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Republic of Moldova

## Report to the Committee Against Torture Concluding Observations

This Report has been drafted by the Moldovan Institute for Human Rights (IDOM). It focuses on **the rights of persons with intellectual and psychosocial disabilities and persons in detention under the police custody** offering a critical perspective on relevant policies, legislation and practices.

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**The Moldovan Institute for Human Rights (IDOM)** is an independent, non-profit organization, which activates for more than 10 years for promoting and defending human rights on grassroots and government levels, through education and empowerment, monitoring and reporting, raising awareness activities, strategic litigation and promotion of human rights standards in policies and legislation.

IDOM carries out activities in the following main areas:

- Defending and promoting the rights of persons living with HIV/AIDS;
- Monitoring, defending and promoting the rights of persons with mental disabilities from psychiatric and psycho-neurological institutions;
- Respecting the right not to be subjected to torture or other cruel, inhuman or degrading treatment in the pretrial detention institutions <sup>1</sup>;
- Litigating cases of malpractice and defending the patients' rights.

IDOM would like to raise the following 2 principal issues before the Committee against Torture:

1. Prevention of torture and ill-treatment in the pretrial detention places and respecting the rights of persons held under police custody, and
2. Ensuring the rights of persons with mental disabilities held under the state custody and prevention of torture and ill-treatment in psychiatric and psycho-neurological institutions from the Republic of Moldova.

### THE RIGHTS OF PERSONS IN DETENTION UNDER THE POLICE CUSTODY

#### **The police fails to ensure the 72 hours time limit for pretrial detention (24 hours in cases of minors).**

In some cases, the persons who have the preventive measure of arrest or even sentence of conviction are detained in police custody, contrary even to the national law. Basing on the 9<sup>2</sup> monitoring visits conducted by IDOM to the police detention places, 5 cases of violating 72 hours time limit have been documented. The most commonly claimed reasons are: 1) the refusal of the penitentiary (Ministry of Justice) to receive the arrested/convicted person, because the person has injuries. As a consequence, the person is sent back under the police custody ; 2) the refusal of the penitentiary to receive the detained person because the person does not have an identity document; 3) personal request of the criminal prosecution officer to carry out some procedural actions.

<sup>1</sup> The members of IDOM contribute to writing reports on diverse violations of human rights. The reports result from various sources, as the analysis of the situation and of cases, the comparison of national legislation with international acts in the domain of human rights and from recommendations for improvement, such as: Alternative Reports to the UN Committees: UN Committee for Civil and Political Rights, available at: [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO\\_IDOM\\_Moldova97.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO_IDOM_Moldova97.pdf) (27.02.2011),

List of issues submitted in 2010 to the UN Committee for Social, Economic and Cultural Rights, available at <http://www2.ohchr.org/english/bodies/cescr/cescrwg44.htm> (27.02.2011);

UN Committee against Torture, available at:

[http://www2.ohchr.org/english/bodies/cat/docs/ngos/CreDO\\_IDOM\\_CNR\\_Moldova43.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/CreDO_IDOM_CNR_Moldova43.pdf) (27.02.2011) and others. For more info, please see [http://idom.md/index.php?option=com\\_k2&view=item&layout=item&id=76&Itemid=400&lang=en](http://idom.md/index.php?option=com_k2&view=item&layout=item&id=76&Itemid=400&lang=en)

<sup>2</sup> Note: The Police detention places from Chisinau, Ștefan Vodă, Aneni-Noi, Soroca, Florești, Briceni, Taraclia and Basarabasca; available at <http://idom.md/rapoarte/rapoarte-pe-izolatoare-de-detentie-provizorie/>

#### **Suggested recommendations to the Government:**

- The State party should ensure that no one is illegally deprived of liberty over the 72-hour term (24 hours in cases involving minors).
- The State party should ensure that injuries to detainees are not the case to restrict the access to the penitentiary and to ensure that in each case the character of the injuries are fixed (documented) by the medical staff in accordance with the Istanbul Protocol and the case is reported immediately to the Prosecutor's Office about a potential case of torture, but not later than 24 hours according to the national norms.
- The State party should develop clear instructions and mechanisms for inter-institutional collaboration to ensure the admission of persons to penitentiaries on the alternative documents, other than the identity card (ex.: unified provisional form of recognition of the person, which will make possible to place the arrested/convicted person to the penitentiary, before getting the ID Card).
- The State party should ensure that police officers do not abuse their power, as well as to ensure elimination of the authorities' practices to keep the person in detention beyond the prescribed legal deadline, in order to carry out some procedural actions.

#### **Lack of medical staff in detention places under police custody and the lack of their independence.**

Out of the 39 police inspectorates, only 19 have medical staff. IDOM considers the failure of the authorities to meet the standards of the Istanbul Protocol as all medical workers are contracted directly by the Police Inspectorates and are therefore subordinated to the employer (to the inspectorates' management). The main reason for the lack of medical staff is due to the insufficient salary for this function, which is about 50 euros per month.

#### **Suggested recommendations to the Government:**

- The State party should ensure that upon admission and release to / from the detention place the persons are immediately examined by an independent doctor in respect to the Istanbul Protocol.

#### **The deplorable conditions of detention cells in the police, the lack of mattresses, bedding and hygiene sets (toilet paper, soap, brush and toothpaste).**

In some police isolators prisoners are forced to meet their physiological needs during nights in bowls/boilers, which are to be emptied by them the next day. In these cells, contrary to hygienic standards, they are forced to eat. Thanks to the financing agreement with the European Union, the Republic of Moldova is in the process of reforming the police, which includes the renovation of at least 15 detention isolators by 2020. At the same time, during the transition period it is necessary to minimize any inadequate conditions.

#### **Suggested recommendations to the Government:**

- State party should ensure that people in custody have hygienic sets, bed linen and mattresses.
- State party should stop the activity of the detention places where people have to meet their physiological needs in boilers due to the lack of a sewerage system.

### **THE RIGHTS OF PERSONS WITH INTELLECTUAL AND PSYCHOSOCIAL DISABILITIES<sup>3</sup>**

#### **Torture and other ill-treatment in psycho-neurological institutions and psychiatric hospitals**

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<sup>3</sup> Psychiatric Hospitals – 1000 persons and in Psycho-neurological Institution – 2000 persons

There are numerous reports on forms of abuse in institutions, including: beatings and blows with hands, feet, and other objects; immobilization; insults and verbal threats; isolation; and restrictions of food, healthcare, and other services.<sup>4</sup> This situation is particularly worrying considering that these people are from a vulnerable group and are most often in a situation of deprivation of liberty.

When it comes to the use of restraint measures, the Republic of Moldova does not clearly define procedure about the circumstances that justify the intervention of the staff to immobilize the patients, who can do this, how it must be made. Moreover, registries about such incidents are not kept in an adequate manner. In this context, IDOM identified several cases from Psychiatric Hospitals where patients were found with multiple bodily lesions and have not been documented in the institutions' registries. Cases of obvious non-proportional application of force to patients have been identified.

At the present moment IDOM litigates cases related to Codru Psychiatric Hospital, which is one of the biggest psychiatric hospitals from the Republic of Moldova. These cases deal with lack of access to medical services, neglect, malnutrition, cold wards, use of chemical restraints against patients, availability of showers only once a week and verbal and physical abuse among patients tolerated by medical personal. In one such case the victim has died and one of our clients was, at the time of being subjected to ill-treatment, a minor.

Another specific problem taking place in such institutions is gender based violence. Violence against women and girls constitutes a wide-spread problem in the Republic of Moldova. For women and girls with disabilities, much of that violence occurs in institutions, where they are subjected to cruel, inhuman and degrading treatment and punishment of both a sexual and non-sexual nature.<sup>5</sup> In the past years many allegations of gender-based human rights violations have surfaced from the Moldovan institutions for people with disabilities. Such allegations include rape, forced abortion and non-consensual insertion of intra-uterine contraceptive devices.

Global data gathered in the past indicated "high rates [of] physical and sexual abuse against disabled women and girls living in institutions for the disabled,"<sup>6</sup> at times with rates of abuse double that of those living in the community.<sup>7</sup> The situation does not differ in Moldova. To take a few examples, the Mental Disability Advocacy Center (MDAC) (Hungary) is currently supporting litigation in a case against a doctor who is accused of repeatedly raping, over a period of more than 10 years, at least 18 of his female patients. One other relevant case was from Cocieri Psycho-neurological Institution. Allegations of sexual assault/rape of women there were first reported in 2008 by the Council of Europe's Committee for the Prevention of Torture<sup>8</sup>. Allegations again concerning two orderlies resurfaced in 2013. In November 2013, Dubasari police and prosecutors declined to open criminal proceedings, apparently on grounds that women in Psycho-neurological institutions provide inherently unreliable testimony. Under international

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<sup>4</sup>See November 2016 report prepared by various agencies for the Republic of Moldova's 2<sup>nd</sup> Universal Periodic Review, titled "Rights of Persons with Mental Disabilities in the Republic of Moldova," at page 5, available at [https://promolex.md/wp-content/uploads/2016/08/UPR-6\\_Pomo-LEX\\_MDAC\\_IDOM\\_CAJPD\\_Joint-Submission\\_Mental\\_Health\\_EN.pdf](https://promolex.md/wp-content/uploads/2016/08/UPR-6_Pomo-LEX_MDAC_IDOM_CAJPD_Joint-Submission_Mental_Health_EN.pdf); see also Statement of the United Nations Special Rapporteur on the rights of persons with disabilities, Catalina Devandas Aguilar, on the conclusion of her official visit to the Republic of Moldova, 10 to 17 September 2015, available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16441&LangID=E>.

<sup>5</sup>In 2013 in the Moldova institutions there were 2,200 individuals with disabilities (see article, available at <http://mdac.org/en/olivertalks/2013/10/30/girls-and-women-disabilities-have-rights-too>).

<sup>6</sup>See Human Rights Watch, "Women and Girls with Disabilities," available at <https://www.hrw.org/legacy/women/disabled.html>.

<sup>7</sup>See *id.*

<sup>8</sup>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). (2008). Report to the Government of the Republic of Moldova related to CPT's visit in from 14-24 September 2007. CPT/Inf (2008) 39m paras. 146 and 149, available [in French] at <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>

pressure, a criminal investigation was reportedly re-opened, but the status of proceedings is not currently known.<sup>9</sup>

IDOM has also identified several other allegations of gender based violence in Moldovan institutions, including other cases of rape from caregivers, forced abortions and forced contraception. These are just a few examples.

#### **Suggested recommendations to the Government:**

- ***Take legal policy and practical measures to address ill-treatment and gender-based violence against people with disabilities, including those in institutions, and to ensure prevention, investigation, punishment and redress regarding the human rights violations of women living in institutions.***
- ***Finalize the de-institutionalization plan in progress and in consultation with organizations that serve women and girls with disabilities, and take steps to ensure its effective implementation. Create mechanisms to protect individuals with disabilities against abuse in non-institutionalized settings.***

Thus, with regard to the rights of persons with disabilities who are under the state custody, one of the major problems is lack of accountability and effective mechanisms to hold those who inflict torture and other forms of ill-treatment on people with disabilities. When abuse occurs, people with disabilities have limited means of reporting violations of rights and even when they are submitting complaints, their allegations are usually treated with disbelief. We argue that the Moldovan government “has taken insufficient systemic measures to prevent or detect instances of abuse,” the response of law enforcement to these violations remains inadequate, and there are “no court decisions establishing cases of torture or inhuman or degrading treatment.”<sup>10</sup> In many of the cases in which IDOM supports litigation, the investigations into the allegations of our clients are inadequate from a variety of reasons: some have been dismissed by prosecutors on the basis of the disability of the complainant (arguing they are either lying, or distorting the reality or have asked for harsher treatment through their behavior), and when the investigation was carried out the main evidence used were testimonies from staff, the evidence was not corroborated, other investigative acts were executed with huge delays, including months and years after the alleged fact has occurred.

The system for reporting abuse in institutions is inadequate and ineffective. Currently, there is no independent monitoring or complaint mechanism to report abuse in institutions. Under Moldovan law, complaints can only be brought in connection with abuse relating to the provision of healthcare services.<sup>11</sup> Accordingly, there is no formal complaint mechanism for non-healthcare related abuse, such as placement in solitary confinement, withholding of food or privileges, or physical abuse. Although there is a Patients’ Ombudsman, that person is responsible for at least 1,810 patients, and the ombudsman’s conclusions are nonbinding.<sup>12</sup>

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<sup>9</sup> United Nations Human Rights Office of the High Commissioner, Mental Disability Advocacy Centre et. al. (2015). *The Human Rights of People with Mental or Intellectual Impairments in the Republic of Moldova. An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities*, p. 61, available at [http://www.mdac.org/sites/mdac.info/files/moldova\\_report\\_2015\\_english.pdf](http://www.mdac.org/sites/mdac.info/files/moldova_report_2015_english.pdf)

<sup>10</sup> See November 2016 report prepared by various agencies for the Republic of Moldova’s 2<sup>nd</sup> Universal Periodic Review, titled “Rights of Persons with Mental Disabilities in the Republic of Moldova,” at page 6, available at [https://promolex.md/wp-content/uploads/2016/08/UPR-6\\_Pomo-LEX\\_MDAC\\_IDOM\\_CAJPD\\_Joint-Submission\\_Mental\\_Health\\_EN.pdf](https://promolex.md/wp-content/uploads/2016/08/UPR-6_Pomo-LEX_MDAC_IDOM_CAJPD_Joint-Submission_Mental_Health_EN.pdf).

<sup>11</sup> See November 2016 report prepared by various agencies for the Republic of Moldova’s 2<sup>nd</sup> Universal Periodic Review, titled “Rights of Persons with Mental Disabilities in the Republic of Moldova,” at page 7, available at [https://promolex.md/wp-content/uploads/2016/08/UPR-6\\_Pomo-LEX\\_MDAC\\_IDOM\\_CAJPD\\_Joint-Submission\\_Mental\\_Health\\_EN.pdf](https://promolex.md/wp-content/uploads/2016/08/UPR-6_Pomo-LEX_MDAC_IDOM_CAJPD_Joint-Submission_Mental_Health_EN.pdf).

<sup>12</sup> See *id.*

In the absence of an independent complaint body, persons with disabilities must file complaints with the same staff against whom they are bringing their complaints. Yet, these remedies are often ineffective and may even place complainants at risk of further harm. Institutional directors often tolerate, ignore, or may even encourage abuses.<sup>13</sup> This environment also creates the risk that complaints are disregarded or result in retaliation against the complainant.

If we look at the case we mentioned above, related to the doctor accused of raping at least 18 of his patients,<sup>14</sup> his conviction is not yet final and is currently in the appellate stage, although the case was initiated in 2013. Despite the case's severity and reports of intimidation of victims, the state has not deprived the offender of liberty. Several victims have reported efforts by the offender to, directly or indirectly, intimidate them into withdrawing their complaints. This case highlights the extent of the problem, as well as the impunity with which institutional employees have abused women with disabilities.

**Suggested recommendations to the Government:**

- ***Exercise due diligence to prevent violence and human rights violations in these institutions, and carry out regular, mandatory trainings, in consultation or led by organizations that serve women with disabilities, for all institution staff.***
- ***Urgently adopt and implement an independent, accessible, and effective complaint mechanism to report confidentially all violations in institutions.***
- ***Take steps to ensure that authorities investigate, prosecute and punish those responsible for violence against women and girls with disabilities and ill-treatment against people with disabilities in general, including when such acts are committed by private actors.***
- ***Provide effective access to redress and reparations for victims of human rights violations in institutions.***
- ***As a matter of urgency, adopt and enforce legislation to hold accountable those who abuse people with disabilities. Penalties should be commensurate with the gravity of the offense.***
- ***Adopt and implement measures to permit institutionalized residents to confidentially report all forms of abuse to an independent, objective third party for redress.***

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<sup>13</sup>See *id.*

<sup>14</sup>See article, Representing Women from Balti Institution, available at <http://mdac.org/en/women-of-balti>.