



# 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**

## **Comments of Mozambique on the recommendations and observations addressed to it in connection with the Subcommittee visit undertaken from 5 to 9 September 2016\*, \*\***

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\* The present document is being issued without formal editing.  
\*\* On 3 March 2025, the State Party requested the Subcommittee to publish its comments, in accordance with article 16 (2) of the Optional Protocol.



## I. Introduction

1. The Republic of Mozambique ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the Convention) on July 1, 2014, as a way of demonstrating its commitment to international commitments to the United Nations Human Rights Council.
2. In order to prevent torture and other inhuman or degrading treatment and in order to verify compliance with the standards laid down, in May 2013, the Republic of Mozambique adopted the Resolution for the ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as OPCAT), but only officially deposited the instrument in July 2014.
3. Pursuant to Article 17 of the OPCAT, and as part of the implementation of the Protocol, the Republic of Mozambique assigned to the National Human Rights Commission the responsibility of the National Mechanism for the Prevention of Torture, through Resolution 23/2013 of May 3, 2013.
4. As a way to strengthen its commitment to the prevention of torture, through closer relations with the Subcommittee on the Prevention of Torture (SPT), the Mozambican State received the first visit of the Committee for the Prevention of Torture from 5 to 9 September 2016.
5. In addition to the members of the SPT, the visiting delegation included representatives of the Office of the United Nations High Commissioner in Mozambique.

## II. Objectives of the visit

6. Although the recommendation of the report was that it was necessary to respond six (6) months later, the Mozambican State regrets the delay, as this was due to factors of an organizational nature. Meanwhile, in view of the recommendations issued to the Government of Mozambique, it is up to us to inform you that there are advances made with regard to the dialogue between the Mozambican State and various actors, as well as in the implementation of the recommendations, despite the difficulties imposed by natural disasters, terrorism and violent extremism.
7. **In view of the publication of the report in paragraph 11 thereof, the Ministry of Justice, Constitutional and Religious Affairs, as an organ of the State apparatus which, in accordance with the principles, objectives and tasks defined by the Government, is responsible for directing, implementing and coordinating the area of constitutionality, legality, justice, human rights and cross-cutting issues, He sees no problem with the report being made public.**
8. In accordance with Article 16 (2) of the OPCAT, the report remains confidential until such time as the State decides to make it public. To highlight that the Mozambican State recognizes that by publishing this report, it would be contributing to the prevention of torture and degrading treatment in Mozambique, as a way of disseminating the recommendations based on a fruitful and transparent national dialogue.
9. **It should be noted that this instrument was in due course shared by all relevant institutions dealing with the issues of torture and prevention in Mozambique.**
10. Actions are currently underway to map the recommendations contained in the report of the Subcommittee's visit, made public and eligible for funding through the funds for specific projects.
11. In accordance with the mandate as provided for in Article 11 (b), sub-paragraphs (ii) and (iii) of the OPCAT, the Committee sent a separate confidential report to the National Human Rights Commission as the National Mechanism for the Prevention of Torture.
12. Under Article 13 of the Convention against Torture and Other Cruel or Inhuman Treatment (the Convention against Torture), all those who report or testify to acts or practices against torture enjoy protection and should not be prejudiced by reporting such acts.

13. That is why, the SPT carries out its tasks in accordance with the Optional Protocol, the situation of the persons with whom it establishes contact must not be prejudiced. Where this is not the case, the Subcommittee's precautionary mandate, including the basic imperative to "**do no harm**" is jeopardised.

14. **The Mozambican State observes and takes into account the primary responsibility provided for in Article 15 of the Optional Protocol. At no time do persons who come into contact with SPT or NPM delegations to report acts or practices of torture suffer consequences or reprisals for such acts, otherwise the State assumes the responsibility to protect victims and bring offenders to justice for trial and punishment.**

### **III. Background**

#### **A. Regulatory framework**

15. The Republic of Mozambique acceded to the Convention against Torture on 14 September 1999 and to the Optional Protocol on 24 July 2014.

16. In Mozambican Legislation, although there are no specific laws that define torture as a criminal offense, however, the Constitution of the Republic in its Article 40.1 prohibits torture and other inhuman and degrading treatment.

17. In particular, the Optional Protocol notes that the definition of torture in Article 1 of the Convention against Torture is not reflected in the conditions of the Mozambican Penal Code, contrary to the obligation of the State Party under Article 4 of the Convention. During the visit, several authorities informed the Committee that this was not a major point of analysis during the recent revision process of the Penal Code. The committee found this lack of analysis incongruous, given that all quarters coincide on the problematic of torture and cruel treatment in the country.

18. While the Sub-Committee has been informed that a criminal law review process may take place in a short-term reform, the Committee regrets that the State Party does not comply with this condition, which was included, *inter alia*, in the observations of the Committee against Torture's ("CAT") conclusion for Mozambique in 2013, well before the date of adoption of the New Code on 26 June 2015. The SPT further states that the State Party that has defined the offence of torture in accordance with Article 1 of the Convention against Torture has a preventive effect.

#### **B. The Republic of Mozambique, in the ongoing process of evaluating and revising its criminal legislation, has used the guidance contained in General Comment 2 of the CAT**

##### **Impunity**

19. Non-specific legislation on the crime of torture also impedes the collection and analysis of differentiated statistics, thus making it difficult to diagnose existing torture and ill-treatment. Even when the SPT was informed that acts of torture, if and when reported, could be subject to criminal charges under other existing national legislation, the authorities did not provide the delegation with information on any such cases that had occurred before the Mozambican courts; Coincidentally, other stakeholders have maintained that there has never been a conviction resulting from acts of torture or ill-treatment, which is a very worrying situation.

20. In this regard, the SPT remains concerned about reports it has received that alleged acts of torture and ill-treatment are not systematically investigated in Mozambique. During its visit, the Sub-Committee 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, after being detained by the police during the SPT visit, reportedly died from injuries sustained from torture and ill-treatment.

21. In this context, the Mozambican State, within the framework of national legislative reforms, revised the Penal Code, although it did not specifically address the issue of the definition of torture as a criminal act, but it needs to be aligned with the provisions of Article 1 of the Convention against Torture, for the framing and sanctioning of torture in the Republic of Mozambique.

22. The Mozambican State, with a view to complying with the taking of urgent measures to prevent and punish all acts of torture and ill-treatment occurring in the circumstances described in this paragraph, has created and strengthened the National Criminal Investigation Service (SERNIC) and other Anti-Crime Brigades or CNDH and MNP, in order to ensure: a) investigate all allegations of torture and ill-treatment through processes that are expeditious, impartial and transparent, and to be efficient and effective, and (b) to prosecute those responsible. Persons convicted of such acts shall be punished with penalties commensurate with the seriousness of the offences committed.

### **Preventive System**

23. The SPT notes that in addition to the NPM, a wide range of bodies carry out monitoring functions in Mozambique, including the National Assembly Commission on Constitutional Affairs, Human Rights and Legality, the Judiciary, the Prosecutor General, the Ombudsman and some civil society organisations. The mandates and visiting prerogatives of these existing bodies may coincide, but they do not appear to be part of an overarching system or overarching policy.

24. In addition, the SPT noted that the interaction and cooperation between the latter seems to oscillate between what is largely ad hoc and what does not exist. As a result, attempts to prevent torture and ill-treatment are unsystematic and irregular in nature, lacking a comprehensive strategy, systematic monitoring and mutual cooperation. This is likely to result in gaps in coverage or overlapping institutional mandates with divergent or conflicting measures.

25. In this context, the Mozambican State has made progress in developing and establishing a coherent and coordinated approach to the prevention of torture, taking into account the differentiated roles of state and non-state institutions, civil society and other independent sectors. To this end, the Mozambican State is studying the possibility of establishing an action plan against torture, in order to define guidelines for the synergetic action of all actors interested in the prevention of torture and ill-treatment. The National Human Rights Commission, as the National Prevention Mechanism, has carried out monitoring visits to places of agglomerations or concentrations of people, in order to carry out prevention work, thus contributing to its relationship with the State and other interested parties in this work.

26. Within this approach, the State Party should take into account that, through the ratification of the OPCAT, it has added two additional institutions to its internal system: the Subcommittee itself and the NPM. These bodies are entitled, under the terms of the Optional Protocol, to unrestricted, unannounced, and unlimited access to any place where persons are or may be deprived of their liberty, in order to make all necessary observations and recommendations.

27. The work of the Sub-Committee and the NPM aims to prevent torture and ill-treatment in two mutually reinforcing ways: First, through the conduct of regular, unannounced, and unimpeded visits to places of deprivation of liberty by the SPT and the NPM, future acts of torture and ill-treatment can be deterred. Second, by engaging in constructive dialogue with authorities, the SPT and NPMs provide independent and expert support from the detention system and detailed recommendations for improvement based on first-hand information gathered during their visits.

28. As explained by the United Nations Special Rapporteur on torture and other cruel forms, Inhuman or degrading treatment or punishment:

“The very fact that national or international experts have the power to inspect each place of detention at any time without prior notice, have access to prison records and

other documents, have the right to speak to all detainees privately and [are able] to conduct medical investigations of torture victims has a strong deterrent effect. At the same time, such visits create the opportunity for independent activities for experts to examine first-hand the treatment of prisoners and detainees [...] Many problems result from inadequate systems that can be easily improved through regular monitoring. By conducting regular visits to places of detention, specialist visitors often engage in a constructive dialogue with the authorities involved to help them resolve the problems observed."

29. Preventive visits are therefore distinguished from other types of visits by their purpose and methodology. For example, reactive visits are often triggered by the receipt of a complaint. These visits are intended to address the complainant's specific problem, or if not, aim to investigate and document a case so that appropriate sanctions can be applied to 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.

30. Preventive visits, on the other hand, are proactive. Forming an integral part of an ongoing process of analysis, monitoring and evaluation of the prison system, these visits involve multidisciplinary teams of independent experts who engage in conversations with detainees and share their direct observations with detainee staff. These experts also examine facilities, materials, standards and procedures, as well as the adequacy of existing protection guarantees.

31. The SPT has developed a deep understanding of the importance of a multidisciplinary approach as the basis of 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 of detention – as well as withholding or insufficient provision of health care – can constitute torture or ill-treatment. To guard against this, monitoring of places of detention should be based on health information, including, among other things, assessment of conditions that may be a threat to health, as well as analysis of conditions of care and treatment provided to people with health problems, both permanent and temporary. Informed health monitoring also includes the analysis of existing physical and mental health care, and medication. It should also incorporate assessments of groups, communities, and populations historically subject to discrimination, the way they are treated, and what is done to provide necessary care and protection for these groups. This can include people with mental health problems and physical disabilities and people with special needs, such as people with diabetes, celiac disease, HIV, and tuberculosis, among others.

32. In addition, special emphasis should be placed on registration and health documentation upon arrival at the place of detention. Preventive monitoring includes surveying, whether any assessment of injuries was made on arrival, whether any form of forensic investigation was conducted, or whether there are possibilities to document a possible sequela on arrival. The importance of evaluating medical records, both upon entry and during the course of detention, should be highlighted, as well as the need to evaluate other health services, including dental care and services provided outside of a detention facility.

**33. In this regard, the Mozambican State, despite facing financial constraints, has nevertheless made some effort to empower officials in the training component in some disciplines that directly or indirectly contribute to ensuring the work of prevention against torture. In addition, the work resulting from visits to places of detention or deprivation of liberty is generally carried out with the prior knowledge of the competent authorities, which have sought to cooperate in the provision of information that may be necessary for this purpose, and this act constitutes an unmistakable sign of the establishment of a constructive dialogue between the parties in the process of carrying out preventive work. within the framework of national, regional or international best practices set out in the CAT.**

**34. In this context, the State has made immeasurable efforts to support the NPM, as a direct partner, in order to help the NPM to carry out its specialised function with the necessary effectiveness and efficiency, with a view to achieving the objectives set out. In the meantime, the State recognizes that there are still enormous challenges to detach**

the NPM from a solid and powerful structure, with regard to the insufficiency of specialized human resources, such as: health professionals, social workers, psychologists, among others. The State, through dissemination and awareness-raising actions at all levels of society, has sought to give visibility to the importance of the mandate and work of the NPM, a fact that has been welcomed mainly in detention centers and other places with outbreaks of torture and ill-treatment, obviously respecting the principle of confidentiality.

## IV. The National Preventive Mechanism

35. Pursuant to Article 17 of the OPCAT, Mozambique had an obligation to maintain, designate or establish one or more independent MPNs at least one year after its accession to the Protocol. It was in this context that, through a resolution of the Council of Ministers published on May 3, 2013, the State Party designated the National Human Rights Commission (CNDH) as its National Prevention Mechanism (NPM).

36. The CNDH is a public institution charged with strengthening the protection, promotion, and defense of human rights in Mozambique. Mandated by Law No. 33 of 22 December 2009 ("CNDH Law"), the CNH is composed of eleven members, currently including executive and non-executive agents and employees of the State, lawyers, university professors and members of civil society. The CNDH Law provides the criteria for membership of the CNDH and describes the institution's role, functions, and statute, as well as ensuring its independence. The CNDH has an office. However, as the CNDH Law precedes the designation of the mandate of the NPM, it does not expressly define the role of the NPW as NPM. With the exception of the President of the Commission, the members of the CNDH perform their duties on a part-time basis.

37. The SPT welcomed the immediate designation of an NPM, through which the State party underlined its commitment to the prevention of torture. However, the SPT previously noted that when an existing institution is designated as an NPM, it should not assume that the institution's existing framework automatically meets the requirements of the NPM's mandate. This has proven to be true in the Mozambican context, where the SPT has found no indication of reflection on the part of the State Party on the specific subject of the requirements to be met that would allow for a functioning NPM.

38. In light of the characteristics set out below, the SPT concludes that the State party has not fully complied with its obligations to establish an OPCAT-compliant NPM.

### Designation and Legal Basis

39. The SPT observes that the preparatory analysis was not carried out before the decision of the CNDH to designate the NPM to examine itself, or another institution, would better comply with the requirements of the OPCAT. In addition, no legal instrument specifically regulates the functions, mandate, working methods, resources, and other essential features of the NPM as described in Part IV of the OPCAT. Therefore, significant work remains pending to ensure that the NPM is empowered to fulfil its mandate efficiently and effectively. This includes taking all necessary measures to ensure the independence of the NPM and to ensure that the NPM has the necessary capacities, professional knowledge and resources in accordance with Article 18 of the Optional Protocol.

40. **With regard to this point, the State recognizes that it is imperative to adopt specific legislation for the NPM, since only in this way will it be possible to better delimit and distinguish the roles of this body from those of the CNDH which, for the time being, still generate some uncertainty about the limits of action of each one in the work of prevention. The State is currently engaged in the search for document-level data in order to develop specific legislation on NPM in accordance with OPCAT and the SP Guidelines on National Prevention Mechanisms ("NPM Guidelines") appropriate for Mozambique.**

41. **The Mozambican State, recognizing the importance of the NPM for the exercise of its functions on the basis of specific legislation, will do so in compliance with the provisions of Article 10 of the OPCAT, safeguarding the principle of being able to regularly review the treatment of persons deprived of liberty in all places of detention, as defined in Article 4 of the OPCAT, to issue recommendations to the competent authorities and to submit proposals and comments on the draft law. As well as outlining the main features of the NPM, in line with articles 18, 20-23 of the OPCAT, including privileges and immunities of the NPM members and those who contribute to the NPM, such as experts and civil society, while ensuring protection for persons who provide information to the NPM.**

## **Independence**

42. Given the obligation of the State party under Article 18(1) of the OPCAT to ensure that the NPM and its staff are functionally independent, it is underlined that the NPM should not operate under the institutional control of a Ministry or Government Minister, Cabinet or Executive Council, President, or Prime Minister. The SPT considers that the involvement of representatives of government authorities in NPM discussions and deliberations leading to the adoption of recommendations is not appropriate. Among other concerns, in the context of its work, the NPM has access to personal information and testimony that must remain confidential. It is important to highlight this, as privileged access to confidential information within the context of NPM would undoubtedly create a conflict of interest in the simultaneous exercise of other governmental functions. In addition, persons who are serving as actors in the Criminal Justice System should not be members of the NPM, as this requires them to simultaneously perform several functions in relation to a person deprived of liberty, presenting another set of real or perceived conflicts of interest.

43. The SPT notes that the fundamental requirement that MPNs be independent is at odds with the current composition of the CNDH and the Commission's view held by the State Party which, as informed to the delegation, favours an intersectoral approach that deliberately includes state and non-state actors from some of these sectors. The SPT notes that even within bodies designed to adopt a multi-sectoral approach, certain constructions may be set up to meet the independence requirements under the Optional Protocol. For example, working groups, commissions or rapporteurships can be created, with compositions free of conflict of interest.

44. **In this regard, the State, as has been emphasized above, recognizes the need for the separation of the mandate of the CNDH and the NPM, since their form of action, although with a common objective, is nevertheless different. Hence, the enactment of specific legislation of the NPM may be feasible to make this body of full autonomy, in accordance with the NPM Guidelines. In addition, its way of acting should be complementary to the other existing supervision systems in Mozambique, always guided by the spirit of cooperation and effective coordination of prevention.**

45. **In this regard, the State will endeavour to comply with the enactment of legislation, in compliance with the provisions of paragraphs 42 and 43, which provide for the guarantee of the functional and operational independence of the NPM in accordance with the Paris Principles.**

## **Visits**

46. According to the Law of the CNDH, this body has a mandate to carry out visits to places of deprivation of liberty, which in the position of the State party, would allow it to function as an NPM. However, during its visit, the SPT obtained very little information on the number of visits carried out by the CNDH and the specific places of detention visited each year. In addition, the SPT noted that the CNDH has not yet developed specific working methods, protocols, or practices for the NPM's mandate which raises doubts that any visits carried out have followed the preventive approach.

47. In addition, the SPT takes the view that there is no written procedure or institutionalised forums in which the recommendations of those visits are presented to the State authorities and subsequently followed up. The CNDH has not yet published visit reports or an annual report on NPM activities.

48. Furthermore, although Article 19 of the Optional Protocol authorizes NPMs to visit “any place under the jurisdiction and control [of the State Party] where persons are or may be deprived of their liberty”, the SPT notes that the CNDH has not undertaken this mandate in its entirety, as it has not visited places of detention other than penitentiary establishments, such as police stations, hospitals, migrant detention centres, and military installations. In addition, it is worrying that, in the case of police stations, particularly problematic in terms of torture and ill-treatment – including the General Police Command in Maputo – the SPT was informed that access is prohibited to any monitoring institution, in clear violation of articles 4, 19 and 20 of the OPCAT.

49. **In this regard, the State, with the support of cooperation partners, has carried out some technical training, although not specifically to carry out the functions of an NPM, but has nevertheless contributed to the establishment of constructive dialogue and discussions around institutional challenges, which include intersectoral and multisectoral forms of action for crime prevention, in general, including torture and ill-treatment. With a view to training CNDH technicians in specific techniques to perform the functions of an NPM, the State shows its openness and availability to carry out such activity, provided that it is through the support of cooperation partners.**

50. The State, recognizing the relevance of the publication of reports of NPM visits, has made efforts to establish continuous dialogue with the CNDH and the NPM in order to define ways of working in a coordinated manner, both for the discussion and follow-up of reports of NPM visits, and to facilitate the publication of all reports, ensuring, including the production of the Annual Report to be transmitted to the SPT, pursuant to Article 23 of the OPCAT and paragraph 29 of the NPM Guidelines, both related to the obligation of States Parties to publish and widely disseminate NPM reports.

51. **In this regard, the State has respected the NPM and other interested parties in accessing all places of deprivation of liberty, or other places of detention, in order to carry out pre-announced or unannounced visits at all times. Similarly, the State sees no inconvenience in ensuring that the NPM carries out visits in the manner and at the intervals that the NPM deems appropriate, based on the principle of mutual inter-aid collaboration between the parties involved in prevention work.**

## Resources

52. Finally, the SPT is concerned that the CNDH does not have adequate financial and human resources to carry out comprehensive preventive work, which would include, inter alia, visits, accompaniment, advocacy, training and public engagement. The annual budget of the CNDH is insufficient for its operation and in fact decreased after receiving the addition of the mandate of the added NPM. Among its current members, only the President of the Commission works full-time, and the SPT notes that the part-time status of all other members limits their ability to perform the functions of the NPM. In addition, the Commission’s limited resources hinder the recruitment of support staff. This lack of resources seriously undermines the ability of the CNDH’s work to fulfil the NPM’s mandate.

53. The SPT also notes that the CNDH could benefit from internal medical and social assistance and psychological specialists, as well as from the expertise of professionals working with children and other groups historically subject to discrimination. In addition, the SPT is alarmed that derogatory statements have been made by a member of the CNDH demonstrating an unequal level of human rights experience and competence among members.

54. **With regard to the issue of the provision of the necessary financial resources to the CNDH to carry out the work of the NPM, in a systematic and adequate manner, the State will continue to provide funding to the CNDH in the manner it has been doing to**

enable it to perform all the essential functions mandated under the OPCAT, due to the limitations of the budgetary allocation. However, in the event of any reinforcement or increase in its budget, the State may reinforce the NPM with sufficient resources to ensure that members have the necessary resources and professional knowledge, including through training and recruitment of necessary medical, psychological and other specialists, as well as enabling the hiring of personnel, provision of logistical needs, infrastructure and other related issues, including the publication of relevant reporting and disclosure tools.

55. On this point, and considering the imperative need for the NPM to operate with full financial and operational autonomy, through a separate line in the national annual budget, the State is considering how to readjust its budgetary plan, with a view to responding to the annual work plan drawn up by the NPM, in order to ensure the creation of conditions for access to adequate own infrastructures and facilities, pursuant to Article 18 (1) of the OPCAT.

56. The State, in compliance with the provisions of Article 18 (3) of the OPCAT, will make every effort to keep the SPT informed, within the time limits, of the measures taken by the State Party to provide the NPM with adequate human and financial resources for its functional and operational autonomy in Mozambique.

## V. Final recommendations

57. The SPT recalls that the prevention of torture constitutes an ongoing task and overarching obligation of the State party, which is achieved in part by the establishment and operation of an efficient NPM.

58. The State Party, within the framework of its task and obligation to commit the prevention of torture, shall endeavour in every way to keep the SPT informed annually of any legislative and policy changes and other developments relating to the NPM, so that it may continue to assist the State Party in fulfilling its obligations under the Optional Protocol.

59. The SPT emphasizes that its high-level visit to Mozambique represents a unique opportunity for the State Party to demonstrate its goodwill and readiness to comply with its international obligations under the Optional Protocol through, inter alia, the manner in which it responds to the recommendations made by the SPT. In this regard, the SPT considers its visit and this report as the beginning of a constructive dialogue with the State Party. The SPT stands ready to assist Mozambique in fulfilling its obligations under the Optional Protocol, in particular through the provision of technical assistance and advice, in order to achieve the common goal of preventing torture and ill-treatment in places of deprivation of liberty.

60. As stated in the introductory part of this report, on this point, the State Party would like to take this opportunity to express its gratitude for the visit made by the SPT to the country, which certainly brought a gain, especially from the perspective of advice and assistance given, for the improvement of the execution of the functions of the State Party and other parties interested in the prevention of torture and ill-treatment in places of detention or deprivation of liberty, freely from the advisory role of the SPT, in line with Article 11 (b) of the Optional Protocol, as soon as such advice and assistance is needed. Therefore, the State party through the Ministry of Justice, Constitutional and Religious Affairs (MJCR) expects to make this report public as soon as it has been completed. It will then be distributed to all relevant government institutions and other stakeholders in the prevention of torture and ill-treatment work in Mozambique.