**Council for the Prevention of Torture**

**Republic of Moldova**

*(Torture Prevention Mechanism)*

**The report of the National Preventive Mechanism (NPM) on the status of implementation of recommendations from the Concluding observations on the third periodic report of the Republic of Moldova,**

**recommendations put forward by the UN Committee against Torture as a result of the analysis of the country report during the meetings 1572 and 1575 held on 7 and 8 November 2017 (CAT/C/SR.1728 and CAT/C/SR.1575)**

**on subjects to be reported by 06 December 2018**

**27 November 2018**

1. **Introductory information. Activity of the** **Council for the Prevention of Torture (NPM)**
2. This report has been drafted and approved by five members of the Council for the Prevention of Torture, representing the Civil Society (the Institute for Penal Reform (IRP), the Moldovan Institute for Human Rights (IDOM), the Health and Community Development Center AFI, Promo-Lex and GENDERDOC-M Information Centre).

The Council for the Prevention of Torture (hereinafter, the Council) as National Torture Prevention Mechanism (NTPM) consists of five representatives of civil society and two ombudsmen. The current composition of the Council has been selected in October 2016 for a five-year term. The five members are specialists/experts in human rights, with legal, medical and psychology degree.

1. After seven years, the Republic of Moldova drafted and then presented the Annual Activity Report of the National Torture Prevention Mechanism to the stakeholders. The report is available in three languages (Ro, Ru and Eng.). The annual report was also presented to the UN SPT (that duly appreciated it).

<https://www.ohchr.org/Documents/HRBodies/OPCAT/NPM/NPM_Moldova2017.pdf>, [http://www.People’s Advocate.md/sites/default/files/document/attachments/raport\_cppt\_2017\_ru.pdf](http://www.ombudsman.md/sites/default/files/document/attachments/raport_cppt_2017_ru.pdf)

Unfortunately, there are significant discrepancies in the Report concerning the human rights in the RM for the year 2017 presented by the PAO in the Plenary Meeting of the Parliament and the issue of the NTPM mandate was not discussed with the members of the Council.

1. Ms. Mari Amos, SPT Member and Head of Regional Team for Europe Subcommittee on Prevention of Torture visited RM during 18-19.12.2017 with the aim to assess the progress in implementing the recommendations of the SPT of 2012. As a result of this visit, a number of recommendations for the NPM were made, which were disregarded by the authorities. The multiple attempts of the five members of the civil society to initiate discussions at the Council meeting have failed.
2. **The status of the UN CAT recommendations as a result of final observations on the third periodic report of the Republic of Moldova 2017.**
3. Despite the fact that the recommendations of UN CAT for the Republic of Moldova are pending consideration for one year, the members of the National Torture Prevention Mechanism have not been involved in any dialog to discuss the solutions aimed to redress the situation, both in preventing and combating torture and the activity/mandate of the NPM. Furthermore, at the request of some members of the NPM to discuss the recommendations of the UN CAT at the NPM meetings, the People’s Advocate, including the representatives of the PAO, ignored this subject. It is our perception that the relations with the People’s Advocate Office became even more strained after the submission of the shadow report to the UN CAT, as all collaboration initiatives have been ignored, and there are some forms of discrimination of the members of the Council as civil society representatives.

**„16 (c) on National Torture Prevention Mechanism in the Republic of Moldova”**

1. The National Torture Prevention Mechanism is functional and independent through the Council for the Prevention of Torture. However, there are urgent issues that need to be improved in light of OP CAT.
2. There is still a direct conflict of interest between the position of People’s Advocate and the position of Chairperson of the Council/NPM.

The People’s Advocate, the PAO and the representatives of the civil society in the Council for the Prevention of Torture (NPM) have not reached a common position on who is the National Preventive Mechanism in the Republic of Moldova and no meetings were organized on this issue with the participation of the Council members.

Therefore, in our opinion:

* + The Law on the People’s Advocate clearly states the role of the Council for the Prevention of Torture as NPM (two ombudsmen + five representatives of the CSO).
  + There is no need for amending the law, it is necessary to reach a consensus/ common approach in terms of practical implementation of the Law.
  + The Rules of Procedure of the NPM, PAO, the competences of the Prevention Unit/PAO, the collaboration mechanisms between the PAO – NPM, etc., are not clearly provided in relation to the NPM (as a result of the reorganization of the PAO, the Unit was reorganized into a Division).
  + There is still duplication of activities between the NPM and the Torture Prevention Division of the PAO. Both institutions (teams) conduct visits to detention facilities. Scheduling of visits (especially the annual ones) is not coordinated between the two teams. Thus, there are cases when both teams visit the same institution in a very short time period. PAO/Unit is aware of and has the annual plan of visits of the NPM for the year 2018, while the NPM is not acquainted with the annual plan of visits of the PAO/Unit.
  + The practice of misleading the State partners by underestimating the importance of the visits of the Council and duplicating activities through the Torture Prevention Units and territorial representative offices of the PAO is still in place. Often, the issues identified by the Council as systemic, are subsequently duplicated by the PAO and executed at the institutional level. Thus, the importance of the Reports of the Council and the competence of both institutions are being discredited because of handing over the Reports signed by the People’s Advocate.
  + The assistance of the PAO Unit is still partial and insufficient for a good functioning of the NPM. The assistance is limited to only technical activity: organization of the NPM meetings, taking minutes, receiving NPM reports and sending the reports of the NPM to institutions, receiving feedback from institutions and forwarding it to the NPM, ensuring transport for the NPM for visits.
  + Analytical assistance, consultancy or systematization of information/information support is not provided by the PAO. The five members of the CSOs within the NPM conduct monitoring visits on their own and draft activity reports (without any support from PAO, as institution that has to provide this support).
  + As of December 2017, the Unit within PAO no longer assists/participates in NPM visits.
  + The vision on the functionality sent to PAO by the five members of the Council as far back as February 2018 has been disregarded.

1. The NPM members conduct regular unannounced monitoring and preventive visits to all types of detention facilities in the Republic of Moldova, including to the facilities of the RM located in Transnistria (Bender region).

As a result of their visits, comprehensive monitoring reports are drawn up, that include a system of recommendations for improving the situation regarding the inmates’ rights. The reports approved by the NPM through consensus are circulated among concerned institutions and ministries, as well as are published in the internet and are publicly available. In total, over the two years more than 50 visits were conducted, more than 45 reports, with over 700 findings and over 550 recommendations were prepared and circulated.

However, no guidelines, methodologies and systemic working tools of the NPM have been developed so far.

1. No divergent opinions or disagreements between the People’s Advocate and the five members representing the civil society in approving the Council Reports have been found during the two years of operation. This fact points out to the absence of any impediments often invoked by the PAO regarding the imperfection of the Law and interference in the mandate of the People’s Advocate.
2. According to the OP CAP, the access of Council members to the information available at PAO on its mandate remains a major issue. The plans to launch a new internal database at the People’s Advocate Office, with the possibility for all members of the Consultative Council to access the information relating to the NPM in the registers and databases are not fulfilled yet.
3. There is no steady flow of information from the Torture Prevention Unit of the PAO to the Council on implementation, feedback from recipients, ways of involving the Office in the next processes, etc. The members of the Council carry out the only system set up for monitoring during the repeated visits. The Torture Prevention Unit does not ensure the necessary technical assistance on this subject as well as the quality of feedback received from authorities. There is no verification methodology (questionnaires, databases, etc.) or follow up to recommendations (remote or through visits) in place, including a clear joint NPM-PAO-PA system for verification/follow up of recommendations. The NPM makes many and diverse recommendations. During the repeated visits, the NPM identified that there is an increase in the number of implemented recommendations.
4. There is no strategic/systemized plan for the NPM activity, including the approach to the NPM. The scheduling of visits is made based on the Annual Plan, which is divided by quarters. At the same time, the mechanism for collecting the findings as well as relevant information about the institutions to be visited, information support provided by the Torture Prevention Unit needs to be elaborated and approved.
5. As of mid of 2017, the institutions responsible for detention facilities have started to gradually implement and report on NPM recommendations.

The dialog between the NPM and the institutions responsible for detention facilities becomes more stable / steadier. Even if there is room for improvement.

Hence, the number of cases when institutions request the opinion of the members of the NPM on endorsing/amending legislative acts/rules related to the situation in detention facilities or other related aspects falling within the mandate of the NPM increases.

1. The budget of the People’s Advocate Office includes a budget line for the NPM’s activities, but it is not exclusively earmarked to the Council for the Prevention of Torture in its legal capacity as NTPM, but also includes other PAO activities and the needs of the unit. The Rules of Procedure of the Council do not stipulate the NPM budget management procedure and who/when/how to assist Council members in preparing and managing the budget.
2. Remuneration of the members of the Council is insufficient compared to the plethora of activities (including technical tasks), which they have to carry out on their own, without inputs from the PAO, members of the NPM on behalf of the CSOs. By approval of the Law no. 52/2014, the members of the Council for the Prevention of Torture, except the members of right, are entitled to a remuneration in the amount of 10% of the average monthly national wages for each day in which they made a preventive visit to the detention facilities or participated in the meetings of the Council. De facto, the remuneration offered to the members of the NPM is about $30 dollars per visit or meeting (up to a maximum of $60-90 per month). In the absence of sufficient assistance from the Office, the writing of reports takes time and may add at least 5-7 additional unpaid days.
3. According to Art. 31.8 of the Law 52, the necessary resources for carrying out the Council duties, for contracting specialists and experts are included in a separate budget line, that is an integral part of the PAO budget. The roster of specialists and experts that can be involved in visits of the Council is not available to the members of the Council. Moreover, there is no clear procedure for requesting their support and sufficient time for planning.
4. Publication of the Council reports on the website is still deficient, including difficulty in delimitating them from other reports of the PAO. At present, in order to ensure visibility of NPM activities and a user-friendly access to reports, a new site of the People’s Advocate is under development, but its concept has not been discussed yet with the members of the Council.
5. At the initiative of the five members of the Council a Facebook page was created designed to promote different activities of the Council (<https://www.facebook.com/npmmoldova/>).
6. With the support of the OP CAT Special Fund, implemented by the NGO “Institute of Penal Reforms (IRP)” in partnership with the PAO, the Visibility Strategy of the Council/NPM for the years 2018 – 2021 was developed and approved and the Annual Report of the NPM for the year 2017 was developed. The report was drafted in three languages –Romanian, Russian and English. At the same time, the findings of the report were discussed during the four round tables (one round table organized with NGOs and the other three - with state institutions). The report was sent to the relevant national and international institutions. Also, with the support of the OP CAT Special Fund, a mini-brochure on duties, mandate and rights of the members of the Council has been drafted.

**B.**

**„9. On ensuring fundamental legal safeguards for persons deprived of their liberty.”**

Substantial progress in implementing the Recommendations of the CPT of 2015 and Recommendations of the UN CAT in order to ensure fundamental safeguards for persons deprived of their liberty has been attested during the years 2017-2018. The systemic problems outlined in the annual report of the CfPT for the year 2017 remain disregarded by authorities (see the report of the NPM Moldova in English).

Thus, the Council/NPM faced with the following issues:

1. Insufficient information (in laypeople terms) of detained/arrested/imprisoned persons on their right during the state custody provided by institutions.
2. In general, the detained/arrested/imprisoned persons can benefit of the services of an lawyer (private or public/pro bono) quickly and without excess of formalism.
3. The mechanism of informing a relative/friend by the detained /imprisoned person about his/her location is partially functional. Although, there are situations when relatives are informed only at the time of the person's apprehension, and not at the subsequent moment of placement in a pre-trial detention facility (isolator). Furthermore, it is not always clear how the third parties are to be informed (in writing / by phone) and who and how shall ensure this right. Lack of clear instructions in this regard.
4. Lack of standard operational procedures on interaction/behavior with persons with (phisical and/or mental) disabilities at the apprehension and detention stage.
5. There is a practice of detaining persons in pre-trial/provisional detention, for more than the specified term (24/72 hours) expressly provided by both national law and international standards.
6. Lack of an efficient procedure/mechanism in case of complaints/confidential information filed with prosecutors, People’s Advocate and other institutions.
7. Aspects relating to medical examination:

* There are no clear procedures for securing the right of detainees to independent medical examination, which limits the respect of this right at institutional level;
* The independence of medical procedures and confidentiality of medical examination are not guaranteed, and no national dialog has been initiated with a view to subordinating the personnel from detention facilities to the Ministry of Health, Labor and Social Protection;
* Insufficient health care manpower remains an issue due to low salaries and staff turnover;
* Reorganization of the National Penitentiary Administration has deepened the medical staff crisis in detention facilities, about 20 positions have been optimized with loss of wages for the mid-level medical personnel;
* Violence between detainees is not managed through the elaboration of a comprehensive plan.

**C.**

***”14 (i)* on the death in detention of Andrei Braguta”**

1. The most critical situation is attested in the field of safeguards for medical examination, including for persons with mental disabilities. The monitoring visits to concerned institutions in the case of Braguta shows the lack of effective actions to prevent the repetition of similar cases (Visit report to the pre-trial detention facility (IDP Centru), 11.11.2017, 12.06.2018 and Chisinau Penitentiary no. 13 of 20.05.2017, 04.01.2018).
2. We are concerned that in Braguta case, the emphasis was on sanctioning the culprits at the institutional level, but the systemic solution of problems at the high level are not addressed. Thus, effective preventive mechanisms, implemented at all detention facilities are not developed.