



**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**

**Views of the Subcommittee on Prevention of Torture  
on the compatibility with the Optional Protocol to the  
Convention against Torture of presidential decree  
No. 9.831/2019 relating to the national preventive  
mechanism of Brazil\*\* , \*\*\* , \*\*\*\***

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\* Reissued for technical reasons on 11 February 2020.

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\*\*\* At its thirty-ninth session, in November 2019, the Subcommittee decided, in accordance with its mandate under article 11 (b) of the Optional Protocol, to issue these views as a public document.

\*\*\*\* The present document is being issued without formal editing.



## I. Introduction

1. On 3 September 2019 the Mecanismo Nacional de Prevenção e Combate à Tortura, the national preventive mechanism of Brazil, sent a request to the Subcommittee on Prevention of Torture and other Cruel, Inhuman, or Degrading Treatment for a legal opinion on the compatibility of presidential decree No. 9.831 of 10 June 2019, which modifies presidential decree No. 8.154 of 16 December 2013, with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
2. The Subcommittee on Prevention of Torture, established under article 2 of the Optional Protocol, is an independent treaty body with its mandate and functions set out in the Optional Protocol, which was adopted on 18 December 2002 by the General Assembly in resolution 57/199 and entered into force on 22 June 2006.
3. The objective of the Optional Protocol is to “establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment” (art. 1). The Subcommittee has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill-treatment and an advisory mandate to assist States parties and national preventive mechanisms to comply with their obligations under the Optional Protocol.
4. Pursuant to article 11 of the Optional Protocol, the Subcommittee has a threefold mandate: to visit places of deprivation of liberty in States parties; to advise and assist both States parties and national preventive mechanisms concerning the establishment and functioning of such mechanisms; and to cooperate with other international, regional and national organizations and institutions to strengthen protection against torture and ill-treatment.
5. The Subcommittee monitors the implementation of the Optional Protocol by States which are a party to it. This includes overseeing the implementation of the obligation of States to set up independent and functional national preventive mechanisms to examine the treatment of persons deprived of their liberty, making recommendations to government authorities to strengthen protection against torture and commenting on existing or proposed legislation. As such, the Subcommittee is the guardian of the Optional Protocol.
6. The views expressed by the Subcommittee in the present document are its own and do not necessarily reflect those of, or bind, the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Human Rights, the United Nations or any of its bodies or officials. They do, however, represent the views of the body expressly mandated by the Optional Protocol to ensure the integrity of the system of preventive oversight established under the Optional Protocol.

## II. Context

7. Brazil ratified the Convention against Torture on 28 September 1989 and the Optional Protocol on 12 January 2007. In accordance with article 17 of the Optional Protocol, Brazil should have established a national preventive mechanism at the latest one year after its ratification. A national system to prevent and combat torture was established by the State party by Law 12.847, of 2 August 2013, which directly refers to article 3 of the Optional Protocol.<sup>1</sup>

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<sup>1</sup> Article 8 of the Law states that the national mechanism for the prevention and combat of torture has been created, as part of the structure of the Human Rights Secretariat of the Presidency of the Republic and is responsible for preventing and combating torture and

8. In December 2013, presidential Decree No. 8.154 was published to regulate the functioning of the the national system to prevent and combat torture, the composition and functioning of the National Committee for the Prevention and Combat of Torture and to establish provisions regarding the national preventive mechanism.

9. In September 2014, the Human Rights Secretariat of the Presidency of the Republic launched a public call for candidates for the positions of the National Committee for the Prevention and Combat of Torture assigned to representatives from civil society organizations and professional associations.<sup>2</sup> The national preventive mechanism was finally established in 2015.<sup>3</sup>

10. On 10 June 2019, presidential Decree No. 9.831/2019 brought substantive changes to the national system to prevent and combat torture. The Decree appears to indicate a change in the policy of the State party towards prevention of torture in general, as well as, in particular, towards a model of a national preventive mechanism appropriate to fulfilling its international obligations under the Optional Protocol. A new model has been introduced, the main differentiating feature of which is that the members/experts of the national preventive mechanism would cease to be remunerated and would exercise their functions on a voluntary basis (article 4 of Decree No. 9.831, which modifies article 10 of Decree No. 8.154).<sup>4</sup> Decree No. 9.831 also removes the requirement for membership of the mechanism to be diverse in terms of gender, race and regional representation<sup>5</sup> and, in ways that remain somewhat unclear, dismantles the the administrative support structure of the mechanism.

11. As clarified in its letter dated 2 August 2019 (reference No. 2020/2019/GAB.SNPG/SNPG/MNFDH) addressed to the national preventive mechanism, the Ministry of Women, Family and Human Rights stated that in future it would support the members of the mechanism, inter alia, in the following ways:

(a) Access to and use of the electronic system of information of the Ministry would be available to the members of the mechanism, but only as **external users** (bold in the original);

(b) Financial support for the transportation of members of the mechanism would be provided by staff of the Ministry, yet to be designated;

(c) Entry to the Ministry would only be available upon request;

(d) The use of offices for members of the mechanism would only be available upon advance request;

(e) The current support staff of the mechanism (the secretariat) would be “redistributed” to other units within the Ministry, to be defined;

(f) Members of the mechanism would have to return their badges and access cards for the Ministry buildings and parking facilities and their official mobile telephones and any other public equipment that had been provided to them.

12. According to these new measures, the 11 members/experts of the national preventive mechanism have not only lost their remuneration but have also lost their previous levels of administrative support and dedicated staffing. It is now quite

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other cruel, inhuman or degrading treatment or punishment, pursuant to article 3 of the Optional Protocol, which was promulgated by Decree no. 6.085, of 19 April 2007.

<sup>2</sup> See [www.mdh.gov.br/informacao-ao-cidadao/participacao-social/comite-nacional-de-prevencao-e-combate-a-tortura/representantes/editais-do-sistema-nacional-de-combate-a-tortura](http://www.mdh.gov.br/informacao-ao-cidadao/participacao-social/comite-nacional-de-prevencao-e-combate-a-tortura/representantes/editais-do-sistema-nacional-de-combate-a-tortura).

<sup>3</sup> For more information on the establishment of the national preventive mechanism, see CAT/OP/BRA/3 and CAT/OP/BRA/1.

<sup>4</sup> Article 4 states that participating in the national preventive mechanism will be considered as providing unpaid, relevant public service.

<sup>5</sup> See article 10, paragraph 2, of Decree No. 8.154 of 16 December 2013.

unclear how the Ministry will provide this support, which is essential for the effective functioning of the mechanism. Taken as a whole, this represents a major change in the way the State party has decided to organize the functioning of the national preventive mechanism and hence its policy on the prevention of torture.

13. On 12 August 2019, an injunction of the Federal Court (ACP 5039174-92.2019.4.02.5101) ordered the suspension of the effects of Decree 9.831 and that the Ministry of Women, Family and Human Rights return the 11 members/experts to their pre-existing functions on a remunerated basis. On 13 August 2019, the Government challenged this decision but the Court rejected its arguments. A final decision on the case is pending. Meanwhile, the order suspending the effects of the Decree and returning the 11 members/experts to their previous position remains valid. In a letter dated 29 August 2019 to the United Nations (attached), the national preventive mechanism indicated that the Government was not complying with the judicial order and, therefore, the members/experts of the mechanism remained without remuneration and unable to undertake their functions in the manner required by the court order.

### **III. National preventive mechanisms under the Optional Protocol system**

14. The Subcommittee has not set out a specific model for national preventive mechanisms. It is of the view that there is no “one size fits all” model that would be appropriate for all States parties to the Optional Protocol.<sup>6</sup> However, the elements that are necessary for a body to constitute a national preventive mechanism for the purposes of the Optional Protocol are clearly set out in articles 17 to 23 of the Protocol. They have been authoritatively interpreted by the Subcommittee in its guidelines (see CAT/OP/12/5), reports<sup>7</sup> and advice (see CAT/C/57/4), which are variously addressed to States parties and national preventive mechanisms. Only those mechanisms that reflect those elements can be considered to be compliant with the Optional Protocol.

15. The provisions of the Optional Protocol clearly stipulate that States parties shall ensure the structural and functional independence of national preventive mechanisms and of their personnel (secretariat), and shall also guarantee that the necessary resources are allocated to them in order to enable the mechanisms to carry out their mandates effectively, as provided for in articles 19 and 20 of the Optional Protocol. Article 18 of the Optional Protocol reads as follows:

1. The States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.
2. The States Parties shall take the necessary measures to ensure that the experts of the national preventive mechanism have the required capabilities and professional knowledge. They shall strive for a gender balance and the adequate representation of ethnic and minority groups in the country.
3. The States Parties undertake to make available the necessary resources for the functioning of the national preventive mechanisms.

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<sup>6</sup> See “Preventing torture, the role of the national preventive mechanisms” (2018), p. 8, available at [www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM\\_Guide.pdf](http://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Guide.pdf).

<sup>7</sup> The publicly available Subcommittee reports can be found on its website at [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/CountryVisits.aspx?SortOrder=Chronological).

4. When establishing national preventive mechanisms, States Parties shall give due consideration to the Principles relating to the status of national institutions for the promotion and protection of human rights.

16. The Subcommittee has clarified these elements through its guidelines on national preventive mechanisms (CAT/OP/12/5). For the purposes of assessing the current changes in the legislation of Brazil, the following guidelines seem to be of particular relevance:

- (a) **§8. The operational independence of the NPM should be guaranteed;**
- (b) §9. The relevant legislation should specify the period of office of the member/s of the NPM and any grounds for their dismissal. Periods of office, which may be renewable, should be sufficient to foster the independent functioning of the NPM;
- (c) §10. The visiting mandate of the NPM should extend to all places of deprivation of liberty, as set out in Article 4 of the Optional Protocol;
- (d) **§11. The necessary resources should be provided to permit the effective operation of the NPM in accordance with the requirements of the Optional Protocol;**
- (e) **§12. The NPM should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol;**
- (f) **§13. The State authorities and the NPM should enter into a follow-up process with the NPM with a view to the implementation of any recommendations, which the NPM may make;**
- (g) §14. Those who engage or with whom the NPM engages in the fulfilment of its functions under the Optional Protocol should not be subject to any form of sanction, reprisal or other disability as result of having done so;
- (h) **§15. The effective operation of the NPM is a continuing obligation. The effectiveness of the NPM should be subject to regular appraisal by both the State and the NPM itself, taking into account the views of the SPT, with a view to its being reinforced and strengthened as and when necessary;**
- (i) §16. The NPM should be identified by an open, transparent and inclusive process, which involves a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria;
- (j) §17. Bearing in mind the requirements of Article 18 (1) and (2) of the Optional Protocol, members of the NPM should collectively have the expertise and experience necessary for its effective functioning;
- (k) §18. The State should ensure the independence of the NPM by not appointing to it members who hold positions which could raise questions of conflicts of interest;
- (l) §19. Members of NPMs should likewise ensure that they do not hold or acquire positions, which raise questions of conflicts of interest;
- (m) **§20. Recalling the requirements of Articles 18 (1) and (2) of the Optional Protocol, the NPM should ensure that its staff have between them the diversity of background, capabilities and professional knowledge necessary to enable it to properly fulfil its NPM mandate. This should include, inter alia, relevant legal and health-care expertise;**
- (n) §21. The NPM should be established within one year of the entry into force of the Optional Protocol for the State concerned, unless at the time of ratification a declaration has been made in accordance with Article 24 of the Optional Protocol;

- (o) **§24. The State should allow the NPM to visit all, and any suspected, places of deprivation of liberty, as set out in Articles 4 and 29 of the Optional Protocol, which are within its jurisdiction. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control;**
- (p) **§25. The State should ensure that the NPM is able to carry out visits in the manner and with the frequency that the NPM 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, in accordance with the provisions of the Optional Protocol;**
- (q) **§26. The State should ensure that both the members of the NPM and its staff enjoy such privileges and immunities as are necessary for the independent exercise of their functions;**
- (r) §27. The State should not order, apply, permit or tolerate any sanction, reprisal or other disability to be suffered by any person or organisation for having communicated with the NPM or for having provided the NPM with any information, irrespective of its accuracy, and no such person or organisation should be prejudiced in any way;
- (s) **§28. The State should inform the NPM of any draft legislation that may be under consideration which is relevant to its mandate and allow the NPM to make proposals or observations on any existing or draft policy or legislation. The State should take into consideration any proposals or observations on such legislation received from the NPM;**
- (t) §29. The State should publish and widely disseminate the Annual Reports of the NPM. It should also ensure that it is presented to, and discussed in, by the national legislative assembly, or Parliament. The Annual Reports of the NPM should also be transmitted to the SPT, which will arrange for their publication on its website;
- (u) **§31. The NPM, its members and its staff should be required to regularly review their working methods and undertake training in order to enhance their ability to exercise their responsibilities under the Optional Protocol;**
- (v) **§32. Where the body designated as the NPM performs other functions in addition to those under the Optional Protocol, its NPM functions should be located within a separate unit or department, with its own staff and budget;**
- (w) **§33. The NPM should establish a work plan/programme which, over time, encompasses visits to all, or any, suspected, places of deprivation of liberty, as set out in Articles 4 and 29 of the Optional Protocol, which are within the jurisdiction of the State. For these purposes, the jurisdiction of the State extends to all those places over which it exercises effective control;**
- (x) **§34. The NPM should plan its work and its use of resources in such a way as to ensure that places of deprivation of liberty are visited in a manner and with sufficient frequency to make an effective contribution to the prevention torture and other cruel, inhuman or degrading treatment or punishment;**
- (y) **§35. The NPM should make proposals and observations to the relevant State authorities regarding existing and draft policy or legislation which it considers to be relevant to its mandate;**
- (z) **§37. The NPM should ensure that any confidential information acquired in the course of its work is fully protected;**

(aa) §38. **The NPM should ensure that it has the capacity to and does engage in a meaningful process of dialogue with the State concerning the implementation of its recommendations.** It should also actively seek to follow-up on the implementation of any recommendations which the SPT has made in relation to the country in question, liaising with the SPT when doing so.

17. For a national preventive mechanism to be compliant with the provisions of the Optional Protocol, it must reflect the elements set out above in its mandate, structure and operational practice.

18. In the light of the Optional Protocol and its guidelines, the Subcommittee considers that Decree No. 9.831 means that the national preventive mechanism cannot be considered to be compliant with the Optional Protocol for a number of reasons, including (but not limited to), the following:

(a) The members/experts of the mechanism have been unduly restricted in their ability to exercise their functions in a sufficiently focused, independent and dedicated manner by the change in their status to unremunerated office holders;<sup>8</sup>

(b) The members/experts of the mechanism will no longer be supported by dedicated, expert and independent staff, chosen by the mechanism, funded from its dedicated budget and reporting directly to it;

(c) The proposed changes are not the result of a process of consultation or engagement with the mechanism (or the Subcommittee) designed to enhance the effectiveness of the policies on prevention of torture of the State Party.

19. These shortcomings in both substance and process appear to undermine the capacity of the mechanism to function effectively in the manner envisaged by the Optional Protocol.

## **IV. Presidential Decree No. 9.831 and the Optional Protocol**

### **A. Implications for members/experts of the national preventive mechanism**

20. The result of the Decree is that members/experts of the national preventive mechanism cease to be remunerated and no longer receive independent administrative support in the execution of their tasks. De facto, and in combination, this means that they will not be able to exercise their mandate effectively, considering the volume of work to be undertaken in Brazil. It is implausible to believe that a small group of unpaid, part-time and unsupported persons could effectively undertake preventive visits to all places within the scope for their mandate in a manner compatible with the Optional Protocol, considering the situation of the country.

21. In countries such as Brazil, which have, inter alia, a very large number of persons deprived of liberty, substandard conditions of detention, overcrowding, violence, including numerous cases of death in detention and inter-prisoner violence, mutinies, de facto absence of non-custodial measures, significant numbers of complaints, concerns regarding impunity for instances of alleged torture or ill-treatment and weak monitoring mechanisms, there is a particular need for an active, robust and respected national preventive mechanism. The totality of the circumstances outlined above support the clear need for the members/experts of the mechanism to be working on a full-time basis, for this to be their primary professional occupation and thus a properly remunerated full-time activity.

<sup>8</sup> See "Preventing torture, the role of the national preventive mechanisms", p. 17.

Voluntary, part-time, unremunerated members/experts cannot effectively fulfil such a task in the context.

22. Given the context, it seems clear that the Optional Protocol requires that there be full-time (hence remunerated) members/experts of the national preventive mechanism, supported by an appropriately sized and properly funded secretariat with the requisite experience and independence, organized in an independent and autonomous operational entity.

23. In addition, revocation of the need for adequate representation of gender, ethnicity and the geographical diversity within the national preventive mechanism directly contravene the provisions of article 18 of the Optional Protocol.

## **B. Implications for the secretariat of the national preventive mechanism**

24. The entry into force of presidential Decree No. 9.831 would completely change the situation of the administrative support staff of the national preventive mechanism (the secretariat). The Secretaria Nacional de Proteção Global, in its communication No. 2020/2019/GAB.SNPG/SNPG/MMFDH, removes the right of access of the members/experts of the national preventive mechanism to the physical workspace of the Ministry/Secretariat, to meeting rooms, and to the confidential files stored on the electronic information system. Prior authorization or approval by the Secretariat/Ministry would be needed for the exercise of almost all of the tasks of the mechanism, including travel and field visits to the places of deprivation of liberty in the country, which is the essence of the mandate of national preventive mechanisms. Without prior approval or authorization, such activities cannot take place and so, in effect, they would be at the discretion of the Ministry. That is, of course, incompatible with the Optional Protocol.

25. The proposed changes also mean that the work plan and programme of visits to places of deprivation of liberty can only be conducted following requests made by the national preventive mechanism to other government departments for appropriate practical and logistical support, including access to offices, meetings rooms, computers, information technology services, telephones, transportation and, of course, staffing. That seems incompatible with the obligation to establish an independent mechanism capable of determining its own visiting programme and conducting visits to places of detention unannounced.

26. Moreover, the requirement to seek prior governmental authorization or approval violates the core principle of confidentiality, since the programme of visits would have to be divulged to others. To the extent that it becomes dependent on others for permission or for the practical assistance necessary to undertake its visits, the national preventive mechanism could be considered to have lost its functional independence, which the Optional Protocol requires. That has unfortunately already been the case, among other examples, in the refusal by the authorities to finance the travel of members of the mechanism to visit places of detention in the State of Ceará.

27. In addition, the confidentiality of the information gathered, including that arising from confidential interviews with detainees, officials, medical staff and others, cannot be assured if that data is not kept confidential, as required under the Optional Protocol, by an independent dedicated secretariat.

28. The lack of a clearly defined independent, properly resourced, remunerated and professional secretariat, reporting directly to the national preventive mechanism and accountable to it, poses clear impediments to the functioning of such a mechanism and its members/experts, and it would seem difficult, if not impossible, for such a mechanism to be compliant with the Optional Protocol.

### C. Absence of consultative process

29. The Subcommittee guidelines stress the importance of consultation in the establishment and operation of a successful national preventive mechanism. Any significant alteration to the structural arrangements concerning an established mechanism should be informed by a process of consultation aimed at determining how its work can be strengthened in accordance with the criteria set out in the Optional Protocol. The effectiveness of all national preventive mechanisms should be subject to regular appraisal by both the State and the mechanism itself, taking into account the views of the Subcommittee, in order to reinforce and strengthen its work as and when necessary (CAT/OP/12/5, paras. 13 and 15).

30. Decree No. 9.831 does not appear to have been decided upon following any process of review and consultation and it appears evident from the response of the national preventive mechanism that it does not consider the proposed changes will enhance its effectiveness; indeed, it considers that they impede its ability to function as such.<sup>9</sup>

### V. Compliance of presidential Decree No. 9.831/2019 with the Optional Protocol and recommendations of the Subcommittee

31. It therefore appears that the reforms brought about by presidential Decree No. 9.831 fail to respect the Optional Protocol in terms of both process and substance. As such, they seem to weaken rather than strengthen the policy on the prevention of torture of Brazil and the work of the national preventive mechanism. It means that the mechanism cannot operate in manner that is compliant with the Optional Protocol and in consequence, the changes are not in accord with the obligations of Brazil under the Optional Protocol.

32. The changes in the State party's approach towards the prevention of torture and the national preventive mechanism are difficult to understand, run counter to the progress previously made towards the implementation of its obligations under the Optional Protocol and are a setback to the Optional Protocol system in the country. Following the establishment of the mechanism and subsequent to its visit to Brazil in 2015, the Subcommittee made a number of recommendations on the functioning of the national preventive mechanism (CAT/OP/BRA/3, paras. 84–87).

“84. The Subcommittee welcomes the completion of the lengthy legislative process involved in creating the National Mechanism to Prevent and Combat Torture in 2015. The Subcommittee reminds the State party that the provision of adequate financial and human resources constitutes a legal obligation under article 18 (3) of the Optional Protocol, and wishes to be informed, as a matter of priority, about the steps the State party intends to take to provide the national preventive mechanism with adequate financial and human resources to ensure that it has complete financial and operational autonomy.

85. The Subcommittee recalls that, in accordance with its guidelines on national preventive mechanisms, the State party should ensure that the national preventive mechanism enjoys operational autonomy and independence, and that it should refrain from appointing members to the mechanism who hold positions that could raise questions of conflict of interest (see CAT/OP/12/5, paras. 12 and 18).

86. The Subcommittee recommends that the Federal Government provide both the necessary human resources and adequate funding for the effective functioning of the national preventive mechanism through a specific budget

<sup>9</sup> See the public release of NMPCT No. 02/2019.

line, in addition to granting the mechanism the institutional autonomy to use its resources. The necessary resources should be provided to permit the effective operation of the mechanism, which should enjoy complete financial and operational autonomy when carrying out its functions under the Optional Protocol. Resources should be assured through a separate line in the annual budget and should be predictable, to allow the national preventive mechanism to develop its annual work plan and visits and to plan its cooperation with other partners.

87. The Subcommittee emphasizes that the national preventive mechanism should complement rather than replace existing systems of oversight in Brazil, and its functioning should take into account effective cooperation and coordination between preventive mechanisms in the country. The Subcommittee recommends that the budgets of the National Committee and the National Mechanism be separated. The National Mechanism, in cooperation with the National Committee, should clearly separate their respective mandates so that they can carry out all aspects of their respective mandates in a manner that avoids actual or perceived conflicts of interest.”

33. In light of those recommendations, which also draw on those made following its first visit to Brazil in 2011, the Subcommittee considers that the current reforms run counter to the Optional Protocol and fail to reinforce the national preventive system of the State party, as claimed by the national authorities. On the contrary, they weaken the role of the national preventive mechanism to a point that it runs the risk of becoming practically inoperable owing to the many obstacles it now faces. Prior to the reform, the State party’s policy on the prevention of torture was unsatisfactory in the sense that the national preventive system of had not been established in all parts of the country, something that should have been achieved by 2008. Furthermore, the current changes mean that the national preventive mechanisms still to be established in many of the states of Brazil may follow a model, i.e. that proposed by the current reform, that would make them incapable of operating in accordance with the Optional Protocol, thus rendering Brazil in serious violation of its international obligations.

34. Finally, it should be recalled that in reports following two visits conducted by the Subcommittee in 2011 and 2015 respectively (see CAT/OP/BRA/1 and CAT/OP/BRA/3), two visits conducted by the Special Rapporteur on Torture in 2001 and 2015 (see E/CN.4/2001/66/Add.2 and A/HRC/31/57/Add.4) and the inquiry carried out by the Committee against Torture in 2005 (CAT/C/39/2) the bodies in question point out the need for a strong, independent and efficient system for the prevention of torture in line with the principles set out in the Optional Protocol. Some of those issues were also raised by the Committee against Torture in its list of issues prior to reporting in 2009, which remain unanswered (CAT/C/BRA/Q/2). The same concerns have also been echoed by different bodies inside Brazil, such as the decision by the Federal Supreme Court in its allegation of breach of fundamental provision No. 347 in September 2015, in which it found that the Brazilian prison system was unconstitutional owing to serious chronic and structural dysfunctions that threatened the fundamental rights of prisoners.

## **VI. Conclusion**

35. The adoption and entry into force of presidential Decree No. 9.831 has severely weakened the policy on torture prevention in Brazil by rendering it difficult for the national preventive mechanism to operate in a manner that is compliant with the Optional Protocol. In view of all of the above, the Subcommittee takes the view that Decree No. 9.831 should be revoked in order to better ensure that the State party’s system of prevention of torture functions efficiently and independently, with

financial and structural autonomy and adequate resources, in accordance with its international obligations under the Optional Protocol.

36. Finally, in light of articles 17 to 23 of the Optional Protocol and the Subcommittee guidelines on national preventive mechanisms (CAT/OP/12/5, para. 15), the Subcommittee recommends that the Brazilian authorities engage with the national preventive mechanism concerning how best to strengthen the effectiveness of its system of prevention of torture, including any proposed reforms to reinforce the national preventive mechanism.

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