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Criminal Legislation for Human Trafficking in the Republic of Moldova

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Criminal Legislation for Human Trafficking in the Republic of Moldova

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The Republic of Moldova has, in recent years, strengthened its legislation in relation to the crime of human trafficking. The country's current legislation focuses on four areas: 1) the protection of victims; 2) prosecution of criminals; 3) prevention of the crime; and 4) partnership of stakeholders. This paper will identify and analyze the prosecutorial legislation existing in the Moldovan Criminal Code, initially in the broader context of Trafficking in Human Beings ("THB") as a whole, and subsequently concentrating on each of the aforementioned areas, applicable to Labor Trafficking, Sex Trafficking and Child Trafficking in the Republic of Moldova ("Moldova"). Not unlike many countries, the legislative measures in Moldova¹ remain "top-heavy". The laws are existent and known by government, law enforcement and Non-Governmental Organizations ("NGOs"), yet affect limited change for those actually impacted by the crime. However, legislative measures remain critical in counter trafficking and legislation put forth by a government is often the first step in pushing these efforts forward. Therefore, a thorough examination of the legislation is necessary if a decrease of trafficking is to result.

A National Plan for Preventing and Combating Trafficking in Human Beings ("National Plan") is created, approved and distributed by the Moldovan Parliament once every two years in accordance with The Law on Preventing and Combating Trafficking in Human Beings.² The last National Plan approved by the Moldovan Parliament addressed the period from 2014-2016.³ Increased efforts by the Moldovan Government, from 2011 to present, to publicly report their response to

¹ It should be noted that all sources used in this report are not inclusive of the area of Transnistria. This region has, been in the past and currently, not cooperative with reporting statistics on THB to the Moldovan government. This region also considers itself autonomous and therefore does not have the same legislation as that which is attributed to the Republic of Moldova within this report.

² *Law on Preventing and Combating Trafficking in Human Beings*, Official Monitor of the Republic of Moldova no. 164-167/812 of 9 December 2005 [Republic of Moldova], No. 241-XVI, 20 October 2005. <http://www.refworld.org/docid/4c3d839f2.html>

³ *National Report on Preventing and Combating Trafficking in Human Beings for 2012*, National Committee for Combatting Trafficking in Human Beings Permanent Secretariat, 17 July 2013. <http://www.antitrafic.gov.md/libview.php?l=en&idc=30&id=189&t=/Reports/National-Reports/NATIONAL-REPORT-on-Preventing-and-Combating-Trafficking-in-Human-Beings-for-2012>

THB have led to numerous documents available which examine the country's current legislation and their effects. Since publications reviewing The National Plans and existing legislation are readily available⁴, this paper will concentrate more heavily on the same, during the period of 2011 to the present.

Stakeholders in the field of counter-trafficking currently active in Moldova include the Moldovan government, International Organization for Migration Moldova ("IOM Moldova"), Organization for Security and Cooperation in Europe ("OSCE"), International Center for Women Rights Protection and Promotion, "La Strada", and the United States State Department. These organizations have published numerous reports from which my analysis is based. Research regarding THB is typically broken into subsections of sex trafficking, labor trafficking and child trafficking. Research and reports regarding THB legislation in Moldova generally adheres to this structure. Therefore, in order to create a tool which will be efficient in campaigns to compare trafficking legislation in Moldova this structure is mimicked throughout my analysis. In addition, Moldova recognizes not only its domestic legislation, but also certain regional and international law. These broader laws, if ratified by Moldova, are included within my analysis.

Moldova has a general law titled "The Law on Preventing and Combating Trafficking in Human Beings,"⁵ which is the blueprint for all anti-THB activities within Moldova. This law includes the definition of THB, the establishment of a National Referral System ("NRS")⁶, a National Committee, as well as other anti-THB policies. It includes measures to provide protection to victims, prevention of the crime, prosecution of the criminals and partnership amongst all relevant organizations involved. This is an example of the "4P" framework common to many anti-human trafficking programs.⁷ While the protection of victims, prevention of the crime and partnership of counter trafficking stakeholders is mainly outlined in the Law on Preventing and Combating Trafficking in Human Beings, the prosecution of criminals is codified in the Moldovan Criminal Code. In the interest of examining the situation as it affects Moldovan trafficking victims, the criminal case statistics are illustrative of current trends in the field. The number of investigations, prosecutions, length of sentences and other similar aspects will help determine whether legislative efforts are making a difference in the lives of

⁴ See Review of the Legislation Combating Trafficking in Human Beings of the Republic of Moldova. Report. December 14, 2011.

⁵ *Law on Preventing and Combating Trafficking in Human Beings*, Official Monitor of the Republic of Moldova no. 164-167/812 of 9 December 2005 [Republic of Moldova], No. 241-XVI, 20 October 2005,

⁶ See page 11 for more information on the NRS.

⁷ *Four "Ps": Prevention, Protection, Prosecution, Partnerships*. U.S. Department of State. Accessed April 6 2014, <http://www.state.gov/j/tip/4p/>

those most vulnerable to being trafficked. A close study of these statistics will help highlight a potential disconnect between legislation and its intended effects.

The broadest article regarding the prosecution of criminals who traffick humans in Moldova is Article 165 of the Moldovan Criminal Code. This article specifically pertains to “Trafficking in human beings, in its various forms, including trafficking in children”⁸ and encompasses of most types of THB. In addition to Article 165, Article 362/1 deals with the organization of illegal migration.

Anti-Human Trafficking Law in The Republic of Moldova	
Criminal Code of the Republic of Moldova: Article 165	Trafficking in Human Beings
Criminal Code of the Republic of Moldova: Article 167	Slavery and Conditions Similar to Slavery
Criminal Code of the Republic of Moldova: Article 362/1	Organization of Illegal Migration

Table 1

Unfortunately, this article is not commonly used by prosecutors. In 2011 and 2012 there were respectively 118 and 117 offenses recorded under Article 362. As for convictions, there were 43 in 2011, however only 21 in 2012.⁹ This notable decrease in convictions could be attributed to a shift in prosecutorial strategy, whereby more prosecutors turned to Article 165 to achieve prosecutions, rather than remaining with the original law (Article 362/1).

Indeed, Article 165 saw increased numbers from 2011 to 2012. In addition, while in 2013 the number of registered crimes under Article 165 dropped to 135 from the 151 in 2012, the number of crimes registered under Article 362/1 was cut more than in half from 117 to 53.¹⁰ Analyzing Article 165 alone shows that the number of convictions under Article 165 continued to rise from 2011 to 2013 with 16 being recorded in 2011, 21 in 2012, and 27 in 2013.¹¹ Continued use of Article 165, instead of Article 362/1, will likely prove positive to the Moldovan government’s attempts to thwart THB because a conviction under Article 165 has a much higher penalty than that of Article 362/1. Crimes convicted using Article 165

⁸ *Criminal Code of the Republic of Moldova Adopted by Law no. 985-XV Article 165*, Republic of Moldova, 18 April 2002., <http://www.hsph.harvard.edu/population/trafficking/moldova.traf.04.htm>

⁹ *National Report on Preventing and Combating Trafficking in Human Beings for 2012*, National Committee for Combatting Trafficking in Human Beings Permanent Secretariat., 17 July 2013,

¹⁰ *Raport Național în Domeniul Prevenirii și Combaterii Traficului de Ființe Umane Pentru Anul 2013*, Comitetul Național Pentru Combaterea Traficului de Ființe Umane Secretariatul Permanent . 6 May 2014.

¹¹ See note 8

entail a sentence of 5-12 years, while conviction under Article 362/1 only carries a sentence of 1-3 years.¹² Removing the reality of low risk / high reward previously associated with THB crimes will hopefully serve as a deterrent to criminals, especially serial offenders. Repeat offenders, specifically those involved with organized crime, face sentences up to 10-20 years under Article 165 convictions whereas under Article 362/1 they would only face 5-7 years.¹³

Due to the underground nature of THB, it is difficult to gather exact statistics on how many victims there are. In Moldova, one can draw from the number of victims assisted by IOM Moldova, the number of victims according the Ministry of Internal Affairs (“MIA”) and the number of victims assisted by the NRS, however exact statistics still elude researchers. While IOM Moldova specifies the type of trafficking victims encountered, the NRS and MIA fail to make such classifications in their reporting. Due to this lack of classification it is nearly impossible to make a comparison of the number of Moldovan victims to the number of cases brought forward. A better system of classification and collection of statistics would help facilitate a more thorough examination of the success of counter trafficking measures.

In addition to domestic laws, Moldova uses other regional-based legislation including the laws of other European states. The Council of Europe proactively fights THB by passing laws and creating collaborative bodies. As Moldova moves closer to inclusion within the European Union, it has adopted many European policies. In 2005, Moldova signed The Council of Europe Convention on Action against Trafficking in Human Beings, demonstrating its commitment to join the regional fight to stop THB. This decision was ratified in May of 2006 and is currently enforced in Moldova.¹⁴

¹² *Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002*, Article 165 , 362, The Official Monitor of the Republic of Moldova No.128-129/1012, 13 September 2002

¹³ *Ibid.*

¹⁴ *Council of Europe Convention on Action against Trafficking in Human Beings*. Council of Europe, May 16 2005. <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=197&CM=1&DF=&CL=ENG>

Regional Laws Regarding Human Trafficking Recognized by the Republic of Moldova		
	Signed	Ratified
The Council of Europe Convention on Action against THB	May 16 th 2005	May 19 th 2006
Collaboration and Collusion Between Authorities in Commonwealth of Independent States	September 17 th 2010	N/A

Table 2

Moldova is also one of many countries which rely on international code to strengthen its anti-THB efforts. THB has long been understood as an international problem. One of the main methods traffickers utilize to gain control over their victims is to move them across borders. If the borders themselves are less of an obstacle, the more important it is that efforts of all involved states be collaborative. Collaborative works allow counter trafficking stakeholders to assist victims without jurisdictional issues arising. For its part, Moldova has done such a thing by ratifying the Palermo Protocol.¹⁵ The Palermo Protocol, or The Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children; Supplemental to Convention against Transnational Organized Crime,¹⁶ was signed by The Republic of Moldova on 14 December 2000 and ratified on 16 September 2005. The Protocol provides specific minimum standards, to signatory states, on the legal measures required to protect trafficking victims, prevent trafficking within the state's borders and promoting cooperation between states. In addition, the Palermo Protocol provides a common legal definition of human trafficking¹⁷.

Due to the lack of economic opportunity in Moldova and its classification as a source country, labor trafficking is a significant problem in the region. Article 168 of the Moldovan Criminal Code specifically outlaws forced labor.¹⁸ However, Article 168 has been an underutilized resource for prosecutors. Cases involving

¹⁵ UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, UN General Assembly, 15 November 2000. <http://www.refworld.org/docid/4720706c0.html>

¹⁶ *United Nations Convention against Transnational Organized Crime : resolution / adopted by the General Assembly* UN General Assembly, 8 January 2001, A/RES/55/25, <http://www.refworld.org/docid/3b00f55b0.html>

¹⁷ According to the Palermo Protocol, the definition of human trafficking is “the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;” for more see: http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

¹⁸ *Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002 Article 168*, The Official Monitor of the Republic of Moldova No.128-129/1012, 18 April 2002.

Article 168 are can be tried using the farther reaching Article 165. This would explain the lack of focus on Article 168 in current proceedings. This is a positive strategy in prosecutorial measures as the punishments under Article 165 are much more severe and are consistent with the sentences prescribed to Article 168, which only carries a sentence of no more than 3 years.¹⁹

While there seems to be much focus on sex trafficking throughout the world, perhaps due to its sensationalist appeal, the issue is not as prevalent in Moldova as other forms of trafficking. Women and children are most often the victims of this type of trafficking, which can be especially damaging due to its heinous nature. As in other parts of the world, Moldova has a law against pimping which is used in conjunction with its human trafficking legislation. The legal definition for pimping, in Moldova, is “Encouraging or inducing a person to practice prostitution or facilitating prostitution or gaining benefits from practicing prostitution by another person” and is codified in Article 220.²⁰

There was a slight rise in court actions related to Article 220 from 2011 to 2012, but a significant drop in 2013. There were only 46 cases investigated in 2013 compared to the 135 offenses recorded in 2012 and 105 in 2011.²¹ Interestingly, the number of cases brought to court under Article 220 in 2013 was higher than the number of cases investigated. This may demonstrate that many cases brought forward under other articles were reclassified as they went to trial. In a study conducted by IOM Moldova of 380 cases completed from 2006 to 2010, this phenomenon was also documented. Of these 380 cases, 22.8% of cases brought to court under Article 165 were reclassified to crimes under Article 220 at conviction.²² This is due to the often muddled distinction between an individual engaged in prostitution under a pimp, yet owning the ability to leave of their own free will and an individual being trafficked for sexual purposes in a “no-escape situation.”²³ This issue continues to be problematic for the counter-trafficking field in general.

Perhaps the most developed area of anti-trafficking legislation in Moldova exists in its efforts to combat trafficking of children. Moldova has not only found itself a source country for children being trafficking for sexual and labor exploitation, but also a destination for sex tourists. In fact, this issue was so great,

¹⁹ *Ibid.*

²⁰ *Criminal Code of the Republic of Moldova No. 985-XV of 18 April 2002*, Official Monitor of the Republic of Moldova No. 128-129/1012, 13 September 2002.

²¹ *Raport Național în Domeniul Prevenirii și Combaterii Traficului de Ființe Umane Pentru Anul 2013*, Comitetul Național Pentru Combaterea Traficului de Ființe Umane Secretariatul Permanent . 6 May 2014.

²² *Analytical Study on the Investigation and Trial of Cases of Trafficking in Persons and Related Offences*, Chisinau: International Organization for Migration, 2013. 42.

²³ *Ibid.* 66

the Moldovan Parliament attempted to enact mandatory chemical castration for foreigners who were found guilty of entering Moldova to engage in sexual acts with children.²⁴ The law was passed by parliament in May of 2012, but was subsequently struck down by Moldova's Constitutional Court.²⁵ Within Moldovan criminal code, there exist a number of articles addressing the variant forms of this particularly heinous crime.

Anti-Trafficking Laws Specifically Related to Child Trafficking Active in Moldova	
Criminal Code of the Republic of Moldova: Article 206	Trafficking in Children
Criminal Code of the Republic of Moldova: Article 207	Illegal Removal of Children from the Country
Criminal Code of the Republic of Moldova: Article 208	Attracting Minors in Criminal Activity or Their Determination to Commit Immoral Acts
Criminal Code of the Republic of Moldova: Article 1751	Approaching Children for Sexual Purposes
Criminal Code of the Republic of Moldova: Article 2081	Child Pornography
Criminal Code of the Republic of Moldova: Article 2082	Use of Child Prostitution

Table 3

The most commonly used of these is Articles 206, a general law against the trafficking of children.²⁶ While Article 206 includes the trafficking of children for labor, sexual exploitation and all other forms of child trafficking, it has a surprisingly low rate of application in the courts. In 2012, there were only 20 offenses, the same number of offenses registered in 2013.²⁷ This is even lower than the 24 crimes registered in 2011.²⁸ Of these 24 only 2 resulted in convictions.²⁹ This number rose to 10 convictions in 2012 and to 12 in 2013.³⁰

²⁴ Children are those aged 0-17, though the age of consent in Moldova is 16 years of age.

²⁵ *Moldovan Court Bans Chemical Castration of Pedophiles*, Radio Free Europe/Radio Liberty , 5 July 2013, <http://www.refworld.org/docid/51e79b8b25.html>

²⁶ Article 206 covers the use, transfer or harboring of a child for all types of trafficking including labor, sex, organ and others making it more thorough and general than the other laws against child trafficking.

²⁷ *Raport Național în Domeniul Prevenirii și Combaterii Traficului de Ființe Umane Pentru Anul 2013*, Comitetul Național Pentru Combaterea Traficului de Ființe Umane Secretariatul Permanent . 6 May 2014.

²⁸ *Ibid.*

²⁹ *Ibid.*

³⁰ *Ibid.*

However, the ascribed punishments for those found guilty of the crime, between 8 years to 20 years, seemed in line with the severity of the crime in most cases. Again, it is incredibly difficult to tell whether cases are being brought forward for all children victimized in THB crimes. While the number of victims, specified as children, assisted by IOM Moldova, the NRS and other resources are available, the fact there may be overlap in services from one resource to another, makes it very difficult to make any solid comparison of reported victims. In addition, reports show victims assisted each year, which may include not only ongoing assistance to victims of a single crime, but a single victim who may have experienced re-trafficking.

If we rely exclusively on the number of children victimized, as reported by the MIA, we see that the rate of registered crimes, crimes brought to court and convictions are low. The number of child victims and adult victims were only reported separately beginning in 2012, thus a comparison can only be made for the past two years. This comparison shows us that the MIA reported 24 minor victims of THB in 2012 and only 20 crimes reported under Article 206.³¹ Of these 20 registered crimes, only 5 were brought to court and 8 sentences handed down.³² In 2013, the MIA reported 29 victims of child trafficking with 20 crimes registered, 8 brought to court and 12 sentences given.³³ That means that, according to MIA reports, for the period of 2012-2013 there were 53 cases of child trafficking and only 20 sentences were accomplished. This demonstrates room for improvement.

Moldova also has additional legal tools to deal with crimes involving child trafficking. In October of 2007, Moldova signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. It was ratified on 12 March 2012.³⁴ How many cases were brought forth in the Republic of Moldova using this convention is unknown. One anticipates it will be put to frequent use, as the commercial sexual exploitation of children is a very serious and detrimental crime which must be thoroughly tried and harshly sentenced.

One unfortunate trend that has plagued the country since its inception has been corruption. Corruption of government and law enforcement is a factor which has the power to hinder anti-trafficking efforts. Corruption is listed yearly in the US State Department's *Trafficking in Persons Report* as hurdles to productive

³¹ *Raport Național în Domeniul Prevenirii și Combaterii Traficului de Ființe Umane Pentru Anul 2013*, Comitetul Național Pentru Combaterea Traficului de Ființe Umane Secretariatul Permanent . 6 May 2014.

³² *Ibid.*

³³ *Ibid.*

³⁴ Ciomas, Tatiana. *Legal Aspects of Combating Human Trafficking in Moldova*. CARIM EAST – Consortium for Applied Research on International Migration Co-financed by the European Union, May 2013. http://www.carim-east.eu/media/exno/Explanatory%20Notes_2013-43.pdf

measures in anti-THB activities. In 2011, two Moldovan government officials were under investigation for crimes related to THB³⁵; however there has yet to be a conviction against an official. In addition, the 2013 *Trafficking in Persons Report* states that:

Once convictions for trafficking were secured, the judiciary often applied sentences that did not correspond with the severity of the crimes; offenders regularly served only commuted prison terms or fines. Convictions were frequently reversed on appeal with little to no explanation by judges. Criminal cases span several years through appeals, leaving victims vulnerable to threats and intimidation and providing opportunities for defendants to bribe officials.³⁶

This type of activity cannot continue if citizens and victims are to trust the legal system. This level of corruption has the power to undermine all of Moldova's work towards ending THB.

Going forward, there are many things that Moldova must consider in their fight against THB. One very important factor is their acceptance and integration into the European Union. How unification will affect the problem of THB in the region is unknown. However, visa liberation, EU funding and other consequences of joining this larger governmental body will surely have an effect. Factors outside of Moldova which cannot be foreseen will, of course, also have a strong impact on the issue. One of the driving factors behind activity by the Moldovan government is the pressure of the United States. The US State Department not only provides funding for research, victim rehabilitation and training programs, but also has provided one of the benchmarks by which Moldova has to monitor their own progress in anti-THB activities.

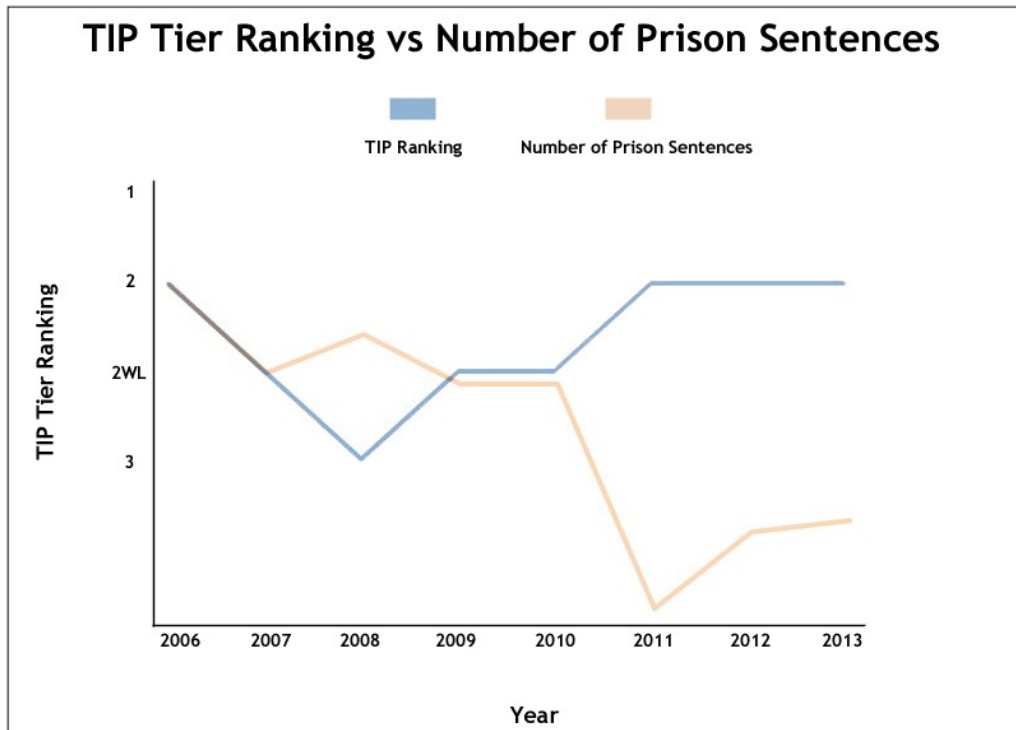
The annual *Trafficking in Persons Report* published by the US State Department provides not only a summary of the country's progress, but also a tool for penalizing countries which do not comply with its minimum standards. If Moldova (as any country) reaches tier 3 on a future *Trafficking in Persons Report*, this can affect U.S. aid received by Moldova. It would also open up the option for the United States to enact sanctions. It should be noted that Moldova was listed as a tier 3 country in 2008³⁷, so the scenario is not farfetched. However, while the

³⁵ Ganta, Vladimir. *Human Trafficking in Moldova*. CARIM EAST – Consortium for Applied Research on International Migration Co-financed by the European Union. May 2013. http://www.carim-east.eu/media/exno/Explanatory%20Notes_2013-56.pdf

³⁶ *Trafficking in Persons Report 2013- Moldova*, United States Department of State, 19 June 2013. <http://www.refworld.org/docid/51c2f3a2d.html>

³⁷ *Trafficking in Persons Report 2008 – Moldova*, United States Department of State, 4 June 2008. <http://www.refworld.org/docid/484f9a2c37.html>

Trafficking in Persons Report does state that prosecution plays an important role in their review of a country's counter trafficking activities, Moldova's ranking within the report does not correspond to the number of convictions with prison sentences.



4 June 2008. <http://www.refworld.org/docid/484f9a2c37.html>

This is interesting considering that the 2013 report, while listing the country at Tier 2, states that corruption led to cases not being given appropriate sentences. One would assume that a higher rate of prison sentences handed down to traffickers would correspond with a higher ranking in the TIP report, but this is not the case. Taking into consideration the other factors measured in the TIP report,³⁸ which have continually been improved, the year that saw the 3rd highest rate of prison sentences³⁹ was the year that Moldova dropped to a Tier 3 rating and the years that saw the lowest number of prison sentences given saw the country rise to its highest rating thus far. The U.S. State Department remains unclear in how it measures the success, or failure, of countries to prosecute crimes involving THB.

³⁸ Protection, prevention and partnership

³⁹ The number of cases investigated, brought to court and convictions were also significantly higher than in the following years which saw the country at a Tier 2 ranking.

While the Moldovan government is continuing to bolster its reputation as a leader in the fight against THB, the results of their actions remain limited. A few factors account for this. First, it will take time for legislation to become a known tool by those who likely encounter THB. While the crime of human trafficking is not new, its denunciation is new in the larger historical picture. It will take time for prosecutors to become fully informed of the tools, first care responders to become aware of their options and victims to understand their rights. It will also take time for criminals who traffick to understand the potential penalties for their crimes and therefore dissuasion has not yet become effective. In addition, The Republic of Moldova is undergoing an unprecedented national transition and general transformation in political, economic and social policies. The country is still young and it stands to be quite some time before the foundation of its legal and social institutions are strong enough to make deep, beneficial change for its citizenry. However, the legislation exists to enact positive change in the country's anti-THB efforts. It is now up to the leadership of Moldova to ensure the laws are faithfully executed.

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