



Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
4 July 2024

Original: English

Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

General comment No. 1 (2024) on article 4 of the Optional Protocol (places of deprivation of liberty)*

I. Introduction

1. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was established as a result of the conviction of the international community that further measures were necessary to achieve the purposes of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that States had the primary responsibility for implementing effective measures to prevent acts of torture and other cruel, inhuman or degrading treatment or punishment in any territory under their jurisdiction.¹ To effectively fulfil the legal obligations relating to torture prevention contained in the Optional Protocol, States parties are obliged to maintain, designate or establish national preventive mechanisms and allow regular visits by those mechanisms and by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment² to places where people are deprived of liberty.³

2. Article 4 (1) of the Optional Protocol reinforces the fundamental purpose of the Optional Protocol as a whole by defining the places that the Subcommittee and national preventive mechanisms have the mandate to visit as any place under a State party's jurisdiction or control⁴ where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. This broad definition includes not only places dedicated to the detention or custody of persons but also places where the public authority instigates or consents or acquiesces to the deprivation of liberty.

3. Article 4 (2) of the Optional Protocol defines the term "deprivation of liberty" as "any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority". This definition specifically acknowledges that deprivation of liberty may occur in both public and private settings.

* Adopted by the Subcommittee at its fifty-third session (3–7 June 2024).

¹ Optional Protocol, preamble.

² Ibid., art. 1.

³ The Optional Protocol contains references to both places where people are deprived of their liberty and places where people are or may be deprived of their liberty, which are defined in article 4. Article 4 also contains a definition of the term "deprivation of liberty". Furthermore, the Optional Protocol contains, as a short form, the term "places of detention". For purposes of consistency, the term "places of deprivation of liberty" and not "places of detention" will be used throughout the present general comment.

⁴ See paragraphs 29 to 39 below for an explanation of the use of the phrase "jurisdiction or control" in the present general comment.



4. The preventive objective of the Optional Protocol is manifest in its *travaux préparatoires* and the wording of the preamble.⁵ The understanding and practical application of article 4 by the Subcommittee⁶ and national preventive mechanisms leave no doubt that paragraphs 1 and 2 of that article should be read together. This means that the definition of places of deprivation of liberty must be understood broadly to encompass both public and private settings and situations in which there is State instigation of, or consent or acquiescence to, the deprivation of liberty.

5. However, in practice, some national preventive mechanisms have, at different times, faced difficulties or restrictions in conducting visits to some places of deprivation of liberty. In exceptional cases, these difficulties have stemmed from the national legislation; for example, when it is specified in legislation that national preventive mechanisms can only visit places where persons are deprived of their liberty by order of an administrative or judicial authority or when the legislation does not contain reference to the instigation, consent or acquiescence of the public authority. National preventive mechanisms have also informed the Subcommittee about practical difficulties in entering certain places of deprivation of liberty owing to an incorrect or limited understanding by the State party, its authorities or other relevant stakeholders of the term “place of deprivation of liberty”.

6. In addition, the Subcommittee has observed discrepancies in the places that States parties allow national preventive mechanisms and the Subcommittee to visit, with more restrictions imposed on national preventive mechanisms, notwithstanding the fact that the Optional Protocol imposes the same obligations with regard to both bodies. This is a serious obstacle to the preventive work of the national preventive mechanisms and the Subcommittee and is inconsistent with States’ obligations under the Optional Protocol. Consequently, States parties, their places of deprivation of liberty and, most importantly, persons deprived of their liberty do not benefit from that important preventive work.

7. The aim of the present general comment is to clarify and address questions that States parties, national preventive mechanisms and other stakeholders may have regarding the obligations of States parties to the Optional Protocol as they pertain to the definition of places of deprivation of liberty to enable effective and uniform interpretation and implementation of the Optional Protocol. To do this, in the general comment, the Subcommittee examines States’ obligations under article 4 of the Optional Protocol, which should be understood in the light of the object and purpose of this treaty and in line with the practice of the Subcommittee and national preventive mechanisms, keeping in mind that the Optional Protocol is a treaty designed to respond to current, emerging and future situations and challenges.

II. Comprehensive approach to defining places of deprivation of liberty

8. Consistent with the overarching preventive aim and spirit of the Optional Protocol, the Subcommittee has recommended and implemented in its practice as extensive an interpretation as possible of the term “places of deprivation of liberty” to maximize the preventive impact of its work and that of national preventive mechanisms.⁷ This is also consistent with the comprehensive approach to the term “deprivation of liberty” taken by other United Nations and regional human rights bodies.

A. Object and purpose of the Optional Protocol

9. Article 4 is central to the effective implementation of the core objective of the Optional Protocol. Any restrictive interpretation of this provision would be detrimental to the mechanism enshrined in the Optional Protocol and thus be contrary to its spirit. Therefore,

⁵ See E/CN.4/1993/28, E/CN.4/1993/28/Corr.1 and E/CN.4/1995/38.

⁶ CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, paras. 1–3.

⁷ Ibid., annex, para. 2. See also CAT/OP/POL/ROSP/1 and CAT/OP/POL/ROSP/1/Corr.1, para. 26; and CAT/OP/PRT/1, para. 25.

the Subcommittee has repeatedly underlined that the term “places of deprivation of liberty”, as contained in article 4 of the Optional Protocol, should be understood broadly. An interpretation of the term that is restricted to such conventional settings as prisons would be overly limiting and clearly contrary to the Optional Protocol.⁸

10. Moreover, a restrictive interpretation of article 4 would also violate the obligation to interpret treaties in good faith, as contained in article 31 of the Vienna Convention on the Law of Treaties. That obligation requires that all treaties be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Given that the objective of the Optional Protocol is the prevention of torture and other cruel, inhuman or degrading treatment or punishment through visits to all places of deprivation of liberty, a good faith interpretation cannot lead to a limited understanding of the term “places of deprivation of liberty” that would exclude certain places where persons are or could be deprived of their liberty.

11. Throughout its history and consistent practice, the Subcommittee has required that the term “places of deprivation of liberty” extend to any place, whether permanent or temporary, where persons are deprived of their liberty by, or at the instigation or with the consent and/or acquiescence of public authorities.⁹ It has clarified that any place in which persons are deprived of their liberty, in the sense of not being free to leave, or in which the Subcommittee considers that persons might be deprived of their liberty, should fall within the scope of the Optional Protocol, if the deprivation of liberty relates to a situation in which the State either exercises or might be expected to exercise a regulatory function.¹⁰ The Subcommittee has consistently emphasized that, pursuant to article 4 of the Optional Protocol, the State party must enable and ensure visits to any place where persons are or may be deprived of their liberty.¹¹

12. Consequently, in accordance with the comprehensive approach to the definition of the term “places of deprivation of liberty”, the Subcommittee has clearly established that the two paragraphs of article 4 must be read together,¹² as they are complementary. In other words, places of deprivation of liberty include private or public settings, as specified in paragraph 2, and deprivation of liberty includes, as specified in paragraph 1, any form of placement in a setting under the State’s jurisdiction or control that a person is not permitted to leave at will, including at the instigation or with the consent or acquiescence of a public authority.

B. Approach of other United Nations and regional human rights mechanisms

13. The approach of the Subcommittee to the definition of places of deprivation of liberty is consistent with that of other United Nations and regional human rights mechanisms and bodies. Within the United Nations human rights treaty body system, the Committee against Torture has established that a State party’s obligations to prohibit, prevent and redress torture and ill-treatment extends to all contexts of custody or control, for example, prisons, hospitals, schools and institutions that engage in the care of children, older persons or persons with disabilities, including persons with intellectual or psychosocial disabilities, military service and other institutions and contexts.¹³

14. Similarly, the Human Rights Committee has maintained that, under the International Covenant on Civil and Political Rights, the right to be treated with humanity and respect for the inherent dignity of the human person applies “to anyone deprived of liberty under the laws and authority of the State who is held in prisons, hospitals – particularly psychiatric hospitals – detention camps or correctional institutions or elsewhere”.¹⁴ The Committee,

⁸ CAT/C/50/2, para. 67.

⁹ Ibid.

¹⁰ CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 3. See also CAT/OP/POL/ROSP/1 and CAT/OP/POL/ROSP/1/Corr.1, para. 25.

¹¹ CAT/OP/PRT/1, para. 24; and CAT/OP/POL/RONPM/1, para. 28.

¹² CAT/C/57/4 and CAT/C/57/4/Corr.1, annex, para. 1.

¹³ Committee against Torture, general comment No. 2 (2007), para. 15.

¹⁴ Human Rights Committee, general comment No. 21 (1992), para. 2.

referring to the obligation to respect liberty and security of person, has established that deprivation of liberty also includes police custody, *arraigo*, remand detention, imprisonment after conviction, arrest, administrative detention, involuntary hospitalization, institutional custody of children and confinement to a restricted area of an airport, as well as involuntary transport.¹⁵

15. A broad interpretation of places of deprivation of liberty has also been adopted by the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families. For example, in line with the definition in article 4 of the Optional Protocol, these Committees have explained that immigration detention covers “any setting in which a child is deprived of his/her liberty for reasons related to his/her, or his/her parents’, migration status, regardless of the name and reason given to the action of depriving a child of his or her liberty, or the name of the facility or location where the child is deprived of liberty”.¹⁶ At a more general level, in the global study on children deprived of liberty, a broad definition of deprivation of liberty and places of deprivation of liberty is used, as set out in article 4 of Optional Protocol. In the study, places of detention are defined as extending to “all places where children may be deprived of liberty, such as prisons, police lock-ups, pretrial detention centres, military camps, social care facilities, institutions for persons with disabilities or for persons addicted to drugs or alcohol, ‘orphanages’, children’s homes, institutions for the educational supervision of children, psychiatric hospitals, mental health centres or migration detention centres”.¹⁷

16. The Committee on the Rights of Persons with Disabilities applies the principles and standards of the Convention against Torture and the Optional Protocol to the situation of persons with disabilities through articles 14 and 15 of the Convention on the Rights of Persons with Disabilities, which prohibit torture or cruel, inhuman or degrading treatment or punishment and deprivation of liberty on the basis of a disability. In this context, the Committee has found that the practice of placing persons with disabilities in residential settings without specific consent or with the consent of a substitute decision maker amounts to arbitrary deprivation of liberty.¹⁸

17. Equally, the special procedures of the Human Rights Council have developed standards regarding the definition of deprivation of liberty and places of deprivation of liberty that are consistent with the Subcommittee’s broad approach. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has emphasized that private custodial settings are also included within the meaning of the terms “deprivation of liberty” and “detention” and that, in practice, deprivation of liberty may include prisons or purpose-built detention facilities, closed reception or holding centres, shelters, guesthouses and camps, and also temporary facilities, vessels and private residences. The Special Rapporteur has been clear that the deciding factor for the qualification of a situation as “deprivation of liberty” is not the name given to a particular placement or accommodation or its categorization in national law but whether individuals are free to leave it.¹⁹

18. Similarly, the Working Group on Arbitrary Detention has recognized that there is an increasing number of new regimes of deprivation of liberty that arise in different situations and contexts around the world and that, while prisons and police stations remain the most common places in which individuals may be deprived of their liberty, there are a number of different places that individuals are not free to leave at will and that raise a question of de facto deprivation of liberty.²⁰ Emphasizing that deprivation of liberty is a question not only of legal definition but also of fact, the Working Group has underlined the importance of the

¹⁵ Human Rights Committee, general comment No. 35 (2014), para. 5.

¹⁶ Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017), para. 6.

¹⁷ [A/74/136](#), para. 18.

¹⁸ Committee on the Rights of Persons with Disabilities, general comment No. 1 (2014), para. 40.

¹⁹ [A/HRC/37/50](#), para. 17.

²⁰ [A/HRC/36/37](#), para. 52.

autonomous examination of each situation and of not being bound by the descriptions in national legislation or by the assessments of domestic authorities.²¹

19. The Independent Expert on the enjoyment of all human rights by older persons has recognized the broad definition of deprivation of liberty and places of deprivation of liberty in article 4 of the Optional Protocol and has considered three specific situations in which older persons may be deprived of their liberty and for which the State holds direct or indirect responsibility based on its obligations under international human rights law: (a) when they have committed crimes or legal offences; (b) when they have been detained because of their migration status; and (c) when they are under the control and supervision of certain institutions or caregiving arrangements, including those provided through legal guardianship by family members.²²

20. In the context of international humanitarian law, the concept of deprivation of liberty that the International Committee of the Red Cross (ICRC) uses to guide its work is likewise broad and consistent with the Subcommittee's approach.²³ ICRC defines detention as "custodial deprivation of liberty", which "refers to the deprivation of liberty caused by the act of confining a person in a narrowly bounded place, under the control or with the consent of a State, or, in non-international armed conflicts, a non-State actor".²⁴

21. A comprehensive approach to the definition of the term "places of deprivation of liberty" has also been adopted by regional human rights mechanisms. The European Court of Human Rights has held that deprivation of liberty is not confined to detention following arrest or conviction, but may take numerous other forms,²⁵ including being held in psychiatric or social care institutions,²⁶ being taken by paramedics and police officers to hospital,²⁷ confinement in airport transit zones,²⁸ confinement in land border transit zones,²⁹ placement in a police car to draw up an administrative offence report,³⁰ stops and searches by the police,³¹ not being permitted to leave during a house search,³² house arrest³³ and holding migrants in reception facilities and on ships³⁴ and asylum "hotspot" facilities.³⁵ The Court

²¹ Opinion No. 22/2020, paras. 62–65. See also [A/HRC/42/39](#), para. 54; and [A/HRC/45/16](#), annex II, para. 8.

²² [A/HRC/51/27](#), paras. 11 and 12.

²³ Optional Protocol, art. 32.

²⁴ ICRC, "Detention", A to Z glossary. Available at https://casebook.icrc.org/a_to_z.

²⁵ *Guzzardi v. Italy*, Application No. 7367/76, Judgment, 6 November 1980, para. 95.

²⁶ See *De Wilde, Ooms and Versyp v. Belgium*, Applications No. 2832/66, 2835/66 and 2899/66, Judgment, 18 June 1971; *H.L. v. the United Kingdom*, Application No. 45508/99, Judgment, 5 October 2004; *Storck v. Germany*, Application No. 61603/00, Judgment, 16 June 2005; *A. and Others v. Bulgaria*, Application No. 51776/08, Judgment, 29 November 2011; and *Stanev v. Bulgaria*, Application No. 36760/06, Judgment, 17 January 2012.

²⁷ See *Aftanache v. Romania*, Application No. 999/19, Judgment, 26 August 2020.

²⁸ See *Z.A. and Others v. Russia*, Applications No. 61411/15, 61420/15, 61427/15 and 3028/16, Judgment, 21 November 2019; *Amuur v. France*, Application No. 19776/92, Judgment, 25 June 1996; *Shamsa v. Poland*, Applications No. 45355/99 and 45357/99, Judgment, 27 February 2022; and *Riad and Idiab v. Belgium*, Applications No. 29787/03 and 29810/03, Judgment, 24 April 2008.

²⁹ See *R.R. and Others v. Hungary*, Application No. 36037/17, Judgment, 5 July 2021.

³⁰ See *Zelčs v. Latvia*, Application No. 65367/16, Judgment, 20 June 2020.

³¹ See *Foka v. Turkey*, Application No. 28940/95, Judgment, 26 January 2009; *Gillan and Quinton v. the United Kingdom*, Application No. 4158/05, Judgment, 28 June 2010; and *Shimovolos v. Russia*, Application No. 30194/09, Judgment, 28 November 2011.

³² See *Stănculeanu v. Romania*, Application No. 26990/15, Judgment, 28 May 2018.

³³ See *Buzadjı v. the Republic of Moldova*, Application No. 23755/07, Judgment, 5 July 2016; *Mancini v. Italy*, Application No. 44955/98, Judgment, 2 August 2001; *Lavents v. Latvia*, Application No. 58442/00, Judgment 28 November 2003; *Nikolova v. Bulgaria (No. 2)*, Application No. 40896/98, Judgment, 30 December 2004; and *Dacosta Silva v. Spain*, Application No. 69966/01, Judgment, 2 February 2007.

³⁴ See *Khlaifia and Others v. Italy*, Application No. 16483/12, Judgment, 15 December 2016.

³⁵ See *J.R. and Others v. Greece*, Application No. 22696/16, Judgment, 28 May 2018.

has also emphasized that it adopts an autonomous interpretation of “deprivation of liberty” and is not bound by the terms of national legislation.³⁶

22. Under the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, visits may be organized to various places where persons are deprived of their liberty, whatever the reasons for that deprivation of liberty, and the Convention is applicable to all such places. This includes places where persons are held in custody, imprisoned because of conviction for an offence, held in administrative detention or interned for medical reasons, or where minors are detained by a public authority, including by military authorities.³⁷

23. The Inter-American Court of Human Rights has utilized the term “deprivation of liberty” instead of “detention” because it considers it more inclusive in interpreting the right to personal liberty under the American Convention on Human Rights. It has also adopted a broad approach, in keeping with the development of international human rights law and autonomous from the provisions of national legislation. 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 in which they have been placed.³⁸

24. Consistent with this approach, the Inter-American Commission of Human Rights has defined deprivation of liberty as referring to public or private institutions and has clarified that this category of persons includes “not only those deprived of their liberty because of crimes or infringements or non-compliance with the law, whether they are accused or convicted, but also those persons who are under the custody and supervision of certain institutions, such as: psychiatric hospitals and other establishments for persons with physical, mental, or sensory disabilities; institutions for children and the elderly; centres for migrants, refugees, asylum or refugee status seekers, stateless and undocumented persons; and any other similar institution the purpose of which is to deprive persons of their liberty”.³⁹

25. Similarly, within the African system of human rights, both the African Court on Human and Peoples’ Rights and the African Commission on Human and Peoples’ Rights interpret the provisions of the African Charter of Human and Peoples’ Rights to encompass the broad approach to deprivation of liberty, underscoring that it may occur in different forms.⁴⁰ The African Commission on Human and Peoples’ Rights understands the right to liberty 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.”⁴¹

26. Lastly, the International Court of Justice, the principal judicial organ of the United Nations, has also made it clear that deprivation of liberty can take place in various forms and can occur in various places.⁴²

³⁶ *Khlaifia and Others v. Italy*, para. 71; and *Krupko and Others v. Russia*, Application No. 26587/07, Judgment, 26 June 2014, para. 37.

³⁷ Council of Europe, “Explanatory report to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment”, European Treaty Series, No. 126, para. 30.

³⁸ Advisory Opinion OC-21/14 on the Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, 19 August 2014, para. 145.

³⁹ Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, general provision.

⁴⁰ See, for example, African Court on Human and Peoples’ Rights, *African Commission on Human and Peoples’ Rights v. Libya*, Application No. 002/2013, Judgment, 3 June 2016, paras. 78 ff.

⁴¹ *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communication No. 279/03-296/05, 27 May 2009, para. 172.

⁴² *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Reports 2010, p. 639.

III. Constitutive elements of article 4

A. Public or private custodial setting

27. Article 4 (2) of the Optional Protocol clearly stipulates that deprivation of liberty can occur in any location, be it a public or a private custodial setting. Consequently, the mandates of national preventive mechanisms and the Subcommittee extend to places beyond prison settings and States parties must ensure access to any privately run institutions, be they criminal justice, administrative, health-care, social care or other settings. Any other approach, limiting the mandate of national preventive mechanisms and of the Subcommittee to public custodial settings only, is contrary to article 4.

28. Moreover, while some institutions may be run by State authorities, many others may be private institutions, institutions whose operation has been outsourced or delegated to private actors and/or institutions run by non-State actors. In all such cases, the State remains responsible for the way in which such contractors carry out that delegation and it cannot absolve itself of the responsibility for how the private companies or other entities run such facilities, given that a duty of care is owed by the State to those deprived of their liberty.⁴³ This includes a duty to allow preventive visits to any such facilities by national preventive mechanisms and the Subcommittee.

B. Jurisdiction or control

29. The physical location and status of a place of deprivation of liberty under international law are highly relevant for determining whether a place falls under the mandates of the Subcommittee and national preventive mechanisms. In this regard, the question may arise as to whether a place of deprivation of liberty has to fall simultaneously under both the jurisdiction of a State party and its effective control, or whether the exercise of either jurisdiction or control by a State party suffices to mean that it falls under the visiting mandate of the Subcommittee and the national preventive mechanisms.

30. There is a linguistic discrepancy in the wording of article 4 of the Optional Protocol among its six authentic texts: the English authentic text contains the phrase “any place under its jurisdiction and control”, while the French authentic text reads “*tout lieu placé sous sa juridiction ou sous son contrôle*” – meaning “any place under its jurisdiction or control”. The discrepancy cannot be resolved by prioritizing a literal interpretation of one version over the others, given that, in accordance with article 33 of the Vienna Convention on the Law of Treaties, all six versions of the Optional Protocol are equally authoritative.

31. Having regard to article 31 of the Vienna Convention on the Law of Treaties⁴⁴ and therefore to the object and the purpose of the Optional Protocol and international obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment, the interpretation that maximizes the preventive impact of the work of national preventive mechanisms and the Subcommittee should be applied: article 4 of the Optional Protocol should therefore be read as “jurisdiction or control”. Any other interpretation would lead to unacceptable “grey areas” that cannot be reconciled with the absolute and non-derogable prohibition of torture and cruel, inhuman or degrading treatment or punishment in international law.

32. Consequently, in the Subcommittee’s guidelines on national preventive mechanisms, it is emphasized that the State should allow the national preventive mechanism to visit all, and any suspected, places of deprivation of liberty that are within its jurisdiction. For those purposes, the jurisdiction of the State extends to all those places over which it exercises effective control.⁴⁵

⁴³ See also Working Group on Arbitrary Detention, revised deliberation No. 5 (A/HRC/39/45, annex), para. 46.

⁴⁴ See paragraph 10 above.

⁴⁵ CAT/OP/12/5, para. 24.

33. This interpretation is consistent with that of other treaty bodies. In particular, the Committee against Torture has stated that article 2 of the Convention against Torture requires that each State party take effective measures to prevent acts of torture in any territory under its jurisdiction. The Committee has recognized that “any territory” includes all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. The reference to “any territory” refers to prohibited acts committed not only on board a ship or aircraft registered in a State party, but also during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities and other areas over which a State exercises factual or effective control. The Committee considers that the scope of “territory” under article 2 must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention.⁴⁶ The implementation of the Optional Protocol, and specifically the preventive visits undertaken by the mechanisms established pursuant to it, constitute an effective preventive measure that States parties to the Convention against Torture are obliged to undertake, in accordance with articles 2 (1) and 16 (1) of that Convention.

34. Equally, the Human Rights Committee, the Committee on the Rights of the Child and the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families all hold that States parties’ obligations under the respective treaties encompass everyone who may be in a State party’s territory, under its jurisdiction or within its power or effective control, even if not situated within its territory.⁴⁷

35. The practical relevance for the mechanisms established under the Optional Protocol arises in particular in situations where parts of a State party’s territory are occupied by another State or under the control of non-State actors; where States “outsource” detention or “lease” facilities for detention (e.g. prisons, immigration detention facilities and military bases where deprivation of liberty might take place, including in the context of peacekeeping and peace-enforcement operations) on the territory of another State; during involuntary removals (extradition, expulsion, deportation, etc.) by aircraft, boat or similar; and in cases where States declare certain parts of their territory as “international zones”.

36. In practice, the Subcommittee has visited and continues to endeavour to visit places of deprivation of liberty within the jurisdiction of a State party but not under its effective control, and vice versa. Likewise, the practice of other international and regional mechanisms mandated to visit places of deprivation of liberty with a view to preventing torture and other forms of ill-treatment demonstrates that, even if a territory is not under the effective control of a State, it may still fall within its jurisdiction and therefore within the mandate of the mechanism.⁴⁸

37. The Subcommittee, in a compilation of advice in response to requests from national preventive mechanisms published in its ninth annual report, set out the practical details for implementation of the Optional Protocol in cross-border situations, such as the leasing by a State party of prisons or immigration detention facilities located on the territory of another State.⁴⁹ The Subcommittee has established that the sending State should ensure that its national preventive mechanism has the legal and practical capacity to visit persons deprived of their liberty in such settings, in accordance with the provisions of the Optional Protocol. After undertaking such visits, the national preventive mechanism of the sending State should be able to present its recommendations and enter into a dialogue with the authorities of both

⁴⁶ Committee against Torture, general comment No. 2 (2007), para. 16.

⁴⁷ Human Rights Committee, general comment No. 31 (2004), para. 10; and joint general comment No. 3 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 of the Committee on the Rights of the Child (2017), para. 12.

⁴⁸ See [E/CN.4/2006/6/Add.3](#); [A/HRC/10/44/Add.3](#); Council of Europe, “Report on the visit to the Transnistrian region of the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 27 to 30 November 2000” (CPT/Inf (2002) 35); and Council of Europe, “Report to the Governments of Belgium and the Netherlands on the visit to Tilburg Prison carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 17 to 19 October 2011” (CPT/Inf (2012) 19).

⁴⁹ [CAT/C/57/4](#) and [CAT/C/57/4/Corr.1](#), annex, paras. 26–31.

the sending and the receiving States. Moreover, if the receiving State is a party to the Optional Protocol, its national preventive mechanism should have the right to visit the place of deprivation of liberty and present its recommendations to both the sending and the receiving authorities. In other words, in cross-border situations involving two States parties to the Optional Protocol, the onus is on both parties to facilitate effective preventive visits by their national preventive mechanisms and by the Subcommittee.

38. It is not inconceivable that the mechanisms of the Optional Protocol will face limits to their ability in practice to visit places where de facto control is exercised by non-State actors, such as armed insurgent groups, or States that are not parties to the Optional Protocol. However, a State party is still obliged to do everything in its power – for example, through bilateral agreements – to facilitate access by the bodies established under the Optional Protocol to places of deprivation of liberty that are outside its effective control. Lastly, States parties cannot in good faith circumvent their obligations under the Optional Protocol to allow visits by deliberately outsourcing deprivation of liberty onto the territory of third States or to international zones, as this would undermine the object and purpose of the Optional Protocol.

39. In this context, it is recalled that article 29 of the Optional Protocol requires that its provisions extend to all parts of federal States without any limitations or exceptions. The Subcommittee emphasizes that all places of deprivation of liberty fall under article 4 of the Optional Protocol, irrespective of whether they are run by federal, state or provincial authorities or are within the jurisdiction or under the control of such authorities acting jointly and irrespective of any domestic regulations adopted in this regard.

C. In which persons are or may be deprived of their liberty

40. Article 4 of the Optional Protocol refers to any place where persons are or may be deprived of their liberty. This is not limited to the conventional view taken of the term “places of deprivation of liberty”, but should be understood comprehensively, in accordance with the object and purpose of the Optional Protocol, to mean any place, facility or setting in which individuals already are or potentially may be deprived of their liberty.

41. The Subcommittee has been unwavering in its view that, in order to properly discharge fulfil their obligations under the Optional Protocol, States parties must allow national preventive mechanisms and the Subcommittee access to any place where persons are, or in their opinion may be, deprived of their liberty.⁵⁰ It is therefore imperative that States parties not only allow both the Subcommittee and national preventive mechanisms full access to any places, facilities or settings in which individuals currently are, previously were or potentially may be deprived of their liberty but also ensure the autonomy of the Subcommittee and the mechanisms to decide which places to visit. Such factors as the duration of the deprivation of liberty, the nature of the facility and the status accorded to it in the domestic legal system are irrelevant for the determination of whether a place constitutes a place of deprivation of liberty.

D. In which persons are not permitted to leave

42. The factual element of a person not being “permitted to leave at will” a place, facility or setting is a key consideration of article 4 of the Optional Protocol. Indeed, the deciding factor for the qualification of any place, facility or setting as a place of deprivation of liberty is not the name or title given to it or its categorization in national legislation but whether individuals are free to leave it at will.⁵¹

43. In this regard, the Subcommittee wishes to emphasize that, in some cases, an individual might be in a place that does not seem to constitute a place of deprivation of liberty but, when examined in the full context of an individual case, does indeed constitute such a place.

⁵⁰ CAT/OP/MEX/2, para. 13.

⁵¹ A/HRC/36/37, para. 56; and A/HRC/37/50, para. 17.

44. Similarly, an individual may be free to leave a place, facility or setting at will but may be unable to exercise that freedom for physical, medical, economic or other reasons, and is therefore compelled to remain. This creates a situation where, despite a theoretical right to leave at will, a person is unable to leave in practice. In certain places, facilities or settings, individuals' inability to leave may be coupled with a high degree of vulnerability. This is particularly evident in respect of persons in situations of vulnerability, including children, women, survivors of trauma, older persons and persons with disabilities.

45. Consequently, whether a particular fact or circumstance may be taken to be a deprivation of liberty depends not only on whether the person in question has a *de jure* right to leave, but also on whether the person is able to exercise that right *de facto* and is able to do so without being exposed to serious human rights violations.⁵² Therefore, if the ability to leave such a place, facility or setting would be somehow limited or expose a person to serious human rights violations, that place, facility or setting should also be understood as a place of deprivation of liberty within the meaning of article 4 of the Optional Protocol.

E. By virtue of an order given by a public authority or at its instigation or with its consent or acquiescence

46. Under article 4 (1) of the Optional Protocol, States parties must allow visits to any place under its jurisdiction or control where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence. The Subcommittee has stated that any place in which persons are or may be deprived of their liberty should fall within the scope of the Optional Protocol, provided that such deprivation of liberty relates to a situation in which the State exercises or might be expected to exercise a regulatory function.⁵³

47. Deprivation of liberty that arises from an order given by a public authority concerns places where individuals are or may be deprived of their liberty and a State exercises or may exercise its regulatory or institutional function with regard to that place. That function may occur through a specific decision or order, often originating in the criminal justice system. However, it can also result from decisions made by other State bodies, such as administrative or judicial or quasi-judicial authorities. Deprivation of liberty that arises at a State's instigation or with its consent or acquiescence encompasses a broader spectrum of scenarios wherein the State might be expected to exercise a regulatory function and uses its powers to promote, accept or allow deprivation of liberty.

48. "Instigation" must be understood in its literal sense, namely, as synonymous with "incitement", "stimulation", "inducement", "solicitation", "incentive" or "encouragement". In other words, the authority participates or is involved in the origin of the decision to deprive a person of liberty. Instigation implies using the State's powers to promote or in any other way aim at causing the deprivation of liberty of an individual. Instigation of the deprivation of liberty of individuals may be undertaken by various actions of State officials and could include media or public statements or any other forms of expression that could be understood as instigating a person, a group of persons or a legal entity to deprive an individual of liberty.

49. Consent and acquiescence concern situations in which State authorities are or should have been aware of the deprivation of liberty but fail to take any actions aimed at preventing or ending it, with consent referring to deprivation of liberty that has been expressly agreed to, and acquiescence referring to tacit consent. In the context of the Optional Protocol, acquiescence may concern situations in which the State tolerates, allows or in any other form chooses to turn a blind eye to deprivation of liberty caused by any other entity or person, allowing the specific situation of deprivation of liberty to take place and not exercising the powers of the authority to prevent, disallow or end it. States are accountable for the actions of both their public officials and private persons or non-State actors if the State, in any way, consents to those actions, either expressly or tacitly. The fact that States may choose not to undertake any actions aimed at preventing or ending such deprivation of liberty or that they

⁵² A/HRC/43/49, para. 65; and Working Group on Arbitrary Detention, opinion No. 22/2020, para. 69.

⁵³ CAT/OP/MEX/2, para. 13.

may in any other way allow the existence of places of deprivation of liberty outside their authority does not exclude such places from the mandate of the Subcommittee and national preventive mechanisms.

50. The Subcommittee is mindful of the various traditional forms of justice and treatment prevalent globally that lead or may lead to individuals being deprived of their liberty. In some jurisdictions, traditional forms of justice and treatment, as well as other customary settings, exist alongside the formal legal system and its institutions, with the national legislation explicitly enabling their operation in parallel. In other countries, traditional forms of justice and treatment, as well as various other forms and places of deprivation of liberty, are not designated by national legislation, but nevertheless deprive persons of their liberty in practice. The Subcommittee recalls that all such situations fall within the remit of article 4 of the Optional Protocol through the obligation of the State party to allow visits to any place where a person is or may be deprived of liberty with the consent or acquiescence of a public authority.

IV. Practical implementation of article 4

A. Places of deprivation of liberty visited by the Subcommittee and national preventive mechanisms

51. Neither article 4 of the Optional Protocol nor the Subcommittee, in its practice, provides an exhaustive list of places of deprivation of liberty. It is not the Subcommittee's intention to provide such a list in the present general comment, as that would be restrictive and thus contradict the Optional Protocol. Indeed, throughout the discharge of its mandate, the Subcommittee has established that places and forms of deprivation of liberty include not only prisons and police stations, but also situations of house arrest, closed centres for foreigners and asylum-seekers, centres for children, social care homes, hospital and psychiatric institutions, facilities for military personnel (or detention centres under military jurisdiction),⁵⁴ clandestine clinics that "treat" homosexuality⁵⁵ and places of compulsory quarantine and isolation.⁵⁶ Special boarding or religious schools may also constitute places of deprivation of liberty.⁵⁷ For example, the Subcommittee has visited *daaras*⁵⁸ because it considers that they are places where persons (in particular young children) are or could be deprived of their liberty, with the tacit consent of the State party.⁵⁹ The Subcommittee has also clearly stated in its visit reports that periods of deprivation of liberty during apprehension, transfer and removal are covered by the Optional Protocol.⁶⁰

52. There is convergence in the current practice of national preventive mechanisms regarding a wide, purposeful and effective interpretation of the term "place of deprivation of liberty". Even in cases where national laws include non-exhaustive lists, national preventive mechanisms have generally gone beyond the listed facilities and visited other settings as part of their regular visiting programme. National preventive mechanisms have highlighted to the Subcommittee the need to ensure their access to all places of deprivation of liberty, whether public or private, non-profit or for-profit, and civil or military. They can include places where persons of any age are held on the orders, at the instigation or with the consent of a public authority, for a variety of reasons, such as being in conflict with the law or for protection, humanitarian or educational reasons. Persons held in places of deprivation of liberty can be there for any period of time, including very short periods, even in transit, and the place itself can be any type of facility and on land, at sea or in the air. Persons held in such places may have entered voluntarily or involuntarily. Deprivation of liberty can also take place when persons are arrested by police on public roads or by private guards in shopping malls, for

⁵⁴ CAT/OP/KGZ/2, para. 40. See also CAT/OP/NLD/1, para. 45.

⁵⁵ CAT/OP/ECU/2, para. 51.

⁵⁶ See CAT/OP/9.

⁵⁷ CAT/OP/KGZ/2, para. 40.

⁵⁸ *Daara* is the name used in some countries to designate traditional Qur'anic schools.

⁵⁹ CAT/OP/SEN/RONPM/1, paras. 30 and 31.

⁶⁰ CAT/OP/NLD/1, paras. 42 and 45.

example. Other places where persons may be de facto deprived of their liberty, such as privately owned or rented housing for persons with intellectual disabilities, owing to restrictions imposed by specific service providers, are also included within the scope of article 4.

53. The Subcommittee welcomes the practice of many national preventive mechanisms reflecting a comprehensive understanding of the definition of places of deprivation of liberty, in compliance with the Optional Protocol. While emphasizing that article 4 of the Optional Protocol does not call for any type of exhaustive list, the following are illustrative examples of some of the places that national preventive mechanisms around the world have visited and should continue to visit as part of their obligations under the Optional Protocol: adult prisons; pretrial detention centres; juvenile or socioeducational detention centres; police or other law enforcement units; mental health facilities; nursing homes; orphanages; residences for children and adolescents without parental care or who have suffered neglect or abuse; centres for persons with disabilities; migrant detention centres, such as first reception centres for adults and unaccompanied children and detention and removal centres for migrants; transit zones at international borders; military compounds; vehicles, ships and aeroplanes; coronavirus disease (COVID-19) hotels and other formal places of compulsory quarantine and isolation, or home confinement; rehabilitation and treatment centres for persons with drug use disorders; police training schools; State security service detention facilities; boarding schools and religious schools; public demonstrations; and any gatherings where police practices such as kettling⁶¹ are or may be carried out.

54. The worldwide public health emergency in the context of the COVID-19 pandemic led to the widespread application of modern technologies that, for example, individuals were required to use in the context of compulsory quarantine. These had a direct impact on the right of such persons to personal liberty and, indeed, in some instances, led to them being deprived of their liberty. Similarly, the emergence of digital, non-physical spaces has made it possible to use digital environments for meting out treatment prohibited under articles 1 and 16 of the Convention against Torture.

55. Consequently, mindful of the wide variety of circumstances in which deprivation of liberty occurs or may occur, the Subcommittee underlines that the key element in deciding whether a place is or may be a place of deprivation of liberty is the status of the persons who are or may be deprived of their liberty rather than any official title accorded or description allocated by the national authorities and/or national legislation or others. In this regard, it is paramount that the autonomy and functional independence of the Subcommittee and national preventive mechanisms are fully ensured in practice to enable both to make a fully independent decision as to whether a particular place constitutes or may constitute a place of deprivation of liberty and therefore comes under their respective mandates.

B. Persons in situations of vulnerability

56. The Subcommittee is mindful of the various settings in which persons in situations of vulnerability, including children and adolescents, older persons, LGBTIQ+ persons, individuals with physical and psychosocial disabilities, Indigenous Peoples and people who use drugs, may be confined, unable to leave at will. Aside from such places as prisons and remand centres, there are specific settings where people are or may be deprived of their liberty, including but not limited to schools and institutions that engage in the care of children, military camps, social care facilities, institutions for persons with disabilities or for persons with drug or alcohol use disorders, drug use treatment centres, orphanages, children's homes, institutions for the educational supervision of children, psychiatric hospitals, mental health centres, shelters, hostels and migration detention centres. Moreover, in the case of children, there are settings in which they are or may be deprived of their liberty for reasons related to their, or their parents', migration status, regardless of the name and reason given to the child's deprivation of liberty, or the name of the facility or location where the child is deprived of

⁶¹ Kettling is a police practice in which group of demonstrators or protesters are confined in a small space as a method of crowd control.

liberty. All such places fall under article 4 of the Optional Protocol and therefore under the mandate of the Subcommittee and national preventive mechanisms.

57. The Subcommittee notes that many persons with disabilities are presumed to be unable to live independently, or that support to live independently is not available or is tied to specific living arrangements.⁶² Although there may be no legal or administrative order confining such persons to a certain facility, the lack of support compels them to remain in living situations that deprive them of their liberty and may subject them to harmful practices. This form of disability-specific deprivation of liberty can occur in family homes and in institutional arrangements, including social care institutions, psychiatric institutions, long-stay hospitals, nursing homes, secure dementia wards, special boarding schools, child welfare institutions, group homes, rehabilitation centres, forensic psychiatric settings, albinism hostels, leprosy colonies, religious communities, family-type homes for children and prayer camps.⁶³

58. Therefore, when considering whether a particular place, facility or setting is a place of deprivation of liberty within the meaning of article 4 of the Optional Protocol, it is important that national preventive mechanisms and the Subcommittee ascertain the presence of reasonable accommodation arrangements and support for persons with disabilities. If reasonable accommodation and support are unavailable, the place, facility or setting should be considered a place of deprivation of liberty.

V. Obligations of States parties under article 4

59. With the present general comment, the Subcommittee is setting out authoritative guidance on the effective implementation of the Optional Protocol, aimed at clarifying the obligations of States parties and the mandates of the Subcommittee and national preventive mechanisms under article 4. In compliance with the Optional Protocol, the term “places of deprivation of liberty” must be understood as a comprehensive concept that encompasses all situations, as a result of the cumulative reading of the two paragraphs of article 4. Moreover, the concept of places of deprivation of liberty is not fixed or limited. It evolves with time, allowing for the inclusion of novel situations and circumstances of deprivation of liberty that may arise in new contexts. Equally, the inclusion of places where persons may be deprived of their liberty signifies the importance of the autonomous decision-making in this regard by the Subcommittee and national preventive mechanisms. Only with such an approach and effective application may the Optional Protocol fulfil its core objective of preventing torture and other cruel, inhuman or degrading treatment or punishment through visits by the Subcommittee and national preventive mechanisms to all places of deprivation of liberty.

⁶² Committee on the Rights of Persons with Disabilities, general comment No. 5 (2017), para. 1.

⁶³ CRPD/C/5, paras. 15 and 18.