



CHILD PARTICIPATION IN JUVENILE JUSTICE IN CHINA

National Report for AIMJF's Comparative and Collaborative Research.

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

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile en Chine

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 China.

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 China.

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 Chine.

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.

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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's members.

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?

In China, juvenile courts (also, in the name of juvenile & family court across the regions) are courts that deal exclusively with juvenile offenders. If the offender is under the age of 18, the case is referred to the juvenile court. The juvenile court also has the authority to issue supervision and protection orders for juveniles 18 years of age or younger. According to the *“China’s Child Development Program (2021-2030)”* released by the Chinese National Bureau of Statistics, there were 2,181 juvenile courts nationwide by the end of 2021.

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

A person who has reached the age of 16 commits a crime and shall bear criminal responsibility. A person who has reached the age of 14 but has not yet reached the age of 16 commits the crime of intentional homicide, intentional injury causing serious injury or death, rape, robbery, drug trafficking, arson, explosion, or throwing dangerous substances shall bear criminal responsibility. Where a person who has reached the age of 12 but not the age of 14 commits the crime of intentional homicide or intentional injury, causing death or causing serious injury to a person by particularly cruel means and causing serious disability, if the circumstances are abominable, and the Chinese Supreme People's Procuratorate approves the prosecution, he or she shall bear criminal responsibility. Persons under the age of 18 who are investigated for criminal responsibility in accordance with the provisions of the preceding three paragraphs shall be given a lighter or mitigated punishment. If criminal punishment is not given because the offender is under the age of 16, his/her parents or other guardians shall be ordered to discipline him; when necessary, special correctional education shall be carried out according to law (Chinese Criminal Code, Article 17).

- 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?

Juvenilejuvenilejuvenile

According to the *Opinions of the Chinese Supreme People's Court on Strengthening Juvenile Trials in the New Era of 2020* released by Chinese Supreme People's Court on December 24, 2020, a criminal case in which the defendant was under 18 years old when he/she committed the accused crime and was under 20 years old when the case are filed to court shall be tried by a juvenile court (Article 6). Further, the following criminal cases may be heard in juvenile courts: (1) criminal cases involving students who were under the age of 22 when the case is filled to the court; (2) rape, molestation and other sexual crimes against juveniles; (3) murder, injury, kidnapping, abduction, maltreatment, abandonment and other crimes that seriously violate the personal rights of juveniles; (4) cases of modification of punishment execution such as commutation, parole, temporary execution outside prison, revocation of probation, etc. in the above-mentioned criminal cases; (5) For other criminal cases involving juveniles, it is more appropriate for juvenile courts to try them. Joint criminal cases between juveniles and adults should generally be tried separately (Article 7). The following civil cases are heard in the juvenile courts: (1) marriage and family dispute cases involving juvenile custody, guardianship, visitation, etc., as well as divorce cases suitable for trial by juvenile courts; (2) disputes over personality rights where one or both parties are juveniles; (3) for tort liability dispute cases where the infringer is a juvenile, or where the infringed person is a juvenile, juvenile courts are more appropriate for tort liability dispute cases; (4) protection order cases involving juveniles; (5) other civil cases involving the protection of the rights and interests of juveniles (Article 8). Mover, administrative litigation cases where the parties are juveniles shall be tried by juvenile courts if conditions permit (Article 9).

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According to Chinese Civil Code of 2020, adults are persons with full capacity for civil conduct and may independently perform civil juristic acts. Any juvenile who is over the age of 16 years of age or older shall be regarded as a person with full capacity for civil conduct, with his/her income as his/her main source of livelihood (Chinese Civil Code of 2020, Article 18).

- 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?

A criminal case in which the defendant was under 18 years old when he/she committed the accused crime and was under 20 years old when the case is filed to court shall be tried by a juvenile court (Opinions of the Chinese Supreme People's Court on Strengthening Juvenile Trials in the New Era of 2020, Article 6). The following criminal cases may also

be heard in juvenile courts: criminal cases involving students who were under the age of 22 when the case is filled to the court (Opinions of the Chinese Supreme People's Court on Strengthening Juvenile Trials in the New Era of 2020, Article 7(1)).

Juvenile juvenile juvenile

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

The most important feature of Chinese juvenile courts is that the trials are mostly conducted in the form of round tables. This type of trial is designed to reduce the number of participants who are not related to the case, thus reducing the psychological guilt of the juvenile and ultimately helping the juvenile to return to society better and faster.

The general steps of the procedure are as follows:

The first step is the preparation before the trial, which includes the following three stages: Firstly, before the trial, the legal representative of the juvenile defendant should be notified to appear in court. If the legal representative is unable to appear in court or really unsuitable to appear, other guardians or other adult close relatives shall be notified to appear in court. After notice, other guardians or adult close relatives do not appear in court, the court shall record in the file. Secondly, before the trial begins, the presiding judge of the juvenile criminal case may arrange for the legal representative or other adult close relatives, teachers and other persons to meet with the juvenile defendant if he or she deems it necessary. Finally, before the trial, the prosecution and the defense can investigate the juvenile defendant's personality characteristics, family situation, social interactions, upbringing and performance before and after the commission of the alleged crime, and make written materials for submission to the collegial court. If necessary, the court may also entrust the relevant social organizations to investigate the above-mentioned circumstances or conduct their own investigation.

The second step is the court hearing, which includes the following three stages: Firstly, the court hearing, the trial judge should pay attention to the degree of intellectual development and psychological state of the juvenile defendant, to be serious and amiable, accurate and easy to understand language. If a juvenile defendant is found to be induced to confess, reprimanded, sarcastic or threatened, it should be stopped in time. Secondly, during the court investigation, the trial judge should verify the age of the juvenile defendant at the time the alleged act was committed. It shall also ascertain the subjective and objective reasons for the juvenile defendant to commit the alleged act. Finally, the court hearing, the prosecution and defense to the court to lightly sentence the juvenile defendant control, detention suspended sentence or fixed-term imprisonment suspended sentence, exemption from criminal punishment and other applicable penalties proposed, should provide written materials about the juvenile defendant can get custody, help and education.

The third step is to pronounce the sentence, which includes the following two stages. On the one hand, if the sentence is pronounced regularly, the panel shall notify the public prosecutor, the legal

representative of the juvenile defendant and other participants in the proceedings to appear in court. If the legal representative does not appear in court or is really unable to appear in court, other adult close relatives may also be notified to appear in court, and serve a copy of the verdict on them after the verdict is pronounced. On the other hand, if the court decides that the juvenile defendant is guilty, after the verdict is pronounced, the collegial court shall organize the participants in the proceedings who are present to educate the juvenile defendant. If the participation of adult close relatives other than the legal representative of the juvenile defendant or teachers or public prosecutors is beneficial to the education and probation of the juvenile defendant, the collegial court may invite them to participate in the education after the sentencing.

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

The child hearing occurs primarily at the judicial stage of prosecution, which is the responsibility of the procuratorate. Whether to arrest or detain a juvenile involved in a crime and the conditional non-prosecution can be conducted by means of a hearing.

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

Juvenile courts have specific procedures that distinguish them from adults in the trial of delinquent juveniles under the age of 18, as follows:

- ✓ No one other than persons connected with the case and reporters, etc., may be present (the court may refuse the presence of reporters if it deems it necessary).
- ✓ Any coverage of the juvenile court (and related appeals cases) shall not mention the name, address, or school attended by the child or juvenile (whether defendant or witness), disclose any information that would lead to their identification, or publish any pictures of them.
- ✓ The juvenile court has a duty to explain the charge in plain language and to ensure the nature of the defendant's charge.
- ✓ The court has the right to cross-examine witnesses for the benefit of the defendant and may allow the defendant's parents or guardians to ask questions of the witnesses.
- ✓ The court may compel the presence of the defendant's parents or guardians or require them to leave the courtroom in order to protect the defendant's interests.
- ✓ The court must obtain information about the child's or juvenile's general behavior, home environment, school records, and medical history before making a decision.

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 for the child to participate in the hearing. The child is summoned for the hearing.

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 legal representative of the juvenile defendant shall be notified to be present.

It is made in a child-friendly language. Language expressions appropriate for juveniles should be used in accordance with the degree of their intellectual development and psychological state.

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?

There are no separate entrances and accesses for the child and other persons (professionals, victims and witnesses) to the room where the child is heard.

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?

Although there is no waiting room specifically allocated for juvenile defendants, juvenile defendants are separated from other people (especially victim and witnesses of the same case; any adults) and placed in separate rooms.

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.)?

Juvenile defendants are transported separately from adults. They should also be separated from adults while waiting.

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

There is some space where the child and his/her support persons can meet confidentially before and after the hearing.

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?

In the courtroom.

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?

There are no general differences.

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

Generally speaking, there are no differences regarding the hearing room in comparison with a regular criminal courtroom (for adults) due to the juveniles that juveniles share. However, where available, hearing rooms more suitable for juveniles can be set up.

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

Yes.

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

Cases where the defendant is under the age of 18 at the time of the trial will not be heard in public. However, with the consent of the juvenile defendant and his legal representative, the juvenile defendant's school and the juvenile protection organization may send representatives to the scene (Chinese Criminal Procedure Code of 2018, Article 285).

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)

The following two pictures show the hearing site in different places.



Picture 1



Picture 2

- 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?

There is no informative material because of the confidentiality of the hearing under the law.

- 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?

Judges and prosecutors.

- 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?

There are no guidelines or a protocol on how to interact with the child. However, relevant persons receive regular and systematic training related to the protection of the rights of juvenilejuveniles, including techniques for interacting with juveniles.

- 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?

The judge must wear a uniform judge's gown without a wig for both the hearing and the trial, regardless of whether the trial is for a juvenile or an adult. The photo is below (mosaic for privacy reasons).



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

Prosecutors are required to wear a uniform prosecutor's uniform and wear a prosecutorial emblem.

Chinese lawyers shall also be required to wear a uniform lawyer's robe and wear a lawyer's badge (the emblem of the All-China Lawyers Association).

- 2.16.3. Who else is allowed to attend the hearings?

Cases where the defendant is under the age of 18 at the time of the trial will not be heard in public. However, with the consent of the juvenile defendant and his legal representative, the juvenile defendant's school and the juvenile protection organization may send representatives to the scene (Chinese Criminal Procedure Code of 2018, Article 285).

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

When criminal detainees or appellants appear in court for trial, they wear formal or casual clothes, and do not wear the identification clothing of the regulatory authority (People's Court Court Rules, Article 13). Further, there is no special requirement for the parents or non-legal professionals to enter the hearing room.

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?

When criminal detainees or appellants appear in court for trial, they wear formal or casual clothes, and do not wear the identification clothing of the regulatory authority (People's Court Rules, Article 13). Further, courts are not allowed to use restraints on defendants or appellants during court trials, unless they are deemed to be personally dangerous and may endanger the safety of the court(Article 13).

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

There is no requirement for this. It is possible for a judge or decision maker to enter earlier or later than the child.

2.16.7. Does the child have to stand up?

When the judges enter the courtroom and when the chief judge or the sole judge announces the judgment, ruling or decision, all people in the courtroom should stand up (People's Court Rules, Article 15). Except that, the juvenile could sit.

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

When the judges enter the courtroom and when the chief judge or the sole judge announces the judgment, ruling or decision, all people in the courtroom should stand up (People's Court Rules, Article 15). Except that, the juvenile could sit.

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



When the judges enter the courtroom and when the chief judge or the sole judge announces the judgment, ruling or decision, all people in the courtroom should stand up (People's Court Rules, Article 15). Except that, the juvenile could sit.

2.16.10. 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 judge should explain to the juvenile defendant the alleged crime and the relevant legal provisions; and inform the procedure of the lawsuit and the relevant litigation rights and obligations to eliminate his or her nervousness.

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

There is no requirement for this.

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

The judge, prosecutor, attorney, witness or victim may pose the questions to the child.

The child answers the question directly and his or her attorney may add to it.

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

The child is allowed to consult his/her defense attorney or his/her family during the hearing. However, permission must first be obtained from the judge.

2.16.14. 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, attorney, witness or victim is allowed to address the child. However, there is a strict order to all conversations throughout, which is led by the judge. That is, the dialogue can only take place with the permission of the judge.

2.16.15. 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?

Professionals, including forensic experts and social workers, are present at the hearing and their role is to prove or assess relevant facts. They generally do not speak with the child. If necessary, they may speak to the child with the judge's permission.

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

After applying to the judge to speak and being allowed to do so, the child or his or her attorney may be allowed to interfere or correct the information or conclusions.

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?

The hearing is structured in a formal 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 hearing has strict procedural requirements. Juveniles must answer questions strictly. However, the dialogue does not focus only on the juvenile's criminal behavior, but also discusses his/her family situation, educational process, social experiences, and the expression of his/her subjectivity. In our opinion, it is the professional judicial social worker with a comprehensive social investigation report that facilitates this dialogue, while the less professional judicial social worker with a less comprehensive social investigation report hinders it.

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?

It is 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 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?

The judge or any other professional is allowed to make any recommendation on how the child should behave.

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

Legal and procedural safeguards and protections during hearings are different for juveniles than for adults. All hearings in juvenile cases are closed to the public. In addition, tribunals that try juvenile cases should set up areas and seats according to the characteristics of juveniles' physical and mental development (People's Court Court Rules, Article 3).

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?

The answer to this question is the same as the previous one (2.18). For the purpose of protecting juveniles, all hearings in juvenile cases are closed to the public.

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 juveniles's rights in juvenile justice and specifically on child hearing in this setting?

Yes.

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

N/A.

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

N/A.

3.4. Any suggestions for improvement from your side?

N/A.