



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**List of issues to be considered during the examination of the
second periodic report of MOLDOVA (CAT/C/MDA/2)**

Articles 1 and 4

1. According to the State party's report (CAT/C/MDA/2, paras. 12 and 13), Law No. 139 of 30 June 2005 introduced torture as a separate crime into the new Criminal Code (entered into force on 12 June 2003). Please explain whether the sentence of two to five years' imprisonment, withdrawal of the right to hold certain positions or to carry out certain activities for a period of up to five years provided for under article 309, paragraph 1, of the Criminal Code are appropriate penalties for crimes of torture? How do these penalties commensurate with the other penalties available under the Criminal Code? Please also explain the application of conditional punishment to persons found guilty of having committed the acts of torture, para. 84).
2. Please indicate whether the Convention is directly applicable and can be invoked before the State party's domestic courts (State party's core document, HRI/CORE/1/Add.114, para. 29). If so, please give specific examples and provide statistical data on cases, if any, where its provisions were invoked in court.

Article 2

3. According to the conclusions of the Special Rapporteur on the question of torture (A/HRC/10/44/Add.3, para. 82) and the Council of Europe Committee for the Prevention of Torture, ill-treatment during the initial period of police custody is widespread and torture is often used to obtain confessions from suspects. Despite new laws and regulations adopted by the State party to prevent torture and ill-treatment, an array of mutually reinforcing conditions creates obstacles in tackling these issues in the criminal justice system. Please provide the following information on legal safeguards and effective measures to prevent torture:
 - (a) Further to the previous recommendation of the Committee on the State Party's initial report (CAT/C/CR/30/7, para. 6(i)), please provide information on whether the responsibility over places of temporary detention was fully transferred from the Ministry of Internal Affairs to the Ministry of Justice (State party's second periodic report , paras. 52 – 53).

(b) According to the State party's report (para. 9), the Code on Administrative Offences was reviewed by the Parliament in 2007. Please inform the Committee whether a new Code on Administrative Offences has been adopted and if so, whether the practice of "administrative police detention" was abolished, as recommended by the Committee in its concluding observations on the State party's initial report (para. 6(d)). If the practice of "administrative police detention" was not abolished, please provide information on the measures taken to ensure that the fundamental safeguards against torture and ill-treatment of detainees subjected to the administrative police detention are available in practice.

(c) Please explain the concept and purpose of "preventive detention" (State party's initial report, para. 13) and give examples of its application in the State party's legal system. Does "preventive detention" differ from "preventive custody", envisaged by the Law on Preventive Custody (paras. 213 – 214)? Is the Law on Preventive Custody still in force?

(d) According to the information before the Committee, despite the legal guarantees of articles 64, 69 and 167 of the Criminal Procedure Code (entered into force on 12 June 2003), most detainees do not see a lawyer soon enough and are often subjected to torture and ill-treatment at the hands of police officers before they can see a lawyer. Interrogations are often carried out without the presence of a lawyer, and in many cases the quality of legal advice is not a sufficient safeguard against torture and ill-treatment. Please elaborate on any measures undertaken to ensure that suspects are immediately informed of their rights when taken into custody. What practical measures have been taken to ensure that persons detained by the police have unrestricted access to a defence attorney from the outset of custody and can notify relatives in a timely manner? Is there a monitoring mechanism in place to guarantee the quality of free legal aid? How does the State party ensure the right of a detainee to request an independent medical doctor, in the absence of such a request by the authorities?

(e) Did the State party introduce a programme of unannounced inspections of pre-trial detention centres where, according to the State party's initial report (para. 109) the largest number of torture cases was registered (State party's second periodic report, para. 314)? According to the State party's second periodic report (para. 187), places of detention are regularly visited and monitored by Ombudspersons, NGO representatives, such as the Helsinki Committee, Institute of Penal Reform, CarLux, RCTV Memoria. Please provide additional information on the modalities, frequency and results of such visits. Are these visits unannounced?

(f) Please elaborate on the measures taken, if any, to prevent torture and ill-treatment of women in places of detention or confinement. How is sexual violence in the prisons or other places of detention or confinement monitored? Please provide statistical data on the number of complaints received and investigated and the measures taken to discipline or prosecute offenders.

4. Further to the previous recommendation of the Committee (para. 6(f)) and its request for the follow-up written replies (para. 7) that remained unanswered despite the Committee's reminder of 7 March 2006, please provide detailed information on the status the judiciary in Moldova and its conformity with the United Nations Basic Principles on the Independence of the Judiciary. Please comment on the concerns expressed by the Human Rights Committee (CCPR/CO/75/MDA, para. 12) about short initial appointments for judges, beyond which they must satisfy certain criteria in order to gain an extension of their term. Please comment also on

the concerns expressed by Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.91, para. 12) that the State party faces serious problems of corruption and that low salaries of civil servants and judges may obstruct the effective implementation of measures to combat corruption.

5. Does the State party's domestic law specifically provide that no exceptional circumstances whatsoever, or an order from a superior or a public authority, may be invoked as justification of torture? (State party's second periodic report, para. 57) What is a legal effect of the draft Disciplinary Statute of the internal affairs authorities and the Penitentiary department (paras. 58 – 59 and 313)?
6. Given a large number of complaints against the State party that are addressed to and adjudicated by the European Court of Human Rights on the allegations of torture and other cruel, inhuman or degrading treatment or punishment, please provide more detailed information on the number and nature of these cases, their outcome and the measures undertaken to execute the judgments rendered by the Court, and compensation given to victims.
7. Please provide information on the mandate of the Centre for Human Rights and its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134 of 20 December 1993, annex). What are the resources available to the Centre for Human Rights? Please also indicate how many investigations into allegations of torture have been initiated by the Centre for Human Rights and what the outcome of such investigations is. How are the recommendations of the Centre for Human Rights implemented? Please provide information, including statistics, on the number and types of complaints of torture and other forms of ill-treatment proscribed by the Convention which were received by the Centre for Human Rights since the examination of the State party's initial report in 2003.
8. Please provide information on legislative and other measures that the State party has taken to prevent domestic violence and to classify acts of domestic violence as specific offences under the criminal law. Please provide statistical data on complaints, prosecutions and sentences in matters of domestic violence, including marital abuse and rape. Please also inform the Committee of any measures taken to support or provide redress to women and children who have experienced domestic violence.
9. Please provide information on the measures taken to ensure effective implementation of the National Plan to Prevent and Combat Trafficking in Human Beings, including on the progress made to develop social rehabilitation services for victims of human trafficking, both men and women, to train professionals to work with victims of trafficking and to ensure prosecution of traffickers. Please provide detailed information, including statistical data, on tendencies in trafficking and on court cases, prosecutions and victims assisted, as well as the results achieved in prevention.
10. What measures is the State party taking to combat police violence against persons, belonging to minority groups, including Roma, Muslims and persons of African and Asian descent, and to change the behaviour of police and law enforcement officials towards them?

Please provide information on the measures taken to ensure the effective investigation of complaints about police violence against persons, belonging to minority groups.

Article 3

11. In connection with the State party's obligations under article 3 of the Convention, please clarify:

(a) Whether the existing legal safeguards against non-refoulement and the procedures of appeal described in the State party's report (para. 78) have suspensive effect regarding the expulsion, return and extradition of persons to another State. Please comment on whether, in practice, such remedies exist. Do the same legal safeguards apply in cases of a transfer of convicted persons to a third State (para. 71)? Please provide examples of cases where the authorities did not proceed with extradition, return or expulsion because of fear that the persons might be tortured. Does the State party have a list of "safe third countries" for removal? If so, how is it created and maintained?

(b) Asylum procedures in the State party and their compliance with non-refoulement obligations under article 3 of the Convention. Who are the competent authorities? Please provide detailed information on access to a lawyer, including the right to speak to a lawyer in private, and to interpreters by asylum-seekers.

12. Please provide detailed statistical data covering the entire reporting period with respect to the implementation of article 3 of the Convention in cases of expulsion or return (refoulement) of foreigners, disaggregated by age, gender and country of origin, and indicating in particular:

(a) The number of persons seeking asylum and the number of returnees, including the countries of return;

(b) How is the probable risk of torture assessed in the determination of cases and in the appeal process?

(c) The procedure for the examination of asylum requests submitted at the border and any appeal process; and

(d) Any instances in which diplomatic assurances or the equivalent thereof have been offered to or accepted by the State party, and the procedures for verifying and following up on such assurances.

Articles 5, 6 and 7

13. Please provide information on whether the State party's domestic legislation establishing universal jurisdiction applies to the offences referred to in article 4 of the Convention (State party's second periodic report, para. 104).

14. Please update the Committee on any progress made since the examination of the State party's initial report in 2003 , paras. 109-115) in ensuring full respect for the Convention in all territories under the State party's jurisdiction, including the left bank of the Dniester river.

15. According to the State party's report (para. 108), its domestic legislation does not stipulate explicitly the mandatory establishment of its own jurisdiction in case of refusal to extradite. In the light of this information, please describe practical measures taken by the State party to ensure its compliance with the obligations under article 7 of the Convention. Please indicate whether the State party has rejected, for any reason, any requests for extradition by a third State for an individual suspected of having committed a crime of torture. If so, please provide the number of requests and rejections, and the outcomes of such prosecutions, if any, including the penalties imposed and penalties actually served.

Article 8

16. Please provide updated information on the instruction and training provided for law-enforcement officials and other public officials with respect to human rights, specifically on the treatment of detainees and vulnerable people (such as minors, persons with disability, minority groups) and on the measures for the prevention of torture and cruel, inhuman or degrading treatment or punishment. Please specify who conducts and who undergoes the training, and if the Convention is made known in the course of such programmes. Please provide an update since the examination of the State party's initial report (para. 60) in 2003 on the plan to establish a Centre for Professional Training of Penitentiary Personnel. Furthermore, please provide detailed information on the training of police enforcement officials in crowd control and the regulations on the use of force and firearms by law enforcements officials. How and by whom these training and instruction programmes are monitored and evaluated? Has there been any specific training with regard to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, known as the Istanbul Protocol (State party's second periodic report, para. 170), including the training of forensic doctors and medical personnel dealing with persons in detention, asylum-seekers and refugees, to detect physical and psychological *sequelae* of torture? Is the Istanbul Protocol applied in practice and, if so, how? Is there any training into the absolute nature of non-refoulement of article 3 as well as on the non derogability of the prohibition of torture and cruel, inhuman or degrading treatment or punishment?

Article 9

17. Please provide information regarding the interrogation rules, instructions and methods currently existing in Moldova. Please also indicate the frequency with which these are reviewed. Please provide an update since the examination of the State party's initial report (para. 349) in 2003 on the mechanisms in place for the inspection of prisons, police stations and other places of detention. In particular, please provide information on the current composition and activities of the Complaints Committee established under article 177 of the new Criminal Procedure Code to deal with complaints lodged by inmates from penitentiary institutions against illegal actions of the penitentiary administration, violations of regime, as well as other actions infringing on the legality in places of detention (State party's second periodic report, paras. 181 – 185). Please provide statistical data with respect to the number of complaints received by the Complaints

Committee, as well as a number of persons accused, tried and convicted following the referral of these complaints to the Committee.

18. Please provide updated information, including statistics, disaggregated by sex, age, ethnicity and crime, on the number of imprisoned persons and the occupancy rate of the accommodation capacities, covering the entire reporting period. Please provide information on whether the new Criminal and Criminal Procedure Codes address the legacy of imprisonment policy of the Moldavian Soviet Socialist Republic, which relied heavily on the deprivation of liberty as a mode of punishment also for petty crimes, thus contributing to the overcrowding of prisons. Is there a system of alternative punishment, especially for minor crimes? Is the practice of making use of amnesties as a means for decreasing prison population still being applied in Moldova (State party's initial report, para. 57)?

19. Please indicate if juveniles and adults (State party's second periodic report, para. 299) and women and men are separated in all situations of detention. Please elaborate on the measures taken to ensure that juvenile justice standards are in compliance with international obligations. Please provide information on alternative socio-educational measures for persons under the age of 18 in conflict with the law. Please also provide statistical information on the number of juveniles in detention, including the length of sentences being served.

20. Please provide information, including disaggregated statistical data by age, sex and ethnicity, on the number of migrants and asylum-seekers detained and the maximum length of and the grounds for detention. Which authority is entitled to order such detention? Further to the Committee's request for the follow-up written replies (para. 7) that remained unanswered despite the Committee's reminder of 7 March 2006, please explain whether the State party has a special placement system for non-criminal migrants and asylum-seekers?

21. What means does a detainee have to document any bodily injuries suffered while in detention? Are confidential medical examinations upon arrival and departure from places of detention compulsory under the State party's law? The Committee has received allegations about the issuance of an internal document or verbal order from the Ministry of Health and Social Protection, through which all medical institutions were instructed not to deliver medical certificates attesting to the ill-treatment and use of torture, including death, in the aftermath of the events of 7 April 2009 in Chişinău. Please explain what measures are taken to ensure access to medical care, and what guarantees are provided that medical personnel and institutions are impartial and able to assist persons claiming torture in the verification of their complaints?

Articles 10 and 11

22. Please provide detailed statistical data, covering the entire reporting period, with respect to the number of criminal proceedings initiated on the basis of article 309, paragraph 1, of the Criminal Code, number of persons accused, tried and convicted, including the sanctions imposed, for the crimes of torture, attempts to commit torture, and complicity or participation in torture. Has an independent administrative body been established, as recommended by the Committee in its concluding observations on the State party's initial report (para. 6(e)), to deal with complaints against the police and law enforcement personnel and, if so, what are its terms of reference?

23. According to the information before the Committee, as many as 200 persons were arrested by public security forces in the aftermath of the events of 7 April 2009 in Chişinău. In most of the cases, they have not been provided with prompt access to a lawyer of their choice. As of 11 April 2009, fifteen persons were still unaccounted for. Many of those arrested, including minors, have reported that they were subjected to beatings with clubs, plastic bottles filled with water, fists and kicking with feet during their arrest and police custody in district police stations, as well as in the General Police Commissariat of Chişinău. Many of the detained persons had physical marks that appeared to corroborate their claims. Reports of overcrowding and instances of denial of food and limited access to water and basic sanitary facilities were also reported. Two persons, Ion Tabuleac and Valeriu Boboc, died shortly afterwards allegedly of injuries inflicted by the police. Please explain whether these allegations of torture and other ill-treatment have been promptly, thoroughly and impartially investigated. If so, what is the outcome of such investigations?

24. Please provide the Committee with information, including statistics, on the number and types of complaints of torture and other forms of ill-treatment received by the Department of Internal Security of the Ministry of Internal Affairs, the General Department of Criminal Investigation of the Ministry of Internal Affairs, the Department for Penitentiary Institutions of the Ministry of Justice, the territorial units of the General Prosecutor's Office since the examination of the State party's initial report in 2003. Please provide information on the measures put in place by the State party to avoid the duplication of their terms of reference with regard to the complaints of torture and other forms of ill-treatment. How is general public informed about the specific terms of reference of each of these entities?

25. Please provide information on the measures in place to guarantee the confidentiality of complaints and to protect complainants from possible reprisals (A/HRC/10/44/Add.3, paras. 67, 75, 90). According to the State party's report (para. 246), post boxes were installed in all penitentiaries, except for pre-trial detention centres, where the correspondence is collected and delivered by the penitentiary according to the provisions of the legislation. Please explain why no post boxes were installed in pre-trial detention centres? Please provide an update on the implementation of the Law on State Protection of Injured Parties, Witnesses and Other Persons Involved in Criminal Trial of 28 January 1998 since the examination of the State party's initial report (paras. 279 - 285) in 2003. Please provide statistics on the practical application of witness protection programmes for victims of torture, ill-treatment and related violations (State party's second periodic report, paras. 254 - 265).

26. Information before the Committee indicates frequent impunity for law enforcement and prison officers accused of torture, ill-treatment and excessive use of force. Please describe the procedure to be followed in cases of complaints against police and prison staff misconduct. In particular, please describe the steps taken by the State party to ensure that the investigation of complaints is independent, prompt and effective. Who carries the burden of proof in such proceedings (A/HRC/10/44/Add.3, para. 85)?

27. Further to the approval of the Regulations on Serving of Sentences by Convicted Persons on 16 June 2006 (State party's second periodic report, paras. 21 and 46), please provide information, including statistics, on the number of occasions when doctors that perform medical examinations have reported to the Department for Penitentiary Institutions and the territorial

units of the General Prosecutor's Office their findings that a detained person had been subjected to torture and other cruel, inhuman or degrading treatment or punishment, as well as on the number of subsequent investigations, prosecutions and punishment of perpetrators.

Article 12

28. Please provide the Committee with information on cases in which redress and compensation was ordered by the courts for victims of torture or cruel, inhuman or degrading treatment or punishment, or for their families, during the reporting period. This information should include the number of requests made, the number granted, and the amounts ordered and actually provided in each case. Please provide an update on the implementation of the Law on Compensation for Damages Caused by Illegal Acts of Criminal Procedure and Preliminary Inquiry Bodies, the Judiciary and the Courts of 25 February 1998 since the examination of the State party's initial report (para. 116) in 2003. Please indicate how many victims have been compensated despite the perpetrator not being identified. Do investigations into such cases continue until the perpetrator(s) is/are identified and brought to justice?

29. Please indicate what services exist for the treatment of trauma and other forms of rehabilitation of torture victims and what financial allocations have been made for this purpose (State party's second periodic report, paras. 268 – 271)? Please indicate whether the State party is considering limiting access of law enforcement officials to medical institutions with hospitalized victims of torture, which is identified in the State party's report (para. 268) as a factor preventing the rehabilitation of torture victims. Please explain how victims of torture and ill-treatment are informed of the rehabilitation services and how often such services have been utilized?

Article 13

30. How is the provision in article 15 of the Convention prohibiting the use of any statement obtained as a result of torture as evidence in any proceedings, except against the alleged torturer, implemented in practice in the State? Please provide examples of any judicial cases where the courts have declared statements inadmissible on the ground that they were obtained coercively (State party's second periodic report, paras. 266 – 267).

Article 14

31. According to the State party's report (paras. 287, 289 and 291 - 292) confirmed by the information before the Committee, the material conditions of detention are disastrous, and in some instances life-threatening (living space per inmate, water and electric supply, hygiene, medical services, heating, nutrition, etc.), and amount to cruel, inhuman or degrading treatment.

(a) Please provide information on the measures taken to improve this situation, including the financial resources allocated. Please provide information on the practical measures taken during the entire reporting period in furtherance of the Concept Paper on Penitentiary System Reform for 2004 – 2013 (State party's second periodic report, paras. 23 – 26, 289 and 292). Please describe the current conditions in those premises, including the number of metres

per prisoner used in practice in these facilities and availability of food and drinking water to individuals held in police custody for long periods.

(b) According to the State party's report (para. 305), patients in the penitentiary system are refusing to undergo the tuberculosis treatment, motivating their decision by the fact that the medicine is too strong, while the nutrition in the penitentiary is unsatisfactory and, as a result, such treatment worsens the patient's state of health. What practical measures are being taken by the State party to ensure that necessary conditions, including adequate nutrition, are provided to patients in the penitentiary system for the tuberculosis treatment to be effective? Please provide statistical data and detailed information on the prevention and treatment of tuberculosis and HIV/AIDS in detention facilities, and the results obtained.

32. Please provide information about inter-prison violence, including sexual violence and intimidation, including statistical data covering the entire reporting period, disaggregated by sex, age, nationality, location, type of sentence etc. What measures have been taken to prevent this type of violence, particularly against female, juvenile and immigrant detainees, and what is done to monitor and report it? What practical measures have already been taken for the implementation of the Strategy for combating violence in penitentiary institution (State party's second periodic report, para. 294)?

33. According to information before the Committee (A/HRC/4/25/Add.1, para. 258 and A/HRC/4/37/Add.1, para. 453) lawyers are being threatened with criminal prosecutions under article 335 of the Criminal Code for 'misuse of official position' when they carry out their lawful professional activities for the protection of human rights, and in particular against grave human rights violations, such as torture. What measures has the State party taken to protect and prevent such harassment and violations? What mechanisms are in place, and have been used, to investigate those acts from public entities? Please provide data on complaints, investigations, prosecutions and conviction related to such acts.

34. Please describe the measures taken to combat racism and discrimination, in particular racially motivated offences and hate speech, against minority groups or foreigners, including prompt and impartial investigations into allegations of offences pursuant to articles 1 and 16 of the Convention. Please indicate the number of allegations of racially motivated offences and hate speech as well as convictions of perpetrators of such acts. Please provide information about the number of members of minority groups that are recruited into the law-enforcement agencies, especially from the Roma minority.

35. Please provide information on any independent inspections of Psychiatric hospitals of the Ministry of Health and Social Protection (State party's second periodic report, paras. 191 – 192), bodies undertaking these activities and follow-up. Please elaborate on the use and extent of any coercive measures (State party's initial report, para. 64).

36. According to the information before the Committee, even though there is no criminal penalty under the State party's law for women who have abortions outside of the hospital, there were instances when these women were charged with intentional and premeditated murder and subsequently sentenced to long-term imprisonment. They encounter gender-based discrimination throughout their detention, prosecution and trial. In at least one case, a woman who had an

abortion outside of the hospital and was experiencing continuous bleeding, was humiliated by prison guards and denied appropriate post-abortion care. The prosecution and the courts, meanwhile, repeatedly made biased remarks against her based on gender stereotypes and anti-abortion attitudes. What are the State party's law and practice with respect to doctors' obligation to report to the police women who undergo abortion outside of the hospital? What are the State party's law and practice with respect to criminal investigations, including interrogation and arrest of women that find themselves hospitalized and in need of potential life-saving medical treatment (CEDAW/C/MDA/CO/3, paras. 30 – 31)? Is the State party monitoring cases of preterm births or late term abortions that take place outside of the hospital? In such cases, how many women have been charged and how many have been sentenced for undergoing an illegal abortion? In such cases, how many women have been charged and how many have been sentenced for murder or infanticide? What measures has the State party adopted to ensure that the authorities are aware of the vulnerable situation of women who terminate their pregnancies?

Other issues

37. With regard to Moldova's ratification of the Optional Protocol to the Convention against Torture on 24 July 2006 (State party's second periodic report, para. 56), please provide information on the current status of the independent National Preventive Mechanism(s) at the domestic level and the activities it/they undertook. According to the information before the Committee, between 7 and 13 April 2009, members of the Consultative Council for the Prevention of Torture (National Preventive Mechanism under OPCAT) established within the Parliamentary Human Rights Advocates office were refused access to many police stations, including the General Police Commissariat of Chişinău and the Central, Buiucani and Rîşcani District Police Commissariats in Chişinău. They were only able to visit the pre-trial detention centre (SIZO) No. 13 on 11 April 2009 after more than an hour of negotiations and with the intervention of the Ombudsman. Furthermore, on 14 and 15 April 2009, the Consultative Council was given very restricted access to Ciocana District Police Commissariat and access to Rîşcani District Police Commissariat only when the Ombudsman arrived. The Committee has also received allegations that the Parliamentary Human Rights Advocates have been strongly advised by the authorities not to speak out about human rights violations or assist with visits to detention centres. Please provide an explanation and elaborate on what measures are being taken by the State party to prevent similar occurrences in the future. How does the State party ensure that police officers at all levels are properly informed of the legal functions and duties of the Consultative Council against Torture?

38. Is the State party considering making the declaration under articles 21 and 22, recognizing the competence of the Committee to receive and consider communications?

39. Please indicate whether there is legislation in Moldova aimed at preventing and prohibiting the production, trade, export and use of equipment specifically designed to inflict torture or other cruel, inhuman or degrading treatment. If so, please provide information about its content and implementation. If not, please indicate whether the adoption of such legislation is being considered.

40. Please provide information on the legislative, administrative and other measures the State party has taken to respond to the threat of terrorism, and please indicate if, and how, these have

affected human rights safeguards in law and practice. Please describe the relevant training given to law enforcement officers, the number and types of convictions entered under such legislation, the legal remedies available to persons subjected to anti-terrorist measures, the number of complaints related to non-observance of international standards, and the outcome of and follow-up to these complaints.
