

**CAT 70 Session**

Country name: Ukraine

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 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 Pretrial detention is only permitted as a measure of last resort and for “*the shortest appropriate period of time.*”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 The CRC additionally recommended that any such detention should be reviewed regularly by a competent body⁵ These recommendations can and should be strengthened.

Defendants in pretrial detention are more likely to be abused, mistreated and tortured,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

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].

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>.

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

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].

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

⁶ 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.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 detention⁸. 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:⁹

This alternative report is based on the *Children in Pretrial Detention* report on pretrial detention times of 119 CRC State parties.¹⁰ 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

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.

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*].

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/>)

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

Ukraine

Ukraine has a generally applicable and crime-based pretrial detention limit of 60 days with applicable exceptions that could amount to an average of 365 days of detention for youth.¹¹ The statute establishes custodial measures for youth ages 14–18, but it is not clear if the pretrial detention extensions apply in the same manner in comparison to adults.¹²

Statutory Citation	<p>Criminal Procedure Code of 2013 (amended 2015)¹³</p> <p>Art. 3. Definition of the Code’s principal terms 12. Underage person is a minor and also a child aged between fourteen and eighteen.</p> <p>Article 197. Term of validity of the ruling to commit to custody, extend custody 1. Term of validity of the investigating judge’s, court’s ruling to commit to custody or to extend custody may not exceed sixty days. 3. Total duration of keeping under custody of the suspect, accused in the course of pre-trial investigation shall not exceed: 1) six months in criminal proceedings in respect of crimes of small or medium gravity; 2) twelve months in criminal proceedings in respect of grave or especially grave crimes.</p> <p>Art. 492. Imposition of a measure of restraint on an underage suspect, defendant 1. One of the measures of restraint specified in the present Code may be applied to an underage suspect, defendant, taking into account his age-related and psychological specifics, occupation, if grounds specified in the present Code, exist. 2. Apprehension and keeping in custody may be applied to an underage person only if he is suspected or accused of committing a grave or especially grave crime, provided no other measure of restraint may ensure prevention of risks specified in Article 177 of the present Code.</p>
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¹¹ Criminal Procedure Code of 2013 (amended 2015) (Ukraine), arts. 197, 492. English version available at https://www.legislationline.org/download/id/6454/file/Ukraine_CPC_2013_am2015_en.pdf

¹² See *id.* at arts. 3, 197, 492.

¹³ *Id.*

	<p>Art. 219. Time limits for pre-trial investigation</p> <p>1. Pre-trial investigation is required to be completed:</p> <ol style="list-style-type: none"> 1) within one month from the date the person concerned is notified of suspicion in committing a criminal misdemeanor; 2) within two month from the date the person concerned is notified of suspicion in committing a crime. <p>2. Time limits for pre-trial investigation may be extended [...] and the total duration of pre-trial investigation may not exceed:</p> <ol style="list-style-type: none"> 1) two months from the date the person concerned is notified of suspicion in committing a criminal misdemeanor; 2) six months from the date the person concerned is notified of suspicion in committing a crime of small or medium gravity; 3) twelve months from the date the person concerned is notified of suspicion in committing a grave crime or a crime of special gravity.
Failure to comply with Convention	<p>Under Ukrainian law, a child can be detained, without a trial, up to one year.¹⁴ 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>.¹⁵ As explained above, 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.¹⁶</p>
JJIA Recommendations	<ul style="list-style-type: none"> ● JJIA recommends that Ukraine invests efforts in promoting 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. ● Ukraine should ensure that children are separated from adults while in custody. ● JJIA recommends that Ukraine works towards a pretrial detention of children for 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

¹⁴ *Id.*

¹⁵ CRC General Comment 10 at ¶ 83 (emphasis added).

¹⁶ 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>showing that more time is <i>absolutely essential</i> to secure evidence that is necessary and cannot otherwise be obtained, or;</p> <p>(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"> ● Ukraine should 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.
<p>Lines of Inquiry related to torture and ill-treatment</p>	<ul style="list-style-type: none"> ● Data on the actual times children spend in pretrial detention. ● Disaggregated statistical data by sex, age, and ethnicity of children in confinement, including in pretrial detention. ● Data on the number of children confined along with adults. ● 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. ● Data on the conditions of detention places for juveniles, including access to rehabilitation and education opportunities. ● Annual number of juveniles that die in custody and causes of death.
<p>Link to Global Study</p>	<p>https://jjimexico.org/ptd-report/</p>