# AIMJF´S COMPARATIVE AND COLLABORATIVE RESEARCH ON CHILDREN BELOW THE AGE OF CRIMINAL RESPONSIBILITY:  MEASURES, RIGHTS, PROCEDURE, PARTICIPATION

#  The research´s aims in the context of AIMJF´s actions for the improvement of Justice and Children´s Rights

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

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

AIMJF has a longstanding commitment towards the improvement of the Justice System in order to provide better conditions for a qualified attention to children based in a human rights approach.

AIMJF´s promotes research on international problems facing the operation of the courts and various laws relating to youth and family and training programs. Among other activities, AIMJF organizes world congresses, study tours in different countries, monthly webinars and discussion groups. Therefore, AIMJF is a key actor in in promoting transnational judicial dialogue.

Transnational judicial dialogue is not only based on a shared history or legal tradition, nor on a formal treaty-based organizational structure or hierarchy, such as the Convention on the Rights of the Child, but as part of a common enterprise of a world judicial community, recognizing that not only comparative law, but also foreign judicial decisions and organizational structures are important resources for deliberations in domestic courts[[1]](#footnote-1). Judicial dialogue “allows judges to be more conscious about the environment in which they operate, making them aware that they belong to an international legal community in which everyone contributes to the development of a global normative system in benefit of the human person”[[2]](#footnote-2)

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

The aims of this new research are to identify similarities and discrepancies among countries and to develop a cartography on responses to the involvement of children below the age of criminal responsibility with criminal offenses: the measures applied, their rights, procedures and participation.

For this purpose, different tools will be at stake.

Each national contribution will be published as an article in our Journal, the Chronicle.

Based on these contributions, a global comparative analysis and also, as much as possible, regional analysis, according to similarities in cultural, linguistic and legal backgrounds, will be prepared.

This analysis will provide us with elements and inputs to organize webinars and discussions among members and a larger community.

AIMJF has already organized research on child participation in family and protection matters, in juvenile justice and as victims in criminal procedures, each of them involving between 35 to 55 countries each in all continents <https://chronicle.aimjf.info/index.php/files/issue/archive>). A discussion on the outcomes was addressed in the world congress on justice with children.

For these reasons, AIMJF is contacting its members to join this collaborative research, but also independent Judges and Magistrates, researchers or other legal professionals who could support this initiative.

To guide the research and allow comparison of data, AIMJF has organized the following questionnaire to be responded by each participant. We invite you to participate at this initiative. The proposed deadline is June the 30, 2025

In case of doubts, suggestions or commentaries, please contact the Chronicle´s Editor in Chief, Dr. Eduardo Rezende Melo, Judge in Brazil (aimjfchronicle@gmail.com)

## QUESTIONNAIRE:

1. general information

1.1.   What is the minimum  age of criminal responsibility in your country (the **age of criminal responsibility** is the age below which a child is deemed incapable of having committed a [criminal offence](https://en.wikipedia.org/wiki/Criminal_offence), it can also be referred as  [**age of accountability**](https://en.wikipedia.org/wiki/Coming_of_age), **age of responsibility**, and **age of liability for children and it is different of the age when a person becomes an adult)**?

1.2.    Is there more than one minimum age of criminal responsibility? Which one? Is it possible to apply the ‘doli incapax rule’ in your country (possibility of demonstration that the child is sufficiently mature and capable to understand that the behavior was an offense and therefore could be criminally responsible)?

2. age assessment

2.1.     In case of application of the ‘doli incapax rule’, how is this assessment made? Is there a specific methodology for this evaluation? A protocol on how to evaluate? Who assesses the child? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

2.2.     In case of necessity of age assessment (due to a lack of birth registration), how is this assessment made? Is there a procedure? Is the child heard in this procedure? Does the child have legal assistance in this situation? Is it possible for the child to challenge the conclusions of this assessment?

3. police intervention

3.1.       In case a child under the minimum age of criminal responsibility commits an act considered as a crime, is he/she brought to a police station? Is it mandatory to do so? If not, in which situations is it necessary to be brought to the police station?

3.2.      In case the child is brought to the police station, what is expected from the police to do? What are the legal guarantees for the child in this context? Is it possible, in any circumstance, that the child be imprisoned, even for a very short time? In this case, how long is it possible for the child to be deprived of liberty?

4. measures

4.1.    In case a child below the minimum age of criminal responsibility has committed an act considered as a crime, is it possible to impose any kind of measure? Which one?

4.2.     Is it possible to impose an out-of-home placement (such as alternative care, in institution or foster family; in health facilities, for instance)? in which circumstances? For how long?

5. procedure

5.1.   Who imposes such measures?

5.2.   Is there a legal procedure for the determination of these measures? What is the nature of these procedures? Can you describe it shortly?

5.3.  Is it possible to adopt alternative resolution mechanisms in these situations, such as mediation or restorative justice?

6. assessment

6.1.  Is there any kind of assessment of the child for the imposition of such measures (on vulnerabilities, risk, rights violations)? Who assesses the child? Is there a protocol or guideline on how to assess the child? Can you please share it?

7. legal and procedural guarantees

7.1.  What are the rights of the child in this procedure (legal and procedural guarantees)?

7.2.   Does the child have the right to refuse any of these measures? Or to challenge in court any of these measures?

7.3.  What happens if the child does not fulfill the obligations inherent to these measures?

8. the role of the justice system

8.1.  Is it possible in your country that the justice system gets involved in these situations? In which situation (vg. to impose the measure or to review it, in case of resistance by the child or his/her family, or to impose some child protection order)? For what purpose? Which branch of the justice system is involved (youth court, family court, child protection court, criminal court…)?

8.2..  In case of involvement of the justice system, can you briefly describe the procedure?

8.3..  What are the rights of the child in this procedure? Does the child have the right to legal assistance? The right to appeal against any kind of decision?

9. assistance or support

9.1.  Besides the measures imposed to children, are there other kind of assistance available on a voluntary basis (social, psychological, medical)?

10. child participation

10.1.  Is the child heard in this procedure? By whom? At which stage of the procedure?

10.2.  Is the child heard more than once in this procedure? How many times?

10.3.  Is there a protocol or guideline on how to hear the child in this situation? Can you please share it?

11. legal implications

11.1.  Is there any record of legal infringement committed by children below the age of criminal responsibility? When the child reaches the age of criminal responsibility, are these records taken into consideration?

11.2.  In case of damages, what kind of rights and remedies does the victim have regarding the child and the family? Besides financial reparation, does the victim have the possibility to have a say on the measures applied to the child?

12. reforms in progress

12.1.  Are there ongoing reforms on this subject?

1. WATERS, Melissa A. Mediating norms and identity: the role of transnational judicial dialogue in creating and enforcing international law. The Georgetown Law Journal, volume 93, number 2, January 2005, pp. 487-574 [↑](#footnote-ref-1)
2. FERRER MAC-GREGOR, Eduardo. What do we mean when we talk about judicial dialogue? Reflections of a Judge of the Inter-American Court of Human Rights. Harvard Human Rights Journal, vol. 30, pp. 89-127 [↑](#footnote-ref-2)