

Dear UN Subcommittee on the Prevention of Torture,

Circle Green Community Legal is a not-for-profit NGO which provides advice and assistance to people who are culturally and linguistically diverse, who have recently arrived in Western Australia, have limited financial capacity, and are disadvantaged in their access to justice.

As an organisation that provides legal assistance to people who experienced torture and operates a weekly detention advice line, we regularly hear and see stories of people that currently are, or previously were, deprived of their liberty. For this reason, we are welcoming the SPT's General Comment on Article 4 of OPCAT.

We regret that a comment to clarify the application of Article 4 OPCAT is even necessary, as in our opinion the language used in OPCAT is clear and comprehensive enough to understand what places of deprivation of liberty are covered by OPCAT. As an organisation we strongly support a definition of places of detention that covers all public and private settings in which people are not at liberty to leave, in accordance with the state of International Law.

We understand that the Australian Government, however, is adopting a too restrictive understanding of places of detention for the application of OPCAT. Our understanding relies on information indicating that the Australian Government is using the terminology 'primary places of detention' for the application of OPCAT, even though this terminology is not used in OPCAT, and the Protocol knowingly does not allow for any reservations by State Parties in the application of the Protocol.

In a public speech after Australia's ratification of OPCAT, the Commonwealth Ombudsman, who acts as NPM Coordinator within Australia, has listed the places of detention that the Australian Government considers as 'primary' in the context of the implementation of OPCAT. These are prisons, juvenile detention, police cells, closed psychiatric institutions and (onshore) immigration facilities.

For this reason, we especially welcome the clarification in paragraph 11 of the comment, stating that places of detention should be interpreted as any place in which persons are deprived of their liberty, in the sense of not being free to leave.

Further, we appreciate the reminder in paragraph 9 of the comment about State Parties' obligations to interpret OPCAT in good faith, as well as the non-exhaustive list of examples of places of detention provided in paragraph 36 and 38 of the comment.

Another important concern for Circle Green Community Legal is that according to the Australian Human Rights Commission, the Australian Government considers offshore immigration detention facilities as not covered by OPCAT. In light of the known human rights violations occurring in Australia's offshore immigration detention facilities on Nauru and Papua New Guinea, this is especially problematic.

Therefore, we strongly support Part III. B. of the comment on the definition of jurisdiction or control for the purpose of interpreting Article 4 OPCAT. We especially appreciate paragraph 27 specifying that the understanding of “jurisdiction or control” under Article 4 includes both individuals under the jurisdiction or control of a State Party within or outside of the State Party’s territory.

We further welcome the affirmation of the prohibition of torture being a part of *jus cogens* in paragraph 24, as well as the clear and concise definition of “jurisdiction” in paragraph 26.

It is regrettable that the French version of OPCAT, as discussed in paragraph 25 of the comment, contains the more precise wording of “jurisdiction or control”, compared to the English version’s “jurisdiction and control”. However, we are convinced that with the part of the comment dedicated to the interpretation of jurisdiction and control, any misunderstandings about the application of OPCAT in that regard should be clarified.

On a more general note, we would like to express our disappointment about Australia’s non-compliance with its obligations under OPCAT, which led to the suspension of the SPT human rights experts’ visit to Australia. We are awaiting the publication of the report on what the SPT observed in Australia with great interest and would like to express our gratefulness to the SPT for making the decision to produce a report, even though the visit had to be suspended. The publication will help organisations like ours to continue advocating for a correct implementation of OPCAT by Australia.

We remain hopeful that the General Comment on Article 4 OPCAT will have a positive impact on the future implementation of the Protocol, and that more State Parties will adopt a broader interpretation regarding the applicability of OPCAT.

Yours faithfully

Circle Green Community Legal – Humanitarian

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