightforward step, a review of legislation in LAC demonstrates that the issue is more complex than it seems. Laws often include various minimum ages for marriage: for boys and for girls, with or without parental consent, depending on specific situations such as pregnancy or birth of a child, and on the basis of ethnicity. As a result, although the generic framework often sets 18 as the minimum age for marriage, the existence of multiple exceptions and their scope, sometimes wide, means that many adolescents are not protected from underage marriage. The persistence of child marriage in LAC is preoccupying and significantly affects the realization of adolescents' rights and their future. Adequate legal provisions for the protection of adolescents from marriage constitute in many respects a fundamental element of the policy framework for adolescents' rights.

Child marriage – A significant issue for adolescents' rights in LAC

Child marriage is a significant concern worldwide. Various studies have demonstrated the negative effects of child marriage on children's rights and development.⁷ Child marriage disproportionately affects girls. Given its far-reaching consequences on their development, it contributes to perpetuating gender disparities.

Child marriage has negative effects on adolescents' health and is a cause of early pregnancy. Early pregnancy bears significant risks for the mother's health, including risk of dying, complications during delivery, and higher infant mortality rate. A combination of physical factors and socio-economic factors are involved, since in addition to biological considerations related to child bearing at a young age, early pregnancy tends to primarily affect marginalized girls with limited access to health information and services.

Child marriage represents a significant cause for school dropout, with significant implications for children's, and especially girls', lives. It impairs their chances to earn a living independently, making them financially dependent on their spouse. Should the marriage come to an

end, they are more likely to fall into poverty. Schooling also offers access to critical sexual and reproductive health information and services. It supports the multiple social interactions that provide a protective environment and help build one's sense of identity and self-esteem.

Child marriage is correlated with higher levels of domestic violence. Girls who marry early are more likely to be beaten. They usually enjoy a lower degree of self-confidence and lack the necessary resources to oppose violence and seek adequate help.

The situation in Latin America and the Caribbean is preoccupying. UNICEF data indicate that 30 per cent of women aged 20 to 49 years were married or in union before 18 years in the region, while 8 per cent were married before the age of 15.⁸ Currently, 19 per cent of girls aged 15 to 19 – almost 1 in 5 – are married or in union.⁹ Rates of child marriage in Latin America and the Caribbean are close to the global average. However, while globally the practice of child marriage has been slowly declining since the 1980s, no significant change has been observed in the region.¹⁰

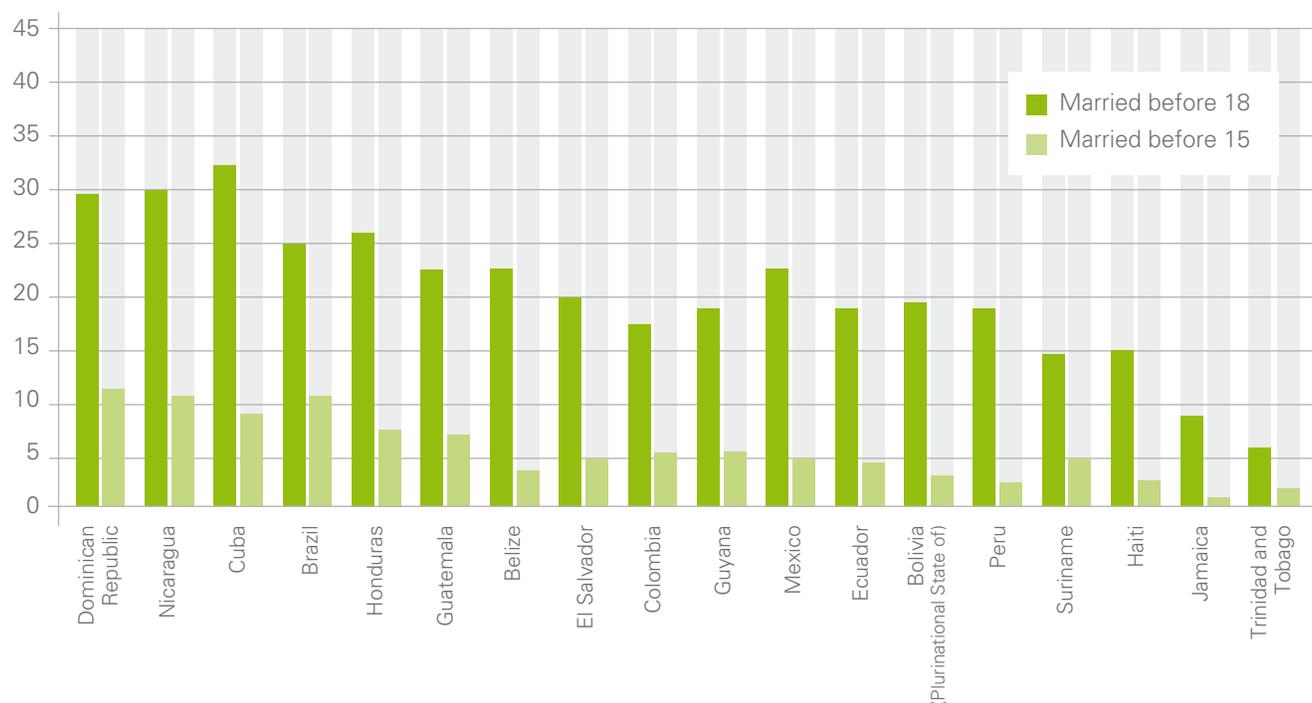
⁷ See e.g. UNFPA, *Motherhood in Childhood – Facing the challenge of adolescent pregnancy*, 2013; UNICEF Innocenti Research Centre, *Early Marriage*, Innocenti Digest no. 7, 2001.

⁸ UNICEF, *Ending Child Marriage: Progress and prospects*, UNICEF, New York, 2014.

⁹ UNICEF, data <<http://data.unicef.org/child-protection/child-marriage.html>>

¹⁰ UNICEF, *Ending Child Marriage: Progress and prospects*, UNICEF, New York, 2014

CHILD MARRIAGE RATES (GIRLS)



Source: UNICEF datasets, State of the World's Children 2014.

Girls from poor backgrounds and living in rural areas are particularly vulnerable to the practice. In LAC, the prevalence of child marriage in rural areas is about twice that of urban areas. While in the richest quintile an estimated 10 per cent of women aged 20 to 49 years were married before the age of 18, the proportion reaches 38 per cent in the

poorest quintile.¹¹ Indigenous girls are particularly affected.¹²

Addressing child marriage is therefore a critical challenge for adolescents' rights in the region and one closely related to the reduction of disparities.

One of the primary ways of preventing child marriage and promoting equity is to set a universal age for marriage in line with international standards.

¹¹ UNICEF, Ending Child Marriage: Progress and prospects, UNICEF, New York, 2014

¹² UNICEF, Guía regional sobre adolescentes, 2014.

Minimum age for marriage in international standards

International standards set the minimum age of marriage at 18. Consequently, the term “early marriage” has been abandoned for the clearer reference to the generic prohibition of “child marriage”. The prohibition applies to all equally, girls and boys. While gender discrimination is quite common in this area, it is strictly prohibited in international standards like any other form of discrimination.

While child marriage is not referred to directly in the CRC, it is closely connected to other rights - such as the right to express views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices - and is frequently addressed by the Committee on the Rights of the Child.¹³

The Convention on the Elimination of All Forms of Discrimination against Women, however, makes an unambiguous reference to the issue of child marriage:

The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory. (CEDAW, Article 16.2)

Both the CRC Committee and the CEDAW Committee have extensively addressed the issue in their General Comments or Recommendations and Concluding Observations. Significantly, the first General Comment/Recommendations jointly issued by the two Committees in November 2014 on harmful practices contains far-reaching considerations in relation to child marriage.

In relation to the minimum age for marriage, the Committees recommend:

A minimum legal age of marriage for girls and boys is established, with or without parental consent, at 18 years. When exceptions to marriage at an earlier age are allowed in exceptional circumstances, the absolute minimum age is not below 16 years, grounds for obtaining permission are legitimate and strictly defined by law and marriage is permitted only by a court of law upon full, free and informed consent of the child or both children who appear in person before the court.¹⁴

This represents a significant evolution compared with previous positions in which the CRC and CEDAW Committees have each affirmed the need for a complete ban of marriage under the age of 18¹⁵. Of specific relevance to the region, the CRC Committee has addressed the issue in its General Comment on the rights of indigenous children and called on states to work with indigenous communities to end the practice where it exists.¹⁶

The cautious evolution in the Committees’ approach to child marriage may be explained by pragmatism in light of the sometimes-difficult situations in which adolescents may find themselves, for example when expecting or having a child, given the high rates of adolescent motherhood in various countries. In keeping with the Committees’ overall approach, it also seeks to recognize the evolving capacities of children to make decisions about their lives. This stance is in many respects consistent with the

¹³ UNICEF, *Child Marriage and the Law, Legislative Reforms Initiative – Paper series*, New York, 2007

¹⁴ Joint general recommendation/general comment no. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices, CEDAW/C/GC/31-CRC/C/GC/18, 2014, para. 54 (f).

¹⁵ See e.g. CEDAW General Recommendation (1994) on Equality before marriage stating that the minimum age for marriage should be 18 years for both man and woman and that the possibility to set an earlier age for majority as provided in Article 1 of the CRC does not apply in relation to marriage; CRC General Comment on Adolescent health which provides that the minimum age for marriage should be set at 18 with and without parental consent. In its Concluding Observations, the CRC Committee systematically calls on States Parties to bring the legal age of marriage to 18 for all.

¹⁶ UNICEF, *Ending Child Marriage: Progress and prospects*, UNICEF, New York, 2014

CRC Committee's view on the child's consent to medical treatment for instance (see Minimum age for medical consent).

One critical issue regarding the minimum age for marriage legislation therefore relates to the notion of consent – and most importantly, who can give consent to marriage. This question is highly relevant in the region, since as will be examined below, in several countries in LAC the legislation provides for the possibility for parents to give consent for a child's marriage.

International standards recognize that freedom of marriage implies the consent of the spouses. Core regional and international instruments¹⁷ contain provisions related to the right to marry and the prohibition of marriage without the full

and informed consent of the intending parties. In relation to child marriage, the question is whether parents or legal guardians are entitled to provide that consent on behalf of the child, in other words, whether they can act as surrogates. The joint CRC and CEDAW Committees General Recommendation/Comment reckons that "a child marriage is considered as a form of forced marriage given that one or both parties have not expressed their full, free and informed consent." For this reason, the conditions set to exceptionally allow marriage between 16 and 18 do not include the possibility for parental consent and focus on the adolescent's ability to give full consent. The CRC Committee had previously clearly stated that the minimum age for marriage should be set at 18 "with and without parental consent".¹⁸

Minimum age for marriage in LAC countries

Domestic legislation in LAC countries systematically contains provisions setting a minimum age for marriage. With the exception of four Caribbean countries, the general minimum age for marriage is set at 18 or over. Yet actually, a second minimum age – or "absolute minimum age" – is often included in legislation under certain circumstances. When considering the numerous possible exceptions to the general rule, the average minimum age of marriage for the region falls to 14 years for girls and 14.7 years for boys. The median minimum age is 15 for girls and 16 for boys. Across the region, the absolute minimum age for marriage is lower than 18. Gender differences in the legal age are frequent. In many cases, the provisions making it possible to waive the 18 years threshold are quite broad, thus questioning the effectiveness of legislation in adequately protecting adolescents, in particular adolescent girls, from marriage. An additional issue rests with the legal consequences of marriage, which often entails that the child is no longer legally considered a minor but an adult.

In all countries in Latin America and the Caribbean, the absolute minimum age for marriage is lower than 18 years of age. When it is explicitly stated, the lowest age mentioned in legislation is 12 in Ecuador and in Trinidad and Tobago. In Ecuador however a legislative reform process is underway aiming to set the age at 18 for boys and girls. Other countries have minimum ages for marriage ranging from 14 to 16 years. In several countries, including Brazil, Costa Rica, Dominica, Dominican Republic, Guyana, Nicaragua, Paraguay and Santa Lucia, parental consent is required for marriage under 18. In Paraguay for example, in the absence of parental consent, a children's judge can authorize marriage between adolescents who have not reached majority.¹⁹

Yet in some countries, like Argentina, Colombia and El Salvador, the law does not explicitly mention an absolute minimum age for child marriage. This situation is preoccupying, as it does not set age limits. In the case of El Salvador for example, the law provides for exceptions to

¹⁷ These include the Universal Declaration on Human Rights, the International Covenant on Civil and Political Rights, CEDAW, and the Inter-American Convention on Human Rights.

¹⁸, para. 20.

¹⁹ Civil Code, art. 148.

the 18 years old rule if the intending spouses have reached puberty or have or are expecting a child in common.²⁰ Colombia, in spite of a general minimum age for marriage at 18, underage children can marry with parental consent.

Further to exposing children to multiple risks in terms of health and development, child marriage can have significant implications in terms of the child's legal status. In many countries, marrying is a motive for so-called emancipation, meaning that children who are married are automatically presumed to have reached majority. In Argentina for instance, the civil code provides that marriage entails emancipation and the acquisition of legal capacity for all civil acts. The emancipation is irrevocable.²¹ The combination of the lack of minimum age for marriage and the important responsibilities marriage implies raises serious concerns in terms of child protection.

A major issue in many countries in the region relates to the acceptable motives for the exceptions to the 18-year-old rule. The vaguer the provision, the higher the likelihood that children will be at risk of underage marriage. The majority of States recognize as a valid exception the fact that the intending spouses have a child in common or that the girl is pregnant. The objective is presumably to deal with de facto situations in which social norms value the importance of marriage. This is a particular situation because it involves the right of the newborn or future child to grow up in a supportive family environment. However, in many instances legal provisions leave a wide margin of appreciation as to what could be considered a valid reason for child marriage. In Peru for example, the law provides that the judge can waive the 18 years requirement for "valid reasons" if the intending spouses are at least 16 and have explicitly expressed their willingness to get married.²² In the Dominican Republic, the judge can waive even the 15-year-old minimum age for girls (with parental consent) for "valid reasons".²³ In Cuba, the law refers to "exceptional circumstances and a good cause", leaving room for broad interpretation.

In their reports to the CRC Committee, some State Parties have explained the rationale for allowing exceptions for child marriage. Main arguments revolve around the need to solve difficult situations and/or address various cultural norms. According to Cuba's state report to the CRC Committee (2010), a widespread social practice consists in parents or other family members forcing girls to marry when they first engage in sexual activity. In its state report (2008), Guatemala has pointed to the need to take into account cultural traditions prevailing in Mayan communities: "With regard to adolescent marriage, the State is aware of the recommendations made by the Committee. However, the practice still has a firm hold among Guatemala's Mayan population, so the law states that boys aged 16 and girls aged 14 wishing to marry must obtain their parents' consent."

The fact that the age can be lower on an exceptional basis presents an advantage over the establishment of a general minimum age under 18. It may presumably be contested and subject to judicial review in individual cases. While it does not guarantee respect for the best interests of the child as such, it may ensure some form of monitoring of the decision.

About a third of the countries in the region have set different minimum ages for marriage for boys and girls. In these countries, the minimum age for girls is consistently a year or two lower than the minimum age for boys. This is considered a discriminatory practice on the basis of gender, which is not in accordance with international standards. Not only does it make girls particularly vulnerable to the practice, it also conveys an official recognition that girls can legitimately be "sexualized" earlier than boys and therefore contributes to feeding prejudices in relation to girls' ownership of their lives. The CRC Committee has criticized "the use of the biological criterion of puberty to set different ages of maturity between boys and girls".²⁴

²⁰ Código de Familia, art. 14.

²¹ Civil Code, art. 131-134.

²² Civil Code, art. 241.

²³ Ley 659-44, art. 56.

²⁴ CRC COBs for Honduras (2007), para 29.

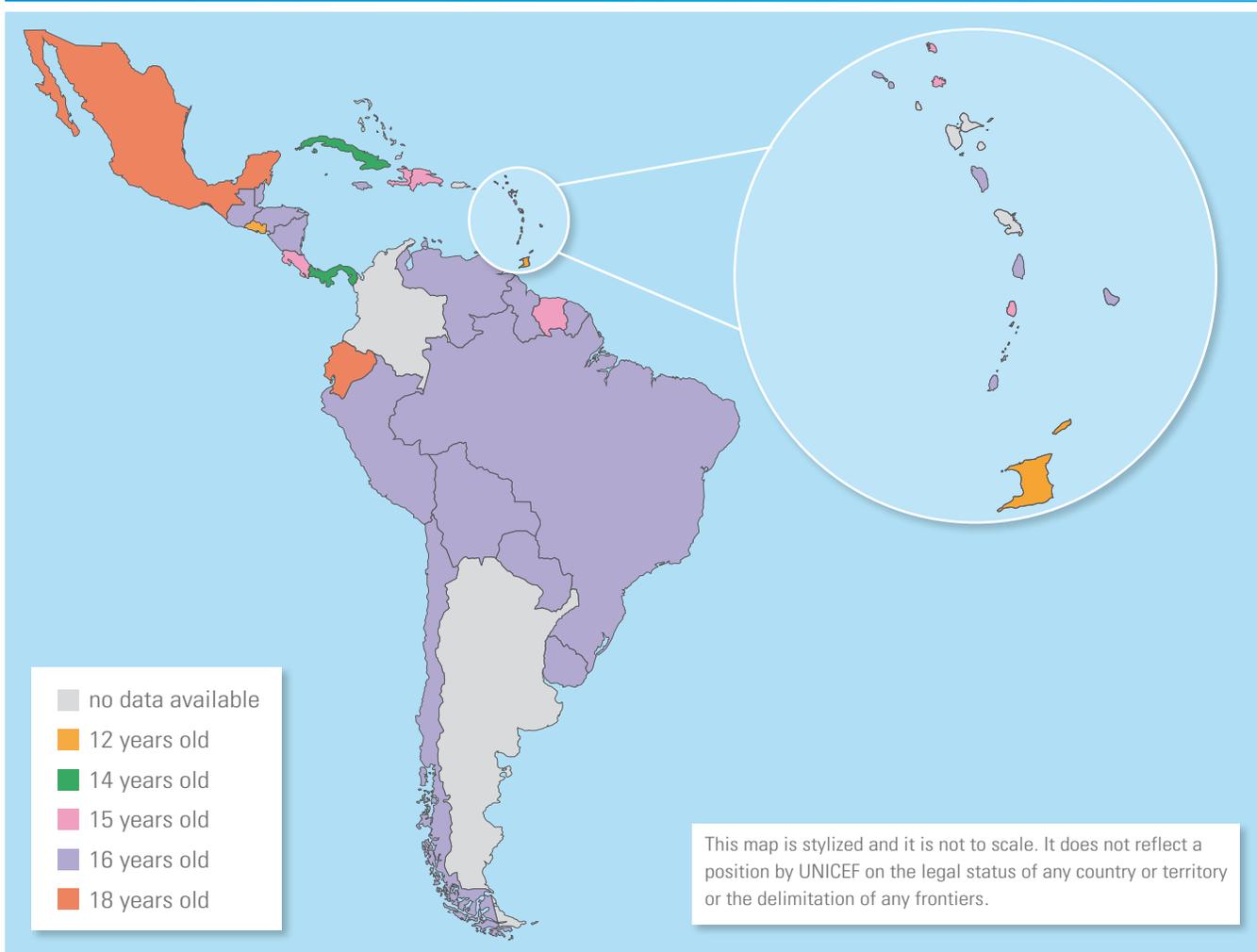
An interesting initiative in this respect is the petition to the Supreme Court filed by the Ombudsperson's Office in Venezuela in 2010, in order to contest the different minimum ages for boys and girls set in legislation as a discriminatory and therefore unconstitutional provision. The Supreme Court has declared the case admissible. At the time of writing it has not yet issued its decision on the matter.²⁵

A tradition inherited from colonial rule in some Caribbean countries has consisted in having different minimum ages based on belonging to a certain ethnic or cultural group. In Trinidad and

Tobago for example, the age of marriage is set at 18 as a general rule but the minimum age is 12 for Muslim and 16 for Hindu marriages. A similar situation existed in Suriname until 2003, with a separate 'Asian marriage legislation' setting a lower minimum age for marriage for persons belonging to this ethnicity. As underlined in its State Party Report to the CRC: "Since the establishment of one national marriage law, the number of marriages within the age group 15-19 has dropped".²⁶ A bill setting the marriage age at 18 for boys and girls is under consideration as of end 2014.²⁷

Map #1

ABSOLUTE MINIMUM AGE OF MARRIAGE WITH PARENTAL OR JUDGE CONSENT OR EXCEPTIONAL CIRCUMSTANCES



²⁵ Venezuela CRC state report (2013).

²⁶ Suriname State Party Report to the CRC, 2012.

²⁷ Information submitted by the UNICEF Country Office in Suriname.

Intersection with other minimum ages

Minimum age for marriage and minimum age of sexual consent

Minimum age for marriage and minimum age for the end of compulsory education

Key points

- Child marriage has numerous long-term negative implications on children's rights, in particular the right to education, the right to express views, the right to be protected from violence, and the right to health, among others. Girls are particularly vulnerable to the practice, with significant impact on their development and gender equality in general.
- Rates of child marriage in the Latin America and the Caribbean remain significant and close to global averages. However, they have not decreased in recent years like in other regions.
- Child marriage – i.e. marriage when at least one of the intending spouses is under 18 – is generally forbidden under international standards, although recent evolutions provide for the possibility for adolescents over 16 to marry under specific circumstances and on their own consent, through judicial approval.
- While providing that adolescents can fully consent to marriage on their own at 18, legislations in the overwhelming majority of countries provide for the possibility for children to get married with parental and/or a judge's consent.
- Approximately one third of the countries have different minimum ages for marriage for boys and girls, thus effectively featuring discriminatory legislation.
- Possible grounds for authorizing underage marriage due to “exceptional circumstances” are in many instances extensive, thus significantly undermining the protection the legal marriageable age offers.

Recommendations

- Set the legal minimum age for marriage at 18 for all, with or without parental consent.
- Exceptions should only be allowed in exceptional circumstances clearly circumscribed by law, and marriage only authorized by a court of law upon the child's full, free, informed consent, regardless of parents' views. In any case, the legal minimum age for marriage should never be below 16 years old.

Minimum age of sexual consent

The minimum age of sexual consent is the age from which someone is deemed capable of consenting to sexual activity. It aims to protect adolescents from abuse and from the consequences they may not be fully aware of when engaging in early sexual activity. Sexual activity with a person under the age of sexual consent is considered non-consensual. It constitutes sexual abuse and is criminally sanctioned.

One rationale for a minimum age of sexual consent is to protect children and adolescents from situations in which they may be pressured or coerced in any way to engage in sexual activity without having the means or power to resist and/or give their genuine and fully informed consent. These situations may range from older adults exercising a form of authority or offering “gifts” and other benefits to obtain sexual favours from underage children, peers blackmailing sexual activity for inclusion in a group or other forms of recognition, or various forms of prostitution enjoying some degree of social acceptance.

The objective of the minimum age of sexual consent is also to protect children including adolescents from the multiple risks associated with early sexual activity, such as sexually transmitted diseases and early pregnancy, which have lifelong consequences on their health and development.

Like for the minimum age for marriage, the minimum age of sexual consent is far from being straightforward. An important consideration is the age difference between those involved. There may be exceptions when the adult is for instance only 2 or 3 years older than the adolescent concerned. In these cases, it may be possible to demonstrate that consent was not affected by lack of balance of power. Similarly, underage sexual activity often involves two adolescents under the age of consent and too strict legislation may lead to criminalize attitudes rather than protect adolescents.

An additional question paradoxically relates to whether the age of consent may be too high. By making sexual activity illegal under an age where most adolescents are already in practice sexually active, the risk is to prevent them from accessing critical sexual and reproductive healthcare and information. Adequate arrangements are therefore needed to avoid over-criminalizing adolescents’ behaviours and ensure their access to health services.

Early sexual initiation – A significant issue for adolescents’ rights in LAC

The establishment of a minimum age for sexual consent is an important component of the protection of children from sexual abuse and from the consequences of early sexual activity. The fine line between sexual abuse and exploitation means that social tolerance for early sexual activity may also pave the way for child sexual exploitation and prostitution.

Available data indicates that sexual initiation of girls and women is more likely to be forced if it

occurs at younger ages,²⁸ when peer pressure and coercion may be more difficult to resist. The Latin America and the Caribbean region features the world’s highest rates in terms of girls’ early sexual initiation. Over 22 per cent have had their first sexual intercourse before the age of 15. In some countries, the rate reaches 25 per cent.²⁹ In the OECS, the initiation into sexual activity for girls can begin as early as the age of 10. Sexual activity among school children between the ages of 13 to 15 ranges from 26 per cent in Grenada

²⁸ UNICEF, Hidden in plain sight, 2014.

²⁹ UNICEF, Guía regional sobre adolescentes, 2014.

and St. Lucia to 35.7 per cent in the British Virgin Islands. Additionally, 44 per cent of sexually active youth had their first experience before the age of 15.³⁰

Early sexual activity is a significant cause of concern for adolescents' health and development. Due to lack of information, adolescents are particularly vulnerable to sexually transmittable

diseases including HIV and AIDS. Early sexual activity also increases the risk of early pregnancy, a major preoccupation in the region. Young adolescent girls may not have access to the sexual and reproductive health information and services needed to use contraceptive methods (see also next section on the minimum age for medical consent).

Minimum age of sexual consent in international standards

The international standards' approach to the minimum age of sexual consent is closely related to the prohibition of child sexual abuse. Child sexual abuse is characterized as comprising all situations in which sexual activity with a person under 18 is illegal. Because it delineates illegal sexual activity, age is one of the defining elements of sexual abuse.

The CRC contains important provisions in relation to sexual abuse. Article 19 deals with all forms of violence against children while in the care of parents, legal guardians or any other person who has the care of the child, and specifically refers to sexual abuse. Even more importantly for the issue under examination, Article 34 obliges States parties to protect children from all forms of sexual exploitation and sexual abuse. This includes "the inducement or coercion of a child to engage in any unlawful sexual activity". The CRC therefore infers that consent is irrelevant when sexual activity is prohibited by law – in particular when the child has not reached the minimum age of sexual consent.

The 2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse commonly known as the Lanzarote Convention is open for accession to any country in the world. It is the most comprehensive international instrument on this issue and as such provides relevant guidance, including in the LAC context. Its Article 18 requires States Parties to criminalize sexual

abuse, defined as engaging in sexual activities with a child under the minimum age of sexual consent. It obliges States Parties to define such a minimum age.

International instruments do not however provide a clear indication of what constitutes an adequate age for sexual consent. A review of the CRC Committee Concluding Observations nevertheless provides some guidance on unacceptable lower limits. In relation to Costa Rica, the Committee has pointed to "the very low minimum age of sexual consent of 13 years" and recommended that the State party review that age.³¹ A similar observation had been made to Guyana in 2004, prompting legislative reform.



³⁰ OECS Country Office Annual Report, 2013.

³¹ CRC COBs 2011, para 27 and 28.

One critical issue relates to the criminalization of sexual activity between children who are both under the age of sexual consent. Here international standards suggest that consent is a primary criterion. The Council of Europe Convention excludes from its scope consensual sexual activities between children under the age of sexual consent. Similarly, the CRC Committee has elaborated on the definition of child sexual abuse. In the case of sexual activities between persons under the age of sexual consent, it refers in substance to the notion of equal power as a proxy to define genuine consent. The Committee has emphasized that any form of pressure from one child on another characterizes abuse and underlined the role of age difference:

Sexual abuse comprises any sexual activities imposed by an adult on a child, against which the child is entitled to protection by criminal law. Sexual activities are also considered as abuse when committed against a child by another child, if the child offender is significantly older than the child victim or uses power, threat or other means of pressure. Sexual activities between children are not considered as sexual abuse if the children are older than the age limit defined by the State party for consensual sexual activities. (GC on violence against children, footnote 9)

Minimum age of sexual consent in LAC countries

The minimum age of sexual consent in Latin America and the Caribbean ranges from 12 to 18 years old. The average age is 15 and the median is 16 years old.

Three countries in the region have set the minimum of sexual consent below 14 years old. They comprise Argentina, Costa Rica and Uruguay. Ten more have established that age at 14 years old. Most Caribbean countries have set the minimum age at 16. In the Dominican Republic and Ecuador, the age is set at 18. This may be considered particularly high, given that in the Dominican Republic for example, data indicates that 28.4 per cent of adolescents are mothers by the age of 18³² and girls can get married as early as 15 years old with parental consent.

An important dimension in relation to adolescents' rights concerns situations in which both persons involved in underage sexual activity are under the age of majority. As asserted in international standards, criminalizing such acts could lead to overly criminalizing adolescents' behaviours. It can also bear significant risks in terms of access to

health services. At the same time, it is important to protect adolescents, especially adolescent girls, against peer pressure and unwanted sexual activity.

In Bolivia for instance, the law sets the minimum age of sexual consent at 14 years old. Yet, it also provides that consensual relationships between adolescents over 12 years old will not be punished, if they have no more than three years of age difference and no violence nor intimidation was involved.³³ In Paraguay, the age of consent is also 14, but when the perpetrator is under 18, the sentence can be waived.³⁴ The law does not specify under which conditions. Presumably, if the sexual activity is not consensual, it also falls under the relevant provisions of the criminal code penalizing coercion.³⁵

Various domestic laws in the region feature different levels of presumption of consent depending on the age of the person concerned. Accordingly, they set a minimum age under which consent cannot be given. In these cases, the question of consent is irrelevant and any sexual activity represents a form of rape. The new

³² Demographic and Health Survey, Preliminary Report, 2013.

³³ Criminal cod, art. 308bis.

³⁴ Criminal cod, art. 135.

³⁵ Criminal cod, art. 128.

integral penal code adopted in Ecuador in 2014 for example explicitly stipulates that for sexual offences, the consent given by a person under 18 is irrelevant.³⁶

Laws may also set another age at which consent is presumed to be invalid, but a person can prove that the underage partner consented. In Uruguay for example, sexual activity under 15 years old is presumed to be a form of violence, but when the victim is aged 12 to 15, the perpetrator can prove otherwise.³⁷

In Trinidad and Tobago, the minimum age of consent is set at 16. Sexual intercourse with a person under that age is a criminal offence unless the partner honestly believed the person was over 16 years old or was not over three years older and can prove he or she is not only or chiefly to blame. However, the law provides that the issue of consent or age belief is completely irrelevant when the female is under fourteen. A parallel provision does not exist for males.³⁸

While this is an area where laws in the region do not generally feature discriminatory provisions, there are some notable exceptions in relation to gender and to homosexual sexual activity. As seen in the case of Trinidad and Tobago, the law makes some distinction on the basis of gender. In Jamaica sexual activity between two underage children is also punishable with the presumption of culpability usually falling on the male child.

In Paraguay and Chile, the law distinguishes between homosexual and heterosexual sexual activity. In Chile, the age of consent is 14 for heterosexual sex and 18 for homosexual sex. In Paraguay, the minimum age for consent for heterosexual sex is set at 14, yet according to the criminal code sexual intercourse of a man with a “woman aged 14 to 16” is punishable by a fine.³⁹ The fine can be waived if the partner is under 18. It is interesting to note here the assumption in the formulation of the legal provision that the man will necessarily be older than the woman. Homosexual sex with a person aged between



³⁶ Nuevo Código Integral Penal, art. 175 (5).

³⁷ Criminal cod, art. 272.

³⁸ Sexual offences Act (2000), sections 6 to 8.

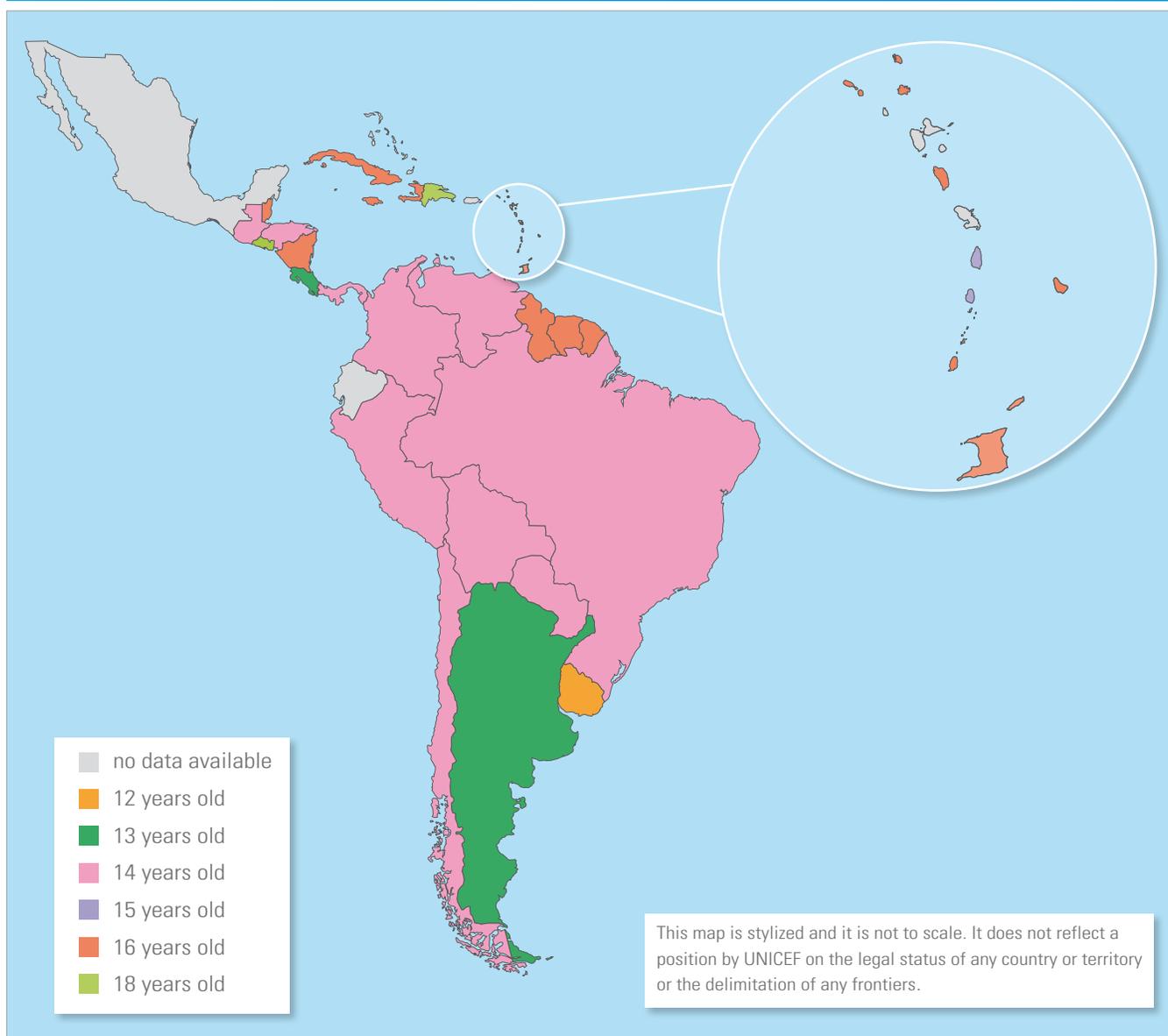
³⁹ Criminal code, art. 137.

14 and 16 is punishable of up to two years imprisonment and a fine.⁴⁰ In this case, the law does not provide for the possibility to waive the sentence when the partner is under 18 years of age.

In some countries, including Belize⁴¹, Guyana⁴², Jamaica⁴³, Trinidad and Tobago⁴⁴ and various Eastern Caribbean countries⁴⁵ homosexual sex is completely banned and constitutes a criminal offence, presumably equally for adults and adolescents.

Map #2

MINIMUM AGE OF SEXUAL CONSENT



⁴⁰ Criminal Code, art. 138.

⁴¹ Criminal Code, sect. 53.

⁴² Criminal Code, Art. 352-354.

⁴³ Offences Against Persons Act. (1864), art. 76 to 79.

⁴⁴ Sexual Offences Act.

⁴⁵ Barbados, Sexual Offence Act. (2002), Sec. 9

Intersection with other minimum ages

Minimum age for marriage and minimum age of sexual consent

Minimum age of medical consent (without parental consent) and minimum age of sexual consent

Key points

- The objective of the minimum age of sexual consent is to protect adolescents from sexual abuse and from the consequences of early sexual activity on their rights and development.
- Young adolescents may be lured into sexual activity by older adults in exchange for goods and favours, making those from disadvantaged settings and poor background particularly at risk. Underage sexual activity presents a number of risks in relation to sexual and reproductive health, including unwanted or early pregnancy and exposure to sexually transmitted diseases. Early pregnancy and motherhood is in turn a primary determinant of school drop out for adolescent girls.
- International standards do not indicate what the minimum age for sexual consent should be. The CRC Committee has considered 13 years to be “very low”. The age should however avoid the over-criminalization of adolescents’ behaviours and prevent access to services. Accordingly, it should respect the evolving capacities of the child and not be set too high. It should also consider as a criterion the age difference between the partners involved as one indication of the balance of power between them and address cases in which two underage adolescents are involved.
- Across the region, the overwhelming majority of countries have established the minimum age for sexual consent between 14 and 16 years. Yet a few countries have an age lower than 14 years or over 16.
- In several countries, discriminatory legislation persists, on the basis of gender and sexual orientation.

Recommendations

- The legal minimum age for sexual consent should neither be too low nor too high and should contain provisions taking due account of limited age difference between the two partners – three years for example.
- Laws should avoid criminalizing consensual sexual activity between underage adolescents, taking into consideration the age difference and possible balance of power in determining the validity of consent.
- Discriminatory provisions, in particular on the basis of gender and sexual orientation, should be removed.

Minimum age of medical consent (without parental consent)

The question of the minimum age of medical consent encompasses access to health information and counselling on the one hand, and consent for medical treatment and care on the other. The minimum age of medical consent refers to the ability to seek medical care and/or counseling without the authorization of, or without being accompanied by, a parent or legal guardian.

Traditionally, consent for healthcare is understood as falling within the scope of parents' primary responsibility in the child's upbringing and development (art. 18 of the CRC). This principle however needs to be balanced with the evolving capacities of children to make decisions concerning their lives, and their right to information.

In the area of sexual and reproductive health, the requirement of parental consent, especially for information, counseling and testing, can constitute a significant obstacle to accessing health services.⁴⁶ Yet, sexual and reproductive health has significant implications for adolescents' lives. In light of the numerous challenges faced by adolescents in Latin America and the Caribbean in this area, the question of the minimum age of medical consent is a significant – though sensitive – matter for policies aiming to promote adolescents' rights. Most countries however do not set a minimum age for medical consent without parental consent, and when they do, it is frequently rather high.

Age of medical consent – A significant issue for adolescents' rights in LAC

Adolescents' sexual and reproductive health is a major challenge in the region. Indicators are alarming. Latin America and the Caribbean is the world region where the fertility rate for women aged 15-19 is the highest after sub-Saharan Africa. The proportion of adolescent mothers has overall increased between 1990 and 2010. While maternity rates decreased in all age groups of the countries in the region, they continue to increase in adolescents between 15 and 19 years of age.⁴⁷ It reached over 12.5 per cent of all adolescent girls in the region in 2010.

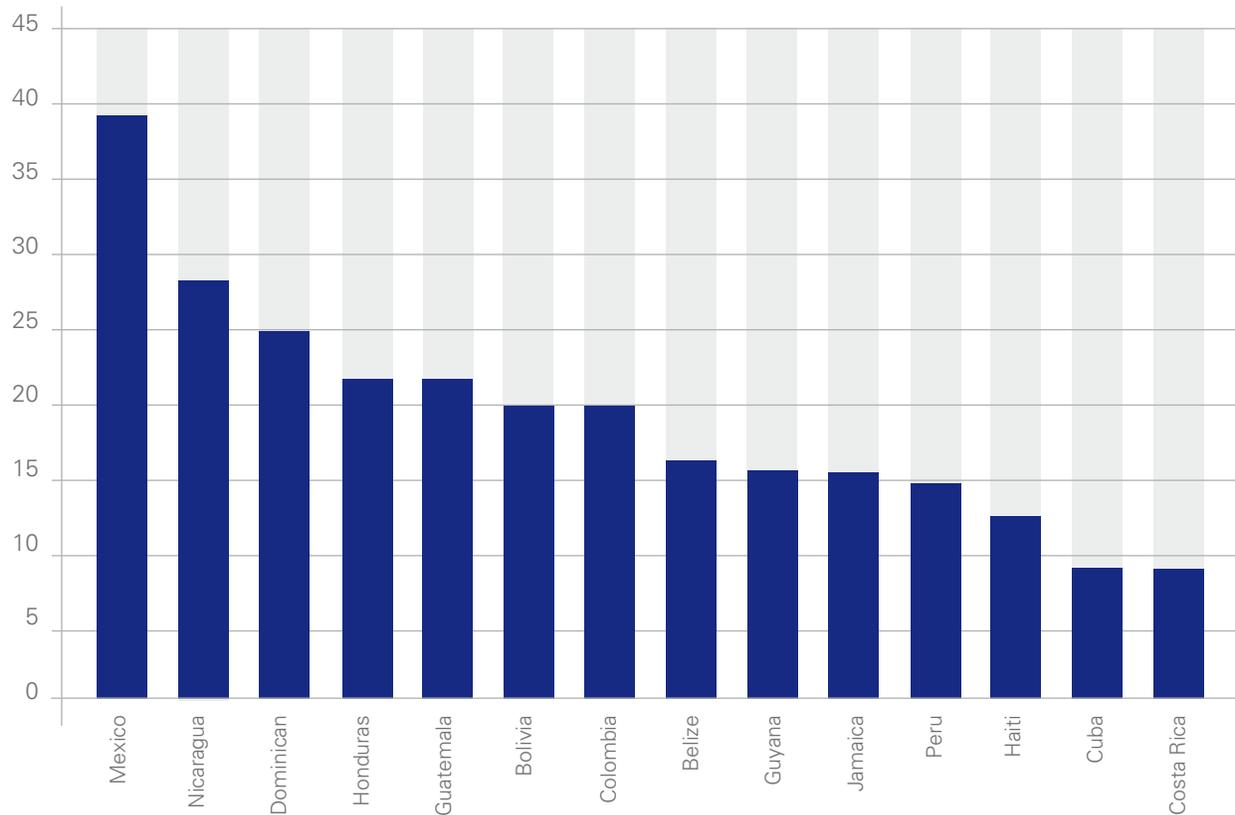
Disparities are high in this area. The proportion of adolescent mothers is consistently higher in rural areas than in urban areas – up to twice the rate in countries like Bolivia and Peru. In Latin America, income inequalities are reflected in teenage fertility rates. The region shows the highest difference in fertility among adolescents in the poorest quintile and the richest quintile.⁴⁸ Furthermore, a lower level of education is closely correlated with a higher chance of being an adolescent mother, raising the prospect of the perpetuation of the cycle of poverty and lack of opportunities for adolescent mothers.

⁴⁶ United Nations Children's Fund, *Towards an AIDS-Free Generation – Children and AIDS: Sixth Stocktaking Report, 2013*, UNICEF, New York, 2013.

⁴⁷ ECLAC, Notes for Equality, no. 5.

⁴⁸ ECLAC, Notes for Equality, no. 5

BIRTH BY AGE 18



Source: UNICEF datasets, *State of the World's Children 2014*.

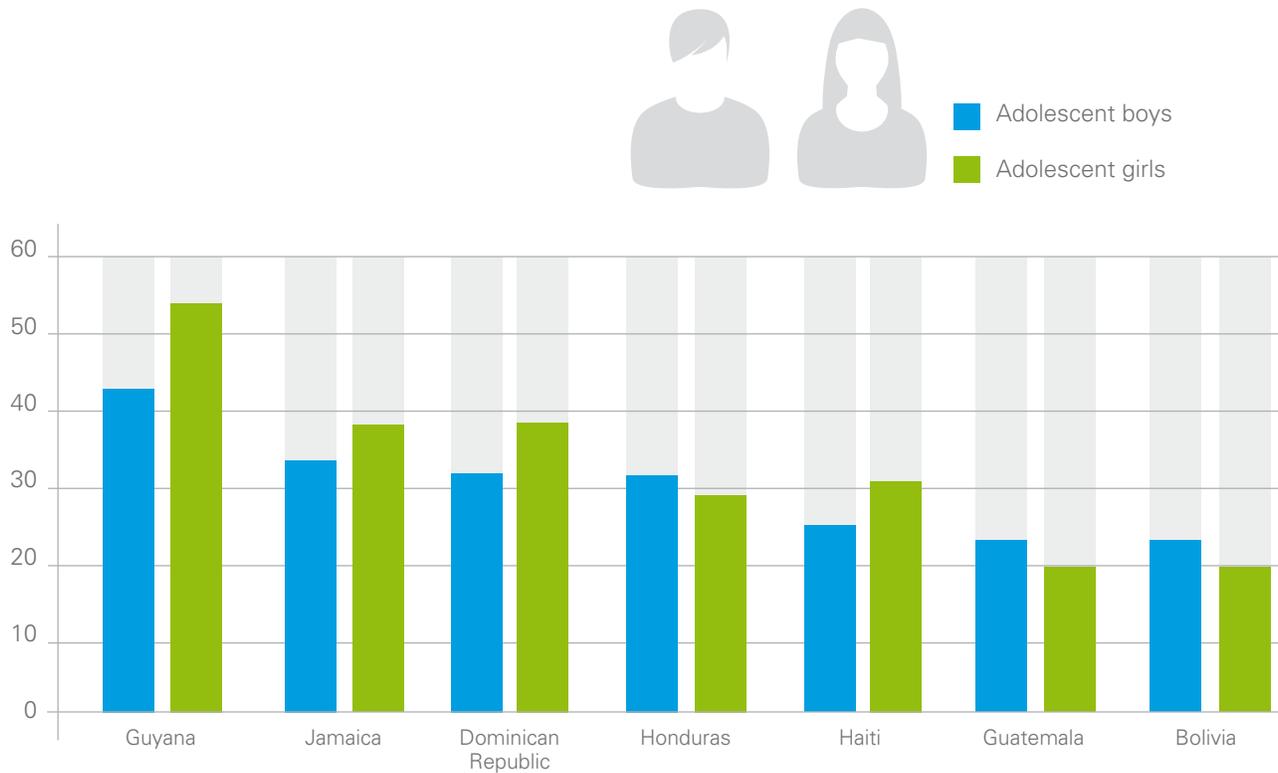
Even more preoccupying is the systematic increase in the proportion of unwanted births among adolescents, which, in the majority of the countries where data is available, is higher than in the total population. This suggests that many adolescents do not have access to sexual and reproductive health information and services that would support them in family planning and to prevent unwanted pregnancy.

The spread of HIV/AIDS among young people is also a major concern. It is estimated that 82,000 adolescents aged 10 to 19 live with HIV, representing 5 per cent of the total population living with HIV in the region.⁴⁹ Almost half of the new HIV infections affect young people aged 15 to 24.⁵⁰

⁴⁹ United Nations Children's Fund, *Towards an AIDS-Free Generation – Children and AIDS: Sixth Stocktaking Report, 2013*, UNICEF, New York, 2013.

⁵⁰ UNICEF, *Guía regional sobre adolescentes, 2014*.

COMPREHENSIVE KNOWLEDGE OF HIV



Source: UNICEF datasets, State of the World's Children 2014.

In this context, unhindered access to health care is a central element of policies supporting adolescent development. Certainly, multiple factors determine access to sexual and reproductive health. They include the availability of such services within the geographic area, information on services provided, the quality of care including from a socio-cultural perspective, and the capacity of staff among others.

Yet for adolescents, the possibility to have access to sexual and reproductive health services without parental consent is a critical dimension of access. When dealing with sexual and reproductive

health, the obligation to inform parents and obtain their consent becomes a significant barrier with significant consequences for adolescents' lives and for public health in general.

Even more than in other areas, confidentiality is an essential condition. Although strong social norms may prevail, it is critical to consider reality and the need to address the issue. The establishment of a minimum age in this area needs to take into account these factors. International standards have sought to provide guidance on this often-delicate issue.



Minimum age of medical consent in international standards

Access to health care and counseling for adolescents relates to the right to health and health services articulated in Article 24 of the CRC, which provides that “States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.” In its interpretation of this article, the CRC Committee has specifically addressed the issue of access to health care without parental consent, underlining the importance of waiving the obligation to obtain permission in the area with of sexual and reproductive health without consideration of age:

In accordance with their evolving capacities, children should have access to confidential counseling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child’s best interests (...). States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion. (General comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health)

On various occasions, the Committee has dissociated access to medical counseling from actual medical treatment, emphasizing the importance of guaranteeing unrestricted access to medical counseling in conditions of confidentiality and without parental permission. It has recommended that no minimum age be set for medical counseling:

States parties need to introduce legislation or regulations to ensure that children have access to confidential medical counselling and advice without parental consent, irrespective of the child’s age, where this is needed for the child’s safety or well-being. Children may

need such access, for example, where they are experiencing violence or abuse at home, or in need of reproductive health education or services, or in case of conflicts between parents and the child over access to health services. The right to counselling and advice is distinct from the right to give medical consent and should not be subject to any age limit. (General Comment on the right to be heard, paragraph 101).

Similarly, in its General Comment on adolescent health and development, the Committee has emphasized that “States parties should ensure that [adolescents] have access to appropriate information, regardless of their marital status and whether their parents or guardians consent.”⁵¹ In relation to consent to medical treatment, the Committee advocates for provisions that set a minimum age, while at the same time recognizing that a younger child may demonstrate capacity to form informed views and should therefore be heard:

The Committee welcomes the introduction in some countries of a fixed age at which the right to consent transfers to the child, and encourages States parties to give consideration to the introduction of such legislation. Thus, children above that age have an entitlement to give consent without the requirement for any individual professional assessment of capacity after consultation with an independent and competent expert. However, the Committee strongly recommends that States parties ensure that, where a younger child can demonstrate capacity to express an informed view on her or his treatment, this view is given due weight. (General Comment on the right to be heard, paragraph 102).

The CEDAW Committee has also addressed the issue of access of health, in particular sexual and reproductive health for adolescents, underlining the importance of confidentiality:

⁵¹ Para 28.

States parties should ensure, without prejudice and discrimination, the right to sexual health information, education and services for all women and girls (...). In particular, States parties should ensure the rights of female and male adolescents to sexual and reproductive health education by properly trained personnel in specially designed programmes that respect their rights to privacy and confidentiality. (CEDAW General Comment on the right to health, paragraph 18).

It has identified the need for preliminary authorization by parents as one of the barriers to access and called on States Parties to remove such barriers:

States parties should report on measures taken to eliminate barriers that women face in gaining access to health care services and what measures they have taken to ensure women timely and affordable access to such services. Barriers include requirements or conditions that prejudice women's access such as high fees for health care services, the requirement for preliminary authorization by spouse, parent or hospital authorities, distance from health facilities and absence of convenient and affordable public transport. (CEDAW General Comment on the right to health, paragraph 21).

Minimum age of medical consent in LAC countries

In the majority of countries in Latin America and the Caribbean, the legislation does not provide for a minimum age for access to medical counseling and medical treatment.

Where a minimum age is set in legislation, which concerns a dozen countries in the region according to available information, it usually ranges between 16 and 18 years. Previous analysis of domestic legislations in Latin America on this issue⁵² has concluded that only four countries have laws that explicitly recognize adolescents' access to health services without parental consent. They comprise Argentina, Costa Rica, Ecuador, Uruguay and Venezuela. In these countries, available information suggests that there is no explicit minimum age for medical consent in the legislation, except in Venezuela where it is set at 14. Interestingly, in Costa Rica for example, the Children's Code explicitly prohibits denying medical attention to a child because the legal guardians are not present.⁵³

In Chile however, specific provisions apply to emergency contraception. According to the law, an adolescent under 14 can obtain emergency contraception and parents or "a responsible adult the child nominates" will only be informed afterwards.⁵⁴

Medical counseling for adolescents is usually recognized across the region, either through legislative provisions or through the various strategies put in place to address adolescents' sexual and reproductive health needs. However, in only a handful of countries, including Argentina, Costa Rica, the Dominican Republic and Uruguay, does the law expressly guarantee the privacy and confidentiality of information and services.

Uruguay is an interesting case in point, because its legislation specifically refers to the evolving capacities. The law on the right to sexual and reproductive health provides for confidential access to medical counseling to all children and

⁵² A. Morlachetti, Análisis legislativo comparado sobre embarazo adolescente y matrimonio temprano, UNFPA. The analysis that follows significantly draws on information contained in this publication.

⁵³ Art. 41. Quoted from A. Morlachetti.

⁵⁴ Quoted from A. Morlachetti.

adolescents, and recognizes the progressive autonomy of adolescents and joint decision-making with parents when it comes to making decisions on medical treatment and sexual health prevention.⁵⁵

Unless universal access is explicitly mentioned, lack of legislation in this area leaves room for

interpretation by medical staff and others.

As in other areas, discretionary power may lead to various forms of discrimination or expression of prejudices and prevent access. In Guyana and Barbados for example, the law does not provide for a minimum age. Yet in practice, UNICEF country offices report that it is generally considered to be 16 years old.⁵⁶



⁵⁵ Ley no. 18.426 (2008), Defensa del derecho a la salud sexual y reproductiva, art. 7.

⁵⁶ See e.g. UNICEF Belize Country Office Annual Report, 2013.

Intersection with other minimum ages

Minimum age for medical consent (without parental consent) and minimum age of sexual consent

Key points

- Age is one of the significant barriers adolescents meet with in accessing health services, particularly sexual and reproductive health services. Given the high rates of early sexual initiation in the region, in particular for girls, the question of the minimum for medical consent without parental consent is a critical public health issue.
- It is important to differentiate access to medical information, counseling and testing, and access to medical treatment. According to international standards, the former should not have any minimum age, while the latter may involve parental consent and should provide the possibility to set a lower age according to the child's maturity. In all cases, confidentiality is an essential element.
- In most countries in Latin America and the Caribbean, the legislation does not provide for a minimum age for access to medical counseling and to medical treatment without parental consent. Where there is one, it is usually comprised between 16 and 18 years. A handful of countries have laws providing for privacy and confidentiality of services. Yet, while there may not be a minimum age set in the law, prevailing practices in health institutions may lead to require parental consent for counseling and testing – especially in the area of sexual and reproductive health.

Recommendations

- Domestic laws should not state a minimum age for access to medical information, counseling and testing without parental consent. They should contain explicit provisions requiring universal access, in particular for sexual and reproductive health, and guaranteeing the privacy and confidentiality of information.
- When setting a minimum age for medical treatment without parental consent, laws should provide for mechanisms to waive the minimum if the adolescent demonstrates adequate maturity and understanding of the implications of the medical decision.
- Health providers should be sensitized to the need to offer adequate counseling and testing to adolescents, regardless of their age.
- On sexual and reproductive health matters, the minimum age of medical consent should never be higher than the age of sexual consent.

Minimum age for admission to employment

The minimum age for admission to employment is the age at which a person is deemed able to work without impairing his or her development, in particular his or her access to education. Yet “work” is a broad concept that can have various understandings. The minimum age for admission to employment refers to generic work, which involves actual employment on a full time basis – even if some restrictions apply before 18. Work performed under the minimum age for employment is considered child labour. Light work however, consisting in safe tasks and performed on a limited basis, can be a way to recognize children’s evolving capacities and ability to contribute to society and prepare for adulthood. In some cultural settings, in particular indigenous cultures, work is integral to children’s upbringing.⁵⁷ The nature of the work performed is also an important dimension in defining acceptable forms of work. Some types of work can be dangerous or harmful to children’s health and development and are inadequate for anyone under 18.

The challenge is to ensure that the minimum age for admission to employment addresses the need to simultaneously recognize children’s evolving capacities and ability to contribute including economically to society, and their right to adequate protection from child labour. As will be seen, the notion of minimum age in this area cannot be dissociated from the nature of the work performed. For this reason, international standards and many domestic laws have set different minimum ages depending on the activity. However, there is a bottom limit under which children’s work is not acceptable. Yet, like in other areas, exceptions contained in legislation, in particular in relation to work within the family context, are legion and raise concerns in terms of adolescents’ rights and development.

An important additional question relates to the minimum age for admission to employment vis-à-vis the age for compulsory education, which is tackled in the section on interaction among minimum ages.

Minimum age for admission to employment– A significant issue for adolescents’ rights in LAC

Although progress has been made in recent years in the region, child labour continues to be preoccupying. Child labour has major effects on children’s development. It is a cause of school dropout. Many forms of child labour have a negative impact on children’s health. Child labour makes children vulnerable to various forms of exploitation and violence. It has significant effects on the perpetuation of disparities and social exclusion.

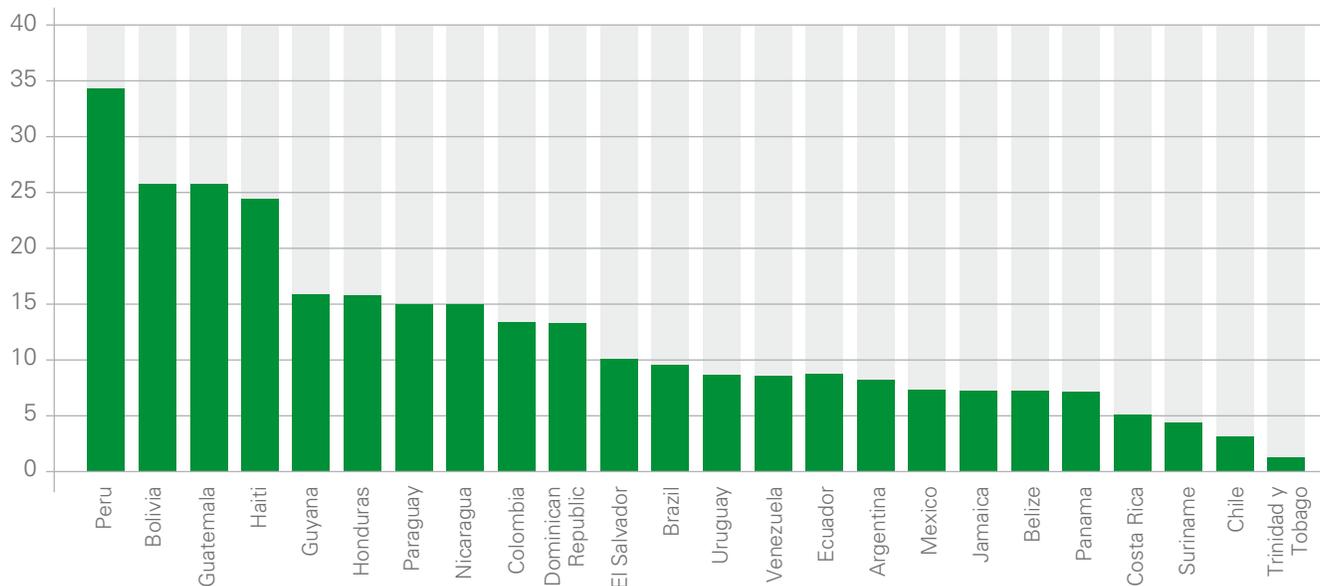
The ILO estimates that 12.5 per cent of children aged 5 to 17 in Latin America and the Caribbean are in employment. 12.5 million children across the region (8.8 per cent of children aged 5 to 17) are engaged in child labour and 9.6 million (6.8 per cent) carry out hazardous work.⁵⁸ It is estimated that 2 million children are engaged in domestic labour, with the highest levels in Brazil, Haiti and Guatemala.⁵⁹

⁵⁷ UNICEF, Innocenti Research Centre, Ensuring the rights of indigenous children, Innocenti Digest no. 11, UNICEF, 2004.

⁵⁸ ILO, Marking progress against child labour – Global estimates and trends (2000-2012), 2013.

⁵⁹ UNICEF, Guía regional sobre adolescentes, 2014. Using ILO data.

CHILD LABOUR RATE (AGE 5-17)



Source: UNICEF datasets, *State of the World's Children 2014*.

The number of working children, including those involved in child labour and hazardous work, has declined in absolute and relative terms between 2008 and 2012, suggesting that progress is being made.⁶⁰ However, analyses have shown that progress in this area can be precarious and easily reversed in adverse economic conditions.⁶¹

This is an area where data heavily relies on minimum age in order to define which category children belong to. At the national level, definitions of children involved in “acceptable” forms of work are highly dependent on their age. Age is the main criteria enabling to categorize work as labour, combined with other dimensions such as the nature and length of the work.

One issue is that some forms of child labour remain hidden and hard to account for, in particular for children involved in domestic work or working within family settings. The minimum age for admission to employment is critical to providing adequate protection to children and adolescents and ensuring that they can attend school. The establishment of such a minimum age and importantly the adequate definition of the kind of employment admissible at which age are also important elements in identifying the forms of light work that are acceptable for children to perform, and for assessing the reality of the situation of children and adolescents.

⁶⁰ ILO, *Marking progress against child labour – Global estimates and trends (2000-2012)*, 2013.

⁶¹ *Understanding Child Work Programme, Trends in children's employment and child labour in the Latin America and Caribbean region*, November 2010.

Minimum age for admission to employment in international standards

Children's right to be protected from economic exploitation and harmful forms of work is formulated in Article 32 of the Convention on the Rights of the Child. This provision also explicitly requests States Parties to establish a minimum age for employment, as well as specify hours and conditions of employment.

The international framework for minimum age for employment is primarily articulated in various International Labour Organization Conventions, namely ILO Convention No. 138 on the minimum age for admission to employment and work (1973) and ILO Convention No. 182 on the worst forms of child labour (1999). These instruments distinguish three main types of work involving children:

- Child work (children in employment) includes children engaged in any economic activity for at least one hour. Economic activity is a broad concept that includes formal and informal forms of employment, including in family settings.
- Child labour includes children in the worst forms of child labour and children in employment below the minimum age. It excludes children involved in light work and those whose work is not classified as a worst form of child labour.
- Hazardous work by children or worst forms of child labour are any activity or occupation that, by its nature or type, has or leads to adverse effects on the child's safety, health and moral development.⁶²



⁶² ILO, Marking progress against child labour – Global estimates and trends (2000-2012), 2013.

Depending on the type of work involved, various minimum ages apply. Furthermore, in recognition that certain states may face particularly difficult economic conditions, international instruments

condone lower minimum ages by one year for developing countries. The table below summarizes acceptable minimum ages for admission to employment:

| | General | Possible for countries whose economy and educational facilities are insufficiently developed |
|---|--|--|
| General minimum age | | |
| The minimum age for admission to employment or work should not be below the age for finishing compulsory schooling | 15 years or more | 14 years |
| Light work | | |
| Children between the ages of 13 and 15 years old may do light work, as long as it does not threaten their health and safety, or hinder their education or vocational orientation and training | 13 years | 12 years |
| Hazardous work | | |
| Any work which is likely to jeopardize children's physical, mental or moral health, safety or morals should not be undertaken by anyone under the age of 18 | 18 years (16 years under certain strict conditions) | 18 years (16 years under certain strict conditions) |

Source: ILO, Manual on linkages between education and child labour (2011)

Regional instruments also contain provisions in relation to the minimum age of admission to employment. Article 7 of the Protocol of San Salvador of 1999 in particular prohibits night work

and hazardous working conditions for persons under 18 years of age and specifies that for children under 16, work should not hinder school attendance or limit the benefits of education.

MINIMUM AGE OF ADMISSION TO EMPLOYMENT



Minimum age for admission to employment in LAC countries

All countries in Latin America and the Caribbean have set a minimum age for admission to employment. That age ranges from 12 years old in Bolivia and Dominica to 16 years old in six countries. The average and the median ages are 14.5 years.

Recent developments in this area have raised preoccupations as to possible drawbacks. In Bolivia, the new Children's Code adopted in July 2014 provides that the minimum age of employment is 14. However, the Code introduces two important exceptions (article 129-II), that constitute serious obstacles to the full protection and fulfilment of children's rights. Formal work is permitted starting from 12 years old with prior authorization from the legal guardian of the child and the Ombudsperson for children. From age of 10 employment is permitted for self-employed children⁶³, with prior authorization from the child's legal guardian and the Ombudsperson for children.

Proponents of the reform, including unions of child labourers, have argued that allowing children as young as 10 years old to work is a way to provide legal protection for children engaged in various forms of work for subsistence. This evolution however raises serious concerns in relation to the fulfillment of children's right to education, the risk that even more children will be drawn into child labour, and the fact that it perpetuates a system relying on child labour rather than addressing its root causes.

A similar concern arises in Peru. While the children's code sets 14 years as the general minimum age and higher ages for specific sectors, such as agricultural, industrial and commercial work, it provides that on an exceptional basis work can be authorized from 12 years old if it does not impair the child's health, development and education. The law further considers that parents' consent is presumed, unless they explicitly express their opposition.⁶⁴

Peru and Bolivia have the highest rates of child labour in the region at 34 per cent and 26 per cent respectively. One question is whether the law seeks to somewhat endorse an existing reality or whether social acceptance of child labour is reflected in the law, which in turns makes child labour more acceptable.

In most Caribbean countries, relevant legislation sets a minimum age for employment at either 14 or 16 years old. However, it provides the possibility for children to participate in family run economic activities. In Dominica for example, the Employment of Women, Young Persons and Children Act states: "No child shall be employed or work in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed."⁶⁵ This represents a concern, since the law does not establish limitations in terms of the working hours and conditions. While light work, including household chores, is acceptable in a family setting, it should not impair children's education. Similarly, in Antigua and Barbuda, Barbados, the Dominican Republic, Saint Kitts and Nevis, Saint Vincent and the Grenadines, and Trinidad and Tobago the law does not set an age limit for working in family ventures outside school hours.

Conversely, other States have brought their domestic legislation in line with international standards. In Mexico, the minimum age for admission to employment has constitutional status and is set at 15.⁶⁶ In El Salvador, the Children's Code adopted in 2009 makes it clear that any work under the age of 14 is strictly prohibited. Even so, as of 14 years old work is permitted to the extent that it is not harmful to the child and does not impair the child's right to education. Between 14 and 16, the workday cannot exceed 6 hours and night work is forbidden. Domestic labour is only allowed from 16 years old.⁶⁷

⁶³ Children engage in informal work such as car wash, street vending of cigarettes and candies etc.

⁶⁴ Art. 51.

⁶⁵ Chapter 90:06, sect. 4 (1)

⁶⁶ Art. 123 of the constitution.

⁶⁷ Art. 59, 60 and 64.

Several countries allow work under the general minimum age in force domestically as part of vocational training. In Cuba, from 15 to 17 a child may work under an apprenticeship contract, upon approval by the Ministry of Labour and medical examination. Similarly, in the Dominican Republic, the Labour Code envisions exceptional cases where employment may be justified before the age of 16 on the ground of a need for training or precocious talent. The reference to a precocious talent here needs to be considered carefully, as the CRC prohibits any form of exploitation that can be harmful to the child's welfare, including for gifted children.⁶⁸

Interestingly, in Costa Rica, the Children and Adolescents' Code refers to the need to guarantee social protection for children under 15 working out of necessity. It provides that relevant authorities should take action and provide adequate assistance to the family.⁶⁹

ILO Convention 138 further requires other minimum ages to be set – for light work and for hazardous work. In relation to light work, all countries in the region except Bolivia have a minimum age of 12 or over, which is in line with the Convention. In many countries the minimum age for light work is equal to the general minimum age for employment. In others, some of the states that have set the minimum age for employment at 14 years as per the possibility to set the age lower than 15 due to the country's level of development typically have a light work age set at 12, using the same exception.

With respect to hazardous work, the overwhelming majority of countries in LAC have set the age at 18 in line with international standards. One exception is Cuba, where the age is established at 17 and 16 for night work, prompting concerns by the CRC Committee.⁷⁰ In Dominica, the minimum age for employment is at a low 12 for all forms of work.

A problem arises when the law provides for the possibility to grant children the authorization to work under special circumstances. Here again, exceptions undermine the effectiveness of legislation. In Panama, the minimum age for admission to employment is constitutionally set at 14, yet a 2000 law establishes the age at 15 years. The CRC Committee has expressed its concern at this discrepancy and the fact that State authorities apply the lower standard. Furthermore, it has pointed to the existence of legal provisions that allow the State party to grant permits for children from 12 to 14 years to work in agriculture and domestic service.⁷¹ In Belize, the law provides for the possibility for the minister to waive the prohibition of night work for adolescents aged 16 to 18 and to suspend the applicability of prohibitions protecting this age group in case of an emergency in an industrial undertaking.⁷²

Various countries have laws that link the minimum age of employment to the requirement to access education, in line with ILO Convention No. 138. These laws are examined in the section examining the intersection between minimum ages.

Intersection with other minimum ages

Minimum age of admission to employment and minimum age for the end of compulsory education

⁶⁸ Art. 36.

⁶⁹ Código de la Niñez y la Adolescencia, Ley no. 7739 (1998), Art. 92.

⁷⁰ CRC Committee Concluding Observations for Cuba (2011), para. 22.

⁷¹ CRC Committee Concluding Observations for Panama (2011), para. 66.

⁷² Belize, Labour Act (2000), Sec. 162.

Key points

- The minimum age of admission to employment is critical in protecting children from all forms of child labour and exploitation. It also takes into account the positive dimensions for adolescents to contribute to society in conditions that do not impair their development, health and education.
- Child labour is a significant issue in LAC with significant disparities between and within countries. Several countries have child labour rates reaching a fourth to a third of children aged 5 to 17.
- The minimum age for admission to employment encompasses both the age and the nature, conditions, and duration of activities allowed for that age.
- The general minimum age designates the age at which a child is allowed to work on a full-time basis. ILO Convention No. 138 establishes this age at 15, with the possibility to temporarily set the age at 14 for countries which economy and educational facilities are insufficiently developed. However, there are limitations in terms of weekly and daily working hours, night work, and hazardous activities under 18 years old.
- International standards also recognize a minimum age for light work that does not interfere with the child's education – with limited daily and weekly working hours and light activities. It should be at least 13 years of age – or 12 temporarily for insufficiently developed countries. According to international standards, all forms of hazardous work are forbidden before the age of 18.
- In LAC, the overwhelming majority of countries are in line with ILO Convention No. 138. They usually have a general minimum age of admission to employment comprised between 14 and 16 years old. Light work is usually authorized over 12 years of age and hazardous work is forbidden under 18. A handful of countries however have ages that are below those required in international standards. Recent evolutions, such as recent legal reform in Bolivia, are particularly preoccupying.
- A concern is the exception for family owned business, present in several laws in particular in Caribbean countries, for which the minimum age does not apply.

Recommendations

- Ensure that laws regarding minimum ages for admission to employment are fully in line with international standards, in particular ILO Convention No. 138.
- Remove exceptions that enable underage children to work under certain circumstances, in particular family business, with no limitations in terms of age and the nature, conditions and duration of the work.
- Strengthen linkages in the legislation between the child protection and social protection system as a way to prevent child labour.

Minimum age for the end of compulsory education

The minimum age for the end of compulsory education or age of completion of compulsory schooling refers to the end of the minimum period of education required for a child. Hence parents or legal guardians of children below that age who are not in school could face charges of child neglect. It does not imply however that education should stop at that age – States are encouraged to facilitate access to the highest possible level of education for all. Rather, it represents the age at which a child is presumed to have acquired the minimum skills, knowledge and maturity required for his or her development and contribution to society.

In practice, many children and adolescents are out of school. Yet the compulsory school age represents the one criterion defining who should be in school and corresponding State's obligations in terms of investments, programmes and measures to facilitate school attendance. In light of the importance of secondary education for the current and future rights and well-being of adolescents, the establishment of a minimum age at an adequate level is critical. Most countries in the region have set such a minimum age, usually during adolescence. Others refer to a level of educational achievement.

The minimum age for the end of compulsory education is also related to the age for the beginning of compulsory schooling and the overall length of education. The present study, which focuses on adolescents' rights, only considers the age for the end of compulsory schooling.

Minimum age for the end of compulsory education – A significant issue for adolescents' rights in LAC

While primary education enrolment rates in Latin American and the Caribbean are high (91 per cent), lower secondary school enrolment drops significantly. Lower secondary school enrolment reaches only 74 per cent, with some countries showing rates below 50 per cent.⁷³ Across the region, 1.5 million adolescents of secondary school age are out of school and 7.6 million more who are enrolled in lower secondary school are at risk of dropping out.⁷⁴ It is estimated that almost one in five adolescents aged 12 to 18 years old does not attend any educational institution.⁷⁵

Completion of secondary education is however important for a successful insertion into the labour market. It is considered that completion of primary education is no longer sufficient to escape poverty and secondary education is the minimum threshold for guaranteeing the future well-being of adolescents, and reducing poverty and inequalities.⁷⁶

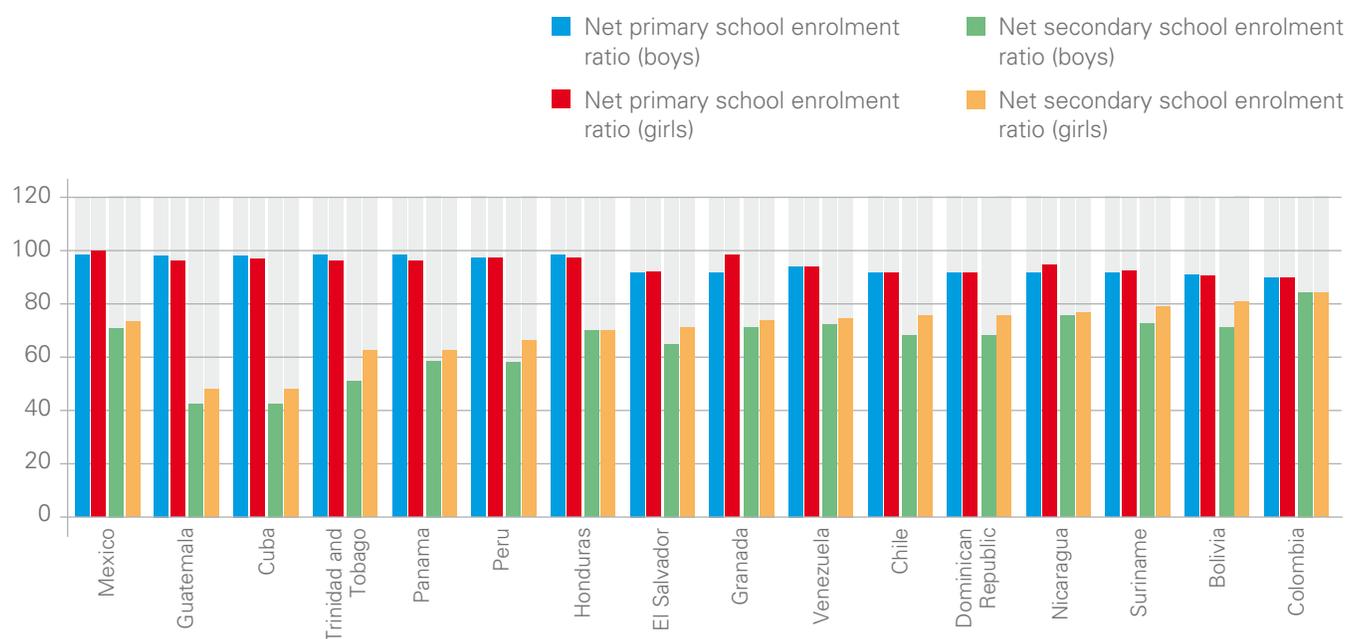
⁷³ UNICEF, Guía regional sobre adolescentes, 2014, quoting MICS data.

⁷⁴ UNICEF and UNESCO Institute of Statistics, Iniciativa Completar la escuela: logros y desafíos al año 2011, 2014.

⁷⁵ UNICEF, Guía regional sobre adolescentes, 2014.

⁷⁶ UNICEF and ECLAC, Challenges: Adolescents and the right to education, no. 17, November 2013.

NET PRIMARY AND SECONDARY SCHOOL ENROLMENT RATES (BOYS AND GIRLS)



Source: UNICEF datasets, State of the World's Children 2014.

The establishment of a minimum age for the end of compulsory education has important implications for adolescent policies. Compulsory schooling is associated with States' obligations to provide free education and ensure access to education. For all children younger than the age of end of compulsory education attending school should be free of charge. This constitutes an important element for equality of opportunities. Accordingly, States are required to make sufficient investments in terms of public finance to ensure that free quality education is available to all school aged children.

Age represents an important objective threshold to determine who should be in school. All children and adolescents under a certain age are expected to attend school during school hours. If they do not, it should alert child protection institutions and action should be taken to address the issue. Adolescents especially are more vulnerable to being out of school to engage in work or because they have taken family responsibilities as spouses

and/or parents. States have the obligation to set up relevant, targeted, programmes and measures to ensure that all children and adolescents are in school, especially those most at risk of drop out and exclusion.

Finally, setting an age at which adolescents must be in school is an important element of a national child protection system. School is an important environment for identifying children at risk, addressing vulnerabilities, detecting and reporting situations of violence, and limiting children's exposure to being drawn into hazardous and illegal activities and other forms of exploitation. Education helps build children's resilience and ability to protect themselves. It ensures that adolescents have access to resources for their intellectual and social development, promoting their sense of citizenship. School constitutes an important way of informing adolescents on sexual and reproductive health and promoting safe behaviours.

The minimum age for the end of compulsory education in international standards

The right to education is recognized in numerous core human rights instruments.⁷⁷ While these mainly require that primary education be free and mandatory, they also provide important guidance on secondary education.

The Convention on the Rights of the Child requires States Parties to “encourage the development of various forms of secondary education (...), make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need” (Article 28 (b)). The Protocol of San Salvador uses a similar formulation. It provides in its Article 16 that “every child has the right to free and compulsory education, at least in the elementary phase, and to continue his training at higher levels of the educational system.”

International standards do not however provide express guidance on an adequate level for a minimum age for the end of compulsory education. Education is first and foremost approached in terms of outcome – completion of primary schooling. International instruments do

however set a minimum age by proxy, through the minimum age for admission to employment.

ILO Convention No. 138 concerning Minimum Age for Admission to Employment stipulates in Article 2 that “the minimum age [for admission to employment] shall not be less than the age of completion of compulsory schooling and, in any case, shall not be less than 15 years,” - or 14 years for countries whose economy and educational facilities are insufficiently developed. The CRC Committee has repeatedly called on States Parties to equalize the age for admission to employment with the age for the end of compulsory education.

As a consequence, the minimum age for the end of compulsory education should follow the guidelines mentioned in the previous section regarding the minimum age for admission to employment without interfering with schooling. This implies that the age of end of mandatory schooling should be at least 15 years, with a possible temporary exception at 14 years old.

Minimum ages for the end of compulsory education in LAC

Across the region, the minimum age for the end of compulsory schooling has a very wide range, from 12 to 21 years old. The average is 14.5 years old median age is above 15.

In several countries, including Argentina, Bolivia, and Mexico, compulsory education ends at 18 years of age. Conversely other States have set the age at a very low level – 12 years old – in Suriname and Trinidad and Tobago. Over two thirds of the countries in the region have set the minimum age for the end of compulsory education at 14 years old or above.

A few countries, such as Haiti, Honduras, Nicaragua and Uruguay, do not establish clear ages for the end of mandatory education and refer instead to schooling levels. In Haiti, there is no exact minimum age but reference to an educational achievement. Only completion of primary education is mandatory. The lack of a clear age limit for compulsory education raises serious concerns as to the accessibility of secondary education and the risks to which out-of-school children are exposed, as mentioned above. In Uruguay, the law on education provides that preschool, primary, and lower and upper

⁷⁷ Universal Declaration on Human Rights, International Covenant on Economic, Social and Cultural Rights, and Convention on the Rights of the Child among others.

secondary education is compulsory. While the age for the beginning of education is four or five years old, no age is indicated for the end of mandatory schooling. Parents have an obligation to ensure that children are enrolled in, and attend, an educational institution.⁷⁸ Likewise, in Honduras, the law requires school attendance from one-year before primary school to lower secondary education (educación media).

The law obliges parents and legal guardians to ensure that children attend school.⁷⁹ Approaching the minimum age for the end of compulsory education implies considering the minimum age for admission to employment, as will be examined in the next section on the intersection between minimum ages.

Intersection with other minimum ages

Minimum age of admission to employment and minimum age for the end of compulsory education

Minimum age for marriage and minimum age for the end of compulsory education

Minimum age of criminal responsibility and minimum age for the end of compulsory education



⁷⁸ Ley general de educación no. 18.437 (2009), art. 7.

⁷⁹ Ley fundamental de educación (2012), art. 8 and 10.

Key points

- The minimum age for the end of compulsory education refers to the end of the minimum period in which children are supposed to attend school. It creates corresponding obligations for parents to ensure they do so and for the state to provide free education and take other measures to guarantee universal access.
- It refers to the age at which adolescents are deemed to have acquired the skills, knowledge and maturity to economically contribute to society and act as responsible citizens. It is a minimum requirement, rather than an upper limit, and States should support conditions for increased access to secondary education for adolescents.
- Primary education enrolment is almost universal in Latin America and the Caribbean. While secondary schooling is considered the minimum level in today's societies for employment that will ensure stability and freedom from poverty, enrolment drops significantly from primary to secondary. In some countries less than half of adolescents are enrolled in secondary education.
- International standards provide that the minimum age for the end of compulsory schooling shall not be lower than the minimum age for admission to employment, hence at least 15 years old – or 14 as a temporary exception for countries whose economy and educational facilities are insufficiently developed.
- Most countries in LAC make education compulsory until 14 to 16 years of age. A handful of countries have however set the age at 12 or 13. In some States, the law provides for minimum educational achievement rather than define an exact age. The level is either primary schooling like in Haiti or upper secondary like in Uruguay.
- In several countries, the law obliges parents to ensure that children go to school. In some, the state also has explicit specific obligations in guaranteeing that families receive adequate support to ensure that their children have access to education.

Recommendations

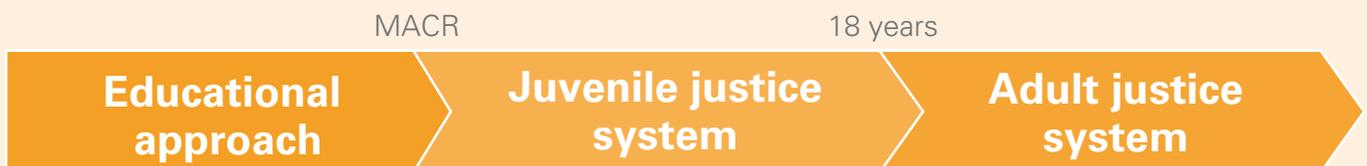
- Ensure that domestic legislation set a minimum age for the end of compulsory education at 15 years old or exceptionally and temporarily at 14, depending on the minimum age for admission to employment.
- Consider combining age requirements with educational achievement requirements, i.e. completion of lower secondary education as a minimum.
- Ensure that domestic legislation provides for free and mandatory secondary education.
- Consider including provisions linking access to education and social assistance for families in need.

Minimum age of criminal responsibility

The minimum age of criminal responsibility is the age under which a child cannot be held criminally responsible for his or her actions, and cannot therefore be brought before a criminal court. The rationale is that children under a certain age do not have the capacity to fully understand the consequences of their actions. They should neither be subject to the traumatizing experience of a criminal trial, and nor be put in detention. Crime prevention instead calls for pedagogic and educational approaches, as well as social protection measures aiming to build a protective environment for children and give them the opportunity to become responsible citizens.

The establishment of a minimum age of criminal responsibility is therefore a requirement under international standards and all countries in Latin America and the Caribbean have legislation providing for such an age. The main question relates to the level of that age, which in many countries in the region, especially in the Caribbean, is very low and under acceptable limits.

A separate but related issue concerns the upper limit for being protected under the juvenile justice system – the age of penal majority. This refers to the system in which a person under-18 who has reached the minimum age of criminal responsibility will be judged – the juvenile justice system or the adult system. According to the CRC and other international instruments, all persons under 18 in contact with the law are entitled to be treated in accordance with juvenile justice standards. Yet legal provisions in several countries in LAC mean that their justice systems treat adolescents under 18 years old as adults.



An additional question, examined in the section on intersection among minimum ages, concerns adolescents' ability to bring a case to court, in civil, administrative and criminal proceedings. Comparison between the age of criminal responsibility and legal capacity sheds light on the various ways in which justice systems approach adolescents.

Minimum age of criminal responsibility – A significant issue for adolescents' rights in LAC

Most countries in the region are equipped with legislation aiming to address the situation of children in contact with the law. In a study on juvenile justice in the Americas, the Inter-American Commission on Human Rights has found that applicable legal provisions are overall in line with international standards. However, it has pointed to significant shortfalls in relation to implementation, emphasizing the persisting gaps between the normative framework and actual practice.

The Commission has found that “juvenile justice systems on the continent are characterized by discrimination, violence, lack of specialization and overuse of measures of deprivation of liberty.”⁸⁰ 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.⁸¹

Across Latin America and the Caribbean, negative perceptions of adolescents in society continue to pave the way for harsher juvenile justice legislation. Children and adolescents are often held responsible for high levels of criminality. As indicated below, this perception has prompted debates and law reform proposals in several States aiming to dismantle the protection guaranteed to adolescents in contact with the law. However, research for the UN Study on Violence against Children showed that a small percentage - between 5 and 10% - of crimes was actually committed by children and adolescents, and in most cases the offences were minor.⁸² Evidence also suggests that children under the age of criminal responsibility may be used by others to commit offences, on the consideration that they would not be prosecuted. Lowering the age of criminal responsibility increases the likelihood that even younger children will be used for this purpose.

In this context, the establishment of a clear minimum age of criminal responsibility at an adequate level is central. It helps ensure that adolescents do not become victim of a criminal system that can often be discriminatory. It reduces their vulnerability to exploitation by others to commit crimes. It also contributes to giving them access to the services and other social protection measures needed for their rehabilitation and reintegration – as well as to prevent recidivism – and for becoming responsible citizens.

⁸⁰ CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011, p. x.

⁸¹ CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011.

⁸² UNICEF, *La Violencia contra los niños, niñas y adolescentes - Magnitud y desafíos para América Latina - Resultados Estudio Mundial de Violencia*, Conferencia Subregional Cultura de Paz y Prevención de la Violencia Juvenil, San José, Costa Rica 15 y 16 de Noviembre, 2007.

The minimum age of criminal responsibility in international standards

The Convention on the Rights of the Child requires States Parties to establish “a minimum age below which children shall be presumed to not have infringed the penal law”. Yet it does not specify what the age should be. Rule 4 of the Beijing Rules recommends that the minimum age “shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.”

Building on these instruments, the CRC Committee has provided additional guidance. In its General Comment No. 10 on the administration of juvenile justice, the Committee has concluded that any minimum age of criminal responsibility under the age of 12 is not considered acceptable under international standards. Accordingly, States Parties should consider 12 years old as the absolute acceptable minimum age and continue to increase it to a higher level. According to the Committee, 14 or 16 years old represent “commendable” minimum ages of criminal responsibility in line with the Convention’s requirements.

The Inter-American Commission on Human Rights has expressed its concern that 12 years old is too low and should not be considered an acceptable minimum age of criminal responsibility internationally. It has recalled that many States have set a much higher age. Accordingly, it has recommended the establishment of the minimum age of criminal responsibility as close as possible to 18, and reaffirmed that the principle of non-regression of penal law excluded the possibility to lower that age.⁸³



Another question relates to the age until which children are entitled to be treated in accordance with juvenile justice rules. In its General Comment, the Committee has underlined that juvenile justice law should apply to all children under 18, regardless of the nature of the offence.

The Committee further rejects the possibility of allowing any exception to the minimum age, for serious offences for example. Likewise, it has explicitly stated that legislative provisions that enable a judge to decide upon a child’s criminal responsibility or the applicability of the juvenile justice regime on the basis of an assessment of a child’s maturity are not in line with international standards.⁸⁴ In its report on juvenile justice, the Inter-American Commission has taken a similar view.

⁸³ CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011.

⁸⁴ General Comment no. 10.

The minimum age of criminal responsibility in LAC countries

The minimum age of criminal responsibility in LAC ranges from a low 7 years old in Trinidad and Tobago to 18 in Ecuador and Brazil. The average is 12.4 years and the median age is 12, suggesting that this is an area where most countries are in the lower limit or below the absolute minimum set in international standards. Three quarters of the countries have an age below 14, i.e. under the minimum recommended age under the Inter-American human rights system.

Numerous Caribbean countries have a minimum age below the 12-year-old limit – and even below the age of 10. Further to Trinidad and Tobago's age of 7, Antigua and Barbuda, Saint Lucia and Saint Vincent and the Grenadines have all set the age at 8. Guyana and Suriname have set the minimum age at 10 years old – although in the latter a proposed amendment raising the age to 12 is before parliament for approval – and Barbados at 11. This is presumably inherited from the British legal tradition – the minimum age remains at 10 today in the United Kingdom, except for Scotland where it is 12.

One concern lies in the existence in several countries of an intermediate regime consisting in the “social responsibility” of children under the age of criminal responsibility. The Inter-American Commission has specifically highlighted this issue.⁸⁵

Under this approach, children under the minimum age of criminal responsibility can be subject to a form of social responsibility, which includes the possibility of sanctions. Where it exists, it generally applies to actions that would be considered criminal offences if committed by a person over the age of criminal responsibility. This situation is preoccupying because it means that children under the age of criminal responsibility may be subject to so-called “administrative sanctions” in proceedings that may not offer the same degree of fair trial guarantees and possibility of appeal as in a regular criminal procedure.

While juveniles in such cases are protected from criminal punishment and record, they may actually be vulnerable to inadequate sanctions.

In Ecuador, the age of criminal responsibility is 18. Yet from the age of 12 adolescents are accountable for their actions though a system that establishes custodial and alternative measures under the juvenile justice system, as provided by the Children's Code (2003). Several provisions have been reviewed in the new penal code approved in 2014, including the increased duration of custodial measures for some specific crimes. Likewise in Brazil, the minimum age of criminal responsibility enshrined in the Constitution is 18 years.⁸⁶ Actions that would constitute a criminal offence if committed by adults are considered infractions. While not judged under the criminal justice system, these infractions may however lead to trial and deprivation of liberty.

The current situation in relation to the minimum age of criminal responsibility is fragile. In Panama, a 2010 law reform has revised the 1999 legislation and lowered the minimum age of criminal responsibility from 14 to 12 years old.⁸⁷ Yet in August 2014, the age was brought up again to 14. Discussions on the age of criminal responsibility have taken place in places like Brazil and Uruguay. In the latter, a proposal to lower the age through constitutional reform has been put to a referendum in 2014 – and did not pass. This suggests that the minimum age for criminal responsibility is affected by the pulls and pushes of national political agendas.

Another issue relates to the upper age for being protected by the juvenile justice system, i.e. the period between the minimum age of criminal responsibility and the age at which someone is treated as an adult in the justice system. In some countries, the legislation provides that children under 18 years old and above a certain age do not fall under the scope of juvenile justice provisions. In Caribbean States for example, in addition to

⁸⁵ CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011, p. xi.

⁸⁶ Art. 228.

⁸⁷ Ley 6, 8 March 2010.

the low level of the minimum age of criminal responsibility, juvenile justice provisions do not apply to children over 16 years of age.⁸⁸ In Saint Vincent and the Grenadines, the Criminal Code (cap. 124, sect. 24) states that the sentence of death shall not be pronounced against a person convicted of an offence if at the time when the offence was committed he was under the age of 16 years. This implies that a 17-year-old can be sentenced to death. In Cuba, criminal responsibility begins at 16 and from then on adolescents are treated like adults, although with lower sentences.⁸⁹

In limited instances, the judge may have the power to decide whether an adolescent will be treated as a child in accordance with juvenile justice law or as an adult. Criteria include assessment of the child's maturity and the seriousness of the crime committed. In Argentina for example, while the minimum age of criminal responsibility is set at 16, the law provides that an adolescent aged 16 to 18 can be treated as an adult if the offence is punishable by two or more years of imprisonment. The judge decides on the regime and sanctions applicable in a specific case.⁹⁰ As mentioned above, the Committee considers such discretionary power not in line with CRC requirements.

In Argentina, Brazil, Colombia, Costa Rica, Guatemala, Ecuador, El Salvador, Peru, and Uruguay, reform proposals have included the possibility to include a criterion referring to the child's maturity to establish the child's entitlement to the set of special rights and protections the juvenile justice system offers.⁹¹ Increasing the discretionary power of judges to assess a child's evolving capacities in relation to criminal issues raises significant risks for adolescents' right to a system that fosters their reintegration and rehabilitation. It may perpetuate discriminatory prejudices against specific groups, which are already subject to harsher punishment.

In Uruguay, a proposal for constitutional reform to lower the age at which adolescents in contact with the law can be judged under the juvenile justice system from 18 to 16 was put to a referendum in October 2014. The proposal was rejected.

Research has found that introducing harsher juvenile justice provisions not in accordance with international standards has not led to a decrease in criminality for the countries concerned.⁹²

⁸⁸ J. Palummo, *Juvenile Justice and Human Rights in the Latin America and Caribbean*, 2014, quoting CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011.

⁸⁹ Criminal Code, art. 16.

⁹⁰ J. Palummo, *Juvenile Justice and Human Rights in the Latin America and Caribbean*, 2014, quoting CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011.

⁹¹ J. Palummo, *Juvenile Justice and Human Rights in the Latin America and Caribbean*, 2014, quoting CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011.

⁹² J. Palummo, *Juvenile Justice and Human Rights in the Latin America and Caribbean*, 2014, quoting CIDH, *Juvenile Justice and Human Rights in the Americas*, 2011.



Intersection with other minimum ages

Minimum age of criminal responsibility and minimum age for the end of compulsory education

Minimum age of criminal responsibility and minimum age for bringing a case to court (access to justice/legal capacity)

Key points

- The minimum age of criminal responsibility defines the age at which a child can be held criminally responsible for his or her actions. While the CRC Committee has set the age at an absolute minimum of 12 years old, it considers that ages in the range of 14 to 16 are commendable. The Inter-American Commission on Human Rights considers the age of 12 as unacceptably low and recommends an age as close as possible to 18.
- The upper limit age for the applicability of juvenile justice provisions – or age of penal majority – defines the age until which someone in contact with the law is dealt with under the juvenile justice system. As provided by the CRC and other instruments, all children and adolescents under 18 years old should enjoy the protection offered by juvenile justice standards.
- The objective of the minimum age for criminal responsibility is to protect children from taking responsibility for actions which consequences they cannot fully comprehend. Juvenile justice aims to ensure that the criminal justice system is respectful of children’s rights, capacities and understanding, and favour their long-term rehabilitation and reintegration.
- Countries in Latin America and the Caribbean have minimum ages for criminal responsibility, ranging from 7 to 18. The lowest ages are found in the Caribbean, where it is in several instances under 12 and even under 10. Over three quarters of the states in LAC have a minimum age below 14.
- While in most domestic legislations the juvenile justice system applies to all persons under 18, in a number of cases, especially in the Caribbean, adolescents over 16 are tried like adults.
- In many countries, legislative proposals aiming to undermine the protection guaranteed to adolescents, whether by lowering the minimum age of criminal responsibility or that of the applicability of the adult justice system under 18 years of age, have been tabled and sometimes passed. An additional concern is the tendency to seek to award some discretionary power to judges in assessing the child’s maturity to decide on the applicable system – exposing marginalized children to discriminatory practices.

Recommendations

- Ensure that the minimum age of criminal responsibility is over 14 and as close as possible to 18.
- Ensure that all children and adolescents under 18 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.

Minimum age for marriage and minimum age of sexual consent

The minimum age of sexual consent defines the minimum age at which one is deemed capable of consenting to sexual activity. Consequently, sexual activity with a child under that minimum age is considered child sexual abuse and constitutes a criminal offence. The minimum age for marriage should therefore never be lower than the minimum age of sexual consent.

While this is the case of the overwhelming majority of countries in LAC, domestic legislations in some countries feature inconsistencies in this respect, which can have significant effects on the protection of adolescents' rights. In Haiti for example, while the minimum age of sexual consent is 16 years, girls and boys can get married at age 15 and 18 respectively, with consent of both parents. Similarly, in the Dominican Republic, the minimum age of sexual consent is set at 18 but girls can get married as young as 15 with relevant authorizations.

A serious concern further arises when marriage can be used to "legalize" sexual activity with an underage person. This describes a situation in which the law enables to waive the criminal liability of the perpetrator if he or she marries the victim.

In Brazil the minimum age of sexual consent is 14 and the minimum age for marriage is in principle set at 16 with parental consent. The law used to provide that exceptionally marriage under that age could be allowed in order to avoid criminal sanctions (and in case of pregnancy).⁹³ This provision was concretely dismantling the protection mechanism offered by the establishment of both a minimum age for marriage and a minimum age for sexual consent, since they were mutually obliterating each other. While the provision still formally exists, subsequent legal reform has made it impossible

for the perpetrator to be forgiven by the victim for crimes of sexual abuse committed on a person under 18.⁹⁴ Such a situation has however recently emerged in Guyana, where in 2013, a court authorized the marriage of a pregnant 15 year-old girl with a 38 year-old man facing charges of statutory rape, on the basis of "humanitarian grounds" and upon the girl's parents' request.⁹⁵

In Cuba, the minimum age of sexual consent is 16. However, the law provides that girls can be authorized to marry at 14 under exceptional circumstances. Although there is not clear definition of concepts such as "exceptional circumstances" "good causes" and/or "valid reasons", these exceptions often apply in cases of adolescent pregnancy. As underlined in the section on the minimum age for marriage, a frequent practice is for parents to encourage or force their daughters to marry when they start engaging in sexual activity. In Belize, the minimum age of sexual consent and the minimum marriage with parental consent is 16.

Conversely, one question is whether the minimum age of sexual consent can operate as a substitute for a minimum age for marriage in countries where there is no absolute bottom limit. In Argentina, while legislation does not recognize an absolute bottom age for marriage, the minimum age of sexual consent is 13. This may be understood as defining puberty and could mean that a judge cannot authorize a union when one of the intending spouses is under 13 years old – still a very low age in light of international standards requirements. Similarly in El Salvador, there is no absolute minimum age for marriage – only a reference to puberty and jointly having or expecting a child.

⁹³ Civil Code, art. 1.520

⁹⁴ Law 11.106 (2005) and law 12.015 (2009)

⁹⁵ Caribbean 360, Guyana riled by ruling allowing wedding of underage girl to accused rapist, 25 October 2013.

Minimum age of medical consent (without parental consent) and minimum age of sexual consent

The issue of the minimum age for medical consent without parental consent primarily concerns sexual and reproductive health for adolescents and is a central dimension of access to health care. International standards differentiate medical information and counseling, for which no minimum age should be set, and medical treatment for which parental consent may be required under a certain age with the possibility to waive the minimum age when the child demonstrates adequate maturity and understanding. Testing should be understood as falling under the scope of medical information and counseling and be performed without the parental consent requirement.

Given the critical relevance of ensuring access to sexual and reproductive health treatment for adolescents when they are sexually active, the minimum age for medical consent (without parental consent) should not be higher than the minimum age for sexual consent. If the legislation considers that adolescents over a certain age have the capacity to make decisions in relation to their own bodies for sexual activity, that capacity should extend to sexual and reproductive health counseling and treatment.

Yet laws in several countries in LAC show discrepancies in this respect. In Panama and Guatemala for example, the minimum age of medical consent is 16 years while the age of sexual consent is set at 14. Similarly in Belize and Peru, the age of medical consent is 18 but the age of sexual consent is respectively 16 and 14, meaning that adolescents in need of sexual and reproductive health care do not have access on their own.



The question arises as to whether the ages of consent for medical treatment and sexual activity should be equal. It is worth reminding that a high number of adolescents are sexually active several years before the age of consent. Consequently, the legislation should remain as open as possible and provide for the possibility to ensure that adolescents have access to adequate treatment, including contraceptive methods, on the basis of their needs. Given the fact that adolescents who are sexually active below the age of sexual consent may be deterred from seeking health counseling and health care out of fear that they or their partner may face criminal sanctions, the law should contain provisions regarding privacy and confidentiality. Furthermore, many may face situations of sexual abuse within the family at an even earlier age and require unimpeded and confidential access to health care.

Minimum age of admission to employment and minimum age for the end of compulsory education

A core principle in international standards is that the minimum age for admission to employment should be equal to the age of the end of compulsory education. The rationale is to prevent children from leaving school to work on a full time basis, which impairs their right to education. The risk is particularly high for children from disadvantaged backgrounds who may early on engage in full time work in order to support themselves and their families. Under international instruments, States are obliged to ensure that families have an adequate standard of living and provide them with necessary assistance for children to go to school. Conversely, if the age of admission to employment is higher than the age of the end of compulsory schooling, children who are not attending school but are too young to work legally may enter the informal sector, with increased risks of experiencing hazardous and/or exploitative labour conditions.

Across the region, in approximately half of the countries the age of employment and the age of end of compulsory education are different, suggesting inconsistencies in domestic legal frameworks in this respect.

In some places, there is a one-year difference between the two. In Guatemala, the employment age is 14 while the age for end of compulsory education is 15. The CRC Committee has expressed its concern at the disparity.⁹⁶ Similarly in Costa Rica, there is a 6-month discrepancy between the two ages, compulsory education ending at 15.5 years while employment is authorized from 15 years old.

In other countries, the gap between the two ages is much wider. In Bolivia, children can start working at 12 but education is compulsory until 18. In Chile, the minimum age for admission to employment is 15 but mandatory schooling ends at 21.

In several States, the law makes a direct link between compulsory schooling and the ability to work. The legislation in force in Chile is an interesting case in point, in that it links some level of educational achievement to the possibility for adolescents to work. The law provides that adolescents between 15 and 18 can engage in light work with the legal guardian's consent when it does not impair their health, development, and access to education. It also requires for working adolescents to have either completed secondary education or be attending school. The employer has the responsibility to facilitate school attendance and the working week is limited to 30 hours during the school year. In the same vein, in Ecuador, the law obliges employers of adolescents between 15 and 18 who have not completed their basic education to give them two hours a day to attend school. Employers are subject to sanction if they prevent an adolescent who has not completed basic education from attending classes.⁹⁷ In Barbados, the law prohibits an employer to hire a child of compulsory schooling age in any undertakings during school hours.⁹⁸

⁹⁶ CRC COBs (2010), para 88.

⁹⁷ Código del Trabajo, art. 135.

⁹⁸ Barbados Employment Act, art. 14.

Minimum age for marriage and minimum age for the end of compulsory education

According to international standards, the minimum age for marriage should be no lower than 18 for boys and girls alike. Most countries in the region have however provided for exceptions and allow adolescent boys and girls to marry at a younger age with the consent of their parent(s) or a judge.

The relevance of a comparison between the age of the end of compulsory schooling and the minimum age for marriage draws on the correlation that has been established between child marriage, especially girls' marriage, and school dropout. Adolescent pregnancies and motherhood have an even more serious impact on adolescent girls' right to education. Furthermore, access to education is also a means of accessing sexual and reproductive health information at school, which can be critical for the prevention of adolescent pregnancies. Accordingly, the absolute minimum age for marriage, even considering the exceptions, should not be lower than the minimum age for the end of compulsory education.

In at least a dozen countries in the region however marriage can be authorized at an age when school is still mandatory. In many cases,

the age difference is one year. However, in a few countries, it can be significantly higher. In Ecuador, compulsory education ends at 17 years but marriage is possible for girls at 12 years old and for boys at 14. In Guatemala, education is mandatory until 15 years old but girls can get married at 14 and boys at 16. In Chile, the end of compulsory education is set at 21 but the minimum age for marriage is 16. In Paraguay, there is a two-year difference between the age of the end of compulsory education and the marriageable age.

In a few cases where girls are allowed to marry at a younger age than boys, adolescent girls are specifically penalized because the minimum age for marriage for them is lower than the age of end of compulsory schooling, while for boys, it is equal or higher. In Cuba and Panama for example, education is compulsory until 15 years old. While girls can marry at 14 with parental consent, boys are only allowed to marry at 16 – meaning that girls are less protected against early interruption of education. In Venezuela, education is mandatory until 16 and the minimum age for marriage is 16.

Minimum age of criminal responsibility and minimum age for the end of compulsory education

International standards are very clear on what constitutes an acceptable minimum age of criminal responsibility and the obligation for all children above that age to be treated in accordance with juvenile justice provisions. Yet an appreciation of the consistency of the minimum age of criminal responsibility with other minimum ages can provide some insights on the perception of children in the country. While not providing strict guidance, it may offer avenues for reflection – and possibly arguments for advocacy.

The assumption behind the minimum age of criminal responsibility is that adolescents over that age have reached a sufficient level of maturity and understanding of the consequences of their actions to be held criminally responsible. Presumably, the minimum age for the end of compulsory education is the age at which an adolescent is supposed to have achieved sufficient learning to be able to live responsibly and economically contribute to society. That age can be used as a proxy to define the minimum age of criminal responsibility. The minimum age

of criminal responsibility should therefore not be lower than the minimum age for completion of mandatory schooling, the latter being in line with international instruments.

It is therefore interesting to note that in the overwhelming majority of the countries in LAC, the age for the end of compulsory education is higher than the age of criminal responsibility.

This sheds light on the punitive approach that prevails in relation to adolescents in many systems. Limited exceptions include Cuba, where the minimum age of criminal responsibility is 16 while education is compulsory until 15, and Brazil where criminal responsibility begins at 18 years old and schooling is mandatory until 17.

Minimum age of criminal responsibility and minimum age for bringing a case to court without parental consent (access to justice/legal capacity)

Children can enter in contact with the justice system in different ways. They can be defendants in a criminal case, when they are over the minimum age of criminal responsibility and are suspected of having breached criminal law. They may act as victims or witnesses of crimes perpetrated by others. They may also be a party to a civil trial. The minimum age for filing a lawsuit without parental representation is beyond the scope of this study. However, it is relevant to ask whether the children that can be brought to justice (because they have reached the minimum age of criminal responsibility) can also directly bring others to justice (because they have sufficient legal capacity) in criminal, civil and/or administrative proceedings.

In many countries, adolescents acquire legal capacity when they reach majority – usually 18. Before that age, they cannot undertake legal action unless their parents or another legal representative does it on their behalf. In Argentina for example, only parents can seek judicial remedies for child rights violations – or as the case may require, a legal representative appointed by the State – until children reach the age of 18.⁹⁹ However, adolescents over 16 are criminally responsible and can be tried as adults in the criminal justice system.

In Saint Kitts and Nevis for example, the minimum age of criminal responsibility is among the lowest in the region at 8 years old. However, a child under 18 cannot take a case to court and needs a “next friend” to do so. The requirement also applies in cases of domestic violence, which is a significant concern.¹⁰⁰ Similarly, in Dominica, children need to have a “next friend” who brings lawsuit on their behalf until they reach the age of 18. This person does not need to be approved by parents or legal guardians. A child cannot file a lawsuit on their own, unless the court authorizes them to do so on the child’s request.¹⁰¹ In this country the minimum age of criminal responsibility is 12.

In El Salvador, children under 14 cannot bring a case to court on their own but need to go through their legal representatives (except when they are victims of a violation perpetrated by them).¹⁰² Yet the minimum age of criminal responsibility is 12. Similarly in Honduras, children cannot file a lawsuit on their own,¹⁰³ but they are criminally responsible at age 12. Similar requirements are found in additional countries such as Venezuela, Mexico, Peru and Colombia among others.

⁹⁹ Child Rights International Network, Access to justice for children: Argentina, White & Case LLP, November 2013.

¹⁰⁰ Child Rights International Network, Access to justice for children: Saint Kitts and Nevis, White & Case LLP, October 2014.

¹⁰¹ Child Rights International Network, Access to justice for children: Dominica, White & Case LLP, February 2014.

¹⁰² Child Rights International Network, Access to justice for children: El Salvador, White & Case LLP, June 2014.

¹⁰³ Child Rights International Network, Access to justice for children: Honduras, White & Case LLP, April 2014

Key points

- Many countries in Latin America and the Caribbean have legal frameworks featuring inconsistent minimum ages in relation to one another, thereby undermining the protection minimum ages provide for adolescents' rights.
- In some cases, discrepancies highlight critical lack of coherence (e.g. minimum age for marriage and minimum age of sexual consent, minimum age for admission to employment and minimum age for end of compulsory education).
- In other cases, they may put adolescents' development at risk (e.g. minimum age for sexual consent and minimum age for medical consent, minimum age for marriage and minimum age for end of compulsory education).
- In yet other situations, they may reveal societies' perceptions of adolescents as punitive rather than developmental (e.g. minimum age of criminal responsibility and minimum age to bring a case to court, minimum age of criminal responsibility and minimum age for end of compulsory education).

Recommendations

- Ensure consistency among minimum ages bearing in mind the indivisibility of the rights of children and adolescents.
- The minimum age for marriage should not be lower than the minimum age of sexual consent.
- The minimum age for admission to full time employment should be at least equal to the minimum age for the end of compulsory education
- The minimum age for medical consent without parental consent should not be higher than the minimum age for sexual consent.
- The minimum age for marriage should be at 18, and no lower than the minimum age for the end of compulsory education.
- The minimum age of criminal responsibility should not be higher than the minimum age for the end of compulsory education.
- The minimum age of criminal responsibility should not be lower than the minimum age for bringing a case to court.

Conclusions

Legal minimum ages are important instruments for advancing the rights of adolescents and need to be fully considered in adolescent programming and policies. Minimum ages aim to enhance adolescents' protection from rights violations. They protect adolescents from making choices or for bearing the consequences of actions for which they do not have the experience and maturity to understand the full implications, including for their own lives. Minimum ages do not seek to limit the exercise of rights by adolescents nor hinder their increased autonomy and development.

Discussions around minimum ages revolve around the question of consent – and who can give it. It is critical to ensure that transfer of

consent to parents or legal guardians does not undermine adolescents' legal protection. By representing objective and universal criteria, minimum ages protect adolescents from marginalized groups from early choices and from discriminatory practices. They therefore constitute important tools for equity.

Across Latin America and the Caribbean, all countries have set up minimum ages in their legislation in most of the areas considered for this study. An analysis of these minimum ages yields the following findings.



Marriage

- While providing that adolescents can fully consent to marriage on their own at 18, legislations in the overwhelming majority of countries provide for the possibility for children to get married with parental and/or a judge's consent.
- Approximately one third of the countries have different minimum ages for marriage for boys and girls, thus effectively featuring discriminatory legislation.
- Possible grounds for authorizing underage marriage due to "exceptional circumstances" are in many instances extensive, thus significantly undermining the protection the legal marriageable age offers.

Sexual consent

- Across the region, the overwhelming majority of countries have established the minimum age for sexual consent between 14 and 16 years. Yet a few countries have an age lower than 14 years and others over 16.
- In several countries, discriminatory legislation persists, on the basis of gender and sexual orientation.

Medical consent

- In most countries in Latin America and the Caribbean, the legislation does not provide for a minimum age for access to medical counseling and to medical treatment without parental consent. Where there is one, it is usually comprised between 16 and 18 years. A handful of countries have laws providing for privacy and confidentiality of services. Yet, while there may not be a minimum age set in the law, prevailing practices in health institutions may lead to require parental consent for counseling and testing – especially in the area of sexual and reproductive health.

Admission to employment

- The overwhelming majority of countries are in line with ILO Convention No. 138. They usually have a general minimum age of admission to employment comprised between 14 and 16 years old. Light work is usually authorized over 12 years of age and hazardous work is forbidden under 18. A handful of countries however have ages that are below those required in international standards. Recent evolutions, such as recent legal reform in Bolivia, are particularly preoccupying.
- A concern is the exception for family owned business, present in several laws in particular in Caribbean countries, for which the minimum age does not apply.

Compulsory education

- Most countries in LAC make education compulsory until 14 to 16 years of age. A handful of countries have however set the age at 12 or 13. In some states, the law provides for minimum educational achievement rather than define an exact age. The level is either primary schooling or secondary schooling.
- In several countries, the law obliges parents to ensure that children go to school. In some, the state also has explicit specific obligations in guaranteeing that families receive adequate support to ensure that their children have access to education.

Criminal responsibility

- Countries in Latin America and the Caribbean have minimum ages for criminal responsibility, ranging from 7 to 16. The lowest ages are found in the Caribbean, where it is in several instances under 12 and even under 10. Over three quarters of the states in LAC have a minimum age below 14.

- While in most domestic legislations the juvenile justice system applies to all persons under 18, in a number of cases, especially in the Caribbean, adolescents over 16 are tried like adults.
- In many countries, legislative proposals aiming to undermine the protection guaranteed to adolescents, whether by lowering the minimum age of criminal responsibility or that of the applicability of the adult justice system under 18 years of age, have been tabled and sometimes passed. An additional concern is the tendency to seek to award some discretionary power to judges in assessing the child's maturity to decide on the applicable system – exposing marginalized children to discriminatory practices.

Marriage

- Set the legal minimum age for marriage at 18 for all, with or without parental consent.
- Exceptions should only be allowed in exceptional circumstances clearly circumscribed by law, and marriage only authorized by a court of law upon the child's full, free, informed consent, regardless of parents' views. In any case, the legal minimum age for marriage should never be below 16 years old.

Sexual consent

- The legal minimum age for sexual consent should neither be too low nor too high and should contain provisions taking due account of limited age difference between the two partners – three years for example.
- Laws should avoid criminalizing consensual sexual activity between underage adolescents, taking into consideration the age difference and possible balance of power in determining the validity of consent.
- Discriminatory provisions, in particular on the basis of gender and sexual orientation, should be removed.

Medical consent

- Domestic laws should not state a minimum age for access to medical information, counseling and testing without parental consent. They should contain explicit provisions requiring universal access, in particular for sexual and reproductive health, and guaranteeing the privacy and confidentiality of information.
- When setting a minimum age for medical treatment without parental consent, laws should provide for mechanisms to waive the minimum if the adolescent demonstrates adequate maturity and understanding of the implications of the medical decision.
- Health providers should be sensitized to the need to offer adequate counseling and testing to adolescents, regardless of their age.

Admission to employment

- Ensure that laws regarding minimum ages for admission to employment are fully in line with international standards, in particular ILO Convention No. 138.
- Remove exceptions that enable underage children to work under certain circumstances, in particular family business, with no limitations in terms of age and the nature, conditions and duration of the work.
- Strengthen linkages in the legislation between the child protection and social protection system as a way to prevent child labour.

End of compulsory education

- Ensure that domestic legislation set a minimum age for the end of compulsory education at at least either 14 or 15 years old, depending on the minimum age for admission to employment.
- Consider combining age requirements with educational achievement requirements, i.e. completion of lower secondary education.
- Ensure that domestic legislation provides for free and mandatory secondary education.
- Consider including provisions linking access to education and social assistance for families in need.

Criminal responsibility

- Ensure that the minimum age of criminal responsibility is over 14 and as close as possible to 18.
- Ensure that all children and adolescents under 18 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.

Intersection among minimum ages

- The minimum age for marriage should not be lower than the minimum age of sexual consent.
- The minimum age for admission to full time employment should be at least equal to the minimum age for the end of compulsory education
- The minimum age for medical consent without parental consent should not be higher than the minimum age for sexual consent.
- The minimum age for marriage should be at 18, and no lower than the minimum age for the end of compulsory education.
- The minimum age of criminal responsibility should not be higher than the minimum age for the end of compulsory education.
- The minimum age of criminal responsibility should not be lower than the minimum age for bringing a case to court.

Recommendations

The analysis of the situation in Latin American and Caribbean countries, in conjunction with the guidance provided by international standards, has enabled to highlight the following recommendations for addressing minimum ages in legislation.

- Consideration of legal minimum ages should constitute an important element of adolescent programming and policy advocacy.
- States are required to establish appropriate legal minimum ages in line with the international and regional instruments they have subscribed to.
- Legal minimum ages should aim to protect adolescents' rights and promote their full and safe development in order to enable them to positively contribute to society and become responsible adults.
- Discussions around minimum ages should be adolescent-centered and focus on their protection and empowerment, rather than on limiting the exercise of their rights.
- The notion of consent – and who can give it – should be integral to debates on minimum ages with the aim of ensuring that substitute mechanisms for consent do not impair adolescents' rights.



Credits of photos

Front page: © UNICEF/UNI177582/Richter

Page 6: © UNICEF LACRO/PER2006-008/Cousineau

Page 9: © UNICEF Peru/2015

Page 10: © UNICEF Peru/2015

Page 12: © UNICEF/UNI166650/Fabres

Page 23: © UNICEF/UNI186297/Heger

Page 25: © UNICEF/UNI166636/Fabres

Page 31: © UNICEF LACRO/PAN2007-015/Bell

Page 34: © UNICEF LACRO/PAN2007-017/Bell

Page 38: © UNICEF/UNI166619/Fabres

Page 47: © UNICEF/UNI159373/Pirozzi

Page 49: © UNICEF/UNI186312/Heger

Page 51: © UNICEF/UNI44089/DeCesare

Page 57: © UNICEF/UNI169949/Markisz

Page 62: © UNICEF/HQ06-1330/Versiani

Page 66: © UNICEF Peru/2008



Latin America and Caribbean Regional Office
Building 102, Alberto Tejada St., City of Knowledge
Panama, Republic of Panama

Follow us on Facebook, Twitter, YouTube,
Instagram, LinkedIn

www.unicef.org/lac