



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

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

**Visit to Mozambique undertaken from 5 to
9 September 2016: recommendations and
observations addressed to the State party**

Report of the Subcommittee*, **

* In accordance with article 16 (1) of the Optional Protocol, the present report was transmitted confidentially to the State Party on 2 June 2017. On 3 March 2025, the State Party requested the Subcommittee to publish the report, in accordance with article 16 (2) of the Optional Protocol.

** The annexes to the present document are being circulated as received, in the language of submission only.



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I. Introduction

1. In accordance with its mandate set forth in the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment undertook its first visit to Mozambique from 5 to 9 September 2016.
2. In Mozambique, the Subcommittee was represented by Víctor Madrigal-Borloz (head of delegation), Nora Sveaass and Aneta Stanchevska. The Subcommittee was also assisted by two Human Rights Officers and a Security Officer from the Office of the United Nations High Commissioner for Human Rights.
3. The primary objective of the visit was to ascertain the situation regarding the establishment and activities of the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment. A subsidiary objective was to commence the process of assisting the mechanism in strengthening its capacity by evaluating its needs, in accordance with article 11 (b) (ii) and (iii) of the Optional Protocol.
4. Given the objective to establish a dialogue with senior State authorities and to provide advice and assistance in relation to the State party's obligation to maintain, designate or establish a national preventive mechanism, the Subcommittee held meetings with the Speaker and members of the Assembly of the Republic; with the Minister and Vice-Minister of Justice; as well as with officials from the Ministry of Justice, Constitutional and Religious Affairs; the Ministry of Foreign Affairs and Cooperation; the National Penitentiary Service; the Ministry of Defence; the Ministry of Health; and the Ministry of Labour, Welfare and Social Insurance. The Subcommittee held further meetings with the President and Vice-President of the Supreme Court, with the Attorney General and Deputy Attorney General of the Republic and with the Ombudsman. The Subcommittee also benefited from the views of a wide range of stakeholders from civil society, including human rights defenders and the bar association. The list of persons met is contained in annex I.
5. In order to provide the national preventive mechanism with advisory services and technical assistance, the Subcommittee also held a series of working meetings with the National Human Rights Commission and accompanied members of the Commission, acting as the national preventive mechanism, on a visit to the Provincial Penitentiary Establishment of Maputo in Machava (annex II). During the joint visit, Subcommittee members took the role of observers, while members of the Commission led the visit. The overall aim of the visit, together with the working meetings, was to provide feedback on the national preventive mechanism's framework, structure and working methods.
6. The Subcommittee is pleased that it was able to meet with such a broad range of stakeholders and with the cooperation provided by national authorities during the visit, in compliance with the State party's obligations under the Optional Protocol. The involvement of senior authorities in discussions with the Subcommittee is a welcome sign and provides evidence of the positive atmosphere surrounding the process of implementation of the State party's obligations under the Optional Protocol. However, the Subcommittee regrets that there were certain organizational failings during the visit's preparation phase, including delays in the provision of accreditations, lists of places of detention and relevant legislation. The provision of this information at the last minute – or the complete failure to do so – was prejudicial to the work of the Subcommittee and limited the efficacy of the visit.
7. The present report is a tool of dialogue between the Subcommittee and the authorities of Mozambique on the prevention of torture and other forms of ill-treatment. It sets out observations and recommendations to the State party, in accordance with article 11 (b) (iv) of the Optional Protocol.
8. **In order to facilitate ongoing dialogue, the Subcommittee requests that the State party reply to the present report within six months of the date of its transmission, giving a full account of the actions undertaken in response to it and the implementation of its recommendations as well as a road map and timeline for those that remain pending. It also recommends that, in its reply, the State party include proposals for further**

assistance and advice from the Subcommittee in furtherance of article 11 of the Optional Protocol.

9. In accordance with article 16 (2) of the Optional Protocol, the report remains confidential until such time as the State party decides to make it public. The Subcommittee firmly believes that the publication of the report would contribute positively to the prevention of torture and ill-treatment in Mozambique, as the widespread dissemination of the recommendations would foster a transparent and fruitful national dialogue on the issues covered.

10. The Subcommittee therefore recommends that the State party permit the report to be published. In addition, the Subcommittee recommends that the State party distribute the report to all the relevant government departments and institutions.

11. Moreover, the Subcommittee draws the State party's attention to the Special Fund established in accordance with article 26 of the Optional Protocol. Recommendations contained in the Subcommittee's visit reports that have been made public can form the basis of an application for funding of specific projects through the Fund.¹

12. In accordance with its mandate, as set forth in article 11 (b) (ii) and (iii) of the Optional Protocol, the Subcommittee will address a separate confidential report to the national preventive mechanism of Mozambique.

13. Finally, the Subcommittee recalls that article 13 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment provides for the protection of victims, complainants and witnesses of acts of torture against all ill-treatment or intimidation as a consequence of any information provided. In addition, article 15 of the Optional Protocol prescribes that no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the Subcommittee or to its delegates any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.

14. Therefore, as the Subcommittee carries out its functions under the Optional Protocol, the situation of persons with whom it comes into contact must not be prejudiced. Where this is the case, the preventative mandate of the Subcommittee, including the basic imperative to "do no harm", is put at risk.

15. The Subcommittee draws the attention of the State party to its primary responsibility to ensure that article 15 of the Optional Protocol is upheld. It recommends that the State party take all necessary measures to ensure that the persons who came in contact with the Subcommittee delegation or the national preventive mechanism do not suffer any adverse consequences for having done so and that any alleged acts of reprisal and intimidation against them are promptly, impartially and effectively investigated, that those responsible are brought to justice and that victims are provided with appropriate remedies.

II. Background

Normative framework

16. Mozambique acceded to the Convention against Torture on 14 September 1999 and to the Optional Protocol on 24 July 2014.

17. The Subcommittee notes, and welcomes, the prohibition of torture and inhuman or degrading treatment by article 40 (1) of the Constitution. Nevertheless, the Subcommittee remains concerned that, at the time of its visit, there was no specific provision in the country's legislation defining torture as such and making it a criminal offence.

18. In particular, the Subcommittee observes that the definition of torture set out in article 1 of the Convention is not reflected in provisions of the Penal Code, contrary to the State party's obligation under article 4 of the Convention. During its visit, several authorities

¹ See www.ohchr.org/EN/HRBodies/OPCAT/Fund/Pages/SpecialFund.aspx.

informed the Subcommittee that this had not been a main subject of analysis during a recent process of review of the Penal Code. The Subcommittee finds this lack of analysis incongruous, given that it is generally agreed that there is a problem of torture and ill-treatment in the country.

19. While the Subcommittee was informed that a constant process of review of the criminal legislation may yield reform in the short term, the Subcommittee regrets that the State party has not complied with this obligation, which was included, *inter alia*, in the concluding observations of the Committee against Torture on the report of Mozambique in 2013 (see CAT/MOZ/CO/1, para. 7), well before the adoption of the new Penal Code on 26 June 2015. The Subcommittee reminds the State party that defining the offence of torture in accordance with article 1 of the Convention has a preventive effect.

20. The Subcommittee recommends that, in the ongoing process of evaluation and review of its criminal legislation, the State party use the guidance contained in the Committee's general comment No. 2 (2008) on the implementation of article 2 of the Convention, in particular paragraphs 9 and 11, which read as follows:

9. Serious discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation and thus the Committee calls upon each State party to ensure that all parts of its Government adhere to the definition set forth in the Convention for the purpose of defining the obligations of the State. At the same time, the Committee recognizes that broader domestic definitions also advance the object and purpose of this Convention so long as they contain and are applied in accordance with the standards of the Convention, at a minimum. In particular, the Committee emphasizes that elements of intent and purpose in article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but rather must be objective determinations under the circumstances. It is essential to investigate and establish the responsibility of persons in the chain of command as well as that of the direct perpetrator(s).

...

11. By defining the offence of torture as distinct from common assault or other crimes, the Committee considers that States parties will directly advance the Convention's overarching aim of preventing torture and ill-treatment. Naming and defining this crime will promote the Convention's aim, *inter alia*, by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture. Codifying this crime will also (a) emphasize the need for appropriate punishment that takes into account the gravity of the offence, (b) strengthen the deterrent effect of the prohibition itself, (c) enhance the ability of responsible officials to track the specific crime of torture and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention.

Impunity

21. Non-specific legislation on the crime of torture also impedes the gathering and analysis of differentiated statistics, thereby hindering diagnosis of existing torture and ill-treatment. Although the Subcommittee was informed that acts of torture, if and when reported, could be the subject of criminal charges under other existing national legislation, the authorities did not provide the delegation with information about any such cases having come before the country's courts. At the same time, other stakeholders maintained that there has never been a conviction resulting from an act of torture or ill-treatment, which is a very troubling fact.

22. With this in view, the Subcommittee remains concerned about reports it has received that alleged acts of torture and ill-treatment are not systematically investigated in Mozambique. During the course of its visit, the Subcommittee received serious allegations of acts which, if proven, would amount to torture and ill-treatment. Among them was the case of an individual accused of a crime who, following his detention by police during the

Subcommittee's visit, was reported to have died as a result of injuries sustained during torture and ill-treatment.

23. **The Subcommittee reminds the State party that fighting impunity is one of the strongest preventive measures against acts of torture and ill-treatment. The Subcommittee recommends that, as a matter of priority, torture be criminalized by the State party in a manner that fully reflects the definition provided in article 1 of the Convention against Torture. In addition, the Subcommittee recommends that torture and ill-treatment be publicly condemned by the State party.**

24. **Moreover, the Subcommittee recommends that the State party take urgent measures to prevent and punish all acts of torture and ill-treatment occurring at the hands of, or with the consent or acquiescence of, State officials. To that end, the Subcommittee recommends that the State party (a) investigate all allegations of torture and ill-treatment through processes that are prompt, impartial and transparent, in addition to being efficient and effective; and (b) prosecute those responsible. Persons convicted of such acts should be subjected to penalties commensurate with the severity of these crimes.**

Preventive system

25. The Subcommittee notes that, in addition to the national preventive mechanism, a wide range of bodies carry out monitoring functions in Mozambique, including the National Assembly Committee on Constitutional Affairs, Human Rights and Legality; the judiciary; the Attorney General; the Ombudsman; and some civil society organizations. The visiting mandates and prerogatives of these bodies may coincide but do not appear to be part of a comprehensive system or overarching policy.

26. In addition, the Subcommittee has observed that interaction and cooperation between these bodies appears to range from the largely ad hoc to the non-existent. As a result, attempts to prevent torture and ill-treatment are unsystematic and irregular in nature, lacking an overall strategy, systematized follow-up and mutual cooperation. This is likely to result in gaps in coverage or overlapping institutional mandates with divergent or conflicting approaches.

27. **The Subcommittee therefore recommends that the State party develop and set out a coherent and coordinated approach to torture prevention, taking into account the differentiated roles of executive and non-executive State institutions, civil society and other independent sectors. This analysis should:**

(a) **Provide a road map for how all such stakeholders, setting out how they can contribute to the work of torture prevention in the State party;**

(b) **Help determine, together with the national preventive mechanism and relevant stakeholders, how overlapping mandates and duplication of efforts can be avoided and which institutional configuration would be the most effective and efficient structure for the prevention of torture in the State party;**

(c) **Clearly define the roles of the national preventive mechanism, public authorities, civil society and international cooperation and how they relate to each other;**

(d) **Encourage and support cooperation and synergy between them to enhance the overall effectiveness and efficiency of the national preventive mechanism.**

28. Within that approach, the State party should take into account that, by ratifying the Optional Protocol, it has added to its internal system two additional visiting institutions: the Subcommittee itself and the national preventive mechanism. These bodies are entitled, under the Optional Protocol, to unhindered, unannounced and unlimited access to any place where persons are or may be deprived of liberty in order to formulate all necessary observations and recommendations.

29. The work of the Subcommittee and of the national preventive mechanism is meant to prevent torture and ill-treatment in two ways that are mutually reinforcing. First, through the conduct of regular, unannounced and unhindered visits to places of deprivation of liberty by the Subcommittee and the national preventive mechanism, future acts of torture and ill-treatment may be deterred. Second, by engaging in constructive dialogue with officials,

the Subcommittee and national preventive mechanisms provide independent and expert analysis of the detention system and detailed recommendations for improvements based on first-hand information collected in the course of their visits.

30. As explained by the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment:

The very fact that national or international experts have the power to inspect every place of detention at any time without prior announcement, have access to prison registers and other documents, are entitled to speak with every detainee in private and to carry out medical investigations of torture victims has a strong deterrent effect. At the same time, such visits create the opportunity for independent experts to examine, at first hand, the treatment of prisoners and detainees Many problems stem from inadequate systems which can easily be improved through regular monitoring. By carrying out regular visits to places of detention, the visiting experts usually establish a constructive dialogue with the authorities concerned in order to help them resolve problems observed (see A/61/259, para. 72).

31. Preventive visits are therefore distinguishable from other types of visits by their purpose and methodology. For example, reactive visits are often triggered by the receipt of a complaint. Such visits intend to resolve the specific problem of the complainant, or otherwise aim to investigate and document a case in order that appropriate sanctions can be applied against those responsible. Humanitarian visits, on the other hand, offer goods and services directly to detainees to improve their conditions of detention or to rehabilitate survivors of torture.

32. Preventive visits, on the contrary, are proactive. Constituting an integral part of a continuous process of analysis, monitoring and evaluation of the detention system, these visits involve multidisciplinary teams of independent experts conducting confidential conversations with detainees and sharing their direct observations with officials in detention centres. The experts also examine material facilities, standards and procedures, as well as the adequacy of existing protection guarantees.

33. The Subcommittee has developed an in-depth understanding of the importance of a multidisciplinary approach as the basis for its visiting work. In this context, the Subcommittee emphasizes the need for, among others, health professionals to be part of any visiting body. This is partly because conditions in detention, including the withholding or insufficient provision of health care, may amount to torture or ill-treatment. To prevent this from occurring, monitoring of places of detention should be health-informed, including, inter alia, thorough assessment and evaluation of conditions that may be a threat to health as well as analysis of the conditions of care and treatment provided to persons with health concerns and health problems, both of a permanent character and temporary. Monitoring that is health-informed also includes analysis of existing care regarding physical and mental health and of medication. It should also incorporate evaluations of how groups, communities and populations historically subjected to discrimination are treated and what is done to provide necessary care to, and protection for, such groups. This may include persons with mental and physical disabilities and persons with special needs, such as persons with diabetes, coeliac disease, HIV and tuberculosis, among others.

34. Furthermore, registration and documentation of health status upon arrival at a place of detention must be given special emphasis. Preventive monitoring includes determining whether any evaluation has been done of injuries detected upon arrival, if any form of forensic examination has been undertaken or if any possibilities exist to document possible torture sequelae on arrival. The importance of assessing and evaluating medical files, both at entry and during the course of detention, must be highlighted as well as the need to assess other health services, including dental care and services provided outside a detention establishment.

35. The Subcommittee further encourages the State party to evaluate the need for other approaches, including the use of interpretation services and the input of other disciplines, to ensure the preventive value of its monitoring system. Carefully setting the objectives of detention visits helps to ensure that such visits effectively yield appropriate and relevant recommendations to the State party. In this case, information

obtained during visits is to be assessed at a later date against international standards and best national, regional or international practice. Following such an analysis, specific recommendations and practices should be extracted and addressed to the competent authorities for their implementation. Such recommendations form the basis of constructive dialogue with the authorities. Moreover, follow-up visits and further discussions provide additional opportunities to monitor the adoption of the recommendations and to introduce adjustments in the same recommendations or to develop new ones.

36. Owing to all of the above considerations, the Subcommittee recommends that the State party ensure that the framework of the national preventive mechanism is conducive to effective and efficient compliance with its highly specialized, multidisciplinary and unique function, including through the inclusion of a health professional in the mechanism. In this regard, the Subcommittee stresses the importance of increasing public awareness concerning the mandate and work of the mechanism. The State party should ensure that the mechanism is recognized as a key component of the country's system for the prevention of torture and ill-treatment. Moreover, the Subcommittee wishes to emphasize the importance of ensuring that the national preventive mechanism is given a prominent role, with institutional and public visibility, while fully respecting the principle of confidentiality.

III. National preventive mechanism

37. Pursuant to article 17 of the Optional Protocol, Mozambique is under the obligation to maintain, designate or establish one or several independent national preventive mechanisms at the latest one year after its accession to the Optional Protocol. Through a resolution of the Council of Ministers published on 3 May 2013, the State party designated the National Human Rights Commission as its national preventive mechanism.²

38. The National Human Rights Commission is a public institution entrusted with strengthening the protection, promotion and defence of human rights in Mozambique. Mandated by law No. 33 of 22 December of 2009, the Commission is composed of 11 members, currently including executive and non-executive State agents and officers, lawyers, university lecturers and civil society members. The law provides the criteria for membership in the Commission and outlines the institution's role, functions and status, in addition to guaranteeing its independence. The Commission has also been assigned an office. However, because the adoption of the law preceded the designation of the national preventive mechanism's mandate, it does not expressly define the Commission's role as a national preventive mechanism. Except for the Chair of the Commission, members serve only on a part-time basis.

39. The Subcommittee welcomes the immediate designation of a national preventive mechanism, underlining the State party's commitment to the prevention of torture. However, the Subcommittee has previously observed that, when an existing institution is designated as the national preventive mechanism, it should not be presumed that the institution's existing framework automatically fulfils the requirements of the national preventive mechanism mandate.³ This has proven true in the context of Mozambique, where the Subcommittee has found no indication of reflection by the State party on the particular requirements to be satisfied which would enable a functioning national preventive mechanism.

40. In the light of the characteristics described below, the Subcommittee concludes that the State party has not wholly fulfilled its obligation to establish an Optional Protocol-compliant national preventive mechanism.

² Resolution No. 23/2013 of 3 May 2013.

³ See, for example, the Subcommittee's guidelines on national preventive mechanisms (CAT/OP/12/5) and the compilation of advice provided by the Subcommittee in response to requests from national preventive mechanisms (CAT/C/57/4 and Corr.1, annex), especially paras. 11–23.

Designation and legal basis

41. The Subcommittee notes that preparatory analysis was not carried out before the Commission was designated the national preventive mechanism, to examine whether it, or another institution, would best fulfil the requirements of the Optional Protocol. In addition, no legal instrument specifically regulates the functions, mandate, working methods, resources and other essential characteristics of the mechanism, as outlined in Part IV of the Optional Protocol. Therefore, significant work remains to be done to ensure that the national preventive mechanism is enabled to carry out its mandate in an efficient and effective manner. This includes taking all necessary measures to guarantee the mechanism's independence and to ensure that it has the required capabilities, professional knowledge and resources, in line with article 18 of the Optional Protocol.

42. **While the institutional format of the national preventive mechanism is left to the State party's discretion, it is imperative that the State party enact specific legislation which guarantees a national preventive mechanism in full compliance with the Optional Protocol and the Subcommittee's guidelines on national preventive mechanisms. The Subcommittee deems the adoption of specific national preventive mechanism legislation a crucial step towards guaranteeing compliance, although the enactment of such legislation will be beneficial only after the articulation of a vision for the prevention of torture and the identification of the appropriate national preventive mechanism model for Mozambique.**

43. **The Subcommittee further highlights the importance of granting the national preventive mechanism, by means of specific legislation, core national preventive mechanism functions, in line with article 19 of the Optional Protocol, including the power to regularly examine the treatment of persons deprived of their liberty in all places of detention, as defined in article 4 of the Optional Protocol; to issue recommendations to the relevant authorities; and to submit proposals and observations on existing and draft legislation. Moreover, it should outline key characteristics of the national preventive mechanism, in line with articles 18 and 20–23 of the Optional Protocol, including privileges and immunities of the mechanism's members and those who contribute to the mechanism, including experts and civil society, while guaranteeing protection for persons who provide information to the mechanism.**

Independence

44. Given the State party's obligation under article 18 (1) of the Optional Protocol to ensure that the national preventive mechanism and its personnel are functionally independent, it follows that the mechanism should not operate under the institutional control of a ministry or government minister, cabinet or executive council, president or prime minister. The Subcommittee considers that the involvement of representatives of governmental authorities in discussions and deliberations of the national preventive mechanism leading to the adoption of recommendations is not appropriate. Among other concerns, in the context of its work the national preventive mechanism has access to information and personal testimonials that must remain confidential. It is important to highlight this aspect, as privileged access to confidential information within the national preventive mechanism context would undoubtedly create conflicts of interest in the concurrent exercise of other governmental functions. In addition, persons who are actors in the criminal justice system should not be members of the national preventive mechanism as that would require them to carry out diverse functions simultaneously with respect to a person deprived of liberty, presenting another set of real or perceived conflicts of interest.

45. The Subcommittee observes that the fundamental requirement that national preventive mechanisms be independent is at odds with the current composition of the Commission and the vision of the Commission held by the State party, which, as the delegation was informed, privileges an intersectoral approach that deliberately includes State and non-State actors from sectors of the criminal justice system. The Subcommittee notes that, even within bodies designed to have a multisectoral approach, certain arrangements can be constructed to satisfy the requirements of independence pursuant to the Optional Protocol. For example, working groups, committees or rapporteurships could be created whose composition would be free of conflict of interest.

46. In this regard, the Subcommittee recommends that the State party clearly separate the mandate of the National Human Rights Commission and that of the national preventive mechanism or identify separate national preventive mechanism functions within the Commission which can be performed completely autonomously, in line with the guidelines on national preventive mechanisms. The national preventive mechanism should complement existing systems of oversight in Mozambique, and its establishment should take into account effective cooperation and coordination between preventive mechanisms in the country, without precluding the creation or operation of other complementary systems.

47. The Subcommittee further encourages the enactment of legislation, as described in paragraphs 42 and 43 above, that ensures the functional and operational independence of the national preventive mechanism, with due consideration for the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles).

Visits

48. According to article 27 of the law on the National Human Rights Commission, the Commission has a mandate to carry out visits to places of deprivation of liberty which, according to the State party, would enable it to function as a national preventive mechanism. However, during its visit the Subcommittee obtained very little information about the number of visits carried out by the Commission and the specific places of detention visited every year. In addition, the Subcommittee has observed that the Commission has not yet developed working methods, protocols or practices specific to the national preventive mechanism mandate, which raises doubts that any visits carried out could have followed the preventive approach.

49. Further, the Subcommittee understands that there is no written procedure or institutionalized forum where recommendations from such visits are presented to State authorities and subsequently followed up. The Commission has not yet published visit reports or an annual report on national preventive mechanism activities.

50. In addition, while article 19 of the Optional Protocol empowers national preventive mechanisms to visit any place under the jurisdiction and control of the State party where persons are or may be deprived of their liberty, the Subcommittee observes that the Commission has not embraced this mandate to its full extent as it has failed to visit places of detention other than penitentiaries, such as police stations, hospitals, migration detention centres and military installations. Moreover, the Subcommittee is concerned that, in the case of police stations known to be particularly problematic in terms of torture and ill-treatment — including the general command of the police in Maputo — access is reportedly barred to any monitoring institution, in clear violation of articles 4, 19 and 20 of the Optional Protocol.

51. The Subcommittee recommends that the State party facilitate training of members of the National Human Rights Commission to enable it to fulfil the functions of a national preventive mechanism, as provided for by the Optional Protocol (see CAT/OP/12/5, para. 31). Such training should cover interviewing techniques, visiting procedures and skills to detect signs and risks of torture and ill-treatment, with a view to developing national preventive mechanism working methods and a comprehensive visiting methodology that will highlight institutional and systematic challenges, including those affecting groups, communities and populations historically subjected to discrimination.

52. The State authorities and the National Human Rights Commission should enter into a meaningful process of continuous dialogue, with a view to implementing recommendations made by the Commission as a national preventive mechanism. In particular, the Subcommittee encourages the State party to introduce, together with the national preventive mechanism, an institutional forum for the discussion of, and follow up to, national preventive mechanism visit reports. It is recommended that the State party facilitate the publication of all reports to be produced by the national preventive mechanism and ensure that the mechanism produces an annual report that is transmitted to the Subcommittee, bearing in mind article 23 of the Optional Protocol

and paragraph 29 of the guidelines on national preventive mechanisms, both of which relate to the obligation of States parties to publish and widely disseminate the reports of national preventive mechanisms.

53. In addition, the Subcommittee emphasizes that the principle of unhindered access to all places where persons are or may be deprived of liberty is a cornerstone of the Optional Protocol. The State party should ensure that its national preventive mechanism is able to carry out visits in the manner and with the frequency that the mechanism itself decides. This includes the ability to conduct private interviews with those deprived of liberty and the right to carry out unannounced visits at all times to all places of deprivation of liberty. Limiting access by the mechanism to any place of detention as defined in article 4 of the Optional Protocol is a serious breach of the Optional Protocol. The Subcommittee urges the State to end these limitations immediately.

Resources

54. Finally, the Subcommittee is concerned that the National Human Rights Commission lacks adequate financial and human resources to carry out comprehensive preventive work which would include, inter alia, visits, follow-up, advocacy, training and public engagement, as set out in the analytical assessment tool for national preventive mechanisms (see CAT/OP/1/Rev. 1, para. 9). The Commission's annual budget is insufficient for its functioning, and actually decreased after it received the added national preventive mechanism mandate. Among its current membership, only the Chair of the Commission works full-time, and the Subcommittee notes that the part-time status of all the other members limits their ability to carry out national preventive mechanism duties. Further, the Commission's restricted resources preclude its recruitment of support staff. This lack of resources seriously undermines the Commission's capacity to discharge the national preventive mechanism mandate.

55. The Subcommittee also notes that the Commission could benefit from in-house medical, social work and psychological experts, as well as from the expertise of professionals working with children and other groups historically subjected to discrimination. Further, the Subcommittee is alarmed that derogatory statements have been made by a Commission member, demonstrating an uneven level of human rights experience and competence among the members.

56. The Subcommittee, recalling that an adequate budget helps secure the independence of the mechanism, notes that it is essential that the State party provide the National Human Rights Commission with the financial resources required to systematically and adequately undertake national preventive mechanism work. The Subcommittee therefore recommends that the State party provide funding to the Commission at a level that will allow it to carry out all essential mandated functions under the Optional Protocol. The mechanism should be sufficiently resourced so that it can ensure that the members have the required capabilities and professional knowledge, including through training and the recruitment of medical, psychological and other necessary expertise. Moreover, funds provided should also be sufficient to enable the hiring of staff, as well as provide for logistical, infrastructural and other related needs, including the publication of reports and relevant dissemination tools.

57. Article 18 (1) of the Optional Protocol, as elaborated in paragraph 8 of the guidelines on national preventive mechanisms, requires the mechanisms to have complete financial and operational autonomy. This implies that a national preventive mechanism designated within a larger institution should enjoy such autonomy not only from the State party that designated it, but also from the larger institution in which it is housed (see CAT/C/57/4, annex, paras. 11–12). The Subcommittee therefore recommends that the State party ensure that the funding of the national preventive mechanism be provided through a separate line in the annual national budget referring specifically to the national preventive mechanism, and ensure that the mechanism has its own infrastructure and is based in its own premises (see CAT/OP/12/5, para. 12). The Subcommittee further recommends that the State party's budget respond to an annual workplan produced by the national preventive mechanism itself.

58. Moreover, the Subcommittee wishes to be informed, as a matter of priority, about the steps taken by the State party to provide the national preventive mechanism with adequate human and financial resources, given that this constitutes a legal obligation under article 18 (3) of the Optional Protocol.

IV. Final recommendations

59. The Subcommittee recalls that, in accordance with general comment No. 2 (2008) of the Committee against Torture, prevention of torture constitutes an ongoing and wide-ranging obligation of the State party, which is achieved in part by the establishment and operation of an efficient national preventive mechanism.

60. **The Subcommittee therefore requests that the State party keep the Subcommittee informed annually of any legislative and policy changes and other relevant developments regarding the national preventive mechanism, so that it may continue to assist the State party in fulfilling its obligations under the Optional Protocol.**

61. The Subcommittee emphasizes that its high-level visit to Mozambique represents a unique opportunity for the State party to demonstrate its goodwill and readiness to fulfil its international obligations under the Optional Protocol through, inter alia, the manner in which it responds to the recommendations made by the Subcommittee. In this respect, the Subcommittee regards its visit and the present report as the beginning of a constructive dialogue with the State party. The Subcommittee stands ready to assist Mozambique in fulfilling its obligations under the Optional Protocol, in particular by providing technical assistance and advice, in order to achieve the common goal of prevention of torture and ill-treatment in places of deprivation of liberty.

62. **The Subcommittee therefore encourages the State party to freely take advantage of the Subcommittee's advisory function, in line with article 11 (b) of the Optional Protocol, as soon as such advice and assistance are needed. In addition, and further to paragraph 10 above, the Subcommittee recommends that the State party make the present report public, believing that this in itself is a preventive measure. Further, the Subcommittee recommends that the State party distribute the report to all relevant government departments and institutions.**

Annex I

List of government officials and other persons with whom the Subcommittee on Prevention of Torture met

Authorities

Ministry of Foreign Affairs and Cooperation

Mr. Juvenal Monjane, Directorate for International Organizations and Conferences Ministry of Justice, Constitutional and Religious Affairs

Ministry of Justice, Constitutional and Religious Affairs

H.E. Mr. Abdurremane Lino de Almeida, Minister of Justice

H.E. Mr. Joaquim Veríssimo, Deputy Minister of Justice

Mr. Albachir Macassar, National Director, Directorate of Human Rights and Citizenship

Ms. Leonilde Jonasse, Directorate of Human Rights and Citizenship

Office of the Attorney General

H.E. Ms. Beatriz Buchili, Attorney General

H.E. Ms. Amábélia Chuquela, Deputy Attorney General

Ms. Ester Lara Cossa, Director of the Office

Mr. José Maria Flor de Senda, Director, Office of International Cooperation

Mr. Afonso Antunes, Adviser

National Penitentiary Service

Ms. Virginia Megue, Head of the Department of Criminal Control

Ministry of Defence

Mr. Francisco Xavier Chirime, National Directorate of Defence Policy

Ministry of Labour, Welfare and Social Insurance

Mr. Joaquim Moises Siuto, Inspector General

Ministry of Health

Ms. Luisa Panguene, Deputy National Director of Medical Care

Assembly of the Republic

H.E. Mr. Veronica Macamo, President

H.E. Mr. Edson da Graça Macuacua, President, Committee on Constitutional Affairs, Human Rights and Legality

H.E. Mr. Isekiel Maolde Gusse, Rapporteur, Committee on Constitutional Affairs, Human Rights and Legality

H.E. Ms. Esmeranda Muthemba, Member, Committee on Constitutional Affairs, Human Rights and Legality

Supreme Court

H.E. Mr. Adelino Manuel Muchanga, Venerable President of Supreme Court

H.E. Mr. João Baptista de Assunção Beirão, Vice-President of the Supreme Court

Mr. Jeremias Alfredo Manjate, Secretary-General

Ms. Elsa da Paula, Director of the Office of the Vice-President

Office of the Ombudsman

H.E. Mr. José Ibraimo Abudo, Ombudsman

Mr. Carlos Singano Famano Júnior, Head of Office

Ms. Lidia Soares, Adviser

National preventive mechanism

Mr. Custódio Duma, Chair, National Human Rights Commission

Mr. Amilcar Andela, Commissioner

Mr. Ernesto Cassimuca Lipapa, Commissioner

Mr. Luís Bitone Nahe, Commissioner

Others

Mozambique Bar Association

Mr. Flavio Menete, Chair

Mr. Dazio de Sousa

Civil society

ALBIMOZ

Centre for Research on Human Development

LAMBDA

Lutheran World Federation

Human Rights League

Reformar

United Nations bodies and specialized agencies

International Labour Organization

International Office for Migration

Joint United Nations Programme on UNAIDS

Office of the United Nations High Commissioner for Refugees

Office of the United Nations Resident Coordinator

United Nations Development Programme

United Nations Educational, Scientific and Cultural Organization

United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women)

United Nations Human Settlements Programme (UN-Habitat)

United Nations Industrial Development Organization

United Nations Office on Drugs and Crime

United Nations Population Fund

Annex II

List of places of deprivation of liberty jointly visited by the national preventive mechanism and the Subcommittee on Prevention of Torture

Provincial Penitentiary Establishment of Maputo, Machava
