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|  | **CAT 69 Session**  Country name: Montenegro |
| 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.[[1]](#footnote-1) 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.[[2]](#footnote-2) Pretrial detention is only permitted as a measure of last resort and for “*the shortest appropriate period of time*.”[[3]](#footnote-3) 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.[[4]](#footnote-4) The CRC additionally recommended that any such detention should be reviewed regularly by a competent body[[5]](#footnote-5) These recommendations can and should be strengthened.  Defendants in pretrial detention are more likely to be abused, mistreated and tortured,[[6]](#footnote-6) 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 depression, suicide, school drop-out, and drug use among children.[[7]](#footnote-7) 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[[8]](#footnote-8). 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. However, the length of time that children actually spend in detention awaiting trial is data that countries have not be 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:  This alternative report is based on the *Children in Pretrial Detention* report on pretrial detention times of 119 CRC State parties.[[9]](#footnote-9) 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 the child is in pretrial detention, such as if the clock is suspended or if the time limit still applies | |

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| Montenegro has a blanket pretrial detention limit of 30 with exceptions that can amount to 60 days. | | |
| Constitution / Statute Citation | | Criminal Code. Nos. 70/2003, 13/2004, 47/2006 and 40/2008  Chapter Six. Provisions on juveniles  Article 80. Exemption of children from criminal sanctions  Criminal sanctions cannot be applied to a juvenile who at the time of the commission of a criminal offence was under the age of 14 fourteen years (a child).  Chapter Fifteen. Criminal offences against freedoms and rights of man and the citizen  Article 167. Torture and abuse  (1) Anyone who, by force, threat or in any other unlawful manner, causes great pain or suffering of other person with the aim to obtain a confession, statement or other information from that person or a third party, or to intimidate or to punish unlawfully that person or a third party, or who does it from some other motives grounded on any form of discrimination, shall be sentenced to imprisonment for a term of six months to five years. (2) Anyone who abuses others or treats them in the way insulting to human dignity shall be punished by a fine or sentenced to imprisonment for a term of up to one year. (3) Should the offence referred to in paragraphs 1 and 2 above be committed by a person acting in an official capacity during performance of his/her duties, that person shall be sentenced to imprisonment for a term of one to eight years for the offence referred to in paragraph 1 above, and to imprisonment for a term of three months to three years for the offence referred to in paragraph 2 above.  The Criminal Procedure Code. No. 57/09, August 18, 2009  Part one. General Provisions  Chapter I. Basic Rules  Article 11. Prohibition of Use of Force and Extortion of a Confession  (1) It shall be forbidden to threaten or exert violence over a suspect, accused person or another person participating in the procedure, as well as to extort confession or another statement from such persons. (2) No judgment shall be based on any confession or other statement obtained by extortion, torture or inhuman or degrading treatment.  Part Two. Course of the Proceedings  A. Preliminary Investigation  Chapter XVII. Criminal Charge  Article 268. Ordering Detention in Preliminary Investigation  (1) Where the State Prosecutor issues a decision on holding a suspect, and finds that there are still reasons for ordering detention, the State Prosecutor shall file a motion to the investigative judge for detention of the suspect. (2) The motion referred to in paragraph 1 of this Article shall be delivered to the investigative judge before the expiration of the holding time limit. Within that time limit the person held must be brought before the investigative judge. (3) The investigative judge shall, in the presence of the State Prosecutor, interrogate the person referred to in paragraph 1 of this Article regarding all the circumstances of significance for the rendering of the decision ordering detention. After interrogation, without delay and at the latest within 24 hours as of the moment that person was brought before him/her, the investigative judge shall order detention or reject the motion ordering detention. (4) The person referred to in paragraph 1 of this Article shall have the right to have his/her defense attorney present during his/her interrogation by the judge. As regards the exercise of this right, provisions of Article 266, paras. 2 and 3 of the present Code shall be applied. (5) If the State Prosecutor did not bring and deliver to the court the order on conducting investigation in the course of holding a suspect, and does not perform this within 48 hours as of the moment of ordering detention, the investigative judge shall release the detainee. (6) Where a liberty-deprived person is brought to the State Prosecutor, that person, his/her defense attorney, family member, or partner in a customary marriage may request that the State Prosecutor allow a medical examination of the detainee. The decision on appointing a medical doctor who will perform the medical checks and the record on the detainee’s hearing shall be enclosed in criminal case file by the State Prosecutor. |
| Failure to comply with Convention | * Art.: 1 ,2, 3, 4, 10, 11, 12, 13, 14, 16 * Definition and criminalization of torture * Fundamental legal safeguards * Legal aid * National institutions * Independence of the judiciary * Impunity for war crimes and remedy for victims * Investigations * Individual complaints * Training * Conditions of detention * Violence against women * Trafficking in persons * Corporal punishment * Data collection | |
| JJIA Recommendation | * Montenegro shall codify all elements of definition of torture and ill-treatment to Article 167 of the Criminal Code. * Montenegro shall ensure all fundamental legal safeguards to all persons deprived of their liberty, including right to have access to an independent lawyer and doctor of their choice and to contact families and relatives as well as education for juveniles. * Montenegro shall apply its adopted Law on Legal Aid to all people, including juveniles and marginalized groups, without discrimination and restriction to access to justice both at an early stage of the procedure and throughout legal proceedings. * Montenegro shall establish specialization of juvenile justice judges and provide appropriate training and resources to all relevant actors in the juvenile justice system. * Montenegro shall promote non-custodial measures for cases of children accused of criminal offenses and shall use detention only as a last resort and for the shortest possible period of time. * Montenegro shall build separate facilities for children deprived of their liberty and run them by specialized personnel with guarantee of all fundamental legal safeguards. * Montenegro shall ensure the full independence and impartiality of the judiciary. * Montenegro shall ensure thorough, prompt and independent investigations on any allegations against police force as well as against perpetrators as well as access to justice and reparations for victims. * Montenegro shall improve criminal investigation methods to be applied with no physical ill-treatment of detainees and shall punish police or perpetrators who are responsible with appropriate penalties. * Montenegro shall establish an effective mechanism for reporting complaints of torture and ill-treatment and protecting involved complainants, victims and witnesses. * Montenegro shall improve prison conditions by providing meaningful activities and rehabilitation programmes to prisoners and by taking measures to reduce overcrowding. * Montenegro shall explicitly prohibit corporal punishment in all settings, supported by the necessary awareness-raising and educational campaigns about the negative impact of corporal punishment on children. | |

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| Lines of Inquiry related to torture and ill-treatment | Data on:   * + Disaggregated statistical data by sex, age and ethnicity and type of crime, on the number of cases where redress and/or compensation measures have been ordered by the courts   + Arbitrary arrests and detention   + Abuse of authority   + Right to life violations   + Treatment during the arbitrary detentions towards juveniles   + Conditions of Detention places for juveniles   + Number and status of detainees, including juveniles   + Number and status of deaths in custody, including juveniles   + Number of complaints, investigations, prosecutions and criminal and disciplinary sanctions imposed against the perpetrators of acts of torture and ill-treatment   + Any juveniles prosecuted or investigated under the charge of terrorism or war crimes   + Inter-prisoner violence and sexual violence in prisons |
| Link to Global Study | <https://jjimexico.org/ptd-report/> |

1. 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]. [↑](#footnote-ref-1)
2. 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. [↑](#footnote-ref-2)
3. G.A. Res. 44/25, Convention on the Rights of the Child, art. 37(b) (Nov. 20, 1989) [hereinafter CRC]. [↑](#footnote-ref-3)
4. 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]. [↑](#footnote-ref-4)
5. *Id.* ¶ 83 (specifying that regular review is “preferably every two weeks”). [↑](#footnote-ref-5)
6. Moritz Birk et. al., *Pretrial Detention and Torture: Why Pretrial Detainees Face the Greatest Risk*, 27, Open Soc’y Found. (2011)), <https://www.opensocietyfoundations.org/sites/default/files/pretrial-detention-and-torture-06222011.pdf>. [↑](#footnote-ref-6)
7. 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>. [↑](#footnote-ref-7)
8. *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*]. [↑](#footnote-ref-8)
9. Additional methodological information available in *Children in Pretrial Detention: Promoting Stronger International Time Limits,* i, May, 2018 (available at https:jjimexico.org/ptd-report/) [↑](#footnote-ref-9)