

REPUBLIC OF MOLDOVA, 3rd cycle of Universal Periodic Review

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**ALTERNATIVE SUBMISSION presented
by the Promo-LEX Association, the
Rehabilitation Centre for Torture Victims
(RCTV) “Memoria”, Legal Resources Centre
from Moldova (LRCM), World Organisation
against Torture (OMCT) and European
Prison Litigation Network (EPLN)**

Promo-LEX Association is a non-governmental organization that aims to advance democracy in the Republic of Moldova, including in the Transnistrian region, by promoting and defending human rights, monitoring the democratic processes, and strengthening civil society.

The Promo-LEX Association was established in 2002 and was registered with the Ministry of Justice of the Republic of Moldova on 19 July 2002. Registration number - 2278. The Promo-LEX Association is an apolitical and non-profit organization. The Promo-LEX Association holds the Certificate of Public Interest. The Promo-LEX Association is a national level organization and operates throughout the Republic of Moldova. Promo-LEX is an organisation with special advisory status at ECOSOC since 2014.

The Rehabilitation Centre for Torture Victims (RCTV) “Memoria” (RCTV Memoria) is the only Moldovan NGO dealing with the rehabilitation of torture victims, including from the Transnistrian region. RCTV Memoria is registered with the Ministry of Justice (7.12.99) and has been granted Certificates of Public Utility (2008-2012-2015). RCTV Memoria is a plenipotentiary member of the General Assembly of IRCT and had an elected representative in IRCT Council from the European region (2003 - 2006, 2012 - 2015). So far, comprehensive rehabilitation services have been provided annually in about 450-600 cases of torture and other forms of violence. However, the number of beneficiaries is much higher when indirect ones are considered, including relatives of victims, their lawyers, and various professionals dealing with investigation, legal defense or assistance of cases. We have also experience in conducting research studies on torture prevention against juveniles.

The World Organisation Against Torture (OMCT) is today the main international coalition of non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. The OMCT works with around 200 member organisations which constitute its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide.

The European Prison Litigation Network (EPLN) is an international non-governmental organization (INGO) granted participative status with the Council of Europe. EPLN was founded in 2013 by a network of NGO jurists, lawyers and researchers active in the penitentiary field in different countries. The Network aims at heightening the judicial protection of prisoners' fundamental rights in the Member States of the Council of Europe.

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EXECUTIVE SUMMARY AND KEY RECOMMENDATIONS

Despite the positive developments and efforts taken by the government of Moldova, torture and ill-treatment remain an acute problem. The present report addressed three main problematic issues: lack of prompt, impartial and effective investigation of torture allegations; inadequate conditions of detention for prisoners, including low-quality medical assistance, and lack of implementation of the right to rehabilitation for victims of torture.

Most acts of torture and ill-treatment are not investigated or prosecuted and remain unpunished, despite Article 166/1 of the Criminal Code criminalizes torture, in compliance with the art 1 of the UN Convention against Torture. The problem of impunity and lack of accountability of law enforcement and other public officials is caused by multiple factors and persistent systemic deficiencies, including: lack of effective and independent investigation mechanisms; lack of appropriate and impartial prosecution and trial proceedings; insufficient legal safeguards to protect victims and witnesses; and limited access to independent forensic documentation of physical and psychological trauma.

Despite all the efforts to humanize the criminal legislation, the rate of the prison population in the Republic of Moldova is still extremely high and detention facilities are overcrowded due to a complex set of causes that need to be addressed simultaneously to avoid perverse effects. Another serious problem in the Moldavian penitentiary is the problem of inter-prisoner violence and intimidation among the adult male inmate population. That is largely caused by chronic shortage of custodial staff, reliance on informal prisoner leaders to keep control over the inmate population and the existence of large-capacity dormitories. The healthcare in penitentiary also remains low quality because of lack of qualified medical personnel, medicines, inadequate medical services, non-compliance with medical confidentiality, lack of the psychological service. The existing systemic problems in the penitentiaries were outlined by the COVID 19 pandemic.

Finally, the Moldovan anti-torture policy ignores victims' need for rehabilitation, reintegration and for access to justice. The state response to the needs of victims and their rights to a comprehensive rehabilitation, as it is stated by General Comment No. 3 of CAT (2012) to art. 14 UNCAT, has so far been ineffective.

Key Recommendations

- * The Government should confirm its commitments to zero tolerance of impunity for acts of torture and ill-treatment at the highest political level;
- * The Prosecutor General shall ensure that complaints regarding acts of torture and ill-treatment that are not *prima facie* unfounded receive a prompt, impartial, and effective investigation in accordance with the Istanbul Protocol (the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment);
- * The Government and the Parliament should take concrete steps to improve conditions in prisons and detention facilities in line with the Convention against Torture and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners, Non-custodial Measures for Women Offenders (Bangkok Rules);
- * The government should engage in a determined policy to reduce its prison population. It should develop an integrated strategy, mobilising all the tools of penal policy and ensure wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);
- * The Government should enhance steps to reduce inter-prisoner violence, including that resulting from the active approval and solicitation of prison officials, by launching prompt, impartial, thorough and effective investigations into all allegations of such incidents, and prosecute and punish those responsible;

- * The Government should secure access of torture victims to medical and psychosocial rehabilitation services in the context of respect for human rights, which requires a trauma and victim-focused approach and increased attention from the authorities, with allocation of the necessary resources for the effective implementation of rehabilitation programmes;
- * The Parliament should amend the national legislation, including the Law 137, to include explicit provisions on the right of victims of torture and ill treatment to redress, including fair and adequate compensation and the means for as full rehabilitation as possible, in accordance with article 14 of the Convention and GC N3

I. BACKGROUND

1. As a state party to numerous international instruments prohibiting torture and ill-treatment, like UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment¹; Optional Protocol of the UN Convention against Torture, the Republic of Moldova² has the obligation to prohibit torture and ill-treatment and to undertake a number of specific actions to this effect. These include, among others: #prompt, impartial and effective investigation; #ensuring adequate conditions of detention for prisoners, including the requisite medical assistance and #implementing the right to rehabilitation for victims.
2. Since the last UPR cycles, some progresses have been achieved in the field of prevention of torture, due to joint efforts of civil society, international institutions, State authorities and their external partners. Some actions in this field have been taken, as part of the National Action Plan on Human Rights adopted in 2018, for 2018-2022 years ³, even if rehabilitation of torture victims was excluded from the list of priorities.
3. As a result of the second UPR Cycle and evaluation, the government undertook to implement the following 13⁴ specific recommendations made in the previous cycle related to detention and prevention and investigation of torture.
4. However, in spite of the efforts made, torture and impunity persist, while victims' access to justice is difficult and limited. In practice, many of these problems are related to ineffective investigation of torture allegations and the inability and/or unwillingness to identify perpetrators for prosecution. These problems are widely recognised and mentioned in the decisions of the European Court of Human Rights (ECtHR), in the cases vs Moldova. However, even so, the majority of the ECtHR decisions are not taken into account and are not followed by the effective investigation and prosecution. Until June 1, 2021, the ECtHR issued 107 judgments, finding 149 violations of art. 3 ECHR by the Republic of Moldova. Most of these violations concern the application of ill-treatment and their incorrect investigation by state representatives (67), but also the inhuman detention conditions⁵.
5. The following report focuses on three issues: 1) effective investigation of torture and ill-treatment; 2) detention conditions (including interprisoners violence and medical assistance in prisons, especially during COVID 19 pandemic); 3) implementation of victims' right to rehabilitation.
6. Thus, it requires a thorough assessment of the issues and formulation of specific recommendations for the Government which will improve the situation of victims of torture, inhuman and degrading treatment and will improve the level of protection of their fundamental rights and freedoms, within third UPR cycle.

II. TORTURE AND ILL-TREATMENT

Inefficient investigation of torture and ill-treatment

7. The crimes of torture committed by state representatives (mainly law enforcement) remain of serious concerns. Most acts of torture and ill-treatment are not investigated or prosecuted and remain unpunished, despite Article 166/1 of the Criminal Code criminalizes torture, in compliance with the art 1 of the UN Convention against Torture.
8. The exceeding of legal limits on the use of physical force and special means was also reported in many cases⁶. In the second half of 2020, the National Administration of Penitentiaries, registered 199 cases of use of force (vs 178 in 2019) and 153 cases of use of special means (vs 144 in 2019). The indicator increased by 5.88%. It's important to mention, that in the last years, the number of such allegations had increased, even if within the previous UPR review⁷, the State was recommended to adopt policies and measures to prevent such abuses against detainees.
9. For many years, the culture of impunity and lack of accountability of perpetrators has been identified by international and regional torture monitoring bodies, among key factors contributing to the prevalence of torture and ill-treatment in Republic of Moldova⁸. In the period of 2011-2021, impunity continued to persist. In spite of the well-known context of the April 7, 2009 dramatic events, when hundreds of persons have been cruelly tortured, we can confirm an absence of effective investigation and prosecution of the police officers who committed abuses and applied torture. The same situation is in the cases of torture or ill-treatment in the "ordinary" context - in the criminal justice process or within the penitentiary institutions.
10. With regard to torture investigations as a whole, analysing the official data for 2021 issued by Prosecutor General Office (PGO) ⁹, criminal investigations were initiated in relation to torture and ill-treatment only in 17.9% (113 cases) from a total number of 633 recorded complaints. This fact raises questions. Even though in over 82% of complaints, criminal investigations were not initiated, there was no qualitative analysis of the complaints and the circumstances which led citizens to file such complaints. In 2015 alone, prosecution was not initiated in 365 cases, where the victim had visible body injuries. In 174 cases the injuries were qualified as *minor (insignificant)*, without conducting diagnostic tests or consultations of other medical doctors to exclude damage on internal organs and systems. In fact, the forensic doctors are still focused on appreciations/qualifications of the "severity" of visible signs or damages, not on the medical and psychological evidences of torture, as it is clear explained in the Istanbul Protocol.
11. The table below presents relevant data about complaints of torture and ill-treatment, registered in the period of 2014 – 2020, according to official statistics¹⁰.
12. In 2020, as a result of the examination of the complaints, the prosecutor office ordered the criminal investigation, in only 47 cases or in 8.3% of the total number of recorded complaints. For example, during the reporting in the previous UPR Cycle, we found that in 2015, the criminal investigations were initiated in relation to torture and ill-treatment in 17.9% (113 cases) from a total number of 633 complaints. The trends seem to be negative it is shown that the prosecutors are reluctant in starting criminal cases in relation of torture complaints. This fact raises questions. Even though in over 91% of complaints in 2021, criminal investigations were not initiated, there was no qualitative analysis of the complaints and the circumstances which led citizens to file such complaints.

TABLE 1: Torture and ill-treatment in the statistics of the Prosecutor General Office. Number of complaints addressed to the prosecutor office

PERIOD	CONSTRAINT TO MAKE STATEMENTS	INHUMAN AND DEGRADING TREATMENT	TORTURE	VIOLENCE AGAINST THE MILITARY	TOTAL
	ART.309 CRIMINAL CODE	ART.166¹ ALIN.(L), (2) CRIMINAL CODE	ART.166¹ ALIN.(3), (4) CRIMINAL CODE	ART.368 CRIMINAL CODE	
2014	7	534	88	34	663
2015	18	530	50	35	633
2016	4	538	61	19	622
2017	12	569	48	10	639
2019	12	833	13	18	876
2020	15	530	12	6	563

TABLE 2: torture and ill-treatment in the statistics of the prosecutor general office. number of the criminal cases opened

PERIOD	CONSTRAINT TO MAKE STATEMENTS	INHUMAN AND DEGRADING TREATMENT	TORTURE	VIOLENCE AGAINST THE MILITARY	TOTAL
	ART.309 CRIMINAL CODE	ART.166¹ ALIN.(L), (2) CRIMINAL CODE	ART.166¹ ALIN.(3), (4) CRIMINAL CODE	ART.368 CRIMINAL CODE	
2014	-	73	18	27	118
2015	-	72	10	31	113
2016	-	70	23	14	107
2017	-	85	10	8	103
2018	1	78	2	12	93
2019	3	51	8	14	86
2020	1	42	1	3	47

13. In 2020, out of the total of 199 criminal cases investigated for acts of torture, inhuman or degrading treatment, 22 were sent to court, for examination. Among the 22 cases sent to court, out of the total number of 27 defendants: 2 have military status, 11 were police officers, 9 - employees of security agencies, 3 representatives of the teaching staff (educators, teacher), 1 medical worker (nurse), 1 - public person (deputy mayor). These people were charged with committing of (32) torture crimes against 37 victims.

14. As to the judicial practice in 2020, it is attested that based on art.166/1 of the Criminal Code, by the courts of first instance, 12 sentences were pronounced regarding 17 persons, including: convictions - 8 in respect of 10 persons, in which the courts applied sentences: imprisonment - 2 sentences for 2 people; imprisonment with conditional suspension of the execution of the sentence (art. 90 of the Criminal Code) - 1 sentence regarding 1 person; fine - 5 sentences in respect of 7 persons (with the application of a fine in the amount of 1150 u.c. in respect of a police officer); acquittal sentences - 4 regarding 7 people. On 31.12.2020, on the role of the courts of first instance,

pursuant to art.166/1 of the Criminal Code, there were 50 criminal cases opened against 89 persons.

15. A central problem experienced by RCTV Memoria and Promo-LEX is the lack of effective implementation of the UN *Manual on the Effective Investigation and Documentation of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (the Istanbul Protocol)¹¹. This is a strange situation, because it was edited by RCTV Memoria in Romanian version and printed in 4000 copies (with support of UNHCR) in 2010 and offered to all the relevant institutions from Moldova. Moreover, numerous training on the use of the Istanbul Protocol were performed by CoE in Moldova, UNDP Moldova and other actors/NGOs.
16. However, torture victims continue to have problems in accessing the independent, appropriate and qualitative documentation of their torture allegations.
17. RCTV “Memoria” remains the only non-state institution where it is possible to obtain a medical certification of torture allegations, in accordance with the Istanbul Protocol, where physical and psychological trauma is documented and correlated to the victim’s allegations of abuse, to reach a conclusion on the level of consistency
18. An emblematic case which shows the inefficiency of the torture prevention and torture investigation, is the case of Andrei Braguta.

In August 2017 a young man - Andrei Braguta – was stopped by traffic police for speeding at one of Moldova's highways. During his interaction with the police, Andrei Braguta behaved aggressively (mainly verbally) towards the officers, who stopped him.

Traffic police officers brought him into their facility in the capital city of Moldova. In the courtyard of their facility, Andrei Braguta hit one of the officers, inflicting some mild injuries. Police decided to initiate a criminal case against Mr Braguta for an attack against a police officer.

During the first hearing of Mr Braguta by police, the early indications over mental health issues experienced by Mr Braguta came out. His father explicitly pointed at the fact that Mr Braguta had mental health issues, which may aggravate without medication.

Despite these circumstances, the police and prosecutor in charge of the case requested the Court to apply preventive arrest to Mr Braguta. The Court ruled in favour of using the preventive arrest for 30 days.

His first night in police custody Mr Braguta was placed in a cell with four other inmates. The criminal investigation found out that he was placed in the cell intentionally, to be ill-treated by other inmates, as a punishment. Because of his critical mental condition, Mr Braguta immediately got into a confrontation with other cell-mates. As a result, Mr Braguta was severely beaten by the cell-mates, while police officers on guard watched the violence and did not intervene to stop it.

The next days Mr Braguta was transferred into a solitary cell, where due to his critical health condition and detention conditions he slept naked on the floor. As a result, Mr Braguta soon developed pneumonia.

During the period of his imprisonment, Mr Braguta interacted with medical personnel of the Emergency Service and Specialized Medical Personnel of the psychiatric hospital. Even if his medical situation was critical, they did not insist on the urgent hospitalization of Mr Braguta.

Several days after these events Mr Braguta was transferred to Prison no. 13 and then to Penitentiary no. 16, which serves as a detention hospital facility for the entire Moldovan penitentiary institution. The administration of the prisons no. 13 and 16, did not provide adequate medical services. The medical personnel of both prisons could not identify and treat pneumonia, which led to the death of Mr Braguta.

Even though Mr Braguta had visible injuries on his body, the administration of the prisons and hospitals (ambulance service and the psychiatric hospital) did not inform the prosecutor office about it. Even though according to the above mentioned Joint Order and Regulation they had an obligation to do so.

The administration of the Prison no. 16 has not informed at that time the prosecutor office about the death of Mr Braguta.

The Prosecutor Office found out about the death of Mr Braguta from the news. A criminal case was started just six days after the incident (the death occurred on 26 August 2017. The first criminal case was initiated on 1 September 2017). During this period, the police officers and other persons responsible for the torture and ill-treatment of the applicant continued to work in the same institutions.

RECOMMENDATIONS ARE LISTED IN ANNEX NO. 1

Detention conditions (including inter-prisoners violence and medical assistance in prisons, especially during COVID 19 pandemic)

19. Currently, the prison system consists of the National Prison Administration, 19 prisons, including two prisons with suspended activity, 4 specialized institutions (Guard, Surveillance and Escort Troops Division, Training Center, Special Intervention Team, Center for Technical and Material Supply) and nine state enterprises within the penitentiary system¹².
20. According to the situation as of April 1 2021, the detention ceiling was of 6,735 places. As of this date, the penitentiary institutions held 6443¹³ persons, compared to 6632 persons as of January 1, 2020¹⁴.
21. Despite all the efforts to humanize the criminal legislation regarding the decrease in sentences, the rate of the population imprisoned in the Republic of Moldova in 2019 constituted 166,5 prisoners to 100,000 inhabitants¹⁵, which largely exceeds the European average, by about 63 prisoners to 100,000 inhabitants.
22. The implementation of the preventive and compensatory mechanism, in correlation with lack of the specific policies and visions in relation to the implementation of the alternatives to incarceration and as well as systemic reform of the penal policy, showed that the preventive and compensatory mechanism had a limited impact to the systemic problem of overcrowding in the Moldavian prisons.
23. The obsolete infrastructure inadequate to the system of cells does not allow to separate prisoners in small sectors, and the insufficient number of custodial staff, lead to continued violence and criminal subculture in penitentiaries. The use of violence structures everyday social interactions in detention in Moldova, over and above local variations and changes in the prison subculture, The European Committee for the Prevention of Torture (CPT) criticized the phenomenon of bullying and ill-treatment of some categories of prisoners intensively. The CPT also pointed to the interaction between informal authorities and prison management in the day-to-day management of detention, and assignments to the various prison wards. It must be stressed that the informal hierarchy, ruled by its own rules and its interaction with criminal groups outside the penitentiary system threatens the safety of the entire society. The administration contributes to the survival of this subculture, both because it is, for historical reasons, fully part of the reference system of its staff, who accept it as such, and because, at the operational level, the directors of the establishments very often develop their own informal practices, in order to ensure control of the detainee population (in particular by using teams of loyal prisoners). As a result, historical heritage, inmate tradition and administrative practices contribute to the structuring of daily prison life through violence, directed mainly against a caste of untouchables. In other words, the administration is part of the stratification phenomenon of the prison subculture, accommodating informal norms to facilitate the control of detention and feeding it, by developing its own illicit category.
24. Overcrowding is a complex and multifactorial phenomenon caused by the fact that the national legislation does not provide for alternative means of punishment.

The construction of the new prison

25. For several years now, there have been plans to replace the existing Chisinau prison with a new remand facility near Chisinau. According to the information provided by the authorities, the construction of the new establishment, which had been repeatedly postponed in the past, was now planned to start by the end of 2018 and its opening was envisaged for the end of 2021.
26. According to the provisions of the Agreement between the Government of Republic of Moldova and CEB, the construction works had to be completed on December 31, 2017, and the final inauguration of the penitentiary was planned for June 30, 2018. At the request of the Ministry of Finance from January 2019, the CEB has extended the project implementation deadline until December 31, 2022.
27. According to recent declarations of the former director of the special unit responsible for the construction of the new prison, the further actions related to the construction of the new prison are blocked by the representatives of the Ministry of Justice¹⁶.
28. According to the information provided by the Penitentiary Construction Project Implementation Unit Chisinau, so far, about 34.6 million lei have been spent. Thus, about 13 million lei were spent from the loan account, and another 5 million lei, from the grant account offered by CEB. At the same time, almost 15 million lei was the contribution from the state budget, of which about 10 million were allocated for the payment of the salary for the staff of the Unit.

Health care in prison facilities

29. The health care services in the Moldovan penitentiaries were constantly in the sight of national, regional and international human rights mechanisms. Recommendations on improving access of inmates to medical, mental health and psycho-social services were addressed previously to the Moldovan Government during the second UPR cycle (2016), by the Human Rights Committee as a result of considering the Government of Moldova report on observance of ICCPR (2016), by the Council of Europe's human rights mechanisms, such as ECtHR and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and by the National Preventive Mechanism. The quality of the health services became even more important, during the COVID 19 pandemic.
30. The main issues regarding the inadequate health care in penitentiary institutions are the following:
 - * The overall shortage of medical staff in the penitentiary system, especially medical assistants (feldshers) and nurses;
 - * Assignment of unqualified staff to provide medical services for detainees;
 - * Insufficient budget allocations by prison administrations for the purchasing of medicines;
 - * Neglect of detainee's right to receive medical consultations in confidentiality;
 - * Non-compliance with medical confidentiality, medical consultations being provided to detainees in the presence of surveillance staff;
 - * Expired medicines and inappropriate medical services;
 - * People suffering from diabetes are not receiving glucometers for carrying out the daily glycemic control;
 - * Underdevelopment of the psychological service, to adequately address the problems encountered by detainees with personality disorders ;

The CPT's monitoring report (from 2015) over the quality of medical services provided to detainees in the penitentiary-hospital, has highlighted the following issues:

- dirty, battered, overcrowded and poorly equipped patient's' rooms;
- insufficient medical personnel and lack of medicines (including antipsychotic drugs);
- the poor quality of food;

- lack of individualized treatment plans for psycho-neurologic patients and the treatment is almost exclusively pharmacological;
- providing medical services to detainees between the bars, in the presence of other patients and staff of the penitentiary;
- patients who refused to give consent for treatment received disciplinary sanctioning;
- providing almost exclusively drug / pharmacological treatment and lack of antipsychotic drugs.

According to the last report¹⁷ of the National Preventive Mechanism, as a result of the monitoring visit in the only prison hospital no. 16, held during the period of 22 – 23 July 2020, the following conclusions were drawn:

- The prison hospital does not comply with the national standards of a medical institution, does not have a health authorization for operation, does not have accreditation for the provision of medical services;
- The prisoners' right to health is violated due to inadequate treatment, lack of medical staff and non-compliance with national treatment protocols and standards;

COVID 19 in Prisons

31. According to the information published by the Office of the People's Advocate regarding the situation of COVID-19 in the places of detention, the first case of infection in the penitentiary system is that of a convicted person extradited from Ukraine. The person was detected with COVID-19 on April 22, 2020, at Penitentiary no. 13 Chisinau (with the status of a criminal prosecution isolator). The detainee was transferred from the police to the penitentiary. The detainee was tested positive due to the testing procedures made at the COVID-19 Center in Chisinau.
32. Also, according to a monitoring report published by the Promo-LEX¹⁸, the following findings were made:
 - 1) Following the registration of the first case of COVID-19 infection, the National Administration of the Penitentiary system (NAP) initiated at the institutional level biological sampling for testing at COVID-19 of all individuals deprived of freedom who have been in contact with the confirmed case and show symptoms related to infection with COVID-19 disease.
 - 2) On November 27, 2020, 68 detainees were confirmed with COVID-19 infection, most of them treated in Penitentiary no. 16. Most cases of infection among detainees were recorded in Penitentiary no. 13 Chisinau - 24 cases and Penitentiary no. 17 Rezina - 31 cases.
 - 3) A large number of cases of infection, compared to the number of infected detained people, was among the employees of NAP. A total of 203 cases were registered on November 27, 2020. Among the NAP employees there were also registered two cases of death. In total, in the penitentiary administration system, until November 27, 2020, 222 tests were performed.
33. In general, the prison administration system and the medical services reacted promptly to the risk of COVID-19 infection, and a series of action plans were developed and implemented shortly at the national and institutional level. The National Administration of Penitentiaries took institutional measures in March 2020.
34. The existing systemic problems in the penitentiaries were outlined by the COVID 19 pandemic. In particular, the issue of medical staff, cooperation and low involvement of the Ministry of Health and Social Protection in the problems of health in prisons. Thus, this population is not in the national public health priorities, the international recommendations being ignored, and the Medical Directorate of the ANP has human resources and insufficient financial resources for the complex management of the situation.

35. The normative framework in the field of health in penitentiaries is outdated, has obsolete provisions and refers to contradictory international standards, including on the management of infectious diseases (tuberculosis, HIV / AIDS, viral hepatitis and, of course, COVID-19). The Ministry of Justice / NAP delays the approval of the revised draft documents.
36. The provision of staff and detainees with PPE was achieved by redistributing resources available and external donors' support. There is no increase in the budget approved by reference to separate resources for the control of COVID-19. Thus, there is a risk of failure to perform other planned activities.
37. There is no calculation methodology and approved rules for insuring detainees and staff penitentiary with detergents for hand hygiene, disinfectants and personal protective equipment. Thus, the insurance with these consumables was done chaotically, depending on the resources available or donations, being unsustainable for long term planning.
38. Within the NAP, there is no epidemiologist position, hygienist, or other specialist in the field of public health. The sanitary-hygienic regulation for the penitentiary administration system does not imply the involvement of the National Public Health Agency.
39. Performance indicators with financial remuneration or other motivation systems for medical staff in prisons involved in providing medical care to persons with COVID-19, similar to the one existing for medical employees in the medical institutions within the public sector, were not implemented within NAP.
40. The authorities of the Republic of Moldova have not applied measures to release certain people from detention, among groups of vulnerable detainees (such as detainees with pre-existing illnesses, detainees over 60 years of age etc.) to reduce the overcrowding of penitentiary institutions and, respectively, the risks associated with COVID-19.
41. A relatively large number of infections are registered among the employees of the penitentiary system (203 cases on November 27 2020). On November 27, 2020, 68 detainees were confirmed with COVID-19 infection, most of them being treated in Penitentiary no. 16.
42. Even though the management and direction of patient flow between institutions, there are no provisions regarding the cooperation with the NAP and the measures to be taken in penitentiary institutions and other places of detention (e.g. detention facilities preventive measures of the police).
43. Information materials adapted to the meaning for the sanitary education of detainees are available in limited numbers.
44. The penitentiary population in the Republic of Moldova decreased insignificantly during the pandemic of COVID-19.

RECOMMENDATIONS ARE LISTED IN ANNEX NO. 2

TORTURE CONSEQUENCES AND RIGHTS OF VICTIMS TO REHABILITATION, COMPENSATION AND REPARATION

45. The UN Convention against Torture, Article 14 provides victims of torture and ill-treatment with an explicit right to rehabilitation. This is further clarified in the Committee against Torture's General Comment No 3 (2012) which explains the content and scope of the obligations under article 14.
46. Despite the changes and measures taken to adjust the Moldovan legislation in line with international and European standards, torture and ill-treatment in state custody remain an alarming issue, including because of the lack of clear mechanisms to respond to the needs and problems of victims and their families.
47. The Moldovan anti-torture policy focuses on preventing torture and combating impunity, mainly through the strengthening (reparation, adaptation) of state institutions. However, it ignores victims' need for rehabilitation, reintegration and for access to justice.
48. Torture consequences can be individual or collective, acute or chronic, immediate or belated, visible or invisible at first sight, but they are always devastating for victims, their families, communities and society as a whole. Torture affects all the domains of human beings: a) physical state; b) mental health; c) social life; d) spiritual; e) legal. Torture changes the whole life perspectives, moral values and social functionality of victims. For this reason rehabilitation should present a response to their needs with a holistic approach of victims' problems and consequences which are correlated to torture.
49. From a total number of 373 victims (120 female and 253 male), assisted by RCTV Memoria in period January - September 2020, the following main after effects of torture, have been registered:

PHYSICAL/ Diseases

The main pathologies in nr of cases and % from 195 assisted victims; #Cardio-vascular - 60 (30,7%); #Chronic digestive - 56 (28,7 %); #Genito-urinary system - 41 (21 %); #Metabolic disorders (including diabetes) - 8 (4,1 %); #Chronic pain syndrome/Diseases of joints and extremities - 38 (19,4%); Cancer - 7 (2,3 %); #Chronic respiratory system - 32 (16,4 %); #Eyes pathology - 12 (6,1%); #Diseases of throats, nose and ears, including post-traumatic deafness - 6 (3%); #Anemia - 4 (2,6 %).

Mental/ PSYCHOLOGICAL	(1) Organic disorders - 93 (47,7%), including: #Mental disorders, caused by brain damage and dysfunction – 45 (23,1%); #Personality/behavioural disorders caused by organic damage or dysfunction – 48 (24,6%); (2) Neurotic, stress-related and somatoform disorders – 153 (78,4%), including: PTSD – 126 (64,6%), (mostly in recent torture /refugees); Enduring personality changes after catastrophic experience – 27 (13,8%); (3) Other pathologies - 5 (2,6%). The most frequent psychological consequences of the suffered torture and other forms of violence is PTSD, and various clinical symptoms, such as: (1) affective disorders (emotional instability, anxiety, depression, lack of trust in future, feelings of isolation and loneliness, anger); (2) troubling memories and thoughts about traumatic events (flashbacks, nightmares); (3) hyper arousal, nervousness, irritability, aggressiveness; revenge, etc.; (4) avoidance, social withdrawal; relationship problems (difficulties in communication, dysfunctional relationships); (5) breakdowns in social life; failures in jobs, educations, hobby, occupation, social integration (especially in case of refugees)
SOCIAL consequences:	1) decreased functionality with limited capacities to start or continue their studies, to find and to keep a job; 2) communication and interpersonal problems; 3) social isolation and withdrawal; 4) increased reticence and lack of trust in others; 5) affected marital status; 6) behavioral problems, etc.
LEGAL status	Many victims faced a huge pressure from their perpetrators or representatives of the state institutions, so many of them were forced: 1) to change their testimonies during the investigation process, 2) to withdraw their complaints; 3) to leave the country, because of fear and of the lack of trust in the justice system. More than 60 survivors of the dramatic events from April 7, 2009 and other recent victims of torture who were assisted by RCTV Memoria are now living abroad.

50. The state response to the needs of victims and their rights to a comprehensive rehabilitation, as it is stated by General Comment No. 3 of CAT (2012) to art. 14 UNCAT, has so far been ineffective. Rehabilitation and social reintegration of victims of torture, as a vulnerable group with special needs, has not been the object of activity and priority for the Ministry of Health or the Ministry of Labour, Social Protection and Family (merged in 2017) or other state institutions despite previous recommendations contained in various country reports.
51. The Ministry of Justice drafted the Law on Rehabilitation of Victims of Crimes (including torture), which was approved by Government on March 4, 2016 and Parliament as Law No. 137 (29.07.2016)¹⁹. Unfortunately, the law is not consistent with the requirements for right to rehabilitation for torture victims as outlined in Article 14 of the UNCAT and General Comment Nr. 3 of the Committee against Torture (2012). Specifically, Art. 2 of the Law states that the victims will receive support only in form of information about existing services, psychological and legal counseling and compensation thus disregarding the need for medical and social assistance. Further, Art. 9 of the Law restricts the length of psychological counseling to three months or maximum 6 months. In relation to torture victims, this raises a number of concerns including the fact that the law fails to take a holistic and long term approach to rehabilitation. The survivors of torture need comprehensive mental health services, not only the psychological counseling, as the Law 137 stipulates. RCTV Memoria contributed with comments and recommendations to the working group of the Ministry of Justice but unfortunately those recommendations did not make it into the final text of the law.

52. However, more importantly, there are no existing state services that are capable of effectively addressing the complex needs of torture victims in a way where victims can trust that the services they are receiving are independent. No State institution has been assigned responsibility for developing rehabilitation programs and no financial resources have been allocated to non-State services to do the work. Furthermore, the existing state institutions do not have staff with the necessary professional skills to be able to deal with traumatic after-effects of torture.
53. Even if a common inter-ministerial and inter-departmental document, the “*Rules on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman and / or degrading treatment*” has been created and approved on 31 December 2013 by the most relevant institutions - the General Prosecutor’s Office, the Ministry of Health, the Ministry of Internal Affairs, the Customs Service, the National Anti-Corruption Center and the Ministry of Justice (by Order no. 969 of 20 March 2014), the referral system for rehabilitation of torture victims has not been created and in practice no referrals are taking place to RCTV Memoria which is the only existing specialised rehabilitation center in Moldova.
54. Non-State rehabilitation services (provided by RCTV “Memoria”) are insufficiently resourced and thus not able to cover the existing needs of all victims. RCTV Memoria aids annually around 400 - 450 beneficiaries even though its team is solely composed of 7 (5 full-time and 2 part-time) medico-social staff including the Executive Director. Treatment is comprehensive as the centre provides social, medical, legal, psychological and mental health support. However, many victims in the country do not have access to these services, including because of lack of references from the state institutions, which are identifying and registering the cases (as are also the Prosecutor offices). Those who do not access rehabilitation services often suffer continuing devastating physical and mental health consequences.
55. In addition to the lack of access to rehabilitation, there are concerning trends where victims who speak out about their torture experience face very repressive attitudes from the investigators in the criminal cases opened against them. E.g. a survivor of torture from April 2009, who was more open to give interviews to journalists, lately have been punished more harshly – about 3 years of detention for a pretended infraction, i.e. for stealing a mobile phone. Furthermore, there are examples of victims testimonies obtained through torture used against them, in contradiction with art. 15 of UNCAT. The most relevant case is of brothers Repesco²⁰, assisted by Memoria and Promo-LEX.

ANNEX NO. 1

RECOMMENDATIONS

- * The Government should issue a public statement at the highest level unambiguously reaffirming its zero tolerance policy regarding impunity for acts of torture and ill-treatment and stating that investigations will be carried out and prosecutions promptly initiated against perpetrators of torture and those complicit in such acts;
- * In order to end all forms of torture in Moldova, all relevant professionals must be trained on the definitions of torture and what practices are prohibited under national and international legislation;
- * The Prosecutor General shall ensure that complaints regarding acts of torture and ill-treatment that are not *prima facie* unfounded receive a prompt, impartial, and effective investigation in accordance with the Istanbul Protocol - the UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- * The Istanbul Protocol should be integrated as obligatory discipline in the training programs of legal, forensic, medical, psychosocial and mental health professionals, in order to secure an earlier identification, appropriate documentation of torture by the medical, psychosocial and legal professionals and effective investigation of the cases;
- * Ensure that persons under investigation for having committed acts of torture or ill-treatment are immediately suspended from their duties and remain so throughout the investigation;
- * The Moldovan authorities should ensure that detainees have prompt access to qualified medical professionals who are also trained in detecting physical and psychological evidences of torture and inhuman treatment, in accordance with the Istanbul Protocol;
- * The medico-legal reports, the medical findings and reports produced by non-state actors should be afforded equal evidentiary value to those provided by government officials;
- * The Government shall ensure that Article 15 of UNCAT is respected and that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings;
- * The Supreme Court of Justice should standardize the judicial practice related to trial of crimes of torture, which will allow to convict the guilty persons by applying sanctions that are proportionate to severity of the crime;
- * Government and Parliament must work together to amend the legislation regulating the activity of law enforcement by establishing clear conditions for the use of force and special means, also an unconditional obligation of reporting excessive use of force;
- * The institutions that have the right to use physical force and special means should adopt institutional and departmental regulatory acts that would detail the procedures and the algorithm for applying physical force and special means.
- * Transfer responsibility for temporary detention facilities from the Ministry of Internal Affairs to the Ministry of Justice as a measure to prevent torture and ill-treatment, as recommended by the Committee in its previous concluding observations (see CAT/C/CR/30/7, para. 6 (i) and CAT/C/MDA/CO/2, para. 9);
- * Ensure that the allegations surrounding Mr. Braguta's death, including the alleged complicity of officials in his beating and in the denial of prompt medical care, allegations of medical negligence, and reported failure by many officials to report evidence of his treatment to the appropriate authorities, are effectively and impartially investigated and that the perpetrators are prosecuted.

ANNEX NO. 2

RECOMMENDATIONS

- * The Government should bring prison conditions in line with the Standard Minimum Rules for the Treatment of Prisoners and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), (CAT/C/AUS/CO/4-5, CAT/C/UKR/CO/6, CAT/C/LUT/CO/3);
- * The Government and the Parliament should take concrete steps to improve conditions in prisons and detention facilities in line with the Convention against Torture and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) as well as Article 16 of UNCAT and Article 3 of the European Convention on Human Rights.
- * The government should engage in a determined policy to reduce its prison population. In this perspective, it should develop an integrated strategy, mobilising all the tools of penal policy, whether in the field of imprisonment, the scale of sentences, non-custodial measures, sentence adjustments, and the orientation of the activity of public prosecutors' offices, particularly in the fight against drugs.
- * The Ministry of Justice to provide a detailed timetable for the construction of the new prison in Chişinău and information on its general layout (overall capacity; size and design of accommodation cells; facilities for out-of-cell association activities, including areas for educational and vocational training, workshops, facilities for outdoor exercise and sport, etc.)
- * The Government of the Republic of Moldova should increase the budget allowances for prisoners' food by at least 30%;
- * The Ministry of Justice and the Ministry of Health, Labor and Social Protection should follow the recommendations given by UN Committee for Prevention of Torture and the recommendations made under the UPR and to develop a public policy ensuring the transfer of health workers subordinated to the Department of Penitentiary Institutions under the subordination of the Ministry of Health;
- * The Government should reduce overcrowding, particularly through the wider application of non-custodial measures as an alternative to imprisonment, in the light of the United Nations Standard Minimum Rules for Non-custodial Measures (Tokyo Rules);
- * The Government should ensure that adequate somatic and mental health care is provided for all persons deprived of their liberty
- * The Government should ensure that all incidents of death in custody are promptly, effectively and impartially investigated and, on a finding of criminal responsibility, lead to a penalty proportional to the gravity of the offence.
- * The Government should ensure living space in accordance with existing international norms;
- * The Government should provide appropriate and effective medical care of prisoners and detained persons, including adequate medicines;
- * The Government should enhance steps to reduce inter-prisoner violence, including that resulting from the active approval and solicitation of prison officials, by launching prompt, impartial, thorough and effective investigations into all allegations of such incidents, and prosecute and punish those responsible;
- * The Government should ensure the recruitment of qualified medical personnel;
- * The Government should improve the quality and quantity of food and water provided to detainee;
- * The Government should ensure that all reports of excessive use of force by prison staff are investigated promptly, effectively and impartially by an independent mechanism with no institutional or hierarchical connection between the investigators and the alleged perpetrators;
- * The Government should ensure that mothers detained with their babies are placed in more appropriate settings;
- * The Government should increase the budget allocated for health care in penitentiary institutions, including by developing the capacities and the infrastructure of the Pruncul Prison Hospital (Prison No 16).

- * Detention conditions and places of detention, including those for detention in isolation, should be thoroughly assessed by taking the necessary measures to minimize the destructive and degrading effect on the physical and mental health of detainees;
- * It is important for the Republic of Moldova to pay more attention to detention in isolation, which should become a separate study object for a detailed analysis of the situation, taking steps to respect all procedural safeguards and the rights of individuals from state custody. Also, the conditions and places for detention in isolation must be kept constantly within the scope of the National Mechanism for Torture Prevention.
- * It is necessary to change the paradigm and approach of the penitentiary system by switching from "closed", to "open" practice, from "punishment" to correctional, educational, resocialization and rehabilitation, focusing on cooperation based on the rights and needs of torture victims, on outcomes of assistance and on impact;
- * The medical and psychosocial services in the penitentiary system require a greater degree of independence from the prison administration and should be subordinated only directly to the NPA, if not to the Ministry of Health, which should be more involved in health care persons in detention;
- * The Government should increase the budget allocated for health care in penitentiary institutions, including by developing the capacities and the infrastructure of the Pruncul Prison Hospital – P 16;
- * The Government should urgently elaborate and put in practice specific medical protocols for prevention and treatment of COVID 19 and other potentially infectious diseases in the prison system;
- * The Government and parliament should take prompt action to reduce the prison population in conditions allowing effective implementation in detention of the preventive measures required by WHO.

ANNEX NO. 3

RECCOMENDATIONS

- * Considering the connection between access to justice and rehabilitation, authorities shall ensure that complaints about acts of torture and ill-treatment that are not *prima facie* unfounded receive a prompt, impartial and effective investigation in accordance with the Istanbul Protocol.

The State of Republic of Moldova should,

- * Secure the access of torture victims to medical and psychosocial rehabilitation services in the context of respect for human rights, which requires a *trauma and victim centered approach* and increased attention from the authorities, with allocation of the necessary resources for the effective implementation of rehabilitation programmes;
- * Amend the national legislation, including the Law 137, to include explicit provisions on the right of victims of torture and ill treatment to redress, including fair and adequate compensation and the means for as full rehabilitation as possible, in accordance with article 14 of the Convention and GC N3;
- * Establish or support rehabilitation programmes that are adequately funded and offer holistic rehabilitation services to all torture victims without temporal limitations on the services offered.
- * Develop an effective cooperation and referral mechanism between all relevant institutions in order to unify efforts in early identification and rehabilitation of torture victims. This should include relevant amendments to the “*Rules on the procedure for the identification, registration and reporting of alleged cases of torture, inhuman and / or degrading treatment*”.
- * Within the national system for rehabilitation of torture victims to be created, the Ministry of Health, Labor and Social Protection should develop institutional policies that will provide the victims of sexual abuses in psychiatric hospitals and residential institutions (especially Psycho-Neurologic Institution from Balti municipality) with all the needed support and rehabilitation services.
- * The authorities of the Republic of Moldova should take measures to prevent torture in the Transnistrian region as well as to ensure the right of the victims from the left bank of the Dniester to the necessary rehabilitation.
- * The Moldovan authorities should report regularly on the implementation of the UNCAT, taking into account also the provisions of the paragraphs 45 and 46 of General Comment No 3 to art. 14 of UN CAT.

ENDNOTES

- ¹ (n.d.). OHCHR | Convention against Torture. Retrieved July 1, 2021, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>
- ² (n.d.). OHCHR | Optional Protocol to the Convention against Torture. Retrieved July 1, 2021, from <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>
- ³ http://www.justice.gov.md/public/files/massmedia/PNADO_III.pdf
- ⁴ [https://upr-info-database.uwazi.io/library/?q=\(allAggregations:!f.filters:\(cycle:\(values:!\(b237423c-6c85-4329-b3b0-acd1ceae04ed\)\),issues:\(values:!\(f4d9ab3a-71d4-412d-b048-e0389609b937.cc335ecc-2973-4ccf-8388-288ba39609c7\)\),state_under_review:\(values:!\(umhbdirfh2p\)\)\),from:0,includeUnpublished:!f.limit:30,order:desc.searchTerm:%27moldova%27.sort:creationDate.types:!\(%275d8ce04361cde0408222e9a8%27\),unpublished:!f\)](https://upr-info-database.uwazi.io/library/?q=(allAggregations:!f.filters:(cycle:(values:!(b237423c-6c85-4329-b3b0-acd1ceae04ed)),issues:(values:!(f4d9ab3a-71d4-412d-b048-e0389609b937.cc335ecc-2973-4ccf-8388-288ba39609c7)),state_under_review:(values:!(umhbdirfh2p))),from:0,includeUnpublished:!f.limit:30,order:desc.searchTerm:%27moldova%27.sort:creationDate.types:!(%275d8ce04361cde0408222e9a8%27),unpublished:!f))
- ⁵ <https://promolex.md/20564-20564/?lang=ro>
- ⁶ "Tortura și relele tratamente în Republica Moldova ... - FIDH.org." <https://www.fidh.org/IMG/pdf/moldavie611roumain2013.pdf>
- ⁷ "UPR Moldova (Republic of) - Session 26 / November 2016 - Review in" 4 Nov. 2016, <https://www.upr-info.org/en/review/Moldova-%28Republic-of%29/Session-26---November-2016/Review-in-the-Working-Group>
- ⁸ "Report of the Special Rapporteur on the rights of ... - UN Moldova's." 2 Feb. 2016, http://md.one.un.org/content/dam/unct/moldova/docs/pub/A%20HRC%2031%2062%20Add.2_E.pdf.
- ⁹ <http://procuratura.md/md/newslst/1211/1/6532/>.
- ¹⁰ <http://procuratura.md/file/Raport%20de%20activitate%20a%20Procuraturii%20Republicii%20Moldova%20pentru%20anul%202020.pdf>
- ¹¹ "Istanbul Protocol - OHCHR." <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.
- ¹² Information provided by the National Prison Administration, available here: <http://www.anp.gov.md/>
- ¹³ <https://drive.google.com/file/d/1-0XbNOGmdy3CAqXzUFbUXOEaGWC6aPh6/view>
- ¹⁴, Statistic information available here: https://drive.google.com/file/d/12j_EeNysZpiUF7vDiA6RG9eu5uSqB7XG/view
- ¹⁵ SPACE report
- ¹⁶ <https://www.zdg.md/importante/blocaj-interese-si-acuzatii-de-coruptie-in-procesul-de-constructie-a-noului-penitenciar-din-chisinau/>
- ¹⁷ <http://ombudsman.md/wp-content/uploads/2020/02/P-16-Pruncul.pdf>
- ¹⁸ <https://promolex.md/wp-content/uploads/2021/03/Raport-Mmonitorizare-1-Covid-19-%C3%AEn-penitenciare.pdf>
- ¹⁹ <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=366518>.
- ²⁰ <http://www.civic.md/stiri-ong/19173-promo-lex-ctedo-continuu-s-comunice-noi-cauze-cu-privire-la-aplicarea-torturii-in-comisariatele-de-poliie.html>.