



EQUAL RIGHTS TRUST

Submission to the 62nd session of the Committee Against Torture in relation to the third periodic report of

Republic of Moldova

October 2017

Introduction

1. The Equal Rights Trust (the Trust) submits this parallel report to the 62nd session of the Committee Against Torture (the Committee) in advance of its consideration of the third periodic report submitted by the Republic of Moldova (Moldova) on implementation of the Convention Against Torture (the Convention).
2. The Trust exists to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. We focus on the complex relationship between different types of discrimination and inequality, and their relationship with other human rights, developing strategies for translating the principles of equality into practice.
3. Since 2010, the Trust has actively supported civil society in Moldova in pursuit of this mission. In the context of this work, we have undertaken research to document patterns of discrimination in Moldova, published a comprehensive report on patterns of discrimination,¹ provided training to civil society actors and undertaken advocacy and litigation. Together with civil society organisations and lawyers, we have been particularly focused on working to increase the protection of vulnerable groups in Moldova from discriminatory torture and ill-treatment. In the last year, we have supported litigation on behalf of victims of discriminatory torture and ill-treatment at the domestic, regional and international level,² in collaboration with our partner, the Moldovan human rights organisation, Promo-LEX Association.

Discriminatory torture and ill-treatment

4. The purpose of this submission is to present selected evidence from our litigation work in Moldova which is relevant to the Committee's assessment of Moldova's compliance with Articles 1, 2, 12, 13, 14 and 16 of the Convention. The evidence presented in this submission relates to instances of discriminatory torture (as defined under Article 1) and

¹ The Equal Rights Trust, *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*, June 2016, available at:

http://www.equalrightstrust.org/ertdocumentbank/From%20Words%20to%20Deeds%20Addressing%20Discrimination%20and%20Inequality%20in%20Moldova_0.pdf

² See paragraphs 21, and 23 – 27 below.

discriminatory cruel, inhuman or degrading treatment or punishment (as prohibited by Article 16, “ill-treatment”).

The Connection between Discrimination and Torture and Ill-treatment

5. The term “discriminatory torture and ill-treatment” is used to refer to circumstances in which *discrimination* is a relevant factor in the manifestation of torture or other cruel, inhuman or degrading treatment or punishment as prohibited under the Convention.³

6. Article 1 of the Convention defines torture to include:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

7. Article 16 of the Convention requires states parties to:

[P]revent acts of cruel, inhuman or degrading treatment or punishment (...) when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

8. In its General Comment No. 2 (2008), the Committee emphasised that the principle of non-discrimination is “fundamental to the interpretation and application of the Convention”. For example, that “the *discriminatory* use of mental or physical violence or abuse is an important factor in determining whether an act constitutes torture.”⁴

9. According to Article 1 of the Convention, four elements must be present in order to conclude that treatment amounts to torture: severe pain and suffering; intentionally inflicted; for a purpose; and by or with the consent or acquiescence of a public official.⁵ In the Trust’s view, discrimination or inequality may be relevant in respect of each of these elements:

a. **Severe Pain and Suffering** It is increasingly accepted that the determination of whether a person is experiencing pain and suffering and the severity of that pain

³ See, Equal Rights Trust, *Shouting Through the Walls: Discriminatory Torture and Ill-treatment: case studies from Jordan* (March 2017), available at: <http://www.equalrightstrust.org/resources/shouting-through-walls-discriminatory-torture-and-ill-treatment-case-studies-jordan>.

⁴ Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, para 20 (Emphasis added).

⁵ See Copelon, R., “Recognizing the Egregious in the Everyday: Domestic Violence as Torture”, *Columbia Journal of Human Rights Law Review*, Vol. 25, 1994, p. 308.

and suffering involves a subjective element, which may include factors such as the age, sex and health of the victim.⁶ As has been noted by the current and previous Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment (Special Rapporteurs), these subjective considerations also include consideration of whether a person has a disability.⁷ It is noteworthy that this subjective approach will also be necessary to determine whether or not there has been a violation of Article 16 in respect of cruel, inhuman or degrading treatment or punishment.

- b. **Intent** It has been largely accepted that although the definition of torture refers only to “acts”, it includes intentional omissions, such as denying a person food, because excluding such intentional omissions from the scope of the definition would run contrary to the purpose of the prohibition on torture.⁸ While it has not previously been explored, it is the Trust’s submission that, properly understood, in many circumstances a state failure to make a reasonable accommodation where it has an obligation to do so (an act of discrimination) will fall within this scope. It is arguable that such failures should not be seen as merely negligence, given that they are positive human rights obligations. However, this matter has not previously been determined.
- c. **Purpose** The Convention identifies that acts which are perpetrated “for reasons of discrimination” fall within Article 1 where the other elements of the definition are met. While the Committee has not itself had the opportunity to explore this purpose element in great detail, other useful international commentary assists and is outlined below.
- d. **Involvement of the State.** There are circumstances in which a state’s failure to meet its obligations to prevent torture generally, including by failing to take specific measures to prevent discriminatory treatment, may in some circumstances lead to the State being held responsible for violating the prohibition of torture in individual cases. The Committee has explained that the State’s failure to exercise due diligence to prevent, investigate, prosecute and punish non-State officials or private actors, amounts to acquiescence or consent

⁶ United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/63/175, 28 July 2008, Para 47; Human Rights Committee, *Vuolanne v Finland*, Communication No. 265/1987, U.N. Doc. Supp. No. 40 (A/44/40), 7 April 1989, Para. 9.2. This approach is also taken by the European Court of Human Rights, *Yordanov v Bulgaria*, Application No. 56856/00, 10 August 2006, Para 86 where the Court noted “[t]o fall within the scope of Article 3, ill-treatment must attain a minimum level of severity. The assessment of this minimum is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim”.

⁷ United Nations General Assembly, *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/63/175, 28 July 2008, Para 47.

⁸ Rodley, N. and Pollard, M., “Criminalisation of torture: state obligations under the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment”, *European Human Rights Law Review*, 2006, p. 120 and the sources cited therein; and Miller, G.H., *Defining Torture*, Floersheimer Center for Constitutional Democracy, Benjamin N. Cardozo School of Law, 2005, pp. 6-8.

to acts of torture.⁹ For example, state failures to protect women from gender-based violence, such as domestic violence and trafficking have often been found to fall short of this due diligence requirement.¹⁰

10. The Trust also welcomes the growing recognition elsewhere in international and regional human rights law of the relationship between discrimination and torture:

- a. In his 2016 report to the Human Rights Council, the Special Rapporteur sought to address what he considered to be the historic failure of “the torture and ill-treatment framework” to “account adequately for the impact of entrenched *discrimination*”.¹¹ In his report, the Special Rapporteur explained the relationship between torture and discrimination in a number of important respects, including:
 - That “[i]ntersectional identities can result in experiencing torture and ill-treatment in distinct ways”.¹²
 - That “[g]ender stereotypes play a role in downplaying the pain and suffering that certain practices inflict on women, girls, and lesbian, gay, bisexual and transgender persons”;¹³ and
 - That an assessment of pain and suffering must include consideration of “normative and institutional frameworks that reinforce gender stereotypes and exacerbate harm”.¹⁴
- b. In many cases involving discriminatory torture, a number of the purposes identified in Article 1 may be fulfilled. For example, the use of discriminatory language may be aimed at intimidating a person.¹⁵ However, there are some cases in which only the last of these purposes, “for any reason based on discrimination of any kind”, may be present. For example, medical treatment may be considered to be in the “best interests” of the patient but actually be based on discriminatory notions of what is in a person’s best interests. In a 2013 report on torture and

⁹ Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 24 January 2008, Para 18.

¹⁰ Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 24 January 2008, Para 18. See, for example, *Opuz v Turkey*, Application No. 33401/02, 9 June 2009 in the context of the right to life;

¹¹ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 5.

¹² *Ibid.*, Para 9.

¹³ *Ibid.*

¹⁴ *Ibid.*, Para 68.

¹⁵ See, *Stop Torture in Health Care, Treatment or Torture? Applying International Human Rights Standards to Drug Detention Centres*, June 2011, p. 12.

other ill-treatment in healthcare settings, the Special Rapporteur stated that: *“The mandate has recognized that medical treatments of an intrusive and irreversible nature, when lacking a therapeutic purpose, may constitute torture or ill-treatment when enforced or administered without the free and informed consent of the person concerned. This is particularly the case when intrusive and irreversible, non-consensual treatments are performed on patients from marginalized groups, such as persons with disabilities, notwithstanding claims of good intentions or medical necessity. For example, the mandate has held that the discriminatory character of forced psychiatric interventions, when committed against persons with psychosocial disabilities, satisfies both intent and purpose required under the article 1 of the Convention against Torture, notwithstanding claims of “good intentions” by medical professionals.*¹⁶ (references omitted)

- c. In practical terms, we have seen that taking a gender sensitive approach to the definition of torture and other ill-treatment has led to the recognition of domestic violence and other forms of violence against women as torture or other ill-treatment.¹⁷ In 2008, the then Special Rapporteur Manfred Novak recognised that acts which were discrimination on the basis of sex met the “purpose” requirement under the definition of torture, stating that: *“In regard to violence against women, the purpose element is always fulfilled, if the acts can be shown to be gender-specific, since discrimination is one of the elements mentioned in the CAT definition”.*¹⁸
- d. In the context of violence against persons with disabilities, the Special Rapporteur reported in 2016 that:

*By recognizing and reframing violence and abuse perpetrated against persons with disabilities as torture or other cruel, inhuman or degrading treatment or punishment, victims and advocates can be afforded stronger legal protection and redress for violations of human rights.*¹⁹

Why consider the concept of discriminatory torture and ill-treatment?

- 11. These developments in international and regional law are particularly welcome given that, in the Trust’s view, acknowledging the discriminatory nature of certain acts of torture or

¹⁶ United Nations General Assembly, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, UN Doc. A/HRC/22/53, 1 February 2013, Para 32.

¹⁷ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 55.

¹⁸ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak*, UN Doc. A/HRC/7/3, 15 January 2008, Para 30.

¹⁹ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 45, 70 and 83.

ill-treatment is key to a proper understanding of the causes, consequences, impact of, and solution to such acts.

12. The Trust considers that discriminatory torture and other ill treatment is qualitatively distinct from other instances of torture and ill treatment in two ways:
 - a. Discrimination is often a *cause* of torture and other ill-treatment of protected groups.²⁰ This may occur in the sense that a particular group, such as women or persons with mental disabilities, is singled out for particular acts amounting to torture or other ill-treatment or is particularly vulnerable to such acts.²¹ It may also occur less overtly, for example, a failure to accommodate the specific needs of persons with disabilities in detention and the inhuman and degrading treatment that can result from this failure is a manifestation of the wider discrimination that persons with disabilities face in society.²²
 - b. Torture and ill-treatment also *impacts* disproportionately and differently upon certain groups including those who have faced historical disadvantage – such as women – and those with specific vulnerabilities – such as certain persons with mental disabilities.²³ For example, a person with a mental disability may experience psychological ill-treatment in a different way to others, and in a way which means that the impact of that ill-treatment may be severe enough to amount to torture. For this reason, it is necessary to take into account the ways

²⁰ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 6; Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Para 21; Committee on the Rights of Persons with Disabilities (CRPD Committee), *General comment No. 3 (2016) - Article 6: Women and girls with disabilities*, UN Doc. CRPD/C/GC/3, 2016, Para 53; Human Rights Council, *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/20/5, 30 March 2012, Paras 14-16.

²¹ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 20; Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Para 21; CRPD Committee, *General comment No. 3 (2016) - Article 6: Women and girls with disabilities*, UN Doc. CRPD/C/GC/3, 2016, Para 53; Human Rights Council, *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/20/5, 30 March 2012, Paras 14-16; United Nations General Assembly (UNGA), *Interim report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/63/175, 28 July 2008, Para 39.

²² Human Rights Council, *Thematic study on the issue of violence against women and girls and disability: Report of the Office of the United Nations High Commissioner for Human Rights*, UN Doc. A/HRC/20/5, 30 March 2012, Para 16; see also Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 9.

²³ See Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 9; European Court of Human Rights, *Keenan v United Kingdom*, Application No. 27229/95, 3 April 2001, Para 111; UN Office of Drugs and Crime, *Handbook on Prisoners with Special Needs*, Criminal Justice Handbook Series, 2009, pp. 44-46; and Human Rights Committee, *Vuolanne v Finland*, Communication No. 265/1987, UN Doc. A/44/40, 1989, Para 9.2.

in which different groups experience treatment in order to determine if acts amount to torture and other ill-treatment.

13. As a result of these qualitative differences, the Trust considers that states parties to the Convention need to adopt distinct responses to acts of discriminatory torture and ill-treatment which combat both discrimination and torture. In many contexts, steps taken to prevent torture and other ill-treatment will be ineffective unless steps are also taken to combat the discrimination which leads to such acts. Discrimination and stereotypes may mean that the torture or other ill-treatment of persons with vulnerabilities is accepted by the wider community, and the marginalised status of victims may mean that they are less able or willing to seek assistance, which fosters a climate of impunity.²⁴ As the Special Rapporteur has noted:

*Full integration of a gender perspective into any analysis of torture and ill-treatment is critical to ensuring that violations rooted in discriminatory social norms around gender and sexuality are fully recognized, addressed and remedied.*²⁵

Case studies of discriminatory torture and ill-treatment in Moldova

14. Commencing in 2013, the Trust and Promo-LEX have worked to seek adequate recognition of, and response to, discriminatory torture and ill-treatment in Moldova. In addition, the Trust has supported Moldovan lawyers to initiate and develop legal claims on behalf of victims of discriminatory torture and ill-treatment. Allegations made by the individuals cited in this submission have been put to the Government of Moldova and other relevant institutions but, at the time of submission, responses are awaited. All information cited below is either in the public domain or has been included with the consent of the individuals concerned.
15. We have selected five cases from our work in Moldova which we consider to be relevant to the assessment of Moldova's compliance with Articles 1, 2, 12, 13, 14 and 16 of the Convention. They elucidate evidence we have found more widely through our work. It is our submission that, despite the interpretations of the Convention obligations outlined above, our work in Moldova highlights a persistent failure on the part of the state to recognise the relationship between discrimination and torture and ill-treatment, and, most concerningly, to comply with its obligations under the Convention concerning violations in which discrimination is a relevant factor.

²⁴ CRPD Committee, *General comment No. 3 (2016) - Article 6: Women and girls with disabilities*, UN Doc. CRPD/C/GC/3, 2016, Para 53; Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 9.

²⁵ Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, UN Doc. A/HRC/31/57, 5 January 2016, Para 6.

16. Under Articles 2 and 16, Moldova has a duty to take effective legislative, administrative, judicial or other measures to prevent torture and ill-treatment respectively. Under Article 12, Moldova must ensure that a prompt and impartial investigation is carried out when there are reasonable grounds to believe an act of torture (or ill-treatment²⁶) has been carried out.²⁷ Article 13 of the CAT guarantees the right of individuals who allege that they have been subjected to torture (or ill-treatment²⁸) to complain and to have their case promptly and impartially examined by competent authorities. Complainants and witnesses must be protected against any ill-treatment or intimidation as a consequence of their complaint or any evidence they give.²⁹

Discriminatory torture or ill-treatment committed by State authorities in contexts of custody or control

17. The Committee has held that Moldova, like all states parties, has a duty to prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, such as prisons, hospitals, schools and institutions that “engage in the care of children, the aged, the mentally ill or disabled”, among others.³⁰

Psychoneurological residential institutions (Romanian: *Internatul Psihoneruologic*)

18. In our 2016 report on patterns of discrimination in Moldova, the Trust considered the discriminatory practice of institutionalisation of persons with disabilities in Moldova.³¹ We acknowledge that the institutionalisation of persons with mental disabilities is contrary to the CRPD³² and may, in itself, violate the Convention. However, for the purpose of the present submission, we do not focus on phenomenon of institutionalisation itself, but

²⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), G.A. Res. 39/46, 1984, Article 16.

²⁷ CAT, Article 12.

²⁸ CAT, Article 16.

²⁹ CAT, Article 13.

³⁰ Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Para 17; UNGA, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Mendez*, UN Doc. A/HRC/22/53, 1 February 2013, Para 24. As the Special Rapporteur notes, the CEDAW Committee has stated that “the State is directly responsible for the action of private institutions when it outsources its medical services and that, furthermore, the State always maintains the duty to regulate and monitor private health-care institutions”, in CEDAW Committee, *da Silva Pimentel v Brazil*, Communication No. 17/2008, UN Doc. CEDAW/C/49/D/17/2008, 27 September 2011, Para 7.5.

³¹ The Equal Rights Trust, *From Words to Deeds: Addressing Discrimination and Inequality in Moldova*, June 2016, page 184 – 190, available at: http://www.equalrightstrust.org/ertdocumentbank/From%20Words%20to%20Deeds%20Addressing%20Discrimination%20and%20Inequality%20in%20Moldova_0.pdf.

³² Article 19 of the CRPD states that all people with disabilities, including people with mental disabilities, have the right to live independently while Article 14 states that disability should in no case be the basis for deprivation of liberty.

rather the discriminatory torture and ill-treatment that occurs against persons with “mental disabilities” who reside in institutions known as “psychoneurological residential institutions” (Romanian: Internatul Psihoneruologic). The Trust uses the term “persons with mental disabilities” to refer to all persons with intellectual, psychosocial or other cognitive disabilities. The use of this term is problematic and best practice requires a specific delineation of the situation of different groups within this broad umbrella. However, we use the term after consultation with relevant stakeholders in Moldova about the situation in Moldova and the possibility of overcoming the severe lack of understanding of mental disability and exploring the treatment fully if such delineation was adopted.

19. The case of *Nicolae* concerns two acts of discriminatory torture or ill-treatment that arise in the context of a man with mental disabilities who resides in a psychoneurological residential institution, namely:
 - a. His serious physical abuse by a state employee in the institution, in violation of Article 2 or 16; and
 - b. the subsequent failure of the state to promptly investigate the incident, in violation of its duty under Article 12.

20. The claimant alleges that in February 2017, a medical assistant at the psychoneurological residential institution punched and kicked him on different parts of his body and locked him up in a room. According to his testimony, the claimant suffered bruises and excisions on different parts of his body, including the head area. At the time of the incident, the claimant required urgent medical attention, which, according to his lawyer, he did not receive. As a result of the assault, the claimant continues to experience persistent headaches. As at October 2017, more than seven months after the assault, the perpetrator has not been charged with an offence and is still employed in the same role at the institution where the claimant resides. Due to the lack of prosecution of the case, the claimant’s lawyer has filed a complaint to the Equality Council, a domestic body that has jurisdiction under domestic anti-discrimination law, regarding the discriminatory nature of the assault and the failure of the hospital and the police to promptly and effectively investigate the incident. Pressure to institute criminal proceedings is ongoing and civil proceedings are ongoing.

Prisons

21. The case of *Tatiana Machina* concerns an act of discriminatory ill-treatment arising from a failure to make reasonable accommodation for a prisoner’s disability in a prison. The Trust is currently awaiting a decision from the European Court of Human Rights (ECtHR) in a case developed with our partner, Promo-LEX on behalf of Ms Machina.³³ Ms Machina is a person with a physical disability who requires a wheelchair for mobility. Ms Machina alleged that she has been kept in an overcrowded cell, with no adjustments made to enable her to access her bed, the toilet/bathing facilities, the daily walk area, and the meeting room to meet with legal counsel without assistance from other prisoners. Ms Machina has contracted hepatitis C whilst in detention, and also suffers from a number of other health

³³ *Tatiana Machina v. Moldova* (Application No. 69086/14), details of the communicated case are available at: [https://hudoc.echr.coe.int/eng#{"appno":\["69086/14"\],"itemid":\["001-158460"\]}](https://hudoc.echr.coe.int/eng#{).

problems. In the application to the ECtHR, it was alleged that the conditions of her detention amounted to discriminatory ill-treatment, in violation of Article 14 (Prohibition of discrimination) taken in conjunction with Article 3 (Prohibition of torture) of the European Convention on Human Rights (ECHR).

22. Subsequent to the decision of the domestic Equality Council in this case, the Government of Moldova prepared internal guidelines (not publicly available) for the provision of prison facilities to accommodate persons with disabilities. The Government has also committed to constructing a new prison by the end of 2010 which is intended to be specially designed to meet the needs of prisoners with disabilities.³⁴ The Trust notes with concern the lack of information on the content of the guidelines and on their enforceability and implementation, and also notes that the Government has not indicated how a special prison would be consistent with its obligations under *inter alia* the CRPD. We urge the Committee to call on Moldova to clarify how it will ensure – through implementation of the guidelines – full compliance with the Convention and other human rights obligations, including those contained in CRPD .

Discriminatory torture or ill-treatment committed by private actors where the state's duty of due diligence applies

23. As noted above, the Committee has explained that the state's failure to exercise due diligence to prevent, investigate, prosecute and punish acts of torture or ill-treatment amounts to acquiescence or consent to acts of torture:

[W]here State authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with the Convention, the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts.³⁵

24. The Trust has supported Moldovan lawyers to bring claims in domestic and regional courts, and before an international treaty body, regarding the failure of Moldova to comply with its

³⁴ See the National Prison Strategy with reference to the new prison, available at: http://justice.gov.md/public/files/noutati/Strategia_de_dezvoltare_a_sistemului_penitenciar_2016-2020.pdf; Further information is available on the Ministry of Justice website, available at: <http://justice.gov.md/libview.php?l=ro&idc=4&id=3349>; See also a news report from Moldovan website, "ProTV", *Cell-like films and a special block for disabled prisoners. New prison project to be built instead of penitentiary 13 – VIDEO*, 2 February 2017, available at: <http://mobi.protv.md/stiri/actualitate/celule-ca-n-filme-si-un-bloc-special-pentru-detinutii-cu-dizabilitati---1769821.html>.

³⁵ Committee Against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, UN Doc. CAT/C/GC/2, 2008, Para 18.

duty of due diligence with respect to torture and ill-treatment committed against women by private actors.

25. The cases of *Eremia* and *Cretu* concern the failure of the state to prevent ongoing serious acts of violence (amounting to torture or ill-treatment) perpetrated against women by their male partners. In both cases, the claimants reported the assaults to police and insufficient action was taken to prevent the acts continuing. In addition, in both cases, the state failed appropriately punish the perpetrator of the offences. In the case of *XY*,³⁶ the claimant reported a single act of torture or ill-treatment (rape) which the authorities delayed in investigating and prosecuting, and attempted to persuade the claimant to desist with her claim.

26. In 2013, the ECtHR handed down its judgment in a case brought by the Trust and its partner Promo-LEX on behalf of *Lilia Eremia* and her two daughters regarding persistent and serious violence committed by the claimant's husband against them.³⁷ The Court found that Moldova had violated its obligations under Article 14 (non-discrimination) combined with Article 3 (ill-treatment) on the basis that:
 - a. The authorities were "well aware" that the claimant was subjected to violence, including threats to kill, being punched in the head, and an attempt to suffocate her;³⁸
 - b. The authorities pressured the claimant to withdraw a formal complaint against her husband;
 - c. The authorities failed to enforce a court-ordered protection order against the claimant's husband for a period of 16 months, during which he "blatant[ly] disregard[ed]" it and continued to assault the claimant;³⁹ and
 - d. The prosecutor attempted to "shiel[d]" the claimant's husband from criminal liability by determining to conditionally suspend criminal proceedings against him, in effect "resulting in his virtual impunity".⁴⁰

27. The Court found that Moldova had effectively "condon[ed]" the violence against the claimant and did so because the claimant was a woman.⁴¹ Furthermore, the Court found that, on a systemic level, Moldova failed to appreciate the seriousness of violence perpetrated against women throughout the country:

³⁶ We have used a pseudonym to protect the identity of the claimant as the case is currently under consideration before a secret court.

³⁷ ECtHR, *Eremia v. Republic of Moldova* (App. No 3564/11), 28 May 2013.

³⁸ *Ibid.*, Para 59.

³⁹ *Ibid.*, Para 64.

⁴⁰ *Ibid.*, Para 65.

⁴¹ *Ibid.*, Para 89.

*[T]he authorities' actions were not a simple failure or delay in dealing with violence against the first applicant, but amounted to repeatedly condoning such violence and reflected a discriminatory attitude towards the first applicant as a woman. ... the authorities do not fully appreciate the seriousness and extent of the problem of domestic violence in Moldova and its discriminatory effect on women.*⁴²

28. Despite this clear judgment in 2013, there is evidence that systemic failures in this area persist. Notably, further evidence of Moldova's failure to prevent, investigate, prosecute and punish acts of discriminatory torture and ill-treatment committed against women is illustrated in the case of ***Vera Cretu v Moldova*** which the Trust and its partner Promo-LEX have filed with the Committee on the Elimination of Violence Against Women (CEDAW Committee).⁴³ From 2007, Mrs Vera Crețu (deceased) was subjected to a sustained campaign of domestic violence by her husband. Despite attempts to seek protection and support from state services, the violence ultimately ended with Mrs Cretu's death in 2014. The defendant was sentenced to 8 years in prison, though the maximum punishment for such crime under Moldovan law is 15 years. In 2016, the Trust and Promo-LEX submitted the case to CEDAW Committee, with Promo-LEX acting on behalf of the deceased victim. We allege that the state failed to provide effective protection to Mrs Cretu, as required by the state's due diligence obligations in respect of discriminatory torture and ill-treatment. The Trust awaits consideration of the case by CEDAW.
29. Finally, the case of ***XY***,⁴⁴ which is currently under consideration before a secret court in Moldova, highlights the multiple discrimination that women with disabilities (particularly those with mental disabilities) face in terms of their vulnerability to violations of the Convention, and in terms of the resistance of state authorities to act upon their allegations of torture or ill-treatment. ERT and Promo-LEX have long been concerned about the evidence that women with disabilities are particularly vulnerable to violence as a result of multiple discrimination. This case is one of numerous reported cases of rape of a woman with disabilities but in other cases survivors were not prepared to proceed with the case. Further, the case highlights that, as victims of torture or ill-treatment, women with mental disabilities in Moldova face deeply entrenched prejudice from state authorities who, in the words of XY's lawyer, regard "*the disability of the person as an obstacle to believe the person and to investigate his or her allegations*" and who "*would rather consider that the person is inventing things, not telling the truth or exaggerating the reality*", contrary to the state's obligations under Article 12 of the Convention and the rights of victims under Article 13 of the Convention.

⁴² *Ibid.*, Para 89.

⁴³ Equal Rights Trust, *Communication to the Committee on the Elimination of Discrimination Against Women on Behalf of Mrs Vera Cretu*, Communication No. 105/2016, 20 June 2016, presented to the Committee on the Elimination of Discrimination Against Women.

⁴⁴ We have used a pseudonym to protect the identity of the claimant as the case is currently under consideration before a secret court.

30. The claimant is a young woman with an intellectual disability who alleges that she was raped by a member of the public in late 2016. Following her report of the rape, three aspects of the prosecutor's response raise concerns about the state's compliance with its obligations under the Convention:
 - a. For a period of six months after the rape was reported, the prosecutor failed to press charges against the alleged perpetrator, despite a large volume of physical and other evidence in support of the allegation;
 - b. The prosecutor and the police asked the claimant to drop the charges against the perpetrator three or four times; and
 - c. The prosecutor ordered a psychiatric assessment of the claimant to determine, amongst other things, whether she was "telling the truth".

31. Following months of intense advocacy by the claimant's lawyer and a formal complaint about the lack of prosecution, the original prosecutor was replaced and the new prosecutor determined to charge the alleged perpetrator with rape. As at October 2017, criminal proceedings are ongoing. However, it remains unclear to what extent further steps will be taken by the authorities to prevent future similar incidents and redress the systemic problems which the case has helped to highlight in the way the prosecutor and police deal with such cases.

Recommendations

The Trust urges the Committee to recommend that the state party:

- Take immediate measures to take effective legislative, administrative, judicial or other measures to prevent acts discriminatory torture or ill-treatment against all persons in Moldova, including in particular but not limited to, discriminatory torture or ill-treatment against persons with mental disabilities and women;
- Provide training for the judiciary, police, and law enforcement officials on the relevance of discrimination to the prevention of torture and ill-treatment, to their obligations with respect to prompt and impartial investigation of all allegations of torture and ill-treatment, and to the right of victims of discriminatory torture and ill-treatment to redress;
- Take the following specific measures to address patterns of discriminatory torture and ill-treatment, as identified in this submission:
 - Take immediate steps to ensure the prevention of abuse within psychoneurological residential institutions;
 - Investigate and prosecute all allegations of abuse within psychoneurological residential institutions and bring anyone found to have committed such abuse to justice;
 - Develop and implement a system to actively monitor such residential institutions to ensure that incidences of abuse and other ill treatment are uncovered and fully investigated;
 - Clarify how it will ensure – through implementation of the guidelines regarding the reasonable accommodation of prisoners with disabilities – full compliance with the Convention and other human rights obligations, including those contained in CRPD;
 - Develop a comprehensive approach to combat violence against women, in compliance with the state's obligations to prevent discriminatory torture and ill-treatment under the Convention; and
 - Evaluate the current mechanisms for the handling of allegations of discriminatory torture and ill-treatment made by women, the investigation of such allegations, and the subsequent prosecution of perpetrators, to ensure that the state complies with its obligations under the Convention.