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

Final Project Report - Moldova

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Abbreviations

CCRM	Criminal Code of the Republic of Moldova
CPCRM	Criminal Procedure Code of the Republic of Moldova
DISI	Directorate for Internal Security and Investigation (MIA)
ECHR	European Convention on Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
CPT	European Committee for the Prevention of Torture
GPO	General Prosecutor's Office
MCHR	Moldovan Centre for Human Rights
MIA	Ministry of Internal Affairs
MOJ	Ministry of Justice
NPM	National Preventive Mechanism (as foreseen by the OPCAT)
OPCAT	Optional Protocol to the Convention against Torture
UNCAT	UN Convention against Torture
CAT Committee	Committee against Torture
UNSRT	UN Special Rapporteur on Torture

1. Introduction

The present report was produced as final product of the Atlas of Torture project: Monitoring and Preventing Torture Worldwide – Building Upon the Work of the UN Special Rapporteur on Torture (UNSRT), financed by the European Commission under the Instrument for Democracy and Human Rights (EIDHR/2010/222-226) and implemented in the Republic of Moldova between September 2011 and December 2013. The project was carried out by the Ludwig Boltzmann Institute of Human Rights in Vienna in cooperation with the two Focal Points the Legal Resources Centre from Moldova and the Institute of Penal Reform in Moldova. The Vienna-based team was composed of Julia Kozma, Johanna Lober and Jörg Stippel in partnership with Ion Guzun as representative of the Legal Resources Centre from Moldova and Victor Zaharia, representing the Institute of Penal Reform. The three organisations formed the "Atlas of Torture team" jointly designing and implementing all activities described throughout this report.

As part of the global Atlas of Torture project, implemented in Paraguay, Moldova, Uruguay and Togo, the project aimed at supporting governments and civil society in the target countries in the development of local option to implement the recommendations made by the UN Special Rapporteur on Torture and other international and regional torture monitoring bodies. It pursued the overall objective of contributing to the promotion and protection of human rights and the rule of law and strengthening the prevention of torture and other forms of ill-treatment in the target countries. Additional specific objectives addressing the needs of each country were developed in the course of the project implementation. The project was implemented over 6 successive project visits to the Republic of Moldova by the Vienna-based team between September 2011 and January 2013, and followed up by the Focal Points until December 2013. The activities addressed a wide range of stakeholders and target groups and covered technical assistance to the development of draft laws, the development of capacity key stakeholders as well as networking and advocacy activities.

The purpose of the present report is to provide an overview of the implementation of the Atlas of Torture project in Moldova, including a description of the situation found at the beginning of the project (Chapter 2), an explanation of the choice of fields of engagement (Sub-Chapter 3.1.), the intervention logic and implementation strategies, activities implemented and results achieved, followed by an evaluation of the estimated impact of the project (Sub-Chapters 3.2.-3.5.). The report concludes with a brief discussion of further measures necessary to enhance the sustainability of progress achieved and to further advance in the prevention of torture.

2. Situation of torture and ill-treatment in Moldova - gaps and needs identified in the assessment phase 2011 in relation to the implementation of recommendations made by the UN Special Rapporteur on Torture

Prior to identifying the project implementation strategy and work plan for the implementation of the Atlas of Torture project in Moldova, an assessment of the situation of torture and ill-treatment was carried out in September 2011. This assessment was based on consultations with a great variety of stakeholders, including representatives of the Government, civil society and the international community. Taking into account prior research, the consultations mainly focussed on the concerns raised by interview partners in relation to the systemic factors contributing to the occurrence of torture and ill-treatment in Moldova. The aim of the assessment was to identify achievements, obstacles and needs towards the implementation of recommendations made by the UNSRT to the Republic of Moldova in 2008 and other international and regional torture monitoring and human rights bodies (such as the UN Committee against Torture (UN CAT Committee), the European Committee for the Prevention of Torture (CPT), and the judgements by the European Court of Human Rights (ECtHR) against the Republic of Moldova)[1]. The information received throughout the consultations were further completed by legal analysis of existing legislation, available documents and public reports from Moldovan civil society organisations and consolidated into an assessment report, circulated widely among Moldovan stakeholders. The assessment report served as the basis for stock-taking during the Kick-Off Conference and the subsequent elaboration of the work plan for the Atlas of Torture project in Moldova.

In the following sections, a brief overview of the situation of torture and ill-treatment in Moldova in 2011 as identified in the assessment report in relation to the main areas of concern provides the context for the description and evaluation of project activities and results in Chapter 3 of this report.

2.1. Situation of torture and ill-treatment

The information collected during the assessment phase[2] suggested that even though the number of serious cases of torture had decreased since the independent fact-finding of the UNSRT in 2008, police abuse of apprehended persons continued to be prevalent, particularly outside the capital Chisinau[3]. In addition to forcing confessions in order to obtain quick results in the investigation of

[1] The reports and documents which were regularly referred to by the Atlas of Torture team included *inter alia* the Report of the UN Special Rapporteur on Torture on his mission to the Republic of Moldova, UN Doc. A/HRC/10/44/Add.3, 12 February 2009; Concluding Observations of the Committee against Torture on the 2nd periodic report of the Republic of Moldova, UN Doc. CAT/C/MDA/CO/2, 29 March 2010; List of issues prepared by the Committee prior to the submission of the third periodic report of the Republic of Moldova, UN Doc. CAT/C/MDA/Q/3, 11 July 2012; Report by the European Committee for the Prevention of Torture on its visit to the Republic of Moldova from 21 to 27 July 2010, CPT/Inf (2011) 8, 3 March 2011 (available only in French and Romanian); Report by the European Committee for the Prevention of Torture on its visit to the Republic of Moldova from 1 to 10 June 2011, CPT/Inf (2012) 3, 12 January 2012 (available only in French and Romanian); judgments by the European Court of Human Rights against the Republic of Moldova accessible at http://hudoc.echr.coe.int/; for an analysis of case all judgements and their execution see Legal Resources Centre from Moldova, "Execution of Judgements of the European Court of Human Rights by the Republic of Moldova – 1997 – 2012", 2012, available at http://crjm.org/app/webroot/uploaded/Execution_of_Judgments_of_the_ECHR_by_the_Republic_of_Moldova_1997-2012.pdf.

[2] The assessment was not based on prior independent fact-finding and interviews with detainees, but relied on information gained through multiple interviews with state and non-state actors and an analysis of available reports. See Atlas of Torture, "Assessment Report – Republic of Moldova", November 2011, available at: www.atlas-of-torture.org

[3] Due to the lack of a uniformed complaints management system at the time, the real number of complaints of torture and ill-treatment was difficult to determine. At the time of writing the report, there was still no coherent unified system of data in place on number and types of complaints, the results of criminal investigation, the number of cases brought to courts or otherwise specific decisions or actions taken by the responsible institution (thus a lack of information and coordination persisted between the Prosecution Office, the Ministry of Interior, the Penitentiary Department, the Supreme Court of Justice).

crimes, physical abuse at the hands of the police – and to a lesser extent within the penitentiary system – was reportedly also used as a method of intimidation or "preventive deterrent" to impose authority. Most cases of ill-treatment in the context of criminal investigation were attributed to the police during arrest and the preliminary investigation phase, and only few cases were linked to the criminal investigators.

The post-election escalation in April 2009 with more than 600 demonstrators being indiscriminately detained and wide-spread allegations of police brutality and excessive use of force[4] brought the prevalence of torture and ill-treatment by the police into public debate. As a result, increased public awareness and media coverage accompanied by high-level signals by the Moldovan Government that torture was no longer tolerated contributed to the perception in 2011 that the problem was taken more seriously[5]. Several measure had been taken to address the problem of impunity and enhance effectiveness of investigations, most importantly a system of anti-torture prosecutors had been established in 2010, which is described in more detail below. The strong commitment by the Government to tackle sensitive issues in the field of combating and preventing torture was also evidenced by recent strategic policy documents, such as the National Human Rights Action Plan (NHRAP) and the 2011-2016 Justice Sector Reform Strategy, which include specific measures to address the issue[6].

At the same time, the continuing lack of effective sanctions against perpetrators of the April 2009 events reinforced public distrust in the accountability of the law enforcement services and the independence of the prosecution services and the judiciary. Most interlocutors therefore linked their perception of the prevalence of ill-treatment at the hands of the police to the lack of effective independent investigations and the continuation of a culture of impunity. On the institutional level, a prevailing culture of repression within the police, dysfunctional internal accountability mechanisms and a system of evaluating police performance according to crime detection rates further supported the perception that the law enforcement services had a long way to go in order to implement the politically declared zero-tolerance policy against torture in practice.[7] In addition, loopholes in the legal framework, such as insufficient legal safeguards, deficiencies in the criminalisation of torture and ill-treatment and problematic statutes of limitations for both criminal and disciplinary procedures were identified as contributing to the lack of protection of persons in detention from torture and ill-treatment.

Similarly, the situation in penitentiary facilities had not significantly improved in comparison to the situation found by the UNSRT in 2008, despite some infrastructure-related investment by the Government. According to civil society organizations interviewed during the assessment visit, most complaints from detainees continued to concern inhuman conditions of detention, such as the lack or poor quality of medical treatment, lack and poor quality of food, and the punitive character of the prison regime. In addition, excessive use of force by prison guards was reportedly not uncommon. The penitentiary administration itself acknowledged the prevalence of inter-prisoner violence in Moldovan prison as an issue of concern. The main underlying factors for the continuing deficiencies in the protection of the rights of detainees were the lack of resources and infrastructure, the punitive character of prison policies, ineffective or inaccessible complaints mechanisms, and the lack of

[4] For many others, see Amnesty International, "Police torture and other ill-treatment", November 2009, available at http://www.amnesty.org/en/library/info/EUR59/009/2009; see also the report of the European Committee for the Prevention of Torture following its visit to the Republic of Moldova in 2010 (for details footnote 1).

[5] See e.g. Anti-Torture Action Plan by the Ministry of Internal Affairs first published in 2010, available at http://www.mai.md/content/3464.

[6] See Ministry of Justice of the Republic of Moldova, Strategy for the Reform of the Justice Sector 2011- 2016; Action Plan for the implementation of the Justice Sector Reform Strategy for the years 2011-2016 and the annual implementation reports; all documents are available at http://www.justice.gov.md/category.php?l=ro&idc=155&nod=1&.

[7] For a comprehensive systemic assessment of the weaknesses of law enforcement services and the justice system see Soros Foundation – Moldova, "Criminal Justice Performance from a Human Rights Perspective", November 2009, available at http://www.opensocietyfoundations.org/publications/criminal-justice-performance-human-rights-moldova.

transparent and impartial internal investigation into complaints within the penitentiary administration.

2.2. Impunity and lack of accountability

Already in previous years, the culture of impunity and lack of accountability of perpetrators ad been identified by the UNSRT and subsequent reports of international and regional torture monitoring bodies as key factor contributing to the prevalence of ill-treatment in Moldova[8]. In 2011, impunity continued to prevail not only in relation to the absence of effective investigation and prosecution of the police abuse in the context of the April 2009 events[9], but also in relation to ill-treatment in the "ordinary" context of the criminal justice process and the penitentiary institutions[10]. In the analysis of the Atlas of Torture team, the problem of impunity and lack of accountability of law enforcement personnel and other public officials was based on a number of factors and systemic deficiencies including loopholes in the legal framework regulating the criminalization of torture, ambiguous provisions relating to the institution of criminal procedures; the lack of effective and independent investigation mechanisms; the lack of expedient and impartial prosecution and trial proceedings; insufficient legal safeguards to protect victims and witnesses; and limited access to independent (forensic) documentation of evidence. Moreover, the role of the investigatory judge in detecting and following up on cases of ill-treatment was weak so that judicial control over investigations did not function in practice.

2.2.1. The legal framework for the fight against impunity

While the Moldovan Parliament had introduced a new Article 309[1] into the Criminal Code of the Republic of Moldova (CCRM) defining torture in line with Article 1 CAT, this provision had been criticized by the UNSRT and the UN CAT Committee for the classification of torture as a "less severe crime" and the too lenient sentences attached to it (ranging from two to five years imprisonment).[11] As a consequence of the categorization of Article 309[1] as a less severe crime, a statute of limitations of five years applied and the sentences could be suspended in accordance with Article 90 CCRM.[12] The application of statutes of limitations to the crime of torture was in direct contravention of Moldova's obligation under the UN CAT[13] and Article 3 ECHR[14]. Moreover, the frequent resort to

[8] Report of the UNSRT, footnote 1, para. 90; Concluding Observations of the UN CAT, footnote 1, para. 15.
[9] Statistics in relation to trails and convictions vary, according to official data from the General Prosecutor's Office at the end of 2011, 58 criminal cases had been initiated out of 108 complaints received by the prosecutors in relation to the post-election police abuse, of which only 27 cases against 43 officers had been sent to trial, with a result so far of three suspended sentences and 19 acquittals. http://www.procurata.md/md/com/1211/1/4434/; for a critical analysis of the investigation into the 2009 events, see the report of Amnesty International, "Unfinished Business", April 2012, available at http://www.amnesty.org/en/library/info/EUR59/001/2012.
[10] According to the overall statistics for the year 2011 from the General Prosecutor's Office, only in 108 cases (11%) out of 958 registered complaints, criminal investigations were opened; out of these, 92 (85%) investigation were discontinued and 36 (33%) were sent to the courts. http://www.procurata.md/md/com/1211/1/4434/; for a comparison of prosecution statistics in torture cases in the years 2009 – 2012 see, Legal Resources Centre, "Briefing for the EU-Moldova Human Rights Dialogue", 8 November 2012 (unpublished document).
[11] Report of the UNSRT, footnote 1 para. 90; Concluding Observations of the UN CAT Committee, footnote 1 para. 14.
[12] Holding perpetrators criminally liable could additionally be excluded through the application of amnesty or pardon (Articles 107 resp. 108 CCRM).
[13] See e.g. the recommendation in the Committee's report on Liechtenstein CAT/C/LIE/CO/3, 25 May 2010, para. 9; report on Lithuania CAT/C/LTU/CO/2, 19 January 2009, para. 5; report on Sweden CAT/C/SWE/CO/5, 4 June 2008, para. 10. See also Report of the UN Special Rapporteur on Torture, A/HRC/10/44/Add.3, para. 90 a).
[14] See e.g. judgment of the ECtHR in Paduret vs Moldova, 5 January 2010, (Application no. 33134/03) § 61, 73, 75.

suspended sentences by Moldovan judges had not only been criticized internationally[15], but fuelled public perception that perpetrators of torture could continue public careers unpunished and that impunity prevailed.

Another obstacle to adequate punishment of perpetrators in practice were overlapping offences in the CCRM, such as Article 309 (Coercion to Testify) and Article 328 (Excess of Power or Excess of Official Authority), which included a qualification in paragraph 2 relating to abuse of official power by using "(a) violence; […]; (c) torture or actions that humiliate the dignity of the injured party". Both provisions carried less severe punishments than the offence of torture in Article 309[1].[16] In practice, this overlap in substantive provisions led to the frequent application of less severe offences to cases of torture and ill-treatment (such as abuse of power), thereby limiting the deterrent effect of criminal prosecution of torture and further nourishing a culture of impunity. Moreover, several lawyers and prosecutors pointed out during the assessment phase that other forms of cruel, inhuman or degrading treatment below the threshold of torture (such as excessive use of force during riot control operation) were not sufficiently covered by the existing provisions in the CCRM.

With regard to the Criminal Procedure Code of the Republic of Moldova (CPCRM), the provisions regulating the investigation and prosecution of torture and ill-treatment fell short of ensuring an effective and speedy process: According to Article 298 para. (4) CPCRM the exclusive competence of the preliminary examination and criminal investigation of these cases was attributed to the prosecution services. This meant that by law, the collection of evidence in torture cases had to be carried out by the prosecution services without involvement of the police or other operational staff. While this rule was reportedly introduce to ensure a certain degree of independence in the investigations, it meant that in practice investigations had to be carried out without operational staff and appropriate technical equipment. Furthermore, in accordance with Article 274 CPCRM, a preliminary investigation was required to establish a prima facie case before formally opening the criminal investigation. However, the CPCRM did not prescribe a time limit for the preliminary investigation, which as a consequence usually resulted in long delays before cases were formally opened, thereby risking that crucial evidence was lost. The situation was aggravated by the lack of operational staff and problems relating to the institutional set-up of the prosecutors mandated to investigate cases of torture and ill-treatment (see below).

Another concern related to the practice of applying the legally prescribed shift of the burden of proof in accordance with Article 10 para. (3) CPCRM once a prima facie case had been established. According to information from civil society and a former representative of the Supreme Court of the Republic of Moldova, the collection of evidence by prosecutors was often not done in a thorough and impartial way, including securing relevant documents and statements from the authorities concerned with the alleged case. Instead, the presumption seemed in the majority of cases *against* the veracity of the complaint. The relatively low number of initiated investigations out of the total number of complaints (only 11% in 2011), the high percentage of discontinued investigations (85% out of all initiated investigations were discontinued in 2011) and the small percentage of cases sent to court (33% out of all opened investigations) coupled with an unusually high acquittal rate (almost 50% of the torture cases dealt with by the courts in 2011 ended in acquittals, whereas the general acquittal rate in criminal cases was about 1,8% or 184 out of 10,088 criminal cases examined by judges in 2011)[17] seemed to confirm that the required shift in the burden of proof was not effectively

[15] See e.g. judgment of the ECtHR in Valeriu and Nicolae Roşca versus Moldova, 20 October 2009, (Application No. 41704/02) § 76.

[16] However, Article 116 para. (2) CCRM stated that in case of a conflict between a general and a special norm, only the special norm shall be applied.

[17] For more details, see Legal Resources Centre from Moldova, "Execution of Judgments of the European Court of Human Rights by the Republic of Moldova – 1997 – 2012", 2012, pages 116 ff. , (§ 6.3.1 Articles 2 and 3 of the Convention), available at

implemented in practice. Similar criticism was raised in multiple judgments against the Republic of Moldova by the ECtHR, which regularly found procedural violations of Article 3 ECHR due to long delays and lack of thoroughness and impartiality in the investigation of torture allegations.[18]

The legal framework also had weaknesses with regard to protecting the rights of victims during criminal investigations. For example, the evidentiary value in Court given to medical documentation of injuries provided by the Centre for Forensic Medicine upon the request by the judges and prosecutors was higher than medical documentation requested by victims and lawyers and provided by civil society experts specialized in the Istanbul Protocol.[19] Thus, it was nearly impossible for victims to successfully provide additional medical proofs of their injuries or submit a second medical opinion. The Centre for Forensic Medicine itself was reportedly lacking capacities and forensic documentations were reportedly considerably delayed. Furthermore, the appeals procedure against decisions to discontinue the criminal investigation had to be addressed to the superior prosecutor and not directly to the investigative judge, thereby limiting the role of external oversight of the investigation process. Finally, a reportedly high number of reprisals and threats against alleged victims following the lodging of complaints frequently succeeded in forcing victims to withdraw their complaints. This seemed to be linked to the lack of effective legal mechanisms to suspend on full pay police officers or penitentiary staff allegedly responsible for ill-treatment during the criminal investigations proceedings. Those suspensions (without or with reduced salary) ordered by the prosecution services were mostly annulled by subsequent court decision.[20] Therefore, the suspension of alleged perpetrators from official duty pending the outcome of the investigation as an important safeguard against torture was practically non-existent.

2.2.2. The institutional framework for the fight against impunity

In response to the considerable number of judgments by the ECtHR against Moldova in regard to procedural violations of Article 3 ECHR, and the recommendations by international mechanisms, including the UNSRT to create an independent investigation mechanism into allegations of torture[21], a separate unit had been created in 2010 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), as well as directly undertake criminal investigations in exceptional or high level cases. Furthermore, each regional prosecutor's office appointed one or more prosecutors responsible for the investigation of torture cases in each rayon (district) (specialised regional anti-torture prosecutors). These steps have proved to be an important sign of political willingness to professionalise the investigation into torture allegations. However, the newly established structure carried a number of shortcomings and problems relating to its independence and capacities, which considerably impeded its effectiveness.

Amongst others, the appointment of the specialised anti-torture prosecutors lacked transparent criteria, and no vetting processes had been carried out to ensure personal qualification and integrity. By law, the function of anti-torture prosecutor explicitly prohibited any direct cooperation with the police; however, in practice, the specialised prosecutors were reportedly nevertheless involved in the investigation of other cases thereby creating a dependency on the cooperation with local law enforcement officials. This local embedment of the specialised anti-torture prosecutors resulted in a greater vulnerability to corruption and did not enhance public perception of the independence of the

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http://crjm.org/app/webroot/uploaded/Execution_of_Judgments_of_the_ECHR_by_the_Republic_of_Moldova_1997-2012.pdf.

[18] For many others, see e.g. the judgment of the ECtHR in the case of Buzilov v Moldova, (Application no. 28653/05), 23.9.2009, para. 33 (inactivity of the prosecutors); and in the case of Paduret v Moldova, (Application no. 33134/03), 5.1.2010, para. 68 (undue delays).

[19] See also the UN CAT Committee in this respect, Concluding Observations (footnote 1) para. 10.

[20] Amnesty International, "Unfinished Business" (footnote 11), p. 11.

[21] Report of the UNSRT, (footnote 1), para. 90.

prosecution services in cases of torture or ill-treatment. Moreover, the new structure had not been allocated necessary resources and capacities, in particular they did not dispose of operational staff and were not furnished with the necessary forensic equipment to carry out effective investigations.[22]

Impairments to the effective functioning of the new structure also related to the relationship between the specialised regional anti-torture prosecutors and the Anti-Torture Unit at the GPO. The specialised anti-torture prosecutors in the regions were obliged to inform the Anti-Torture Unit of any complaint they had received within 24 hours and all decisions had to be coordinated with the unit, which also approved the final charges. However, due to the lack of financial and human resources (only four staff were employed at the GPO to supervise around 70 specialised anti-torture prosecutors with no technical support staff), the Anti-Torture Unit was hardly capable of monitoring all investigations and limited their interventions to cases against high-ranking police officers. The specialised anti-torture prosecutors in the region continued to perform their daily routine in most cases under the sole supervision of the local prosecution services, which could not be considered independent (see above).

With regard to the role of the judiciary in fighting impunity, many stakeholders expressed concern about the susceptibility of the judiciary to corruption and the lack of a pro-active approach towards identifying cases of torture and ill-treatment. In particular, the investigative judges did not have the competence to order ex officio investigations into allegations of ill-treatment appearing during the hearing. Absence of a pro-active role of judges in fighting impunity also concerned the handling of evidence allegedly obtained under coercion or torture: Even though judges had the liberty to assess the admissibility of evidence independently from the decision of the prosecution services whether to open a criminal investigation into a case of alleged torture, the judicial practice suggested that such allegations were mostly ignored in the decision on the admissibility of evidence.

2.2.3. Internal accountability mechanism and complaints management

A further impediment to effectively combating impunity identified during the assessment phase was the weakness of internal accountability mechanism both within the Ministry of Internal Affairs (MIA) and the Penitentiary Department at the Ministry of Justice (MOJ). Deficiencies related to the internal management of complaints, the system of in-service investigations and the application of disciplinary sanctions against personnel and the relationship between disciplinary and criminal procedures

In the penitentiary system, investigations into complaints and cases of alleged excessive use of force were carried out by an internal investigation unit, which was also responsible for recommending disciplinary actions. However, no comprehensive system of complaints management existed and statistics on the number of complaints and internal investigations was not available. The relationship between internal disciplinary procedures and criminal investigations in practice remained unclear and civil society representatives reported that internal disciplinary sanctions against penitentiary staff were mostly limited to "warnings" if applied at all.

Within the MIA, a unified complaints register existed: all complaints received through different channels (telephone hotline, commissariat, mail directly addressed to the MIA etc.) were centrally registered by the Documentation Unit and subsequently forwarded to the responsible departments. It remained unclear, whether a duty to report ex officio any allegation of misconduct, abuse of power or ill-treatment by MIA personnel existed within the law enforcement services and how failure to comply with reporting duties was sanctioned.

[22] The prohibition to cooperate with local law enforcement officials and the failure to allocate operational staff to the anti-torture prosecutors placed them in a difficult position with little means to effectively fulfil their task and also contributed to delays in the collection of evidence.

The in-service investigation of complaints against the public order police was supervised or carried out by the Directorate for Internal Security and Investigation (DISI)[23], a separate organisational unit directly subordinated to the Minister of Internal Affairs, which could also propose respective disciplinary sanctions in the cases under its investigation. According to representatives of the MIA, most complaints received concerned the public order police and amounted to several thousand a year. The DISI was responsible for analysing and investigating the complaints in order to establish whether the information was substantiating a *prima facie* case. If the examination of the complaint revealed elements of a crime or certain administrative offences under the competence of criminal investigation bodies, the files had to be transferred to the responsible bodies according to their respective jurisdiction. For complaints related to an allegation of torture, cruel or inhuman treatment, the competence for preliminary investigations were exclusively with the prosecution services.[24] The DISI was therefore by law not competent to investigate such complaints, but obliged to immediately refer such cases to the prosecutors.

However, statistics received from the MIA suggested that despite this legal obligation, the DISI had investigated and taken decision on the veracity of allegations of torture or even concluded settlements with victims in several instances.[25] While the legal and regulatory framework did not prohibit internal investigation mechanism from taken its own actions in relation to complaints about torture *in addition* to referring such cases to the prosecutors, the practice as presented by the MIA suggested that the DISI functioned as bottle neck for the filtering of complaints with potential criminal relevance. Such a practice could however not be considered to be in compliance with established international standards for investigation into allegations of torture or ill-treatment, as the DISI lacked the necessary institutional independence.

A further problem related to the application of disciplinary procedures in cases where an allegation had been transferred for criminal investigation to the prosecution services. In the majority of such cases, disciplinary investigations were suspended pending the outcome of criminal investigations and usually, no disciplinary actions were taken after the criminal investigation had been concluded (even in cases of discontinuation due to lack of evidence), either because the MIA was reportedly not informed of the outcome of the criminal case, or the statute of limitations for disciplinary sanctions had already expired, or MIA representatives were of the opinion that both procedures were mutually exclusive. A lack of clarity in the procedural relationship between disciplinary and criminal investigation and a lack of or at least inefficiency in the communication between the authorities involved therefore seemed to constitute a serious impediment to effective internal accountability. With regard to complaints referring to acts below the threshold of criminal liability, statistics on disciplinary sanctions applied were not available or only used for internal purposes.

On the positive side, the MIA had issued several internal instructions based on recommendations made by the CPT in relation to the lack of compliance of police officers with the rights of arrested persons. These instructions reportedly directly addressed safeguards against torture and ill-treatment, such as access to independent medical doctors, the timely information of rights and charges and the documentation of detention in the designated registers. In addition, the MIA had embarked on an institutional reform process aiming at *inter alia* the demilitarisation of the civil administration, the adoption of a unified law on the use of force and firearms and the development of community oriented policing strategies.[26] In addition, a specific Human Rights Action Plan and information on obligations and measures taken to combat torture and ill-treatment had been

[23] See Ministry of Internal Affairs, Order No. 79, 19 March 2010.
[24] Article 298 (4) CPCRM, the procedure to be followed is described in Article 274 CPCRM.
[25] These data is available in the annual reports of the MIA up to 2012.
[26] Action Plan on the Implementation of the Concept of reforming the Ministry of Internal Affairs and its subordinated and decentralized structures, available at http://www.mai.md/reforma_mai.

published on the Ministry's website.[27] Through a cooperation with UNDP Moldova police commissariats and temporary detention facilities were gradually equipped with video surveillance and the officers were obliged to record all interviews with suspects. While the provision of technical equipment was an important contribution to strengthening safeguards against torture, doubts remained on the effective use and storage of the video material by the police authorities and whether this information was made available for defence lawyers upon request.

In light of positive signals among the management level of the Ministry to embark on the creation of a more professional and human rights compliant law enforcement body, the deficiencies in the system of internal accountability were of particular concern as they raised doubts on the effective implementation and follow-up to the reform initiatives in operational practice. Without strong mechanism holding personnel accountable to new professional standards, new instructions and ethical codes, these reforms would risk remaining dead letter.

2.3. Legal Safeguards

2.3.1. Length of police custody and pre-trial detention

One of the most important safeguards against torture and ill-treatment is to limit the time period as short as possible, which suspected persons spend in police custody before being transferred to remand facilities under a different authority or released pending trial. In his report on Moldova in 2008, the UNSRT had described that suspects or pre-trial detainees were held weeks or even months in police custody and thus at a high risk of being subjected to torture and ill-treatment. He had thus urged the Government to change the practice of excessive pre-trial detention and reduce the legally permitted time limit of police custody from 72 hours, as provided by Article 165 para (5) CPCRM to the internationally recognised standard of a maximum of 48 hours, after which the detainee should normally be released or transferred to a pre-trial facility. In addition, all temporary detention facilities (IDPs) were recommended to be transferred from the authority of the MIA to the MOJ.

In 2011, both recommendations were not implemented. The Government of the Republic of Moldova reiterated in response to successive recommendations by international human rights bodies and inquires that it was not willing to reduce the time limit for pre-trail detention from 72 to 48 hours in order not to endanger the effectiveness of police investigations.[28] Despite political agreement that a transfer of the responsibility for temporary detention facilities (IDPs) to the MOJ was necessary, this recommendation had also not been implemented in practice by the end of 2011 due to a lack of appropriate facilities and recurring delays in the construction of new arrest houses.

2.3.2. Access to a lawyer

The role of access to a lawyer from the moment of arrest and in particular during the first interrogation is another crucial safeguard against torture and ill-treatment. Article 64 of the CPCRM provided the right to access to a lawyer from the moment of being attributed suspect status. In practice, many initial interrogations by the police were reportedly still carried out without the presence of a lawyer, and the information received therefrom was used for "writing an explanation on the case" (in many cases the protocols establishing suspect status were only filled out several

[27] Annual reports on the measures implemented and updates of the MIA Human Rights Action Plan are accessible at http://www.mai.md/content/3464.

[28] The recommendation had been taken up in the course of the Universal Periodic Review (UPR) process of the human rights obligation of the Republic of Moldova before the UN Human Rights Council, see the Outcome Report of UPR Working Group, UN Doc A/HRC/19/18, 14 December 2011, para. 76.14 (recommendations by Austria); in response to the list of recommendations, the Government of Moldova noted that the law enforcement bodies and the judiciary "were not ready yet" to adopt this recommendations, see the "Views on conclusions and/or recommendations, voluntary commitments" by the Republic of Moldova, UN Doc. A/HRC/19/18/Add.1, 6 March 2012, para. 20.

hours after the arrest and after the first interrogations). The legal framework was thus interpreted in a way which limited the effectiveness of the right to a lawyer on the prevention of torture in the initial hours following the arrest. Another reason for limited role of lawyers in the prevention of torture was that the existing system of defence lawyers did not function properly due to lack of independence, adequate funding and professional competences. According to civil society information, the majority of defence lawyers lacked adequate qualifications and awareness of their role in the prevention of torture and rights of detainees. Additionally, the bar association was identified as weak and inactive with regard to its role in ensuring regular in service-training and capacity development of its members. However, a new legal aid system with a sound legal basis had been established and was in the process of being established, including a pilot project with several well qualified public defenders financed through donor contributions.

2.3.3. Medical personnel employed in places of detention

Mandatory independent medical examinations upon entry and transferral from and to detention facilities, including documentation of any physical injuries, is another fundamental safeguard against the prevention of torture and ill-treatment. Resulting documents can be an important piece of evidence in support of victims' complaints. In Moldovan police and penitentiary facilities, para-medics (so called "feldshers") are employed and responsible for medical examinations upon each entry and transferral from and to detention facilities, which in principle is a very laudable measure. The problem is that these para-medics do not enjoy institutional independence from the detention facility they are working in. During his fact-finding in 2008, the UNSRT found that the lacking independence of the feldshers constituted an impediment against the impartial documentation of abuses and potential allegations of ill-treatment.[29] The same situation holds true for medical personnel working in police commissariats, who are placed under the immediate authority and direct oversight of the commander, who is responsible for ensuring the delivery of services and can impose disciplinary measures. In order to protect medical personnel from conflict of interests and ensure that their work is carried out free from pressure by superiors, the authority over the feldshers should be transferred from the MIA respectively the Penitentiary Department to the Ministry of Health.

2.4. Preventive Monitoring

The Republic of Moldova ratified the Optional Protocol to the Convention against Torture (OPCAT) in 2006 and subsequently designated the Parliamentary Advocates and the Moldovan Centre for Human Rights (MCHR) as National Preventive Mechanism (NPM) through amending the Law on Parliamentary Advocates. In addition, a Consultative Council was established "to provide advice and assistance to the Parliamentary Advocates in the exercise of their competences as a national mechanism of torture prevention".[30] The Council was composed of 10 members, including representatives of human rights NGOs, who should dispose of relevant professional experience in different fields (e.g. lawyers, doctors, forensic specialists, psychiatrists etc.) necessary to effectively monitor places of detention. In addition, the Parliamentary Advocate who functioned as Head of the MCHR held ex officio the position of President of the Council.[31] All members of the Council were by law endowed with the same rights and competences as the Parliamentary Advocates in exercising the task of the NPM, including full access to all places of detention and all relevant information, the right to conduct private interviews, request explanations from the authorities and investigate and report on human rights violations against persons in detention. In short, the Republic of Moldova had chosen an Ombuds-plus model to function as NPM, namely the existing MCHR as National Human

[29] See report of the UNSRT (footnote 1), para. 67.
[30] Article 23^2 Law on Parliamentary Advocates, No. 1349-XIII, 17 October 1997. Details on the composition, mandate and working procedures of the Council were regulated by the Regulation on the organization and functioning of the Consultative Council adopted by the Head of the Human Rights Centre.
[31] Articles 5-8 of the Regulation.

Rights Institution in cooperation with a specially established consultative body of civil society representatives.

Soon after its establishment it became clear that the Moldovan NPM faced serious obstacles preventing it from effectively exercising its mandate of torture prevention. The impediments were partly rooted in ambiguities in the legal basis, but also related to a lack of clear working procedures and adequate capacities and resources. During his visit in 2008, the UNSRT was confronted with different statements as to which entity constituted the NPM and was responsible for decision-making and external representation. In fact, the legal framework in place was not clear on this point: While the Law on Parliamentary Advocates designated all four advocates as NPM, it also endowed the Council with the right to undertake preventive visits. The Regulation establishing the Council went even further and declared the members of the Council competent for presenting recommendations to the authorities. At the same time, the Regulation establishing the MCHR as National Human Rights Institution mentioned that an advisory council to be established would constitute the NPM[32]. In practice, the authorities argued that it was the Parliamentary Advocate, who chaired the Council and the MCHR that was formally constituted the NPM. Faced with these legal ambiguities, the UNSRT emphasised that the designation of one person could *not* be considered in line with the requirements of the OPCAT and recommended to clarify the legal basis on this issue. Another main concern raised by the UNSRT related to the lack of sufficient financial resources allocated to the NPM, resulting in a situation where the members of the Consultative Council did not receive any remuneration for their work and even had to meet expenses for travel costs from their private means.

During a follow-up training provided by the UNSRT in 2009, the NPM was still lacking the necessary resources, and the Parliamentary Advocate had difficulties filling the positions of the Consultative Council as the reputation of the mechanism had deteriorated and representatives of civil society and human rights NGOs were reluctant to participate. The underlying reasons were not only related to the lack of financial remuneration but also to tensions and growing mistrust between the Parliamentary Advocate and the members of the Consultative Council. As a result, monitoring visits were increasingly carried out separately by both entities. In spite of efforts by the international community, first and foremost UNDP, to support the NPM, the situation continued to be difficult in 2010 when several members of the Council resigned out of protest against the lack of clarity of working procedures and the division of competences between the Council and the Parliamentary Advocate, which had even lead to parallel reporting.

During the assessment visit in 2011, the Atlas of Torture team found many of the same challenges still existing: The NPM had still not been provided with sufficient resources[33], and the legal ambiguities as to which entity constituted the NPM remained. Even though nine new members of the Council had been recruited, concerns were raised as to the lack of transparency in their appointment and criticism was raised as to the personal independence and qualification of several new members.[34] In addition, differences as to the internal decision-making procedure between the Council and the Parliamentary Advocate on the adoption of recommendations and the publication of reports as well as weak capacities to conduct effective monitoring visits continued to impede the proper functioning of the mechanism.

As a reaction to the difficulties encountered, the Parliamentary Advocate was planning to create a separate administrative unit within the MCHR to more effectively coordinate the work the NPM. This would however not address the continuing problems in the relationship between the Centre and the

[32] Parliamentary Resolution adopting the Regulation on the Centre for Human Rights, No. 57-XVI, 20 March 2008.
[33] The Parliamentary Advocate mentioned in the consultations that he had been able to secure some financial means to reimburse the travel costs for monitoring visits carried out by members of the Consultative Council.
[34] Most of the new members worked in official capacity prior to their designation, e.g. in penitentiaries or the MIA. Merely a third of the appointed members had a human rights background.

Council. The majority of state and non-state stakeholders seemed to be aware that only a thorough legal and institutional reform of the NPM would allow a fresh start and a rebuilding of trust in the institution. At the time of the assessment visit, a revision of the legal and institutional set-up of the Ombudsinstitution, including the NPM was already envisaged as part of the Action Plan for the Justice Sector Reform Strategy for 2012, which was to be supplemented by capacity development for the reformed institution.[35]

Besides the NPM, local monitoring commissions had been established by the "Law on civil control of respect for human rights in institutions which detain persons" (2008), followed by a regulation on the functioning and organisation of local civil society monitoring commissions in 2009. Based on this legal framework, in each rayon (district) a commission composed of civil society actors had to be installed by the local authorities for the monitoring of places of detention. However, no financial means were foreseen to support the establishment of the commissions. Several interlocutors pointed out that the establishment process was slow. Civil society members were reportedly reluctant to form part of the commissions, due to the unremunerated nature of the work and lack of experience in monitoring the places of detention. As a result, some commissions included public officials, despite the fact that they were by law excluded from participating, thus raising doubts about the independence and functionality of the system. The MHRC and several civil society organisations had initiated a number of round tables and trainings to empower members of existing local commissions and facilitate the setting up of new ones in the remaining districts. A point of discussion remained, how the work of the commissions could be linked to the NPM in order to achieve a useful coordination between the two monitoring systems.

[35] See the Action Plan, specific area of intervention 6.2.1. Action No. 1; and specific area of intervention 6.4.3., Milestones No. 5 and 6.

3. Strategies, activities, and results of the project implementation September 2011 – December 2013

3.1. Strategic choice of fields of engagement and development of intervention plan

Based on the findings of the assessment phase, the implementation phase of the Atlas of Torture project in Moldova was launched with the Kick-Off Conference in November 2011. The conference presented the opportunity to convene more than 80 representatives of civil society organisations, the MIA, MOJ, the prosecution services, the Ombudsoffice and other public institutions, as well as representatives of the international community in thematic working groups. The working groups were structured around the main challenges faced by the Republic of Moldova in relation to the fight against torture and ill-treatment identified in the assessment report: 1) The institutional and legal basis and capacity of the Ombudsoffice and the National Preventive Mechanism; 2) The legislative framework relating to the criminalisation and prosecution of torture and ill-treatment; 3) Internal accountability and complaints procedures; 4) Investigation and prosecution of torture and ill-treatment; 5) Procedural safeguards against torture.

To ensure a broad inclusion of different views and expertise, the discussions were launched by a brief presentation from civil society and state experts on the main challenges and improvements in each thematic field. The working groups developed a comprehensive list of challenges and recommendations how to address them. Participants were also asked to discuss how the Atlas of Torture project could contribute to achieving the implementation of these recommendations. Through the exchange in the working groups, participants as well as the Atlas of Torture team became more aware of ongoing reform initiatives and other actions being implemented or planned by other international and local actors. As a result of the conference, a wide range of stakeholders had developed a broader understanding of the systemic factors contributing to the persistence of torture and ill-treatment, steps already taken by the Republic of Moldova to implement the recommendations of the UNSRT and other torture monitoring bodies, and concrete measures necessary to further improve the situation.

The outcome of the conference together with the assessment report served as the basis for the selection of entry points and the elaboration of an intervention plan for the implementation of the Atlas of Torture project in the Republic of Moldova. The prioritisation of thematic fields of engagement and the choice of intervention logics and activities for each of them was based on several considerations: All thematic areas of work were selected in order to contribute to the implementation of the recommendations of the UNSRT and prioritised on the basis of their perceived urgency and relevance for improving the situation of torture. Secondly, the Atlas of Torture team considered it to be crucial to use the momentum of the existing framework strategy for the EU funded reform of the Moldovan justice sector and accompanying Action Plan, to promote the integration of recommendations related to the fight against torture and ill-treatment into the larger public reform programmes in Moldova. Moreover, several items of the Justice Sectors Reform Action Plan directly concerned combating torture and ill-treatment. Wherever possible, the Atlas of Torture project therefore aimed at supporting planned or ongoing institutional and legal reforms. Contributing to the change processes envisaged for 2012/2013 by the Moldovan Government was imperative since local actors had no or only very limited capacities to absorb yet another additional reform initiatives.

Another factor taken into account in the selection of thematic priorities and implementation strategies was the relatively short time frame of the Atlas of Torture project, favouring interventions that focussed on stakeholders expressly willing to cooperate. In this respect, it was indispensable that the project focal points the Legal Resources Centre from Moldova and Institute of Penal Reform disposed of excellent knowledge of local stakeholders and their respective openness to reforms in

the field of torture prevention and had access to relevant authorities and inter-institutional working groups. A further aspect taken into account in the choice of activities was the need to avoid duplication with ongoing or planned actions of other international and national actors. At the same time, the Atlas of Torture team always worked on the assumption that the impact of project activities would be significantly enhanced if synergies could be created with other national or international initiatives.

Based on these considerations, the intervention plan focussed on the topic of impunity, with the thematic objectives of

- **strengthening the legal framework against impunity by improving the criminalisation of torture and ill-treatment in the Criminal Code of the Republic of Moldova**
- **promoting further procedural and institutional reform of the anti-torture prosecutors**
- **promoting an improved relationship between criminal and disciplinary accountability to effectively address the accountability gap**
- **enhancing the capacities of defence lawyers in relation to their role in the prevention of torture and the fight against impunity.**

With view to prior engagement of the UNSRT and its team in capacity development of the Moldovan NPM, and the express invitation by the MOJ to the Atlas of Torture team to participate in the Government-led Working Group on the reform of the law of the Ombudsinstitution, **contributing to the reform of the National Preventive Mechanism** was chosen as second main focus.

Initially, additional entry points had been identified, including supporting the capacity development for the judiciary on standards for effectively fighting impunity and the inadmissibility of tainted evidence, organisational reform and training for the police, the establishment of effective and accessible complaints procedures for persons in detention and strengthening safeguards against torture and ill-treatment. However, these areas were not further pursued throughout the project implementation, because either other actors covering the field[36], actions on the particular issue were foreseen in the national Action Plan outside the term of implementation of the Atlas of Torture project[37], the issues were considered to be too complex to be effectively addressed within the limited time and financial resource of the project[38], the priority in the national reform process was put on other issues and a reluctance of authorities to address additional points was to be expected[39], or it was clear that the authorities were not interested to move forward on certain topics[40].

The thematic fields of engagement were followed throughout the project implementation. However, the respective implementation strategies and concrete activities were continuously adapted to the ongoing legislative, political and social developments in the country.[41] Towards the second half of the

[36] The Council of Europe was implementing a series of trainings for judges and prosecutors on ECHR standards, including on the prohibition of torture in the framework of the EU-funded "Democracy Support Programme"; UNDP in Moldova was implementing an EU-funded project on "Strengthening the forensic examination of torture and other forms of ill-treatment in Moldova", which included working on amendments to the CPCRM to strengthen procedural safeguards against torture and capacity development for the Centre for Forensic Medicine.

[37] For example, legislative reforms to strengthen the standing of victims and witnesses in criminal proceedings and to improve protection measures were only foreseen to be initiated at the end of 2013 and realized throughout 2014, see the Action Plan (footnote 6), Specific Intervention Area No. 6.4.6.

[38] Effectively addressing the reform needs of the police would have required a longer-term involvement together with sufficient resources to provide sustained capacity development.

[39] The topic of complaints mechanisms, though foreseen in the JSRS and Action Plan, was seemingly attributed a lower priority by the MOJ and in particular by the penitentiary administration.

[40] For example, as mentioned above, the Moldovan Government had officially stated that it did not intend to implement the recommendation by the UNSRT to limit police custody to 48 hours.

41 Where relevant to the overall project objectives, the Atlas of Torture team also included smaller ad-hoc activities where relevant. For example, in May 2012, the project team sent a letter to the president of the Republic of Moldova requesting not to promulgate the amendments to the CCRM on mandatory chemical castration, which were in contradiction with Moldova's obligation under the UN CAT.

project implementation, the project team increased cooperation with other actors on those areas where it became clear that tangible results could not be achieved within the project itself and to hand over fields of engagement to actors, who could follow-up beyond the duration of the Atlas of Torture project.

In the following, a brief description of the respective intervention logic, activities implemented and results achieved will be provided for each thematic field of engagement, followed by a discussion of the estimated impact of the project activities, including an analysis of those factors impeding or contributing to the achieved outcomes.

3.2. Addressing the accountability gap by strengthening the legal, procedural and institutional framework against impunity

3.2.1. Strengthening the legal framework against impunity by improving the criminalisation of torture and ill-treatment in the Moldovan Criminal Code

Intervention Logic

The criminalisation of torture in line with Article 1 UN CAT as a serious offence without statute of limitation and the provision of appropriate sentences is the minimum requirement for effectively fighting impunity. In this regard, the deficiencies in the Moldovan legal framework had been clearly identified during the assessment phase as one of the main factors for the persistence of impunity. In addition, an abundance of successive recommendations by international torture monitoring bodies and judicial decisions by the ECtHR was available recommending specific amendments to the Moldovan Criminal Code (CCRM). This reform need was recognised in the official Action Plan of the Justice Sector Reform for 2012, which included a specific Action under the responsibility of the MOJ requiring "the development of draft legal amendments to the Criminal Code to remove the contradictions concerning the definition of torture and ill-treatment"[42]. Supporting the revision of the CCRM through technical expertise and the facilitation of a participatory legal reform process, which would raise awareness on the importance of the fight against impunity, was therefore an evident and timely entry point for the Atlas of Torture project.

From the beginning, the activities in this field were aimed at ensuring participation of all relevant stakeholders in order to create a broad ownership for the elaboration of draft amendments to the CCRM; the broad participation also ensured that the experience from practitioners and experts, such as prosecutors, judiciary, and defence lawyers as well as academia were taken into account. The role of the Atlas of Torture team was both to provide guidance on international human rights standards relating to the effective criminalisation of torture, and to facilitate discussions among different national stakeholders in order to identify suitable options on how to implement these standards in the context of Moldovan criminal law. Activities started with expert workshops and continued with advocacy meetings, and the coordination of a civil society strategy to promote the adoption of the draft amendments throughout the formal legislative process. The continuing engagement of the Legal Resources Centre from Moldova and the Institute of Penal Reform in domestic Working Groups in public consultations outside the project activities provided additional important opportunities to promote and follow-up the legal reform process.

Activities and Results

[42] Action Plan (footnote 6), Specific Intervention Area 6.4.5. "Effective combating acts of torture and ill-treatment", Action No 4.

The initial momentum for the elaboration of draft amendments to the CCRM relating to the criminalisation of torture was created in the thematic Working Group during the Atlas of Torture Kick-Off Conference in November 2011. There, experts from civil society, the anti-torture prosecutors and the MOJ did not only identify in detail existing legal gaps and obstacles to effectively fighting impunity, but already started discussing concrete proposals for amending the CCRM. The participants called for, *inter alia*, increasing the penalties for the crime of torture; excluding the statute of limitations; removing all overlaps and contradictions with other crimes; introducing new aggravating circumstances as qualifications of newly drafted offences of torture and cruel, inhuman or degrading treatment; considering additional sanctions, such as the prohibition to hold public offices; and changing the systematic placement of the prohibition of torture within the CCRM to emphasise its seriousness.[43] The Atlas of Torture project was requested by participants at the Conference to facilitate a second expert workshop, during which comparative examples from other countries could be presented and the open issues relating to the draft amendments of the CCRM further discussed.

The second Workshop took place in January 2012 in cooperation with UNDP, which was implementing the EU funded project on "Strengthening the forensic examination of torture and other forms of ill-treatment in Moldova"[44]. This project included the development of relevant amendments to the CPCRM to strengthen legal safeguards against torture and ill-treatment. The cooperation enhanced the synergies between the working results of both projects and concentrated the resources of local stakeholders in light of the multiple parallel reform initiative in the country. The joint workshop gathered many of the same local experts from civil society, academia, practicing lawyers, judges, and prosecutors of the Anti-Torture Unit, who had participated in the Kick-Off Conference. With reference to the relevant international standards and recommendations, the Atlas of Torture team provided comparative expertise on the criminalization of torture and ill-treatment in other European countries including on the systematic placement of the crime of torture in different national Criminal Codes, the level of punishment, the abolition of the lawful sanctions clause, the categories of perpetrators, the inapplicability of statues of limitations and the suspension/dismissal of perpetrators during criminal proceedings/upon conviction.

Based on the discussions and agreements reached among participants at the Workshop, a draft proposal for amending the CCRM was elaborated by the Atlas of Torture team and several Moldovan legal experts. The draft amendments included the proposal of a new Article 166[1] with the following elements changed in comparison with existing Article 309[1]:

- Abolition of the "lawful sanction clause";
- Inclusion of a separate paragraph defining and criminalising cruel, inhuman and degrading treatment;
- Adding additional aggravating circumstances for torture and other forms of ill-treatment;
- Raising the level of punishment in form of a prison sentence for torture (6-10 years, resp. 8-15 under aggravating circumstances) and cruel, inhuman or degrading treatment (2-6 years, resp. 3-8 years under aggravating circumstances), classifying torture as a serious crime;
- Financial punishments of up to 1.000 conventional units for cruel, inhuman or degrading treatment, in addition to a mandatory prison sentences,
- Mandatory deprivation of the right to hold public offices for periods between 3 and 15 depending on the category and gravity of the crime as a sign of zero-tolerance towards such acts;
- Inclusion of "de facto" authorities among the categories of perpetrators[45].

[43] See Power Point Presentation on the results of working group 2 of the Opening Conference in November 2011 available at www.atlas-of-torture.org.
[44] For more information on the UNDP project, see http://www.undp.md/projects/Forensic.shtml.
[45] This proposal was deemed relevant by the experts with view to the fact that torture and ill-treatment remained a widespread phenomenon in the Transnistrian region of the Republic of Moldova.

As a consequence of the classification of torture as a serious crime, the draft amendments proposed to place the new Article in Chapter III of the CCRM, titled "Crimes against Freedom, Honour and Dignity of the Person" to reflect the particular grave nature of the crime of torture, similar to other crimes contained in this section like slavery (Article 167) or trafficking in human being (Article 165). Furthermore, to pay tribute to the recognition of the particular grave nature of the crime of torture, several amendments to the General Part of the CCRM were proposed, including: The exclusion of the application of statutes of limitations to new Article 166[1] (Article 60), the possibility to extend the period of dismissal from public functions according to the seriousness of the crime (Article 65), the exclusion of the application of more lenient sentences for crimes falling under new Article 166[1] (Article 79), and the exclusion of the application of amnesties (Article 107) and pardons (Article 108) for crime falling under new Article 166[1]. In addition, changes were proposed to several other provisions in the CCRM to remove contradictions and overlap between the crime of torture and other offences[46].

The proposed draft amendments were accompanied by an explanatory note, summarizing the results of discussions and line of argument to substantiate the proposal. The Atlas of Torture team transmitted both documents to the MOJ in March 2012 for consideration in the legislative reform process.[47]

The substantive work on the draft amendments was followed by successive activities to promote the endorsement of the proposed changes by the Moldovan Government and monitor the outcome of public consultations and debates in the Parliament. Several meetings took place with the MOJ, which positively endorsed the proposal. In addition, the project team met with Parliamentarians sitting in the Human Rights and Legal Committee to raise awareness on the proposed changes, the participatory process of elaboration and the underlying justifications.

Subsequently, an advocacy strategy and action plan were developed with representatives of seven NGOs, who had participated in the elaboration of the draft amendments. The participants agreed to publish a joint support letter advocating for the adoption of the proposed amendments as soon as the official ministerial version was sent for public consultations. In parallel, civil society representatives pledged to promote the legal reform in their capacities as members of national working groups and during relevant public events, such as in the context of the global anti-torture day in June 2012.[48]

Based on the advocacy strategy, the Atlas of Torture team widely shared the proposed legal amendments and accompanying explanatory note with relevant stakeholders. Throughout the summer of 2012, the two Focal Points actively participated in the official Working Group at the MOJ and thereby ensured that the original intention of the proposal developed within the Atlas of Torture project could be conveyed in the official discussions. The Focal Points continued to monitor the reactions of the different institutions and stakeholders, coordinated the transmission of a support letter in June 2012 and promoted the acceptance of the draft legal amendments through consultations with representatives of the relevant Parliamentary Committees. As early as October 2012, the legal amendments passed the Moldovan Parliament in a first reading and were finally adopted on 8 November 2012 by law no. 1945.

[46] Articles of the CCRM to which amendments were proposed were: Article 151 (intentional severe bodily injury or damage to health), Article 152 (intentional less severe bodily injury or damage to health), Article 165 (trafficking in human beings), Article 171 (rape), Article 172 (violent actions of sexual nature), Article 188 (burglary), Article 189 (blackmail), Article 309 (coercion to testify), Article 328 (excess of power or official authority).

[47] The text of the proposed amendments and explanatory note is available at www.atlas-of-torture.org.

[48] See e.g. the public event organized by the Legal Resources Centre form Moldova, Amnesty International Moldova and CREDO on 26 June 2012, more information available at http://www.amnesty.md/ru/media/ong-uri-impunitatea-o-cultura-incurajata-de-justitia-din-rm/.

Compared to the original proposal developed in the framework of the Atlas of Torture project, only very few changes had been made in the ministerial draft sent for adoption by Parliament.[49] However, during the Parliamentary readings, a small but very significant change was introduced in comparison to the ministerial proposal: In relation to the sentencing for cruel, inhuman and degrading treatment, the draft proposal developed within the Atlas of Torture project foresaw mandatory prison sentences *and* the imposition of a fine (*cumulative sanctions*). The same formulation was contained in the ministerial draft. However, the final version of Article 166[1] para (1) and (2) CCRM as amended by the Moldovan Parliament contains imprisonment and monetary sanctions as *alternative sanctions*. The protocols of the parliamentary readings lack any mentioning or justification of this change. In the contrary, all statements made by relevant actors prior to the adoption in Parliament seemed to suggest that no changes were to be expected. At the time of writing this report, it remained unclear, whether the change from the word "and" to the word "or" in adopted Article 166[1] para (1) and (2) was an editorial mistake or deliberately chosen to reduce the level of criminal accountability in cases of cruel, inhuman or degrading treatment.

As a result of this small but significant change in wording, even serious forms of ill-treatment under aggravating circumstances (e.g. leading to bodily injury) can be subject to a mere fine. The adopted formulation, unfortunately, provides for the possibility to apply even more lenient sentences than former Articles 328 para (2) Criminal Code and is therefore a regression not an improvement from the point of view of fighting impunity. Moreover, one of the deficiencies identified by the anti-torture prosecutors in the old legal framework was the lack of effective criminalisation of ill-treatment below the threshold of torture. The changes made during the parliamentary reading are therefore not only in direct contravention to the spirit, in which the draft amendments had been formulated, but also significantly reduce the impact of the new legal provisions in the CCRM on the fight against impunity.

3.2.2. Promoting further procedural and institutional reform of the anti-torture prosecutors

Intervention Logic

The lack of independent and effective investigation and prosecution into allegations of torture and ill-treatment was identified as the second most important obstacle to improving the situation of torture and ill-treatment in the Republic of Moldova. The UNSRT and other international and regional torture monitoring bodies had therefore repeatedly recommended the establishment of a separate investigation mechanism independent from the law enforcement and the prosecution services. Although the creation of the Anti-Torture Unit at the GPO and the specialised anti-torture prosecutors in the region were an important improvement, this new system faced several obstacles relating to independence, effectiveness of the institutional set-up and operational capacity (for details see Chapter 2).

However, based on the information received during the assessment visit and subsequent discussions with different stakeholders, the recommendations to create a completely independent mechanism for the investigation of allegations of torture was contested by many stakeholders as being not a realistic option: First of all, the system of anti-torture prosecutors had only become operational in the course of 2011 and it was too early to assess their effectiveness. In addition, the political commitment for such a reform step was not apparent and lack of financial resources was regularly put forward by the authorities as main impediment to comply with the international recommendation.

[49] These changes concerned the exclusion of negligence from the definition of cruel, inhuman and degrading treatment in Article 166[1] para. 1 and the re-insertion of the possibility to apply pardons to crimes of torture.

However, the National Action Plan for the implementation of the Justice Sector Reform Strategy foresaw for the year 2012 a revision of the regulatory framework of the prosecution services in order to ensure direct subordination of the specialised regional anti-torture prosecutors under the General Prosecutor.[50] The Atlas of Torture team therefore decided to seek the cooperation of the Anti-Torture Unit at the GPO, whose members were highly motivated and interested to improve the effectiveness of their institution. Based on a cooperation agreement reached with the head of the unit, activities were developed that included the facilitation of exchange on institutional reform options and the funding and coordination of the development of methodological tools. As key stakeholders in this field, the anti-torture prosecutors were also prominently engaged in all other activities relating to developing of draft amendments to the CCRM Code (see above) and the promotion of stronger internal accountability mechanism (see below). The activities described in this section were designed so as to complement other project activities relating to the fight against impunity.

Activities and Results

During the Atlas of Torture Kick-Off Conference, participants in the thematic Working Group on effective investigations and prosecution of torture and ill-treatment developed several recommendations. In particular, it was recommended to elaborate different institutional options for the establishment of an independent mechanism responsible for the investigation and prosecution of torture cases, equipped with operational investigators directly subordinated to that entity. In view of the existing system of anti-torture prosecutors, an evaluation of their performance to date was deemed necessary followed by the adoption of clear internal regulations on the working procedures by order of the General Prosecutor. In addition, the development of methodological recommendations and curricular for in-service trainings on the effective investigation of complaints was recommended as well as mandating the anti-torture prosecutors with the competence to order effective victim and witness protection measures.

Based on these outputs of the Conference and the deficiencies identified in the assessment report, the Atlas of Torture team discussed the reform needs and priorities of the Anti-Torture Unit at the GPO for 2012 during a round table in January 2012 with members of the unit and the EU High Level Policy Advisor to the General Prosecutor. The head of the Unit emphasised the need for financial and infrastructure-related support as well as the restructuring of the system of anti-torture prosecutors including the assignment of operational staff. He noted, however, that changing the institutional set up of his unit would require high-level political commitment to institutional reform of the prosecution services and depend on the political bargaining process in the context of the overall justice sector reform[51].

Based on these considerations, a cooperation agreement was reached between the project and the Anti-Torture Unit to facilitate by means of an Expert Conference the development of viable options for the establishment of a more independent and effective investigation and prosecution mechanism. It was expected that such options could be useful for national stakeholders in further promoting the institutional reform process of the prosecution service in the future. The agreement also included addressing the procedural obstacles faced in practice in the cooperation between the anti-torture prosecutors and the internal investigation mechanisms at the Ministry of Internal Affairs and Ministry of Justice. In addition - subject to the successful adoption of amendments to the Criminal Code and Criminal Procedure Codes - the development of methodological recommendations

[50] Action Plan (footnote 6), Specific Intervention Area 4.6.3, Action No. 4 foresees: Develop the draft amending the regulatory framework for the direct subordination to the General Prosecutor's anti-torture prosecutors.

[51] The question of the institutional allocation of criminal investigators was a main topic in the justice sector reform discussions in general and subject to political debates and power struggles between the GPO, MOJ and MIA. It was deemed unrealistic to expect that a political agreement could be reached on this topic throughout the time-span of the project implementation.

was envisaged to support the application of the amended Codes in the practice of the anti-torture prosecutors.

Developing options for the institutional and procedural reform of the anti-torture prosecutors

The timing of the Expert Conference on "Strengthening the Institutional Framework of Investigation and Prosecution of Allegations of Torture and Ill-Treatment" was strategically set for September 2012. By that time, the development of the draft amendments to the CCRM had been finalised and the Atlas of Torture project had established a sound basis for cooperation with relevant local actors. Several activities had already provided opportunities for stakeholders from different and sometimes competing institutions to meet and discuss their respective point of view in relation to the main obstacles in the fight against impunity. Moreover, the Anti-Torture Unit at the GPO disposed of first results of their internal evaluation, which allowed for a more substantiated discussion on the relative strengths and weaknesses of the existing structure. Since the authorities were obliged by the National Action Plan to embark on a draft amendment to the regulatory framework for the anti-torture prosecutors by the end of 2012, it was expected that the conference could generate a momentum for change and produce useful substantive recommendations.

Against this background, the aim of the conference was to offer a platform for discussion and exchange of experiences between national and international experts on institutional and procedural options for further strengthening the framework of investigation and prosecution of crimes of torture and ill-treatment in Moldova. The main beneficiaries of the Expert Conference were the Anti-Torture Unit at the GPO, the specialised anti-torture prosecutors in the region and stakeholders involved in the justice sector reform. To allow for inclusive consultations of high quality, the conference reached out to a broad range of stakeholders from both governmental and non-governmental organisations and institutions and the international community[52]. The Atlas of Torture team provided the framework on relevant European standards on the effective investigation and prosecution of torture allegations. Subsequently, three international experts were invited to give good practice examples of investigation and prosecution bodies: The first body presented was the Norwegian Bureau of Investigation of Police Affairs – an independent institution equipped with full prosecutorial powers and experienced operational investigators mandated to investigate allegations against the police and prosecution services. It was followed by a presentation of the Specialized Prosecution Department in Slovenia, an independent unit of the Specialised State Prosecutor's Office in Slovenia, equipped with operational investigators and mandated to investigate crimes committed by law enforcement agents on the entire territory. The third model presented was the Independent Police Complaints Commission in the United Kingdom, which has investigators who enjoy full search, seizure and arrest powers, but have no prosecutorial competences.

The comparative input from the practice of other European countries set the stage for intensive consultations in small 2-half-day thematic working groups, based on problem-oriented guiding questions on the following topics[53]: 1) Strengthening independence and impartiality: Institutional localisation of investigation and prosecution bodies within the Moldovan criminal justice system; 2) Competences and effective working procedures for full and timely establishment of facts and efficient case management and oversight; 3) Resources, skills and capacities necessary for thorough investigations; and 4) Procedural safeguard to ensure victim involvement and protection; transparency and public oversight. In a solution oriented manner, the thematic groups were

[52] Among the participants at the Expert Conference were investigative judges from different district courts, representatives of the Centre for Forensic Medicine, the Moldovan Centre for Human Rights, the law department of the Moldova State University, lawyers and public defenders, human rights organisations as well as representatives of the Ministries of Foreign Affairs, MIA, MOJ,, UNDP, EU Delegation, OSCE Mission to Moldova, Council of Europe, NORLAM, ABA ROLI, US Embassy and other representatives of international organisations.

[53] For details see "Concept note of the Impunity Conference, 20-21 September 2012", available at www.atlas-of-torture.org.

requested to draw up outcome tables with the identified challenges, proposed solutions and necessary next steps.

One of the main points of discussions was whether the establishment of a new investigation and prosecution mechanism separate from the law enforcement services (similar to the Norwegian or British model) constituted a viable option at this point in time in the Moldovan context. Though most participants were in principle in favour of such a solution as it would carry the highest chance of being perceived as fully independent, this option was not considered realistic due to financial restraints and political reluctance to create new institutions. Several other options for mandating existing institutions (such as the military prosecutors or the Centre for Combating Economic Crimes) with the investigation of torture allegations were considered less suitable than strengthening the existing Anti-Torture Unit at the GPO, particularly enhancing the unit's independence and operational effectiveness. To achieve this aim, significant changes to the existing organizational and procedural framework were deemed necessary and detailed recommendations were developed to this effect.

Most importantly, the final Conference Outcome Document[54] called for the dissolution of the system of specialized regional anti-torture prosecutors and instead the enlargement of the staff of the Anti-Torture Unit at the GPO. This centralization at the GPO was proposed in order to inhibit the occurrence of conflicts of interests and accompanying lack of independence due to the direct sub-ordination of regional prosecutors to the rayon prosecution services, which had damaged the reputation of the specialized anti-torture prosecutors in the regions. Moreover, the employment procedure at the GPO should be based on a public announcement and transparent criteria to ensure necessary professional qualities and personal independence of candidates. Since the public perception of the professionalism and impartiality of the Anti-Torture Unit was positive, the proposed reform was expected to enhance public trust in the willingness of the authorities to effectively combat impunity. As a consequence, the unit should be mandated with the exclusive competence for the investigation of allegation of torture, ill-treatment and related offences (e.g. abuse of power) covering the entire territory of the Republic of Moldova. To that effect, an organizational structure ensuring regional coverage should be developed (e.g. by creating separate regional offices) and effective procedures established to ensure coordination with other organizational units of the prosecution services.

The second most important recommendation concerned the need to provide the anti-torture prosecutors with operational staff (investigators, forensic experts, psychologists etc.) disposing of the necessary expertise for thoroughly investigating torture cases. While several options were discussed in this respect (e.g. seconding staff by the MIA to the GPO), the employment of operational staff by the GPO was considered to be the only option to ensure their independence from the law enforcement services. However, participants acknowledged that this option would require additional financial resources at the GPO and the Outcome Document therefore called upon the donor community to consider supporting such a reform process financially.

Other recommendations considered indispensable for more effectively fighting impunity called for the development of methodological recommendations for anti-torture prosecutors and operational staff and the regular provision of multi-disciplinary trainings on the Istanbul Protocol and other relevant technical standards for applicable to the investigation of torture cases. Moreover, the revision of the CPCRM with view to strengthening and protecting the position of victims of torture in criminal proceedings (more effective appeals procedures, enlargement of legal instruments to protect victims and witnesses) was recommended, and the necessity to transfer the authority over medical personnel to the Ministry of Health through amendments to the Execution Code suggested.

[54] Available at www.atlas-of-torture.org.

Finally, increasing transparency of the activities of the anti-torture prosecutors was considered crucial to increase public confidence in this mechanism.

As a result of the Expert Conference, a broad range of stakeholders had developed a thorough understanding of existing institutional, procedural and operational obstacles to effectively fighting impunity and jointly produced a range of technical options for overcoming these obstacles. The outputs of the conference were distributed to the responsible authorities and the EU Delegation. They are hoped to provide a useful reference in the ongoing process of reform of the prosecution services.[55]

Methodological recommendations for anti-torture prosecutors

As a follow-up to the development of draft amendments to the CCRM with newly defined crimes of torture and ill-treatment, the Atlas of Torture team initiated the elaboration of detailed methodological recommendations for the investigation and prosecution of complaints alleging torture or other forms of ill-treatment. This activity was meant to support the application of the revised legal framework against impunity in practice. The drafting process could therefore only be commenced towards the end of the project implementation following the adoption of the proposed amendments to the CCRM by the Moldovan Parliament in November 2012.

During the final project visit in January 2013, the content and structure of the methodological recommendations was discussed and finalised in a working meeting with the Anti-Torture Unit at the GPO. The head of the unit expressed his commitment to promote the adoption of the document as internal regulations to be applied by all prosecutors investigating and prosecuting torture cases. It was agreed that the document would contain references to international and European human rights standards on the classification of torture and ill-treatment, an interpretative commentary on the new CCRM provisions, a section on procedural safeguards during investigations, including victim and witness protection measures and a detailed regulation of the procedural duties of anti-torture prosecutors during the preliminary investigation stage, during the criminal investigations and during court proceedings.

The recommendations were produced by a multi-disciplinary expert team, composed of two academic experts in Moldovan criminal law, an expert in forensic examinations and psychiatry, a national judge, and the anti-torture prosecutors themselves. Input on international human rights standards and jurisprudence was provided by the Atlas of Torture team. Several rounds of reviews were carried out and coordinated by the Legal Resources Centre from Moldova to ensure consistency, accurateness and quality of the final document. In December 2013, the final version of the methodological recommendations was sent to the General Prosecutor and by Order of 30.12.2013, No. 76/8 the document was officially approved and 200 copies of the methodological recommendations were printed in the framework of the Atlas of Torture project and distributed to all concerned prosecutors. As a result, the recommendations have to be applied as mandatory internal framework for the investigation and prosecution of torture cases. The Anti-Torture Unit at the GPO will in the future be responsible for supervising the application of the recommendations.

[55] The elaboration of a new charter on the internal re-organisation of the anti-torture prosecutors was postponed in 2013 pending discussions on the overall reform of the prosecution services. Unfortunately, by the time of writing the report, the political reform concept and draft law developed by the official Working Group for the reform of the prosecution services have so far not taken up the recommendations developed at the Expert Conference to address the identified institutional deficiencies of the anti-torture prosecutors (lack of independence and centralized management and operational capacities); in particular, the local prosecutors responsible for dealing with torture cases are likely to remain procedurally sub-ordinated to the rayon (district) prosecutors; for more information, see the protocol of the Working Group session in October 2013 available at http://justice.gov.md/public/files/file/reforma_sectorul_justitiei/procese_verbale/proces-verbal_08_octombrie_2013_pilon_VI.pdf; and the "Concept on Reforming the Prosecution Services" available at http://justice.gov.md/libview.php?l=ro&idc=4&id=1603.

3.2.3. Promoting an improved relationship between criminal and disciplinary accountability to effectively address the accountability gap

Intervention Logic

In addition to fighting impunity through effective criminal sanctions, internal disciplinary and oversight mechanism within law enforcement institutions play a crucial role in enforcing professional standards and good practices, preventing misconduct and facilitating the management of personnel in line with ethical codes. Moreover, such mechanisms are essential to maintaining public trust in law enforcement services. In Moldova, the weakness of existing internal investigation and disciplinary procedures, both within the MIA and the Penitentiary Department had been identified by the Atlas of Torture team as a factor for decreasing public confidence in a genuine political commitment to a zero-tolerance policy against torture. At the same time, the MIA was starting to engage internally as well as with some international support in organizational reform discussions[56], and it therefore seemed to be a good moment for setting the issue of internal accountability on the reform agenda. Similar signs of openness to organizational reform were not perceived with regard to the Penitentiary Department.

However, while recognizing the importance of the issue, the Atlas of Torture project could not realistically aim at achieving sustainable results in the institutional reform process of the law enforcement institutions due to the limited financial scope and timeframe of the project. Therefore, the Atlas of Torture team decided to limit its intervention to agenda-setting and promoting the engagement of other actors on this topic.

Within the MIA, the representatives of different departments were initially cautious to discuss the practice of internal oversight with the Atlas of Torture team and accurate information on statistics and procedures was not accessible. Through several bilateral meetings and trust building measures by the Focal Points, a cooperation agreement with the head of the DISI could eventually be reached and active engagement of the staff of the DISI in project activities ensured. Based on this agreement, targeted activities were implemented with a specific focus on the interface between criminal and disciplinary procedures. In particular, the activities provided opportunities for exchange between the DISI and the anti-torture prosecutors on those aspects, which impeded the prompt and thorough processing and investigation of complaints against torture and ill-treatment.

Activities and Results

During the Atlas of Torture Kick-Off-Conference, a separate working group composed of representatives from the DISI, the prosecutions services, lawyers and civil society representatives discussed shortcomings of the internal accountability mechanisms and complaints procedures within the police, the penitentiary system and psychiatric facilities. Existing practical impediments to accessing confidential complaints procedures for persons in detention (prisons, psychiatric hospitals) were identified as a major obstacle to in the comprehensive documenting and investigation of complaints. The Working Group therefore proposed inter alia to install a system of complaints boxes in detention facilities, only to be opened by the Ombudsinstitution or a similar independent body mandated to receive petitions.

With view to the internal processing, follow-up and investigation of complaints within the MIA, the discussion revolved around the investigative steps taken by the DISI to establish whether a case contained criminal elements and had to be transmitted to the prosecution services; as well as the measures implemented in cases, which did not provide sufficient evidence or did not reach the

[56] See footnote 23 and 24.

threshold to incur individual criminal liability. Representatives from the DISI provided information on a planned restructuring of their department to enhance its operational capacities - an initiative that was to be integrated into the overall reform of the Ministry and coordinated by an internal expert group at the MIA.[57]

The discussion in the working group also brought to light serious impediments to ensuring accountability, which were rooted in conflicting understandings of the relationship between internal investigations leading to disciplinary sanctions and the criminal investigations by the prosecution services held by the different institutions. As far as the staff of the DISI was concerned, they interpreted the existing legal and regulatory framework in such a way that the parallel institution of criminal and disciplinary proceedings was legally impossible. Moreover, the institution of disciplinary proceedings after the finalization of criminal proceedings was understood as equally impeded by the prohibition of double jeopardy and the statute of limitations applicable to disciplinary investigations and sanctions. Representatives of the DISI suggested that their actions depended on an express indication by the responsible prosecutor upon closure or completion of a file requesting that disciplinary sanctions are applied. However, the MIA staff complained about a lack of communication and timely information about the outcome of the criminal investigations. The prosecutors on the other hand did not perceive themselves to be responsible for recommending disciplinary actions and complained about a lack of cooperation by the internal investigation bodies. Overall, a lack of effective communication and information between the two authorities involved in following-up to complaints and a certain competition over competences constituted a serious obstacle to holding perpetrators accountable.

Following the recommendation by the working group that these concerns relating to the interface between criminal and disciplinary procedures merited further discussions between the authorities concerned, the Atlas of Torture team implemented an Expert Workshop in April 2012 targeting representatives of internal investigation mechanism at the MIA and the Penitentiary Department, as well as anti-torture prosecutors. Representatives of civil society organizations and selected representative of the international community and donors, who took an active interest in MIA-related reforms, were also invited to ensure that the results of the workshop could be followed-up by different actors. Through a prior cooperation agreement between the head of the DISI and the Atlas of Torture team, access to relevant internal regulations of the MIA and practical case examples was provided. The head of the Investigation Unit at the Penitentiary Department was less forthcoming, but its personnel nevertheless participated at the Workshop.

The framework for the discussions was set by the Atlas of Torture team with an input on the importance of strong internal accountability mechanism for holding public officials accountable to a professional and human rights oriented policing culture. Moreover, the team emphasised the need for considering the application of disciplinary investigations and sanctions independently from the outcome of criminal investigations and prosecutions in a given case. In line with international standards, both types of procedures should pursue different purposes and thus different standards of proof needed to be applied.

Representatives of the DISI, the Penitentiary Department and the anti-torture prosecutors subsequently presented their respective assessment of legal and procedural obstacles to a smooth cooperation and complementary relationship between disciplinary and criminal procedures. Based on the joint discussion of the applicable laws and internal regulations, a common understanding on the following issues could be achieved: Most importantly, it could be clarified that the prohibition of

[57] Different options for the reform of the DISI had been elaborated in several consultation rounds with national stakeholders and were published in the first quarter of 2012 on the website of the MIA in a public policy document (available in Romanian, titled "Propunere de Politică Publică privind modernizarea mecanismului de investigare a cazurilor de încălcare a drepturilor omului de către angajaţii subdiviziunilor Ministerului Afacerilor Interne") available at http://www.mai.md/sites/default/files/images/Propunere%20de%20Politica%20Publica.doc.

double jeopardy in the CCRM does *not* apply to disciplinary sanctions and the Disciplinary Statutes in force explicitly provided for the institution of disciplinary proceedings in parallel with criminal investigations.[58] Moreover, the statute of limitations for the application of disciplinary sanctions, legally prescribed to a maximum period of 6 months from the date of committing the offence, could be suspended for the time period of criminal investigations.[59] Therefore, the argument that the short statutes of limitations inhibited the application of disciplinary sanctions pending the outcome of criminal proceedings was not correct. However, even with a correct legal reading of the law participants agreed that the time limits for in-service investigations and for the application of sanctions was too short, particularly in cases where complaints were only lodged after a certain time span (e.g. because the complainant was afraid of reprisals while in detention). Participants therefore recommended that the prescription periods should be extended through amendments to the Labour Code and other relevant laws. In addition, the channels of communication between the anti-torture prosecutors and the internal investigation units should be improved to ensure prompt referral of cases and mutual information on the status and/or closure of criminal investigations.

With regard to the methodology applied in in-service investigations by the DISI and the Penitentiary Department, experts from both institutions provided practical examples on some of the challenges faced as well as success stories. However, before guidance on the improvement of the working methodology could be developed, the workshop disclosed the need to more systematically assess the practice of in-service investigations pursued in individual cases, to create solid baseline data before elaborating methodological recommendations.

The idea for an in-depth assessment of the practice of internal investigations was taken on by the OSCE Mission to Moldova, which had cooperated with the Atlas of Torture team in the preparation of the Expert Workshop and taken on a strong interest to further promote the reform of the internal accountability mechanisms within the MIA. The Atlas of Torture team participated in several meetings with OSCE experts to technically support the development of the research design, scope and methodology of the assessment study. A joint follow-up to the outcome of the assessment study had originally been planned for early 2013 but could not be implemented as the study was only finalized after the final project visit of the Atlas of Torture team.

As a result of the described activities, the importance of strengthening internal accountability mechanisms had been put on the political reform agenda and taken up by other international actors. The targeted stakeholders expressed their satisfaction that the encounter between representative of internal investigation mechanisms and prosecutors had enhanced understanding for the different roles and competences thereby reducing competition and strengthening channels of communication and cooperation. As a substantive outcome of the activities, the systematic misinterpretation by MIA personnel of the existing legal and regulatory framework on disciplinary procedures had been addressed and clarified, which was expected to positively impact on the ongoing reform of the DISI.

3.2.4. Enhancing the capacities of defence lawyers in relation to their role in the prevention of torture and the fight against impunity

Intervention Logic

Whereas it is the responsibility of the State to ensure that adequate legislative, institutional, procedural and administrative measures are taken to hold perpetrators accountable, defence

[58] See Article 17 of the Disciplinary Charter for Law-Enforcement Bodies, Government Resolution No. 2, 1.4.1996; see also Article 5 of the Disciplinary Statute for representative of the penitentiary system, Government Decision No. 308, 19.3.1998.
[59] See Article 209 (2) of the Labour Code and according Article 30 of the Disciplinary Statute and Article 29 of the Disciplinary Charter.

lawyers have an important role to play in fighting impunity and preventing ill-treatment. In Moldova, the lack of adequate qualification and awareness of practicing defence lawyers on their role in the protection of rights of detainees and respective practical training on how to bring torture complaints to court had been criticised by many stakeholders during the assessment phase. A further entry point identified in the work plan of the Atlas of Torture project had therefore been the strengthening of the role of defence lawyers through targeted capacity development as a complementary strategy to promoting changes to the legal framework against impunity and supporting the authorities to carry out more effective investigation and prosecution into torture allegations.

Since the awaited adoption of the proposed amendments to the CCRM and the CPCRM was going to have significant repercussions on the work of defence lawyers in defending torture victims, the development of training tools or guidelines for lawyers had to be postponed until the new legislation entered into force. The decision by the Moldovan Parliament could only be expected towards the end of the project implementation. The Atlas of Torture team therefore sought the cooperation with other actors, who could reach out to practicing defence lawyers and were interested in engaging in longer-term capacity development activities in the future. Against this background, the Atlas of Torture team provided technical advice to the American Bar Association Rule of Law Initiative (ABA ROLI) on the elaboration of a handbook for lawyers.

Another entry point to supporting access to justice was found through the Atlas of Torture small grant scheme, where a project was selected that proposed the development of a web-portal offering information for torture victims and lawyers, including the provision of pro-bono legal advice.

Activities and Results

Based on several bilateral consultations between the project team and ABA ROLI, during which the initial idea was born to provide practicing lawyers with guidelines and training materials on how to make effective use of the new legal framework against impunity in court, ABA ROLI decided to go forward with a participatory development of a handbook for defence lawyers. In September 2012, the Atlas of Torture team jointly with ABA ROLI implemented a round-table on enhancing the role of lawyers in combating torture and abuse of detainees, which was attended by both defence lawyers and public defenders. The aim of the round-table was to discuss practical and legal difficulties encountered by lawyers when taking cases to court and to seek the opinion of practitioners on the most useful format for a handbook. Discussion focussed on the necessary procedural steps and expertise to secure relevant evidence crucial for corroborating complaints about torture, as well as legal mechanism for lawyers to challenge the effectiveness of criminal investigations or the closure of cases. Another issue addressed was the submission of motions to exclude evidence obtained by coercion and the submission of civil claims for damages on behalf of torture victims.

The results of the round-table were included in a draft outline for the handbook and a group of practicing lawyers coordinated by ABA ROLI elaborated handbook draft document. During its final project visit in January 2013, the Atlas of Torture team was again invited to discuss with the group of authors. The role of Atlas of Torture team was limited to providing expertise on international standards relating to combating torture and potential topics to be included in the guidelines, whereas ABA ROLI ensured the outreach to and input of practicing lawyers and the coordination and financing of the drafting process.[60]

With regard to its small grant scheme, the Atlas of Torture project issued a public call for micro projects to support local initiatives in the fight against torture and impunity. Among 15 applications received, the project "Stop Torture in Moldova" proposed by the NGO Human Rights Embassy was

[60] The handbook for defence lawyers was finalized in 2013 and is available on the website of the Moldovan Bar Association at http://www.avocatul.md/files/documents/56056-Apararea%20victimelor%20torturii.pdf.

selected for funding.[61] The small project entailed establishing an online-platform for victims of ill-treatment and other interested persons on access to justice, practical tools for lawyers and victims how to bring complaints as well as information on international and domestic legal standards. In addition, pro-bono legal advice and consultations have been made available through an interactive communication tool on the website. Throughout the pilot phase of the project (until September 2013), 13 individuals have been supported with several hours of pro-bono legal advice in each case. Embedded in capacity development activities implemented by the Human Rights Embassy, the website is also expected to constitute the basis for the implementation of internet-based training courses and regular exchange among legal practitioners in Moldova and the region. To ensure the sustainability of the website, the Atlas of Torture team has supported the application for follow-up funding by the Human Rights Embassy to international donors.

3.3. Evaluation of estimated impact of project activities on the fight against impunity and enhanced accountability

While it is too early to measure the actual impact, which the Atlas of Torture activities have had on the fight against impunity in Moldova in terms of increasing the number of prosecutions and convictions, several indicators suggest that the project significantly impacted both on the process of reforming the legal framework and on producing options for necessary further reform measures. The following evaluation of estimated impact in a short, mid and long term view is partly based on the feedback received from different stakeholders throughout the project implementation and particularly during the final project round-table, which took stock of the results and impact achieved.

Generally speaking, successive rounds of technical discussions on necessary legal and institutional reform steps (during the Kick-Off Conference and subsequent activities) resulted in a deeper understanding among representatives of responsible institutions and civil society on the inter-connectedness of different systemic factors contributing to the persistence of impunity. Key actors from the law enforcement and prosecution services were interested in participating and committing to the development of joint proposals to overcome existing obstacles to fighting impunity as part of a personal ambition to achieve greater professionalism in their respective working context. As a direct result of these joint discussions, many stakeholders expressed that the project activities had not only sharpened their understanding of existing problems, but also led to an enhanced communication and cooperation with other actors in a criminal justice sector, which had a direct effect on their working practice. For example, both the anti-torture prosecutors as well as the staff of the internal investigation unit at the MIA acknowledged that through participation in project activities they had significantly improved their cooperation. The Head of the Centre for Forensic Medicine also noted that his working relationship with the anti-torture prosecutors had improved through the cooperation in the project activities. Equally, civil society representatives targeted by the project activities positively mentioned that their relationship with state authorities had improved and their ability to cooperate on a technical level had been increased.

The biggest and most visible impact achieved by the project in the field of fighting impunity certainly relates to the participatory development of draft amendments to the CCRM adopted by the Moldovan Parliament within less than a year. During the implementation of project activities, the following effects were discernable: The involvement of a broad variety of actors and the implementation of targeted advocacy activities had the effect of raising awareness of the general public on the necessity to amend the legal framework. Moreover, the project activities contributed to maintaining the fight against impunity as a high priority on the reform agenda of political decision-takers. Lastly, the substances of the legislative proposals developed in the project were also carried

[61] For more information, see www.humanrightsembassy.org.

into academic discussions at the University by several participants of project activities, thus raising awareness among young professionals on the necessary reforms.

As a direct outcome of the project activities, the Republic of Moldova had laid down a new legislative foundation for effectively combating impunity of torture and thereby implemented a number of long overdue recommendations made by international and regional torture monitoring bodies. The project could produce such an impact due to several factors: With regard to the process leading to the development of a substantive proposal for amending the CCRM, all relevant institutions and stakeholders had been included. Thus a broad range of opinions and experiences from practitioners had been taken into account from the very beginning, and as a consequence broad ownership of the reform had been created including from important state and non-state actors. Another crucial factor was the alignment of project activities with the National Action Plan for legislative reform in 2012 and the linking of the proposed amendments to the CCRM with anti-torture related amendments to the CPCRM initially developed in the framework of the above mentioned UNDP project. Project activities and results therefore directly contributed to achieving the domestic reform schedule and provided opportunities for synergies and reinvigorating discussions.

In the design of activities, the project effectively used the combination of international comparative expertise provided by the Vienna-based expert team and the substantive expertise on the domestic criminal legal system and practical experience provided by the Focal Points and a wide range of stakeholders. Without the continuing substantive commitment, enthusiasm and solution-oriented professionalism of many actors including the anti-torture prosecutors, defence lawyers and civil society organization, for whom the amendments will have a practical relevance in their future work, this impact would not have been achieved. The inclusiveness of the project activities also minimized the risk of lengthy substantive discussion throughout the formal public consultation process. Most importantly, however, the follow-up throughout the formal legislative process was ensured by the two Focal Points through continuing participation in and monitoring of political discussions.

It remains to be seen how the new legislative framework will be applied in practice[62] by prosecutors, judges and defence lawyers. At the time of writing, a certain effect of the legislative reform may already be discernable: While the sentencing practice by Moldovan Courts in cases of torture throughout 2012 and 2013 continued to rely on the possibility to suspend prison sentences against convicted police officers, the prosecutors concerned appealed against these decisions in several cases on the ground that the suspended sentences were considered to be too lenient.[63] This is a very positive development, which raises hopes that the revised legal framework will contribute to changing the approach of prosecutors, followed by changes to the judicial practice from impunity to effective criminal accountability of perpetrators. Through the elaboration of the methodological recommendations for anti-torture prosecutors and there adoption as mandatory regulation by the General Prosecutor, it can be expected that the quality and professionalism of the investigation and prosecution practice will significantly improve.

[62] The newly adopted provisions in the CCRM are only applicable to acts, which have been committed after the entry into force of the revised Code in January 2013 and can therefore not be applied to the great number of pending investigations of torture cases committed before that date.

[63] In a case of three police officers from Ialoveni, who had physically abused and ill-treated several people in a public bar and later at the police station, the perpetrators were convicted by the first instance court for 5 years of imprisonment, but the sentences were suspended. The prosecutors appealed to the superior court on the ground that the punishment was too lenient in light of the gravity of the offence (for more information, see the article on the website of the GPO "Trei poliţişti din Ialoveni condamnaţi pentru tortură", available at http://www.procuratura.md/md/newslst/1211/1/5166/); in a case concerning severe ill-treatment inflicted by a criminal investigator on a young boy immediately following the April 2009 events for the purpose of extracting information about participants of the post-election protests, the facts were qualified as abuse of powers by the first instance judge, even though the prosecution had brought charges on the grounds of torture, and the perpetrator was convicted for 3 years imprisonment, with the sentence being suspended on probation. Also in this case, the responsible prosecutor appealed on the ground of inappropriate sentences (for more information, see the article on the website of the GPO, "Încă un poliţist condamnat în „dosarul 7 aprilie 2009", available at http://www.procuratura.md/md/newslst/1211/1/5310/).

One caveat remains, however, with view to the impact of the project activities on the fight against impunity: As mentioned above, the punishment level for cruel, inhuman and degrading treatment in the new amendments to the CCRM adopted by the Moldovan Parliament was changed from the original proposal developed in the framework of the Atlas of Torture project. As a result, the punishment for even severe cases of ill-treatment can now be limited to a monetary fine, which significantly reduces the impact of the revised CCRM on the effective fight against ill-treatment *below the threshold of torture*. This is all the more regrettable, as the effective criminalization of ill-treatment in the draft proposal would have constituted a best practice example in comparative international practice on the fight against impunity. It has to be hoped that this setback can be attributed to an editorial mistake and will be remedied by the Moldovan legislator in the near future.

The second level of impact achieved by the Atlas of Torture project on the fight against impunity relates to the **promotion of necessary institutional reforms to ensure independent investigation and prosecution**. The activities in this field, particular the International Expert Conference, contributed to the development of concrete options for reforming the existing system of anti-torture prosecutors through an enhanced understanding of its current strengths and weaknesses. As the recommendations developed in the framework of the project directly relate to the milestones defined in the National Action Plan of the Justice Sector Reform Strategy, they can provide a useful reference in the ongoing process of reforming the prosecution services. In the short term, the activities strengthened the position of the anti-torture prosecutors and their relationship with other state and non-state actors.[64]

Thirdly, the project activities enhanced the understanding of the weaknesses of disciplinary procedures within the police and penitentiary department and the **need to strengthen internal accountability mechanisms** in order to ensure that the zero-tolerance policy in relation to torture is enforced internally within the law enforcement bodies. The activities in this field had an important agenda setting effect, resulting in the development of a follow-up project by the OSCE Mission to Moldova. Through the adoption of an inter-disciplinary approach and the inclusion of state and non-state actors, recommendations could be developed on necessary amendments to the legal framework regulating the relationship between criminal and disciplinary procedures, which are expected to be taken into account in the ongoing reform of the MIA. The most direct outcome, however, was an enhanced communication and cooperation between the internal investigation unit at the MIA and the anti-torture prosecutors, who – according to their own statements – had become more aware of the weak points in their procedural relationship. Moreover, the activities led to the open acknowledgement of reform needs within the MIA's internal accountability structures.

The least direct impact was achieved in relation to strengthening the capacities of defence lawyers due to the necessity to sequence project activities. However, with the initiation of a manual for defence lawyers on their role in torture prevention developed under the auspices of the ABA ROLI, the Atlas of Torture team has successfully handed over this topic to a locally based actor, which is in a much better position to reach out to the relevant target group.

3.4. Contributing to the reform of the National Preventive Mechanism

Intervention strategy

An effectively functioning National Preventive Mechanism conducting regular visits to places of detention is a crucial instrument contributing to gradually overcoming the underlying systemic

[64] All activities implemented in cooperation with or directly targeting the Anti-Torture Unit at the GPO are referenced in the response of the Republic of Moldova on the list of issues presented by the UN CAT Committee prior to the consideration of the 3rd periodic report, UN Doc. CAT/C/MDA/Q/3, 11 July 2012, available at http://particip.gov.md/public/documente/119/ro_1300_CAT-LoIPR-3rd-periodic-report-Republic-of-Moldova-(EN)-10.11.2013-final.doc.

factors for human rights violations of detainees and the persistence of torture and ill-treatment. Given the multiple structural problems faced by the Moldovan penitentiary system and psychiatric institutions and the prevalence of ill-treatment at the hands of law enforcement personnel, regular independent monitoring could function both as protection as well as deterrent to further abuse. Moreover, the NPM could become a motor for reforms through the development of structural recommendations how the situation in detention can be improved and the continuing evaluation of the effect of new policies and laws in practice. To achieve this, the Moldovan NPM clearly needed to be reformed to become a fully independent, professionally trained and sufficiently funded body.

Since the ratification of the OPCAT and the establishment of the NPM at the MCHR, the international community, in particular the UN, UNDP and the OSCE had continuously supported the NPM. The UNSRT and members of the Atlas of Torture team had already been engaged in capacity development of the NPM in 2009. In 2011, UNDP was in the process of training the new members and finalizing a project providing technical support to the MHRC.

Thus, at the time of the launch of the Atlas of Torture project, many different stakeholders were engaged in promoting the reform the Moldovan NPM. Most importantly, the Moldovan Government had acknowledged the necessity of clarifying the legal framework of the NPM as well as reforming the MCHR.[65] A separate Working Group had been initiated by the MOJ in 2011 to focus on revising the legal framework of the Ombudsinstitution, including the NPM. In November 2011, former UNSRT and Atlas of Torture project leader Manfred Nowak was invited to function as honorary chair of that Working Group. The Atlas of Torture team thus decided to support the official reform process through participation in the Working Group, with a focus on those aspects particularly concerning the NPM.

The activities and interventions by the Atlas of Torture project included providing sustained advice and comparative expertise based on best practice examples from other countries to support the decision on how the new Moldovan NPM should like. Once, the MOJ had decided on the institutional option, technical legal drafting support for the elaboration of a new legal basis of the NPM was provided. As access to the Working Group was limited to selected civil society representatives, the Atlas of Torture project also organized exchanges with NGOs on the draft amendments developed within the project. Furthermore, strong coordination was sought with those international and national actors directly involved in the Working Group in order to streamline recommendations. The sustained engagement of the Atlas of Torture project in this process heavily relied on the continuing involvement of Focal Points both within the Working Groups and outside throughout 2012 and 2013.

Project activities and results

Already during the second project visit, the Atlas of Torture team took part in the official Working Group at the MOJ on the reform of the Parliamentary Advocates, the MCHR and the NPM. This initial meeting was used to emphasize the importance of achieving legal compliance with the Paris Principles[66], and to encourage open discussions on the advantages and disadvantages of retaining the NPM within the realms of the institution of the Parliamentary Advocates versus the creation of a separate independent mechanism. The project Kick-Off Conference provided a further opportunity

[65] The MCHR had so far only been accredited with B-Status by the International Coordination Committee (ICC) of National Institutions for the Promotion and Protection of Human Rights, which accredits National Human Rights Institutions (NHRIs), and classifies them in A, B, and C categories, according to their compliance with the Paris Principles (Principles relating to the status of national institutions ("Paris Principles"), adopted by the UN Human Rights Commission Resolution 1992/54, 1992 and the UN General Assembly Resolution 48/134, 1993). The classification of the MCHR with "B-Status" in 2009 signalled that it could not be considered in full compliance with the standards of independence and professionalism set by the Paris Principles. For more information, see the Chart of Statutes of Accreditation, July 2013, available at www.nhri.ohchr.org/EN/Contact/NHRIs/Documents.

[66] See footnote 65.

for the Atlas of Torture team to broaden the discussion on the necessary reform of the NPM and the Centre and gather the different viewpoints from the Parliamentary Advocate heading the MCHR, members of the Centre as well as members of the Consultative Council working as part of the NPM. Participants agreed that a new organic law needed to provide for a separate budget line for the NPM, independent from the funding of the MCHR; a transparent selection of members of the NPM; and to ensure that the internal regulations guaranteed pluralistic decision-making procedures.

Further direct consultations could not be held as planned in early 2012, because the second meeting of the official Working Group, which was envisaged during the period of the third project visit, had been cancelled for other reform priorities. The Atlas of Torture team decided to keep up the momentum by providing a written advisory opinion to the MOJ, which highlighted once more the advantages of creating a separate mechanism as NPM outside the Ombudsoffice.[67] The document focused on the main areas of concern and concrete recommendations how to address them in a revised organic law for the NPM. The recommendations were subsequently supported by the Focal Points at the official Working Group during its next session in spring 2012.

A first version of the revised law on the Parliamentary Advocate was circulated by the MOJ in April 2012 with the request for comments. At that point in time, it had become clear that the Moldovan Government favoured the existing institutional model of an NPM within the Ombudsoffice. Based on the previously made generic recommendations, the Atlas of Torture team now commented directly on the draft law by developing a revised version of the Chapter IV of the law on Parliamentary Advocates relating to the NPM. One of the main aspects emphasised by the project was that the revised law needed to ensure the functioning of the Consultative Council as collegial decision-making body, fully equipped with all competences and rights in accordance with the OPCAT and selected according to professional experience and personal independence. To realise this in practice, the law also needed to specify necessary administrative support and ensure adequate resources and a separate budget line, including remuneration for the members of the Council based on the time invested. All these proposals were designed with view to remedying the existing lack of clarity in mandate and competences and ensuring proper funding of the mechanism in the future. The revised Chapter IV was discussed during a workshop with representatives of seven NGOs, who suggested further additions and validated the draft. Thus the project ensured broad ownership of the recommendations developed and raised awareness of the status of reform discussions beyond the members of the official Working Group. The finalised version of the draft proposal for Chapter IV was transmitted to the Ministry for further consideration in the Working Group. In addition, the NGO workshop provided the opportunity for civil society representatives to coordinate their input into the upcoming visit of the UN Sub-Committee on the Prevention of Torture scheduled for October 2012.

Throughout the summer 2012, new versions of the revised law on the Parliamentary Advocates were circulated by the MOJ, which included several amendments proposed by the Atlas of Torture project. For the next round of comments, the Atlas of Torture team coordinated further recommendations with the UN Mission to Moldova. A pre-final draft version was circulated by the MOJ with the Working Group members prior to its meeting in September 2012, in which the Atlas of Torture team again participated. Several important recommendations had been integrated into the revised law. However, domestic stakeholders in the Working Group remained divided on the role of the Parliamentary Advocate, the autonomy of the Council and its relationship with the MCHR. Following the Ministry's request to all participants to submit their written assessment of different institutional options, the Atlas of Torture team coordinated a Round Table in cooperation with UNDP to which all representatives of the international community and civil society experts were invited, who participated in the Working Group. The purpose of the Round Table was to enhance coordination between different actors.

[67] The document is available at www.atlas-of-torture.org.

In principle, participants at the Round Table favoured the establishment of the NPM as a body completely independent from the Ombudsinstitution, as such a model would prevent the risk of blurring the line between the preventive approach of an NPM and the mainly reactive mandate of the Ombudsoffice. In addition, the relatively strong and politicised position of the Ombudsman would risk dominating the NPM, which should be working in a collegial rather than a hierarchical manner. Taking into account that political decision-takers had excluded the option of creating an independent body, the experts at the round table concentrated their recommendations on ensuring adequate "safeguards" in the new draft law to mitigate the above mentioned risk factors. The joint commentary thus proposed inter alia to limit the role of the Parliamentary Advocate in the work of the NPM, ensure transparency in the selection of NPM members, increase the number of experts, and guarantee financial independence and budgetary autonomy for the NPM. The joint commentary[68] produced at the Round Table served to coordinate feedback to the MOJ between actors involved in the Working Group. In view of the upcoming visit of the SPT, the commentary was also shared with the Secretariat of the SPT to ensure that the developed recommendations would be taken into account in the review process by the Committee.

The report on the visit of the SPT[69], which had conducted its NPM-specific assistance mission in October 2012 was published in March 2013 and contained many aspects similar to the recommendations developed by the Atlas of Torture project, the UN Mission in Moldova and other actors. Throughout the summer of 2013, the Focal Points and local civil society actors continued their active engagement in the Working Group and subsequent public debates on the draft law organised by the MOJ. In particular, the Legal Resources Centre, developed several proposals for the Ministry of Justice and relevant parliamentary Commissions.[70] These follow-up activities proved decisive in ensuring that most of the recommendations and proposals developed within the Atlas of Torture project were successfully integrated into successive draft versions and supported through the public consultations process. In September 2013, the ministerial draft "Law on the People's Advocate", including the legal basis for the NPM, was submitted for approval to the Government Following several controversial discussions in Parliament, the draft law no 371 on People's Advocate was adopted in the final reading by the Parliament on 26.12.2013. At the time of finalising the report, the adopted text was not published yet on the Parliament's web page. Due to some essential changes during the parliamentary reading to the draft law which were not consulted with the civil society, more than 17 NGOs requested the president of the Republic of Moldova not to promulgate the recently adopted law.[71]

3.4.1 Evaluation of estimated impact of project activities on the reform of the NPM

As a consequence of the decision to focus project support on the Government-led reform process of the Ombudsoffice, the results achieved by the Atlas of Torture project on the reform of the NPM largely depended on the official working schedule. While meetings of the Working Group at the MOJ were irregular and often postponed due to changing reform priorities at the Ministry, the Atlas of Torture project contributed to maintaining the momentum for the reform of the NPM through the circulation of written advice and comments. In light of the abundance of national and international actors involved in the reform discussions, the project's main impact on the reform process was a strengthened coordination of expertise and advice provided by different international actors, including representatives of the UN, the Council of Europe, and the OSCE as well as civil society

[68] The document is available at www.atlas-of-torture.org.
[69] Report on the visit made by the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment for the purpose of providing advisory assistance to the national preventive mechanism of Moldova (Report for the national preventive mechanism), UN Doc CAT/OP/MDA/2, 30 May 2013.
[70] The documents are available at http://crjm.org/news/view/245.
[71] One of the main concerns raised by civil society organisations is that the new law requires the Ombudsoffice to proof 20 years of relevant professional experience, see the public statement available at http://crjm.org/news/view/259.

representatives active in the field of torture prevention and human rights. The workshop with civil society organizations also ensured a broadened awareness and ownership of the comments to the draft law developed by the project, thereby facilitating civil society contribution to the reform of the NPM. As a consequence of the activities implemented by the project in cooperation with other actors, the MOJ was supported by different national and international actors in a more coherent, targeted and well-coordinated manner.

On a substantive level, the project contributed to the development of suitable options for reforming the Moldovan NPM through combining comparative experience from other countries by the Vienna-based expert team with an in-depth understanding of the Moldovan practice provided by the Focal Points. The Atlas of Torture team thus ensured that the proposals developed within the project were not only in line with international standards and best practices but also adapted and suitable to the Moldovan context, which increased the likelihood of their acceptance by local decision-takers. Many of the substantive recommendations and proposals promoted by the project and supported by or coordinated with other actors have been integrated into the draft law submitted by the MOJ for public consultations. The impact that the project activities had on the formulation of the content of the draft law was officially recognized by the MOJ during the final round-table.

If adopted and implemented along the lines of the ministerial proposal, the new legal basis for the Moldovan NPM will clarify existing ambiguities as to the entity representing the NPM, strengthen the position of civil society experts, ensure at least de jure adequate funding and remuneration of the mechanism and its members, and has the potential of creating a more independent and effective torture prevention body, trusted by the general public. Thus, one of the main recommendations of the UNSRT and other anti-torture monitoring bodies would have been implemented. As a consequence of the envisaged comprehensive reform of the NPM, the mechanism would be equipped with the institutional conditions to function more effectively as a deterrent against torture and ill-treatment in Moldova. Moreover – in a longer term perspective - the Moldovan NPM could become an important motor for the implementation of necessary structural reforms in the penitentiary system, psychiatric institutions as well as pre-trail detention facilities in line with European and international human rights standards.

4. Follow-up to the project and further measures advancing the prevention of torture

During the final Round Table in January 2013, the Atlas of Torture project invited all state and non-state actors and representatives of the international community that had participated in project activities for an evaluation of the results and outcome of project activities. Participants took stock of improvements realized and measures necessary to ensure the sustainability of the progress achieved as well as future challenges and further steps envisaged to fully implement the recommendations of the UNSRT. Based on the results of the stock-taking exercise, the following sections provide a brief overview of the measures necessary to ensure the sustainability of outcomes achieved by the Atlas of Torture project and to further advance in the preventing and combatting torture and ill-treatment in Moldova.

4.1. Continuing the fight against impunity

With the adoption of the amended CCRM, a strong legal framework has been put in place for the effective fight against impunity. However, to ensure that the new provisions exert the envisaged deterrent effect, the level of punishments for cruel, inhuman and degrading treatment in Article 166[1] para. (3) and (4) of the CCRM should be changed in accordance with the original version of the ministerial draft proposal in order to ensure that ill-treatment below the threshold of torture is effectively punished with a prison sentence *in addition* to a monetary fine. Only if the sentencing level for ill-treatment takes into account the gravity of the offence (distinct from other forms of misconduct by public officials, such as excess of power), a **consistent approach against impunity of perpetrators of torture and ill-treatment** will be possible. Otherwise, the impact of the amended legal framework against impunity is significantly reduced and runs the risk of allowing for loopholes in the sentencing practice with the consequence of potentially even more lenient punishments than under the previously applicable provisions. To ensure that the amended legal framework bears fruits in practice, trainings for all actors involved in the fight against impunity (defence lawyers, prosecutors and judges) should include reference to the new legal qualifications of the offences of torture and other forms of ill-treatment and the according sentencing structure.

With the methodological recommendations for anti-torture prosecutors adopted as mandatory internal regulation, an important step has been achieved with view to changing the prosecutorial practice towards more effective investigations and prosecutions of torture cases in line with the requirements of international recommendations and the numerous judgments of the ECtHR. In order to ensure their application in practice, it would be highly desirable if the recommendations are systematically integrated into training of prosecutors both on an internal level as well as into the capacity development carried out or funded by international actors. A promising idea following-up to the methodological recommendations is an initiative planned by UNDP to develop and additional set of guidelines for prosecutors specifically addressing investigations into cases of torture and ill-treatment in psychiatric institutions. However, without **institutional reform of the system of anti-torture prosecutors** aiming at enhancing their independence, operational capacities and resources, the amended legal framework and strengthened methodology will remain dead letter. In particular, it will be indispensable that the independence of the anti-torture prosecutors from law enforcement services is ensured, inter alia, by ensuring that local prosecutors can work fully independently from local law enforcement bodies, by providing them with their own operational staff, fully trained and properly furnished with forensic equipment to carry out prompt, thorough and impartial investigations in line with the Istanbul Protocol. The recommendations gathered in the Outcome Document of the Expert Conference against Impunity implemented by the Atlas of Torture project may serve as guidelines in the institutional reform process to further advance in the implementation

of the UNSRT's recommendation on the creation of a fully independent mechanism for the investigation of torture allegations.

As a complementary strategy to the fight against impunity, it is to be hoped that the initial results achieved by the Atlas of Torture project with view to raising awareness on the importance of internal accountability procedures and their relationship with the criminal justice process will translate into a **strengthened organizational and procedural framework for in-service investigations** within the Ministry of Internal Affairs. In particular, it should be ensured that a reformed organizational set-up of the Directorate for Internal Investigation and Security guarantees sufficient impartiality and competences within the bureaucracy to exercise effective oversight over MIA personnel. Only if internal accountability structures are systematically mainstreamed into the reform of the Ministry of Internal Affairs will it be likely that reform measures, such as the adoption of internal regulations to enhance compliance with international human rights standards, bear fruits in the operational practice of the police. Similar reforms would be advisable within the Penitentiary Department. With respect to the complementary relationship between criminal and disciplinary procedures, the recommendations developed within the Atlas of Torture project as well as by the follow-up project of the OSCE Mission to Moldova may serve as guidance to amend the legislative framework on the time periods and statutes of limitations for in-service investigations and the application of disciplinary sanctions.

Another important milestone recommended by the UNSRT in the fight against impunity is the **establishment of confidential and accessible complaints mechanism and the effective protection of victims and witnesses from reprisals**. This recommendations has so far not been comprehensively taken up. While different avenues for complaints are available within different institutions, the respective systems of managing complaints and ensuring their prompt referral to the competent authorities need to be reviewed to ensure the protection of the rights of victims. Several safeguards recommended by the UNSRT and other international and regional torture monitoring bodies should be taken into account in this context: To limit the risk of reprisals, it has to be ensured that alleged victims are transferred to a different detention facility, if they would otherwise remain within the reach of the alleged perpetrator or his/her colleagues or superiors. In addition, the procedural framework for the investigation of allegations of torture or ill-treatment against public officials should be changed so as to stipulate the automatic suspension of the suspected persons from duty on full pay.

Another important aspect concerns the **availability and access to independent forensic expertise** by victims of torture, which should be attributed the same evidentiary value as forensic documents requested by the prosecutor. In this respect, important improvements have been achieved through a project implemented by UNDP aiming at diversifying the availability of forensic experts, strengthening their capacities and amending the respective provision in the CPCRM on the admissibility of medical and other documents submitted by victims. However, further support should be provided to civil society organizations providing independent and professional documentation of injuries, which is affordable and directly accessible by victims of torture.

4.2. Further strengthening legal safeguards

Whereas the amendments to the CPCRM adopted in the course of 2012 included several improvements relating to safeguards and the protection of rights of victims and witnesses in criminal proceedings, the most important structural safeguards against torture and ill-treatment repeatedly recommended by the UNSRT and other international and regional torture monitoring bodies are yet to be implemented. They concern the limitation of police custody to a maximum of 48 hours, after which the suspected person concerned has to be brought before a judge and either released or immediately transferred from the authority of the police to a pre-trial detention facility under a

different authority. The transfer of the suspects to a different authority than the one investigating the case significantly reduces the risk of torture and ill-treatment. However, the temporary detention isolators (IDPs), where suspects are held pending the investigations are situated within police commissariats. The decision of the Moldovan Parliament in May 2011 to transfer the authority over IDPs from the Ministry of Internal Affairs to the Ministry of Justice so far remains without effect pending the building of new arrest houses, which has been repeatedly delayed. The second structural recommendation concerns the lack of institutional independence of the para-medical service ("feldshers") employed in the penitentiary institutions and police commissariats. While the existence of a permanent para-medical service, tasked to ensure medical examination upon each entry or referral, is an important safeguard against torture and ill-treatment, the effectiveness of this measure is impeded by the sub-ordination of the para-medics to the authority of the head of the detention facility, thus risking conflicts of interests. To ensure the independence and compliance with highest professional standards, the authority over para-medics should be exclusively attributed to the Ministry of Health. The speedy implementation of these two institutional safeguards would significantly contribute to reducing the structural conditions conducive to torture and ill-treatment.

With regard to the important safeguard of access to a lawyer, the legal framework is in compliance with the international standards. However, in practice the system of legal aid lawyers and public defenders does not sufficiently guarantee availability of diligent and well trained lawyers. As an important measure to ensure effective access to justice, the capacity of the bar association should be strengthened to fully perform its tasks concerning the promotion of ethical standards, professional practices and capacities as well as ensuring adequate disciplinary procedures.

4.3. Ensuring the effective functioning of the NPM

The proposal of the Ministry of Justice for the new law on the People's Advocate (Ombudsperson), including a revised legal basis of the NPM as submitted to the Moldovan legislator, created the legal conditions for remedying existing deficiencies in the regulatory and organizational framework of the mechanism and implementing the recommendation of the UNSRT relating to the effective functioning of the NPM in practice. It is to be hoped that the law adopted by the Moldovan Parliament does not fall short of the ministerial draft law and will effectively set the stage for the establishment of a more functional, independent, and professional and fully funded national torture prevention body. Moreover, the new members of the NPM will require practical training on the exercise of their mandate. A further point to be addressed in the work of the future mechanism will be its cooperation with the local monitoring commission, which would be ideally suited to complement the preventive mandate of the NPM with a focus on direct humanitarian assistance to detainees in need.

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