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Government Proposes Lowering Criminal Responsibility Age in Argentina

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A mugging in a Buenos Aires suburb the day before Christmas left a 14-year-old boy dead. The victim was apparently shot by another adolescent, a 15-year-old who was born in Argentina but of Peruvian parents. Weeks earlier, three other deadly episodes occurred, although in those cases, the perpetrators were a small-business owner, a doctor, and a lawyer, all of whom reportedly acted in self-defense, killing their would-be attackers.

Argentina’s major media outlets and even the Justice Ministry reacted with outrage to the Christmas Eve killing, demanding the stiffest possible punishment for the teenage suspect. Ultimately, the young man was freed and deported because the prosecutor’s office and judge, in accordance with the law, determined that he couldn’t be held criminally liable due to his age. The shopkeeper, doctor, and lawyer who killed in self-defense were freed as well, but without any of the same public indignation. In their cases, the mainstream media, Justice Minister Germán Garavano, and even President Mauricio Macri called for “understanding,” a term coined by the daily La Nación.

As often occur with these kinds of sensationalized cases, a wave of public opinion quickly developed in response to the Christmas Eve murder, demanding that the age of criminal responsibility be lowered. What’s different this time around is that the government itself—banking on the perfect cocktail of anger-inducing elements (namely that the case touches on both immigration and underage crime issues)—has taken action by calling for changes to the Código Juvenil (juvenile code) and tightening controls on Latin American immigrants who come to Argentina seeking a better future.

For now, the only thing known about the proposed Código Juvenil reform is that it looks to reduce the age of criminal responsibility; that it will be debated by judges and other authorities this election year (partial parliamentary elections will be held in October); and that it will be submitted to Congress in 2018.

With regards to immigration, authorities are stepping up border controls and stiffening requirements for foreigners seeking work and residency permits in Argentina (NotiSur, Jan. 13, 2017).

‘Legal aberration’

The teenager who was shot on Dec. 24 died two days later. Within in a week, Garavano announced government plans to modify the juvenile justice code and lower the age of criminal responsibility from 16 to 14, an idea that past administrations have tried without success at least four times since 2001. Garavano also said that the issue had been examined already with experts from the United Nations Children’s Fund (UNICEF). The UN agency’s local delegation claims otherwise.

The proposal, in the meantime, has prompted a wave of criticism. Among those opposing the government initiative is 1980 Nobel Peace Prize winner Adolfo Pérez Esquivel. “This attempt to
lower the age of responsibility and lock up children is an old goal of the Argentine right,” he said. “It’s a humanitarian and legal aberration. Childhood problems aren’t solved with repression, but rather with education, decent living conditions. The problems some children have with the law repeat themselves because the measures taken are repressive, rather than social, and only serve to aggravate the situation.”

Experts in family law noted that stiffer punishments or lower liability ages have not proven to be effective crime deterrents anywhere in the world. They also said that lowering the age of responsibility, besides being unconstitutional, violates the human rights principle—as established in various treaties, laws, and international conventions to which Argentina is a party—of progressive realization and non-regression. The principle holds that rights can be advanced but not scaled back. With regards to the age of liability, the experts argue, it means that the legal limit can be raised or left alone, but not lowered, as the government proposes, from 16 to 14.

Luis Arias, an outspoken judge in La Plata, blasted the government for “wanting to dust off the manual of punitive demagogy in an election year rather than propose something to help prevent [crime] and protect the rights of young people.” Arias noted that minors commit just 5% of all serious crimes, according to the justice system’s precarious statistics, and said that any reform of the juvenile criminal code that is based on lowering the age of responsibility would be a serious mistake.

Justicia Legítima (Legitimate Justice), a professional judges association, also accused the government of pushing the issue for electoral reasons. “The only thing [Minister Garavano] did was introduce the idea of lowering the age. But he says it won’t be discussed until 2018,” the group noted. “It was introduced just as campaign issue.”

Jailed teenagers
The UNICEF delegation in Argentina, for its part, not only challenged Garavano’s claim that it helped draft the proposal, but also came out strongly against lowering the age of responsibility. “That would be a step back in the protection of the rights of minors, a decision that wouldn’t respect international standards,” said UNICEF official María Ángeles Misuraca, who called the approach “retrograde and aberrant.” Juvenile justice should, instead, focus on prevention and respect the UN Convention on the Rights of the Child, a human rights treaty to which Argentina is a party, Misuraca argued.

In a press release posted on its website, UNICEF reported that as of 2015, there were approximately 1,300 adolescents locked up in Argentina. Of those, 82 were under the age of 16 and another 789 were either 16 or 17. The rest are now older than 18. The agency faulted Argentina for failing to offer the jailed teenagers alternative forms of punishment and for the poor condition of the detention centers used to house them. It also said that jailed minors have only limited access to information about their rights, including their rights to adequate defense, education, and health care.

To properly address these challenges, the UNICEF document suggested, Argentina needs a new juvenile justice law that “doesn’t reduce the age of liability, that creates a specialized system in accordance with international human rights standards, that guarantees due process for every adolescent involved in criminal procedures, and that, as a rule, applies non-custodial [punishment] measures.” Incarceration should only be used, the agency insists, as a measure as last resort.
Tighter controls

Between Jan. 15 and 26, the government took two other steps that were as questioned as its juvenile justice proposal. First, it publicly associated immigrants with drug trafficking. Second, it established, by decree, a series of new controls meant to discourage people from entering the country.

“We’re receiving immigrants who come with their own personal baggage that needs to be looked into. When someone comes here with a criminal background, that’s not a migrant. That’s someone escaping the law,” Foreign Affairs Susana Malcorra, explaining the new restrictions, told reporters.

Malcorra also drew a clear link between immigration and drug trafficking, echoing statements made by Security Minister Patricia Bullrich, who said 33% of people detained for such crimes are foreigners. “You have Paraguayan and Peruvian citizens coming here and killing each other for control of the drugs,” Bullrich said at one point. UN agencies refute such claims, noting that of the nearly 2 million foreigners living in Argentina—Latin America’s most receptive country—fewer than 1,500 (approximately 0.07%) are locked up on drug-related charges.

On Jan. 26, the government took another step in its crackdown on immigrants by introducing what it calls a Sistema de Información Anticipada de Pasajeros (Pre-emptive Passenger Information System). The system requires airlines to supply the Interior Ministry with the first and last names, passport information, flight number, carrier name, and baggage ticket for every passenger and crewmember on every flight coming in and out of the country.

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