

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

Comments from the UK NPM

Submission by: UK NPM Secretariat

The UK NPM is pleased to comment on the SPT's public draft No. 1 on places of deprivation of liberty (article 4). In the UK NPM's submission of June 2021, NPM members highlighted complexities, barriers or difficulties in the implementation of OPCAT article 4 in the areas of:

- Non-regulated settings for children deprived of their liberty;
- Children detained under the Mental Health Act;
- Monitoring of private homes – Liberty Protection Safeguards;
- Schedule 7 terrorism detention;
- Hotel quarantine;
- The impact of the COVID pandemic on access to detention.

We are pleased to see these comments reflected in the draft general comment paragraphs:

- § 5 on practical difficulties of entering places of deprivation of liberty “owing to an incorrect or limited understanding by the State party of the definition of places of deprivation of liberty”.
- § 13 and 14 on the state's obligation to facilitate these visits;
- § 15, on private residences and a broad interpretation of the definition;
- § 29 detailing that the length of time of deprivation of liberty is irrelevant to the determination of such a place;
- § 31's emphasis that deprivation of liberty may also occur in situations in which the state “might be expected to exercise a regulatory function”;
- § 37's non-exhaustive list of settings of deprivation of liberty, and NPMs' lack of statutory mandate to enter some settings without consent;
- §40 clarifies that places of quarantine or isolation that a person is not free to leave also fall within the visiting mandate of NPMs.

We would like to highlight that further specification about what the state's obligation to facilitate NPM visits means for accessing private dwellings, in situations where they become settings of deprivation of liberty.

Specifically, a section of the General Comment dealing with how to approach the balance of rights to private and family life (Article 17 ICCPR, Article 8 ECHR), and to liberty and security (Article 9 ICCPR, Article 5 ECHR) and the prohibition of torture, cruel and inhuman or degrading treatment and punishment (Article 7 ICCPR, Article 3 ECHR).

Furthermore, specific clarification following §31 regarding whether voluntary police interviews can become situations of deprivation of liberty, due to the reasonable expectation of the state to exercise its statutory function, and the person might anticipate arrest if they attempt to leave. Explicit clarification that this situation fits within the scope would be helpful. In addition, a section in the General Comment detailing how this relates to state's immigration policies would be useful. For example, how it applies to people on immigration bail in hotels or former barracks, where they are technically not detained, but consequences for leaving are realistically anticipated. A non-exhaustive list, similar to that in § 37, would be helpful, relating to § 39, outlining that certain settings that do not normally constitute places of deprivation of liberty, might fall under the definition when examined in context when considering if a person is de facto able to exercise their right to leave without exposing themselves to human rights violations.