



CHILD PARTICIPATION AS VICTIMS OR WITNESSES IN CRIMINAL CASES IN JORDAN

National Report for AIMJF's Comparative and Collaborative Research.

*La participación de niños como víctimas o testigos en causas penales en Jordania
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 Jordanie
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 as victims or witnesses in criminal cases. The article explains the legal, institutional and procedural aspects of child participation in the Justice System in Jordan.

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 Jordania

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 en Jordanie

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

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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.

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)?
- 1.2. Are there any restrictions to the right to be heard (minimum age, or other criteria)?
- 1.3. Are children allowed to refuse to make a statement? If so, in which cases?

First of all, Jordanian criminal procedure law (CPL) considers the best interest of the child on its provisions. Children over fifteen years of age can provide their testimony in front of prosecutor and the court. According to the article 74 of this law the testimony of persons who are under fifteen years of age shall be heard only in order to obtain information. Such persons shall give their testimony without taking any oath stated in article (71) of criminal procedure law if the public prosecutor finds that they do not understand the meaning of the oath.

According to the law the testimony of witnesses who are below fifteen years of age is admissible in front of the court without having to take the oath. Such testimony is admissible for informative purposes only if it was proven that they don't understand the nature and ramifications of the oath.

According to the general rules the child as any other witness has the right to refuse testifying in front of the court in the case that the defendant is decedents, or spouse of the indicted person or his/her accomplices who are charged with the same criminal act.

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)?

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?

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?

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

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?

There are many articles in the Jordanian law provided procedures by which the children will avoid to be exposed to any negative effects resulting from testify procedures during the trial .

In the article 22 of the Juvenile Law

The prosecutor or the court may use modern technology to protect the children who is under eighteen years of age in witness hearing, discussion, and confrontation procedures, provided that these means enable any opponent to discuss the juvenile or witness during the trial. It is also permissible to use this modern technology in juvenile hearing procedures. As a witness in any case.

According to the Article 158 of the CPL the Prosecutor and the court shall use modern technology as required by in order to protect witnesses who have not yet completed eighteen years of age when Giving their testimony.

In addition to the Domestic Violence Protection law (Article 12) provided that the prosecutor or the competent court, if necessary, must use modern technology, if any, to protect the victim who is under eighteen years of age or the juvenile witness in the procedures for hearing witnesses, discussion, and

confrontation, provided that these means enable any opponent to discuss the juvenile or witness during the trial.

Article 13/B of the Human Trafficking Prevention Law and its amendments No. 9 of 2009, which stipulates that the prosecutor or the competent court may use modern technology to protect a witness who is under eighteen years old when he gives his testimony.

These are the legal framework that defines how to treat child victims/witnesses of crime. It considered as a tool by which we can avoid the children who are victim of crime or witness from repeated his testimony and to be faced with the offender that will protect him from any bad effect may be caused from investigation and trial procedures.

There is great coordination between different institution are responsible for protect the children judiciary, police and council of family affairs protection to pr improve the implantation of the new technology to protect the children who is a witness by holding several training for judges , prosecutor and investigator . There is a guideline was developed in that regard (using the technology for protection of the witness)

The procedure which is followed when we are hearing the testimony of the children will start always with Providing psychological preparation for victims and witnesses of crime through the social service offices located in the family affairs department unit, which provide psychological and social support services.

initial report will be submitted from the social and psychologist specialist showing to what extent the assault impact the child are sent to the court or the prosecution. They are working to prepare the child to be ready to testify they determine the best times to hear him and the mechanism for hearing his statements.

The next step is to explain for the children the procedures that take place in the trial and investigation, through the competent court employee who coordinates with the social worker in the family affairs department . that will lead the child to be aware of the procedures he will be subject during the testimony, the devices used in the court, the trial procedures, and a description of the roles of the judges, the public prosecutor, and the lawyers, and to ensure that The child is aware about that information

Providing comfortable circumstances enable the child from giving the testimony. The circumstances in which the child gives his testimony must ensure avoiding him all negative influences that would affect his psychology on the one hand and the accuracy of his testimony on the other hand. The child waits in a comfortable and appropriate room prepared for the children, provided with books, stories and games, and clear the waiting areas of any member of the accused's family. As for the testimony room, it includes drawings and comfortable seating areas that keep the child's mind away from the fact that he is involved in justice procedures.

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?

There are several brochures regarding protection of children as witness in addition to the guidelines . Several brochures were prepared in the first stage when we connect by cctv all of the felonies courtrooms in all first instance and grand felony courts with separate room. These brochures for three categories one for the judges, one for lawyer one for clerks and the last one for parents. The guideline was prepared regarding using the modern technology in the interviewing the child as a witness or victim.

3.2. How do children have access to these materials?

These brochures are available on the police family protection department. It is also available on the courts and prosecution department Infront of the children's rooms which established to be comfortable for the children provided with suitable furniture. The mentioned guideline distributed to all specialized criminal judges, juvenile judges in addition to that copies are available on the court and prosecution department.

3.3. Is there any assessment of the child conducted before a child is interviewed/heard?

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

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

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

The first assessment is made by judges and prosecutor to determine whether the children is aware to give his testimony by asking some general questions specially for whom less than fifteen years and to decide that he or she aware to testify under the oath. As mentioned above in the case of using technology report will be submitted from the social and psychologist specialist showing that to what extend that the assault impact the child are sent to the court or the prosecution. They are working to prepare the child to be ready to testify they determine the best times to hear him and the mechanism for hearing his statements.

The judges are trained to deal with children in the case they are victims of the crime or witness a crime so they can decide when they can proceed in the hearing. The judge or prosecutor in all cases can decide to ask the specialist in psychology , criminology , medical, and social worker to provide a report clarify 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, and anything else in that regards.

A number of specialists and professionals participate in implementing the procedures for hearing the child's testimony using modern technologies, who cooperate to make the process a success and achieve

its goals, most important of which is sparing the child as much as possible from the negative effects of the experience of going through formal justice procedures. The list of these professionals includes:

Case Coordinator: He is the central person who is responsible for following up coordination between the various parties and implementing the following tasks:

- A- Collect all information related to the case and evaluate the risk factors for the child.
- B- Referring the child victim/witness to therapeutic medical services immediately if he needs it.
- C- Referring the victimized child to forensic medicine to carry out the necessary procedures according to the nature of the case.
- D- Referring the child victim or witness to a social worker or psychologist to evaluate the child if the child is able to testify.
- E - Based on the social and psychological evaluation, it is recommended that the child is ready to give a statement.
- F - Coordinating with the court judge or public prosecutor regarding the case, and providing him with all the information and risk factors and expressing an opinion on the extent of the child victim/witness's ability to testify.

Second - The social worker/psychologist in the social service office evaluates the child's condition and his eligibility to testify, taking into account the following criteria:

- A- The child's health status.
- B- The seriousness of the attack.
- T- The severity of the impact of the assault on the child.
- D- The child's readiness to talk about the incident of assault.
- C- The child's age
- H- Matters that must be taken into consideration when evaluating eligibility
 - Disturbed memory and other symptoms of psychological trauma.
 - The victim's deliberate, subconscious forgetting.
 - The psychological roots of the crime.
 - Event time.
- X - Providing the necessary psychological support to the child and his family

Third: The court liaison officer carries out the following tasks:

A - Coordination between the liaison officer (case coordinator) in the administration and the court or public prosecutor to begin hearing procedures.

B - Ensure that the child is present on the appointed day to give testimony.

C - Take into account that all technical and logistical arrangements are ready so as not to delay the procedures and to reduce the child's waiting period before giving testimony.

2- Carry out the necessary procedures to prepare the courtroom or the public prosecutor's office to use the television connection network, operate the television connection equipment, and ensure that the display screens are ready for viewing by the president of the court, the public prosecutor, and the defense lawyers.

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?

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

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

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?

According to the procedures already mentioned above that the only assessment is being done. Using the technology by hearing the child witness by using CCTV and other connection methods to avoid the child as a victim or witness from confront the offender. The assessment and the reports mentioned above conducted in the case of using the technology to hear the witness.

In the case of domestic violence law (Article 12) provided that the prosecutor or the competent court, if necessary, must use modern technology, if any, to protect the victim who is under eighteen years of age or the juvenile witness in the procedures for hearing witnesses, discussion, and confrontation, provided that these means enable any opponent to discuss the juvenile or witness during the trial.

There are special procedure in that law as a settlement in the misdemeanor in that case the court can impose some alternative sanctions.

In article 16 of that law if the competent court is convinced of the necessity of protecting the victim and any family member, and upon the request of either of them and in the absence or presence of the perpetrator of domestic violence, a protection order shall be issued that includes obligating him to do any of the following:

- A- Not to attack the victim or any family member or incite attack against them.
 - B- Do not approach the place where the affected person or any family member resides.
 - C- Not to harm the personal property of the affected person or any family member.
 - D- Enabling the affected person or any of the family members or the authorized person of either of them to enter the family home in the presence of a member of the Family Protection Department to take his personal property and deliver it to the person concerned under an order to receive it.
 - E- Any matter that the court deems would provide effective protection for the injured person or for any person likely to be harmed because of their relationship with him.
- In addition to all of that there are some NGOs provided the child victim pre and post care in the case it needed.

5. Environment

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

In the police family affairs department, there are special room for the children whom the victims or witnesses in the crime. In the prosecution stage the prosecutor hear the child directly on his office but on special cases specially in sexual abuse the hearing should conducting according to the law by using the technology, so the prosecutor in that case hear the children remotely while the children in the police department on the room was prepared to that purpose. In the trial stage the hearing conducted in the court room but as we mentioned in the felony cases all courts are connected to the separate room with cctv to hear the children as victim or witness this room well equipped to be child friendly atmosphere.

5.2 Is there any specificity in this environment to adapt it for children?

We have separate room beside the felony court room in all courts and the grand felony court equipped with cctv system to avoid the children facing the defendant. The room within the police family protection department consider the best scenario to avoid the children going to the court which enable the court and prosecutor to hear the child from distance.

5.3. Are there guidelines for the environment where the child is interviewed/heard? (

the guideline available, which include the instruction for judges, prosecutor, liaison officer, social worker and the police officers. Thousands of copies distributed among them.

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

Yes, as we mentioned above there are spaces beside the child room was prepared to be suitable for the children and their parents in the juvenile court, in the domestic violence specialized judges.

5.5. Are there protection measures to avoid direct contact (including visual) between the child and the alleged offender? if so what kind?

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

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?

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?

Using separate rooms and using the technology as mentioned before are the methods. Using the CCTV system in both the investigation and trial stage. In addition to that if the procedures required to show the defendant for the child to recognize the that will be made remotely to avoid the child to conformed the defendant.

There are no specific procedures in the ordinary hearing have to be taken to protect the children. The judges evaluate the situation and decide when is the best time to start the hearing, the best way to deceive maximum protection to the best interest of the child.

There are some NGOs are working to provide assistance for the protection of the child, by providing them with pre care and post care.

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 the case of using the technology by hearing the witness virtually, the testimony registered in writing exactly as an actual attendance of the witness. The examination and cross examination are required by the law. There is no need for recording the testimony since already will be part of the case file . testimony acceptable in the trial procedures.

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)

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; ...)?

According to the legal aid bylaw the legal aid is the legal representation before the Public Prosecution departments, the regular courts, and the Grand Criminal Court in accordance with the provisions of the legislation in force. The juvenile law also provided that the courts in felonies should appoint lawyers for the juvenile. Both legislations are dealing with the children as defendant not as witness or victims .

There are some NGOs provided the assistance for the children who is witness and victim such JCLA ,TDH in both form of the legal representation and counseling

In the cooperation between ministry of justice and bar association and judicial council a list of specialized lawyers in juvenile cases will be ready soon. These layer will be subject to specialized training to deal with the children.

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?

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

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

Regarding to provide children support by being accompanied by support person it depends on the evaluation of the child situation if he needs to be supported during the procedures the judge or prosecutor will allow for the proper person to attend. If the parents of the children will be witnessed at the same act it is not acceptable for them to attend since that will affect the trial procedures. In that case the social worker may be the person to attend to support the children.

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

According to article 3 of CPL If the victim of the crime has not completed fifteen years old the complaint shall be submitted by the person who has guardianship over him. If the crime is committed against property, the complaint shall be accepted from the guardian or guardian.

. If the interest of the victim contradicts with the interest of his/her representative or he/she has no one to represent him/her, in such case the public prosecution shall be such person's 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?)

The initial investigation which conducting by prosecutor all procedures are confidential. In the trial procedures Ifront of the juvenile court all procedures are confidential. In the trial before other courts if the procedure of hearing the testimony will affect the children who is victim or witness the judge may decide the confidentiality of procedure if that will affect the children rights of privacy or his psychology resorting to the rule of best interest of the child

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

The cautionary procedure should be taken as result of the dangerousness evaluation. The request may be submitted to the police family protection department or to prosecutor from the children directly or his/her representative, then the police or prosecutor will ask the court for this measure .

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

The child or his legal representative apply asking the prosecutor to appeal. If the prosecutor convince by the reasoning the prosecutor only has the right to appeal .

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 trained police officers are responsible for interview the child who is victim or witness in the stage of initial investigation. Then we will move to the judicial investigation where trained prosecutor will heard the children testimony according to the procedures we have mentioned. In the trial stage the judge is responsible for all hearing procedures.

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

It is not mandatory but actually all of them are trained how to deal with the children as a victim or witness.

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?

The CPL and the procedurals guideline consider as a protocol should be followed .

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?

According to evaluation in the first stage in the police it should be decided who is appropriate to attend. In the prosecution stage may be the parents or social worker will be allowed to attend according to the circumstances of the case . In the trial stages all parties of the trial should attend but in the case the children is victim or witness the separate room is available with CCTV connection with the court room that allow to avoid the children any confront with defendant. The judge controls the camera so he is responsible for administration of the session. The examination and cross examination conducting in the same way.

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 investigator in initial investigation , prosecutor in judicial investigation the judge on trial stage only doing the interview or hearing . cross examination allow only in the trial stage

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?

In the trial stage the judge will allow question or refuse to direct the question and he/she is able to rephrase the question

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)?

The CCTV system is applicable but all procedures are written down to be within the case file no recoding is doing to avoid any violation of privacy of children.

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?

In the police and prosecutor, it is not allowed to the defendant to attend the interview and hearing procedures. The role only for investigator to interview and the prosecutor to investigate there is no role in this case for the offender. In the trial stage the defendant and his lawyer should attend hearing procedures otherwise the procedures will be nulled. In the case that the witness or victim is child the court will use the technology to conduct the trial virtually. During the trial even virtually or actually the offender has the right to discuss the witness on his testimony. According to CPL the judge cannot rely on evidence except the evidence subject to the discussion during the trial from the parties.

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?

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

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)?

If there are any other procedures should be applied such as family or child protection the special procedure has the priority. In the case that the case considers as domestic violence the domestic violence law should be applies so the police officers of the family protection department, the nominated prosecutor as domestic violence prosecutor, the specialized judges of the domestic violence have the jurisdiction over interviewing and hearing procedures. The special protection order should be applied on that case. For example if the case consider as domestic violence case the protection orders on article 16 of the domestic violence law will be applicable on the child victims and witnesses .

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10. Training

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

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

The continues annual training program for judges includes specific courses about the hearing procedures of the victims in the criminal case. That training course refer to special procedure should be taken when the witness is a child. Using the technology on the hearing also one of the training topics. There are special courses about the social and psychological aspects that will affect the witness during his/her testimony, this training g enable judges to deal in a best manner with these cases. The curriculum of the future judges' program includes also courses in that regards. Several trainings were done for judges, prosecutor, social worker, forensic doctor, and police officers regarding the child protection international principle, the agreeable procedure should be followed on the interviewing and hearing children. Training on the guideline for using the modern technology for hearing the children as witness or victim of crime.

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?

The partners in the field of the child protection are gathered under the umbrella of the national team for combating domestic violence, within the national council for family affairs, Judicial council, Ministry of justice , ministry of social protection , Psd , NGOs institution and other official institution . There are national efforts to improve the protection system for the children as a witness or victim. There are some future projects to enhance this protection system. Complete the connection between all of the courts , prosecution department with all of police family affairs branch. Establish protocol by which the social and psychological evaluation us required before doing any interview hearing of child as a witness. Enhance the specialization of all worker in that regard will be one of future plan