



Human Rights Implementation
Centre

**Report on the current state of play and possible solutions to assist the
process of designating or establishing a National Preventive Mechanism**

in Romania

by

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1. Executive Summary¹

Romania ratified the Optional Protocol to the Convention against Torture (OPCAT) on 9 July 2009 but at the same time made a declaration under Article 24 to temporarily postpone their obligation to establish, maintain, or designate a National Preventive Mechanism (NPM) for a period of three years. One of the aims of Article 24 is to provide States with a set period of reflection in order to consider the most appropriate form of NPM for their particular context and address any difficulties. In accordance with this Article the Romanian Government should designate its NPM by July 2012.²

A comprehensive review of the NPM options available to the Romanian authorities was undertaken between December 2009 and April 2010 under the Twinning Light Project Romania “*Support for setting up an efficient National Preventive Mechanism for an increased promotion and protection of human rights in places of detention*”.³ The findings of this project suggested that two possible options were available for an NPM in Romania, either the Ombudsman office could be designated as the NPM with additional support being given from NGOs, or a new body could be established. Unfortunately, since the publication of the findings of this project, the decision-making process appears to have stalled and many issues still need to be tackled in order to decide upon the most appropriate and effective NPM for the Romanian context.

This present report details the current situation with the decision-making process for an NPM in Romania and identifies the main issues that still need to be addressed. The report concludes with a series of recommendations addressed to the Government, the Ombudsman office and civil society organisations. A short summary of the more urgent recommendations is presented here:

1. A meeting between the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Health, Ministry of Interior, Ministry of Defence, Ministry of Labour, Family and Social Protection, and all other relevant ministries, should be arranged to discuss the findings of the final report of the Twinning Light Project Romania and this report and to develop a plan of action and timeline for designating an NPM.

¹ The author would like to thank Dr Elina Steinerte, research associate at the Human Rights Implementation Centre, University of Bristol, for her comments on earlier drafts of this report.

² Please note that in accordance with Article 24(2) of the OPCAT after this initial three year period of postponement the UN Committee against Torture may grant a further extension of up to two years but only after due representations have been made by the UN Subcommittee on Prevention of Torture and the State Party concerned.

³ See Report of the Twinning Light Project Romania, TF 2007/IB/JH-21/TL, ‘*Support for setting up an efficient National Preventive Mechanism for an increased promotion and protection of human rights in places of detention*’ (The Twinning Light Project Romania), available at: www.bim.lbg.ac.at/files/sites/bim/Endbericht.pdf

2. A round-table meeting should be organised with all relevant ministries, the Ombudsman office and civil society organisations to discuss the options for an NPM and to agree a plan of action.
3. A representative of the SPT should be invited to attend round-table discussions and bi-lateral meetings should be arranged for the SPT representative to meet with relevant ministries, the Ombudsman office and civil society organisations.
4. The inventory of places of detention commenced by the Twinning Light Project Romania should be completed to include all places of detention as defined under Article 4 of the OPCAT. This should be widely distributed among the participants of the consultation process and made publicly available.
5. The Ombudsman office should conduct a thorough internal audit to consider what financial and staffing resources would be required and what changes would need to be made to Law 35/1997 (as amended) if they were to undertake the NPM mandate. The findings of this audit should be shared with the Government and civil society organisations and made publicly available.
6. Civil Society organisations should consider organising or co-sponsoring with the authorities an expert conference to examine the NPM solutions for Romania.

2. Introduction

This report is produced following a research visit undertaken to Bucharest, Romania between 21 and 23 June 2011 as part of the project '*Preventing Human Rights Abuses in Places of Detention*', which is run by a consortium of organisations led by the Association for the Defence of Human Rights in Romania (APADOR). The aims of this project are to... The research visit to Romania was aimed at gathering information on the current state of play with the process for deciding upon an NPM and to identify measures that may enable the process to move forward.

Commented [E1]: Diana is this correct?

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An earlier analysis of the options for the designation or establishment of an NPM in Romania had been carried out between December 2009 and April 2010 under a separate project, the Twinning Light Project Romania: '*Support for setting up an efficient National Preventive Mechanism for an increased promotion and protection of human rights in places of detention*' (Twinning Light Project Romania). This project was funded by the European Commission and involved the Romanian Government, in particular the Ministry of Justice, and a number of experts from Austria, the Czech Republic, France, Germany, Poland and Slovenia. The aim of this earlier project was to elaborate with the Romanian authorities and experts a set of options for the designation of an NPM in Romania.⁴ At the end of this project a comprehensive report was produced detailing the challenges and opportunities for establishing an NPM in Romania and making a number of recommendations for future action by the Romanian authorities and civil society organisations.

The aim of this current report is not to duplicate the work undertaken as part of the Twinning Light Project Romania but rather to complement and supplement the findings of this earlier instructive project. This report draws on some of the key observations and recommendations of the Twinning Light Project Romania and examines to what extent the recommendations have been implemented and explores the current opinions of various actors as to what form an NPM should take in Romania.

The first section of this report provides an overview of some of the key findings and recommendations made by the earlier Twinning Light Project Romania. The report then sets out the current state of play with the decision-making process on the form of NPM in Romania based on the findings of the research visit undertaken in June 2011. The final part of the report makes some recommendations for the authorities, Ombudsman office and civil society organisations, which are aimed at assisting the decision-making process to move forward.

⁴ Report of the Twinning Light Project Romania, TF 2007/IB/JH-21/TL, '*Support for setting up an efficient National Preventive Mechanism for an increased promotion and protection of human rights in places of detention*' (The Twinning Light Project Romania), p.32, available at: www.bim.lbg.ac.at/files/sites/bim/Endbericht.pdf

3. Methodology

The research carried out in Romania under the 'Preventing Human Rights Abuses in Place of Detention' project had a number of key objectives. Firstly, it was designed to examine to what extent the recommendations made as a result of the Twinning Light Project Romania had been implemented. Secondly, through a series of semi-structured interviews it sought to obtain up-to-date information from a range of stakeholders on the current challenges and opportunities for designating an NPM in Romania. Finally it was also aimed at making recommendations to the Romanian Government, Ombudsman office and civil society organisations to assist them to move the decision-making process forward.

In light of the non-quantifiable aims of the project a qualitative research methodology was chosen as the most suitable approach for this research. Two specific methods were employed: a literature review and semi-structured in-depth interviews.

Firstly a literature review was undertaken which involved a review of the earlier report of the Twinning Light Project Romania, as well as an examination of reports from various international and regional human rights bodies, such as the relevant documents associated with the Universal Periodic Review (UPR)⁵ under the United Nations Human Rights Council, which Romania underwent in June 2008, as well as the documents prepared by the Romanian authorities for the UPR process,⁶ and the summary of the stakeholders' information;⁷ and the report following the visit of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) to Romania between 28 September and 2 October 2009.⁸ This review enabled background information to be gathered on the process that had led to the ratification of the OPCAT in 2009 and the declaration made under Article 24. It also identified the key existing mechanisms and the main stakeholders in the NPM decision-making process at the national level.

Subsequently a research visit was undertaken to Romania between 21 and 23 June 2011 in order to carry out semi-structured interviews with key national actors. The meetings were organised by the partner organisation in Bucharest, APADOR. During the course of the research visit a round-table meeting with civil society organisations was undertaken and interviews were carried out with the Ombudsman office and various government representatives and agencies (please see Annex I for a full list of the meetings). These interviews enabled a first-hand account of the current state of play and remaining challenges with the NPM decision-making process to be obtained.

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⁵ See UN.Doc A/HRC/8/49 of 3 June 2008.

⁶ See UN.Doc A/HRC/WG.6/2/Rom/1 of 2 May 2008.

⁷ See UN.Doc A/HRC/WG.6/2/Rom/3 of 3 April 2008.

⁸ See CPT/Inf (2010) 25 of 26 August 2010.

4. Overview of key findings of the Twinning Light Project Romania

The Twinning Light Project Romania undertook a detailed analysis of existing mechanisms “inspecting places of detention” to consider to what extent they were or could be compliant with the requirements for NPMs prescribed in the OPCAT.⁹ This project looked at the existing executive, judicial, and statutory bodies, as well as non-governmental organisations (NGOs) that have a role in inspecting places of detention.¹⁰ Their findings concluded that while a “comprehensive system of monitoring of places of detention already exists, the current inspection mechanisms display significant shortcomings in view of independent preventive monitoring.”¹¹

In relation to the current executive mechanisms, this project noted that these have an “entirely different purpose and philosophy than an NPM”.¹² In particular as internal self-control mechanisms these executive mechanisms are not independent as required by Article 18(1) of the OPCAT.¹³ Thus while it was noted that they had an important role to play as partners for an NPM it was concluded that it would not be feasible for any of these bodies to be designated as an NPM.¹⁴

Similarly, the existing judicial mechanisms were noted as having an important role to play with respect to observing the rights of persons deprived of their liberty but that these bodies have a reactive rather than preventive function.¹⁵ It was observed that the “different approach of delegated judges makes their incorporation or transformation into an NPM impossible”.¹⁶

With respect to NGOs who undertake visits to places of detention it was noted that these serve an important function in the prevention of torture and other ill-treatment. While it was observed that they do not have the financial or human resources to carry out regular monitoring as required by the OPCAT it was advised that the current NGOs operating in the field of detention monitoring should be integrated into the future NPM as much as possible.¹⁷

Lastly, the Ombudsman office was singled out for particular attention because it appeared to be the “closest partner of the future NPM”.¹⁸ It was observed that the Ombudsman office *prime facie* appeared to comply with the OPCAT requirement of independence,¹⁹ and can in principle carry out visits in accordance with Article 22 of

⁹ Report of the Twinning Light Project Romania, op.cit. pp.6-9.

¹⁰ Ibid, p.8.

¹¹ Ibid, p.7.

¹² Ibid. p.7.

¹³ Article 18(1) of the OPCAT provides that “States Parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel.”

¹⁴ Report of the Twinning Light Project Romania, op.cit. p.7.

¹⁵ Ibid. p.8.

¹⁶ Ibid. p.8.

¹⁷ Ibid. p.8.

¹⁸ Report of the Twinning Light Project Romania, op.cit. p.8.

¹⁹ Notwithstanding the *prime facie* independent status of the Ombudsman office, in practice the lack of independence of this body was highlighted as a concern by some civil society organisations and was

Law no. 35/1997 (the Ombudsman Law).²⁰ However, it was noted that in its current form the Ombudsman office would be unable to fulfil the mandate of the NPM and that a number of significant changes would need to be made if this body were to be designated in order to make it OPCAT compliant.²¹ (The shortcomings in the current mandate, structure and resources of the Ombudsman office in relation to the NPM mandate are explored in more detail in section 7 below.)

It was also observed that a range of different actors expressed concern regarding the lack of efficiency and transparency of the Ombudsman office to carry out its existing functions, which they feared would also inevitably mean that the NPM would have or be perceived as having the same deficiencies if it were established within the Ombudsman office.²² Most notably it was stated that the strongest opposition to the designation of the Ombudsman office as the NPM came from the then Ombudsman, Prof. Ioan Muraru, as well as from other members of his staff.²³ It was recorded that the Ombudsman considered that his office lacked the necessary human and financial resources to fulfil the tasks of an NPM and that the Ombudsman office was not currently in compliance with the OPCAT regarding the composition of the staff and its mandate.²⁴

Drawing upon its research findings the Twinning Light Project Romania considered that there were two options available to the Romanian authorities for the designation of an NPM. The first option would be to designate the Ombudsman office supplemented by members of civil society, subject to the necessary changes to the mandate, structure and resources that would be required to make this mechanism OPCAT compliant. The second option would be to establish an entirely new body to carry out the NPM mandate.²⁵ The various advantages and disadvantages of these two options were addressed in the final report of the project, although it was noted in conclusion that it was “not evident which model for an NPM is to be preferred in Romania”.²⁶

A full analysis of the benefits of and problems with both options can be found in the final report of the Twinning Light Project Romania, and it is not the intention of this report to duplicate this authoritative paper.²⁷ Nevertheless, the feasibility of either designating the Ombudsman office, with or without support from NGOs, as the NPM or establishing an entirely new body was reviewed during the course of the research visit undertaken in June 2011. Accordingly, the current challenges and options for an

noted as an issue that would require further analysis. See Report of the Twinning Light Project Romania, op.cit. p.38, n.74.

²⁰ Article 22 Law No. 35/1997 empowers the Ombudsman to “conduct his own inquiries”.

²¹ Report of the Twinning Light Project Romania, op.cit. p.8.

²² Ibid. p.39.

²³ Ibid. p.39.

²⁴ Report of the Twinning Light Project Romania, op.cit. pp.39-40.

²⁵ Ibid. p.33.

²⁶ Ibid. p.40.

²⁷ Report of the Twinning Light Project Romania, op.cit. pp.32-53.

NPM in Romania that were identified both during the Twinning Light Project Romania and the latest research visit are explored in more detail below.

5. Observations on the current state of play

Looking at the current state of play with the process for deciding on an NPM, unfortunately it was evident during the research visit in June 2011 that little progress had been made since the publication of the final report of the Twinning Light Project Romania and the numerous recommendations made following that in-depth consultation process had not been acted upon. In particular the primary recommendation that “the Government should make an objective evaluation with the support of economic experts of the costs involved with each model” had not in fact taken place.²⁸

It would appear that the main reason for this inertia is the lack of engagement of relevant ministries. The Ministry of Justice (MOJ) had agreed to draft the law on the NPM and it was stated by various actors that it was the only ministry that was working on the issue. However it was noted that the MOJ do not have the authority to make the formal decision as to which form the NPM should take. The MOJ only has responsibility for some places of detention that fall within the scope of Article 4 of the OPCAT. Other places of detention such as centres for asylum seekers; psychiatric institutions; places of detention within military facilities etc. come under the responsibility of other ministries and who therefore need to be engaged in the discussions. Furthermore, because of the financial consequences of designating an NPM, whether it is an existing or new body, the Ministry of Finance also needs to be involved with the decision-making process. Unfortunately many different stakeholders noted a general apathy among the Government in relation to the decision-making process.

It was also noted that some ministries held a “traditional view” that places of detention only encompassed prisons and police lock-ups, whereas in order to be compliant with the OPCAT all places “*where people are or may be deprived of their liberty either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence*” are to fall within the mandate of the NPM.²⁹ This will include, but is not restricted to, places such as: police stations, pre-trial centres, prisons for sentenced persons, juvenile detention centres, border police facilities and transit zones at land crossings, international ports and airports, immigrant and asylum-seeker detention centres, psychiatric institutions, security or intelligence services facilities, detention facilities under military jurisdiction, places of

²⁸ Report of the Twinning Light Project Romania, op.cit. p.53.

²⁹ See Article 4(1) of the OPCAT.

administrative detention, means of transport for the transfer of prisoners. It also includes “unofficial” places of detention and private custodial settings.³⁰

Specifically in relation to the Romanian context, during the research visit in June 2011 it was stated by a number of different actors that particular attention should be given to ensure that the future NPM is able to undertake preventive visits to detention centres for persons with mental health problems or learning disabilities, asylum seekers and refugees, as well as “public custody centres” where individuals may be deprived of their liberty as defined by Article 4 of the OPCAT. In addition “control procedures” were noted as a particular concern by some civil society organisations. This involved the practice of “inviting” persons down to police stations for example when they have not produced a form of identification and where they may be “held” for a period of time by the police. Typically no record is made of this “detention” as the authorities do not formally recognise it as an act of deprivation of liberty, but the practice may fall within the scope of the Article 4 of the OPCAT. It was observed that the NPM mandate must cover these different forms of deprivation of liberty.

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Consequently, places of detention as defined by Article 4 of the OPCAT will not only fall under the responsibility of the MOJ but other departments as well. Accordingly a range of ministries need to be engaged with the issue and recognise that the OPCAT will apply to places of detention that come within their mandates.

Unfortunately without the engagement of a range of ministries the decision-making process appears to have stalled. It was also observed that the findings and recommendations contained within the final report of the Twinning Light Project Romania were not widely known.

A further issue that had led to the stagnation of the decision-making process also appeared to be the continued strong resistance from the Ombudsman office to assume the mandate of the NPM under its work. At the time of the research visit in June 2011 a new Ombudsman had yet to be appointed, however representatives of the Ombudsman office reiterated their concerns expressed during the Twinning Light Project Romania that the Ombudsman office was not the appropriate body to assume the NPM mandate.³¹ Notwithstanding this opposition, during the research visit in June 2011 a preference was expressed from some of the authorities for the Ombudsman office to be designated as the NPM. The main reason given for this preference was that there was an assumption that this would be the most cost effective option and that out of all of the existing mechanisms the mandate of the NPM would appear to be more closely aligned with the Ombudsman office. Some stakeholders noted that in light of the financial difficulties facing the Government the

³⁰ Article 4(2) of the OPCAT. See also M. Nowak and E. McArthur, *The United Convention against Torture: A Commentary*, Oxford University of Press, 2008, p.931 §15

³¹ See Report of the Twinning Light Project Romania, op.cit. Annex II.

creation of a new body, which was perceived as a more expensive option, would be difficult to justify and would not be welcomed by Parliament or the general public. However, as a result of the Government's apparent reluctance to establish a new body and the Ombudsman office's resistance to accept the NPM mandate a stalemate situation appeared to have occurred that had in fact halted the decision-making process.

6. Factors to consider with the designation or establishment of an NPM in Romania

Two possible options for an NPM were identified by the Twinning Light Project Romania, namely the designation of the Ombudsman office, supplemented by representatives from NGOs, or the creation of a new body.³² A third option was also proposed by a few actors during the research visit undertaken in June 2011, namely that an NPM could be composed entirely of NGOs, although for reasons explained below this would not appear to be a viable option. Before looking at these options in more detail and exploring the current state of play with each, it is useful to recall the mandate of the NPM as set out under the OPCAT and what the concept of prevention entails in practice in order to consider the relative suitability and feasibility of the options currently available.

While the OPCAT does not prescribe a particular structure for an NPM it does set out in some detail the mandate and minimum powers that NPMs must be given by States Parties.³³ In accordance with Article 19 NPMs shall be granted at a minimum the following powers:

“(a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture, cruel, inhuman or degrading treatment or punishment;

(b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture, cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations;

(c) To submit proposals and observations concerning existing or draft legislation.”

Consequently, NPMs have a broad preventive mandate which not only includes conducting regular, unannounced visits to places of detention but they are also empowered to look at the broader picture relating to the prevention of torture and

³² Report of the Twinning Light Project Romania, op.cit. p.33.

³³ See Articles 17-22 of the OPCAT.

other ill-treatment within their respective countries.³⁴ Thus, as well as making recommendations on any failings observed within specific places of detention following a visit, NPMs are also empowered to make recommendations concerning any systemic problems or legislative gaps relating to the prevention of torture and other ill-treatment and the protection of persons deprived of their liberty.³⁵ The mandate of the NPMs may also include other preventive activities such as training workshops, educational campaigns and other promotional initiatives.³⁶

Furthermore, as outlined above, in relation to the visiting mandate of NPMs it must also be recalled that the definition of places of detention contained within Article 4 of the OPCAT is broad and encompasses all places where people are or may be deprived of their liberty.

Consequently the NPMs' preventive mandate is wide ranging and requires a variety of expertise and adequate resources to function effectively. No mechanism currently exists in Romania that is able to fulfil the mandate of an NPM.³⁷ Thus the options available to the Romanian authorities are either to make substantial amendments to the Ombudsman office to bring it into conformity with the OPCAT or to create a new specialised body to be the NPM.

7. Key issues concerning the designating of the Ombudsman office as the NPM

As noted above, during the research visit in June 2011 the authorities appeared to prefer the option of designating the Ombudsman office as the NPM. The foremost reason given for designating this body as the NPM was that it was considered to be the most cost effective option. This opinion is based largely on an assumption that the mandate of the Ombudsman office is closely aligned with the NPM mandate and it requires less by way of resources in order to assume the NPM role because it already has offices and staff. Further it was stated that the Ombudsman office already has expertise and experience in dealing with complaints of human rights violations and visiting places of detention.³⁸ The Ombudsman office also has 14 regional offices, and this regional scope of the Ombudsman office was also seen as a distinct benefit as it was believed that this would help with outreach of the NPM in all areas of Romania.³⁹

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³⁴ See final report "OPCAT in the OSCE region: What it means and how to make it work?", *Summary and Recommendations from the Conference held on 25-26 November 2008, Prague Czech Republic*, University of Bristol, p.5. Available at: <http://www.bris.ac.uk/law/research/centres-themes/opcat/opcatdocs/prague2008/proceedingspraguenovember2008.pdf>

³⁵ APT, *Establishment and Designation of National Preventive Mechanisms*, 2006, p.26. Available at: http://www.apt.ch/index.php?option=com_docman&task=cat_view&gid=117&Itemid=257&lang=en

³⁶ Final report "OPCAT in the OSCE region: What it means and how to make it work?", op.cit. p.6.

³⁷ Report of the Twinning Light Project Romania, op.cit. p.8.

³⁸ Report of the Twinning Light Project Romania, op.cit. p.37 and p.39.

³⁹ Ibid, p. 38.

The designation of Ombudsman offices as NPMs, either with or without additional support from NGOs, has been a noticeable trend among some States Parties to the OPCAT. This is understandable as it has been observed that Ombudsman offices normally enjoy considerable guarantees of independence and their mandate is often grounded in the national constitution.⁴⁰ As an existing body they will also already have offices and staff and many Ombudsman offices already consider issues relating to torture and other ill-treatment during the course of their work.⁴¹

The analysis of the Twinning Light Project Romania concluded that valuable synergies could be developed if the NPM were to be installed within the existing Ombudsman's structures.⁴² Nevertheless it noted that the Ombudsman office in Romania would require significant changes to its mandate and substantial additional resources in order to bring it into compliance with the OPCAT and to make it effective if it were to be designated as the NPM.⁴³ Furthermore, as noted earlier, the Ombudsman office and civil society organisations have expressed their strong concern if this body were to be designated as the NPM and a range of issues have been identified that need to be given serious consideration by the authorities during the decision-making process on the NPM.

a) Compatibility of the mandates

The first issue concerns the compatibility of the mandates of the Ombudsman office and the NPM. The Romanian Ombudsman office has a "traditional" Ombudsman mandate i.e. it is primarily complaints focused and reactive.⁴⁴ In accordance with Article 13 of Law no. 35/1997 the Ombudsman has a number of duties including *inter alia* coordinating the activity of the institution; receiving and distributing complaints; following up on 'legal solutions' on complaints; requesting an end to violations; seeking redress for violations; formulating points of view at the request of the Constitutional Court; and notifying the Constitutional Court of the unconstitutionality of laws before their promulgation.⁴⁵

In stark contrast with this it must be recalled that the mandate of the NPMs is preventive in its approach i.e. it seeks to address issues of concern before they can escalate into a violation of the right not to be subjected to torture or other ill-treatment.⁴⁶ Thus, the visits to places of detention carried out by the NPMs are not aimed at verifying or addressing specific complaints but rather to establish a picture

⁴⁰ E. Steinerte, presentation at the Opening Plenary of the Conference 'OPCAT in the OSCE region: What it means and how to make it work?', p.1. Available at: <http://www.bris.ac.uk/law/research/centres-hemes/opcat/opcatdocs/prague2008>

⁴¹ Final report "OPCAT in the OSCE region: What it means and how to make it work?", op.cit. p.6.

⁴² Report of the Twinning Light Project Romania, op.cit.p.39.

⁴³ Ibid. p.38.

⁴⁴ See Article 13 Law no.35/1997, as amended.

⁴⁵ See Article 13 Law no.35/1997, as amended.

⁴⁶ Final report "OPCAT in the OSCE region: What it means and how to make it work?", op.cit. p.6.

over time of the improvements required and implemented in relation to the treatment of persons deprived of their liberty and the conditions of detention.⁴⁷

While it is noted that the Ombudsman office may “conduct his own inquiries” and therefore can visit places of detention,⁴⁸ the purpose of such visits will primarily be relating to advocacy in relation to a particular case. Furthermore, the Twinning Light Project Romania noted that in practice the Ombudsman office only carried out visits to places of detention in exceptional circumstances and in 2009 it had in fact carried out only two visits.⁴⁹ The Ombudsman office itself has noted that it does not have the power to conduct “systematic and unannounced visits to places of detention” as required by the OPCAT.⁵⁰

Similarly, as noted earlier, the range of places of detention that fall under the current mandate of the Ombudsman does not encompass all places of detention as defined by Article 4 of the OPCAT. In particular it has been noted that it does not extend to “private” places of detention, such as private social welfare institutions organised by the Government Ordinance no.68/2003 regarding social services,⁵¹ or “unofficial” places of detention as required by Article 4 of the OPCAT. Thus, if the Ombudsman office were to be designated as the NPM the visiting powers of this institution would need to be significantly revised in order to comply with the provisions of the OPCAT.

Furthermore, on a more general note, in order to carry out its preventive mandate effectively the NPM needs to establish a constructive dialogue with the authorities. This may be difficult for a body more usually associated with investigating complaints, such as the Ombudsman office, to reconcile with its pre-existing relationship with the authorities.⁵² In these circumstances individuals may be more reluctant to speak or contact the NPM freely if they fear that their identity or information may be disclosed during any complaints process.⁵³

Moreover, the UN Subcommittee on Prevention of Torture (SPT) has noted in relation to the designation of existing complaints focused bodies as NPMs that “[w]hile registering, investigating and adjudicating individual complaints constitute very important components of a comprehensive plan of human rights protection, they do not meet per se the ultimate requirements of prevention.”⁵⁴

⁴⁷ Final report “OPCAT in the OSCE region: What it means and how to make it work?”, op.cit. p.6.

⁴⁸ See Article 22 Law no.35/1997.

⁴⁹ Report of the Twinning Light Project Romania, p.37.

⁵⁰ See ‘Official Point of View of the Romania Ombudsman Regarding its Potential Designation as NPM’, Report of the Twinning Light Project Romania, op.cit. Annex II, p.61.

⁵¹ Ibid. p.61.

⁵² APT, *Establishing and Designation of National Preventive Mechanisms*, op.cit. p. 83

⁵³ APT, *Establishing and Designation of National Preventive Mechanisms*, op.cit. p. 83.

⁵⁴ See UN Doc. CAT/OP/SWE/1, p.9, §36

Similarly, it has been observed that the point of reference of Ombudsman offices and NPMs may differ.⁵⁵ In accordance with Article 19(b) of the OPCAT NPMs are to take into consideration the relevant norms of the United Nations when making their recommendations, whereas the point of reference for Ombudsman offices is primarily domestic law.⁵⁶ Linked to this it has been highlighted that Ombudsmen are not specifically connected to human rights principles or treaties via their constitutions.⁵⁷ Instead they have been described as “creatures of statute, identified as officers of Parliament”, whose role is to bring to account the actions of the executive in the name of the individual citizen, rather than upholding the rights of individuals.⁵⁸ Thus the different approaches of an Ombudsman office and an NPM can be conflicting and therefore difficult to combine under one body.

Some States Parties have tried to address these potential problems by establishing a unit within an Ombudsman office to act as the NPM but which is separate from the other more reactive, complaint driven functions of the office. For example the Czech Republic has created an NPM unit within the Ombudsman office which is “institutionally separated” from the section dealing with complaints.⁵⁹ It is recommended that such a distinct NPM unit, with its own staff and budget, should be established within the Romanian Ombudsman office if it is designated as the NPM.⁶⁰

b) Composition and resources

A second issue concerns the composition of the Ombudsman office and the particular requirements of the NPM mandate. The Romanian Ombudsman office is a typical example of this type of institution. It is headed by a single decision-maker who is assisted by support staff. The Ombudsman office is concerned with issues of oversight regarding the proper administration of justice and is therefore predominately staffed by lawyers.⁶¹

Conversely an NPM should have a multidisciplinary membership in order to carry out the wide variety of preventive activities required by its mandate, and to tackle the specific issues raised by the broad range of places of detention that fall within its remit.

It has been noted by the Romanian Ombudsman office itself, as well as a number of different actors, that the office in its current structure “fundamentally lacks resources

⁵⁵ E. Steinerte and R.Murray, *Same but Different? National human rights commissions and ombudsman institutions as national preventive mechanisms under the Optional Protocol to the UN Convention against Torture*, in *Essex Human Rights Review*, Vol.6. No.1, 2009, p.68.

⁵⁶ *Ibid.* p.68.

⁵⁷ *Ibid.* p.69.

⁵⁸ A. Satyanand, ‘*The Ombudsman Concept and Human Rights Protection*’, (1999) *Victoria University of Wellington Law Review* 6, p.4.

⁵⁹ Report of the Twinning Light Project Romania, *op.cit.* p.12.

⁶⁰ See SPT Guidelines on National Preventive Mechanisms, UN.Doc CAT/OP/12/5, p.5, §32.

⁶¹ Official Point of View of the Romania Ombudsman Regarding its Potential Designation as NPM’, *Report of the Twinning Light Project Romania*, *op.cit.* Annex II, p.62.

in order to conduct preventive fact-finding effectively”.⁶² Thus additional members of staff with differing expertise will be required if the Romanian Ombudsman office is designated as an NPM, which may also require a change in the legislation relating to the Ombudsman office to allow for additional staffing resources.⁶³ For example in the Czech Republic provisions have been made for the Ombudsman to contract-in the necessary expertise as and when required by the mandate of the NPM.⁶⁴

Linked to the issue of staff is the matter of financial resources. The OPCAT requires States Parties “to undertake to make available the necessary resources for the functioning” of the NPMs.⁶⁵

The preventive mandate of an NPM is not “resource light” and a lack of necessary resources was expressed as a concern from the Ombudsman office and other stakeholders during the research visit in June 2001, and had been highlighted as an issue in the findings of the Twinning Light Project Romania. The Ombudsman office has formally stated that it “has a lack of sufficient financial resources which should enable the development of a system of regular visits in places of detention”.⁶⁶

The SPT has emphasised that “*to be in a position independently to exercise the minimum powers assigned to it in article 19 of OPCAT an NPM must have structures equipped with the human, material and financial resources which will enable it to function satisfactorily in the light of the number and distribution of places of detention (OPCAT, article 4) and the numbers of persons to be visited regularly and with a periodicity which is reasonable for adequate monitoring.*”⁶⁷

Thus, if the Ombudsman office is designated as the NPM specific additional resources will need to be allocated to that body in order to carry out the mandate effectively.⁶⁸

c) Assistance from NGOs

Some States Parties have tried to overcome some of the challenges outlined above by developing what have become known as “Ombudsman Plus” models for NPMs. This is where the NPM mandate is carried out by the Ombudsman office and NGOs.

⁶² Report of the Twinning Light Project Romania, op.cit. p.37

⁶³ Final report ‘OPCAT in the OSCE region: What it means and how to make it work?’, Summary and Recommendations from the Conference held on 25-26 November 2008, Prague Czech Republic, op.cit. p.7.

⁶⁴ F.Glotzmann and P.Zdrzilova, ‘National Preventive Mechanism: Czech Republic’, OPCAT in the OSCE region: What it means and how to make it work?, Prague, Czech Republic, 25-26 November 2008. Available at:

<http://www.bris.ac.uk/law/research/centres-themes/opcat/pragueseminar.html#docs>

⁶⁵ See Article 18(3) of the OPCAT.

⁶⁶ See ‘Official Point of View of the Romania Ombudsman Regarding its Potential Designation as NPM’, Report of the Twinning Light Project Romania, op.cit. Annex II, p.61.

⁶⁷ UN Doc. CAT/OP/SWE/1. p.10, §38.

⁶⁸ UN.Doc. CAT/OP/12/5, p.5, §32. See also Final report ‘OPCAT in the OSCE region: What it means and how to make it work?’, Summary and Recommendations from the Conference held on 25-26 November 2008, Prague Czech Republic, op.cit. p.5.

The Twinning Light Project Romania considered in some detail the Ombudsman Plus model of Slovenia where the Ombudsman office and 3 members from NGOs together form the NPM membership.⁶⁹ This type of model can address some of the inherent problems outlined above with designating the Romanian Ombudsman office as an NPM. For example it can provide additional resources and expertise in particular fields; it may also strengthen the credibility and independence of the body because NGOs by their very nature are structurally and institutionally independent from the authorities.⁷⁰ It may also help to ensure a better and more regular coverage of places of detention as required by the OPCAT.⁷¹

However, this approach is not suitable for all States and it should not be seen as a “cure all” where there are significant problems with placing the mandate of the NPM within the work of the Ombudsman office. Its success will depend on a number of factors such as the existing relationship between the Ombudsman office, authorities and NGOs; the level of transparency and inclusivity when appointing NGOs to form part of the NPM; and the establishment of an efficient system of coordination and cooperation. These were all factors that were highlighted as areas of concern during the research visit in June 2011, and the Twinning Light Project Romania. Unfortunately, it would appear that the Ombudsman office does not have a solid track record of constructive cooperation with NGOs and it was admitted that it has a problem with perceptions of a lack of transparency and credibility.

In addition, on a more general note, membership of the NPM also raises particular issues for NGOs, who may have had a confrontational relationship with the authorities. Similarly to the problems that may be encountered by a complaint focused body when assuming the mandate of the NPM, NGOs may find it difficult to reconcile the constructive dialogue approach of the NPM with their own organisation’s mandate and working practices.⁷² Membership of the NPM will require NGOs to act independently from their own organisational interests when undertaking NPM activities, which may be difficult or undesirable for them.⁷³ Thus, NGOs will need to consider whether their actual or perceived independence will be compromised by accepting membership of the NPM.

In conclusion, while there is some potential synergy between the mandates of the Ombudsman office and the NPM there are, nevertheless, some significant differences. Thus taking on the NPM mandate can represent a challenge for any Ombudsman office, which is more accustomed to reacting to allegations of

⁶⁹ Report of the Twinning Light Project Romania, op.cit. p.10.

⁷⁰ APT, *Optional Protocol to the UN Convention against Torture Implementation Manual*, op.cit. p.217.

⁷¹ Ibid, p.217.

⁷² Ibid. p.218.

⁷³ Ibid. p.218.

violations, rather than engaging in a range of proactive preventive activities as required by the NPM mandate.⁷⁴

While similar obstacles have been addressed to a lesser or greater extent in other States Parties to the OPCAT, perhaps the most difficult to rectify within the Romanian context is the perception among civil society that the Ombudsman office lacks independence, transparency, efficacy and credibility.⁷⁵ Of particular concern, during the research visit in June 2011 it was stated by a range of different actors that even if a separate unit were to be created within the Ombudsman office to carry out the functions of the NPM this would still be considered to be “business as usual” and the NPM would be perceived from the outset as lacking independence and credibility.

Lastly but perhaps most importantly the strong views held by the Ombudsman office must be taken into consideration. The Government should not “force” a reluctant body to take on the NPM mandate or they may find that the body is unable and/or unwilling to embrace the NPM activities. For example, in Sweden the authorities designated the Parliamentary Ombudsman and the Chancellor of Justice to carry out the NPM mandate notwithstanding objections these institutions raised and assertions made that they did not meet the requirements of the OPCAT.⁷⁶ During a visit to Sweden the SPT considered the objections voiced by these institutions and noted with some concern that the designation of these bodies as the NPM “had not produced the slightest impact on their day-to-day methodologies and practice”.⁷⁷ They therefore noted a degree of “perplexity as to the prospects for these bodies to fulfil the NPM mandate.”⁷⁸

Accordingly, if the Romanian authorities wish to continue to consider designating the Ombudsman office as the NPM they need to hold consultations as a matter of urgency with the staff at the Ombudsman office to address their concerns and agree upon the most effective ways to make the significant changes that will be necessary to the mandate, structure, working practices and budget of the Ombudsman office in order for it to be OPCAT compliant.

8. Key issues concerning the establishment of a new body

The second NPM option available is the establishment of a new body to undertake the NPM mandate. One of the primary advantages of establishing a new body is that it would be specifically tailored to meet the requirements of the OPCAT. A new body would start with a “clean slate” and this would enable it the opportunity to develop

⁷⁴E. Steinerte and R.Murray, *Same but Different? National human rights commissions and ombudsman institutions as national preventive mechanisms under the Optional Protocol to the UN Convention against Torture*, op.cit. p.70.

⁷⁵ Report of the Twinning Light Project Romania, op.cit.pp.39-40.

⁷⁶ See UN.Doc. CAT/OP/SWED/1, p.5, §20.

⁷⁷ Ibid. p.8, §34

⁷⁸ Ibid. p.8, §34

and demonstrate its credibility and legitimacy overtime and thus avoid being “tainted” with any negative perceptions that may have formed with respect to an existing body. A new body has the potential to be more OPCAT compliant from the start and may avoid some of the potential problems of being incorporated into the work of an existing body whose working practices may differ significantly from that required of an NPM. It has also been observed that a new body may make the NPM “more visible to detainees and the public at large and show the respective State’s particular commitment to combating torture and other forms of ill-treatment”.⁷⁹

In terms of the practical and logistical considerations involved with establishing a new body to be the NPM in Romania, the Twinning Light Project Romania observed that it is was not necessarily more expensive to establish a new body because it was “questionable whether the assignment of the Ombudsman office would really lead to a significant reduction of costs, taking into account the need for additional staff, office space, and infrastructure.”⁸⁰

It was also noted that in the light of the significant amendments that would be required to the Ombudsman Law if that body were to assume the NPM mandate, it was “arguable whether the time period necessary for the drafting a new law would be considerably longer than the time needed for the amendment of the existing law” on the Ombudsman.⁸¹

Furthermore, the previous visiting experience of the Ombudsman office should not be overstated and it should not be assumed that members of a new body would automatically require more training to undertake visits. As noted earlier, in practice the Ombudsman office has limited experience of visiting places of detention and only undertook two visits during 2009 and these did not have a focus on torture and other ill-treatment.⁸² Thus if the Ombudsman office is to undertake the NPM mandate the staff assigned to this role will inevitably require training. The criteria for membership of a new body could actively seek out persons with visiting experience, as well as other expertise relevant to the NPM mandate. As noted earlier, the NPM membership should be multidisciplinary in order to meet the particular challenges raised by the scope of the preventive mandate. Thus persons with a range of expertise will need to be sought and training provided regardless as to whether the Ombudsman office is designated or a new body is created.

Establishing a new body is not however without its own particular challenges. A new body will need time to demonstrate its independence and establish its legitimacy and credibility. A further particular issue with respect to creating a new body was raised during the research visit in June 2011, namely that provision would need to be made to ensure that it covered all regions within Romania. It was proposed that regional

⁷⁹ Report of the Twinning Light Project Romania, op.cit.p.37.

⁸⁰ Ibid. p.37.

⁸¹ Ibid. p.38.

⁸² Report of the Twinning Light Project Romania, op.cit. p.39.

offices may need to be established, whereas the Ombudsman office already has a regional presence.

9. The involvement of NGOs in the future NPM

A third proposal was suggested by a few actors during the research visit in June 2011, namely that NGOs could take on the responsibility of the NPM. It was suggested that this would be a cost effective option and would address the concerns and problems noted with respect to the Ombudsman office taking on the role. It was noted by several different actors that NGOs have a solid track record of visits to places of detention, although it was observed that few NGOs visited places of detention outside of Bucharest and that visits were typically focused on the more traditional places of detention such as prisons and police lock-ups and not the full range of places of detention as required under the OPCAT.

NGOs undoubtedly have a crucial role to play in the designation or establishment of an NPM in Romania, and they should be included in any consultations on the NPM structure and could form part of the final NPM. While, the suggestion that NGOs could take on the role of the NPM *prime facie* appears to be a good solution there are a number of concerns with this proposal, some of which have been outlined earlier with respect to the Ombudsman Plus model.

Firstly, it is the responsibility of the State to establish the NPM and ensure that it has the necessary resources to function effectively. A State Party cannot “delegate” its responsibility for the establishment and effective functioning of an NPM to civil society.

Secondly, this proposal would suggest that a contractual relationship would be formed between the State and the NGOs concerned and some sort of tender may be sought from NGOs wishing to be a member of the NPM. This raises some concerns regarding the process for deciding upon which NGOs would be included. There is the potential for that decision to be determined on the basis of cost effectiveness and not expertise.⁸³ Furthermore, the contractual relationship that would exist between the State and the NGOs forming the NPM may be problematic with regards to the status of the NPM’s recommendations. In accordance with Article 19(b) of the OPCAT the NPMs are to make recommendations to the relevant authorities who, in turn, as per Article 22 of the OPCAT, are to examine these recommendations and enter into a dialogue with the NPM on possible implementation measures. A tension or conflict of interest may arise where a contractual relationship exists between a body making recommendations to the authorities for their consideration. It is possible

⁸³ See letter to the Kazakhstan authorities the NPM model proposed by the civil society in Kazakhstan and the corresponding draft legislation by Dr. Elina Steinerte, dated 14 April 2010, p.2. Available at: <http://www.bris.ac.uk/law/research/centres-themes/hric/hricdocs/commentnplawforkazakhstan.pdf>

that this contractual relationship may place a strain on the independence, or perceived independence of the NPM.⁸⁴

Thirdly, in accordance with Article 19 of the OPCAT the NPM is to be allowed access to all places of detention and the recommendations of the NPM are to be considered by the authorities. This might make inclusion within an NPM an attractive option for NGOs who may have or have had difficulties in securing access to places of detention or having their recommendations reviewed by the relevant authorities. However, it may be difficult for the authorities and the individuals who come in contact with the NGOs while undertaking NPM tasks to acknowledge this different role and the additional powers and guarantees that must be respected. It may be difficult for an NPM composed entirely of NGOs to build confidence and legitimacy with those with whom they may have had a more adversarial approach as a result of their NGO activities. This may cause tension between the authorities and the NGOs forming an NPM. Similarly as discussed above, the NPM approach requires a constructive dialogue to be established with the authorities and the NGOs themselves may find it hard to reconcile the NPM approach with their own organisation's mandate and interests.⁸⁵

Fourthly, as mentioned earlier there is the need to ensure that the NPM members have a range of expertise. It cannot be assumed that this will be found more easily among NGOs and additional, external expertise is likely to be required in any event in order to undertake the preventive mandate of the NPM fully.

Lastly, similarly to NPMs formed with multiple bodies, there will be a need to develop an effective system to coordinate the NPM work among the various NGOs. It may be difficult for multiple NGOs to maintain consistency while carrying out the NPM mandate, particularly in relation to recommendations.⁸⁶ Therefore some system of coordination will be required if NGOs were to form the NPM. This may be difficult to achieve where there has not been a history of cooperation among NGOs.

In conclusion having an NPM composed entirely of NGOs is not a viable option, although NGOs could form part of an NPM. In any event, NGOs should be directly involved with consultations to decide upon the form of NPM and do have an important "watchdog" role to play in the appointment and scrutiny of the functioning of the future NPM.

10. Conclusion and recommendations

During the research visit in June 2011 it appeared that an impasse had occurred and that the process for deciding upon the form of NPM had stalled. There were two main reasons for this. First, the Ministry of Justice was the only ministry engaged

⁸⁴ See letter to the Kazakhstan authorities the NPM model proposed by the civil society in Kazakhstan and the corresponding draft legislation by Dr. Elina Steinerte, op.cit. pp.2-3.

⁸⁵ APT, *Optional Protocol to the UN Convention against Torture Implementation Manual*, op.cit. p.223.

⁸⁶ See APT, *Establishment and Designation of National Preventive Mechanisms*, op.cit. p.91.

with the issue yet they do not have the power to take the matter forward and make a decision on the form of NPM without the commitment and agreement of other relevant ministries. The second reason for the lack of progress was that a stalemate had occurred as two diametrically opposing views had emerged. It appeared that there was a difference in opinion between the authorities, who on the whole, preferred the option of designating the Ombudsman office as the NPM, perhaps along the lines of an Ombudsman Plus model, and the opinion of the Ombudsman office and civil society organisations who believed that the Ombudsman office was not capable of taking on the NPM mandate and therefore preferred a new body to be created.

This report has sought to review the main options available for designating or establishing an NPM in Romania. The findings of this current report, and the earlier Twinning Light Project Romania, do indicate that the assumption that designating the Ombudsman office as the NPM is the easiest and most cost effective option may not necessarily be correct. Amendments would have to be made to the Ombudsman Law⁸⁷ and significant changes would have to be made to the structure, composition, budget, working practices and mentality of that body and its staff in order for it to carry out the NPM mandate effectively. This would not only require additional resources but training as well. The challenges and costs involved in achieving this should not be underestimated.

Furthermore, while issues of cost are important and pragmatic decisions will inevitably have to be made they should not be the driving force for the decision as to the form of NPM.⁸⁸

The strong reluctance of the Ombudsman office to accept the NPM mandate, and the concerns voiced by different stakeholders and the institution itself about the credibility and efficacy of this mechanism must be taken seriously by the authorities. In light of these challenges it would appear that this option is currently problematic. If these concerns and difficulties cannot be addressed satisfactorily then the only viable option would appear to be the establishment of a new body.

A number of recommendations are made below in order to assist the decision-making process to move forward and help to address the stalemate that has occurred. They are addressed to the authorities, Ombudsman office and civil society organisations. These recommendations are based upon the findings of the research visit of June 2011, taking into consideration the earlier analysis of the Twinning Light Project Romania. The recommendations also incorporate the recently revised '*Guidelines on national preventive mechanisms*' adopted by the SPT that set out,

⁸⁷ See Law no.35/1997 as amended.

⁸⁸ Report of the Twinning Light Project Report, op.cit.p.37.

inter alia, a number of key principles in relation to the establishment of NPMs and can be considered to be a useful tool to assist future discussions.⁸⁹

To the Government:

1. An open, transparent and inclusive process should be created to decide upon the best form of NPM. This should involve a wide range of stakeholders, including civil society. This should also apply to the process for the selection and appointment of members of the NPM, which should be in accordance with published criteria.⁹⁰
2. The Government should proactively publicise the decision-making process, identifying opportunities for participation. The criteria, methods and reason for the final decision should also be publicised.⁹¹
3. A focal point within the Government for the OPCAT should be appointed to liaise with the relevant ministries, the Ombudsman office, civil society organisations and the SPT.
4. A meeting between the Ministry of Justice, Ministry of Foreign Affairs, Ministry of Finance, Ministry of Health, Ministry of Interior, Ministry of Defence, Ministry of Labour, Family and Social Protection, and all other relevant ministries, should be arranged as a matter of urgency to discuss the findings of the final report of the Twinning Light Project Romania and this report and to develop a plan of action and timeline for designating an NPM.
5. A round-table meeting should be organised as a matter of urgency with all relevant ministries, the Ombudsman office and civil society organisations to discuss the options for an NPM and to agree a plan of action.
6. A representative of the SPT should be invited to attend round-table discussions and bi-lateral meetings should be arranged for the SPT representative to meet with relevant ministries, the Ombudsman office and civil society organisations.
7. The inventory of places of detention commenced by the Twinning Light Project Romania should be completed to include all places of detention as defined under Article 4 of the OPCAT. This should be widely distributed among the participants of the consultation process and made publicly available.
8. The final report of the Twinning Light Project Romania and this report should be distributed to all ministries, internal oversight mechanisms, the Ombudsman office and relevant civil society organisations. They should also be placed on the website of the MOJ.
9. Once a decision has been taken on the form of NPM, a working group should be created to assist the MOJ to draft or amend the relevant law. This working group should include civil society organisations and the draft law should be distributed widely for comments from all interested parties.

⁸⁹ UN Doc. CAT/OP/12/5.

⁹⁰ Ibid. p.4 §16.

⁹¹ APT, *Establishing and Designating National Preventive Mechanisms*, op.cit. p.11.

To the Ombudsman office:

1. The Ombudsman office should be actively involved in the decision-making process on the NPM and pro-actively participate in any expert or other meetings that may be organised.
2. The Ombudsman office should submit information to the authorities that will help to inform the decision-making process.
3. The Ombudsman office should pro-actively seek to build a cooperative relationship with civil society organisations.
4. The Ombudsman office should conduct a thorough internal audit to consider what financial and staffing resources would be required and what changes would need to be made to Law 35/1997 (as amended) if they were to undertake the NPM mandate. The findings of this audit should be shared with the Government and civil society organisations and made publicly available.

To Civil Society Organisations:

1. A coalition of interested civil society organisations could be organised to provide a focal point for advocacy and to liaise with the authorities, as well as the SPT.
2. Civil society organisations should insist on being included in the decision-making process.
3. Civil society organisation should assist the authorities with the decision-making process by supporting the completion of the inventory of places of detention and providing all relevant information to the authorities that will facilitate and inform the decision-making process.
4. Civil society organisations should consider organising or co-sponsoring with the authorities an expert conference on the NPM solutions for Romania.
5. Civil society organisations should distribute the Final Report of the Twinning Light Project Romania, this report and any other expert studies to all interested parties, and facilitate the translation of relevant documents.
6. Civil society organisations should pro-actively seek to build a cooperative relationship with the Ombudsman office.
7. Civil society organisations should facilitate the participation of the SPT in relevant round-table discussions or conferences that are organised.
8. Civil society organisations should promote the involvement of survivors of torture and other ill-treatment, persons deprived of their liberty and any associations of former detainees in the decision-making process.⁹²

⁹² APT, policy paper on '*Civil Society and National Preventive Mechanisms under the Optional Protocol to the UN Convention against Torture*', June 2008, p. 10. Available at http://www.apr.ch/index.php?option=com_docman&task=cat_view&gid=51&Itemid=257&lang=en