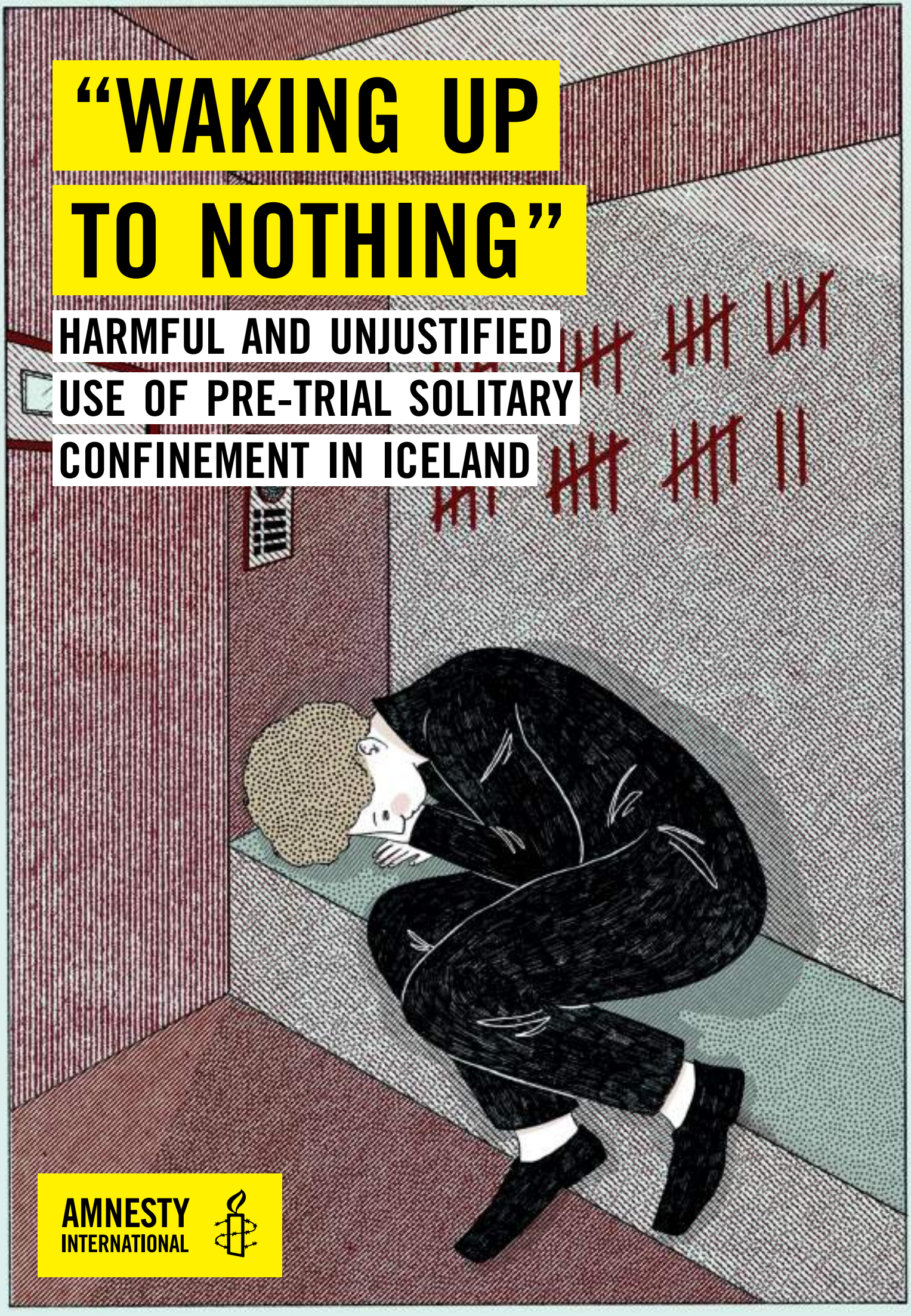
“WAKING UP TO NOTHING”

HARMFUL AND UNJUSTIFIED USE OF PRE-TRIAL SOLITARY CONFINEMENT IN ICELAND



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First published in 2023
by Amnesty International Ltd
Peter Benenson House, 1 Easton Street
London WC1X 0DW, UK

Index: EUR 28/6373/2023
Original language: English

amnesty.org

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EXECUTIVE SUMMARY

Solitary confinement is inherently fraught with the potential for human rights violations and harm to individuals. It is for this reason that international law and standards state that it should be used only in the most exceptional cases and always subject to exacting safeguards, monitoring and limitations. Any use of solitary confinement can amount to torture or other ill-treatment and increases the risk that other human rights violations will go undetected and unchallenged.

Data obtained by Amnesty International shows that over the 10 years between 2012 and 2021, 825 individuals were placed in pre-trial solitary confinement in Iceland. Of these, 10 were aged between 15 and 17. In a small country with low rates of imprisonment generally,[1] and pre-trial detention specifically,[2] these figures are troubling.

In April 2022, the UN Committee against Torture raised a series of concerns about the legal framework for pre-trial solitary confinement in Iceland and how it is applied. It flagged particular concerns about its use for prolonged periods and for people with psychosocial disabilities and children. It also cast doubt on Iceland's account of the safeguards in place to ensure it is only used when necessary. The Committee also provided clear guidance in its concluding observations to the Icelandic authorities on the measures they must take to bring current practice in relation to solitary confinement in pre-trial contexts into line with Iceland's international treaty obligations.[3]

International human rights law sets out exacting safeguards to guide what must only be exceptional use of solitary confinement in the pre-trial context. Further to this, the UN Special Rapporteur on Torture has called for an end to the use of solitary confinement in the pre-trial context.[4] In line with the international prohibition on torture and other ill treatment, solitary confinement should never be applied to people with pre-existing vulnerabilities – such as children and people with disabilities caused by physical, mental health or neurodiverse conditions that would be exacerbated by solitary confinement – due to the enhanced likelihood that it will cause harm. Solitary confinement for more than 15 days constitutes prolonged solitary confinement amounts to ill-treatment and should be prohibited.[5]

The research on which this Amnesty International report is based has shown that, while the use of solitary confinement may now be less frequent and for shorter periods than in the past, rates of pre-trial solitary confinement remain too high and are taking a heavy toll on those individuals subjected to it. Through interviews with current and former detainees and many criminal defence lawyers, Amnesty International researchers documented the harsh and often uniform restrictions imposed on detainees and the inadequate measures in place to safeguard their health and mitigate the harmful effects of solitary confinement.

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[1] M.F. Aebi and others, *SPACE I – 2021 – Council of Europe Annual Penal Statistics: Prison populations,* 15 December 2021, https://wp. unil.ch/space/files/2022/05/Aebi-Cocco-Molnar-Tiago_2022__SPACE-I_2021_FinalReport_220404.pdf p. 32.

[2] In 2020 this was 5.49 per 100,00 inhabitants. EUROSTAT, Crime and Criminal Justice Database, accessed 19 October 2020, https://ec.europa.eu/eurostat/web/crime/data/database, "Prisoners by legal status of the trial process".

[3] UN Committee against Torture (CAT), Concluding Observations on the Fourth Periodic Report of Iceland, 9 June 2022 (UN Doc. CAT/C/ISL/CO/4), paras 13–14 and 35.

[4] UN Special Rapporteur on Torture, Report: *Torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011 (UN Doc. A/66/268), paras 73 and 85.

[5] UN, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 45(2).

The report identifies serious concerns about the application of solitary confinement to children and people with health concerns, disabilities and neurodiverse conditions and its possible disproportionate application to foreign nationals. It details the procedures currently implemented in the justice system and deficiencies in the way they are applied. It identifies weak justifications for applying solitary confinement measures for investigation purposes and insufficient understanding of the harmful realities of solitary confinement. The report also highlights a number of fair trial violations linked to the way in which decisions are made to impose solitary confinement that need to be addressed.

Amnesty International's research calls into question the assurances of the Icelandic government and many other relevant authorities, including sitting judges, that existing safeguards in Iceland are sufficient, adequate and human rights compliant.

This report seeks to contribute positively to the revision of the legislation which the Ministry of Justice has stated is ongoing. It ends with a series of recommendations which Amnesty International urges the government to take forward in order to map a route towards compliance with its international and national legal obligations to respect, protect and uphold human rights and help put an end to Iceland's harmful reliance on pre-trial solitary confinement. These include:

- Revise the Code of Criminal Procedure to remove the possibility of applying solitary confinement *solely* to prevent interference with, or protect the integrity of, a police investigation.
- Identify and introduce measures that would provide less restrictive alternatives to solitary confinement.
- Prioritize urgent action to ensure that the application of solitary confinement is explicitly prohibited:
  - on children;
  - on persons with disabilities caused by physical, mental health or neurodiverse conditions that would be exacerbated by solitary confinement;
  - for any longer than 15 days.
- Introduce stronger safeguards to ensure that where solitary confinement is imposed, it is in line with human rights standards, including the prohibition of torture and the rights to fair trial and non-discrimination.

GLOSSARY

CAT	United Nations Committee against Torture
CCP	Code of Criminal Procedure
CPT	Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
Nelson Mandela Rules	UN Standard Minimum Rules on the Treatment of Prisoners
NPM	National Preventive Mechanism
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PPA	Prison and Probation Administration

METHODOLOGY

This report is based on in-depth desk and field research by Amnesty International conducted in 2021 and 2022.[6]

In February 2021, researchers started conducting a desk review of the legal framework and practical application of solitary confinement in Iceland. They identified pre-trial solitary confinement as an area of possible concern and requested data and information from the Ministry of Justice. The response received in April 2022 is available in Appendix I. Amnesty International representatives also met senior officials from the Ministry of Justice in November 2021.

Amnesty International also requested information from the Prison and Probation Administration (PPA), the National Commissioner of the Icelandic Police, the Attorney General, the Judicial Service and the Police Supervisory Committee. Researchers also spoke with key actors, including several judges and lawyers.

Amnesty International sought to analyse case documentation but, due to information from most district courts being unavailable, relied primarily on data provided by officials and lawyers, including information from the prosecution division of the Metropolitan Police in Reykjavík, to understand what happens at the various stages of the legal process. Researchers sent a list of questions and were provided with anonymized information extracted from an internal database in June 2022, covering all of the cases in which prosecutors within that police district had requested solitary confinement in 2021. Further to this, Amnesty International researchers reviewed 15 random rulings relating to solitary confinement that they were able to access as part of appeal rulings.

Amnesty International conducted a research visit in April 2022 during which researchers interviewed five current and former detainees (four men and one woman) about their experiences of solitary confinement and gathered numerous other accounts of individual cases from lawyers. The research team actively sought interviews with women, foreign nationals and those with any particular individual characteristics or circumstances that would be relevant to the experience of solitary confinement.

During the visit and subsequent online meetings, researchers interviewed representatives from: Hólmsheiði Prison, the prison mental health team, the PPA, the Ombudsman's Office (which is designated as Iceland's National Preventive Mechanism), the Judicial Administration, the National Police Commissioner and the Ministry of Justice. They also interviewed two police prosecutors; the Director of Public Prosecutions and a District Prosecutor; five current and former judges from district, appeals and the supreme courts; 10 defence lawyers; two representatives from the Bar Association; an academic criminologist; and an NGO. The delegation requested, but were unable to secure, interviews with some other authorities and senior representatives who were unavailable at the time of the visit.

[6] Acknowledgements: Louise Finer, Consultant researcher and expert on human rights in detention was engaged for this research project and report with Amnesty International Iceland.

The delegation requested permission from the Director General of the PPA to make a brief visit to the solitary confinement wing at Hólmsheiði Prison, which was granted and the delegation visited the wing, escorted by prison staff. A formal request to observe a court hearing in the Reykjavik District Court was not answered and attempts to explore a court observation were inconclusive.

Researchers also consulted experts from Denmark and Norway for comparative perspectives on solitary confinement in pre-trial detention.

Amnesty International has not identified any individual interviewees in this report to ensure the confidentiality and wishes of current and former detainees and because the organization felt it was important not to attribute comments by others who were interviewed, such as officials and judges, given the context of the close-knit and interconnected nature of Icelandic society.

Amnesty International acknowledges the timely help of several public authorities in response to data requests throughout the research. In particular, the PPA provided detailed information in response to many questions and the prosecutions division at the Reykjavik Metropolitan Police extracted information from their database. Useful information was also provided by the Judicial Administration, a District Court and the Attorney General's Office.

Amnesty International would like to express its particular thanks to the current and former detainees who shared their experiences and who agreed to their inclusion in this report.

CHAPTER 1: THE LEGAL FRAMEWORK

1.1 INTERNATIONAL LEGAL STANDARDS

International human rights treaties ratified by Iceland assert that solitary confinement can amount to torture and other ill-treatment, prohibited under the International Covenant on Civil and Political Rights (Article 7), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Articles 1 and 16) and the European Convention on Human Rights (Article 3).[7] Determination of whether particular instances of solitary confinement amount to torture or other ill-treatment is made by human rights courts and mechanisms in light of the specific context, conditions, effects and other factors. If a person is held in solitary confinement for a prolonged period (in excess of 15 consecutive days) or indefinitely, this always amounts to torture or other ill-treatment.

Amnesty International's position on solitary confinement draws on these treaties as well as evolving international standards, including the UN Standard Minimum Rules on the Treatment of Prisoners (the Nelson Mandela Rules), adopted in 2015. These define solitary confinement as the confinement of prisoners for 22 hours or more a day without meaningful human contact (Rule 44). They apply regardless of why or by whom these conditions are imposed.[8] This widely adopted definition is also reflected in the revised European Prison Rules.[9]

International human rights bodies have set a clear direction towards the reduction in use of solitary confinement. Specifically in the context of pre-trial detention, the UN Special Rapporteur on Torture made an authoritative call on states to take the necessary steps to put an end to this practice.[10] Other human rights bodies call for its use to be reduced to an absolute minimum[11] and for alternative measures to be adopted.[12] Where it is used, solitary confinement must be justified in each individual case, based on sufficient evidence.[13] Solitary confinement creates a *de facto* situation of psychological pressure and if used intentionally as a technique for the purpose of obtaining information or a confession it amounts to torture or other ill treatment.[14]

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[7] For further detail see European Court of Human Rights, *Factsheet: Detention conditions and treatment of prisoners,* December 2021, https://www.echr.coe.int/Documents/FS_Detention_conditions_ENG.pdf

[8] OSCE Office for Democratic Institutions and Human Rights and Penal Reform International, *Guidance Document on the Nelson Mandela Rules*, 2018, https://www.osce.org/files/f/documents/7/b/389912_0.pdf p. 104.

[9] Council of Europe, *Recommendation of the Committee of Ministers to member States on the European Prison Rules,* July 2020, Rec (2006)2-rev, rule.60.6.

[10] UN Special Rapporteur on Torture, *2011 Report,* (previously cited), paras 73 and 85.

[11] Council of Europe, *21st General Report,* (previously cited), para. 53.

[12] UN Special Rapporteur on Torture, *2011 Report,* (previously cited), para. 85.

[13] UN Special Rapporteur on Torture, *2011 Report,* (previously cited), para. 85. Council of Europe, *21st General Report,* (previously cited), para. 56(a).

[14] UN Special Rapporteur on Torture, *2011 Report,* (previously cited), para. 73.

In line with the international prohibition on torture and other ill-treatment, solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities whose conditions would be exacerbated by such measures,[15] for children and for pregnant women or those with young children.[16]

THE EFFECTS OF SOLITARY CONFINEMENT

> ***"Solitary confinement 'attacks' the isolated individual in two ways: it places them in highly stressful conditions, and it takes away the usual coping mechanisms – access to human company, nature, and things to do,"***
>
> Sharon Shalev, international expert on solitary confinement, 2022.[17]

A significant body of evidence points to the serious and adverse health effects, both psychological and physiological, of the use of solitary confinement. Symptoms include insomnia, confusion, hallucinations and psychosis. It is understood that negative health effects may occur after only a few days and that pre-trial detainees have an increased rate of suicide and self-harm within the first two weeks of solitary confinement.[18] Generally, health risks rise with each additional day spent in such conditions.

Individuals react differently to solitary confinement and their experiences cannot necessarily be predicted by the specific conditions, time and place or any pre-existing personal factors.[19] Some individuals experience distinct symptoms, while others experience a "severe exacerbation or recurrence of pre-existing illness, or the appearance of an acute mental illness in individuals who had previously been free of any such illness."[20] Accordingly, the point at which the level of suffering amounts to torture or other ill-treatment will differ from individual to individual.

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[15] Nelson Mandela Rules, Rule 45(2). It should be noted that this threshold has been criticized on the grounds that it should not require a person's condition to deteriorate before asserting that they should not continue to be subjected by a practice known to cause mental illness. Sharon Shalev, "30 years of solitary confinement: What has changed and what still needs to happen", 2022, Torture Journal, Vol.32 No.1–2, https://tidsskrift.dk/torture-journal/issue/view/9671 p. 157.

[16] UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229, Rule 22.

[17] Sharon Shalev, "30 years of solitary confinement: What has changed and what still needs to happen", 2022, Torture Journal, Vol.32 No.1–2, https://tidsskrift.dk/torture-journal/issue/view/9671, p. 149.

[18] UN Special Rapporteur on Torture, 2008 Report: *Torture and other cruel, inhuman or degrading treatment or punishment*, 28 July 2008 (UN Doc. A/63/175), para. 82.

[19] The Istanbul statement on the use and effects of solitary confinement, 9 December 2007, https://www.solitaryconfinement.org/_files/ugd/f33fff_74566ecc98974f8598ca852e854a50cd.pdf. Peter Scharff Smith, *"The effects of solitary confinement on prison inmates: a brief history and review of the literature"*, 2006, Crime and Justice, vol. 34, University of Chicago Press, pp. 441–528.

[20] Stuart Grassian, *"Psychiatric Effects of Solitary Confinement"*, January 2006, Washington University Journal of Law and Policy, p. 333.

1.2 AMNESTY INTERNATIONAL'S POSITION ON SOLITARY CONFINEMENT

Amnesty International considers that solitary confinement must never be used in circumstances in which it will amount to torture or other ill-treatment. Given that the use of solitary confinement itself may amount to torture or other ill-treatment, but that it also increases the risk that other acts of torture and ill-treatment will go undetected and unchallenged, Amnesty International's position on solitary confinement, therefore, emphasizes that it should only be used as:

- An exceptional measure
- For as short a time as possible
- Under judicial supervision
- With adequate review mechanisms

Even where these requirements are met, there are only two exceptional circumstances in which Amnesty International considers that the use of solitary confinement could ever meet the requirements of necessity and proportionality: where it is used as an emergency measure to protect other prisoners or prison staff and no other measure can provide such protection, only for as long as is deemed absolutely necessary and for no longer than a few days; or as a disciplinary punishment for serious infringements within the prison, as a last resort and only for a very short period lasting no more than a few days.

Amnesty International does not consider solitary confinement, as it is defined in international law, is ever necessary and proportionate if used solely to prevent interference with, or protect the integrity of, a police investigation (including preventing evidence tampering or influence being exerted on other suspects or witnesses). Other, less draconian, measures can achieve these ends without resorting to the level of restriction that solitary confinement entails. These measures may in some circumstances need to include separating suspects from certain other individuals or reducing external contacts, but any such restrictions must be justified on a case-by-case basis.

Amnesty International shares the view of international human rights bodies that holding a person in solitary confinement before trial may be considered a form of coercion and that when it is used intentionally to obtain information or a confession and inflicts severe pain or suffering it amounts to torture.[21]

Depending on the specific reason for its application, conditions, length, effects and other circumstances, solitary confinement can constitute torture or other ill-treatment. Prolonged solitary confinement (where it lasts more than 15 days) always amounts to torture or other ill-treatment and must be absolutely prohibited.

Amnesty International considers it essential that states take steps to minimize the harmful effects of solitary confinement on detainees by ensuring they have access to adequate exercise and social and mental stimulation and that their health is regularly monitored. Further to international standards, Amnesty International considers that the vast majority, if not all, mental disabilities as well as some neurodiverse conditions will be exacerbated by solitary confinement.

[21] UN Special Rapporteur on Torture, *2011 Report,* (previously cited), para. 73.

1.3 ICELANDIC LEGAL FRAMEWORK

Since 2008, Icelandic legislation has required a court order to impose solitary confinement[22] on pre-trial detainees. Under the 2008 Code of Criminal Procedure (CCP), a suspect can be remanded to custody by court order where there is reasonable suspicion that they are guilty of a crime carrying a custodial sentence, among other conditions.[23] The Icelandic Constitution (Article 67) stipulates that any suspect must be brought before a judge within 24 hours in order that a reasoned decision be made on remanding them in custody.

The CCP sets out conditions in which solitary confinement for remand prisoners may be requested (Article 99b) and the requirement for a judicial ruling on the request (Article 98(2)). The CCP establishes two possible grounds for imposing solitary confinement:

- that there is reason to believe the accused would impede the investigation of the case, for example by destroying evidence or influencing another co-accused or witnesses (Article 95 a)
- that there is reason to believe that custody is necessary in order to prevent the accused attacking third parties or harming themselves or being influenced by others (Article 95 d).

The CCP stipulates a maximum period of solitary confinement of four weeks and for an unlimited period for those accused of an offence carrying a custodial sentence of 10 years or more (Article 98(2)). The Ministry of Justice recently told the UN Committee against Torture that the 12-week limit on pre-charge remand custody (Article 95) ensures pre-trial solitary confinement cannot legally last longer than 12 weeks, though there is a possible exception that would extend the 12-week limit based on "urgent considerations regarding an investigation."

At the time of writing, senior officials were making public calls for increasing the 12-week limit for pre-charge remand custody on the grounds that it is insufficient for their investigations.[24] As there is no explicit legal limit on the length of pre-trial solitary confinement, any extension to the 12-week detention period, would consequently inevitably allow longer periods of solitary confinement, in breach of international human rights standards.

Icelandic law does not define solitary confinement and Amnesty International is not aware of any rules or framework setting out what it entails in the pre-trial context, beyond a general description on the PPA website:

> ***"Isolation: A prisoner is then locked in a prison cell for most of the day. A prisoner is left in solitary confinement, i.e. not to communicate with other prisoners and not receive visits. He is allowed to communicate with a lawyer, the police, prison guards and medical staff."[25]***

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[22] We note that the Icelandic word "einangrun" is translated as both "solitary confinement" and "isolation" in different sources. For the purposes of consistency, we refer throughout to "solitary confinement".

[23] Specifically, that there is reason to believe that the accused (a) would impede the investigation of the case; (b) would attempt to flee the country or hide, or by other means avoid prosecution; (c) where a person would continue to commit offences or has violated conditions imposed in a suspended sentence (Icelandic: "síbrotagæsla"); or (d) where there is reason to believe that custody is necessary to protect other persons from attacks by the accused or to protect the accused from being attacked or influenced by others. Code of Criminal Procedure, Article 95.

[24] Morgunblaðið Iceland, "Skortir heimildir til að elta alla anga", 9 June 2022, https://www.mbl.is/frettir/innlent/2022/06/09/skortir_heimildir_til_ad_elta_alla_anga/

[25] Prison and Probation Administration website, https://www.fangelsi.is/afplanun/gaesluvardhald/ (accessed 19 October 2022), "Gæsluvarðhald".

We note that although the CCP states that the Minister of Justice "shall set out rules on the conduct of remand custody in a regulation" (Article 99(3)) there is no such regulation relating to solitary confinement in remand custody. The Ministry of Justice informed Amnesty International that "it is implicit in the law that isolation means no visits."

The CCP sets out further restrictions that may be applied to remand prisoners including those in solitary confinement, that is restrictions additional to solitary confinement measures, at the discretion of the person leading the investigation (henceforth referred to as "additional restrictions"). These include: restrictions on visits (Article 99, paragraph 1 (c)); restrictions on use of telephones or other telecommunications and sending and receiving letters or other documents (Article 99, paragraph 1 (d)); and restrictions on access to media (newspapers, books, radio and television (Art.99, paragraph 1 (e)). These restrictions can be challenged before a judge (Article 99, paragraph 3), but if not challenged they are not reviewed. According to the explanatory note to Article 99, paragraph 3, "there is no reason to restrict the rights according to [paragraph] 1 c-e *unless deemed necessary for investigative purposes*" (added emphasis).[26]

There are no specific provisions relating to the application of solitary confinement to children, which means in practice it can be applied within the legal framework for remand custody. However, the CCP sets out a general presumption against remand custody for under-18s in favour of alternative measures (Article 95 d) and states that it should not be applied to children under the age of 15 (Article 95).

These are the only criteria set out in Icelandic law regarding decisions to impose solitary confinement. The explanatory note to the CCP states that solitary confinement "can have serious and lasting consequences for mental as well as physical health, and it is recommended that restrictions be placed on how long it can last." However, this is undermined by the subsequent statement: "On the other hand, it may be necessary to keep defendants in solitary confinement for a long period of time in order to solve a case if the case is very extensive and its investigation lengthy."[27]

According to the Icelandic Constitution, decisions to place someone in pre-trial detention must be subject to appeal. These appeals, which include appeals against decisions to impose solitary confinement, are now referred to the Court of Appeal (Icel. *Landsréttur*), a new court level, established in 2018, between the district courts and the Supreme Court;[28] prior to this appeals were heard by the Supreme Court.

Important principles that should underpin decisions on remand and solitary confinement are established in law, namely the principle of proportionality, which is established under the Administrative Procedure Act. Furthermore, the CCP states: "Those who investigate criminal cases shall ensure that persons are not made to suffer greater damage or loss, inconvenience or non-financial loss than is unavoidable under the circumstances" (Article 53, paragraph 3).

The European Convention on Human Rights is the only human rights treaty to have been incorporated into Icelandic domestic law (Act No.62/1994). Although Icelandic courts should interpret national law in accordance with international obligations insofar as possible, as a general rule, domestic law prevails where there is a conflict.[29]

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[26] "About Article 99" paragraph 3, Explanatory note to the Code of Criminal Procedure https://www.althingi.is/altext/135/s/0252.html

[27] "About Article 98" paragraph 2, Explanatory note to the Code of Criminal Procedure https://www.althingi.is/altext/135/s/0252.html

[28] Government of Iceland, https://www.government.is/topics/law-and-order/the-judicial-system-in-iceland/ (accessed 19 October 2022), "The Judicial System in Iceland".

[29] Halldóra Þorsteinsdóttir, "*Globalisation and Court Practice in Iceland: New Case Law of the Supreme Court in Relation to the EEA Agreement and European Convention on Human Rights*", 01 July 2021, Laura Ervo and others, Rethinking Nordic Courts, pp. 151–165.

The Icelandic Constitution includes provisions prohibiting torture and ill-treatment (Article 68) and establishing the right to fair trial (Article 70) and equality before the law (Article 65), among others.

Iceland has been criticized by the UN Committee against Torture for its failure to criminalize torture as a specific crime in domestic legislation or to adopt a definition that is consistent with the Convention against Torture.[30]

The CCP sets out alternatives to remand and by implication solitary confinement (Article 100). A judge can order that the accused be placed in a hospital or appropriate institution or impose a travel ban (a ban on leaving the country or a requirement to remain in a particular place or area, which may include the condition that they wear a tracking device or surrender their passport).[31] Such measures must be set out in the judge's ruling and only be imposed for as long as necessary. Legal provisions regarding bail (Article 101) have never been used.

For children, an alternative to prison custody takes the form of a placement at the Stuðlar "treatment centre" run by children's services.

[30] UN Committee against Torture (CAT), Concluding Observations on the Fourth Periodic Report of Iceland, 9 June 2022 (UN Doc. CAT/C/ISL/CO/4), para. 9.

[31] Amnesty International researchers were told that the imposition of a travel ban can be seen as less desirable because the time spent under this ban does not count against any final sentence, whereas time on remand in custody would.

STEP BY STEP: REMAND AND SOLITARY CONFINEMENT PROCESS

The initial 24 hours

Police can hold criminal suspects in police custody for 24 hours before bringing them before a judge (CCP, Article 94). During this time, an investigator will be appointed and the suspect will be interviewed and give a statement. Researchers heard accounts of suspects not being allowed to contact anyone other than a lawyer while held in a police cell.[32] There is no routine access to a doctor during this period.[33]

Securing legal representation

There are three main ways in which suspects secure legal representation. Some already have a lawyer, others rely on the police for advice and for those in Reykjavik and surrounding areas, the police can approach lawyers on the Bar Association's list of lawyers who have agreed to staff a 24/7 hotline as part of a rota and to be on call 24 hours a day for a week for criminal defence work, including custody hearings. The police do not have to use this list.

Requests for remand and solitary confinement

Investigators and the police prosecutors work closely together and it is the responsibility of police prosecutors to prepare applications to a judge requesting that suspects be remanded in custody. According to the Ministry of Justice, such requests are made after the investigator has demonstrated "what remains to be done and why it needs to be done without interference." At this stage prosecutors also make the case for solitary confinement, if they deem it necessary.

Court hearings

Custody hearings are requested during the 24-hour initial detention period. The police prosecutor phones the on-call judge to arrange a time for the hearing; researchers were informed that a new online Justice Portal will administer these requests in the near future. Custody hearings are scheduled within a few hours and held in the presence of the suspect, represented by a lawyer, and the police prosecutor. Before the hearing, the prosecutor sends the request – a short document – and evidence to the judge. The request is also shared with the defence lawyer, usually a few minutes before the hearing. The hearings are held in private and there is no routine consideration of the suspect's health or disabilities.

Appeals and extensions

Appeals against a judge's decision to place someone on remand and in solitary confinement can be made immediately or in the three days following the decision. It is reportedly a straightforward process with a quick turnaround. Defence lawyers told Amnesty International that they almost always lodge appeals.

Prosecutors can request extensions to the period of solitary confinement ordered by the district court judge and do so frequently.

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[32] This warrants further research but was outside the scope of this project. The ability of duty officers or officers in charge of an investigation to delay notification of custody has been criticised by the CPT (Council of Europe, *Report to the Icelandic Government on the visit to Iceland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT],* 28 January 2020, para. 17). The Committee against Torture has also stated that the right to notify a family member or other person without delay must be upheld (UN Committee against Torture [CAT], Concluding Observations on the Fourth Periodic Report of Iceland, 9 June 2022 (UN Doc. CAT/C/ISL/CO/4), paras 11–12.)

[33] Council of Europe, *Report to the Icelandic Government on the visit to Iceland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT],* 28 January 2020, para. 17.

CHAPTER 2: EXTENT OF PRE-TRIAL SOLITARY CONFINEMENT

Amnesty International obtained data from the PPA that sheds light on the overall use of pre-trial solitary confinement in the last 10 years (2012–2021). This data sets out the numbers of individuals with a court order for pre-trial detention and the number of these who also have a court order for solitary confinement at the initial stage. Amnesty International's analysis of this data highlights a variable but consistently high rate of solitary confinement.[34]

SOLITARY CONFINEMENT IN PRE-TRIAL DETENTION BETWEEN 2012 AND 2021										
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total number of individuals with a court order for pre-trial detention	120	130	112	130	123	139	149	164	108	114
Number of remand detainees given a court order for solitary confinement	94	82	72	87	82	87	109	78	64	70
Percentage of remand detainees with a court order for solitary confinement	78%	63%	64%	67%	67%	63%	73%	48%	59%	61%
Days on average in solitary confinement	10.34	12.39	8.43	11.49	8.40	11.54	8.50	9.51	9.06	7.21
Shortest time in solitary confinement (days)[35]	1	2	1	2	2	1	1	1	1	1
Longest time in solitary confinement (days)	38	57	36	56	43	41	29	33	22	37
Number of remand detainees held in solitary confinement for longer than 15 days	15	18	7	14	4	15	10	8	6	2

[34] Analysis by Amnesty International of data provided by the PPA on 27 January 2021 and updated on 8 March 2022. Amnesty International was informed that this data may only relate to initial court orders and therefore may not capture the full extent of solitary confinement.

[35] As recorded by the PPA. This data relates to actual days in solitary confinement and may not correspond to the days agreed in the court order.

2.1 WHO IS PLACED IN SOLITARY CONFINEMENT?

2.1.1 NATIONALITY AND ETHNICITY

Prison and police authorities told Amnesty International that they were unable to collect data on ethnicity due to data protection laws: this was confirmed by the Data Protection Agency as a correct interpretation of data protection laws.[36] As a result, there appears to be no data that would allow analysis of the profile of detainees by ethnicity.

Data obtained from PPA does, however, show that a large percentage of remand prisoners placed in solitary confinement were foreign nationals.

	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Proportion of detainees in solitary confinement who are foreign nationals	**31%**	**34%**	**24%**	**54%**	**39%**	**56%**	**44%**	**53%**	**45%**	**57%**

These are striking statistics, given that foreign nationals make up a much smaller percentage of the prison population as a whole, varying between 16% and 23% between 2012 and 2019.[37] It is also considerably higher than the number of foreign nationals in the Icelandic population which, as last reported, was 13.9% of the population.[38] Foreign nationals most commonly held in solitary confinement in the last three years were detainees from: Poland (19), Lithuania (15), Spain (13) and Albania (11), but the list of nationalities is much longer.

2.1.2 AGE AND GENDER

Data obtained from the PPA shows that between 2012 and 2021, 10 people aged 15–17 were subject to court-ordered solitary confinement.[39]

In 2021, seven women were held in pre-trial solitary confinement, 10% of the total. The median figure for women as a percentage of the total number placed in solitary confinement each year between 2012 and 2021 is 12%.

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[36] "The processing of personal information about a person's race or ethnic origin, political views, religion, outlook on life, membership of a trade union, health information, human sex or sexuality, genetic information and biometric information in order to uniquely identify a person is therefore only permitted if the processing is absolutely necessary and of which she meets at least one of the following conditions: a. that there is a special authority for it in other laws, b. that it serves to protect the vital interests of the data subject or another person, c. that it protects information that the data subject himself has made public." Act No. 75/2019 on the processing of personal information for law enforcement purposes, Article 6. https://www.althingi.is/lagas/nuna/2019075.html

[37] The percentage of foreign nationals among the sentenced prison population was much lower (ranging between 16% and 23% in 2012–2019). Helgi Gunnlaugsson, "Criminal Justice in a small Nordic country: the case of Iceland", 2021, Nordisk Tidsskrift for Kriminalvidenskab nr.1.

[38] Statistic Iceland, Erlendir ríkisborgarar 1950–2021, accessed 19 October 2020, https://px.hagstofa.is/pxis/pxweb/is/Ibuar/Ibuar__mannfjoldi__3_bakgrunnur__Rikisfang/MAN04001.px/table/tableViewLayout1/?rxid=9e668b58-412a-4a32-8db2-f8bd83ae9c36

[39] 2012 (1), 2013 (1), 2014 (6), 2015 (1), 2016-2019 (0), 2020 (1), 2021 (0)

2.1.3 HEALTH AND DISABILITY

Amnesty International wrote to the Minister of Justice to obtain information about any processes that make it possible to identify the number of individuals in pre-trial solitary confinement with mental illness or who have an intellectual or psychosocial disability.[40] In its response the Ministry explained that "no data was available concerning people with mental illnesses or disabilities", but that it "would look into it and try to amend, so data concerning people with mental illnesses or disabilities will in the future be gathered under these circumstances."[41]

Nevertheless, interviews conducted during the research identified numerous cases and accounts of people with mental ill health, neurodiverse conditions and disabilities being placed in solitary confinement.[42]

2.1.4 TYPE OF CRIMES

During the UN Committee against Torture review, Ministry of Justice representatives stated that solitary confinement was only applied in the context of serious crimes (such as homicide, serious violence or sexual offences) and this is consistent with the 2021 cases from the Reykjavik police prosecution division, although these also included investigations relating to money laundering and "large scale" drug offences. ('See p.20')

Lawyers, however, consistently and independently of each other pointed to repeated instances where their clients were put in solitary confinement for lesser offences, such as breaking into cars, breaking down a door and possession of small amounts of drugs. Several lawyers cited examples of investigations that began with serious crimes (at the point at which solitary confinement was requested and granted) but where charges were later substantially reduced or dropped.

[40] Amnesty International, Letter to Minister of Justice, Ms. Sigurbjörnsdóttir, 6 July 2021, on file with Amnesty International (TG EUR 28/2021.1822).

[41] Haukur Guðmundsson and Ragna Bjarnadóttir, Ministry of Justice (on behalf of the Minister of Justice) letter to Amnesty International, 13 April 2022, on file with Amnesty International.

[42] Interviews in person with lawyers, 26, 27, 29 April and 13 May and by video call on 1 June and 12 July 2022.

DATA SNAPSHOT: ANNUAL SOLITARY CONFINEMENT APPLICATIONS BY SAMPLE PROSECUTION DIVISION

Amnesty International obtained data from the prosecution division of the Metropolitan Police in Reykjavík, one of nine police districts in Iceland. This data details all the cases in which solitary confinement was requested in 2021. The data covers 16 separate police cases involving a total of 31 individuals, the youngest of whom was 22 and the oldest 60 and four of whom were women.[43]

The rationale given for each of the solitary confinement requests was to ensure there were no attempts to "impede the investigation" (CCP, Article 95, 1a). The investigations related to crimes including manslaughter, grievous assault, drug offences, money laundering, sexual offences against a child, attempted murder, large scale drug offences and organized crime. In all of the cases, the defence lawyer objected to the request for solitary confinement.

- Solitary confinement was granted by the district court judge in all the cases where the police requested it and approved the length of time requested in all but 2 cases.
- The maximum time in solitary confinement imposed in a first ruling was 8 days, in many instances it was less.
- In 9 of the 16 cases the defendant(s) appealed the district court order; 7 appeals were unsuccessful and 1 was dropped when the prosecutor withdrew the request, but only after the defendant had spent 2 of the initially approved 4 days in solitary confinement.
- One appeal was successful; however, the defendant had already completed 5 of the 6 days of solitary confinement initially approved by the district judge.
- In all other cases, the defendants spent the whole period set out in the initial court order in solitary confinement.
- In 4 cases, involving 15 individuals, prosecutors applied to judges for a follow-up ruling to extend the initial period of solitary confinement. All of these were granted.
- 1 of the 15 suspects served 2 of 7 days granted as follow up and 2 more were released from solitary confinement on day 6 of the 7 of the days granted as follow up. These early releases were on the initiative of the prosecutor and the defendants were released from custody, not just solitary confinement.
- Prosecutors requested a third court order in 2 cases (relating to 3 individuals), 1 of which was granted; 2 were rejected and a travel ban issued instead.
- The longest period any of these individuals spent in solitary confinement was 16 days; the mean length was 8.7 days.

Many of these cases were ongoing at the time the information was received and as a result Amnesty International was not able to analyse in full the status of prosecutions, convictions or sentences and whether these were secured for the same offences as those pursued by the initial investigations. Nevertheless, of the outcomes which were later confirmed:

- prosecutions were secured in 6 of the cases
- 4 of these prosecutions resulted in sentences of under 3 years' imprisonment
- 2 prosecutions resulted in sentences of between 3 and 6 years' imprisonment
- in 1 case charges were dropped and
- 3 defendants were found not guilty of the criminal charges.

[43] Letter and data received from Metropolitan Police prosecution division on 7 June 22, on record with Amnesty International Iceland.

Hólmsheiði prison was completed in 2016.
© Hólmsheiði prison

CHAPTER 3: IMPACT AND EXPERIENCE OF SOLITARY CONFINEMENT

> ***"[T]he effects of solitary confinement on pre-trial detainees may be worse than for other detainees in isolation, given the perceived uncertainty of the length of detention and the potential for its use to extract information or confession."***
>
> Manfred Nowak, former UN Special Rapporteur on Torture[44]

Amnesty International researchers' visit to the solitary confinement wing of Hólmsheiði[45] and interviews with officials, lawyers and former and current detainees revealed a number of areas of concern, some of which may amount to ill-treatment. While some of the practices described may be relatively benign in their intent, they are inevitably harsh in practice, leading in some cases to individuals' mental health deteriorating so much that they required psychiatric care.

[44] UN Special Rapporteur on Torture, *2008 Report,* (previously cited), para. 82.

[45] Researchers did not set out to make a full evaluation of the treatment and conditions in which pre-trial detainees in solitary confinement are held, but they were shown the wing where detainees are held in solitary confinement and saw an unused cell and the exercise yard that is exclusively used by detainees held in solitary confinement.

The solitary confinement cell at Hólmsheiði prison with frosted glass in the external window.
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3.1 HIGHLY RESTRICTIVE AND AUSTERE ENVIRONMENT

> ***"[T]he newly-built [Hólmsheiði] prison signals a departure. It is, by Icelandic standards, very much high security, probably in a setting that does not really require it. Its setting and its newly-built status lends it, despite its mod cons, a certain degree of sterility that is unknown in other more organically-developed prisons in Iceland."***
>
> Francis Pakes and Helgi Gunnlaugsson, academic criminologists[46]

Hólmsheiði is Iceland's only purpose-built prison and was completed in 2016. The PPA told Amnesty International they had hoped to build a bigger prison but limits on costs meant this was not possible. They highlighted the value of a design that allows flexibility.

[46] Francis Pakes and Helgi Gunnlaugsson, "A More Nordic Norway? Examining Prisons in 21st Century Iceland", June 2018, The Howard Journal Vol 57 No 2.

Remand detainees in solitary confinement have have access to a dedicated yard at Hólmsheiði prison for one hour a day.
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The cell the Amnesty International researchers saw was spacious and in good condition and equipped with a toilet and shower but had frosted glass in the external window. Researchers were told the frosted glass was necessary to ensure that detainees could not communicate with anyone outside the prison. The reports of international torture prevention bodies frequently cite the "oppressive effect" of frosted glass.[47] Given Hólmsheiði is surrounded by uninhabited countryside, any risk of external communication should have been possible to address through less restrictive means.

The solitary confinement wing has its own yard, which is a small area surrounded by high concrete walls and a metal grille: an austere and depressing environment which was at odds with the need to alleviate the potential detrimental impact of solitary confinement.[48] There was no shelter against inclement weather, a reality for many months of the year in Iceland. As one former detainee reported:

[47] Council of Europe, Report to the Government of the Slovak Republic on the 2013 visit to the Slovak Republic carried out by the European CPT, 25 November 2014, https://hudoc.cpt.coe.int/eng?i=p-svk-20130924-en-22 para. 74. Council of Europe, Report to the Swedish Government on the 2021 visit to Sweden carried out by the European CPT, 09 September 2021, https://hudoc.cpt.coe.int/eng?i=p-swe-20210118-en-12 para. 36. Council of Europe, Report to the Government of the Netherlands on the 2011 visit to the Netherlands carried out by the European CPT, 9 August 2012, https://hudoc.cpt.coe.int/eng?i=p-nld-20111010-en-19 para. 43.

[48] Nelson Mandela Rules Rule 38.2. OSCE Office for Democratic Institutions and Human Rights and Penal Reform International, *Guidance Document on the Nelson Mandela Rules*, 2018, paras 64 and 66.

> ***"The yard is a nightmare… this is a brutal yard. And over there, the bars on top… I mean you're not a spiderman, I do not know why this is needed up there."***[49]

The PPA acknowledged that some detainees, especially those who have been in solitary confinement for a long time, do not want to go outside in the yard.

There were no breakout areas where detainees could go as an alternative to their cell and as a result detainees' time in solitary confinement, which may last several weeks, is spent entirely in their cells or in sessions in the yard. Taken together, the frosted glass in individual cells and the austere yard, neither of which allow the possibility for detainees to see any of the wide natural environment surrounding the prison, and the absence of any breakout areas to introduce the possibility of alternative space, result in a highly restricted and harsh environment.

Neither the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), nor Iceland's National Preventive Mechanism (NPM) made any observations on these aspects of the physical environment for detainees in solitary confinement at Hólmsheiði in their most recent reports.[50]

3.2 THE EXPERIENCE OF SOLITARY CONFINEMENT: NO STRUCTURE AND NO END IN SIGHT

Pre-trial detainees in solitary confinement spend 23 hours a day alone in their cells and up to one hour outside. They are given meals in their cell and are likely to have contact with two people including the staff member who is in charge of the solitary confinement wing that day. Amnesty International researchers were told that detainees could ask to see a doctor, priest or their lawyer and that no detainees in solitary confinement were allowed to make phone calls other than to their lawyer.

All of those who had spent time in pre-trial solitary confinement who spoke to Amnesty International shared accounts of how they tried to cope by finding ways to structure their time for themselves.[51] All of them highlighted the challenge of not knowing how long they would be held in solitary confinement, as they knew it was possible the court order would be extended:

> ***"If you have a deadline, you know when you're going to get out it's a little bit easier, because you have something to look forward to."***[52]

[49] Interview with current/former detainee, June 2022.
[50] Report of the Althingi Ombudsman's visit to Hólmsheiði Prison, 13–15 January 2020, https://www.umbodsmadur.is/opcat/heimsoknir-og-skyrslur/fangelsid-holmsheidi/vidburdur/9/fangelsid-holmsheidi.
[51] Interview with current/former detainee, June 2022.
[52] Interview with current/former detainee, April 2022.

Interviewees described the impact on their families, stress and time spent alone:

> ***"The mornings are the worst, because you're just waking up to nothing. In the night once you've been there you sort of get used to it throughout the day."***[53]

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> ***"Yes, just to be there alone. To be there with yourself… you get a certain, one gets a certain image of oneself, if you are just… people come to meet you through a small hatch and do not dare to open… Like you're a monster…"***[54]

> ***"My wife was six months pregnant with her second child… It was more difficult for her than me… for me it was not the most painful thing and this is [the case for] most of the prisoners: it's your relatives, it's your kids, it's your family. That is what bothers you the most."***[55]

[53] Interview with current/former detainee, April 2022.
[54] Interview with current/former detainee, June 2022.
[55] Interview with current/former detainee, June 2022.

One detainee who had been held in Hólmsheiði soon after it opened said he had no access to a clock and had calculated time based on how long the films he was watching lasted:

> ***"I watched the movie and counted the hours, how long the movie was. But that is something that I've never experienced before. It was very, you know, to not know what time of the day it is, night or day, seven to nine days… I couldn't sleep even though I wanted to sleep."*** [56]

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Lawyers told Amnesty International that while some of their clients had the inner resilience to find ways of coping in solitary confinement and were able to "tough it out", the impact on others was very destructive. They shared accounts of clients who tried to appear tough but weren't: one said most of his clients don't want anybody to see that they are affected.[57] One former detainee reported that because of his previous experiences as a child in care, when he had been subjected to physical abuse and isolation, he had been "moulded" to be resilient and as a result he was able to get through periods of solitary confinement.[58] Even though those who said they were able to act "tough" clearly still found aspects of the experience very difficult to withstand.

[56] Interview with current/former detainee, June 2022.
[57] Interview in person with lawyer, 27 April 2022.
[58] Interview with current/former detainee, May 2022.

3.3 COMPOUNDING HARMS FOR THOSE WITH DISABILITIES CAUSED BY PHYSICAL, MENTAL HEALTH OR NEURODIVERSE CONDITIONS

Amnesty International heard several accounts from detainees and lawyers of people with health issues, disabilities and neurodiverse conditions that, if human rights standards had been fully complied with, should have meant they never ended up in solitary confinement. These included three people with intellectual disabilities. One lawyer said of his client:

> ***"He understood it because he went through it before… He was like a child, just cried. He didn't understand the basic facts, like how long he should stay in solitary confinement, what time it was. They gave him drugs to relax him."***[59]

Two former detainees also told Amnesty International of specific needs they had that had brought additional challenges to their ability to cope with solitary confinement. They also spoke about challenges they knew others had faced:

> ***"I have an obsessive-compulsive disorder and it's very hard for me to be alone with my head… I do not think they [the mental health team] know I have it."***[60]

> ***"If you're a person with troubles, like ADHD or you have to move around a lot, it can be a really hard place to be."***[61]

> ***"I feel like young people, they should try not to put them there, especially for a first offence."***[62]

[59] Interview in person with lawyer, 29 April 2022.
[60] Interview with current/former detainee, June 2022.
[61] Interview with current/former detainee, April 2022.
[62] Interview with current/former detainee, April 2022

3.4 DEPRIVED OF MEANINGFUL HUMAN CONTACT

> ***"It's not just a fancy wall or a CD DVD player that is what matters. It's human contact."***[63]

All of the former detainees interviewed highlighted the importance of human contact during their time in solitary confinement. Where they had positive interactions with prison staff, this had stayed clearly in their memories. But several also reported the lack of human contact and the lengths they had gone to try and seek this. One detainee, who had been under investigation for a non-violent crime and said he had never shown any violent or threatening behaviour, told Amnesty International that for the seven days he was in solitary confinement, no-one came into his cell or sat down with him:

The bell inside solitary confinement cells at Hólmsheiði Prison.
© Íslandsdeild Amnesty International

> ***"They were playing by the rules. There was everything through a hatch and no human contact You didn't see who you're talking to."***[64]

> ***"I found like a loophole… I was so annoying and was always ringing the bell and saying I'm so lonely can someone come and talk to me… Then someone came for two minutes and left… it was a prison guard… If I had gotten like a half hour, just a good chat, I would have been good but I was always ringing because I only got like two minutes."***

It was clear from interviews that many lawyers were performing, and were being relied upon to perform, a pastoral support role to their clients in solitary confinement. One detainee reported that if he wanted to chat to someone to ease the solitude, he would ask his lawyer to come and see him:

> ***"[S]he called sometimes to check in on me. It was nice to talk to someone."***[65]

During Amnesty International's visit to Hólmsheiði, researchers observed a meal being provided to a pre-trial detainee through the small hatch in the door by three officers and were told by staff that this was standard practice for all detainees. However, senior PPA staff suggested that there was some discretion and a decision on how to deliver meals is made by the prison guard on duty on the day, based on "a feeling not on rules." The detainees Amnesty International asked all stated that they had received their meals through a hatch.

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[63] Interview with current/former detainee, June 2022.
[64] Interview with current/former detainee, June 2022.
[65] Interview with current/former detainee, April 2022.

Hólmsheiði managers told Amnesty International that the level of interaction depends on each prisoner, but that it is "on request" and that if a prisoner asked to speak they would go to them. One manager said they would go to talk to a detainee who is in distress, but another was very clear that:

> ***"We are not constantly going to check whether the prisoners are ok."***[66]

They also commented that:

> ***"Often if people are used to prisons they don't ask for so much contact."***[67]

Internationally, it is accepted that "the central harmful feature of solitary confinement is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well-being."[68] The Mandela Rules introduced the concept of "meaningful human contact" as a factor distinguishing permissible and prohibited practice.[69] Authoritative attempts have been made to define this concept further:

> ***"Such interaction requires the human contact to be face to face and direct (without physical barriers) and more than fleeting or incidental, enabling empathetic interpersonal communication. Contact must not be limited to those interactions determined by prison routines, the course of (criminal) investigations or medical necessity."***[70]

View through the hatch in the solitary confinement cells at Hólmsheiði Prison.
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[66] Interview in person with Prison Administration staff, 25 April 2022.
[67] Interview in person with Prison Administration staff, 25 April 2022.
[68] The Istanbul statement on the use and effects of solitary confinement, 9 December 2007, p. 2.
[69] Sharon Shalev, "30 years of solitary confinement: What has changed and what still needs to happen", 2022, Torture Journal, Vol.32 No.1–2, p. 155.
[70] University of Essex and Penal Reform International, Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, February 2017, https://cdn.penalreform.org/wp-content/uploads/2016/10/Essex-3-paper.pdf pp. 88–89.

Experts emphasize the responsibility of prison administrations to "raise the level of meaningful social contact with others", [71] but accounts shared with Amnesty International by former detainees, lawyers and prison staff suggest that, rather than understanding human contact as crucial to the well-being of detainees held in solitary confinement and an essential means of mitigating harm, there is an over-reliance on detainees themselves to seek or initiate interaction.

3.5 LACK OF ACTIVITY AND MENTAL STIMULATION: "STARING AT WALLS"

> ***"[T]he starting point for devising regimes for remand prisoners must be the presumption of innocence and the principle whereby prisoners must not be subject to more restrictions than are strictly necessary to ensure that they are incarcerated without risk and that the interests of justice are duly served."***
>
> Council of Europe Committee for the Prevention of Torture[72]

PPA representatives told Amnesty International that detainees in pre-trial solitary confinement have no access to work, education, a gym or a library but can read books that are brought to them from the library or watch a DVD player. They also said there was risk of detainees leaving notes for each other if they could access the library or the gym. Those who had experienced solitary confinement gave Amnesty International a clear sense of their isolation and boredom and the lack of any activities that would have provided mental stimulation or any emotional support.

> ***"You were just staring at the walls. But the first 3 days or at least in my case, you have nothing. Then you only have the white walls and one green wall there in Hólmsheiði and then just a bed and you are just there… I asked on the first day 'can I have a DVD player' and they said something like it is after 3 days."[73]***

> ***"…not a pen just a pencil. Pens are prohibited. There is a desk but you never get a chair. You are not trusted with a chair. I took the mattress off the bed and there is like a wooden plate there I just sat on it… leaning forward."[74]***

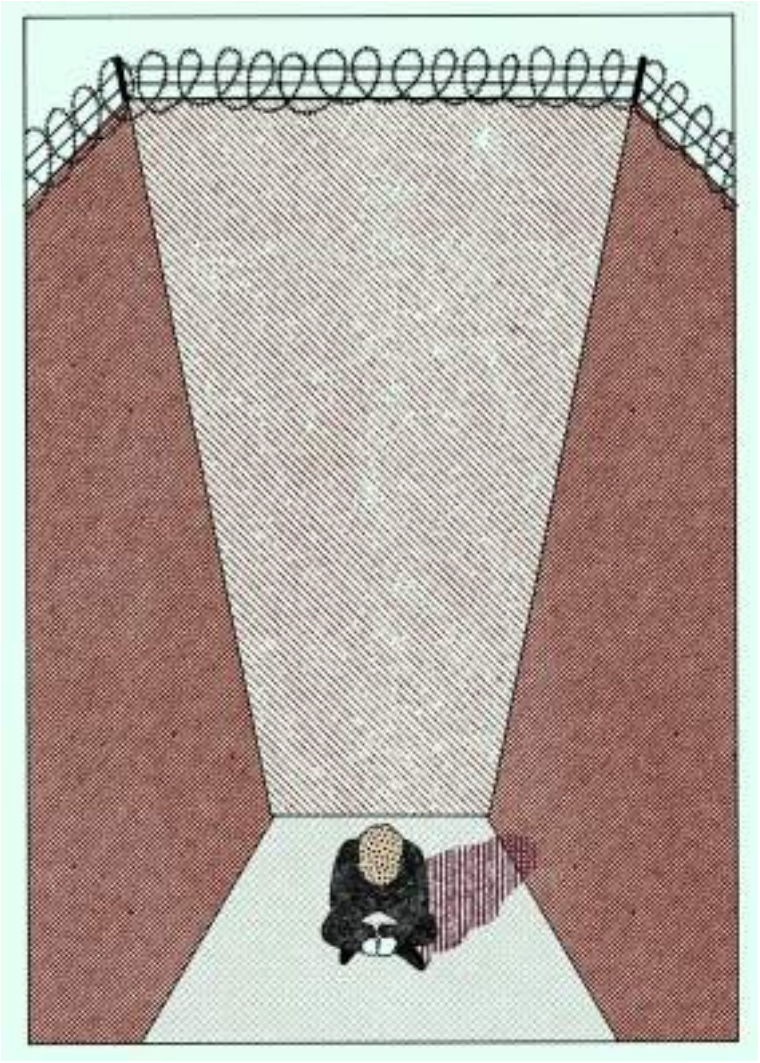
[71] "Prison administrations should put effort into raising the level of meaningful social contacts with others, for example by facilitating more visits and access to social activities with other prisoners, by arranging talks with social workers, psychologists, psychiatrists, volunteers from NGOs, from the local community, or religious prison personnel, if so wished by the prisoner", University of Essex and Penal Reform International, Essex paper 3: Initial guidance on the interpretation and implementation of the UN Nelson Mandela Rules, February 2017, p. 92.

[72] Council of Europe, *26th General Report of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) 1 January – 31 December 2016*, April 2017, https://rm.coe.int/168070af7a, para.62.

[73] Interview with current/former detainee, June 2022.

[74] Interview with current/former detainee, June 2022.

"I don't know, [the yard is] really boring cos it's just four walls and bars." [75]



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It was concerning that basic initiatives that could have eased the isolation and boredom of solitary confinement and provided mental stimulation seemed to be out of the question, with blanket rules that appeared inflexible to any individual circumstances. For example, two people interviewed would have been keen to have a ball to play with in the yard. One mentioned that a family member had tried to bring him one from home but this was refused and, although balls were available in the general remand yards, no initiative had been taken to bring one over from there. One detainee who passed their time in solitary confinement reading had asked for books from the library but said it would take about a day for them to be brought to him. This was surprising, given that the library is a few paces from the solitary confinement wing in Hólmsheiði. There was also evidence that detainees were expected to request the few activities that were on offer, including a DVD player, which could put at disadvantage detainees where there is a language barrier or who are unfamiliar with the rules.

[75] Interview with current/former detainee, April 2022.

CHAPTER 4: LACK OF EFFECTIVE SAFEGUARDS TO PREVENT HUMAN RIGHTS VIOLATIONS

This chapter examines the extent to which safeguards and other human rights guarantees are in place to ensure that human rights violations do not occur. These include procedural safeguards that should ensure solitary confinement is not imposed on people or in situations contrary to international standards. They also include fair trial standards that should apply at different stages of the judicial process of imposing pre-trial solitary confinement and other restrictions. The chapter also looks at the failure of the authorities at a number of levels to uphold the state's obligation to prevent ill-treatment and torture and at the inadequate oversight to ensure any violations of the rights of detainees are identified and addressed effectively and promptly.

4.1 LACK OF PROCEDURAL SAFEGUARDS

There is a clear international direction set towards the elimination of solitary confinement in general and specifically in the context of pre-trial detention.[76] However, the Icelandic Ministry of Justice has made it clear that it does not plan to eradicate the use of solitary confinement.[77] In light of this, and assurances that senior officials provided to Amnesty International and the UN Committee against Torture that legal and procedural safeguards are adequate, Amnesty International undertook a detailed examination of the safeguards in place and their effectiveness. As this chapter documents, these safeguards were found to be inadequate.

All of the cases of solitary confinement Amnesty International was told about were justified on the grounds of an alleged need to protect the interests of the investigation (CCP, Article 95 a).

The CPT's guidance on procedural safeguards in this context states:

> ***"[I]t is axiomatic that there may be justification, in an individual case and based on sufficient evidence, for keeping a given remand prisoner apart from other particular prisoners or, in even more exceptional circumstances, prisoners in general, and in restricting his/her contact with the outside world. This should only be done to guard against a real risk to the administration of justice."[78]***

[76] UN Special Rapporteur on Torture, *2011 Report,* (previously cited), paras 73 and 85.
[77] Ministry of Justice, Reply to Amnesty International, 13 April 2022, on file with Amnesty International.
[78] Council of Europe, *21st General Report,* (previously cited), para. 56(a).

Amnesty International does not consider that solitary confinement can be necessary and proportionate if used solely to prevent interference with, or protect the integrity of, a police investigation as other less harmful measures could achieve these ends without resorting to solitary confinement.

4.1.1 FAILURE TO PROVIDE A CASE-SPECIFIC RATIONALE FOR SOLITARY CONFINEMENT[79]

International human rights standards enshrine the principle that minimum restrictions – only those that are strictly necessary on an individual level – should be imposed on those deprived of their liberty.[80] This principle is a crucial safeguard against ill-treatment.

However, Amnesty International's research found that the decisions to impose solitary confinement and additional restrictions relied on largely unchallenged interpretations of the "reason to believe that the accused would impede the investigation of the case" that are broader than those set out in the wording of the CCP. Amnesty International has concerns about this justification per se. However, these concerns are further intensified by the fact that when it is invoked, it is not subject to meaningful scrutiny to ascertain whether, even in the terms of current legislation, the request is well founded. Few interviewees were able to identify how an application for solitary confinement would be justified over and above the justification for remand custody.

Prosecutors interviewed by Amnesty International stated that any requests for custody were made on a case-by-case basis and that there were specific reasons why they would request solitary confinement. One prosecutor said they would consider the number of suspects, whether they were arrested at the same time and whether the evidence has been secured and witnesses identified.

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INDIVIDUALS PLACED IN SOLITARY CONFINEMENT IN REMAND

2012–2021

However, defence lawyers told Amnesty International that there was little in the way of detailed substantiation of the justification for solitary confinement in written applications; this was confirmed by the documents reviewed by Amnesty International. One lawyer stated that the basis for the application is "whatever suits the prosecutor"[81] and a judge reported that police prosecutors use "basically the same reasons as for the detention itself."[82] Others suggested the decision would be linked to the severity or violence of the crime.[83]

Ministry of Justice officials assured Amnesty International that "proportionality is always taken into consideration."[84] Although judges said that they were guided by the principle of proportionality, none of those Amnesty International asked was able to elaborate and explain what this means in practice.

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[79] This was a point criticized by three dissenting judges in *Rohde v. Denmark* who noted that the court and appeal court "gave rather general reasons for their decisions and did not specify why, in the circumstances, solitary confinement was considered absolutely necessary or, to put it another way, why the applicant had to be totally excluded from association with other inmates." European Court of Human Rights, *Rohde v. Denmark*, Application No.69332/01, Judgment 21 July 2005, https://hudoc.echr.coe.int/eng?i=001-69794, Joint Dissenting Opinion para. 1.

[80] "While detained, they should be subjected only to such restrictions as are necessary and proportionate for the investigation or the administration of justice in the case and the security of the institution", Amnesty International, *Fair Trials Manual,* para. 10.7.

[81] Interview in person with lawyer, 27 April 2022.

[82] Interview in person with judge, 29 April 2022.

[83] Interviews in person with judges, 25 and 27 April 2022.

[84] Interview in person with representatives of the Ministry of Justice, 29 April 2022.

There were discrepancies between accounts of how requests for solitary confinement would be justified and the reality of many of the cases examined. The criteria that one prosecutor gave as the rationale for requesting solitary confinement were often not present in case examples. One lawyer said it was common for the police to justify a request on the basis of a "discrepancy in the testimonies" between suspects and that in his experience this was never questioned by judges as a grounds for solitary confinement.[85] Applications that set out the justification for solitary confinement in detail or with specific reasoning were seen as an exception to the rule, although one prosecutor suggested that they are required to provide more information and reasoning than used to be the case.

Amnesty International researchers met detainees who had turned themselves in to the police or had fully cooperated and were still put in solitary confinement. Despite claims that solitary confinement would generally be sought only in a case involving multiple suspects, Amnesty International found that in more than half of the cases it reviewed (nine out of 16) that led to solitary confinement there was only one suspect: this was also identified with concern by several lawyers. Furthermore, lawyers pointed to many cases where solitary confinement had been sought and granted in relation to a crime that had been committed several days or even weeks prior to arrest, which in their view made the justification for solitary confinement on the basis of investigative interests unfounded.

Several interviewees, including representatives of the Ministry of Justice and people holding prosecutorial functions, told Amnesty International that there were sometimes disagreements between the police investigators and prosecutors about whether or not to request remand custody and solitary confinement.[86] One senior official told Amnesty International: "Deputy prosecutors [police prosecutors] are working alongside the police. They have to be firm in saying no to the police. There is a human factor in this" and highlighted also that police investigators are more "aggressive" than prosecutors regarding the need for solitary confinement to be applied.[87]

Two senior officials informed Amnesty International that when the prosecutor calls the judge to schedule a hearing, the judge may ask for, or the prosecutor offer, some indication of the case and it becomes clear that the application for remand and/or solitary confinement is not justified and the prosecutor will decide not to submit or will withdraw the application.[88] Other interviewees denied that this initial, informal filtering out of requests happened.

[85] Interview in person with lawyer, 26 April 2022.
[86] Interviews in person, at the Director of Public Prosecution's office, with a lawyer and with representatives of the Ministry of Justice, 26, 28 and 29 April 2022.
[87] Interview in person at the Director of Public Prosecution's office, 26 April 2022.
[88] Interviews in person with prosecutors, 26 April 2022.

COMPENSATION CLAIMS FOR SOLITARY CONFINEMENT

Amnesty International obtained data from the State Attorney which, for the first time, documents the extent to which the government has had to compensate or agree a settlement with individuals who have been placed in pre-trial solitary confinement.

Between 2012 and 2021, the state resolved 58 cases involving solitary confinement in court and reached out of court settlements in a further 30 cases. This suggests that over 10% of solitary confinement cases (88 of 825 cases in the same period) resulted in compensation or settlements ranging from ISK 200,000 to ISK 10,990,000 (approximately EUR 1,363 – EUR 74,900).

While it is important to note that some of the payment amounts may correspond to other aspects of these cases (for example remand detention), this data casts further doubt on the decisions and justifications for solitary confinement, given the rate of successful challenges.

4.1.2 FAILURE BY JUDGES TO QUESTION POLICE ASSESSMENTS

Data sent to Amnesty International by the Ministry of Justice shows that over a two-year period (10 October 2016–10 October 2018), 54.89% of applications by police prosecutors for remand custody included claims for solitary confinement. Judges went on to accept 98.77% of these requests.

REMAND AND SOLITARY CONFINEMENT IN ALL POLICE DISTRICTS 10 OCTOBER 2016–10 OCTOBER 2018 (INFORMATION PROVIDED BY THE MINISTRY OF JUSTICE)[89]	
TOTAL FOR ALL POLICE DISTRICTS	
Applications for remand custody	592
Applications for solitary confinement	325
Applications for solitary confinement approved by judges	321

AVERAGE FOR ALL POLICE DISTRICTS	
Applications for remand custody with solitary confinement	54.89%
Applications for solitary confinement approved by judges	98.77%

[89] This was the only and most recent data that the Ministry of Justice was able to provide in response to Amnesty International's request for data on approved, rejected and appealed cases.

Amnesty International's analysis of data from the Metropolitan Police suggests little has changed since 2018. In 2021, solitary confinement was granted by district court judges in all of the cases where the police requested it. Lawyers reported that they had come to expect judges to agree to police requests and gave many compelling accounts of situations where they had not been heard or thought decisions in favour of the police were a foregone conclusion. One lawyer, who has acted in many criminal defence cases, told Amnesty International that he had never seen a request rejected and only once had they seen a judge reduce the time period.[90]

> ***"When a claim for custody or claim for solitary confinement is not accepted, you are just like 'yeah wait… what?' … you are always a little bit in shock."***

Amnesty International asked judges to explain how they would consider a case made for solitary confinement and the kinds of questions they would ask to probe further. It was striking how little explanation judges gave of their approach, beyond assurances that they would consider any request with care. Some responses evidenced an overwhelming reliance on and trust in the police's account. As one judge told Amnesty International, "the biggest factor is the assessment of the police."[91] Another suggested that "in the first round we leave it to the police to make this decision, you need a particular reason to question it."[92] One lawyer shared an account of a case where a judge had said they wanted to reject a request for solitary confinement but saw it as too much of a risk to reject it and "didn't [want to] bear the consequences" if the client was eventually found guilty.[93]

The role of judges in issuing an order for solitary confinement was introduced in legislation in 2008 as a safeguard. However, the fact that judges approve almost all police requests seriously calls into question its effectiveness. When asked what they thought of the high acceptance rate, most judges reflected that the figure was too high. Only one argued that it probably evidenced the police's careful approach to only request solitary confinement where absolutely justified.

> ***"Judges are human. The police bring a case to the table… it's incredibly convenient to give the police room to investigate… it's just human nature."[94]***

4.1.3 UNJUSTIFIED RESTRICTIONS AND A FAILURE TO CONSIDER ALTERNATIVES

None of the judges interviewed referred to a process for exploring the possibility of granting a less restrictive measure when faced with a request for solitary confinement from a prosecutor. In none of the cases reviewed by Amnesty International did a judge reject solitary confinement outright in favour of granting remand or a non-custodial measure.

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[90] Interview in person with lawyer, 26 April 2022.
[91] Interviews in person with judges, 25 April 2022.
[92] Interviews in person with judges, 25 April 2022.
[93] Interview in person with lawyer, 26 April 2022.
[94] Interview in person with lawyer, 13 May 2022.

Furthermore, the way that additional restrictions (such as on visits, receiving letters and phone calls and access to media including newspapers and television) are applied in solitary confinement, results in an extreme level of blanket restrictions being imposed without scrutiny or challenge. In theory, if used carefully, the legal framework provides for a range of restrictions that could be used to ensure appropriate attention is given to any specific, individual risks posed by suspects held in remand custody without the need for solitary confinement. However, this is not what currently happens in practice.

61%

OF REMAND DETAINEES WERE PLACED IN SOLITARY CONFINEMENT

2021

By law, prosecutors can request additional restrictions over and above isolation in solitary confinement. Lawyers and prosecutors told Amnesty International that they request such additional restrictions all together, as a package. Moreover, additional restrictions set out in the application for solitary confinement are only reviewed by a judge if they are challenged. One judge stated that they are rarely challenged, while one of the lawyers interviewed stated that such challenges are rarely made because they are felt to be futile. Interviewees – including a prosecutor, a judge, a lawyer and a representative of the PPA – confirmed that in practice, because the restrictions are only questioned if the suspect challenges them, they essentially apply as a full package unless successfully challenged. The PPA told researchers that they apply all of the additional restrictions if nothing is specified in the ruling, but when a ruling does specify that one of the restrictions should not apply, they implement this. The PPA have since clarified that in all instances it is the case investigator who decides on restrictions: in instances where a custody order or police note only specifies solitary confinement and if a detainee requests a visit or phone call they will contact the police investigator to decide if this can be facilitated (Correspondence with Prison and Probation Administration, 23 January 2023, on file with Amnesty International).

This is clearly out of step with the recommendations of international human rights bodies, which have stated that:

> ***"[D]uring solitary confinement there should, for example, be no automatic withdrawal of rights to visits, telephone calls and correspondence or of access to resources normally available to prisoners (such as reading materials). Equally, the regime should be flexible enough to permit relaxation of any restriction which is not necessary in individual cases."*** [95]

It also appears to go against Icelandic legal guidance: the explanatory note to the CCP specifies that: "There is no reason to restrict the rights according to [paragraph 99.] 1. c-e. unless deemed necessary for investigative purposes." The note goes on to say that: "The possibility of having a ruling by the judge that some or all restrictions are not permitted strengthens the rights of those remanded at the same time as setting boundaries for the person in charge of the investigation." Interestingly, a Ministry of Justice representative was under the impression that additional restrictions do not apply in the context of solitary confinement.

[95] Council of Europe, *21st General Report,* (previously cited), para. 41.

This situation requires urgent clarification. Given that detainees can face extensive restrictions on their rights if the additional restrictions are applied as a package, a change to the legislative framework and current practice to ensure judicial scrutiny and challenge in line with the principles of least restriction necessary and proportionality is urgently needed.

"THE PHONE THING"

During this research it became very clear that access to phones was a significant factor in decision-making and disagreement between parties. A prosecutor told Amnesty International unequivocally that they had put in requests for solitary confinement because this was the only way of ensuring a suspect could not make phone calls (as phones are easy to access in Hólmsheiði), but did not see solitary confinement as otherwise necessary: "Yes, we have requested a solitary confinement before a judge because of the phone thing."[96]

Most worryingly, this also led to prosecutors requesting solitary confinement for a 17-year-old because at Stuðlar, the child services "treatment centre", it was apparently not possible to guarantee that the child would not have access to a phone.

Two senior stakeholders expressed concern with how the prison service was dealing with the issue. The PPA told Amnesty International that despite a new phone system that allows them to block some numbers, it is still difficult to ensure people do not phone victims. However, they denied that the situation with access to phones was leading to more solitary confinement. It is not clear to what extent judges are aware when they are taking a decision to impose solitary confinement that the prosecutor's request may be motivated solely to restrict phone access.

The need to stop a suspect from calling certain numbers can be achieved through more proportionate means, with the help of technological solutions and barring phone numbers, as appropriate in individual cases. Imposing the full range of restrictive measures that come with solitary confinement in Iceland as a means solely to restrict phone access is incompatible with the principles of proportionality and applying the minimum restrictions necessary.

Furthermore, entrenched perceptions of what solitary confinement should "look like" lead to even more restrictions being applied within the prison without individual justification. Blanket restrictions appear to govern key aspects of detainees' time in solitary confinement: how meals are delivered, time in the exercise yard and activities. Accounts of the "request culture" that placed the responsibility on detainees to ask for a chance to interact with staff, ask to see a doctor or even use a DVD player, which Amnesty International was told they are all entitled to, meant that many would not even access these basics.

Amnesty International heard of some extremely limited circumstances in which prison staff had sought to check whether certain exceptions could be made, but these appeared minimal and had to be consulted with police. Perceptions of risk and security appear to be so high that basic measures that could have played a significant role in mitigating the harmful effects of solitary confinement had not even been considered. Generally, the PPA saw their role as inflexible: "we still have the ruling he is supposed to

[96] Interview in person with prosecutors, 26 April 2022.

be in SC [solitary confinement] so we cannot change that, we cannot say 'ah, why', we just have to." However, when Amnesty International probed whether the fear of jeopardizing the investigation by allowing escorted access to the gym or library was rational, one PPA representative reflected: "I think maybe the level of risk is rather low."

It was striking that prison staff and managers appeared unable to make individualized assessments about the appropriateness of different activities or access to facilities on the basis of risk. Furthermore, it did not appear that prison staff would have been ready to make individualized assessments even if they did have more information and a clear remit to do so. The PPA told Amnesty International that prison staff were not trained to make this kind of assessment, rather that it "comes with experience".

Researchers saw little, if any, evidence that the tests of necessity and proportionality in relation to restrictions imposed on remand prisoners in solitary confinement were understood and these essential safeguards against ill-treatment were clearly not implemented. Rather, the system appeared to presume a uniform level of risk and failed to question its own presumptions about what solitary confinement should look like: it appeared accustomed to implementing blanket restrictions without challenge. This is a serious failing that needs to be resolved in order to protect the rights and well-being of detainees.

In line with international human rights standards, measures must be introduced to ensure proportionate and individualized assessments are made at every stage in the process: when prosecutors put forward additional restrictions and by prison managers or staff. There is an urgent need to question current presumptions.

4.1.4 FAILURE TO JUSTIFY SOLITARY CONFINEMENT: MISAPPLICATION OF "INVESTIGATIVE INTERESTS"

> ***"I have asked many times what protection of the interest of the investigation means? What is behind the claim? I can certainly imagine some things that need to be looked at specifically, but they need to be set out. What exactly is it that is being sought?"*** [97]

Amnesty International does not consider that solitary confinement in order to protect the interests of the investigation can be justified as other less draconian measures can achieve this end – such as allowing the detained person access to a limited group of people, or extensive access to prison staff while otherwise separated.

Nevertheless, under the Icelandic legal framework solitary confinement can be resorted to if it is claimed that there is a "reason to believe that the accused would impede the investigation of the case." The research considered this "reason to believe" and found that consideration of questions about the likelihood or probability of a suspect impeding an investigation as well as whether alternative measures would address or alleviate the risk where it is in fact real seemed to be absent.

[97] Interview in person with lawyer, 13 May 2022.

Defence lawyers identified a number of important factors that they felt warranted caution, including investigations into organized crime and the close-knit nature of Icelandic society, where people know each other and police investigations are in the public eye. While not underestimating these specific considerations in the Icelandic context, research indicated that the theoretical possibility of a suspect impeding an investigation is a deeply engrained assumption that warrants greater challenge and that the routine acceptance of solitary confinement applications by judges, almost without exception, means there is insufficient incentive to consider less restrictive alternatives.

Lawyers and a detainee described cases where suspects had already confessed to the crime under investigation or were cooperating with the police investigation. In these scenarios it is hard to imagine what justification there could be for imposing solitary confinement for investigative purposes.

> ***"I mean I've often asked myself the question that 'what is left to investigate?' They have everything, even if you get caught with your hand in the cookie jar so to speak, what's left?"***[98]

Amnesty International asked many interviewees, including prosecutors and judges, why there was such an acute sense of the possibility that investigations would be interfered with and received little in the way of concrete answers. One prosecutor not involved in initial requests for solitary confinement was of the view that there should be a convincing rationale:

> ***"[F]or the likelihood of influencing others. We would want a real argument that there is a real danger."***[99]

Currently, the judicial process appears to be a long way from requiring this real argument for a real danger to support the imposition of solitary confinement.

Furthermore, many lawyers stated that judges are misled by the police as to the severity of the crimes being investigated or, as one lawyer put it, "[the] claims are just a fishing expedition." Another lawyer explained:

> ***"[T]hey always trump the charges. I've been involved in a case where it started as a homicide that the person involved was trying to commit homicide, then it was serious assault with a weapon, then it ended up in court as a minor assault and he got acquitted. So they always trump the charges when they bring them before the judges to try to make the instances that they are talking about more serious."***[100]

[98] Interview in person with lawyer, 27 April 2022.
[99] Interview in person at the Director of Public Prosecution's office, 26 April 2022.
[100] Interview in person with lawyer, 28 April 2022.

Amnesty International was also told that the police sometimes did not share crucial information with the judge when requesting an extension to the solitary confinement period.[101] While Amnesty International was unable to substantiate these concerns, a senior prosecutor acknowledged the concerns and pointed to a system for recording when lawyers argue that a judge has been misled in this way.[102] These concerns indicate that further research should be conducted into the extent to which initial charges, on the basis of which solitary confinement is requested and granted, actually result in lesser convictions.

At the same time, Amnesty International was concerned by suggestions made by some interviewees that extending the 24-hour initial detention period would mean police would need to request solitary confinement less often: this is not supported by the evidence and would likely lead to longer periods of initial detention for many who are currently released in less than 24 hours.

4.1.5 FAILURE TO CONSIDER HEALTH OR DISABILITY WHEN IMPOSING SOLITARY CONFINEMENT

International standards prohibit the application of solitary confinement to anyone whose health or disability might be exacerbated by it (Mandela Rules, 45(2)). They also state that there must be prompt access to an independent medical professional from the moment of deprivation of liberty and a process in place that ensures individuals who are to be interviewed are physically and psychologically fit for that purpose.[103]

Amnesty International is therefore concerned that there is no routine health screening of detainees in police custody in Iceland though the organisation has been informed of new processes for identifying and categorising risk in police custody. As a result, there is no routine consideration of any health issues or disabilities before a judge considers an application for solitary confinement.

Indeed, this research found a worrying degree of confusion about whose responsibility it would be to raise any such concerns: most interviewees considered it was someone else's responsibility.

Most judges do not appear to consider this their responsibility and do not raise questions that would clarify any health issues or disabilities before imposing solitary confinement and only one of the judges interviewed suggested that judges should play more of a role in this.[104] A senior health professional confirmed this view: "in general judges don't take into consideration the effects [of solitary confinement] on that person's mental health: there isn't adequate awareness."[105]

The Ministry of Justice and most judges seemed to consider it to be the responsibility of defence lawyers to raise any issues relating to health or disability at the custody hearing.[106] Lawyers told Amnesty International that it was difficult for them to identify such issues given the very limited information and time they have with their client prior to the hearing. One lawyer thought it was "the duty of the authorities and the prosecution to consider these things prior to making the claim because it's their petition, it's their claim and they have a duty of care both towards their role as well as to the person concerned."[107] However, Amnesty International researchers were told that the prosecution does not currently make any evaluation of the health situation or the possible consequences of solitary confinement when making an application.

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[101] Interview in person with lawyer, 26 April 2022.
[102] Interview in person at the Director of Public Prosecution's office, 26 April 2022.
[103] Principles on Effective Interviewing for Investigations and Information Gathering, May 2021, https://www.apt.ch/sites/default/files/inline-files/apt_PoEI_EN_08.pdf paras 86–91.
[104] Interviews in person with judges, 25, 29 April 2022 and by voice call with judge, 6 April 2022.
[105] Interview with representatives of the prison mental health team, 25 April 2022.
[106] Interview in person with representatives of the Ministry of Justice, 29 April 2022.
[107] Interview by video call with lawyers, 12 July 2022.

The end result of this confusion over responsibility is the absence of any effective process for ensuring that people whose health condition, disability or neurodiverse condition would be exacerbated by solitary confinement are not subjected to it.

Three lawyers identified separate cases where people with intellectual disabilities they had represented had been put in solitary confinement.[108] A senior official providing healthcare services in prisons stated that they had seen cases where it was "evident that a person is incapacitated" and several interviewees with first-hand knowledge reported that suspects with severe mental illness, including paranoid schizophrenia and psychosis, had been placed in pre-trial solitary confinement.[109]

The Ministry of Justice informed Amnesty International that there is legislation allowing for a judge to issue an alternative measure of placing the suspect in a hospital (CCP, Article 100) and that this was a safeguard against the use of solitary confinement on people at particular risk of harm from it.[110] However, this sets a higher threshold than the prohibition in human rights standards on imposing solitary confinement in the case of prisoners with disabilities caused by physical, mental health or neurodiverse conditions that would be exacerbated by solitary confinement.

This research underscores the urgent need to clarify responsibility and ensure effective processes are implemented to prevent people being placed in solitary confinement who should not be on health grounds, in line with international human rights standards.

4.1.6 EFFECTIVENESS OF APPEALS

An effective appeals process is an essential safeguard. As indicated above, the appeals process for solitary confinement is frequently invoked.

While lawyers were positive about the way the process worked, Amnesty International's research, and most strikingly data from the Metropolitan Police prosecutor, suggest otherwise. In nine out of 16 cases, the district court order for solitary confinement was appealed. One appeal was dropped when the prosecutor decided the suspect did not need to be in custody. Of the remaining eight, only one appeal was successful with the appeal court ruling that the investigation could proceed without the suspect being in custody. In seven out of nine appeals the appeal judge confirmed the original court order.

Lawyers reported that "at best" they could hope the appeals court would shorten the period of solitary confinement. One lawyer said: "In 5–10% of cases you get some result [in reducing duration]… not a remarkable number."[111] Another lawyer, with years of experience, reported that in their career they had only had five or six solitary confinement orders overruled on appeal.[112] Defence lawyers also noted that there were differences in approach between judges.[113]

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[108] Noting also research recently published in the Icelandic medical journal showing that the mental health team has diagnosed up to half of Iceland's prisoners with ADHD in the last two years. Læknablaðið, "Um helmingur fanga með ADHD", July 2022, https://www.laeknabladid.is/tolublod/2022/0708/nr/8081 (accessed 19 October 2022).

[109] Interview in person with the prison mental health team 25 April 2022 and interview with current/former detainee, May 2022. See also footnote 42.

[110] Ministry of Justice, letter in response to Amnesty International, 13 April 2022, on file with Amnesty International.

[111] Interview in person with lawyer, 13 May 2022.

[112] Interview in person with lawyer, 27 April 2022.

[113] Interviews with lawyers in person, 13 May 2022.

One prosecutor was critical of the length of time it takes to get decisions on appeals, pointing out that "often we have already released the person" when the decision was made.[114] This was supported by Amnesty International's research; in the case of the successful appeal, the suspect had already spent five out of the six days ordered in solitary confinement.

4.1.7 EXTENDING THE PERIOD OF SOLITARY CONFINEMENT

Judges are frequently called on to extend the period of solitary confinement with a follow-up ruling, leading to continuous periods of solitary confinement that meet the international threshold for prolonged solitary confinement in a number of cases.

Amnesty International's case review illustrates that prosecutors applied for extensions for 15 out of the 31 individuals where solitary confinement had initially been requested: all of these were granted. In two cases, relating to three individuals, a third court order was sought to extend custody, but only one of these was granted (a travel ban was issued instead for the other two suspects). Former detainees said that the fear that the police would apply for an extension to the court order was always present for them.

The CPT has suggested that pre-trial solitary confinement should be reviewed on a frequent basis to ensure there is a continuing need;[115] that it must take into account any changes in the detainee's circumstances, situation or behaviour; and that "[t]he longer a restriction is imposed on a prisoner in remand custody, the more rigorous should be the test as to whether the measure remains necessary and proportionate."[116] However, lawyers were sceptical about how this time was used:

> ***"I have often asked… not just when people are in solitary confinement but just custody and 4 weeks have passed you just ask what have you done during this time and the answer is always 'investigate'… what kind of answer is that?"***[117]

Although one lawyer thought that as time progressed, judges would question more, it is still not clear to Amnesty International that the review process is rigorous or regular enough to ensure that all detainees are released as soon as the purported justification for the imposition of solitary confinement is no longer present. Lawyers suggested that when their clients have been released before the end of a court ordered period in solitary confinement this often comes because of a threat to appeal.

4.1.8 FAILURE TO ENSURE SOLITARY CONFINEMENT IS FOR THE SHORTEST POSSIBLE PERIOD

The CCP (Article 100, paragraph 2) requires that "the party who demanded the remand custody or other measure shall terminate it as soon as it is no longer necessary." Prosecutors were keen to emphasize that they release suspects from solitary confinement early and 2021 case data from the Metropolitan Police prosecution division demonstrate this does happen.

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[114] Interview in person with representatives of Metropolitan Police prosecution division, 26 April 2022.
[115] Council of Europe, *21st General Report,* (previously cited), para. 57(a).
[116] "The longer the measure is continued, the stronger must be the reason for it and the more must be done to ensure that it achieves its purpose", UN Special Rapporteur on Torture, *2011 Report,* (previously cited), para. 55. Council of Europe, *26th General, Report*, (previously cited), para. 63.
[117] Interview in person with lawyer, 13 May 2022.

However, some of those released early from solitary confinement were people who it had been determined were not in fact suspects. Amnesty International's analysis found no cases of early release from solitary confinement because the police considered the suspect no longer posed a risk to the investigation but remained on remand as a suspect. This would further support Amnesty International's concerns that there is insufficient differentiation between the grounds for solitary confinement over and above remand custody.

Given that solitary confinement is ostensibly imposed to protect the integrity of police investigations, Amnesty International asked lawyers, former detainees and officials how the police conduct their work while an individual is held in solitary confinement. Prison managers said that detainees are often not interviewed by police until a week into their solitary confinement, that is at the end of the court-ordered period of solitary confinement. This was confirmed by lawyers and detainees. One man who had spent seven days in solitary confinement told Amnesty International:

> ***"They didn't speak to me at all… They were just playing games. They came on the last day and then [only because] they had to do it… They just came to say [to the judge] that we spoke to him and we need a longer time and they got extension and extension."*** [118]

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[118] Interview with current/former detainee, June 2022.

One lawyer said:

> ***"It's always this same charade… Perhaps you go to the court on Friday and they are sentenced to a week in solitary and then nothing happens, you don't hear a word from the police, then on the Thursday they say 'oh we need to take a statement from him, we need to interrogate', and so on Thursday there is interrogation, then on Friday again, solitary confinement. The interrogation is maybe 2–3 minutes and then Friday another solitary for a week… I had a case where this went on for a month. Nothing was happening, nothing at all. The only reason he was released was because it wasn't possible then for it to be longer."***[119]

One prosecutor told Amnesty International that there are higher expectations for the quality of investigation and that the quality of solitary confinement requests has improved because "everything is getting stricter." This is welcome if true, but the case analysis and wider accounts suggest there is a long way to go yet.

Numerous accounts suggest that the time police say they need a detainee to be held in solitary confinement is not put to use. This further supports Amnesty International's view that solitary confinement can never be a necessary and proportionate measure if applied solely for investigative purposes. Amnesty International notes that internationally alternatives to pre-trial detention are used to safeguard victims, witnesses and avoid collusion between the accused. Amnesty International therefore urges the authorities to end the use of solitary confinement on grounds of the protection of the administration of justice.

4.1.9 PROLONGED SOLITARY CONFINEMENT

According to international human rights standards, prolonged solitary confinement constitutes ill-treatment.[120]

Despite this, over a 10-year period (2012–2021) 99 people were subjected to prolonged solitary confinement in Iceland. The fact that the legal framework permits solitary confinement for four weeks and for an indefinite period in some instances, means that there is no legal safeguard against prolonged solitary confinement. While many interviewees attested to more rigorous questioning of the basis for extending solitary confinement as time progressed, this has not prevented cases of prolonged solitary confinement.

Amnesty International believes that a review of Icelandic legislation and practice is urgently needed to ensure effective safeguards against prolonged solitary confinement, protecting those on remand from torture or other ill-treatment.

[119] Interview in person with lawyer, 27 April 2022.
[120] Nelson Mandela Rules, Rule 45(2).

4.2 FAILURE TO ENSURE FAIR TRIAL GUARANTEES

Amnesty International is concerned that aspects of the judicial process fall short of international law and standards on fair trials.[121]

4.2.1 THE CUSTODY HEARING

Interviews conducted with individuals who had been placed in solitary confinement showed that for some of them, it was hard to understand what was going on, or why, at the custody hearing:

> ***"I do not understand what language the judge is speaking. This is a legal language."***[122]

Two interviewees told Amnesty International they only found out the police were requesting solitary confinement when they went before the judge, one of them because they only met their lawyer at the hearing. For one, the request made no sense:

> ***"I turned myself in, I thought I was just going to go to a normal corridor. But then it turned out to be isolation."***[123]

The CCP requires judges to deliver rulings on applications for custody as soon as possible and within a maximum of 24 hours of the person being brought to court (Article 98) but lawyers were universally critical of the speed of judicial decision-making. Lawyers reported that judges would normally reach their decisions immediately or within minutes, which they saw as evidence that judges were not considering the evidence in detail. Many lawyers said they thought judges had already made their minds up, regardless of what was said at the hearing:

> ***"[I]t's a game where the judge listens or actually acts as though he's listening then he goes inside for five minutes, gets a cup of coffee then comes back. I've even had cases where the judge forgot to let me speak, where he already made a ruling."***[124]

> ***"Then you go out of the court room and you are called back in 2–3 minutes… [the judge says] 'we have a verdict'… [there is] no way they read this pile of documents."***[125]

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[121] Amnesty International, *Fair Trial Manual: Second Edition*, 9 April 2014, https://www.amnesty.org/en/documents/pol30/002/2014/en/
[122] Interview with current/former detainee, June 2022.
[123] Interview with current/former detainee, April 2022.
[124] Interview in person with lawyer, 27 April 2022.
[125] Interview in person with lawyer, 13 May 2022.

> ***"[T]aking somebody's freedom even for 3 days, 4 days, a week, is a really serious act and you can't just do that without taking a look at the case and taking everything into consideration"*** [126]

The CCP allows judges to decide to hold the hearing (in part or in full) in private on a number of grounds set out in Article 10, paragraph 1 (a)-(g). These include the grounds that "the investigation of a case is in progress and there is considered to be a danger of damage to the procedure if the court were to be held in open session" (Article 10, paragraph 1(f)). This suggests that the decision should be reasoned on the grounds of a specific risk. However, in practice there is a blanket prohibition on public hearings,[127] contrary to CPT guidance that custody hearings should be "made in open court."[128]

While appreciating that custody hearings are organized at short notice, Amnesty International considers that public hearings are an essential safeguard of the fairness and independence of the judicial process. Custody hearings should be accessible to the public, unless the authorities have a good reason why this would not be in the interests of justice or the rights of the relevant parties. Where a decision is made to hold a hearing in private, the judge should provide reasons for this. We note that the decision to hold a session behind closed doors can be appealed (Article 192 CCP). Amnesty International's research indicates that there is a need for greater scrutiny of custody hearings and greater transparency to ensure that the principle of openness is respected.

4.2.2 THE RIGHT TO COMPETENT, EFFECTIVE AND INDEPENDENT LEGAL REPRESENTATION

Any person arrested, detained or charged with a criminal offence should be entitled to a lawyer of experience and competence commensurate with the nature of the offence.[129] This lawyer should act freely and diligently in accordance with the law and recognized standards and ethics of the legal profession.[130]

There are number of ways in which suspects obtain legal representation. Those who do not choose their own lawyer rely on the police to identify a lawyer for them, either by using a Bar Association list or contacting a lawyer directly. It is not possible to calculate or even estimate the number of cases where the police directly contact a lawyer they know, but the impression given in several interviews is that this is common practice. Amnesty International has concerns about the extent to which this way of working can guarantee the independence of legal representation.

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[126] Interview in person with lawyer, 27 April 2022.

[127] Amnesty International researchers sought to attend a custody hearing and made a formal request to the Reykjavik district court as well as raising the possibility with one of the judges interviewed. As has already been noted, the organization's requests remained unanswered at the time of writing. As a result, this analysis is based on the many accounts of judges and lawyers who were interviewed, as well as those with experience of solitary confinement.

[128] Council of Europe, *21st General Report,* (previously cited), para. 57.

[129] UN Basic Principles on the Role of Lawyers, 07 September 1990, Principles 3 and 13.

[130] UN Basic Principles on the Role of Lawyers, 07 September 1990, Principles 13-14.

Some of the lawyers interviewed relied on the police to pass cases on to them. There were a variety of views among the lawyers interviewed about the implications of this. All lawyers acknowledged that this process relied on a relationship of trust between the police and the individual lawyer. One lawyer said: "If you're not making ridiculous claims they still trust you" and suggested that there was no conflict because it was the investigator who made initial contact with the lawyer but the prosecutor who would argue against them in court.[131] However one prosecutor interviewed by Amnesty International clearly presented the process of selecting a lawyer as one in which they were involved.[132] Another lawyer said he had good communication with the police and saw disagreements with them as an inherent part of the job:

> ***"Of course I have had a disagreement many times with the police. But basically I look at it this way… I'm doing my job, the people who are with the police and elsewhere are doing their job. You don't gain anything if you make a big fuss about it when someone makes mistakes at work."[133]***

Several lawyers, however, were highly critical of these arrangements, suggesting that some lawyers act "smoothly" for the police, or make things "comfortable" for the investigator and highlighted the dangers of a system where some lawyers get all of their work from the police:

> ***"If you have a person that has all their income coming from the police, there is no way that this person is going to bite that hand. He is always going to follow with it and help the police: this is dangerous. Maybe in 70% or 80% of cases it just doesn't matter, but in cases where it is important that the attorney is doing whatever he can, it is important that he doesn't have to rely on his income from the police."[134]***

The alternative approach to securing legal representation for suspects who do not have their own lawyer is to use the Bar Association list. Amnesty International was told that this had been set up to ensure all suspects could get a lawyer and that the Bar Association hoped it would be used for all instances where a suspect had not identified a lawyer themselves. There were, however, a range of strong opinions among defence lawyers about this list, for example some were concerned that lawyers on the list may not have the required experience or knowledge of criminal law.

There is no doubt that current arrangements leave significant discretion to the police as to how legal representation is secured. There is also no doubt that the current discretionary arrangements are the cause of almost universal frustration among lawyers and require a level of trust that risks undermining independence.

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131 Interview in person with lawyer, 27 April 2022.
132 Interview in person with prosecutors, 26 April 2022.
133 Interview in person with lawyer, 13 May 2022.
134 Interview in person with lawyer, 27 April 2022.

Amnesty International's research suggests that there is a need for the Bar Association, individual lawyers and the police to reconsider current practices and develop a new process to ensure that all criminal suspects are able to secure representation from a lawyer of sufficient independence and of experience and competence commensurate with the nature of the offence under investigation.[135]

4.2.3 EQUALITY OF ARMS

> ***"It's kind of like a Kafka trial and it has the appearance of a fair trial but you don't have the same information as the judge and the prosecutor."[136]***

Lawyers were universally critical of the judicial process and their ability to provide an effective defence to their clients. Their accounts give rise to significant fair trial concerns relating to the principle of equality of arms.[137]

> ***"I have sometimes said in court that I could just as well be a plumber in the courtroom as I don't have access to any information."[138]***

Lawyers said that, for the most part, they receive the prosecutor's application for solitary confinement only minutes before the hearing. While the new Justice Portal meant there were some instances (one lawyer said "every once in a while") where they had received the application sooner, at the same time as the judge, lawyers told Amnesty International:

> ***"[W]hen I walk in, then I get a paper with the claim [application], 'these are our demands'. And this is usually about 5 minutes before the judge takes the case, so I have 5 minutes to go over the case, see what they are looking at, then I have maybe 2–3 minutes to go over it with my client, and then we go on."[139]***

> ***"It's just a one or two page document which is the claim [application] and it's basically just, he is accused of this crime, of this nature and the investigation is ongoing and it's necessary to put them into custody or solitary confinement to prevent them from using their influence over the investigation' and that's about it. We don't get the same information as the judge has and the prosecutors, they have all the documents but we don't."[140]***

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[135] UN Basic Principles on the Role of Lawyers, 07 September 1990, Principle 6. UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 2013, Principle 13 and Guidelines 5 §45(c), 13 §64, 15 §69. Amnesty International, *Fair Trial Manual*, para. 20.5.

[136] Interview by video call with lawyers, 12 July 2022.

[137] Amnesty International, *Fair Trial Manual (Second Edition)*, para. 13.2.

[138] Interview in person with lawyer, 26 April 2022.

[139] Interview in person with lawyer, 27 April 2022.

[140] Interview by video call with lawyers, 12 July 2022.

Lawyers also said that they have insufficient information on which to mount a defence. They only see the application from the prosecutor, which provides limited reasoning behind the need to protect the investigation, not any of the case files and only have 10–15 minutes to talk to the defendant about the case. In addition, the environment can make their clients feel pressured:

> ***"I only get about ten minutes with the defendant in an interrogation room where there is a camera. There are recording devices everywhere but not turned on. It's difficult to establish trust in this environment."***[141]

One lawyer who took on cases directly from the police said it was particularly hard to make any arguments if their clients do not want to talk.

> ***"I arrive and ask if I can see the documents. The answer is no."***[142]

> ***"You don't know anything about the case except the information you get from the defendant in 10 or 15 minutes. Impossible to build an argument."***[143]

4.2.4 THE RIGHT TO A PUBLIC AND REASONED JUDGMENT

International law and standards provide that the rights to a fair trial and to a public judgment require courts to give reasons for their judgments. The right to a reasoned judgment is essential to the rule of law, in particular to protect against arbitrariness. In criminal cases, reasoned judgments allow the accused and the public to know why the accused has been convicted or acquitted. Furthermore, they are necessary for the right to appeal.[144] Further guidance is provided by the CPT, which states that for remand decisions including solitary confinement: "The written decision should provide reasons for every restriction imposed and should be given to the prisoner concerned and/or his/her lawyer."[145]

The accounts of many lawyers led Amnesty International to question the extent to which these principles are upheld in the context of Icelandic custody hearings. This includes the account one lawyer gave of a case where they had challenged a judge who had issued an order seconds after he had concluded his speech, asking for a copy of the court order. The lawyer stated that the judge had replied that it was not ready, which they challenged on the grounds that it was a violation of the Constitution which requires a reasoned opinion. After the hearing, the lawyer recounted, he was taken to one side by the state prosecutor who told him: "you shouldn't be doing this… this is just how it works." The lawyer subsequently appealed the decision, but the person was released before the appeal was heard. He told researchers: "I think they released him because they knew this was a very bad precedent to have."[146]

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[141] Interview in person with lawyer, 27 April 2022.
[142] Interview in person with lawyer, 13 May 2022.
[143] Interview in person with lawyer, 29 April 2022.
[144] Amnesty International, *Fair Trial Manual*, para. 12.2. UN Human Rights Committee, General Comment 32, Article 14: Right to Equality before the Courts and tribunals and to a fair trial, para. 49. Council of Europe, *21st General Report,* (previously cited), para. 57.
[145] Council of Europe, *26th General, Report*, (previously cited), para. 63.
[146] Interview by video call with lawyers, 1 June 2022.

A lawyer also told Amnesty International of a case where he had asked a different judge to provide a reasoned opinion for his decision to remand a suspect in solitary confinement, to which the judge "pointed to his head and told me: 'the reasoning is all in here'". When the lawyer insisted, the judge called him back on Sunday morning. The lawyer suggested the judge did this to be difficult, yet when the lawyer returned to court, the judge had changed his mind and rejected the application. The lawyer told Amnesty International that he thought this change came about because the judge had taken the time to examine the case:

> ***"I think in that instance, the judge honestly just looked at the case and gave it the scrutiny I think is necessary."***

Several judges interviewed pointed to the challenges of their caseload, which is too high for them to be able to provide detailed reasoning in each custody case. One judge shared the view: "Usually they are not very extensively reasoned as you can't give too much away." Rulings from district court custody hearings are not published[147] but do get published by the appeal court as part of its ruling.[148] Seen together, the concerns outlined give the distinct impression of a system that is not just failing to provide reasoned decisions but is doing so behind closed doors.

4.3 FAILURE TO ENSURE IMPARTIALITY AND INDEPENDENCE: CULTURE, COMFORT AND CO-DEPENDENCE

> ***"[I]n my opinion, I think it's too comfortable for all involved, the prosecution and the judges, especially. And these cases, they don't get the scrutiny that they require."[149]***

> ***"I found my colleagues took it too lightly. Using detention is very convenient for the police, there is an attitude that we are on the same team, we are giving in too lightly."[150]***

> ***"[T]he judge is in a difficult situation to refuse a request of this kind at the initial stage of the investigation."[151]***

> ***"Yes, there is a risk that the process becomes automatic."[152]***

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147 Rules of publishing judgments and findings of courts relating to Section XIV of the Code of Criminal Procedure No. 88, 2008 https://domstolar.is/domstolasyslan/reglur/reglur-um-utgafu-doma-og-urskurda-a-vefsidum-domstola/ (accessed 19 October 2022).

148 The Courts Act, https://www.althingi.is/lagas/152b/2016050.html (accessed 19 October 2022), Articles 20 and 28. Amnesty International was told that there is sometimes a delay to publication on the grounds of "investigative interests".

149 Interview by video call with lawyers, 1 June 2022.

150 Interview in person with judge, 29 April 2022.

151 Interview in person with judge, 27 April 2022.

152 Interview in person with representatives of the Ministry of Justice, 29 April 2022.

The system by which the police are able to contact lawyers to provide representation on a discretionary basis inevitably relies on lawyers to limit the extent to which they "rock the boat", even if it does not intentionally set out to inhibit their independence. It was surprising that some of these lawyers could not see that this relationship was inherently problematic.

It was also striking that while lawyers were universally frustrated by their inability to provide an effective defence to their clients at the custody hearing, they mostly seemed resigned to this reality. As one said: "Nothing works in the district courts in Iceland. We try our best."[153]

Several interviewees pointed to tensions between police investigators and prosecutors in deciding on requests for custody and solitary confinement. Some presented this as a constructive tension, others said that at the end of the day the chain of command meant it was the police commissioner who would decide on any disagreements, with police investigators going above the prosecutor's head to challenge their decision.

The Ministry of Justice's position is that the role of prosecutors provides a safeguard of legality and proportionality in the imposition of solitary confinement, yet there are clear indications that there is a more complex picture in which the actual power relations and formal chain of command within the police and towards prosecutors could undermine this safeguard.

One judge commented that they felt there was a "cultural phenomenon" of "co-dependence in the system."[154] Comments made by judges about their approach to cases certainly confirmed a highly trusting attitude towards the police that lends itself to a judicial process of insufficient rigour and challenge. One judge agreed, asserting that serious decisions were taken "too lightly" and with too much leeway to the police.[155] In the words of one lawyer,

> ***"[I]t should be a matter of professional pride not to be on the conveyor belt process stamping these documents that come from the police."[156]***

4.4 FAILURE TO SAFEGUARD AGAINST THE INHERENT RISK OF COERCION AND PRESSURE

> ***"[T]he practice of solitary confinement during pretrial detention creates a de facto situation of psychological pressure which can influence detainees to make confessions or statements against others and undermines the integrity of the investigation."[157]***

[153] Interview in person with lawyer, 27 April 2022.
[154] Interview in person with judge, 29 April 2022.
[155] Interview in person with judge, 29 April 2022.
[156] Interview by video call with lawyers, 1 June 2022.
[157] UN Special Rapporteur on Torture, Report: *Torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011 (UN Doc. A/66/268), para. 73.

International human rights bodies are clear about the potential, if not inherent, risk that solitary confinement in pre-trial detention will exert pressure on suspects. Solitary confinement must not be used with the aim of bringing pressure to bear on suspects remanded in custody to cooperate with the justice system. If used intentionally for the purpose of obtaining information or a confession, it amounts to torture or other ill-treatment.[158]

GUÐMUNDUR AND GEIRFINNUR CASE

The use of solitary confinement has been a common feature of pre-trial detention practice in Nordic countries.[159]

One criminal case has a particular hold on the consciousness of the Icelandic people and government: the Guðmundur and Geirfinnur case in which two apparently unconnected men disappeared in 1974.

After many years of investigations and reviews, six people confessed and were convicted of their murder. All of those convicted had been held in pre-trial solitary confinement for prolonged periods and subjected to pressure and, in some case, abusive treatment.

After many years unravelling the botched police investigations, a government working group[160] shone a light on many heavy-handed police tactics, not least the excessively long periods of solitary confinement that suspects were subjected to.[161]

Five of the six were acquitted in 2018.[162] In 2022 the sixth person, who did not secure a retrial, received an apology from the Prime Minister for the treatment she endured while detained and its consequences, and reached a financial settlement.[163]

This case is a point of reference in Icelandic society and is widely seen as having set in motion a major shift away from excessively long periods of solitary confinement.

Significant developments have been made in the arrangement of police, prosecution and judicial functions and in 1994 the European Convention on Human Rights was incorporated into Icelandic law. The 2008 Code of Criminal Procedure also removed the power of police investigators to decide whether to impose solitary confinement on suspects.

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158 UN Special Rapporteur on Torture, Report: *Torture and other cruel, inhuman or degrading treatment or punishment*, 5 August 2011 (UN Doc. A/66/268), para. 73.

159 Peter Scharff Smith, "Punishment Without Conviction? Scandinavian Pre-trial Practices and the Power of the Benevolent State", in Peter Scharff Smith and Thomas Ugelvik (eds.), *Scandinavian Penal History, Culture and Prison Practice. Embraced by the Welfare State?*, 2017, London: Palgrave.

160 Government working group on the Guðmundur and Geirfinnur case, *Report of the government working group on the Guðmundur and Geirfinnur case to the Minister of Interior*, 21 March 2013, https://www.stjornarradid.is/gogn/rit-og-skyrslur/stakt-rit/2013/03/25/Skyrsla-starfshops-um-Gudmundar-og-Geirfinnsmal/

161 Anthony Adeane, *Out of Thin Air: A True Story of Impossible Murder in Iceland*, 2018, London.

162 Prime Minister's Office, "Prime Minister's statement on behalf of the Icelandic government regarding the recent acquittal by the Supreme Court of those convicted in the retrials of the Gudmundur and Geirfinnur case", 28 September 2018, https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2018/09/28/Yfirlysing-forsaetisradherra-fyrir-hond-rikisstjornarinnar-vegna-nyfallins-syknudoms-Haestarettar-Islands-i-malum-allra-domfelldu-i-endurupptokumali-i-Gudmundar-og-Geirfinnsmalinu/.

163 Prime Minister's Office, "Prime Minister's statement regarding the case of Erla Bolladóttir", 22 December 2022, https://www.stjornarradid.is/efst-a-baugi/frettir/stok-frett/2022/12/22/Yfirlysing-forsaetisradherra-vegna-mals-Erlu-Bolladottur/.

As Icelanders know only too well, long periods of solitary confinement were an instrumental part in the coercive measures used against the six suspects in the Guðmundur and Geirfinnur case who were held in solitary confinement for between 87 and 627 days by the time of their sentencing.[164] While such lengthy periods of solitary confinement are a thing of the past, there remain concerns that investigations are still confession-based. A criminologist told Amnesty International:

> ***"We should have learned from the Guðmundur and Geirfinnur case but still not enough has changed."[165]***

In contrast, prosecutors and officials stressed that police investigation approaches have dramatically changed and are less focused on securing confessions. However, Amnesty International's research found that some of the characteristics of past practices are still present in perception and reality. One prosecutor was clearly aware of this:

> ***"[Solitary confinement] is not a decision we take lightly, it puts pressure on."[166]***

Amnesty International asked former and current detainees whether being in solitary confinement affected their responses to the police. One suggested the lack of human contact made them talk more to the police, and felt keenly the sense of pressure:

> ***"Yeah, definitely. You know it's like... even though it's the police, it is good to talk to somebody if you've been locked inside a long time. So, yeah, definitely. You find yourself chatting to them. It is pressuring, you know. Definitely. They are giving you maybe a little bit hints that you can maybe stay longer if you... Because it will be harder to investigate if you don't give the information."[167]***

Lawyers saw the sometimes subtle but significant impact of solitary confinement on their clients:

> ***"It is still obvious today that the police use isolation to put mental pressure on suspects and get the results they want. Luckily now they only have limited time for it."[168]***

> ***"Most lawyers believe that solitary confinement is used to make the client tired and let them talk: it makes them a little bit crazy."[169]***

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[164] Anthony Adeane, *Out of Thin Air* (previously cited), p. 195.
[165] Interview in person with criminologist, 26 April 2022.
[166] Interview in person with prosecutors, 26 April 2022.
[167] Interview with current/former detainee, May 2022.
[168] Interview in person with lawyer, 26 April 2022.
[169] Interview in person with lawyer, 27 April 2022.

The solitary confinement wing at Hólmsheiði prison.
©Íslandsdeild Amnesty International

One lawyer noted a case where a judge had refused a police request for a week's solitary confinement, saying:

"I know the police were punishing him for stealing. They were making a point."[170]

Whether police and prosecutors are knowingly or deliberately using solitary confinement to apply pressure is hard to determine, but there cannot be any doubt that it does in practice create a *de facto* situation of pressure: lawyers and former detainees confirmed this. Review of the legal framework for solitary confinement must, therefore, also address a wider review of police investigation practices and culture to ensure that they comply fully with international standards, including on interviewing for investigations.

[170] Interview in person with lawyer, 27 April 2022.

4.5 FAILURE TO OBSERVE THE INTERNATIONAL PROHIBITION ON PLACING CHILDREN IN SOLITARY CONFINEMENT

Contrary to international human rights law,[171] the Icelandic legal framework does not prevent the imposition of solitary confinement on children and researchers learned that there are applications and decisions to place children in solitary confinement. This is in violation of Iceland's obligations to prohibit torture and other ill-treatment, as well as provisions of the UN Convention on the Rights of the Child. While it was clear from all the interviews conducted by Amnesty International with relevant officials that decisions to impose solitary confinement on children would not be taken lightly, there appeared to be no clear or consistent criteria for decision making.

Amnesty International urges the authorities to comply, as a matter of urgency, with the concluding observation of the UN Committee against Torture which calls on the Icelandic government to: "Observe the prohibition on imposing solitary confinement and similar measures on minors."[172]

4.6 FAILURE TO PREVENT DISCRIMINATION

International human rights law imposes clear obligations on states to prevent and eliminate discrimination in all its forms. This applies broadly to the administration of justice[173] and should underpin efforts to prevent torture and other ill-treatment against individuals belonging to any minority or marginalized group at particular risk.[174]

The UN Committee on the Elimination of Racial Discrimination has identified that "no country is free from racial discrimination in the administration and functioning of the criminal justice system" and that where racial or ethnic discrimination does exist, it constitutes "a particularly serious violation of the rule of law, the principle of equality before the law, the principle of fair trial and the right to an independent and impartial tribunal, through its direct effect on persons belonging to groups which it is the very role of justice to protect."[175]

The Committee for the Prevention of Torture, in light of European Convention on Human Rights provisions and case law, has concluded: "Authorities should monitor the use of all forms of solitary confinement to ensure that they are not used disproportionately, without an objective and reasonable justification, against a particular prisoner or particular groups of prisoners."[176]

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[171] UN Rules for the Protection of Juveniles Deprived of their Liberty (resolution 45/113, annex), Rule 67. Nelson Mandela Rules, Rule 45. UN Committee on the Rights of the Child, General Comment Number 24 on children's rights in the child justice system (UN Doc. CRC/C/GC/24), 18 September 2019, paras 95(g) and (h).

[172] UN Committee against Torture, Concluding Observations on Iceland 2022 (previously cited), para. 14(b).

[173] UN Committee on the Elimination of Racial Discrimination, General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, 17 August 2005.

[174] UN Committee against Torture, General Comment 2: Implementation of Article 2 by States Parties (UN Doc. CAT/C/GC/2), 24 January 2008. Also, states "should interpret the torture protection framework against the background of other human rights norms, such as those developed to eliminate racial discrimination". UN Special Rapporteur on Torture, Seventieth anniversary of the Universal Declaration of Human Rights, reaffirming and strengthening the prohibition of torture and ill treatment (UN Doc A/73/207), 20 July 2018, para. 64.

[175] UN Committee on the Elimination of Racial Discrimination, General Recommendation 31 (previously cited), preamble.

[176] Council of Europe, *21st General Report,* (previously cited), para. 55e.

The data uncovered by Amnesty International demonstrates that a high and rising proportion of those held in pre-trial solitary confinement are foreign nationals (57% in 2021). When seen against data relating to the percentage of foreign nationals in the prison population as a whole and in Icelandic society in general, this raises significant questions that should be probed further. Amnesty International's concerns were confirmed by several lawyers who expressed their view, based on their experience of representing a range of clients, that foreign nationals had an enhanced risk of being subjected to solitary confinement. Some suggested that they thought that social prejudice played a role in the likelihood of solitary confinement being considered and applied: one said: "It's just buried in the culture."[177] Another said:

57%

PROPORTION OF DETAINEES IN SOLITARY CONFINEMENT WHO WERE FOREIGN NATIONALS

2021

> ***"If you are a foreigner you are in a bad place, especially if you are Lithuanian, Latvian or Dutch. If you bring a foreigner to a court he is always put in solitary confinement."[178]***

In addition to the issue of foreign nationals, Amnesty International sought data on the ethnicity of those held in pre-trial solitary confinement to understand whether, for example, there was disproportionate application of solitary confinement to Icelandic nationals of different ethnicities. In response, the authorities invoked data protection laws which preclude the collection of data on ethnicity or race. This is not in line with international standards which call on states to disaggregate data to be able to "identify, compare and take steps to remedy discriminatory treatment that may otherwise go unnoticed and unaddressed."[179]

In light of this, Amnesty International believes that further consideration should be given to collecting this information, with due consideration for confidentiality, in order to establish whether solitary confinement is applied disproportionately to certain groups[180] and, if this is found to be the case, to take action to address this. Furthermore, Amnesty International sought, but was unable to obtain, accounts of the experience of foreign nationals of pre-trial solitary confinement in prison. However, given our concerns about blanket restrictions and a "request culture", it would be important to conduct further research into whether foreign nationals face specific risks, barriers or have worse experiences than Icelandic detainees.

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[177] Interview in person with lawyer, 29 April 2022.
[178] Interview in person with lawyer, 29 April 2022.
[179] UN Committee against Torture, General Comment 2: Implementation of Article 2 by States Parties (UN Doc. CAT/C/GC/2), 24 January 2008, para. 23.
[180] Council of Europe, *21st General Report,* (previously cited), para. 55e.

4.7 FAILURE TO ENSURE ACCESS TO ADEQUATE HEALTHCARE

International law and standards require that Iceland provide the same standard of healthcare to those in prison as is available in the community.

The Mandela Rules state that: "Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status."[181] They further require that every prison shall have a healthcare team that is adequately resourced to evaluate, promote and protect prisoners mental and physical health.[182]

While Icelandic law reflects the requirement that those in prison are provided with the same standard of healthcare as is available in the community, Amnesty International is concerned that current provision to those on remand in solitary confinement does not meet this standard.[183]

Since 1993, in every visit it has made to Iceland, the CPT has commented on the failure to provide systematic or prompt medical screening of newly arrived prisoners, a situation which it deems "unacceptable", as well as the "extremely limited access to psychiatric care and psychological assistance" in prisons.[184] The CPT has made further criticism of the availability of healthcare for remand prisoners, stating that "establishments accommodating remand prisoners… should, in the CPT's view, have a 24-hour healthcare staff availability."

In light of these criticisms, the Ministry of Justice and Ministry of Health established a working group which led to the creation in 2020 of a new mental health team for prisons, which operates as a referral service. According to its current head, "the prison system had been starved of mental health services for many years"; the team now has two psychologists, two psychiatric nurses and one psychiatrist. To ensure its independence, it is part of the Primary Care of the Capital Area, not the prison system.[185]

At the time that Amnesty International researchers visited Hólmsheiði, a representative from the primary healthcare service was visiting the prison on Mondays and Thursdays to screen newly arrived detainees. A detainee arriving on any other day would wait until the team's next visit. The primary healthcare team have some training in mental health and Amnesty International researchers were told that they would call the mental health team if they had any particular concerns: the mental healthcare team are available in office hours on a Tuesday and a Thursday. Amnesty International was informed that most common healthcare issues that arise on arrival are to do with withdrawal from alcohol or drugs and those people receive a "standard package".

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[181] Nelson Mandela Rules, Rule 24.

[182] Nelson Mandela Rules, Rule 25.

[183] Nelson Mandela Rules, Rule 24. Also Icelandic legislation sets out that there should be equal access to "optimum health service". Health Care Act 2007 no.40, Article 1.

[184] Council of Europe, *Report to the Icelandic Government on the visit to Iceland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT],* 28 January 2020, para. 35. The UN Committee against Torture also recommended that Iceland: "Continue strengthening its ongoing efforts to increase healthcare in prisons, including medical checks upon admission as well as psychiatric and psychological care, and ensure, in cooperation with public health services, the continuity of medical treatment in prison, particularly for drug and alcohol dependency and persons with disabilities." UN Committee against Torture, *Concluding Observations on Iceland 2022* (previously cited), para. 16 (c).

[185] Prior to this, the research team was informed that any mental health care provided in prisons came from within the prison administration, though the focus of those involved was more forensic by nature.

The health staff interviewed by Amnesty International seemed acutely aware of the inadequacies of their own service. A representative of the prison mental healthcare team said they would like to be in a situation where any detainee put into solitary confinement sees a doctor first and said their practice has evolved to ensure they are notified every time someone is put in solitary confinement, with the caveat that: "it is hard to put into practice if you don't have a doctor."[186]

There is also a multidisciplinary "treatment team" within the prison service who described their focus as on reducing risk factors and reoffending and enhancing public protection. The head of this team told Amnesty International that this team has no predefined role vis-a-vis detainees in pre-trial solitary confinement, but that they are notified of any arrivals and that, if there is no one from the health teams available, they will try to fill the gap by visiting on days when the health service is unavailable. Researchers asked if that meant a member of the treatment team would take off their treatment or public protection "hat" and step into the role of a clinical psychologist and were told that it did and that psychologists from the treatment team are experienced and understand the effects of solitary confinement and so are able to do this.[187]

Similarly, interviewees told researchers that they relied on informal processes to raise and address any health concerns including if they were concerned about the deteriorating mental or physical state of an individual detainee.[188] The mental healthcare team appeared reassured that they were being informed by prison guards of situations where their input was needed. They told Amnesty International: "there are more frequently cases of false alarms than them not being alarmed when they should be."[189] Furthermore, it did seem that those involved in the provision of healthcare were making efforts to escalate their concerns through procedures they had developed on their own initiative, referred to by them as "raising a red flag".

The treatment team described a process where after four weeks they raised concerns with the police, "saying that we are concerned that this is getting too long, we know the detrimental effects that solitary has."[190] However, it was not clear whether these informal processes would have enough weight to end a period of solitary confinement or require an alternative be found to it if a person's situation deteriorated.[191] In fact interviewees noted clearly that they raised concerns with the police "no matter what effect it has or doesn't have."

The mental healthcare team expressed concern that in some cases where they had considered it necessary to transfer a seriously mentally ill detainee to a hospital, the hospital had been reluctant to admit them on the basis that the prison could deal with them better.[192]

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[186] Interview in person with representatives of the prison mental health team, 25 April 2022.
[187] Interview in person with representatives of the PPA, 28 April 2022.
[188] Interviews in person with staff of the PPA, 25 and 28 April 2022.
[189] Interviews in person with representatives of the prison mental health team, 25 April 2022.
[190] Interview in person with representatives of the PPA, 28 April 2022.
[191] Healthcare staff should be able to "review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner", Nelson Mandela Rules, Rule 46.3.
[192] Interview in person with representatives of the prison mental health team, 25 April 2022.

While noting the efforts being made between the various teams involved in different aspects of healthcare to ensure regular visits to those spending more than a few days in solitary confinement, by their own admission these could not guarantee the daily visits that would be expected under international standards.[193] Furthermore, the different roles of the mental health and treatment teams appeared somewhat unclear and the informal arrangements to "fill gaps" could potentially undermine the important principle of providing healthcare with independence from the prison service.

Amnesty International believes the inadequate attention to health and disability in the early hours of police custody, through the judicial process and while in pre-trial solitary confinement is unacceptable. In order to prevent ill-treatment and ensure the right to health, this situation must be addressed urgently.

4.8 INADEQUATE MONITORING AND OVERSIGHT

4.8.1 MONITORING

International standards on solitary confinement emphasize the importance of recording decisions to impose solitary confinement, evidencing factors that have been taken into account and the grounds for the decisions.[194] The system as it currently operates in Iceland does not provide the guarantee of accountability that the CPT standards require.

Much of the data Amnesty International has relied upon in this report was generated by various public authorities in response to its requests for information. As the research progressed, it became apparent that there was no single source of information about court rulings imposing solitary confinement nor key indicators relating to numbers and the characteristics of people entering solitary confinement.

Instead, there were many different systems operating in parallel and in different formats. The PPA informed Amnesty International that they collected significant amounts of data but that this was done on their own initiative, not because of any requirement to do so. It was unclear how much of the information they were collecting was being used either within the PPA or by other authorities.

The Judicial Administration told Amnesty International that they have been working to improve their general data collection and presentation in recent years. The courts have been using a new case management system called GoPro since 2019 and a Justice Portal that aims to digitise processes around the custody hearing including scheduling. This should ensure earlier access for defence lawyers to custody requests. However, these measures are unlikely to allow significant advances in the analysis of solitary confinement requests, decisions, extensions and appeals, not least because there is no way of identifying solitary confinement cases without manually trawling through all remand cases. Following Amnesty International's questions, the Judicial Administration stated that it is now exploring the possibility of adding this as an additional field in the software to be able to filter out solitary confinement cases.

Data on key indicators is also not being collected or analysed in a way that differentiates between those held in solitary confinement and those in remand and that could therefore give a picture of the impact of this measure. This includes data relating to self-harm, suicide or assaults: in response to Amnesty International's questions about rates among detainees in solitary confinement, the PPA said that "it is

[193] Council of Europe, *21st General Report,* (previously cited), para. 63.
[194] Council of Europe, *21st General Report,* (previously cited), para. 55c.

not recorded in the reports whether prisoners are held in solitary confinement in remand or not so it would take a lot of time to find that out."[195] This suggests inadequate monitoring and a failure to take seriously the risks inherent in solitary confinement.

General statistics on the numbers of people in solitary confinement over the years are important, but give insufficient insight into significant elements of the process including, for example, the numbers of requests made by police prosecutors and their outcomes, judicial decision making, follow-up rulings and any difference between the time period approved by the court and the length of time an individual actually spent in solitary confinement. Amnesty International was only able to analyse these processes with the help of a prosecutor who manually extracted one year's worth of information from one police district from a database.

Amnesty International believes that such data is crucial to understanding the way the legal framework applies in practice to individuals, yet there seemed to be some scepticism as to its usefulness, including from the police.[196] Developing a more detailed understanding of case level information will be crucial to informing revisions to the legal framework, to working towards reducing the use of solitary confinement and to ensuring effective and transparent safeguards to prevent human rights violations are put in place.

4.8.2 OVERSIGHT

In 2019 Iceland ratified the Optional Protocol to the Convention against Torture (OPCAT). This requires states to establish a system of regular visits by an independent national body (a National Preventive Mechanism, NPM) to all places where people are deprived of their liberty in order to prevent torture and ill-treatment (Article 1). In Iceland this body has been established as part of the Alþingi Ombudsman[197] and, as required by international standards, it conducts visits and publishes reports. The Ombudsman's role is a crucial safeguard to prevent ill-treatment in detention and challenging the use of pre-trial solitary confinement. The Icelandic NPM last visited Hólmsheiði in January 2020.[198]

In line with guidance from the UN Subcommittee on Prevention of Torture, an NPM should make proposals or observations on existing or draft policy or legislation where this is relevant to its preventive mandate.[199] Amnesty International's research identified some confusion as to whether the restrictions on the Ombudsman's ability to comment on 'activities of the courts' precludes his ability to comment on this legislation due to solitary confinement being imposed by judicial decision.[200] During the review of Iceland by the UN Committee against Torture (CAT) on 21 and 22 April 2022, Ministry of Justice officials confirmed while responding verbally to the Committee members that the state considered commenting on the practice of the courts to be outside the Ombudsman's remit.[201] Amnesty International has since

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[195] Correspondence with PPA, 19 July 2022, on file with Amnesty International.

[196] Interview in person with representatives of the National Police Commissioner, 29 April 2022.

[197] "Monitoring the conditions of persons deprived of their liberty" (Eftirlit með aðstæðum frelsissviptra) https://www.umbodsmadur.is/opcat (accessed 19 October 2022). The role and functions of the Ombudsman are governed by Act No.95 (1997), which states that its mandate does not include 'activities of the courts' (Art.3.4). The Act sets out the Ombudsman's ability to notify Parliament or Ministers of any 'flaws in existing legislation' (Art.11) https://www.umbodsmadur.is/asset/10014/act-no-85-1997-on-the-althingi-ombudsman.pdf

[198] Report of the Althingi Ombudsman's visit to Hólmsheiði Prison, 13-15 January 2020, https://www.umbodsmadur.is/opcat/heimsoknir-og-skyrslur/fangelsid-holmsheidi/vidburdur/9/fangelsid-holmsheidi.

[199] UN Subcommittee on Prevention of Torture, Guidelines on national preventive mechanisms, 9 December 2010 (UN Doc. CAT/OP/12/5), para. 28.

[200] Interview in person with representatives of Ombudsman's Office, 26 April 2022. Correspondence with NPM representative by email, 17-18 August 2022.

[201] In response to a question by Mr Buchwald who asked if the Ombudsman's status as part of the legislative branch inhibited its ability to speak to judges and question decision-making.

been reassured by the Ombudsman that his Office has on numerous occasions commented on the conformity of Icelandic law with international obligations, and for this reason it hoped that there is scope for comment on the legal provisions relating to solitary confinement (Correspondence with Skúli Magnússon, 20 January 2023, on file with Amnesty International).

Amnesty International's view is that the Ombudsman's failure to raise the inherent incompatibility of the legal framework for solitary confinement with international human rights standards (its application to children, the absence of safeguards for health and disability and the potential length of solitary confinement exceeding 15 days) falls squarely within its mandate under OPCAT and that any structural inability to comment on the practice of the courts should pose no obstacle to this. While acknowledging the role of an NPM is not to assess individual cases (though this is part of the Icelandic Ombudsman's other functions), Amnesty International believes the NPM should, in the exercise of its preventive function, be actively questioning the routine reliance on solitary confinement in the pre-trial context and why less restrictive measures, with less potential for ill-treatment, are not being used as an alternative.

As part of its preventive monitoring role, the NPM should be commenting in detail on the treatment and conditions in pre-trial solitary confinement, making recommendations on areas where this could amount to ill-treatment.[202] The NPM's report on its 2020 visit to Hólmsheiði pays little attention to the experience of detainees in pre-trial solitary confinement and no attention to the harsh, uniform restrictions observed by Amnesty International or aspects of the physical environment that should be improved.

International detention monitoring also plays a crucial role in preventing ill-treatment, yet there are a number of inexplicable omissions in the report of the most recent periodic visit to Iceland by the CPT. The CPT reports having been reassured that "recourse to court-ordered isolation of remand prisoners for investigative purposes had much diminished and was now rare"[203] without any reference to data to support this. Their comments on the possibility of closed visits and phone calls for detainees in pre-trial solitary confinement are at odds with Amnesty International's findings. The CPT offers no more in the way of insights into the restrictive regime imposed on those in solitary confinement, nor does it appear to have taken a view of aspects of the physical environment (the exercise yard or the frosted glass) which it has criticized in other contexts.

It is of great concern that neither the national nor international monitoring bodies that should be holding Iceland to account for practices that can amount to ill-treatment have adequately performed this role.

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[202] For example, guidance developed by the UK's National Preventive Mechanism on solitary confinement in detention; UK NPM, *Guidance: Isolation in Detention*, January 2017, https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2017/02/NPM-Isolation-Guidance-FINAL.pdf.

[203] Council of Europe, *Report to the Icelandic Government on the visit to Iceland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT],* 28 January 2020, para. 29, footnote 53 and para. 47.

CHAPTER 5: CONCLUSIONS AND RECOMMENDATIONS

> ***"It's always a danger that this becomes a habit to ask for solitary confinement and to accept it."***[204]

"Generally we are becoming more sensitive to how detrimental solitary confinement can be."[205]

"I am sure we can improve. I think we are using [solitary confinement] more than other countries."[206]

"Often people are put on remand for trivial crimes but after solitary confinement their mental health deteriorates and after they are released they get into harder crimes. The policy makers aren't aware of the effects of solitary confinement, especially on those with mental illnesses."[207]

"It can therefore be argued that prisons in Iceland have developed the way they have through culture and habit."[208]

"We need [people who are working in the government and judges] to understand that these are people and a week of confinement is a long time."[209]

Amnesty International's research evidences a system that overuses solitary confinement in circumstances where its application is not and cannot be justified. In the 10 years from 2012 to 2021, 825 individuals were placed in solitary confinement by judges responding, in most instances apparently uncritically, to the requests of police prosecutors. Amnesty International considers this routine use of such an extreme level of restriction, for the purported purpose of protecting the administration of justice, to be unnecessary and disproportionate and thus a violation of international human rights law. In such circumstances solitary confinement violates the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

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[204] Interview in person at the Director of Public Prosecution's office, 26 April 2022.
[205] Interview in person with representatives of the Ministry of Justice, 29 April 2022.
[206] Interview in person with judge, 29 April 2022.
[207] Interview in person with prison mental health team, 25 April 2022.
[208] Francis Pakes and Helgi Gunnlaugsson, "A More Nordic Norway? Examining Prisons in 21st Century Iceland", June 2018, The Howard Journal Vol 57 No 2.
[209] Interview in person with lawyer, 27 April 2022.

Although many of those involved in formally requesting or approving requests for solitary confinement sought to reassure Amnesty International researchers that it was not overused and that when it was used it was with a strong justification, this was not backed up by case documentation, wider data or accounts from individuals involved in the process. Amnesty International documented that judges failed to adequately scrutinize police prosecutors' applications for solitary confinement and that the police and prosecutors failed to question assumptions about the need to impose such harsh restrictions on detainees.

Amnesty International is not reassured by suggestions that the processes for requesting and approving solitary confinement have become more rigorous over time. In fact, this report exposes the current inadequacy of procedural safeguards to guarantee that fundamental principles of proportionality and necessity are considered and to prevent children and people with disabilities and other vulnerabilities from being ill-treated. Though those involved may not intend to use solitary confinement as a method of pressuring or coercing detainees, or indeed to cause them harm, the practices as Amnesty International saw them can indeed have this effect.

Amnesty International welcomes the government's stated intention to reform the legal framework for solitary confinement and urges the government to reconsider its position not to end the current use of pre-trial solitary confinement, in line with its international human rights obligations.

As this report demonstrates, such a draconian measure cannot be necessary or proportionate if used solely to prevent interference with, or protect the integrity of, a police investigation. The government should prioritize the development of alternative, less oppressive measures to achieve these ends in cases where there is a clear and substantiated risk: any restrictions introduced through alternative measures will also need to pass the tests of proportionality, necessity and be justified on a case-by-case basis.

The Ministry of Justice should monitor closely and publicly the progress made towards the ultimate goal of ending the use of solitary confinement in pre-trial detention. Given the serious risks to human rights posed by the use of solitary confinement, a process to urgently and rigorously review the current safeguards for the use of solitary confinement must be implemented immediately, to provide robust oversight and enhanced guarantees of the rights of any individual subjected to solitary confinement. Further attention must also be paid to ensuring fair trial guarantees are upheld throughout the judicial process.

A crucial part of this process will be to set in motion a shift in culture and practice. To achieve that, the government must play a proactive role in identifying obstacles and setting out solutions, forging consensus with the many actors involved. Several interviewees described a system that is "comfortable" with solitary confinement: Amnesty International believes the process must become less comfortable for all of those involved in requesting or authorizing it. Self-fulfilling assumptions about what solitary confinement should "look like" must be vigorously challenged, including by independent oversight bodies, who have to date played a very limited role.

Although police and prison staff currently liaise regularly in relation to those held in pre-trial solitary confinement, this is clearly not leading to individualized decisions being taken about risk and the restrictions imposed on individual detainees. The Prison and Probation Administration highlighted the value of the design of Hólmsheiði that allows flexibility, while the system it operates appears highly inflexible.

Amnesty International acknowledges that there has been some progress in the provision of mental health in prisons in Iceland, but the current system is failing to identify health conditions, disabilities or neurodiverse conditions that should preclude placement in solitary confinement, given the enhanced and serious likelihood of trauma and harm and, as a consequence, violations of the prohibition of torture and other ill-treatment. In this regard renewed attention to the implementation of the recommendations of the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on healthcare is needed.

Acceptance of solitary confinement appears to be deeply ingrained among the various actors involved in seeking, imposing and implementing it. There is an urgent need to move away from this passive acceptance in favour of an approach that has at its centre actively taking the steps necessary to respect, protect and uphold human rights, particularly in a pre-trial context.

In line with its mandate to prevent ill-treatment, the National Preventive Mechanism should take a more active role in questioning the legal framework and its application, as well as the justification for blanket restrictions. In addition, further research is needed to understand the reasons why there is such a high, and rising, percentage of foreign nationals in solitary confinement and to consider other groups on whom the measure may be disproportionately applied, including on grounds of ethnicity.

Amnesty International acknowledges the openness of interviewees and their ability to acknowledge areas of concern about the application of solitary confinement and hopes this translates into meaningful reform. In order to assist this process of bringing law and practice on solitary confinement for prisoners on remand in Iceland into line with international human rights standards, Amnesty International makes the following recommendations:

RECOMMENDATIONS

TO THE MINISTRY OF JUSTICE:

- Revise the Code of Criminal Procedure to remove the possibility of applying solitary confinement *solely* to prevent interference with, or protect the integrity of, a police investigation.
- Identify and introduce measures that would provide less restrictive alternatives to solitary confinement. These should identify a range of approaches that can be applied to specific, evidenced circumstances where there may be real concerns about risks to investigations.
- Prioritize urgent action to ensure that solitary confinement is explicitly prohibited in circumstances where it would violate the prohibition on torture and other ill-treatment, namely:
    - on children;
    - on people with disabilities caused by physical, mental health or neurodiverse conditions that would be exacerbated by solitary confinement;
    - for any longer than 15 days (the international definition of prolonged solitary confinement); and

  urgently clarify current responsibilities for identifying and acting upon concerns about health, disability or neurodiversity through the court process and during the period of solitary confinement.
- Introduce stronger safeguards to ensure that where solitary confinement is imposed, it is done in line with human rights standards, including the prohibition of torture and the rights to fair trial and non-discrimination, by:
    - Introducing a requirement to justify and evidence decisions based on individual circumstances, with accompanying criteria as needed;

    - Requiring active consideration of alternatives to solitary confinement and a clear proportionality test at the initial request and at every attempt to extend solitary confinement;
    - Where restrictions are deemed proportionate on an individual basis, ensuring they are individually tailored and go no further than strictly necessary;
    - Amending the Explanatory note to the Code of Criminal Procedure to ensure clear and unambiguous wording, drawn from international standards and evidence, about the risks of solitary confinement;
    - Ensuring progressively more stringent justification is required as the time in solitary confinement progresses;
    - Strengthening the current model for securing independent legal representation, in consultation with individual lawyers experienced in criminal defence work and the National Police Commissioner, and developing and implementing a new process that ensures all suspects are able to secure representation from a lawyer with experience and competence commensurate with the nature of the offence and of sufficient independence from the police.
- Develop further research to interrogate current practice and guide future changes that includes:
    - Analysing at case-level the justification for solitary confinement requests (at initial stage and continuation) and judicial decision-making;
    - Undertaking a retrospective review of the justification of solitary confinement in light of final case outcomes; and
    - Investigating and identifying the reasons for the high and rising percentage of foreign nationals in solitary confinement.

- Ensure that the collection of data by different pertinent agencies allows for disaggregation of solitary confinement cases, to be able to better understand the application and implications of the measure and inform future policy and practice. This data should be made public and be easily accessible with due protection for individual confidentiality.
- Reconsider the interpretation of data protection laws that prohibit the collection of data on race and ethnicity, in line with international standards on the disaggregation of data.
- Develop a monitoring framework to track progress ensuring disaggregation of data to identify any disproportionality or differential trends.

TO THE MINISTRIES OF JUSTICE AND HEALTH AND THE PRISON AND PROBATION ADMINISTRATION:

- Develop and implement a plan for expanding the availability of general health and mental health provision in custody, in line with CPT recommendations. This should include:
    - Ensuring prompt access to a doctor for all detainees in police custody;
    - Ensuring daily health visits to all those in solitary confinement;
    - Clarifying the roles and responsibilities of the Treatment Team, Mental Health Team and General Health provision; and
    - Ensuring individuals who are in custody have their right to privacy upheld and principles of confidentiality and independence are maintained by all officials and health professionals.

TO THE MINISTRY OF JUSTICE AND THE PRISON AND PROBATION ADMINISTRATION:

- Develop and implement adaptations to the physical environment in the solitary confinement wing at Hólmsheiði to include improving the outdoor area, removing frosted glass in cells and introducing a "break-out" area.

TO THE PRISON AND PROBATION ADMINISTRATION:

- Conduct a thorough review of current policy and practice to ensure all restrictions imposed are the minimum necessary and strenuous efforts are made to mitigate the harmful effects of solitary confinement. This should include detailed attention to: dynamic risk assessment, staff-detainee interaction and access to the library, gym and other facilities.
- Urgently introduce a phone system that can ensure appropriate and reliable safeguards against misuse.

TO THE JUDICIAL ADMINISTRATION AND JUDGES:

- Develop a comprehensive training programme on:
  - the harms of solitary confinement;
  - international human rights standards including on the specific roles and responsibilities of judges in relation to the prevention of torture and other ill-treatment and safeguards relating to the application pre-trial solitary confinement; and
  - mental health, disability and neurodiversity and their relevance in the context of detention.
- Consider arranging a familiarization visit to the solitary confinement wing at Hólmsheiði for all judges who hear solitary confinement applications.
- Ensure that custody hearings are only held behind closed doors where there is a reason why a public hearing would not be in the interests of justice or the rights of the relevant parties. Any decision to hold a hearing in private must be individually justified and open to challenge.

TO THE NATIONAL COMMISSIONER OF POLICE, DISTRICT POLICE CHIEFS AND PROSECUTORS:

- Develop new internal procedures, guidance and training to ensure:
  - Solitary confinement applications and additional restrictions are justified on the basis of individual circumstances;
  - Internal challenge before an application is made to test assumptions about the proportionality and necessity of the solitary confinement request; and
  - Daily case monitoring by a senior police officer throughout the period of solitary confinement to ensure that solitary confinement is ended as soon as the justification for it is no longer present.
- Ensure that procedural safeguards for detainees, in accordance with international law and standards, are abided by during police investigations.

TO THE BAR ASSOCIATION:

- Develop training for lawyers on best practice for raising concerns about mental health, disability and neurodiversity when defending clients at custody hearings.

TO THE NATIONAL PREVENTIVE MECHANISM:

- Ensure the implementation of the Optional Protocol to the Convention against Torture mandate by highlighting areas of the legislative framework for solitary confinement that are incompatible with international standards on solitary confinement.
- Introduce human rights-based criteria for monitoring solitary confinement to make sure due attention is paid to the physical environment, treatment and conditions in which detainees are held and raise any cases of possible ill-treatment through appropriate channels.
- Until the law is changed, request formal notifications of any child entering solitary confinement and any period of solitary confinement of over 15 days for adults.

APPENDIX 1 – CORRESPONDENCE BETWEEN AMNESTY INTERNATIONAL AND THE MINISTRY OF JUSTICE

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Reference: TG EUR 28/2021.2077

Minister of Justice, Ms. Sigurbjörnsdóttir
Sölvhólsgata 7
101 Reykjavík
Iceland

13 October 2021

RE: CONCERNS REGARDING USE OF SOLITARY CONFINEMENT IN PRE-TRIAL DETENTION

Dear Minister of Justice, Ms. Sigurbjörnsdóttir,

Thank you in advance for your letter confirming receipt of our formal request for information regarding the use of solitary confinement in pre-trial detention. We also thank you and your staff for the time and effort they are putting into answering our questions about the policies and procedures regarding this measure.

Pending your responses to our information requests, we would like to take this opportunity to follow up on one particular question which was posed in our letter upon which we would welcome your more immediate thoughts and clarity with regards to the position of your office and government.

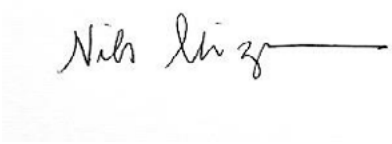
Specifically, as mentioned in our XXDATEXXX letter, the United Nations Special Rapporteur on Torture has called for states to end the use of solitary confinement in pre-trial detention, urging that: "States should take necessary steps to put an end to the practice of solitary confinement in pre-trial detention.

The use of solitary confinement as an extortion technique during pretrial detention should be abolished. States should adopt effective measures at the pretrial stage to improve the efficiency of investigation and introduce alternative control measures in order to segregate individuals, protect ongoing investigations, and avoid detainee collusion."[1] This is because in most instances solitary confinement violates international human rights law.

We would welcome the opportunity to hear your views on whether or not the Icelandic authorities are committed to ending the use of solitary confinement in pre-trial detention. We would be pleased to have a dialogue about this , especially in view of the forthcoming review of Iceland by the United Nations Committee against Torture vis a vis its compliance with the UN Convention against Torture. We would therefore welcome an online meeting with you to discuss this and the wider human rights concerns pertaining to the use of solitary confinement. To coordinate the meeting please do contact our colleague Bryndís Bjarnadóttir on e-mail bb@amnesty.is

Yours sincerely

[1] United Nations Special Rapporteur on torture, UN Doc. A/66/268 (2011) §§73, 85.



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Ref: **TG EUR 28/2021.1822**

Minister of Justice, Ms. Sigurbjörnsdóttir
Sölvhólsgata 7
101 Reykjavík
Iceland

6 July, 2021

Dear Minister of Justice, Ms. Sigurbjörnsdóttir,

RE: CONCERNS REGARDING USE OF SOLITARY CONFINEMENT IN PRE-TRIAL DETENTION

We write to you from Amnesty International with regard to the use of solitary confinement in pre-trial detention in Iceland. We are keen to engage in a dialogue with you about the use of solitary confinement in the context of pre-trial detention. We have some initial information which would indicate that there is some cause for concern about its use and wanted to bring to your attention some of the key issues as we understand them to be from our preliminary research, as well as request further information from your Ministry about the current situation.

In 2008 the UN Committee against Torture expressed concern about the use of what it called "excessive" solitary confinement, and in the same review of Iceland's compliance with the treaty, the Committee urged Iceland to review its use of the measure.[1] Recently, and in view of the forthcoming UN Committee against Torture review of Iceland against its treaty obligations, Amnesty International conducted desk research regarding the legal framework and practical application of solitary confinement in Iceland. The organisation sought and collected information and data on the issue. Amnesty International felt there was grounds for more research into the use of solitary confinement in Iceland, particularly its use in the context of pre-trial detention and therefore requested specific information from the following public administration bodies: the State Prison and Probation Administration, the National Commissioner of the Icelandic Police, the Attorney General, the Judicial Service (Dómssýslan) and the Policy Supervisory Committee. The data we have received confirms our initial concerns.

Amnesty International will be compiling our findings on the above in a more detailed letter to you, but wanted to begin a dialogue with you on this issue in your role as Minister of Justice, and also request some further information from your office in regards to the same. For now, we write to you to raise our initial concern about the ongoing excessive use of solitary confinement in the context of pre-trial

[1] Concluding Observations by the United Nations Committee against Torture on Iceland, CAT/C/ISL/CO/3, 8 July 2008, at paragraph 9.

detention in Iceland, particularly its application to people belonging to particularly marginalised and/or at risk groups, such as people suffering mental illness or who have an intellectual or psychosocial disability, and children. Connectedly, the organisation is also concerned that there may be limited or inadequate legal and other procedural safeguards being used to govern the application of solitary confinement in the context of pre-trial detention, and that this situation may place Iceland in breach of international human rights obligations and standards.

Relevant international human rights standards regarding the use of solitary confinement

Solitary confinement is a harsh penalty with serious psychological and physical consequences for those it is applied to and so international human rights law requires that its use is restricted and justifiable only in cases of proven urgent need.[2] According to international standards, when solitary confinement is used it should only be as an exceptional measure, for as short a time as possible, under judicial supervision, and with adequate review mechanisms including the possibility of judicial review.[3] Solitary confinement also has little or no rehabilitative value, and thus runs counter to the key aim of the treatment of prisoners and it can create a psychological pressure that can induce detainees to make incriminating statements. Furthermore, holding a person in solitary confinement before trial may in certain circumstances be considered a form of coercion, and when it is used intentionally to obtain information or a confession and inflicts severe pain or suffering, it can amount to torture.

Importantly, the United Nations Special Rapporteur on Torture has called for states to end the use of solitary confinement in pre-trial detention, urging that: "States should take necessary steps to put an end to the practice of solitary confinement in pre-trial detention. The use of solitary confinement as an extortion technique during pretrial detention should be abolished. States should adopt effective measures at the pretrial stage to improve the efficiency of investigation and introduce alternative control measures in order to segregate individuals, protect ongoing investigations, and avoid detainee collusion."[4]

As you may know, application of solitary confinement to people belonging to certain groups is prohibited in all circumstances, and it is worth highlighting Rule 45, paragraph 2 in the Nelson Mandela Rules which states: "The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply." [5] Connectedly, the Special Rapporteur on Torture noted circumstances where the physical conditions and the application of solitary confinement can cause severe mental and physical pain or suffering, when used as a punishment, during pre-trial detention, indefinitely, prolonged, on juveniles or persons with mental disabilities, this can amount to cruel, inhuman or degrading treatment or torture.[6]

The application of solitary confinement in pre-trial detention in Iceland has been raised as a concern with the Icelandic authorities in the past by the UN Committee Against Torture (2008) concluding observation in review of Iceland in 2008 where the following is stated: "The Committee is concerned about the reported cases of frequent and excessive use of solitary confinement for persons in custody (art. 11). The State party should investigate promptly the issue of excessive use of solitary confinement and adopt effective measures to prevent such practice."[7] International standards and experts are not only urging states to put an end to the use of solitary confinement in the context of pre-trial detention and in

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[2] See the interpretation of Article 10(1) of the International Covenant on Civil and Political Rights by the UN Human Rights Committee: Concluding Observations of HRC: Denmark, UN Doc. CCPR/CO/70/DNK (2000) para 12. See also Rosa Espinoza de Polay v Peru, HRC, UN Doc. CCPR/C/61/D/577/1994 (1997) para 8.6

[3] Rules 51, 53, 60.5 and 70 of the European Prison Rules; Ramirez Sanchez v France (59450/00), European Court Grand Chamber (2006) 138–145; A. B. v Russia (1439/06), European Court (2010) 108; Concluding Observations of UN Committee against Torture: Azerbaijan, UN Doc. CAT/C/AZE/CO/3 (2009) 13; Denmark, UN Doc. CAT/C/DNK/CO/5 (2007) 14; Israel, UN Doc. CAT/C/ ISR/CO/4 (2009) 18; Norway, UN Doc. CAT/C/CR/28/3 (2002) 4(d).

[4] United Nations Special Rapporteur on torture, UN Doc. A/66/268 (2011) §§73, 85.

[5] United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) General Assembly resolution 70/175, annex, adopted on 17 December 2015, at Rule 45, para 2, available at: https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf

[6] United Nations Special Rapporteur on torture, UN Doc. A/66/268 (2011)

[7] See Concluding Observations on Iceland by the United Nations Committee against Torture, CAT/C/ISL/CO/3, at paragraphs 9 and 10, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CAT%2fC%2fISL%2fCO%2f3&Lang=en

the context of particularly high risk people, but also increasingly urging restriction or even elimination of the use of solitary confinement as a punishment too. Article 7 of the UN Basic Principles for the Treatment of Prisoners states that: "Efforts addressed to the abolition of solitary confinement as a punishment, or to the restriction of its use, should be undertaken and encouraged."[8]

Although we received some information from our requests to the various authorities listed above, we are keen to obtain specific data, and ask that any information you share where possible details as separate figures for each year, and disaggregated by ages and gender and ethnic identity. We would also appreciate it if the number of days each individual was kept in solitary confinement in pre-trial detention was listed. We would therefore request this more specific data and details from you, including copies of any pertinent written rules of procedure about the following:

1. Are you planning to eradicate the use of solitary confinement in pre-trial detention?
2. Are you planning to eradicate the use of solitary confinement in the cases of children and people who are suffering from mental illness or who have an intellectual or psychosocial disability?
3. We would welcome detailed information (including copies of the rules) about the procedures judges must follow to approve the application of pre-trial detention and, in particular, what are the criteria used in decision making on the application of solitary confinement?
4. What are the specific procedural safeguards that judges use and apply in decision making around the application of solitary confinement in a pre-trial detention context? For those cases where an application for solitary confinement in pre-trial detention is rejected, what are the common reasons provided for the decision to deny the application of solitary confinement?

5. How many applications for pre-trial solitary confinement have been made in the last 5 years, and how many of those were
    - a) approved
    - b) rejected and,
    - c) how many were successfully appealed and if available on what grounds?

6. Considering international standards that urge the abolition of solitary confinement and alternative measures in order to protect investigations and prevent detainee collusion and the fact that international standards state clearly that solitary confinement must never be imposed on children or on people suffering from a mental illness or who have an intellectual or psychosocial disability, we are keen on receiving information from you about any cases in which it has been applied to children and people with mental illnesses or disabilities in the last 5 years, even if successfully appealed subsequently to it being applied?

7. How many pre-trial detainees have been placed in solitary confinement for longer than 15 days in each year from 2015-2020?
8. How many children have been placed in solitary confinement in the years 2015-2020 (disaggregated wherever possible by year, age, gender, ethnic identity and how long they were in detention)?
9. How many individuals with mental illness or who have an intellectual or psychosocial disability have been subjected to solitary confinement in pre-trial detention in the years 2015-2020 (disaggregated wherever possible by year, age, gender, ethnic identity and how long they were in detention)?

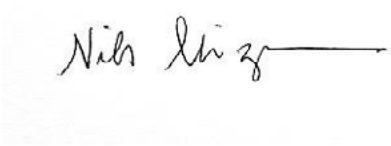
10. What are the procedures to ascertain mental health status of individuals during applications for pre-trial solitary confinement, and what are the rules governing access to, and visits from, healthcare professionals if an individual is subjected to pre-trial solitary confinement?

[8] UN General Assembly, Basic Principles for the Treatment of Prisoners : resolution / adopted by the General Assembly, 28 March 1991, A/RES/45/111, available at: https://www.un.org/ruleoflaw/files/BASICP~2.PDF

We thank you in advance for your attention to the situation of solitary confinement in pre-trial detention.

We look forward to hearing from you on the specific concerns raised in this letter, receiving the data and other information requested, and hearing about any action your government has taken or is planning to take in regards to the same, as well as continuing a dialogue with you on this important human rights issue.

Your sincerely,



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Reykjavík April 13, 2022
Reference: DMR21070039/11.5

The Ministry refers to your letter of 6 July 2021, in which you address concerns and ask certain questions regarding the use of solitary confinement in pre-trial detention. Firstly, the Ministry offers its sincere apologies for the late reply. In order to prepare the following answers, the Ministry has gathered information from the relevant authorities. However, it appears that a part of the requested information is not available. In the light of that, the following answers are at times not exhaustive, but they are as thorough as possible.

1. *Are you planning to eradicate the use of solitary confinement in pre-trial detention?*

The Ministry does not plan to eradicate the use of solitary confinement in pre-trial detention. The Ministry would like to emphasis that the use of solitary confinement in pre-trial detention should only be used when strictly necessary in cases where other measures are not sufficient. The legal requirements for the use of solitary confinement are strict in Icelandic legislation. A revision of the legislation is ongoing during which the Ministry will, in particular, examine whether there are improvements to be made on the relevant provisions, with the view of making the legal requirements even clearer.

2. *Are you planning to eradicate the use of solitary confinement in the cases of children and persons who are suffering from mental illness or who have an intellectual or psychosocial disability?*

The Ministry will examine this during the abovementioned revision.

3. *We would welcome detailed information (including copies of the rules) about the procedure judges must follow to approve the application of pre-trial detention and, in particular, what are the criteria used in decision making on the application of solitary confinement?*

Solitary confinement can only be used on the grounds of a court order and the legal requirements for solitary confinement are listed in Art. 98, Art. 99 and Art. 95 in the Act on Criminal Procedure No. 88/2008.

According to Art 98, para 2, an accused person may not be committed by a court order to solitary confinement during custody unless it is necessary for the reasons stated in indents a or d of the first paragraph of Art. 95, that is;

> *a that there is reason to believe that the accused would impede the investigation of the case, for example by obliterating evidence of the offence, disposing of items or exerting an influence on persons who are also guilty, or on witnesses.*
>
> *d. that there is reason to believe that custody is necessary in order to protect other persons*

from attacks by the accused, or to protect the accused himself or herself from being attacked or influenced by other persons.

For this reasons, solitary confinement is mostly used during the initial stages of a police investigation. Other requirements are that solitary confinement may not last, continuously, for more than four weeks unless the person on whom it is imposed is accused of a serious offence (i.e. that may entail 10 years' imprisonment or more). The requirement that the solitary confinement must be strictly necessary in the interest of the investigation or for the protection of the accused or others of course still applies. According to Art. 100, para 2, the party who demands the remand custody or other measures is also obliged to terminate it as soon as it is no longer necessary. Therefore, the police can be obliged to terminate the remand custody before the court order expires.

In the explanatory note for Art. 98 of the Act on Criminal Procedure No. 88/2008, it is stated that solitary confinement is a remedy which can have serious and permanent consequences if it is used long-term. Therefore, the legal requirements for use of solitary confinement are narrowly defined.

It shall also be noted that a judge must always evaluate whether it is possible to use a lesser severe remedy than solitary confinement. It follows that a judge must always evaluate the proportionality of the using such severe remedy before granting a court order.

It should also be noted that according to the Icelandic legal practice/case law regarding the use of custody, it is only applied when a suspect is accused of the most serious offences, such as homicide, serious violence, sex offences or other serious crimes. A judge would not grant custody unless other measures in the Act on Criminal Procedure No. 88/2008 cannot be sufficient. Moreover, upon arrest the police is obligated to release the accused or bring them before a judge within 24 hours. Almost all suspects are released before that time so it is only in very exceptional cases, when deemed strictly necessary for the purpose of the investigation, that the police decides to bring them before a judge to request pre-trial detention.

In this respect it is also important to note that according to Art. 100, para 1, a judge can when the conditions for pre-trial detention under the first or second paragraph of Art. 95 are met, order that the accused is instead placed in a hospital or appropriate institution. Therefore, the prosecutor and the judge must evaluate the condition of the accused and assess whether it is in their best interest to be placed in a hospital or an appropriate institution in stead of pre-trial detention (and solitary confinement).

Regarding the use of solitary confinement in pre-trial detention for children, it shall be noted that according to Art. 95, para 5, children under the age of 18 may not be remanded in custody unless it may be regarded as certain that other measures referred to in the first paragraph of Art. 100, or prescribed in the Child Protection Act, cannot be applied instead. The age of criminal liability is 15 in Iceland, but certain safeguards exist in the cases of children between the age of 15 and 18 when it comes to criminal investigations and sentencing

To sum up, the legal requirements are strict regarding the use of solitary confinement in pre-trial detention, and there are also certain additional safeguards in place, in particular in the cases of children (between the ages of 15 and 18) and persons who are suffering from mental illness or who have an intellectual or psychosocial disability. Moreover, the accused always has a right to the assistance of legal counsel, among other things to guarantee that the judge has all relevant information regarding the situation of the accused when deciding on pre-trial detention and solitary confinement. Lastly, it is always the prosecutor who has to estimate whether all legal requirements are met before claiming a court order for solitary confinement in pre-trial detention. At the same time the prosecutor is also obligated to estimate whether it is necessary to claim a court order for solitary confinement given the circumstances of the case, seriousness and status of the accused. A prosecutor, should therefore never claim a court order for solitary confinement if the legal requirements are not met.

In the light of the above, it is safe to state that it would only be in the most exceptional cases that a judge would grant pre-trial detention with solitary confinement for children or persons suffering from mental illness or who have an intellectual or psychosocial disability.

The legal provisions referred to above are listed in an English translation in an annex to this letter.

4 *What are the specific procedural safeguards that judges use and apply in decision making around the application of solitary confinement in a pre-trial detention context? For those cases where an application for solitary confinement in pre-trial detention is rejected, what are the common reasons provided for the decision to deny the application of solitary confinement?*

The Ministry refers to the answers to question 3 regarding the legal requirements and procedural safeguards for the use of solitary confinement in pre-trial detention.

Unfortunately, it is not possible to gather information on common reasons provided for in decisions to deny the application of solitary confinement as that information is not available statistically. To gather such information, it would be necessary to go manually over each verdict from every district court in Iceland and read them through in order to identify the reasons for denying such a request

In recent years the Ministry has been working on the digitalization of certain aspects of the justice system, i e. so that it will be possible to have a clear overview of all cases from the beginning to the end, from police to prosecution and finally to the judicial system. Once that is up and running, statistical information will be readily available. Such information is vital for policy making in this field and therefore the Ministry has put a lot of resources into establishing this portal for a digital justice system

5. *How many applications for pre-trial solitary confinement have been made in the last 5 years, and how many of those were:*

   a. *Approved*

   b *Rejected and,*

   c. *How many were successfully appealed and if available on what grounds?*

Unfortunately, it was not possible to obtain information for the last 5 years, as to do so it is needed to go manually over all verdicts from each district court in Iceland. However, the Ministry has similar statistics that were obtained in 2018 over a 2-year period. In table 1, you can see all claims for remand custody and solitary confinement made by the Police Commissioners from 10 October 2016 to 10 October 2018.

Table 1: Claims for solitary confinement and remand custody by Police Districts from 10 October 2016 to 10 October 2018:

Police District*	Claim for remand custody	Claim for solitary confinement	Ratio of SC/RC	Judge approval for SC	Approval ratio
The West Fjords Commissioner of Police	0	0			
The Northern Iceland (Western Region) Commissioner of Police	0	0			
The Western Iceland Commissioner of Police	7	5	71,42857	5	100
The Northern Iceland (Eastern Region) Commissioner of Police	27	22	81,48148	20	90,9
The Southern Iceland Commissioner of Police	11	2	18,18181	2	100
The Eastern Iceland Commissioner of Police	4	4	100	4	100
The Westman Islands Commissioner of Police	0	0			
The Suðurnes Commissioner			42,5925		

of Police	270	115	9	114	99,130
The Metropolitan Commission of Police	273	177	64,8351 6	176	99,435

[1] When reviewing the answers from the police districts, it appeared that the Police Commissioners had counted the verdicts in a different manner, some had listed a verdict and a continued verdict as a one case and other had listed them separately. This misunderstanding does not have impact on the statistic as such as the confirmatory ratio is the same, the difference is only the total number of verdicts.

It should be mentioned that in this statistic's the Police has in at least two cases withdrawn a claim for solitary confinement before the judge concluded the court order.

Table 2: Summary of all Police Districts for the period of 10 October 2016 to 10 October 2018.

Total number for all Police Districts

Claims for remand custody	592
Claims for solitary confinement	325
Numbers of cases where solitary confinement was approved	321

Average for all Police Districts

Claims for remand custody with solitary confinement	54,89%
Solitary confinement approved	98,77%

6 *Considering international standards that urge the abolition of solitary confinement and alternative measures In order to protect investigations and prevent detainee collusion and the fact that international standards state clearly that solitary must never be imposed on children or on people suffering from a mental illness or who have an intellectual or psychosocial disability, we are keen on receiving information from you about any cases in which it has been applied to children and people with mental illnesses or disabilities in the last 5 years, even if successfully appealed subsequently to it being applied?*

The Ministry gathered information about this from the National Commissioner of the Icelandic Police and the Prison and Probation Administration. Information regarding children is available, but no data is available concerning people with mental illnesses or disabilities. This is something that the Ministry of Justice will look into and try to amend, so data concerning people with mental illnesses or disabilities will in the future be gathered under these circumstances.

In this 5-year period which the question concerns, three children have been arrested and remanded in custody by a judge order. In one case a child was ordered in solitary confinement in remanded custody. He was suspected of an attempt to homicide. He stayed in Hólmsheiði prison for 5 days, but after that he was placed in a facility run by the child protection services.

In the other two cases the children were placed in appropriate institution (one in a hospital) In one case the child was suspected of a large drug offence and the other one for an extremely violent assault. In neither of these cases were the children placed in solitary confinement.

All three children were 17 years old at the time of the arrest and custody. The age for criminal liability in Iceland is 15 years.

7. *How many pre-trial detainees have been placed in solitary confinement for longer than 15 days in each year from 2015-2020?*

The Ministry gathered information from the Prison and Probation Administration regarding this matter and received following statistics.

	2015	2016	2017	2018	2019	2020
Number of individuals in solitary confinement in						

pre-trial detention for longer than 15 days listed by year:	14	4	15	10	8	6

8 *How many children have been placed in solitary confinement in the years 2015-2020 (disaggregated wherever possible by year, age, gender, ethnic identity and how long they were in detention)?*

Reference is made to answers to question 6

One child has been placed in solitary confinement in remanded custody for this 5-year period. It was in the year 2017, he was 17 years old, suspected of attempt to homicide. He stayed in Hólmsheiði prison for 5 days, and after that he was placed in a facility run by the child protection services. Other information is not available.

9. *How many individuals with mental illness or who have an intellectual or psychosocial disability have been subjected to solitary confinement in pre-trial detention in the years 2015-2020 (disaggregated wherever possible by year, age, gender, ethnic identity and how long they were in detention)?*

Unfortunately, this information is not available.

10. *What are the procedures to ascertain mental health status of individuals during applications for pre-trial solitary confinement, and what are the rules governing access to, and visits from, healthcare professionals if an individual is subjected to pre-trial solitary confinement?*

The Ministry gathered information about this from the Prison and Probation Administration. Individuals that have been subjected to pre-trial solitary confinement have the same access to doctors and other healthcare professionals as prisoners. In some cases, they have even more access since they are considered to be a priority by the mental health team working in the prison. When individuals are being subjected to pre-trial solitary confinement, they are asked to provide information regarding their health and to specify the type of health care they need. A doctor is contacted immediately if requested by the individual or if the prison guards become aware of health problems. Even if there is no request, every individual meets a doctor twice a week during pre-trial solitary confinement

Regarding procedures to ascertain mental health status of individuals during applications for pre-trial solitary confinement, it shall be stated that an individual who has been arrested has certain rights, according to law on criminal procedure No 88/2008 and regulation No. 651/2009 on rights of an arrested person, interrogation and more. Moreover, special procedure is required after a person is arrested and put into a prison cell and the Reykjavik Metropolitan Police has special rules on treatment while staying in a prison cell and also special rules regarding individual status evaluation on arrested persons and individual risk assessment on self-harm. This assessment can therefore have impact on the evaluation the prosecutor makes when deciding whether he claims solitary confinement in a pre-trial detention or whether he claims that the accused is instead placed in a hospital or appropriate institution. Therefore, the prosecutor and the judge must evaluate the condition of the accused and assess whether it is in their best interest to be placed in a hospital or appropriate institution instead of pre-trial detention (and solitary confinement).

On behalf of the Minister of Justice

Haukur Guðmundsson

Ragna Bjarnadóttir

Annex I

The Articles mentioned before are here following in English translation:

Article 98

Judges shall normally deliver rulings on applications for custody orders as soon as possible. At all times, rulings shall be delivered within 24 hours of the time when an accused person who has been arrested appears in court (cf. Article 94).

If it is demanded that an accused person be held in solitary confinement during custody under indent b of the first paragraph of Article 99, the judge shall adopt a position on this demand in his or her ruling. Accused persons may not be committed by a court order to solitary confinement during custody unless this is necessary for the reasons stated in indents a or d of the first paragraph of Article 95. Solitary confinement may not last, continuously, for more than four weeks unless the person on whom it is imposed is accused of an offence that may entail 10 years' imprisonment according to law. Furthermore, the judge shall, in his or her ruling, adopt a position on how other aspects of solitary confinement are to be arranged (cf. the third paragraph of Article 99).

Article 99

Remand prisoners shall receive the treatment necessary in order that custody will be of use and good order is maintained during custody; however, harshness or severity shall be avoided. In other respects, the following rules apply to custody:

a. remand prisoners may have themselves provided with, and receive, food and other personal necessities, including clothing,

b. remand prisoners shall only be held in isolation in accordance with a court order, though they may not be kept together with other prisoners against their will,

c. remand prisoners shall be entitled to receive visits. Nevertheless, the person directing the investigation may prohibit visits if this is necessary in the interest of the investigation, but a remand prisoner's wish to contact his or her defence counsels and speak to him or her in private (cf. the first paragraph of Article 36) must be granted, and requests to contact a physician or a minister of religion shall be granted if possible.

d. remand prisoners may use telephones or other telecommunications equipment and send and receive letters and other documents. However, the person directing the investigation may prohibit the use of telephones or other telecommunications equipment and have the contents of letters or other documents examined, and seize them if this is necessary in the interest of the investigation, but the sender shall be informed of the seizure if it takes place,

e. remand prisoners may read newspapers and books and also follow radio and television. However, the person directing an investigation may limit remand prisoners' access to the media if this is necessary in the interest of an investigation,

f. remand prisoners may, according as this is possible, have themselves provided with employment during their time in custody.

Without prejudice to indent d of the first paragraph, remand prisoners may accept letters from, and send letters to, the courts, [the minister], 1) the Parliamentary Ombudsman and their legal counsels without their contents being examined.

At the demand of an accused person who is remanded in custody, it may be decided in a court ruling that the rights to which he or she is entitled as a remand prisoner under indents c-e of the first paragraph may not be abridged.

[The minister] 1) shall set further rules on the conduct of remand custody in a regulation, including as regards the application of the matters covered in the first and second paragraphs in further detail.

Remand prisoners may refer matters concerning their time in remand custody to a judge under Article 102.

Article 95

An accused person may only be remanded in custody if a reasonable suspicion has arisen that he or she is guilty of conduct for which a term of Nr. 2018 imprisonment is prescribed, providing he or she has reached the age of 15 years. In addition, one of the following conditions must obtain:

a. that there is reason to believe that the accused would impede the investigation of the case, for example by obliterating evidence of the offence, disposing of items or exerting an influence on persons who are also guilty, or on witnesses,

b. that there is reason to believe that the accused would attempt to flee the country or hide, or by other means avoid prosecution or the execution of a punitive judgment,

c. that there is reason to believe that the accused would continue to commit offences until the conclusion of the case, or there is reason to suspect that he or she has, in substantial respects, violated conditions that were imposed on him or her in a suspended sentence,

d. that there is reason to believe that custody is necessary in order to protect other persons from attacks by the accused, or to protect the accused himself or herself from being attacked or influenced by other persons.

An accused person may also be remanded in custody even though the conditions of indents a-d of the first paragraph do not obtain if there is a strong suspicion that he or she has committed an offence for which 10 years' imprisonment is prescribed in law, providing that the offence is of such a nature that it is reasonable to believe that custody is necessary in view of the public interest.

An accused person may not be remanded in custody if it is considered as being demonstrated that the offence of which he or she is accused will only result in fines or a suspended prison sentence according to the circumstances. Furthermore, to the extent possible, measures shall be taken to ensure that accused persons are not held in custody for longer than the time for which it is considered demonstrated that they will be sentenced to spend in prison.

An accused person may not be remanded in custody for more than twelve weeks unless an action has been brought against him or her or this is demanded by urgent considerations regarding an investigation (cf. indent a of the first paragraph).

Accused persons under the age of 18 may not be remanded in custody unless it may be regarded as certain that other measures referred to in the first paragraph of Article 100, or prescribed in the Child Protection Act, cannot be applied instead.

Article 100

When the conditions for remand custody under the first or second paragraph of Article 95 obtain, the judge may, instead of having the accused remanded in custody, order that he or she be placed in a hospital or appropriate institution, forbid him or her to leave the country or require him or her to remain in a particular place or within a particular area. If this is demanded, the judge may impose, as a condition for the measure taken, that the accused wear a device on his or her person so as to make it possible to monitor his or her movements.

The judge shall prescribe measures under the first paragraph in a ruling, and the measure may not last for longer than is necessary. The party who demanded the remand custody or other measure shall terminate it as soon as it is no longer necessary. At the latest, the measure shall end when a district court judgment has been delivered in the case. [At the request of the prosecution, however, the district court judge may rule that it is to remain in force during the period allowed for lodging an appeal under Article 199, and also while the case is under examination by a higher court and until a final judgment is delivered.]

The police may require an accused person who is under a travel ban, or another measure under the first paragraph, to report his or her whereabouts to the police or to report in person to the police at certain times. The police may also require an accused person who is under a travel ban to deliver his or her passport to them for safekeeping.

An accused person may refer matters regarding the application of a travel ban and other measures under the first paragraph to a judge under Article 102.

APPENDIX 2 – CONCLUDING OBSERVATIONS OF THE UN COMMITTEE AGAINST TORTURE

United Nations CAT/C/ISL/CO/4

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
9 June 2022

Original: English

Committee against Torture

Concluding observations on the fourth periodic report of Iceland*

1. The Committee against Torture considered the fourth periodic report of Iceland[1] at its 1879th and 1882nd meetings,[2] held on 20 and 21 April 2022, and adopted the present concluding observations at its 1903rd meeting, held on 9 May 2022.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the simplified reporting procedure and submitting its periodic report thereunder, as this allows for a more focused dialogue between the State party and the Committee. It regrets, however, that the report was submitted six years late.

3. The Committee appreciates having had the opportunity to engage in a dialogue with the State party's delegation, and the additional information and explanations provided.

B. Positive aspects

4. The Committee welcomes the ratification of or accession to the following international instruments by the State party:

(a) The Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness, in 2021;

(b) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2019;

(c) The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, in 2018;

(d) The Convention on the Rights of Persons with Disabilities, in 2016;

(e) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in 2012;

(f) The Council of Europe Convention on Action against Trafficking in Human Beings, in 2012;

(g) The United Nations Convention against Transnational Organized Crime, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in 2010.

* Adopted by the Committee at its seventy-third session (19 April–13 May 2022).

[1] CAT/C/ISL/4.

[2] See CAT/C/SR.1879 and CAT/C/SR.1882.

5. The Committee also welcomes the State party's initiatives to revise and introduce legislation in areas of relevance to the Convention, including:

(a) The incorporation of the Convention on the Rights of the Child into Icelandic law, in 2013;

(b) The incorporation of new provisions on stalking and protection against digital sexual violence and on increasing the judicial protection for victims of human trafficking in the General Penal Code, in 2021;

(c) The adoption of the Parliamentary Resolution on a Plan on Measures against Violence and its Consequences, for 2019–2022;

(d) The adoption of the Parliamentary Resolution on Preventive Actions among Children and Young People against Sexual and Gender-based Violence and Harassment, for 2021–2025;

(e) The amendment of the Act on the Althing Ombudsman, in 2018;

(f) The adoption of the Act on Services for Persons with Disabilities with Long-Term Support Needs, in 2018;

(g) The amendment of the General Penal Code concerning the definition of rape, in 2018;

(h) The adoption of the Act on the Execution of Sentences, in 2016;

(i) The amendments to the Foreign Nationals Act, in 2010 and 2016;

(j) The amendment of the General Penal Code to include a specific offence of domestic violence, in 2016;

(k) The amendment of the Act on Air Transport, in 2015;

(l) The amendment of the General Penal Code to increase the maximum penalty for the crime of trafficking in persons, in 2011;

(m) The adoption of Act No. 85/2011 on restraining orders and expulsion from the home, in 2011;

(n) The amendment of the General Penal Code to specifically criminalize beneficiaries and perpetrators of trafficking and prostitution, in 2009.

6. The Committee commends the State party's initiatives to amend its policies and procedures in order to afford greater protection for human rights, and to apply the Convention, in particular:

(a) The adoption of Emphasis on Actions to Combat Human Trafficking and Other Forms of Exploitation, in 2019;

(b) The adoption of the Action Plan for the Handling of Sexual Offences, for 2018–2022;

(c) The establishment of a steering committee on comprehensive measures to combat sexual violence, in 2018;

(d) The establishment of the Government Steering Committee on Human Rights, in 2017;

(e) The establishment of the Police Supervisory Committee, in 2017;

(f) The adoption of the Action Plan for Immigration, for 2016–2019;

(g) The establishment of the Centre for Police Training and Professional Development at the Office of the National Police Commissioner of Iceland, in 2016;

(h) The establishment of the Immigration and Asylum Appeals Board, in 2015;

(i) The adoption of new rules on procedures concerning domestic violence cases reported to the police and the registration of such cases, in 2014;

(j) The adoption of the National Plan against Trafficking in Persons, for 2013–2016.

7. The Committee welcomes the designation of the Althing Ombudsman as the national preventive mechanism following the legislative amendments of 2018. It also notes that the Althing Ombudsman can conduct monitoring visits to all places of deprivation of liberty, has already conducted nine visits, and can receive complaints from individuals about violence and make non-binding recommendations to the national authorities.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

8. In its previous concluding observations,[3] the Committee requested the State party to provide information on its implementation of the Committee's recommendations on solitary confinement, trafficking in human beings and violence against women and children.[4] While noting with appreciation the replies submitted by the State party on 22 December 2009 under the follow-up procedure[5] and referring to the letter dated 19 November 2010 from the Committee's Rapporteur for follow-up to concluding observations addressed to the Permanent Representative of Iceland to the United Nations Office and other international organizations in Geneva, the Committee finds that the information received from the State party was not sufficient to assess and conclude that the recommendations in its previous concluding observations had been fully implemented. Those issues are covered in paragraphs 13–14, 21–22 and 19–20 of the present document.

Definition and criminalization of torture

9. While noting the existing constitutional provision prohibiting torture and ill-treatment, and the legislation making all forms of physical violence punishable under the General Penal Code, as well as the principle of the domestic courts interpreting the constitutional prohibition in the light of the Convention, the Committee regrets that the State party has not yet criminalized torture as a specific crime in its domestic legislation in accordance with article 4 (2) of the Convention. Moreover, the Committee remains concerned at the continued absence in the State party's domestic legislation of a definition of torture consistent with article 1 of the Convention. In this regard, the Committee takes note of the State party's commitment to revisit the existing legislation to bring it into line with the Convention. Lastly, the Committee also regrets that the State party has not provided it with information on instances when the domestic courts have, in practice, interpreted the constitutional prohibition of torture in the light of Convention's prohibition (arts. 1–2 and 4).

10. **The Committee reiterates its previous recommendations to the State party[6] and urges it to take effective legislative measures to include torture as a specific offence in domestic laws, punishable by appropriate penalties that take into account its grave nature, and to adopt a definition of torture that covers all the elements contained in article 1 of the Convention. It again draws attention to its general comment No. 2 (2007) on the implementation of article 2, which states that serious discrepancies between the Convention's definition of torture and that incorporated into domestic law create actual or potential loopholes for impunity.**[7]

Fundamental legal safeguards

11. The Committee takes note of the procedural safeguards to prevent torture and ill-treatment that are set forth in the Code on Criminal Procedure and Regulation No. 651/2009, including the provision of an information sheet to persons deprived of their liberty detailing their rights in several languages. However, the Committee remains concerned that article 1

[3] CAT/C/ISL/CO/3, para. 20.
[4] Ibid., paras. 9 and 14–15.
[5] CAT/C/ISL/CO/3/Add.1.
[6] CAT/C/ISL/CO/3, para. 5.
[7] See para. 9.

of Regulation No. 651/2009 allows duty officers or officers in charge of investigation to exceptionally delay the notification of custody, despite the delegation's assurances that the decision to postpone arrestees' right to contact relatives or other persons of their choice about their detention may only be taken by an official who has not conducted the investigation (arts. 2, 11 and 16).

12. **The State party should ensure that all persons who are arrested or detained are afforded, in law and in practice, all fundamental safeguards against torture from the very outset of their deprivation of liberty, including the right to notify family members or any other person of their choice that they have been taken into custody. It should also ensure that Regulation No. 651/2009 is amended so as clearly to require delayed notification to be authorized by a senior police officer unconnected to the investigation or a public prosecutor, and to require that any delay in the notification of custody is for as short a time as possible.**[8]

Solitary confinement in pretrial detention

13. The Committee is seriously concerned at the legal framework allowing up to four weeks of solitary confinement in pretrial detention, and an even longer period for persons accused of an offence that carries a 10-year prison sentence or longer. It is also concerned at reports that solitary confinement on remand has been used for prolonged periods ranging between 9 and 33 days in 2020, and up to 37 days in 2021. In this connection, the Committee welcomes the State party's willingness to examine the legislative and procedural framework further. While taking note of the assertion by the State party's delegation that only 2 per cent of arrested persons are detained on remand and that solitary confinement is subject to a high level of scrutiny by prosecutors and judges and is employed only when strictly necessary, the Committee observes with concern that about 54 per cent – but possibly even more – of pretrial detainees were placed in solitary confinement between 2012 and 2021, and 98.77 per cent of the requests for solitary confinement on remand were granted by judges between 2016 and 2018. The Committee is particularly concerned at reports that persons with psychosocial disabilities and, on an exceptional basis, children, might be among those subjected to solitary confinement (arts. 2, 11 and 16).

14. **The State party is urged to bring its legislation and practice regarding solitary confinement into line with international standards. In particular, it should:**

(a) **Ensure that solitary confinement is used only in exceptional cases and as a last resort, based on specific grounds and an individualized determination, only when strictly necessary in the interests of criminal investigations and for the maintenance of security or order, and for as short a time as possible (no more than 15 consecutive days), and that it is accompanied by strict procedural safeguards in accordance with rules 43–46 of the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), and includes access to a defence lawyer who has full ability to effectively defend his or her client against the request for the application of such a measure;**

(b) **Observe the prohibition on imposing solitary confinement and similar measures on minors; and guarantee health screening and sufficient consideration of the health conditions of the person concerned in order to ensure that solitary confinement of persons with intellectual, psychosocial or physical disabilities is prohibited when their conditions would be exacerbated by such measures (see rule 67 of the United Nations Rules for the Protection of Juveniles Deprived of their Liberty, and rule 45 (2) of the Nelson Mandela Rules);**

(c) **Inform the Committee about the progress of any legislative review undertaken concerning solitary confinement on remand, and about its outcome, as well as about the monitoring of such process at the multisectoral level; and compile comprehensive and disaggregated data, in particular on the requests made and the**

[8] As noted by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in paragraph 17 of the report on its May 2019 visit to Iceland.

solitary confinement imposed, and on the number of pretrial detainees placed in solitary confinement as a percentage of the total number of pretrial detainees.

Conditions of detention

15. The Committee welcomes the ongoing prison reform, efforts to strengthen access to health care in prison, including medical checks upon admission, and the ongoing implementation of the action plan to improve mental health care in prisons. Nevertheless, the Committee remains concerned at reports that therapy for drug users, including harm reduction measures, and persons with intellectual or psychosocial disabilities, remains insufficient. While welcoming the 2011 amendments to the Execution of Sentences Act, which extended the application of non-custodial measures, the Committee is concerned that the amended Act does not require an individual plan to be drawn up for every sentenced prisoner.[9] In the view of the Committee, this negatively affects prisoners' development and their access to work and other activities in prisons and may hamper their subsequent full social rehabilitation (arts. 2, 11 and 16).

16. **The State party should:**

(a) **Continue promoting and effectively applying existing alternatives to detention;**

(b) **Increase access to rehabilitation and social reintegration programmes for all persons deprived of liberty and ensure in law and in practice that they participate in designing their individual sentence plan for full rehabilitation;**

(c) **Continue strengthening its ongoing efforts to increase health care in prisons, including medical checks upon admission as well as psychiatric and psychological care, and ensure, in cooperation with public health services, the continuity of medical treatment in prison, particularly for persons with drug and alcohol dependency and for persons with disabilities.**

Evidence obtained as a result of torture

17. In the absence of a separate offence of torture, the Committee regrets that the State party has taken no steps in its domestic legislation to explicitly exclude any evidence obtained as a result of torture (art. 15).

18. **The State party should amend its legislation to explicitly prohibit the use of evidence obtained through torture, except as evidence against the person accused of torture.**

Sexual and gender-based violence, including domestic violence and other forms of abuse

19. The Committee welcomes several legislative steps taken by the State party, including the amendments to the General Penal Code, as well as progress made at the policy and institutional levels to prevent and combat sexual and gender-based violence, protect victims and afford them access to medical services, shelter, counselling and other support, also during the coronavirus disease (COVID-19) pandemic. The Committee notes the State party's information concerning the higher number of reported cases of sexual and gender-based violence, and the increased funding provided to the police districts to strengthen investigations and prosecutions of sexual offences and to develop a digital plan in the police records system. Nevertheless, it remains concerned at the following reported shortcomings:

(a) The number of cases of domestic and sexual violence, including rape, remains high, including with respect to children, migrant women, women and girls with disabilities and women from minority backgrounds,[10] and the number of prosecutions, in view of the number of reported incidents, seems limited. The number of dismissals of charges in cases

[9] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment report on its May 2019 visit to Iceland, para. 23.

[10] CERD/C/ISL/CO/21-23, paras. 21–22.

of rape and other sexual violence remains high, and information on in-depth analysis of the high number of acquittals, for example in sexual violence cases, is lacking.[11] The Committee also regrets the lack of the latest statistics on the prosecuted cases of all forms of gender-based violence, and their outcomes, and information on victims' redress;

(b) While taking note of the efforts made by the State party to deal with gender-based violence and sexual harassment against women police officers while on duty, noting that 24 cases were reported between 2014 and 2020 to the professional council of the National Police Commissioner, the Committee regrets the lack of information on the remedial action taken. However, it welcomes the planned research to examine the work culture within the police (arts. 2 and 16).

20. **The State party should:**

(a) **Strengthen its ongoing efforts to ensure that all cases of sexual and gender-based violence, especially those involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately, and that the victims receive redress, including adequate compensation and rehabilitation services;**

(b) **Compile and provide the Committee with statistical data, disaggregated by the age and ethnicity or nationality of the victims, on the number of complaints, investigations, prosecutions, and convictions and sentences recorded in cases of sexual and gender-based violence, as well as on the measures adopted to ensure that victims have access to effective remedies and reparation, and monitor the effectiveness of complaints mechanisms, including the follow-up to reported incidents;**

(c) **Inform the Committee about the remedial actions taken to tackle gender-based violence and sexual harassment within the police force and about any progress made with respect to the work culture therein;**

(d) **Continue to provide mandatory training on the prosecution of sexual and gender-based violence and methods of interviewing the victims, to all justice officials and law enforcement personnel, as well as training to social and medical professionals on how to identify indications of trafficking and protect effectively victims of sexual and gender-based violence, and continue awareness-raising campaigns on all forms of violence against women.**

Trafficking in human beings

21. The Committee welcomes the State party's ongoing efforts and multisectoral approach to tackle human trafficking, and the statement by the State party's delegation about the 2021 amendments to the General Penal Code aimed at increasing judicial protection of trafficking victims. It looks forward to receiving the full wording of new provisions concerning the legal definition of trafficking in human beings, covering all types of exploitation for all purposes, in line with the State party's other international obligations. While noting the strengthened safeguards in the labour market, the Committee is concerned at reports that further protection of migrant workers against exploitation is needed.[12] The Committee also notes with concern the mere handful of prosecuted cases concerning the offence of trafficking compared to the number of potential cases that have been reported[13] during the reporting period (arts. 2 and 16).

22. **The State party should:**

(a) **Allocate sufficient funding for action aimed at preventing and combating trafficking, and monitor its implementation and evaluate the results;**

[11] CEDAW/C/ISL/CO/7-8, paras. 19–20.
[12] CERD/C/ISL/CO/21-23, paras. 19–20.
[13] CERD/C/ISL/CO/21-23, paras. 17–18.

(b) **Confirm that the recent legislative changes made to the General Penal Code contain a legal definition of trafficking in human beings that properly covers all forms of exploitation, including slavery, slavery-like practices and servitude;**

(c) **Continue to strengthen the criteria for evaluating the vulnerability of a person subjected to human trafficking, and ensure that cases of human trafficking in its various forms are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective protection and redress, including fair and adequate compensation, and as full rehabilitation as possible;**

(d) **Continue to provide specialized training to law enforcement officials, border guards, immigration officials, prosecutors, labour inspectors, medical professionals and other relevant actors on detecting and identifying victims of trafficking in persons, with a specific focus on persons in vulnerable circumstances;**

(e) **Keep conducting national prevention campaigns exposing the criminal nature of human trafficking.**

National human rights institution

23. The Committee regrets the State party's long delay in complying with its commitment made already during the 2016 universal periodic review,[14] but takes note of the information provided by the State party on the creation of a working group in 2021 with the aim of establishing an independent national human rights institution and making a plan to present the bill to that effect in 2023 (art. 2).

24. **Recalling its previous recommendation,[15] the State party should expedite its ongoing efforts with a view to establishing a national human rights institution with a broad human rights protection mandate and adequate human and financial resources, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).**

Althing Ombudsman as the national preventive mechanism

25. The Committee is concerned at the Althing Ombudsman's reportedly limited staffing, which restricts it in carrying out its mandate as the national preventive mechanism fully, including in undertaking the frequent visits and follow-up visits regularly. The Committee appreciates the information provided on the steps taken by the State party to implement several recommendations made by the Althing Ombudsman in its capacity as the national preventive mechanism following its monitoring visits, and expects further information on the implementation of all its recommendations. In addition to its preventive mandate, the Committee notes the Althing Ombudsman's competence to receive individual complaints, but regrets the lack of further details on the follow-up to such complaints, including their outcome (arts. 2 and 11).

26. **The Committee recommends that the State party continue its ongoing efforts to strengthen the Althing Ombudsman, including sufficient human resources as requested by it, to enable it to fully implement its mandate in accordance with the Optional Protocol to the Convention, notably to ensure proper follow-ups to visits undertaken to places of deprivation of liberty. It should also continue ensuring that the Althing Ombudsman's recommendations resulting from its visits as the national preventive mechanism are implemented. Furthermore, it should ensure that individual complaints received by the Althing Ombudsman and referred to national authorities are properly addressed, that victims obtain redress and compensation, including medical and psychosocial rehabilitation, and that a register of all complaints received and acted upon, including their outcome, is kept.**

[14] A/HRC/34/7, paras. 115.26–115.40; and CERD/C/ISL/CO/21-23, paras. 11–12.
[15] CAT/C/ISL/CO/3, para. 6.

Psychiatric establishments and involuntary hospitalizations

27. While the Committee notes the ongoing revision of the Patient Rights Act, with the pending bill providing a clearer legal framework and legal safeguards for secure custody and care, as well as the planned review of the Act of Legal Competence, it regrets the existing shortcomings in legal safeguards concerning involuntary hospitalizations, as observed by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.[16] Issues of concern include the following: The Act still provides for compulsory deprivation of legal competence in the case of an extension of involuntary hospitalization beyond the 12 weeks originally ordered by a court. The initial placement and continuation of involuntary hospitalization of civil and forensic patients lacks proper criteria of absolute necessity. Automatic judicial review at regular intervals is not required with respect to the need to continue hospitalization concerning involuntary placement for an unspecified period (or a placement that exceeds six months). The Committee is also concerned at reports that the patients in some psychiatric establishments lack access to daily outdoor exercise and that use of the police to manage distressed patients is not sufficiently regulated (arts. 2, 11 and 16).

28. **The State party is urged to:**

(a) **Continue its ongoing legislative reforms, and in particular step up its efforts to revise legislation regulating involuntary hospitalization, from the initial placement to its continuation, so as to include specific criteria, safeguards and additional medical opinions to comply with the absolute necessity principle when depriving a person of their liberty, and subject such placement orders to judicial review at all times;**

(b) **Embark on its plan to reform the psychiatric establishments and increase its efforts in providing therapeutic and rehabilitation activities to patients and in developing psychiatric community care;**

(c) **Strictly limit the use of the police in dealing with patients in psychiatric establishments and ensure that all medical and non-medical staff continue to be regularly trained on de-escalation measures and methods of non-violent and non-coercive care.**

Excessive use of force and the police supervisory committee

29. The Committee takes note of the information provided by the State party that the police supervisory committee dealt with 30 cases of alleged ill-treatment between 2017 and 2019. It observes that most allegations concerned excessive use of force by police during arrests. The Committee is concerned at the low number of prosecutions: out of the 30 above-mentioned cases, charges were brought in 2 cases and 5 cases were sent to the relevant police commissioner for internal follow-up. Moreover, the Committee regrets that the State party has not presented information on complaints registered since 2019, on cases referred and their outcome, and on the impossibility of disaggregating the available data by type of offence, including torture, owing to the legislative loophole identified in paragraphs 9–10 above (arts. 2, 12–13 and 16).

30. **The State party should:**

(a) **Ensure that all allegations of excessive use of force by law enforcement officials are investigated promptly, thoroughly and impartially, that alleged perpetrators are duly tried and, if found guilty, punished in a manner commensurate with the gravity of their acts, and that victims are provided with adequate redress;**

(b) **Ensure that in cases of excessive use of force, the suspected perpetrators are suspended from duty immediately and for the duration of the investigation, with the presumption of their innocence observed, particularly when there is a risk that they**

[16] European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment report on its May 2019 visit to Iceland, paras. 62–68.

might otherwise be in a position to repeat the alleged act, commit reprisals against the alleged victim or obstruct the investigation;

(c) **Continue its efforts to systematically provide training to all law enforcement officials on the use of force, especially on preventing and minimizing violence during arrest, taking also due account of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;**

(c) **Compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports received of excessive use of force, including information as to whether such complaints led to investigations, and if so, by which authority, whether the investigation resulted in the imposition of disciplinary measures or prosecutions and whether the victims obtained redress.**

Safeguards against non-refoulement

31. The Committee notes the comprehensive revision of the Foreign Nationals Act, concluded in 2016, and the establishment of the administrative Immigration and Asylum Appeals Board in 2015, which reviews the decisions of the Directorate of Immigration. It also notes the State party's increased rate of cases of international protection (in 2021, it granted protection in respect of 354 out of 872 applications). However, the Committee is concerned at reports that the appeals procedure before the Board has, in general, a suspensive effect, except as regards applications from "safe" countries of origin that are considered manifestly unfounded. Subsequent court proceedings have no automatic suspensive effect. The Board can grant such suspension for reasons "deemed justified", which seems to be left to its discretion, and is considered only upon request of the applicant made within a short deadline and following a specific procedure. In addition, the pending draft legislative proposal to amend the Foreign Nationals Act reportedly maintains a short five-day deadline for appeals concerning cases from "safe" countries of origin deemed manifestly unfounded (arts. 2–3 and 12–13).

32. **The State party should:**

(a) **Ensure that the non-refoulement principle enshrined in article 42 of the Foreign Nationals Act is applied with full respect for the principle of non-refoulement enshrined in article 3 of the Convention and that any forthcoming legislative amendments fully respect this principle;**

(b) **Guarantee that all foreign nationals at risk of deportation, including those from "safe" countries of origin, have access to fair procedures, notably a detailed and thorough interview to assess the risk that they may be subjected to torture and ill-treatment in their country of origin in view of their individual circumstances;**

(c) **Ensure that persons at risk of deportation are able to seek an individual judicial review of the deportation order and that doing so has suspensive effect;**

(d) **Ensure rapid and appropriate identification of persons in a vulnerable situation, including survivors of torture and ill-treatment, and of sexual and gender-based violence, and provide them with adequate access to health-care and psychological services;**

(e) **Provide information on cases relating to non-refoulement of possible victims of torture that the Immigration and Asylum Appeals Board has considered since its establishment, on the number of cases submitted and the number decided, on the case outcomes, including the number of cases resulting in deportation, on successful claims that led to the reversal of a deportation order, and on the number of appeals and the outcomes of those appeals.**

Asylum-seeking children

33. While acknowledging the low number of unaccompanied asylum-seeking children (10 in 2022 and 16 in 2021), the Committee is concerned at information received regarding their situation in a designated reception facility (Baejarhraun), administered by the Directorate of Immigration, where they are hosted before their placement with a foster family or at a

reception centre for adults. It is noted that the child protection authorities are responsible for their care in this facility, but reports suggest that this facility is unfit for children, as it lacks child-friendly spaces or areas for recreation, and clear safety procedures, and does not fully respond to children's needs (arts. 11 and 16).

34. **The State party should adopt a holistic approach to the reception of unaccompanied child asylum seekers and ensure adequate reception and care arrangements, including safe and suitable accommodation adapted to their needs, and should guarantee proper health-care, educational and psychosocial support. It should also monitor the conditions and needs of children in the reception centres regularly.**

Follow-up procedure

35. The Committee requests the State party to provide, by 13 May 2023, information on follow-up to the Committee's recommendations on solitary confinement in pretrial detention, sexual and gender-based violence, and safeguards against non-refoulement, as contained in paragraphs 14 (c), 20 (a) and 32 (a) respectively of the present document.

Other issues

36. The Committee invites the State party to consider ratifying the United Nations human rights treaties to which it is not yet party, namely the International Convention for the Protection of All Persons from Enforced Disappearance and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

37. The State party is requested to widely disseminate the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

38. The Committee requests the State party to submit its next periodic report, which will be its fifth, by 13 May 2026. To that end, and in view of the fact that the State party has agreed to report to the Committee under the simplified reporting procedure, the Committee will, in due course, transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its fifth periodic report under article 19 of the Convention.

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“WAKING UP TO NOTHING”

HARMFUL AND UNJUSTIFIED USE OF PRE-TRIAL SOLITARY CONFINEMENT IN ICELAND

Amnesty International’s research evidences an abusive use of solitary confinement in pre-trial detention in Iceland. The report is based on extensive desk research as well as interviews with relevant experts from across the justice system and people subjected to solitary confinement. The findings show that, contrary to the international prohibition on torture and other ill treatment, it is evident that Iceland routinely applies solitary confinement for prolonged periods and even to people with pre-existing vulnerabilities, such as children and people with disabilities that would be exacerbated by solitary confinement.

The report further demonstrates the lack of adequate safeguards to guarantee that rights are protected. The main justification put forward by the authorities for the use of solitary confinement is for the ‘protection of the investigation’. However, solitary confinement, as it is defined in international law, is not ever necessary and proportionate if used solely to prevent interference with, or protect the integrity of, a police investigation. Although it is hard to determine if solitary confinement is used deliberately to apply pressure, the report shows that it does in practice create a *de facto* situation of pressure.

Amnesty International welcomes the government’s stated intention to reform the legal framework and makes recommendations for the urgent review of the current safeguards for the use of solitary confinement in line with its international and national legal obligations to respect, protect and uphold human rights and help put an end to Iceland’s harmful reliance on pre-trial solitary confinement.

INDEX: EUR 28/6373/2023
ORIGINAL LANGUAGE: ENGLISH

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