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## TERMS OF REFERENCE

- A. Job title:** National Consultant in the psychiatric institutions (patients' advocate)  
**B. Duty station:** Chisinau, Republic of Moldova  
**C. Project reference:** Strengthening National Capacities to Protect the Most Vulnerable from Torture in Moldova  
**D. Contract type:** Individual Contract (IC)  
**E. Duration of assignment:** September 2014 – August 2015 (up to 261 working days with possibility of extension till December 2015)

**F. Background:**

Torture remains to be a serious human rights violation in Moldova and not all of the aspects of this violation are addressed properly. The legal framework on general torture prevention and combatting are improving gradually. At the same time, impunity for torture remains one of the most acute problems. Thus, ECHR has released 27 judgments on Moldova in 2012, out of which 13 judgments were on torture and ill-treatment.<sup>1</sup> Prosecutors received 970 torture related complaints in 2012, criminal investigation was started in 140 cases, just 46 cases were sent to the courts and sentences on 37 cases were released regarding 62 persons most of which were sentences with the suspension of execution, some of them acquitted and just one person sentenced to a real prison term.<sup>2</sup>

In February 2013 international standards on freedom from torture have experienced a new milestone development with the release of the UN Special Rapporteur's on Torture report focusing on the "certain forms of abuses in health care settings that may cross the threshold of mistreatment that is tantamount to torture or cruel, inhuman or degrading treatment or punishment."<sup>3</sup> The Report notes the prevalence of torture against stigmatized groups, including against women and men with psychosocial and intellectual disabilities.

In the Republic of Moldova about 98,000 persons have psychosocial or intellectual disabilities out of which 21,116 persons were hospitalised to psychiatric hospitals in 2012, about 2,200 persons are held in psycho-neurological internats (care homes), and about 3,000 adults are deprived of their legal capacity and thus are legally deprived from the possibility to protect their rights themselves. Women and men, who are held in mental health facilities, are marginalised and unseen in and by the society. They are not empowered to make their voices heard.

The problem of torture and ill-treatment in mental health facilities is an emerging issue in Moldova, which has not been adequately addressed both in legislation and practice in spite of numerous complaints from the part of persons held there.

Starting from 2011 UNDP supported the Ministry of Health in establishing a pilot independent complaint mechanism (ombudsperson for psychiatry) to identify the human rights violations in psychiatric hospitals in Chisinau, Balti and Orhei and further on in the psycho-neurologic internats under the Ministry of Labour, Social Protection and Family. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has provided methodological and substantive guidance for the pilot

<sup>1</sup> <http://www.procuratura.md/file/RAPORTUL%20PG%20pentru%20a.%202012.pdf>

<sup>2</sup> <http://www.procuratura.md/file/RAPORTUL%20PG%20pentru%20a.%202012.pdf>

<sup>3</sup> United Nations, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, A/HRC/22/53, 1 February 2013.

Ombudsperson in Psychiatry since the beginning of this arrangement. The pilot Ombudsperson in psychiatric institutions,<sup>4</sup> who provided legal consultancy and drafted monitoring reports on the situation in psychiatric hospitals and neurological internats, has received in October 2012 – July 2013 (during 9 months of her work) 5622 complaints from 1474 institutionalised persons (960 women and 514 men), all of whom complained about several violations, including 281 complaints (5%) on physical abuse, 674 (12%) – on the lack of information about treatment, 955 (17%) – on the lack of informed consent on institutionalization and treatment, etc.<sup>5</sup> The ECtHR found that Moldova violated ECHR Art. 3 (in terms of inhumane treatment) and Art. 5 (in terms of deprivation of liberty) in two psychiatry related cases: David vs. Moldova and Gorobet vs. Moldova. In addition to this, Center for Human Rights (CHR) and National Torture Preventive Mechanism (NPM) have released their monitoring reports on several psychiatry institutions listing a number of problems, including the complaints of institutionalized persons on ill-treatment from the part of staff persons of the institutions.<sup>6, 7</sup> Taking this situation into account, National Legal Aid Council has compiled a list of 13 legal aid lawyers wishing to work on cases of persons held in psychiatric institutions in a priority order.<sup>8</sup>

With a common UN advocacy effort, the Ministry of Health institutionalized in 2014 the independent complaint mechanism into the official structures – the National Centre for Health Management. Yet, more technical support is needed to strengthen the capacities of this mechanism. Therefore the UNDP will support, with expert guidance from OHCHR, the work of the psychiatry patient's rights service by providing a consultant to ensure quality continuation of the started work and increasing the impact.

#### **G. Objective:**

The psychiatry patients' advocate operates according to the Ministry of Health (MoH) patients' rights service regulation in a manner to preserve the confidentiality of those seeking services, maintains a neutral/impartial position with respect to the concerns raised, works at an informal level of the organizational system, and is independent of formal organizational structures.

Successfully fulfilling that primary function in a manner consistent with the service's Standards of Practice requires a number of activities on the part of the patients' advocate while precluding others. The patients' advocate is also following the principle of subsidiarity and putting effort to ensure effective remedy in a timely manner at the lowest possible level, although having powers to bring issues to a higher level, bodies outside the institution and to court.

The main **objective** is to ensure an independent complaint review mechanism and identification of systemic human rights issues in the psychiatric institutions. The core activity of the psychiatry patients' advocate in the psychiatric institutions will consist in reviewing patients' complaints. This will require that the patients' advocate is physically visiting in the institutions and access to his/her office is free; regular visits to all psychiatric institutions covering the needs of individual complaints and monitoring; available and visible telephone numbers for after-hours emergencies.

The psychiatry patients' advocate has to ensure an effective complaint system that should be:

- Non-discriminatory;

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<sup>4</sup> The pilot Ombudsperson in psychiatric institutions is UNDP's consultant, which was established in consultations with the Parliament, Ministry of Health and the Ombudsperson Office. The consultant and its title should not be confused with the Ombudsperson in Moldova or Ombudsperson Office, which are State established.

<sup>5</sup> Report of pilot Ombudsperson in psychiatric institutions on the period of October 2012 – July 2013.

<sup>6</sup> Report on the NPM's visit to the Chisinau Psychiatric Hospital on 2 October 2012:

[http://ombudsman.md/sites/default/files/rapoarte/vizita\\_psihiatrie\\_2.10.2012.pdf](http://ombudsman.md/sites/default/files/rapoarte/vizita_psihiatrie_2.10.2012.pdf)

<sup>7</sup> Report on the CHR's prevention visit to the Balti psycho-neurological internat (care home) on 10 January 2013:

[http://ombudsman.md/sites/default/files/rapoarte/vizita\\_psihoneurologie\\_balti\\_10.01.2013\\_-\\_kopiya\\_-\\_kopiya.pdf](http://ombudsman.md/sites/default/files/rapoarte/vizita_psihoneurologie_balti_10.01.2013_-_kopiya_-_kopiya.pdf)

<sup>8</sup> [http://cnaigs.md/fileadmin/fisiere/documente/Hotariri\\_CNAIGS\\_2013/Hotarare\\_27\\_actualizare\\_lista\\_dezabilit.pdf](http://cnaigs.md/fileadmin/fisiere/documente/Hotariri_CNAIGS_2013/Hotarare_27_actualizare_lista_dezabilit.pdf)

- Respectful;
- Accessible;
- Responsive (and timely);
- Accountable;
- Transparent.

This system needs to provide for genuine participation of consumers and careers (or institution staff) in the development, implementation and review of the system, incorporate sound governance and enable advocacy and recourse to independent complaints mechanisms.

The **guiding principles** for this mechanism are:

1. Independence

The psychiatry patients' advocate is independent in structure, function, and appearance to the highest degree possible within the organization.

This practically means that the office of the psychiatry patients' advocate and the psychiatry patients' advocate are independent from other organizational entities; the psychiatry patients' advocate holds no other position within the organization which might compromise independence; the psychiatry patients' advocate exercises sole discretion over whether or how to act regarding an individual's concern, a trend or concerns of multiple individuals over time. The psychiatry patients' advocate may also initiate action on a concern identified through the psychiatry patients' advocate's direct observation; the psychiatry patients' advocate has access to all information and all individuals in the organization, as permitted by law.

2. Neutrality and Impartiality

The psychiatry patients' advocate, as a designated neutral, remains unaligned and impartial. The psychiatry patients' advocate does not engage in any situation which could create a conflict of interest.

3. Confidentiality

The psychiatry patients' advocate holds all communications with those seeking assistance in strict confidence, and does not disclose confidential communications unless given permission to do so. The only exception to this privilege of confidentiality is where there appears to be imminent risk of serious harm.

#### **H. Scope of work and expected outputs:**

The **scope of work** of the psychiatry patients' advocate will be:

- (1) To work with individuals and groups in the organization to explore and assist them in determining options to help resolve conflicts, problematic issues or concerns, and
- (2) To bring systemic concerns to the attention of the organization for resolution.

In order to achieve objectives the National Consultant shall:

- Ensure (along with institution administration) that information about the service is visible and accessible in all wards and departments of the institution;
- Periodic check (**at least twice per month of each institution**) that all institution staff ensure full and unlimited access of users to filing complaints or addressing the psychiatry patients' advocate;
- Check of complaint records resolved at the ward level, and/or overtaking appeals to these resolutions;

- Processing of users complaints on an informal basis by such means as: listening, providing and receiving information, identifying and reframing issues, developing a range of responsible options, and – with the permission of complainant and at psychiatry patients’ advocate discretion – engaging in informal third-party intervention. When possible, the psychiatry patients’ advocate helps people develop new ways to solve problems themselves;
- Pursues resolution of concerns and looks into procedural irregularities and/or broader systemic problems when appropriate;
- The psychiatry patients’ advocate identifies trends, issues and concerns about policies and procedures, including potential future issues and concerns, without breaching confidentiality or anonymity, and provides recommendations for responsibly addressing them;
- Is entitled to bring significant cases to court or to other relevant institutions, if it is not resolved informally or the issue is systemic and relevant recommendations of the psychiatry patients’ advocate are not considered and effectively implemented;
- Follow-up of complaint resolving;
- Follow up of systemic changes as corrective and preventive actions (CAPAs);
- Actively acts in wards, at admissions, especially at involuntary confinement, compulsory criteria for positively observe and ensure protection of the rights of residents and users of the psychiatry institutions, etc.;
- Provides training for the psychiatry institutions staff on international and national standards on the rights of persons with disabilities and the responsibilities of the psychiatry institutions staff;
- Checks that ongoing clinical studies involving patients are approved by relevant ethics committees and follow legal and regulatory requirements in the field;
- Periodic users satisfaction surveys;
- The psychiatry patients’ advocate has access to all departments of the institution, to procedures and records in these departments;
- The patients’ advocate observes and is entitled to independently identify human rights issues;
- These issues are included in the consultant’s report but can be separately brought to the attention of the policy and lawmakers.

### **Reporting requirements**

The psychiatry patients’ advocate releases public reports at least biannually, informing about their release UNDP, OHCHR, Ministry of Health, Ministry of Labour, Social Protection and Family, Ombudsperson Office, Equality Council and the Parliamentary Commission on Social Protection, Health and Family. The biannual report should contain disaggregated data on the complaint mechanism, patients’ advocate service progress indicators. A minimum of information should contain:

- Status of complaints:
  - Resolved;
  - Referred to third party;
  - Referred for litigation;
  - Unresolved (left for follow-up, unable to assist, pending, etc.);

*Note: all complaints should be disaggregated by diagnosis, wards, sex, etc., to allow identification of trends and policy and procedural improvements.*

- Number of trainings;
- Status of access to services of the psychiatry patients’ advocate;
- Systemic issues/trends;

- Legal representation (qualitative and quantitative data);
- Involuntary confinements (qualitative and quantitative data).

Payments will be made on the monthly basis based on the monthly reports and timesheets submitted to the UNDP Moldova Justice and Human Rights Programme Analyst.

#### **I. Deliverables:**

	<b>Deliverable</b>	<b>Deadline</b>
<b>1</b>	Complaints reviewed and resolved on monthly basis. Report on activities submitted to UNDP, containing number systemic and human rights issues identified for the month. Info on cases referred to litigation if any.	<b>Every last day of the month between September 2014 and August 2015. The last report on 31 August 2015.</b>
<b>2</b>	Biannual public reports of the psychiatry patients' advocate released informing about this UNDP, OHCHR, Ministry of Health, Ministry of Labour, Social Protection and Family, Ombudsperson Office, Equality Council and the Parliamentary Commission on Social Protection, Health and Family.	<b>First report-up to 30 December 2014; Second Report-up to 30 June 2015;</b>
<b>3</b>	Advocate's office Standards of Practice updated and followed	<b>30 November 2014</b>

#### **J. Organizational setting:**

The office of the psychiatry patients' advocate will be located in the National Centre for Health Management under the Ministry of Health, but will be independent from the institution administration. He/she will also submit biannual public reports. The psychiatry patients' advocate is obliged proactively to seek methodological guidance on questions of human rights law and best practice from the United Nations Human Rights Adviser, based in the Office of the United Nations Resident Coordinator in the Republic of Moldova, as issues arise.

Systemic supervision with periodic working visits to all psychiatric clinics, and to all other relevant residential institutions is required.

#### **K. Inputs:**

The Ministry of Health, National Centre for Health Management and UNDP Moldova Justice and Human Rights Programme Analyst will provide the National Consultant with the necessary information and materials for the fulfilment of tasks and will provide support in facilitation of the meetings where necessary. The United Nations Human Rights Adviser, based in the Office of the United Nations Resident Coordinator in the Republic of Moldova, is a resource provided by the United Nations Office of the High Commissioner for Human Rights (OHCHR) for methodological, expert and international law guidance.

#### **L. Qualifications and skills required:**

##### **I. Academic Qualifications:**

- Master's Degree or equivalent (5-year university education) in law, human rights, social sciences, pedagogy, medicine or other relevant fields;

##### **II. Years and sphere of experience:**

- At least 2 years of proven professional experience in the area of the rights of persons with disabilities;
- Advanced knowledge of Moldovan health system and practical human rights issues in the mental health field;
- Previous experience of work with/in international organizations on human rights issues is a strong advantage;

### III. Competencies:

- Adheres to the core values of the United Nations; in particular, is respectful of differences of culture, gender, religion, ethnicity, nationality, language, age, HIV status, disability, and sexual orientation, or other status;
- Proven commitment to universal human rights and rights of persons with disabilities (knowledge of UN Convention of the Rights of Persons with Disabilities is a must);
- Ability to work independently; auto-evaluation, monitoring and report writing;
- Ability of effective inter-personal relationships and counselling with both patients and authorities;
- Fluency in Romanian and Russian;
- Knowledge of one or more additional languages relevant for Moldova, including Bulgarian, Gagauzian, Romani, Ukrainian or sign language is an asset;
- Knowledge of English would be an advantage.

Personal qualities: independency, discretion.

The UNDP Moldova is committed to workforce diversity. Women, persons with disabilities, Roma and other ethnic or religious minorities, persons living with HIV, as well as refugees and other non-citizens legally entitled to work in the Republic of Moldova, are particularly encouraged to apply.