



CHILD PARTICIPATION IN JUVENILE JUSTICE IN EGYPT

National Report for AIMJF's Comparative and Collaborative Research.

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

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Égypte

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

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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 Egypt.

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 Egipto.

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 en Égypte.

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.

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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.

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?

The name of the Court is: The Child Court.²

The name of the Court is the same across all the districts and cities of Egypt.

In addition to deciding upon juvenile delinquencies, the Court also reviews three types of cases committed by adults against children, namely:³

- 1- negligence which leads to endangering the child,
- 2- inciting, preparing, assisting a child to commit a crime,
- 3- the failure of child's parents if failed to bring the accused child to court as served.

Another jurisdiction the Child Court has is to review the cases of endangered children by taking the proper action to their cases⁴.

1.2. What is the minimum age of criminal responsibility (MACR)?

12 years old.⁵

² See article 121 of Law no. 12 year 1996 amended by law no. 126 year 2008. Hereinafter called "the Child law."

³ See article 122 of Child Law.

⁴ Cases of child endangerment are stipulated in article 96 of the Child Law.

⁵ See articles 94, 101, 111 of the Child law.

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?

Until the age of 18.⁶

One exception in which a child can be tried before the criminal court if the child is:⁷

- 1- Above 15 years old,
- 2- Committed a felony under penal law, and
- 3- The felony was committed with an adult accomplice.

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.⁸

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

The process begins with the police department in one of two ways:

- 1- A crime is reported against a child, or
- 2- A child is arrested for committing a crime.

The case is shortly transferred to the child Prosecution which conduct all the required investigation and eventually decides whether or not to trial the child before the court.

If the prosecution decided to trial the child, the child will be brought before the court.

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

The child has the absolute right to be heard across all the proceedings.

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

In general, children between 12 till 18 are tried before the same court if they committed a minor crime (fine or misdemeanor) or a serious one (felony). However, the penalties that can be applied to the child are different according to the age. While children below the age of 15 may not be sentenced by any criminal penalties, those above the age of 15 can

⁶ See articles 2 & 95 of the Child law.

⁷ See article 122, 2nd paragraph of the Child law.

⁸ See articles 94, 101, 111 of the Child law.

receive criminal penalties except the severe ones such as the death penalty and lifetime imprisonment.⁹

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 not mandatory in misdemeanors and fines, but it is mandatory in cases of felonies.

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

the child doesn't receive a separate invitation for the call to appear.

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

It is hard to answer such question because there are over 35 Courts in Egypt which are not built with the same design. Also, in some districts, Child courts are merely circuits in a big court building. However, the Egyptian government has recently begun to build separate and special buildings for Child courts; for example, the one in the 6th of October City and the one in North Banha. In these courts, there are separate entrances for the child and other persons.

2.4. 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?

It is hard to answer such question because there are over 35 Courts in Egypt which are not built with the same design. Also, in some districts, Child courts are merely circuits in a big court building. However, the Egyptian government has recently begun to build separate and special buildings for Child courts; for example, the one in the 6th of October City and the one in North Banha. In these courts, there is a waiting room assigned to the child and separated from the other people.

2.5. 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.)?

⁹ See articles 101 and 111 of the Child law.

As a general rule, children cannot be detained with adults in the same place;¹⁰ however, many questions can be raised regarding the applicability of this rule on the transportation of the child.

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

It is hard to answer such question because there are over 35 Courts in Egypt which are not built with the same design. Also, in some districts, Child courts are merely circuits in a big court building. However, the Egyptian government has recently begun to build separate and special buildings for Child courts; for example, the one in the 6th of October City and the one in North Banha. In these courts, there is a waiting room assigned to the child and separated from the other people.

2.7. 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?

Usually, the hearing takes place in a chamber. It is worth noting that, unlike the general rule in criminal hearing, child hearings are not public and are only accessible to the child parents, lawyers, witnesses, and social experts assigned by the courts.¹¹

2.8. 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?

It is hard to answer such question because there are over 35 Courts in Egypt which are not built with the same design. Also, in some districts, Child courts are merely circuits in a big court building.

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

It is hard to answer such question because there are over 35 Courts in Egypt which are not built with the same design. Also, in some districts, Child courts are merely circuits in a big court building. However, the Egyptian government has recently begun to build separate and special buildings for Child courts; for example, the one in the 6th of October City and the one in North Banha. In these courts, unlike regular courtroom, the judges' bench is not on a higher level than where the child stands; also, the child is not placed in a cage during the trial.

¹⁰ See article 112 of Child law.

¹¹ See article 126 of Child law. See also article 118 of the same law for further information about the social experts and their role in child trials.

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

As a general rule, no. Sound or videos recording is not a legal requirement for court hearing. However, the Child model courts established in the 6th of October City and North Banha are provided with facilities that can be used for video and sound recordings.

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

Child hearings are not public and are only accessed by the child parents, lawyers, witnesses, and social experts assigned by the courts, and whoever authorized by the court to attend.¹²

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

2.13. 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?

<https://www.oecd.org/mena/governance/towards-child-friendly-justice-egypt.htm>

<https://www.unicef.org/egypt/documents/guidelines-treatment-child-victims-and-witnesses-crime>

2.14. 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?

The Child indeed has the full right to be heard during the trial. In addition, the court will not proceed with the trial if the child doesn't have a lawyer; in such a case, the court will assign a lawyer to defend the child.

Unlike the quorum of regular criminal courts, Child courts in Egypt consist of three judges as well as two social experts who approach the child and write a report explaining the sociological and psychological reasons behind the crime.

2.15. Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this?

¹² Id.

Yes, there are guidelines which are taught to freshly appointed judges in the National Center for Judicial Studies. Likewise, the Ministry of Social Solidarity trains the social experts who assist the judges in Child courts.

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

2.16.1. 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?

No gowns and wigs are required in all courts.

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

No

2.16.3. Who else is allowed to attend the hearings?

Check answer to 2.11.

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

It is not legally stipulated in a statute, to the best of my knowledge.

2.16.5. 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?

This is regulated by internal prison regulation and ministerial directives.

2.16.6. Is the judge/decision maker in the hearing room when the child enters? Does the child have to stand up?

Practically, yes, but it is not regulated by a legal provision, to the best of my knowledge.

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

Practically, yes, but it is not regulated by a legal provision, to the best of my knowledge.

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

Practically, no, but it is not regulated by a legal provision, to the best of my knowledge.

2.16.9. 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?

Yes, the child should be informed and educated of all his rights.¹³

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

The general rule is that tried suspects don't have to swear any oaths before the judges.

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

During the hearing, it is the presiding judge who speaks to the Child. The social experts attend the court hearings as well and can, upon the judge authorization, speak with the child.

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

Practically, yes, but it is not regulated by a legal provision, to the best of my knowledge.

2.16.13. 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 presiding judge is in charge of managing the hearing; if so authorized, the prosecutor, or social workers may communicate with the child.

2.16.14. 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?

Check answer to 2.14.

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

Yes, as it is considered part of the intrinsic right of due trial.

¹³ Article 54 of the Egyptian Constitution amended in 2014.

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

A structured way.

2.17.1. 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 presiding judge is in charge of leading the managing the hearing. The Judge asks questions, and the child answers them on the way he/she can. Also, the child has the right to be heard; so, he/she can request to explain to the court whatever deems important to be explained.

2.17.2. 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?

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

I believe it could be part of the social experts job in the conversation with the child. However, this conversation takes place outside the hearing proceedings. The judge may blame the child for his wrongful behavior if this deems necessary as an arrangement to be taken with the child.¹⁴

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

Yes, the child has all the procedural guarantees and safeguards as an adult. In addition, the child court has in its quorum two social experts who attempt to explain the psychological and sociological reasons behind the crime and suggest to the court the best possible non-criminal arrangement to be taken with the child for the purpose of correction not sentencing.

¹⁴ See articles 101, 102 of the Child law.



Also, child hearings are not public nor accessible to the public. Furthermore, punitive damages are not applicable in cases where the offender is a child.¹⁵

2.19. 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??

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?

Yes, for judges and prosecutors.

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

No.

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

Not that I am aware of.

3.4. Any suggestions for improvement from your side?

No.

¹⁵ See article 129 of Child law.