



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

Distr.: General

30 May 2013

Original: English

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

### Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Moldova

### Report for the national preventive mechanism\*,\*\*

#### Contents

##### *Paragraphs Page*

I. Introduction 1–63

II. Recommendations for the national preventive mechanism 7–343-7

## I. Introduction

1. In accordance with the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Optional Protocol” or “OPCAT”), members of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as “the Subcommittee”) visited the Republic of Moldova from 1 to 4 October 2012.

2. The objective of the visit was to provide advisory services and technical assistance to the national mechanism for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter NPM), as specified in article 11 (b) of the Optional Protocol. The visit was also intended to assist in building the capacity and reinforcing the mandate of the NPM of Moldova. To that end, this report sets out recommendations and comments in accordance with article 11 (b), subparagraph (iv), of the Optional Protocol.

3. This report sets out a series of recommendations for the Centre for Human Rights and the Consultative Council, which together constitute the National Preventive Mechanism of the Republic of Moldova. These recommendations are made in line with the Subcommittee’s duty to offer training and technical assistance with a view to capacity-building and to advise and assist national preventive mechanisms in evaluating their needs and identifying measures for providing greater protection for persons deprived of their liberty against torture and other cruel, inhuman or degrading treatment or punishment in accordance with article 11 (b), subparagraphs (ii) and (iii), of the Optional Protocol.

**4. This report is being sent to the national preventive mechanism on a confidential basis; it will be up to the national preventive mechanism to decide whether or not to make it public. The Subcommittee does, however, recommend that the national preventive mechanism make the report public and requests that it be notified of the mechanism’s decision in that regard.**

5. The Subcommittee will send a separate confidential report for the authorities in which it will make recommendations to the State party.

6. The Subcommittee wishes to express its gratitude to both the Center for Human Rights and the Consultative Council for their cooperation and the facilitation of the visit.

## II. Recommendations for the national preventive mechanism

7. The planning of the Subcommittee’s advisory visit was a joint undertaking, as both the NPM and the Subcommittee agreed in advance on the agenda of the meetings and the NPM chose the places of detention. The meetings allowed the Subcommittee to understand legal, structural and institutional obstacles faced by the NPM, while joint site visits to two places of deprivation of liberty permitted to analyse the working methodology of the visiting teams. During the visits, members of the Subcommittee adopted a role of observers, while members of the NPM led the delegation.

8. The Subcommittee took a good impression of the individual capacities of the members composing the teams and, thus, considers the NPM to have a great potential. It also commends the NPM for its efforts to respect the gender balance of the teams, in compliance with article 18.2 of the OPCAT. The Subcommittee is also of the view that the members and staff of the NPM should be required to undertake jointly some further training, as well as to review jointly their working methods on a regular basis, in order to

enhance their ability to perform collectively and individually the functions entrusted to them under the Optional Protocol.

9. The Subcommittee recognizes that not all the problems encountered are attributable to the NPM, as the authorities would be liable for instance for institutional factors, such as the ambiguous legislative framework or the budgetary constraints. Therefore, a number of legal, structural and institutional problems will be raised by the Subcommittee in its separate and confidential report to the authorities.

### **Recommendations relating to main legal, structural and institutional issues**

10. Although the Optional Protocol leaves it up to the State Party's discretion in which institutional format the NPM should be set up, the Protocol is axiomatic that the NPM must be structured in a manner which fully reflects its provisions. The Subcommittee's "Guidelines on national preventive mechanisms" represent a key-tool in that domain.

11. The Subcommittee is fully aware that current normative deficiencies create various interpretations regarding which institution fulfils the mandate of the NPM. In practice, the Subcommittee observed that this ambiguity jeopardizes significantly the collegial work and information sharing, and often results in conflicting positions of the Centre for Human Rights versus the Consultative Council.

12. The Subcommittee could indeed witness a lack of team spirit in preparation and conduct of visits (see below methodological recommendations) as well as during some meetings. The Subcommittee believes that the lack of a unified team has unfortunately led to a number of additional wide-ranging problems affecting the NPM in its structure and as an institution, *inter alia*, the discrepancy of working methods, the misunderstandings due to poor communication, the overlap of roles, the absence of clear definition of tasks, the lack of common strategy, the poor planning of visits and, to some extent, the incoherent methods of work. The Subcommittee is of the view that these problems may jeopardize the efficiency and the institutional credibility of the NPM as a whole.

13. While awaiting a definitive solution to the current legal ambiguity through a prompt legal reform, today's functioning of the NPM as one institution could be improved with a better communication and an improved coordination of work between the Centre for Human Rights and the Consultative Council. In this connection, the Subcommittee was encouraged to hear from both institutions during the meeting on Tuesday, 2 October 2012, that they have a good will to put aside a few misunderstandings and strive to work as a collegial body, as envisioned by the Optional Protocol.

**14. While recalling that the Optional Protocol envisages the NPM as a collegial body of experts the Subcommittee urges the members of the NPM to improve information sharing through regular meetings, new intranet page and, most importantly, collaborative attitude.**

15. The Subcommittee has noticed that, in the absence of a separate unit for torture prevention, the broad mandate of the Centre for Human Rights could lead to a confusion of its role. For instance, staff members who deal with NPM issues within the Centre, also deal with individual complaints and other activities, which may undermine preventive focus of its work.

16. Moreover, when the Centre for Human Rights submits proposals concerning existing or draft legislation that deals with the prevention of torture and other forms of ill-treatment, it does not indicate whether this is being done in its capacity of the NPM or as the National Human Rights Institution. Finally and to the extent of the Subcommittee's knowledge, the Consultative Council does not submit proposals concerning existing or draft legislation in the NPM capacity.

**17. In order to fully discharge its mandate in accordance with article 19 (c) of the Optional Protocol, the Subcommittee recommends that the NPM as a collegial body take proactive steps to submit proposals and comments concerning existing or draft legislation that deals with the prevention of torture and other forms of ill-treatment. In conformity with the Guidelines on the national preventive mechanisms, the Subcommittee recommends separating activities of the Centre for Human Rights in the general capacity of the National Human Rights Institution from its functions as the NPM. When the Centre implements activities under the NPM mandate, it should be clearly stated as such in all visits, meetings, written communications with the authorities, penitentiary and other institutions and individuals.**

18. The Subcommittee observed during the meetings that the authorities in charge of places of detention, persons deprived of liberty and civil society do not perceive the Consultative Council and the Centre for Human Rights as a single collegial body that constitutes the NPM of Moldova. The Subcommittee is of the view that the mechanism's lack of visibility may have a detrimental effect on the efficiency and credibility of the NPM.

**19. The Subcommittee recommends that the NPM enhance its institutional visibility through public awareness campaigns and other promotional activities. The Subcommittee recommends elaborating and distributing material on NPM's mandate and activities in the places of deprivation of liberty, and to the civil society at large, including associations of former detainees or former patients of mental health system. Finally, the NPM should disseminate its Annual Reports, including by transmitting them to the Subcommittee, as provided for and for the purposes set out in the Optional Protocol.**

20. The Subcommittee is aware of other institutional, structural and legislative constraints to the NPM work, such as the absence of a separate structure and of a separate budget line for the NPM function within the Centre for Human Rights, lack of honorarium and of administrative support team for the members of the Consultative Council and the need to review salary grades for employees of the Centre.

**21. The Subcommittee recommends that the NPM continue collaborating with the Working Group on the amendments to the Law on Parliamentary Advocates, as well as engaging in a proactive fashion with the legislature and any other relevant institutions, in particular the Parliamentary Human Rights Commission, in order to contribute to the elimination of any current or future legal**

*or institutional constraints.*

## **Methodological recommendations**

22. In order to assist and advise the NPM in its task of protecting persons deprived of their liberty, the Subcommittee is making the following recommendations concerning preparations for visits to places of detention, the methods to be used during such visits and steps to be taken following their completion.

23. *Prior to the visits*. The NPM, as a collegial body of experts, should agree upon and establish a long-term strategy of its activities as well as a subsequent annual plan of work, which would include unannounced and follow-up visits, eventually to all places of detention under the State's jurisdiction where persons are or may be deprived of liberty, in accordance with articles 4 and 29 of the Optional Protocol. **The Subcommittee recommends that the NPM develop collectively criteria for selecting the facilities to be visited that will ensure that they are all visited periodically. These criteria should be based on the type and size of the institutions and the severity of the human rights issues of which the mechanism is aware, while not excluding any type of institution or any geographic area from the scope of its work.**

24. **The national preventive mechanism should plan its work and its use of resources in such a way as to ensure that it is able to conduct its visits to places of detention in the most efficient manner. The Subcommittee recommends that the national preventive mechanism divide up collectively the tasks to be completed by its members before their arrival at a place of detention, in order to avoid any duplication of work and to enable them to cover as many areas as possible. It also recommends that they choose specific issues to be addressed with particular attention during each visit.**

25. **While welcoming with satisfaction the information provided that all NPM visits are unannounced, the Subcommittee would like to emphasize the confidential nature of the NPM work, as envisaged in the Optional Protocol. Furthermore, common guidelines for interviews and shared methodology for visits to different places of detention are key to the NPM's efficiency. In this connection, the Subcommittee welcomes methodology developed by the staff from the Center for Human Rights. At the same time, it observed some inconsistent practices among the team members during the visits. The Subcommittee recommends that, in the medium term, the NPM make available operational guidelines and handbooks to all members and staff of the NPM, with a view to ensuring consistency of working methods and transfer of knowledge among all members of the NPM.**

26. *During the visits*. The Subcommittee observed that members of the NPM have made a good introduction of themselves to the authorities in places of detention, but that the presentation to detainees was extremely brief and did not highlight the key principles of confidentiality and voluntary nature of the interview. The Subcommittee believes that an appropriate and complete presentation would facilitate communication and trust-building with the respondents. **The Subcommittee recommends that members of NPM in charge of the interview introduce themselves to persons deprived of liberty and tell them their name, profession and the position they occupy within the NPM. The interviewer should explain the mandate of the NPM, placing particular emphasis on its preventive nature. The interviewer should also obtain the consent of the interviewee and make it clear that the interview is confidential, voluntary and can be interrupted at any time at the interviewee's request. The Subcommittee also recommends that the NPM prepare a leaflet that describes its mandate and working methods, explains the concept of informed consent and provides contact information. It should also indicate and encourage persons deprived of liberty to report any reprisal to the NPM using the contact details of the leaflet.**

27. **Private interviews with persons deprived of their liberty are a basic aspect of the preventive visits, as specifically stated in the Optional Protocol. The Subcommittee has noticed that the majority of interviews conducted during the visits were collective ones and often were done under the surveillance of the wards. Therefore and unless there are compelling reasons to advise against it, the Subcommittee recommends to conduct private individual and unsupervised interviews with detainees and employees of the host institution, including with the medical personnel.**

28. **The Subcommittee noted that on one occasion some members of NPM focused on individual complaints of detainees and attempted to resolve them. Although the intention is laudable, the Subcommittee recalls that the mandate of the NPM differs from other bodies working against torture and is characterized by its preventive approach through identifying patterns and detecting systemic risks of torture. Instead the NPM should be in a position to advise detainees on how and to whom to address individual complaints.**

29. **The Subcommittee observed that the visiting teams were lacking equipment, such as torch lamps, measuring tools (for humidity and space measures), etc. In addition, not all the members of the team were wearing badges, which are important for the purpose of identification. The Subcommittee recommends that the NPM use the measuring equipment and wear identification visibly.**

30. *Follow-up to visits*. The Subcommittee wishes to highlight the need for better protection of interviewed persons against eventual reprisals. The Subcommittee has noticed that visiting teams have not mentioned to the authorities of the institutions at the final meeting that any form of intimidation or reprisals against persons deprived of their liberty constitutes a violation of the State party's obligation. It is particularly alarming taking into account the prevalence of collective interviews versus individual ones and the presence of the staff of the institutions during these interviews. **The Subcommittee recommends the NPM to strengthen protection of persons who provide information to the Subcommittee against sanctions or reprisals through, *inter alia*, follow-up visits, and contacts with family members, and strong warning to the authorities of detention facilities that such behaviour will be reported and sanctioned.**

31. **The NPM should prepare and make public the reports on the visits it conducts. Its visits will be much less effective if it does not issue a report following each visit. The Subcommittee recommends that a report should be an output for every**

**visit conducted by the national preventive mechanism. The report should focus on prevention and on identifying the problems that exist and proposing solutions in the form of recommendations. These recommendations must be concrete and well-founded, should be directed towards developing preventive measures to deal with shortcomings in systems and practices, and should be practicable.**

32. The NPM should develop a strategy for presenting its visit reports to the authorities for publication and distribution and for using them as a platform for dialogue. Pursuant to paragraph 36 of the SPT Guidelines on NPMs, **the Subcommittee recommends that the NPM set up mechanisms for following up on its recommendations and that it do es this, insofar as possible, in conjunction with the authorities.**

33 .The Subcommittee hopes that its recent advisory visit and the present report will mark the commencement of a constructive dialogue with the NPM of the Republic of Moldova. The Subcommittee stands ready to assist the NPM as far as it is able in the common goal of prevention of torture and ill-treatment with a view to translating commitments into the reality.