



CHILD PARTICIPATION IN JUVENILE JUSTICE IN KENYA

National Report for AIMJF's Comparative and Collaborative Research.

La participación de los niños en la justicia juvenil en Kenia.

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile au Kenya

Rapport national pour la recherche comparative et collaborative de l'AIMJF

ALICE WAMBUI MACHARIA¹

JACKIE KIBOSIA²

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation in juvenile justice. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Kenya.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de adolescentes en la justicia juvenil. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Kenia

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants à la justice juvénile. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice au Kenya.

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¹ **OGW** (Order of Grand Warrior), holds a PhD in Human Rights Law from King's College London (2019), a Master in Laws degree from the University of Nairobi (2013), a Postgraduate Diploma in Laws from Kenya School Law (2006), and a Bachelor in Laws Degree from Moi University (2004). Dr. Macharia is an internationally Certified and accredited Mediator, and one of Kenyan Court Annexed Mediators by Mediation Accreditation Committee (MAC). Currently, she is serving as a Magistrate at Thika Law courts, but also deployed at the Kenya Judiciary Academy as the Portfolio Lead, Education and Curriculum Development. Dr. Macharia is the author of the book titled '**Rights of the Child, Mothers and Sentencing: The Case of Kenya**' by Routledge Publishers

² **OGW**, is Magistrate based in Milimani Law Courts (Nairobi) with a keen interest in Child Justice. She is a member of the National Council of Administration of Justice (NCAJ), Special Task Force on Children Matters and represents Judiciary in the National Steering Committee on Prevention of Violence Against Children.



Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

To do so, AIMJF organizes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs.

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation in juvenile justice is organized worldwide.

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This national report is based on a questionnaire prepared by AIMJF.

Questionnaire

1. General description of the procedure and the system
 - 1.1. What is the name of the Court in your country with jurisdiction for wrongful acts committed by children? Does the name vary among different regions of your Country? Does this Court also have jurisdiction for other matters? Which one?

There are only two Courts gazetted to handle children matters ONLY. Otherwise all magistrates are gazetted to handle children matters.
 - 1.2. What is the minimum age of criminal responsibility (MACR)?

12 years under the Children Act, 2022

1.3.Until which age is a child subjected to the jurisdiction of the Youth Court? Does your legislation provide the possibility or possible obligation to treat a child under 18 as an adult? If yes, in which cases and in what way?

Kenya does not have a Youth Court. There is no legislation to support this. All children are governed under the Children Act and dealt with as children even after the age of majority

1.4.Does this Court maintain the jurisdiction regardless of age at the time of the judgment if the offense was committed before the age of 18?

Yes it does

1.5.Can you describe the general steps of the procedure?

The word sentence is not used. We use placement instead. There is a gap in the law because there is no holding facility purely for young adults. There are authorities that point towards sentencing them as adults.

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1.6.What are the opportunities for the child hearing in the whole proceeding?

The ascertainable views of the child are considered in the entire process

1.7.Are there differences on how to proceed according to the age or other criteria? Please specify.

There is no difference save for the fact that the child speaks through an Advocate

2. Judicial hearing

2.1. Is it mandatory for the child to participate in the hearing or is it optional? Is the child invited or summoned for the hearing?

It is mandatory that the child appears at the hearing just like any party to the suit

2.2. Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon?

The child is given a hearing date and it is mandatory that the parent or guardian appears

2.3. Is it made in a child-friendly language? Can you please add a copy of this document?

There is no document inviting the child, the date is given in Court in their presence and the Advocate

2.4. Are there separate entrances and accesses for the child and other persons (professionals, victims and witnesses) to the room where the child is heard?

There is only one entrance

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2.5. Is there a specific waiting room assigned to the child, separated from other people (especially victim and witnesses of the same case; any adults)? Can you share a photo of this place, if any?

There is a holding facility for the children within the Court premises, a photo requires written consent before sharing

2.6. If children are brought by the police from places of detention, are they transported separately from adults? Do they have to wait in cells, if so under what conditions (e.g. single or group cells, separation from adults etc.)?

The children are escorted separately from adults and have a separate holding facility

2.7. Is there some space where the child and his/her support persons can meet confidentially before and after the hearing?

Yes, there is-the Advocate's lounge

2.8. Where does the hearing occur? In the courtroom, chambers, in another room (if so please specify)? If various options apply, which situation will determine the difference in the approach?

In the Courtroom, the Court is cleared first

2.9. Are there differences in terms of accommodation between the hearing environment in comparison with a family (or child protection, or child victim/witness) hearing environment?

The environment is the same, the Courtroom

2.10. Are there differences regarding the hearing room in comparison with a regular criminal courtroom (for adults)?

No difference

2.11. Are hearings sound or video recorded? Does such option exist?

Sound, no recording is done

2.12. Who must, may, may not take part in the judicial hearing? If there are differences according to the situation, please specify.

The advocate and the parent/guardian must be present

2.13. Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing of photo not possible)

This requires a written consent from the Chief Registrar of the Judiciary

2.14. Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?

No materials

2.15. Who normally hears the child in juvenile justice proceedings? Is it the Judge or other professional? If it is another professional, does the child have the right to be heard by the Judge? In which circumstances?

Judge or magistrate

2.16. Are there guidelines or a protocol on how to interact with the child?

One is being developed

2.17. Can you please share it/them? Do those interacting with the child receive specific training on this?

General Training, no specific one

2.18. Can you please describe the ritual? (Some guiding questions are below)

2.18.1. Does the judge wear a gown/wig during the hearing? Would it be different in a family court? And in a criminal court for adults? Can you please share a photo?

The judge does not have to wear a wig....not specified for children for children matters

2.18.2. Does the prosecutor and the defense attorney have to wear a gown or to use special clothes?

Not a requirement

2.18.3. Who else is allowed to attend the hearings?

A counsellor, children officer or a probation officer depending on the information the Court requires

2.18.4. Are there cloth restrictions for the child, his/her parents or non-legal professionals to enter in the hearing room?

None

2.18.5. When the child is deprived of liberty, does he/she wear regular clothing or a uniform? What kind of security measures/measures of restraint may be adopted? Is their use regulated by law (if so, please share provision)? Would it be visible for any attendee that the child is deprived of liberty?

The child wears their normal clothing, no legal requirement on this

The child is not handcuffed but a uniformed officer is present at all times

2.18.6. Is the judge/decision maker in the hearing room when the child enters?

Yes

2.18.7. Does the child have to stand up?

Yes

2.18.8. Does someone have to allow the child (or others attendees) to sit down?

They sit down once the Judge takes their seat

2.18.9. Does the child have to remain standing during the hearing?

No

2.18.10. Is there any kind of solemn speech or specific information/explanations provided to the child before he/she has the opportunity to speak? What is it said at this moment?

The child does not have to speak, unless the Court requires them to. All children have advocates.

2.18.11. Does the child have to make any kind of commitment or swear an oath before speaking?

Yes. When giving evidence if the child understands the solemnity of an oath

2.18.12. Who poses the questions to the child: judge, psychologist, any other? Does the child respond directly or via a third person, eg lawyer?

The Court... the child then responds

2.18.13. Is the child allowed to consult his/her defense attorney or his/her family during the hearing?

Yes

2.18.14. Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?

The Judge, Prosecutor and the Defence Counsel

2.18.15. If other professionals (such as social workers or probation officers) are attending the hearing, what is their role? Are they allowed to speak to the child?

Yes. After the Court process and if a report is required by the Judge

2.18.16. If some professional presents a report during the hearing, is the child allowed to interfere or correct the information or conclusions?

Yes

2.19. Do you consider that the hearing is structured in a formal way or is it more open to a dialogical interaction with the child?

Dialogical interaction, non-formal

2.19.1. How would you characterize the tone of the dialogue and the general attitude of the hearing? Must the child answer strictly to the questions or is he/she allowed to freely speak about what has happened? The interaction is focused on the wrongful act or, additionally, is it open to contextualize the child's behavior, his/her family condition, educational process, social experiences, and to express some aspects of his/her subjectivity? What promotes such dialogue, what hampers it, in your opinion?

The proceedings are inquisitorial in nature. Its more or less a conversation

2.19.2. Is it an occasion for the Judge to strictly give the opportunity for each party to speak, according to the rules, in order to take a decision, or a moment that enable some kind of less formal interaction with the child with some kind of feedback on the pros and cons of his/her behavior as part of a negotiation of plea-bargaining, restorative justice or other alternative to the trial?

It's a conversation geared towards finding solutions that protect the best interest of the child

2.19.3. Is the Judge or any other professional allowed to make any recommendation on how the child should behave?

Yes. Depending on the contents of the reports presented to the Court

2.20. Does the child have, during the hearing, the same legal and procedural guarantees and safeguards as an adult? What are the differences?

Same safeguards as an adult. The child MUST be represented by an Advocate, that's the difference

2.21. What special protections are available to prevent trauma to the child (because of the nature of a hearing) which are not available in regular criminal court for adults??

The child is given an opportunity to speak at whatever stage and has the right to inform the Advocate of any adverse issue arising from the proceedings. The same is then relayed to the Judge

3. Generic questions concerning the improvement of Youth Courts



3.1. In your country, do the judges, prosecutors and defense attorneys benefit from specific initial and continue training on children’s rights in juvenile justice and specifically on child hearing in this setting?

The trainings are one off. No specific curriculum for training

3.2. Anything else you would like to add on this topic?

There is need to develop training guidelines, especially on emerging issues in Child Justice

3.3. Any reform proposals in progress on any of the above issues?

Develop guidelines on how to handle children in the criminal proceedings

Enactment of the new Children Act

Continuous training of all Justice Actors handling children

3.4. Any suggestions for improvement from your side?

Comparative Studies with other jurisdiction to enhance our practice