



University of  
**BRISTOL**

HUMAN RIGHTS IMPLEMENTATION CENTRE

31<sup>st</sup> March 2023

[Rachel.Murray@bristol.ac.uk](mailto:Rachel.Murray@bristol.ac.uk)

### **Comment on Draft general comment No. 1 on places of deprivation of liberty (article 4)**

1. The Human Rights Implementation Centre (HRIC) is based at the University of Bristol Law School. It is a leading institution for the implementation of human rights working in collaboration with organisations, both nationally and internationally.
2. We welcome the opportunity to make a submission on this Draft general comment No.1 on places of deprivation of liberty (article 4).

#### **Breadth (paragraphs 14, 36, 37 and 38)**

3. We welcome the non-exhaustive and expansive approach adopted by the SPT to defining what is a place of deprivation of liberty.
4. Whilst we appreciate the need to provide examples of what is a place of deprivation of liberty, as is done in paragraphs 14, 36, 37 and 38, the list of examples differs in each paragraph. We would recommend consistency in having one list rather than several.

#### **Reference to the African system (paragraphs 13-18)**

5. The Draft general comment notes examples from the UN, Council of Europe and Inter-American system but does not refer to the African human rights system (paragraphs 13-18). Reference could here be included to the broad interpretation by the African Commission on Human and Peoples' Rights of the right to liberty, namely as 'the right to be free. Liberty thus denotes freedom from restraint – the ability to do as one pleases, provided it is done in accordance with established law'.<sup>1</sup> It has also determined that where individuals 'were not allowed to leave voluntarily and were subsequently detained and not given reasons for the detention', that detention is arbitrary.<sup>2</sup>

---

<sup>1</sup> Communication 279/03-296/05 Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v Sudan, 27 May 2009, paragraph 172.

<sup>2</sup> Communication 379/09 Monim Elgak, Osman Hummeida and Amir Suliman (represented by FIDH and OMCT) v Sudan, 10 March 2015, paragraph 106.

### Guidance for monitors in different places of deprivation of liberty

6. Given that the SPT acknowledges the breadth of places of deprivation of liberty, we would call on the Subcommittee to provide some guidance to different considerations that may need to be taken into monitoring these different places of deprivation of liberty.

### Guidance for monitors in private places (paragraphs 15)

7. The Draft general comment reiterates throughout that Article 4 applies to private places of deprivation of liberty. Some NPMs have experience in carrying out visits and monitoring such private places and have faced challenges in fulfilling this part of their mandate, particularly where a place of deprivation of liberty could also, in some circumstances, include an individual's private home (paragraph 15). Thus, in such contexts, it may be more difficult to fulfil the OPCAT criteria, for example, by holding interviews in private.
8. Whilst, albeit in the context of the pandemic, the SPT has called upon NPMs 'to respond in imaginative and creative ways to the novel challenges they face in the exercise of their mandates related to the Optional Protocol',<sup>3</sup> we would respectfully request the SPT to use this general comment to provide some advice for NPMs on how to monitor such private settings. This could include guidance, firstly, on how to manage the breadth of places, specifically how to strategise or prioritise what potentially could be a very large number of visits vis-à-vis the other settings which it will be required to monitor. The SPT has noted that '[i]n all situations, the national preventive mechanism should also be mindful of the principle of proportionality when determining its priorities and the focus of its work',<sup>4</sup> but this does not imply priority should necessarily be given to 'traditional' places of deprivation of liberty.<sup>5</sup> The SPT should stress the obligation of states to provide the necessary resources to enable the NPM to carry out such monitoring. Secondly, it could also include information for NPMs on how to address particular challenges in monitoring private places of deprivation of liberty. These could include consideration of:
  - a. Whether it is appropriate to undertake unannounced visits and how to gain access in such settings, particularly a private home.
  - b. How to speak to individuals in private, balanced against the presence of others in these settings such as family members.
  - c. The difficulties of conducting a visit to a private home and the need for the NPM's visiting methodology, such as length of time taken for visits, and the size, skills and knowledge of the visiting team, to be adapted.
  - d. How to protect the identity and confidentiality of the individuals during and in the reporting of the visit, to ensure compliance with rights to privacy<sup>6</sup> and Article 21(2) of OPCAT.<sup>7</sup>
  - e. Encouraging NPMs to work with other authorities, including police and social services, among others, to enable access to be gained, or intelligence on the welfare of individuals to be gathered.
  - f. Encouraging NPMs to also, in the context of private settings, consider an analysis of policies and procedures as well as any complaints processes.

---

<sup>3</sup> CAT/OP/10, paragraph 14.

<sup>4</sup> CAT/OP/C/57/4

<sup>5</sup> Manfred Nowak, Moritz Birk, Giuliana Monina (eds), *The United Nations Convention Against Torture and its Optional Protocol: A Commentary* (2nd Edition, 2019), paragraph 25, available at: <https://opil.ouplaw.com/view/10.1093/law/9780198846178.001.0001/law-9780198846178-chapter-40#law-9780198846178-chapter-40-div2-256>,

<sup>6</sup> [Guide on Article 8 - Right to respect for private and family life, home and correspondence \(coe.int\)](https://www.coe.int/en/web/taar/guide-on-article-8-right-to-respect-for-private-and-family-life-home-and-correspondence), paragraph 393.

<sup>7</sup> See also, in context of Covid-19, Advice provided by the Subcommittee to the National Preventive Mechanism of the United Kingdom of Great Britain and Northern Ireland regarding compulsory quarantine for coronavirus (COVID-19 virus), CAT/OP/9, 31 March 2020.

#### Consistency (paragraphs 1, 2, 3, 4, 8, 9, 10, 11, 15, 19, 21, 24, 29, 30, 31, 36, 37, 39)

9. There are a number of paragraphs in the Draft general comment which are repetitious or where the words or phrases used are inconsistent.
10. Paragraph 1 begins with the main purpose of OPCAT as being to establish an effective mechanism of 'torture prevention'. As the first sentence in the general comment, it should be made clear that prevention should also include other forms of ill treatment, as are mentioned elsewhere in the general comment.
11. There is some repetition in the wording in paragraphs 1 and 2.
12. In paragraphs 4-13, 'broad interpretation' is mentioned several times, as is that Article 4(1) and (2) must be read together.
13. Reference is made to 'conventional places of deprivation of liberty', listing only prisons (paragraph 8), and then 'prisons and police stations' (paragraph 10, 15, 36).
14. Reference to 'any type of facility or any type of terrain (land, sea or air)', (paragraph 37), 'place, facility or setting' (paragraph 29, 30), 'settings and situations' (paragraph 4), 'place or facility' (paragraph 39), 'places and forms of deprivation of liberty' (paragraph 10 and paragraph 36). We would encourage the SPT to ensure consistency throughout the general comment.
15. There is reference to where a person 'is or may be deprived or their liberty' (paragraph 3, 11, 21, 24, 29, 30, 31), elsewhere this is sometimes simply 'may be deprived....' (paragraph 9, 15, 19), or 'are or potentially maybe deprived' (paragraph 29) and elsewhere '...in which individuals are, previously were or potentially may be deprived' (paragraph 29).
16. There is repetition in paragraph 8 'The Subcommittee has underlined that the term 'places of detention should be given a broad interpretation' with paragraph 11.