

Special Rapporteur on the situation of human rights in the Islamic Republic of Iran
A/HRC/40/67 para 75(i)

Full recommendation:

Pending implementation of the aforementioned recommendations, and without prejudice to the binding obligation enshrined in the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights to not sentence children to death and to not execute child offenders, the Special Rapporteur recommends that the judiciary: Ensure that detention pending trial is only used as a measure of last resort and for the shortest possible period of time for children accused of any crime, including qisas and hudud crimes

Assessment using Impact Iran human rights indicators¹

A. The Judiciary should ensure that pre-trial detention is used as a measure of last resort only.

The 2015 Code of Criminal Procedures (CCP) makes pretrial detention dependent on two preconditions: 1) sufficient reason and evidence to charge someone with one of the specific crimes listed in Article 237 of the CCP; 2) the judge's belief that the person's liberty would result in the destruction of evidence or collusion with co-accused individuals, witnesses or others who have information about the case or it would cause witnesses to refrain from testifying, where the person's liberty would pose a risk of public disorder, a risk to their own life or to the lives of others, or would be likely to lead to the suspect hiding or absconding.

The new CCP provides a number of alternatives, or flight risk measures, to provisional pretrial detention under its Article 217, such as recognizance with an oath by the accused person to present themselves before the judicial authorities when needed, prohibition on leaving the place of residence monitored through electronic devices, and bail. The issuance of flight risk measure orders shall take into account, among other circumstances, the type and severity of the offence in question, the risk of the accused absconding, the accused's gender, age, character, and physical and psychological condition, and the accused's previous criminal record.² The investigator is granted the responsibility to determine the type of flight risk measure that shall be issued rather than an independent court.

¹CCPR.37.2.S.1; CCPR.37.2.S.2

CCPR.37.2.P.1

CCPR.37.2.O.1

² Code of Criminal Procedure, 2015, Article 250

B. The Judiciary should ensure that when pre-trial detention is implemented as a last resort, it is for the shortest possible period of time

Concerning the limitation in time of pretrial detentions under Iranian law, Article 242 of the 2015 Code of Criminal Procedure provides that in cases of “crimes punishable by the death penalty”, “crimes punishable by life imprisonment”, “crimes punishable by amputation and intentional physical assault punishable by payment of one third of a full *diya* [blood money]”, and “*ta’zir* crimes of degree four and higher”,³ if investigations have not resulted in an indictment at the end of two months, the investigator must revoke the detention order against the accused individual or replace it with a lighter measure. In cases of other crimes, the envisioned period is one month. If there exist sufficient grounds to do so, the investigator can decide to issue, extend the detention order, or aggravate other flight risk measures such as bail. The accused can appeal the order⁴ to a competent court.⁵ Extension of pretrial detention has to be renewed every month or two months depending on the nature of the charges.⁶ The accused individual can also challenge the continuation of their detention order.⁷ Under Article 242 of the CCP, “the detention period of the accused must not exceed the minimum penalty applicable to the crime. In any case, the detention period must not exceed two years in cases of crimes punishable by death, and one year in cases of other offences.”

While the existence of measures to limit and challenge the extension of temporary detention is positive, the legally permissible length of one or two years is disproportionately long. Long pretrial detention may violate the right to presumption of innocence as well as the right to trial within reasonable time or release, as guaranteed under Article 9(3) of the International Covenant on Civil and Political Rights.

The revised CCP adopted in 2015 has strengthened the application of alternative measures to pretrial detention, however it does not provide a specific legal framework for child defendants. There is no readily available information that might indicate that the Government of the Islamic Republic of Iran has applied alternative measures whenever possible to pretrial detention for cases of children in conflict with the law. Additionally, Iranian law does not prescribe any limit on pretrial detention of defendants under 18 years old which can reach one or two years before trial.

³ *Ta’zir* crimes of degree four and higher are crimes sentenced with minimum five years imprisonment and/or a fine of one hundred and eighty million rials. Article 19, Islamic Penal Code, 2013, English translation, Iran Human Rights Documentation Center, <https://iranhrdc.org/english-translation-of-books-i-ii-of-the-new-islamic-penal-code/>

⁴ The appeal deadline is 10 days from the time of notification for those residing in Iran at the time of the investigator’s decision and one month for those residing outside the country

⁵ Code of Criminal Procedure, 2015, Article 270

⁶ Code of Criminal Procedure, 2015, Article 242

⁷ Code of Criminal Procedure, 2015, Article 241

Consequently, the Iranian legal framework does not guarantee that pretrial detention is applied as a measure of last resort and for the shortest time possible under Iranian law for cases involving child defendants.

The Article 90 Commission of the Parliament is in charge of investigating complaints from citizens made against the operations of the Parliament itself, the executive and the judiciary.⁸ There is no publicly available information on data relating to the number of complaints received and investigated vis-à-vis cases of violations of the rights to fair trial and due process of children in the Islamic Republic of Iran. There is no National Human Rights Institution in the Islamic Republic of Iran that is competent to receive and address complaints of violations of children's rights.

Reports of disproportionately long pretrial detention of children and adults in the Islamic Republic of Iran suggest that in practice pretrial detention is not a measure of last resort and is not applied for the shortest time possible.^{9 10 11 12} NGO reports have been showing a pattern of arrests and detention of children that suggest that detention in general is not considered as a last resort in the Islamic Republic of Iran. Amnesty International reported the arrest and detention of hundreds of children during and in the aftermath of the November 2019 protests, some of them as young as 10 years old.¹³

Recommendation Status:

This recommendation has **NOT** been implemented.

⁸ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

⁹ Human Rights Watch, <https://www.hrw.org/news/2015/03/13/iran-submission-committee-rights-child>

¹⁰ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, July 2020, <https://undocs.org/A/75/213>

¹¹ Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, September 2019, <https://undocs.org/en/A/HRC/37/24>

¹² Report of the Special Rapporteur on the situation of human rights in the Islamic Republic of Iran, January 2019, <https://undocs.org/en/A/HRC/40/67>

¹³ Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>