REVISTA INVECOM
ISSN en línea: 2739-0063

Incorporation of adolescents into the ordinary penal system: Criticism of Law No. 32330

Incorporación de adolescentes al sistema penal ordinario: crítica a la Ley N° 32330

Received: 10/03/2026 - **Accepted:** 06/06/2026

Ángel Ramiro Ruiz Sánchez
https://orcid.org/0009-0002-6044-6437
aruizsa75@ucvvirtual.edu.pe
Universidad César Vallejo. Lima, Peru

Abstract

This study critically evaluates Law No. 32330, which amended the Peruvian legal framework to allow 16- and 17-year-olds to be subjected to the ordinary criminal justice system in cases of serious offenses. Using a mixed-methods approach, the study analyzed normative and doctrinal foundations, as well as the opinions of justice system specialists, regarding this penal reform. The results reveal a predominantly critical stance toward the law, as many specialists believe it violates fundamental principles of juvenile criminal justice, particularly the best interests of the child and the principle of specialty recognized in the Convention on the Rights of the Child. Furthermore, it was noted that incorporating adolescents into the adult criminal justice system could negatively impact the rehabilitation and social reintegration processes of young offenders. In conclusion, the punitive approach of Law No. 32330 represents a setback in the protection of human rights, a situation subsequently acknowledged by the Constitutional Court when it declared unconstitutional the provisions that allowed for attributing ordinary criminal responsibility to 16- and 17-year-olds.

Keywords: juvenile criminal justice, juvenile offenders, best interests of the child.

Resumen

El presente estudio realiza una evaluación crítica de la Ley N° 32330, norma que modificó el marco jurídico peruano permitiendo que adolescentes de 16 y 17 años sean sometidos al sistema penal ordinario en casos de delitos graves. A través de un enfoque metodológico mixto, se analizaron fundamentos normativos, doctrinarios y opiniones de especialistas del sistema de justicia respecto a dicha reforma penal. Los resultados evidencian una postura predominantemente crítica frente a la ley, debido a que gran parte de los especialistas considera que vulnera principios fundamentales de la justicia penal juvenil, especialmente el interés superior del niño y el principio de especialidad reconocido en la Convención sobre los Derechos del Niño. Asimismo, se advirtió que la incorporación de adolescentes al sistema penal adulto podría afectar negativamente los procesos de rehabilitación y reinserción social de los menores infractores. En conclusión, el enfoque punitivo de la Ley N° 32330 representa un retroceso en materia de protección de derechos humanos, situación que posteriormente fue recogida por el Tribunal Constitucional al declarar inconstitucionales las disposiciones que permitían atribuir responsabilidad penal ordinaria a adolescentes de 16 y 17 años.

Palabras clave: justicia penal juvenil, adolescentes infractores, interés superior del niño.

Introduction

Juvenile delinquency has emerged as one of the most pressing social and legal concerns in Peru in recent years. The rise in criminal offenses involving adolescents has fueled an intense debate over whether harsher criminal policies are needed for certain high-risk behaviors. Against this backdrop, Law No. 32330 was enacted, amending both the Criminal Code and the Adolescent Criminal Responsibility Code to bring 16- and 17-year-olds into the ordinary penal system when they commit serious crimes such as homicide, contract killing, sexual assault, extortion, human trafficking, and other offenses of comparable gravity.

The enactment of this statute stirred considerable controversy across legal, political, and social spheres. Proponents argued that the reform was necessary to address rising juvenile crime rates and bolster public security through more stringent sanctions. They also claimed that tougher penalties would help counter the prevailing perception of impunity for offenses committed by adolescents, thereby strengthening the State's capacity to confront new forms of organized crime (Orosco Aguilar & Pineda Cando, 2023).

From a doctrinal and human rights perspective, however, numerous specialists, international organizations, and justice-system institutions raised sharp objections to the law's compatibility with the foundational principles of juvenile justice. Principal criticisms pointed to violations of the best-interests principle enshrined in the Convention on the Rights of the Child, as well as a disregard for the rehabilitative and socio-educational approach that should guide legal responses to adolescents in conflict with the law. In this vein, Cillero Bruñol (2001) contends that juvenile justice systems must prioritize rehabilitation and social reintegration over purely repressive measures.

Furthermore, research in neuroscience and developmental psychology has shown that the adolescent brain remains immature, particularly in areas governing impulse control, decision-making, and critical reasoning. Scott and Steinberg (2008) therefore argue that subjecting adolescents to sanctions equivalent to those imposed on adults is incompatible with their developmental characteristics and with the differentiated principles of juvenile justice.

Similarly, organizations such as UNICEF Peru, the Ministry of Women and Vulnerable Populations, the Ministry of Justice and Human Rights, and specialists in juvenile criminal law warned that placing adolescents in ordinary penitentiaries could increase risks of violence, stigmatization, and recidivism, undermining their prospects for social reintegration (UNICEF, 2006). From this standpoint, policies centered solely on punitive escalation do not necessarily offer effective solutions to juvenile delinquency, especially when not accompanied by preventive, educational, and social-inclusion measures.

The controversy surrounding Law No. 32330 extended beyond doctrinal and institutional circles, leading to constitutional challenges regarding its compatibility with adolescents' fundamental rights and with Peru's international obligations to protect children. These challenges prompted constitutional review by the Constitutional Court, which ultimately struck down the provisions allowing ordinary criminal responsibility to be assigned to 16- and 17-year-olds, reaffirming the validity of the specialized juvenile justice system and the minimum age of criminal responsibility established under Peruvian law.

The present study is thus justified by the legal and social significance of the debate triggered by Law No. 32330, as well as by the need to critically examine its implications from constitutional, doctrinal, and human rights perspectives. Although the law was subsequently declared unconstitutional, the analysis remains important because it allows for an exploration of the tensions between punitive criminal policies and international standards for the protection of adolescents in conflict with the law.

Accordingly, this research aims to analyze the legal, constitutional, and social implications arising from Law No. 32330, while assessing its compatibility with the principles underpinning the juvenile justice system and international human rights standards applicable to adolescent offenders. It also seeks to examine doctrinal foundations related to adolescent criminal responsibility and the rehabilitative purpose of juvenile justice; to analyze the amendments introduced by the law to the Criminal Code and the Adolescent Criminal Responsibility Code; to identify the principal constitutional and institutional objections raised against the incorporation of 16- and 17-year-olds into the ordinary penal system; and to evaluate the perceptions of legal specialists regarding the implications of this legislative reform.

Methodology

The research was conducted using a mixed-methods approach, integrating quantitative and qualitative techniques to analyze the legal and social implications of Law No. 32330. According to Hernández-Sampieri and Mendoza (2018), the mixed-methods design allows for the combination of quantitative and qualitative procedures to achieve a broader and deeper understanding of the phenomenon under investigation.

The quantitative component employed a non-experimental, cross-sectional, descriptive design. As Hernández-Sampieri and Mendoza (2018) note, non-experimental studies observe phenomena as they occur in their natural context, without manipulating variables, while cross-sectional designs collect information at a single point in time. Statistical data were drawn from official sources such as the Judiciary, the Ministry of Justice, the Ombudsman's Office, UNICEF Peru, and the National Computerized System of Death Records (SINADEF).

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For the qualitative component, a documentary, normative, and jurisprudential analysis was conducted on national and international legislation related to juvenile justice, including the Convention on the Rights of the Child, the Beijing Rules, and the Havana Rules. Ñaupas et al. (2018) point out that documentary analysis is a fundamental technique for studying and interpreting legal, doctrinal, and regulatory sources. Specialized scholarship and academic studies on adolescent criminal responsibility and criminal policy were also reviewed.

In addition, a structured questionnaire was administered to judges, prosecutors, and lawyers specializing in juvenile justice, in order to gauge their perceptions regarding the inclusion of adolescents in the ordinary penal system. As Creswell and Creswell (2018) observe, questionnaires are useful instruments for collecting standardized information on participants' perceptions and opinions.

Finally, the research was guided by principles such as the best interests of the child and the rehabilitative character of juvenile justice, enabling an evaluation of Law No. 32330's compatibility with national and international human rights standards.

Results and discussion

The results are presented on the basis of doctrinal and normative analysis of Law No. 32330, along with information gathered through interviews with legal specialists. To facilitate a comprehensive understanding of the phenomenon, the main foundations of juvenile criminal justice are developed, followed by the amendments introduced by the statute, the criticisms raised in legal scholarship, and the international standards applicable to the protection of adolescents in conflict with the penal law.

Juvenile criminal justice

Juvenile criminal justice constitutes a specialized legal system for dealing with adolescents in conflict with the penal law, whose primary purpose is rehabilitation and social reintegration rather than the imposition of strictly punitive sanctions. Unlike the adult penal system, this model recognizes that minors are at a stage of physical, psychological, and emotional development that demands differentiated treatment consistent with international human rights standards. Cillero Bruñol (2001) maintains that the juvenile justice system must rest on guarantist principles that balance the adolescent's accountability for unlawful conduct with the State's duty to protect their holistic development. From this perspective, the measures applied should not be limited to punishment, but should focus primarily on education, support, and the progressive reintegration of the young offender into society.

Best interests of the child principle

The best-interests principle is one of the cornerstones of the international system for the protection of children's and adolescents' rights. As Garcés Peralta (2021) explains, this principle requires that any decision made by judicial, administrative, or legislative authorities must prioritize the minor's overall well-being, ensuring the protection of their fundamental rights and fostering their full development within society.

Adolescent criminal responsibility

Adolescent criminal responsibility is a special legal regime applicable to persons under eighteen years of age who have committed a criminal offense. This system starts from the recognition that adolescents possess a different level of psychological and emotional maturity compared to adults, which is why they require differentiated treatment within the justice system. Paucar Laurencio (2024) notes that the purpose of juvenile criminal responsibility is to strike a balance between the need to respond to unlawful conduct and the obligation to protect the adolescent's overall developmental process. Accordingly, the measures imposed must retain a predominantly educational and resocializing character, avoiding disproportionate responses that might hinder the minor's personal and social development.

Punitive populism

Punitive populism is a politico-criminal tendency characterized by the hardening of penalties and the adoption of repressive measures as an immediate response to public perceptions of insecurity. This phenomenon often manifests in legislative reforms driven by media pressure or social demands related to rising crime, even when such measures lack sufficient technical or criminological support. Méndez (2007) observes that in Latin America, many penal reforms concerning adolescents respond to "tough-on-crime" discourses aimed at satisfying

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immediate social demands rather than building comprehensive crime-prevention policies. Under this logic, increasing sanctions appears as a quick fix to structural problems of violence and juvenile delinquency.

From a doctrinal standpoint, authors such as Scott and Steinberg (2008) and Fergusson, Boden, and Horwood (2013) contend that overly repressive criminal policies can produce counterproductive consequences, especially in adolescents, by intensifying social exclusion, stigmatization, and recidivism.

Social reintegration of adolescent offenders

Social reintegration is a primary objective of juvenile criminal justice, aimed at rehabilitating the adolescent through educational, psychological, family, and community support programs. According to Paucar Laurencio (2024), this approach holds greater promise for reducing recidivism than responses based exclusively on punishment.

Enactment and normative content of Law No. 32330

Law No. 32330 constitutes one of the most controversial reforms recently introduced into Peru's juvenile criminal justice system, as it introduces substantial amendments to both the Criminal Code and the Adolescent Criminal Responsibility Code. The reform establishes, as already noted, that adolescents aged 16 and 17 may be tried under penal parameters similar to those applied to adults when they commit offenses considered serious. Consequently, minors falling within these parameters would no longer be subjected exclusively to the specialized juvenile rehabilitation system; instead, they could be transferred to ordinary penitentiaries if found responsible for crimes such as homicide, sexual assault, extortion, or other offenses of particular gravity (Bazemore, Hudson & Schiff, 2013).

Law No. 32330 also modified Article 20 of the Criminal Code, introducing an exception to the relative non-imputability of minors. In doctrinal terms, Muñoz and Villavicencio (2019) argue that such amendments represent a significant shift in the traditional conception of juvenile criminal justice, because they partially displace the socio-educational approach in favor of harsher punitive mechanisms.

From the proponents' perspective, the law responded to growing public insecurity and the perceived need to strengthen the State's response to serious crimes committed by adolescents.

Under this view, advocates of the reform argue that Law No. 32330 would have a deterrent effect on recidivism, while also conveying a message of State authority and reinforcement of public order. They further assert that the application of stricter sanctions does not necessarily entail a violation of the fundamental principles of the rule of law or of adolescents' rights, but rather an adaptation of the penal system to new forms of criminality present in the national context (Cipriani, 2020).

Nevertheless, it must be noted that the amendments introduced by Law No. 32330 were subsequently subjected to constitutional review by Peru's Constitutional Court. In its ruling on consolidated cases Nos. 00008-2025-PI/TC, 00012-2025-PI/TC, 00014-2025-PI/TC, and 00023-2025-PI/TC, the Court struck down the provisions allowing ordinary criminal responsibility to be attributed to 16- and 17-year-olds. It further established that all persons under 18 must continue to be tried within the specialized juvenile penal system, in accordance with the Adolescent Criminal Responsibility Code. Thus, the reform ceased to have legal effect with respect to the incorporation of adolescents into the adult penal system.

Rehabilitative purpose of juvenile criminal justice and the international *corpus iuris*

The rehabilitative purpose is one of the pillars of juvenile criminal justice. Under the international *corpus iuris*, comprising the Convention on the Rights of the Child, the American Convention on Human Rights, and other specialized instruments, adolescents in conflict with the penal law must receive differentiated treatment aimed at their rehabilitation, education, and social reintegration. Consequently, any legislative reform concerning adolescent criminal responsibility must respect the best-interests principle and international human rights standards.

Constitutional and doctrinal objections to Law No. 32330

Law No. 32330 has been challenged by various legal and institutional sectors due to its potential incompatibility with the principles of juvenile justice and international human rights standards. One of the main objections concerns the violation of the best-interests principle. The statute fails to prioritize the overall well-being of persons under eighteen, as required by the Convention on the Rights of the Child, instead privileging a punitive response to juvenile delinquency.

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Specialists also contend that this reform disregards advances in neuroscience and developmental psychology, which have demonstrated that the adolescent brain is still maturing, particularly in areas related to critical judgment, impulse control, and decision-making. Consequently, equating an adolescent's criminal responsibility with that of an adult is inconsistent with the developmental characteristics of this life stage (Bigenwald & Chambon, 2019).

Another significant objection concerns the potential incompatibility of Law No. 32330 with the Convention on the Rights of the Child and with the Adolescent Criminal Responsibility Code, both of which recognize a specialized system based on educational, restorative, and social-reintegration principles (Méndez, 2007).

Finally, additional criticism has been directed at the lack of technical support and the widespread institutional rejection that followed the law's enactment. Numerous justice-system bodies, including the Judiciary, the Ministry of Women and Vulnerable Populations, the Ministry of Justice and Human Rights, UNICEF Peru, and the Lima Bar Association, publicly expressed their opposition to the statute. These institutions pointed out that the reform was not backed by technical studies, criminological research, or sufficient scientific evidence demonstrating its effectiveness in reducing juvenile delinquency. It was also argued that the law represented a hasty legislative response to a complex problem that requires comprehensive measures of prevention, education, and social reintegration, rather than strictly repressive mechanisms (UNICEF, 2006; Bazemore, Hudson & Schiff, 2013).

Perspectives of the specialists surveyed

To ascertain the views of legal specialists regarding Law No. 32330, a survey was administered to judges, prosecutors, and lawyers involved in the criminal justice system. The results reveal a predominantly critical stance toward the statute, especially concerning the protection of fundamental rights, social reintegration, and the capacity of the ordinary penal system to adequately handle adolescents.

The results are presented below:

Table 1

Perceptions of legal specialists regarding Law No.32330

No.	QUESTIONS	YES	NO
1	Do you agree with the enactment of Law No. 32330?	3	7
2	Do you believe that the application of Law 32330 will bring favorable changes for adolescents?	2	8
3	Do you consider that Law 32330 respects the fundamental rights of adolescents?	1	9
4	Do you believe this Law conforms to the best-interests principle of the child (CRC)?	0	10
5	Do you think the adult penal system is prepared to properly handle adolescents?	2	8
6	Do you consider that this statute violates principles of the Code of Children and Adolescents?	9	1
7	Do you believe the law helps improve public safety?	4	6

Source. Author's own elaboration

The findings reflect a critical view of Law No. 32330. Most respondents consider that the statute fails to respect adolescents' fundamental rights or the best-interests principle. The results also reveal a convergence between the specialists' perceptions, the scholarly literature, and international human rights standards regarding the need to maintain a specialized juvenile justice system focused on rehabilitation and social reintegration.

Similarly, the findings suggest that the approval of Law No. 32330 occurred in a context marked by concerns over public security and the hardening of penal responses, a situation that the literature identifies as an expression of punitive populism. In this sense, the data underscore a tension between public safety demands and the principles underlying juvenile criminal justice.

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Conclusions

The results support the conclusion that Law No. 32330 violated the fundamental principles of juvenile criminal justice by incorporating 16- and 17-year-olds into the ordinary penal system, thereby prioritizing a punitive approach over the socio-educational, rehabilitative, and resocializing purpose recognized in the Adolescent Criminal Responsibility Code and in international human rights instruments. It was also determined that most legal specialists consider the statute to have failed to respect adolescents' fundamental rights or the best-interests principle as enshrined in the Convention on the Rights of the Child, because it partially equated juvenile criminal responsibility with adult criminal responsibility.

The findings further show that the ordinary penal system lacks adequate conditions for handling adolescent offenders, since their placement in general penitentiaries increases risks of violence, stigmatization, social exclusion, and recidivism, negatively affecting their prospects for social reintegration.

The research also established that criminal policies based solely on harsher penalties do not constitute effective mechanisms for addressing juvenile delinquency, especially when not accompanied by comprehensive policies on prevention, access to education, family strengthening, social inclusion, and specialized psychological care.

It is therefore concluded that the doctrinal and constitutional objections raised against Law No. 32330 are consistent with international human rights standards applicable to minors, a position subsequently upheld by the Constitutional Court when it struck down the provisions related to ordinary criminal responsibility for 16- and 17-year-olds.

Consequently, the legal treatment of adolescents in conflict with the penal law must remain within a specialized system oriented toward comprehensive protection, rehabilitation, and social reintegration. To that end, it is necessary to strengthen preventive public policies and juvenile justice mechanisms that are compatible with the best-interests principle and with Peru's international obligations.

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