

**CAT 69 Session**

Country name: Uruguay

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 depression, suicide, school drop-out, and drug use among children.⁷ Unfortunately, in many countries the

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 SOC’Y FOUND. (2011)), <https://www.opensocietyfoundations.org/sites/default/files/pretrial-detention-and-torture-06222011.pdf>.

⁷ Barry Holman & Jason Zidenberg. *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.

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. However, 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:

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

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*].

⁹⁹⁹ Additional methodological information available in *Children in Pretrial Detention: Promoting Stronger International Time Limits*, i, May, 2018 (available at <https://jjimexico.org/ptd-report/>)

Uruguay

Uruguay has a blanket pretrial limit of 60 days with exceptions that account for a total of 90 days for pretrial detention.	
Constitution / Statute Citation	<p>Criminal Code No. 9155 Art. 272 – Rape Whoever compels a person of the same or different sex, with violence or threats, to suffer carnal conjunction, even if the act was not consummated commits the act of rape. Violence is presumed when carnal conjunction takes place: 1. With a person of the same or different sex, under fifteen years of age. However, evidence to the contrary is admissible when the victim is twelve years of age....</p> <p>Civil Code Law No 16.603 Art. 91 The following are nullifying impediments to marriage: 1. Any of the parties are under sixteen years of age. 2. Lack of consent in the contracting parties. The deaf and dumb who cannot be understood in writing are able to marry, provided it is proven that they can give consent. The verification will be done by judicially approved medical report. 3. The undisclosed bond of a previous marriage. 4. Kinship in a straight line by consanguinity or affinity, be legitimate or natural. 5. In the transversal line, the kinship between legitimate or natural brothers. 6. Homicide, attempt or complicity in the homicide against the person of one of the spouses, with respect to the survivor. 7. The lack of religious consecration, when this had occurred stipulated as a condition in the contract and claiming compliance with it on the same day of the marriage.</p> <p>Law No.18026, “Genocide, Crimes of Lese Humanity, War Crimes and Cooperation with the International Criminal Court” Article 22. 1. Any State agent or anyone acting with the authorization, support or acquiescence of one or more State agents who inflicts any form of torture on a person deprived of liberty or under his or her custody or control or on a person who appears as a witness, expert or similar before the authorities, in any manner and for any motive, shall be punished with imprisonment for a term of between 20 months and 8 years. 2. ‘torture’ shall be understood to mean: (a) any act by which severe pain or suffering, whether physical, mental or psychological, is inflicted; (b) subjection to cruel, inhuman or degrading punishment or treatment; or (c) any act aimed at dehumanizing or diminishing the physical or mental capacities</p>

	<p>of the victim, even if it does not cause pain or physical distress, or any act referred to in article 291 of the Criminal Code, where it is carried out for the purpose of investigation, punishment or intimidation.</p> <p>Juvenile Criminal Offenders Act No. 18777 of July 2011 criminalized attempted theft and attempted severe offenses committed by adolescents as well as complicity in theft and severe offenses.</p> <p>Juvenile Criminal Offenders Act No. allows juvenile prosecutors to ask to the judge for the maintenance (for a maximum of two years) of juvenile criminal records for severe offenses, which were unsealed from adult courts.</p>
Failure to comply with Convention	<ul style="list-style-type: none"> • Art.: 1, 2, 4, 5, 11, 12, 13, 14, 16 <ul style="list-style-type: none"> ○ Definition of the offence of torture ○ Basic procedural guarantees ○ Allegations of torture and ill-treatment in prisons ○ Prison conditions ○ Deaths in custody ○ Juvenile justice ○ Juvenile facilities ○ Monitoring and inspection of places of detention ○ The National Human Rights Institution and Ombudsman's Office ○ Efforts to combat impunity and to provide redress for serious human rights violations committed during the dictatorship ○ Independence of the judiciary ○ Violence against women ○ Training
JJIA Recommendation	<ul style="list-style-type: none"> • JJAI strongly recommends Uruguay to work towards a 30 day pretrial detention limit for children. • Uruguay should consider raising its minimum age for marriage and sexual consent to 18. • When receiving complaints for allegations of ill-treatment and torture and irregularities against law enforcements, specially those dealing with children deprived of their liberty, Uruguay shall promptly initiate investigations on the matters under an independent agency, protect involved witnesses and victims from reprisal and punish those who are responsible to prevent the same conduct in the future. • Uruguay shall prohibit excessive use of force and collective punishments in facilities where children are detained. • Uruguay shall reduce the extension of the duration of pretrial detention back to 60 days, rather than 90 days.

	<ul style="list-style-type: none"> • Uruguay shall not criminalize “attempt at theft” and not allow change its classification of serious crimes into very serious crimes, which entails mandatory pretrial detention. • JIAI welcomes the national juvenile corrections institutions for reducing the number of reports of ill treatment, but strongly recommends that Uruguay shall reduce overcrowding in prisons by speeding the judicial process of children in pretrial detention. • Uruguay shall ensure that deprivation of liberty for juveniles is used as a measure of last resort only, and that the use of pretrial detention is minimized. • Uruguay shall develop national policies based on human rights with a particular focus on non-custodial measures, including recovery and social integration programmes, and access to education. • Uruguay shall evaluate the juvenile detention system by an independent agency with authorities politically detached from the executive and legislative Branch. • Uruguay shall establish expeditiously specialized juvenile court facilities and procedures with adequate human, technical and financial resources, designate specialized judges for children and ensure that such judges receive appropriate education and training, and ensure adequate funding, resources and trainings.
Additional Comments on Review of the Country	<ul style="list-style-type: none"> • Minimum age for marriage is 16. <p>Convention on the Rights of the Child, <i>Concluding observations on the combined third to fifth periodic reports of Uruguay</i>, ¶¶ 6, 21, 26, U.N. Doc. CRC/C/URY/CO/3-5 (Mar. 05, 2015), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fURY%2fCO%2f3-5&Lang=en</p>

<p>Lines of Inquiry related to torture and ill-treatment</p>	<p>Data on:</p> <ul style="list-style-type: none"> • Disaggregated information on the number of complaints, investigations, trials and judgements and on reparation granted to victims. • 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 • Inter-prisoner violence and sexual violence in prisons • Number of persons who have died in custody during the reporting period, disaggregated by place of detention, sex, age, ethnic origin or nationality and cause of death; outcome of investigations into those deaths and on steps taken to prevent any recurrence of such cases • Number of alleged victims or their sex and age, the place of detention concerned or the protective measures taken in each case of criminal complaints from juvenile facilities • Children in Street situations • Progress and evaluation of the National Institute for the Social Inclusion of Adolescents (INISA) on handling juvenile justice cases and relevant complaints • Reports from the Parliamentary Commissioner for the Prison System and the National Human Rights Institution on external oversight of places of deprivation of Liberty • Progress and evaluation of new Code of Criminal Procedure through Act No. 19293 of December 2014 and new practice of prosecutors being responsible for investigations and the Attorney General's Office replacing the judge in the investigation of cases • Progress and evaluation of the Specialized Team for Serious Human Rights Violations under Act No. 19355 of December 2015) on handling juvenile justice cases
<p>Link to Global Study</p>	<p>https://jjimexico.org/ptd-report/</p>