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**Quality of Legal Aid Services:  
A capacity needs assessment for the National  
Council for State Guaranteed Legal Aid from the  
Republic of Moldova**

**Supported by UNDP [Bratislava Regional Center and UNDP Moldova]**

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## **Introduction**

1. We were invited to undertake this report for UNDP in November 2012 as respectively international expert and a national consultant. This assignment is linked to UNDP Regional Center for Europe and CIS [UNDP BRC]'s Rule of Law and Access to Justice Initiative. We spent the week beginning 12th November meeting the main stakeholders, culminating in a public discussion at a Law Club meeting in the Public Law Library of the main findings with an audience of lawyers and interns. We read and took into account various previous studies that are relevant to the topic which are listed in appendix 1. The schedule of our visits is attached as appendix 2.

## **The theme**

2. The recommendations of this report have a unifying theme. It is the need for legal aid to be 'practical and effective, not theoretical and illusory' (see below). Practicality and effectiveness depend crucially on culture and training. This would seem the critical issue in terms of capacity building initially for legal aid in Moldova and, beyond that, the legal profession as a whole.

## **The brief**

3. The brief was to 'write an internal assessment report for the NLAC (the National Council for State Guaranteed Legal Aid), identify barriers for its effective work, propose recommendations on how to improve its capacities, especially related to the quality assurance of legal aid'. We were asked specifically to look at the following areas:
  - the 'enabling environment' (law, policies, regulations);
  - management and organisation of the National Council for State Guaranteed Legal Aid (NLAC);
  - the quality of legal services; reviewing 'the quality of legal services delivered and comparison with the quality of legal services in general in Moldova delivered by lawyers and advocates';
  - criteria and mechanisms of legal aid quality assurance, the tools available to the NLAC, and comparison with the tools and mechanisms to ensure the general quality of legal aid in Moldova;
  - recommendations on how the NLAC could ensure the quality of services to vulnerable persons;
  - co-operation with government, civil society organisations, the bar association and other national and international partners.

## **Initial observations**

4. Some preliminary points about the process should be made:
  - No empirical work was possible in a project of this kind so that some important judgements, such as the crucial issue of the quality of legal aid, have to be advanced on the basis of what we were told, read or inferred;
  - Moldova has made enormous advances in legal aid since the international consultant first visited in 2004 in terms of funding, management and delivery. Those responsible - Parliamentarians, the Bar Association, the NLAC and others - should be proud of what has been achieved, for all that more may need to be done;

- The Council and senior management of the NLAC are engaged in the issue of raising quality and expanding service: they have devoted considerable time, effort and skill in building up both the organisation of the NLAC and the delivery of legal aid. The council is meeting regularly and much more often than had been anticipated: we were told that it often met on a weekly basis. We are grateful for the courtesy and interest with which we were seen by a wide range of stakeholders in legal aid. We thank them for their time.
  - There is a group of lawyers and interns who are genuinely interested in improving practice and shaping the developing legal aid service. There would seem to be a wider group of those interested in lectures and events which have been organised by ABA ROLI and others. These groups should clearly be fostered as a potential agent for change in legal aid and the legal profession more generally.
  - Different interest groups see the world with different perspectives. Moldova is no different from anywhere else in the world in that there is a degree of rivalry between lawyers who are private practitioners and those who are salaried; between those working in organisations such as the Bar Association and those in civil society organisations; or between those involved in criminal defence and prosecution.
5. Moldova should be proud of the progress made since the new legislation on state-guaranteed legal aid came into force in 2008. The number of individuals assisted has risen from around 6000 in 2006 before the new legal aid system was introduced to around 26,000 in 2011. Expenditure has risen correspondingly: from 3.5m MDL (217,000 euros) in 2008 to a budgeted 22.8m MDL (1.42m euros) for 2012. From January 2012, coverage has extended to civil matters. This expansion has been managed by the National Legal Aid Council, the members of which have clearly worked with considerable commitment. Recognition of the contribution of the council has recently been given through the passage of additional powers, approved by Parliament, to establish an executive director and, thus, a more permanent secretariat.
  6. The development of legal aid in Moldova owes an extraordinary amount to the Soros Foundation Moldova. The foundation has not only been responsible for a series of research reports, including most of those listed in Appendix 1. It has also funded, and continues to fund, practical projects such as that on peer reviewed quality assessment, the initial work of the Public Defender Office, ongoing piloting of paralegals and assistance with the financial costs of the National Legal Aid Council. It would be important that any engagement in legal aid by external funders is integrated with that of the Soros Foundation.
  7. Through the connection between the Soros Foundation and its link with the Open Society Justice Initiative (OSJI), the NLAC is on the steering group of the Legal Aid Reformers Network, funded by OSJI, which gives it contact with the equivalent organisations in countries where the OSJI is active: Bulgaria, Georgia, Lithuania, Mongolia and Ukraine. There has, thus, been some contact between Moldova and a group of countries in a similar position since the fall of the Soviet Union, some of which are within the European Union and some outside. Several of those with whom we spoke referred to a recent visit to Lithuania. There are likely to be common issues for the countries in LARN and others in the region. UNDP might consider how discussion - say, of the quality of legal aid and the training of lawyers - could be taken further within the region (see below).

## Methodology and reference documents

8. Prior to arrival in Moldova, a methodology was drafted by the international consultant which sought to identify the standards against which legal aid delivery should be measured. These are obtainable from review of a number of internationally agreed documents including those set out in appendix 3. Two questions are, however, key:
- Does the scope of legal aid cover those areas where it is mandatory under the European Convention on Human Rights or required by the UN Declaration of Human Rights or the UN International Covenant on Civil and Political Rights or other conventions, such as that against torture, to which Moldova may have committed itself?
  - Is the quality of legal aid 'practical and effective, not theoretical and illusory'.<sup>1</sup>
9. This report concentrates on the second question: the practicality and effectiveness of legal aid. This has tended to be the language used by the European Court of Human Rights in covering issues related to the quality of legal assistance. The court has fleshed out the requirements of Article 6 of the European Convention on Human Rights in a number of recent cases. Article 6 makes no explicit mention of quality but it does make certain requirements which strongly imply a level of competence to make effective its guarantees of rights to overall fairness and additionally to the specific rights e.g. to facilities to prepare the case and to examine witnesses specifically set out in Article 6(3). At an overall level, it is well established that the fundamental point of Article 6 is to guarantee 'equality of arms', the principle of a measure of balance between defence and prosecution. Latterly, the European Court of Human Rights has begun to dig deeper into the duties of defence lawyers that states should guarantee. In *Dayanan v Turkey*, the court gave examples of what was expected:
- ... the fairness of proceedings requires that an accused be able to obtain the whole range of services specifically associated with legal assistance. In this regard, counsel has to be able to secure without restriction the fundamental aspects of that person's defence: discussion of the case, organisation of the defence, collection of evidence favourable to the accused, preparation for questioning, support of an accused in distress and checking of the conditions of detention.<sup>2</sup>
10. The precise wording of Article 6 is contained in the footnote below.<sup>3</sup> The combined effect of the article and decisions like *Dayanan* is that a set of criteria can be built up

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<sup>1</sup> *Airey v Ireland* [1979] 2 EHRR 305

<sup>2</sup> *Dayanan v Turkey* ECtHR 13 January 2010, para 32

<sup>3</sup> 6.1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

and expressed as questions to check the practical effectiveness (i.e. the quality) of legal assistance. They imply requirements both on the competence of the lawyer and the environment in which the lawyer is working. They would include, just as an example of some of the relevant questions which might be identified specific to representation and pointing to how quality might be assessed:

- (a) was there, overall, an equality of arms (implication of Article 6.1)?
- (b) was the trial fair (6.1)?
- (c) was the presumption of innocence maintained by the defence (or, for example, did the defendant's lawyer too easily accept the guilt of the client) (6.2)?
- (d) did the lawyer make sure that the defendant was informed of all the relevant matters relating to the case against him (6.3(a))?
- (e) were there adequate time and facilities for the preparation of the defendant's case (6.3(b))?
- (f) were witnesses for the prosecution properly examined (6.3(c))?
- (g) were witnesses for the defence properly sought and examined (6.3(c))?
- (h) did the lawyer appropriately discuss the case with the defendant (*Dayanan*)?
- (i) did the lawyer properly organise the case (*Dayanan*)?
- (j) did the lawyer collect all available evidence favourable to the defendant (*Dayanan*)?
- (k) did the lawyer properly support the defendant (*Dayanan*)?
- (l) did the lawyer check the legality of the defendant's detention (*Dayanan*)?

11. These are the sorts of questions about quality which arise simply from the examination of the wording of Article 6 and one decided case. The list could be extended to cover, for example, the time at which representation was first provided (the subject of recent decisions of the European Court of Human Rights which, following *Salduz v Turkey*<sup>4</sup>, should be prior to any questioning on which the prosecution might rely at trial, effectively arrest), the quality of advocacy at trial and advice on appeal. The importance of the questions above in this context is to emphasise that quality of legal representation is not an abstract or optional concept. Fundamentally at issue is the basic provision of the requirements of Article 6 ECHR. The issue of the definition of quality is considered further below.

12. Both the European Union and the UN are involved in exercises to specify in more detail the requirements on criminal defence. The EU is working through the 'Stockholm Programme' of a 'roadmap' six 'Measures'. These cover:

- i. Measure A: Translation and interpretation;
- ii. Measure B: Information on Rights and Information about the Charges;
- iii. Measure C: Legal Aid and Legal Advice;
- iv. Measure D: Communication with Relatives, Employers and Consular Authorities;
- v. Measure E: Special Safeguards for Vulnerable Persons; and
- vi. Measure F: A Green Paper on the Right to Review of the Grounds for Detention.

All, except F, are intended to become directives under the Lisbon Treaty.

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(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.  
<sup>4</sup> Decision of the Grand Chamber, 27 November 2008

13. Measures A and B have been agreed. Measure C on legal aid has been divided into C1 and C2 - the right to a lawyer and the right to legal aid. The Measures are directed to states. However, duties of lawyers can be inferred so that, if a state has a duty to allow something, the lawyer has a duty to operate professionally. For example, Measure C1, in the current draft being considered by the European Council, Commission and Parliament, requires access for a lawyer to certain events with the clear inference that the lawyer has a professional role when they do so:  
 The suspect or accused person shall as a minimum have the right for his lawyer to attend the following investigative or other evidence-gathering acts, if these acts are provided for in the national law concerned and if the suspect or accused person is required to attend the act concerned: (i) identity parades (ii) confrontations (iii) experimental reconstructions of the scene of crime.<sup>5</sup>
14. Thus, if you were building up a list of questions to test the quality of representation in any state implementing the provision above you would ask questions like the following:  
 Did the lawyer ensure that identity parades etc. were held when appropriate?  
 Did the lawyer advise the client of the advantages and disadvantages?  
 Did they ensure that the event was properly undertaken and was, overall, fair?  
 Did the lawyer make sure that the client understood the procedure?
15. As far as the NLAC is concerned, the most detailed document is that which has been very recently agreed by the UN General Assembly on 20 December 2012: guidelines and principles on access to justice in criminal cases.<sup>6</sup> At an appropriate time, it might be useful for the NLAC, perhaps with UNDP assistance, to have an internal discussion for its council on the guidelines. Indeed, this would be a valuable exercise in relation to all the countries in the region. They all face very similar issues as their legal systems adapt to moving away from the model set during the dominance of the Soviet Union (see below).
16. The guidelines provide an internationally agreed way of looking at legal aid provision and give a different viewpoint from that in domestic legislation and requirements. An example of the issues raised would be Guideline 11. This suggests that States undertake measures in particular to provide:
- i. effective legal aid in criminal cases;
  - ii. effective legal aid in cases of unlawful arrest, detention etc;
  - iii. co-ordination between agencies and professionals involved in justice system;
  - iv. partnerships with bar and legal associations;
  - v. assistance to paralegals where appropriate;
  - vi. encouragement to Bar Associations to draw up lists of volunteers in criminal cases;
  - vii. the identification of incentives for lawyers to assist the poor and disadvantaged;
  - viii. encouragement for lawyers to organise country-wide circuits of lawyers to provide legal aid;
  - ix. adequate services for those who might face discrimination;

<sup>5</sup> Council of the European Union, Presidency, *Proposal for a Directive of the European Parliament and of the Council on the right of access to a lawyer in criminal proceedings and on the right to communicate upon arrest – General Approach*, 10467/12 (31st May 2012) [DROIPEN 67 COPEN 129 CODEC 1459], Chapter 3, Article 3(c)

<sup>6</sup> [http://www.uanet.org/sites/default/files/RES\\_GA\\_UN\\_121003\\_EN.pdf](http://www.uanet.org/sites/default/files/RES_GA_UN_121003_EN.pdf)

and to consider national legal aid board or authority that is:

1. independent;
2. has the necessary powers to provide legal aid;
3. able to develop a long term strategy for legal aid; and
4. reports periodically to the responsible authority.

### Quality: what does it mean?

17. The European Court of Human Rights has approached the question of quality somewhat obliquely, as documented above. That is the result of its concentration on the rights of the individual and the duties of the state. However, the concept of the quality of legal aid services has been explored more directly in a number of jurisdictions, particularly those in the United Kingdom where high spending has encouraged a demand by Government for quality assurance mechanisms. Thus, there are a variety of overlapping approaches. However, those derived from legal aid programmes use slightly different concepts to reach the same basic ideas as can be derived from the analysis above. For example, seven issues were initially suggested in the peer review pilot funded by Soros Foundation Moldova.<sup>7</sup> These were:

- file and defence strategy;
- communication;
- information and fact-gathering;
- consultations and assistance;
- quality of assistance;
- efficiency; and
- ethical issues.

18. A slightly different typology, developed elsewhere, is:

- Technical competence;
- Good client care;
- Utility to the client.<sup>8</sup>

19. For the purpose of this report, the most useful analysis of quality might be to break it down under the following three headings:

a. technical e.g. keeping files properly, attending punctually, being efficiently organised.

These are matters to be monitored by the funding authority (ie the NLAC) as justification for remuneration.

b. ethical e.g. avoiding outright corruption but also respect for the paramount interest of the client, successfully identifying conflicts of interest and appropriately resolving them.

This is a matter for the Bar Association.

c. professional/practical - e.g. making judgements as the appropriate law, identifying the strategy to be taken, communication with client, gathering the facts, ensuring client's instructions are followed.

This is fundamentally a matter for the Bar Association as the upholder of standards of the legal profession. However, it may be that, as there was in the jurisdictions of the UK, the NLAC or its equivalent has a role in indicating its advice on what is required and encouraging the Bar Association to adopt standards with which it approves.

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<sup>7</sup> *Peer Evaluation of Criminal 'Cases Peer Review Form*, Republic of Moldova, 8 November 2011

<sup>8</sup> Mayson S *Civil Legal Aid: squaring the (vicious) circle* Legal Services Institute, September 2010 quoted in Legal Services Consumer Panel *Quality in Legal Services* November 2010



Legal aid is a bulk funder of legal services and, thus, has a major stake in the standard to which they are delivered.

### Is quality of legal aid an issue in Moldova?

20. Previous studies have asserted that the quality of legal aid in Moldova is an issue. A 2009 account reported:

The bar and the Legal Aid system are not yet providing adequate legal assistance. The bar suffers from underdog status in the system and poor treatment by officials in the system. They also lack a culture of active defence. The phenomenon of 'pocket-book lawyers' undermines the credibility of all lawyers. Furthermore the new Legal Aid system is in its infancy and it is yet to be seen if it will be successful in expanding early access on arrest to a lawyer and improve the quality of legal representation in the criminal justice system. Certainly without adequate funding and appropriate quality controls it may not meet this objective.<sup>9</sup>

21. There is some acceptance that legal aid has improved since that date. However, a study in 2012 found that:

More thorough quality monitoring mechanisms are needed. NLAC itself acknowledges in its annual 2011 report that the quality of legal aid provided by legal aid lawyers is below the NLAC expectations.<sup>10</sup>

22. The Moldovan justice system as a whole seems to struggle for credibility among Moldovan citizens themselves. A 2011 study found:

Less than one third of the respondents in the survey think that the justice system is either very effective (6.4%) or somewhat effective (23.7%). More than half of the respondents (51.6%) think that the Moldovan justice system is biased towards people with more money. Further 24.7% agree partially with the statement.<sup>11</sup>

23. The most recent and the most thorough investigation of the operation of the Moldovan criminal justice system from the perspective of the defence was written in a study contained within a wider examination of this issue in four central or eastern European states.<sup>12</sup> This repeated a methodology used in a previous study, funded by the European Commission, of 10 countries, nine in Europe and Turkey, which has been well received.<sup>13</sup> Thus, the Eastern European study was following a tried and tested methodology: it was led by two members of the original team. The recommendations in relation to Moldova included a need to:

Improve the quality of legal aid by developing quality standards and quality assurance mechanisms for lawyers, ensuring an appropriate balance between the right to a competent defence and the independence of lawyers. Ensure that the

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<sup>9</sup> Soros Foundation Moldova *Criminal Justice Performance from a Human Rights Perspective: assessing the transformation of the criminal justice system in Moldova* 2009, p70

<sup>10</sup> M Gramatikov and N Hriepivschi *Impact assessment on the Moldova Law on State-Guaranteed Legal Aid* 2012

<sup>11</sup> M Gramatikov *Met and Unmet Legal Needs in Moldova* 2011, p10,11

<sup>12</sup> N Hriepievischi chapter 6 'Moldova' in E Cape and Z Namaradze *Effective Criminal Defence in Eastern Europe* Legal Aid Reformers Network, 2012 covering Bulgaria, Moldova, Lithuania and Ukraine

<sup>13</sup> E Cape, Z Namaradze, T Spronken and R Smith *Effective Criminal Defence in Europe*, Intersentia, 2010

remuneration scheme for lawyers is adequate for the required legal aid work, providing sufficient incentives for active defence work.<sup>14</sup>

The author made a further point:

The Law of the Bar contains one article dealing with 'the quality of legal assistance', which states that the legal assistance provided by the lawyer must correspond to the best professional practices in legal matters, material and procedural norms, and involve professional and correct conduct. This requirement might further be used for developing quality assurance mechanisms within the profession.<sup>15</sup>

24. The Moldova study made the following further general point:

From the defendant's perspective, the main problems with the criminal investigation stage concern delays in appointing a lawyer, unjustified arrests, late access to the case file, unjustified pre-trial arrest warrants, and very limited powers of the defence to collect evidence.<sup>16</sup>

25. The report made these observations within the context of a wider critique of the quality of legal services generally:

Lawyers, including those providing legal aid services, have been criticised for years for the low quality of their services. This was one of the main reasons for initiating the legal aid reform that culminated with the adoption of the Legal Aid Law on 26 July 2007. However, the low quality of legal representation goes well beyond legal aid and is a feature of the entire system. For example, it is not yet a well-established rule for lawyers to keep files for their clients. Some lawyers still accept to represent clients at the appeal stage without having had at least a meeting with the client prior to the court hearing. There is as yet no visible peer pressure to end the activities of 'pocket lawyers', who are not only damaging the defendant's rights, but also the reputation of the entire legal profession. There is still anecdotal evidence that legal aid lawyers continue to ask their clients for additional money or encourage them to sign a contract. The current state of affairs is mainly due to the poor organisational structure of the Bar, a lack of initial and continuous training, improper admission criteria, a lack of a functional disciplinary mechanism and a lack of other functional quality assurance mechanisms within the profession.... Although accountability of legal aid lawyers has increased since the adoption of the new Legal Aid Law, mainly due to the quality monitoring mechanism of the NLAC, the overall perception of the quality of legal aid lawyers is not very positive. In fact, the legal profession as a whole lacks suitably articulated quality standards and quality assurance mechanisms regarding legal services provided by lawyers, including legal aid lawyers.<sup>17</sup>

26. A concern with the quality of legal aid, consistent with the previous literature above, was expressed to us by pretty well everyone that we saw - though there was a general agreement that it had improved in recent years and some variation in the points taken by various observers:

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<sup>14</sup> As above in 12, p336

<sup>15</sup> p331, as above

<sup>16</sup> p272 as above

<sup>17</sup> p330 as above

- The criminal investigators pointed to delays in attendance by lawyers of suspects in custody awaiting interview;
- The members of the council of the NLAC thought overall that quality had risen but that there were still issues to be resolved.
- The Bar Association representatives admitted that some of their members who were private practitioners and undertaking legal aid had not previously kept case files had now been required to do so and were beginning to comply. It seemed that some still did not.
- The territorial offices appear to monitor only the 'external' elements of technical quality e.g. whether attendances were made etc.
- The legal aid administration suggested that there was a problem with the selection of lawyers to undertake legal aid. Newly qualified lawyers without other work tended to undertake legal aid in order to get an income when they had little practical knowledge of how to do it. A working group with the Bar Association has failed as yet to agree on selection criteria, with the association being reluctant to accept further restriction on practice imposed other than by a professional body.
- Some practitioners pointed to a systemic problem in legal education. Lawyers came out of university with good theoretical knowledge but they lacked practical training.
- There were difficulties in lawyers keeping up to date with changes to the law. Moldovan law has been subject to frequent amendment and lawyers had difficulty in implementing the changes as they come into force.
- The low level of remuneration, and particularly the restriction on maximum payment per case per day of 200MDL with restricted uplifts was felt by practitioners to be arbitrary, unfair and a disincentive to undertake necessary actions on behalf of a client. It may also contribute to a degree of evasion. It was suggested that private payment rates were much higher, with one person suggesting that the difference was about tenfold.
- There was a shortage of practitioners willing to undertake legal aid in some regions outside Chisinau. This resulted in no realistic possibility of choice. There appeared to have been two cases where the NLAC territorial office had enforced its right to require a practitioner, where there is no alternative, to undertake a case without charge.
- Some practitioners criticised the quality of those lawyers particularly of those who qualified by the ten year experience route, having been judges or prosecutors. It was suggested that they were disproportionately the source of concern over ethics and competence. Perhaps predictably, those who had been judges or prosecutors vigorously disagreed.
- It was suggested by some that the Bar Association was insufficiently concerned with the quality of work undertaken by its members: understandably, the Bar Association saw matters rather differently.
- A retired judge said that there were commonly cases where, in their opinion, lawyers were negligent. They often did have all the relevant papers, including in particular any relevant court orders.
- The Soros Foundation Moldova had identified quality as an issue; had funded a peer review quality assurance project; and had committed itself to returning to the issue in the next couple of years.
- ABA ROLI had identified the practical training of lawyers to be an issue and had undertaken some projects to address it eg by funding advocacy courses with foreign trainers.

27. From January 2012, legal aid has been extended to civil cases. We were unable to obtain a comprehensive picture of the quality of civil legal aid though one of the issues which were consistently mentioned was the need for clearer guidance on what cases were appropriate for civil legal aid. In this initial phase, take up of civil legal aid seemed very patchy and haphazard. In addition, there seemed to be some cases where legal aid was provided in circumstances which did not seem a priority.

### **Findings as to quality**

28. On the basis of what we were told; previous studies; and our experience of the Moldovan criminal justice system, we would be disposed to agree that:
- It is very likely that the quality of legal aid services has improved substantially over the last five years as a result of the work of the NLAC, the piloting of peer review and greater experience of practitioners.
  - There may well be a quality gap among legal practitioners. Certainly, one is widely asserted between private and publicly funded practitioners - particularly by the private lawyers themselves. However, it is possible that the full-time public defenders provide a better service than those paid on a case-by-case basis. That would be consistent with a celebrated study of New York where the authors compared those provided by the Legal Aid Society with salaried lawyers against private practitioners funded on a case by case basis.<sup>18</sup> The findings were, however, hotly contested by practitioners. A more general point is that it is very likely that there is a difference between the quality of specialists and those undertaking only occasional cases.
  - Some problems will be due to the low remuneration of those undertaking public defence work but there seems to be a gap in the training of newly qualified lawyers undertaking legal aid which is independent of remuneration levels.
  - It is likely, though we saw no proof and heard little comment, that the position in civil cases is the same as in criminal matters. Indeed, given their diversity, the range of quality is likely to be even more diverse.
  - The issue of the quality of legal aid services is integrally linked to the quality of all legal services more generally to the extent that there is a deficiency of practical skills training for all those entering the profession.

### **What is to be done?**

29. The issue of improving quality needs to be considered in relation both to:
- legal aid; and
  - the legal profession more generally.
30. This project's major focus is legal aid but, in reality, the two issues are integrally connected and improvement of legal aid practice needs to be seen within the general context.

### **The constraints of context**

31. Any suggestions for reform have to be practical and based on what has already been decided as the way forward. These are provided by:
- the existing legislative framework;

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<sup>18</sup> *Criminal Defence of the Poor in New York City* M McConville and M Mirsky, Centre for Research into Crime and Justice, 1989

- the existing planning framework by government and other governmental agencies such as the NALC;
- existing institutional interests; and
- finance.

32. Legal aid is governed by the Law of 2007 as amended. This sets out various duties in relation to the quality of services and the role of various actors in relation to issues such as the selection of legal aid lawyers. In particular:

- i. Article 4 sets out the principles of state guaranteed legal aid as including the professional competence of persons who deliver state guaranteed legal aid and the quality, efficiency and cost-effectiveness of delivered services;
- ii. Article 9 gives to the Ministry of Justice the duty of supervising 'the process of assessing the quality of the legal aid';
- iii. Article 10 gives the Bar Association the following functions:
  - a) participation in the development of the criteria for the selection of lawyers who shall deliver state guaranteed legal aid;
  - b) participation in the establishment of the criteria for the assessment of quality of legal aid;
  - c) participation the monitoring of the activity of lawyers, who deliver legal aid;
  - d) application of disciplinary sanctions upon lawyers, in accordance with the Law on the Legal Profession and the present law.
- iv. Article 12(1) gave the NLAC functions which include insurance 'of the initial and continuous training, including through the National Institute of Justice, of the persons involved in the system of delivering of state guaranteed legal aid' and the 'compilation of the practice of implementation and development of the recommendations for the purpose of ensuring the uniform enforcement of the present law'. Since July 2012, this is the specific duty of the executive director;
- v. Article 12(2) gave the NLAC powers which include in the field of quality developing and approving ', 'determining how the contests for the selection of the lawyers, who will deliver qualified state guaranteed legal aid will be held'; establishing and revising 'periodically the standards of activities and professional training of lawyers, paralegals, as well as other categories of people, who deliver state guaranteed legal aid', 'developing, in coordination with the Bar Association, the criteria for assessing the quality of state guaranteed legal aid', and monitoring 'the process of delivering of qualified state guaranteed legal aid' and, specifically for the executive director, organising 'the process of evaluating the quality of state guaranteed legal aid delivered by authorized persons'.

33. Thus, the legislative framework sets out in a logical fashion the following:

- the principle of quality;
- the duty of the Ministry of Justice to supervise the process of ensuring quality;
- a right of the Bar Association to participate in the development of selection criteria, the establishment of quality criteria, the monitoring of practitioners and a duty to apply disciplinary sanctions where appropriate;
- the power on the NLAC to decide on tests for selection; develop with the Bar Association and then monitor quality criteria for legal aid; establish standards and training for legal aid practitioners.

34. There are various pieces of relevant secondary legislation including the decision of NLAC of 5th June 2008 to proceed with selection of legal aid lawyers. This envisages

a 'contest' to join the legal aid scheme based on open competition, merit, transparency and non-discrimination'.<sup>19</sup>

35. The final major piece of the existing context is provided by the existing plans of the Ministry of Justice and the NLAC, particularly those of the Ministry. Directly relevant is known as pillar 3 of the judicial reform strategy of the Ministry of Justice and approved by Parliament. This includes a commitment to work for:
- 3.1.2. Improvement of the quality of and accessibility to the services of the state guaranteed legal aid (criminal and other cases). This includes a commitment that the 'training of public lawyers and other lawyers rendering guaranteed legal aid' will be ensured;
- Also relevant are:
- 3.2.2. Elaboration of quality standards for the services rendered by the representatives of the professions related to the judicial system;
  - 3.2.5. Ensuring initial and continuous training of the representatives of the professions related to judicial system, including the joint continuous training, by extending the role of the National Institute of Justice
  - 3.2.4. Establishing clear and transparent, merit-based criteria for joining the profession; and
  - 3.2.6. Promoting and implementing of ethical standards of the activity of professions related to the judicial system.
36. It would appear, therefore, that the statutory and Parliamentary approved framework envisages:
- some form of selection of legal aid practitioners;
  - some degree of training, at least in part with the National Institute for Justice;
  - some form of quality assurance which involves monitoring;
  - encouragement and enforcement of acceptable ethical standards by lawyers as a whole and legal aid practitioners in particular.

### **Selection criteria**

37. There is a working group looking at selection criteria that contains representatives of the Bar Association, the NLAC and public defenders. Work has been done on a 'grid' of requirements which include specified previous experience. The working group has only just begun to meet but there is speculation that it may find it difficult to come to agreement. If so, it may be appropriate for the Ministry of Justice to indicate that the working group should reach a decision by consensus within a specified time, say three months. It would seem that, in default of agreement, the NLAC has the power to decide on selection criteria.
38. Three elements of quality were identified above:
- technical;
  - ethical;
  - professional/practical.
39. The selection criteria should cover these three elements. It would seem reasonable for the NLAC to insist that:
- a new entrant knows what administrative requirements need to be fulfilled;

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<sup>19</sup> Article 9

- there is no evidence of ethical or disciplinary issues of concern eg no negative findings have been made under the bar association's disciplinary procedures and none are outstanding;
- the new entrant can show the minimum acceptable level of professional and practical skills.

### **The need for a practical training course**

40. Once immediate selection criteria have been agreed, consideration can move on to a more systemic problem with new practitioners. Newly qualified lawyers effectively learn their practical and professional skills with real clients rather than through any prior training. The period of internship was portrayed to us as uneven; highly dependent on the interests and capacities of the mentor; and more oriented towards observation than learning by doing. As a result, newly qualified practitioners struggle to obtain the necessary practical skills for their role. This is a general problem but is disproportionately an issue for the NLAC because so many newly qualified lawyers are drawn to work for it as an initial source of income.
41. At the moment, new practitioners are interviewed by the NLAC's executive director as some form of very minimal check and the opportunity taken to give basic information about how the system works. This conversation could be expanded into an organised course that contained the crucial administrative and skills requirements to be a legal aid practitioner.
42. Once developed, this legal aid preparation course could become a compulsory part of the existing requirement on interns to undertake 80 hours of continuing legal education during their internship. Thus, those undertaking internship would have taken and passed the course before qualification. Indeed, the existence of a suitably attractive course may well be of assistance to the morale and image of legal aid practice.
43. Such a course would need to be well constructed; enjoyable; and focused on the very practical needs of those undertaking legal aid. There would be no point in a course which was simply seen as a bureaucratic barrier to be overcome.
44. A first and very informal step would be to encourage interested interns and practitioners to meet to discuss the sorts of training that they would welcome. The NLAC will already have done much of its preliminary work in deciding what it would want to check in the selection 'grid' that it has developed. The group could be assisted by UNDP to look at the kind of training that its members would like in the context of the skills demanded in other jurisdictions. The point would be to draft what would be useful in Moldova with assistance of examples from elsewhere. The assistance of a group of lawyers with a draft programme of this kind would be helpful in building the capacity within the legal profession to argue for reform and to pressurise both the Bar Association and the NLAC.
45. The NLAC has a training mandate and should seek ways of taking it forward. There are various ways in which this might happen. Preliminary work by the group suggested above might be helpful. They might pressure the NLAC to consider their proposals. In any event, it would seem desirable that the NLAC expand its capacity by expanding its role into training. It would have to decide the best way that this could be done. There are clearly pressures on the time of council members but it could

either itself decide on the appropriate length of such a course, its content and how to bear its cost or establish a training committee to advise it. This could be chaired by a member of council or a public defender with considerable defence experience to ensure that it was practical. The committee could advise on the appropriate length. Something like 20 hours might be a feasible minimum: the longer, the better. The cost should not be enormous, though the numbers in each group should be kept reasonably low in order to facilitate group and individual exercises. It would be important for the training to be seen as a coherent whole that gave the participant sufficient background skills and knowledge to undertake legal aid practice with a degree of competence, confidence and skill. In relation to cost, it might be that the Bar Association would contribute some of the payments made by interns and that this could be supplemented by payment from the Ministry of Justice. A small amount, but not more than might be affordable, could be asked of interns themselves. It might even be that a donor would be willing to fund the start up costs of the course. This is an area in which the ABA ROLI has been active. If successful, this kind of course is one which the Bar Association might introduce for all interns (see below) and its participation in the planning of the legal aid course would be invaluable. One objective for UNDP in assisting in the process of drawing up a legal aid course would be that it proves sufficiently attractive for expansion into the rest of the profession. If it is any good then all interns will want something similar.

46. The elements of such a course could be drawn out of sources which would include:
  - The suggestions of interns and practitioners involved in the public defender office, other public defenders and legal aid practitioners;
  - The work that has been already undertaken, funded by the Soros Foundation Moldova, on peer review because this will have identified the main elements of quality in undertaking a case.
  - Advice on best practice such as the guide produced by the public defender office on criminal defence and by UNICEF in relation to juveniles.
  - The input of the Bar Association.
  - A contribution which UNDP might make of submitting for discussion various models of such training from other jurisdictions.
47. There are various models for the skills component for a course of this kind. As an example, details of the current professional skills course required during the training period of English solicitors are included in appendix 4. This includes: Financial and Business Skills 18 hours; Advocacy and Communication Skills 18 hours; Client Care and Professional Standards 12 hours. This follows, and supplements, a full year's course on legal practice.
48. Such a course would cover the legitimate and statutory concerns of both the Bar Association and the NLAC. If the idea appealed to the Ministry of Justice, it might indicate that such a course should be developed within a given a fixed period, say six months. During that time, the NLAC would be asked to agree a course with all relevant stakeholders. If this proved difficult and the Ministry of Justice agreed a course was desirable, then the NLAC might be authorised to proceed in any event.
49. It might be that the NLAC could see the advantage of such a preparatory course but was unable for what might be a variety of reasons to advance the idea in the immediate future. In that eventuality, there might be an interesting role for UNDP in association with other organisations concerned to improve skills (including ABA ROLI and the Soros Foundation Moldova) as well as any grouping of lawyers and interns in



developing a course which could be taken on an optional basis. The experience of ABA ROLI and other organisations such as UNICEF seems to be that there is an interest in obtaining training from a reasonable percentage of interns and lawyers.

50. There is a broader point here. There is a danger that quality is seen as a monitoring or 'policing' issue. However, actually, it is much more a cultural and training issue of developing a concern with effective delivery of legal services. Hard pressed practitioners need to encounter the issue of raising quality not as yet another threat and hurdle but as an opportunity to improve their professional practice. If the NLAC could develop a reputation for the provision or encouragement of excellent training this might operate to counteract the inevitable prejudice among the profession engendered by remuneration rates which are always likely to be lower than in private practice. And, put at its most cynical, the NLAC might find that a relatively negligible investment in training or simply its encouragement might pay practical financial dividend in increasing the retention of lawyers that will move into private practice after establishing themselves through legal aid.
51. A direct concern with training both pre-selection and continuing afterwards would put the NLAC in the lead of improvements to the quality of the whole legal profession.
52. A point of detail was put to us as sometimes impeding the practical learning of interns in relation to criminal justice. Article 67 of the Criminal Procedure Code restricts those who 'may participate in a criminal proceeding' to attorneys' and those 'provided by law with the authority of defence counsel'. It would be unfortunate if this was construed - as it sometimes seems to be - as totally forbidding the involvement of interns in the preparation of every part of a criminal case. It does not seem as if such a limitation needs to be implied from the wording of the Article which surely does not mean that an intern could not, for example, take a statement or otherwise assist in the preparation of a case under appropriate supervision - though, of course, it would be unfortunate if this led to any lessening of the quality of assistance.

### **Selection**

53. One of the issues holding back selection of legal aid lawyers is an undersupply of lawyers in some of the outlying regions of the country. This creates a difficulty but it should not be allowed to halt the introduction of selection as a principle. It might be that the NLAC could appoint peripatetic public defenders to serve these regions if it has the resources. Alternatively, it might, at the extreme, waive the selection criteria for regions where, otherwise, be no provision. A stronger approach would be to demand passage of the criteria, which are hardly onerous, on pain of payment of a lower tariff if the lawyer did not meet them.

### **Ensuring continuing quality**

54. A recommendation of the Impact Study of Legal Aid Act was that:

NLAC should initiate a discussion among the main stakeholders regarding the possible systems for quality monitoring and assurance. Some of the possible systems that can be discussed are: peer review, quality standards and benchmarks, competitive bidding, award of status of trusted provider, client satisfaction surveys etc. Permanent monitoring by TOs (territorial offices) of the

accuracy of case files and compliance to reporting procedures should be continued. Involving other stakeholders in the development of a quality assurance system is another avenue to be explored. NLAC's capacity and mandate is insufficient for bringing visible changes to the quality of legal aid. The Bar's involvement is crucial in this respect. The Bar has been quite reluctant towards the legal aid reform in the beginning but it seems to be appreciating the value of a specialised institution to administer the legal aid system. Now when the initial stage of the LAA implementation is over, it is strongly recommended that Bar and NLAC work closer together to improve quality. One way in which this could be done on a short term is to develop practical guides for lawyers and citizens and develop quality assurance mechanisms, for example following up on the SFM's project that developed the concept and recommendations for instituting the peer review method for criminal legal aid cases.<sup>20</sup>

55. To some extent, the quality of legal aid will be linked to remuneration. Better pay will tend to correlate with better quality though it does not necessarily give rise to it. Remuneration levels might need reconsideration. In particular, the daily limit on earnings - of 200 MDL plus certain uplifts in restricted circumstances - should be reconsidered if this could be done in a way which encouraged appropriate action on cases without 'milking' of the legal aid system. The NLAC already has monitoring processes for technical quality in terms of record keeping. Removal of the daily limit for actions claimable might ease the monitoring process.
56. The NLAC should encourage good practice guides of the kind that has been produced by the public defender office and published by the Bar Association in its bulletin. It might be that the training committee of the NLAC recommended above could examine what further guides might be useful.
57. It would be desirable to continue with some form of peer review since a considerable amount of attention has been given to it as part of the earlier Soros Foundation project. The foundation is planning to return to this as an element in its two year plan for work in the legal aid field. In that circumstance, it might be best to see what might be done in that context. It would seem sensible for the NLAC to await the results of the Soros Foundation's study.
58. The NLAC should suspend or remove as appropriate any practitioner found to have been negligent or dishonest in filing claims for funding.
59. The Bar Association might wish to consider its disciplinary procedures to ensure that they comply with Article 6 of the European Convention and provide a fair and impartial hearing. To do so, there would need to be a degree of independence in the determining tribunal. This was mentioned during the visit as an issue on which the Bar Association's Disciplinary Commission might welcome some assistance in terms of looking at models of provision in other jurisdictions.

### **Continuing legal education**

60. The Bar Association requires 40 hours a year of continuing legal education but there seems no mechanism for monitoring compliance. The association might consider requiring members to send it a list of courses attended and to investigate a small number of cases on a random basis. It might be noted that the requirement on

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<sup>20</sup> M Grammatikov and N Hriepivski p43

English solicitors is only 16 hours a year, of which four hours must be undertaken at accredited courses. Solicitors must annually confirm that they have met this requirement and there is some random checking. The Bar Association must be aware of the danger that their requirement looks good on paper but is not actually complied with.

61. The NLAC should consider whether it should run courses that would count towards the 40 hours on topics which it would want practitioners to know about. For example, there might be discussion of changes to the criminal or civil procedural codes. ABA ROLI seems to organise occasional courses that respond to need but the NLAC could identify on a rolling basis the kind of basic knowledge which legal aid practitioners need to know. There might be some advantage in the NLAC committing to an organised programme of, say, 10 hours updating a year as a coherent package. This could be very simple: five evenings of two hour sessions on subjects like latest administrative practice; updates on civil and criminal practice; latest jurisprudence of the European Court of Human Rights etc. Incorporated within this package might also be joint training provided by the National Institute of Justice (see below).
62. The Justice Sector Reform Strategy, approved by Parliament, commits to the undertaking of training in part with the National Institute for Justice. We heard mixed views about the appropriateness of the institute providing all the training for legal aid practitioners but no-one expressed any objection to joint courses on specific issues. Indeed, there seemed some enthusiasm for joint training on matters where it would be relevant to the varied interests of judges, prosecutors and criminal investigators. It might be that the Ministry of Justice should be invited, if this has not yet happened, to come forward with proposals so that they might be implemented, say, by autumn 2013.

### **Extension of legal aid to civil cases**

63. It would appear that the extension of the legal aid scheme to civil cases in January this year has been somewhat haphazard. Numbers of cases have been less than anticipated and the nature of some of them seems to be somewhat questionable. As Ms Wurstova pointed out in her advice on the draft legal aid law, states have an obligation to secure:  
**effective** access to court either because legal representation is mandatory under domestic law or because of the complexity of the procedure or of the case itself.<sup>21</sup>
64. It is not clear that the current legal aid arrangements are meeting this standard. Amendments in the scope of civil coverage are part of the package of reforms approved in 2012. At an appropriate time, the NLAC might consider undertaking a review of what civil cases are being undertaken and what types of cases should be covered by the legal aid scheme with a view to concentrating resources.

### **Capacity of NLAC: summary**

65. The NLAC has undertaken a considerable amount work in implementing a much improved legal aid scheme in a short space of time. It has successfully convinced

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<sup>21</sup> *Moldova: Expertise and Written Comments on the Draft Law on State-guaranteed legal aid*, Wurstova, undated, p5

Parliament and the Ministry of Justice that it needs an executive director and some form of secretariat. Soros Foundation Moldova is providing financial assistance for this central office and to the territorial offices. It is likely to need more and more permanent staffing because it is highly dependent on the commitment of council members and there must be a danger that this will not be sustainable. It would appear to have sufficient legal powers to do its job. Strategically, it would seem that its priorities are:

- controlling the expansion into civil work;
- raising quality;
- ensuring minimum national coverage throughout the country.

66. There must be some doubt about how much additional work the NLAC can successfully undertake on its existing resources. It might gain some assistance by forming a training committee of practitioners in the way suggested above. The idea would be to use their knowledge and enthusiasm to develop ideas about training which the NLAC could then implement after they have been developed.
67. There might well be a role for the UNDP is assisting this work on training in co-ordination both with the Soros Foundation Moldova and ABA ROLI which have both been involved in different aspects of existing provision - quality being a particular concern of the Soros Foundation and training of the ABA ROLI office.

#### **Qualification of lawyers: general**

68. To some extent, questions about the quality of legal aid practitioners raise rather more general issues about the training process of lawyers as a whole in relation to practical skills. Different jurisdictions integrate theoretical and practical training in different ways. For example, the US teaches both together in terms of a postgraduate degree with a high clinical component. In the UK, a law degree or its equivalent is known as the 'academic' stage of training. It is then supplemented by the 'practical' stage. This consists of a full-time year practical course; a period of training and, for the largest branch of the legal profession, the additional training course in professional skills referred to above.
69. This is an area in which ABA ROLI has been working in particular and there might be opportunities for UNDP and the ABA to work together on the development of training.
70. Since the issue is the general training of lawyers, this should be the responsibility of the Bar Association. However, the NLAC could play a major role in encouraging reform by its example.
71. There are a range of reforms which should be considered and which would, in the long run, lead to an improvement in legal aid within the context of an improvement of the practical skills of the profession as a whole. The Bar Association might want to consider these and might find it helpful to meet with those in equivalent organisations which have addressed these issues. These would include the following:
  - i. re-conceiving internship as more of a training period (perhaps going through the work of identifying what might be learnt);
  - ii. a specification for the role, and approval by the Bar Association, of mentors;
  - iii. a professional skills course of the kind considered above for all those qualifying as lawyers;

- iv. approval of a set of skills and outcomes that a trainee should develop during their period of training;
- v. a requirement that all entrants to the profession undertake a professional skills course; the examinations; and a period of training (which might be shortened for those using the current experience route available to prosecutors and judges).

### **Potential regional role of UNDP**

72. The issues considered here in the context of Moldova are both national and regional. Moldova provides a good example of the difficulties of countries emerging from domination by the concepts encouraged the Soviet Union but now in need of change. The difference in relation to criminal justice was articulated by the editors of the study of effective criminal defence in Eastern Europe cited above:

Views differ as to whether the Soviet system represented a distinctive procedural tradition, but there is common agreement that criminal procedure focused on the pre-trial investigative process, which was heavily reliant on confessions rather than investigation, with trials constituting formalised, 'political' events. The principal function of all participants including prosecutors, lawyers and judges, was to serve the interests of the state.<sup>22</sup>

73. One way of putting the difference is that a fundamental constitutional shift is being engineered - from the primacy of the interests of the state to the primacy of the rule of law. In such a conception, the role of the lawyer changes fundamentally to a much more independent and adversarial figure who is, in US jargon, a 'zealous advocate' for the interests of their client within a legal system which depends on the defence and prosecution taking more adversarial positions.

74. The consequence of this is that issues will manifest in Moldova in a particular form dictated by its own particular circumstances but the general issue of the change of lawyers' role and the need for more practicality and effectiveness is likely to be general to all those countries affected by the break up of the Soviet Union. They will all be making the same transition.

75. Thus, there are great opportunities here for UNDP at a regional level. All the countries in Eastern Europe will be subject to the European Convention on Human Rights except Belarus. All will be influenced by developments within the EU, even those outside it. All are members of the UN and should be preparing to meet its new guidelines.

76. There are already, of course, legal aid networks within the region. LARN (the Legal Aid Reformers' Network) brings together Bulgaria, Georgia, Lithuania, Moldova (and Mongolia), all countries in which the Open Society and Soros Foundations have been active. It recently produced the book on effective criminal defence discussed above. A certain amount of common training has already been undertaken between countries formerly part of the Soviet Union. Indeed, as noted above, a number of those that we met in Moldova had returned relatively recently from a visit to Lithuania.

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<sup>22</sup> As above, p5

77. There is undoubtedly an opportunity here for UNDP. There would be a number of possible approaches towards greater capacity building within the Eastern European region in terms both of legal aid and, more generally, the legal professions and, thereby and in turn, support for the rule of law. The first step would be for UNDP to have an internal discussion between representatives of its offices within the region on what made the most sense as a common issue on which to focus as a way into building greater capacity within the countries in which it was working. Alternatives (which could be combined) would include:
- i. using the recently agreed UN guidelines and principles to encourage states within the region to look at effective criminal defence. The role of UNDP would be very clear in such an initiative since it would be working on a UN document and within a UN initiative, though it would be limited to crime.
  - ii. using legal aid as a common issue for all countries.
  - iii. taking up the issue of legal education and training.

## **Recommendations**

78. The recommendations of this report are:

1. There is a need to raise the quality of legal aid and, more generally, legal services in Moldova but this must be seen not only as an issue of control and monitoring but as one of training and professional culture.
2. There is a strategic role for the UNDP to assist legal practitioners, the NLAC and the Bar Association to raise the quality of practitioner training in Moldova.
3. It is important that any engagement in legal aid in Moldova by UNDP is integrated with other active organisations such as the ABA but particularly the Soros Foundation which has been so active in this area.
4. UNDP should consider how capacity might be built within the countries of Eastern Europe in advancing a more independent and skilled role for lawyers – within the criminal justice system; within legal aid; and ultimately the legal system generally. It might want to begin with a high level regional meeting of representatives of its offices to decide on a regional strategy.
5. At an appropriate time, it might be useful for the NLAC, perhaps with UNDP assistance, to set up an internal discussion for its council on the newly agreed UN guidelines and principles on criminal legal aid. This is something which UNDP might also consider doing with other equivalent bodies in the region.
6. If the Ministry of Justice felt that it was an appropriate way forward, it might indicate to the parties engaged in discussions on selection of legal aid practitioners for working with the NLAC so that they make an agreed decision within, say, three months.
7. It would seem that, in default of agreement, the NLAC has the power to decide on selection criteria for legal aid practitioners. The unilateral use of this would be undesirable but should be supported in default of agreement within the agreed period, suggested as three months above.

8. The current initial interview for practitioners wishing to undertake legal aid work could be expanded into an organised course that was mandatory before selection. This course could be developed into a compulsory part of the requirement on interns to undertake 80 hours of initial legal education during their internship.
9. The NLAC should consider the appropriate length of such a course, its content and how to bear its cost. To do this, it could establish a training committee chaired by a full-time public defender with knowledge of the practicalities of public defence work or a council member. UNDP might assist such consideration.
10. If the Ministry of Justice thought that such a course was a good idea, then the parties to discussion could be given a fixed period, say six months, to come to an agreement on the curriculum of a training course with which they all agreed or default power given to the NLAC to decide.
11. Article 67 of the Criminal Procedure Code should not be construed so as to prevent the engagement of interns in all aspects of the conduct of a criminal case so that they can still obtain practical experience under appropriate supervision.
12. To deal with undersupply of lawyers in some regions, it might be that the NLAC could appoint peripatetic public defenders or other incentives such as assistance with travel costs. Alternatively, it might, at the extreme, waive the selection criteria for regions where, otherwise, be no provision. A stronger approach would be to demand passage of the criteria, which are hardly onerous, on pain of payment of a lower tariff if the lawyer did not meet them.
13. Legal aid remuneration levels might need reconsideration. In particular, the daily limit on earnings - of 200 MDL plus certain uplifts in restricted circumstances - should be reconsidered in a way that rewarded actions on cases which had to be taken but avoided abuse.
14. The NLAC should encourage good practice guides of the kind that has been produced by the public defender office and published by the Bar Association in its bulletin. It might be that the training committee of the NLAC recommended above could examine what further guides might be useful.
15. The NLAC should wait to implement further exploration of peer review pending the proposed additional work in this area planned by the Soros Foundation Moldova.
16. The Bar Association might wish to consider its disciplinary procedures to ensure that they comply with Article 6 of the European Convention and provide a fair and impartial hearing. The NLAC should suspend or remove as appropriate any practitioner found to have been negligent or dishonest in filing claims for funding.
17. The Bar Association might consider monitoring its requirements for compulsory professional development. It might be that the total number of hours could be dropped in return for stronger enforcement.
18. The NLAC should consider whether it should run courses that would count towards the requirement for compulsory professional development and hold, or support, a regular annual updating course of, say, 10 hours on core topics.

19. The Ministry of Justice should suggest that the National Institute for Justice should come forward with plans for joint courses with prosecutors, others involved in criminal prosecutions, judges and defence lawyers by autumn 2013.
20. At an appropriate time, the NLAC might consider undertaking a review of what civil cases are being undertaken and what types of cases should be covered by the legal aid scheme to ensure that obligations under Article 6 of the European Convention on Human Rights are met.
21. Improvement might be undertaken of the practical skills of the training of the whole legal profession. Suggestions would include:
  - i. re-conceiving internship as more of a training period (perhaps going through the work of identifying what might be learnt);
  - ii. a specification for the role, and approval by the Bar Association, of mentors;
  - iii. a professional skills course of the kind considered above for all those qualifying as lawyers;
  - iv. approval of a set of skills and outcomes that a trainee should develop during their period of training;
  - v. a requirement that all entrants to the profession undertake the professional skills course; the examinations; and a period of training (which might be shortened for those using the current experience route available to prosecutors and judges).



## Appendix 1

### **Previous studies**

*Moldova: Expertise and Written Comments on the Draft Law on State-Guaranteed Legal Aid Act in Moldova*

Dr Jana Wurstova, Council of Europe and European Commission, undated

*Criminal Justice Performance from a Human Rights Perspective: assessing the transformation of the criminal justice system in Moldova*

Soros Foundation Moldova, 2009

*National Report: Moldova*

N Hriepievschi

International Legal Aid Group, 2009

*Impact Assessment of the Moldovan Law on State-Guaranteed Legal Aid*

M Grammatikov and N Hriepievschi, Soros Foundation Moldova 2012

*Met and Unmet Legal Needs in Moldova*

M Grammatikov, Soros Foundation Moldova, 2012

*Effective Criminal Defence in Eastern Europe*

Legal Aid Reformers Network, 2012

E Cape and Z Namaradze

N Hriepievschi chapter 6 'Moldova'

Appendix 2

Quality of Legal Aid Services: Capacity Needs Assessment of the National Council for State Guaranteed Legal Aid

Roger Smith (UK)  
Olga Rabei (Moldova)  
Natalia Romandas (Interpreter)

11 November – 17 November 2012

Schedule of visits

No.	Time	Name	Authority
12 November			
1.	12.30	Evghenii Golosceapov	Programme Analyst, Justice and Human Rights, UNDP Moldova
		Alexandru Cocirta	Project Manager, Support to Justice Sector Reform in Moldova Project
		Olga Rabei	National Consultant
2.	17.00	Nadejda Hriptievschi	Centre of Legal Resources
13 November			
3.	09.00	Mihail Lupu	Member, National Legal Aid Council (representing Lawyers Union)
		Cristina Melnic	Member, National Legal Aid Council (representing Ministry of Justice)
		Vasile Cretu	Member, National Legal Aid Council (representing Superior Council of Magistracy)
		Elena Gritco	Member, National Legal Aid Council (representing Ministry of Justice)
		Ludmila Dimitrisin	Member, National Legal Aid Council (representing Ministry of Finance)
		Eduard Revenco	Member, National Legal Aid Council (representing Lawyers Union)
4.	11.00	Lilian Darii	Executive Director, National Legal Aid Council
		Sergiu Chiruta	Coordinator, Territorial Office Chisinau, National Legal Aid Council
		Victor Grijuc	Coordinator, Territorial Office Balti, National Legal Aid Council

		Sergiu Haritonenco	Coordinator, Territorial Office Bender (Causeni), National Legal Aid Council
		Petru Hodorozea	Coordinator, Territorial Office Cahul, National Legal Aid Council
		Vadim Suhov	Coordinator, Territorial Office Comrat, National Legal Aid Council
5.	14.00	Doinea Svetlana	Legal Aid lawyer, representing territorial office Cahul
		Untila Vasile	Legal Aid lawyer, representing territorial office Chisinau
		Irina Costea	Legal Aid lawyer, representing territorial office Chisinau
		Alexandru Cebanas	Legal Aid lawyer, representing territorial office Chisinau
		Avramov Veaceslav	Legal Aid lawyer, representing territorial office Bender
6.	16.00	Igor Ciobanu	Manager, Public Defenders Office
		Molosag Natalia	Public defender
		Criclivaia Mariana	Public defender
		Mirza Daniela	Public defender
14 November			
7.	11.00	Gheorghe Amihalachioaie	Chairman of the Lawyers Union's Council
		Tetelea Eugeniu	Chairman of Disciplinary commission
		Bobu Petru	Member of the Disciplinary commission
		Mihail Lupu	Member of the Lawyers Union's Council, Member National Legal Aid Council (representing Lawyers Union)
8.	14.00	Raisa Botezatu	Judge (ret.), Supreme Court of Justice
9.	16.00	Victor Zaharia	Chairman, National Legal Aid Council (representing civil society/academia)
15 November			
10.	09.30	Richard Grawey	ABA/ROLI
11.	11.00	Victor Munteanu	Justice Programme Director, Soros Foundation-Moldova
		Sergiu Rusanovschi	Project Coordinator, "Enhancement of quality assurance tools and management of the legal aid system in Moldova", Soros Foundation-Moldova
		Diana Marian	Project Coordinator, "Legal Empowerment of rural communities through a network of community based paralegals", Soros Foundation-Moldova
12.	14.00	Gheorghe Malic	Head of the Criminal Investigation Department, Ministry of Internal Affairs
		Ruslan Ojog	Deputy Criminal Investigation Department, Ministry of Internal Affairs
		Marcel Scutari	Criminal Investigation Officer
		Petru Malai	Criminal Investigation Officer

13.	17.15	Olimpia Iovu	Staff Attorney ABA ROLI
16 November			
14.	09.00	Vladimir Grosu	Deputy Minister of Justice
15.	11.00	Ecaterina Palanciuc	Vice-president, Centru District Court (Chisinau)
		Ion Turcan	President, Centru District Court (Chisinau)
16.	15.00	Lelea Metreveli	NGO "Human Rights Embassy"
		Veaceslav Turcan	NGO "Human Rights Embassy"
17.	16.30		Human Rights Club for Lawyer's meeting

## Appendix 3

### Relevant legislation and guidelines

- (a) the Universal Declaration on Human Rights and, in particular, Articles 2, 8 and 11 (right to enjoy the rights without discrimination, right to a remedy for breach and right to 'guarantees necessary for defence' if charged with an offence;
- (b) the International Covenant on Civil and Political Rights and, in particular, the right in Article 14(3): 'To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it'
- (c) the European Convention on Human Rights and, in particular, Article 6 on general fair trial rights and, in relation to criminal matters, Article 6(3)(c): the right 'to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require';
- (d) the relevant jurisprudence of the European Court of Human Rights eg *Airey v Ireland* ([1979] 2 EHRR 305)
- (e) other UN Conventions including the Convention against Torture, Conventions for the elimination of racial discrimination or discrimination against Women;
- (f) UN Office of Drugs and Crime *Criminal Justice Assessment Toolkit I*, 2006
- (g) Council of Europe documents adopted by its Committee of Ministers, including
  - Resolution (76) 5 on legal aid in civil, commercial and administrative matters;
  - Resolution (78) 8 on legal aid and advice;
  - Recommendation (81) 7 on measures facilitating access to justice;
  - Recommendation (85) 11 on the position of the victim in the framework of criminal law and procedure;
  - Recommendation (93) 1 on effective access to the law and to justice for the very poor;
  - Recommendation (2000) 21 on the freedom of exercise of the profession of lawyer;
  - Recommendation (2001) 3 on the delivery of court and other legal services to the citizen through the use of new technologies;
  - Recommendation (2005) 12 containing an application form for legal aid abroad for use under the European Agreement on the transmission of applications for legal aid and its additional protocol.
- (h) UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems. Also relevant but more general are the UN Basic Principles on the Role of Lawyers. The Principles and Guidelines were endorsed by the UN General Assembly on 20 December 2012. Particularly relevant is Guideline 11 on national legal aid systems. This requires that States undertake measures in particular to provide:
  - i. effective legal aid in criminal cases;
  - ii. effective legal aid in cases of unlawful arrest, detention etc;
  - iii. co-ordination between agencies and professionals involved in justice system;
  - iv. partnerships with bar and legal associations;
  - v. assistance to paralegals where appropriate;
  - vi. encouragement to Bar Associations to draw up lists of volunteers in criminal cases;

- vii. the identification of incentives for lawyers to assist the poor and disadvantaged;
  - viii. encouragement for lawyers to organise country-wide circuits of lawyers to provide legal aid;
  - ix. adequate services for those who might face discrimination;
- and to consider national legal aid board or authority that is:
- 1. independent;
  - 2. has the necessary powers to provide legal aid;
  - 3. able to develop a long term strategy for legal aid; and
  - 4. reports periodically to the responsible authority.

## Appendix 4: Professional skills course - and example from England and Wales

This kind of course would be too complex and, more importantly, too expensive to run in Moldova but the outline below gives an indication of the possible content of a practical skills course for interns either specific to legal aid or more generally. This course has to be undertaken by all trainees wishing to qualify as solicitors in England and Wales. This example comes from the College of Law.

### PSC (Professional Skills Course) core modules

The three PSC core modules should normally be completed before you start your electives. Our flexible PSC allows you to take the core modules across a wide range of dates:

Advocacy and Communication Skills – 3 days (18 hours)

Client Care and Professional Standards – 2 days (12 hours)

Financial and Business Skills – 3 days (18 hours)

### Advocacy and Communication Skills – 3 days (18 hours)

This module builds on and extends the skills learnt on the LPC and helps you to:

- Develop your skills to make a persuasive presentation, structure a logical and cogent argument, and elicit information from others efficiently
- Conduct a factual analysis of a case and develop theories as to why your client's case should succeed
- Conduct chambers advocacy
- Understand trial advocacy and practise the effective examination of witnesses in chief, cross- and re-examination, and the presentation of opening and closing speeches
- Reach the ethical and procedural standard required to properly exercise the rights of audience granted to qualified solicitors in the civil and criminal courts

The module is assessed with an individual oral and written appraisal.

### Business of Law competencies covered:

**Business:** *Client Relationships; Commerciality*

**Law:** *Technical Competence; Development*

**Self:** *Managing Self; Development*

**Working with Others:** *Team-working; Communication*

### Client Care and Professional Standards – 2 days (12 hours)

We offer a choice of career routes for this module, meaning you can tailor the course to suit your type of practice:

- **Corporate route** – for trainees in corporate firms where clients are predominantly publicly-listed companies

- **Commercial and private route** – for trainees in firms with a mixture of private and business clients
- **Legal aid route** – for trainees whose firm mainly acts on matters where the fees of one or more of the persons involved are publicly funded through legal aid
- **In-house lawyers route** – for trainees working in commercial organisations where their client is the employer

The module is offered as two separate days of training, which can be taken together on consecutive days, or individually at different times to suit you. Please note that the SRA stipulate that Day 2 cannot be taken during the first six months of your training contract.

The module develops your understanding of professional conduct, client care and work management, and helps you to:

- Identify and deal with matters of ethics, professional conduct, risk management and client care
- Develop ways of working with others, managing your time and organising your projects and professional development
- Understand practicalities such as the retainer, duties owed to third parties and the court, undertakings, fees and client care
- Identify and solve problems in a practical way

The **Commercial and Private module** is recommended for those following the Commercial and Private route and the Legal Aid route.

We offer a tailored **Corporate** module for those following the Corporate route and an **In-house Lawyer** module tailored to those following the In-house lawyers route.

### **Business of Law competencies covered:**

**Business:** *Client Relationships; Commerciality*

**Law:** *Technical Competence; Development*

**Self:** *Commitment; Managing Self; Professional Responsibility; Development*

**Working with Others:** *Team-working*

For more information on the electives to suit your tailored route, please click on one of the following: [Corporate](#), [Commercial and Private](#), [In-house](#) and [Legal Aid](#).

### **Financial and Business Skills – 3 days (18 hours)**

This module looks at the specific statutory bases upon which financial advice can be given and the application of those principles, the possible criminal sanctions arising from such advice together with issues which might arise under the Code of Conduct. The module is a three day course (Thursday, Friday, Monday) with a 1 hour 30 minute written exam on the Monday morning.

By the end of the second day, and in preparation for the exam, delegates will:

- have an overview of the financial services industry
- understand the legal and regulatory regime which applies to solicitors in the provision of financial advice
- appreciate the impact of the Code of Conduct on the provision of financial services
- have an overview of the characteristics of different types of investments and an appreciation of portfolio planning



Following the exam delegates will conclude the course by developing an appreciation of the relevance of financial interpretation to solicitors and gain an overview of the regulation of accounts.

**Business of Law competencies covered:**

**Business:** *Commerciality*

**Law:** *Technical Competence; Development*

**Self:** Professional Responsibility: *Development*

**Working with Others:** *Communication*