# The Functioning and Role of Public defenders in Moldova

# Roger Smith, international consultant, and Olga Rabei, national consultant

## *This report:*

## *(a) records the crucial role that the Public Defender Office (PDO) in Chisinau, initially funded by Soros Foundation Moldova, has played during the establishment of a state-funded legal aid in Moldova, and the way that this is reflected in the relevant legal aid legislation;*

## *(b) recommends that the current funder of the PDO, the National Legal Aid Council, (on its own or jointly with the Ministry of Justice) initiates an inquiry into the role of public defenders to prevent any instability of provision arising from tensions over that role;*

*(c) suggests that the members of the Public Defender Office be encouraged to present a submission to that inquiry on the lessons that should be drawn from their experience, both as members of an initial pilot project and now as an integral part of the system of state-funded legal aid.*

## **Introduction**

## This paper was commissioned by the Soros Foundation Moldova (SFM) to provide an ‘assessment of the functioning and role of the Public Defenders Office (PDO) in Moldova’. In particular, the following areas were to be considered in detail:

* + the place and role of the PDO in the legal aid scheme

##  best practices created and applied by the public defenders

* + functionality of the PDO in terms of indicators and quality

##  status and efficiency of public defenders in other regions of Moldova

* + current financing model of the PDO

##  barriers to expanding the PDO throughout the country.

## The paper is based upon:

1. consideration of the legal framework governing public defenders - in particular, the Law on State Guaranteed Legal Aid (no 198 - XV1 of 26.07.2007) and the Regulation of the activity of public defenders approved by the National Council for State Guaranteed Legal Aid on 06.10.2008;
2. various other documents relating to the practice of legal aid in the Republic of Moldova including the Annual Report of the National Legal Aid Council for 2012 and the Justice Reform Strategy 2011-16 approved by Parliament;
3. a programme of interviews conducted in Chisinau and Cahul between 17 and 19 December listed as an appendix;
4. various previous studies noted in the text.

**The brief**

## The general context of the paper was explained in the brief to the international consultant:

The Public Defenders Office in Chisinau was supported by SFM from 2006 to 2011, and now is being financially supported by the state. It has proved a viable and necessary model for Moldova in terms of quality and has integrated well in the justice system.

## Specifically, the brief raised the following issues relating to the future of the public defender model:

* + the lack of current initiatives to encourage the development of the existing PDO model or the transfer of knowledge to private lawyers and others;

## the need for further monitoring and advocacy of the extension of the PDO model throughout Moldova;

## the funding and payment of the PDO lawyers;

## the risk of too great a focus on quantity and the consequent risk of ‘burn out’ of PDO lawyers.

##

**Context**

## Moldova has committed itself to extending its legal aid in the years since declaring its independence in 1992. It signed the European Convention on Human Rights in 1995 and ratified it in 1997. Article 6 of the Convention requires a number of fair trial rights to be respected, including the availability of legal aid in criminal and some civil cases subject to various conditions. in 2007, Moldova passed the legal aid legislation referred to above. The consequent extension of provision is clear from the National Legal Aid Council’s 2012 annual report. Over five years to 2012, expenditure on remuneration to lawyers has increased from 661,958 lei to 10,918,468 lei. The number of non-urgent cases assisted has risen to 29761 from 4491 and urgent cases from 444 to 2536.[[1]](#footnote-2)

## Despite this progress, expenditure on legal aid in Moldova remains low on a comparative basis with other European countries - though rising and with relatively high availability. Thus, in 2010 Moldova was reported as providing criminal legal aid in 240 cases per 100,000 of its population - a higher rate than countries like Georgia, Hungary, Italy or Slovenia. Moldova was, however, somewhat parsimonious in its average payments per case - being the lowest of any Council of Europe country and only a little over one third of the cost per case in Georgia. The authors of the survey of the Commission for the Efficiency of Justice (CEPEJ), from which these figures are taken, however, paid specific tribute to the ‘significant efforts’ made to improve legal aid in a range of countries that included Moldova.[[2]](#footnote-3) Moldova’s rising expenditure on legal aid since 2010 will improve its comparative position further and be apparent in later reports of CEPEJ.

## **Concerns and the government’s response: the justice strategy**

## There are indications, on the one hand, that the quality of justice in Moldova is, on the one hand, uneven and, on the other, that the government wishes to address the problem. The 2012 Amnesty International report on Moldova noted problems to be addressed which included the treatment of those in pre-trial custody, the impunity of police officers and unfair trial conditions. On the latter, it said:

In its report to the UN Human Rights Council for the Universal Periodic Review, the Parliamentary Advocates for Human Rights of Moldova (the Ombudsman) stated that 25 per cent of all complaints received by the Ombudsman concerned unfair trials. The most frequent were failure to examine cases within a reasonable time, **limited access to a qualified lawyer,[[3]](#footnote-4)** non-enforcement of court decisions, and violations of procedural rules by courts. According to a survey conducted in May by the Institute for Public Policies, only 1 per cent of respondents had complete confidence in the justice system, and 42 per cent had no confidence at all. On 3 November, Parliament approved an ambitious justice reform package for the court system, police and prosecutors. Measures included increasing the efficiency and independence of the judiciary; bringing the role of prosecutors into line with European standards; improving legal aid; reducing corruption; and improving respect for human rights.

## As part of its response to criticisms of this kind, Moldova has developed a Justice Strategy to cover the period 2011-16. This has the general objective of improvement of the judiciary, access to justice and human rights and the following objectives relevant to legal aid:

- improvement of the procedure of pre-trial investigation, in order to guarantee the observance of human rights, to ensure the security of every person and diminish the level of criminality;

- improvement of the institutional framework and of procedures which ensure effective access to justice: efficient legal aid, examining of cases and enforcement of judicial decisions within a reasonable term, modernising the status of some legal professions related to the exerting of justice;

- promotion and implementation of principle of zero tolerance towards corruption in judiciary;

- implementation of certain measures by which the judiciary shall contribute to development of a favourable environment for sustainable development of economy;

- ensuring effective observance of human rights in judicial practices and policies;

- coordination, establishing and delimitation of functions and responsibilities of main actors of judicial sector, providing the interdepartmental dialogue.[[4]](#footnote-5)

## The specific objective in the Justice Strategy for legal aid is the ‘improvement of the institutional framework and of the processes which ensure effective access to justice: effective legal aid, enforcement of judicial decisions within reasonable terms, modernising of the statute of some legal professions related to the judicial system’. The strategy noted, as a response to the goal of improving quality, that a ‘Mixed system for rendering of state guaranteed legal aid through public lawyers and lawyers rendering state guaranteed legal aid per request, [had been] implemented.’ [[5]](#footnote-6)

## **Public Defenders and the Public Defender Office**

## The development of legal aid in Moldova was significantly assisted by the creation of the Public Defender Office in Chisinau with funding from SFM. It opened in April 2006 with the following main objectives:

 To provide qualitative legal aid to the clients of the office,

 To test the PDO model in the Moldovan legal and cultural contexts,

 To collect data on legal aid delivery that can be useful for reshaping the legal

aid system in the country.[[6]](#footnote-7)

## As funded by the SFM, the PDO had the following characteristics which it retains:

- it is a joint practice of lawyers providing legal aid in criminal cases,

- the office has common principles of defence, based on the Law on Bar and Code of Ethics of Moldovan Lawyers, plus a few specific principles such as … representation of the client until the final case resolution;

- the manager of the office, a lawyer with minimum 5 years of experience as a lawyer, is responsible for ensuring the quality of the office’s services … ;

- each lawyer has a case file (defence file) for each represented client …;

- the office lawyers work in teams, sharing information about the represented clients and discussing the most difficult cases in order to ensure the best defence to the client;

- the office gathers necessary data (except private data about the client and other confidential data according to the lawyer’s standards), analyses them and provides to the SFM and the Ministry of Justice in the process of the legal aid reform.[[7]](#footnote-8)

## **The Legal Framework**

## The 2007 Law on Legal Aid allows ‘qualified’ legal aid (which includes criminal legal aid) to be delivered by ‘lawyers’ (‘who deliver legal aid by request’ or on a case by case by basis) or ‘public defenders’.[[8]](#footnote-9) The public defenders are paid ‘in fixed amounts’.[[9]](#footnote-10) Public Defenders are governed by Article 30 which states that:

(1) In the places of residence of territorial offices, qualified legal aid is delivered by public defenders. In case of necessity, the National Council can select public defenders for other regions as well.

(2) Public defenders work on the basis of the Rules on the activity of public defenders, approved by the National Council.

(3) Public defenders work in individual or associated lawyer offices, established in accordance with the Law on the Legal Profession.

## The National Council for State Guaranteed Legal Aid made regulations under Article 30(2) which were approved on 06.10.2008. This binds the public defenders to deliver services under contracts negotiated by the council.[[10]](#footnote-11) It requires various professional standards, such as confidentiality. It commits the PDO to work as a team, meaning ‘making in group the analysis of complicated cases, suggestions of different solutions … ‘[[11]](#footnote-12) The public defenders work for ‘fixed monthly remuneration’ on an individual basis.[[12]](#footnote-13) However, in addition and in contrast to privately funded lawyers:

## Territorial offices shall ensure the provision of a room, equipment, expenses for office maintenance as well as costs of remuneration of staff of the offices … [[13]](#footnote-14)

## **The Public Defenders**

## Public defenders are prohibited by their contracts from undertaking private work for paying clients but may, either individually or as an office, ‘receive financial resources to deliver services of state guaranteed legal aid also from other sources that are not prohibited by the law, including for the delivery of other legal aid services than the ones stipulated in the contract concluded with the territorial office, with the consent of the National Council’.[[14]](#footnote-15)

## The staff of the public defender office includes a head of office - with various specified management duties -, an ‘accountant as well as other specialists that the office of the public defenders can afford to employ with the consent of the National Council or a donor should an office of public defenders receive financial support from other sources than the budgetary ones that are subject to the delivery of state guaranteed legal aid’.[[15]](#footnote-16)

## The workload of the public defenders is to ‘be established in the contract concluded with the territorial office either in absolute number of percentage from applications for the delivery of state guaranteed legal aid’.[[16]](#footnote-17) However, a provision appears to be designed to prevent overwork of the public defenders: ‘A public defender also shall refuse to take over an application for the delivery of qualified legal aid beyond the hours of work, save for cases when the head of the office distributes the respective case as a matter of urgency.’[[17]](#footnote-18)

## From January 2012, the NLAC took over responsibility for funding what were then the seven public defenders in the PDO office in Chisinau. Over the year 2009-10, Unicef-Moldova funded 10 public defenders specialising in juvenile work but this project was discontinued. In addition, the NLAC funded public defenders in territorial offices to provide services where private practitioners were unable or unwilling to do so. Reflecting this history, the NLAC currently funds three types of public defender:

* 1. those employed in the public defender office in Cishinau, which serves two of the five districts of the city (currently eight, including the head of the office)

## those employed in the public defender office to specialise in juvenile cases (two included in the number above)

* 1. those employed in territorial offices outside Chishinau (currently four).

## The public defenders in the PDO work as a team, as required by their legislation. The public defenders in the regions operate effectively as one-person practices with, so far as could be seen, little link with the central PDO.

## The public defenders are hired, as required under the appropriate regulations made by the NLAC, on annual contracts. Since January 2013, they have been expected to take at least five new cases a month and to have a live caseload of between 30 and 50 cases. Their function was explained in a meeting with members of the NLAC as threefold: the provision of qualified legal aid (and, between the public defenders in the Chisinau office 2 hours a day of primary legal aid); training of private practitioners (for which extra remuneration could be obtained from third party contractors); and observers of the judicial system as a whole. It was reported that public defenders had fed back on 29 problems with other actors in the criminal justice system in the last six months.

## In terms of the relative volume of cases undertaken by the public defenders as compared with private practitioners, the NLAC reported that the PDO took around 30 per cent of the cases in the two sections of Chisinau which they serve. Overall, the PDO accounted for 225 cases in 2012 out of 17545, 1.2 per cent.

## The quality of legal aid work generally has been acknowledged by the NLAC and other commentators as an issue which needs to be addressed. 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.[[18]](#footnote-19)

##  A further study in 2012 stated 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.[[19]](#footnote-20)

## To address the issue of quality, the SFM introduced a pilot peer review programme. Significantly, lawyers within the PDO produced a set of standards for criminal defence which was accepted by the Bar Union and published by it as setting standards for the whole profession in this area of work. Subsequently, through the Legal Aid Reformers Network, these standards are being used, together with similar publications in Ukraine and Georgia, to produce a model set of standards for use more widely.

## It was impossible with the short field time available for this project to make a definitive judgement as to the relative quality of public defenders as against private lawyers. This is partly because the investigative judges whom we saw identified lawyers individually rather than by their organisation. However, the core of the PDO offices are now highly experienced; highly articulate; widely respected; and used to working in a structured way to certain minimum requirements. It seems likely that the position as to quality is that:

1. the core members of the PDO operate to a high standard;
2. quality among the public defenders in the regions may be more variable;
3. there remain quality issues among private practitioners paid on a case by case basis but, overall, standards are rising;
4. there will be some private practitioners acting for wealthy clients who are also of a high standard.

##  The NLAC is clearly content with the PDO as a delivery mechanism in essentially its current form. It has plans to expand the number of public defenders by two for each of the next two years (2014 - with one in Chisinau - and 2015).

## **Historical role of the PDO**

## The PDO played a key role in the development of legal aid in Moldova by providing practical feedback on developments to those devising the scheme. A paper in 2008 reported:

The experience to date proves that public defenders played an important role in the establishment of the new legal aid system. They informed the working group on various details of criminal legal aid delivery, providing both quantitative and qualitative data. For example, the office keeps track of all cases and records for every defence activity on the case, which allowed calculating the average time and costs, data that were used for drafting the preliminary regulation for payment for legal aid lawyers in September 2008.[[20]](#footnote-21)

## The staff of the PDO were hired in accordance with such a ‘pathfinder’ pioneering role:

In the case of Moldova working for a public defender office is attractive firstly to persons interested and committed to helping the poor, for young lawyers seeking experience, for lawyers that prefer working in teams and/or for lawyers interested in specializing in criminal defence. The level of remuneration is higher than in the public offices (e.g. the medium pubic officials in the Ministry of Justice) or what an average private lawyer would get providing only criminal defence, but lower than what an active experienced private lawyer would make. Thus the salary is not the main attraction for joining the office, except the fact that it is stable and guaranteed for at least a year. The well-equipped office is an attractive element for working in a public defender office. The fact that the office receives the clients from the Territorial Office and thus does not have to look for clients is another attractive part. And lastly, but not least, the in-house quality assurance mechanism is one of the most attractive aspects of the Public Defender Office operation, especially for young lawyers. The office manager is responsible for case distribution, overseeing the equal workload and ensuring the quality of the office’ services. The manager reviews every pending case at least once, advising the lawyer on the measure that the latter can take for improving his/her performance in the case and reviews the case when finished. The manager is also available at any moment for consultation by any lawyer of the office. The lawyers are encouraged to work in teams and help each other. The most difficult and interesting cases are regularly discussed at the office meetings, which both helps the relevant lawyer and her client, and teaches the others about the relevant issue. The lawyers also benefit from on- going in-house training targeted to improve their professional skills. In a context of dominant solo practice in criminal cases, as Moldova is so far, practice in an office that shares experiences, encourages team work and learning from each other is a very useful place to start for any young lawyer. The biggest disadvantage of public defenders is their restriction on taking private cases and the mandatory inclusion in the duty lawyers’ lists.[[21]](#footnote-22)

## The core PDO team has proved remarkably loyal and has stayed since the beginning, despite no increase in the lawyers’ salary since the PDO’S inception in 2006. The somewhat ‘ad hoc’ conditions of employment are proving, however, somewhat more unattractive as time goes on. One problem is the inherent uncertainty of an annually renewable contract; another (as noted above) is the consequence of a working arrangement that looks like a compromise between that of an employee and self-employment. Some expenses, such as rent, are met on a collective basis and some terms enforced, such as mandatory supervision, as if the PDO was an autonomous office with employees. Other terms, such as the failure of the NLAC to meet health insurance costs are more consistent with self-employment. Members of the PDO may earn additional income from some activities but not private practice which is of benefit to those wishing to take additional academic posts but not to those who want to be practising lawyers. Figures have been produced within the PDO which indicate that a gross monthly salary of 6785 lei can be reduced through unavoidable costs to 2,356.[[22]](#footnote-23) The detail might be disputed but it is clear that members of the PDO could well feel themselves trapped in lesser remuneration that might be expected given their leadership role in the quality of legal services.

## In 2008, the researcher quoted above listed the following as the ‘main challenge’ facing the PDO as the ‘recruitment and keeping of competent and dedicated lawyers.[[23]](#footnote-24) In the event, the lawyers at that time have remained. However, it must become increasingly likely that they will move on, particularly if they have any legitimate grievance with their working conditions. The danger then would be that the nature of the PDO would change as it became clear that comparably good staff would not be attracted to relatively low paid posts which no longer had the additional interest and prestige of working in a pilot project developing new ways of working.

**Questions for the Future**

##  *Our fundamental recommendation is that the NLAC (on its own or jointly with the Ministry of Justice) should initiate an inquiry into the role of the PDO and the public defenders in the Territorial Offices.* It would seem timely to do this, given that the PDO was established by an external donor; has been recently taken over by the NLAC; and faces tensions from conflicting pressures.

## As to the focus of such an enquiry, there would seem to be at least four questions which should be addressed about the future role of public defenders:

1. What is their function?
2. how is a Chishinau-based PDO best organised?
3. what should be the relationship of the PDO and the public defenders in the regions?
4. should any changes be made to the contracts and working conditions of public defenders in Moldova?

**Function**

## Moldova has adopted a system of delivery incorporating a public defender element. The NLAC plans the extension of public defenders in each of the next two years. It would seem unlikely that there is much appetite to review fundamentally the balance of work to be undertaken by the public defender. However, within this overall commitment there are choices as to the role of the public defender. These include a choice between the following or some form of combination of some of them, at least in relation to the PDO in Chisinau. They basically involve choosing between whether the PDO is seen as a ‘volume’ or ‘elite’ provider and whether as generalist or specialist. Options would include:

1. the PDO could be a volume provider of low cost services, demonstrating to the NLAC and the private profession how much can be handled when lawyers are well organised and trained;
2. the PDO could be, on the contrary, seen as a high quality provider of specialist legal services in areas where these are particularly required eg juvenile work on the basis that adequate specialists do not exist in private practice;
3. the PDO could be seen as a ‘model’ provider of services, showing to the private profession and the NLAC how cases should be handled and with a specific mandate to raise the quality of general provision through training, the setting of standards and otherwise;
4. the PDO could be seen as a deliverer of strategic services, ie cases of a particular type which it was felt desirable for it to undertake, e.g. certain types of criminal case, challenges to government or civil litigation which is being developed further to the expansion of legal aid from criminal;
5. the PDO could - whether general, model or specialist - be seen as a ‘window’ on the justice system with a specific role (as happens now) in feeding back to policy makers issues that would merit attention.

## At the present time, the PDO is actually being asked to provide services under (b) to (e) but also to act as a volume provider as in (a). These roles are likely to prove incompatible and a choice has to be made.

## It would be entirely possible to argue that the PDO has played a strategic role in the past during the formation stage of legal aid in Moldova and should now reconcile itself to a volume case-focused role. The difficulty with such a position is whether Moldova can safely regard the quality of its legal aid as stable and acceptable. It would appear from its Justice Strategy that the Government accepts that problems of quality remain. And it would seem that the NLAC itself has a somewhat wider view of the PDO’s role than simply the provision of caseswork. If this is to be the case then there are organisational and contractual consequences.

## It would be helpful in any inquiry established by the NLAC for the Public Defenders, either or both individually and/or as an office, to give their views on the various models. In particular, it would also be useful if the lawyers of the PDO could identify:

1. the issues on which they perceive weaknesses in the quality of private providers and how they might be used in addressing them;
2. the issues of law and procedure on which it would be helpful to have them concentrate strategically - these might relate to criminal procedure (eg pre-trial rights), civil procedure (various forms of government challenge) or substance (the operation of certain laws, civil or criminal).

## There may well be other agencies in Moldova that would have views that it would be helpful to hear (not least the SFM and perhaps also such bodies as the Ombudsman).

**Organisation**

## The organisation of the public defenders in the PDO represents, as has been noted, a compromise between an employed staff and a contracted independent advocate model. This operates somewhat to the disadvantage of the public defenders who may well feel that they get the worst of both worlds in terms of their net remuneration.

## The NLAC probably now has to decide between these models. The current situation was really only justifiable while the PDO was a pilot experiment at a time when there was some opposition from the organised Bar to its formation. There now seems much more acceptance of its right to exist and the value of its lawyers’ experience.

## There are a variety of options over what might be done. These include:

1. the relationship between the NLAC and the individual public defenders could be exactly like that with other lawyers ie there would be no restriction on private work that could be undertaken by the public defenders and the only difference would be that between guaranteed payment for time or payment per case;
2. alternatively, the relationship between the NLAC and the public defender office could be as if it was an independent NGO with which the NLAC contracted. The NLAC would then pay an annual grant for services delivered which could include reimbursement of the employment obligations in relation to health care and running costs;
3. as a further option, the NLAC could employ the public defenders directly meeting their costs in terms of health care and otherwise just as it does for its existing employees;
4. finally, the NLAC could contract as now with the individual public defenders as now but compensate them for their liability for additional costs for which they cannot get assistance by taking on private clients.

##  A number of these options might require amendment to other legislation covering forms of practice by lawyers. It would seem inherently unsatisfactory to rely on part-time public defenders who can make up their earnings from other types of work such as academic teaching and research. Additionally, there might be additional potential conflicts of interest in allowing public defenders to undertake private work although, superficially, this might seem the most attractive both to public defenders and to the NLAC.

## **Public Defenders in the Territorial Offices**

## The division between the public defenders in the Chisinau PDO and those in the regions seems stark. It is understandable from a history where the regional public defenders were a response to a lack of adequate lawyers but it would be worth reviewing whether all public defenders should be managed as one unit. This would have value in terms of encouraging common standards and combatting this isolation of the regional public defenders. Work could still be allocated by the Territorial Office.

## There are ways in which the territorial office public defenders could be linked to the PDO. For example, there might be ways of encouraging communication short of assimilation into one office through the formation of internet based groups such as the site for [www.parajurist.md](http://www.parajurist.md) for paralegals.

## **Contracts**

## Whatever the role and organisation of the public defenders, consideration should be given to whether any contract with the public defenders should be longer than the one year at present. This gives very little job security and might be satisfactory for a pilot project but not really once the project has become established.

## The contract needs to reflect the role of the public defender. So, if it is decided that the public defender has a role in relation to strategic litigation, specialist services, training to other practitioners or systemic feedback then there should be an allowance for that in the level of remuneration. It may be that the NLAC could seek that the funds for that additional remuneration from sources other than the government and among interested donors.

## In any event, the NLAC might want to reconsider the contractual casework obligations of public defenders in the light of the view that is taken of their role as being more than simply the provision of volume cases.

## **Summary**

##  Moldova has made enormous strides in the development of legal aid since 2006 when the PDO was established and 2007 when it passed its legal aid legislation. The PDO has played an invaluable role during this period. The lessons to be drawn from the experience both as a pilot project and then as an integral part of the legal aid system in Moldova need to be considered. Thus, in summary, this report recommends the following.

## The NLAC (on its own or jointly with the Ministry of Justice) should initiate an inquiry into the role of the PDO and the public defenders in the Territorial Offices.

## The inquiry should address at least four questions about the future role of public defenders:

1. What is their function?
2. how is a Chishinau-based PDO best organised?
3. what should be the relationship of the PDO and the public defenders in the regions?
4. should any changes be made to the contracts and working conditions of public defenders in Moldova?

##  Fundamentally, a choice needs to be made between different roles for the PDO. Possibilities include:

1. the PDO could be a volume provider of low cost services;
2. the PDO could be, on the contrary, seen as a high quality provider of specialist legal services in areas where these are particularly required eg juvenile work;
3. the PDO could be seen as a ‘model’ provider of services, showing to the private profession and the NLAC how cases should be handled and providing relevant training;
4. the PDO could be seen as a deliverer of strategic services, such as those relating to aspects of human rightsd;
5. the PDO could - whether general, model or specialist be seen as a ‘window’ on the justice system with a specific role (as happens now) in feeding back to policy makers issues that would merit attention.

## Options for the future organisation of the public defenders include:

1. the relationship between the NLAC and the individual public defenders could be exactly like that with other lawyers ie there would be no restriction on private work that could be undertaken by the public defenders and the only difference would be that between guaranteed payment for time or payment per case;
2. the relationship between the NLAC and the public defender office could be as if it was an independent NGO or specific office with which the NLAC contracted. The NLAC would then pay an annual grant for services delivered which could include reimbursement of the employment obligations in relation to health care and running costs;
3. as a further option, the NLAC could employ the public defenders directly meeting their costs in terms of health care and otherwise just as it does for its existing employees;
4. finally, the NLAC could contract as now with the individual public defenders as now but compensate them for their liability for additional costs for which they cannot get assistance by taking on private clients.

## The inquiry should consider whether all the public defenders should be managed as one unit, merging those in Chisinau with those in territorial offices outside.

## It would be helpful for the Public Defenders, either or both individually and/or as an office, to give their views and, in particular:

1. the lessons that they draw from their experience;
2. the issues on which they perceive weaknesses in the quality of private providers and how they might be used in addressing them;
3. the issues of law and procedure on which it would be helpful to have them concentrate strategically - these might relate to criminal procedure (eg pre-trial rights), civil procedure (various forms of government challenge) or substance (the operation of certain laws, civil or criminal).

## Whatever the role and organisation of the public defenders, consideration should be given to various matters relating to the contracts with the public defenders, including:

## whether any contract with the public defenders should be longer than the one year at present;

## the consequences of decisions on strategic litigation, specialist services, training to other practitioners or systemic feedback in terms of the composition and level of remuneration;

## whether any donor might be encouraged to pay for strategic or training elements of the work of public defenders on a structured basis; and

## whether the current contractual casework obligations of public defenders should be reduced in the light of any view of their role as being wider than the provision of volume cases.

December 2013

**Appendix 1**

**Assessment of the functioning and role**

**of the public defenders office in Moldova.**

**Roger Smith (UK)**

**17 December – 19 December 2013**

**Schedule of visits**

|  |  |  |  |
| --- | --- | --- | --- |
| **No.**  | **Time**  | **Name**  | **Authority**  |
| **17 December 2013** |
| 1.  | **11.00** | **Victor Zaharia** | **Chairman, National Legal Aid Council (representing civil society/academia)** |
|  |  | **Mihail Lupu** | **Member, National Legal Aid Council (representing Bar Association)** |
|  |  | **Lilia Ionita** | **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 Bar Association)** |
|  |  | **Lilian Darii** | **Executive Director, National Legal Aid Council** |
|  |  | **Sergiu Chiruţa** | **Coordinator, Territorial Office Chisinau, National Legal Aid Council** |
|  |  | **Andrei Bătrînac** | **Counselor, Administrative Apparatus, National Legal Aid Council** |
|   |  | **Cristina Paladi** | **Consultant, Administrative Apparatus, National Legal Aid Council** |
| 2.  | **13.30**  | **Valentina Ciobanu**  | **Prosecutor, District Prosecution** |
| 3. | **15.00** | **Alexandru Cocirta** | **Project Manager, Support to Justice Sector Reform in Moldova Project** |
|  |  | **Evghenii Golosceapov** | **Programme Analyst, Justice and Human Rights, UNDP Moldova**  |
| 4. | **16.00** | **Public Defender Office** | **Public Defenders,****Chief of Public Defender Office** |
| **18 December 2013** |
|  | **09.00** | **Departure to Cahul** |
| 5. | **12.00** | **Eduard Bondarenco** | **Public defender, Territorial Offices from Cahul** |
| **19 December 2013** |
| 6.  | **08.00** | **Nicolae Esanu** | **Deputy Minister of Justice** |
| 7 | **09.30** | **Tetelea Eugeniu** | **Chairman of Disciplinary commission, Bar Association** |
|  |  | **Bobu Petru** | **Member of the Disciplinary commission, Bar Association** |
|  |  | **Mihail Lupu** | **Member of the Bar Association’s Council, Member National Legal Aid Council (representing Lawyers Union)** |
| **8.**  | **11.00** | **Iurie Obadă** |  **Judge on criminal investigation, District Court**  |
| 9. | **15.00** |  | **Lawyer’s club meeting** |

1. Raport de Activitate in Sistemul de Accordare a Assistentei juridice Garantate de Stat Pentru Anul 2012. [↑](#footnote-ref-2)
2. CEPEJ *Evaluation of European Judicial Systems*  2012, chapter 3 [↑](#footnote-ref-3)
3. emphasis added. [↑](#footnote-ref-4)
4. Law on adopting the Strategy for the reform of judiciary for 2011–2016, No. 231  from  25.11.2011 [↑](#footnote-ref-5)
5. as above, para 3.1.2 [↑](#footnote-ref-6)
6. Nadejda Hriptievschi *Legal aid reform in Moldova – prerequisites, progress, challenges and expectations*

Paper prepared for the Foundation for Legal Technologies Development, Minsk, Belarusi,

November 2008, p3 [↑](#footnote-ref-7)
7. as above. [↑](#footnote-ref-8)
8. Article 29(1) [↑](#footnote-ref-9)
9. Article 32(2) [↑](#footnote-ref-10)
10. Article 6 [↑](#footnote-ref-11)
11. Article 18 [↑](#footnote-ref-12)
12. Article 22 [↑](#footnote-ref-13)
13. Articile 23 [↑](#footnote-ref-14)
14. Article 24 [↑](#footnote-ref-15)
15. Article 28 [↑](#footnote-ref-16)
16. Article 35 [↑](#footnote-ref-17)
17. Article 38 [↑](#footnote-ref-18)
18. Soros Foundation Moldova *Criminal Justice Performance from a Human Rights Perspective: assessing the transformation of the criminal justice system in Moldova* 2009, p70 [↑](#footnote-ref-19)
19. M Gramatikov and N Hrieptivschi *Impact assessment on the Moldova Law on State-Guaranteed Legal Aid* 2012 [↑](#footnote-ref-20)
20. Nadejda Hriptievschi *Legal aid reform in Moldova – prerequisites, progress, challenges and expectations* p3 [↑](#footnote-ref-21)
21. N Hrieptivschi *Moldova National Report* ILAG conference Wellington 2009 p11 [↑](#footnote-ref-22)
22. Fees collected and distributed per month, undated [↑](#footnote-ref-23)
23. as in 19. [↑](#footnote-ref-24)