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Monitoring and Preventing Torture Worldwide –
Building Upon the Work of the UN Special Rapporteur

ASSESSMENT REPORT – REPUBLIC OF MOLDOVA

Analysis of problems and needs in the area of torture prevention

Conclusions of the consultations held in Chisinau
from 12 – 23 September 2011

November 2011

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Executive summary

The present report reflects findings of the Atlas of Torture expert team, which were gathered during an assessment visit in September 2011. In addition to consultations with numerous stakeholders from the Government, civil society and international community during this visit, a legal analysis was undertaken where appropriate. The findings were assessed and mirrored with recommendations provided by the UN Special Rapporteur on Torture to the Republic of Moldova in 2008, as well as recommendations and standards of other international expert bodies, such as the CPT.

It is important to note that a number of promising steps have been undertaken by the Moldovan authorities since the Special Rapporteur's visit to the country, which are proof of a genuine political will to eradicate torture and ill-treatment in Moldova.

However, fighting torture is not an undemanding endeavour and many of the initiatives taken can be improved in the view of the Atlas of Torture team in order to make them a true deterrent against ill-treatment by public officials. Equally, it has to be seen by all relevant stakeholders, governmental, non-governmental and representatives of the international community that none of these measures stands alone, but that only concerted efforts at the diverse entry points outlined below will ultimately bring sustainable success in eradicating torture. In this context, the current reforms of the justice sector can provide a unique opportunity to streamline torture prevention in the different fields.

Situation of torture and internal accountability

Even though no independent fact-finding was conducted during the assessment visit, the perception of the majority of stakeholders was that the situation of torture had overall improved regarding the most serious cases. This change was attributed to growing public awareness and high level signals that torture would not be tolerated. However, it seems that abuse of apprehended persons by the police is still prevalent, even more so outside of Chisinau. In addition to forcing confessions, police abuse is also reportedly used as a means of imposing authority and deterring crime. Most cases of ill-treatment were attributed to the operational police during the preliminary investigation stage and to a lesser extent to the criminal investigators.

A combination of factors contribute to the persistence of police abuse, such as evaluating police performance according to crime detection rates, which encourages repressive attitudes; weaknesses of the internal accountability and oversight mechanisms; and a very short statute of limitations for disciplinary sanctions. Despite the commendable adoption of an Anti-Torture Action Plan for the police, the overall reform strategy of the MIA fails to streamline a human rights perspective and to address the weaknesses of the current internal accountability and oversight structures.

Similarly, the internal complaints and investigation procedures within the penitentiary system were perceived to be weak and detainees had reportedly very restricted access to complaints procedures in practice. Most complaints against the penitentiary institutions by detainees concerned conditions of detention, punitive policies and lack of adequate health care or arbitrary transfer between penitentiary facilities.

Impunity

The low public trust in any effective accountability of law enforcement officials also extends to the judicial system. In fact, most stakeholders noted that impunity for torture and ill-treatment was still prevailing, particularly with regard to the very low prosecution and conviction rates in relation to police brutality against demonstrators in April 2009. This was seen with concern as it sends out the wrong message to the security forces and undermines the credibility of positive reform measures adopted by the Government since then.

The basis for effectively fighting impunity for acts of torture must be laid in the Criminal Code by clear and unambiguous provisions criminalising such acts. Despite the fact that the Moldovan Criminal Code foresees the crime of torture in accordance with the definition of the UN Convention against Torture, several shortcomings in law and in practice can be noted. These include the qualification of torture as a "less severe crime" and a statute of limitations of five years; penalties that are by no means commensurate to the gravity of the crime; and overlapping provisions, such as abuse of power, which prompt prosecutors in practice to apply these provisions, rather than attaching the stigma of torture to a public official.

The establishment of the Anti-Torture Unit at the General Prosecutor's Office in 2010 and the appointment of 70 specialised regional prosecutors against torture constitute an important step towards ensuring credible criminal investigations into allegations of torture or ill-treatment. However, the new institutional set-up suffers from several challenges, such as a lack of *de facto* independence of the specialised prosecutors due to their working relations in the local law enforcement context; limited managerial control and effective supervision over torture investigations by the Anti-Torture Unit; and lack of specialised expertise and expert investigators available to the anti-torture prosecutors to carry out prompt and professional investigations. In addition, the poor quality of investigations, long delays and lack of impartiality in the evaluation of evidence were reported to hinder effective conclusion of criminal cases. Further factors rooted in the structure of the justice system are the dominant role of the prosecutors, combined with procedural shortcomings in relation to the appeals procedures available to victims, and insufficient protection of victims against reprisals. In addition, the role of the judiciary in detecting cases of torture and declaring tainted evidence inadmissible was reported to be very limited in practice.

Monitoring of places of detention

With regard to the development of strategies to prevent torture, Moldova ratified the OPCAT in 2006; one year later, the Parliamentary Advocates were endowed with the function of National Preventive Mechanism (NPM). Following an "Ombuds-Plus" model, a Consultative Council, comprised of civil society representatives and chaired by one of the Parliamentary Advocates, was established to carry out the tasks of the NPM. However, in the past few years, the NPM has experienced severe practical difficulties due to a number of factors.

At the heart of the problem lies the ambiguity of the law, which does not clearly spell out which body actually constitutes the NPM. This has led in the past to differences of opinion regarding visits, reporting and the formulation of recommendations. In addition,

financial restraints have impeded the Consultative Council's effectiveness throughout the years. Recently, with the election of new members to the Consultative Council, criticism regarding the appointment procedures and perceived lack of personal independence was raised by a number of stakeholders. In addition, the NPM's capacity to undertake professional visits to places of detention and to write quality reports and recommendations could be further developed.

It is commendable that the Moldovan Government has chosen opening up places of detention to public scrutiny by enacting a law on local commissions comprised of civil society representatives. According to the intention of the law, these local commissions are endowed with far reaching competencies and rights. However, in reality, hardly any of these commissions could be established so far and the existing ones still have a long way to go before they can be regarded a truly effective mechanism against torture and ill-treatment.

Safeguards

Because detainees are most vulnerable to abuse in the hands of the police, reducing the length of police detention is essential to the prevention or early detection of ill-treatment. However, there was no indication of willingness by the Government to follow the Special Rapporteur's recommendation to reduce police custody from 72 to 48 hours. In addition, in some parts of the country, the transfer of persons remanded in custody by the investigative judge from police detention to a pre-trial facility under the control of the Ministry of Justice reportedly failed due a lack of appropriate facilities. This means that pre-trial detainees can be in the hands of the police for weeks and sometimes even months.

Paramedics (so-called feldshers), who are employed in police detention facilities could play an important role in documenting and denouncing cases of ill-treatment. However, the main impediment to making feldshers a true safeguard against torture and ill-treatment lies in their lack of independence from the detention facilities and commissariats they are working in. Shifting the authority over the feldshers from the Ministry of Internal Affairs to the Ministry of Health would improve the system considerably.

Introduction

The present report is part of the EIDHR project *Atlas of Torture: Monitoring and Preventing Torture Worldwide - Building Upon the Work of the UN Special Rapporteur* (EIDHR/2010/ 222-226). The project aims at following up the mission recommendations of the former UN Special Rapporteur on Torture, Manfred Nowak (2004-2010), and to assist the respective Governments and civil society in their implementation.

The assessment report is the result of a two-week visit to the Republic of Moldova in September 2011, during which consultations where held in Chisinau with representatives from the State, civil society and the international community. The purpose of these consultations was to identify the main problems and shortcomings in the area of torture prevention. The report forms the basis for comprehensive discussions on the pertaining needs in the field of torture prevention to be held during an expert conference on 28 and 29 November 2011 in Chisinau. Subsequently, a work plan will be elaborated together with the project's civil society focal points, the Legal Resources Centre and the Institute for Penal Reform, identifying the activities to be carried out during the project implementation in the Republic of Moldova.

The information in this report is drawn from the consultations held in September 2011 and various documents researched and received during and after the consultations. It is not intended as a fact-finding report based on empirical monitoring of the situation of torture and ill-treatment in the country, but represents the different viewpoints and concerns of the interlocutors on the problems and shortcomings in the field of torture prevention and their possible solution. The issues identified during the consultations are clustered in focus areas which are deemed by the Atlas of Torture team as most relevant entry points for future discussions and engagement.

I. Description of the visit

The assessment visit of the '*Atlas of Torture*' project was carried out by Julia Kozma and Johanna Lober, supported by project administrator Karl Schönswetter, from 12 to 23 September 2011. A list of all interlocutors met during the consultations can be found in the Annex of the report.

During the first week, the Atlas of Torture team met with representatives from the international community in the country (EU, UN, OSCE, Council of Europe and representatives of the Embassies of Germany and the United Kingdom) as well as with all relevant civil society organisations active in the field of torture prevention. In addition to bilateral meetings with NGOs, a civil society round table was organised in order to bring different organisations together to discuss shared perceptions of the most pressing issues regarding torture and ill-treatment in the Republic of Moldova. At the end of the first week and during the second week, the Atlas of Torture team met with the Ombudsman/head of the National Preventive Mechanism (NPM), representatives from all relevant Ministries, the General Prosecutor's Office, as well as the judiciary.

The main purpose of the assessment visit was to identify the systemic factors contributing to torture and ill-treatment in the Republic of Moldova and to discuss the main needs in addressing these factors: legally, procedurally, institutionally as well as in terms of personal capacities of relevant institutions. Furthermore, the team collected information on ongoing projects in the field of torture prevention by international and national actors and on the needs and capacities of civil society organisations. Finally, a cooperation

agreement was formed with the Legal Resources Centre and the Institute for Penal Reform for the further implementation of the project. The visit was concluded with a roundtable on torture prevention in the Republic of Moldova held on 22 September 2011, where the Atlas of Torture team presented its preliminary findings and discussed the main problems and needs with stakeholders from the Government and the international community.

The Atlas of Torture team was welcomed by all interlocutors in a cooperative and constructive spirit. It was able to collect valuable information on the functioning of the different institutions and their problems and shortcomings, as well as on the legal and practical obstacles in the effective prevention and eradication of torture and ill-treatment. The openness and frankness of the Government during the consultations is highly commendable. The persistent problem of torture and ill-treatment as a main human rights concern is openly acknowledged. The Government is taking steps to improve the prevention of torture and showed willingness to strengthen its efforts in cooperation with the Atlas of Torture project.

Despite the fact that the human rights situation in the Transnistrian region remains of serious concern, the Atlas of Torture team will primarily focus on the laws and structures in force in the other parts of the Republic of Moldova. This, however, does not exclude the participation of civil society representatives living and active in the Transnistrian region in the various project activities.

In Chisinau, a number of civil society organisations (CSOs) deal, inter alia, with prevention of torture or rehabilitation of victims of torture. With the exception of one organisation that provides psycho-social and medical support to torture survivors, all other organisations deal with torture related issues only as part of their overall human rights related work. The activities of CSOs regarding torture prevention differ: some occasionally provide legal assistance to victims of torture, monitor court cases or are engaged in strategic litigation before the European Court of Human Rights (ECtHR); some participate in studies commissioned by international organisations; and some are involved in traditional monitoring of the situation of ill-treatment, in particular in the Transnistrian region. A number of new CSOs active in the field of torture prevention recently emerged, some of which engage more on the level of strategic thinking and policy advice. Overall, the capacity of CSOs engaged in the field of torture prevention to embark on a joint strategic approach and to effectively monitor ongoing reform agendas and their implementation appeared to be limited. This may also be due to limited resources to effectively cover the large scope of current reforms, where the prevention of torture does not stand as priority (see below).

As a general remark, the political strength of most Moldovan CSOs in the field of civil and political rights seems to depend on individual members and their interconnection with relevant Government institutions and/or the international community, rather than on the respective organisational foundation and structure. Some interlocutors from the international community, who have worked with CSOs in Moldova for several years, remarked that the current political constellation fosters a tendency to build varying personal ties between government institutions and CSOs depending on short-term political agendas, rather than the consolidation of a watchdog role of civil society. Against this background, the actual capacities of CSOs to embark on systematic and comprehensive monitoring, documenting and reporting of human rights violations were estimated to be rather low.

II. Current reform processes in the Republic of Moldova

In the context of the current comprehensive reform of the Moldovan justice sector,[1] which receives strong financial and technical support from the European Union,[2] the Council of Europe and other donors, the assessment of the situation of torture and ill-treatment and the identification of strategic steps is timely and crucial to streamline torture prevention, and to use the momentum to promote necessary legislative changes.

The Justice Sector Reform Strategy (JSRS) is built around seven pillars, including strengthening the judiciary, reforming the criminal justice system, improving access to justice and ensuring the observance of human rights throughout the justice system. Several working groups have been established within the Ministry of Justice (MoJ) to discuss inter alia legislative revisions to the Criminal and Civil Procedure Codes, the institutional reform of the prosecution services and criminal investigation agencies, and the institutional reforms of the judiciary and the Moldovan Centre for Human Rights (MCHR). The different working groups function as (political) forum for key stakeholders and institutions to negotiate core policy decisions and prepare draft legislation.

Consultations with civil society on the reform agenda take place through participation of individual representatives of CSOs in working groups as well as within the National Participatory Council – a body created to facilitate dialogue between Government and civil society and to oversee the progress of the reform. Some stakeholders appraised the Council as an important mechanism for coordination and exchange. Others voiced doubt as to its effectiveness in monitoring and overseeing the political decision-making process. All interlocutors from civil society raised some degree of concern regarding the large number of draft legislation to be commented on under tight deadlines and the lack of sufficient capacities to coordinate civil society input into draft laws and policies. With regard to the Government's openness to genuine inclusion of civil society positions into draft policies, laws and action plans, experiences differed significantly: some representatives of CSOs perceived the consultations as a window dressing exercise to demonstrate compliance with donors' requirements for an inclusive and participatory process; others appeared content that their comments and positions were taken seriously. Overall, civil society organisations' capacities to effectively and jointly follow-up, monitor and hold government actors publicly accountable for their reform pledges seems to be limited; this may partly come as a result of insufficient resources to keep up with the considerable number and speed of the different interconnected reform agendas and action plans, which are currently rushed through in response to tight donor funding cycles.

In parallel to the JSRS, a reform concept for the demilitarisation and restructuring of the Ministry of Internal Affair (MIA) has been launched, which seems, however, to receive less public and international attention. In the opinion of the Atlas of Torture team it would be very important to closely link both reforms in order to ensure that the measures are based on a comprehensive view of all actors in the criminal justice process.

[1] The draft law to approve the strategy for justice sector reform 2011-2016 was submitted to Parliament and approved in first reading in November 2011.
[2] Budget sector support: 40-60 million EUR of direct budgetary support foreseen; plus 10 million EUR budget support package still in 2011 as technical assistance to pre-trial investigation techniques (mainly equipment).

III. Situation of torture and ill-treatment in the Republic of Moldova

With respect to the recommendations formulated by the Special Rapporteur on Torture in his report on Moldova in 2008, several important measures have been taken since then by the Moldovan authorities to address some of the identified challenges in the fight against torture: most importantly, a separate unit in the General Prosecutor's Office has been created in 2010 designated to coordinate and oversee special regional prosecutors appointed to solely take on investigations of torture allegations. Various measures have also been taken to strengthen procedural safeguards against ill-treatment that are described in more detail below.

With regard to the situation of torture and ill-treatment, the overwhelming majority of stakeholders noted some decrease since 2008 in the very serious cases of torture, at least regarding the situation in Chisinau. Some interlocutors mentioned increased public awareness and media reporting as main factors contributing to this development. Most often, however, this positive change was explained by high-level signals that torture was not tolerated. Such signals were coming inter alia from the Ministry of Justice, the Prime Minister and, reportedly to a lesser extent, from the Ministry of Internal Affairs. The general openness of the current Government to tackle sensitive issues in the field of combating and preventing torture is also evidenced by recent strategic policy documents, such as the Human Rights Action Plan and the JSRS, which include specific measures to address the issue.

However, the acknowledgment of these improvements always came with the caveat that these high-level signals have so far not resulted in the necessary systemic changes. Most interlocutors referred to the existing gap between the political reform agendas and the lack of de facto capacity and willingness of the relevant institutions to transform the zero-tolerance policy into tangible institutional reforms and expedient actions. Moreover, the consultations revealed a widespread perception that ill-treatment at the hands of the police during criminal investigations, and - to a lesser extent within penitentiary institutions - as a method of intimidation or "preventive deterrent", persisted to impose authority. At the same time, several interlocutors acknowledged that in their perception the number of complaints had decreased. However, the real number of complaints is difficult to estimate since there is no unified complaints management system. But most stakeholders agreed that the situation would significantly differ outside of Chisinau, where the likelihood of being ill-treated by the police was estimated to be as high as 50%. This regional difference was explained with a lower awareness among the general public about the rights of detainees/absence of critical public oversight, limited access to qualified lawyers and lack of knowledge about existing avenues to lodge complaints.

Since the assessment visit did not include separate fact-finding, and comprehensive statistics about the number of complaints were not available, the current extent of the problem of torture and ill-treatment in daily police routine can not be finally assessed. However, the fact that a wide range of stakeholders held similar perceptions regarding the persistence of ill-treatment in police custody is of significance in and of itself as it reflects very low trust in law enforcement agencies. In addition, most interlocutors linked their perception of a pressing problem of ill-treatment to the lack of effective investigation and prosecution and a culture of impunity as the principal root cause for the continuing occurrence of police abuse. The existence of impunity was highlighted by the majority of interlocutors in view of the complete lack of appropriate sanctions against those law

enforcement officials involved in the April 2009 abuse of demonstrators (see below). In fact, the failure of the criminal justice system to effectively respond to the 2009 incidents was interpreted by many stakeholders as evidencing the acquiescence by the prosecution services and the judiciary in police abuse. It was also seen to reflect a mentality of nepotism and lack of accountability still present in State institutions that run counter to official statements of zero-tolerance policies.

III.1. Penitentiary

III.1.a. Penitentiary facilities and conditions of detention

Regarding **conditions of detention in penitentiary institutions**, representatives of the Ministry of Justice (MoJ) emphasised that improving living conditions, health care and the quality of food had been a priority of ministerial policies since 2008 with a 14% budgetary increase for new constructions. This included the refurbishment of prison No. 4, where a separate block for life imprisonment was opened, as well as plans to close down the notorious prison No. 13 in Chisinau. However, most complaints received by CSOs from inmates of penitentiary institutions reportedly continued to concern inhuman conditions of detention.

One expert from the international community raised strong concerns regarding the lack of appropriate **forensic psychiatric institutions**: criminal convicts with mental disabilities are reportedly placed under deplorable conditions in psychiatric hospitals, as neither the Ministry of Justice nor the Ministry of Health felt responsible to provide the necessary funding.

III.1.b. Prison regime and treatment of detainees

Concerning the **strict prison regime and punitive penitentiary policies** criticised by the Special Rapporteur on Torture in his 2008 report, no changes to the Enforcement Code have been made since then in this regard. Government representatives pointed out that legislative changes were foreseen in the National Human Rights Action Plan and would be included in the revision of the legislative framework within the JSRS. In respect of the reform of the prison system, the MoJ mentioned plans to introduce two types of prison regimes, based on an individual assessment of "danger" of the individual detainees and individual sentence service plans.

With regard to the **types of complaints** brought against staff of penitentiary institutions, no allegations of excessive use of force in prison had reportedly been received by the Penitentiary Department in the first half of 2011. In contrast, interlocutors from civil society were more critical regarding occurrences of disproportionate use of force in penitentiary institutions. The Penitentiary Department emphasised that frequent cases of inter-prisoner violence currently constituted the main concern of the penitentiary administrations.

According to most stakeholders, serious challenges continue to exist with respect to the provision of qualified health care, particularly in the field of psychiatry and infectious diseases. Most complaints received by CSOs about inhuman treatment in the penitentiary system were said to concern lack of or poor quality of medical treatment, punitive regime policies as well as lack of adequate food and water during the transport of detainee to

court houses. Furthermore, complaints reportedly also concerned the arbitrary transfer of prisoners between different facilities without proper notification to family members and legal representatives. There is official recognition of these problems at least on the declaratory level, as various measures are included in the National Human Rights Action Plan to address these issues.

III.1.c. Internal complaints and accountability procedures

Within the Penitentiary Department of the MoJ, an **internal investigation unit** is responsible for carrying out internal investigations into complaints against staff of penitentiary institutions from a disciplinary point of view. The unit is an integral organisational part of the Penitentiary Department. According to representatives of the MoJ, allegations of ill-treatment and excessive use of force in prison were investigated by special teams on the spot. In some cases – such as a recent prison riot – the investigatory team reportedly included experts from the Moldovan Centre for Human Rights (MCHR), prosecutors and staff of the internal investigation unit. These teams draw **conclusions as to the legality of the use of force**. If physical injuries were documented, the complaints would automatically be forwarded to the prosecution. In addition, each case of use of force would have to be notified to the MoJ, the Centre for Human Rights and the prosecution by the administration of the respective penitentiary institution. Apparently, there is no feedback to the Penitentiary Department on the outcome of a criminal investigation after referral of a case to the prosecution.

Stakeholders from CSOs were **critical as to the effective functioning of internal complaints and investigation procedures**. Some interlocutors raised concerns that the right to lodge a complaint was severely limited in practice due to a **lack of accessible procedures**. For example, it was mentioned that the hotline established at the Moldovan Centre for Human Rights was not accessible for prisoners who had limited or no access to telephone.[3] Moreover, the investigation unit was not perceived as initiating credible and impartial investigations, and disciplinary sanctions were said to be often limited to a simple "warning". CSO stakeholders monitoring prison facilities also mentioned that allegations of ill-treatment in prisons transferred to the prosecutor were routinely countered with accusations of aggressive behaviour by the respective penitentiary institution against the alleged victim.

While a conclusive assessment of the effective functioning of the internal procedures dealing with complaints against staff of penitentiary institutions and appropriate internal accountability mechanisms was not possible due to lack of information and statistics, the consultations revealed that most external actors perceived these procedures as lacking impartiality, transparency and effectiveness. In the assessment of the Atlas of Torture team, it is of concern that the conclusions drawn by the internal investigation unit regarding the legality of use of force by prison staff may function as a “filter” for deciding if complaints are followed-up. As this unit is part of the Penitentiary Department, minimum standards of impartiality are not guaranteed. It also remained unclear, whether use of disciplinary sanctions is made at all in cases where the complaint has been transferred to the prosecution or where the prosecutor has closed the criminal case due to a lack of sufficient evidence to start criminal prosecution.

[3] The fact that the hotline can only be reached via landline constitutes and additional obstacle in practice.

III.1.d. Capacity development needs

According to representatives of the MoJ, penitentiary staff receives three months initial training, followed by in-service trainings once a year, including training on relevant human rights standards (ECHR, CPT). Further needs of the training centre of the Penitentiary Department were identified in relation to training of the internal investigation unit to properly investigate complaints, as well as in relation to the medical staff in penitentiary institutions (Istanbul Protocol). Concerning the prevalence of inter-prisoner violence in penitentiary institutions, representatives of the MoJ expressed the need for assistance in addressing this problem effectively.

III.2. Police

As mentioned above, ill-treatment at the hand of the police was perceived by the majority of interlocutors as a continuing and prevailing problem. The Ministry of Internal Affairs (MIA) has drawn up an **Anti-Torture Action Plan** in 2010 to implement the recommendations of the CAT Committee, which includes several measures strengthening procedural safeguards. The Action Plan was presented as a demonstration of the zero tolerance policy of the political leadership. However, most stakeholders cautioned that the necessary changes in the attitudes and self-understanding of the role of the security forces as a demilitarised, service-oriented institution have not yet occurred and **political willingness to drive forth systemic reforms within the MIA** was perceived as at least ambiguous.

III.2.a. Detention facilities under the Ministry of Internal Affairs

With regard to the deplorable conditions of some police holding cells and temporary detention isolators (TDIs) criticised by the Special Rapporteur on Torture in 2008,[4] the MIA, according to its own reports, has undertaken measures to adjust the cells in the territorial police commissariats to international minimum standards. The inspection of the physical conditions of all TDIs reportedly continues to be undertaken by inspection teams composed of representatives of the MIA and the MoJ, which recommend either refurbishing or closing down cells that do not conform to international standards. Oversight over police custody is also carried out by the regional prosecutors, but is limited to controlling the legality of the deprivation of liberty.

III.2.b. Institutional reform of the Ministry of Internal Affairs and the police

On a systemic level, many stakeholders referred to a prevailing **organisational culture to be "tough on crime" and repressive attitudes** within the police as a main root cause for continuing prevalence of ill-treatment, despite declaratory statements on the political level that such acts would not be tolerated. In particular, the system of **performance measurement** and distribution of bonuses has long been based on high crime detection rates,[5] rather than focussing on qualitative indicators about crime prevention and community services. Representatives of the MIA acknowledged that these evaluation criteria had encouraged different commissariats to compete with statistics on the number

[4] See UN Doc A/HRC/10/44/Add.3, para 38.
[5] The "Crime detection rate" is calculated based on the number of "finished case files" that are submitted to the prosecution for bringing charges against the defendant; see Soros Foundation Moldova, "Criminal Justice Performance from a Human Rights Perspective", November 2009, p. 32.

of "successful" or "completed" investigations transmitted to the prosecution. This system, combined with insufficient technical facilities and low professional skills to collect physical evidence **encourages the use of coercive measures to obtain confessions**.[6] Stakeholders from CSOs noted that there were some encouraging signs of commitment to organisational reform within the MIA, particularly at the technical level of the administration, but also referred to resistance and lack of political will to systemic changes by the political leadership.

During the consultations with the Atlas of Torture team, representatives of the MIA recognised to some extent the need for further institutional reform and pointed to a number of **internal instructions** reportedly issued to strengthen safeguards against torture and ill-treatment. However, the discussions remained **inconclusive as to whether these internal measures have positively impacted on the organisational culture and attitudes** of the police and how compliance with the instructions is ensured.

The 2011 Government Action Plan on the institutional reform of the MIA includes a number of important measures aimed at, *inter alia*, demilitarising the administration and the police; the transfer of law and order competences to the Carabinieri; the adoption of a unified law on the use of force and firearms; the entrenchment of the principle of community policing in law and practice; the identification and implementation of new methods of performance evaluation of police activities.[7] Yet, the plan does not specify the qualitative criteria to be taken as basis for the new system of performance evaluation of the police.

Unlike the JSRS, the institutional reform concept of the MIA does not include an explicit human rights component. Moreover, **the strategy lacks reference to internal accountability and oversight structures**, and the **strengthening of procedures for complaints** against abuse of police powers. These aspects would be crucial in order to reinforce new methods of performance evaluation and service oriented policing with effective procedures to ensure compliance with these principles. According to the website of the MIA, a separate human rights action plan has been drawn up in mid 2011,[8] but it remained unclear how it is linked to the overall reform of the security authorities. It was also surprising to note that most interlocutors from CSOs and international community had very little knowledge about the current state of the reform of the MIA.

In the assessment of the Atlas of Torture team, it would seem to be crucial to closely link the reform concept of the security authorities with the priorities set in the framework of the JSRS with (such as improving access to justice and guarantee of human rights), ensure close involvement of civil society and mainstream a human rights perspective into the reform of the police, particularly with regard to clear accountability and oversight mechanisms.

III.2.c. Complaints and internal accountability procedures

According to interlocutors, all complaints submitted to the MIA are internally transferred to the Internal Investigations and Security Department, which is responsible for

[6] Ibid. p. 35.
[7] See The Action Plan on the Implementation of the Concept of reforming the Ministry of Internal Affairs and its subordinated and decentralized structure, Government decision No. 1109 of 2nd February 2011.
[8] http://www.mai.md/content/3464.

investigating complaints against the public order police. The Department is a separate organisational unit under the MIA external to the police. Representatives of the Department of Criminal Investigation said that their department investigates any complaints raised against criminal investigators (criminal police). **Most complaints were said to be lodged against the public order police and often concerned cases of alleged excessive use of force**; significantly less complaints were received against criminal investigators (according to the department's own statistics, only 1-2 complaints in the last 5 years). This assessment was shared by several interlocutors from CSOs, in whose experience most cases of torture and ill-treatment were **attributable to members of the operational police during the preliminary investigation stage** *(*crime scene examination, body searches etc). This information is particularly concerning, as the operational police is equipped with broad powers (including apprehension, securing evidence, taking statements, securing documentation, etc.) without supervision by the prosecution and without having to comply with the procedural requirements of the CPC.

Various **avenues to lodge complaints** were reported to exist within the MIA**:** complaints can be submitted directly to the Minister or to any subdivision or commissariat; in addition, the Ministry has installed a 24/7 telephone hotline; representatives of the MIA added that investigations were also initiated upon credible information received from media reports or internal whistle blowers. Complaints made during the interrogation of suspects and documented in the protocols were to be directly reported. **However, it remained unclear whether all personnel was explicitly obligated to report any allegation of ill-treatment to the prosecution and what the consequences would be if they failed to do so**. Against the backdrop of the above mentioned concerns that the zero-tolerance policy has not yet effectuated tangible change in practice, the Atlas of Torture team considers it particularly important that clear reporting and accountability structures are implemented. In order to reinforce stronger incentives for professional and human rights oriented policing, the managerial level of the police should clearly denounce any acquiescence of or complicity in covering up complaints against other police officers and notably support whistle blowers.

All complaints against police officers, involving any kind of misconduct, received by the MIA through different channels are centrally registered by the Department of Information and then submitted to the relevant unit. Some 2,000 complaints were registered by the MIA in the first half of 2011, of which 30 cases were considered to be "true" after internal investigations. According to statistics provided by the Internal Investigation and Security Department, 21 complaints concerning acts of torture had been received in the first half of 2011 (as compared to 26 in 2010 and 105 in 2009), of which 3 cases were confirmed (one was closed with a friendly settlement), 8 were not confirmed, 2 were still under investigation, 3 had been forwarded to other sub-divisions and 5 had been referred to the prosecution (which had reportedly "refused" one case).

While it was emphasised that all documented physical injuries of arrested persons are reported to the prosecution, representatives of the Internal Investigation and Security Department explained that they conducted an **initial examination into complaints of physical abuse to establish a prima facie case**; as to the evidentiary material sought during this preliminary examination and the applied "standard of proof", it was explained that photo documentation of physical injuries and initial statements were taken and that a case needed to be "confirmed" before being transferred to the prosecution. In cases of use of force by the police that would not be assessed as disproportionate by the internal

examination, no further action would be necessary. It was also reported that if an allegation of torture was transmitted to the prosecution, the disciplinary procedures were halted awaiting the outcome of the criminal investigation. In most cases, the statute of limitations for disciplinary sanctions had expired by the time the prosecutor had decided to close a case.

In the assessment of the Atlas of Torture team, the information received suggests that a **pre-selection process** de facto takes place by the internal investigation procedures within the MIA, resulting in **only partial referral of all torture complaints to the prosecution**. This practice does not only undermine the legally established, exclusive responsibility of the prosecution for complaints about torture and ill-treatment in accordance with Article 298 CPC, but is also **contrary to the basic standards for independent and impartial investigations of torture allegations**. Secondly, confirmed allegation of torture against police officers resulting in a friendly settlement are of great concern, as such "settlements" send out the message that no serious consequences have to be expected by police officers who commit a crime. Lastly, the statistics lack any reference to disciplinary measures taken in addition to/ instead of the referral to the prosecution. Against this background, it is not surprising that most stakeholders from CSOs perceived internal accountability mechanisms within the MIA as either non-existent or dysfunctional and ineffective.

In the view of the Atlas of Torture team, the creation of credible and transparent internal complaints and accountability structures should be made a priority in order to both ensure effective implementation of the zero-tolerance policy and to respond to the low level of trust by the population in the security authorities.

IV. Impunity

Most stakeholders noted that **impunity for torture and ill-treatment was still prevailing**, particularly with regard to the very low prosecution and convictions rates in relation to police brutality against demonstrators in April 2009. According to the General Prosecutor's Office, one conviction and two suspended sentences have so far been delivered, but no judgement is final yet. The last official information on the status of the prosecutions of alleged perpetrators of the April 2009 events was reportedly issued by the General Prosecutor's Office in April 2011. All stakeholders from civil society and the international community voiced strong concerns that the criminal investigations and prosecutions into these events had not been seriously carried out. This was seen with alarm as it sent out the wrong message to the security forces and undermined the credibility of positive reform measures recently adopted by the Government.

Different stakeholders identified different **reasons for the prevalence of impunity**: most noted that the **legislative framework** has some deficiencies both on the substantive and procedural level, particularly concerning the procedural framework of criminal investigations, and inadequate offences and penalties in the Criminal Code. Others referred to ineffective mechanisms to protect victims and witnesses of torture. The majority of interlocutors saw the main obstacle in the **lack of expedient and impartial criminal investigation**, but all acknowledged that the establishment of the specialised anti-torture prosecutors was an important step towards more effective criminal prosecution of perpetrators. Furthermore, the **judiciary** was also described by several

stakeholders as not taking on a sufficiently impartial and pro-active role in following-up on allegations and excluding tainted evidence.

IV.1. Legislative Framework

Following recommendations by the Committee against Torture in May 2005, on 30 June 2005, by Law No. 139, the Moldovan Parliament introduced new **Article 309[1]** into the Criminal Code, making torture **punishable by two to five years' imprisonment** and suspension from official duties for five years. The definition of torture is in line with Article 1 CAT.[9] Like for any other crime sanctioned with a maximal punishment of five years' imprisonment ("less severe crime"), a **statute of limitations of five years** is applicable to the crime of torture.

Some **other provisions** can equally be applied to acts of ill-treatment by officials, notably Articles 309 (Coercion to Testify), 308 (Illegal Detention and Arrest) and Article 328 (Excess of Power or Excess of Official Authority); as well as general provisions, such as intentional bodily harm.

In his report of 2008, the Special Rapporteur on Torture found that the **penalties foreseen** for acts of torture were in no way commensurate to the gravity of the crime. He urged the Government to amend the law and to abolish the statute of limitations for torture.

During the assessment visit, the Atlas of Torture team noticed that no changes to the legislative framework had been undertaken since 2008. In addition to the low penalties foreseen for the crime of torture and the resulting statute of limitations for a "less severe crime", a number of stakeholders criticised that sentences pronounced under Article 309[1] could be conditionally suspended (cf. Article 90 Criminal Code). A representative of the Supreme Court reported that the Court had tried to propose more severe sentences for torture or to introduce aggravating circumstances into the provision; however, they were subsequently criticised for this initiative as it was seen as an undue assumption of legislative competences.

In the assessment of the Atlas of Torture team, it is important but will **not suffice to amend Article 309[1]** by raising the maximum punishment and making it a serious or extremely serious crime in accordance with the classification of crimes provided in Article 16 of the Criminal Code in order to bring about a deterrent effect and tackle impunity. Time and again the Atlas of Torture team has witnessed that even if States had a textbook provision in their Criminal Codes, i.e. a definition of torture in line with Article 1 CAT, sanctions that are commensurate to the gravity of the crime, and no statute of limitations, a number of other factors inhibited the application of these provisions and therefore the effective fight against impunity.

[9] Article 309[1] Criminal Code: [torture is an] "action by which severe physical or mental pain and suffering is deliberately caused to a person, especially with the aim of receiving information or a confession from the person concerned or a third person, punishing him or her for a deed that the person concerned or a third person committed or is suspected of having committed, intimidating or putting pressure on the person concerned or a third person, or for any other reason based on a form of discrimination, whatever it is, if such pain or suffering is caused by an official or by any other person that acts officially or at the instigation or with the verbal or written consent of such a person, except for the pain or suffering that results exclusively from legal sanctions, inherent to such sanctions or caused by them".

In particular, the existence of other overlapping provisions, such as abuse of official authority, was in many cases the reason why the prohibition of torture in Criminal Codes remained dead letter. Rather than attaching the **specific stigma of torturer** to a public official incriminated with ill-treatment, prosecutors and judges more often than not resort to applying the less severe provision and sanction.

As outlined above, the Moldovan Criminal Code foresees **a number of provisions** applicable to public officials accused of having resorted to torture or ill-treatment. In particular, Article 309 (Coercion to Testify)[10] and Article 328 (Excess of Power or Excess of Official Authority), which includes a qualification in paragraph 2 relating to abuse of official power including "(a) violence; […]; (c) torture or actions that humiliate the dignity of the injured party", **overlap with the crime of torture** as foreseen in Article 309[1]. It is therefore not surprising that prosecutors[11] faced with allegations of ill-treatment more often than not base their indictments on Article 328 rather than on the crime of torture, despite the regulation of Article 116 Criminal Code (*lex specialis derogat legi generali*). Interlocutors from the General Prosecutor's Office suggested that in order to eliminate the existing overlap and clarify the application of Article 309[1], the related provisions in Article 328 (2) a) and c) should be revoked.

On the other hand, it was highlighted by a number of counterparts that **other forms of cruel, inhuman or degrading treatment**, in particular if applied outside of detention settings (e.g. during riot control and demonstrations), were **not sufficiently covered** by the Criminal Code. For example, representatives of the General Prosecutor's Office deplored the lack of a criminal offence adequately covering ill-treatment below the threshold of torture.

An issue that remained unresolved during the assessment visit lays in the **applicability of Article 328** (Excess of Power or Excess of Official Authority) ***ratione personae***. The provision speaks of "actions of a public official obviously exceeding the limits of the rights and authority granted to him/her by law". According to a Council of Europe expert and some Moldovan lawyers representing CSOs, this wording could entail that it does not apply to lower rank (operational) police officers, since they were provided only with limited authority falling short of the definition of a public official. Such operational officers, however, were allegedly among the ones most often resorting to ill-treatment as they were the ones actually carrying out investigations. Representatives of the Supreme Court and the General Prosecutor's Office, however, held the opinion that Article 328 was equally applicable to operative police officers. A clarification of this matter has to be sought.

[10] Article 309 reads: (1) Coercing a person by threats or other illegal acts to testify during an interrogation, coercing in the same way an expert to offer a conclusion, or coercing a translator or an interpreter to provide an incorrect translation or interpretation committed by the person conducting a criminal investigation shall be punished by imprisonment for up to 3 years with the deprivation of the right to hold certain positions or to practice a certain activity for up to 5 years. (2) The same action involving (a) violence; (b) cruel, inhuman, or degrading treatment; (c) a plea bargaining agreement shall be punished by imprisonment for 3 to 8 years with the deprivation of the right to hold certain positions or to practice certain activities for up to 5 years.

[11] The responsibility for the legal classification of acts as specific crimes and indictment in accordance with these charges lies with the prosecutor. He/she is also responsible for changing the indictment if in the course of the procedure it becomes evident that the act has to be subsumed under another provision of the Criminal Code.

The Ministry of Justice signalled in the discussions with the Atlas of Torture team that it would welcome support in reviewing and analysing the legal framework governing torture and ill-treatment and requested expert opinions on draft laws.

IV.2. Investigation and prosecution of allegations of torture and ill-treatment

IV.2.a. Institutional Aspects

In response to the considerable number of judgments by the European Court of Human Rights against Moldova determining procedural violations of Article 3 ECHR and the recommendations by international mechanisms, including the Special Rapporteur on Torture, to establish an independent body to effectively investigate allegations of torture, **the institutional set-up of the Moldovan prosecution services with regard to the criminal investigation of torture allegations was significantly changed in 2010**. In May 2010, a separate unit was created at the General Prosecutor's Office (GPO) exclusively mandated to coordinate and supervise all criminal investigations into allegations of torture and ill-treatment (**Anti-Torture Unit**). The unit has four staff members and has been functional since November 2010. Subsequently, in November 2010 each regional prosecutor's office was instructed to appoint one or more prosecutors solely responsible for the investigation of torture cases (**specialised prosecutors**). In order to ensure their independence from the police, the specialised regional prosecutors are not to be involved in other criminal cases. In addition to the Anti-Torture Unit, the GPO has a separate unit on ECHR case law, which examines the outcome of judgments of the Strasbourg Court and their implementation in Moldova, including with regard to Article 3 ECHR. According to the head of the unit, a new procedure was introduced, which enables the prosecution services to re-open a case once an application to the ECtHR has successfully passed the admissibility stage. This form of extraordinary recourse procedure was evidently introduced to avoid conviction by the Strasbourg Court.

Even though the introduction of special anti-torture prosecutors does not fully implement the recommendation to establish a completely independent investigation mechanism, it was acknowledged by all stakeholders as an **important sign of political willingness** to professionalise the investigation of torture allegations. While it is still too early to comprehensively evaluate the actual effectiveness of the new structure, interlocutors pointed out a **number of shortcomings** and problems which could considerably impair its success.

At the time of the consultations some 70 specialised regional prosecutors had been appointed. Several stakeholders noted that **the appointment procedure lacked transparent criteria**, because it solely depends on the choice of the head of the regional prosecutor's office, to whom the appointees remain directly sub-ordinated. **No vetting processes** had been carried out and the specialised prosecutors were said to have previously established links with local law enforcement officials. Even though they were legally excluded from any direct cooperation with the police in their new function, they continued to be part of the local prosecution services, which in turn depended on good cooperation with the local police. Interlocutors from CSOs, the Anti-Torture Unit at the GPO and the Supreme Court agreed that the fact that specialised prosecutors were locally embedded placed them in a difficult position, made them more **vulnerable to corruption** and did not help to disperse **public perception of the partiality of the prosecution**

services in cases of ill-treatment or abuse of power against local law enforcement officials.

In addition to insufficient institutional independence, the **new structure did not allow for allocation of necessary resources and capacities for effective investigations**. In some regions the specialised prosecutors were said to be heavily overloaded with cases, whilst in others they had little to do and were therefore assigned to other criminal cases, in contradiction to the rules issued by the GPO. A particular problem seems to be that the prosecution services in general do not have their own criminal investigators but solely rely on the police for collecting evidence. In torture cases, the specialised prosecutors are by law not allowed to involve the local police (see below), but have **no additional resources and no specialised staff** available to carry out the investigation. According to several interlocutors, the lack of specialised investigators available to the anti-torture prosecutors led to delays in the collection of evidence. The head of the Anti-Torture Unit pointed out that in addition to the lack of operative support, specialised prosecutors needed **specialised training on the necessary skills and techniques to effectively investigate torture**. Obstacles to expedient investigations reportedly also resulted from the categorisation of torture (Article 309[1] CC) as less sever crime, which only allowed for limited investigative methods legally available to the prosecution.

Impairments to the effective functioning of the new structures also relate to the relationship **between the specialised prosecutors and the Anti-Torture Unit** in the GPO. By order of the GPO, the specialised prosecutors have to inform the Anti-Torture Unit in writing of any complaint they have received within 24 hours. Any decision in the case is to be coordinated with the unit, which also approves the final charges. According to the head of the unit, only cases against high-ranking police officers are directly investigated by the unit, as are complaints against specialised prosecutors concerning alleged delays in criminal investigations. The unit's role is therefore mostly limited to supervision of investigations, while the specialised prosecutors continue to be subordinated to the local prosecution services in their daily routine. However, with only 4 staff members the unit has **insufficient resources to effectively supervise and review all investigations** carried out by the currently 70 specialised prosecutors. It was also unclear, whether internal standards and procedures for reviewing and managing all the cases had already been established.

In order to enable the Anti-Torture Unit to exercise effective managerial supervision over resources and control the necessary steps during the criminal investigation, the head of the unit suggested that the institutional set-up should be revised. Rather than appointing 70 regional specialised prosecutors, **a smaller pool of some 30 prosecutors could be centralised in two to four regional branches directly under the supervision and control of the Anti-Torture Unit.** This proposal was supported by a representative of the Supreme Court as it would enhance the independence of the specialised prosecutors from the local law enforcement context.

In the assessment of the Atlas of Torture team it is crucial to **ensure the independence** of the specialised prosecutors by directly placing them under the GPO and reinforcing prosecutors' **compliance with international procedural standards** for the investigation of torture allegations, such as the Istanbul Protocol. This could be achieved inter alia by centralising the organisation of the specialised prosecutors and ensuring their autonomy from the regional prosecution services. In practice, however, it also has to be ensured that

prosecutors specialised in torture investigations are provided with **specialised investigators and forensic experts to expediently secure all relevant evidence**.

IV.2.b. Procedural aspects

In general, the Moldovan **criminal investigation procedure** is based on several phases, starting with a preliminary examination of sufficient grounds for formally opening a criminal case, which is carried out by the police if not otherwise specified in the Criminal Procedure Code (CPC). According to Article 273 (3) CPC, the examining body has to transmit the collected evidence to the prosecution (or other investigating bodies) for the official opening of a criminal file within 24 hours. However, with the reform of the CPC the **time limit for the opening of the criminal file** by the prosecution **was abolished**. The criminal investigations are carried out by the criminal investigators (criminal police) or other criminal investigation bodies under the direct supervision of the prosecution services.

In relation to "any statement, complaint or other circumstances substantiating an assumption that a person was subjected to **torture, inhumane or degrading treatment**", Article 298 (4) CPC attributes the preliminary examination and criminal investigation of the case to the **exclusive competence of the prosecution services**. This means that by law, the collection of evidence in torture cases has to be carried out by the prosecution services without involvement of the police (see above). In accordance with Article 274 CPC, the prosecution services have to establish a prima facie case before formally opening the criminal investigation. Representatives of the General Prosecutor's Office explained that while there is no legally prescribed time limit, the criminal investigation into allegations of ill-treatment is opened "within a reasonable time". It was, however, admitted that depending on the time it took to gather sufficient evidence, including forensic reports, statements and observations made during on-sight visits and body searches, the formal opening of the case could be **delayed for several weeks.** As mentioned above, the lack of operational staff and specialised experts available to the specialised prosecutors in practice contributes to delays in the formal opening of criminal files and subsequent criminal investigation.

According to Article 10 (3) CPC, **the burden of proof is to be shifted upon the authority detaining the alleged victim** in cases of complaints about torture or ill-treatment. Many interlocutors were, however, sceptical with regard to the implementation of this provision in practice as the **presumption against the veracity of the complaint** was said to be predominant and information from the authority concerned was not impartially sought. A representative of the Supreme Court pointed to the pressing need for training of prosecutors not only in international standards, but rather in the concrete application of domestic legal provisions (substantive and procedural) in accordance with these standards.

The majority of stakeholders criticised that the **quality of investigations into allegations of ill-treatment** was poor and, in practice, suffered from the difficulty to obtain forensic documentation in a timely manner. It was also noted with concern that alleged victims are not sufficiently involved in the proceedings at the criminal investigation stage and in most cases not informed of the decision to close a criminal file. In cases where an appeal is brought against the prosecutor's decision to discontinue a case, the alleged victim has to follow a **two-step appeal process**, lodging it first with the superior prosecutor and

subsequently with the investigative judge. According to interlocutors from CSOs, this appeal process was not effective in practice, took a long time and had little prospect of success. Accompanied by a weak appeals system and the limited role of the judiciary, the exclusive discretion of the prosecution services to open or close criminal investigations into allegations of ill-treatment was perceived by many stakeholders as primary "bottle-neck" responsible for the continuing prevalence of impunity. However, the head of the Anti-Torture Unit showed great interest and commitment to genuinely address these procedural shortcomings.

In addition, the consultations revealed weaknesses in the existing **avenues to bring complaints to the attention of the prosecution services**. Similar to the MIA, the Anti-Torture Unit has also established a hotline for torture complaints, but no information was received about its acceptance by victims.[12] In theory, any complaint made by suspects in police custody has to be documented in police registers, which are to be checked by the visiting prosecutor each day. Depending on whether a complaint is registered by the police as "complaint" or "petition", the prosecutor has to respond within 3 days (first case) or within 30 days (second case). Interlocutors from CSOs criticised that allegations of ill-treatment are often "downgraded" as petitions. This false classification leads to inadequate and delayed responses to the complaints. It was also explained that in practice, it depended on the "insistence" of victims if their case was taken up by the prosecutor. In the assessment of the Atlas of Torture team, mal-functioning or inaccessible avenues to lodge complaints constitute another obstacle for eradicating impunity. The Atlas of Torture team noted with interest that the JSRS reportedly foresees to introduce a centralised electronic complaints system.

Problems also seem to exist with regard to **ex officio reporting** by public officials of any suspicion of an act of torture or ill-treatment having been committed. Despite the express instructions that any physical injury of detained persons detected by public officials from the MIA or the Ministry of Health has to be recorded and brought to the attention of the Anti-Torture Unit at the GPO within 24 hours, the system was assessed by the unit itself as dysfunctional. Since the beginning of 2011, inter-institutional working groups have reportedly worked on improving the cooperation between the Anti-Torture Unit and the relevant Ministries to ensure ex officio referral of any substantiated suspicion to the prosecution and to address irregularities in medical documentation by feldshers in police detention facilities.

Finally, several interlocutors from CSOs referred to a **high risk of reprisals** against complainants while in police custody or pre-trial detention and a very weak protection system for alleged victims. For example, the decision to suspend a suspected law enforcement official during the criminal investigation phase lies within the discretion of the superior officer, which heightens the risk of pressure on the alleged victim to withdraw the complaint.

In conclusion, the establishment of the Anti-Torture Unit and the specialised prosecutors constitutes an important step towards ensuring credible criminal investigations into allegations of torture or ill-treatment. However, the new institutional set-up suffers from

[12] According to statistics received from the Anti-Torture Unit at the GPO, 431 complaints about torture or ill-treatment had been received by the prosecution services in the first half of 2011, out of which 50 criminal cases had been opened, 56 complaints where still in the preliminary investigation phase and 89 cases were pending before the courts.

several challenges, including a lack of *de facto* independence of the specialised prosecutors, limited managerial control over torture investigations by the Anti-Torture Unit and lack of specialised resources and expertise. In addition, poor quality of investigations, long delays and lack of impartiality in the evaluation of evidence further contribute to impunity, combined with procedural shortcomings in relation to ineffective appeals procedures against the prosecutor's decision, weak ex officio responses to suspicions of ill-treatment at the hands of public officials, and insufficient protection of alleged victims against reprisals.

IV.3. Judiciary

Recent reports have suggested that the Moldovan public generally has very low trust in the judicial systems. This tendency was confirmed by several interlocutors, who perceived the investigative judges as being complicit in the infringement of rights of persons placed in police custody following the April 2009 events. In the consultations with CSOs, the general perception prevailed that the judiciary was still very prone to corruption and did not always take up an impartial role in cases concerning allegations of torture and ill-treatment. The Council of Magistrates as oversight body of the judiciary was not perceived as an effective control body but described as highly politicised.

According to a representative from the Supreme Court, the **gaps and deficiencies in the substantive legal framework posed a challenge to ensure accountability** of perpetrators in judicial practice. With regard to the qualification of ill-treatment under Article 309[1] or Article 328 CPC, judges can not change the charges brought by the prosecutor. However, as mentioned above, the Plenary of the Supreme Court previously issued a decision on the implementation of Article 3 ECHR and the procedures to be followed by the courts. To increase the knowledge about the jurisprudence of the European Court of Human Rights, the Court is reportedly developing a data base on relevant judgments and an analysis of their relevance for Moldovan judicial practice.

On the **procedural level**, the introduction of an adversarial system in Moldova limits the investigative judge's role in ordering specific investigatory steps or re-opening closed criminal investigations. It was emphasised that the Supreme Court had encouraged the judiciary to take on an active role in asking defendants as to whether they had been subjected to pressure or ill-treatment. Complaints about torture raised during Court hearings were, however, to be followed up by the same prosecutor, who also dealt with the criminal case against the defendant. The **investigative judge could not order an investigation into the allegation ex officio**. In order to ensure a **more effective appeals procedure** against the prosecutor's decision to close criminal files, it was proposed that appeals of alleged victims of torture or ill-treatment against such decisions should directly be lodged with the investigative judge. In the assessment of the Atlas of Torture team, this proposal should be considered for implementation.

In cases of alleged **tainted evidence**, the burden of proof rests on the prosecutor to show that the evidence was not obtained by coercion; otherwise the evidence has to be dismissed by the judge. The representative of the Supreme Court confirmed that in cases, where the criminal investigation into alleged police abuse is discontinued by the prosecutor, but the defendant continues to allege that evidence had been obtained illegally, the judge is not bound by the prosecutorial decision and has to assess the admissibility of the evidence separately. Interlocutors from civil society raised doubts as

to the implementation of the legal provisions of inadmissibility of evidence in the judicial practice. According to them, indications about evidence obtained under coercion were more often ignored than not by the responsible judge.

Similar to the **training needs** expressed with respect to the specialised prosecutors, many stakeholders mentioned that the judiciary, particularly the investigative judges, would profit from a skills-based training on the concrete implementation of international standards within the context of Moldovan domestic law, including in particular the practical implementation of the Istanbul Protocol.

V. Preventive Monitoring of Places of Detention

V.1. The National Preventive Mechanism

V.1.a. The Parliamentary Advocates and the Moldovan Centre for Human Rights

According to Articles 4 and 5 of the Law on Parliamentary Advocates (No. 1349-XIII of 17 October 1997), the Moldovan Parliament appoints **four Parliamentary Advocates** (Ombudspersons); they are elected by a majority of votes of Parliamentarians. Both the President of the Republic of Moldova or at least twenty Parliamentarians have the right to nominate candidates. Any citizen of Moldova who has a law degree, high professional competence, at least five years work experience in practicing or teaching law in higher education, and who enjoys a good reputation can be nominated Parliamentary Advocate.

The four Parliamentary Advocates, together with staff[13] responsible for providing organisational, scientific and analytical support, form the **Moldovan Centre for Human Rights** (MCHR). The Parliament appoints one of the four Advocates as **director of the MCHR**, with the responsibility of coordination and management of the other Parliamentary Advocates and the Centre's staff.

One of the Parliamentary Advocates is by law designated to deal with the protection of the rights of the child, while the other three do not have explicit assignments.[14] The main **tasks** of Parliamentary Advocates lie in the examination and settlement of petitions on infringements of rights; they can also act *proprio motu* in case of widespread or severe violations of rights. In addition, they are endowed with the power to address the Parliament with proposals to amend existing legislation; and to notify the Constitutional Court in order to verify the constitutionality of legal acts or their conformity with international human rights law.

V.1.b. The ratification of OPCAT and establishment of the Consultative Council

The Republic of Moldova has ratified OPCAT on 30 March 2006; it entered into force on 24 July 2006. The obligations deriving from OPCAT have been domestically implemented by way of an amendment in July 2007 of the Law on Parliamentary

[13] Art. 11 (3) Law on Parliamentary Advocates; cf., however, Art. 10 of the Regulation on the Centre for Human Rights, which stipulates that only the four Parliamentary Advocates - not including the staff - constitute the Centre for Human Rights.
[14] In practice, one Ombudsperson deals with economic, social and cultural rights, and a third one with matters of non-discrimination.

Advocates, as well as by the establishment of a so-called Consultative Council by regulation[15].

The **amendment to the Law on Parliamentary Advocates** following the ratification of OPCAT (in particular Articles 23^1, 23^2 and 24) foresees that "[i]n order to secure the protection of people against torture […], Parliamentary Advocates, members of the Consultative Council and other people accompanying them shall make regular preventive visits to facilities where persons are deprived of their liberty […]".

The Human Rights Centre is assigned by this law (Article 23^2) with the **establishment of the Consultative Council**, which shall "provide advice and assistance to the Parliamentary Advocates in the exercise of their competences as a national mechanism of torture prevention". The composition of the Consultative Council as well as the regulations for its organisation and functioning are to be approved by the director of the MCHR, i.e. one of the Advocates. The law only stipulates that the Consultative Council "necessarily has to comprise representatives of public associations operating in the field of human rights protection" (Article 23^2 (1)). The members of the Consultative Council shall enjoy similar rights as the Parliamentary Advocate when undertaking visits to places of detention, such as free access to all facilities, information and documents; private interviews with detainees; and hiring of additional experts if necessary.

The Regulation on the Organisation and Functioning of the Consultative Council specifies the **criteria for candidacy** for the Council. According to Articles 8 and 9, a candidate must *inter alia* be of high moral character, have a demonstrable commitment to human rights, have professional experience of at least two years in a relevant profession (law, medicine, psychology etc.), have no criminal record, and be independent and impartial. They shall not be representatives of the political leadership, lawyers, or prosecutors; nor shall they perform any political activity or be part of the administration of a political party.

The Council's members, including the Parliamentary Advocate, who acts as the head of the Consultative Council, are **appointed** by order of the director of the MCHR (Article 6 of the Regulation on the Consultative Council).

V.1.c. Who is the NPM?

It is essential to clearly define by law, which body actually forms the NPM in order to provide for certainty regarding decision taking procedures and reporting. In particular, the question becomes relevant when deciding on which facilities to visit; on the assessment of findings deriving from visits to places of detention; on the resulting recommendations to the authorities; and on the publication of reports.

At first sight, it seems that the **legislator meant to designate all four Parliamentary Advocates to constitute the NPM**; in this function, they should be **advised by the Consultative Council**. However, the members of the Council in turn should not only provide advice to the Parliamentary Advocates but rather undertake preventive visits

[15] "Regulation on organisation and functioning of the Consultative Council".

themselves, endowed with the same rights[16] as the Advocates. Furthermore, the Regulation on the Consultancy Council foresees that the Council is composed of 11 members, "including the Parliamentary Advocate, *who is responsible for the implementation and functioning of the National Preventive Mechanism*". The Law on Parliamentary Advocates, however, is silent on who of the four Advocates is responsible for the NPM; on the contrary, as outlined above, its wording rather suggests that all four Advocates constitute the NPM.[17]

Another interpretation can be found in the Regulations on the Moldovan Centre for Human Rights. These provide in their Article 41 that "**Councils** for the provision of advice and assistance to Parliamentary Advocates, attached to the Centre, **can be established as a national mechanism on torture prevention**."

Unsurprisingly, the **ambiguities of the law** led to different interpretations regarding **which entity constitutes the NPM**. From the side of the Ministry of Justice, who had drafted the law, it was argued that only the Parliamentary Advocate chairing the Consultative Council was the NPM. However, a number of relevant actors, including international bodies such as the Council of Europe's Commissioner on Human Rights, have clearly stated that the NPM has to be comprised of both the **Consultative Council and the Parliamentary Advocate**, who acts as chair. The Special Rapporteur reiterated that the designation of one individual person as NPM would not be in compliance with OPCAT and the Paris Principles. And even the Parliamentary Advocate in charge was open to the argument that he alone could not constitute a pluralistically composed body.

V.1.d. Chronology of challenges to the effective functioning of the NPM

In **July 2008**, the Special Rapporteur on Torture met the then head of the Consultative Council and Parliamentary Advocate, as well as members of the MCHR[18] and the Consultative Council. The major challenge the body faced at that time was the **lack of sufficient financial resources**. Not only were the members of the Consultative Council not paid for their work, they even had to use their own cars and mobile phones for the visits and their coordination. Consequently, the Special Rapporteur recommended that the NPM should be provided with sufficient resources in order to carry out their work effectively.

On the invitation of UNDP in the framework of a project on strengthening the NPM, Manfred Nowak and Julia Kozma returned to Moldova in **September 2009**, in order to provide training for members of the Consultative Council, staff of the MCHR as well as the new head of the NPM and Parliamentary Advocate. In the course of the training it transpired that in addition to the **ongoing lack of finances**, the NPM was facing **additional challenges**. First, only few of the ten seats in the Consultative Council could be filled as representatives of civil society or human rights NGOs were reluctant to become members of the Consultative Council. This was on the one hand explained by the lack of resources and the fact that not many persons could afford to work without any

[16] It is interesting that the Regulation on the Organisation and Functioning of the Consultative Council foresees even further reaching rights for the Council, such as presenting recommendations to the authorities and senior officials.
[17] In practice, the director of the MCHR took up the responsibility for torture prevention himself and chairs the Consultative Council.
[18] Members of the MCHR have from the start been involved in preventive visits to places of detention.

kind of remuneration or even spend their private money on NPM related tasks. On the other hand, already in 2009 some tensions between the head of the NPM and members of the Consultative Council became apparent. The situation was such that the Parliamentary Advocate went on visits to places of detention with his staff of the MCHR rather than with the Consultative Council, while members of the Consultative Council took off to do monitoring alone.[19] In general, a certain level of mistrust between members of the Consultative Council and the Parliamentary Advocate and MCHR staff could be sensed.

In addition, tensions arose in the context of the **events of 7 April 2009**. The reported lack of a clear statement from side of the Parliamentary Advocate condemning the excessive use of force and ill-treatment applied by the authorities in the course of the April 2009 demonstrations prompted some members of the Consultative Council to issue reports on their own or in the name of their NGOs.

In **2009 and 2010** the **situation did not improve substantially**, despite numerous efforts by the international community, first and foremost UNDP, to support the NPM. A number of members of the Consultative Council resigned and it was not possible to fill the vacant posts. It was not clear who was responsible for reporting and the remaining members of the Consultative Council felt that their findings were not sufficiently taken into account. On the other hand, it was reported that some of the members did not participate in the regular meetings or visits to places of detention any longer. According to the MCHR's annual report, 126 visits to places of detention had been undertaken in the course of 2010, of which 94 were carried out by the Parliamentary Advocate together with MCHR staff; 21 by the Parliamentary Advocate together with members of the Consultative Council; and 11 by members of the Consultative Council alone.[20] The complete breakdown of any cooperation between the Parliamentary Advocate and some remaining members of the Consultative Council was reportedly reached when those members submitted civil society reports critical of the NPM to the Universal Periodic Review of the UN Human Rights Council.

V.1.e. The NPM today: status quo and current challenges

At the time of the assessment visit of the Atlas of Torture experts, **nine newly recruited members** of the Consultative Council had just been sworn in and received their initial training. The team welcomes the efforts undertaken by various stakeholders to finally bring the number of members close to the provision of the Regulation on the Organisation and Functioning of the Consultative Council.

Having said this, some concerns have been raised with the Atlas of Torture team during their visit in relation to the **selection procedure**[21] and the **personal independence of the current members**. There were diverging opinions among civil society whether some

[19] The Parliamentary Advocate had endowed the members of the Consultative Council with the competence to undertake visits on their own in November 2008. Before that time, they were only allowed to visit places of detention together with the Parliamentary Advocate.

[20] See Centre for Human Rights of the Republic of Moldova, Report on the observance of human rights in the Republic of Moldova in 2010, p. 132, at http://www.ombudsman.md/file/RAPORT_2010_CpDOM_EN_.doc.

[21] According to the Regulations, the members are elected by a selection panel of five members (two Parliamentary Advocates, two civil society representatives, one academic), which in turn are appointed by the director of the Centre for Human Rights. The final selection of the members of the Consultative Council is subject to approval by the Parliamentary Human Rights Committee.

former members, who claimed that their application had not been considered, had not respected the deadline for applying. More seriously, however, were allegations that some of the newly recruited members had been "smuggled in" at a later stage, circumventing the procedures and criteria foreseen by law. Regarding personal independence, a number of counterparts indicated that the majority of the new members had held some official position before, such as Governors of penitentiaries or employees of the Ministry of Internal Affairs. It was acknowledged by the current Parliamentary Advocate that only three of the ten members represent a human rights related organisation.

On a more positive note, the current head of the NPM reported in the discussions with the Atlas of Torture team that he had been able to secure at least some **minor financial means for reimbursing travel costs** the Consultative Council might incur in the fulfilment of their mandate.

Furthermore, he reported of plans to create a **separate unit within the MCHR** with sole responsibility for the tasks of the NPM. This way, he hoped to be able to employ a forensic medical expert as well as a psychologist. At the moment, five MCHR staff members were working exclusively on NPM related tasks but they did not have a structure to reflect this.

The option of creating a separate unit within the MCHR reflects therefore on the one hand the practical reality. In addition, proposals to this effect have been made by some external experts tasked with the assessment of the NPM and more broadly the Centre for Human Rights. On the other hand, it has to be apprehended that such a restructuring could **marginalise the role of the Consultative Council within the NPM even further**. The Atlas of Torture team therefore suggests discussing further the future cooperation between the MCHR, including the Parliamentary Advocate, and the Consultative Council with a view to safeguarding the intended contribution of civil society to the NPM tasks.

Other critical issues that were raised in the consultations with various stakeholders during the assessment visit related to the lack of transparency of the internal decision making procedures, including the decisions to publish findings of the NPM; the general weakness of the NPM's reports as well as its recommendations and follow-up; and the lack of capacity to conduct effective monitoring in places of detention. The issue of sufficient funding for the NPM continues to constitute an obstacle. In this connection, the Atlas of Torture team wants to reiterate the Special Rapporteur's reasoning that although international organisations have indicated their willingness to support the NPM, the State has the primary obligation to provide sufficient resources.

V.1.f. The broader context – reform plans regarding the MCHR

In addition to the plans to create a specific NPM unit within the MCHR, the Atlas of Torture experts had the opportunity to gain insights into **plans to reform the overall structure and legal framework of the Parliamentary Advocates and the Centre for Human Rights**.[22] According to the counterparts, the Centre is currently overloaded with petitions, but it remained unclear whether this was due to a lack of resources of the Centre

[22] The Human Rights Centre of Moldova is accredited with "B" status by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

and its regional offices, or abuse of the right to file petitions and limited understanding of the Centre's mandate, or due to a combination of these factors.

In addition, it was critically remarked by some that the Parliamentary Advocates did not make full use of their legal powers, such as addressing the Constitutional Court in certain matters. The selection procedure of the Parliamentary Advocates was not deemed to guarantee independence of the individual mandate holders, which reportedly led to weak leadership due to lacking political will. Finally, the question was raised whether one Ombudsperson instead of four would be sufficient.

In this connection, **Manfred Nowak** was officially requested to become **honorary chair of a Working Group** under the auspices of the Ministry of Justice, mandated to look into the reform of the legal framework and structures governing the Parliamentary Advocates and the MCHR. This initiative is highly welcome as the Atlas of Torture team is convinced that only certain shortcomings of the existing institution can be remedied by capacity development and training of its members. First and foremost, however, it is necessary to provide the NPM, and in the broader perspective the MCHR, with a solid an unambiguous legal basis and structure in conformity with international obligations and best practices that will allow them to work effectively.

V.2. Local monitoring commissions

In November 2008, the Law on civil control of respect for human rights in institutions which detain persons (No. 235) was adopted; in order to implement this law, the Government adopted in April 2009 a regulation on the functioning and organisation of local civil society monitoring commissions (No. 286). Both legal acts aim at **strengthening civil society control (monitoring) over places of detention**, in order to ascertain human rights compatibility of conditions of detention as well as treatment of detainees. According to the law, **Commissions** of seven members each shall be set up **in each local district** ("rayon"); the members shall be representatives of civil society, be at least 25 years of age, have no criminal records and have a good reputation. No remuneration is foreseen, thus the members are to act voluntarily. Certain categories of persons are excluded from becoming members of Local Monitoring Commissions, such as persons who hold public functions, civil servants, judges, prosecutors, lawyers, notaries and mediators. The Commissions are afforded with relatively far reaching competences to carry out their monitoring tasks. They shall report after each visit as well as annually to the MCHR.

The reported number of Local Commissions that were **in practice** set up since the law entered into force, varied from one counterpart to the other. Some claimed that Commissions had been established in ten of the 32 districts, while others spoke of only three to four. In any case, **numerous problems** regarding these Commissions were mentioned and their functionality was put into doubt. In particular, it was mentioned that not nearly enough members of civil society in the districts could be encouraged to participate in unremunerated public monitoring of places of detention; therefore, some local authorities (rayon councils) had resorted to nominating persons who were clearly incompatible, i.e. public officials. This fact was also criticised in the MCHR's annual

report.[23] The MCHR additionally reported that they had not received visit reports of Local Commissions or that these reports had been insufficient; and emphasised that it was not possible for these Commissions to function without any financial resources.

With regard to **problems arising from the legal framework**, it was highlighted that the law stipulates that potential candidates of Local Monitoring Commissions had to be members of civil society organisations existing for at least five years. However, in some of the districts, no such organisations exist so far, which makes the establishment of Local Commissions impossible. The Atlas of Torture team was informed, however, that the Government planned to reform the legal framework in the near future.

A number of activities have been or are currently undertaken in order to **empower the existing structures and to set up Commissions in all the districts**. For example, round-tables with public officials were organised on how to set up Commissions, training was provided (based on a developed training manual), and changes to the law elaborated. According to representatives of involved CSOs, they envisage to do trainings for members of Local Commissions on monitoring and reporting. In addition, the MCHR has organised a round table at their regional office in Cahul on conditions for setting up a Local Commission; and a workshop in Causeni on certain deficiencies of the law.

In general, the Atlas of Torture commends the Moldovan authorities for creating legal conditions that aim at opening up places of detention to public scrutiny. Such civil society oversight is an important deterrent against torture and ill-treatment and can generate a deeper understanding within the general public of the human rights issues faced by detainees. However, clearly a number of obstacles are yet to be overcome in order to **transpose the good intentions of the law into an effective practice**.

VI. Safeguards

VI.1. Length of police custody and pre-trial detention

In his mission report on Moldova, the UN Special Rapporteur on Torture clearly recommended that the Government should (a) **reduce the period of police custody to a maximum of 48 hours**, (b) after which the **detainees should be transferred to a pre-trial facility**, where no further unsupervised contact with the interrogator or investigator should be permitted. This recommendation was based on his findings that ill-treatment during police detention was widespread and that *de facto* most detainees were kept in police custody for several weeks or even months and regularly returned there for "further investigation" or pre-trial detention, which made them vulnerable to further ill-treatment and reprisals.

Article 166 (5) of the CPC allows for a **maximum duration of police custody** of up to 72 hours, within which period the person concerned must be brought before an investigative judge. During the discussions with the respective authorities, in particular the MoJ and the

[23] Centre for Human Rights of the Republic of Moldova, Report on the observance of human rights in the Republic of Moldova in 2010, p. 131, at http://www.ombudsman.md/file/RAPORT_2010_CpDOM_EN_.doc. The MCHR had requested from the Prime Minister's Office information on the enforcement of the law. According to the report, in their reply the Prime Minister's Office spoke of "defective enforcement".

MIA, it became clear that there was **no willingness from the side of the Government to reduce the length of police custody from 72 to 48 hours**.

The second issue raised by the Special Rapporteur on Torture in his recommendation, namely the **transfer of persons remanded in custody by the investigative judge in a pre-trial detention facility out of reach of police authorities** and under the competence of the MoJ, has equally not been implemented in practice. The underlying reason, however, was in this case not the lack of political will, but rather the practical reality that in particularly in the more remote parts of the country no dedicated pre-trial detention facilities under the MoJ existed. Representatives of the MoJ explained to the Atlas of Torture team that temporary detention isolators (TDIs) were often located in the basement of the district police commissariats. Recommendations to the effect to simply transfer responsibility over these TDIs from the competence of the MIA to the MoJ were thus not feasible. The current ministerial strategy was to build new arrest houses (the initially envisaged number of twelve new arrest houses was reduced to four buildings for 250 detainees each), but funding by the European Bank for Reconstruction and Development has so far only been secured for the construction of one arrest house. Additional donor commitment to financially support the construction for the other arrest houses was urgently needed.

In addition, interlocutors from civil society mentioned cases, where pre-trial detainees continued to be held in TDIs under the authority of the police after the judicial review, because the investigative judge had failed to explicitly order the transfer of the person concerned to pre-trial detention facilities under the MoJ.

This means that after a period of 72 hours of police detention, **remanded persons can still be transferred back to a police facility for lengthy periods**, during which they are again under the *de facto* control of the police. In the opinion of the Atlas of Torture team, it is a matter of urgency to find a solution for this issue by constructing appropriate facilities; meanwhile, judges must be reminded of the possible risks when issuing the order that a person should be remanded in a detention facility under the control of the police. In addition, alternative measures to pre-trial detention should be strengthened and the necessity of keeping a person in remand detention should be assessed and justified by the investigate judges in each individual case.

VI.2. Access to a lawyer

The right of access to a lawyer is guaranteed in Article 64 of the CPC from the moment when the person concerned is provided with the status of a suspect. Some interlocutors raised concerns that this right was in practice not sufficiently guaranteed and that police interrogations were sometimes conducted without the presence of a lawyer. The majority of interlocutors that referred to this safeguard mentioned that **defence lawyers** were often powerless and sometimes not independent from State institutions. Only a minority of legal aid lawyers were reportedly highly qualified and active, whereas the majority lacked the necessary qualifications. The underlying reason was said to be a “Soviet-type” culture still prevailing among defence lawyers, and the bar association was in general considered to be rather weak and lacking the capacity to be actively involved in reforms.

With regard to litigation of cases involving torture or ill-treatment, as well as regarding the defence of persons who allege that they have been tortured during criminal

investigations, many lawyers lacked awareness of the prohibition of torture and the rights of detainees.

On a more positive note, some civil society representatives expressed high hopes in the new legal aid system and highlighted the sound legal basis of the new system. According to the MIA, the cooperation with the bar association has been strengthened and a journal service was created which would be able to provide a defence lawyer within three hours after arrest, as required by law.

Furthermore, NGOs reported that they were not aware of any recent cases of reprisals against defence lawyers taking up cases involving torture.

VI.3. Medical personnel employed in places of detention

The system of **employing paramedics** (so-called feldshers) **in detention facilities**, both police and the penitentiary system, is in principle very commendable considering that mandatory medical examination upon each entry and transferral from and to detention facilities constitutes one of the most important safeguards against torture and ill-treatment. However, as was already mentioned in the report of the Special Rapporteur on Torture, the main impediment to making this institution an effective safeguard in practice lays in its lack of independence from the detention facility they are working in.

As conceded by the MIA, the **feldshers remain under the authority of the commissariats**, who are responsible for direct oversight of delivery of services and disciplinary measures, and are organisationally subordinated to the medical department of the MIA. It became apparent during the discussions with representatives of the MIA that there was no consensus within the Ministry on the necessity to improve the system: Some representatives were clearly in favour of strengthening independence of feldshers by transferring responsibility of medical personnel in detention facilities from the MIA to the MoH. However, others did not put into doubt the feldshers' independence despite their subordination under the Commissariats and the MIA.

In addition, the Atlas of Torture team heard **varying accounts of who actually resisted a possible transfer** of responsibility over feldshers from one Ministry to the other. According to the MIA, the MoH refused to take over this responsibility; on the other hand, the Deputy Minister of Health reported that according to reform plans, all health services should be moved under the competence of the MoH, which was apparently meeting resistance from side of the MIA.

The obvious disparities encountered during the assessment visit should be further discussed with a view to enhancing the effectiveness and independence of a system which could play a crucial role in the prevention of torture.

It is encouraging to hear from various sources, including the MIA, that certain steps have been undertaken in connection with medical examinations of detainees. The possibility of detained persons to **request a medical examination by an independent doctor** other than the feldsher has according to accounts by both civil society representatives and the MIA been strengthened. However, representatives of the MIA added that not many persons were making use of the possibility to call into detention an independent doctor of their choice. Another positive element can be seen in a new order by the MIA, which

stipulates that medical examinations of detainees shall be performed without the presence of police officers.

VI.4. Other safeguards

In the course of the assessment visit, the Atlas of Torture team learned of a project implemented by UNDP on equipping police commissariats and isolators with **video surveillance**; reportedly, this video surveillance covers the entire police station, particularly entry and exit. This undertaking is in line with a recommendation given by the Special Rapporteur on Torture to this end. However, it remained unclear if there is sufficient capacity in place to effectively use the surveillance in documenting and reporting abuse of detainees. In addition, video surveillance does only constitute a safeguard as long as it is guaranteed that any questioning of suspects is carried out in designated interrogation rooms covered by the CCTV, which is not always the case according to civil society counterparts.

According to the MIA, the format of the minutes on police custody was revised and now includes a specific field concerning **information of relatives of the arrested person**.

VII. Forensic documentation

In order to effectively investigate allegations of torture and ill-treatment, it is imperative to have a well functioning system of forensic evidence-taking. In this respect, the Atlas of Torture team was informed of a number of practical difficulties during its assessment visit. Legally speaking, the respective provisions in the **Criminal Procedure Code limit the evidentiary value of medical records to forensic documentation provided by the Centre of Forensic Medicine or public medical officers** working in the districts. This means that documentation taken even by renowned and independent CSOs providing for rehabilitation of victims of torture is not legally valid in court, even if explicitly requested by the prosecutor, according to the interlocutors. Judges were described as being indifferent or reluctant to even consider additional medical documentation produced by independent medical examination.

In addition, the **lack of independence as well as of capacities and equipment** of the Centre of Forensic Medicine was pointed out by a few interlocutors. According to the Deputy Minister of Health, the Centre of Forensic Medicine is subordinated both under the MoJ and the MoH; this situation resulted in a conflict of interest. He was of the opinion that the Centre should in fact be independent of any executive body and be provided with its own budget. In the discussion with the Atlas of Torture team he proposed a direct subordination of the Centre under the Parliament. Mention was made of considerable **delays** in producing forensic medical evidence by the Centre. With regard to capacity and equipment, UNDP has recently commenced a project aimed at strengthening the Centre's capacities and infrastructure. As a first step, an audit of the Centre will reportedly be undertaken. The UNDP project will also aim at revising the relevant legislation on forensic evidence during criminal investigations and evaluate potential for the diversification of services. In the second phase, the development of standard procedures and trainings for forensic experts are foreseen. Possibly, a revision of the institutional set-up could be considered in order to strengthen the Centre's independence.

Another issue that came up during the discussion was the question who could actually request a forensic examination by the Centre of Forensic Medicine. Apparently, victims of torture and/or their lawyers could not request a forensic examination by the Centre, but only judges and prosecutors could order such a service. Indeed, even representatives of the Penitentiary Department criticised that penitentiary facilities have no possibility of requesting forensic documentation if persons show physical injures upon admission to the facilities.[24]

With regard to **further training**, representatives of CSOs reported that a Romanian translation of the Istanbul Protocol on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was provided to all relevant authorities. However, further training on the Protocol's provision was necessary. A representative of the Supreme Court agreed with this opinion and concretised that judges' and prosecutors' ability to apply the Istanbul Protocol in practice must be strengthened by providing specific training for these professional groups.

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[24] According to the Penitentiary Department, in 2011, 80 cases of physical injuries upon admission to MoJ facilities from police were documented.

Annex – Agenda Assessment Visit

Republic of Moldova 12 to 23 September 2011

Monday, 12th September	**Organisation**	**Interlocutors**
10:00-11:30	UN country team	Claude Cahn Mircea Esanu Andrei Brighidin
14:00-15:30	Legal Resources Centre	Sorina Macrinici Ion Guzun Vladislav Gribincea
16:00-17:30	OSCE	Amb. Philip Remler Rita Tamm Jaqueline Carpenter
Evening	Soros project on performance indicators (MIA)	Karl-Heinz Grundböck Walter Suntinger
Tuesday, 13th September	**Organisation**	**Interlocutors**
9:30-11:00	Delegation of the European Union to the Republic of Moldova	Zane Ringule Wolfgang Behrendt
11:30-13:00	Council of Europe	Nelea Bugaevski Ruslan Grebencea Ghenadie Barba Eridana Cano
14:00-15:30	Institute for Penal Reform	Victor Zaharia Ion Graur Daniela Groza
16:00-17:30	RCTV Memoria	Ludmila Popovici
Evening	Amnesty International	Cristina Pereteatcu Igor Stoica
Wednesday, 14th September	**Organisation**	**Interlocutors**
9:30-11:00	Human Rights Embassy	Veaceslav Turcan Lela Metreveli Zinaida Neznaica Maxim Belinschi
11:00-12:30	SEDLEX	Iulian Rusu
14:00-15:30	IDOM	Vanu Jereghi Natalia Mardari Ion Dorogoi
16:30-18:00	Promo-LEX	Ion Manole Alexandru Postica Pavel Postica
Thursday, 15th September	**Organisation**	**Interlocutors**

10:00-12:00	Soros Foundation	Radu Danii (criminal justice programme coordinator) Victor Munteanu (Justice Programme Director)
12:00- 14:00	German & UK Embassy	Carsten Wilms Amy Sherwood
14:00-15:30	Centrul de Resurse pentru Drepturile Omului Resource Center for Human Rights (CReDO)	Serghei Ostaf
Evening	NGO Round Table	Ion Guzun Vanu Jereghi Lela Metreveli Serghei Ostaf Ludmila Popovici Iulian Rusu Igor Stoica Veaceslav Turcan
Friday, 16th September	**Organisation**	**Interlocutors**
9:00-12:00	MIA	Iurie Ursachi - Deputy Minister of Interior Mircea Ciobanu - Head of Interaction with Justice Direction Marin Maxian - Head of Prevention Section, Directorate General for Police and Public Order Nelea Prodan - Head of Analysis, Monitoring and Control at Medical Direction Iurie Maximov - Head of Investigation and Internal Security Direction Victor Sotchi - Head of International Cooperation and European Integration Direction Ruslan Ojog - Deputy Head of Department of Criminal Prosecution Constantin Cojocari - Deputy Head DDCUP Alexandr Jitari - Deputy Head DAPI, Dept. penali Mihai G. Grigoras - Deputy Head of Managerial Evaluation and Internal Oversight Direction Vladimir Turcan - Head of Analysis, Monitoring and Evaluation of Policies Direction

15:30-17:30	General Prosecutor	Ion Caracuian - Prosecutor; Head of Anti-Torture-Unit Alexandru Cladco - Prosecutor; Head of ECHR Analysis and Implementation Section Iurie Perevoznic - Prosecutor; Head of Minors and Human Rights Unit
18:00-19:00	Head of NPM/Parliamentary Advocate	Anatolie Muneanu
Monday, 19th September	**Organisation**	**Interlocutors**
8:00-9:00	UNDP	Claude Cahn
10:00-12:00	MoJ	Augustina Bolocan Holban - Head of Treaties and European Integration Division Cristina Melnic - Head of General Legal Department Anna Aruta - Head of public relations, mass-media and secretariat unit of the Department of Penitentiary Institutions
12:30-14:00	UNDP (Health and Human Rights)	Arkadie Astrahan
17:00-19:00	Legal Resources Centre	Ion Guzun
Evening	Formerly UNDP (responsible for UNSRT 2008 mission)	Angela Dumitrasco
Tuesday, 20th September	**Organisation**	**Interlocutors**
8:30-9:30	Ministry of Health	Viorel Soltan - Deputy Minister of Health
14:00-15:00	Supreme Court of Justice	Raisa Botezatu - Interim President of the Supreme Court of Justice
16:00-17:00	Institute for Penal Reform	Victor Zaharia
Evening	CPT	Ana Racu
Wednesday, 21st September	**Organisation**	**Interlocutors**
15:00-16:00	Ministry of Foreign Affairs and European Integration (MoFA)	Andrei Popov - Deputy Minister of Foreign Affairs Corina Calugaru
16:00-17:00	MoFA	Corina Calugaru
17:30-18:30	EU Advisor to the General Prosecutor	Holger Hembach
Evening	UNDP, Advisors to Prime Minister	Mircea Esanu Serghei Diaconu Victor Lutenco

Thursday, 22nd September	Organisation	Interlocutors
10:00-12:00	Debriefing	EU Delegation OSCE Mission Institute for Penal Reform UNDP German Embassy Council of Europe Ministry of Justice Department of Penitentiary Institutions British Embassy MoFA General Prosecutor's Office MoIA Moldovan Human Rights Centre
18:00 - 20:00	Legal Resources Centre	Ion Guzun
Friday, 23rd September	**Organisation**	**Interlocutors**
12:00 - 13:30	EU Advisor to the Minister of Interior	Gabriel Sotirescu