



# *Child Rights Impact Assessment CRIA*



## *Moldova: Child Rights Impact Assessment in the Context of the COVID-19 Pandemic*

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## CONTENTS

Executive summary .....	2
I. Introduction .....	4
Context .....	4
Purpose and objectives .....	5
Methodological approach .....	6
II. Analysis.....	7
General presentation of how the measure influenced the realization of the right of children in detention to stay in contact with the external world.....	7
Chronological approach of the actions taken by the Ombudsperson for child rights in relation to the chosen measure .....	10
Technical Note: COVID-19 and children deprived of their liberty and the actions taken by UNICEF to bring it to the attention of the relevant authorities.....	14
The influence of the measures on the four guiding principles of the United Nations Convention on the Rights of the Child regarding the right of children to stay in contact with the external world .....	15
Different impacts of the measure across different groups of children.....	18
Analysis of the positive, negative and neutral impacts of the measure.....	18
The preventive visit to Penitentiary no. 10, Goian, and the relevance of its conclusions in terms of the impact of the measure on children’s right to keep in touch with the outside world.....	19
III. Final conclusions.....	20
IV. Recommendations .....	21
V. Planned follow-up .....	22
Report dissemination.....	22
VI. Lessons learned .....	22

## Executive summary

The COVID-19 pandemic is an unprecedented situation that has deeply affected and will continue to deeply affect children's lives worldwide. In its [Statement on Children's Rights in the context of the COVID-19 outbreak](#), the European Network of Ombudspersons for Children (ENOC) and its members pledged to closely monitor the situations of all children. In addition, it pledged to monitor responses from local, national, and European authorities during and after the end of isolation measures, and to continue to share critical information, good practices and experiences. These measures aimed to keep children and their families safe and guarantee respect for children's rights under the United Nations Convention on the Rights of the Child and other relevant European and international human rights guidelines.

The United Nations Children's Fund (UNICEF) in Europe and Central Asia Region proposed to further partner with the ENOC to support national child rights mechanisms to assess key areas and specific vulnerable groups of children. This included those in institutional care, those in detention and/or closed institutions, those affected by violence, involved in child labour, or affected by migration. Through this cooperative project, UNICEF supported the ENOC to provide direct technical assistance (through webinars and bilateral quality assurance) to a number of ombudspersons for children's offices in Europe and Central Asia. This facilitated the completion of specific Child Rights Impact Assessments (CRIAs) related to COVID-19.

The Republic of Moldova committed to be part of the ENOC-UNICEF initiative for a multi-country impact assessment of COVID-19 states' measures on children's right to protection. Support has been provided by UNICEF Moldova to conduct a CRIA exercise, with a special focus on the rights of children in detention institutions who are serving criminal sentences or are in pretrial detention

Throughout the COVID-19 pandemic, the Ombudsperson for child rights has continuously monitored the observance of children's rights in detention institutions, where children are serving criminal sentences or are in pretrial detention. During this period, the Ombudsperson for child rights collaborated with the National Administration of Penitentiaries to make recommendations for reducing the negative impact of the restrictions on children. Where appropriate, information about the actions taken were requested.

According to the guidance and methodology of the CRIA process, it should be focused on a restrictive measure (decision) adopted during the pandemic. Therefore, the Order of the Ministry of Justice no. 50 from 12 March 2020 on the establishment of the special regime within the

penitentiary administration system was selected to analyse the impact of restriction of visits of parents, caregivers etc.<sup>1</sup>It was therefore determined that, in terms of impact on the rights of children in detention, that they should remain in contact with the external world, to reduce the impact on their psycho-emotional state. The assessment of the impact of national policies on children's rights followed a temporal, spatial approach, with strict consideration for the conditions and risks that may have arisen at any point.

The Ombudsperson for child rights has, with the support of UNICEF, been involved in such an exercise. Although the Ombudsperson for child rights is continuously involved in drawing up thematic, special or multifaceted reports, the focused approach of assessing the impact (negative, neutral and/or positive) of national policies on children's rights has offered an opportunity to analyze an unprecedented situation and its impact on a preselected group of children. The aim was to assess the impact of a chosen measure in terms of its impact on children's right to remain in contact with the external world, in the context of the pandemic.

This was made possible by setting short-, medium- and long-term goals. The CRIA was carried out by an expert employed on the basis of the existing inter-institutional agreement between the and UNICEF.

The research concerns those directly involved in the process of guaranteeing the protection of children's rights, the responsible authorities, and members of the public who are interested in the field of human rights in general, and children's rights in particular.

To avoid the risk of acting against the best interest of the child, and to ensure the safety of children detained in Penitentiary no. 10, Goian, it was decided that CRIA would be used to conduct a desk review. This is because enough data were available, and any online action could have led to a delay. Also, excessive bureaucracy could have impacted the procedures.

The key findings relate both to the obvious intention of the national authorities to prioritize the health and safety of children – including the risk of possible emotional stress – and to the impact of the measure taken in this context, in the absence of effective insurance and practical compensatory measures.

One of the relevant findings is not that the adoption of such normative provision has had a negative impact on children's right to remain in contact with the external world, but that it is actually impossible to ensure the implementation of the proposed actions as alternative measures.

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<sup>1</sup> [\*On establishing the special regime in the penitentiary administration system / NAP – National Administration of Penitentiaries \(gov.md\).\*](#)

The recommendations arising from the research are narrowly addressed, taking into account the findings on the impact of the chosen measure. The general extent of the measure of detaining children, as a measure of last resort, is also considered.

## I. Introduction

### Context

The context in which the CRIA was conducted is addressed from the perspective of time and space and by considering the conditions and the risks that may occur along the way. Thus, although CRIA uses an ex ante assessment of the impact of national policy on children's rights, in this context we will make a post ante impact assessment, as well assessing the implementation of the assessed policy at the time.

The Ombudsperson for child rights believed it was necessary and relevant to get involved in such an exercise due to the concept proposed, and the innovation it brings in the field of children's rights. The peculiarities of the CRIA in general, and assessment of the impact of measures taken during the COVID-19 pandemic on a child's right to protection in particular, are extremely new. However, they are paramount in a period during which the systemic observance of children's rights was severely tested due to the prevalence of the right to health.

Although the Ombudsperson for child rights is continuously preparing certain thematic, special or comprehensive reports, the focused approach required by the CRIA offered a good opportunity to analyse an unprecedented situation and its impact on a preselected group of children.

From the start, the Ombudsperson for child rights appreciated that the CRIA aims to assess not only the negative, but also the neutral and positive impacts of a particular measure taken in relation to children's rights. This allows for a specific, multidimensional and impartial analysis. Exclusive assessment of the negative impact would raise only criticism of the national authorities with respect to accusations of improper management or inaction in the context of a public health emergency.

The decision to assess the impact of a COVID-19 measure on children's rights was directly proportional to the situation at national level. The pandemic and the emergency management of certain important aspects of children's rights was a new challenge for the national authorities of all countries, not just of the Republic of Moldova. When the decision to perform such an assessment was made, a state of emergency had been declared in the country, so the process had to adapt to an unusual context, which was challenging.

## Purpose and objectives

The Ministry of Justice Order No. 50 of 12 March 2020, establishing the special regime in the penitentiary administration system,<sup>2</sup> was selected as a restrictive measure. As well as introducing a quarantine in the institutions, it also suspended any visits or meetings.

The impact of these measures is analysed chronologically, as its duration can justify the possible interferences with the children's right to stay in contact with the external world by maintaining regular and significant contacts with parents, family and friends through visits and exchange of letters (*see Figure 1*).

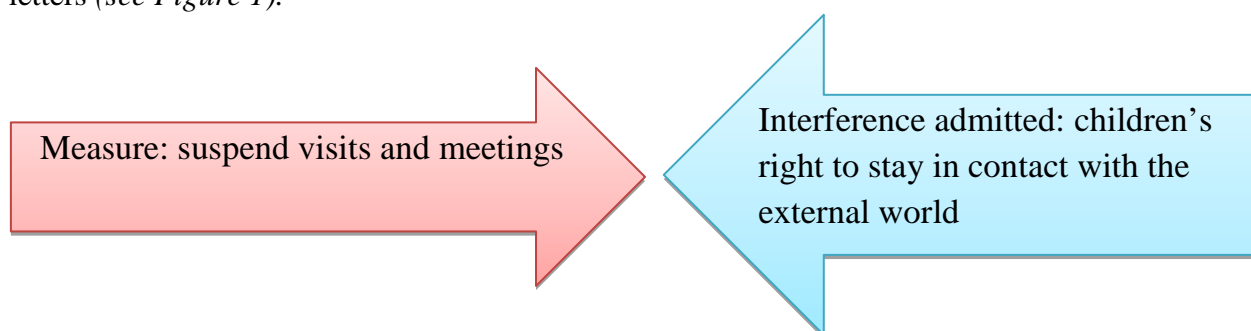


Figure 1. **Interconnection between the measure and the admitted interference**

The chosen target group comprised children in detention facilities serving criminal sentences. Those detained in Penitentiary no. 10, Goian – a closed type of penitentiary – were selected to delimit the target group. According to the data<sup>3</sup> provided by the National Administration of Penitentiaries, 32 minors were detained in this institution during the time this regulatory rule was in force.

The decision to highlight not only this group of children but the regulatory rule that restricts their rights, aimed to narrow the research to monitor alternatives proposed to improve the situation. Although the pandemic made the situation unpredictable, a quick child-appropriate response would have been necessary in any context, particularly for children deprived of their liberty. From this point of view, two periods can be defined: the period in which the selected measure was implemented and the action existed, and the period following this, during which the CRIA assessment was conducted and the report was written (*see Figure 2*).

<sup>2</sup> [On establishing the special regime in the penitentiary administration system / NAP – National Administration of Penitentiaries \(gov.md\)](#)

<sup>3</sup> [ANP-27.04.2020-2-2-1555.pdf \(ombudsman.md\)](#)

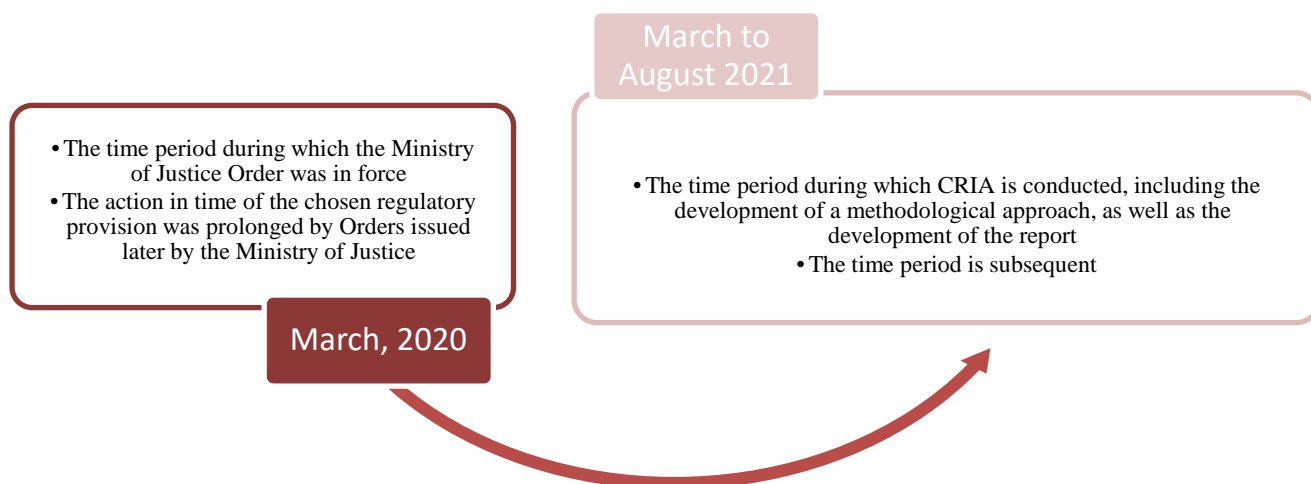


Figure 2. **Interconnection between the time periods used in the report**

The Order<sup>4</sup> was issued by the state authority in the field of justice, the Ministry of Justice of the Republic of Moldova. It is therefore binding and will be applied to all penitentiary facilities, including Penitentiary no. 10, Goian, in which only children are detained.

The CRIA had short-, medium- and long-term objectives. As a short-term objective, CRIA aims to quantify the impact of the selected measure on the group of children analysed. This includes children's rights in general, and also children's right to stay in contact with the external world in particular, by developing adaptations that are necessary and likely to be applied.

As a medium-term objective, CRIA aims to identify where there is a persistent lack of systematized data, particularly regarding collaboration between stakeholders engaged in promoting children's rights. It also aimed to draw relevant stakeholders' attention to the need to assess the impacts of some of the developed measures, including those that are ex ante.

As a long-term objective, CRIA aims to institutionalize this process through continuously improving monitoring of the United Nations Convention on the Rights of the Child.

### Methodological approach

CRIA was conducted by an external expert hired on the basis of the inter-agency agreement between the Ombudsperson for child rights and UNICEF. That is, the expert was not part of the

<sup>4</sup> Ministry of Justice Order No 50 of 12 March 2020 establishing the special regime in the penitentiary administration system: [On establishing the special regime in the penitentiary administration system | NAP – National Administration of Penitentiaries \(gov.md\)](#).

divisions within the office but could request support from the employees of the Child rights division under the People’s Advocate office, when necessary.

As CRIA is a new and challenging process, the involvement of an external expert outside the Ombudsperson’s office was required. In parallel, the Ombudsperson for child rights had attempted to start work on several thematic reports, including analysis of the impact of COVID-19 on children's rights, but without properly addressing a CRIA. On one hand, this reduced the workload of the employees of the Ombudsperson for child rights office, thereby improving the quality of the work. However, this this also resulted in an environment in which an expert could conduct an independent analysis, with the possibility of asking for support from the employees of the Child rights division, when necessary.

The assessment process started at the beginning of March 2021. On 31 March 2021, by decision of the Parliament of the Republic of Moldova – no. 49 on the Establishment of State of Emergency<sup>5</sup> – special regimes were established, to run until 30 May. This narrowed the diversity in the methodology as the visits would have been inappropriate and non-compliant with the regulatory acts in force at that time, given the pandemic.

In order to avoid the risk of actions against the best interests of the child, and in order to ensure the safety of children detained in Penitentiary no. 10, Goian, it was decided that a CRIA should be used to conduct a desk review. This is because enough data were available, and any online action could have led to a delay. Also, excessive bureaucracy could have impacted the procedures. This decision was taken due to the tight deadlines under which the report had to be submitted.

As mentioned above, the versatility of the process is entirely due to the unpredictability of coronavirus and of the actions taken by the authorities. The chosen reporting method removed excessive bureaucracy, which would have created obstacles had the initial indicative timelines been maintained.

## II. Analysis

General presentation of how the measure influenced the realization of the right of children in detention to stay in contact with the external world

**Table 1. Representation of the evolution in time of the chosen regulatory provision and of compensatory measures**

Name/no. of the	Issuing	Period of	Regulatory provision
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<sup>5</sup> [HP49/2021 \(legis.md\)](#).



regulatory document	authority	action	
Order No. 50 <sup>6</sup>	Ministry of Justice	12–23 March 2020	Point 3: “Suspend visits and meetings within penitentiary institutions”
Order No. 119 <sup>7</sup>	National Administration of Penitentiaries	12 March 2020	<ul style="list-style-type: none"> <li>The plan of measures for the prevention of illness and spread of COVID-19 infection among staff and detained persons</li> <li>Chapter II, Point 10: “Replace the meetings with additional phone calls, on the basis of detained persons’ request”</li> <li>Chapter IV, Point 8: “The right to phone calls shall be executed in appropriate sanitary-epidemiological conditions”</li> </ul>
Order No. 53 <sup>8</sup>	Ministry of Justice	18 March to 12 April 2020	<ul style="list-style-type: none"> <li>Point 3: “Extend the suspension of visits and meetings within penitentiary institutions”</li> <li>Point 5: “Suspending the receipt of postal matters, packages with supplies and parcels with food products shall be decided beforehand, for each case separately...”</li> <li>Point 7: “Allow short meetings through teleconference systems and software platforms accepted by the penitentiary institution”</li> <li>Point 8: “Allow to replace the long meetings with short meetings...”</li> <li>Point 9: “Meetings can be replaced by phone calls, within the maximum authorised limits”</li> <li>Point 10: “Double the frequency of the inmate’s right to phone calls”</li> </ul>
Order No. 134 <sup>9</sup>	National Administration of Penitentiaries	24 March 2020	Plan of standard measures within the penitentiary administration system in the context of the state of emergency established on the territory of the Republic of Moldova; Annex 7 – Offering online meetings between inmates and relatives (Annex 1)
Order No. 61 <sup>10</sup>	Ministry of Justice	10 April to 12 May 2020	Point 3: “Extend the suspension of visits and meetings within penitentiary institutions”
Order No. 72 <sup>11</sup>	Ministry of Justice	16 May to 15 June 2020	<ul style="list-style-type: none"> <li>Point 3: “Suspend long meetings within penitentiary institutions”</li> <li>Point 4: “Double the duration and number of phone calls”</li> <li>Point 5: “On the basis of the inmate’s request, offer short meetings through teleconference systems and software platforms accepted by the penitentiary institution”</li> </ul>
Order No. 97 <sup>12</sup>	Ministry of Justice	15 June to 15 July 2020	Point 4: “The receipt of parcels, packages with supplies and parcels with food products in penitentiary institutions shall be

<sup>6</sup> [On establishing the special regime in the penitentiary administration system | NAP – National Administration of Penitentiaries \(gov.md\).](#)

<sup>7</sup> [On organizing the process of preventing and combating the novel Coronavirus infection \(2019-nCov\) within the penitentiary administration system | NAP – National Administration of Penitentiaries \(gov.md\).](#)

<sup>8</sup> [On extending the special regime within the penitentiary administration system | NAP – National Administration of Penitentiaries \(gov.md\).](#)

<sup>9</sup> [On certain measures within the penitentiary administration system in the context of the state of emergency established on the territory of the Republic of Moldova | NAP – National Administration of Penitentiaries \(gov.md\).](#)

<sup>10</sup> [On extending the special regime within the penitentiary administration system – 12 May 2020 | NAP – National Administration of Penitentiaries \(gov.md\).](#)

<sup>11</sup> [On extending the special regime within the penitentiary administration system – 15 June 2020 | NAP – National Administration of Penitentiaries \(gov.md\).](#)

<sup>12</sup> [On extending the special regime within the penitentiary administration system – 15 July 2020 | NAP – National Administration of Penitentiaries \(gov.md\).](#)

			<p>allowed by taking into account the following circumstances:</p> <ul style="list-style-type: none"> <li>• existence of sufficient number of protective equipment for the staff that receives the packages with supplies and parcels with food products;</li> <li>• disinfection of the received goods;</li> <li>• compliance with the requirements regarding the quality, quantity, production and packaging of transmitted goods/products, set by the National Administration of Penitentiaries as regards the need to impose restrictions in order to prevent the spread of COVID-19 infection in penitentiaries”</li> </ul>
	National Administration of Penitentiaries	13 July 2020	Points 6 and 7 list the divisions in charge and the deadlines for developing the proposals for the amendment of Law No 69/2020 as regards the enjoyment of certain rights by inmates (e.g., the right to meetings)
Orders of the Ministry of Health <sup>1314</sup>	Ministry of Justice	16 July to present	Continue to maintain the provisions regarding the parcels, parcels and packages.

The representation in Table 1 was necessary to conduct a broader analysis from the point of view of the chosen regulatory provision. Although the initial measure refers exclusively to suspending visits and meetings, the above-mentioned regulatory acts can help to better understand the evolution of this provision, particularly in terms of the compensatory measures taken and the corresponding consequences.

The right of children in detention to meet with relatives and family includes the right to receive letters and packages of supplies food from them. We believe that by including this, children will realise their right to stay in contact with the external world, because most parcels will contain items that the children depended on before they were detained.

Regulatory provision of relevant documents easily reveals the lack of an alternative provided initially to ease the period during which relatives and families were not allowed to visit the children. It should be noted that, although an alternative was introduced later, the impact of the initial lack of contact was significant.

It is therefore necessary to pay closer attention to Annex 7: “Offering online meetings between inmates and relatives” of the Order of National Administration of Penitentiaries No. 134 of 24 March 2020, on certain measures within the penitentiary administration system in the context of the state of emergency established in the Republic of Moldova. This requires a series of actions,

<sup>13</sup> [On extending the special regime within the penitentiary administration system – 15 August 2020 / NAP – National Administration of Penitentiaries \(gov.md\).](#)

<sup>14</sup> [On extending the special regime within the penitentiary administration system – 31 August 2020 / NAP – National Administration of Penitentiaries \(gov.md\).](#)

and for those in charge at the penitentiary institution to explain the mechanism of offering online meetings.

The following actions are planned:

- Prepare IT equipment to offer online meetings between inmates and their relatives (application, rules for ensuring confidentiality, necessary equipment)
- Inform inmates and their relatives about the measures taken in the context of the state of emergency established on the territory of the Republic of Moldova and provide online meetings (schedule, duration, etc.)

#### Chronological approach of the actions taken by the Ombudsperson for child rights in relation to the chosen measure

The right of children to have contact with their family and the external world will be addressed according to the order in which texts were adopted. In this context, general comment no. 24 of the United Nations Committee on the Rights of the Child reveals that, “Every child deprived of liberty has the right to maintain contact with his/her family through correspondence and visits. To facilitate visits, the child should be placed in a facility that is as close as possible to the place of residence of his/her family. Exceptional circumstances that may limit this contact should be clearly described in the law and not be left to the discretion of the competent authorities. The Committee draws the attention of States parties to the Havana Rules for the Protection of Juveniles Deprived of their Liberty (1990) and encourages their full implementation, while also taking into account as far as relevant the Standard Minimum Rules for the Treatment of Prisoners and the UN Rules for the Treatment of Women Prisoners.”<sup>15</sup>

In the context of the exceptional situation of the COVID-19 pandemic, the Ombudsperson for child rights continuously monitored the observance of the rights of children in detention institutions who serve a criminal sentence or are in pretrial detention.

Over this period, the Ombudsperson for child rights collaborated with the National Administration of Penitentiaries and made recommendations to reduce the negative impact on children of the restrictions imposed by penitentiaries’ administrations separately and requested, where appropriate, information about the actions taken following the recommendations.

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<sup>15</sup> [Report-P-13-.pdf \(ombudsman.md\)](#).

On 6 April 2020, the Ombudsperson for child rights made requests<sup>16</sup> to the administrations of detention institutions from around the country, including Penitentiary no. 10, Goian. As well as requesting information about the actions taken to ensure the security and health of children, and their rights to education, food, hygiene products and medicines, the Ombudsperson for child rights also requested information about the compensatory actions taken to diminish the negative impact and the possible emotional stress caused by cancellation of relatives' visits.

On 17 April 2020, in answer<sup>17</sup> to the request of the Ombudsperson for child rights, the administration of the Penitentiary no. 10, Goian, listed all the measures taken so far to ease the stay of children in detention in the context of the new pandemic-related conditions.

The actions taken by the administration of Penitentiary no. 10, Goian to reduce the negative impact and emotional stress for children mentioned the efforts of staff working in the detention sector (e.g., educators and psychologists). This includes those who, during their work, talk to, or provide individual counselling to detained minors, and aim to ease any nervousness in the child. In this section, the institution's administration also mentioned providing time for leisure activities such as puzzles, drawing materials, etc.

It should be noted that the observance of the right to leisure time, including in detention institutions, should not be optional. According to international standards, it should be considered a major obligation of the actors concerned (i.e., teachers and psychologists).

The representatives of the institution also referred to the Annex 7 of the Order of the National Administration of Penitentiaries No. 134 of 24 March 2020, according to which the convicted person has the right to have online meetings with relatives during the entire period of national lockdown. Also, it was noted that minors "do not hesitate" to use their right to phone calls as provided by the law in force. It should be noted that the general national provisions include the condition that, regardless of the regime in which he or she is held, the child is entitled to two telephone conversations, lasting 20 minutes, with a relative or another person of his or her choice, per week.

On 21 April 2020, the Ombudsperson for child rights filed a request with the National Administration of Penitentiaries for information on a request previously filed by the Ombudspersons to the President of the Commission for Emergency Situations and the Ministry of Justice asking to release from detention a certain category of prisoners, including minors.

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<sup>16</sup> [Request-No-12-8-24-12-8-26-din-06.04.2020.pdf \(Ombudsperson.md\)](#).

<sup>17</sup> [P.-10-File.pdf \(ombudsman.md\)](#).

On 27 April 2020, the National Administration of Penitentiaries sent an answer<sup>18</sup> containing the relevant information. According to this, 32 persons (who were convicted or in pretrial detention) were in Penitentiary no. 10 at that time. The information came in the form of statistical tables and data, without the examination of a potential release.

It should be noted that the Ombudsperson for child rights repeatedly appreciated the efforts made by the penitentiary administration system to take all measures necessary to prevent and/or reduce the risks associated with the COVID-19 pandemic, so that the health, corporal integrity and lives of detained persons and penitentiary staff were prioritized.

Nonetheless, the Ombudsperson for child rights drew attention to the fact that the actions taken should have avoided interfering with the other rights guaranteed by the Convention on the Rights of the Child, given that the state is obliged to ensure that all the rights guaranteed by an international treaty are applied simultaneously, regardless of the child's location.

The Ombudsperson for child rights also notified the National Administration of Penitentiaries and its subordinated institutions that although the measures taken aim at diminishing/ending the epidemiological situation, it is extremely important for the authorities in charge to have a more systemic approach to ensuring observance of the rights of children in detention, making sure that the fulfilment of one right does not interfere too much with another.

The Ombudsperson for child rights prepared a set of recommendations<sup>19</sup> for the National Administration of Penitentiaries. This underlined that, although it was necessary to restrict the visits of relatives of detainees who are minors, or of detainees with children under 3 years of age in order to prevent COVID-19 outbreaks, those restrictions should have been introduced in a transparent manner and communicated clearly to all affected. The sudden interruption of contact with the external world risks worsening already tense, stressful, difficult, and potentially harmful situations.

Though necessary, limiting contact with relatives was certainly hugely emotionally stressful for children, affecting their well-being and health. The Ombudsperson for child rights therefore recommended the following compensatory measures:

- Increase the number of phone calls allowed, as directed by the National Administration of Penitentiaries

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<sup>18</sup> [NAP-27.04.2020-2-2-1555.pdf \(ombudsman.md\)](#).

<sup>19</sup> [APDC ANP.pdf \(ombudsman.md\)](#).

- Ensure that child detainees have access, to the extent possible, to Viber, Skype or Messenger discussions with their relatives

The Ombudsperson underlined that, though these actions were not authorized by law, they were in line with the United Nations' recommendations regarding observance of detainees' rights during the COVID-19 pandemic.

The Ombudsperson for child rights also reminded the National Administration of Penitentiaries of the rules stated in the United Nations Convention on the Rights of the Child (in force in the Republic of Moldova since 25 February 1993), the United Nations Standard Minimum Rules for the Administration of Juvenile Justice of 18 December 2002 and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, which contain imperatives on observance of the rights of juvenile detainees regardless of exceptional situations that might occur.

Another important aspect raised by the Ombudsperson for child rights refers to the need to reduce and/or eliminate violence among or against children. The crisis period, during which children could not take part in any socio-educational activities, resulted in increased conflict and higher levels of aggression among children. To mitigate such situations, it is recommended that psychological support is enhanced through provision of regular psychological counselling, following the required epidemiological protection measures.

Drawing a conclusion based on chronological analysis and summing up the recommendations made repeatedly to the National Administration of Penitentiaries, it was found that the National Administration of Penitentiaries was able to partially observe children's rights during the crisis period. The Ombudsperson for child rights recommends the following, with a view to improving the situation:

- Improve the technical infrastructure with computers and internet connection in order to secure remote learning in similar situations;
- Identify opportunities and increase the number of phone discussions of juvenile detainees with persons/relatives from outside of the institution, in similar situations;
- Eliminate the fee of 15 MDL (about 1 USD) charged for the delivery of parcels via the "Poșta Moldovei" postal service;
- Develop and diversify psychological support for child detainees.

It should be noted that the office of the Ombudsperson prepared several analyses during this period, including a multilateral analysis of the COVID-19 situation in detention facilities.

## Technical Note: COVID-19 and children deprived of their liberty and the actions taken by UNICEF to bring it to the attention of the relevant authorities

In accordance with the above-mentioned recommendations, to ensure that the rights of children in detention institutions are fully met, and taking in consideration the elaboration of the Technical Note: COVID-19 and children deprived of their Liberty,<sup>20</sup> the need arose to inform the relevant institutions. On 15 May 2020, a letter was sent to the Ministry of Justice on behalf of the UNICEF Country Representative in the Republic of Moldova (Ref. MOL/R/ER – 2775). Through this, the content of the Technical Note that was relevant for judges, probation officers, officials from penitentiary institutions and staff of the Ministry of Justice was made known.

The Technical Note: COVID-19 and Children Deprived of their liberty sought the protection of the most vulnerable children during the pandemic, and the possibility of establishing measures to respond to the pandemic, such as:

- Introduction of a moratorium on the detention of children in places of liberty deprivation (i.e., penitentiaries)
- Release of all children who can be released safely
- Protection of the health and well-being of children who need to remain in detention

In the same vein, and in order to be open to any support needed to prevent the spread of the virus and reduce the effects of the pandemic on children deprived of their liberty, UNICEF has sent the above-mentioned Technical Note to the following authorities/institutions:

- Superior Council of Magistracy (MOL R ER 2784c)
- Ministry of Internal Affairs (MOL R ER 2784a)
- General Prosecutor's Office (MOL R ER 2784)
- National Legal Aid Council (MOL R ER 2784b)

As the consistent actions followed and analyzed in the light of the evolution of the documents issued by the Ministry of Justice and, correspondingly, the National Administration of Penitentiaries, did not follow a path to highlight the first two pandemic response measures listed above, it is difficult to appreciate to what extent the Ministry of Justice of the Republic of Moldova took into account the recommendations and the request given in the Technical Note; a request that was folded, including the recommendations of the Ombudsperson for child rights.

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<sup>20</sup> [ChildrenDeprivedofLibertyandCOVID.pdf \(ohchr.org\)](#).

The influence of the measures on the four guiding principles of the United Nations Convention on the Rights of the Child regarding the right of children to stay in contact with the external world

Given the vulnerability of children deprived of liberty, the importance of family links and social reintegration, the relevant authorities should guarantee and support actively the observance of children's rights, as stipulated in the international guidelines.<sup>21</sup>

The four guiding principles of the United Nations Convention on the Rights of the Child, which assign an ethical and ideological dimension to the whole system of child rights, are intended to act as guide through periods of insecurity, such as during the COVID-19 pandemic. Physical, face-to-face contact with family members is crucial for children, and the lack thereof can trigger significant negative consequences. That is why it is extremely important to prioritize contact with parents and relatives to maintain the mental health of children, particularly in relation to those who are dependent on these connections while in a detention facility.

The extent to which the measures affected the four guiding principles of the United Nations Convention on the Rights of the Child regarding the right of children to stay in contact with the external world is summarized in Table 2.

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<sup>21</sup> *The Guidelines of the Council of Europe on Child-friendly Justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, page 21.*



**Table 2. Influence of the measures on the four guiding principles of the United Nations Convention on the Rights of the Child**

Principle	Effect of principle on measures to protect child rights for child detainees
<p><b>Non-discrimination, Article 2 of the Convention</b></p>	<ul style="list-style-type: none"> <li>• The weight of the non-discrimination principle is conferred by the obligation imposed by Article 2 of the Convention to respect and ensure the rights set forth in the Convention “irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status”.</li> <li>• Analysis of the impact of the restrictive measure of suspending visits and meetings revealed positive discrimination of children who do not have relatives, friends, families to keep in touch with and be dependent on. However, we cannot regard this as a genuine discrimination, as it does not meet the case definition; it is rather a different impact. Though the measure and the target group (detainees) are the same, there is a different impact due to the existence of children who depend on the relationship with the external world.</li> </ul>
<p><b>Best interests of the child, Article 3 of the Convention</b></p>	<ul style="list-style-type: none"> <li>• The criterion of best interests of the child was found to be biased. First, there was a collective bias. At that time, society and the national authorities formed an isolated image of the best interest of the child. That is, “the best interest of the child to stay healthy”.</li> <li>• The personal bias of the child was also not taken into account when his or her wishes were not aligned with the overall concept and bias of society. This gap was a result of the lack of a connection between the best interest of the child and observance of the child’s opinion. Without the child’s express opinion, his or her individual needs will be encompassed by the collective best interests of the group. This is not necessarily negative in the context of the pandemic and from the perspective of the right to survival. In an ideal world, there would be a systemic approach, where the right to survival and development prevails, and the right to maintain the relationship with relatives and families, as well as all other rights guaranteed by the Convention are fulfilled in line with the child’s opinion and in compliance with the best interest of the child, in equal and non-discriminatory conditions.</li> <li>• The decision to take such a measure was based on an exclusively ‘scientific’ analysis of the situation, disregarding the approach based on human rights in general, and on children’s rights in particular.</li> <li>• It is relevant to note that no derogation from this principle is allowed, not even in cases of danger. For example, the United Nations Convention on the Rights of the Child stated in its report on children and armed conflict that no</li> </ul>

	<p>derogations from Articles 2, 3 and 4 of United Nations Convention on the Rights of the Child are allowed, not even in situations of war or danger.</p>
<p><b>Right to survival and development, Article 6 of the Convention</b></p>	<ul style="list-style-type: none"> <li>• The right to development is to be understood in a broad manner, not only from the perspective of physical health, but also mental, psychological and emotional development.</li> <li>• The child’s right to survival and development is closely related to the child’s right to the highest attainable standard of health, health care services and adequate standard of living. We will therefore believe that the national authorities did not provide an overview, without admitting that any of the components – basic principles of the Convention on the Rights of the Child – were prejudiced. Marking such a line between observance of the right to health for juvenile detainees and other rights that children should enjoy fully, the adopted measures produced only an incomplete ‘result’.</li> <li>• However, the obvious intention to ensure children’s right to health and safety was impossible to implement due to the failure to ensure a systemic order of the measures taken in this regard. The fact that employees of the penitentiary institution maintained their right to interact with the external world made it impossible to totally eliminate the risk of an outbreak in the detention facility.</li> </ul>
<p><b>Respecting the child’s views, Article 12 of the Convention</b></p>	<ul style="list-style-type: none"> <li>• Article 12 of the United Nations Convention on the Rights of the Child sets forth the right of any child to express freely their views on matters affecting them, and to obtain relevant attention for their views. In this regard, it is obvious that ensuring the health and security of child detainees was prioritized, however, respect for children’s views could have been ensured in parallel in this context by explaining the need to introduce such a measure and by requesting the child’s opinion on the alternatives offered during the suspension of visits and meetings.</li> <li>• The state had to implement this, in order to comply with its obligation to ensure this right in all areas of the social life and to fulfil all the rights set forth by the Convention.</li> <li>• Establishing efficient complaint mechanisms and the provision of state-guaranteed legal aid in case of ignoring or violating the child’s right to opinion and/or failure to take into account the expressed opinions are component parts of the right to maintain the relationship with relatives and family, correlated with the principle of respect for the child’s view. Despite the public health emergency situation, there were safe ways to ensure observance of this right. In particular, during the visit, the children stated that they had problems with correspondence.</li> </ul>

## Different impacts of the measure across different groups of children

We believe that the measures had a different impact on those children in Penitentiary no. 10, Goian who have no family or relatives to keep contact with. We may say that the measure had a minimal impact on these children, or no impact at all, because for these children, not seeing their family and relatives is normal. This does not necessarily mean that these children are not psycho-emotionally affected by this.

## Analysis of the positive, negative and neutral impacts of the measure

Considering the above-mentioned analysis, it appears there were only negative and neutral impacts of the measure implemented under Ministry of Justice Order No 50 Establishing the Special Regime in the Penitentiary Administration System of 12 March 2020.

The negative impact predominantly concerns the spontaneous separation of children from their families, which was not followed by any real compensating measures. However, there is a plan to implement measures to prevent COVID-19 infection among staff and detainees, which was approved on the same date by Order No 119 of the National Administration of Penitentiaries on Preventing and Combating the Novel Coronavirus. In fact, on a visit to Penitentiary no. 10, Goian, several issues were found regarding phone calls, mail and parcel receipt.

We can say that the impact is neutral for those children who, although they fall into the category of children detained in Penitentiary no. 10, Goian, for reasons beyond their control, have no contact with the community and do not have family or relatives who could otherwise visit them. The restrictions did not affect these children. We can therefore conclude a neutral impact on them.

Regarding the positive impact, this concerns the national authorities' intention, that is, the Ministry of Justice, the focus being namely on ensuring child security and safety. Still, the full extent of this positive impact could only be ensured if there were a complete loss of contact with people outside the penitentiary. This is about penitentiary staff, including auxiliary staff who had no movement restrictions, at least not from a regulatory point of view. In other words, the positive impact can only be regarded as partial because, although this measure was regarded as necessary by the authorities, it was not adopted systemically.

The measure was meant to support keeping children away from the potential danger of contracting coronavirus from people outside the penitentiary, not to exclude this risk completely.

## The preventive visit to Penitentiary no. 10, Goian, and the relevance of its conclusions in terms of the impact of the measure on children's right to keep in touch with the outside world

On 17 and 18 May 2021, the staff of the Child rights division of the People's Advocate Office made a preventive visit<sup>22</sup> to Penitentiary no. 10, Goian, in line with Articles 1(11)(j), 17 and 24 (2) of the Law on the Ombudsperson No 52/2014, with Item 8 of the Regulation on the Organisation and Operation of the Office of the Ombudsperson approved by the Law No 164/2015, and with Action 1.9, Sub-action 1.9.5 of the 2021 Plan of the Child rights division on monitoring the implementation of the key recommendations in the thematic report on the assessment of the rights children in detention due to criminal prosecution on sentencing.

In the context of the pandemic, both the penitentiary administration and children confirmed that visits were prohibited, but that children keep in touch with their family and relatives, communicating with them for 20 minutes per day, by phone and by Skype.

In this regard, the Ombudsperson for child rights found some barriers impeding the fulfilment of the child's right to keep in touch with family and relatives. Some detainees reported not being able to call their family because they do not have a special phone card, and others reported that their letters were not sent to their families. These two impediments certainly had a significant negative impact on the psycho-emotional state of the detained children, given the fact that they decided to voice these concerns.

In that context, in order to fully implement the right of detainees to communicate with their families, the Ombudsperson reiterated the recommendations made at the beginning of the pandemic; specifically, to consider the possibility of increasing the number of phone calls in order to compensate for the visits that were not allowed during the restrictions. The Ombudsperson also found that these children are not enrolled in re-socialization activities and programmes to enable their successful reintegration in the society/community, therefore they do not have the elementary skills of social interaction.

In the same train of thought, an alarming situation was found with regards to the group of children who do not have any relatives to contact in the community. On release, without a complete education, employment or work experience, any source of income, or material, financial or psychological support, compounded by poverty and social problems, these children are likely to reoffend and to end up back in detention. This will be a familiar environment for them, with rules

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<sup>22</sup> [Raport-vizita-P-10-1.pdf \(ombudsman.md\)](#).

that are already accepted and assumed by the children, and the penitentiary becoming their only experience of a 'normal' living environment.<sup>23</sup>

The findings of the visit confirmed that, although alternative measures were provided in the regulatory framework, the situation on the site was not working. One year after visits and meetings had been suspended, some children reported not having SMS cards, while others experienced difficulties in exchanging letters with family members.

It may be, however, that this negative impact has been caused by the failure to implement alternative measures, as stated in the above-mentioned regulatory provisions. Though they seemed insufficient at first glance, a lack of effective implementation conditions has worsened the situation in this regard.

The United Nations Convention on the Rights of the Child stipulates the principle of simultaneous and cumulative implementation of all rights guaranteed by the Convention. Limiting children's access to certain rights in order to protect their lives and health during the emergency period is in line with the international standards on child rights.

This needs to be addressed as a whole, taking into account the real possibility of providing alternative ways to exercising all the rights. In other words, although the authorities had noble intentions, the development of alternative measures that were impossible to implement increased the negative impact of the measure.

### III. Final conclusions

1. According to the General Comment No. 24 of the United Nations Convention on the Rights of the Child, children in conflict with the law, including child recidivists, have the right to be treated in ways that promote their reintegration into society, and allow the child to assume a constructive role. The arrest, detention or imprisonment of a child may be used only as a measure of last resort. This should be taken into account, especially in the context of the COVID-19 pandemic and, if detention is allowed as a measure of last resort, then assessing opportunities to release immediately children from detention should be considered a measure of first resort. However, this did not happen, unlike in other countries.
2. Implementing immediately compensatory measures in order not to interrupt the contact of juvenile detainees with their relatives and family would have mitigated the impact and the psychological pressure on the child.

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<sup>23</sup> [Raport-vizita-P-10-1.pdf \(ombudsman.md\)](#).

3. There is an obvious intention of the national authorities to prioritize the physical health and security of the child, even if it means risking emotional stress for the child.
4. Assessing the impact of the measure during the period in which it was being implemented would have resulted in a much closer analysis of the immediate effects and impact of the measure.
5. The negative impact was not caused by the implementation of such a regulatory provision, but rather by the impossibility of offering alternative actions.
6. The measure did not have any impact on the children who do not have anyone in the community to keep in touch with (family members or relatives), as a lack of visits and meetings is normal for them. Some impact in this regard could be identified, in terms of the connections these children had with the prison staff, as well as due to the limitation of the children's relationship between them.
7. Given the uncertainty around the possibility of similar situations arising in the future, it is difficult to formulate rigid recommendations other than those related to regulatory aspects.

#### IV. Recommendations

1. The government should ensure that CRIA is conducted prior to policy/decision-making on any issue affecting the rights of children in emergency and non-emergency contexts.
2. Detention of children should be the last resort, and if similar situations occur in the future, the possibility to release children in all forms of detention should be considered as a matter of priority.
3. The National Administration of Penitentiaries should strengthen in a practical way, not only through normative provisions, its efforts to maintain the contact of children (including those convicted and those in pretrial detention) with their families in a pandemic context and to prevent the infection of children with COVID-19.
4. The Ministry of Justice should develop the regulatory framework to diversify the methods of ensuring contact with the family, using modern technical solutions.
5. Introduce a mechanism to monitor and follow up on compliance with emergency measures. The fact that such measures are implemented for a determined, shorter period of time does not mean that they are not important and do not have an impact. Lack of such mechanisms results in a non-serious attitude towards compliance with them.

## V. Planned follow-up

### Report dissemination

The report will be disseminated via the [www.ombudsman.md](http://www.ombudsman.md) platform, like the other thematic or special reports of the Ombudsperson for child rights. An announcement will be made about the report and its results. The cover letter and the report will be sent to the detention facility concerned – Penitentiary no. 10, Goian – and to other detention facilities from the penitentiary system for information purposes. Also, it will be sent to the Ministry of Justice and the National Administration of Penitentiaries, these institutions being addressed in the text of the report.

## VI. Lessons learned

1. The main difficulty concerns the unpredictable decision of the authorities to introduce in May, 2021 a state of emergency countrywide during the period when CRIA was supposed to be developed. Though justified from the pandemic point of view, this decision restricted access to such institutions as detention facilities. These decisions narrowed down to the large extent the methodology and data collection approach i.e. face-to-face interviews, questionnaires.
2. Initial deadlines were extended, broadening the time span between the period during which the measure was applicable and when the report was produced and its final conclusions were formulated.
3. As a first exercise, the CRIA of a measure taken in connection with the COVID-19 pandemic also represented an attempt to adjust to an unpredictable challenge (e.g., the CRIA implementation period coinciding with the national state of emergency; the initial decision on CRIA methodology and the subsequent decision to extend the project period).
4. The fact that the process was implemented simultaneously in the countries that are part of European Network of Ombudspersons for Children allowed for the exchange of best practices when needed (e.g., training sessions).
5. Given the chance to start the assessment again from the beginning, we would have done it in parallel with the implementation of the selected measure.
6. It is possible, but not certain that outcomes of the impact assessment would have been different if the assessment had been conducted in parallel with the implementation of the selected measure. This would have allowed us to react promptly, and to choose between the variety of methodological approaches. However, possible excessive bureaucracy could have impeded progress and delayed data collection.
7. The existence of a volume of data and facts when the desk review started ensured the good outcome of the research.