

CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN YEMEN

National Report for AIMJF's Comparative and Collaborative Research.

La participación de niños como víctimas o testigos en causas penales au Yémen

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

*La participation des enfants en tant que victimes ou témoins dans des affaires pénales
en Yemen*

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

Judge Mohammad Sultan Al-Faqih¹

Abstract: The paper is part of a collaborative research organized by the International Association of Youth and Family Judges and Magistrates (AIMJF/IAYFJM) on child participation as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Yemen.

Resumen: El documento es parte de una investigación colaborativa organizada por la Asociación Internacional de Juventud y Familia (AIMJF) sobre la participación de niños, niñas y adolescentes como víctimas o testigos en causas penales. El artículo explica los aspectos legales, institucionales y procesales de la participación infantil en el sistema de justicia en Yemen

Résumé : Le document fait partie d'une recherche collaborative organisée par l'Association Internationale des Magistrats de la Jeunesse et de la Famille (AIMJF) sur la participation des enfants en tant que victimes ou témoins dans des affaires pénales. L'article explique des aspects légaux, institutionnels et procéduraux de la participation des enfants dans le système de justice au Yémen.

Introduction

The International Association of Youth and Family Judges and Magistrates (IAYFJM or AIMJF, in the French and Spanish acronym) represents worldwide efforts to establish links between judges from different countries, promoting transnational

¹ **Head of the Appeals Prosecution Office in Taiz Governorate; Former Juvenile Prosecutor in Ibb**

judicial dialogue, in order to provide better conditions for a qualified attention to children based in a human rights approach.

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

The aims of this research are to identify similarities and discrepancies among countries and to develop a cartography of how child participation as victims and witnesses in criminal cases is organized worldwide.

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

Questionnaire

1. Right to be heard

1.1. Are children presumed to be capable witnesses (or presumed invalid/untrustworthy by reason of their age alone, or similar)?

Yes, children are capable of being witnesses according to their age and mental level (if they are 10 years old or above), and their statements can serve as supporting evidence alongside other proof.

1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?

There are no restrictions on the right to be heard if the child is at the age of discernment. According to Yemeni law, the age of discernment, or a discerning child, is one who has completed 10 full years.

1.3. Are children allowed to refuse to make a statement? If so, in which cases?

Yes, children are allowed to refuse to testify in cases where they are unable to provide testimony or if there are risks that could endanger them by doing so.

2. Broad perspective of the legal framework and procedure

2.1. Is there a specific legal framework that defines how to treat child victims/witnesses of crime (e.g. special norms in the criminal procedural code, special child code, special victims code, etc)?

Yes, there are several laws that outline how to treat child victims/witnesses of crimes, including the Yemeni Child Rights Law No. 45 of 2002, the Juvenile Care and Rehabilitation Law No. 22 of 1992 and its amendments, and the Yemeni Evidence Law No. 21 of 1992.

2.2. Is there any coordination between different role players (such as the police, education, social services, health system) to initiate legal proceedings and coordinate response (evidence collection and intervention), including avoiding multiple interviews of the child? Is there any flowchart in your country to coordinate these interventions? If so, could you please share it?

Yes, there is coordination, and a framework for coordination exists between the entities. This framework is the Technical Committee for Child Justice, which is composed of several governmental and non-governmental entities.

2.3. Can you briefly explain what are the major steps of the legal procedure in criminal cases (felonies) with child victims or witnesses involved?

The first step in the police stage is when the report is received, and the victim's statement is heard by the police. This is the stage of arrest and evidence collection. Then comes the investigation stage by the prosecution, followed by the trial stage by the court. Between these three stages, there are sub-steps according to what is specified in the law. These include either placement in an alternative care institution, returning the child to their family, or imposing alternative penalties in the case of juvenile offenders. If the juvenile offender's situation requires it, they may be placed in a juvenile care facility for the shortest possible period. In the case of child witnesses, only their testimony is taken.

2.4. In which moment(s) can a child be heard in this procedure?

The child can be heard immediately after the crime has occurred, and the child can be listened to at all stages (when being dealt with by the police, the prosecution, or the court).

2.5. Does the child have the power to initiate, suspend or terminate the criminal procedure (such as giving consent for the complaint or the possibility to refuse consent or revoke consent)? If so in which cases?

Yes, the child has the authority to initiate, suspend, or terminate legal proceedings through their guardian or caretaker (parent or legal guardian).

3. Preparation for the child participation

3.1. Is there in your country specific child-friendly information material for children as victims or witnesses (e.g. brochure, video etc)? If so can you please share them?

Guidance materials are rarely available.

3.2. How do children have access to these materials? (e.g. brochure available at police station/court; brochure sent to the child together with summon; witness preparation conducted in court with support of a video, or with support of a special professional; investigator/judge orally explaining in child-friendly language before interview/hearing, or any other?) How long before the interview/hearing does this happen?

The child receives guidance if they are a victim or an offender from a specialist (psychologist or social worker) or from their lawyer. This happens from the specialist or lawyer before the hearing session, and also from the lawyer or judge during the hearing session.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard? If so, what is assessed / for what purpose (e.g. background and circumstances of child; whether the child would be able to speak freely; capacity of child to express him/herself; capacity to participate, if uncertain; capacity to handle interview and possible effects; potential vulnerabilities and special needs, etc)? If so, what is the legal background of their professional conducting this assessment? To which institution does this professional belong? Is there any kind of report produced?

Yes, the child undergoes an assessment through an interview and listening to them by a social worker or psychologist. This specialist has completed qualification courses and is nominated by the Minister of Social Affairs, with their appointment issued by the Minister of Justice. The specialist provides a comprehensive report on the child's assessment, their ability to express themselves, potential effects, and whether the child has special needs. This report is essential, and its recommendations must be considered by the judicial authorities.

3.4. Is there any kind of contact or evaluation with the parents or legal guardians?

Yes, there is communication with the child's parents or guardians by the social worker.

3.5. Is the child allowed/invited to visit the facilities where he or she will be heard prior to the interview/hearing?

Yes, there is no objection.

3.6. Does the child receive any kind of support prior to the interview/hearing (psychological, social, medical, legal)?

Yes, the child receives, by law, social support before and during the hearing to assess their situation, medical support to determine their age and whether they have any health issues, and legal support by providing a lawyer during the hearing and legal proceedings. All of this is specified in Articles 4, 15, and 19 of the Juvenile Care Law and Article 130 of the Child Rights Law.

4. Protection and Support

4.1. Is there any risk assessment conducted for the child victim/witness after a crime has been reported? If so, who conducts it? Is there any specific tool? If so, can you share it please?

Yes, the risks to the child, whether they are a victim, witness, or perpetrator of the crime, are assessed by the social worker.

4.2. In case of identification of risks, what kind of protective measures are available in your country?

Yes, preventive measures are provided for the child to ensure their protection and safety. This may involve placing the child in a secure location with a trusted relative or temporarily in a care institution with security.

4.3. What kind of support measures are available for child victims / witnesses of crime (psychosocial, medical, legal) before, during, after the judicial process)

There is psychological and social support, as well as health care, available, and there are specialized lawyers providing legal support at all stages the child goes through in the justice system. The Child Protection Law mandates these measures and requires government agencies to provide them.

4.4. In case of intrafamilial violence, which measures can be / are usually adopted to grant the child's security? Is there any/which kind of support offered to the remaining members

of the family? Are there any specific measures in case of child abduction or child kidnapping?

The Child Rights Law criminalizes domestic violence and imposes stricter penalties for child abduction. Additionally, the Yemeni Penal Code has increased penalties in cases where the abducted person is a minor or below the legal age.

5. Environment

5.1. In which institution/what kind of environment is the child interviewed/heard in pre-trial/trial phase?

In the pre-trial phase, the child's statements are heard at a juvenile police center, while in the trial phase, they are heard in the judge's chamber in the juvenile court.

5.2 Is there any specificity in this environment to adapt it for children? (e.g. separate 'building' specifically for children; non child- specific building, but separate entrance for children; separate interview/hearing room for children)

There are specialized facilities for handling child cases, including a juvenile police building, a juvenile prosecution building, and a juvenile court building. This applies whether the child has been involved in delinquency or has been a victim of another child.

5.3. Are there guidelines for the environment where the child is interviewed/heard? (architecture, setting)? If so can you please share it? Can you share a photo of this space?

There are no such facilities.

5.4. Is there a specific waiting area for the child?

There are no such facilities.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind? (e.g. separate entrance, separate waiting area, separate interview/hearing rooms, use of video link, voice or image distortion etc)

Direct visual contact between the offender and the victim child can be avoided if it is observed that the child does not wish to have it or might feel terror and fear from such contact.

5.6. In case identification of the offender is needed, how is this conducted, and where?

This can be achieved by presenting the offender or suspect along with others to the child for identification.

5.7. If the child lives in a different city in relation to the city where the proceeding is tried, what are the specificities at stake?

is very rare for a child to live in a different city from where the trial is taking place.

5.8. Is it possible in your country that the interview is conducted virtually (the child and the interviewer are in different places)? In which circumstances? Are any / which special security measures (are) adopted?

Such a procedure has never been implemented, and there are neither the technical resources nor the legal provisions to carry out such a procedure.

5.9. Must a child appear in court to be interviewed or are recorded investigative interviews admitted as evidence in court? If the child has to appear in court, which circumstances are determinant?

In general, the Evidence Law requires the witness to attend court, and there is no specific provision regarding their presence. However, the law does define the extent of the child's testimony and the type of testimony.

6. Specific legal guarantees for the child

6.1. Does the child have the right to legal assistance? for free? Is this assistance specialized? At what moment does this assistance come in (e.g. already advising whether or not to report a case / during the first interview / only in court / other)

The law requires the investigation authority or the court to ensure that the child receives legal assistance at the government's expense if they do not have a personal lawyer appointed by their family or relatives. The child has the right to receive this legal assistance both before and during the trial.

6.1.1 What is the role of the legal assistant (representing views of child or best interests of child; advising the child; talking on behalf of the child; ...)?

Representing the child, providing advice, speaking on their behalf, and advocating for the child's best interests.

6.2 Does the child have the right to be accompanied by a support person? If so, what is the role of this person? What is this person entitled to do in support of the child?

The law does not prohibit any accompaniment for the child, and the child is often accompanied by both parents, one of them, a guardian, or a caretaker, in addition to their lawyer. The person present with the child has the right to speak on their behalf or clarify what the child may have been unable to explain.

6.3. What is the role of parents/legal representative?

Providing psychological support to the child, the role of the legal representative in defending and representing the child, and providing the necessary assistance.

6.3.1 When are parents/legal representative excluded (e.g. perpetrator, exploitative, intimidating/influencing, non-supportive, conflict of interests...)?

There are no legal exceptions for parents or legal representatives from accompanying the child. On the contrary, the legal texts in the Child Rights Law and the Juvenile Law require the presence of a lawyer and grant the right to parents to attend. However, if the parents or legal representative are the perpetrators of the crime or are exploiting the child, they are excluded from attendance, and another trusted relative is appointed to accompany the child.

6.3.2. If excluded, is there another legal representative appointed/ if so by whom?

There are no exceptions for the legal representative except in cases where there are specific reasons related to the legal representative themselves. In such cases, the court can appoint another legal representative.

6.4. What kind of measures are adopted to grant the right to privacy / confidentiality (public excluded / in all cases / in which cases? press statements so that child can not be identified?)

Article 20 of the Juvenile Law stipulates that the trial of a juvenile should be conducted in private, with attendance restricted to relatives, witnesses, lawyers, social workers, and anyone permitted by the court. Article 42 prohibits the publication of the juvenile's name or image, or the publication of trial details or summaries in any media.

6.5. Is the child allowed to plea for cautionary measures?

Yes, the child is allowed to do that

6.6. Does the child have the right to appeal any decision?

Yes, the child has the right to do so. Article 26 of the Juvenile Care Law permits appeals against judgments issued by the juvenile court, except for judgments involving reprimand

or returning the child to their parents or legal guardian. Appeals are allowed if there is an error in applying the law or if the judgment is invalid.

7. Interviewing structure and procedure

7.1 Who hears the child victim/witness in the pre-trial phase / who in the trial phase? How often is a child usually heard in total (pre-trial and trial)? Does the law limit the total number of interviews/hearings conducted?

The child victim or witness is interviewed by the police officer or prosecutor during the pre-trial phase, typically only once, or by the social worker. There is no specific limit to the number of interviews or hearings, as they depend on the child's needs. During the trial phase, the child is heard by the judge, and there is no fixed number of interviews or hearings; they are determined based on the child's situation and case.

7.2. Is it mandatory that this professional has specific training for child interviews?

Yes, it is essential that the person is specially trained to interview children.

7.3. Is any kind of interview protocol adopted in your country (pre-trial and/or trial stage)? If so, which one? If so, could you please share it?

There is no specific protocol for the interview beyond what the law mandates regarding the presence of the social worker, the specialized police officer, or the prosecutor. However, there is a guide for working in juvenile care facilities that outlines the procedures and forms used by the social worker during interviews with the child, both before the trial and before the sentencing session.

7.4. Who is allowed to participate in the interview/hearing? Who is sitting in the same room as the child / who is sitting in another room, if any?

Participation by the parents or one of them, if present, and the child's lawyer is permitted if necessary.

7.5. Who is addressing the child victim/witness: only the interviewer? cross examination allowed? if only the interviewer, how can other participants ask questions? How is the communication between those who follow the interview and the interviewer? What kind of communication tool is used?

The child victim or witness addresses the investigator (prosecutor or judge), and multiple questioning is allowed if necessary. Other participants may pose questions through the prosecutor, judge, or social worker.

7.6. Is the interviewer allowed not to ask the questions raised by others? Is the interviewer allowed to rephrase the questions raised by others?

The prosecutor has the right to reject any questions raised by others if they are deemed unnecessary. The investigator or judge also has the right to rephrase the questions.

7.7. Is the interviews audio and video recorded, if so for what purpose (accuracy of statement, use as evidence in court, use in other courts, other)?

There has never been a recording of interviews or interrogations, either audio or video, and such procedures and technology do not exist in Yemen.

7.7.1. In case the recording is admitted as evidence in court: what protection measures can be applied (e.g. image and voice distortion, child heard in a separate room etc)?

It is subject to evaluation by a technical expert to ensure it has not been fabricated, if there is incidental recording of the crime, such as camera footage or recorded phone calls, etc.

7.8. How is the quality of the recording? In case of failure in the recording, what are the measures adopted?

There is no recording of trial sessions.

7.9. If no audio/video recording: is the child allowed to review his or her statements and to correct them? Is the child/legal representative allowed to get a copy of written statement / recording?

The child is allowed to review and correct their statements and to access them through their legal representative. They are also permitted to obtain a copy or photograph of the statements, in accordance with the Criminal Procedure Code.

7.10. If there is a special procedure for hearing child victims and witnesses, is it mandatory for the child to participate in such a way or has he/she the right to choose to be heard as any other victim or witness? Are there still adaptations in this case?

There is a specific procedure for hearing children as victims or witnesses, which involves the presence of their legal representative, just like any other victim or witness.

8. Offender's right during or after the interview

8.1. Is the alleged offender allowed to participate in the interview of the child witness? Is his/her defence attorney allowed to participate? Is participation of either of the two mandatory?

The offender is allowed to participate, and their lawyer can also participate and defend them. The offender has the right to seek the assistance of a lawyer if they wish.

8.2. If the offender is not present during the interview, how can he or she make additional questions to the child? How can he or she contradict the child's statements?

The accused, through their lawyer, can ask questions or present evidence that refutes the accusation.

9. Parallel proceedings – coordination

9.1. In case of parallel proceedings (such as in family or child protection procedures) based on the same facts, is it clear who has the priority to conduct the interview?

The priority in conducting the interview is given to the social worker.

9.2. Is there any coordination procedure between different courts/authorities? How is the coordination procedure?

There is coordination between the courts and various authorities, including the police, the prosecution, and social services. This coordination is managed by smaller committees in the governorates, which include the Technical Committee for Child Justice.

9.3. If another court/authority has not participated in the interview and needs additional information, is this court/authority allowed to interview the child again? And/or can interviews be shared (who can share with whom)?

Interviews are only allowed for those with a direct connection to the child, whether social or legal. Additionally, interviews can be shared with those directly involved in the case or supporting the child (interested parties).

10. Training

10.1. Are judges and magistrates trained to deal with child victims?

Yes, judges, prosecutors, lawyers, and social workers receive training courses on how to work with children.

10.2. Is the content of the training interdisciplinary? Do other professionals also participate in the same training?

Yes, the training content covers various disciplines (legal, social, psychological, fair trial procedures, and relevant international treaties). It also involves doctors, teachers, vocational trainers, and civil society organizations in some training sessions.

11. Reforms in progress

11.1. Are there reforms in progress in your country regarding child's victim rights, the procedure among others? What is the aim and the main subject of it?

There is a project to amend laws related to child rights, supported by UNICEF but not yet approved. Additionally, there are proposals to establish model care centers for handling child victim cases, integrating all relevant authorities (juvenile justice authorities, prosecution, juvenile courts, social workers, and rehabilitation centers) into one complex. The establishment of such centers was planned for Taiz and Hodeidah but was halted due to the war in Yemen.