

Advice from the SPT to the UK NPM regarding compulsory quarantine for Coronavirus

The UK National Preventive Mechanism (NPM) has asked for advice from the Subcommittee on Prevention of Torture (SPT) concerning the exercise of its mandate in places where persons are held in compulsory quarantine for reasons of public health protection.

The SPT notes that Article 4 of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) provides that:

Article 4

1. Each State Party shall allow visits, in accordance with the present Protocol, by the mechanisms referred to in articles 2 and 3 to any place under its 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 (hereinafter referred to as places of detention). [...]

2. For the purposes of the present Protocol, 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.

It follows from this definition, read in conjunction with Article 19(a) of the OPCAT concerning the visiting powers of the NPM, that any place where a person is held in quarantine and from which they are not free to leave is a place of deprivation of liberty for the purposes of the OPCAT and so falls within the visiting mandate of an NPM.

Although not expressly stated, it is implicit from the structure of the OPCAT that NPM visits may, like those of the SPT be temporarily restricted in accordance with Article 14 (2) of the OPCAT which provides that:

‘Objection to a visit to a particular place of detention may be made only on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder in the place to be visited that temporarily prevent the carrying out of such a visit. The existence of a declared state of emergency as such shall not be invoked by a State Party as a reason to object to a visit.’

This suggests that whilst a visit may be objected to on grounds of public safety, which might include a medical emergency necessitating quarantine, this could only be a temporary restriction and could not prevent visits to the place of quarantine completely. In other words, there would need to be a particular reason why such a visit ought not to take place at a particular point in time, rather than that such visits ought not to take place at all.

This confirms the view that places of quarantine fall within the visiting mandate of an NPM, although access may be restricted temporarily for strictly limited reasons and not on the basis that the place in question is a place of quarantine.

The SPT notes that Article 20 of the OPCAT provides that the NPM shall have:

- (c) Access to all places of detention and their installations and facilities;
- (d) The opportunity to have private interviews with the persons deprived of their liberty without witnesses.

The SPT recognises that whilst quarantine is imposed for the public benefit it must not result in the ill-treatment of those detained. The role of the NPM is to ensure that all fundamental safeguards are respected, including the right to be informed about the reason for being placed in quarantine, to have a third party notified, to have access to independent legal advice and to be seen by a doctor of one's own choice.

In addition, sufficient and appropriate measures should be put in place in order to prevent violations of the prohibition of ill-treatment. Such violations can include (or flow from) discriminatory practices and actions which have the effect of stigmatising or marginalising particular groups of persons. This may include those individuals and groups who are considered to be at risk of, or being potential carriers of, viruses.

Whilst the visiting mandate of an NPM includes places of compulsory quarantine, NPMs must be mindful of the 'do no harm' principle when exercising that mandate. This may require adaptations to normal working practises, in the interests of those in quarantine, those undertaking the visit, and the general interest in halting the spread of the illness. For example, the opportunity to interview in private may reasonably be conducted by methods which prevent the transmission of infection, and members of the NPM accessing places of quarantine might legitimately be subject to medical checks and other forms of inspection and restriction to ensure the integrity of the quarantine, as would be the case for others servicing the needs of those being detained.

Reports arising out of such visits must be careful to respect the confidentiality of those detained and not contribute to the potential stigmatisation and/or risk of discrimination against those who have been subject to compulsory quarantine. Further helpful guidance can be found in the relevant documents published by CDC¹ and WHO².

¹ <https://www.cdc.gov/infectioncontrol/guidelines/isolation/prevention.html>

² <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance>