

# REPUBLIC OF MOLDOVA'S 2ND UNIVERSAL PERIODIC REVIEW (UPR) 2016

## TORTURE AND ILL-TREATMENT: STATE OBLIGATIONS AND RIGHTS OF SURVIVORS

More than 10 recommendations<sup>1</sup> have been formulated by the governments of France, Poland, United Kingdom, Slovenia, Germany, Norway, Canada, United States, and Austria regarding torture and other Cruel, Inhuman, and Degrading (CID) treatment and detention issues. According to our analysis, the Republic of Moldova has made no progress toward implementing these recommendations. The cases listed in our UPR joint submission illustrate the Republic of Moldova's failure of implementation.



## EMERGING ISSUES

### THE NEED FOR EFFECTIVE INVESTIGATION OF CRIMES OF TORTURE

#### DESCRIPTION

Torture is still in use in the Republic of Moldova, along with the Transnistrian region, despite increased government efforts to crackdown on perpetrators. The number of reported torture acts has decreased recently, however it is estimated that the number of acts remains higher than reported due to lack of trust in the judicial system.

**The victims of torture are both** national and foreign citizens, including children and female victims, and those from poor economic backgrounds and vulnerable communities. In the majority of cases torture is committed against those over 18 years old, though some minors are also victims.

**The perpetrators are** law enforcement agents, in particular police officers, who were reported in connection to the majority of torture cases during the 2009 civil unrest and in more recent allegations. Typically, law enforcement agents fail to respect the conditions in the application of force and special means and do not report excessive use of force due to the imperfect legislation that fails to conform to UN standards.

**Methods of torture** alleged by complainants, and those registered, monitored, and documented by Promo-LEX and RCTV Memoria are diverse and not limited to: beating (blunt trauma), positional torture, chemical exposure, sexual torture, humiliation, threats (death, further torture, rape, long-term imprisonment), and psychological torture. Clear conditions exist for the use of force and special means as well as the unconditional obligation of reporting excessive use of force.

There were **633 officially** recorded complaints of torture in 2015, though unofficial estimates suggest that torture is more widespread.

#### RECOMMENDATION

- The Government and the Parliament shall amend the legislation regulating the activity of law enforcement institutions by establishing clear conditions for the use of force and special means along with the unconditional obligation of reporting the excessive use of force;
- Law enforcement institutions should develop domestic normative acts in accordance with the provisions of UN standards in the field of torture prevention, which will regulate in detail the conditions and limits of the application of physical force and special means.
- 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;
- Ensure training of medical and legal professionals in the use of the Istanbul Protocol and that medico-legal reports produced by non-state actors are afforded equal evidentiary value to those provided by government officials;
- The Government shall ensure that art 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, except against a person accused of torture as evidence that the statement was made.

<sup>1</sup> [http://www.upr-info.org/sites/default/files/document/moldova\\_republic\\_of/session\\_12\\_-\\_october\\_2011/a\\_hrc\\_19\\_18\\_republic\\_of\\_moldova\\_e.pdf](http://www.upr-info.org/sites/default/files/document/moldova_republic_of/session_12_-_october_2011/a_hrc_19_18_republic_of_moldova_e.pdf).



From the total number of cases sent to courts in 2015, on the basis of Art. 166/1 (Torture), 13 judgments of conviction were issued and 5 persons were acquitted. The large number of acquittals confirms the gaps in the criminal proceedings in cases of torture, and/or an imperfect legal framework. Thus, the Government does not ensure that art 15 of UNCAT is respected and thus in particular cases, statements which were established to have been made as a result of torture were invoked as evidence in the criminal proceeding.

## SUGGESTED QUESTIONS

- *What legislative and policy measures are in place to facilitate the effective investigation of torture?*
- *Why are only some perpetrators convicted for acts of torture?*

## DETENTION CONDITIONS AND WOMEN'S RIGHT TO MEDICO-SOCIAL ASSISTANCE

### DESCRIPTION

From all 17 prisons in the Republic of Moldova, 5 institutions have the status of criminal investigation isolators. The situation in penitentiary facilities has not significantly improved in comparison to the situation found by UNSRT in 2008, despite some infrastructure-related investment made by authorities.

**Number of detainees** as of April 1, 2016 were: 7,881 including, 6,359 condemned, 1,522 in pretrial detention. Of the total number, there are 491 women and 67 minors (65 boys and 2 girls). According to CPT reports of the Ombudsman office (CHRM) and of the National Preventive Mechanism (NPM) made after monitoring visits, the majority of persons are detained in poor conditions, below international standards, in addition to overcrowding. The exception is the Goian prison for minors, whose premises were renovated;

**Access to medical service** - detainees' access to medical services continues to be limited and deficient, despite improved legislation. Medical examinations are undertaken upon arrival but insufficient medical care to support potential or alleged victims under arrest in the aftermath of trauma, both physical and psychological.

**Women in detention** - timely access to medical services outside prison facilities is almost never available for women in detention. Based on assisted and documented cases, medical history of many detained women includes severe consequences of sexual and physical abuse, domestic violence, mental illness, and drug or alcohol abuse. Many of them experience chronic diseases and affected health conditions that result from living in poverty, premature pregnancy, malnutrition, and poor health care prior to detention.

The national penitentiary system **does not take into account the specific needs of women**. This includes the need for adequate nutrition, healthy life, fresh air and exercise for pregnant women, and greater hygiene requirements such as regular showers and sanitary items. The alarming situation of women in detention is also confirmed by ECHR decisions issued on Moldovan cases<sup>2</sup>.

<sup>2</sup> <http://hudoc.echr.coe.int/eng?i=001-144118>, <http://hudoc.echr.coe.int/eng?i=001-152559>, <http://hudoc.echr.coe.int/eng?i=001-158460>

### RECOMMENDATION

- Improve the conditions of detention in police stations and prisons that bring them to conformity with article 16 of UN CAT, and establish an independent and methodical system that monitors the treatment in practice of persons arrested, detained, or imprisoned;
- Ensure that the Government implements the principles and recommendations of the Kyiv Declaration on Women's Health in Prison;

## SUGGESTED QUESTIONS

- Provide up to date information on conditions of detention, that take into account the last CPT report and recommendations for improving the conditions of detention for all detainees;
- Why in the national prison system is the medical service still under the control of the prison administration and not reformed under the Ministry of Health?
- Why are medical services in prisons underfunded?
- What legislative and policy measures are in place to guarantee that the national penitentiary system takes into account the specific needs of women by implementing a gender-based approach?

## THE NEED FOR EFFECTIVE INVESTIGATION OF CRIMES OF TORTURE

### DESCRIPTION

UN Convention against Torture by Article 14, provides victims of torture and ill-treatment an explicit right to rehabilitation., Moldovan anti-torture policy only focuses on preventing torture and combating impunity, primarily through the strengthening of state institutions. In doing so, it ignores the victims need for rehabilitation, re-integration, and the required support in order to claim their rights within the judicial system.

**The Republic of Moldova does not support non-state actors who provide rehabilitation.** The State's response to the needs of victims and their right to comprehensive rehabilitation, as stated in GC N 3 of CAT to art. 14 UNCAT (2012), was ineffective until present. So far, rehabilitation and social reintegration of victims of torture, as a vulnerable group with special needs, has not been a priority for the Ministry of Health nor for the Ministry of Labour, Social Protection and Family, despite previous recommendations contained in various country reports. Moreover, rehabilitation was not considered a priority in the country-based programs on torture. While this right of torture victims has been ignored, survivors continue to be discriminated and/or reduced to silence.

Rehabilitation services provided by non-state actors (in fact only by RCTV Memoria) have insufficient resources and thus not able to fully address the present needs of victims. RCTV Memoria annually supports over 450 beneficiaries even though its team is composed solely of 7 (5 FT and 2 PT) medico-social staff, including the Executive Director.

### RECOMMENDATION

- Ensure that all victims of torture and ill-treatment have prompt access to appropriate rehabilitation services in accordance with HRC resolution 22/21 and UN CAT General Comment No 3 to art. 14.

## SUGGESTED QUESTIONS

- What legislative and policy measures are in place to provide rehabilitation services for victims of torture?