



EVALUATION REPORT ON THE IMPLEMENTATION OF THE 2011-2016 REPUBLIC OF MOLDOVA JUSTICE SECTOR REFORM STRATEGY AND ACTION PLAN: PILLAR 6.4.3 “CAPACITY BUILDING OF INSTITUTIONS IN CHARGE OF THE DEPRIVATION OF LIBERTY TO PREVENT AND COMBAT TORTURE AND ILL-TREATMENT”, AND 6.4.5 “EFFECTIVELY COMBATTING ACTS OF TORTURE AND ILL-TREATMENT

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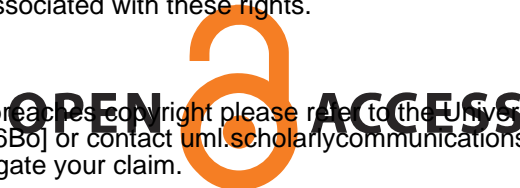
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**SUPPORT TO CRIMINAL JUSTICE REFORMS
IN THE REPUBLIC OF MOLDOVA**



**Ref. DGI(2016)4
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EVALUATION REPORT

**ON THE IMPLEMENTATION OF THE 2011-2016 REPUBLIC OF MOLDOVA JUSTICE SECTOR
REFORM STRATEGY AND ACTION PLAN:
PILLAR 6.4.3 "CAPACITY BUILDING OF INSTITUTIONS IN CHARGE OF THE DEPRIVATION OF
LIBERTY TO PREVENT AND COMBAT TORTURE AND ILL-TREATMENT", AND
6.4.5 "EFFECTIVELY COMBATING ACTS OF TORTURE AND ILL-TREATMENT"**

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LAW OF THE COUNCIL OF EUROPE**

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LIST OF ABBREVIATIONS

Strategy –Justice Sector Reform Strategy 2011-2016

CoE – Council of Europe

HRC – Human Rights Centre of Moldova

NPM – National Preventive Mechanism for Prevention of Torture

PPS –Public Prosecution Service

GPO –General Prosecutor’s Office

GPOSCT – General Prosecutor’s Office Section for Combating Torture

MIA – Ministry of Internal Affairs

NAC – National Anticorruption Centre

MoJ – Ministry of Justice

MoLSPF – Ministry of Labour, Social Protection and Family

MoH – Ministry of Health

MoE – Ministry of Education

NIJ – National Institute of Justice

CS – Customs Service

FFM – fact-finding mission to Chisinau held on 24 - 25 November 2015

P6WG - Working Group on Pillar 6 of the Justice Sector Reform Strategy 2011-2016

DPI – Department of Penitentiary Institutions

GPI – General Police Inspectorate

FC – Forensic Centre

NGO – Non Governmental Organisation

OHCHR –Office of the United Nations High Commissioner for Human Rights

UNDP – United Nations Development Programs

OPCAT – United Nation Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

Introduction

1. The 2011-2016 Justice Sector Reform Strategy (hereinafter – the Strategy) was approved by the Parliament of the Republic of Moldova by the Law no. 231 of 25 November 2011 and the Action Plan for the period 2011-2016 for its implementation was approved by the Parliament Decision no. 6 of 16 February 2012; the Action Plan was published in the *Official Journal* on 5 June 2012. The reference to the Strategy and Action Plan hereinafter will only refer to Pillar 6.4.3 and 6.4.5, the subjects of this Evaluation Report.
2. Pillars 6.4.3 and 6.4.5 of the Strategy are outlined below in Table I:

Table I. Pillar 6.4.3 and 6.4.5

Pillar	Specific intervention area	Responsible institution	Implementation milestones
6.4.3	Strengthening capacities of institutions' representatives responsible of deprivation of freedom (police, penitentiary system, CCECC, psychiatric institutions, psycho-neurological boarding homes and asylums) to prevent and combat torture and ill-treatment. Implementation deadline: 36 months.	Human Rights Centre (hereinafter HRC); National Mechanism for Torture Prevention (hereinafter NPM)	<ol style="list-style-type: none"> 1. Continuous monitoring of places of detention carried out 2. Draft amendment of the regulatory framework developed and adopted 3. Units monitoring the observance of human rights, created within institutions and directly subordinated to the managements thereof 4. Unannounced controls carried out in places of detention 5. National torture preventive mechanism consolidated 6. Staff of the national torture preventive mechanism, trained
6.4.5	Fighting efficiently against acts of torture and ill-treatment. Implementation deadline: 36 months.	General Prosecutor's Office (hereinafter-GPO), Ministry of Internal Affairs (hereinafter-MIA), National Anti-corruption Centre (hereinafter-NAC), HRC, Ministry of Justice (hereinafter-MoJ)	<ol style="list-style-type: none"> 1. The relevant legal framework standardized 2. Criminal penalties for acts of torture modified 3. Mechanism for documenting the mistreatment acts improved 4. Greater involvement of victims in the process of examination of mistreatment 5. Training on the investigation of cases of mistreatment carried out 6. Information campaigns on the absolute prohibition of torture carried out

3. The Action Plan for Pillars 6.4.3 and 6.4.5 comprising total of 10 actions and including outcome indicators and institutions in charge are presented below in Tables II and III:

Table II. Action Plan: Pillar 6.4.3

Action	Title	Outcome indicators	Institutions in charge
1	Analysis of the regulatory framework on the functioning of institutions in charge of the deprivation of liberty in respect of prevention and combating torture and ill-treatment; where appropriate, develop a draft amending the regulatory framework	<ol style="list-style-type: none"> 1. Analysis carried out and recommendations developed 2. Where appropriate, draft amendment to the regulatory frame-work developed 	HRC,GPO, MIA, NAC, Ministry of Health (hereinafter-MoH),Ministry ofLabour, Social Protection and Family (hereinafter-MoLSPF),Ministry of Education (hereinafter-MoE), MoJ

2	Establish internal, independent disciplinary mechanisms for the investigation of complaints on the torture and other ill-treatments	1. Regulation developed 2. Number of complaints reviewed	GPO, MoJ, MIA, NAC
3	Development or modification of the regulatory framework for the establishment of the obligation to report to the prosecutor all alleged cases of torture or other ill-treatment by the worker of the institution providing the detention of persons	Bill prepared and submitted for review to the Government	MoJ, NAC
4	Develop the draft amending the regulatory framework for the direct subordination to the General Prosecutor's anti-torture prosecutors	Draft amending the regulatory framework, drafted and submitted for review to the Government	MoJ GPO
5	Training employees of the institutions that provide detention of persons in preventing and combating torture and ill-treatment	1. Number of courses conducted 2. Number of people trained	GPO, MoJ, MIA, NAC, MoH, National Institute of Justice (hereinafter-NIJ), Academy "Stefan cel Mare"
6	Ongoing monitoring of detention facilities, including unannounced inspections	1. Monitoring carried out 2. Monitoring reports prepared and disseminated 3. Number of controls carried out	CHR, GPO, MoJ, MIA, NAC, MoH

Table III. Action Plan: Pillar 6.4.5

Action	Title	Outcome indicators	Institutions in charge
1	Develop the draft amending the regulatory framework to ensure professional independence of medical workers in the detention facilities through their transfer to the MoH, in order to render probative value to the independent medical examination in cases of alleged torture, to eliminate contradictions in the qualification of actions as acts of torture, and for tightening penalties for acts of torture in correlation with the severity thereof	Draft amendment of the regulatory framework, developed	MoJ, CHR, GPO, MIA, NAC, Customs Service (hereinafter -CS), MoH
2	Develop the draft law on the establishment of compulsory medical examination of persons deprived of liberty at each receipt in / release from detention	1. Working group created 2. Bill prepared and submitted for review to the Government	MoJ, GPO, MIA, NAC, CS, MoH, MoLSPF
3	Endowment of the Forensic Centre with the necessary equipment for medical documentation and conducting appropriate forensic examinations in all cases that were notified, were claimed or were assumed acts of torture	Equipment purchased	MoH
4	Develop the draft amending the Criminal Code no. 985-XV of 18 April 2002 to exclude contradictions concerning the definition of torture and other ill-treatments	Bill prepared and submitted for review to the Government	MoJ

4. Prior to this evaluation the Moldovan authorities had determined that all of the 10 actions had been implemented.
5. Arrangements for this evaluation were made by the Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law of the Council of Europe (hereinafter CoE) within the framework of the Council of Europe project “Support to Criminal Justice Reforms in the Republic of Moldova”, financed by the Government of Denmark.
6. The evaluation team¹, Yuriy Belousov, Pavel Postica and Dr Graham Smith, the CoE Consultants, are grateful to the staff of the CoE Project ‘Support to Criminal Justice Reforms in Moldova’ team in Chisinau, particularly the Project Manager, Margarita Galstyan, Lucia Popescu and Nelea Bugaevski, without whom this evaluation would not have been possible. We also wish to thank the two interpreters that accompanied us during our two days fact-finding mission to Chisinau on 24 and 25 November 2015 (hereinafter-FFM), and the warm welcomes and assistance we received from the Republic of Moldova criminal justice sector and NGO representatives we met during our visit.

II. Methodology

8. For each of the 10 actions itemised under Pillars 6.4.3 and 6.4.5, the Strategy and Action Plan listed indicators of implementation status and outcomes, respectively (see Tables I and II above). Each indicator related to process matters, namely that a stated action should be introduced, and not to the quality of the action implemented. Thus, for each of the 10 actions the Action Plan did not provide the means by which implementation of the Strategy could be qualitatively evaluated. The absence of a baseline of the circumstances that prevailed four years ago created major difficulties for the conduct of an effective evidence based qualitative evaluation of the Strategy.² As a result, the evaluation methodology focussed on ascertaining as

¹ Mr Yuriy Belousov- Representative of the Ukrainian Parliamentary Commissioner for Human Rights, Head of the National Preventive Mechanism Department; Mr Pavel Postica- Lawyer, Program Director, Promo-LEX Association, Responsible for Monitoring Democratic Processes Program Coordination; Dr Graham Smith- Director of Social Responsibility; Senior Lecturer in Regulation, University of Manchester School of Law, United Kingdom

² A range of reports which outlined conditions existing prior to, and shortly after adoption of the Strategy and Action Plan were available to the evaluation team. These reports were important for providing background information, but the general picture they provided could not serve as a substitute for specific evaluation baselines. The reports included: Commissioner for Human Rights (2009) *Report by Thomas Hammarberg Commissioner for Human Rights of the Council of Europe Following his visit to Moldova 25 to 28 April 2009*, CommDH(2009)27 (English only); Svanidze, E. (2009) *Country Report on Moldova: Combating Ill-treatment and Impunity and Effective Investigation of Ill-treatment*, Council of Europe/European Union; Committee for the Prevention of Torture (CPT 2009) *Report to the Moldovan Government on the visit to Moldova carried out by the European Committee for the Prevention of Torture and Unhuman or Degrading Treatment or Punishment (CPT) from 27 to 31 July 2009*, CPT/Inf (2009) 37; Moldovan Government (2010) *Response of the Moldovan Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to Moldova from 27 to 31 July 2009*, CPT/Inf (2010) 9; Commissioner for Human Rights (2011) Findings and observations of Thomas Hammarberg Commissioner for Human Rights of the Council of Europe following his visit to Moldova from 19 to 22 October 2011, CommHR/Bu/sf 113-2011 CommDH(2012)3; CPT (2012) *Report to the Moldovan Government on the visit to the Republic of Moldova carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 1 to 10 June 2011*, CPT/Inf (2012) 3; Commissioner for Human Rights (2013) *Report by Nils-Muiznieks Commissioner for Human Rights of the Council of Europe Following his visit to Moldova from 4 to 7 March 2013*, CommDH(2013)19 (English only); Moldovan Government (undated) Comments of the

comprehensively and accurately as practically possible the current condition of the effectiveness of the Strategy for combating and preventing torture and ill-treatment.

9. The evaluation relies on two types of data source: documents – legal, regulatory, statistical, and official reports – translated into English³; and meetings⁴, conducted during the FFM on 24 and 25 November 2015 with representatives of the CoE Office in Chisinau; four NGOs (Legal Resources Centre of Moldova; Institute for Penal Reforms; Medical Rehabilitation Centre for Torture Victims – “Memoria”; Human Rights Embassy); the Ombudsman (People’s Advocate) and his Office; Pillar 6 Working Group of the Strategy (P6WG); Chisinau offices of the United Nations Office of the High Commissioner for Human Rights and United Nations Development Programme; Department of Penitentiary Institutions (DPI); MIA and General Police Inspectorate (GPI); General Prosecutor’s Office Section for Combating Torture (GPOSCT); NIJ; Forensic Centre (FC); and Mr Eric Svanidze, Team Leader of the EU Project ‘Support to the co-ordination of Justice Sector Reforms in Moldova’.
10. The complexity of the task the evaluation team faced is apparent when considering that the Action Plan for Pillars 6.4.3 and 6.4.5 required nine institutions of the Republic of Moldova to introduce change in 10 actions, or work areas. Adding together the reforms expected of each institution as detailed in Tables I and II above, there was the potential for a total of 65 work areas to be evaluated. Relevant to each of these work areas were a range of cross-cutting laws, governmental or ministerial directions/orders and other types of policy documents/initiatives that had been introduced over the course of four years.
11. The methodology rationalised the evaluation by breaking the task down into manageable parts. Firstly, according to type of measure to be evaluated; secondly, three stages of an evaluation process were identified; and, thirdly, six core work areas were identified.
12. Two types of measure to be evaluated were identified. These are, firstly, the prevention standards, as set out in primary and secondary legislation, governmental and ministerial directions, orders, and the like, which comprise the regulatory framework for combating and preventing torture and ill-treatment. (It is important to note that ill-treatment may occur as a consequence of human behaviour or conditions under which people are detained.) Secondly, there are the practical measures implemented for the purpose of preventing, investigating and prosecuting torture and ill-treatment, which relate to the application of the prevention standards.
13. The evaluation process was conceptually broken down into three stages or questions.
 - a. What is the state of implementation of the prevention standards?
 - b. Have the prevention standards been practically applied?
 - c. What has been their impact?
14. The 10 actions of Pillar 6.4.3 and 6.4.5 overlap and six core work areas were identified upon which a systematic and structured review of the data for evaluation could be developed.
 - A. Regulatory framework (Pillar 6.4.3 Actions 1-6 and Pillar 6.4.5 Actions 1-4)
 - B. Complaints mechanisms (Pillar 6.4.3 Actions 2 and 3)

Moldovan authorities to the Report of Commissioner for Human Rights of the Council of Europe following his visit to the Republic of Moldova from 4 to 7 March 2013.

³See the list of relevant laws and regulations in the Annex

⁴The English/Romanian or Russian interpretation was ensured during the meetings when required.

- C. Prosecution of torture and ill-treatment offences (Pillar 6.4.3 Actions 2 – 4)
- D. Training (Pillar 6.4.3 Action 5)
- E. Inspection, monitoring and National Preventive Mechanism (Pillar 6.4.3 Action 6)
- F. Medical and forensic provision (Pillar 6.4.5 Actions 1-3).

III. Evaluation of core work areas

A. Regulatory framework

- 15. Pillar 6.4.3 Action 1, which reflects the overarching aims and objectives of the Strategy, laid down that analysis of the regulatory framework for preventing and combating torture and ill-treatment, and amendment where appropriate would be undertaken, see above Table II. In addition, reference is made to regulatory reform in Actions 3 and 4 of Pillar 6.4.3 and Actions 1, 2 and 4 of Pillar 6.4.5.
- 16. The standards available to the evaluation team in English, and their purpose in the context of preventing and combating torture and ill-treatment are presented in Table IV below:

Table IV. Prevention of torture and ill-treatment standards (regulatory framework)

Title	Purpose
Constitution of the Republic of Moldova: adopted on July 29 1994	Article 4. Human rights and freedoms (1) Constitutional provisions for human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties endorsed by the Republic of Moldova. (2) Wherever disagreements appear between conventions and treaties signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations.
Law No. 985-XV of 18/04/2002: The Criminal Code of the Republic of Moldova	Legislative act including the norms of law that set the general and special principles and provisions of criminal law, determine the acts that constitute crimes, and set the penalties applied to criminals.
Law No. 122-XV of 14/03/2003: The Criminal Procedure Code of the Republic of Moldova	Protect individuals, society and the state from crime and to protect individuals and society from illegal acts of officials in the course of investigating crimes either alleged or committed so that any person who has committed a crime is punished to the extent of his/her guilt and no innocent person is subject to criminal liability and convicted.
Law No. 252 of 08/11/2012 amending and supplementing certain legislative acts	Amend Criminal Code and Criminal Procedure Code to address conflicts regarding the definition of torture and amend laws to facilitate effective prevention
(Extract) Regulation No. 77/572/408/639-o/197/1589 of 31/12/2013 concerning the procedure for identifying, registering and reporting alleged cases of torture	Establish mechanisms for the identification, registration, reporting and examination of complaints concerning acts of torture, to ensure efficient inter-department co-operation and the prosecutor’s possibility to respond swiftly to such acts
Draft law on the Public Prosecution Service – hereinafter Draft law on PPS (undated, 2014)	“Steps to secure the autonomy of individual prosecutors and the service’s own independence from external influence, the structure of the service and its demilitarisation, the appointment, tenure and removal of the Prosecutor General, the

	appointment and promotion of other prosecutors, as well as the performance evaluation and the disciplinary procedures.” ⁵
Order No.34/11-1093 of the Head of General Directorate Prosecution of General Police Inspectorate of 27/02/2014 concerning the assurance of compliance with the fundamental rights and liberties of persons detained during criminal proceedings	Guidance on criminal investigation procedure and safeguards for suspects
Law No.52 of 03/04/2014 on the People’s Advocate (Ombudsperson)	“Strengthening the capacity and efficiency of this institution, as recommended by relevant international institutions in recent years.” ⁶ “Considering the Law to be “as a step forward in the process of establishing a well-functioning NPM in Moldova. However, the Law requires further revision in order to be in line with international standards and best practices to enable the NPM to function effectively.” ⁷
Government Decision No. 716 of 28/08/2014 approving the regulation of the registry of detained, arrested and sentenced persons	Ensure that the Regulation providing for electronic recording of detainees is brought into effect
Government Decision No. 901 of 27/10/2014 on the approval of the action Plan for the reorganisation of health services in prisons for the years 2015-2016 (extract)	Improving management, funding, quality, professionalism of healthcare services in prisons

17. Pillar 6.4.5 Action 2 set out that the law on the establishment of compulsory medical examination of persons deprived of liberty at each receipt in / release from detention would be developed to provide for the medical examination of detainees on their detention and release. Law No. 252 of 08/11/2012 Article III amended the Enforcement Code No. 443-XV of 24/12/2004. It is accepted that the prevention standard of this Action has been implemented and applied (see Paragraph 65, below).
18. Pillar 6.4.5 Action 4 set out that the Criminal Code would be amended for the purpose of correcting contradictions in law on the definition of torture and ill-treatment. Law No. 252 of 08/11/2012 Article I amended the Criminal Code. It is accepted that the prevention standard of Action 4 has been implemented and applied, and reform of the Criminal Code and Criminal Procedure Code has had a positive impact and contributed to the prosecution and conviction of torture offences.
19. There has also been significant improvement to the reporting and investigation of allegations of torture and ill-treatment as a result of Pillar 6.4.3 Action 3 and 4 (see Paragraphs 25-36, below).

⁵Joint Opinion on the Draft Law on the Prosecution Service of the Republic of Moldova adopted by the Venice Commission at its 102nd Plenary Session (Venice, 20-22 March 2015), Venice Commission Opinion no. 791/2014, ODIHR Opinion-Nr.: CRIM-MOL/266/2015, para. 10.

⁶Opinion on the Law on the People’s Advocate (Ombudsperson) of the Republic of Moldova adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015), Opinion no. 808 / 2015.

⁷Opinion of the Directorate General Human Rights and Rule of Law, (Directorate of Human Rights) of the Council of Europe on the Law no. 52 of 3 April 2014 on the People’s Advocate (Ombudsperson) of the Republic of Moldova Chapter V, The National Mechanism for the Prevention of Torture, DGI(2015) 25, paras. 94-95.

20. The strategy for reform of the regulatory framework for preventing and combating torture and ill-treatment is highly complex, and clarification of the framework was not forthcoming during the course of the evaluation team's fact-finding mission. Testimony was provided that analysis early in the programme was not followed through, which was attributed to disorganisation. In regard to amendment and improved effectiveness of the regulatory framework, testimony was received from several stakeholders that torture and ill-treatment is under-reported at present. The experiences of people with disabilities and criticism that medical treatment is used as a method of punishment are of particular concern.
21. Confusion has resulted from the practice of enacting laws pending advice from international bodies, the Venice Commission for example, followed by introduction of further legislative reform on the recommendation of the international bodies consulted, which may have unintended consequences for the integrity of the regulatory framework. With particular reference to Law No. 52 of 03/04/2012 on the People's Advocate (Ombudsperson) (which requires further amendment) and the Draft Law on PPS (which has not yet been implemented), this reiterative approach is less than satisfactory and has resulted in an ad hoc and haphazard approach to reform. Several senior practitioners gave testimony to the evaluation team that in their opinion the effect of some legislative reforms was to undermine the effectiveness of the system for protecting against torture and ill-treatment rather than improve it.
22. For the regulatory framework to be effective it is necessary that allegations of torture and ill-treatment are effectively investigated and offenders are held accountable to the law. Public trust and confidence in the institutions responsible for preventing torture and ill-treatment is damaged if this is found not to be the case. Concern was expressed to the evaluation team that a culture of impunity exists as a consequence of failure to prosecute high ranking criminal justice practitioners in a number of resonant cases as of 2009 (i.e. allegations dating back to 2009 for which there is a public interest in pursuing criminal proceedings and which have become associated with investigative and evidential difficulties).
23. Responsibility for the regulatory framework rests with the P6WG, the largest introduced for overseeing implementation of the Strategy. The P6WG has been faced with the task of co-ordinating a collection of prevention standards that they have not had express responsibility for the design or implementation of. The expectation that the P6WG would be able to co-ordinate the implementation of standards that are fundamental to the prevention of torture and ill-treatment was unrealistic. These difficulties have been exacerbated by a turnover in P6WG membership and a resulting lack of continuity in the reform programme⁸. It is apparent that committed senior practitioners who display a willingness to seriously reflect on their duties and responsibilities are frustrated with the Strategy and are suffering from reform fatigue. Several senior practitioners attributed the lack of progress on the Strategy to 'lack of political will' on the part of the Moldovan authorities. It is found that the P6WG is now largely dysfunctional and monitoring and oversight of the Strategy is currently ineffective.
24. It is evident that Action 1 of Pillar 6.4.3 has had a positive impact, and the Strategy is responsible for significant improvement in the regulatory framework for preventing and combating torture and ill-treatment. However, on the evidence presented to the evaluation team Action 1 of Pillar 6.4.3 has not been implemented in full and the quality of its impact has been mixed.

⁸ See also, The Secretariat of the working groups coordinating and monitoring the implementation of the JSRS 2011-2016 (2014) *2013 Annual report on the implementation of the Justice sector reform strategy for the years 2011-2016*: page 38

B. Complaints mechanisms

25. Action 2 of Pillar 6.4.3 set out that a disciplinary mechanism for the investigation of complaints of torture and ill-treatment would be established: Action 3 set out that regulatory reform would be undertaken to require institutions responsible for detention facilities to refer all torture and ill-treatment allegations to the Prosecutor's Office.
26. The complaints framework was reformed by Regulation No. 77/572/408/639-/197/1589 of 31/12/2013 (hereinafter the 31/12/2013 Regulation). This Regulation applies to law enforcement bodies, border police officers, police officers, prison staff, staff of the National Anticorruption Centre, of the Customs Service, and healthcare workers in healthcare establishments. The 31/12/2013 Regulation requires institutions with responsibilities for detention facilities to establish mechanisms for the registration, reporting and examination of allegations of torture and ill-treatment; inter-departmental co-operation; and prompt forwarding of allegations to the Prosecutor's Office. Government Decision No. 716 of 28/08/2014 (see Table IV, above) required the implementation of automated information systems for the registration of detained, arrested and suspected persons.
27. Representatives of the DPI described the internal torture and ill-treatment procedures to the evaluation team. The DPI has a contract with the Post Office to collect detainees' complaints from post boxes which are provided in every penitentiary. Detainees may complain to anyone they choose, including the DPI, MoJ, GPO, Ombudsperson or President of the Republic of Moldova. All complaints that are the responsibility of the DPI are eventually forwarded to the Secretariat of the Public Relations Director of the DPI where they are electronically processed (in compliance with Government Decision No. 716 of 28/08/2014). The Deputy Director of the DPI forwards complaints to the appropriate authority, and allegations of torture and ill-treatment are forwarded to the Directorate of Internal Security of the DPI. The Directorate, comprising a Head, Deputy Head and four senior investigators (trained in investigating disciplinary offences) forwards the allegation to the GPO within 24 hours. The Directorate is responsible for the internal disciplinary mechanism and will decide whether or not to commence an internal disciplinary investigation into the allegation in accordance with DPI guidance. This procedure has been followed since application of the 31/12/2013 Regulation. It was not said if any internal investigations associated with 32 allegations of torture and ill-treatment received in 2014 and 18 to date in 2015 had been opened. It was said that the Directorate of Internal Security investigated 163 complaints in 2014 and 121 to date in 2015: no employee of the DPI has been disciplined as a consequence, and on no occasion has the recommendation of the investigation officer not been acted upon. When asked about research and analysis of complaints, the evaluation team was informed that the DPI only investigates complaints against employees.
28. Representatives of the MIA and GPI informed the evaluation team that a complaint about the conduct of a police officer has to be recorded in the same way as any other notifiable incident. In every police office there is a notice board on which information about how to make a complaint is displayed. When a detained person is brought before an investigating officer and complains of torture or ill-treatment, the officer is obliged to report to his or her senior officer who, in turn, is obliged to report to the Head of the GPI and Prosecutor. The Internal Protection and Anti-corruption Section of the MIA will be informed and a decision will be made whether or

not to open an internal investigation⁹. When asked to describe the internal investigation process, there was some confusion between the MIA and GPI representatives present (which may be attributable to misunderstandings arising from language translation).. It would appear that written guidelines to explain in plain language how regulations are to be applied in practice, which is helpful to those responsible for investigations and those who seek to challenge whether allegations of torture and ill-treatment have been effectively investigated, are not in place. MIA statistics on disciplinary proceedings as a result of complaints of torture and ill-treatment against police officers are presented below in Table V:

Table V. Torture and ill-treatment disciplinary proceedings against police¹⁰

Year	No. of complaints	No. disciplined
2012	27	-
2013	46	-
2014	70	4
Jan-Oct 2015	23	2

Research and analysis of complaints is also undertaken by the MIA, and risk assessments and torture prevention action plans are disseminated.

29. It is accepted that Actions 2 and 3 of Pillar 6.4.3 have been largely implemented and applied, a qualification being the Government Direction No. 716 of 28/08/2014 has not been applied by the MIA. Testimony received by the evaluation team on the impact of the 31/12/2013 Regulation was generally positive. The GPOSCT Chief Prosecutor said that before application the police were investigating torture allegations against police and his office were aware of unreported cases. Within three months of application the number of referrals increased eight fold from about six to 50 a month.
30. Representatives of NGOs, OHCHR and UNDP, and the Ombudsman were more cautious about current reporting practice. They acknowledged that the situation has improved, but there is a 'hidden figure' of torture as a result of the tendency for some victims not to complain. Reluctance to complain was ascribed to fear of repercussions, complainants not knowing their rights or how or who to complain to, and mistrust of the complaints system. The statistics on torture and ill-treatment provided to the evaluation team lend support to these testimonies.
31. Victims of torture and ill-treatment may also complain to the Ombudsperson. The Ombudsperson records the complaints under Article 24 of the Constitution of Moldova¹¹ and statistics for the years 2008 to 2014 are presented in Table VI.

Table VI. Article 24 complaints to the Ombudsperson¹²

Fundamental right (Art. 24 of the Constitution of the Republic of Moldova)	Years						
	2008	2009	2010	2011	2012	2013	2014
The right to physical and mental integrity	264	536	422	280	217	224	167

⁹ Pts. 41-42 of the Regulation No. 77/572/408/639-o/197/1589 of 31/12/2013 concerning the procedure of identifying, registering and reporting of the alleged cases of torture, inhuman and degrading treatment, approved by the Order of the General Prosecutor's Office no. 77 of 31/12/2012.

¹⁰ Internal Protection and Anticorruption Section of the Ministry of Internal Affairs' information regarding claims received by the Secretariat of alleged cases of torture and maltreatment; inhuman and degrading treatment against police employees: figures forwarded by the MIA to the evaluation team.

¹¹ Article 24(3) No one may be subjected to torture or to cruel, inhuman or degrading punishment or treatment.

¹² Centre for Human Rights of Moldova (2015) *Report on the observance of human rights in the Republic of Moldova in 2014*; page 318.

Alleged torture	25	75	93	50	35	36	23
Alleged inadequate detention conditions	169	226	249	155	114	131	106

The evaluation team was told that the most prevalent complaints are about conditions in prisons and torture and ill-treatment in the early hours of police detention. The Ombudsperson does not have powers to conduct formal investigations and reviews complaints.¹³ Complaints of torture and ill-treatment are forwarded to the Prosecution Office, and the Ombudsperson may request that the Prosecutor open an investigation. After reviewing a complaint, the Ombudsperson may make recommendations in order to correct behaviour, improve conditions of detention and prevent torture and ill-treatment.¹⁴

32. The duties of the recently established Patients' Advocate who is responsible for handling complaints relating to the provision of medical care in the psychiatric institutions were explained to the evaluation team by the UNDP representative. Set up and currently funded by the UNDP, the Patients' Advocate reports directly to the MoH. A senior lawyer, the Patients' Advocate records and investigates complaints and has rights of access to the MoH and the courts.
33. Different interpretations of the 31/12/2015 Regulation were apparent to the evaluation team in the testimonies of practitioners, which have resulted in their being applied differently and uneven impact of Actions 2 and 3. The MIA/GPI has adopted a broad approach and in addition to referring complaints of torture and ill-treatment to the Prosecution Office, opens internal investigations and researches and analyses complaints. The DPI in contrast, has adopted a narrow approach and maintains that complaints of torture and ill-treatment are the sole responsibility of the Prosecution Office. On this evidence, the preventative impact of Actions 2 and 3 has been to a higher standard in the MIA/GPI than in the DPI.
34. Testimony from DPI, MIA/GPI representatives and the GPOSCT Chief Prosecutor in regard to communication between departments were inconsistent. DPI, MIA/GPI representatives told the evaluation team that the Prosecution Office did not reliably inform them of decisions regarding torture and ill-treatment referrals. The GPOSCT Chief Prosecutor, in contrast, stated that a decision on whether or not to open an investigation would be taken within 15 days of receipt and the referring institution would be informed of that decision (see Paragraph 38, below). On this evidence it is held that there is a gap in the complaints mechanisms that gives rise to the risk that complaints of torture and ill-treatment that do not meet the required threshold to open a criminal investigation, but do meet the threshold for investigation of a breach of discipline, may not be investigated.
35. The limitations identified on the impact of Actions 2 and 3 in the two preceding Paragraphs indicate a further inadequacy in the complaints mechanism core work area. An effective inter-departmental forum on complaints and discipline, including the Ombudsperson's Office, Patient's Advocate, NPM and the Government Agent to the Department for the Execution of Judgments of the European Court of Human Rights,¹⁵ would have contributed to more consistent interpretation and application of the 31/12/2013 Regulation and the sharing of best practice across the sector.

¹³ On the Ombudsperson's powers to review complaints see Law No.52 of 03/04/2014 on the People's Advocate (Ombudsperson) Articles 18-23.

¹⁴ Law No.52 of 03/04/2014 on the People's Advocate (Ombudsperson) Article 24(2).

¹⁵ It is noted that MIA/GPI representatives were unfamiliar with the Action Plan for the *Corsacov* Group of Cases when raised during the meeting with the evaluation team.

36. It is found that implementation of Actions 2 and 3 of Pillar 6.4.3 has not been an unqualified success and the quality of impact on the effectiveness of practice to combat and prevent torture and ill-treatment has been limited.

C. Prosecution of torture and ill-treatment offences

37. Pillar 6.4.3 Action 4 set out that the regulatory framework would be amended to provide for the appointment of specialist torture prosecutors under the direct authority of the Prosecutor General.
38. There is evidence that the prosecution of torture and ill-treatment offences work area has improved under the Strategy. The GPOSCT Chief Prosecutor and representatives of his Section explained developments in torture and ill-treatment prosecution procedure to the evaluation team. Order No. 365-p of 24/05/2010¹⁶ of the General Prosecutor established the GPOSCT in Chisinau, which comprises four prosecutors who work exclusively on torture and ill-treatment cases directly under the authority of the General Prosecutor. In each territory of Moldova one specialist torture prosecutor was appointed, two or three in larger territories, under the authority of the regional chief prosecutor (these prosecutors also undertake duties unrelated to torture and ill-treatment). (In total there are currently approximately 70 specialist torture prosecutors across the country.) Inexperienced specialist prosecutors and judges underwent training on international standards for the prevention of torture and ill-treatment and they found that the regulatory framework of Moldova was inadequate. Stakeholders collaboratively contributed to the reform of the Criminal Code, Criminal Procedure Code and Enforcement Code (Law No. 252 of 08/11/2012) and drafted what was to become the 31/12/2013 Regulation (see above, Paragraph 26). Under the Criminal Procedure Code Article 274 para. 3¹ a decision to open an investigation into a torture or ill-treatment allegation must be taken within 15 days. A decision not to open an investigation may be appealed to a superior prosecutor and then to an Investigating Judge. The referring institution is informed of the reason for a decision not to open an investigation, and the referral is archived.
39. The GPOSCT Chief Prosecutor informed the evaluation team that before 2012 nobody had been imprisoned as the result of a torture or ill-treatment investigation. In 2013 one officer was convicted and sentenced, and in 2014 14 police officers were sentenced following conviction in eight cases. Recorded allegations of torture and ill-treatment and criminal charges brought between 2009 and 2014 are presented in Table VII, below.

Table VII. Torture and ill-treatment criminal proceedings: 2009-2014¹⁷

Year	No. of recorded allegations	No. of criminal charges brought
2009	992	159
2010	828	126
2011	958	108
2012	970	140
2013	719	157
2014	663	118

¹⁶ <http://www.procuratura.md/md/struct/>

¹⁷ Centre for Human Rights of Moldova (2015) *Report on the observance of human rights in the Republic of Moldova in 2014*: pages 324-325.

Statistical data on torture and ill-treatment cases, including breakdowns of alleged offence, status of victim, location of alleged offence, violence complained of and injuries sustained, were provided to the evaluation team for the year 2014.

40. In their testimony to the evaluation team, NGO, OHCHR and UNDP representatives expressed concern with torture and ill-treatment investigations in the following areas:
- a. Failure to prosecute high ranking criminal justice officers after the April 2009 events¹⁸ excesses damaged public trust and confidence in the prosecution authorities, and contributes to the widespread perception of ongoing impunity.
 - b. The accuracy of official statistics is a concern, particularly in light of the lack of independent monitoring, and under-recording of torture and ill-treatment is a major problem.
 - c. The reduced numbers of torture and ill-treatment allegations recorded in the last two years was partly attributed to a decline in public trust and confidence in complaints and prosecution procedures.
 - d. The independence of prosecutors in the territories is undermined as a consequence of operational directives issued by superior prosecutors.
 - e. The impartiality of prosecutors is problematic, and it is believed that the priority is to seek evidence that an offence did not occur.
 - f. The quality of the victim's lawyer is an important determinant of the adequacy of an investigation.
 - g. Inadequate investigation of allegations of psychological torture, and in psychiatric hospitals and social care homes were particularly singled out for criticism.
41. It is found that good practice has been developed by the GPOSCT. It is not accepted that Action 4 of Pillar 6.4.3 has been fully implemented or applied, and it is found that poor and inadequate prevention standards and practices need to be addressed.
42. The 15 day deadline for opening a criminal investigation does not meet the requirement to promptly investigate allegations of torture and ill-treatment and risks the adequacy of investigations¹⁹. Preliminary investigation measures, such as searches, seizing of evidences, medical and corporal examinations could and should be carried out immediately, prior to an official decision to open a criminal investigation.

Governance arrangements, particularly at the regional level, are insufficient to ensure that investigations of allegations of torture and ill-treatment are not subjected to external interference.

¹⁸ On 5 April 2009 were organised the Moldovan parliamentary election. On 7 April, before the official results were announced, began protests in major cities of Moldova (including Balti and the capital, Chisinau). The demonstrators claimed that the elections, which saw the governing Party of Communists of the Republic of Moldova (PCRM) win a majority of seats, were fraudulent, and alternatively demanded a recount, a new election, or resignation of the government. The demonstration, numbering over ten thousand, most of them students and young people, gathered in the city centre on Stefan cel Mare boulevard. The protest against the announced election results turned into clashes with the police, who used tear gas and water cannons. However, the police were soon overwhelmed by the number of the protesters. Rioters broke into the nearby parliament building and the office of president. Entering the building through broken windows, demonstrators set parts of the building on fire, using documents and furniture both inside and outside. The building was retaken by the police later in the evening. On the night following April 7, around 1 AM, police forces routed the remaining crowds in the main square and arrested about 200 participants. On the following day, more arrests were issued, with demonstrators beaten and transported away in police cars. Similarly, footage showed demonstrators getting dragged away and beaten by what appeared to be plain-clothes police officers. Hundreds of people arrested following the civil unrest were subject to cruel, inhuman or degrading treatment, being beaten with clubs, water bottles, fists and feet, were denied food and access to legal counsel, and brought before judges in batches of six and collectively charged.

¹⁹ Art 274(3/1) of the Criminal Procedure Code No. 122-XV adopted on 14.03.2003

43. Outstanding legislative reform is the primary obstacle to implementation of Action 4 of Pillar 6.4.3. In March 2015, in response to a request for advice from the MoJ of Moldova, the Venice Commission adopted the joint opinion of the Venice Commission, Council of Europe Directorate of Human Rights of the Directorate General of Human Rights and Rule of Law and the Organisation for Security and Co-operation Office for Democratic Institutions and Human Rights on the 'Draft Law on the Prosecution Office of the Republic of Moldova.'²⁰ The joint opinion made five recommendations for improvement of the 'Draft Law on PPS.
44. In the opinion of the evaluation team, the Draft Law on PPS, Article 9 Specialized Prosecution Offices does not meet the requirement to create specialist torture and ill-treatment prosecutors directly under the authority of the General Prosecutor, as set out in the Strategy. Nor does the Article meet the European Convention on Human Rights independent and effective investigation standards.²¹ Firstly, the proposed Prosecutor's Office for Special Causes is to specialize in fighting organized crime, as well as terrorism and torture (Art. 9(4)), and a specialist torture investigator will report to a Chief Prosecutor with responsibilities for offences other than torture (Art 9(2)). This carries the real risk that national priorities associated with investigation of other offences, terrorist offences for example, will interfere with the independence and effectiveness of torture and ill-treatment investigations. Secondly, criminal investigations under the direction of the Prosecutor's Office for Special Causes and performed by departmental criminal investigation bodies (Art.9(4)(b)) will not be independent if the official under investigation is an employee of the same department. Thirdly, secondment of investigators from other institutions (Art. 9(5)) risks the independence of investigations, particularly in the event that the specialist torture investigator once served in the same institution as the official under investigation, or may do so in the future.

D. Training

45. Pillar 6.4.3 Action 5 set out that training on combating and preventing torture and ill treatment would be provided to employees of institutions responsible for detention facilities.
46. It is evident that much has been accomplished in the training core work area. Criminal justice sector practitioners informed the evaluation team of departmental arrangements for training, NIJ representatives gave an overview of their contribution to the Strategy and NGO, OHCHR and UNDP representatives outlined their involvement in training programmes.
47. GPOSCT and Forensic Centre representatives placed particular emphasis on the importance of training to their developing expertise on combating and preventing torture and ill-treatment. They stressed the importance of training on international standards, study visits and how inter-departmental and international collaboration was facilitated by participation in joint training programmes.
48. DPI and MIA/GPI representatives gave details of the content and timetabling of internal training programmes on the prevention of torture and ill-treatment, human rights, use of physical force

²⁰ *Joint Opinion on the Draft Law on the Prosecution Service of the Republic of Moldova endorsed by the Venice Commission at its 102nd Plenary Session (Venice, 20-22 March 2015)*, Venice Commission Opinion no. 791/2014, ODIHR Opinion-Nr.: CRIM-MOL/266/2015.

²¹ See Council of Europe Commissioner for Human Rights (2009) *Opinion of the Commissioner for Human Rights Concerning Independent and Effective Determination of Complaints against the Police*, CommDH(2009)4.

and criminal investigation. It was explained that external bodies, including NGOs, participated in the delivery of training programmes.

49. NIJ representatives explained that they organised 26 seminars on torture and ill-treatment in 2011/12, six in 2013 and four in 2014 and 2015²². Their experience was that the year-on-year decline in provision reflected low registration figures and a lack of enthusiasm for training in this area.
50. It is accepted that Action 5 of Pillar 6.4.3 has been implemented and applied. It is found that the impact of the Action has been mixed. In their testimonies GPOSCT and Forensic Centre representatives conveyed that in addition to the development of their knowledge and understanding of international standards and their practical application, training was important to embedding zero-tolerance of torture and ill-treatment in their professional practice. DPI and MIA/GPI representatives, in contrast, conveyed a more formal and mechanistic approach in emphasising that they meet their obligations to provide training.

E. Inspection and monitoring

51. Pillar 6.4.3 Action 6 set out that monitoring and inspection of detention facilities would be ongoing.
52. The Republic of Moldova ratified the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) on 24 July 2006, and thereby assumed responsibility to establish or designate the National Preventive Mechanism for the Prevention of Torture (NPM) in the Republic of Moldova within one year of the Protocol's entry into force. Under the OPCAT, the NPM is required to be an independent body which conducts regular visits to places where people are deprived of their liberty in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.²³
53. On 8 February 2008, the Government of Moldova officially notified the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) that the Centre for Human Rights (predecessor of the Office of the People's Advocate (Ombudsperson)) in combination with the Consultative Council for the Prevention of Torture was designated as the NPM of Moldova.
54. In 2013 the SPT reported on its visit to the Republic of Moldova, and made several recommendations for improving the legislation on the NPM.²⁴ In May 2014 the Parliament of the Republic of Moldova adopted Law No. 52 of 03/04/2014 on the Peoples' Advocate (Ombudsperson) (Law No. 52), Chapter V of which is fully devoted to the NPM.²⁵ In Table VIII,

²² Annual education plans of the National Institute of Justice available at: <http://inj.md/node/18>

²³ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), Article 1.

²⁴ UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2013) *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*, CAT/OP/MDA/R.1.

²⁵ The Moldovan authorities requested advice from the Venice Commission and the Directorate General Human Rights and Rule of Law of the Council of Europe on Law No. 52: see *Opinion on the Law on the People's Advocate (Ombudsperson) of the Republic of Moldova Adopted by the Venice Commission at its 103rd Plenary Session (Venice, 19-20 June 2015)*, Opinion no. 808 / 2015; *Opinion of the Directorate General Human Rights and Rule of Law, (Directorate of Human Rights) of the Council of Europe on the Law no. 52 of 3 April 2014 on*

below, the analysis of the evaluation team is presented on the state of implementation of the SPT’s recommendations.

Table VIII. State of implementation of the SPT’s recommendations on improvement of the legislative framework of the NPM

Recommendations of SPT	State of implementation under Law No. 52
General Recommendations (extract)	
<p>The Subcommittee reminds that the provision of adequate financial and human resources constitutes a legal obligation of the State party under article 18.3 of the OPCAT. Within Ombudsperson Plus model freely chosen by the State party, a specialized subunit dedicated only and exclusively to the preventive mandate of the NPM shall be created. The Subcommittee recommends that the State party allocate to the NPM a separate and adequate budget to allow for its complete financial and operational autonomy. Moreover, the Subcommittee recommends that the State party improve the working conditions by providing honorarium and administrative support team to the members of the Consultative Council, as well as by reviewing the salary scale of the employees of the subunit on prevention of the Centre for Human Rights.</p>	<p><i>Partly implemented</i> Particular provisions which reflect recommendations are:</p> <ul style="list-style-type: none"> - In order to protect individuals from torture and other punishment or cruel, non-human or degrading treatment, beside the People’s Advocate [Ombudsperson] Office is created the Council for the Prevention of Torture as a national mechanism for the prevention of torture, in conformity with the OPCAT. (Art. 30 (1)) - The resources necessary for the realization of the Council’s duties, to contract specialists and experts are included in a separate budget line, part of the budget of the People’s Advocate [Ombudsperson] Office. The members of the Council, except the members by right, have the right to a remuneration amounting 10% of the average monthly salary on the economy for each day they did make preventive visits to detention places or took part to the Council meetings. (Art. 31 (8)) - In its activity, the Council is assisted by a special subdivision from the People’s Advocate [Ombudsperson] Office (Art. 31 (9)).
Recommendations on reform of the NPM	
(a) Principles of impartiality, objectivity and confidentiality of the Council’s work have to be introduced in the text;	<p><i>Implemented</i> The Members of the Council are performing their duties based on principles of independence, impartiality, objectivity and confidentiality. (Art. 31 (6))</p>
(b) Criteria for selection of Council’s members by the Parliamentary Commission for Human Rights have to be further developed, either in the text of the draft law or in the separate document of Rules of Procedure	<p><i>Implemented</i> [A] Member of the Council may be the individual corresponding to the following requirements: a) have higher education in the area of law, health, psychology, pedagogy, social assistance or another area relevant for the mandate; b) a work experience of at least 3 years in the area of human rights; c) no criminal records; d) no public servant job, no member of the Parliament or member of a political party; e) not employed by the law enforcement bodies. (Art. 31(4))</p>
(c) Additional clause on incompatibilities and conflict of interests should be introduced in the law or regulated by Rules of Procedure;	<p><i>Not implemented</i></p>
(d) Length of mandate of the NPM’s members was set up to 3 years (article 45.3). Possibility of reappointment for second and last mandate could	<p><i>Partly Implemented</i> The Council is comprised of 7 members. The People’s Advocate [Ombudsperson] and the People’s Advocate</p>

the People’s Advocate (Ombudsperson) of the Republic of Moldova Chapter V, The National Mechanism for the Prevention of Torture, DGI(2015) 25.

be added, in order to retain persons with accumulated experience in the field of prevention of torture;	[Ombudsperson] for the Rights of the Child are members by right of the Council. The other members proposed by the civil society, are selected by a selection process organized by People's Advocate [Ombudsperson] Office and are appointed for a 5 year mandate, which can't be renewed. (Art 31(3))
(e) Requirement of work experience of at least 3 years for a member of the Council should be reviewed with a view to increasing it. (Article 46 (c));	<i>Not implemented</i> Art. 31(4)(b) limited to requiring work experience of at least 3 years in the area of human rights
(f) It is unclear whether the law requires all members of the Council to be representatives of civil society (Article 45.1 is not in line with the selection criteria stated in article 46);	<i>No information</i> See Art.31(3) above.
(g) Role, duties and limitations of the Chairperson of the Council have to be enumerated;	<i>Not implemented</i>
(h) Administration of the budget has to be a collegial decision of the Council, in accordance with its mandate, priorities and strategic annual planning;	<i>Not implemented</i>
(i) The law should include obligation for the NPM to present to the authorities and the Parliament its Annual Reports (article 23 OPCAT);	<i>Not implemented</i>
(j) It is unclear from the draft law whether the roster of external experts, currently used by the Centre for Human Rights on an ad hoc basis, will continue to be used by the NPM;	<i>No information</i> No provision in Law No. 52 on this point.
(k) Communication/coordination mechanism between monthly meetings has to be elaborated;	<i>No information</i>
(l) Three days deadline for authorities to submit a response, describing measures taken further to the visit of the NPM, appears insufficient, as it is unlikely that significant changes/commitments would take place in such a short time.	<i>No information</i>

55. In comparison with the earlier legislation, Law No. 52 improves the legal framework for the NPM in the Republic of Moldova. It increases the independence of the NPM by allocating a separate budget within the budget of the Ombudsperson, and establishes a separate unit within the Office of the Ombudsperson, which should assist the Council in its operation as the NPM. A positive development is provision for remuneration amounting to 10% of the average monthly salary for each day members of the Council make preventive visits to detention places or participate in Council meetings.

56. At the same time, Law No. 52 contains some potential risks, which could create obstacles to NPM functioning. Firstly, there is no provision for the roles, duties and limitations of the Chairperson of the Council. The Ombudsperson is the Chairperson and the absence of regulations for performing the functions of the Chairperson could lead to the Council being dependent on the decisions of the Ombudsperson. Secondly, Law No. 52 provides that regulations for the organization and operation of the Council are approved by the Ombudsperson, with the notice of the Commission for the Human Rights and Inter-ethnic Relationships (Art. 31 (1)). Thus, the Commission is only notified and has no influence on the process of drafting and approving regulations, which serve as the core document of the NPM. This dependence on the Ombudsperson may increase due to the fact that the Council does not have the right to administer or participate in the NPM budget process.

57. There was no NPM operating in the Republic of Moldova at the time of the visit of the evaluation team on 24 and 25 November 2015. Parliament had not elected the Ombudsperson for the Rights of the Child, members of the Council had not been selected and a special subdivision on the NPM had not been established within the Office of the Ombudsperson.
58. During the meeting with the Ombudsperson and his staff the evaluation team were informed that a new structure is being developed for the Office of the Ombudsperson and it will contain the special NPM unit. Currently monitoring visits to places of detention are conducted by two officers from the Office of the Ombudsperson in addition to their other duties, and they are assisted by four regional offices of the Ombudsperson. In Table IX, below, statistics on monitoring visits to places of detention are presented.

Table IX. Monitoring visits to places of detention of different type: 2008-2014²⁶

Visited institutions	2008	2009	2010	2011	2012	2013	2014
Under the Ministry of Interior (temp. isolation facilities)	27	73	83	155	155	148	78
Under the Ministry of Justice (penitentiary institutions)	13	44	39	70	60	53	40
Under the Ministry of Health (psychiatric hospitals)	2	6	2	4	3	1	0
Under the MLSPF (neurological boarding houses)	1	3	1	0	6	10	6
Military units	0	2	2	9	27	15	4
Total	43	128	127	238	251	227	128

59. It is found that Action 6 of Pillar 6.4.3 has not been implemented in full, and the NPM is not compliant with the OPCAT.

F. Medical and forensic provision

60. Pillar 6.4.5 Action 1 set out that that the regulatory framework would be amended to transfer medical practitioners responsible for the examination of detainees to the MoH; Action 2 set out that a law would be developed to provide for the medical examination of detainees when detained and released; Action 3 set out that the Forensic Centre would be provided with equipment necessary for forensic examination and documentation of allegations of torture and ill-treatment.
61. Government Decision No. 901 of 27/10/2014 concerning the approval of the Action Plan for the reorganisation of health services in prisons for the years 2015-2016 (Decision No. 901) sets out how the Moldovan authorities intend to progress Action 1 of Pillar 6.4.5. The evaluation team have had access to an extract of this Decision in English, and received testimony from DPI and other representatives on the subject. Decision 901 provides for the establishment of a separate unit of medical practitioners who work in detention facilities, but does not specify which department will have authority for the new body.
62. DPI representatives explained that a DPI medical services unit operates at present for administrative purposes, and as employees of the DPI medical practitioners are subordinated to the chief of the detention facility in which they practice. The government's current thinking is to establish a separate medical services unit within the DPI that will be under the authority of the

²⁶ Centre for Human Rights of Moldova (2015) *Report on the observance of human rights in the Republic of Moldova in 2014*, page 314.

Director of the DPI, as set out in Decision No.901. It was explained that this arrangement will be temporary and it is intended that within three years medical practitioners will be transferred under the authority of the MoH.

63. It is found that Action 1 of Pillar 6.4.5 has not been implemented. There has been little progress on the transfer of medical practitioners to the MoH and a risk that this Action will never be implemented.
64. It is accepted that Action 2 of Pillar 6.4.5 has been implemented and applied and the impact has been positive, although with some qualification (see above Paragraph 17). Law No. 252 of 08/11/2012 Article III amended the Enforcement Code No. 443-XV of 24/12/2004, and DPI and GPI representatives explained to the evaluation team that medical examinations are done for every entry / release from detention. It is held that the impact of this Action would be considerably enhanced with the transfer of medical practitioners that practice in detention facilities to the MoH.
65. Representatives of the Forensic Centre gave testimony to the evaluation team in regard to Action 3 of Pillar 6.4.5. They explained that before the end of 2012 a project co-funded by the European Union and the UNDP²⁷ provided the Forensic Centre with all of the equipment and consumables necessary to perform forensic examinations and tests, and document evidence in compliance with the Istanbul Protocol.
66. It is accepted that Action 3 of Pillar 6.4.5 has been implemented and applied and the impact has been positive, although with some qualifications. The Forensic Centre representatives gave details to the evaluation team of the facilities available and services provided across the Republic of Moldova, and their capacity to meet demand. According to them, approximately 300 forensic examinations of torture and ill-treatment allegations are performed each year out of a total of some 30,000.

Table X. Number of forensic examinations of torture and ill-treatment allegations²⁸

Year	2009	2010	2011	2012	2013	2014
Cases	311	267	373	278	222	285

Resource management remains a primary concern for the Forensic Centre, and particular mention was made of the high cost of consumables and the risk to capacity if funds are not available to cover operating costs.

67. An area of forensic provision that the Strategy has not affected to date relates to the capacity of the Forensic Centre to conduct psychological examinations. The Forensic Centre representatives explained that the transfer of forensic psychologists working in the National Clinical Hospital to their Centre, which they understood would take place under the Strategy, has not happened. In consequence, Moldova does not have the capacity to conduct independent psychological examinations as all forensic psychologists currently practice under the authority of the MoH.

IV. Conclusions and recommendations

²⁷Strengthening the forensic examination of torture and other forms of ill-treatment in Moldova': http://www.undp.md/presscentre/2012/Forensic_17December/index.shtml.

²⁸ Forensic Centre information regarding the number of examinations the torture and ill-treatment allegations cases: tables forwarded by the Forensic Centre to the evaluation team.

68. In the absence of qualitative baselines it has been difficult to accurately and precisely determine the impact of Pillars 6.4.3 and 6.4.5 of the Republic of Moldova 2011-2016 Strategy and Action Plan. By the time this evaluation was conducted reform fatigue had set in and persons responsible for overseeing the Strategy and implementing the Action Plan were reluctant to positively acknowledge the difference that it had made. It is concluded:
- torture and ill-treatment are not common practice in the criminal justice sector as they were acknowledged to be prior to adoption of the Strategy;
 - the Strategy and Action Plan have made real and positive differences to criminal justice practice;
 - emphasis in the Action Plan only on procedural and not qualitative targets was misplaced and unfortunate;
 - this has resulted in an overly formalistic or legalistic approach, a box-ticking exercise, to combating and preventing torture and ill-treatment, and has not had the result of bringing about a cultural shift that is serving to embed zero tolerance of torture and ill-treatment in criminal justice practice;
 - some legislative reform has been ad hoc, haphazard and reiterative, especially in regard to the PPS and Ombudsperson (including the National Preventive Mechanism) laws, and implementation prior to receiving advice from or without due consideration of provided recommendations by international bodies has, then, resulted in further reform with apparently less than satisfactory outcomes;
 - three areas where considerable improvement is required are:
 - procedures for handling complaints, including arrangements for sharing knowledge and best practice between criminal justice sectors;
 - inspection and monitoring (National Preventive Mechanism), including independent scrutiny of criminal justice processes and governance arrangements as well as conditions of detention; and
 - transfer out of the Ministry of Justice of medical practitioners with responsibility for examination of detainees;
 - despite the evident advances of the last four years, there remains room for improvement in the criminal justice system of the Republic of Moldova, and it is found that the risk of impunity for torture and ill-treatment, although diminished as a result of the reform strategy, is real.
69. Findings and recommendations of the evaluation team in regard to each action set out in Pillars 6.4.3 and 5 (see above, Tables II and III) are set out below:

Pillar 6.4.3 Action 1

Partly implemented: mixed impact (see above Paragraphs 15-24).

Recommendation 1: a detailed map should be drawn of the regulatory framework for combating and preventing torture and ill-treatment: this is a task that academics may be able to help complete (see above, Paragraph 20).

Recommendation 2: there remains a need for an overarching strategy to combat and prevent torture and ill-treatment in the context of broader criminal justice reform and for the purpose of protecting against impunity (see above, Paragraph 22).

Recommendation 3: oversight of any future strategy for combating and preventing torture and ill-treatment should be based on principles of inclusivity, where relevant stakeholders are consulted on design and development; workability, that the workload is manageable; flexibility, that allows for stakeholders to reflect and adjust the implementation programme in accordance with positive or negative developments; quality, that the purpose of actions should be reflected in qualitative performance indicators; and, measurability, an evaluation of existing mechanisms to combat and prevent torture and ill-treatment should serve as the baseline for progress (see above, Paragraph 23).

Pillar 6.4.3 Action 2

Partly implemented: mixed impact (see above, Paragraphs 25-36).

Recommendation 4: independent investigation and external oversight of criminal justice sector complaints processes are internationally acknowledged as best practice: it is proposed that the Moldovan authorities explore the feasibility of establishing an external oversight mechanism.

Recommendation 5: that an inter-departmental forum on complaints and discipline, including representatives of the Ombudsperson's Office, National Preventive Mechanism and Government Agent to the Department for the Execution of Judgments of the European Court of Human Rights, is established for the purpose of sharing best practice (see above, Paragraph 35).

Recommendation 6: that the research and analysis strategy developed by the MIA and GPI is shared with other departments, possibly under the direction of the inter-departmental forum proposed under Recommendation 5, for the purpose of developing a co-ordinated lesson-learning approach to complaints (see above, Paragraphs 27, 28 and 33).

Recommendation 7: that a public information campaign is undertaken which clearly sets out a) how a member of the public may complain, b) which body will deal with their complaint and c) how their complaint will be handled (see above, Paragraph 30).

Pillar 6.4.3 Action 3

Implemented: mixed impact (Action 3 Pillar 6.4.3 overlaps with Action 2, see above Paragraphs 25-36).

Recommendation 8: communication between criminal justice sector departments and the General Prosecutor's Office Section for Combating Torture needs to be improved to ensure that all complaints of torture and ill-treatment are appropriately investigated for the purpose of establishing if criminal or disciplinary sanctions are required: it is likely that inter-departmental communication would be enhanced by an inter-departmental forum as proposed in Recommendation 5 (see above, paragraph 34).

Pillar 6.4.3 Action 4

Not implemented: positive advances identified in the prosecution of torture and ill-treatment offences (see above, Paragraphs 37-45).

Recommendation 9: that investigation into allegations of torture and ill-treatment should be opened within 24 hours of notification to the criminal justice authorities (see above, Paragraph 42).

Recommendation 10: that the statistical analyses developed by the General Prosecutor's Office Section for Combating Torture is recognised as good practice and shared by other criminal justice sector departments as proposed above under Recommendation 6 (see above, Paragraph 39).

Recommendation 11: that the Moldovan authorities look again at the Draft Law on PPS: that consideration is given to modelling the specialist section for the prosecution of torture and ill-treatment allegations on the currently existing General Prosecutor's Office Section for Combating Torture; and further consideration is given to the recruitment of specialist torture investigators (see above, Paragraph 45).

Pillar 6.4.3 Action 5

Implemented: mixed impact (see above, Paragraphs 46-51).

Recommendation 12: seminar provision on national and international standards and best practice for combating and preventing torture and ill-treatment and impunity should be ongoing and continue for all stakeholders after discontinuation of the Strategy and Action Plan (see above, Paragraph 51).

Recommendation 13: a co-ordinated training strategy that is more capable of embedding zero-tolerance of torture and ill-treatment in the criminal justice sector will be enhanced by an inter-departmental complaints forum as proposed under Recommendation 5.

Pillar 6.4.3 Action 6

Partly implemented: mixed impact (see above, Paragraphs 52-60).

Recommendation 14: that the Parliament of the Republic of Moldova amend Law No. 52 of 03/04/2014 on the Peoples' Advocate (Ombudsperson) and incorporate all of the recommendations of the UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in its Report of 2103; and the Ombudsperson should perform all duties prescribed by the Law and establish the National Preventive Mechanism in full compliance with the UN Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (see above, Paragraph 55).

Recommendation 15: that consideration is given to the participation of the Patients' Advocate in the National Preventive Mechanism (see above, Paragraph 32).

Pillar 6.4.5 Action 1

Not implemented: no observable impact (see above, Paragraphs 61-64).

Recommendation 16: that the Moldovan authorities urgently address the transfer of medical practitioners practising in detention facilities to the MoH (see above, Paragraph 64).

Pillar 6.4.5 Action 2

Implemented: mixed impact (see above, Paragraphs 17, 61 and 65).

Pillar 6.4.5 Action 3

Implemented: positive impact, but with qualification (see above, Paragraphs 61, and 66-68).

Recommendation 17: that the Moldovan authorities set up a working group to explore the feasibility of the transfer of forensic psychologists to the Forensic Centre (see above, Paragraph 68).

Recommendation 18: that a funding formula is agreed for the Forensic Centre that enables it to maintain and develop its capacity to examine allegations of torture and ill-treatment (see above, Paragraph 67).

Pillar 6.4.5 Action 4

Implemented: positive impact (see above, Paragraphs 18 and 38).

Annex I

<p>Relevant regulatory framework used in the course of the evaluation of the implementation of the 2011-2016 Republic of Moldova Justice Sector Reform Strategy and Action Plan: Pillar 6.4.3 and 6.4.5</p>
<p>Constitution of the Republic of Moldova: adopted on July 29 1994</p>
<p>Law No. 985-XV of 18/04/2002: The Criminal Code of the Republic of Moldova</p>
<p>Law No. 122-XV of 14/03/2003: The Criminal Procedure Code of the Republic of Moldova</p>
<p>Law No. 252 of 08/11/2012 amending and supplementing certain legislative acts (Criminal code no 985-XV of 18/04/2002, Criminal procedure code no 122-XV of 14/03/2003, Enforcement code no 443-XV of 24/12/2004)</p>
<p>(Extract) Regulation No. 77/572/408/639-o/197/1589 of 31/12/2013 concerning the procedure for identifying, registering and reporting alleged cases of torture</p>
<p>Draft law on the Public Prosecution Service endorsed by the Parliament in the first reading on 29/05/2015–</p>
<p>Order No.34/11-1093 of the Head of General Directorate Prosecution of General Police Inspectorate of 27/02/2014 concerning the assurance of compliance with the fundamental rights and liberties of persons detained during criminal proceedings</p>
<p>Law No.52 of 03/04/2014 on the People’s Advocate (Ombudsperson)</p>
<p>Government Decision No. 716 of 28/08/2014 approving the regulation of the registry of detained, arrested and sentenced persons</p>
<p>Government Decision No. 901 of 27/10/2014 on the approval of the action Plan for the reorganisation of health services in prisons for the years 2015-2016 (extract)</p>