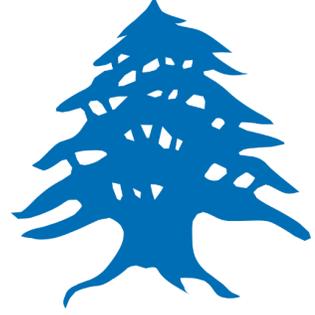


اللجنة الوطنية للوقاية من التعذيب

The National Committee for the Prevention of Torture

منشأة بموجب القانون رقم 62/2016 تاريخ 27 تشرين الأول 2016 (إنشاء الهيئة الوطنية لحقوق الإنسان المتضمنة لجنة الوقاية من التعذيب) وتعديلاته. الآلية الوطنية للوقاية من التعذيب بموجب القانون رقم 12 الصادر بتاريخ 5 أيلول 2008 (المصادقة على البروتوكول الاختياري لاتفاقية مناهضة التعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة)

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Request for Lebanon's NPM (National Committee for the prevention of Torture) to provide information for a General Comment on Article 4

To: Mrs. Suzanne Jabbour - President of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("SPT")

CC: Mr. Nika Kvaratskheklia - Head of Asia Pacific regional team of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("SPT")

We have the honour to write to you on behalf of Lebanon's NHRI - The National Human Rights Commission (NHRC) and Lebanon's NPM - The Committee for the prevention of Torture (CPT) in reference to the Optional Protocol to the Convention against Torture article 20 paragraph (f), and the Law No. 62 of October 27, 2016 (Establishment of the National Human Rights Commission including the Committee for the Prevention of Torture) article 27 paragraph (b).

Introduction

Article 4 is one the key provisions of the Optional Protocol to the United Nations Convention against Torture (OPCAT) as it sets out the extent of and limits to the mandates for both National Preventive Mechanisms (NPMs) and the Subcommittee on Prevention of Torture (SPT) in relation to the types of places of deprivation of liberty that

these entities may visit. Therefore correct interpretation and application of this provision is essential for proper adherence to the obligations undertaken by the States Parties upon the ratification of OPCAT.

The OPCAT

Article 4(1) of OPCAT obliges States parties to allow visits by both the NPMs and SPT to any place under their jurisdiction and 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”. This is a very broad definition which means that visits must be allowed not only to such places as prisons and police cells where persons are deprived of their liberty by virtue of an order given by a public authority, but also to private custodial settings. This means that visits must be allowed also to institutions such as private hospitals, nursing homes and children homes because while persons in such places may be detained by non-state actors, this is done with the knowledge and acquiescence of a public authority and thus Article 4(1) of OPCAT applies.

However, a potential conflict arises between Article 4(1) and 4(2) of OPCAT as Article 4(2) appears to set out a more limited definition of “deprivation of liberty”. According to Article 4(2) “deprivation of liberty” means “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 omits reference to consent or acquiescence by the public authority and it would thus appear that mere knowledge about detention, as described above, would not be sufficient.

CPT considers that in this instance it is clear the text of the OPCAT was intended to cover a broad range of places where people are deprived of their liberty either at the instigation of a public authority or with their consent or acquiescence.

Thus, interpreting Article 4 systematically as well as taking into consideration the object and purpose of OPCAT leads to the conclusion that Article 4(2) of OPCAT must be interpreted in the light of the broader definition set out in Article 4(1) of OPCAT.⁶

The Lebanon Law

Law No 62 dated 27/October/2016 (Establishment of the National Commission on Human Rights incorporating the Committee on Prevention of Torture) amended by Law No6 dated 05/March/2020 adopted and copied the definition of “deprivation of liberty” from 4(2) of OPCAT.

According to Law 62 Article 22(B) “deprivation of liberty” means any form of detention or imprisonment or the placement of a person in a public or private custodial setting, from which this person is not permitted to leave at will, by order of any judicial, administrative or other public authority. Article 22(B) also gives some examples of the places of deprivation of liberty which include, but are not limited to, prisons, places of detention,

police stations, juvenile centers, ports, airports, hospitals and psychiatric institutions in Lebanon where persons are or may be deprived of their liberty.

The same article also mentions the authorities that supervise these places as follows: the Directorate General of Internal Security Forces or the General Directorate of General Security, the General Directorate of State Security, the Customs Administration, the Ministry of National Defense or the Ministry of Justice. This also omits reference to consent or acquiescence by the public authority of some types of deprivation of liberty and it would thus limit the legal definition of the “deprivation of liberty” in Lebanon.

CPT will work with authorities, especially the Ministry of Public Health, to set a legal definition of the deprivation of liberty safeguards (DoLS) for persons with mental health conditions and elderly people including dementia patients.

The problem in practice

This has been a challenge in Lebanon which is in the process of implementing its obligations under OPCAT. During the latest governmental response to COVID19 pandemic the Lebanese Committee for the Prevention (CPT) of Torture acted to promote and practice the recommendation mentioned in the advice of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to States parties and national preventive mechanisms relating to the coronavirus disease (COVID-19) pandemic (CAT/OP/10).

On 22 March 2020 CPT wrote a letter to the prime minister asking to provide the minimum support and capacity building to secure that NPM members and experts can exercise its authority to visit places of quarantine and protect against torture and cruel, degrading, and inhumane treatment. The Ministry of Public Health replied to this message mentioning that places of quarantine that were prepared by the ministry are for emergency and were not used yet. At a later stage the CPT was trying to visit hospitals that were used as places of quarantine, unfortunately the government didn't provide the needed personal protective equipment (PPE) to undertake this mission.

In January 2021 CPT was invited to participate in the meetings held by a committee established by the ministry of interior to deal with COVID19 pandemic in persians and detention centers. According to the reports provided by this committee the definition of “The places of deprivation of liberty” was limited to prisons and detention centers only.

Empowering CPT

CPT would like to mention that Lebanon is violating article 17 of the OPCAT that was ratified on December 22, 2008. Lebanon cant benefit from article 24 of the OPCAT,

therefore, it can't ask for additional time within which to consider how best to implement the obligations set out under the United Nations Convention against Torture.

In specific we would highlight the following violation committed by the Lebanese authorities:

1. Not allocating sufficient financial resources to the NHRC-CPT in the public annual budget (in a specified separate budget line), and not creating functional classification in the public budget related to the promotion and protection of human rights and the prevention of torture.
2. Abstain of ratifying and publishing all executive decrees of the Law 62/2016, to fully implement articles 7 and 30.
3. Delay in amending article 28 of the 62/2016, to fully respect Article 18 of the OPCAT and the principles relating to the Status of National Institutions (The Paris Principles) adopted by General Assembly resolution 48/134 of 20 December 1993, and in reference to general observation 1.10 of the Global Alliance of National Human Rights Institutions (GANHRI) on adequate funding for NHRI's.

CPT's List the places of deprivation of liberty under its monitoring mandate

1- Places of deprivation of liberty under the authority of the Directorate General of Internal Security Forces, Ministry of the Interior To be transferred to the Ministry of Justice in due course. This includes prisons, pretrial detention facilities, police stations, temporary detention facilities on border passages, airports, and seaports, investigation facilities of the ISF Information Department.

2- Places of deprivation of liberty under the authority of the General Directorate of the General Security, Ministry of the Interior. This includes prisons, refugee detention centers, temporary detention facilities on border passages, airports, and seaports.

3- Places of deprivation of liberty under the authority of the General Directorate of State Security, Presidency of the Council of Ministers. This includes temporary detention and investigation facilities.

4- Places of deprivation of liberty under the authority of the General Directorate of Customs, Ministry of Finance. This includes temporary detention facilities on border passages, airports, and seaports.

5- Places of deprivation of liberty under the authority of the Lebanese Army, the Ministry of National Defense. This includes prisons and temporary detention centers and facilities including military barracks, military police pretrial detention stations, investigation facilities of the Military Intelligence.

6- Places of deprivation and or restriction of liberty under the authority of governmental and non-governmental organizations, under the supervision and/or contractual status of the Ministry of Public health. This includes Hospitals and Psychiatric Institutions that treat persons with mental health conditions, elderly centers including dementia patients, drug treatment centers, and alcohol treatment centers.

7- Places of deprivation and or restriction of liberty under the authority of governmental and non-governmental organizations, under the supervision and/or contractual status of the Ministry of Social Affairs. This includes orphanages centers and associations, boarding schools for persons with disabilities, shelters for gender based violence survivors, shelters for LGBTQ+ survivors of violence, and elderly centers and shelters.

8- Places of deprivation and or restriction of liberty under the authority of governmental and non-governmental organizations, under the supervision and/or contractual status of the Ministry of Education and Higher Education. This includes Orphanages centers and associations, and other types of Boarding Schools.

9- Places of deprivation of liberty under the authority, the Ministry of Justice. And under the authority of other governmental and non-governmental organizations. This includes juvenile rehabilitation centers, and all other means of intervention with juvenile facilities.