



## CAT 71 Session

Country name: Bosnia and Herzegovina

### Areas of Concern:

The Committee Against Torture (CAT), in General Comment 2, elaborated that there is no clear definitional threshold between other cruel, inhuman or degrading treatment or punishment (hereinafter “ill-treatment”) and torture, but each State party obliges to take actions and measures that will prevent torture and to apply them to prevent ill-treatment as well because conditions that give rise to ill-treatment facilitate torture.<sup>1</sup> The CAT strongly reinforces *jus cogens* norm in absolute and non-derogable prohibition against torture.

International law strictly limits the circumstances in which children can be placed in detention while awaiting trial or while under investigation pre-charge. Pretrial detention should only be used in exceptional circumstances, where it is necessary to ensure the child’s appearance at the court proceedings, or where the child is an immediate danger to himself/herself or others.<sup>2</sup> Pretrial detention is only permitted as a measure of last resort and for “*the shortest appropriate period of time.*”<sup>3</sup> However, there is no clarity around what is meant by an “*appropriate period of time.*” The Committee on the Rights of the Child (CRC), in General Comment 10, recommended that children who are detained should be formally charged within 30 days and once charged, that a final decision should be made by the court within six months.<sup>4</sup> The CRC additionally recommended that any such detention should be reviewed regularly by a competent body<sup>5</sup> These recommendations can and should be strengthened.

Defendants in pretrial detention are more likely to be abused, mistreated and tortured,<sup>6</sup> and children are particularly vulnerable. In many countries, the lack of adequate facilities, food and sanitation, insufficient access to education and training, and compromised contact with family and friends makes even short periods of time in pretrial detention traumatic for children. Detention has been shown to significantly increase the risk of

<sup>1</sup> Comm. Against Torture, General Comment 2: Implementation of article 2 by States parties, U.N. Doc. CAT/C/GC/2 (Jan. 24, 2008) [hereinafter CAT General Comment 2].

<sup>2</sup> Patrick Webb & William Allen Kritsonis, *Controlling those Kids: Social Control and the Use of Pretrial Detention among Youth in the United States of America: National Implications*, ERIC (Oct. 2006), <https://eric.ed.gov/?id=ED493565>.

<sup>3</sup> G.A. Res. 44/25, Convention on the Rights of the Child, art. 37(b) (Nov. 20, 1989) [hereinafter CRC].

<sup>4</sup> Comm. on the Rights of the Child, General Comment 10: Children's Rights in Juvenile Justice, § 80, U.N. Doc. CRC/C/GC/10 (Apr. 25, 2007) [hereinafter CRC General Comment 10].

<sup>5</sup> *Id.* ¶ 83 (specifying that regular review is “preferably every two weeks”).

<sup>6</sup> Moritz Birk et. al., *Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk*, 27, OPEN SOCIETY FOUND. (2011), <https://www.opensocietyfoundations.org/sites/default/files/pretrial-detention-and-torture-06222011.pdf>.

depression, suicide, school drop-out, and drug use among children.<sup>7</sup> Unfortunately, in many countries the majority of children in detention are awaiting trial and may spend months or years behind bars before having their cases resolved. Even in jurisdictions that have successfully implemented alternatives to detention, children still spend months or years in pretrial detention, often longer than any sentence they might receive on conviction. It is reportedly common for children to receive conditional release or diversion after months of pretrial detention<sup>8</sup>. This means that the most significant time spent deprived of liberty is while awaiting trial, when children are ostensibly presumed innocent.

The 2018 report “Children in Pretrial Detention: Promoting Stronger International Time Limits” is the first study of how long countries allow children to be detained awaiting trial. Looking at the legal limits in 118 countries, the report found that 26% of countries have no time limit and 40% of countries allow exceptions to their time limit, risking indefinite detention. Nevertheless, the length of time that children actually spend in detention awaiting trial is data that countries have not been collecting or reporting.

The *Children in Pretrial Detention: Promoting Stronger International Time Limits* report serves as a baseline for the CRC to expand on country practices regarding times of pretrial detention of children.

### **Methodology:**<sup>9</sup>

This alternative report is based on the *Children in Pretrial Detention* report on pretrial detention times of 119 CRC State parties.<sup>10</sup> Such report was conducted by reviewing the respective current statutes or court rules in force at the time that the data was collected. In defining the statutory time period of pretrial detention, when possible, the report applied the statutory maximum for pretrial detention based on the time allowed in detention from arrest until a sentence was established. However, varying jurisdictions defined pretrial detention differently or set limits based on alternative procedural milestones. Where the statute did not provide a length of days or it was unclear, the number of days was based on the national law’s definition of pretrial detention.

Most jurisdictions did not indicate any time limit for children in pretrial detention pending appeals. For the sake of uniformity, only limits based on pretrial detention before the first adjudication were used. State practices are unclear when a case is appealed, and

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<sup>7</sup> Barry Holman & Jason Ziedenberg. *The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities*, 3–10, JUST. POL’Y INST. (Nov. 28, 2006), [http://www.justicepolicy.org/images/upload/06-11\\_rep\\_dangersofdetention\\_jj.pdf](http://www.justicepolicy.org/images/upload/06-11_rep_dangersofdetention_jj.pdf).

<sup>8</sup> E.g., *Diagnóstico del Sistema de Justicia Para Adolescentes del Estado de Chihuahua: “Buenas Prácticas para las Alternativas a la Detención”*, 8–10, JUSTICIA JUVENIL INT’L (Sept. 2017) <https://jjimexico.org/projects/chihuahua> [hereinafter *Diagnóstico 2017*].

<sup>9</sup> Additional methodological information available in *Children in Pretrial Detention: Promoting Stronger International Time Limits*, i, May, 2018 (available at <https://jjimexico.org/ptd-report/>)

<sup>10</sup>

the child is in pretrial detention, such as if the clock is suspended or if the time limit still applies

## Bosnia and Herzegovina

Bosnia and Herzegovina has a generally applicable pretrial detention limit for juveniles of 30 days with applicable exceptions that could amount to an average of 270 days of pre trial detention of youth.<sup>11</sup>

Statutory Citations	<p><b>Criminal Procedure Code of Bosnia and Herzegovina of 2003 (amended in 2018)</b></p> <p><b>Article 357. Placement of the Minor</b></p> <p>(1) The judge for juveniles may order that the minor during the preparatory proceeding be placed in a juvenile home, educational or similar institution, be placed under the surveillance of the juvenile welfare authority or put in the care of another family if this is necessary to separate the minor from the environment in which he has been living or to provide the minor with aid, protection or a place to live.</p> <p>(2) The cost of the minor's accommodations shall be paid in advance from the budget and shall be included in the cost of the criminal proceedings.</p> <p><b>Article 358 Ordering the Custody</b></p> <p>(1) Exceptionally, the judge for juveniles may order that the minor be placed in custody when the reasons for the custody referred to in Article 132, Paragraph 1, Item a) through c) of this Code exist.<sup>12</sup></p> <p>(2) Based on the decision on custody issued by the judge for juveniles, the custody may not exceed 30 days. The Panel</p>
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<sup>11</sup> Criminal Procedure Code of Bosnia and Herzegovina (2003, amended 2018), ch. XXVI, sec. 2, arts. 357–58 (emphasis added). Unofficial Consolidated Text available in English at: [https://www.legislationline.org/download/id/8502/file/CPC\\_BiH\\_am2018\\_eng.pdf](https://www.legislationline.org/download/id/8502/file/CPC_BiH_am2018_eng.pdf)

<sup>12</sup> These items are: a) if he hides or if other circumstances exist that suggest a possibility of flight; b) if there is a justified fear to believe that he will destroy, conceal, alter or falsify evidence or clues important to the criminal proceedings or if particular circumstances indicate that he will hinder the inquiry by influencing witnesses, accessories or accomplices; c) if particular circumstances justify a fear that he will repeat the criminal offense or complete the criminal offense or commit a threatened criminal offense, and for such criminal offenses a prison sentence of three years may be pronounced or more. Criminal Procedure Code of Bosnia and Herzegovina (2003, amended 2018), ch. IX, sec. 5, art. 132.

	<p>for juveniles is obligated to review the necessity of the custody every fifteen days.</p> <p>(3) The Panel for juveniles <i>may extend the custody for two (2) more months</i> if there are legal reasons for the extension.</p> <p>(4) After completion of the preparatory proceeding, the custody <i>may last for six (6) more months at a maximum</i>. The review of justification of the custody shall be carried out by the Panel for Juveniles upon the expiration of one month period following the date of issuance of the most recent decision on custody. The appeal against this decision shall not stay its execution.</p>
Failure to comply with Convention	<p>Under the laws of Bosnia and Herzegovina, a child can be detained awaiting trial for up to nine months.<sup>13</sup> The Committee on the Rights of the Child, in General Comment 10, recommended that children who are detained should be formally charged <i>within 30 days</i> and, once charged, that a final decision should be made by the court <i>within six months</i>.<sup>14</sup> Pretrial detainees are extremely vulnerable to torture and abuses because they are entirely in the power of authorities, whose interests are often to gain information and a confession. Children are particularly vulnerable to coercive interrogation practices and susceptible to make false confessions.<sup>15</sup></p>
JJIA Recommendations	<ul style="list-style-type: none"> <li>● We recommend that Bosnia and Herzegovina promote non-custodial measures for cases of children accused of criminal offenses and use detention only as a last resort and for the shortest possible period of time.</li> <li>● We recommend that Bosnia and Herzegovina make better efforts to ensure that children are separated from adults while in custody.</li> <li>● Bosnia and Herzegovina should work towards a statutory pretrial detention limit for children of no more than 30 days. The duration of pretrial detention should only be allowed to be extended once by a judge for up to 30 more days based upon the procedural needs of the case at hand, and upon (1) a request by the defense that justifies the extension; (2) a request by the prosecution and a showing that more time is absolutely essential to secure evidence that is necessary and cannot otherwise be</li> </ul>

<sup>13</sup> *Id.*

<sup>14</sup> CRC General Comment 10 at ¶ 83 (emphasis added).

<sup>15</sup> Juvenile Justice Advocates, International Human Rights Clinic of American University Washington College of Law, University of Minnesota Human Rights Center, *Children in Pretrial Detention: Promoting Stronger International Limits*, 2018, at 14, <https://jjimexico.org/ptd-report/>

	<p>obtained, or; (3) a showing of other exigent circumstances in the present case that justifies the extension. When extending the period of pretrial detention, the judge should limit it to the shortest time that is absolutely necessary, based on the procedural needs of the case and justified by the parties, rather than as a rule to extend the pretrial detention time by 30 days.</p> <ul style="list-style-type: none"> <li>● Bosnia and Herzegovina shall ensure all fundamental legal safeguards to all children deprived of their liberty, including their rights to access an independent lawyer immediately after the arrest and to contact their families and relatives.</li> </ul>
<p>Lines of Inquiry related to torture and ill-treatment</p>	<ul style="list-style-type: none"> <li>● Data on the actual times children spend in pretrial detention.</li> <li>● Disaggregated statistical data by sex, age, and ethnicity of children in confinement, including in pretrial detention.</li> <li>● Data on the number of children confined along with adults.</li> <li>● Interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of children subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture.</li> <li>● Data on the conditions of detention places for juveniles, including access to rehabilitation and education opportunities.</li> <li>● Annual number of juveniles that die in custody and causes of death.</li> </ul>
<p>Link to Global Study</p>	<ul style="list-style-type: none"> <li>● <a href="https://jjimexico.org/ptd-report/">https://jjimexico.org/ptd-report/</a></li> </ul>