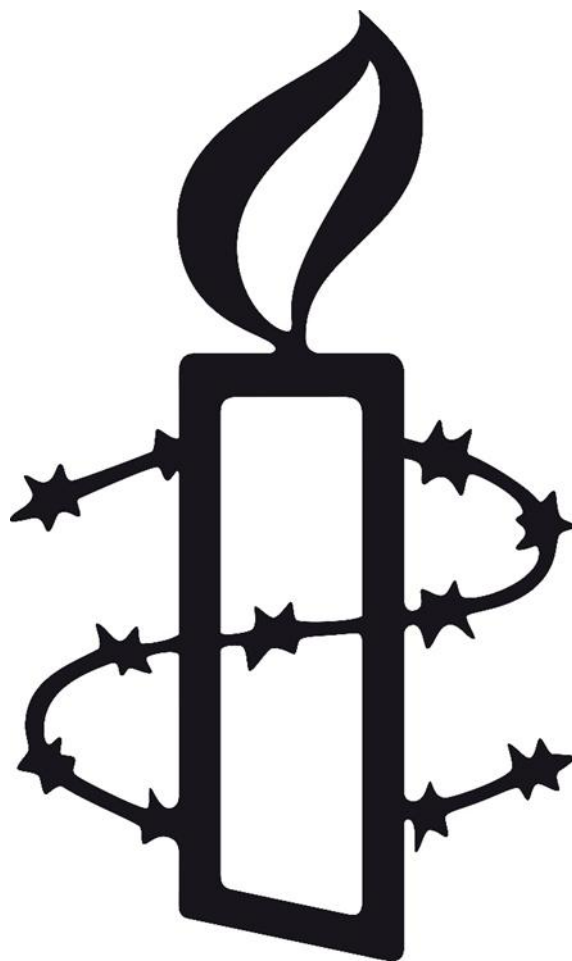


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This submission has been prepared in advance of the review of Iceland's 6th periodic on the implementation of the International Covenant on Civil and Political Rights by the UN Human Rights Committee in October 2024.

In particular, the submission provides information about harmful and unjustified use of pre-trial solitary confinement, failure to ensure fair trial guarantees in applications for solitary confinement in pre-trial detention, possible disproportionality in the application of solitary confinement in pre-trial detention to foreign nationals and increased use of force and surveillance by law enforcement officials.

1. INTRODUCTION

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2. HARMFUL AND UNJUSTIFIED USE OF PRE-TRIAL SOLITARY CONFINEMENT (ARTS. 7 AND 9)

The Icelandic Constitution includes provisions prohibiting torture and other 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.¹

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 the government's account of the safeguards in place to ensure it is only used when necessary.²

Amnesty International set out its concerns about the use of solitary confinement in the context of pre-trial detention in Iceland, in its report *"Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement*, which was published on 31 January, 2023. The report was based on in-depth desk and field research by Amnesty International conducted in 2021 and 2022.

Amnesty International's report shows how Iceland is vastly overusing solitary confinement in pre-trial detention, violating the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment, with grave consequences for people in detention and for their right to a fair trial. The report further 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.³

In 2023, 58% of remand detainees were placed in solitary confinement for an average of 8.2 days. In the previous twelve years, 1091 individual got a court order for solitary confinement in pre-trial detention and 120 individuals were subjected to 'prolonged solitary confinement' for longer than 15 days, violating the international prohibition of torture and other cruel, inhuman or degrading treatment or punishment ('other ill-treatment').⁴

In 2023 The Ministry of Justice stated that "it is working on a law proposal concerning amendments to the provisions on remand prison and solitary confinement in the Code of Criminal Procedure no.

¹ 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.

² 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.

³ Amnesty International, *"Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.6

⁴ Analysis by Amnesty International of data provided by the PPA on 27 January 2021, updated on 8 March 2022 and 8th of March 2024. 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.

88/2008. It is expected that an amendment legislation will be put forth to the Parliament before the end of 2023. During this work, the ministry will consider the concerns and recommendations set out in this report, in particular regarding “persons under 18 years old and persons who are mentally sick.”⁵

No such amendment legislation has been put forth to the Parliament to this date. Amnesty International been made aware of the ongoing work of a working group within the ministry whose purpose it is to make amendments in legislation related to pre-trial detention, but it is still unknown what those entails. In the meantime, harmful and unjustified use of solitary confinement in pre-trial detention continues.

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.⁶ Other human rights bodies call for its use to be reduced to an absolute minimum⁷ and for alternative measures to be adopted.⁸ Where it is used, solitary confinement must be justified in each individual case, based on sufficient evidence.⁹ 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.¹⁰

Depending on the specific reason for its application, conditions, length, effects and other circumstances, solitary confinement can constitute torture or other ill-treatment. 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,¹¹ for children and for pregnant women, or those with young children.¹² 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.¹³ As per international standards, prolonged solitary confinement (where it lasts more than 15 days) always amounts to torture or other ill-treatment and must be absolutely prohibited.¹⁴

Children

The Code of Criminal Procedure (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). For children, an alternative to prison custody is placement at the Studlar “treatment centre” run by children’s services.

However, contrary to international human rights law,¹⁵ the Icelandic legal framework does not prevent the imposition of solitary confinement on children and Amnesty International learned that there are

⁵ Committee against Torture, *Information received from Iceland on follow-up to the concluding observations on its fourth periodic report*, 31 May 2023, UN Doc. CAT/C/ISL/FCO/4, para. 2-3, <https://digitallibrary.un.org/record/4016122?v=pdf#files>

⁶ 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.

⁷ Council of Europe, 21st General Report, para. 53.

⁸ UN Special Rapporteur on Torture, 2011 Report, para. 85.

⁹ UN Special Rapporteur on Torture, 2011 Report, para. 85. Council of Europe, 21st General Report, (previously cited), para. 56(a).

¹⁰ UN Special Rapporteur on Torture, 2011 Report, para. 73.

¹¹ 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.

¹² UN Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), A/RES/65/229, Rule 22.

¹³ Amnesty International, *Waking up to nothing” Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.12.

¹⁴ UN, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 45(2).

¹⁵ 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).

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.¹⁶

Data obtained from the Prison and Probation Administration (PPA) shows that between 2012 and 2023, courts ordered solitary confinement in pre-trial detention for 17 children aged 15–17, thereof three in a Police station (in the years 2012-2015), five at Litla Hraun prison (before Holmsheidi remand prison was established) in the year 2014. Two at Holmsheidi prison (In 2020 and 2023) and four in a treatment centre (2014-2023).

Amnesty International was not able to assess the conditions of and extent to which this solitary confinement was in fact implemented in each of these cases; however, ordering children to be placed in solitary confinement is a violation of international human rights law.

Health and disability

International standards prohibit the application of solitary confinement to anyone whose health or disability might be exacerbated by it.¹⁷ 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.¹⁸

The report shows that there is an absence of any effective process for ensuring that people with mental or physical disabilities whose conditions would be exacerbated by solitary confinement are not subjected to it. There is no routine health screening of detainees in police custody by healthcare professionals. Indeed, Amnesty International found a worrying degree of confusion about whose responsibility it would be to raise health concerns: most interviewees considered it was someone else's responsibility. The report found that judges fail to adequately scrutinize police prosecutors' applications and do not raise questions that would clarify any health issues or disabilities before imposing solitary confinement.¹⁹ In fact, interviews conducted during the research identified numerous cases and accounts of people with mental health conditions, neurodiverse conditions and disabilities being placed in solitary confinement.²⁰

Prolonged solitary confinement

According to international human rights standards, prolonged solitary confinement constitutes ill treatment.²¹

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 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. Judges are frequently called on to extend the period of solitary confinement with a

¹⁶ Amnesty International, *"Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement*, 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.56

¹⁷ UN, Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Rule 45(2).

¹⁸ 3 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.

¹⁹ Amnesty International, *"Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement*, 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.41

²⁰ Interviews in person with lawyers, 26, 27, 29 April and 13 May and by video call on 1 June and 12 July 2022

²¹ Nelson Mandela Rules, Rule 45(2).

follow-up ruling, leading to continuous periods of solitary confinement that meet the international threshold for prolonged solitary confinement (that is, over 15 days) in a number of cases.²²

As per data from the Prison and Probation Administration, over a 10-year period (2012–2023) 120 people were subjected to prolonged solitary confinement in Iceland and there is no reduction evident in recent years with nine individuals subjected to it in 2023.²³

Lack of procedural safeguards

Failure to justify the necessity and proportionality of solitary confinement

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.²⁴

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).

All of the cases of solitary confinement in pre-trial detention documented in Amnesty International's report were justified on the grounds of an alleged need to protect the interests of the investigation (CCP, Article 95 a).

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.**²⁵

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.²⁶ In such circumstances solitary confinement violates the prohibition of torture or other cruel, inhuman or degrading treatment or punishment.

²² Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.43

²³ Analysis by Amnesty International of data provided by the PPA on 27 January 2021, updated on 8 March 2022 and 8th of March 2024. In 2023: 9 individuals, 2022: 12 individuals, 2021: 2 individuals, 2020: 6 individuals, 2019: 8 individuals.

²⁴ Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.64-65.

²⁵ Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.33

²⁶ Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.63

Since 2008, Icelandic legislation has required a court order to impose solitary confinement²⁷ on pretrial detainees. Under the 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.²⁸ 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.

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.²⁹ Amnesty International's report suggests little has changed since 2018.

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.³⁰

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. Amnesty International interviewed five current and former judges from district, appeals and the supreme courts for its report. It was striking how little explanation judges interviewed for the report 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.³¹

Lawyers and a person in detention even described cases to Amnesty's researchers where suspects had already confessed to the crime under investigation or were cooperating with the police investigation. 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. In these scenarios it is hard to imagine what justification there could be for imposing solitary confinement for investigative purposes.³²

Blanket approach unjustified restrictions and failure to consider alternatives

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.³³ This principle is a crucial safeguard against ill-treatment. International human rights bodies 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.”³⁴

²⁷ 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”.

²⁸ 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: “sibrotagæsla”); 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.

²⁹ 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.

³⁰ Interview in person with lawyer, 26 April 2022.

³¹ Interviews in person with judges and lawyers, 25-26 April 2022.

³² Amnesty International, *Waking up to nothing” Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.34 and 40

³³ See for example: “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.

³⁴ Council of Europe, 21st General Report, (previously cited), para. 41.

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.”³⁵

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).³⁶

In practice all the restrictions apply to pre-trial detainees in solitary confinement, even though there is nothing in the law to suggest that all restrictions need to be added to an order of solitary confinement

Amnesty International’s research shows that pre-trial detainees in solitary confinement spend 23 hours a day alone in their cells and up to one hour outside at Holmsheidi prison. 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 people in solitary confinement could ask to see a doctor, priest or their lawyer and that people in solitary confinement were not allowed to make phone calls other than to their lawyer.³⁷

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).³⁸ 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.

The routine acceptance of solitary confinement applications by judges, almost without exception, means less restrictive alternatives have likely not been sufficiently considered.³⁹ In fact, 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.⁴⁰

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 measures that could be used to ensure

³⁵ Prison and Probation Administration website, <https://www.fangelsi.is/afplanun/gaelsluvardhald/> (accessed 19 October 2022), “Gæsluvarðhald”.

³⁶ “About Article 99” paragraph 3, Explanatory note to the Code of Criminal Procedure <https://www.althingi.is/altext/135/s/0252.html>

³⁷ Amnesty International, *Waking up to nothing” Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.24

³⁸ 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.

³⁹ Amnesty International, *Waking up to nothing” Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.40

⁴⁰ Researchers sent a list of questions to the prosecution division of the Metropolitan Police in Reykjavík 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. The data covers 16 separate police cases involving a total of 31 individuals. 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.

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. Few lawyers, judges and prosecutors interviewed were able to identify how an application for solitary confinement would be justified over and above the general justification for remand custody (which could even be met through other, less restrictive measures).⁴¹

Failure to consider solitary confinement for the shortest possible period and safeguard against the inherent risk of coercion and pressure

The CPT has suggested that pre-trial solitary confinement should be reviewed on a frequent basis to ensure there is a continuing need;⁴² 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."⁴³

Amnesty International's research shows that it is not clear that the review process for pre-trial solitary confinement 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.

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, that is, before the date ordered by the court, and 2021 case data from the Metropolitan Police prosecution division demonstrate this does happen.⁴⁴

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.⁴⁵

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.

International human rights bodies have said 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.⁴⁶

⁴¹ Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.33 and 37

⁴² Council of Europe, 21st General Report, (previously cited), para. 57(a)

⁴³ "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.

⁴⁴ Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.43

⁴⁵ Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.43

⁴⁶ UN Special Rapporteur on Torture, 2011 Report, para. 73.

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.⁴⁷

Recommendations

Amnesty International's report contains an exhaustive list of recommendations to end Iceland's harmful reliance on solitary confinement and ensure consistency with international human rights law, which includes:

- 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);
- 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.
- 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 and;
 - Ensuring progressively more stringent justification is required as the time in solitary confinement progresses.

⁴⁷ Amnesty International, *Waking up to nothing" Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/> , p.55

3. FAILURE TO ENSURE FAIR TRIAL GUARANTEES IN APPLICATIONS FOR SOLITARY CONFINEMENT IN PRE-TRIAL DETENTION (ART.14)

Amnesty International is concerned that aspects of the judicial process fall short of international law and standards on fair trials.⁴⁸

The custody hearing

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 regarding applications for solitary confinement in pre-trial detention 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.⁴⁹

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,⁵⁰ contrary to CPT guidance that custody hearings should be “made in open court.”⁵¹** 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.

Equality of arms

All the lawyers Amnesty International spoke with who worked with people who had experienced solitary confinement, were universally critical of the judicial process and their ability to effectively challenge a request for solitary confinement on behalf of their clients.

The lawyers said that, for the most part, they receive the prosecutor’s application for solitary confinement only minutes before the hearing. 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.⁵²

⁴⁸ Amnesty International, Fair Trial Manual: Second Edition, 9 April 2014, <https://www.amnesty.org/en/documents/pol30/002/2014/en/>

⁴⁹ Amnesty International, *Waking up to nothing” Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.46

⁵⁰ 7 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.

⁵¹ Council of Europe, 21st General Report, (previously cited), para. 57.

⁵² Amnesty International, *Waking up to nothing” Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.50

The right to a public and reasoned judgement

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.⁵³ 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.”⁵⁴

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. Applications that set out the justification for solitary confinement in detail or with specific reasoning were seen as an exception to the rule and judges rarely questioned the grounds for solitary confinement. 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 a different view: “Usually they are not very extensively reasoned as you can’t give too much away.” Rulings from district court custody hearings are not published⁵⁵ but do get published by the appeal court as part of its ruling.⁵⁶ 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.

Recommendations

Amnesty International’s report contains an exhaustive list of recommendations to end Iceland’s harmful reliance on solitary confinement and ensure consistency with international human rights law, which includes:

- 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
- 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.⁵⁷

4. POSSIBLE DISPROPORTIONALITY IN THE APPLICATION OF SOLITARY CONFINEMENT IN

⁵³ 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.

⁵⁴ Council of Europe, 26th General Report, (previously cited), para. 63.

⁵⁵ 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).

⁵⁶ 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”.

⁵⁷ 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.

PRE-TRIAL DETENTION TO FOREIGN NATIONALS (ART. 26)

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 justice⁵⁸ and should underpin efforts to prevent torture and other ill-treatment against individuals belonging to any marginalized group at particular risk.⁵⁹

Data obtained from PPA show that a high and rising proportion of those held in pre-trial solitary confinement are foreign nationals, ranging from 31% in 2012, 53% in 2019, 57% in 2021 to 76,26% in 2023.⁶⁰

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 2019.⁶¹ It is also considerably higher than the number of foreign nationals in the Icelandic population which, as last reported, was 16,6% of the population.⁶²

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.

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.⁶³ As a result, there appears to be no data that would allow analysis of the profile of detainees by ethnicity. 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.”⁶⁴

Recommendations

Amnesty International’s report contains an exhaustive list of recommendations to end Iceland’s harmful reliance on solitary confinement and ensure consistency with international human rights law, which includes:

- Develop further research to interrogate current practice and guide future changes that includes:

⁵⁸ 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.

⁵⁹ 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.

⁶⁰ Amnesty International, *Waking up to nothing” Harmful and unjustified use of pre-trial solitary confinement* (index: EUR 28/6373/2023), 31 January 2023, <https://www.amnesty.org/en/documents/eur28/6373/2023/en/>, p.18 and data provided by the PPA, updated on 8 March 2022 and 8th of March 2024.

⁶¹ 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

⁶² Statistic Iceland, Erlendir ríkisborgarar 1950–2021, accessed 14 August 2024, https://px.hagstofa.is/pxis/pxweb/is/lbuar/lbuar___mannfjoldi__3_bakgrunnur__Rikisfang/MAN04001.px/table/tableViewLayout1/?rxid=9e668b58-412a-4a32-8db2-f8bd83ae9c36

⁶³ “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>

⁶⁴ 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.

- 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.

5. USE OF FORCE BY LAW ENFORCEMENT OFFICIALS (ARTS. 18, 19 AND 21)

Amnesty International remains concerned about a new regulation that now permits the use of projectile electric shock devices and other less-lethal weapons. A new regulation permitting the use of projectile electric shock devices came into force in January 2023. Amnesty International Iceland voiced their concerns repeatedly before the new rules came into force, urging the authorities to not allow the use of projectile electric shock devices in law enforcement work in Iceland before a detailed and independent investigation into the potential human rights impact of the use of the devices and their effects as per the new rules had been carried out.

To date, no information or guidelines on how law enforcement is trained to use these devices, or safeguards for their use have been made accessible for review of civil society organisations. Due to the human rights concerns associated with projectile electric shock devices, including their lethal use, Amnesty International has grave concerns that adequate measures have not been put in place to ensure that electric shock devices are only used in a manner consistent with human rights law, and in situations involving a threat to life or of serious injury where no less harmful alternatives are available.

Recommendation:

Amnesty International recommends that the state:

Suspend the rules permitting the use of projectile electric shock devices until information is published on the training of law enforcement and what measures have been put in place to ensure that projectile electric shock devices are only used in circumstances consistent with human rights law.

6. COMMUNICATIONS SURVEILLANCE - INCREASED SURVEILLANCE (ART. 17)

In February 2024, the government introduced a bill titled Law on amendments to the Police Act No. 90/1996 (Crime Prevention, Carrying of Weapons and Surveillance of the Police) that impacted the right to privacy. Under the Bill, the police are given broad powers to monitor individuals who are not suspected of crimes.

The Bill includes provisions that allow the police to use surveillance in certain circumstances, even where people are not suspected of a crime, on the grounds that surveillance may help prevent crime. Although the purpose of the proposed authorization for surveillance is to prevent crime, the risk of misuse of such broad powers is high. It is unclear on what criteria surveillance is authorized and how decisions around the urgency and necessity of when to authorize surveillance are made.

The Bill further proposes that an independent administrative committee supervise police actions. Despite the administrative committee being described as independent it is supervised by the same ministry as the police. Amnesty International is concerned that there is a risk that measures to supervise police actions will not be adequate if the supervision is conducted by a body that is ultimately under the jurisdiction of the same ministry as the police is.

Technology can and should play an important role in the actions of states to save lives and foster the safety of their populations. Increasing the state's powers of surveillance can, however, threaten privacy, freedom of expression and freedom of association in such a way that it can violate human rights and undermine trust in the authorities and thus even undermine the impact of the authorities' response to public safety. Such measures also carry the risk of discrimination and may harm marginalized groups more than others.

Recommendation:

Amnesty International recommends that the state:

- Provisions granting the police powers to use surveillance in the Law on amendments to the Police Act No. 90/1996 (Crime Prevention, Carrying of Weapons and Surveillance of the Police) bill are revised to ensure they are in line with international human rights law. The use of these powers is monitored by an independent institution, to ensure that it functions as an effective safeguard.

Amnesty International is a movement of 10 million people which mobilizes the humanity in everyone and campaigns for change so we can all enjoy our human rights. Our vision is of a world where those in power keep their promises, respect international law and are held to account. We are independent of any government, political ideology, economic

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