AIMJF´S COMPARATIVE AND COLLABORATIVE RESEARCH ON CHILD PARTICIPATION IN JUVENILE JUSTICE

Recherche comparative et collaborative de l´AIMJF sur la participation des enfants à la justice juvenile

Investigación comparativa y colaborativa de l´AIMJF sobre la participación de niños en la justicia juvenil

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Abstract: The paper analyzes comparatively 55 national reports on child participation in juvenile justice. collected from members and collaborators of the International Association of Youth and Family Judges and Magistrates. After a short exposition of the aims of the research and some methodological considerations, applicable international and regional standards are highlighted to introduce and guide specific analysis of 1) criteria for organizing jurisdiction, 2) the preparation for child´s participation, 3) the adaptations to provide better conditions to grant the right of the child to be heard and 4) specific legal guarantees or special measures. The paper also analyzes training conditions for judges and magistrates, reforms in progress and the participants recommendations and suggestions to improve the system. Final conclusions and recommendations for the future intend to stimulate further international judicial dialogue and experience sharing, for which a compilation of both informative material for children and photos of spaces for child hearing is provided.

Résumé: Le document analyse comparativement 55 rapports nationaux sur la participation des enfants à la justice pour mineurs. recueillies auprès des membres et collaborateurs de l'Association Internationale des Magistrats de la Jeunesse et de la Famille. Après un bref exposé des objectifs de la recherche et quelques considérations méthodologiques, les normes internationales et régionales applicables sont mises en évidence pour introduire et guider une analyse spécifique 1) des critères d'organisation de la compétence, 2) de la préparation à la participation de l'enfant, 3) des adaptations pour offrir de meilleures conditions pour accorder le droit de l'enfant d'être entendu et 4) des garanties juridiques spécifiques ou des mesures spéciales. Le document analyse également les conditions de formation des juges et des magistrats, les

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réformes en cours et les recommandations et suggestions des participants pour améliorer le système. Les conclusions finales et les recommandations pour l'avenir visent à stimuler davantage le dialogue judiciaire international et le partage d'expériences, pour lesquels une compilation de matériel d'information pour les enfants et de photos d'espaces d'audition des enfants est fournie.

Resumen: El documento analiza comparativamente 55 informes nacionales sobre la participación de los niños en la justicia penal de adolescentes. recogidos de miembros y colaboradores de la Asociación Internacional de Magistrados de la Juventud y la Familia. Después de una breve exposición de los objetivos de la investigación y algunas consideraciones metodológicas, se destacan las normas internacionales y regionales aplicables para introducir y orientar el análisis específico de 1) los criterios para organizar la jurisdicción, 2) la preparación para la participación del niño, 3) las adaptaciones para proporcionar mejores condiciones para otorgar el derecho del niño a ser oído y 4) garantías legales específicas o medidas especiales. El documento también analiza las condiciones de capacitación para jueces y magistrados, las reformas en curso y las recomendaciones y sugerencias de los participantes para mejorar el sistema. Las conclusiones y recomendaciones finales para el futuro tienen por objeto estimular un mayor diálogo judicial internacional y el intercambio de experiencias, para lo cual se proporciona una compilación de material informativo para niños y fotos de espacios para su audiencia.

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INTRODUCTION. THE RESEARCH AIMS IN THE CONTEXT OF AIMJF´S ACTIONS FOR THE IMPROVEMENT OF JUSTICE AND CHILDREN´S RIGHTS

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) is an NGO (Non-Governmental Organisation) with consultative status at the Council of Europe and associated with UNO's Department of Public Information (DPI).

It represents worldwide efforts to establish links between judges from different countries but also with other international associations working in the sector of the protection of youth and family.

Founded in 1928, AIMJF has a longstanding commitment towards the improvement of the Justice System in order to provide better conditions for a qualified

attention to children based in a human rights approach in various areas and, therefore, is a key actor in promoting transnational judicial dialogue.

Transnational judicial dialogue is not only based on a shared history or legal tradition, nor on a formal treaty-based organizational structure or hierarchy, such as the Convention on the Rights of the Child, but as part of a common enterprise of a world judicial community, recognizing that not only comparative law, but also foreign judicial decisions and organizational structures are important resources for deliberations in domestic courts (WATERS 2005). Judicial dialogue "allows judges to be more conscious about the environment in which they operate, making them aware that they belong to an international legal community in which everyone contributes to the development of a global normative system in benefit of the human person" (FERRER MAC-GREGOR 2017).

The horizontal dialogue between courts of the same status is therefore important to elucidate issues at hand and to suggest new approaches to similar problems. If cultural and legal particularities about controversial legal questions or judicial structures may cause uncertainty among judges, international legal standards and *pro personae* principle (with more protective criteria than the international standard) (FERRER MAC-GREGOR 2017) are important tools to promote norm convergence in response to a perceived need for a single international legal norm on a particular issue (WATERS 2005).

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

The main focus, and probably the specificity of this research, is the interaction between judges and magistrates and the child, for the obvious reason that this is an Association composed by this public.

This focus is not contradictory with AIMJF recognition and support of all efforts to divert children from the justice system, avoiding any contact with judges and magistrates. However, the fact that this interaction should be minimal does no exclude the importance and the need to improve it. More than that, even when considering the possibility of diversion, or when diversion is not possible, the trial remains as part of the imaginary possibilities, impacting all decisions for children.

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With this initiative AIMJF aims as well to collaborate, in accordance with Beijing Rules (rule 30), to collect and analyze relevant data and information for appropriate assessment and future improvement and reform of juvenile justice system´s administration.

A guiding questionnaire (Attachment 1) has been prepared and shared with our members and partners, who have submitted a national report, explaining how child participation occurs in their country in the juvenile justice. Each of these national reports is published in this edition and have its own value for bringing into public a description of the justice system organization, its procedure and how the participation of children occur in their country.

55 countries have participated in this collaborative research, from all continents, representing 28% of all countries in the world and more than half of its population.

Africa	**Americas**	**Asia (and Middle-East)**	**Europe**	**South Pacific**
Benin	Argentina	China	Austria	New Zealand
Cape Verde	Bolivia	East-Timor	Bulgaria	Samoa
Egypt	Brazil	India	Croatia	
Guinea Bissau	Canada – Québec	Iraq – (Kurdistan)	Denmark	
Kenya	Colombia	Japan	England & Wales	
Mauritania	Costa Rica	Lebanon	France	
Mozambique	Cuba	Nepal	Georgia	
São Tomé and Principe	Dominican Republic	Turkey	Germany	
South Africa	Ecuador		Luxembourg	
Uganda	El Salvador		Netherlands	
	Guatemala		North Macedonia	
	Honduras		Portugal	
	Mexico		Spain	
	Panama		Sweden	
	Paraguay		Switzerland	
	Puerto Rico		Turkey	
	Uruguay		Ukraine	
	Venezuela			

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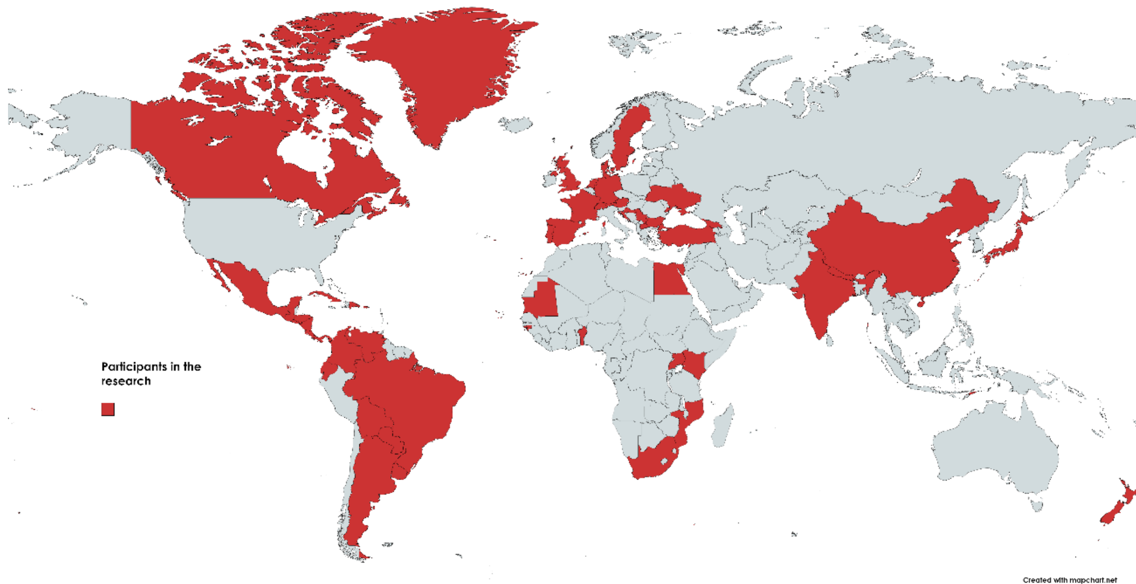

This global analysis will be followed by regional perspectives, with the intention to highlight some cultural or socio-historical elements that may conform to child participation among these countries.

This analysis is structured with the following elements:

1. Some initial methodological remarks on how the data are analyzed, considering the diversity of countries represented;
2. A brief presentation of international and regional legal standards that will guide the analysis;
3. A contextualization of the legal and institutional framework of the participating countries, namely how the juvenile justice jurisdiction is organized within the justice systems and the degree of specialization implemented; who is considered a child in this system (minimum age of criminal responsibility, age until which a person alleged or accused to have committed a crimes has the case dealt by specialized courts, among other differences applied according to specific criteria) and how some personal or material criteria may affect the special jurisdiction of youth courts. These elements were considered important to allow an interpretation of the main data regarding child participation;
4. The preparation of children for participation in courts, considering how they are called to appear, the information provided, especially if there are materials especially designed for them (which are in attachment 4), whether participation is mandatory or voluntary and

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some eventual formal restrictions imposed on children for access to justice, such as clothing (being or not deprived of liberty). In this section, we also consider some environmental aspects prior to participation (entrance, waiting areas and areas for support meeting with family and legal professionals);

5. The participation itself in judicial settings. In this main section, we begin with a brief analysis of the historical, cultural and political challenges of this interaction, considering the diversity of the juvenile justice models and legal traditions worldwide and its impact in child participation. We subdivide the analysis in four main areas:

5.1. some environmental aspects, mainly the layout of the spaces where children are heard, considering where each key actor sit**s**, assuming that architecture is an important element on defining the possibility of exercising legal guarantees. This subsection is connected with attachment 3, with a photo album of courts from several countries

5.2. some aspects of the ritual that might impact the right to participation. This is normally an element not considered in the international standards, except some generic references. However, we consider the ritual a very important and symbolic element of the presiding values of the hearing and what causes, as much as the environmental aspects, one of the first impressions and impact on the child when arriving in Courts. Therefore, any improvement of the judicial system cannot be made without consideration on how this broad element impact**s** and determine**s** the interaction itself between judges and magistrates and legal professionals with the child

5.3. the interaction itself between judges and magistrates and the child, which is analyzed whether it is direct or indirect, the hearing´s nature, its scope, focusing both on the content of the interaction and its aims, the possibility of adopting discretion in this context, the existence of guidelines on how to interact with the child, which are in the attachment 2.

5.4. Finally, we focus on the support provided for children during the hearing in three main areas: the support provided by legal assistance and both the role of the family and of the multidisciplinary professionals that may take part in the hearing

6. The research also pay**s** particular attention on the specific legal guarantees and protection measures each country provides to children, aiming to protect them against trauma, and a specific discussion on audiovisual recording of hearings and the right to privacy

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7. The concluding chapters of the research concentrate on available training for judges and magistrates, the reform proposals under discussion in their countries, exposing the conflicting challenges both judges, magistrates and children may face in the future, and on the specific concerns judges and magistrates have on this subject.
8. We conclude the research with some general remarks and considerations for the future.

1. SOME METHODOLOGICAL CONSIDERATIONS

Human rights are historical, social constructs, born out of social circumstances, characterized by the struggle in defense of new freedoms and new life possibilities, when the emphasis lies on social, economic and cultural rights.

In spite of a relatively common world movement since the creation of the first youth court in Australia and Chicago, in the late nineteenth century, when many youth courts have been created worldwide, and this association founded in 1928, the crisis of the *parens patriae* doctrine in the sixties, in the US but spreading to the world, brought back into scene a reappraisal of the justice model, evolving and opening up a variety of organization possibilities of the juvenile justice system.

New models emerge in a combination of philosophical and sociological assumptions about delinquency – particularly juvenile delinquency – and state responses, institutional organization and the processes (and procedures) adopted to deal with these situations, interacting, once again, with ideological and material factors, the social and cultural context in which these interrelations take place (CAVADINO & DIGNAN 2009).

Even if these models are ideal types and that we may not assume that any country will match them exactly, and even considering that they might be variations of the more sedimented welfarist and judicial model (HAZEL 2008), these "models still provide frameworks that are useful for describing and differentiating among nations´ treatment of youth offenders and allow for objective comparative analysis" (WINTERDYK 2015, p. 7) and many important elements are highlighted in these new models that should be considered in any analysis.

Cavadino and Dignan see, in effect, a great interconnection between the following assumptions (CAVADINO & DIGNAN 2009, p. 199):

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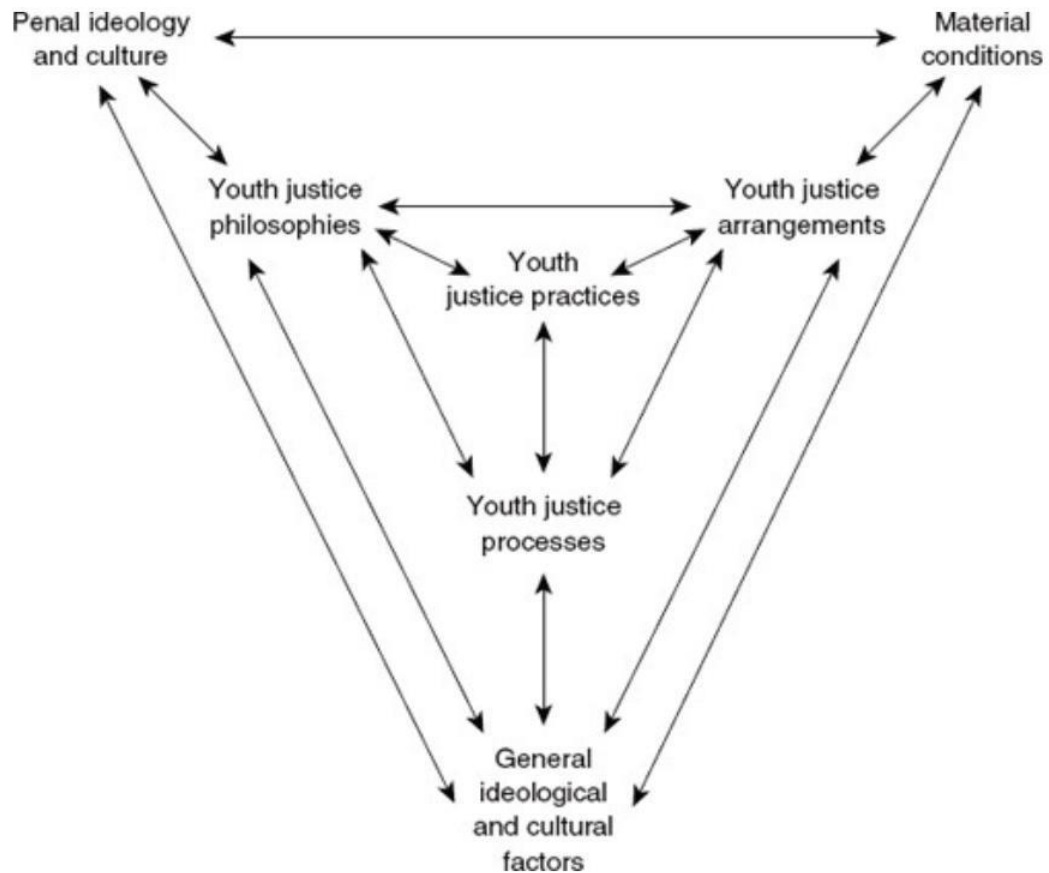

These elements are also impacted by the classifications in families of legal systems – the usual method in comparative law – on one side the Romanistic-Germanic and on the other one the Anglo-Saxon model of the Common Law. Although an accusatorial and adversarial dynamic has ideologically overlapped the traditional inquisitorial model of the continental legal system (FERRAJOLI 1995), it is not possible to disregard the interconnections between penal and civil law.

This research is therefore limited in its conception, because it focuses on some of these aspects, namely youth justice arrangements, practices and processes, although we

consider possible to infer, both from the answers, the photos and external data, some elements of the penal ideology and culture at stake and also the material conditions in each country.

Although limited, these arrangements, practices and processes are able to bring into consideration the interconnection of some macro perspective elements such as the institutions that deal with youth justice, its methods, if any, to interact with child, with some micro perspective elements, such as the layout of courts, their rituals, the conception of the relationship between legal authority and the child citizen (ZWEIGERT & KÖTZ 1998).

In spite of this limitation, it is out of doubt that children´s rights are a legal field marked by an internationalization of legal concepts which makes it easier to be situated in a comparative plan, because they presuppose a cooperation or coordination of different point of views. Ancel warns, however, that we should be cautious and mistrust similarities based on concepts and should not stop on the legal disposition but rather try to understand the institution by itself and within the complexity of social-economical and legal and political context, because comparative study is sociology of law (ANCEL 1973).

That is the reason why our analytical criteria are based on international and regional standards, having in mind that further analysis should be done to understand the reality of each country which could bring interesting responses to our shared problems.

To avoid theses mistrusts, functionality will be assumed as the basic principle of comparison: the different legal systems may be compared if they offer solution to the same practical problem, if they come in response to the same legal problem, and if they accomplish the same function. In this context, we may assume a presumption of similarity for practical solutions, which may allow a heuristic principle, demanding conference of its correctness (ZWEIGERT & KÖTZ 1998) in more specific contexts.

According to Shapiro, comparative method consists not merely on showing that a certain procedural or substantive law of one country is similar or different from that of another, nor a simple description of a number of legal systems side by side. It is, in his opinion, a substitute for the experimental method, “not a terribly satisfactory substitute,

but one pressed upon us by the impossibility of putting laws and nations in test tubes and bubble chambers” (SHAPIRO 1986, position 38).

In this scenario, our limited aims are threefold.

First, assuming a main focus on children´s rights, we intend to understand how differences in organizational and procedural aspects may impact rights, according to the international and regional legal standards.

Second, the comparative study allows us to get more familiar with our own system, because it will give us a better response to its formation, the model that served as base for its inception, its reactions and social values (BLAGOJEVIC 1973). But also it is important as an exercise of otherness in relation to our practices, norms and institutions, helping us to denaturalize some aspects of youth justice practices, arrangements and institutions and allowing us to problematize them. When we make the familiar appear strange – and the strangeness comes from comparative analysis, it is possible to identify the rules shaping its operations (TAIT 2001)

Third, although there is not a presumption of linearity in this process, nor an aim to homogenize all practices, there is an intention in this project to enlarge the possibilities to dialogue about this fundamental aspect of juvenile justice system, the child participation. As much as all these countries are attached to the same international standards, it is also important to enlarge the possibilities of transnational judicial dialogue. Comparative studies within the Judiciary aim to help courts that consult the practice of foreign courts to bring its own decision in line with these foreign decisions. If one solution is suited to answer the same question in one country it may have a similar function in another one (FELDBRUGGE 1973).

In this context, the analysis of the most prominent differences and similarities will challenge us to recommend further discussions on some aspects and to continue this process of transnational judicial dialogue, involving, as much as possible, children themselves and other professionals.

In the context of this dialogue, it will be possible to go in deep in the collective realities in which and by which the specific rules and practices of some countries were formed, their presiding intentions and values and the analysis of the impact/effect that those norms and practices have produced (RECASÉNS-SICHES 1973).

2. THE INTERNATIONAL LEGAL STANDARDS ON CHILD PATICIPATION IN JUVENILE JUSTICE

According to the Committee on the Rights of the Child, "the right of all children to be heard and taken seriously constitutes one of the fundamental values of the Convention"…, identifying article 12 "as one of the four general principles of the Convention, the others being the right to non-discrimination, the right to life and development, and the primary consideration of the child's best interests, which highlights the fact that this article establishes not only a right in itself, but should also be considered in the interpretation and implementation of all other rights". (UNITED NATIONS 2009).

In consonance to article 12,

> "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
> "2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law".

However, because juvenile justice deals with an alleged infringement of the law by children and the possibility of rights restriction, if not deprivation of liberty, participation is mainly focused on the defense of State´s interference in civil rights.

Therefore, article 40 lays down that children should "be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society" (UNITED NATIONS 1990a).

Prior to considering the moment of participation itself, the Convention states three legal guarantees that conform the moment of the child hearing.

First of all, children should be presumed innocent until proven guilty according to law. The onus of proof relies on the prosecution, which implies a negative participation of the child, denying or refuting the charge.

As a second element, children should also be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal

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guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defense. Therefore, a prepared and supported participation is required, analyzing the risks and impacts of this interaction.

And third, elements of a fair trial should be in place, with organizational guarantees of a competent, independent and impartial authority or judicial body, who should act without delay in a fair hearing according to law and, once again, to avoid abuses or disrespect of rights, in the presence of legal or other appropriate assistance. In this context, children should "not be compelled to give testimony or to confess guilt" and have additionally the right "to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality" (UNITED NATIONS 1990a; 2019).

The contours of this treatment is expressed in many international standards.

The Beijing Rules states that Member Stated shall seek, in conformity with their respective general interests, to further the well-being of the juvenile and her or his family, endeavoring to develop conditions that will ensure for the juvenile a meaningful life in the community, in the context of a Juvenile justice conceived as an integral part of the national development process of each country, within a comprehensive framework of social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society. For this reason, article 14, 2, of the Beijing Rules, states that "the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely." (UNITED NATIONS 1985)

This atmosphere of understanding is reinforced in General Comment 12, on the right of the child to participation, and reaffirmed in General Comment 24 on children's rights in the child justice system, where the Committee on the Rights of the Child states in recitals 57 and 58 that "in penal proceedings, the right of child to express her or his views freely in all matters affecting the child has to be fully respected and implemented throughout every stage of the process of juvenile justice"… "from the pre-trial stage when the child has the right to remain silent, to the right to be heard by the police, the prosecutor and the investigating judge. It also applies through the stages of adjudication and

disposition, as well as implementation of the imposed measures. This recommendation is completed in recital 60, where, in order to effectively participate in the proceedings, the Committee lays down that every child must be informed promptly and directly about the charges against her or him in a language she or he understands, and also about the juvenile justice process and possible measures taken by the court. The proceedings should be conducted in an atmosphere enabling the child to participate and to express her/himself freely (UNITED NATIONS 2009).

Accordingly, Riadh guidelines assume as a principle that young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control (UNITED NATIONS 1990b). Considering children as subject of rights and having granted the right to participation in the proceeding is a matter of access to Justice, requiring the legal empowerment of all children, with personal access to relevant information and to effective remedies to claim their rights, including through legal and other services, child rights education, counselling or advice, and support from knowledgeable adults. And mostly, taking into account children's evolving maturity and understanding when exercising their rights (UNITED NATIONS 2013).

In the report on Access to Justice for Children, the UN Human Rights Council emphasize in recitals 46 and 47 that children should "be able to participate in an effective and meaningful way in all matters affecting them, including criminal, civil and administrative proceedings"… in order that rights "have an influence on their life, and not only rights derived from their vulnerability or dependency on adults (UNITED NATIONS 2013).

2.1.REGIONAL LEGAL STANDARDS

At the regional level, we will consider African, American and European legal standards, giving privilege to binding international standards that are object of transnational judicial dialogue among regional courts of human rights, with an impact in

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countries, even if they are not from the same region where originally the situation was brought to judicial analysis.

2.1.1. AFRICAN UNION

The African Charter on the Rights of the Child has two main articles applying to child participation. On article 4, the right of the child to participation is granted on the following terms:

> "2. In all judicial or administrative proceedings affecting a child who is capable of communicating his/her own views, and opportunity shall be provided for the views of the child to be heard either directly or through an impartial representative as a party to the proceedings, and those views shall be taken into consideration by the relevant authority in accordance with the provisions of appropriate law".

On article 17, the rights of the child in juvenile justice are laid down in a similar way as stated in the Convention, emphasizing the right to special treatment in a manner consistent with the child's sense of dignity and worth which reinforces the child's respect for human rights and fundamental freedoms of others.

> Regarding the legal guarantees, the Charter lays down that:
> 2. States Parties to the present Charter shall in particular:
> (a) ensure that no child who is detained or imprisoned or otherwise deprived of his/her liberty is subjected to torture, inhuman or degrading treatment or punishment;
> (b) ensure that children are separated from adults in their place of detention or imprisonment;
> (c) ensure that every child accused in infringing the penal law:
> (i) shall be presumed innocent until duly recognized guilty;
> (ii) shall be informed promptly in a language that he or she understands and in detail ~~of~~ the charge against him or her, and shall be entitled to the assistance of an interpreter if he or she cannot understand the language used;
> (iii) shall be afforded legal and other appropriate assistance in the preparation and presentation of his defence;
> (iv) shall have the matter determined as speedily as possible by an impartial tribunal and if found guilty, be entitled to an appeal by a higher tribunal;
> (d) prohibit the press and the public from trial.
> 3. The essential aim of treatment of every child during the trial and also if found guilty of infringing the penal law shall be his or her reformation, re-integration into his or her family and social rehabilitation.
> 4. There shall be a minimum age below which children shall be presumed not to have the capacity to infringe the penal law." (AU 1999)

There is no similar provision to the one in the Convention on the Rights of the Child on either the right not to be compelled to give testimony or to confess guilt, nor the right to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality.

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The African Youth Charter (for persons between 15 and 35 years), although reinforcing the right of youth to be treated with humanity and with respect of the inherent dignity of the human person, has not laid down any specific provision on the participation, testimony and evidence (AU 2006).

There is no specific statement on child participation in the Outcome Statement of the Day of the African Child 2020 under the theme Access to Child Friendly Justice Systems (AU 2020).

However, the African Charter on Human and People´s Rights lays down in article 7 that "Every individual shall have the right to have his cause heard".

2.1.2. ORGANIZATION OF AMERICAN STATES

According to article 8 of American Convention on Human Rights on the Right to a Fair Trial

> 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
> 2. g. the right not to be compelled to be a witness against himself or to plead guilty; and
> 3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.

In a report on Juvenile Justice and Human Rights, the Interamerican Commission on Human Rights understand that "the right to participate in the proceedings enriches the right of defense if it means that the child has the right to have witnesses called and examined, the right not to testify against oneself and the right not to be forced to incriminate oneself."

For the Commission, if "the fact that these children are deemed old enough to face the juvenile justice system means that their standing as subjects of the proceedings has been acknowledged and their right to participate in the proceedings must be recognized and their opinions taken into account", "even within this age bracket, the system must assume that the capacity of a 12-year-old is not the same as that of a 17-year-old. Hence, some provision has to be made for the extent of a child's participation

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in the proceedings, in order to effectively protect his or her rights in a manner that is in the best interests of the child".

Of importance to our research,

"184. The Commission shares the Inter-American Court's position that judges in the juvenile justice system must take into account the specific conditions of the minor and his or her best interests to decide on the child's participation, as appropriate, in establishing his or her rights. This consideration will seek as much access as possible by the minor to examination of his or her own case.

"185. Here, the Court has observed that the child, because of his or her age or other circumstance, may not be able to critically judge or to reproduce the facts on which he or she is rendering testimony and the consequences of his or her statement, in which case the judge can and must be especially careful when assessing the statement. Obviously, such a statement cannot be regarded as dispositive when made by a person whose age is such that he or she lacks the civil capacity to act, to make a will, or to exercise rights on his or her own.

"186. The Court has also held that "any statement by a minor, if it were indispensable, must be subject to the procedural protection measures that apply to minors, including the possibility of remaining silent, the assistance of legal counsel, and the statement being made before the authority legally empowered to receive it".

"187. With respect to children facing the juvenile justice system, States must ensure that all procedural measures of protection for children are guaranteed, including the possibility of not testifying or remaining silent, until the person charged with the child's defense is assigned to the case. Any possibility that children give declarations tantamount to a confession must be eliminated.

"189. The Commission also concurs with the Committee on the Rights of the Child in the sense that proper exercise of the right to participate in the process means that the child must be informed of the charges and of the process within the juvenile justice system. In the words of the Committee, in order to effectively participate in the proceedings, must be informed not only of the charges but also of the juvenile justice process as such and of the possible measures. Besides, the child needs to comprehend the charges, and possible consequences and penalties, in order to direct the legal representative, to challenge witnesses, to provide an account of events, and to make appropriate decisions about evidence, testimony and the measure(s) to be imposed.

"190. Rule 14(2) of the Beijing Rules provides that the proceedings shall be conducted in an atmosphere of understanding, which allows the child to participate therein and to express himself or herself freely. In the Commission's view, the authorities have an obligation to ensure that the child understands each of the charges being brought against him or her; but it also means that children facing proceedings in the juvenile justice system must be assisted by counsel from the outset in order to be well informed.

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> “191. This means explaining to the child the consequences of being brought before the juvenile justice system, and doing so in linguistic register appropriate to his or her age. It also means that States have an obligation to provide personnel fluent in the child's own language, particularly in the case of indigenous children and children of other cultures. The child therefore has the right to be assisted by an interpreter, at no cost to the child, and persons trained to work with children with special needs.

It is important to mention as well a ruling of the Interamerican Court of Human Rights, Instituto de Reeducación del Menor Vs. Paraguay, in which the Court lays down that, in consonance to articles 2 and 8.1, correlated to articles 19 and 1.1, of the American Convention on Human Rights, there is a duty to adopt specific legislation on rights and legal guarantees and also to organize specialized judicial courts for children alleged or accused of having committed an offense (ICHR 2004), therefore normative and organic specialization (BELOFF 2019).

In this context, specialization must imply, among others, the following elements:

> “(1) first, the possibility of taking measures to treat such children without recourse to judicial proceedings;
> (2) in the event that a judicial proceeding is necessary, this Court shall provide for various measures, such as psychological counselling for the child during the proceedings, control as to the manner in which the child's testimony is taken and regulation of the publicity of the proceedings;
> (3) also have sufficient scope for the exercise of discretion at different stages of trials and at different stages of the administration of justice for children; and
> (4) those exercising such powers should be specially prepared and trained in the human rights of the child and child psychology to avoid any abuse of discretion and to ensure that the measures ordered in each case are appropriate and proportionate”. (ICHR 2004)

Therefore, there is a need to specify how the child will participate in the proceedings.

2.1.3. **EUROPEAN UNION, COUNCIL AND PARLIAMENT**

The European Convention on Human Rights lays down in article 6 the Right to a fair trial that:

1. “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances**,** where publicity would prejudice the interests of justice.
2. “ Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law
   3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   (b) to have adequate time and facilities for the preparation of his defence;
   (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

The European Court of Human Rights in Strasbourg has developed the notion of effective participation of children in juvenile justice, based on article 6(1) of the European Convention.

In T. and V. v. United Kingdom (ECtHR 16 December 1999, Appl. No. 24724/94; Appl. no. 24888/94) the ECtHR considers that ‘it is essential that a child charged with an offense is dealt with in a manner which takes full account of his age, level of maturity and intellectual and emotional capacities, and that steps are taken to promote his ability to understand and participate in the proceedings’. According to the Court, ‘the formality and ritual of the Crown Court must at times have seemed incomprehensible and intimidating for a child of eleven’ (para. 86) and the defendant(s) had been ‘unable to participate effectively in the criminal proceedings against him and was, in consequence, denied a fair hearing (…)’ (para. 89). (ECHR 1999).

In S.C. v. United Kingdom (ECtHR 15 June 2004, Appl. No. 60958/00) the ECtHR gave further details for the notion of the ‘effective participation’ of accused children in criminal justice proceedings:” …) “effective participation” in this context presupposes that the accused has a broad understanding of the nature of the trial process and of what is at stake for him or her, including the significance of any penalty which may be imposed. It means that he or she, if necessary with the assistance of, for example, an interpreter, lawyer, social worker or friend, should be able to understand the general thrust of what is said in court. The defendant should be able to follow what is said by the

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prosecution witnesses and, if represented, to explain to his own lawyers his version of events, point out any statements with which he disagrees and make them aware of any facts which should be put forward in his defence (…).” (ECHR 2004).

As Liefaard, Rap and Bolscher remarked, “the Court explained that article 6 ECHR does not imply that a child defendant should understand every legal detail during the criminal trial: ‘Given the sophistication of modern legal systems, many adults of normal intelligence are unable to fully comprehend all the intricacies and all the exchanges which take place in the courtroom’ (para. 29). It becomes clear from this case that a child defendant should be able to form a general understanding of the nature of the process, the consequences of his appearance and attitude in court and the consequences of a possible sanction or measure. Moreover, in this specific case the Court decided that the defendant should have been tried in a specialised court, with adapted procedures, to have regard for the young age and low level of intellectual maturity of the defendant (para. 35)”. (LIEFAARD, RAP & BOLSCHER 2016, p. 30)

As we will see in our research, important informative material has been developed for children in response to this ruling**.**

The Charter of Fundamental Rights of the European Union also lays down, on article 47, the Right to an effective remedy and to a fair trial (EUROPEAN PARLIAMENT, COUNCIL, COMISSION 2000)**.**

. The European rules for juvenile offenders subject to sanctions or measures are more specific, stating that:

> “13. Any justice system dealing with juveniles shall ensure their effective participation in the proceedings concerning the imposition as well as the implementation of sanctions or measures. Juveniles shall not have fewer legal rights and safeguards than those provided to adult offenders by the general rules of criminal procedure.
> “14. Any justice system dealing with juveniles shall take due account of the rights and responsibilities of the parents and legal guardians and shall as far as possible involve them in the proceedings and the execution of sanctions or measures, except if this is not in the best interests of the juvenile. Where the offender is over the age of majority, the participation of parents and legal guardians is not compulsory. Members of the juveniles’ extended families and the wider community may also be associated with the proceedings where appropriate.” (COUNCIL OF EUROPE 2008).

The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice include the right to participation in the definition itself of what should be considered child-friendly justice:

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"child-friendly justice" refers to justice systems which guarantee the respect and the effective implementation of all children's rights at the highest attainable level, bearing in mind the principles listed below and giving due consideration to the child's level of maturity and understanding and the circumstances of the case. It is, in particular, justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child, respecting the rights of the child including the rights to due process, to participate in and to understand the proceedings, to respect for private and family life and to integrity and dignity" (COUNCIL OF EUROPE 2011)

Of interest to our research are two principles. On the one hand, participation:

"1. The right of all children to be informed about their rights, to be given appropriate ways to access justice and to be consulted and heard in proceedings involving or affecting them should be respected. This includes giving due weight to the children's views bearing in mind their maturity and any communication difficulties they may have in order to make this participation meaningful.
2. Children should be considered and treated as full bearers of rights and should be entitled to exercise all their rights in a manner that takes into account their capacity to form their own views and the circumstances of the case. (COUNCIL OF EUROPE 2011)

In regard to the right to be heard, recital 44 states that Judges should respect the right of children to be heard in all matters that affect them or at least to be heard when they are deemed to have a sufficient understanding of the matters in question. Means used for this purpose should be adapted to the child's level of understanding and ability to communicate and take into account the circumstances of the case. Children should be consulted on the manner in which they wish to be heard.

On the other hand, the Rule of law principle

"1. The rule of law principle should apply fully to children as it does to adults.
2. Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimized or denied under the pretext of the child's best interests. This applies to all judicial and nonjudicial and administrative proceedings.
3. Children should have the right to access appropriate independent and effective complaints mechanisms. (COUNCIL OF EUROPE 2011)

The Guidelines are organized in a linear perspective, before, during and after judicial proceedings. To the interest of our research, during the judicial proceedings, the right to be heard is laid down in the following terms:

"Regarding the Court, article 55 lays down that "before proceedings begin, children should be familiarised with the layout of the court or other facilities and the roles and identities of the officials involved. Language appropriate to children's age and level of understanding should be used (article 56) and when children are heard or interviewed in judicial and non-judicial proceedings and during other interventions, judges and other professionals should interact with them with

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> respect and sensitivity (art. 57). 58. Children should be allowed to be accompanied by their parents or, where appropriate, an adult of their choice, unless a reasoned decision has been made to the contrary in respect of that person. (COUNCIL OF EUROPE 2011)

Finally, the Directive of the European Parliament and of the Council on Procedural Safeguards for Children Suspected or Accused in Criminal Proceedings (EUROPEAN PARLIAMENT & COUNCIL OF EUROPE 2016).

In article 9, the Directive lays down that Member States shall ensure that questioning of children by police or other law enforcement authorities during the criminal proceedings is audiovisually recorded where this is proportionate to the circumstances of the case, taking into account, inter alia, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration.

In the initial considerations, it is stated that the Directive does not require Member States to make audiovisual recordings of the questioning of children by a judge or a court.

The right to privacy is ensured in article 14, laying down that Member States shall either provide that court hearings involving children are usually held in the absence of the public, or allow courts or judges to decide to hold such hearings in the absence of the public, and that the records referred to in Article 9 are not publicly disseminated.

Children have the right to be accompanied by the holder of parental responsibility during the proceedings according to article 15 or by another appropriate adult who is nominated by the child and accepted as such by the competent authority where the presence of the holder of parental responsibility accompanying the child during court hearings would be contrary to the child's best interests; is not possible because, after reasonable efforts have been made, no holder of parental responsibility can be reached or his or her identity is unknown; or would, on the basis of objective and factual circumstances, substantially jeopardise the criminal proceedings" (EUROPEAN PARLIAMENT & COUNCIL OF EUROPE 2016).

Regarding the Right of children to appear in person at, and participate in their trial, article 16 lays down that**:**

> "Member States shall ensure that children have the right to be present at their trial and shall take all necessary measures to enable them to participate effectively in the trial, including by giving them the opportunity to be heard and to express their views. 2. Member States shall ensure that

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children who were not present at their trial have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in Directive (EU) 2016/343."

Training is also of capital importance according to article 20, and Member States shall take appropriate measures to ensure that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field, effective access to specific training, or both. In the initial considerations, it is included that judges and prosecutors who deal with criminal proceedings involving children have specific competence in that field or have effective access to specific training, in particular with regard to children's rights, appropriate questioning techniques, child psychology, and communication in a language adapted to children.

According to the initial considerations of this Directive, information should be procedural and sequential, not only about general aspects of the conduct of the proceedings, but also, when one step is finished, a brief explanation about the next procedural steps in the proceedings should be given (recital 19).

2.2.AIMJF´S GUIDELINES ON CHILDREN IN CONTACT WITH THE JUSTICE SYSTEM

AIMJF has also developed its own Guidelines on Children in Contact with the Justice System, following the same linear perspective adopted in the European Guidelines (AIMJF 2017).

AIMJF´s guidelines prefer the term child focused justice instead of child-friendly justice, which would be appropriate in matters such as civil, child protection, immigration and various other fields, but not in criminal matters, where it is likely to strengthen the unfair and unfounded stereotype that judges who hear cases of children in conflict with the law are too friendly and soft on crime. "Another alternative might be child adapted justice. However, this expression might carry the message that "real" justice is adult justice, of which justice for children would only be an adaptation. The intention is rather to refer to elements of the justice system that have their own specific nature, which they derive from focusing on who and what children are. Hence the choice that was made to refer to child focussed justice in the present guidelines".

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The guidelines also emphasize the right of children to participate, provided with all necessary information. When decisions or rulings are made, they should be explained to the children in a language that they can understand, particularly when they conflict with their expressed wishes or views. The context in which children exercise their right to participate has to be enabling and encouraging, so that they can be sure that the adults who are responsible for the proceedings are willing to listen**,** and seriously consider the views that they wish to express.

Regarding child participation in juvenile justice, the guidelines recall the importance of legal guarantees and fair proceedings to overcome welfarist approaches based solely on the best interests of the child, which could not allow minimization or denial of any element of due process**.**

It is the respect for the child, treated in a manner consistent with his or her sense of dignity and worth, thus reinforcing his or her respect for the rights of others, that will promote an educative experience. Respect for others must be taught through example. This educative role applies not only to officials who work with children in conflict with the law, but to all justice officials with whom children are in contact.

Protection against self-incrimination is emphasized by the guidelines as one of the implications of the presumption of innocence, so children in conflict with the law – like adults – cannot be compelled to give testimony or to confess guilt. A consequence of the presumption of innocence is that the responsibility for proving a child's culpability lies with the prosecutor. Children cannot be compelled to help the prosecutor in establishing their own guilt. This implies, amongst other things, that children have the right to enter a plea of not guilty, even in cases where they know that they have committed the offense.

Information on the charges is considered a basic requirement for enabling children to prepare their defense and a prerequisite for exercising their right to participate in the proceedings.

Participation in the proceeding shall be considered on the right to examine adverse witnesses**,** as well as to obtain the participation and examination of witnesses on their behalf.

Another important remark of the Guidelines is that children should to be treated as children and therefore judges, professionals and others who interact with children

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should do so with sensitivity and respect, expressing consideration for the children's age, their special needs, their levels of maturity and understanding, and any communication difficulties they may have. Adults who interact with children should ensure that children understand the proceedings and the information that is relevant for them. It is also a judicial responsibility that the child understands the relevant documents. The provision of the information to the child's parents should not be an alternative to communicating this information to the child: both should receive the information in a way that they can understand it.

Preparation procedures such as familiarizing the child with the court environment and proceedings, both with the layout and the functioning of the court or other facilities, with the role and identities of the officials involved, as well as with the nature of the proceedings.

And finally, but not of less importance, the Guidelines stress that solemnity of the justice environment may prove rather intimidating and oppressive for children. Court facilities and environment where cases involving children are heard on a regular basis should be designed so as to keep formal solemnity to a strict minimum.

2.3. THE EVOLUTION OF LEGAL STANDARDS AND THE BROAD RANGE OF INSTITUTIONAL IMPROVEMENTS RELATED TO CHILD PARTICIPATION

When analyzing international and regional standards, and also AIMJF´s guidelines, it is interesting to note how the generic value of an atmosphere of understanding, that should preside children´s participation in juvenile justice to promote their sense of dignity and worth , evolved from the conditions to grant fundamental rights to children, especially those that could provide them conditions to understand the proceedings and the measures that could be applied and to give effectiveness to legal and procedural guarantees, to a requirement of personal and institutional sensitivity and respect by legal professionals, with a more comprehensive approach.

This continuous evolution, emphasizing new areas of attention, shows how broad are the areas subject to scrutiny in juvenile justice to provide an adequate attention to children.

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This scenario also shows how important is the comparative analysis of each of these elements to achieve a better understanding of conflicting values, structures and practices affecting children**,** in order to raise awareness both on society, and particularly on children, but also among legal professionals, especially judges and magistrates, in order to consider new possibilities, strategies and methodological approaches.

3. CRITERIA FOR ORGANIZING JURISDICTION ON THE GROUNDS OF PERSONAL AND SUBJECT MATTER INVOLVING JUVENILE JUSTICE CASES

3.1. SPECIALIZATION AND JURISDICTION´S ORGANIZATION

In order to understand the context of child participation in juvenile justice, the research asked the participants to explain the name of the Court and if the court is or not specialized.

According to article 40, 3, of the CRC, States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law**.** General comment 24 explains that, because children differ from adults in their physical and psychological development, such differences constitute the basis for the recognition of lesser culpability, and for a separate system with a differentiated, individualized approach. Exposure to the criminal justice system has been demonstrated to cause harm to children, limiting their chances of becoming responsible adults.

Therefore, the Committee understands that a comprehensive child justice system requires the establishment of specialized units within the police, the judiciary, the court system and the prosecutor's office, as well as specialized defenders or other representatives who provide legal or other appropriate assistance to the child. The Committee recommends as well that States parties establish child justice courts either as separate units or as part of existing courts. Where that is not feasible for practical reasons, States parties should ensure the appointment of specialized judges for dealing with cases concerning child justice (UNITED NATIONS 2019).

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The research shows a prevalence of specialized courts, 24 countries out of 55 participants, although specialization may not be the rule in the country, being restricted sometimes to bigger cities, to severe cases or some procedural phases.

The second more common situation is a joint jurisdiction with child protection matters in 15 countries. If considered those countries with joint jurisdiction with family courts (that in these cases have also jurisdiction on child protection matters), the number raises to 20.

Some common traits identified in this group are the Portuguese speaking countries (Portugal, Brazil, Cape Verde and Guinea-Bissau), French speaking countries (France, Luxembourg, Canada-Québec, Lebanon), Middle-East/Arabic countries (Egypt, Iraq, Lebanon and Turkey), Asian countries (China, Japan, Nepal) and some Latin-American countries (Bolivia, Brazil, Dominican Republic, Ecuador and Puerto Rico). Singular in this group is Uganda.

It is worth noting that this is a recent trend in Puerto Rico, where, since 2000, has adopted a "one family, one judge" jurisdiction criterion, which is also adopted in France and Portugal, among others.

It is also interesting to note some influence in Bolivia, Dominican Republic and Ecuador of the Brazilian model to structure the courts, which was one of the first countries in Latin-American to change its law after the Convention and was influential in the remaining countries of the region (BELOFF 1999). However, it is important to mention that, in this country, at that time (1990), the welfarist model was very influential within the Judiciary, restraining the possibilities to change this structure.

The third group in importance, with 10 countries, is the less specialized, where juvenile justice cases are tried in courts with general jurisdiction, although this situation occurs in many countries**,** in smaller cities. Some of these countries have also small population. Some have no special jurisdiction at all.

Finally, the last group congregate**s** those countries where juvenile justice is dealt in criminal courts. Some of these have special departments or judges, such as Austria, but in other children are dealt in regular criminal courts, like in Cuba.

In the chart below it is possible to see the distribution of these countries.

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Specialized jurisdiction	Joint jurisdiction with child protection	Joint jurisdiction with family courts	Joint jurisdiction with criminal courts	General jurisdiction	Others
Argentina	Bolivia (in the capital)	Cape Verde	Austria (Since 2003 there are special departments in all the courts with specially trained judges, but they only have jurisdiction in criminal matters)	Bolivia (in smaller cities)	Egypt (additional jurisdiction on three types of cases committed by adults against children, namely: negligence which leads to endangering the child; inciting, preparing, assisting a child to commit a crime; the failure of child's parents if failed to bring the accused child to court as served
Bénin	Brazil (including collective actions to provide social, economic and cultural rights for children)	Ecuador (family and protection matters as well)	Bulgaria (in bigger cities)	Brazil (in smaller cities)	
Brazil (in bigger cities, normally State capitals)	Canada - Québec	Guinea-Bissau (and also labor)	Cuba (Youth just receive mitigating responses within the regular criminal court)	Bulgaria (in smaller cities)	
Colombia	China	Japan	Nicaragua (domestic violence only)	Costa Rica (in smaller cities, with domestic violence and family matters)	
Costa Rica (in bigger cities)	Dominican Republic	Portugal	Sao Tome and Principe	Denmark	
Croatia	Egypt		Uruguay	East Timor (no special jurisdiction, children treated as adults)	
El Salvador	France (in case of misdemeanor)			Georgia	
England & Wales	Guatemala			Kenya	

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France (in more severe cases: felonies and crimes)	Iraq-Kurdistan			North-Macedonia	
Germany	Lebanon			Sweden	
Honduras (in the capital and another big city)	Luxembourg			Ukraine	
India	Nepal				
Mauritania	Puerto Rico (since 2000)				
Mexico	Turkey				
Mozambique (in bigger cities. In the remaining, general jurisdiction	Uganda				
Netherlands					
New Zealand					
Panamá					
Paraguay (just for initial and intermediate phases, not for sentence)					
Samoa					
Serbia					
South Africa					
Spain					
Switzerland					
Venezuela					

3.2.MINIMUM AGE OF CRIMINAL RESPONSIBILITY

Regarding the minimum age of criminal responsibility, the Convention lays down in article 40, 3, the duty to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.

According to the Beijing Rules, rule 4.1, in those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.

In the General Comment 24, the Committee on the Rights of the Child states that "documented evidence in the fields of child development and neuroscience indicates that maturity and the capacity for abstract reasoning is still evolving in children aged 12 to 13 years due to the fact that their frontal cortex is still developing. Therefore, they are

unlikely to understand the impact of their actions or to comprehend criminal proceedings. They are also affected by their entry into adolescence”. Therefore, the Committee encourages States parties “to take note of recent scientific findings, and to increase their minimum age accordingly, to at least 14 years of age. Moreover, the developmental and neuroscience evidence indicates that adolescent brains continue to mature even beyond the teenage years, affecting certain kinds of decision-making. Therefore, the Committee commends States parties that have a higher minimum age, for instance 15 or 16 years of age, and urges States parties not to reduce the minimum age of criminal responsibility under any circumstances, in accordance with article 41 of the Convention.” (UNITED NATIONS 2019).

The research shows that still a majority of the countries does not follow yet that recommendation, by establishing a lower minimum age of criminal responsibility than 14 years. In 17 countries, the minimum age is 12 years, and in 7 it is 13 years. It is worth noting that in Panama, in a reverse sense from what the Committee suggests, the minimum age was reduced from 14 to 12.

In 10 countries the minimum age is still lower that 12, as low as seven years in India, Lebanon and Mauritania. In Luxembourg, due to the fact that there is not a youth penal approach, there is no minimum age, because all measures are considered to be protective.

In 15 countries the minimum age is 14 years.

In 2 countries the minimum age is 15 and in 6 countries it is 16 years.

Apparently, there is no special economic developmental conditions, cultural or regional trends to explain these differences, depending more on political or local circumstances.

However, in 6 countries we can see exceptions to the minimum age, which are not approved by the Committee on the Rights of the Child.

General Comment 24 states that “the Committee is concerned about practices that permit the use of a lower minimum age of criminal responsibility in cases where, for example, the child is accused of committing a serious offence. Such practices are usually created to respond to public pressure and are not based on a rational understanding of children’s development. The Committee strongly recommends that States parties abolish

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such approaches and set one standardized age below which children cannot be held responsible in criminal law, without exception." (UNITED NATIONS 2019).

This is the case of China, the Netherlands, New Zealand and Ukraine.

Another situation also observed in our research is the prevision of two minimum ages. According to the Committee, on General Comment 24, "several States parties apply two minimum ages of criminal responsibility (for example, 7 and 14 years), with a presumption that a child who is at or above the lower age but below the higher age lacks criminal responsibility unless sufficient maturity is demonstrated. Initially devised as a protective system, it has not proved so in practice. Although there is some support for the idea of individualized assessment of criminal responsibility, the Committee has observed that this leaves much to the discretion of the court and results in discriminatory practices. States are urged to set one appropriate minimum age and to ensure that such legal reform does not result in a retrogressive position regarding the minimum age of criminal responsibility". (UNITED NATIONS 2019).

We can see this situation in Bulgaria and France, for instance.

For a more detailed comprehension of the situation of the countries participating in this research, check the chart below.

Less than 12	**12**	**13**	**14**	**15**	**16**
England & Wales (10)	Brazil	Benin	Austria	Denmark	Argentina
India (7)	Canada - Québec	Dominican Republic	Bolivia	Sweden	China
Iraq-Kurdistan (11)	Cape Verde	France (but it is possible to demonstrate that a child below 13 who has committed a crime has sufficient discernment)	Bulgaria (only if they have the required maturity in that regard /usually established by the court through expert-witness - psychological expertise)		Cuba
Lebanon (7)	Costa Rica	Guatemala	China (in case of intentional homicide, intentional injury causing serious injury or death, rape, robbery, drug trafficking, arson, explosion, or throwing dangerous		East Timor

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			substances shall bear criminal responsibility		
Luxembourg (there is no juvenile justice. Only protective measures may be imposed to children of all ages)	China (between 12 and 14, in 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, with a lighter or mitigated punishment)	Nicaragua	Colombia		Guinea-Bissau
Mauritania (7)	Ecuador	Puerto Rico	Croatia		Mozambique
Nepal (10)	Egypt	Uruguay	Georgia		
New Zealand (10) Children between 10 and 11 can only be charged of murder or manslaughter	Honduras		Germany		
Samoa (10)	Kenya		Japan		
Switzerland (10)	Mexico		North Macedonia		
	Netherlands (but investigative measures can be imposed to children below 12 in case of offense)		Paraguay		
	Panamá (there was a reduction in 2010, from 14 to 12)		Serbia		
	Portugal		Spain		
	Sao Tome and Principe		Ukraine (for certain types of crimes), otherwise it is 16		

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	South Africa		Venezuela		
	Turkey				
	Uganda				

3.3. THE EXTENSION OF YOUTH COURT JURISDICTION: PERSONAL AND SUBJECT MATTER SPECIAL CIRCUMSTANCES

In consonance to the Convention on the Rights of the Child, children are every person below 18 years.

Although a vast majority of the countries respect this age (48 countries), this is not the case in seven of them. Among these, five have a lower age limit and two a higher age limit.

It is important to register that the Committee commends States parties that allow the application of the child justice system to persons aged 18 and older whether as a general rule or by way of exception. This approach is "in keeping with the developmental and neuroscience evidence that shows that brain development continues into the early twenties" (UNITED NATIONS 2019). This is the case of Japan and North Macedonia.

It is easily identifiable that among the countries with lower maximum age of jurisdiction are four Portuguese speaking countries, where the jurisdiction of specialized courts ceases when the child reaches the age of 16. Although Angola has not participated in this research, this country follows the same regime. In the remaining three Portuguese speaking countries participating in the research the age is 18 (Brazil, Guinea-Bissau and Mozambique). Therefore, this is a controversial issue among these countries, especially because there is a strong movement in Brazil trying to reduce the age of penal majority to 16 years of age.

There is no clear relation between the other countries that fall apart from the generic rule, except to the fact that both East Timor and North Macedonia are recently formed States.

In the table below you can see the list of the countries and the maximum age for special jurisdiction.

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16	17	18	19 and more
Cape Verde	Samoa	Argentina	Japan (20)
East Timor		Austria	North Macedonia (21)
Portugal		Benin	
Sao Tome and Principe		Bolivia	
		Brazil	
		Bulgaria	
		Canada - Québec	
		China	
		Colombia	
		Costa Rica	
		Croatia	
		Cuba	
		Denmark	
		Dominican Republic	
		Ecuador	
		Egypt	
		El Salvador	
		England & Wales	
		France	
		Georgia	
		Germany	
		Guatemala	
		Guinea-Bissau	
		Honduras	
		India	
		Iraq-Kurdistan	
		Kenya	
		Lebanon	
		Luxembourg	
		Mauritania	
		Mexico	
		Mozambique	
		Nepal	
		Netherlands	
		New Zealand	
		Nicaragua	
		Panama	
		Paraguay	
		Puerto Rico	
		Serbia	
		South Africa	
		Spain	
		Sweden	
		Switzerland	
		Turkey	
		Uganda	
		Ukraine	
		Uruguay	
		Venezuela	

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In regard to the maintenance of jurisdiction to children who have reached the age of majority after committing the offense during childhood, the Committee also stresses that the child justice system should apply to all children above the minimum age of criminal responsibility but below the age of 18 years at the time of the commission of the offense.

However, this is not the case in many countries, where children below the age of criminal majority are in some special circumstances tried as adults. This happens in almost half of the countries participating in this research: 20 countries.

Among these are those already mentioned where the age of criminal majority is always below the age of 18, in particular Portuguese speaking countries, with the sole exception of Brazil.

The remaining situation are due either to the commitment of serious crimes, including terrorism or involvement in criminal organizations, or to the joint commission of the offense with an adult.

The Committee on the Rights of the Child, in General Comment 24, also recommends to States parties to consider providing for procedural rules that allow the child justice system to be applied in respect of all the offenses in cases where a young person commits several offenses, some occurring before and some after the age of 18 years when there are reasonable grounds to do so (UNITED NATIONS 2019).

In consonance to the same General Comment, in cases where a child commits an offense together with one or more adults, the rules of the child justice system should also be applied to the child, whether they are tried jointly or separately.

The table below shows the situation among the participants.

No possibility of treating a child under 18 as an adult	**Possibility of treating a child under 18 as an adult**
Argentina	Bulgaria (if the juvenile offender **is** charged with a crime committed together with an adult, the trial will be held following the procedural rules applicable for adults, but substantive law for juveniles will be applied)
Austria	Canada – Québec (if the child is over 14 and when the offense allows a prison sentence of more than 2 years for an adult.
Bénin	Cape Verde. above 16, child is treated as an adult, but with a mitigated sanction
Bolivia	East Timor (there is no specific legislation for youth, who receive the same treatment as an adult)
Brazil	Egypt (when the child is above 15 years old, has **c**ommitted a felony under penal law, and the felony was committed with an adult accomplice

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China	El Salvador (recent legislation on the war against the pandillas – organized criminal groups – allow harsher measures, the creation of a mixt court, composed by a criminal and a juvenile court judge)
Colombia	France (it is possible for children between 16-18 to exclude the mitigating excuse due to minority and impose the maximum conviction sentence for an adult (30 years)
Costa Rica	Guinea-Bissau (when emancipated)
Croatia	India (child who has completed or is above the age of 16 years and who has committed a heinous offense (those offenses for which the minimum punishment is seven years or more) can be treated as adult.
Cuba	Luxembourg (in case of children aged 16 and more who have committed serious offenses and upon request of prosecution and allowance of juvenile judge
Denmark	Mauritania (in case of terrorism)
Dominican Republic	Mozambique (in case of serious offenses committed by children over 16 years)
Ecuador	Nepal
England & Wales (in terms of sentencing options)	Netherlands (between 16-17, in case of serious offenses
Georgia	Portugal (above 16 children are treated as adults)
Germany	New Zealand (17-years-olds charged with certain serious offenses
Guatemala	Puerto Rico (in case of murder)
Honduras	Samoa (all above 17 are dealt in district courts; if the child is charged with an offense which attracts life imprisonment as well)
Iraq-Kurdistan	Sweden (only in the enforcement of care provisions, a child above 15 may waive parental consent
Japan	Sao Tome and Principe (above 16 years children are treated as adults)
Kenya	
Lebanon	
Mexico	
Nepal	
Nicaragua	
North Macedonia	
Panama	
Paraguay	
Serbia	
South Africa	
Spain	
Switzerland	
Turkey	
Uganda	
Ukraine	
Uruguay	
Venezuela	

Child justice systems should also extend protection to children who are below the age of 18 at the time of the commission of the offense but who turn 18 during the trial or sentencing process, according to the General Comment 24.

The research shows that the criterion of age at the time of the commission of the offense is in fact the prevailing situation in the world in 48 countries, including those where the age of penal majority is lower than 18.

Among the exceptional cases, there is no clear rule in two of them. In the remaining, the criterion is the age at the time the child is charged (Bulgaria and New Zealand).

The table below gives a picture of the situation.

Maintenance of jurisdiction at the time of the judgement, if the offense was committed before the age of 18	**No maintenance of jurisdiction at the time of the judgement, if the offense was committed before the age of 18**	**No maintenance of jurisdiction depends on the age the offender was charged, even if committed before the age of 18**
Argentina	Guinea-Bissau	Bulgaria (only procedural aspects, not substantive law)
Austria	Nepal (there is no maximum age limit and no uniform practice on how to treat the situation)	New Zealand (if charged when reaches 19, the child is tried in a regular criminal court, with mitigating factors
Bénin		
Bolivia		
Brazil (until 21 years of age)		
Canada - Québec		
Cape Verde – if the offense is committed before the child reaches 16 years old, until 21 years old		
China (until 20 years old)		
Colombia		
Costa Rica (until 25 years old)		
Croatia (until 23 years old)		
Cuba		
Denmark		
Dominican Republic		
Ecuador		
Egypt		
El Salvador		
England & Wales		
France		
Georgia		
Germany		
Guatemala		
Honduras		
India		
Iraq-Kurdistan		
Japan		
Kenya		
Lebanon (until 21 years old)		
Luxembourg		
Mauritania		

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Mexico		
Mozambique		
Netherlands		
Nicaragua		
North Macedonia (until 27 years old)		
Panama		
Paraguay		
Portugal (if the act is committed before the child is 16, then tried in a regular criminal court)		
Puerto Rico (but prosecution may plea the court for waiving the special jurisdiction)		
Samoa (if the offense is committed until the child reaches 17)		
São Tomé and Principe (if the act is committed before the child is 16, then tried in a regular criminal court)		
Serbia		
South Africa		
Spain		
Sweden		
Switzerland		
Turkey		
Uganda		
Ukraine (general court, but the mitigation due to age persists)		
Uruguay		
Venezuela		

3.4.DIFFERENCES WITH AN IMPACT ON MEASURES OR PROCEDURES

The majority of the participant countries mentioned the existence of differences, mainly according to age, but also on the severity of the offense, on how to adjudicate the cases and in many situations on how to proceed, with a clear impact on the context for participation.

In 21 countries there are differences with an impact on the measures, but the procedure is the same.

Those differences regarding the possibility of applying a harsher measure in case of elder children could represent a concern on proportionality. However, it is worth mentioning that most of these countries have a low minimum age of criminal responsibility, below the level recommended by the Committee.

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The countries where the impact is on the procedure have different profiles. There are some where a higher autonomy is granted to children, becoming unnecessary familial accompaniment, like in Germany or Switzerland. There are some other where differences were settled to justify an exceptional procedure geared both to impact children below the minimum age of criminal responsibility or to exclude children from the special jurisdiction of youth courts and allowing a trial in a regular adult criminal court.

No differences according to the age or other criteria	**Differences based on the age when charged**	**Differences with an impact on the measures**	**Differences on measures and procedures**
Austria	Bulgaria	Colombia (deprivation of liberty is allowed for children between 16-18 when the corresponding sentence prison for adults should be over six years; deprivation of liberty is also allowed in cases of murder, extorsion, rape)	Argentina (in case of serious offenses, the cases are tried by a collegiate, not a single judge. Children below MACR who commit serious crimes may receive a security measure)
Benin		Costa Rica (the procedure is the same, but the measures are different if the child is between 12 and 15 in comparison to those between 15 and 18)	France (13 is the MACR, 16, harsher measures and possibility of excluding the mitigating treatment due to minority)
Bolivia		Dominican Republic (time for deprivation of liberty between 13-15 is shorter than for children between 15-18)	Germany (involvement of parents only when minor at the time of procedure)
Brazil		Ecuador (when the child reaches 14, it is possible to impose harsher measures)	New Zealand÷ (child offenders (12-14) may be dealt with in the Family Court, rather than through the criminal justice system in the Youth Court. *doli incapax* presumption applies to children in the Youth Court.)
Canada - Québec		Egypt (the sanctions that can be applied to the child are different according to the age)	Switzerland (some cantons consider that elder children can exercise their rights on their own and are summoned directly. Sanctions differ according to the age of the child: 10-15, above 15 and above 16 are the age groups)
Croatia		El Salvador (two ranges, 12-16, and 16-18, with impact on the measures and the nature of the responsibility)	Turkey (between 12-15 there is a capacity assessment to determine

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			whether there is criminal responsibility)
Cuba		Georgia (there are three age ranges; 14-16; 16-18 and 18-21, with an increase in the severity of sanctions)	Ukraine (possibility of criminal responsibility prior to the general age of 16 in case of serious offenses)
Denmark		Guatemala (there are two age ranges: 13-15 and 15-18, who may receive harsher sanctions)	
East Timor		Honduras (maturity according to age is considered for a different treatment)	
England & Wales		India	
Mauritania		Iraq-Kurdistan (when the child reaches 15 may receive harsher sanctions)	
North Macedonia		Japan (child between 18 and 19)	
Paraguay		Lebanon (a child between 7-12 cannot be arrested or detained)	
Portugal		Luxembourg (in case of children aged 16 who commit serious offenses)	
Puerto Rico		Mexico (three groups of ages: 12-14; 14-16 and 16-18, with different kind of applicable measures)	
Samoa		Nepal (The first group is 10 years old and above and below 14 years old – maximum punishment up to 6 months only; second group is 14 and above and below 16 – half of the punishment that could be imposed to the adults; third group is 16 or above and below 18 – two third of the punishment that could be imposed to the adults)	
São Tomé and Principe		Netherlands: (not regarding the procedure, but more severe sanctions can be imposed to youth between 16-18)	
South Africa		Nicaragua (just the kind of measures. children between 13-15 cannot be deprived of liberty)	
Sweden		Panama (two groups of children: 12-14 may receive only re educational measures)	
Uruguay		Serbia (three groups of ages: 14-16, 16-18 and 18-21, with the possibility of imposing different kind of measures	
Venezuela (for adolescents between 12-14, special protection measures may be imposed)		Spain (differences regarding the rules and length of the measures for children between 14-15 and 16-17)	

4. PREPARATION FOR CHILD´S PARTICIPATION

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According to General Comment 12, the Committee considers preparation as one of the fundamental aspects of the right to be heard.

Regarding participation in juvenile justice, we are considering in this section how the child is called to appear and the information about the charge is delivered, and also if informative material is especially prepared for children.

We are also considering the impact of some administrative procedures and conditions to exercise the right to be heard, regarding cloth restrictions, appropriate waiting areas and, in case of children deprived of liberty, especially those in remand, transportation and restraint measures.

4.1. THE NATURE AND QUALITY OF THE CALL TO APPEAR

According to Article 14, 3, (a), of the International Covenant on Civil and Political Rights, everyone charged with a criminal offense shall be entitled to be informed promptly and in detail in a language which he understands the nature and cause of the charge against him.

The same right is laid down on article 40, 2, b, of the Convention on the Rights of the Child, specifying that the child has the right not only ~~to~~ (ii) "to be informed promptly and directly of the charges against him or her", but also, when appropriate, "through his or her parents or legal guardians".

General Comment 24 emphasizes that the child is to be primarily directly informed and where appropriate through his or her parent or guardian of the charges brought against him or her. The Committee also stresses that notification of parents should not be neglected on the grounds of convenience or resources.

All countries mentioned that children are summoned to participate in the proceedings. Only Croatia mentioned that children are invited, and not summoned, although it was cleared that participation was mandatory.

However, when asked about how this summon occurs, differences became evident.

In the majority of the countries, in 33 of the participants, the summon is made jointly with the parents.

In 20 countries, children are separately summoned.

This is an important question, because legal standards, on the one hand, lay stress on the entitlement of parents or the guardian to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile (Beijing Rules, article 15).

On the other hand, the parents and guardians may be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile**.**

In fact, in General Comment 24, the Committee recognizes that many children are informally living with relatives who are neither parents nor legal guardians, and that laws should be adapted to allow genuine caregivers to assist children in proceedings, if parents are unavailable (UNITED NATIONS 2019). The European Guidelines on Child-Friendly Justice stress the right of the child to be accompanied by an adult of his/her choice (COUNCIL OF EUROPE 2011).

Therefore, separate summons may preserve such right of the child. The European Directives on procedural safeguards explicitly recommends in its initial considerations that summoning children in person is considered an incentive to their participation (EUROPEAN PARLIAMENT 2016).

It is also worth mentioning those States where, due to reaching certain age, children are entitled to waive the right to accompaniment by parents and guardians. This is the case of Panama and Switzerland.

The research has not dealt with procedural measures to ascertain whether those children are well informed about the consequences and the procedural impact on waiving those rights. It is known that, due to the implications of such waiver of rights, some countries realize further competence assessments to exercise such act in order to confirm its validity (GRISSO 2013).

The research has not dealt either with the adopted steps to check by whom children would prefer to be accompanied.

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As one can see in the table below, there is no clear shared characteristics of the countries who adopt one or the other proceeding.

Separate invitation/summon	Joint invitation/summon with parents	No generic rule
Austria	Argentina	Switzerland (some cantons summon only the child, with a copy to the parents, for considering them able to exercise their rights by their own)
Bulgaria	Benin	
Canada - Québec	Bolivia	
Cape Verde	Brazil	
Costa Rica	Colombia	
East Timor	Croatia	
England & Wales	China	
France	Cuba	
Germany	Dominican Republic	
India	Ecuador	
Iraq-Kurdistan	Egypt	
Japan	El Salvador	
Luxembourg	Georgia	
Netherlands	Guatemala	
New Zealand	Guinea-Bissau	
Portugal	Honduras	
Samoa	Kenya	
Sweden	Lebanon	
Turkey	Mexico	
Venezuela	Mozambique	
	Nepal	
	Nicaragua	
	North Macedonia	
	Panama (for children below 16. Above 16 the law recognizes the right of the child to waive parental accompaniment)	
	Paraguay	
	Puerto Rico	
	São Tomé and Principe	
	Serbia	
	Spain	
	South Africa	
	Uganda (in theory)	
	Ukraine	
	Uruguay (if they live together)	

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Regarding the quality of this initial call to appear, the vast majority of the countries expressed the inexistence of any kind of adaptation of their way to summon children.

Only three countries mentioned having a child-friendly summon procedure: China, Georgia and Serbia.

In two countries, some experimental initiatives were referred, but not as a spread practice in the whole country. This was the situation in El Salvador and Switzerland.

However, such documents were not shared, avoiding both a deeper analysis and also the diffusion of such a good practice. Some countries have shared their models of child summoning and, in spite of not been adequate to children, some of them provide extensive detail on rights and procedures, such as the French one.

In General Comment 24, the Committee on the Rights of the Child clearly expresses that "authorities should ensure that the child understands the charges, options and processes. Providing the child with an official document is insufficient and an oral explanation is necessary. Although children should be assisted in understanding any document by a parent or appropriate adult, authorities should not leave the explanation of the charges to such persons" (UNITED NATIONS 2019).

On the Report of the United Nations High Commissioner for Human Rights on access to Justice for Children, it is emphasized that "the complexity of justice systems makes them difficult to understand for children. Children are often unaware of their rights and the existence of services, lacking information about where to go and whom to call to benefit from advice and assistance" (UNITED NATIONS 2013).

4.2. INFORMATIVE MATERIAL FOR CHILDREN

Information is considered as a core element of the right to participation and a necessary step to prepare the child for his/her involvement in the any proceeding. In its General comment 12 on the right to participation, the Committee stresses that "those responsible for hearing the child have to ensure that the child is informed about her or his right to express her or his opinion in all matters affecting the child and, in particular, in

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any judicial and administrative decision-making processes, and about the impact that his or her expressed views will have on the outcome. The child must, furthermore, receive information about the option of either communicating directly or through a representative. She or he must be aware of the possible consequences of this choice. The decision maker must adequately prepare the child before the hearing, providing explanations as to how, when and where the hearing will take place and who the participants will be, and has to take account of the views of the child in this regard" (UNITED NATIONS 2009).

Some of the presiding values of participation are transparence and information and therefore children must be provided with full, accessible, diversity-sensitive and age-appropriate information about their right to express their views freely and their views to be given due weight, and how this participation will take place, its scope, purpose and potential impact.

On the Report of the United Nations High Commissioner for Human Rights on access to Justice for Children, it is emphasized that children should be empowered with child-sensitive information and expressed that "most countries that contributed information to the present report indicated that dedicated arrangements for the dissemination of adequate information to children are in place. These arrangements include, *inter alia*, (a) information on websites and online counselling services; (b) initiatives to raise awareness, such as human rights education, discussions and presentations in schools, organization of court visits and moot courts; (c) the publication and dissemination of brochures, leaflets, posters in child-sensitive language and adapted to children's age in police stations, courts, and victim support services; (d) the establishment of help-lines that provide free, private and confidential 24-hour telephone counselling for children, as well as other creative initiatives" (UNITED NATIONS 2013).

The report also stresses on the importance of available information to parents, teachers and people working with and for children, explaining that, "in a survey conducted by Child Rights Connect with 310 children from 24 countries on their views and opinions on accessing justice, children overwhelmingly stated that the main source of information about remedies would come from their parents or family members. The vast majority of children also said that they would want their parents to help them in obtaining access to justice because they trusted them. The survey also showed a

preference for information to be sent directly to them as well as for information to be provided at school and online. In that regard, the essential role of civil society organizations in awareness-raising, providing information and promoting public discussion on children's rights has been highlighted by a number of States."

AIMJF´s guidelines point out that this information should be delivered since their very first involvement with the justice system or other authorities and on various issues, such as, amongst others, the rights of the child and ways to exercise and protect them; the court system; the proceedings (in court and out of court), including the place and role of the child, as well as the possible outcomes and consequences of the proceedings on him or her; the charges, if any, laid against the child; availability of services which can provide help and support; the availability of review of decisions. (AIMJF 2017)

Importantly, the European Directives on procedural safeguards for children who are suspects or accused persons in criminal proceedings make also an important remark that this information should be recalled at every step, explaining what will occur in the next phase of the proceeding and about the role of the authorities involved. The information to be given should depend on the circumstances of the case (EUROPEAN PARLIAMENT 2016).

As a consequence of the ECHR ruling in T and V v UK (ECHR 1999), the Lord Chief Justice issued a Practice Direction detailing steps to minimize the formality of young defendants' Crown Court trials and to enhance their participation. A study has been made and found that:

> "• disinterest, hostility and bravado often mask developmental delays, literacy and communication problems, attention deficits, anxiety, depression and substance abuse
>
> • a high proportion of young defendants have significant primary (speech and comprehension) and secondary (literacy and numeracy) communication difficulties
>
> • young defendants, including repeat offenders, are often confused about what happens in court and at other stages in the legal process
>
> • many can take in information about the legal process only in 'bite size chunks' before each stage

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• many do not think they are entitled to be heard in court

• many actively disengage from what is going on in court

• many do not understand the decisions of the court before they leave the courtroom" (PLOTNIKOFF & WOOLFSON 2002, pp. 5-6)

The same authors summarized researches from the United States, Canada, Australia and South Africa demonstrating the problems common across jurisdictions of young defendants' limited understanding of the criminal justice process. Relevant findings include the following:

"• children's knowledge of criminal courts is 'extremely peripheral and often misleading'. Juvenile offenders do not understand what a trial entailed and confuse it with other procedures, including imprisonment

"• the presumption that persistent young offenders are more likely to understand legal matters is not borne out. Youths involved in the legal system may even demonstrate poorer understanding of legal concepts than those with no such experience

"• competence to instruct the defence lawyer does not lie solely with the young client but in the interaction between lawyer and client: 'fitness, to a considerable degree, can be taught'

"• defendants' satisfaction with their legal representation and their ability to 'have their say' relate strongly to their judgment of fairness of the court process and the outcome. Young defendants often have trouble separating the defence lawyer's function from court authority

"• ignorance about the lawyer's duty of client confidentiality is widespread among young people

"• children think of a legal right as 'conditional' - something that authorities allow them to have, but which can also be withdrawn

"• most young people, including teenagers, think that once charged a defendant must prove his or her innocence of a crime

"• until late adolescence, youths often minimize perceived risks. Young adolescents are even less likely to focus on longer-range consequences. This has implications for young defendants' decision-making in the legal process,

> for example in failing to foresee the consequence of waiving legal rights. (PLOTNIKOFF & WOOLFSON 2002)

Therefore, informative material is essential to prepare children for participation.

However, this important step is not observed by the majority of the countries involved in our research. Only thirteen countries informed the existence of informative material for children and three others have referred to some local experiences, varying according the place.

With the exception of two countries, we have prepared a list with all the informative material in ATTACHMENT 4 of this research, aiming to inspire other countries to develop their own material. The materials were made in different format, it is also possible to see clear differences in terms of contents and language sensitivity, but all of them deserve attention.

Regarding the content, Plotnikoff and Woolfson emphasized the need for 'practical and factual information', grouped according to stage of the process and plea, to avoid 'overload'. Typical suggestions for basic advice included: • the importance of not being late or missing the date of the hearing and the consequences of so doing; • the powers of the court and the importance of complying with court instructions; • the importance of a parent or carer's presence; • the importance of raising any special difficulties they child may have and who should be told **so;** • the court layout, where everybody sits and the roles of the persons present, including the Press; • what to do if they do not understand something; • how the defendant gives evidence (including the age for taking the oath and provisions relating to different religions).(46) (PLOTNIKOFF & WOOLFSON 2002).

Familiarization visit to the courtroom is recommended also in AIMJF´s guidelines (AIMJF 2017).

In the table below it is possible see the current scenario in the world about this situation.

Informative material	**No generic rule, with some experiences, varying according the place**

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Argentina	Brazil (some States have developed informative material, some are developing it, but most of them do not have any)
Croatia	Guatemala (there are in 22% of the courts)
England & Wales (including for parents and guardians)	Ukraine (some local experiences)
France	
Germany	
Japan	
Lebanon	
Nepal (poster)	
Netherlands (including for parents)	
New Zealand	
Portugal	
Serbia (made by the police)	
Switzerland	

Regarding those countries that have prepared informative material, there is a prevalence on written materials, either on the internet or leaflets.

Only three countries have more than one communication strategy. Among these, one has two written strategies and two of them have both video and written materials.

The Plotnikoff and Woolfson study for England states that "no single medium would either meet the needs of the entire target audience or be appropriate to convey all messages, from factual information to those aimed at changing attitudes. Certain messages could be reinforced by repeating them in different media. A range of materials would allow those assisting young defendants to select materials according to the needs of the individual and the stage of proceedings". It is also mentioned the importance of attractive and accessible presentation and different material according to the audience.

The suggested possibilities are:

- **Video** was the most popular option for presenting information among young interviewees and criminal justice system personnel**.**
- **Touch-screen technology:** the use of touch-screen technology does not require the intervention of a third party and does not require a high degree of literacy on the part of the user. It is a visual medium which may employ video, photos or animation and can provide an oral commentary. It can offer paths to information at different levels of detail and in different languages.
- **Printed materials;**
- **Internet:** it has been highlighted the experience of the Arizona Supreme Court, who has launched www.lawforkids.org which has won a number of website education awards.

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- **Animated cartoons of children learning about law;**
- **Games:** play games and learn about the law. The California courts' website www.courtinfo.ca has a link for children 'What's happening in Court? An activity book for children who are going to court in California'. This awards a diploma to children who complete all the exercises**;**
- **'Stories:** from kids who have just experienced youth justice system**.** (PLATNIKOFF & WOOLFSON 2002, pp. 61-63)

IJJO has organized videos of children with experience in the formal youth justice, both on the courts and the youth justice services and facilities post-adjudication (https://youtu.be/zDdrbj0Hf2Q).

Video	**Cartoon**	**Leaflet**	**Written information on a website**	**Social media publication**	**Poster on walls in the courts**
Brazil	Japan	Croatia	England	Argentina (Instagram)	Nepal
Netherlands		Germany	Germany		Ukraine
Switzerland		Lebanon	Netherlands		
		New Zealand	Portugal (made by an NGO, not always incorporated in judicial routine)		
			Switzerland		

4.3. MANDATORY OR VOLUNTARY PARTICIPATION

According to Article 14, 3, (d) of the International Covenant on Civil and Political Rights, everyone has the right "to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing" and, also, on section(g), "not to be compelled to testify against himself or to confess guilt**"** (UNITED NATIONS 1966).

Article 12 of the Convention on the Rights of the Child, and in consonance with General Comment 12, stresses that participation is a right, not a duty, and should be voluntary, which means that children should never be coerced into expressing views against their wishes and they should be informed that they can cease involvement at any stage.

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It is worth mentioning article 16 of the European Directive on procedural safeguards, laying down that "Member States shall ensure that children who were not present at their trial have the right to a new trial or to another legal remedy, in accordance with, and under the conditions set out in Directive (EU) 2016/343".

De BonDt and Lauwereys, however, criticize the European Parliament for missing the opportunity for the EU to take a position as to what necessary measures might be required to ensure effective participation. No guidance is provided for the actors in the Member States applying that provision (DE BONDT & LAUWEREYS 2020).

The research focused on how the countries deal with participation. Is it mandatory or voluntary? Is it allowed a trial in *absentia*?

For the majority of the countries, 45 of them, child participation is mandatory. Five of these countries mentioned that, in case of non-appearance, children are coercively brought to court. This is the case of Denmark, Dominican Republic, El Salvador, Netherlands and Puerto Rico. This is a disputable issue in Brazil as well**,** and several judges do determine a bench warrant to make the adolescent be presented coercively, although a ruling of the Supreme Court has prohibited such coercive measures.

In seven countries, children are summoned and expected to participate, but are not obliged to. In four countries, the situation varies, according either to special circumstances of the offense, or to provincial/state specific regulations or, in case of Brazil, because the issue is disputable.

It is important to note, however, that voluntariness is dependent on proper information and security about the involvement and participation in the proceedings.

The existence of informative material for children, clear procedures on how to explain them these materials, their rights, the implications of not appearing in court should be granted to recognize the validity of children´s decision. It is worth noting that many of the States that allow a trial in *absentia* do no provide children with such materials.

However, it is also arguable if bringing children coercively to courts is coherent with their right to participation. In many of the countries where these measures were mentioned there is no reference of informative materials either.

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In this context, it is also disputable those practices of later evaluation of competence to waive rights (GRISSO 2013), especially where clear and structured support is not previously provided for children.

The summation of all these preparatory steps for child participation in juvenile justice shows that this is still an issue to be improved in many countries and further research is required.

The table below shows the situation in each country.

Mandatory	**Non mandatory**	**No clear guidance, no generic rule, disputable issue or special circumstances allow a trial in *absentia***
Austria (For adults exists the possibility under certain circumstances to hold the main hearing without the accused being present, but this possibility is explicitly excluded for children and also young adults)	France (the child is not obliged to attend)	Argentina (in some provinces it is not mandatory)
Benin	Georgia	Brazil (According to the Supreme Court, adults have the right to attend the hearing, they are not obliged to do it. In the child and adolescent statute, there is a provision that it is mandatory for the child to attend. Half of the Judges follows the rule applicable to adults in order to grant equal rights, half considers that the special provision should prevail)
Bolivia	Guinea-Bissau	Egypt (it is mandatory just in case of felonies, not in cases of misdemeanors and fines)
Bulgaria	India	Switzerland
Canada - Québec	Lebanon (upon discretion of the Judge)	
Cape Verde	Nepal (it is a right of the child. If the child does not appear, it does not bar the court to render decision, being mandatory the presence of the lawyer	
China	North Macedonia (only when the factual situation is disputed)	
Colombia (but the child is free to participate or not)		
Costa Rica		
Croatia		

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Cuba		
Denmark (may be coercively taken by the police)		
Dominican Republic (may be coercively taken to the court)		
East Timor		
Ecuador (the child has to be in the Court, but there is no mandatory interrogation)		
El Salvador (if the child does not appear, provisional measures may be applied)		
England & Wales		
Germany		
Guatemala		
Honduras (only for the hearing when evidence is gathered or produced)		
Iraq-Kurdistan		
Japan		
Kenya		
Luxembourg		
Mauritania (if detained)		
Mexico (considered as a fundamental right)		
Mozambique		
Netherlands (may be brought forcibly)		
New Zealand		
Nicaragua		
Panama (in all hearings that may affect children´s rights)		
Paraguay		
Portugal		
Puerto Rico (if the child does not appear, may be coercively brought to court)		
Samoa		
São Tomé and Principe		
Serbia		
South Africa (but the child may remain in silence)		
Spain		
Sweden		
Turkey		
Uganda		
Ukraine		
Uruguay		
Venezuela		

4.4. GARB RESTRICTIONS FOR CHILDREN TO ACCESS THE COURT

Children are summoned and have to appear in Court. Courtrooms are normally formal spaces, images that circulate in the media also show everyone using special garb.

It is also known that criminal justice interventions impact a large number of people from lower socio-economical classes, including with well-known statistics of relevant social disparities.

What is expected in terms of clothing from children and their parents/guardians or adults of trust?

According to the respondents, in 38 countries there are no cloth restrictions for the child.

However, in 15 countries some restrictions were mentioned. In many of these countries, T-shirts, a very common garb for children, are not allowed. Generic terms, such as suitable, decent or respectful clothing were also employed.

Two countries expressed also limitations concerning religious garb, especially face covering clothing.

It is important to further investigate if and how these restrictions could impact access to justice.

However, previous researches with children show that **they** do associate their clothing~~,~~ **with** their corresponding socio-economical status, to the way magistrates will consider their situation, with a belief, common to adults, that a person from "a good area" with a higher status occupation was likely to receive a more lenient sentence than a person from a "poor area" (CASHMORE & BUSSEY 1985). In this context, cloth restrictions may have a further impact on the perceptions of procedural fairness by children.

The table below shows the current situation in the world.

No cloth restriction for the child	**Cloth restrictions**	**No generic rule, with some experiences, varying according to the place**
Argentina	Canada – Québec (caps and T-shirt)	Egypt
Austria	Cuba (shorts, T-shirts and sandals are not allowed)	
Benin	East Timor (no ultra casual attire)	
Bolivia	El Salvador (respectful clothing)	
Brazil	England & Wales (no shorts, no T-shirts)	
Bulgaria	France (respectful clothing and lay clothing – no burka permitted)	
Cape Verde	Lebanon (suitable clothing)	
China	Mauritania (no cap or hat)	
Colombia	Nepal (formal clothing)	
Costa Rica	Netherlands (no face-covering clothing)	

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Croatia	Nicaragua (no shorts, sandals)	
Dominican Republic	Portugal (no rule, but decency is required)	
Ecuador	Puerto Rico (decency is required)	
Georgia	Sweden (no hat/cap)	
Germany	Venezuela (no shorts or short skirts, no T-shirt)	
Guatemala		
Guinea-Bissau		
Honduras		
India		
Iraq-Kurdistan		
Japan		
Kenya		
Luxembourg		
Mexico		
Mozambique		
North Macedonia		
Panama		
Paraguay		
Samoa		
São Tomé and Principe		
Serbia		
South Africa		
Spain		
Switzerland		
Turkey		
Uganda		
Ukraine		
Uruguay		

4.5. WAITING AREAS AND SPACE FOR MEETING WITH DEFENSE ATTORNEY PRIOR TO CHILD PARTICIPATION

Witnesses, defendants, victims and their supporters need space to prepare, compose themselves, speak confidentially to lawyers or just wait, "particularly in courts where scheduling procedures designed around the court´s convenience require lay participants to wait long periods for cases to be heard". (KENNEDY & TAIT 1999)

In Platnikoff and Woolfson study, "the adverse consequences of having children wait for a long time at court and feelings of stress and intimidation in court and the waiting area adversely affect children's powers of concentration and communication" were important aspects considered to grant effective participation (PLOTNIKOF & WOOLFSON 2002, p. 18). In another study organized by Hazel, in children´s perception

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‘having to wait’ is seen as part of the punishment and was identified by many of our interviewees as one of the most stressful things about court (HAZEL 2002).

These waiting areas must cater for two conflicting possibilities: chosen contact or safe separation. Opposing parties are likely to come into contact with one another in the waiting areas, lifts or access ways leading to these spaces; this can be a positive opportunity when it leads to last minute negotiation and settlement between the parties before going into court, but, in criminal cases, both victim and defendants may experience intimidation, distress or even violence by contact in the waiting area. Anxiety may result if seats face away from entrances or windows or when seat positions do not permit people to see who is nearby or approaching from behind (KENNEDY & TAIT 1999).

Safety is, indeed, an important element to favor participation (CYCJ 2019). Appropriate waiting rooms are considered important for children when interviewed about their participation in judicial settings as well the importance to control contact during proceedings with separate waiting areas (FRA 2017).

In spite of this need, only 9 countries have specific waiting areas for children alleged or accused of committing an offense. In 11 eleven countries there is no generic rule on this issue, with some local experiences on having specific waiting areas.

This is the picture captured in our research:

Countries with specific waiting room	**Countries with no specific waiting room**	**No generic rule, with some experiences, varying according the place**
Cape Verde	Argentina	Brazil (in 54,3% of the consulted courts there are specific waiting areas)
Japan (in case of a child committed to a juvenile classification home)	Austria	Costa Rica
Kenya	Benin	Cuba
Lebanon	Bolivia	Egypt
Luxembourg (but no need to use it, because witnesses and victims do not participate in the proceeding)	Bulgaria	Guatemala (in 77% of the courts there are specific waiting areas)
Nepal (for victims)	Canada - Québec	India
Netherlands (for victims)	China (but kept separated in the waiting areas)	New Zealand (even where there is no specific waiting room, there are interview rooms available where the child can meet privately
Portugal	Colombia	Spain

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Uruguay	Croatia	Switzerland (separation from victims is ensured by organizational measures
	Denmark	Uganda
	Dominican Republic (there are separate waiting room for victims)	Ukraine (some local initiatives)
	East Timor	
	Ecuador (for the witnesses and victims)	
	El Salvador	
	England & Wales	
	France	
	Georgia	
	Germany (for the victims, in some courts)	
	Guinea-Bissau	
	Honduras	
	Iraq-Kurdistan	
	Mexico (but there is personal support to avoid contact)	
	Mozambique	
	Nicaragua	
	North Macedonia	
	Panama	
	Paraguay (there are many waiting rooms and there is a separation in practice between adults and children)	
	Puerto Rico	
	Samoa	
	São Tomé and Principe	
	Serbia (except in Belgrade)	
	South Africa	
	Sweden	
	Turkey	
	Venezuela	

The second aspect studied is whether there is a specific space for meeting with the defense attorney.

The majority of the countries does not provide a specific space for meeting with the defense attorney or support persons before or after the hearing: 27 countries.

In 17 countries there is a specific space and in 9 of them it depends on local arrangements.

It is important to mention as well that in three countries there are studies to improve this situation or this is considered an issue to be improved.

Having a specific space for meeting is important to prepare the child to participate.

Some countries mentioned in their report that preparation could be done before arriving in Court. However, in the study organized to grant effective participation it was recognized that:

> 'There is a real problem in overloading the young defendants with information. Many have a very limited attention span and so you really need a few meetings where you are able to give them information in "bite sized chunks". Because a lot of young defendants do not have solicitors at the police station, you lose the opportunity to meet them once or even twice before the matter goes to court. The issue of speedy justice has added to the difficulty of fitting in meetings before the court hearing' (solicitor). 'Preparation is usually done on the day because this will be the first opportunity unless we have been involved at the police station'. (PLOTNIKOFF & WOOLFSON 2002, p. 32)

Therefore, the existence of specific spaces for meeting, where the youth can be concentrated on what is important to understand at this moment, is very important.

In the table below it is possible to have a picture on how the countries are dealing with this issue.

No specific place for meeting	**Specific space for meeting**	**Varies, according to the place**
Austria	Argentina	Brazil (in 77% of the consulted courts, there is a specific space for meeting)
Benin	Bolivia	Cuba
Bulgaria (either on waiting area or in the courtroom, vacated for this purpose)	Canada - Québec	Egypt
Cape Verde	Colombia (in the defense attorney´s office)	Georgia (in several Courts)
Costa Rica (but privacy is granted)	China	Guatemala (in 77% of the courts)
Croatia (in the corridor)	England & Wales	New Zealand (even where there is no specific waiting room, there are interview rooms available where the child can meet privately)
Dominican Republic	India	Serbia
East Timor	Japan	South Africa
Ecuador	Kenya	Ukraine (some local initiatives)
El Salvador	Lebanon	
France (no rule on the subject)	Luxembourg	
Germany	Mexico	

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Guinea-Bissau	Panama (although this place does not grant properly confidentiality)	
Honduras	Portugal	
Mauritania (it is forbidden to grant contact between child and family, only with the attorney)	Puerto Rico	
Mozambique	Switzerland	
Nepal	Uruguay	
Netherlands		
Nicaragua		
North Macedonia		
Paraguay		
Samoa		
São Tomé and Principe (but privacy is granted)		
Sweden		
Turkey		
Uganda		
Venezuela (the courtrooms are large and they can meet in privacy with the defense attorney)		

4.6.CHILDREN DEPRIVED OF LIBERTY

When children are deprived of liberty, four main issues were considered important to analyze the context of their participation in judicial hearings: how they are transported to the courtrooms, what kind of garb they are required to wear, especially if they have to wear uniforms; if restraint measures are adopted while in court and in what kind of waiting areas do they remain until called into the courtroom.

The International Covenant on Civil and Political Rights lays down, on article 10, 2(b), that the "accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication" (UNITED NATIONS 1966).

Beijing rules also determines on article 13.4 that "Juveniles under detention pending trial shall be kept separate from adults and shall be detained in a separate institution or in a separate part of an institution also holding adults (UNITED NATIONS 1985).

In its General comment 24, the Committee on the Rights of the Child also understands that "every child deprived of liberty is to be separated from adults, including in police cells"… because "there is abundant evidence that this compromises their health and basic safety and their future ability to remain free of crime and to reintegrate. The

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permitted exception to the separation of children from adults stated in article 37 (c) of the Convention – "unless it is considered in the child's best interests not to do so" – should be interpreted narrowly and the convenience of the States parties should not override best interests. States parties should establish separate facilities for children deprived of their liberty that are staffed by appropriately trained personnel and that operate according to child-friendly policies and practices.". In the same General Comment, the Committee affirms that "States should further ensure that children are not held in transportation or in police cells, except as a measure of last resort and for the shortest period of time, and that they are not held with adults, except where that is in their best interests." (UNITED NATIONS 2019)

4.6.1. TRANSPORTATION

The research outcomes show that the majority of the countries observe a separate transportation: 45 countries.

However, respondents admit that, among these, in three countries this rule is not observed in practice or it depends on the available resources.

In 9 countries transportation is made jointly with adults. Although most of these countries could be considered lacking enough economic resources, this is not necessarily the case, such as Turkey.

In some countries, hearings are held virtually and therefore children remain in the youth facility, not needing to be transported.

Below the information provided in the research:

Separate transportation	**Joint transportation with adults**	**No transportation – hearings made virtually**	**No transportation – courthouse prison (in the same building)**
Argentina	Benin	Bolivia	Austria (if transportation is needed, separately from adults)
Bolivia	East Timor	Brazil	
Brazil (when transportation is needed)	Honduras	Colombia	

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Bulgaria	Lebanon (although not recommended practice)	Ecuador	
Canada	Mozambique		
Cape Verde	Nepal		
China	Nicaragua		
Colombia	São Tomé and Principe		
Costa Rica	Turkey		
Croatia			
Cuba			
Dominican Republic			
Ecuador			
Egypt (but questionable if the rule is really observed)			
El Salvador			
England & Wales			
France			
Georgia			
Germany			
Guatemala			
Guinea-Bissau			
India			
Iraq-Kurdistan			
Japan			
Kenya			
Luxembourg			
Mauritania			
Mexico			
Netherlands			
New Zealand (limited circumstances for a young person to be detained in a police cell, but in this case transported separately)			
North Macedonia			
Panama			
Paraguay			
Portugal			
Puerto Rico			
Samoa			
Serbia			
South Africa (in theory)			
Spain			
Switzerland			
Uganda (when the resources allow)			
Ukraine			
Uruguay			
Venezuela			

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4.6.2. WAITING AREAS

According to Kennedy and Tait, “respectful waiting areas for accused people may reduce disrespectful or aggressive responses by them to furniture, fittings and officials. Respectful design does not preclude the safety requirements… Just as visible physical connection of the police buildings to the courts may reduce the community understanding of the courts as independent, a lack of clear distinction between police cells and court holding areas may have a similar message” (KENNEDY & TAIT 1999).

When arriving in the Courts, children do wait in cells in the majority of the countries: 27 countries.

In 16 countries other solutions have been provided. In some of them, children remain in separate rooms, nor characterized as cells or they are brought immediately to the courtroom, without the necessity of waiting outside.

Austria has already mentioned that the court is connected with detention facilities.

As easily observed, not all participants have provided information on this issue:

Cells	**Other places**
Argentina	Bolivia
Austria	Brazil (in half of the consulted courts, virtual hearings are common and then they remain in the facilities)
Benin	Cape Verde
Brazil (in half of the consulted courts, virtual hearings are common and then they remain in the facilities)	Ecuador (when it is not the case of virtual hearing, they do not remain in cells)
Bulgaria	Georgia
Canada – Québec	Guatemala (for 77% of the judges)
Croatia	Luxembourg (waiting room)
Cuba (just if necessary for security reasons)	Mauritania (accused boxes in courtroom)
Dominican Republic	Mexico (rooms)
Egypt	North Macedonia
El Salvador	Portugal (only in case of risk children are locked in cells)
England & Wales	São Tomé and Principe
France	Spain
Germany	Sweden
Honduras	Switzerland
Iraq-Kurdistan	Uganda
Japan	
Kenya	
Lebanon	
Mozambique	
Netherlands	
Nicaragua	
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Paraguay	
Puerto Rico	
South Africa	
Turkey	
Uruguay	

When they remain in cells, in 7 countries they stay in joint cells with other children, while in 6 countries they remain in single cells.

Just one country mentioned the existence of child-friendly single cells, the Netherlands. Because it is a unique example, the photo is shared in this space.

In six countries, children remain in joint cells or waiting rooms with adults.

Many countries have not explained in detail their reality, therefore this is an issue with a less comprehensive picture, as follows:

Single cells	**Joint cells with other children**	**Joint cells with adults**
Argentina	Brazil (normally remaining in the youth service facilities, virtual hearings)	Benin
England & Wales	Bulgaria	East Timor
Germany	Croatia	Honduras
Japan	Dominican Republic	Mozambique

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Netherlands (also child-friendly cell)	El Salvador	Nepal (joint waiting rooms)
Portugal	Panama	Nicaragua
	Uruguay	

4.6.3. GARB: UNIFORM OR REGULAR CLOTHING?

According to article 36 of United Nations Rules for the Protection of Juveniles Deprived of their Liberty, known as Havana Rules,

> "To the extent possible juveniles should have the right to use their own clothing. Detention facilities should ensure that each juvenile has personal clothing suitable for the climate and adequate to ensure good health, and which should in no manner be degrading or humiliating. Juveniles removed from or leaving a facility for any purpose should be allowed to wear their own clothing."

The European rules for juvenile offenders also lay down on article 66.1. that "Juveniles shall be allowed to wear their own clothing provided that it is suitable".

This is an important issue because being obliged to wear a uniform in court might be labelling for children, stressing their condition as offender, with a possible impact on procedural fairness.

In the majority of the States, 38 countries, children deprived of liberty do not attend court hearings in uniforms**.**

Still a considerable number of States, 13, allow children to attend court hearings **in** uniform.

There is no general rule in 3 countries.

This is the picture captured in this research:

The child wears a uniform	**The child wears regular clothes**	**No general rule, varying according to the place**
Benin	Argentina	Brazil (in half of the States, the child wears a uniform, not in the remaining)
Colombia	Austria	Switzerland
Cuba (but currently studying the possibility to come with regular clothing)	Bolivia	Turkey
Egypt	Bulgaria	
El Salvador (all in white, T-shirt, long shorts and sandals)	Canada - Québec	
Germany	Cape Verde	
Mexico	China	
Mozambique	Costa Rica	

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Nepal (an outer traffic jacket to identify the police unit)	Croatia	
Nicaragua	Dominican Republic	
Panama	East Timor	
Puerto Rico	Ecuador	
Venezuela	England & Wales	
	France	
	Georgia	
	Guatemala	
	Guinea-Bissau	
	Honduras	
	India	
	Japan	
	Kenya	
	Lebanon	
	Luxembourg	
	Mauritania	
	Netherlands	
	New Zealand	
	North Macedonia	
	Paraguay	
	Portugal	
	Samoa	
	São Tomé and Principe	
	Serbia	
	South Africa	
	Spain	
	Sweden	
	Uganda (uniform in the youth service, but not in court)	
	Ukraine	
	Uruguay	

4.6.4. RESTRAINT MEASURES WHILE IN COURT

Concerning restraint measures while in court, a minority of countries answered the question.

It seems to exist a broad concern on avoiding stigmatization during the trial, although the restraint measures, such as handcuffs, might be used during transportation.

Some countries do also mention the concern on avoiding guards to be in uniforms during the hearing.

Prison guard remains in the room with no uniform	**Prison guard remains in the room**	**Handcuffs**	**Box**	**The child remains in the juvenile facility and the hearing is virtual**

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	~~with~~ in uniform			
Austria	Benin	Benin	Canada - Québec	Brazil (not in all States)
Bolivia	Bulgaria	Bulgaria		Colombia
Colombia	Cuba	Croatia		
	Kenya	Dominican Republic (during transportation, not in court)		
		El Salvador		
		Germany		
		Guatemala (during transportation, not in court) Guards remain in the courtroom		
		Honduras		
		Japan (only during transportation, not in court)		
		Panama (only during transportation)		

5. THE RIGHT TO BE HEARD

In this section we will focus more specifically on the right to be heard.

The research was organized in order to picture the experience of the child. Therefore, we begin the analysis with its environmental aspects and some aspects that normally are not considered the core of the right to be heard, the rituals or the liturgy of the hearing, because they seem to give the first impression to any person who arrives at a Court, impacting the feelings and the perceptions of any person, especially the children.

5.1. ENVIRONMENTAL ASPECTS

The Committee on the Rights of the Child considers, in its GC 12, that child-friendly environments and working methods should be adapted to children's capacities (UNITED NATIONS 2009).

The European Union Agency for Fundamental Rights recommends as well the use of child-friendly facilities to hear children (FRA 2017), considering that the design of the courtroom, the clothing of Judges and lawyers and separate waiting rooms are key elements in providing less stressing ambiances (FRA 2015).

In the English study to provide conditions to children to have a meaningful and effective participation (CYCJ 2019), children mentioned that their ability to express themselves in court, as an important element of ‘engagement’, was highly problematic due to the place they were required to occupy in the courtroom. When they were responding to questions from the bench, or wanted to say something on their own behalf or where they did not understand what was being said, some of them thought it was best not to say anything in court (PLOTNIKOFF & WOOLFSON 2002, p. 28).

Linda Mulcahy makes a historical analysis of the architecture´s evolution in spaces of justice, initially an open, ceremonial and ritual space, to gradually involve a growing movement of segmentation and segregation, differentiating and framing the space where the accused stays, isolated, degraded, but also separating the public. The courthouses, usually of classical style, the almost aristocratic scholarships of the magistrates, all seek to print an aura of sacredness to justice, which invites us to think about the public and democratic dimension of these spaces and the values that all reform projects entail, because at each new corridor, new barrier, symbolic places are created and must be problematized (MULCAHY 2011). Therefore, environmental aspects entail a great discussion, not only on the sociology and politics of the spaces of justice (BRANCO 2013; 2015; 2016), but also on psychological aspects, especially the court user´s need of comfort and security, that is reflected in the design, organization and operation in these spaces (KENNEDY & TAIT 1999).

AIMJF has already researched the spaces of justice in the context of child participation in family and protection matters and make this investigation once again. In Attachment 3, a photo album is provided for further analysis, with images from 49 countries. Not all countries have shared a photo of the courtroom, explaining the need of special authorization, which is also an important element to be analyzed, where the image of judicial spaces is not freely accessible to general public.

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In this research we have focused in inner spaces, although we are aware that public buildings themselves express political values, and the place where they are built could be object of problematization (COMMAILLE 2000) for its impact on access to justice. Indeed, in a research with children´s perceptions of their experience within the Canadian Youth Justice System, accessibility of the courthouse was the most challenging part of being involved in the youth justice system, due to its distant location from their communities and to the difficulty to find affordable transportation (HANSSEN 2008).

The external architecture could also be problematized, because the openness of the building to the exterior or its enclosure and intimidating style may create emotional barriers, expressing that law is closed and inaccessible and justice, remote. External court architecture can also inform the public about accessibility of justice, status accorded to professionals in the justice system, the link between law enforcement agencies and judicial authorities; it presents images of sovereignty best in a monarch or in popular will; it suggests an authority based on origins in classical antiquity and indicates contemporary power by strategic location in close proximity to the police station (KENNEDY AND TAIT 1999).

In this section we have analyzed the following aspects:

- Where the hearing takes place and its specificities in comparison to other areas
- Formal aspects of the space
- The child within the space

5.1.1. WHERE THE HEARING TAKES PLACE AND ITS SPECIFICITIES

The research reveals a predominance of hearings occurring in the courtroom, in 29 countries.

However, this number increases substantially, including another 17 countries, where the hearings do also take place in the courtroom, except in the initial phases of the proceedings (6 countries), in less severe cases (2 countries) and in case of lack of availability of the courtroom (3 countries), among other non-specified criteria.

Only in 7 countries the hearings are held always in chambers.

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It is also noticeable the impact of the pandemic on how hearings are held. In four Latin American countries, hearings continue to be held virtually.

Of particular interest are two Asian alternatives: premises outside the Court and an observation room in Japan for the preliminary phase of the proceedings.

These findings are in accordance with Rap´s study on child participation in juvenile justice in Europe, including countries not involved in this research. According to her, "in total, the number of observed juveniles in chambers was 312 (10%) and the number of juveniles observed in formal court hearings was 2,707 (90%). The much larger number of juveniles observed at a hearing in the youth court results from the fact that in several countries (i.e. England & Wales, Greece, Ireland, Italy and Spain) juvenile justice procedures do not take place in chambers at all. The judge in chambers on the European continent, such as in Switzerland, Belgium, France and the Netherlands, tries to find a middle course between a stern and serious atmosphere and enabling the participation of juvenile defendants and parents. The hearings in chambers in these countries can also be characterized by a minimum of social and physical distance between the participants, a limited number of people present and an informal atmosphere. These factors help the judge to hear the views of the young person. At the same time, a discussion regarding the delinquent behavior and its consequences is not avoided by the judge." (RAP, p. 104-105)

Courtroom	**Chambers/office**	**Chambers + courtrooms, depending on the procedural phase, the severity of the offense, the availability or the Judge**	**Virtual hearing**	**others**
Austria	Bénin	Argentina (it depends on the region and on the kind of hearing)	Argentina (after the pandemic)	India (in the premises of an observation home or at a place in proximity to the observation home or at a suitable premise in any Child Care Institution meant for children in conflict with law. in no

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				circumstances shall the Board operate from within any court or jail premises.
Brazil	Bolivia (before the pandemic)	East Timor (normally in the courtroom, but, if the courtroom is occupied, it is possible to use the chambers as well)	Bolivia (after the pandemic)	Japan (observation and protection room or in the investigation room)
Bulgaria	Egypt	France (in case of felonies, hearings are held in the courtroom; in case of misdemeanors, in chambers)	Brazil (in case of children deprived of liberty in many States and also in regular situations, in some States)	
Canada - Québec	Guinea-Bissau	Honduras (it depends on the quantity of persons involved in the hearing)	Colombia	
Cape Verde	Iraq-Kurdistan	Japan (in the courtroom only during trial)		
China	Mozambique	Lebanon		
Costa Rica	Panama	Luxembourg (normally in the courtroom, but the child might also be heard in chambers)		
Croatia		Mauritania (in the courtroom for trial, in chambers for mediation for children below 15		
Cuba		Nepal		
Denmark		Netherlands (normally in the courtroom, but, in case of decisions on whether to extend pre-trial detention, hearings are held in chambers)		
Dominican Republic		North Macedonia (in the preparatory phase, in the		

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		office; in the main hearing phase, in the courtroom		
Ecuador		Paraguay (in chambers in the initial and intermediate phase, in courtroom in the sentence phase)		
El Salvador		Portugal (in chambers in the initial and intermediate phase, and in courtroom for trial)		
England & Wales		São Tomé and Principe		
Georgia		Spain		
Germany		Switzerland (in the cases handled by a single magistrate, in the office; the remaining, involving more invasive responses, in a courtroom		
Guatemala		Uganda		
Kenya		Venezuela (preliminary and monitoring hearings in chamber, otherwise in special rooms)		
Mexico				
New Zealand				
Nicaragua				
Puerto Rico				
Samoa				
Serbia				
South Africa				
Sweden				
Turkey				
Ukraine				
Uruguay				

With the same concern to fully understand the presiding values when choosing theses spaces for the hearings, participants in the research were asked whether there are

differences regarding the spaces where youth are heard in comparison to a regular Family courtroom.

No differences were mentioned in 40 countries, except some references to the dimension of the room because hearings are held without public assistance.

However, differences were noted in comparison to family courts in 12 countries. In 6 of them, the spaces for hearing of youth are more specific than regular courtrooms. In another group of 6, there are specificities of Family Courts that are not extended to youth.

In three countries, there is no generic rule, and there are local differences.

No difference regarding regular courtrooms/chambers	**Specific environment for juvenile courts in comparison to family courts**	**No generic rule, with some experiences, varying according to the place**	**Family courts are different from regular courtrooms, but this difference is not extended to juvenile courts**
Argentina (but the rooms are smaller, because there is no public attendance)	England & Wales	Egypt	Austria
Benin	France (In case of felonies or crimes)	Serbia	Ecuador (children in family courts are heard in a special room)
Bolivia	Guatemala (the space is larger, even if privacy is also respected)	Switzerland	Honduras (provided of **Gesell** chamber)
Brazil	India (the premises do not look like a courtroom)		Lebanon (no visible presence of the police
Bulgaria	South Africa		Netherlands (child interview room or special procedures for victims)
Canada - Québec	Uganda (chambers)		Paraguay
Cape Verde			
China			
Colombia (the only difference is the existence of Gesell chamber for child victims)			
Costa Rica			
Croatia			
Cuba (the child is treated differently, but not the courtroom)			
East Timor			
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France (in case of misdemeanors it is the same, **in** chambers)			
Georgia			
Germany			
Guinea-Bissau			
Iraq-Kurdistan			
Japan			
Kenya			
Luxembourg			
Mauritania			
Mexico (differences for victims)			
Mozambique			
Nepal			
New Zealand			
Nicaragua			
North Macedonia			
Panama			
Portugal			
Puerto Rico			
Samoa			
São Tomé and Principe			
Spain (although minors courts tend to be more simple)			
Sweden (there are special facilities for hearing a child victim)			
Turkey			
Ukraine			
Uruguay			
Venezuela			

In comparison to a regular criminal courtroom, no differences are observed in 38 countries.

In 14 countries differences were mentioned. In four, the differences are related to the room´s dimension, because there is no public attendance, or the suppression of differences in floor level for judges and the remaining participants (in two countries).

No difference regarding regular courtrooms	**Specific environment**	**No generic rule, with some experiences, varying according to the place**
Argentina (but the rooms are smaller, because there is no public attendance)	Bolivia (adolescents are heard in chambers, while adults in regular courtrooms)	Egypt
Austria	Dominican Republic (the Judges are closer to the parties in Youth Court and in the same level, while in criminal	Honduras

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	courts judges are more distant and in a superior level	
Benin	England & Wales	Serbia
Brazil (Judges are allowed to make adaptations to make the space more child-friendly)	France (smaller because hearings are not open to the public, but the same format)	
Bulgaria	Guatemala (there are no space for the public in the juvenile courts	
Canada - Québec	Guinea-Bissau	
Cape Verde	India (the premises do not look like a court room)	
China (where available, hearing rooms more suitable for juveniles can be set up)	Japan (same floor level in juvenile courtrooms)	
Colombia (the only difference is the Gesell chamber for child victims)	Lebanon (no detention cage/section in the courtroom)	
Costa Rica	Nepal	
Croatia	New Zealand	
Cuba	Panama (in youth court, the room is smaller)	
Denmark	Puerto Rico (regular criminal courts are open to public assistance with the participation of jurors	
East Timor	Switzerland	
Ecuador		
El Salvador		
Georgia		
Germany		
Iraq-Kurdistan		
Kenya		
Luxembourg		
Mauritania		
Mexico		
Mozambique		
Netherlands		
Nicaragua (but there are specific rooms for interviewing victims		
North Macedonia		
Paraguay		
Samoa		
São Tomé and Principe		
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Spain		
Sweden		
Turkey		
Uganda		
Ukraine		
Uruguay		
Venezuela		

5.1.2. FORMAL ASPECTS OF THE HEARING´S SPACE

According to Foucault, architecture, while ordering the visible and the invisible, is fundamental to the exercise of power (FOUCAULT 1987) and the lack of more deep reflection on it could characterize a sociology of absences, with a clear impact in citizenship. Essential to the image of justice, the spaces of justice diffuse symbolic representations of how the society see itself, proceed and judge (BRANCO 2013).

Although it could be argued that courts are inherently hierarchical places and the integrity of justice might be compromised by attempts at intimacy or equality (GARAPON 2020), it is also questioned whether the key principle of courts design should be reconciliation rather than majesty (KENNEDY & TAIT 1999).

According to Commaille, there are two great models of justice with reflections on architecture: a monumental model, inspired in the religiosity, and transcendence and a proximity model, favoring a participatory and democratic function of justice. In the first model, architecture symbolizes power and a status feature where the building is erected, aiming to impose and to oblige all members of a specific society to adhere to, if not to be subjected to, a unified and shared representation of justice. A model of justice based on reciprocity (LERNOUT 2020). In the context of youth court, the centrality is for legal professionals, not for other professionals and members of the family. As such, this model tries to symbolize a meta-reason for society and be operational into society by invoking the notions of shared living and legitimate social order. In the second model, what is searched is the immersion of justice in the social, with an idea of proximity, with three possibilities: one, the mere detraditionalization of justice, in a moment of institutional crisis; another one, more focused in management, with the prevalence of virtual hearings, renouncing to a face-to-face interaction and to the challenging judicial function to make

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society and a last scenario in which a new democratic project contribute to the creation of a new architecture that could both allow a closer relation to society and a positive institutional integrational in the city (COMMAILLE 2013). In this context, it is also disputable whether sumptuosity of judicial spaces**,** to indicate the high value placed on justice**,** could conflict with a comparative analysis on less-generously funded public services for poor people, especially those who attend criminal and juvenile courts (KENNEDY & TAIT 1999).

Recent researches on cognitive-emotional design in the study of architectural space show that "The environment also has effects on humans at the cognitive level (understood as the processing and appraisal of perceived information) and the emotional level (understood as the adaptive reactions to the perceived information), which both operate through closely interrelated systems… architects have explored and exploited some of the perceptual foundations of the experience of space. However, it is particularly linked to subjective issues in decision-making, whose use may result in biases. This can lead to inadequate results in responding to the users' cognitive-emotional needs**"** (HIGUERA-TRUJILLO et al 2021). This is especially the case in criminal and juvenile courts, where possible experiences of humiliation experienced by some participants, even a reintegrative shaming in Braithwaite´s perspective, could be minimized in this interaction between court design, judicial practices and legal culture, avoiding the perception that court proceedings must be an ordeal (KENNEDY & TAIT 1999), if not a sacrifice (ROBERT 1986).

These various scenarios can be found in this research and the attached photo album is an interesting picture of the what is going on in the countries involved in this discussion**.**

Analyzing the photos, it is possible to make some comparisons of the spaces of justice based on some criteria: its formal characteristics, its hierarchical aspects and its emblems (political and artistical), having in mind that court building and court design convey information about justice (KENNEDY & TAIT 1999).

We consider these aspects important, because many national reports mentioned individual initiatives of judges to make adaptations in the hearing spaces and, therefore, these are aspects that may contribute in a reflection of further changes of these spaces.

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We identify a formal appearance of those courtrooms that observe in the internal arrangements a specific form, that may be characterized as typical or traditional for a specific function to be exercised in this space, most of them defined in XIX century.

This aspect means that any person who enters in this space will identify that there is a specific organization that differentiates this space from others.

Of course, there are cultural aspects that may embarrass such conclusions, but it is possible to identify some elements: separate spaces for each actor, division between professional activity and the public, even if restricted.

With these criteria, we intend to see different possible architectural and internal arrangements for courts in order to achieve the expectation of a more child-friendly environment.

In this context, 40 countries courtrooms have a formal appearance, although many of them present interesting nuances and singularities to be noted.

In 9 countries, hearing spaces have a less formal appearance because they are held mostly in chambers, with specificities as well. However, some of these hearings may also be held in very formal courtrooms, depending on some aspects, such as the severity of the case.

In one country there is no generic court design and in another one hearings are not held in tribunals.

Courtrooms have a formal appearance	**Courtrooms with a less formal appearance**	**No generic rule, with some experiences, varying according to the place**	**Hearings not held in tribunals**
Austria	Bolivia	China	India (no formal appearance)
Benin	France (in case of misdemeanors, in chambers)		
Brazil	Guinea-Bissau		
Bulgaria	Japan		
Canada - Québec	Luxembourg (when heard in chambers)		
Cape Verde	Nepal		
Colombia	Paraguay (for initial and intermediate hearings)		

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Costa Rica	Switzerland		
Croatia	Turkey (new design)		
Cuba	Uruguay		
Denmark	Venezuela (in chambers)		
Dominican Republic			
East Timor			
Ecuador			
El Salvador			
England & Wales			
France (in case of felonies and crimes)			
Honduras			
Germany			
Guatemala			
Kenya			
Lebanon			
Luxembourg			
Mexico			
Netherlands			
New Zealand			
Nicaragua			
North Macedonia			
Panama			
Paraguay (for sentence hearings, common for adults)			
Portugal			
Puerto Rico			
Samoa			
São Tomé and Principe			
Serbia			
South Africa			
Spain			
Sweden			
Turkey (current design)			
Uganda			
Ukraine			

The second considered element is the hierarchical appearance, considered by the identification of a specific space for one authority which centralizes all the attention and gives significance to the remaining participants.

For Damaska, the faces of justice are intimately intertwined with hierarchical and coordinate ideals of organization of authority, as much as policy-implementing and conflict-solving forms of justice can be combined with forms adapted to various structures of authority (DAMASK 1986).

According to Kennedy and Tait, “the importance and value of the various participants in the legal system is indicated by the quality and quantity of space

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each occupies. Courts can be 'read' consciously or unconsciously by various users according to location, access to natural light and/or views, and the cost and quality of furnishings". For this reason, they believe that "in future design briefs for courts there should be consideration of the degree to which hierarchy should be reflected. As far as possible there should be consistent design standards and equality of furnishings and fittings throughout court buildings. Design should indicate to users that all participants in the justice system are seen to be equal and respected by providing facilities appropriate to their particular needs"**.** (KENNEDY & TAIT 1999)

Seating at rectangular as opposed to round tables has an impact on speaking patterns and deference behavior.

In her study on child participation in youth justice in Europe, Rap suggests that "the layout of and the atmosphere in a courtroom influence the extent to which juvenile defendants can effectively participate in a youth court hearing. The Scottish children's hearings can be characterized as highly informal. The children's hearing takes place by means of a roundtable discussion, which creates an atmosphere in which communication between the different parties is enabled to a large extent"**.** (RAP 2016)

In contrast, we consider those spaces where a horizontal or circular appearance gloss over in certain measure the hierarchical appearance of this space.

In eleven countries we can see a more horizontal or circular appearance of the judicial spaces, although, as mentioned earlier, in some of them the hearings held in these spaces are conditioned to other elements.

In the remaining spaces, the courtrooms have a more hierarchical appearance.

Hierarchical appearance	**Horizontal/circular appearance**
Austria	Bolivia
Benin	China (round table, although in some places more formal)
Brazil	France (in case of misdemeanors)
Bulgaria	Guinea-Bissau
Canada - Québec	India
Cape Verde	Luxembourg (when in chambers)
Colombia	Nepal
Costa Rica	New Zealand (although hierarchical, it is circular in appearance)
Croatia	Paraguay (for initial and intermediate hearings)
Cuba	Turkey (the new design is circular, but still hierarchical, as the judge is apart and in a superior level)
Denmark	Venezuela
Dominican Republic	

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East Timor	
Ecuador	
El Salvador	
England & Wales	
France (in case of felonies and crimes)	
Germany	
Guatemala	
Honduras	
Japan	
Kenya	
Lebanon	
Luxembourg	
Mexico	
Netherlands	
Nicaragua	
North Macedonia	
Panama	
Paraguay (for sentence hearing)	
Portugal	
Puerto Rico	
Samoa	
São Tomé and Principe	
Serbia	
South Africa	
Spain	
Sweden	
Switzerland (in the youth court)	
Turkey	
Uganda	
Ukraine	
Uruguay	

Finally, the last element considered in this context is the presence or absence of images or emblems, both artistic and political, national or symbolic.

These images are important symbols of what is at stake in this space and what they try to communicate: an emphasis on justice, community, belonging or power and political structures, among others.

Regarding art in the context of the hearing, just in four countries some kind of art is visible inside the courtrooms: Bolivia, Brazil, Honduras and Portugal, all Ibero-American countries. In New Zealand and Switzerland it is also visible some art in chambers, but not in the courtroom.

According to Kennedy and Tait, "as well as being pleasing to the eye, art may also have a didactic function. It may symbolize justice, openness, fairness, protection, order and benefit society is accorded by the law…. Art can communicate belonging and inclusion to various user groups. Art values the diverse nature of the community", which

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is especially important for ethnic minorities. "In addition to the symbolic aspect there is a less obvious role art and architecture can play in the courts. The physical surroundings and atmosphere of the courts may influence behavior and impressions of legal proceedings. Surroundings which are experienced as "institutional" and cold may communicate negative impressions, while considered surroundings may enhance respect for the justice system… Appropriate design, together with appropriate art work, can symbolize the often important life event people experience in the courts. Art serves not just as something to look at, but a practical device to help people come to terms with the emotional, social and psychological experience of the court proceeding" (KENNEDY & TAIT 1999, p. 1054-1055)

This kind of emblem is visible in the majority of the countries: 27 countries, where it is possible to see flags or coat of arms, in some in a more prominent way, in others in a subtler manner.

No emblem or national emblem is visible in the images shared by 20 countries. No generic rule was observed in two countries.

Interestingly, it was not visible in the whole collection of photos any recognizable religious image.

Courts with national symbolic images (coat of arms; flags etc)	**Courts with no symbolic images**	**No generic rule**
Austria (coat of arms)	Bolivia	Brazil (in most of the places, no symbols are visible, but some courts do have a flag and in one there was a cross - religious symbol)
Benin (coat of arms)	Cape Verde	Germany
Bulgaria (coat of arms)	Denmark	
Canada – Québec (flags)	France	
China (coat of arms)	Guinea-Bissau	
Colombia (flag)	Honduras	
Costa Rica (flag)	India (not a court)	
Croatia (coat of arms)	Japan	
Cuba (coat of arms and flag)	Lebanon	
Dominican Republic (coat of arms and flags)	Luxembourg	
Ecuador (flag)	Netherlands	
England & Wales (coat of arms)	Nicaragua	

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Guatemala (coat of arms and flags) but not in all courts	Paraguay (for initial and intermediate hearings, specialized court)	
Kenya (coat of arms)	Portugal	
Mexico (flags)	Samoa	
Nepal (flags)	São Tomé and Principe	
New Zealand (coat of arms)	Sweden	
North Macedonia (flags and coat of arms)	Switzerland	
Panama (coat of arms and flags)	Uganda	
Paraguay (coat of arms and flags, for sentence)	Uruguay	
Puerto Rico (flags)		
Serbia (coat of arms)		
South Africa (coat of arms)		
Spain (flags and the photo of the King)		
Turkey (flags, the phrase "justice is the basis of property" and an image of Atartuk		
Ukraine (coat of arms)		
Venezuela (flags and picture of Bolivar)		

5.1.3. THE CHILD WITHIN THE SPACE

In this subsection, we consider the child within the judicial hearing space, according to the images and the shared information of where each actor or stakeholder sits or remains during the hearing.

The analytical criteria are the following:

- the identical or distinguished level for all participants
- the specification or not of a space for the child as offender
- the necessity or not to move to a different space when heard
- proximity or distance

We have already analyzed the child within the liturgy and the need to stand up during his or her hearing. We will analyze as well the physical proximity of the child to

the defense attorney, their family and multidisciplinary professionals in the respective sections.

The prominence of a space in comparison to others symbolize importance, hierarchy, order, but most of all distance and a certain inaccessibility, especially where there are physical barriers.

The importance and value of the various participants in the legal system is indicated by the quality and quantity of space each occupies. According to Kennedy and Tait, "separation may be needed to protect vulnerable witnesses from alleged abusers, and estranged partners from each other. Prisoners are not the only ones who pose a security risk. Separation of prosecution and defense from a shared table may be useful to provide more effective participation by other court users. Elevation of judges has served to ensure that the tallest standing lawyer cannot look down on the shortest sitting judge. This practice may need to be rethought in relation to psychological evidence about how people experience space. The information need of the court (usually means the judge) are given precedence over the information needs of witnesses, self-represented litigants and members of the general public" (KENNEDY & TAIT 1999, p. 1056)

This is an aspect with a relative more adequate balance, although still prevailing a hierarchical organization, with the judge and magistrate remaining in a superior level in comparison to other participants in the hearing, especially the child: 28 countries.

In 19 countries, Judges sit in the same level as other people.

Judges sitting in a superior level regarding other people	**Judges sitting in the same level as other people**
Austria	Bolivia
Benin	Cape Verde
Bulgaria	Brazil (in most of the States)
Canada – Québec	China
Colombia	Cuba
Costa Rica	Denmark
Croatia	Dominican Republic
Ecuador	East Timor
England & Wales	El Salvador
France (in case of felonies and crimes)	France (in case of misdemeanors)
Germany	Guinea-Bissau

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Guatemala	Honduras
Kenya	India
Lebanon	Japan
Luxembourg	Nepal
Mexico	Nicaragua
Netherlands	Panama
New Zealand (although lower than in a criminal court for adults)	Paraguay (for initial and intermediate hearings, specialized court)
North Macedonia	São Tomé and Principe
Paraguay (for sentence, common to adults)	Ukraine
Portugal	Uruguay
Puerto Rico	Venezuela
Samoa	
Serbia	
South Africa	
Spain (judges and other parties are seated at the same level, except the child and his/her parents, who remain in a lower level)	
Sweden	
Switzerland (in the youth court)	
Turkey	
Uganda	

Many international standards, and Riadh Guidelines is a clear and important example, emphasize the concern on avoidance of stigmatization, based on labelling theories.

Therefore, although the child is a party, and has an important role during the proceeding, is it necessary to assign a specific place for the child in the room to remain (sit or standing) during the hearing? Does the participation on trial need to imply a specific condition of (possible) violator of social norms? Wouldn´t it be stigmatizing?

As mentioned, a new branch of architectural studies focus on cognitive-emotional impact of design and architecture, would it be in accordance with the effort to transform the room in a more child-friendly space not assigning the child a detached space in the room? Would this assignment be in accordance to the presumption of innocence? Is it needed to really grant a better participation for children? In which measure positioning the child in front of the judge favors participation or highlights the traditional image of the trial as combat in court?

These are possible questions that may arise when analyzing where the child sits while in court. We have no specific answers on the impact of this assignment to children, but new approaches on juvenile justice emphasize the importance for the System to treat

young people first as children first and second, as offenders, considering them as part of the solution, not of the problem, having access to their rights, among others that his/her voice should be listened to (SMITHSON & GRAY 2021; HAINES & CASE 2015). Participation viewed as an approach that can be both inspiring, because of the meaningful collaboration it fosters with community, but also daunting, due to its many challenges, from ethical to relational (SMITHSON & GRAY 2021)

AIMJF has emphasized among the participants in this research to share a photo of the courtroom, because images speak for themselves and the mere fact that having included a country among those who assign a specific space for the child does not imply by itself necessarily any inconvenient if the court design favor the participation and do not stigmatize the child. Not assigning a specific space may also not grant the possibility of participation. Everything depends on the context. Therefore, our criteria was as much factual as possible, but inviting the readers to further reflection.

In 28 countries, the child sits in an assigned space.

In 12 countries no specific space is assigned for the child and no generic rule is found in 4 countries.

It is important to notice those countries who separate legal professionals and the child, who sit in the banks for the public.

Child sitting in a specific assigned space for the offender	**Child sitting in an unspecific space,**	**No generic rule, with some experiences, varying according the place**
Austria (In the middle sits the accused, who takes a seat in front of the defense attorney on the wooden bench, after his/her interrogation is over. Then the witnesses take a seat in the middle)	China	Benin
Bulgaria	Croatia (child sits in the chairs for the public)	Bolivia
Cape Verde (beside the defense attorney)	East Timor (in the rear banks, with the public)	Brazil
Colombia (beside the defense attorney)	Guinea-Bissau	Ukraine
Denmark	India	
Dominican Republic	Lebanon	
Ecuador (next to the defense attorney)	Luxembourg (the child may choose where to sit)	
England & Wales	Nepal	
France	Portugal (on the seats for the public)	

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Germany	São Tomé and Principe (on the seats for the public)	
Guatemala	Spain (in the seats for the public, but outside the main area where are all other professionals)	
Honduras (on the table edge)	Venezuela	
Japan		
Kenya		
Mexico		
Netherlands		
New Zealand (facing the Judge, although in a table with a horseshoe layout		
Nicaragua		
North Macedonia		
Panama		
Paraguay		
Puerto Rico		
Samoa		
Serbia		
South Africa		
Sweden		
Turkey		
Uganda		
Uruguay		

In some countries there is a clear movement of the child during the hearing, requiring a displacement from one place to another when he or she is called to speak to the court.

This is an aspect of the liturgy of the court intertwined with environmental organization that could also have an impact on the right of the child to speak freely. Although formal and procedural rules should be respected in order to grant rights, for those who consider child participation as a conversation, in the format of a talk (UNITED NATIONS 2009), restricting the possibility to speak due to the space where the child is located, may have an impact on the exercise of the right.

Not all countries mentioned this situation, therefore this is a short list of countries who explicitly referred the need of displacement when the child is formally heard.

The child goes to a different space to be heard

Austria (In the middle sits the accused, who takes a seat in front of the defense attorney on the wooden bench, after his/her interrogation is over)
Canada - Québec
Croatia (to the middle of the room)
East Timor (to the middle of the room)
England & Wales (in case of giving evidence)
France (in case of felonies and crimes)
Lebanon
North Macedonia (to the parlor)
São Tomé and Principe
Uganda
Ukraine (to the parlor, normally, with some exceptions)

Finally, the last aspect considered is proximity and distance of the child to the judge.

Liefaard, Rap & Bolscher recommend seating within hearing distance of each other and that everyone is able to see each other, alluding to ECtHR, 23 February 1994, Appl. no. 16757/90 (Stanford v. the United Kingdom), para. 26 (LIEFAARD, RAP AND BOLSCHER 2016). Rap suggests that it is important that the physical distance between parties is not too large and that juveniles are addressed in a positive manner (RAP 2016).

Psychological researchers have theories about the way distances are developed, maintained and experienced in social interactions. Kennedy and Tait, based on Edward Hall´s studies, classify distance in intimate (from touch to 45 cm), personal (45cm to 75 cm), social (1,2m to 4 m) and public distance (4 m and over), considering that social distance is suitable for impersonal business and would be suitable in children´s courts, because it allows to talk informally but also to adopt a casual pose. At the same time, during conversations of some length, it is more important to maintain visual contact at this distance than at a closer distance (KENNEDY & TAIT 1999, p. 1057).

According to this criterion, analyzing the photos it is possible to say that most of courts observe a social distance, especially when in courtroom. There is, however, a clear difference between countries in this range, some observing a closer social distance and others almost respecting a public distance. As we have no clear measures, we included these countries in a category of larger social distance or public distance.

Three countries have spaces for hearing with a personal distance between the child and the judge.

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Personal distance	**Closer social distance**	**Larger social or public distance**
New Zealand (when in chamber)	Bolivia	Argentina
Paraguay (when in chamber)	Brazil (in the majority of the States)	Austria
Switzerland (when in chamber)	Cape Verde	Benin
	China	Bulgaria
	East Timor	Canada
	El Salvador	Colombia
	France (when in chamber)	Costa Rica
	Guatemala	Cuba
	Guinea-Bissau	Denmark
	Honduras	Dominican Republic
	India	Ecuador
	Japan	England & Wales
	Luxembourg (when in chamber)	France (when in courtroom)
	Nepal	Germany
	São Tomé and Principe	Lebanon
	Venezuela	Luxembourg (when in courtroom
		Mexico
		Netherlands
		New Zealand
		North Macedonia
		Panama
		Paraguay (when in courtroom)
		Portugal
		Puerto Rico
		Samoa
		Serbia
		South Africa
		Spain
		Sweden
		Switzerland (when in courtroom)
		Turkey
		Uganda
		Ukraine
		Uruguay

5.2. RITUALS (OR COURT LITURGY) AND THEIR IMPACT ON THE RIGHT TO PARTICIPATION

The French philosopher Blaise Pascal, when studying imagination as a haughty enemy of reason, invoke the judicial liturgy, its mysteries, its palaces, its emblems and garb, in order to give an image of justice where it could not be (PASCAL 1979),

in a dialogue with Montaigne´s understanding of the mystical force of justice (MONTAIGNE 1595).

Having nothing to do with legal guarantees, Ferrajoli considers this liturgy an innapropriate and unacceptable way to ensure legitimacy to the procedure (FERRAJOLI 1995, p. 662).

However, according to Garapon, the rituals – or the Court liturgy – appeal to the sacred and ceremonial dimension of spaces, time and its search for regeneration of order, gestures, speeches and oaths, wondering if justice without a scene would be possible, as if in a context of informality there would be a loss of symbolism. In his opinion, if justice is perpetually a domestication of violence, rituals have a double meaning, both to protect the judgement from fragility, and to represent the fragility of judgement itself: there is no justice without symbols and forms, with a certain rationality, but symbols must be meaningful as much as their rationality must favour democracy. In this ambivalence resides what he calls the tragical paradox of justice, always moving between indignation and institution, an ethics of responsibility or of certitude (GARAPON 2010).

Juvenile justice, since its inception, has tried to recreate this scene.

The scene to be recreated has a long history. In the classical contractual reading, crime, as a violation of the social pact, implies considering the wrongdoer as the one who attacks the whole community, ceasing to be a citizen to become an enemy (ROUSSEAU 1999). If what allows or not allows association or dissociation, therefore what could be considered as a friend or an enemy, would define the core of politics for Schmitt (SCHMITT, 1979; 1992), the judicial procedure, according to Arnold, embodies the center of ideas of every Western government is in its judicial system as a dramatization of the values of our spiritual government, representing the dignity of the State as an enforcer of the law, and, at the same time, the dignity of the individual, when he is an avowed opponent of the State (ARNOLD, 1941). For this reason, in this imaginary scene, it is not important that the ceremonial trial never is, or might be, an efficient method of settling disputes, because it is the dramatization of the moral notions of the community in this ideal of trial as combat that is at stake (ARNOLD 1941).

Much before the current trend on child-friendly justice, George Mead, in his "psychology of punitive justice", tries to envisage another scene for juvenile in contrast

to the hostility he sees in the role of criminal justice, favoring such an attitude on the part of the entire population against the offender. Hostility lends itself, in his opinion, to reinforcing the collective will, expressed by law, as an affirmation of the common good. All the theatricality of the criminal procedure aims to replace the emotions that were aroused in the battles, stigmatizing the criminal to strengthen the sense of solidarity in the group. (MEAD 1918). Mead seeks to show that, in its early days, juvenile justice seeks to adopt a different attitude toward adolescents. If it is not friendly, an attitude that could only be recognized in the games, in the parental relationship or in sex, at least it could be non-hostile. In juvenile justice there would be an effort to understand the causes of individual and social collapses, an effort, if possible, to amend the defective situation and restore the disappeared individual, focusing the interest on the reintegration of meaning aimed at the future, the restoration of adequate living conditions, in what today we would call protection. Mead is interested in showing that this non-hostile attitude would not imply a weakening of social cohesion, as seen in other types of social organization whose activities are aimed at mobilizing objectives, inhibiting the hostile impulse. It would be this change of attitude that would allow juvenile justice not only to appreciate aspects of the social order, which in an adult court would be meaningless, but also to force itself to change its method (MEAD 1918).

The amount of discretion entailed in the informality of procedure in the beginning of juvenile justice brought into light how abusive and intrusive protection under *parens patriae* doctrine could be, implying a gradual process of rapprochement with adult justice, seeking for proportionality and predictability under a legal guarantee approach (GARCIA MÉNDEZ 2004).

Therefore, this polarization between inclusion/exclusion remains in the current scene. For Pires, although the idea that it is necessary to save the child to shape the future of the nation played an important role in building justice for minors, this situation changed at the end of the twentieth century, when the nation is no longer a young country that has to be cared for and the young is no longer the future of the nation. The symbiosis came to an end in the pejorative representation of the welfare state as a nanny state and in juvenile justice as a nanny justice (PIRES 2006), which explains the modern concern with the use of the friendly term not to qualify juvenile justice as more lenient with crime, or

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more inferior than criminal justice (AIMJF 2017). This opens a field, also in juvenile justice, for theories and models, for neo-correctional models, of zero tolerance, in which the adolescent can, now, become an enemy.

As an imaginary scene, this complex of liturgies, spaces, formal interaction has an important role in people´s and especially children´s perception of justice, with a clear impact on alternative conflict resolution, because, at the end, what remains is the image of trials as an emblem of Justice.

The liturgies play, therefore, a major role in the judicial scenario and specifically in juvenile justice, deserving more attention in its various implications, a sociopolitical dimension that highlights both the function of Justice, its distance or proximity from the population (COMMAILLE 2007; 2013), as the function of law, in its vertical or horizontal structuration of order (COMMAILLE 2001) and its impact on the organization of spaces, in addition to the role of judges in the framework of democratic transformation (SANTOS 1986; 2011a). According to Tait, symbolism and space are amenable to rational intervention and reform and we need to fill public life with new, more democratic symbols that resonate with contemporary understanding and, therefore, courts should be reconfigured to embody more fully the will of the sovereign people and, instead of Garapon´s grand approach to rituals, emphasis could be greater on more subtle everyday aspects of human behavior, in a way people see, talk and behave in small groups (TAIT 2001).

We will analyze these liturgies in the following aspects:

- Judicial garb
- Legal professionals garb
- Entering and movements in the court

5.2.1. JUDICIAL GARB

Although General Comment 24 lays down that “developments in child-friendly justice provide an impetus towards … removal of intimidating legal attire” (UNITED NATIONS 2019, recital 46), in the majority of the countries, 28, judges and magistrates still wear a gown during the hearings.

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In no country, judges and magistrates wear a wig.

In a large proportion, judges and magistrates wear a professional formal attire, in 25 countries.

Only in three countries judges wear a business casual attire and in one country there is no rule regarding garb, allowing everyone to wear the cloth they please.

Judges wear a gown	**Judges wear a professional-formal attire**	**Judges wear a business casual attire**	**No rule regarding garb: everyone can wear the cloth they please**
Austria	Argentina	Costa Rica (no tie recommended)	Bolivia
Benin	Brazil (in 82% of the States, in 11,4% States they always wear a gown and 5,7% occasionally)	France (in case of misdemeanors)	
Bulgaria	Denmark	Switzerland (when the hearing is in the office)	
Canada - Québec	Dominican Republic		
Cape Verde	Ecuador		
China	Egypt		
Colombia	El Salvador		
Cuba	England & Wales		
East Timor (but not when hearing child victims)	Georgia		
France (in case of felonies and crimes)	Guatemala		
Germany	Guinea-Bissau		
Kenya	Honduras		
Lebanon	India		
Luxembourg (in the courtroom, not necessarily in chambers)	Iraq-Kurdistan		
Mauritania	Japan		
Mexico	Mozambique		
Netherlands	Nepal (judges wear Daura, suruwal and Dhaka topi)		
New Zealand	North Macedonia		
Nicaragua	Panama		
Portugal	Paraguay		
Puerto Rico	Serbia		
Samoa (Judges are allowed to disrobe at their own discretion if the child is very young	Sweden		

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São Tomé and Principe	Switzerland (when the hearing is in the courtroom)		
South Africa	Uganda		
Spain (but there is some flexibility and not all judges do wear a gown)	Uruguay		
Turkey			
Ukraine (occasionally the judge, with permission of the parties, may take off the robe)			
Venezuela			

Suspecting that there could be differences regarding the treatment in Family and Youth courts, the questionnaire submitted a question to the respondents about differences in the required attire in both situations. However, contrary to the hypothesis, the same attire prevails in the majority of courts, in 31 countries, although with some nuances.

In five countries, judges wear a more formal attire in juvenile justice hearings, giving a more grave and circumspect tone to this context.

On the contrary sense, in five countries, judges wear a more formal attire in Family courts than in juvenile justice, including a gown.

Judges wear the same attire in Family Courts	**Judges wear a more formal attire in juvenile justice hearings in comparison to Family Courts**	**Judges in Family Courts wear a gown but they do not in juvenile courts**	**Judges in Family Courts wear a more formal clothing than in juvenile courts**
Argentina	Austria (judges use a gown only in juvenile justice hearings)	Ecuador	Dominican Republic (Judges wear gown and cap)
Bolivia	Bulgaria	Uganda	India
Brazil	East Timor (Judges do not use a gown when hearing child victims)		Mozambique
Canada - Québec	France (in case of felonies and crimes)		Nicaragua
Cape Verde	South Africa (family court judges do not wear a gown, but criminal court judges do)		
China			
Colombia			
Costa Rica			
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Denmark			
Egypt			
El Salvador			
England & Wales			
France (in case of misdemeanors)			
Georgia			
Germany			
Guatemala			
Honduras			
Japan			
Lebanon			
Luxembourg			
Mauritania			
Nepal			
Netherlands			
New Zealand			
North Macedonia			
Panama			
Paraguay			
Portugal (but if the personal circumstances of the child do no recommend the use of a gown, the judge is allowed not to wear it)			
Puerto Rico			
Samoa			
São Tomé and Principe			
Serbia			
Spain			
Sweden			
Switzerland (the same in comparison to the hearing in office. Otherwise, family court judges are less formal than the judges in youth courts)			
Turkey			
Ukraine			
Uruguay			
Venezuela			

5.2.2. LEGAL PROFESSIONALS GARB

Comparing the garb worn by judges and other legal professionals (prosecution and defense attorneys), it remains clear that the formality is more prominent among judges. In 19 countries, prosecution and defense attorneys must wear a gown (or an equivalent specific professional attire).

In three countries, there is a clear difference of garb requirements between prosecution and defense attorneys, where only the previous must wear a gown.

In 30 countries, a professional, formal, attire is required of both attorneys.

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A business casual attire is enough in two countries and in another two there is no rule regarding garb.

It is up to new investigations if these remarked differences between legal professionals signalize a transition and cultural process of removing some formalities or the persistence need to symbolize a transcendental image of justice.

Prosecutor and defense attorney wear a gown	**Only the prosecutor wears a gown**	**Prosecutor and defense attorney wear a professional-formal attire**	**Prosecutor and defense attorney wear a business casual attire**	**No rule regarding garb:**
Benin	Austria (the defense attorney may use it, but normally does not	Brazil	Argentina	Bolivia
Canada - Québec	Bulgaria	Colombia	Costa Rica	Mexico
Cape Verde	New Zealand (prosecutor and youth aid officer appear in standard police uniform)	Croatia		
China (Prosecutors are required to wear a prosecutor's uniform and wear a prosecutorial emblem. Chinese lawyers shall also be required to wear a lawyer's robe and wear a lawyer's badge		Denmark		
Cuba		Dominican Republic (less formal than in Family courts)		
East Timor		Ecuador		
France (including in chambers, where the Judge is not wearing a gown		Egypt		
Germany		El Salvador		
Lebanon (a robe)		England & Wales		
Luxembourg		Georgia		
Mauritania		Guatemala		
Netherlands		Guinea-Bissau		
Portugal		Honduras		
Samoa (if the Judge disrobe, they will as well)		India		
São Tomé and Principe		Iraq-Kurdistan		
South Africa		Japan		
Spain (but they wouldn´t wear it if the Judge is not robed)		Kenya		

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Turkey		Mozambique		
Venezuela		Nepal (prosecutors wear Daura and layer coat, Dhaka cap or a Bhadgaon black cap among others		
		Nicaragua		
		North Macedonia		
		Panama		
		Paraguay		
		Puerto Rico		
		Serbia		
		Sweden		
		Switzerland		
		Uganda		
		Ukraine		
		Uruguay		

5.2.3. THE CHILD´S ENTRANCE INTO THE COURT AND THE JUDGE

The child´s entrance into the court marks the beginning of the liturgy itself, which is intrinsically intertwined with the environmental aspects of the courtroom.

What will the child be faced with? Is the judge in the room?

In 11 countries, judges are not in the room. Interestingly, there is no correlation between the fact that the Judge is not in the room with a more formal attire, specially wearing a gown. In half of these countries, judges do not wear a gown.

In 8 countries there is no generic rule.

In the majority of the countries, 36 countries, the judges are already in the room.

Worth mentioning is the situation of Switzerland, where the magistrate goes out of the court to welcome the child and bring him/her to the room (although, as we will see, children do not have always legal support in this country).

The judge/decision maker is in the room	**The Judge/decision maker is not in the room**	**No generic rule**
Argentina	Bulgaria	China
Austria	Cape Verde	Costa Rica
Benin	Colombia	East Timor

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Bolivia	Denmark	Guatemala (70% of the judges are in the room)
Brazil	El Salvador	Portugal
Canada - Québec	Japan	Samoa
Croatia	Mexico	South Africa
Cuba	Nepal	Uganda (if in chambers, the judge is in the room. If in court, normally the judge is not in the room, but not a rule
Dominican Republic (it is not a rule, but a practice)	Nicaragua	
Ecuador	São Tomé and Principe	
Egypt	Ukraine	
England & Wales		
France		
Georgia		
Germany		
Guinea-Bissau		
Honduras		
India		
Iraq-Kurdistan		
Lebanon		
Luxembourg		
Mauritania		
Mozambique		
Netherlands		
New Zealand		
North Macedonia		
Panama		
Paraguay		
Puerto Rico		
Serbia		
Spain		
Sweden		
Switzerland (if in the courtroom. Otherwise, the child is received and brought to the interview room by the magistrate)		
Turkey		
Uruguay		
Venezuela		

5.2.4. THE CHILD´S INVOLVEMENT IN THE LITURGY: SITTING AND STANDING DURING THE HEARING

The involvement of the child in the judicial liturgy may have multiple meanings, both symbolizing the subjection to a certain power dynamic, hierarchical relationships in society, especially in the relationship with the judge or the magistrate as State authorities,

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but also the pedagogical intent to express the boundaries crossed by the child by committing an offense.

In the majority of the countries, children have to stand up before the judge, 32 countries.

In 19 countries, children do not have to stand up and in five countries there is no generic rule.

The child has to stand up	**The child has not to stand up**	**No generic rule on the topic**
Austria (In general the accused and everybody else has to stand up, when the jury/lay judges is/are sworn in and when the verdict is announced)	Bolivia	Argentina (normally not, but it depends on the Judge)
Benin	Brazil	East Timor
Bulgaria	Cape Verde	Guatemala (in 90% of the courts the child has not to stand up)
Canada - Québec	Croatia	Panama
China	Dominican Republic	Switzerland (in some cantons, never stand up; in others, when the judgement is pronounced
Colombia	England & Wales	
Costa Rica	Georgia	
Cuba	Guinea-Bissau	
Denmark	Honduras	
Ecuador (although not obliged to)	India	
Egypt	Luxembourg	
El Salvador	Mauritania	
France (in case of felonies and crimes)	Mozambique	
Germany	Nepal	
Iraq-Kurdistan	Nicaragua	
Japan	Serbia	
Kenya	Spain	
Lebanon	Sweden	
Mexico	Uruguay	
Netherlands		
New Zealand		
North Macedonia		
Paraguay		
Portugal (if the Judge enters the room after the child is there)		
Puerto Rico		
Samoa		
São Tomé and Principe		
South Africa (If present in court before the magistrate enters, yes.)		
Turkey		
Uganda		
Ukraine		

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Venezuela		

The degree of formality of this situation is complemented by the need (or not) of a special authorization to sit down.

Again, in the majority of the countries, 29, children must wait for a permission to sit.

In a more severe situation, the child is not allowed to sit during the whole hearing in three countries, in one of them any other person except the judge is allowed to sit.

In the remaining 22 countries, either the child is already sitting or he or she does not need a permission to sit.

The child remains sit	**The child does not need permission to sit**	**The child must wait for a permission to sit**	**The child is not allowed to sit during the hearing**	**No generic rule, varying according to the place/judge**
Cape Verde	Argentina	Benin (from the Judge)	Bulgaria (there is no seat either for the child or for prosecution and defense attorneys)	Panama
Croatia	Austria	Canada - Québec (the bailiff)	Iraq-Kurdistan	
Georgia	Bolivia	China	Venezuela	
Guinea-Bissau	Brazil	Colombia (before the pandemic, now only virtual hearing)		
Honduras	Dominican Republic (there is just an indication of where the child should sit)	Costa Rica		
India	East Timor	Cuba		
Serbia	Guatemala (but in 20% of the courts this is necessary)	Denmark (from the Judge)		
Uruguay	Mozambique	Ecuador (from the Judge)		
	Nepal	Egypt		
	Nicaragua	El Salvador		
	South Africa	England & Wales		
	Spain	France (from the judge)		
	Sweden	Germany		
	Switzerland (just an indication of where to sit)	Japan		

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		Kenya		
		Lebanon		
		Mauritania (from the Judge)		
		Mexico (from the Judge)		
		Netherlands (when the judge sits, everyone is allowed to sit)		
		New Zealand (it is expected that the advocate explains the ritual to the child)		
		North Macedonia (the Judge allows to sit)		
		Paraguay		
		Portugal (from the Judge)		
		Puerto Rico (from the Judge)		
		Samoa		
		São Tomé and Principe		
		Turkey		
		Uganda		
		Ukraine		

Even when the child is authorized to sit during the hearing (in all except one country), in the moment the child speaks to the court he or she must stand in a significative number of countries, 19.

In the majority, the child is allowed to sit when personally heard in court: 34 countries. In one of them, this is not an issue, because all hearings became virtual since the pandemic.

The child remains standing during his/her own hearing	**The child may sit during the hearing**	**Non applicable (virtual hearing)**
Benin	Argentina	Colombia
Bulgaria	Austria	
Cuba (when the child is heard)	Bolivia	
Dominican Republic (just during formal declaration)	Brazil	
France (during interrogation)	Canada – Québec (except when the ruling is delivered)	
Iraq-Kurdistan	Cape Verde	
Lebanon	China	
Mauritania	Costa Rica	

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New Zealand (in shorter hearings or when addressed by Court)	Croatia	
North Macedonia (when questioned in the courtroom)	Cuba (during the remaining part of the hearing)	
Portugal (normally the child identifies him/herself standing, but then he/she is allowed to sit down)	East Timor	
Samoa (*when charges are read out and during the initial mentions of a matter. If the charge proceeds to a hearing, then the young person is seated)*	Ecuador	
São Tomé and Principe (normally the child identifies him/herself standing, but then he/she is allowed to sit down)	Egypt	
Serbia (not mandatory, but usually the child stands when heard)	El Salvador	
South Africa (only when addressed by the magistrate)	England & Wales	
Turkey (when the child gives a statement)	Georgia	
Uganda (only when requested to)	Germany	
Ukraine (when giving explanations, as a generic rule, everyone is standing, but the judge may allow the participants to sit)	Guatemala	
Venezuela	Guinea-Bissau	
	Honduras	
	India	
	Japan	
	Kenya	
	Mexico	
	Mozambique	
	Nepal	
	Netherlands	
	Nicaragua	
	Panama	
	Paraguay	
	Puerto Rico	
	Spain	
	Sweden	
	Uruguay	

5.3.THE INTERACTION WITH THE CHILD

In this section we give special attention on how the countries give a concrete application both to article 40 of the Convention, in order to treat the child in a manner consistent with the promotion of his or her sense of dignity and worth**,** and to Beijing rule

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14.2, conducting the proceedings in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express herself or himself freely.

The rights to be observed during the hearing are mainly defensive and therefore the values of sense of dignity, worth and understanding might be understood differently in the context of each particular system.

In spite of international guidelines, this right might express similar challenges as those indicated in the Commentary to Beijing Rule 17 concerning adjudication of young persons, because it is intimately intertwined with unresolved conflicts of a philosophical nature, such as the following:

(a) Rehabilitation versus just desert;

(b) Assistance versus repression and punishment;

(c) Reaction according to the singular merits of an individual case versus reaction according to the protection of society in general;

(d) General deterrence versus individual incapacitation (UNITED NATIONS 1985).

Indeed, criminology evolved from a positivist perspective based on the study of the offender to reframe the analysis on social reaction and, therefore, the efforts on decriminalization and de-judicialization are intertwined with a criticism on how social control mechanisms operate in society, with a major emphasis on social disqualified classes, or poor people (WACQUANT 2004).

In this context, participation is also determined by the conception on the aims of criminal law, either based on the limitation of state intervention or in rehabilitation.

For Luigi Ferrajoli, the Italian legal philosopher and criminal theorist who is very influential in southern Europe and in Latin America, if criminal law aims to achieve two distinct and competing purposes, which are the maximum possible well-being of the non-deviant and the minimum necessary malaise of the deviant, all correctional ideologies are incompatible with the elementary value of civilization which is respect for the human person, including the most edifying variants such as re-education, resocialization, rehabilitation or social recovery of the defendant, because they irremediably contradict the principle of freedom and autonomy of conscience, according to Stuart Mill´s lessons, that over himself and his mind, the individual is sovereign. (FERRAJOLI 1995, p. 272).

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When analyzing one dimension of participation, interrogation, Ferrajoli considers that this is where the deepest differences between methods are manifested and measured. Under a perspective of rights (and legal guarantees) based approach, this moment could only be considered as the main means of defense and it has the sole function of materially giving life to the adversarial judgment and allowing the accused to refute the accusation or adduce arguments to justify him or herself, including by lying. Because it is intended to allow the defense of the defendant to be accomplished, interrogation must be subject to a whole series of rules of procedural loyalty, and more significantly, the prohibition of suggestive questions, the clarity and univocity of the questions, the promise of any direct or indirect promise or pressure on the accused to induce them to repentance or collaboration with the prosecution, even as the result of suggestions or negotiations. (FERRAJOLI 1995). As a consequence, respecting the guarantees to adolescents would mean assuming an education to legality, that is, respect for the rules is obtained, especially, with respect of the adolescent, including the offender, treating him as a responsible citizen, fulfilling us to demand respect, therefore, the value of the rules in the punitive response itself to their infractions (FERRAJOLI, 1999, p. XVIII). For this reason, the old pedagogy constituted only thematic and complementary variations of the culture of discretion, and we should observe pedagogy of guarantees (GARCIA MENDEZ 1999, p. 18).

In contrast to this pedagogy of guarantees, much more focused on refraining the State and refuting any intervention, other approaches expect that children´s participation could also contribute to the child´s perception of fairness of the outcome, in order to change his or her behavior.

Liefaard, Rap and Bolscher state that “the right to participate is not only an important children’s right, but it is also important from a theoretical perspective. Enabling a young person to tell his own side of the story is considered to be an important factor in the potentially positive effect of coming to court and being confronted with his own behavior by the decision maker (Fagan & Tyler, 2005). Theory and research concerning procedural justice has indicated that when people are able to participate in a decision-making procedure they are more satisfied with the procedure and its outcome (Tyler, 2003). Procedural justice refers to the perceived fairness of the procedures and the

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perceived fairness of the treatment one receives". Consistently with this approach, some communicational techniques are recommended based in health care to enhance treatment´s adherence, in order to "achieve intrinsic motivation in people to change". (LIEFAARD, RAP & BOLSCHER 2016, p. 69-70; RAP & WEIJERS 2014). Therefore an emphasis on the importance of child´s perception of procedural justice as a criterion for the system´s legitimacy (BERNU& FERNANDÉZ 2019).

These differences on values and perspectives are found in our research and are even more complex than the picture expressed in the Beijing Rules due to a contemporary greater variability of legal responses and models to criminal offenses, including restorative, minimal intervention, but also neo-correctional approaches (CAVADINO & DIGNAN 2009), participatory and corporatist (WINTERDYK 2015) and the more contemporary approach based on the lemma "children first, offenders second". Youth positive justice, based on the principle of child first, offender second, criticizes justice-based approaches, seeing nothing inherently child-friendly on the responses, even observing legal guarantees, in the context of an adult-oriented setting, subjected to the same enforcement regimes. Therefore, believing that legitimacy is based on thrust and consent, all interventions should be based on children´s perception of legitimacy both of the authority and the interventions by listening what children have to say about the circumstances that bring them into conflict with the law. The legitimacy would derive from this focus shift, granting the possibility of normalization and service provision to overcome socio-structural inequalities (HAINES & CASE 2015).

A clear contrast on this aspect can also be seen by comparing General Comment 10, 12 and 24. On General Comment 10, the Committee laid down in recital 45 that "the child should be given the opportunity to express his/her views concerning the (alternative) measures that may be imposed, and the specific wishes or preferences he/she may have in this regard should be given due weight. Alleging that the child is criminally responsible implies that he/she should be competent and able to effectively participate in the decisions regarding the most appropriate response to allegations of his/her infringement of the penal law (see paragraph 46 below). It goes without saying that the judges involved are responsible for taking the decisions. But to treat the child as a passive object does not recognize his/her rights nor does it contribute to an effective response to his/her behavior.

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This also applies to the implementation of the measure(s) imposed. Research shows that an active engagement of the child in this implementation will, in most cases, contribute to a positive result.

This paragraph was suppressed in both subsequent Comments, assuming a more neutral position based predominantly on legal guarantees. This was Beijing Rules´s assumption as well, considering legal guarantees as a common starting point and it surely should remain so. However, criminologists criticize the solely focus on legal guarantees discourse as if it would be able to change the way criminal systems operate, without considering other extra-systemic aspects (BARATTA 2002; ZAFFARONI 1990; CERVINI 2002).

In addition, there is also the challenge inherent to juvenile justice to reconcile legal guarantees not only with the specialty of the system, treating adolescents with observance of their existential difference, but, even more, in a context of social inequality in the face of the lack of fulfillment of social, economic and cultural rights (BELOFF s/d), with a special incidence of penal control mechanism on poor people (WACQUANT 2004; BAILLEAU 2001; FALEIROS 2002). In this context, how social inequalities could be balanced by the system in order to avoid its reproduction within the justice system (COUSO SALAS 2007)?

Therefore, this interaction, between, on one side, judges and legal professionals and, on the other side, the child, is very specific within the context of a broader conception of participation as a manner of recognizing the evolving role of children in society and their involvement in the decisions that may affect them.

A second aspect, derivative of the first one, are related to more specific technical dimensions of communication that are not neutral either.

In accordance with General Comment 12, “experience indicates that the situation should have the format of a talk rather than a one-sided examination”, without any reference on the paragraphs referring juvenile justice whether this should also be the case in this context.

Twelve, a publication on child participation in juvenile justice organized by Defense of Children, although focused mainly in post-trial, also addresses general

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principles of the right to participation, suggesting a dialogical and conversational approach (DCI 2016).

A Mexican manual on youth justice, organized by its Supreme Court, suggests as well to differentiate what should be an interview, an interrogation and a cross-interrogation or examination in the context of juvenile justice, asserting that both interrogation and counter-interrogation are techniques that hinder the possibility of communication by the youth and therefore a dialogical communication should be observed (MONTENEGRO 2022)**.**

The UN Approach to Justice for Children, a guidance note of the Secretary-General, lays down as guiding principles, that advancing the right of the child to express his or her views freely and to be heard, might require, among other, changes **in** legal practice such as interview techniques and, more generally, attitudes towards child participation (UNITED NATIONS 2008).

Based on observations conducted, Rap concluded that three groups of countries can be specified with regard to hearing the views of juvenile defendants; 1) countries in which the views of the young person and the discussion of his personal circumstances are at the center of the hearing. This was the case at the children's hearings in Scotland, the hearings in chambers in Switzerland and France and youth court hearings in Switzerland, France, Germany and the Netherlands; 2) countries in which a dialogue between the juvenile defendant and the judge takes place, but where this dialogue is merely directed by the contribution and questions of the judge. This was observed at youth court hearings in Belgium, Greece and Italy; and 3) countries in which the views of juvenile defendants are hardly heard at all, which was observed in England and Wales, Ireland, Scotland and Spain. It can be concluded from the results of this study that the adversarial characteristics of the youth court hearings in the last category of countries prevent the judge or magistrates from having a constructive dialogue with the young person. In countries in which the inquisitorial legal tradition is apparent, the judge personally hears the young person during the youth court hearing and engages in a dialogue with him. (RAP 2016).

However, as a means of defense, participation should be strategic and controlled, in order to avoid undue exposition of children to the risk of State intervention. This is clearly seen in our research, in the case of countries that do not hear the child, except if

the defense attorney pleas on that and those who leave all interaction to the defense attorney related to the offense to preserve the child.

In this context, the nature of this interaction is arguable and complex, especially in a context of growing hybridism in modern juvenile justice, coexisting different conceptions and values within a same system, with the risk of contradictory practices (MUNCIE & GOLDSON 2006).

This is to say that research envisages to highlight the differences, to understand what is at stake in these different contexts, allowing a deeper discussion. This is a typical situation that would need participatory observation based on the same criteria to achieve a clear picture of the situation, which is not possible in this context, where the information comes from persons involved in a specific cultural and legal structure.

Additionally, participatory research with children regarding these aspects are very important to enhance further steps. In fact, in a study on children´s perception of their participation, contemporary to Beijing Rules, and amidst the theoretical debate of welfare and judicial model, Cashmore and Bussey verified that children expect the outcome to be determined mainly on the basis of offense-related evidence and a minority of children wanted to say anything in Court, but the main reason for that was fear or embarrassment. Children and their parents could not understand either the reasons for questioning about their personal and social-familial background (CASHMORE & BUSSEY 1985).

The complexity of this interaction is therefore outstanding and it is clearly seen in our first question.

The majority of the countries consider that child participation in judicial setting is much more a formal and structured act than an opportunity for an open and dialogical interaction with the child, although in both cases some nuances were mentioned by the respondents:

Considered as a formal and structured act	**Considered as open and dialogical interaction**
Argentina (formally structured, but the interaction is dialogical)	Benin
Austria	Brazil (in the hearing to discuss alternative conflict resolution opportunities)
Bolivia (according to the law, but in practice it is not very formal)	Croatia
Brazil (during trial)	Denmark

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Bulgaria	East Timor (judges begin the hearing with a dialogue about his/her routine and after that they pose questions about the facts)
Canada – Québec	El Salvador
Cape Verde (although the Judge is allowed to make some adaptations in benefit of the child)	England & Wales
China	Georgia
Colombia	Guatemala
Costa Rica	Guinea-Bissau
Cuba	India
Dominican Republic	Japan
Ecuador	Kenya
Egypt	Lebanon
France	Luxembourg
Germany	Mozambique
Honduras	Nepal
Iraq-Kurdistan	New Zealand (less formal compared to hearings in the adult criminal court)
Mauritania	Paraguay (in the initial and intermediate hearings)
Mexico	Portugal
Netherlands	Serbia (more flexible than a regular criminal proceeding, although structured)
Nicaragua (but open to accommodations)	Spain
North Macedonia (but open to a dialogical interaction)	Switzerland (although structured, more open to dialogue with the child
Panama	Uganda
Paraguay (in the trial hearing)	Uruguay (semi-formal, structured, but open to a less formal interaction)
Puerto Rico (only during disposition it is allowed a larger interaction with the child)	
Samoa (a quasi-.formal way. It is still held in a formal setting but the Judge is more fluid as to how he or she deals with each case and how he or she interacts with the young person)	
São Tomé and Principe (at the beginning there are formalities, but afterwards it is more open to interaction and dialogue with the child)	
South Africa (but with ample opportunity for all issues to be canvassed)	
Sweden	
Turkey	
Ukraine	
Venezuela (structured act but open to a dialogical interaction)	

Amidst a plurality of proceedings and different procedural values and frameworks, the research focused on mainly four criteria to approach the issue.

First, whether the interaction is direct or indirect.

Second, concerning the nature of the interaction, whether it could be considered a one-sided examination or open to a free speech by the children.

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Third, apropos of the content of the interaction itself, whether it was focused merely on the offense or if it also includes personal and social-familial circumstances of the child.

Fourth, regarding the context, whether this interaction was solely focused on adjudication or if it includes also the possibility of diversion or alternative conflict resolution.

5.3.1. DIRECT OR INDIRECT INTERACTION

According to General Comment 24, children have the right to be heard directly, and not only through a representative, at all stages of the process, starting from the moment of contact.

In the research, it is clear that in the vast majority of the countries, children are heard in a judicial setting. Just in one country children are heard indirectly, via social experts.

However, in four countries, Judge may count with professional assistance to hear the children, either psychologists or communication assistants.

The Judge hears the child	**Social workers or psychologists**	**The Judge hears the child with the support of other professionals**
Argentina	Egypt (the social experts submit a written report to the court)	Bolivia (with the assistance of a court psychologist)
Austria		Bulgaria (The judge can be assisted by a teacher or a psychologist who can ask questions instead of the judge /usually in cases when the child does not understands the question of the judge and there is a need for more child-friendly language)
Benin		Guatemala (some Judges hear the child with the assistance of a psychologist)
Brazil		New Zealand (there is a communication assistant in the room)
Canada - Québec		Serbia (the Judge hears with the support of a psychologist)
Cape Verde		
China		
Costa Rica		

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Croatia (in the preliminary procedure by the state attorney´s office and social pedagogue)		
Dominican Republic		
East Timor (during trial)		
Ecuador		
El Salvador		
England & Wales		
France		
Georgia		
Germany		
Guinea-Bissau		
Honduras		
India		
Japan		
Kenya		
Lebanon		
Luxembourg		
Mauritania		
Mexico		
Mozambique		
Nepal (composed by a professional judge, a social worker and a psychologist)		
Netherlands		
New Zealand		
Nicaragua		
North Macedonia		
Panama		
Paraguay		
Portugal		
Puerto Rico		
Samoa		
São Tomé and Principe		
South Africa (A magistrate. A judge hears when it goes for review in cases where a child is given a custodial sentence)		
Spain (by all professionals)		
Sweden		
Switzerland		
Turkey		
Uganda		
Ukraine		
Uruguay		
Venezuela		

However, although no explicit question was made on the subject, some countries let it clear that the child is not heard in the judicial setting about the offense, either because he or she was already heard at the police (and Croatia is an example of this situation), or

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because the defense attorney must plea for the child be heard about the offense (Panama is an example, among others).

5.3.2. ON THE HEARING´S NATURE

The nature of child´s interaction is analyzed in the research under three aspects.

First, whether it is a one-sided examination or if the child may make a free speech, both about the offense or other circumstances.

Second, if this interaction is exclusively made with the judge or if other legal professionals may also address the child and how.

Third, if the child has to make an oath to speak.

Concerning the first aspect, Beijing Rules state that children should be entitled to speak freely (UNITED NATIONS 1985).

In Plotnikoff and Woolfson study, children considered that just answering yes or no was not meant as really being able to speak (PLOTNIKOFF AND WOOLFSON 2002).

The research shows that there is a clear majority understanding that children may make a free speech about all aspects he or she may consider important, both related to the offense and to his or her own personal, familial and social circumstances: 42 countries.

In other six countries, children may speak freely about the offense, but not about other circumstances, except if some legal professional considers important.

In six countries, children face a one-sided examination and in one country there is no legal definition on the issue.

The situation can be better explored in the table below:

The child must strictly answer to the questions posed by the inquirer	**The child may make a free speech about the offense**	**The child may make a free speech about what has happened and other aspects that he/she considers important**	**There is no legal definition on the issue, remaining up to the inquirer.**
Canada – Québec	Bulgaria	Argentina	Guatemala (50% of the judges focus only on the offense, while the remaining consider also

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			the familiar and social context of the child)
China	Ecuador	Austria	
Costa Rica	Georgia	Benin	
Egypt	Panama (if the defense attorney considers important. Social aspects are assessed by multi-professional team before the hearing)	Brazil	
Mauritania	Paraguay	Bolivia	
Puerto Rico (except during disposition)	Samoa (other aspects may be addressed, but not usual, except when dealing with sentencing)	Cape Verde	
		Colombia	
		Croatia	
		Cuba	
		Denmark	
		Dominican Republic (in the intermediate hearing, not usually on trial, when defense attorneys usually do not recommend children to answer questions, just to do a short statement)	
		East Timor	
		El Salvador	
		England & Wales	
		France	
		Germany	
		Guinea-Bissau	
		Honduras	
		India	
		Iraq-Kurdistan	
		Japan	
		Kenya	
		Lebanon (but depending on the Judge´s personality)	
		Luxembourg	
		Mozambique	
		Nepal	
		Netherlands	
		New Zealand (solution-focused approach, child taking accountability and addressing the underlying causes of the offending)	
		Nicaragua	
		North Macedonia	

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		Portugal	
		São Tomé and Principe	
		Serbia	
		South Africa (semi-formal, allowing the child to explain his/her answer)	
		Spain (flexible and open hearing)	
		Sweden	
		Switzerland	
		Turkey	
		Uganda	
		Ukraine	
		Uruguay	
		Venezuela	

Regarding the second aspect, the research asked respondents to explain who could interact with the child and if there is an order to do so.

In 17 countries only the Judge is allowed to address the child and, in consonance with Rap´s findings through observation, "in countries in which the inquisitorial legal tradition is apparent, the judge personally hears the young person during the youth court hearing and engages in a dialogue with him." (RAP 2016). Important to note, as well, that in this study, Rap observed hearings in some countries that have considered their interaction more open and freely than what she has ascertained in practical terms.

The most frequent situation, however, in 32 countries, involves both Judge and parties allowed to interact with the child, prosecution and defense attorney.

Three isolated situations are the experiences of Ecuador (where only the judge and the defense attorney are allowed to interact), Nicaragua (where both prosecution and defense attorney make the questions, but the judge is not allowed to do the same), or Québec, in Canada, where only the defense attorney may make questions to the child.

Only the Judge addresses the child	**Only the Judge and the Defense attorney**	**Both the Judge and the parties (prosecution and defense attorneys)**	**Only the parties address the child, not the Judge**	**Only the defense attorney addresses the child**	**Other situations**

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	address the child	address the child			
Bulgaria (according to the law, prosecution and defense attorney make questions to the Judge, who asks the child. In practice, they are allowed to make questions directly)	Ecuador	Argentina	Nicaragua	Canada – Québec (exceptionally the Judge)	Bolivia (psychologist, to whom both the Judge and the parties send the questions)
El Salvador		Austria			Egypt (the Judge poses questions and may allow social worker and prosecution to do so as well)
France (other parties must pose questions to the Judge who will make them to the child, if allowed)		Benin			Netherlands (the victim may also address the child)
Georgia		Brazil			Switzerland (no uniform practice in the country, normally only the magistrate addresses the child, but may allow other professionals to do it under his/her control)
Guinea-Bissau		Cape Verde			Ukraine (services as well)
Iraq-Kurdistan (the parties may make questions to the Judge)		China (also witnesses and victims)			
Luxembourg (attorneys make their questions to the Judge)		Colombia			
Mauritania (the parties may ask questions through the Judge)		Costa Rica			
Mexico (the parties make the questions to the Judge, who allows the child to answer)		Croatia			
Nepal (the bench: judge, social worker and psychologist, through whom		Cuba			

prosecution and defense attorney may pose questions to the child)					
North Macedonia		Denmark			
Portugal (prosecution and defense attorney pose questions through the Judge)		Dominican Republic			
Puerto Rico (parties should ask for permission to address the child)		East Timor			
São Tomé and Principe (prosecution and defense attorney pose questions through the Judge)		England & Wales			
Serbia		Germany			
Turkey (questions are made to the Judge, who poses them to the child. Cross examinations are not implemented)		Guatemala			
		Honduras			
		Japan (investigating officer instead of prosecution attorney, who attends only in serious cases)			
		Kenya			
		Lebanon			
		Mozambique			
		New Zealand			
		Panama			
		Paraguay			
		Samoa			
		South Africa (depending on the stage of the proceedings)			
		Spain			
		Sweden			
		Uganda			
		Ukraine			
		Uruguay (under judicial guidance			
		Venezuela			

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Although formal sequences are very important for the observance of due process, they have impact in the perception of children on his or her rights to speak freely.

In their study to improve the English system, Plotnikoff and Woolfson mentioned that “nearly all of the young people in our sample believed that they were not permitted to speak in the courtroom, because “ ‘speaking is against the rules” ’ and that the child has “ ‘no right to speak in court except to the solicitor” ’. Due to the implications of what the child may speak, the impression of children was that they were not allowed to ask a question and that they should maintain the same stance adopted in the police, not commenting anything. “All these situations entail the perception of lack of respect to children, with magistrates telling them to stand up or sit down or “ ‘don’t talk to us, talk to your solicitor” ’. They are treated as naughty children, and talked “ ‘to” ’ not “with” ’.” (PLOTNIKOFF AND WOOLFSON 2002).

Therefore, the balance between the observance of procedural formalities and the respect for children, allowing them to understand not only the rule, but its meaning, and, most of all, the respect in an atmosphere of understanding requires some modulations of the rules.

It is also important to know the sequences to comprehend how the child speech is considered. If the child is subjected to cross-examination, both parties are allowed to make questions. In 27 countries this is a possibility.

However, in a mixture of a measure of protection and a prominent role of the judge, in 19 countries judges make questions first, followed by prosecution and finally the defense attorney. As we have seen, in 17 countries the judge is responsible for intermediating the interaction with the child.

Another very particular strategy to protect the child is not allowing prosecution to pose questions, which is the case in three countries.

As a means of defense, there are significant differences on how to conceive the better way to grant children´s rights: either leaving the last word to the defense attorney, or letting the defense attorney begin. The majority of the countries prefer the first solution.

In the second group, composed by 8 countries, defense attorney begins to question the child, varying the role of the judge and if prosecution is or not allowed to question.

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This situation shows that the order itself, in the various legal systems, is very variable, culturally determined and not a logical necessity to grant rights.

It also contributes to a further discussion on the best way to achieve a successful result, as some problematizes "the order and the mode of presentation of facts and creation of history, because it creates a hierarchical, rigid and conservative symbolic space, in which the alleged offender, usually poor, belonging to racial minorities, supported by an institution with much less material and symbolic resources than the accusation, has little room for a successful result and, therefore, little balance for the realization of justice" (NUNN 1995).

Interestingly, in three countries there is no rigid order, with possible implications for both the perception of the child on the nature of this interaction and also on the hearing as a means of defense.

Judges first, then prosecution and Defense attorneys	**Judges first, then defense and prosecution attorneys**	**First prosecution and then Defense Attorney, and at last the Judge**	**There is no order for posing the questions**	**Defense attorney, then prosecution and finally the Judge**	**Defense attorney and then the Judge**	**Judges, then Defense attorneys (Prosecution not allowed)**
Austria	Croatia	Cuba	Argentina	Bulgaria (by law, only the Judge addresses the child. If the child agrees, then this order is followed)	Canada – Québec	Ecuador
Bolivia	Uganda	Guatemala	Benin	Dominican Republic	England & Wales	
Brazil		New Zealand	Colombia	Nicaragua (defense attorney and then prosecution, not the Judge, when the child speaks about the offense		

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Denmark		Paraguay		Panama (the Judge just for clarification)		
East Timor		Samoa				
Honduras		Sweden				
Japan		Ukraine				
Kenya		Venezuela				
Lebanon						
Luxembourg						
Mexico (questions made to the Judge, who allows the child to answer, first **to** the prosecution and then **to** the defense attorney)						
Mozambique						
Nepal						
North Macedonia						
Portugal						
São Tomé and Principe						
Spain						
Turkey (questions made to the Judge)						
Uruguay						

The third aspect concerning the nature of the interaction consist on the demand to the child to speak the truth.

Asked whether the child has to make any kind of commitment or swear an oath before speaking, there was a clear prevalence on the negative answer in 46 countries.

In 9 countries children make a commitment or swear an oath before speaking. There is a prevalence in commonwealth countries, although this is not a rule observed in England & Wales.

Interestingly, according to the Bolivian guidelines on child participation in judicial proceedings, there is a presumption of truth in children´s expression.

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The child makes no commitment or swears an oath before speaking	The child makes a commitment or swears an oath before speaking
Argentina	Bulgaria (commitment to speak the truth if the child understands what is true or false, which should be asked by the judge. The child is not obliged to speak)
Austria	Canada-Québec
Benin	Colombia (to say the truth, nothing than the truth)
Bolivia	Georgia
Brazil	Kenya (the child normally does not speak. If the Judge requires them to, they have to make an oath)
Cape Verde	Puerto Rico (if the child waives his/her right to remain in silence)
China	Samoa (if the child elects to give evidence)
Costa Rica	South Africa (if giving evidence)
Croatia	Uganda (the child has the option to swear or not an oath)
Cuba	
Denmark	
Dominican Republic	
East Timor	
Ecuador	
Egypt	
El Salvador	
England & Wales	
France (the child has the right to lie)	
Germany	
Guatemala	
Guinea-Bissau	
Honduras	
India	
Iraq-Kurdistan	
Japan	
Lebanon	
Luxembourg	
Mauritania	
Mexico	
Mozambique	
Nepal	
Netherlands	
New Zealand	
Nicaragua	
North Macedonia	
Panama	
Paraguay	
Portugal	
São Tomé and Principe	
Serbia	
Spain	
Sweden	
Switzerland	
Turkey	

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Ukraine	
Uruguay	
Venezuela	

5.3.3. ON SCOPE: FOCUS EXCLUSIVELY ON THE OFFENSE OR ALSO ON OTHER PERSONAL OR SOCIAL-FAMILIAL ASPECTS

Beijing Rule 16 considers that the background and circumstances in which the juvenile is living or the conditions under which the offense has been committed shall be properly investigated so as to facilitate judicious adjudication of the case by the competent authority. The rule requires that adequate social services should be available to deliver social inquiry reports of a qualified nature, which is directly connected with the role of multidisciplinary professionals in the proceeding (UNITED NATIONS 1985).

In a complementary way, on General Comment 12, the Committee understands that adults working with children should acknowledge, respect and build on good examples of children's participation, for instance, in their contributions to the family, school, culture and the work environment and therefore they also need an understanding of the socio-economic, environmental and cultural context of children's lives

In this context, the research questioned if this is an issue of interaction for two reasons: as a communication skill and as a means to grant civil, socio-economical and cultural rights.

As a communication skill, Liefaard, Rap and Bolscher suggest two elements that are intertwined with a broader approach to the child. The authors consider it as an important element of effective participation to show genuine interest in the youth and to build trust.

Building trust in the context of juvenile justice is a tricky element if considered in relation to the possibility of applying a restrictive measure as a consequence of the child´s expression, but it is very important when considering the effectiveness of other rights. According to Beijing Rule 1,4, Juvenile justice shall be conceived as an integral part of the national development process of each country, within a comprehensive framework of

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social justice for all juveniles, thus, at the same time, contributing to the protection of the young and the maintenance of a peaceful order in society.

Although the research was not focused on adjudication, in many countries judges may take the corresponding measures to grant rights for children, in a protective manner, if the children wish so.

However, the reason of this kind of interaction should also be explained to children, because they may consider prejudicial to them. According to Cashmore, both parents and children questioned the relevance of information about their family background and behavior at school or work, because it was unclear how children think that information is used and why they think it is irrelevant (CASHMORE & BUSSEY 1985). Therefore, questioning about other circumstances should be preceded by an explanation on how this information would be used for.

As seen before, in the majority of the countries judges do maintain a conversation with children on other aspects than the offense: 36 countries.

In 14 countries the focus is mainly on the offense and in 3 other countries it depends of various factors.

The interaction is focused strictly on the offense	**The interaction is also open to contextualize the child´s behavior, his/her family condition and some other aspects**	**others**
Austria (The interaction in the main hearing is focused on the wrongful act, but additionally the mentioned written report of the Jugendgerichtshilfe gives the judge an understanding of the background of the child. In this way there is the context. This division between the hearing at the Jugendgerichtshilfe and the main hearing is beneficial, because the formality of criminal proceedings is an important factor in safeguarding fundamental rights, but at the same time the formality is the biggest obstacle to research about the background of the accused)	Argentina	Cuba (there are many kinds of hearings, it depends on its purpose)
Bulgaria (additional information is provided by pedagogical services)	Benin (the tone Is softer, it is possible to have a less formal conversation with the child	Denmark
Canada – Québec	Bolivia	Guatemala (50% of the judges focus only on the offense, while the

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		remaining consider also the familiar and social context of the child)
Costa Rica (at the trial)	Brazil	
Ecuador	Cape Verde	
Egypt	China	
Mauritania	Colombia	
Mexico (but it is open for the child to express doubts and concerns)	Costa Rica (at the preliminary hearing)	
Panama (personal and social aspects are assessed by multi-professional team before the hearing	Croatia	
Paraguay	Dominican Republic (in the intermediate hearing)	
Puerto Rico	East Timor	
Samoa (other aspects may be addressed, but more common when dealing with sentencing)	El Salvador	
South Africa (other elements will be raised in the social report)	England & Wales	
Turkey	Georgia	
	Germany (the whole procedure is designed to respond more educational than penal.	
	Honduras	
	India	
	Iraq-Kurdistan	
	Japan	
	Kenya	
	Lebanon	
	Nepal	
	Netherlands	
	New Zealand	
	Nicaragua	
	North Macedonia	
	Portugal	
	São Tomé and Principe	
	Serbia	
	Spain	
	Sweden	
	Switzerland	
	Uganda	
	Ukraine	
	Uruguay	
	Venezuela	

5.3.4. ON CONTEXT: POSSIBILITY OR NOT OF DIVERSION

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According to CRC, article 40, 3, (b) whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

The Committee on the Rights of the Child emphasizes on General comment 24 that opportunities for diversion should be available from as early as possible after contact with the system, and at various stages throughout the process and, therefore, an integral part of the child justice system (UNITED NATIONS 2019).

Therefore, one context of possible interaction with the child in the judicial context should also be the continuous possibility of diversion.

According to the Committee, diversion should be used only when there is compelling evidence that the child committed the alleged offense, that he or she freely and voluntarily admits responsibility, without intimidation or pressure, and that the admission will not be used against the child in any subsequent legal proceeding and also in cases where the child free and voluntary consent to diversion should be based on adequate and specific information on the nature, content and duration of the measure, and on an understanding of the consequences of a failure to cooperate or complete the measure (UNITED NATIONS 2019).

The United Nations Model Strategies and Practical Measures on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice urge countries to provide various options for diverting children away from the justice system, including warning and community work, to be applied in combination with restorative justice processes by fostering close cooperation among the justice, child protection, social welfare, health and education sectors, so as to promote the use and enhanced application of alternative measures to judicial proceedings and to detention (UNITED NATIONS 2014)

Therefore, participants in the research were asked if the child hearing was also an opportunity for discussing about plea bargaining, restorative approach and alternatives to trial and the limits, contours or extent of the interaction in this context.

In 25 countries the hearing is, or might be, an opportunity, for alternative resolution as well. In 19 countries the hearing is focused exclusively on the decision making about the offense.

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In three countries there is no specific rule on the issue.

This is the picture captured on this subject:

The judicial hearing is exclusively geared to the decision making, focused only on the offense	**The judicial hearing may be an opportunity for plea-bargaining, restorative approach or other alternative to trial**	**There is no specific rule**
Austria (Plea-bargaining is not a possibility in Austria, but there are some ways the hearing does not have to end with a verdict. The law provides under certain circumstances the possibility for the accused to agree to a moderated out-of-court settlement or community hours for example. If such an opportunity arises, the formality can be dropped a little. However, the accused must always explicitly agree to such a procedure.	Argentina (both situations: due process shall be respected, but it is open to alternative solutions during the proceeding	Guatemala (40% of the judges do not allow such kind of interaction
Benin	Bolivia	Bulgaria
Brazil (on trial, this is the main focus, but in other kind of hearing other purposes may be at stake, allowing other kind of approaches)	Brazil (there are three main hearings. In the one focusing on diversion, it is more open to discussion on other aspects of the child behavior)	Lebanon
Canada – Québec	China	
Cape Verde (the hearing aims not only to analyze if the act was committed, but also to clear up about the wrongful nature of the act raise awareness on the attitudes to be adopted by the child	Costa Rica (on the preliminary hearing)	
Colombia	Croatia (The session of the council for a minor who does not contest the commission of a criminal act, and the state attorney proposes extra-institutional educational measures, is an informal session. The judge will lead the session in such a way that everyone expresses their opinion and that the opinion of the child is heard.)	
Costa Rica (at the trial)	Cuba (it depends on the purpose of the hearing)	
Croatia (The hearing is more formal when the child does not admit to committing the crime and when the proposal is to sentence him to institutional educational measures or juvenile prison.	Dominican Republic	
East Timor	El Salvador (but in practice there are some challenges to hear the child about alternative conflict resolution)	
Ecuador	France (especially in the preliminary hearing, with a single judge)	
Egypt	Georgia	

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Japan	Germany (the whole procedure is designed to respond more educational than penal.	
Luxembourg	Guinea-Bissau	
Mexico	Honduras	
North Macedonia (alternative solutions should be provided at the beginning of the procedure)	India	
Panama the Judge just inform the possibility of alternative resolution, but do not analyze personal or social aspects to divert the case)	Mauritania	
Paraguay	Nepal	
Puerto Rico	Netherlands (possible referral to mediation or RJ, although nor yet structurally embedded)	
Spain	New Zealand	
	Nicaragua (there are many kind of hearings, each of them with a specific purpose, including the possibility of alternative resolution)	
	Portugal (in the initial hearing)	
	Samoa	
	São Tomé and Principe (a behavior plan or mediation is possible in the preliminary phase of the procedure)	
	Switzerland (legislation enable tailor-made decisions and some restorative approaches	
	Ukraine	
	Venezuela	

5.3.5. DISCRETION

Finally, the research was concerned on the possibility of some kind of discretion in the way judges and magistrates interact with children. *Parens patriae* principle was at the heart of welfarist approaches and Beijing Rule 6 still consider appropriate some kind of discretion dealing with youth.

The large majority of countries still admit that the judge makes some kind of recommendation on how the child should behave: 33 countries.

In 13 countries this is not allowed and in 4 there is no clear definition on the issue.

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The Judge is not allowed to make any recommendation on how the child should behave	The Judge is allowed to make recommendation on how the child should behave	There is no legal definition on the issue, remaining up to the inquirer.
Argentina (the judge may impose orders, but not counsels to the child)	Austria	Bolivia
Canada – Québec	Benin	Bulgaria
Costa Rica (just when sanctioning)	China	Brazil
East Timor	Colombia	Cape Verde
Egypt (social worker can do that)	Cuba	
El Salvador (social experts may make recommendations to be analyzed by the Judge)	Dominican Republic (when there is an agreement between the parties)	
Honduras	Ecuador (at sentence of conviction, the Judge may recommend the child to beg a pardon to the victim)	
Mauritania	England & Wales	
Nicaragua	France (the system is conceived to favor the continuity of judicial intervention in a personal relationship: one judge, one minor)	
Panama (multi-professional team may recommend treatments, activities in their report)	Georgia	
Puerto Rico	Guatemala (for 70% of the Judges)	
South Africa	Guinea-Bissau	
Spain	India	
	Iraq-Kurdistan	
	Japan	
	Kenya	
	Lebanon	
	Luxembourg	
	Mozambique	
	Nepal	
	Netherlands (mostly the lawyer does that)	
	New Zealand (for compliance of FGC plans, bail conditions and youth justice residence)	
	North Macedonia	
	Paraguay	
	Portugal	
	Samoa	
	São Tomé and Principe	
	Serbia	
	Sweden (when rendering the sentence)	
	Switzerland	
	Turkey	
	Uganda	
	Venezuela	

5.3.6. EXISTENCE OF GUIDELINES ON HOW TO INTERACT WITH THE CHILD

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The existence of guidelines is especially important where the interaction might be affected by different kind of conceptions about judicial intervention.

Many scholars who make comparative studies on juvenile justice point out that, more than observing strictly competing models, every country is subjected to different political pressures, travelling back and forth somewhere between two or more poles over time (HAZEL2008). Therefore, judicial interaction with children is also exposed to a variety of values, and local guidelines could be of some support on how to hear the child.

In the commentaries to Beijing Rule 6 it is recommended the formulation of specific guidelines on the exercise of discretion, and the provision of systems of review, appeal and the like in order to permit scrutiny of decisions and accountability are emphasized in this context because these aspects do not easily lend themselves to incorporation into international standard minimum rules, which cannot possibly cover all differences in justice systems.(UNITED NATIONS 1985).

However, only 9 countries mentioned having some kind of guidelines. Only three shared their guidelines, Bolivia, Ecuador and Mexico.

Existence of guidelines or protocol on how to interact with the child
Argentina
Bolivia
Ecuador (restorative approach)
England & Wales
Mauritania (code of penal protection)
Mexico
Nepal
South Africa
Uganda (for prosecution officers and some legal guidance on language)

The International Juvenile Justice Observatory has organized a manual on the right to participation, authored by Liefaard, Rap and Bolscher, which is an important document on the subject as well.

It is possible to consult these guidelines in Attachment 2.

5.4. SUPPORT DURING INTERACTION

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In this section we will consider three dimensions of support for children during the hearing: by the defense attorney, by the parents or a person of trust and, finally, by multidisciplinary professionals

5.4.1. LEGAL ASSISTANCE

Legal assistance is one of the child´s fundamental rights in juvenile justice, according to article 40, 2, b, ii of the CRC and Beijing Rule 15.

Some countries expressed the possibility of children not having legal assistance, such as Benin, Guinea-Bissau and Switzerland, among others. Some studies show a relative high percentage of countries where legal assistance is not always provided (HAZEL 2008) and not only due to economic pressure. Henning shows that in many States in the US, where youth can waive the right to legal counsel, high percentage of them, arriving to 90% in some places, go to court without legal representation. This situation is due to limited eligibility in securing services and the extension of the legal attention, not only to adjudication, but also prior and post disposition matters (HENNING 2010).

In spite of the extremely important assistance of a defense attorney to grant children´s rights, especially and also effective participation (LIMANTE et al. 2021), this is normally a duty of the Executive branch of government to provide the assistance on legal aid, not of the Judiciary. Therefore, the research focused on two aspects of the support provided by legal counselors during the hearing, presided by judges and magistrates and under a greater sphere of their influence.

First, if the child is allowed to consult the attorney during the hearing. The right to be heard with the assistance of a diligent and loyal advocate, who will insist on substantive and procedural regularities, ensure accurate fact-finding, and expand the range of treatment options the judge may consider (HENNING 2010).

Regarding the first aspect, the majority of the countries allows the child to consult the defense attorney during the hearing before any question or issue: 43 countries.

In 2 countries restrictions exist during cross-examination and in another 2 countries consultation **is** forbidden.

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In 6 countries there is no specific rule on the issue.

Child has the right to consult during the hearing before any question and any issue	**The child has the right to consult the defense attorney on some aspects of the hearing, not during cross-examination**	**Child has not the right to consult during the hearing**	**No rule on the issue.**
Argentina	Austria (The accused may consult with his defense attorney during the main hearing, but may not discuss the answers to individual questions)	Lebanon	Croatia (The president of the youth council decides on this and, if necessary, approves consultations.)
Benin (if there is a Defense attorney)	South Africa (the child is not allowed to consult when he/she is under cross-examination).	Paraguay	Guatemala (the majority of the judges allows consultation.. One does not, in any case. Another one allows consultation only to the defense attorney, not to the family)
Bolivia			Spain (if the child asks to, it could be allowed to consult the attorney, not the family)
Brazil (in a minority of States -11% - Judges are more restrictive in allowing consultation)			Switzerland (children do not always have legal assistance and, in this context, could, in principle, consult the family)
Bulgaria			Turkey (the child normally is not allowed, they can be by the judge, but they are not seated close one to the other)
Canada – Québec			Ukraine (the judge may give the child the opportunity to communicate confidentially

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			with the defense attorney)
Cape Verde			
Colombia			
Cuba			
Denmark			
Dominican Republic			
East Timor			
Ecuador			
Egypt			
El Salvador			
England & Wales			
France (if the child asks or if the judge suggests. Not the family)			
Georgia			
Germany			
Guinea-Bissau			
Honduras			
India			
Iraq-Kurdistan			
Japan (it depends on the judge, but normally yes)			
Kenya			
Luxembourg			
Mauritania (just the lawyer, not the family)			
Mexico			
Mozambique			
Nepal			
Netherlands (just the attorney, not the family)			
New Zealand			
Nicaragua			
North Macedonia (just the lawyer)			
Panama			
Portugal			
Puerto Rico			
Samoa			
São Tomé and Principe			
Serbia			
Sweden (only the defense attorney)			
Uganda			
Uruguay			
Venezuela			

The second aspect concerns the physical conditions of the space in order to favor closeness to grant support to the child by the defense attorney, because the child´s right to legal assistance might be hampered during the hearing by the organization of the space. If the child is not close to the defense attorney, consultation becomes more difficult.

In 28 countries, the defense attorney sits beside the child during the hearing.

However, in 12 of them the child sits apart from the attorney. In three of them the situation varies.

Child sitting beside the defense attorney	**Child sitting apart from the defense attorney**	**No generic rule, with some experiences, varying according to the place**	**Children do not have defense attorney**
Bulgaria	Austria (In the middle sits the accused, who takes a seat in front of the defense attorney on the wooden bench, after his/her interrogation is over)	Benin	Guinea-Bissau
Canada – Québec (except when giving testimony	Croatia	Bolivia	
Cape Verde	East Timor	Brazil (but most of the time beside the child)	
Colombia	Honduras		
Cuba	Japan		
Dominican Republic	Kenya		
Ecuador	Portugal		
El Salvador	Samoa		
England & Wales	São Tomé and Principe		
France	South Africa		
Germany	Spain		
Guatemala	Turkey		
Lebanon			
Mexico			
Nepal			
Netherlands			
New Zealand			
Nicaragua			
Luxembourg (children may choose where to sit. In practice, they sit next to the defense attorney)			
North Macedonia			
Panama			
Paraguay			
Puerto Rico			
Sweden			
Switzerland (when the child is assisted by attorney)			
Uganda (either beside the attorney or the probation officer)			
Ukraine			
Uruguay			

5.4.2. THE ROLE OF PARENTS/GUARDIANS OR PERSONS OF TRUST DURING THE HEARING

According to CRC article 40, 2, b(iii) the child has not only the right to legal but also to other appropriate assistance.

Beijing Rule 15.2 lays down that the parents or the guardian shall be entitled to participate in the proceedings and may be required by the competent authority to attend them in the interest of the juvenile. They may, however, be denied participation by the competent authority if there are reasons to assume that such exclusion is necessary in the interest of the juvenile.

General Comment 24 states that parents or legal guardians should be present throughout the proceedings, except at the request of the child or because it is not in the child's best interests. In general, however, the Committee recommends that States parties explicitly legislate for the maximum involvement possible of parents or legal guardians in the proceedings because they can provide general psychological and emotional assistance to the child and contribute to effective outcomes.

It was unanimous in this research the assertion of the involvement of family or a person of trust during the hearing, at least with an invitation, but not always mandatory.

The family´s participation
Argentina
Austria (parents are invited)
Benin
Bolivia (with the agreement of the child, according to the national guidelines)
Brazil
Bulgaria
Cape Verde
China
Colombia
Costa Rica
Croatia
Cuba
Denmark
Dominican Republic
East Timor (the family is invited to attend)
Ecuador
Egypt
El Salvador
England & Wales (if under 16 or with a court order)

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France
Germany (family is optional)
Guatemala
Guinea-Bissau
Honduras
India
Iraq-Kurdistan
Japan
Kenya
Lebanon
Luxembourg
Mauritania
Mexico (it is not mandatory for family)
Mozambique
Nepal
Netherlands
New Zealand
Nicaragua
North Macedonia (informed, not mandatory)
Panama
Paraguay
Portugal
Puerto Rico
Samoa
São Tomé and Principe
Serbia
South Africa
Spain
Sweden
Switzerland (but in some minor cases it is possible a trial in *absentia*)
Turkey (parents may be excluded, if in the best interest of the child)
Uganda
Ukraine
Uruguay
Venezuela

However, there is great variation on how the family participates in the hearing.

How is this support provided? Silently? Is the family close to the child during the hearing?

Six countries explicitly mentioned that the child is not allowed to consult the family during the hearing, just the attorney, as we can see in the table regarding support during interaction.

This situation brings to light the different kind of support children may need during the hearing. If lawyers are responsible for legal assistance, to whom children

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should direct their doubts, family might be consulted about other aspects, if the child feels that it would more appropriate to speak to.

This is even more important in the context in which child hearing is not exclusively geared to giving evidence about the offense, but dealing instead on other aspects that might impact the daily routine of the family.

Therefore, this seems to be an aspect to be better analyzed in another opportunity.

A third aspect was also discussed. Not every country has specified where the family sits in court, but this aspect seems also to be important, even if the family participation is considered in its limited purpose of giving psychological and emotional support to the child. Indeed, as much distant the family is **from** the child more limited could be this kind of support.

The picture among the 38 respondents (France figures in two situations according to the severity of the offense) is very balanced: in 19 countries the family or support person sits beside the child during the hearing and in 18 countries they sit apart. No generic rule is mentioned in two countries.

Family or support person sitting beside the child	**Family or support person sitting apart from the child**	**No generic rule, with some experiences, varying according to the place**
Brazil	Austria	Benin
Croatia	Bulgaria	Bolivia
Cuba	Cape Verde	
East Timor	Colombia	
England & Wales	Costa Rica	
France (in case of misdemeanor)	Dominican Republic	
Guatemala	Ecuador	
Guinea-Bissau	France (in case of felonies and crimes)	
India	Germany	
Japan	Netherlands (behind)	
Lebanon	New Zealand (behind)	
Luxembourg (children may choose where to sit. In practice, they sit next to the parents)	Nicaragua (behind)	
Mexico	North Macedonia	
Nepal	Panama (behind)	
São Tomé and Principe	Portugal	
Spain	Puerto Rico	
Switzerland	Samoa	
Uganda (before called to give testimony)	Turkey	
Uruguay		

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5.4.2. THE ROLE OF MULTIDISCIPLINARY PROFESSIONALS

Social inquiry reports are a more common expression of multidisciplinary professionals´ involvement in the proceedings, in consonance to Beijing Rule 16.

General Comment 24 lays down that the child justice system should provide ample opportunities to apply social and educational measures, and to strictly limit the use of deprivation of liberty, from the moment of arrest, throughout the proceedings and in sentencing. States parties should have in place a probation service or similar agency with well-trained staff to ensure the maximum and effective use of measures such as guidance and supervision orders, probation, community monitoring or day reporting centers, and the possibility of early release from detention.

For De Bondt & Lauwereys "the individual assessment shall, in particular, take into account the child's personality and maturity, the child's economic, social and family background, and any specific vulnerabilities that the child may have… that might be of use to the competent authorities when e.g. determining whether any specific measure to the benefit of the child is to be taken" (DE BONDT & LAUWEREYS 2020)**.**

It is well known that several imbalances are statistically registered in youth justice everywhere regarding vulnerable groups (WACQUANT 2004). This is one reason why children and their families are suspicious of speaking about their personal and social background, as already seen in section 5.3.3. (CASHMORE AND BUSSEY 1985)

That **is** why circumstances that should be considered as mitigating factors might imply in harsher responses.

Therefore, multidisciplinary intervention requires, first of all, a theoretical approach on the use of these data. According to Couso, youth from disadvantaged social classes, ethnic minorities or other vulnerable groups, usually more associated in the public opinion – and neo-correctionalist approaches – with groups with a greater predisposition to delinquency, should have their situation analyzed under a differentiated culpability principle, to postulate an inverse conclusion: observing the proportionality of the state response to the act, taking into account the conduct, and not the individual, those with disadvantaged conditions should have a less disadvantageous response, precisely because of its unfavorable context (COUSO 2008).

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The conceptual approach has an impact on whether these professionals could have a role during the hearing and which would it be.

The European Union Agency for Fundamental Rights states that a lesser involvement of social professionals in criminal in comparison to civil proceedings is highlighted when analyzing the factors that favors child participation (FRA 2015).

In civil proceedings, it is also recognized that the presence of support professionals during hearing, with whom children may have had previous contact, can relieve stressful experiences, implying also the right to choose the person who will accompany the child (FRA 2017).

In Rap´s observation of child hearings in Europe, the involvement of social workers contributes to the participation of the young person and his parents**,** as substantiated by the observations of the children's hearings. It seems that the contribution of social workers to the hearing and attention for the personal circumstances of the young person contribute to their effective participation (RAP 2016).

This is confirmed in Hanssen´s research on perceptions of children about their involvement with the justice system, for whom a proactive participation of a probation officer, speaking positively on their behalf, give them a feeling of support enabling them to participate more effectively in the court proceedings and also respecting the authority of the judicial process (HANSSEN 2008).

The research was interested in knowing how is the involvement of those professionals during the hearing.

Questioned about the presence of these professionals in the hearing, 38 countries mentioned that they might attend it.

Participation of multidisciplinary professionals in the hearings
Argentina (reports submitted orally during the hearing. Professionals might also be present just in special cases to facilitate the communication)
Austria (The probation officer reports on the course of the care**,** and comments on whether the probation should be revoked. In practice**,** there is always a written report from the probation officer, which is read and the probation officer is questioned, if there are any additions. There are no other professionals attending)
Benin (social worker)
Bolivia (psychologist)
Brazil (in 18% of the States: social workers)
Bulgaria (pedagogues)
China (social workers and pedagogues)
Colombia (family defense office – with multidisciplinary team)
Croatia

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Dominican Republic (multidisciplinary team may eventually attend, not a rule)
Egypt (social experts)
England & Wales
France (social educative programs)
Germany (youth services must attend)
Guatemala (psychologist, pedagogue and social worker)
India (as part of the board)
Japan
Kenya
Lebanon (social workers)
Luxembourg
Mauritania
Mexico
Nepal (social worker and psychologist are part of the child bench)
Netherlands (probation service and forensic psychiatric. Professionals may also counsel the child and answer questions during the hearing)
New Zealand (multidisciplinary team of professionals attend to identity the needs of the child and to inform plans to respond to identified issues)
North Macedonia
Panama
Paraguay
Portugal
Puerto Rico (social workers, psychologists, psychiatrists)
Samoa (social worker and probation officers)
São Tomé and Principe
Serbia (these professionals - guardianship authority- might attend. The guardianship authority can make suggestions during proceedings and indicate facts and evidence of importance for appropriate disposition)
Spain (the technical assistance team intervenes to inform the youth situation and to suggest a measure; the representative of a youth service will inform about the possibilities to fulfill the measure and the circumstances that may interfere)
Switzerland (services occasionally attend)
Uganda (probation and social welfare officer. The role of probation and social welfare officer is to submit a report to court and to prepare the child for the hearing**.** The child should have a say on choosing a person of trust to accompany him/her, but this does not happen in practice)
Uruguay (Uruguay National Institute for Children and Adolescents)
Venezuela

Those professionals might have multiple roles during the hearing.

We may identify a supportive role in many countries.

The national reports´ analysis has already pointed out some practices of having multidisciplinary professionals assisting judges and magistrates during the child hearing in four countries, mostly psychologists, but also teachers and communication assistant.

Bolivia (with the assistance of a court psychologist)
Bulgaria (The judge can be assisted by a teacher or a psychologist who can ask questions instead of the judge, /usually in cases when the child does not understand the question of the judge and there is a need for a more child-friendly language)
New Zealand (there is a communication assistant in the room)
Serbia (the Judge hears the child with the support of a psychologist)

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Both the supportive role and the communicational support would require proximity.

Therefore, the research asked where those professionals sit when in court. Not every country answered in detail where each participant in the hearing sits and for this reason a lesser comprehensive picture is provided on this aspect, but in the majority of the countries the professionals sit apart of the children.

However, in several countries those services also suggest measures to be adopted by the court.

In this context their participation might have further consequences for the child.

To understand better how their interaction with the child is conceived, participants were asked if these professionals are allowed also to address the child. This is the case in 18 countries:

Countries where professionals are allowed to address the child during the hearing
Honduras
Lebanon
Nepal (as part of the child bench)
New Zealand
Lebanon
Luxembourg
Nepal (social worker and psychologist are part of the child bench)
Netherlands (Child Protection council, probation service, forensic psychiatric)
New Zealand (multidisciplinary team of professionals attend)
North Macedonia
Panama
Paraguay
Puerto Rico (social workers, psychologists, psychiatrists)
Samoa (if the child has pleaded guilty)
São Tomé and Principe
Spain
Ukraine
Venezuela

Some professionals have, however, a more intrusive role during the hearing, suggesting measures to be adopted by the court that might interfere in adjudication.

In this context, it is important to know if the child has the right or not to contradict reports submitted to the court. In the majority of the countries, 40 countries, this is allowed.

In four countries, children do not have this right granted.

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The child has no right to contradict the report	The child has the right to contradict the report directly to the Judge	The child has the right to contradict the report through his/her defense attorney
Benin	Argentina	Canada – Québec (intervention as evidence collection, subject to cross-examination)
Honduras	Bolivia (usually during disposition)	Costa Rica
Japan	Brazil	Denmark
Nepal (social worker and psychologist are part of the child bench, who renders the decision)	Bulgaria	Lebanon
	Cape Verde	Mexico
	China	Puerto Rico
	Colombia (a previous elaborated psychological and social report is read during the hearing and the child can contradict it)	Uruguay
	Croatia	
	Cuba (but not during its presentation. Afterwards, the child may make comments on it)	
	Dominican Republic	
	Egypt	
	El Salvador	
	England & Wales	
	France	
	Georgia	
	Germany	
	Guatemala (for the majority of the Judges. 20% answered no to a local survey)	
	Guinea-Bissau	
	India	
	Iraq-Kurdistan	
	Kenya	
	Luxembourg	
	Mauritania	
	Netherlands (the judge asks the child about the reports)	
	New Zealand	
	Nicaragua	
	North Macedonia (but this is very rare)	
	Panama	
	Paraguay	
	Portugal	
	Samoa	
	São Tomé and Principe	
	Serbia	
	South Africa	
	Spain	
	Switzerland	
	Turkey	
	Uganda	

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	Ukraine	
	Venezuela	

6. LEGAL GUARANTEES AND SPECIAL PROTECTIONS

Almost all countries stated that children have the same legal guarantees as the adults and more specific in consideration to their own condition. All of them are in consonance to CRC´s article 40 and Beijing Rule 7, both granting basic procedural safeguards**,** such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings.

The only exceptions referred in the national reports are those countries where legal defense is not always provided to children as it is for adults. Brazil faces a specific interpretation dispute whether some specific guarantees provided for adults are adequate for children, such as not being obliged to attend the hearings or the application also for children of some changes for adults in the proceeding´s sequence.

The specific legal guarantees mentioned by countries are the presence of the family, multi-professional intervention, a more speedy trial, the possibility of diversion, lesser formalities, language, garb and environmental adaptations, and privacy, both in court, during the hearing, and records.

6.1. SPECIAL PROTECTION MEASURES

Some singular measures referred by judges concern court organization, especially the possibility that just one judge presides all acts through all stages of the proceedings to ensure continuity and understanding of the best interests of the child (HAZEL 2008). This is the case of France, but also Brazil, Denmark, Portugal, among others. In this sense, Puerto Rico informed that changes are in course to implement the concept of one family, one judge.

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Austria, Honduras and the Netherlands mentioned as a protective measure the possibility that some aspects may be discussed in the absence of the child which are likely to have a negative impact on him or her, with further information about the subject**.**

Communication assistants were referred by six countries, as already mentioned, in order to avoid traumatic experiences during the hearing.

However, it is interesting to note that, according to children, the most stressful experiences regarding youth justice are related to accessibility of the courthouse, information about how to acquire legal representation and how to evaluate the approaches taken by their lawyers in their defenses, generating feelings of uncertainty, intimidation and ignorance (HANSSEN 2008).

6.2. PRIVACY AND AUDIOVISUALLY RECORDED HEARINGS

A more controversial aspect is the possibility of audiovisually recorded hearings.

Some countries have argued that audiovisual recording was not in consonance to the right of privacy, while other interpret this possibility as a legal guarantee for children.

According to Beijing Rules, the juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling. In principle, no information that may lead to the identification of a juvenile offender shall be published. This is a specific provision that grants exception treatment for children regarding publicity as a legal guarantee, as laid down in article 14 of the International Covenant on Civil Rights

However, many aspects considered in this research could not be subject to review by a higher competent authority in a rights-based approach if the access to the hearings content and dynamic is restricted to written or even audio recording.

Indeed, according to Ferrajoli, the mere written transcription of what has been said is an inquisitive trait (FERRAJOLI 1995) and granting audiovisual recording could grant the possibility of case review in a comprehensive manner, not implying that the recording would be available to the general public.

This is the reason why the Directive of the European Parliament and of the Council on Procedural Safeguards for Children Suspected or Accused in Criminal Proceedings

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lays down in article 9 that Member States shall ensure that questioning of children by police or other law enforcement authorities during the criminal proceedings is audiovisually recorded where this is proportionate in the circumstances of the case, taking into account, inter alia, whether a lawyer is present or not and whether the child is deprived of liberty or not, provided that the child's best interests are always a primary consideration. However, in its initial considerations, it is stated that the Directive does not require Member States to make audiovisual recordings of questioning of children by a judge or a court (EUROPEAN PARLIAMENT 2016).

It is important to note that the pandemic has caused an impact both in the perception of audio recording and in the implementation of this measure, as many countries have mentioned in their reports.

The international picture on this issue is very diversified.

A relative majority of the countries does not grant sound and video recording: 21 countries.

Sound and video recording is granted in 14 countries

Just sound recording is also provided in 14 countries.

In five countries there is no generic rule and in one audio recording is just an aid, exceptionally used.

No sound or video recording	**Sound recording**	**Sound and video recording**	**No generic rule, with some experiences, varying according to the place**	**Prevalence of written protocol (audio recording is just an aid)**
Benin	Bulgaria	Argentina	Cuba (if necessary)	Austria
Bolivia	Canada - Quėbec	Brazil	El Salvador (before the pandemic, recording was considered a violation of the right of privacy, but since the pandemic the Courts have equipment to allow recording**s**)	

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Croatia (by the police and prosecution attorney, not by the court)	Cape Verde	China	Guatemala (100% of sound recording and 22% of video recording)	
Dominican Republic	Denmark	Colombia	Panama	
Egypt	East Timor	Costa Rica	Switzerland (normally for virtual participation)	
England & Wales	Ecuador	Georgia		
France	Honduras	Mexico		
Germany	India	Paraguay		
Guinea-Bissau	Kenya	Spain		
Iraq-Kurdistan	New Zealand	Sweden		
Japan	Portugal	Turkey (upon judicial order)		
Lebanon	Puerto Rico	Uganda		
Luxembourg	Samoa	Ukraine		
Mauritania	Venezuela	Uruguay		
Mozambique				
Nepal				
Netherlands				
Nicaragua				
North Macedonia				
São Tomé and Principe				
Serbia				
South Africa				

7. TRAINING

Most of the international standards assert the need for professionalism and training, such as Beijing rule 22 and Riadh guidelines, recital 58.

General comment 12, in its recital 134, recommends the involvement of children with trainers and facilitators on how to promote effective participation; they require capacity-building to strengthen their skills in, for example, effective participation awareness of their rights, and training in organizing meetings, raising funds, dealing with the media, public speaking and advocacy.

This is especially important, because, according to Plotnikof and Woolfson, while some individual magistrates were thought to have good engagement skills, many

interviewees (including some magistrates) thought youth court benches needed more training and feedback. (PLOTNIKOFF & WOOLFSON 2002, p. 30)

For Rap, a lack of well-developed interview techniques is a matter of concern in all the countries involved in her study (RAP 2016, p. 105).

IJJO provided some videos with children to raise awareness of legal professionals on the challenges they face during the hearing (IJJO).

General comment 24 emphasizes as well the need of appropriate multidisciplinary training on the content and meaning of the Convention, including information from a variety of fields on, *inter alia*, the social and other causes of crime, the social and psychological development of children, including current neuroscience findings, disparities that may amount to discrimination against certain marginalized groups such as children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities and the available diversion measures and non-custodial sentences, in particular measures that avoid resorting to judicial proceedings. Consideration should also be given to the possible use of new technologies such as video "court appearances", while noting the risks of others, such as DNA profiling. There should be a constant reappraisal of what works (UNITED NATIONS 2019).

UN report on access to justice for children also stresses the importance of gender equality laws, training and development of child-sensitive skills to communicate with children and creating a safe environment in the justice process (UNITED NATIONS 2013).

Liefaard, Rap and Bolscher understand that the skills professionals need to have in order to be able to maintain an effective conversation with a child who is in conflict with the law, during which the child is able to give his or her views, should include listening to children in conflict with the law; conversation techniques to enhance the participation of children in conflict with the law; explaining procedures and decisions to children in conflict with the law; adapting the setting and atmosphere in which a conversation with a child in conflict with the law is to be held; involving parents in the juvenile justice process (LIEFAARD, RAP & BOLSCHER 2016, p. 17) .

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25 countries mentioned that they have specific training on how to interact with the child. In 16 countries no specific training is provided.

Specific training on how to interact with the child	**No specific training on how to interact with the child**
Austria	Argentina
Canada - Québec	Benin (only social workers have specific training on the subject)
China	Bolivia
Croatia	Brazil (except in a minority of States)
East Timor	Bulgaria
Egypt	Cape Verde
England & Wales	El Salvador
France	Germany
Guatemala	Honduras
India	Kenya
Japan	Lebanon
Luxembourg	Panama
Mauritania	Samoa
Mexico	Turkey
Mozambique	Ukraine
Nepal	Uruguay
Netherlands	
New Zealand	
Nicaragua	
North Macedonia	
Portugal	
Serbia	
Spain	
Sweden	
Switzerland	

Regarding general training on youth justice,

Judges benefit from initial but not continuous training	**Judges benefit from initial and continuous training**	**Judges benefit just of occasional ~~continue~~ training**	**Judges do not benefit from trainings on child hearing**
Paraguay	Argentina	Mozambique	
São Tomé and Principe	Austria (there is a legal provision, that the judges and public prosecutors to be entrusted with juvenile criminal matters in all instances, as well as district attorneys must have the necessary pedagogical understanding and appropriate knowledge in the fields of social work, psychology, psychiatry and criminology. The legal provision also states, that the Federal Minister of Justice must ensure that further training that meets these criteria is offered.)	Samoa (due to lack of funding	Bulgaria

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	Benin	Turkey	Bolivia (but they have manual on how to do it)
	Canada – Québec	Uruguay	Cape Verde
	China		East Timor (training is rare)
	Colombia – (the training is focused on family and criminal law)		Georgia (not always)
	Croatia (education, needs and advancements of the youth and to rule basic knowledge in the field of criminology, social pedagogy, youth psychology and social work for young people.)		Honduras
	Cuba		Kenya
	Dominican Republic		Lebanon
	Ecuador		Nepal
	Egypt		South Africa
	England & Wales		
	France		
	Guatemala		
	Guinea-Bissau		
	India		
	Iraq-Kurdistan (but few)		
	Japan		
	Luxembourg		
	Mauritania		
	Netherlands		
	New Zealand		
	Nicaragua (not initial training)		
	North Macedonia (but rare)		
	Panama (not frequent continuous training)		
	Portugal		
	Puerto Rico		
	Serbia		
	Spain		
	Sweden		
	Switzerland		
	Uganda		
	Ukraine		
	Venezuela		

8 countries mentioned the lack of appropriate training as major issued to be considered.

Regarding generic training, the majority of the countries benefit from training, though.

Judges benefit from initial and continuous training	Judges benefit just from occasional training
Argentina	Bolivia

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Austria (there is a legal provision, that the judges and public prosecutors **are** to be entrusted with juvenile criminal matters in all instances**,** as well as district attorneys must have the necessary pedagogical understanding and appropriate knowledge in the fields of social work, psychology, psychiatry and criminology. The legal provision also states, that the Federal Minister of Justice must ensure that further training that meets these criteria is offered.)	Bulgaria (but judges are not obliged to attend)
Benin	Cape Verde
Canada – Quẻbec	East Timor
China	Georgia
Colombia – (the training is focused on family and criminal law)	Honduras
Croatia (education, needs and advancements of the youth and to rule basic knowledge in the field of criminology, social pedagogy, youth psychology and social work for young people)	Iraq-Kurdistan (but few)
Cuba	Mozambique
Dominican Republic	North Macedonia (but rare)
Ecuador	Panama (not frequent continuous training)
Egypt	Paraguay
England & Wales	Samoa (due to lack of funding)
France	São Tomé and Principe
Guatemala	Turkey
Guinea-Bissau	Uruguay
India	
Japan	
Luxembourg	
Mauritania	
Netherlands	
New Zealand	
Nicaragua (not initial training)	
Portugal	
Puerto Rico	
Serbia	
Spain	
Sweden	
Switzerland	
Uganda	
Ukraine	
Venezuela	

8. REFORMS IN PROGRESS

21 countries mentioned that reform**s** are in progress in their countries.

The approaches are very diversified, in many cases apparently much more related to local challenges than to a broad concern on what should be improved in juvenile justice, according to international legal standards.

In some aspects, the projects are quite contrasting.

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Regarding court organization, for instance, there are projects aiming to create specialized youth courts separated from child protection in Luxembourg and in Bolivia, while in Puerto Rico the projects are in the opposite way, to unify youth and protection courts. In Brazil, there is a doubt whether a project to separate jurisdiction for preliminary proceedings from those regarding trial would also affect youth courts.

Specialization is an issue also in Mauritania**.**

Concerning ages, there are projects to lower minimum age of criminal responsibility in Sweden and to lower the age of penal majority in Brazil.

There is an intent to increase sanctions both in Brazil and in Nicaragua, while in other countries the emphasis is on diversion (Bulgaria, Colombia, Uganda)**.**

Broad reforms are in progress in Guinea-Bissau and Panama.

In Europe, Austria, the Netherlands and Serbia are concerned with new European Union Directive. In England & Wales there is an effort to make also general improvements on the system based on the 'child first' approach.

Reforms in progress
Austria (A European Union directive was recently implemented to guarantee that every child is represented by a defense attorney at every main hearing. In addition, a child who has been arrested for a criminal offense may only be questioned in the presence of a defense lawyer. The child cannot waive this right. To ensure short detentions, a system of on-call defense lawyers has been set up, which ensures that a lawyer can attend an interrogation within hours
Benin (various, not specified)
Bolivia (in order to separate juvenile court from child protection courts)
Brazil (several projects in Parliament, from reducing the age of majority to the increase of time for deprivation of liberty; discussion on creation of a separate court to analyze the respect of legal guarantees before charge)
Bulgaria (diversion mechanisms and educative measures for children; speed up measures to shorten the length of provisional detention**)**
Cape Verde (not specified)
Colombia (to introduce restorative and therapeutic justice)

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England & Wales **https://adcs.org.uk/assets/documentation/ADCS_AYM_LGA_A_Youth_Justice_System_that_Works_for_Children_FINAL.pdf**
Guinea-Bissau (the law is still from colonial period, there are discussions on a new law)
Lebanon (content not specified)
Luxembourg (aiming to create a youth criminal law instead of the exclusive protection focused law that exists in the country)
Mauritania (to create specialized courts)
Nepal (administrative measures to separate children who become adults from children under 18 in youth service facilities; diversion guidelines)
Netherlands (Modernization of the Code of Criminal Procedure and Maximum duration of juvenile detention; Act on Juvenile Justice Institutions)
Nicaragua (trying to increase the sanctions, especially in case of sexual violence)
Panama (an integral reform on juvenile justice system is under consideration)
Puerto Rico (unification of jurisdiction for family and penal cases, under the concept of a family, one judge)
São Tomé and Principe (content not specified)
Serbia (to strengthen child justice system in line with international standards)
Sweden (lowering MACR from 15 to 12)
Uganda: (promotion of diversion. environmental improvements in courts, such as waiting rooms.)

9. PARTICIPANTS' RECOMMENDATIONS OR SUGGESTIONS

All the participants, mostly AIMJF´s members or collaborators, all of them working in the field both as judges and magistrates, lawyer or scholars, were invited to make their own considerations about what should or could be improved in their national system.

Not all of them have made contributions on this discussion, but those who addressed the issue have highlighted some common trends.

Training was mentioned by Honduras, Iraq-Kurdistan, Kenya, Lebanon, Panama, São Tomé and Príncipe and Sweden. Ecuador emphasizes the importance of transnational judicial dialogue for this kind of training.

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Specialization and training of other legal professionals, especially defense attorneys, but also prosecution attorneys, are also highlighted in Austria, Dominican Republic, Lebanon.

Specialization is also suggested for the Court of Appeal in Spain.

Panama brings another perspective on professional adequacy to work with youth justice, pointing out the need to reflect on how judges and professionals are selected, focusing not only on academic skills, but also on sensitiveness and vocation.

Alternative conflict resolution is an issue in Colombia, Dominican Republic, Lebanon and Nepal, either because of lack of legislation or implementation, or due to incoherent approaches.

Strengthening youth programs, especially by coordination with child protection services, was highlighted in Turkey. New Zealand remembers that collaborative approach is a hallmark of the Youth court jurisdiction, with regular meetings of all stakeholders.

Strengthening youth justice is also a concern in Lebanon, with a very broad perspective focusing on child-friendly justice procedures; specialization of relevant justice professionals; complete separation of children from adults in all phases; legislative reform, including age of criminal responsibility; expanding use of non-custodial measures; juvenile judges to be appointed only to juvenile courts; improving services for children.

Finally, Argentina considers interesting to explore the use of information and communication technology in listening to young people under judicial intervention, with special training for all legal professionals, including judges, on how to do it.

10. CONCLUSIONS AND OPPORTUNITIES FOR THE FUTURE

The research reveals a lack of convergence among countries in almost all aspects, and a certain hybridism of models within each country, reflecting in different conditions and approaches to child participation in juvenile justice.

From the organization and specialization of court jurisdiction to processes and practices, but also to internal arrangements, scope, context and communication strategies to interact with the child, the variety of compositions is noteworthy.

The following contrasting trends are particularly worth highlighting.

Regarding court jurisdiction, specialized courts are in place in 24 countries out of 55 participants, although restricted sometimes to bigger cities, to severe cases or some procedural phases. On the contrary, a joint jurisdiction with child protection matters (in 15 countries) or with family courts (in 5 countries) is the second most common situation, with 20 countries. This is a competing field, with countries discussing both specialization and the adoption of the concept **"**one family, one judge**"**, like in Puerto Rico.

This division among countries is also visible in two important aspects. First, the observance of international legal standards on the minimum age of criminal responsibility. Half of the countries have a lower age of criminal responsibility than the one suggested by the Committee**.**

It is also visible a dispute between a more child-focused approach and what the literature classifies as neo-correctional traits, such as the possibility of trying children as adults in some special circumstances, due either to the commitment of serious crimes, including terrorism or involvement in criminal organizations, or to the joint commission of the offense with an adult. This happens in almost half of the countries participating in this research: 20 countries.

Having this dispute in mind, the research also reveals a lack of adaptation in many procedures to provide better conditions of participation to children, although with interesting examples to be considered, as a new trend to be explored and developed.

The vast majority of the countries expressed the inexistence of any kind of adaptation of their way to summon children. Only three countries mentioned having a child-friendly summon procedure: China, Georgia and Serbia (although not shared).

It is visible among those who have shared their models of summons that most of them are limited in terms of information provided for children and parents. Although in a very formal language, the French model is a contrasting example of more extensive information in this context.

Regarding the development of specific informative material for children, only thirteen countries informed the existence of informative material for children and three others have referred to some local experiences, varying according to the place.

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Although a variety of methods is required to convey 'practical and factual information', grouped according to stage of the process and plea, to avoid 'overload', only three countries have more than one communication strategy. Among these, one has two written strategies and two of them have both video and written materials.

However, there are interesting experiences in progress in many places that should be observed, replied and improved: Japan, Lebanon, the Netherlands, Germany, among others.

Another conflicting perspective regards the implications of this call to appear, intimately related to the degree of information children receive.

On the one hand, for the majority of the countries, 45 of them, child participation is mandatory, and in five of these countries, in case of non-appearance, children are coercively brought to court. Therefore, the right to be present in all stages of the proceedings becomes a duty and almost a submission**.**

On the other hand, in this context of lack of informative material for children and clear procedures on how to explain these materials to them, their rights and the implications of not appearing in court, it is arguable if recognizing the possibility of a trial *in absentia* is in accordance with the respect of effective participation of children.

Another issue of concern is the existence of restrictions on access to justice due to clothing requirements identified in a minority of countries, even if still in a significative number, 15 countries, among which very common garb used by young people**,** such as T-shirts**, is** proscribed. Generic terms, such as suitable, decent or respectful clothing as a condition to access to justice is also of concern, especially in a context of general statistical identification of socio-economical, when not ethnical, disparities in youth justice interventions and the corresponding perception of children that differences in treatment are due to social status, with an impact on the perceptions of Juvenile Justice´s procedural fairness.

Regarding children deprived of liberty, there is an expressive concern on not labelling children, granting them the right to take part in the hearing in regular clothes. This is still not the case in more than one fourth of the countries, where children are brought to the courts in uniforms. It is even more challenging the situation of some countries where children remain in cells and are transported to courts with adults.

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The lack of adaptations occurs as well both in the waiting areas and in the hearing rooms.

Only 9 countries have specific waiting areas for children alleged or accused of committing an offense and in 11 eleven countries there are just some local experiences of adaptations.

When deprived of liberty, children remain**,** in more than the half of countries, in 27, in cells, with just one experience of an adapted room. This context may cause a labelling experience and also a negative perception on procedural fairness. The Netherlands presented a photo of its adapted waiting area, which is a good example to be analyzed.

The hearing is regularly held in a courtroom in 29 countries, but it includes another 17 countries in some, but not all, circumstances. In the remaining countries a very diverse picture is found: hearings in chambers, virtually, premises outside the Court.

Although no noteworthy difference was noticed when comparing this hearing room to those in a family or criminal courtroom, it is also remarkable a lack of specificity to children in the courtroom design. On the contrary, there is a prevalence of formal and hierarchical spaces, with judges remaining in a superior level**,** in comparison to other participants in the hearing, especially the child, there being a social or public distance among them.

If the existence of such kind of barriers **is** still quite common, it is important to highlight that the other half of respondents are experiencing different possibilities of hearing children. In spite of not having any specificity regarding children, there are quite different spaces of justice inviting us to problematize the faces and uses of authority in architectural and inherited symbolic traditions.

The formality of the space is also marked by a consistent presence of power insignia and a lack of artistic elements to respond to the challenge of creating an atmosphere of understanding. Interestingly, it was not visible in the whole collection of photos any recognizable religious image.

An additional important aspect of formality is its intertwinement with rigidity and the challenge both of these aspects may pose to participation. Children are not only required to remain in an assigned space in most of the countries, in most of the places

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relatively distant from the judge, and immersed in a strict liturgy of having to stand up before the judge (in 32 countries), waiting for a special authorization to sit down (in 29 countries) and when the child is called to speak to the court he or she must stand in a significative number of countries, 19. This picture could be considered even more aloof if we take into consideration that in 28 countries judges and magistrates still wear a gown during the hearings, a formality that is required mostly for judges, not as much for other legal professionals.

This is half of the picture, of course, as in many countries a very distant approach is prevailing, with less rigid liturgy, unspecific places to sit, closer distances, judges wearing regular garb, showing new possibilities of symbolizing authority in courtrooms, highlighting the importance to discuss the function and the necessity of some inherited liturgies in contemporary and democratic societies.

The external formality is intertwined with a formal approach to children as well. The interaction itself is much more a formal and structured act than an opportunity for an open and dialogical interaction with the child, although in both cases some nuances were mentioned by the respondents. Even though, there is a clear majority understanding that children may make a free speech about all aspects he or she may consider important, both related to the offense and to his or her own personal, familial and social circumstances: 42 countries.

In the majority of the countries, all legal professionals are allowed to address the child (32 countries). Still, some procedural strategies were identified to protect the child from cross-examination, be it by limiting the interaction only among the judge and the child (in 17 countries), be it in more exceptional situations restricting the possibility of examination by prosecution attorney.

Exceptional is also a less rigid sequence of people allowed to address the child, with possible implications for both the perception of the child on the nature of this interaction and also on the hearing as a means of defense.

However, it is clear how, in the various legal systems, the order of questioning or interacting itself is very variable, culturally determined and not a logical necessity to grant rights.

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One example of a possible lessening practice is the requirement to the child of any kind of commitment or swear an oath before speaking, which was found in a scarce minority of only 9 countries. In contrast, the Bolivian guidelines on child participation in judicial proceedings emphasize a presumption of truth in children´s expression.

This interaction in the majority of the countries is not limited to the offense and include other aspects of the child´s life (36 countries) and in almost half of the countries the judge is also involved in the possibility of diverting the case for alternative resolution as well.

If judges are seen as having an important role to protect the child in the procedural dynamic, it is also admitted in most of the countries (33) that the judge makes some kind of recommendation on how the child should behave.

In a context with this large range of possible use of discretion in communication, it would be expected that some sort of control could be in place. However, it is still not universally accepted that the child may consult the defense attorney during the hearing before any question or issue. In almost 20% of the countries this is not a reality yet.

Although there is a clear privilege in placing the child close to the defense attorney, when speaking to the court the child is required in many places to move to a specific space, where such kind of support is not at hand.

The expectation that family could provide emotional support to children is not expressed in many places when assigning places for them during the hearing, because in various countries children have to sit apart from the family. An emphasis on individuality, although in many places social integration is an important value at stake.

Six countries explicitly mentioned that the child is not allowed to consult the family during the hearing, just the attorney, which brings to light the different kind of support children may need during the hearing. If lawyers are responsible for legal assistance, to whom children should direct their doubts, family might be consulted about other aspects, if the child feels that it would be more appropriate to speak to. This is even more important in the context in which child hearing is not exclusively geared to giving evidence about the offense, but dealing instead with other aspects that might impact the daily routine of the family.

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Other professionals, that are considered, in children´s perceptions, very important for their support in this moment, take part of the hearings in 38 countries, in most of them with a supportive role, including the assistance to judges and magistrates during the child hearing. However, in the majority of the countries the professionals sit apart of the children, showing that there is still place for improvement in their role during the hearings.

The role of these professionals is also ambiguous, because in several countries those services also suggest measures to be adopted by the court, putting the professionals in a more interventive, and therefore possibly less supportive role. This might be the case also in those places where these professionals are also allowed to address the child (18), making sense the provision granted in the majority of the countries for children to contradict the professional reports.

The interventional dimension of juvenile justice in children´s life raises the question whether specific protection measures could be provided for children. Some suggest the conception of 'one family, one judge'; some others the intervention of specialized professionals and the role of the family as major specificities in juvenile justice.

However, there is a gap between what children consider more challenging in terms of participation in court proceedings and what judges have mentioned as available protective measures. Accessibility to the buildings, information and orientation, including on how to acquire legal representation and even to be sure that the approaches are adequate, these are some topics referred to in researches with children, showing how important it is to have constant and continuous evaluation with children about their experiences in court. Without these inputs, many adaptations may remain in an abstract and distant sphere, not reaching and impacting children´s lives.

An equally important aspect is the possibility of review of all these practices: liturgies, communication skills, sensible and respectful attitudes that give concreteness to children´s experiences in judicial settings. It is to highlight a still remaining suspicion that audio or video (and audiovisual) recording could violate the right of privacy, instead of a means to grant internal visibility of these aspects within the justice system to provide better conditions to have the rights granted (without access to a larger public).

In this very diverse world context, training is a need in many countries. Just half of the consulted countries provide training for judges, even less for other professionals, and not in a regular basis.

This lack of support for professionals is even more challenging when contrasting and contradictory reform projects are under discussion in many of the countries, affecting the structure of the courts, ages of criminal responsibility and majority, diversion and harshening measures, increasing in many contexts the hybridism already in place that embarrasses the justice system to deliver a coherent response and message to society. In order not to become what Muncie and Goldson consider an amalgam of the punitive, the responsibilizing, the inclusionary, the exclusionary and the protective (MUNCIE & GOLDSON 2006), it remains up to the professionals to recall international standards, join transnational and national judicial dialogue to bring these issues to a large arena, aiming to strengthen juvenile justice in a more comprehensive manner.

Participation is not only a core principle in contemporary children´s rights, it is also a fundamental problematizing axis of many structural aspects in juvenile justice. One could question whether to achieve an atmosphere of understanding, as expected in Beijing Rules, would be sufficient to provide information and orientation to children, when many other aspects embedded in inherited traditions, both material and spiritual, are no longer meaningful, especially in diverse and democratic societies, and should be open to further questioning, even if reasserted or discarded after prudential and public reasoning. The evolving comprehension of the extent of such a demand of understanding, emphasizing not only what should be expected to be granted to children, but also what would be expected to be found in the professionals, among judges, but also in the system itself, shows the potentiality of transformation permeated in this principle, in this practice, of child participation.

Juvenile justice is a risky field for children, where children can be parted, symbolic and physically, from society, if justice is not able to transcend the mere opportunity for children to take part in the procedure, but to make them experience and feel that society has taken their part, that they are part, and not apart, of this continuous effort to construct by deconstructing a more fair and just coexistence, living their rights subjectively and

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relationally as a means, not only of defense, but of building what should be a sense of dignity and worth.

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ATTACHMENT 1: THE GUIDING 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?

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

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?

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?

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

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

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

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?

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?

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?

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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?

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.)?

2.6. Is there 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?

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?

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

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

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

2.12. Can you please share a photo of the hearing room, specifying where each person sits? (or provide a drawing if 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?

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?

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?

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?

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

2.16.3. Who else is allowed to attend the hearings?

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

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

2.16.7. Does the child have to stand up?

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

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

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?

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

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

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

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?

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?

2.16.16. If some professional presents a report during the hearing, is the child 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?

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2.17.1.1 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?

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 enables 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?

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

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 courts for adults??

3. Generic questions concerning the improvement of Youth Courts

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

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

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

3.20. Any suggestions for improvement from your side?

ATTACHMENT 2. GUIDELINES OR PROTOCOLS ON HOW TO HEAR THE CHILDREN

BOLÍVIA

https://tsj.bo/publicaciones/protocolo-de-participacion-de-ninas-ninos-y-adolescentes-en-procesos-judiciales-y-de-intervencion-del-equipo-profesional-interdiciplinario/

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ECUADOR:
https://www.funcionjudicial.gob.ec/pdf/GUIA%20PARA%20LA%20APLICACION%20DEL%20ENFOQUE%20RESTAURATIVO%20EN%20LA%20JUSTICIA%20JUVENIL.pdf

Modelo de atención integral restaurativo: https://tdh-latam.org/wp-content/uploads/2021/04/6-Modelo-de-Atencion-Integral-Restaurativo.pdf

ENGLAND

http://www.michaelsieff-foundation.org.uk/content/Relevant%20Report%204%20-%20Young%20Defendants%20Pack%20-%20Scoping%20Study%20Exec%20Summary.pdf

MEXICO: *https://www.scjn.gob.mx/derechos-humanos/sites/default/files/protocolos/archivos/2022-02/Protocolo%20para%20juzgar%20con%20perspectiva%20de%20Infancia%20y%20Adolescencia.pdf*

https://www.scjn.gob.mx/derechos-humanos/sites/default/files/Publicaciones/archivos/2022-08/Manual%20de%20Justicia%20Penal%20para%20Adolescentes.pdf

IIJO: Can anyone hear me?
https://www.academia.edu/25368645/Can_anyone_hear_me_Participation_of_children_in_juvenile_justice_A_manual_on_how_to_make_European_juvenile_justice_systems_child_friendly

ATTACHMENT 3. COURTROOM´S PHOTO ALBUM

Argentina

Austria

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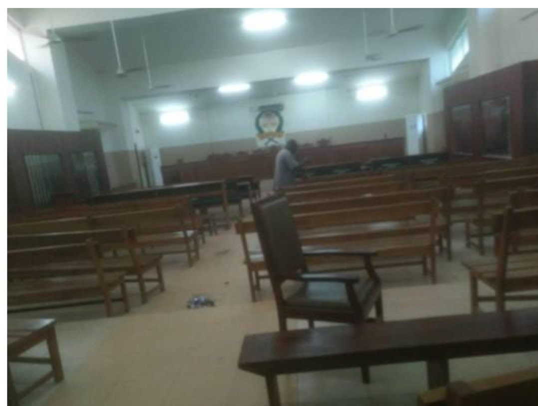
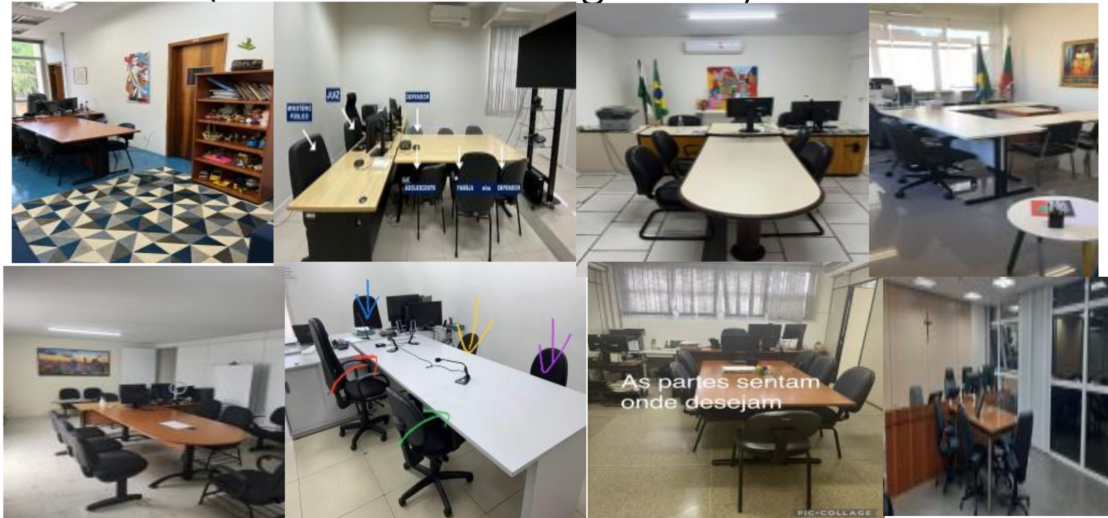
Benin



Bolivia

ISSN 2414-6153

Brazil (differences among States)



Bulgaria

ISSN 2414-6153

Canada

Cape Verde

ISSN 2414-6153

China

Picture 1

Picture 2

Colombia

ISSN 2414-6153

Costa Rica

Cuba (photo from internet, not shared in the report: https://diariodecuba.com/cuba/1588334632_18061.html

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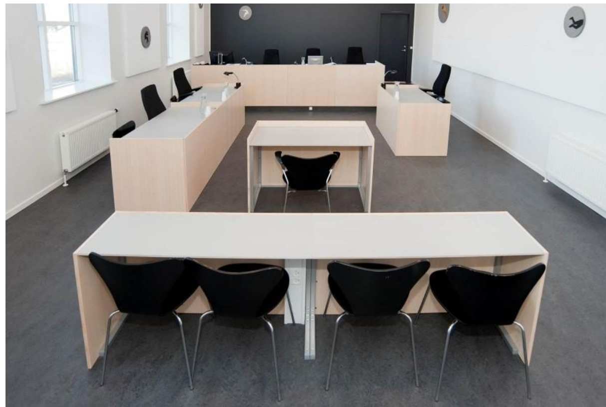
Denmark



Dominican Republic

ISSN 2414-6153

East Timor

Ecuador

ISSN 2414-6153

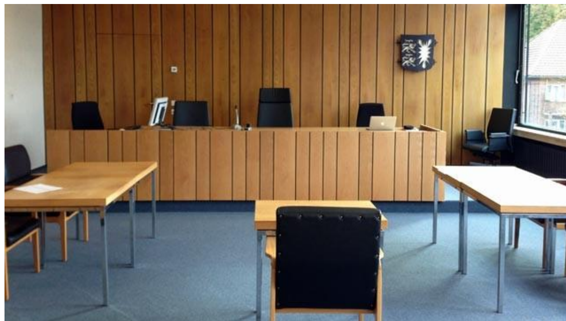
El Salvador

England & Wales

ISSN 2414-6153

France (chambers and courts)

Germany (photo from internet)



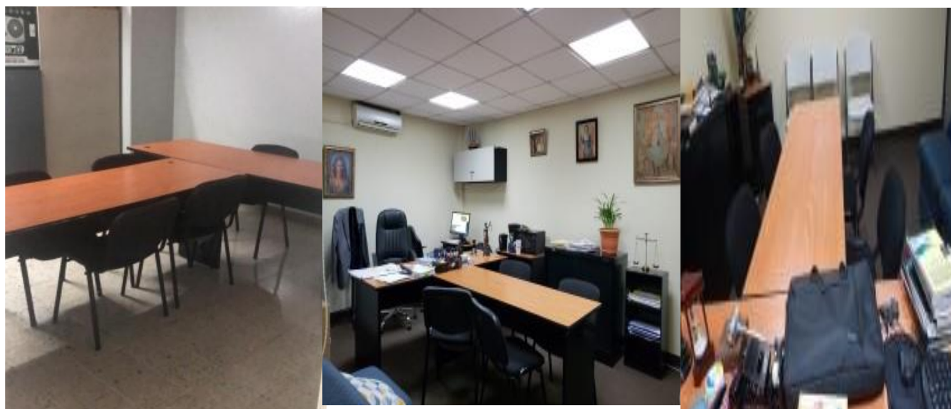
ISSN 2414-6153

Guatemala

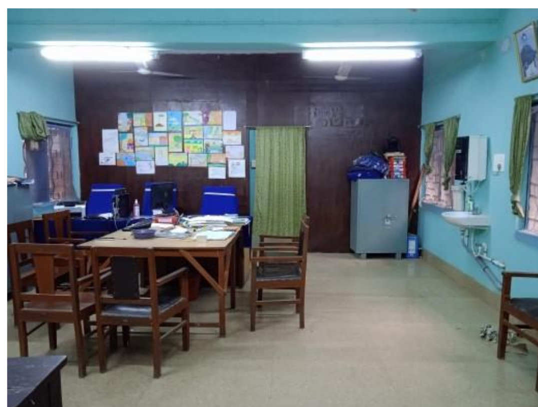
Guinea Bissau

ISSN 2414-6153

Honduras



India



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Japan

- 1Judge
- 2 Court Clerk
- 3 Family Court Investigating Officer
- 4 Court Administrative Official
- 5 Juvenile
- 6 Custodians
- 7 Attendant

Lebanon

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Luxembourg

Mexico

ISSN 2414-6153

Nepal

Netherlands

ISSN 2414-6153

New Zealand

North Macedonia

ISSN 2414-6153

Panama

Paraguay (specific room for initial +intermediate hearing and non-specialized for the sentence)

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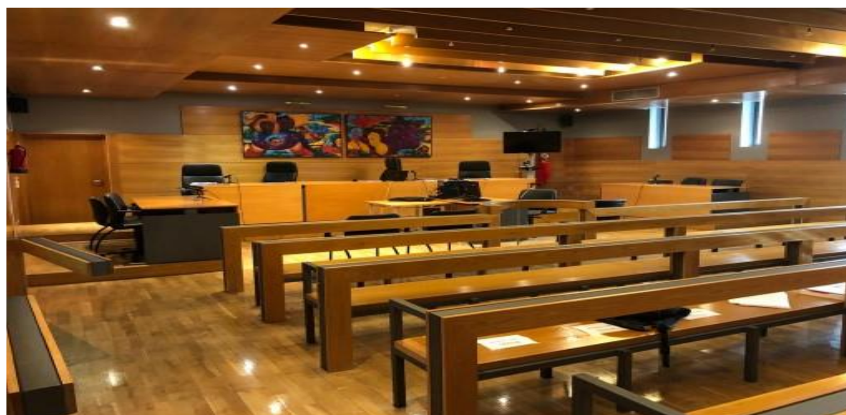
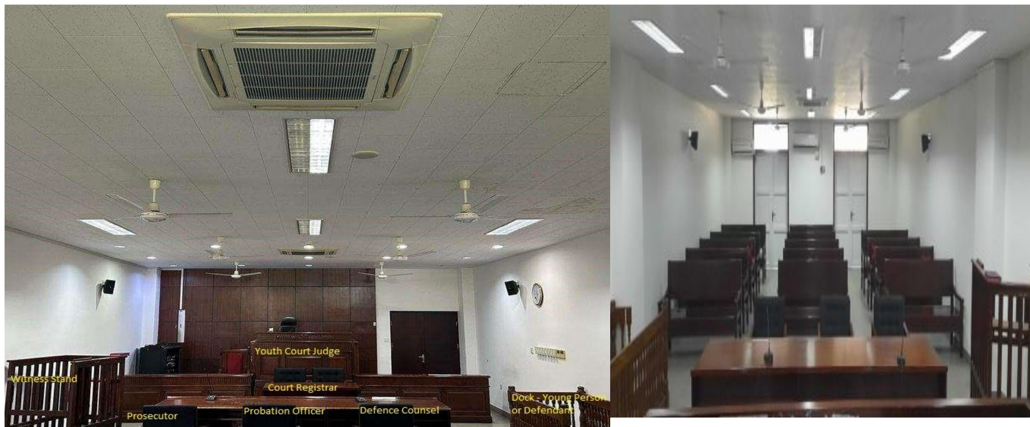
Portugal



Puerto Rico

ISSN 2414-6153

Samoa



São Tome and Principe

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Serbia

South Africa

ISSN 2414-6153

Spain

Sweden

ISSN 2414-6153

Switzerland (Office and Youth Court)

Turkey (standard and new layout)

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Uganda

Ukraine

ISSN 2414-6153

Uruguay

Venezuela

ISSN 2414-6153

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