



CHILD PARTICIPATION IN JUVENILE JUSTICE IN NEPAL

National Report for AIMJF's Comparative and Collaborative Research.

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

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile au Népal

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

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

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

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

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Introduction

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

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

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

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

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?

- We have Three tiers of Courts. The court of first instance is known as District Court (total 77 district courts), the court of appeal known as High Court (total 18 high courts) and the apex court known as Supreme Court (only 1). Apart from this, there are various tribunals and quasi-judicial bodies for dealing with special cases.
- According to the Section 30 (1) of the Act relating to the Children, 2018 the Government of Nepal may, on the recommendation of the Judicial Council, form the required number of Children's Court to initially proceed, try and settle the wrongful act committed by the children. However, unless such Courts are established Child Bench shall be formed in each District Court for the proceeding, hearing and settlement of the cases. [Section 30 (3) of the Act relating to the Children, 2018]
- At present as the Children's Court has not yet been established the cases of the wrongful act of the children are dealt by the Child Bench formed as three members tribunal composed of a district court judge, a child psychologist and a social worker and the name is same (Child Bench is established in each District Court) throughout the region.
- The Court (Child Bench) also has jurisdiction over the issues like: the violation of the rights of the children and offences against the children.

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

- The minimum age of criminal responsibility in Nepal is 10 years.
- There are three categorization of age groups on the basis of the punishment. The first group is 10 years and above and below 14 years – maximum punishment up to 6 months only; second group is 14 years and above and below 16 years – half of the punishment that could be imposed to the adults; third group is 16 years or above and below 18 years – two third of the punishment that could be imposed to the adults

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?

- In case a child attains the age of 18 years while the proceedings of the case are ongoing, the proceedings, hearing and disposal of such cases shall be conducted by the Child Court (Child Bench unless such court are established) itself regardless of the age. The maximum age limits up to which the jurisdiction of the Child Court applies has not been prescribed by the present law, so, it is generally interpreted to cover throughout the lifetime.
- However, there is no uniform practice in the court proceeding regarding the cases where the child involved in wrongful act is apprehended after attaining the adulthood. The current legal provision is silent in this regard so, the child bench uses its discretions and has been treating such person either as an adult or juvenile considering the circumstances, age of the accused, condition of the victim etc.
- There is no provision of judicial, prosecutorial or statutory waiver, so the children below the age of 18 could not be treated as an adult in any circumstances.

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

- Yes, Section 32 of the Act relating to the Children, 2018 states that in case the child attains the age of eighteen years while the proceedings of the case are ongoing, the proceedings, hearing and disposal of such cases shall be conducted by the child court itself.

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

- Upon the complaint the accused child could be apprehended by the police in plain dress.
- In the course of investigation, if it appears to be necessary to take the child accused of an offensive act in custody, the investigation authority may take such child into custody. If

it does not seem necessary to keep the child in custody they shall be handed over to members of family, guardian or a close relative.

- The investigation authority shall not exercise physical force against the child while taking into custody. However, if necessary, minimal force could be used to take the child in custody.
- They cannot be handcuffed, shackled or kept in solitary confinement.
- They should be placed at an observation cell or separate room for separating them from adult detainees.
- There should be separate investigation unit for handling the case of juvenile. Until such units are established person trained in child rights should be designated for the investigation of the cases.
- They must be produced before Child Court (Child Bench) within 24 hours (excluding the time for travel)
- The accused child may be taken into remand for maximum period of 21 days (5 days at a time that could be extended up to 21 days by the permission of the child bench)

➤ **Diversion:**

The investigation officer, public prosecutor or child bench has the power to give the order for diversion of the children. But their authority is based on the amount of fine/claimed amount/imprisonment, which is portrayed as below:

Authority	Fine	Claimed Amount	Imprisonment
Investigation Officer	NRP 2000	NPR 5000	1 months
Public Prosecutor	NRP 5000	NPR 10000	3 years
Child Bench	Infinity	Infinity	3 years

- Diversion cannot be done in the cases where there could be imprisonment of three years or above.
- If not opted for diversion, the public prosecutor should file the charge sheet within 21 days.

- If juvenile is accused along with the adult, separate charge sheet should be filed on child bench for the juvenile and normal bench or judicial authority for the adult.
- The court has discretion to either sent the child to observation unit (remand) or parental custody.
- Bail could not be set against the child during the jail bail hearing.
- The court should decide the cases generally within 120 days of filing of the charge sheet.

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

- Section 26 (1) of the Act relating to the Children, 2018 in the course of investigation into offensive acts and hearing of case, in addition to the rights contained in prevailing laws and elsewhere in this Act, all children are entitled to the rights stated below:
 - (a) To information about the charge against her/him, proceedings on the charge, order or decision regarding it either directly or through her/his family or guardian,
 - (b) To free legal aid and other necessary support for defending herself/himself against the charge against her/him without delay,
 - (c) To conducting of proceedings, hearing and disposal of the case by a competent judicial body,
 - (d) To demand the presence of family members or guardian in all processes of administration of child justice, as required,
 - (e) To speedy and fair justice from the child court,
 - (f) To confidentiality in the process of administration of child justice,
 - (g) To information regarding constitutional or legal rights,
 - (h) To conducting of investigation, prosecution and hearing in a child-friendly environment,
 - (i) To opportunities to participate in each and every stage of judicial proceedings and to freely express her/his views and opinions,
 - (j) To the presence of her/his father, mother or guardian in the hearing of the case, if the child so wishes,
 - (k) In case the child's father, mother or guardian are the perpetrator, stay separate from them, if she/he so wishes.

- Children accused of committing offensive acts shall be deemed innocent by the child court until and unless a decision is taken otherwise, and such children shall not be forced to testify against themselves.

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

- In case of adults the public prosecutor can file the case within 25 days. In certain cases, such time could be extended up to 90 days (example narcotic drug case). However, in any type of wrongful act of child the time limit to file the charge sheet is 21 days.
- Section 36 sub-section 7 of the Act relating to the Children, 2018 states that children under 16 years who are involved for the first time in the wrongful act having less than 3-year imprisonment cannot be sent to child correction home.

2. Judicial hearing

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

- It is the right of the child to participate in each and every stage of judicial proceedings and to freely express her/his views and opinions. The court summons the child for the hearing, but in certain circumstances if the child does not appear in the court, it does not bar the court to render its decision. However, the child court shall not proceed with and dispose of a case involving a child charged with committing an offensive act until legal practitioners are appointed for defending the child from such charges. So, as per the prevailing law, the presence of the lawyer and not the child is mandatory.

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?

- There is no separate invitation/summon for the parents/representative or the child. They get to know about summons either directly or through their parents/legal representatives.

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?

- No

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?

- Generally, there are separate rooms for the victims and the accused.



The child friendly room is used in those situations where the child victims are not willing to face the juveniles directly. In that case, they are placed at separate child friendly room and can get involved in the proceeding of the child bench through the audio-visual system.

Note: Such facility are available only at handful of courts.

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.)?

- No, they are transported along with the adults.
- Even though, there are child friendly rooms in few district courts, the police keep the child accused of wrongful acts and the adults in same waiting rooms.

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

- Generally, no. However, in some district courts where there are separate child friendly room, they could be provided with such separate room upon the request with the court officials.

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?

- The General rule is that the hearing should be in separate designated child bench within the District Courts. However, the practice varies from court to court.
- Out of 77 child benches, 21 child benches operate in separate designated rooms known as child bench; however, remaining 56 child bench operates in the normal court rooms or chamber of the judges by giving the name child bench during the hearing hours.
- These discrepancies are due to lack of availability of separate rooms in those 56 district courts (lack of physical infrastructure or space) for the establishment of separate child bench.

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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?

- No

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

- Yes, the hearing of the child is done in more informal setting as compared to the adult hearing. Generally, it is done in round table setting as opposed to the formal hearing where the judges sit aloof at top.

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

- No

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

- Unless the child court (child bench) passes an order to the contrary, the hearing and proceedings of cases against children accused of wrongful act shall be conducted in closed settings.
- During such closed hearing, only the concerned child, members of his/her family or guardians, victim, government attorney, concerned legal practitioners and any other person authorized by the child court (child bench) could get entry.

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



Generally, the judge sits at the middle and the social worker and the child psychologist on either side of the judge (no preferred order). Likewise, children accused of wrongful

act along with his/her legal representatives and family/guardians sits at one row and the victims along with his/her attorney and family/guardians sits at another row.

Note: Such infrastructures are available only in handful of courts.

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?

➤ No, however, there is a poster prepared with the support of the UNICEF-Nepal which explains the child friendly investigation process.



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

➤ The Child Bench has the jurisdiction to hear the case of the juveniles. It is composed up of a district judge, a child psychologist and a social worker. In the issue of law, the judge has the final say, whereas in the issue of facts the decision of the majority prevails.

➤ Likewise, the decision of the diversion by the investigation authority or public prosecutor could be appealed at the Child Bench.

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?

➤ Section 8 of the Administration of the Child Justice (Procedure) Regulation, 2019 has laid down the things that should be taken into consideration by the investigation officers while interviewing the child accused of wrongful acts, some of which are as below:

- ✓ assure whether the child is in the state to give his/her testimony or not;
 - ✓ ensure the presence of father/mother or other member of the family or guardian, Child Welfare Officer or legal representatives while interviewing the child accused of wrongful act;
 - ✓ To interview in a child-friendly environment;
 - ✓ While interviewing the child focus should be given to the family and social condition or background and other necessary information relating to the child;
 - ✓ The question should be asked in a language or manner that could be easily understood by the child;
 - ✓ Not to question during the night hours;
 - ✓ Even during the day hours, not to interview for more than one hour at a time;
 - ✓ Should not encourage to confess;
 - ✓ Provide the assistance of child psychologist or social workers if necessary;
 - ✓ Not to interview publicly, arrange separate room or place for the interview.
- The investigation authority receives training from the Nepal Police Academy, Public Prosecutors from the Office of the Attorney General, the judges, social workers and child psychologists from the National Judicial Council. Apart from this, the Secretariat of the Central child justice also provides orientation training to the social workers/child psychologists and the staffs and the security personals of the child correction homes.

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?

➤ Till date there is no practice of wearing gown/wig by the judge in Nepal.

- Mostly, they wear similar dress during juvenile and adult hearings, i.e. Daura, suruwal and Dhaka topi.

For reference, please visit the supreme court website as below:
<https://supremecourt.gov.np/web/index.php/justices> (the district judge has the similar attire to that of the Supreme Court Justice)

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

- The prosecutor specific dress but gown is not compulsory. For male, they can wear blue color formal pant and coat along with white shirt or Daura, Suruwal and blue color court.
- For the defense lawyer, they have three options to choose from.
- For male legal practitioner:
 - ✓ a black coat, Dhaka cap or a Bhadgaon black cap during the national dress code.

or

- ✓ a black coat, black pants, plain white shirt, a formal Dhaka cap with leather tuft or a Bhadgaon black cap, tie or neck band should be worn.

or

- ✓ a black color gown, plain white shirt, stand, black pants should be worn.
- Regardless of dress, formal black shoes with leather soles and plain white cotton socks or dark colored cotton socks are mandatory.
- For female practitioner:
 - ✓ a black coat with a saree, cholo or blouse or a plain colored kurta and salwar.

or

- ✓ a black coat, black pants, plain white shirt.

or

- ✓ black gown, plain white shirt, stand, black pants
- Formal black leather shoes and plain white cotton socks or dark colored cotton socks are mandatory for all.
- All the defense lawyers should wear the badge provided by the Nepal Bar Council or the Nepal Bar Association.

- All the defense lawyers who are mourning the death of their family members are permitted to dress according to their customs and traditions.

2.16.3. Who else is allowed to attend the hearings?

- Concerned child, members of his/her family or guardians, victim, and any other person authorized by the child court (child bench).

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

- No, however, in practice mostly formal or semi-formal dress are allowed and court can restrict the entry of the person with informal dress like half pants.

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?

- No separate uniform has been prescribed by the law. However, the recent practice has introduced the outer traffic jacket which is visible from distant. It indicates from which police cell the child has appeared. This is practiced for the convenience of the police, generally, other people could not identify whether they are juvenile or adult.

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

- No

2.16.7. Does the child have to stand up?

- No

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

- No

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

- No

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?

- No

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

- No

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

- Usually Bench assistant questions the child during the testimony. However, during the hearing the judge, psychologist and social worker interviews the child as per the necessity.
- Child directly responds to such questions.

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

- Yes

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?

- Usually, the members of the Child Bench (Judge, Social worker and child psychologists) address the child. However, the prosecutor and defense attorney may address the child with the permission of the child bench.

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?

- Yes, the social worker as well as the child psychologists attends the hearing. They require to submit a written opinion in relation to the case of the child especially on the social/family background of the child and psychological conditions.
- Yes, they are 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?

- No

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?

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

- The tone of the dialogue and the general attitude of the hearing is mild and child friendly.
- Child is allowed to freely speak their views.
- The interaction is focused on family background/condition, social and psychological context of the child, educational performance etc.
- The availability of the child psychologists, social workers and the presence of their family members promotes whereas the absence hampers such dialogues.

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

- The bench hears from the legal representatives of both sides. Similarly, it also involves informal interaction with the children about plea-bargaining, restorative justice or other alternatives.

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

- The judge is allowed to recommend certain compliance order in the name of the child while letting them free in the parental custody or suspension of their sentence.

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

- Apart from the legal and procedural rights guaranteed to the adult they further enjoy additional rights, including:
 - (a) To information about the charge against her/him, proceedings on the charge, order or decision regarding it either directly or through her/his family or guardian,
 - (b) To free legal aid and other necessary support for defending herself/himself against the charge against her/him without delay,
 - (c) To conducting of proceedings, hearing and disposal of the case by a competent judicial body,
 - (d) To demand the presence of family members or guardian in all processes of administration of child justice, as required,
 - (e) To speedy and fair justice from the child court,
 - (f) To confidentiality in the process of administration of child justice,
 - (g) To information regarding constitutional or legal rights,
 - (h) To conducting of investigation, prosecution and hearing in a child-friendly environment, **Clarification:** For the purpose of this segment, “child-friendly environment” means behaviour appropriate to the child’s age, maturity and psychology. This refers to conditions such as the use of language that is understood by the child, creation of a fear-free environment, presence of mother, father or other family members or guardian, addressing of child’s personal needs and availability of facilitators, as needed.

(i) To opportunities to participate in each and every stage of judicial proceedings and to freely express her/his views and opinions,

(j) To the presence of her/his father, mother or guardian in the hearing of the case, if the child so wishes,

(k) In case the child's father, mother or guardian are the perpetrator, stay separate from them, if she/he so wishes.

➤ They are also guaranteed with the right to remain silent and presumption of innocent until proven guilty.

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

➤ Psychological counselling.

➤ Use of Alternative to detention at all stages of hearing (pre-trial, trial and post-trial).

3. Generic questions concerning the improvement of Youth Courts

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

➤ No

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

➤ We have very lenient law and allows juvenile to reside in the same child correction homes even up to the age of 33-34 years.

➤ Diversion and restorative justice are not in practice due to lack of training or orientation to the stakeholders.

➤ Child reform home does not have required resources needed for the reformation of the child eg life skill training, educational institution etc.

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

➤ Central Child Justice Committee has formed a working group who is now doing research to find an appropriate place for settling those juveniles, who have attained 18 years, while being in child correction home and whose sentence period is still remaining. They have found a suitable place at Banke district and is planning to propose the Ministry of Home



Affairs and Ministry of Women, Children and Senior Citizen to do the needful for running a separate block for those juveniles who have attained 18 years and whose decision has been finalized from the court of first instance.

- Diversion Guidelines has been prepared by the Central Child Justice Committee and has been presented to the full court of the Supreme Court for its endorsement.
- Central Child Justice Committee has requested the ministry of women, children and senior citizen to expand the number of well-equipped child correction home (at least one at one province – total 7 well-equipped child correction homes in 7 provinces of Nepal) with the facilities like life skills, library, schools, sports center, computer labs etc.

3.4. Any suggestions for improvement from your side?

- The issue of child justice should be transferred under the mandate of Ministry of Home Affairs and a separate Division should be established under the ministry to oversee the issues of the juveniles. Under the Federal System, the Ministry of Women, Children and Senior Citizen does not have its offices in the province or local level. Furthermore, it also lacks the budget to improve the overall condition of the juveniles.