

Comments on the draft general comment of the Subcommittee on Prevention of Torture (SPT) on the article 4 of the OPCAT

Contributions From:

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Paragraphs 3:

The situations where people are deprived of their liberty should expand beyond the prevention of torture and other cruel, inhumane, or degrading punishment and include assessing the conditions as it relates to the quality of life; access to mental health, legal and interpreting services. For example, in circumstances where asylum seekers are held in prisons with the general population; they are not only deprived of their liberty but also often denied access to communications, culturally appropriate foods, and personal hygiene materials.

Paragraph 12:

Defining the public authority is essential, for example, the immigration ministry or police. This definition and distinction must be made clear and transparent, because as with the case of Canada, we see collusion and even contracts between the government border authority (Canadian Border Services Authority - CBSA) and the Provincial Correctional Services, resulting in increased detention of individuals claiming their legal right to asylum as Refugee Claimants.

Paragraphs 13-18:

Community detention or other forms of alternatives to detention that are restrictive in nature, while they do not fall in the broad definition as outlined in this draft ("Thus, the Court has established that the particular element that allows a measure to be identified as one that deprives persons of liberty is the fact that they cannot or are unable to leave or abandon at will the place or establishment where they have been placed" para. 18) they are restricted in their access to employment, services, and leaving the State. These places remain mechanisms of control, and the cumulative impact of these restrictions must be considered. Visits to these types of spaces are also warranted.

It is essential to highlight that there are no closed immigration detention environments suitable for children, and if children are detained, these places need to be closely monitored.

Also relevant is the understanding that the length of time of the deprivation of liberty is in itself cruel, inhumane and degrading treatment.

Paragraph 29:

How is this subcommittee going to make sure that these visits will happen? For example, in Canada, the only international body that enters the provincial jails is the Red Cross, and they have limited capacity to improve any quality of life conditions. Further to this are questions related to how the SPT will conduct their visits to sites where liberty is deprived. Will they inform the government and select specific facilities to inspect? If this is the case, how can they ensure they can observe the actual conditions of the prisons, not simply those presented by the government? Given the political climate in countries, for example, Afghanistan and Iran, it is possible that the Taliban and the Iranian government may manipulate the situation and conceal the actual conditions of the prisons.

Lastly, in general, VAST is curious how individuals deprived of their liberty will access these monitoring bodies to raise concerns about inhumane or degrading treatment/punishment outside of when visits occur.