

Concluding observations Committee on the Rights of the Child CRC/C/IRN/CO/3-4 para 92(e)

Full recommendation:

Alternative measures to pretrial detention should be strengthened and applied as much as possible in order to ensure that this deprivation of liberty is really a measure of last resort and is for the shortest time possible.

Assessment using Impact Iran human rights indicators¹

In the Islamic Republic of Iran, juvenile defendants are generally subjected to the same legal framework as adult offenders. Although the Law on the Protection of Children and Adolescents (adopted in June 2020) sets out a number of penalties as well as alternative punishments applying specifically to child offenders, it excludes from this regime crimes under *qisas* (retribution in kind) and *hudud* (a crime with a fixed punishment derived from the *Qur'an* of the *Hadith*), where the Islamic Penal Code's sentences prevail.

The 2015 Code of Criminal Procedures (CCP) makes pretrial detention dependent on two preconditions: 1) where there is sufficient reason and evidence to charge someone with one of the specific crimes listed in Article 237 of the CCP; 2) where the person's liberty would pose a risk either to the accused, persons involved with the trial or the trial itself. This includes cases where the person's liberty would: 1) result in the destruction of evidence; 2) result in collusion with co-accused individuals, witnesses or others who have information about the case; 3) cause witnesses to refrain from testifying; 4) pose a risk of public disorder, a risk to their own life or to the lives of others, or; 5) be likely to lead to the suspect hiding or absconding.

The 2015 CCP provides a number of alternative, 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

Commented [RM1]: The newly adopted Law on the Protection of Children and Adolescents sets out penalties for various crimes for children under the age of 18, varying in severity from those for adults, and proposes alternative punishments. However, Article 25 of this law excludes punishments related to the provisions of Qisas, Hudud and diyat from this law. In other words, despite some positive points, this law still treats people under the age of 18 in the same way as adults in the matter of sharia punishments, even if they wait until the age of 18 to carry out the sentence.

Commented [HS2]: This precondition is slightly difficult to follow, is it all based on instances where the person's liberty would result in the destruction of evidence or collusion with co-accused individuals and the rest is associated with that first section?

Commented [MR3R2]: Does it sound clearer this way?

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Concerning the limitation of time for pretrial detentions under Iranian law, Article 242 of the CCP provides that crimes punishable by the death penalty, life imprisonment, amputation, payment of *diya* [blood money], and *ta'zir* crimes of degree four or higher require that investigations result in an indictment within two months or the investigator must revoke the detention order against the accused, 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 or extend the detention order, or order other flight risk measures, such as bail. The accused can appeal against the order³ to a competent court.⁴ Extension of pretrial detention has to be renewed every month, or every two months, depending on the nature of the charges.⁵ The accused individual can also challenge the continuation of their detention order once a month.⁶ 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 ICCPR.

The CCP 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 to pretrial detention for cases of children in conflict with the law as much as feasibly possible. Additionally, Iranian law does not limit the duration of pre-trial detention for defendants under 18 years old, which can last up to two years. Consequently, the Iranian legal framework does not guarantee that pretrial detention is applied 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.⁷ 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

³ 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

⁴ Code of Criminal Procedure, 2015, Article 270

⁵ Code of Criminal Procedure, 2015, Article 242

⁶ Code of Criminal Procedure, 2015, Article 241

⁷ Iran Human Rights Documentation Center, <https://iranhrdc.org/internal-regulation-on-the-commission-of-article-90-of-the-constitution/>

Commented [HS4]: Is it the same to say that “The accused individual can also challenge the continuation of their detention order once a month.”

Commented [HS5]: Not sure that “as much as possible” clarifies what is wrong with alternative measures issued. Are they insufficient, ineffective, not to the greatest extent possible?

Commented [MR6R5]: I’d like to say here that the Islamic Republic of Iran has not applied alternative measures to pretrial detention as much as it could. Don’t hesitate to change accordingly

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Republic of Iran that is competent to receive and address complaints of violations of children's rights.

Reports of disproportionately long pretrial detentions 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.⁸⁹¹⁰¹¹ NGO reports have shown a pattern of cases 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.¹²

Recommendation Status:

This recommendation has **NOT** been implemented.

⁸ Human Rights Watch, <https://www.hrw.org/news/2015/03/13/iran-submission-committee-rights-child>

⁹ 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>

¹⁰ 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>

¹¹ 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>

¹² Amnesty International, <https://www.amnesty.org/download/Documents/MDE1328912020ENGLISH.PDF>