



CHILD PARTICIPATION IN JUVENILE JUSTICE IN SAMOA

National Report for AIMJF's Comparative and Collaborative Research

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

Informe nacional para la investigación comparativa y colaborativa de la AIMJF

La participation des enfants à la justice juvénile à Samoa

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 Samoa.

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 Samoa

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 à Samoa.

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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.



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?

The Court which deals with offending by young persons in Samoa is the Youth Court.

Pursuant to the Young Offenders Act 2007, the Youth Court of Samoa only has criminal jurisdiction for matters concerning young persons who are over the age of 10 and under the age of 17, except for offences where the punishment is life imprisonment, which falls under the jurisdiction of the Supreme Court of Samoa.

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

Section 3 of the YO Act 2007 provides that no person under the age of 10 years shall be charged with a criminal offence.

- 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?

As stated above, the Youth Court deals with offending by a young person between the age of 10 and 17. Therefore, offending by 17 year-olds are dealt with in the District Court or Supreme Court depending on the charge. The practice however is that the principles and practices of the Youth Court are taken into account when dealing with 17 year old offenders. That is also the practice when a young person is charged with

an offence which attracts a life imprisonment term and which is dealt with before the Supreme Court.

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?

In respect of a young person under the age of 17, the answer is yes.

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

Language must be the language of the child. Proceedings before the Court are closed to the public and media. Once a charge is filed before the Youth Court a mentions date is set. The young person has the right to receive independent advice, to have parents or guardians in attendance and to be represented by a lawyer under legal aid. As a general practice, the Youth Court requires the parents or caregiver of the young person to attend. If they do not attend, a summons can be issued by the Court for their attendance. Upon request, or if the Judge considers it appropriate, a lawyer is provided through legal aid. If the charge is denied, a lawyer is always provided and the matter will proceed to hearing where the rights of the young person is protected by his counsel. If the young person admits the charge then a pre-sentence meeting is arranged and a report is provided recommending the best way forward for the young person. The young person may be put under the supervision of an elder relative or community leaders, probation officers or others where they may be required to carry out a program. A report is provided at the end of the supervision term and based on that report, the judge has a variety of options available to him to either grant a discharge without conviction or convict the young person. A term of imprisonment is only imposed as a measure of last resort and only in circumstances where the charge is serious and there is no other reasonable alternative.

Informality is very important. The child must be made to feel at ease. The court can also be set up in a different way. The Samoa Youth Court began with a child under a coconut tree.

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

Yes, refer to the answer to question 1.5 above. The Judge can also at any time intervene and directly obtain the views of the child on any issue.

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

The procedure which has been explained in 1.5 above is the standard procedure. However, the process is not rigid and each judge can adapt and change the way to deal with a young person as he or she feels fit so long as it is within the parameters of the law. It may also be that special sensitivity and consideration is required in particular cases, e.g. with very young children or those with physical or other disabilities.

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?

The child is required to participate in the hearing, nothing can be done without his/her presence and the presence of parents/caregiver. Once charges are laid by police, the young person is remanded by a Registrar to appear before the Youth Court. Alternatively, for less serious offences, the young person is summoned to appear directly before the Youth Court. If for some reason the matter falls off the Court's list, the young person is summoned to appear again on a specific date. If the young person does not appear on the assigned date, a warrant of arrest can be issued by the Judge.

2.2. Is this call to appear, irrespective of its modality, made together with parent/representative or does the child receive a separate invitation/summon? Is it made in a child-friendly language? Can you please add a copy of this document?

The parent/caregiver/guardian or representative is told by the Registrar to appear when the young person's matter is called for the first time before the Youth Court and a note is made on the charging sheet. If the matter is called and the parents or guardians are not present, the Court then either summon them or make an order for them to appear on a specific date. The child's summons is separate but in the same form as an adult summons. So it is not in a child-friendly language.

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 separate entrance, everyone uses the same front door to the court. However, there are special procedures in place for children's evidence. For example, a child can give evidence by video-link from a separate room if she or he is a victim of an offence.

- 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?

In respect of child witnesses there is a special room next to the Courts where they are able to wait. For security and privacy reasons, photos of any child is not permitted.

- 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.)?

This question relates to the actions and duties of the Ministry of Police which is separate from the Judiciary. Our understanding is that when they are transported, they are supposed to be kept separately in a different vehicle. As to detention, they are required to be detained separately from adults. Whilst awaiting for the construction of a new and separate youth rehabilitation center, young persons who are currently in custody are kept in a group cell which is separated from adults.

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

There is no specifically assigned space or room for this on the Court premises. However, there is open space available and sometimes empty court rooms which can be used. They often use the video-link room.

- 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?

Mostly in the Court room. As stated above, the current process is not rigid and there is opportunity for the judge to determine the setting of a hearing depending on the particular circumstances of the matter. Children give evidence by video-link.

- 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?

Child witnesses and child defendants are treated specially. This does not necessarily apply to the rest of the family. That is at the discretion of the trial Judge.

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

No. The Court rooms used by the Youth Court are the same Courts used for adults in the District Court.

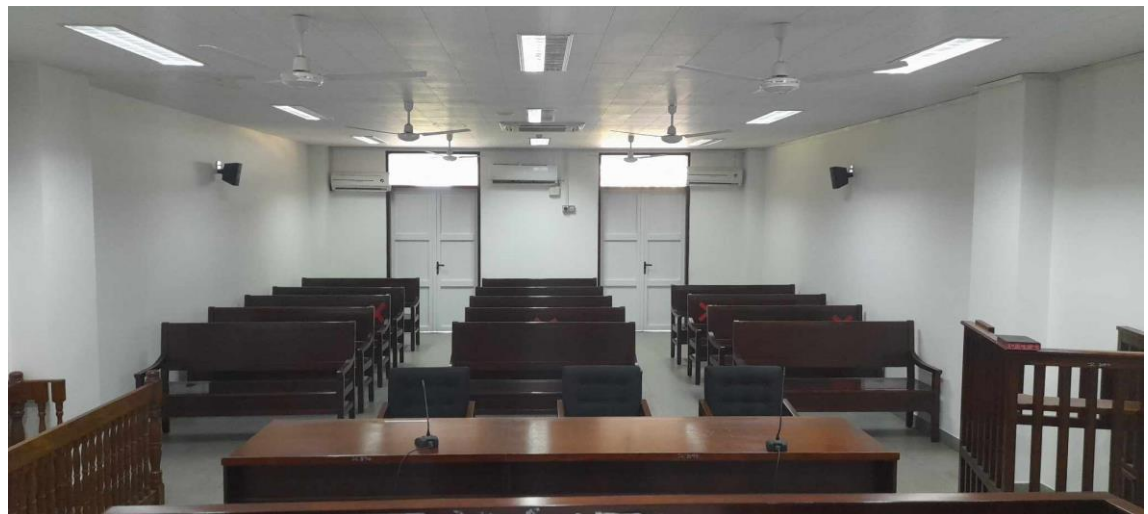
2.10. Are hearings sound or video recorded? Does such option exist?

Sound recording is available. Youth Court proceedings are not video recorded although there is equipment within the Court to allow this if required or ordered by the Judge.

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

As stated above, proceedings in the Youth Court are held in a Closed Court. Therefore, the general public and media are not allowed. The people who are allowed to take part in a judicial hearing include the Judge, a registrar, the young person, the parents, caregivers or guardians, the prosecution, Counsel for the young person, a probation officer or representative of any of the programs undertaken by the young person, court orderly (police officer) and witnesses.

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)



2.13. Is there any informative material for children to explain who will attend and how the hearing will be held? Can you please share it/them?

There is no separate informative written material available at this time. The Judge may explain the process to the young person and his parents, etc before Counsel is engaged but the responsibility is generally left to Counsel acting for the young person to explain the 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?

A judge presides in the Youth Court. There is an opportunity for a young person to be diverted from the Courts by the Ministry of Police. The process of diversion is available to Police if they deem the criminal complaint to be trivial.

- 2.15. Are there guidelines or a protocol on how to interact with the child? Can you please share it/them? Do those interacting with the child receive specific training on this?

There are no specific written guidelines/protocols pertaining to our Courts which assist or instruct how judges should interact with a Child. The judges rely on their own knowledge and experience of best practices, due process and fundamental rights which may be prescribed by the CRC, the YO Act 2007, the District Court rules and any other legislation or regulation. Training for Youth Court Judges is available.

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- 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?

Judges are generally required to wear a gown in all criminal courts including the Youth Court. Some judges will however disrobe at their own discretion, especially if the young person is very young.

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

Yes, the prosecutor and Counsel for the young person are also required to wear a gown when they appear before the Youth Court but not necessarily when in chambers. If the Judge disrobes then they will as well.

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

Refer above to question 2.11.

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

As long as they have on clothes which are neat and tidy.

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?

What a child wears when detained is not regulated by law and they are allowed to wear any clothing which is suitable. The use of handcuffs is normally frowned upon by the Judge and only used as a measure of restraint where the young person is a threat to himself or others around him or her. Children in custody must be accompanied by a Police officer.

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

Not necessarily. Sometime the young person is already in the courtroom before the judge enters. Most times, the young person is waiting outside the courtroom/in a particular place until his or her matter is called.

2.16.7. Does the child have to stand up?

Yes, like everyone else, unless the young person is not physically capable.

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

If there is a reasonable cause accepted by the Judge.

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

The young person is required to stand 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.

- 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?

Yes, even in the presence of counsel, the Judge may explain the process and ask specific questions which are appropriate to the occasion. The young person may then respond or Counsel can always intervene if he or she determines that the question may not be appropriate or if some explanation is required.

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

Only if he or she elects to give evidence and it also depends on the age of the young person or child as to whether he or she understands the oath. If not, the Judge can ask whether he or she understands the difference between right and wrong and knows that it is not right to be untruthful. How the Judge conveys this to the child is left to his or her own discretion.

- 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?

Questions are put directly to the child. But the Judge will clarify and ask further questions if it becomes apparent that assistance is required.

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

Yes as this is a fundamental right provided by article 9 of our Constitution 1962 (Samoa).

- 2.16.14. Who is allowed to address the child? Only the judge, both the judge and the parties (prosecutor and defense attorney) or just the parties (prosecutor and defense attorney)? Is there an order of who interacts with the child?

The courts in Samoa are similar to the Courts found in other Commonwealth countries. So there is an order as to when and who interacts with the young person or child. Normally the prosecutor goes first followed by defence counsel then the Judge. But the Judge can intervene in relation to any matter at any stage of the proceedings.

- 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?

If the young person has pleaded guilty or is convicted of the charge then social workers and probation officers will play a crucial role in selecting the correct program for the young person, engaging with the young person and his or her family, monitoring his or her behavior; and reporting back to the Court.

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

Yes. The opportunity is available to the young person or his or her counsel to correct or challenge any information provided by a professional.

- 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?

At present, the hearing is structured in 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. It all depends on the nature of the charges and the initial plea and the particular defendant.

- 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?

If questions are asked by the Judge then the young person must answer. If during a hearing and the young person through counsel elects to give evidence, then he or she is required to answer either specific questions or general questions by counsel or the judge. When asked a question, the young person is not prevented from speaking freely. Questions may vary and may either focus on the wrongful act. Again, that does not prevent questions being asked contextualizing the young person's behavior, educational and family background and other relevant information. However, these types of questions are more common when dealing with sentencing.

- 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?

Our laws promote restorative justice and the rules or process allow flexibility for the Judge to adopt a particular process which he or she determines to be most appropriate in the circumstances as long as it does not venture away too much from the standard process which is explained above. This includes allowing a less formal approach to cases concerning young persons.

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

Yes. However, plans are put in place in order to guide the young person away from certain behavior and to ensure that the young person understands the consequences of his actions. The process also encourages the parents to be more attentive to the behavior of the young person. The programs which the young person is required to attend are designed to provide tools to assist the young person with rehabilitation and reintegration.

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

Yes and more. As explained above, cases involving a young person is held in a closed court and no matter what the charge is, legal aid assistance is provided to the young person. The Judge is also careful to safeguard the child's rights at all times.

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

The powers of the Judge are broad enough to make any orders if deemed necessary. This includes referring the young person to a counsellor whether it be a pastor in the community for spiritual counselling or to a social worker or mental health specialist if determined to be more serious and appropriate; but both are in serious short supply in Samoa.

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?

Training is available but due to the lack of funding, there has not been specific training in the above area since before the Covid 19 pandemic. There is always room for improvement and having regular trainings for all involved in the criminal justice system in the area of children's rights/processes is always beneficial to all stakeholders.

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

The lack of funding contributes to the lack of resources available to the Court and to Judges to carry out the work in the Youth Court. Assistance is also required to identify where support in this area can be obtained. Data acquisition and evaluation is a constant challenge.

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

There is a need for reform of the laws to ensure that our current legislation conforms to the CRC and other relevant international conventions. We are currently trying to organize such a reform to commence this year. The reform should also take into account new or emerging issues concerning the rights of a child in today's society. The issue which we face is the lack of funding to ensure that specialists in the area are able to be engaged to



carry out the work needed for such a reform and to conduct training of all stakeholders.

3.4. Any suggestions for improvement from your side?

There are a number of areas which need support and improvement but the root cause of most of these issues is the lack of capacity as well as the lack of funding. Some more urgent needs include obtaining a reliable recording system as the current one is defective most of the time; and free access to overseas legal database systems to assist in research which is undertaken by judges.