|  |  |
| --- | --- |
|  | **CRC (85th Session)**Country name: Afghanistan |
| **Appropriate pre-trial detention times for children****Cluster of rights:**Convention on the Rights of the Child Article 37(b): No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time; Convention Against Torture Article 2**Areas of concern:**The international human rights community needs to adopt stricter time limits for children in pretrial detention. 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.[[1]](#footnote-1) Pretrial detention is only permitted as a measure of last resort and for “*the shortest appropriate period of time*.”[[2]](#footnote-2) However, there is no clarity around what is meant by an “*appropriate period of time*.” The Committee on the Rights of the Child, 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.[[3]](#footnote-3) The Committee additionally recommended that any such detention should be reviewed regularly by a competent body[[4]](#footnote-4) These recommendations can and should be strengthened.Defendants in pretrial detention are more likely to be abused, mistreated and tortured,[[5]](#footnote-5) 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.[[6]](#footnote-6) Research shows that children’s sense of time is significantly different than adults, making even short periods of detention particularly harmful.[[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. As a result, it is critical that children’s rights organizations advocate for significant reductions in the use of pretrial detention as well as speedier trials in order to reduce the duration of pretrial detention. While significant research, documentation, and best practices exist for monitoring detention conditions and implementing alternatives to detention, there is very little international research that documents the duration of child pretrial detention. Some organizations advocate for a maximum of 30 days for children in pretrial detention, and many countries have clear legal maximums.[[8]](#footnote-8) Yet it is unclear which nations are in fact adhering to a statutory maximum, what the average pretrial duration is, or what emerging good practices may be for reducing the duration of pretrial detention. Criminal justice procedures for children vary widely throughout the world, and it appears that international and regional human rights bodies have, to date, been reticent to prescribe what constitutes the “*shortest appropriate time*” for pretrial detention for children. Clarification is desperately needed since children in many countries are suffering irreversible harm from spending excessive periods of time in pretrial detention. 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[[9]](#footnote-9). This means that the most significant time spent deprived of liberty is while awaiting trial, when children are ostensibly presumed innocent. The *Children in Pretrial Detention: Promoting Stronger International Time Limits* report serves as a baseline for the committee to expand on country practices regarding times of pre-trial detention of children. State actors and civil society should be made aware that reducing the duration of pretrial detention for children is an urgent priority, and they need the tools to understand both effective practices which can reduce pretrial detention, as well as the governing international standards. This report represents an important step toward these goals.**Methodology:**This alternative report is based on a previous global report on pre-trial detention times of 119 CRC State parties. Such report was conducted by reviewing the respective current statutes or court rules in force at the time that the data was collected. When the actual statute or court rule could not be directly examined, when unavailable, secondary sources such as UN reports, Concluding Observations from the CRC Committee, or other IGO or NGO reports, were used to determine the content of the statute.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. The number of days were calculated at 30 days per month when the statue used a number of months rather than days for durations shorter than one year. Monthly durations beyond one year are added to a 365-day period. For example, 18 months was calculated as one year (365 days) plus six months (six 30-day periods, or180 days) to be 545 days. All time limits and averages were rounded to the closest whole day.If a statute referenced another law or calculation, such as a portion of time based on the possible sentence, such calculation was made. However, when sufficient information could not be found to calculate the time, a maximum limit was not included. If the pretrial detention time limit was defined based on multiple procedural steps, such as X days from arrest to arraignment and Y number of days from arraignment until sentencing, then the longest possible number of days allowed were added for each step to establish the pretrial detention time limit. Most countries do not include in their limits the time held before first hearing or initial charge 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.  |

**Afghanistan**

|  |
| --- |
| Afghanistan has a blanket pretrial detention limit of 7 days for misdemeanors and 15 days for felonies.[[10]](#footnote-10) The statute allows for procedurally-based extensions that may amount to a total of 20 days of pretrial detention for misdemeanors and 60 days for felonies.[[11]](#footnote-11)  |
| Statute Citation | **Criminal Procedure Code****Detention Period during the Investigation****Article 100:** (1) The prosecutor after taking custody of a suspect, if reasons set forth in paragraph (3) of article 99 of this law exist, can issue a detention warrant for7days for misdemeanor crime and15days for felony crime taking the circumstances into considerations. (2) If the detained person or his/her defense attorney or legal aid provider objects to extension of the detention, or if the prosecutor requests an extension of detention in accordance with paragraph (3) of this article, the prosecutor shall bring the person in detention before the court 3 days prior to expiring of the detention period to issue a ruling on extension of the detention. The accused person, defense counsel or his/her legal aid provider shall have a right of presence and objection at such a hearing. (3) In case 7 days for misdemeanor crime and 15 days for felony crime do not suffice for completing the investigation and preparing indictment, the prosecutor can request the relevant primary court, in accordance with the provisions of paragraph (2) of this article, for the following extensions of detention of the accused person: 1– In misdemeanor crime, for up to10 days. 2– In felony crime for up to 30 days. (4) If the need to have the suspect or accused person in detention ends before completion of the period, the detention order will not prevent the release of the accused person on bail or without it. (5) If the prosecutor cannot complete the investigation within the period set forth in paragraph (3) of this article and the need for extension of detention period according to the provisions of this law exists, the primary court upon request of prosecution office, after evaluating the reasons of prosecutor and statements of the accused person, shall extend the detention of the accused person for10 days for a misdemeanor and30 days for a felony crime. The accused person and his defense counsel or legal aid counsel shall have a right to be present and object at such a hearing. (6) Extension of detention of an accused person by a primary court shall in no case exceed 20 days for a misdemeanor and 60 days for a felony.  |
| JJIA Recommendations | * JJIA recommends Afghanistan to invest efforts in implementing non-custodial and rehabilitative measures for children accused of criminal offenses.
* JJAI recommends that Afghanistan ensures 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.
 |
| Additional Information on the country | * In Afghanistan, children cannot be prosecuted for acts committed before age 12.[[12]](#footnote-12)
 |
| Lines of Inquiry related to children pre trial detention  | * Data on the average time children actually spend in pretrial detention.
* Data on the number of children who spend longer than the maximum time in pretrial detention.
* Data on duration of pretrial detention as it varies by race, gender, religion or other relevant characteristics.
* Data on efforts to reduce the length of pretrial detention and expedite cases.
* Information on how appeals and other challenges affect duration of pretrial detention.
* Information on standards related to initial court appearance, determination of legality of initial detention, and judicial control over detention of children.
* Data on oversight and children’s access to legal counsel within pretrial detention.
 |
| Link to Global Study | <https://jjimexico.org/ptd-report/> |

1. 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-1)
2. G.A. Res. 44/25, Convention on the Rights of the Child, art. 37(b) (Nov. 20, 1989) [hereinafter CRC]. [↑](#footnote-ref-2)
3. 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-3)
4. *Id.* ¶ 83 (specifying that regular review is “preferably every two weeks”). [↑](#footnote-ref-4)
5. 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-5)
6. 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-6)
7. David E. Arredondo, *Child Development, Children's Mental Health and the Juvenile Justice System: Principles for Effective Decision-Making*, 14 Stan. L. & Pol'y Rev. 13, 18–19 (2003). [↑](#footnote-ref-7)
8. *E.g*. Marina Ilminska, *Pretrial Detention of Juveniles: As Common as It Is Wrong*, Open Soc’y Found.: Voices (Sept. 1, 2015), <https://www.opensocietyfoundations.org/voices/pretrial-detention-juveniles-common-it-wrong>. [↑](#footnote-ref-8)
9. *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-9)
10. Criminal Procedure Code (Presidential Decree No. 137 of Feb. 23, 2014) Art. 100 (Afg.), translated in Justice Sector Support Program (Mar. 9, 2014), <https://www.unodc.org/res/cld/document/criminal-procedure-code_html/Criminal_Procedure_Code_-_Endorsed_by_President_EN_2014_03_14_with_TOC.pdf> [↑](#footnote-ref-10)
11. *Id*. [↑](#footnote-ref-11)
12. Juvenile Code (1384/01/03 A.P.) Art. 4 (Afg.), translated in AsianLII (Mar. 23, 2005), http://www.asianlii.org/af/legis/laws/jlcogn846p2005032313840103a495/ [↑](#footnote-ref-12)