



## MOLDOVA

### Twenty-sixth Session of the Working Group on the Universal Periodic Review United National Human Rights Council: October – November 2016

**Submitted by: Women’s Law Center, International Center “La Strada”, Promo-LEX, and The Advocates for Human Rights, a non-governmental organization with special consultative status, and endorsed by the National Coalition “Life without violence!”**

#### COVER PAGE

The Women’s Law Center (WLC) is an NGO established by women lawyers in 2009. The organization was founded to promote women’s human rights by ensuring that a gender perspective is applied during the law-making and implementation process. The organization has been involved in advocacy and development of effective legislation on gender equality and domestic violence and is supporting women exposed to domestic violence by providing legal counseling and representation.

The Advocates for Human Rights (The Advocates) is a non-profit organization that seeks to implement international human rights standards to promote civil society and reinforce the rule of law. The Advocates holds special consultative status with the Economic and Social Council. The Advocates and WLC have partnered since 2011, publishing a human rights report on domestic violence in Moldova in 2012, consulting on draft amendments to the domestic violence law, and training multi-disciplinary groups, including police, prosecutors, and judges, on effective implementation of the domestic violence laws and batterer intervention groups.

International Center for Women’s Rights Protection and Promotion “La Strada” (International Center “La Strada”) is an NGO established by advocates in 2001. Founded to ensure that the rights of women and children in Moldova are respected at all levels – individual, legislative and executive, it strives to build a society where human rights are respected, address the issues affecting women and children, and contribute to the protection of those affected. The organization conducts research, legislative advocacy, and provides direct services.

Promo-LEX Association is a civil society organization with special ECOSOC consultative status, whose purpose is to advance democracy in Moldova by promoting and defending human rights and monitoring democratic processes. Preventing and combating gender-based violence is one of Promo-LEX’s priority areas.

The National Coalition “Life without violence!” (The National Coalition) is a platform of 18 NGOs, grass-root organizations, and public institutions working on preventing and combating violence against women and children.<sup>1</sup> Created in 2014, The Coalition engages in advocacy initiatives to support education, awareness-raising, and services, through rehabilitation, assistance, and protection for those abused, as well as aggressors.

The Advocates, the WLC, Promo-LEX, the National Coalition, and International Center “La Strada” jointly submit this report to the U.N. Human Rights Council for Moldova’s second Universal Periodic Review.

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<sup>1</sup> Members of the National Coalition are: Women’s Law Center (also holding the secretariat), International Center “La Strada”, Promo-LEX, “Association Against Domestic Violence-Casa Marioarei”, RCTV “Memoria”, National Center to Prevent the Abuse against Children, Center of Protection and Assistance for Victims of Trafficking in Human Beings and Potential Victims, the “Parent-Child Couple” Centre, Center of Family Crisis, Sotis, the Assistance and Counseling Center for Family Perpetrators, “Gender – Center”, Maternal Center “Pro-Femina”, Maternal Center “Pro Familia din Căușeni”, Cahul Maternal Center, “Stimul” NGO, Maternal Center of the Temporary Shelter and Child Rehabilitation Center, “Honour and Rights of the Contemporary Woman” NGO, Youth Center “Dacia”.

## I. SCOPE OF THIS REPORT AND BACKGROUND

1. Domestic and sexual violence are widespread and systematic problems in Moldova. Some estimates suggest that 63.4 percent of women and girls aged 15 or older had experienced at least one form of physical, psychological, or sexual violence over their lifetime, with the prevalence of violence in rural areas being higher (about 69 percent).<sup>2</sup> However, few victims actually report such violence.<sup>3</sup> A recent survey revealed that physical violence exists in almost 50 percent of the families of surveyed men.<sup>4</sup> This survey found that such violence is associated with negative perceptions and gender stereotypes, as well as gender inequalities in the family and Moldovan society: 27.7 percent of men and 17.5 percent of women think that a woman should tolerate violence in order to preserve the family, and 41.1 percent of men believe that there are moments when a woman should be beaten.<sup>5</sup> In terms of sexual violence, statistics indicate that one in five men have had sex with a female without her consent, while almost one in four men have had sex with a female unable to give consent under the influence of alcohol.<sup>6</sup> Additionally, 18 percent of men surveyed admitted they used force to have a sex with a current partner, while 14 percent of men used force to have sex with a former partner.<sup>7</sup>
2. Domestic and sexual violence are violations of human rights. Domestic and sexual violence violate a woman's rights to freedom from discrimination, equal protection before the law, liberty and security of person, equality before the courts and equality with men before the law, recognition as a person before the law, and freedom from torture. In addition, when a State fails to ensure that its criminal and civil laws adequately protect women and consistently hold abusers accountable, or that its agents – such as police and prosecutors – implement the laws that protect victims of domestic violence, that State has not acted with due diligence to prevent, investigate and punish violations of women's rights.
3. Moldova participated in its first Universal Periodic Review (UPR) session in 2011. In its first report to the Human Rights Council, Moldova reported an important step to stop violence by enacting a law to prevent and combat domestic violence.<sup>8</sup> The law created an institutional framework for competent authorities to address cases of domestic violence by allowing victims to file complaints and seek punitive measures against offenders.<sup>9</sup> In addition to passing this law, Moldova instituted measures to train personnel from the Ministry of Interior in applying the law.<sup>10</sup> The report also described the improvement of measures for rehabilitation of victims of domestic violence by the Ministry of Labor, Social Protection and

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<sup>2</sup> National Bureau of Statistics, UNDP, UN Women and UNFPA, *Violence against Women in the Family in the Republic of Moldova* (2011).

<sup>3</sup> Ibid, showing that of the 40 percent of women who had experienced physical violence, only 9 percent had reported it.

<sup>4</sup> Women's Law Center, Perceptions Survey "Men and Gender Equality in Moldova" (2015).

<sup>5</sup> Ibid.

<sup>6</sup> Ibid, ¶ 96.

<sup>7</sup> Ibid.

<sup>8</sup> Human Rights Council, Working Group on the Universal Periodic Review, *National Report Submitted in Accordance with Paragraph 5 of the Annex to Human Rights Council Resolution 16/21: Moldova*, 19 July 2011, U.N. Doc. A/HRC/WG.6/12/MDA/1, ¶ 29.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid., ¶ 32.

Family.<sup>11</sup> In 2011 the State undertook efforts to develop and introduce an automated computerized system containing a database of domestic violence cases for use by local public authorities; it was intended that this system be piloted in Cahul and Drochia districts.<sup>12</sup> As part of its social policy, the report stated that Moldova “supports continuously” the UN Campaign, “16 Days of actions against Gender Violence,” in conjunction with its own national information campaigns.<sup>13</sup> As areas of concern, Moldova’s report listed the following: social awareness regarding the problem of domestic violence; training of specialists in various fields to work on cases of domestic violence; resources for use in assisting victims of domestic violence; and re-socialization for the domestic offenders.<sup>14</sup>

4. During its first UPR in 2011, the majority of recommendations relate to violence against women in general, domestic violence, human trafficking, and sexual harassment.<sup>15</sup> Moldova accepted all of these recommendations, and indicated a commitment to strengthening its response. Specifically, the government of Moldova accepted all recommendations related to domestic violence, including those to train police and monitor the domestic violence law.<sup>16</sup> The following progress has been observed with regard to those recommendations:

Recommendation	Progress 2011-2016
a) Create a comprehensive policy about violence against women and especially domestic violence that prevents, punishes, and eradicates these issues, especially in rural areas (Recommendations 73.8, 73.11. 73.31);	No progress has been made and the recommendation remains to be implemented;
b) Address the root causes of domestic violence with the aim of conducting public awareness campaigns (Recommendations 73.33, 74.1);	The root causes of domestic violence – gender inequalities, economic issues – have not been fully addressed. The annual 16-Days Campaign against Gender-based Violence is insufficient. Thus, the recommendation remains to be implemented;
c) Increase penalties for domestic violence (Recommendation 74.1);	Penalties for domestic violence have not been increased and the recommendation remains to be implemented;

<sup>11</sup> Ibid., ¶ 30.

<sup>12</sup> Ibid., ¶ 31.

<sup>13</sup> Ibid., ¶ 33.

<sup>14</sup> Ibid., ¶ 34.

<sup>15</sup> Human Rights Council, Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review, Republic of Moldova*, 14 December 2011, U.N. Doc. A/HRC/19/18.

<sup>16</sup> Ibid., ¶¶ 73-74.

<p>d) Train law enforcement officials on responding to domestic violence and provide legal and medical support to victims (Recommendation 73.30);</p>	<p>Some progress has been observed in terms of trainings. Domestic violence is included as one of the modules at the Police Academy for cadets. As for continuous training, only the police inspectorates who have been in contact with civil society organizations (CSOs) (namely WLC<sup>17</sup>) have received trainings in domestic violence.<sup>18</sup> The recommendation remains to be fully implemented;</p>
<p>e) Effectively implement the domestic violence law, increase capacity and coverage of domestic violence shelters and ensure effective police investigations into complaints (Recommendation 73.32);</p>	<p>There is an increase in the number of referrals; for example, in 2014, there were 7338 reported cases, out of which approximately 2,200 cases were investigated and over 920 received protection orders.<sup>19</sup> As for the issue of domestic violence shelters, no progress has been made and the recommendation remains to be implemented;</p>
<p>f) Improve and expand rehabilitation centers for domestic violence victims, especially in rural areas (Recommendation 73.34);</p>	<p>No additional rehabilitation centers for domestic violence were created or improved and the recommendation remains to be implemented;</p>
<p>g) Create a plan of action on domestic violence to monitor the effectiveness of the domestic violence law and provide adequate funding for its implementation (Recommendation 75.28).</p>	<p>A draft law to harmonize national legislation with the provisions of the Istanbul Convention was developed with the support of civil society in 2013. However, it is still in consultation process at the government level, as there is weak political will to promote it. The recommendation remains to be fully implemented.</p>

<sup>17</sup> During 2012-2015, Women’s Law Center has trained over 1000 police officers from all over Moldova, as part of a Project funded by the US Department of State, UNFPA and IOM.

<sup>18</sup> During 2013-2014, HelpAge and Gender-Centru in cooperation with MIA, MLSPF, MoH have trained about 552 law enforcement officials on violence against older persons in the context of Project “Breaking the silence: elder abuse in the Republic of Moldova”.

<sup>19</sup> Official statistics of the Ministry of Interior, November 2014.

5. More broadly, several notable steps have been taken to combat gender-based violence, which are noted here:
- In 2013, the government created a working group comprised of civil society organizations and government representatives to work on the draft law harmonizing the current national legal framework with the Istanbul Convention.
  - As of 2012, a number of documents outlined in the legal framework were produced (see para.14 below).
  - As of 2014, the government began funding for the 16 Days of Activism campaign for the first time.
  - The public entities: 5 maternal centers, the Center of Protection and Assistance for Victims of Trafficking in Human Beings and Potential Victims, the “Parent-Child Couple” Centre and Center of Family Crisis, Sotis and the only Assistance and Counseling Center for Family Perpetrators continue to be financed by the government.<sup>20</sup>
6. Ongoing concerns with regard to the government’s response to domestic violence have been highlighted during Moldova’s 2013 CEDAW review, which are presented below as supplemental information for this review. Namely, they are: (a) the inconsistent application of laws aimed at combating domestic violence; (b) the failure to take note of lower-level injuries; (c) the fact that it takes repeated instances of domestic violence to trigger an investigation; (d) the ineffectiveness of protection orders against alleged aggressors; and (e) the low rate of reporting cases of sexual violence, including rape, and ineffective investigation and prosecution in reported cases.<sup>21</sup>

<b>CEDAW Recommendation</b>	<b>Progress 2013-2016</b>
a) Ensure legal aid is available to all victims of violence;	No progress has been made and the recommendation remains to be implemented;
b) Encourage women to report domestic violence and sexual violence by raising awareness about their criminal nature;	Some awareness campaigns have been conducted by CSOs but no one supported from the state budget. The recommendation should remain to be implemented;
c) Ensure all investigations into sexual violence are carried out according to international standards, including amending existing guidelines on investigation.	No progress has been made and the recommendation remains to be implemented.

<sup>20</sup> Oak Foundation, Women Against Violence Europe (WAVE) and Women’s Law Center “Capacity Gap Analysis study of the Service Providers working with Women Victims of Domestic Violence in Moldova” (2014), ¶¶ 16-17

<sup>21</sup> Committee on the Elimination of Discrimination against Women, *Concluding observations on the combined fourth and fifth periodic reports of the Republic of Moldova*, 29 October 2013, U.N. Doc. CEDAW/C/MDA/CO/4-5.

7. This submission addresses Moldova's compliance with its international human rights obligations, specifically in the context of domestic violence and sexual violence. This summary concludes by making recommendations to the government of Moldova.

## II. OVERVIEW OF NATIONAL LEGAL FRAMEWORK ON DOMESTIC VIOLENCE

8. **Special Laws.** On September 18, 2008, the Law on Preventing and Combating Family Violence (Law 45) entered into force.<sup>22</sup> The Law regulates five forms of domestic violence, including psychological violence.<sup>23</sup> This Law provided a foundation for increasing access to justice and safety for domestic violence victims by introducing the possibility to obtain protective orders. However, due to the lack of specific directives on requesting, issuing, and extending protective orders, Law 45 was rarely implemented in its early years.<sup>24</sup> In July 2010, the necessary directives for implementation were established in Law 167.<sup>25</sup>
9. **Criminal Law.** In 2010, a new Criminal Code provision, Article 201<sup>1</sup>, was adopted, making domestic violence of any level a crime.<sup>26</sup> Rape is criminalized pursuant to Article 171 of the Criminal Code.<sup>27</sup> Related acts are also criminalized, including violent acts of a sexual character,<sup>28</sup> sexual harassment,<sup>29</sup> sex with someone under the age of 16,<sup>30</sup> and certain "perverted actions" against a person under the age of 16.<sup>31</sup>

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<sup>22</sup> Law on Preventing and Combating Family Violence, Law 45 of 01.03.2007 Official Monitor No. 55-56, 18.03.2008.

<sup>23</sup> Ibid., Article 2

<sup>24</sup> Manole, Discriminatory Ill-treatment of Women in Moldova, sec. 2.2.1.1, The Equal Rights Review, Vol. Six (2011).

<sup>25</sup> Law on the Amendment and Supplementing of Certain Legislative Acts, Law 167 of 09.07.2010 The Official Monitor No. 155-158 03.09.2010. The passage of Law 167 took almost two years. Email from Women's Law Center, 27 September 2007, on file with authors.

<sup>26</sup> Criminal Code Article 201<sup>1</sup>. Family Violence. (1) "Family violence, meaning deliberate action or inaction, manifested physically or verbally, committed by a family member against another family member, which provoked physical suffering following minor bodily or health injuries, mental suffering or material or moral damage shall be punished with unpaid labor for the benefit of the community from 150 to 180 hours or with up to 2 years imprisonment. (2) The same deed: a) committed against two or more family members; b) which provoked bodily or health injuries of medium gravity; shall be punished with unpaid labor for the benefit of the community from 180 to 240 hours or with up to 5 years imprisonment. (3) The same deed, which: a) has caused grave bodily or health injuries; b) has determined a person to commit suicide or suicide attempt; c) has caused the victim's death; shall be punished with imprisonment from 5-15 years;" Interview with Police, City F, 17 November 2011; Interview with Police, City D, 11 November 2011; Interview with Police, City I, 18 November 2011; Interview with Police, City B, 14 November 2011.

<sup>27</sup> Criminal Code, Art. 171. Rape, (1) Rape, i.e. sexual intercourse committed by the physical or mental coercion of the person, or by taking advantage of the victim's incapacity to defend himself/herself or to express his/her will shall be punished by imprisonment for 3 to 5 years. (2) Rape: a) committed by a person who has previously committed rape as set forth in par. (1); b) committed knowingly against a juvenile; b<sup>1</sup>) committed knowingly against a pregnant woman; c) committed by two or more persons; e) committed for the intentional contamination of the victim with a sexually transmitted disease; f) involving torture of the victim; shall be punished by imprisonment for 5 to 12 years. (3) Rape: a) of a person under the care, custody, protection, education, or treatment of the perpetrator; b) of a juvenile under the age of 14; c) involving deliberate contamination with AIDS; d) that causes by imprudence severe bodily injury or damage to health; e) that causes by imprudence the death of the victim; f) that results in other severe consequences, shall be punished by imprisonment for 10 to 20 years or by life imprisonment.

<sup>28</sup> Ibid, Art. 172.

10. **Criminal Procedure Code.** For certain crimes, Article 276 of the Criminal Procedure Code requires a complaint by the victim before prosecution can be initiated.<sup>32</sup> These include crimes of intentional less severe bodily injury,<sup>33</sup> threat of murder or great bodily harm,<sup>34</sup> and sexual harassment.<sup>35</sup> However, crimes stipulated in Articles 171, 172, 174 and 175 are not express listed within Article 276.

11. **Contravention Law.** Article 78 Contravention Code refers to “*Deliberate light bodily injury.*” Police continue to apply this non-criminal provision in domestic violence cases, instead of and despite the availability of Art. 201<sup>1</sup> criminalizing domestic violence.

12. **Family Law.** In 2010, an amendment to Article 37 of the Family Code on dissolution of marriage by the court was introduced. Pursuant to this law, if one of the spouses does not consent to divorce, the Court may postpone consideration of the case for a period of 6 months to enable reconciliation of spouses. There is an exception for parties to avoid postponement in cases of proven domestic violence.

13. **Other relevant normative framework/national mechanisms:**

- Law No 198 on State-Guaranteed Legal Aid (26.07.2007) provides the right to legal aid in limited circumstances;<sup>36</sup>
- Decision of the Plenum of the Supreme Court of Justice No.1 (28.05.2012) provides recommendations for judges on how to examine applications for protection orders;
- Order No.155 of the Ministry of Health (24.02.2012) provides guidelines for medical institutions and workers on intervention in cases of domestic violence;
- Order No. 22 of the Ministry of Labor Social Protection and Family (02.09.2012) provides instructions on actions to be taken by the sections, divisions of social assistance, law enforcement bodies and medical institutions in cases of domestic violence;
- Order No. 105 of the Ministry of Labor Social Protection and Family (02.08.2012) provides instructions for local authorities on how to fulfill their obligations in relation to preventing and fighting domestic violence by establishing cooperation agreements with local social assistance bodies, education institutions and health protection incisions;
- Order No. 275 of the Ministry of Interior (14.08.2012) provides instruction for the police response to prevent and combat cases of domestic violence.

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<sup>29</sup> Ibid, Art. 173

<sup>30</sup> Ibid, Art. 174

<sup>31</sup> Ibid, Art. 175

<sup>32</sup> Criminal Procedure Code, Article 276

<sup>33</sup> Criminal Code, Art. 152

<sup>34</sup> Ibid, Art. 155

<sup>35</sup> Ibid, Art. 173

<sup>36</sup> Law on State-Guaranteed Legal Aid, Law 198 of 26.07.2007, Article 19 stipulates the right to qualified legal aid for the state-guaranteed legal aid to be provided during criminal process, in emergency cases, in cases of apprehension, in cases provided by Article 69 of Criminal Procedure Code and in cases provided by Article 77 of the Civil Procedure Code.

### III. COMPLIANCE WITH INTERNATIONAL HUMAN RIGHTS OBLIGATIONS<sup>37</sup>

14. While Moldova has made progress, challenges still remain. **Law 45 requires urgent reform to eliminate barriers to justice, ensure victim safety, and provide accountability for offenders.** Since 2013, the State has been working on amendments which would harmonize national legislation with provisions of the Istanbul Convention. This has been a lengthy and difficult process. The amendments have not yet reached the Parliament as the Ministry of Justice and Ministry of Finance have not agreed to them. This delay may be due to the lack of political will, low interest in domestic violence issues, or the political instability that has affected Moldova in the last years. In addition, the ECHR case of *Eremia and Others v. The Republic of Moldova*,<sup>38</sup> demonstrates other challenges that remain. This case has been highlighted by the Council of Europe’s Committee of Ministers as needing enhanced supervision and follow-up in 2014 and 2015.
15. In 2014, there was an increase of cases pursued based on Article 201<sup>1</sup>.<sup>39</sup> **However, application of the Criminal Code provisions by police in cases of violence against women, namely domestic and sexual violence, remains inefficient.** Police often continue to be **insensitive to victims and dismiss acts of violence that result in low-level injuries.**<sup>40</sup> Contrary to the criminal law, police often require repeated incidences of violence before they will apply Article 201<sup>1</sup>, the criminal law that addresses all forms of domestic violence irrespective of the degree of injury.<sup>41</sup> Even when they do use Article 201<sup>1</sup>, penalties remain weak. Aggressors are often sanctioned only with a fine, to the distress of the victim and family.<sup>42</sup> In fact, the fear of a financial penalty – which would penalize the household as a whole – causes victims to refrain from seeking help.<sup>43</sup>
16. **Police also fail to investigate cases of sexual violence and do not believe victims of sexual violence. In addition, many domestic violence crimes continue not to be investigated or pursued.**<sup>44</sup> There is a lack of harmonization within the Criminal Procedure Code concerning the initiation of complaints in sexual violence cases. Article 276 of the Criminal Procedure Code requires a victim complaint to initiate criminal prosecution of rape; yet, the provision

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<sup>37</sup> Moldova has ratified CEDAW (1994), ICCPR (1993), and CAT (1995), thus subjecting itself to periodic reporting and reviews by the respective treaty bodies. Moldova has also ratified the OP-CEDAW (2006) and OP1-ICCPR (2008), providing an additional means of accountability via the complaint mechanism. Moldova has neither signed nor ratified the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Moldova has ratified the European Convention on Human Rights, thus subjecting itself to the jurisdiction of the ECtHR.

<sup>38</sup> *Eremia and Others v. Moldova*, No. 3564/11, ECHR (2013). The court found that the domestic violence investigation was not effective, the state failed to take proactive measures in enforcement, and the State “repeatedly condoned” such violence.

<sup>39</sup> As per official statistics of the Ministry of Interior, from November 2014, out of 7,338 reported cases, 2,270 criminal investigations were opened using Article 201<sup>1</sup>. In comparison, 721 cases were investigated under Art. 78 of the non-criminal Contravention Code.

<sup>40</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report* (2012), ¶ 3.

<sup>41</sup> *Ibid.*

<sup>42</sup> *Ibid.*

<sup>43</sup> International Center “La Strada”, *Trust Line for Women Activity Report* (2012), p. 11.

<sup>44</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report* (2012), ¶ 3.



listing crimes for which a victim complaint is required does not include rape. It does, however, include several other offenses that may involve sexual violence, such as intentional less severe bodily injury, threat of murder or great bodily harm and sexual harassment, thus creating confusion over the initiation of cases.

17. **There is a lack of clear directions or established protocol for investigating sexual violence crimes. Sexual offences are investigated based on outdated instructions, which do not comply with international best practice standards.** There is no clear working methodology for police to respond to sexual violence cases. For example, the police do not take into account the condition of the victim. In fact, the ECHR found in the case *I.P. v. Republic of Moldova (2015)* that the State failed in its positive obligations to effectively investigate and punish all forms of rape and sexual abuse.<sup>45</sup> Lastly, if and when the criminal procedure is initiated, victims of sexual violence often face pressure from the aggressor and his/her relatives to withdraw the complaint.
18. In addition to these procedural barriers, victims of sexual violence are often subject to multiple vulnerabilities, given the absence of appropriate systems, the lengthy time it takes to collect evidence, other unnecessary legal delays, the pressure and manipulation by aggressors. Without adequate support, victims withdraw their complaints and refuse to continue the criminal investigation.<sup>46</sup>
19. **Prosecutors are reluctant to effectively apply Criminal Code provisions in and pursue violence against women cases.** Like police, prosecutors have been slow to apply Article 201<sup>1</sup> of the Criminal Code to cases of low-level injuries.<sup>47</sup> They exhibit attitudes that blame victims or minimize criminal behavior, resulting in fewer prosecutions.<sup>48</sup> Statistics from the Ministry of Interior indicate that less than 15 percent of the total number of complaints of criminal domestic violence in the first six months of 2012 resulted in the initiation of criminal procedures.<sup>49</sup> Prosecutors frequently refuse to pursue cases or they withdraw cases when victims do not want to testify, even in the most severe cases.<sup>50</sup> As concerns prosecution of **cases of sexual violence**, the prosecutors, as the police, often doubt the statements of the victims of sexual violence.<sup>51</sup>
20. **The State-Guaranteed Legal Aid Law is ineffective in assisting domestic violence victims.** When domestic violence victims seek a civil protection order, they do not benefit from qualified legal aid stipulated in Law 198/2007<sup>52</sup> because they do not meet the stringent

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<sup>45</sup> *I.P. v. Republic of Moldova*, No. 33708/12, ECHR, (2015).

<sup>46</sup> International Center “La Strada” *Ensuring access of victims of sexual violence to adequate legal and social protection*, Research, 2015, ¶ 118

<sup>47</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report* (2012), ¶ 3.

<sup>48</sup> *Ibid.*

<sup>49</sup> Official statistics of the Ministry of Interior, November 2014.

<sup>50</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report* (2012), ¶ 3.

<sup>51</sup> International Center “La Strada”, *Ensuring access of victims of sexual violence to adequate legal and social protection* (2015), ¶ 29.

<sup>52</sup> Law No 198 of 26.07.2007 on State-Guaranteed Legal Aid

criteria set out in Article 19. Victims must then seek out the assistance of specialized non-governmental organizations or a private lawyer for representation. In most cases of domestic violence, victims are extremely vulnerable, lack money, means of transportation, and have limited flexibility in their schedules. As a result, it is almost impossible for them to identify and reach a non-governmental organization (which is often only located in Chisinau or in some district capitals); in the absence of these options, they must hire and pay for a lawyer. As a result, victims give up on asking for protective measures or, even when they do apply, they do so at a very late stage.<sup>53</sup>

21. **Dangerous settlement practices.** Both prosecutors and judges use dangerous “settlement” techniques when determining a victim’s willingness to reconcile under Criminal Code Article 276(5).<sup>54</sup> The law is inconsistent with the requirements of the Istanbul Convention and CEDAW. For example, in cases of sexual violence, Article 276 states that even if the victim makes a complaint and prosecution commences, the prosecution will terminate if the victim and aggressor reconcile.<sup>55</sup>
22. **Reluctance to issue protective orders.** Protective orders are issued in Moldova by judges at the recommendation of the police. Although there has been an increase in the number of protective orders issued since 2011,<sup>56</sup> issuance of protective orders decreased in the first ten months of 2015; this trend may be due to the lack of commitment by the new Minister and reduced capacity building for the police.<sup>57</sup> Victims in shelters or in the process of divorce are often denied protective orders by judges, who mistakenly think protection is not necessary.<sup>58</sup> Judges frequently do not issue protective orders within the required 24-hour time frame.<sup>59</sup> Furthermore, judges do not specify distances and locations in the protective measures issued, rendering victims less secure and enabling aggressors to test the limits of the order.<sup>60</sup> Finally, the immediacy and effectiveness of a protective order is undermined by judges who do not promptly communicate to all parties that the order has been issued.<sup>61</sup> Moreover, there is no mechanism for emergency protective orders under Moldovan law.

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<sup>53</sup> Noted by Promo-LEX during their experience with beneficiaries.

<sup>54</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report* (2012), ¶ 3.

<sup>55</sup> International Center “La Strada”, *Ensuring access of victims of sexual violence to adequate legal and social protection* (2015), ¶ 35.

<sup>56</sup> Official statistics of the Ministry of Interior, November 2014, stating that in 2014, 920 protective orders had been issued compared to 448 in 2013 and 23 in 2011. The increase is most likely due to personal commitment of the Minister of Interior at that time and specialized capacity building activities by WLC jointly with Ministry of Interior and Police Academy during 2012-2015 or other projects conducted in partnership with the Ministry of Interior, such as the Project “Breaking the silence: elder abuse in the Republic of Moldova” implemented by HelpAge and Gender-Centru in cooperation with MIA, MLSPF, MoH (2013-2014).

<sup>57</sup> Official statistics of the Ministry of Interior, November 2014 stating a decrease of to 701 protective orders in the first 10 months of 2015 compared to the 920 in 2014.

<sup>58</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report* (2012), ¶ 3.

<sup>59</sup> *Ibid.*

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*

23. **Reluctance to remove the aggressor from the home** by the authorities. Even when the distances are specified in the protective orders, the relevant authorities are not undertaking sufficient efforts to remove aggressors from victims' accommodation where the victims often reside with their children. In *B. v. The Republic of Moldova*, the European Court on Human Rights found the state failed to take proactive measures to protect a mother who was a victim of domestic violence.<sup>62</sup> She requested that the court evict her ex-husband on a temporary basis and not determine the property issues.<sup>63</sup> The couple had already divorced, but the courts refused to evict him from the shared apartment despite the abuse that had been repeatedly reported to the police.<sup>64</sup> The ECHR found that Moldova had violated her right to prohibition of torture or inhumane or degrading treatment, as well as her right to respect for private and family life.<sup>65</sup>
24. **Lack of effective sanctioning for aggressors and inconsistent application of the laws in cases of protective order violations.** Under Moldovan law, a first time violation of a protective order results in administrative sanctions such as a fine.<sup>66</sup> Criminal liability is not triggered until the offenders violate the protective order a second time.<sup>67</sup> Because Law 45 limits criminalization of violations of protective orders to only those that occur subsequent to a first offense,<sup>68</sup> victims are exposed to substantial risk of future harm when aggressors are not held accountable for their first offense. This failure has been the basis for two cases before the ECHR in which the court issued judgments against the government of Moldova. In the case *Mudric v. The Republic of Moldova*,<sup>69</sup> the ECHR found that the Moldovan court failed to enforce the protection orders and also did not conduct effective investigations. Similarly, in the case *T.M. and C.M. v. The Republic of Moldova*,<sup>70</sup> the ECHR again found that the state failed to enforce protection orders, because it denied a permanent restraining order and did not evict the ex-husband after he violated a temporary restraining order.
25. The authority to determine whether a violation occurred and the responsibility to conduct administrative offence proceedings belongs to bailiffs.<sup>71</sup> In cases of violations of protective measures, bailiffs often refuse to initiate those proceedings when requested by the police, because the procedure fails to stipulate execution of the protective order. This creates problems for further offender accountability as described in the next paragraph.

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<sup>62</sup> *B. v. Republic of Moldova*, No. 61382/09, ECHR (2013), ¶ 75.

<sup>63</sup> *Ibid.*, ¶ 17.

<sup>64</sup> *Ibid.*, ¶¶ 7, 8, 14.

<sup>65</sup> *Ibid.*, ¶¶ 61, 75.

<sup>66</sup> Contravention Code, Article 318, "Failure to execute a court sentence, decision or ruling".

<sup>67</sup> Criminal Code, Article 320, "Deliberate Non-Execution of a Court Decision", "If an aggressor violates a protective order after a contravention or administrative sanction has been imposed, the second violation becomes a crime punishable by up to 2 years in prison"

<sup>68</sup> Law 45, Article 17, "Sanctions", states that violations of protective orders are to be handled under "applicable legislation" referring to Article 318 of the Contravention Code, which sanctions non-execution of court orders with a fine.

<sup>69</sup> *Mudric v. The Republic of Moldova*, No. 74839/10, ECHR (2013), ¶ 62.

<sup>70</sup> *T.M. and C.M. v. The Republic of Moldova*, No. 26608/11, ECHR (2014).

<sup>71</sup> Contravention Code, Article 421, "Enforcement Department".

26. **Because authorities fail to process administrative sanctions for first-time violations, it creates a barrier to criminal prosecutions of later, repeat violations of protective measures.** In order to bring a criminal prosecution for a repeat violation, authorities must show an administrative judgment for the first violation has been issued.<sup>72</sup> The problem is exacerbated by lengthy delays in the administrative courts because there are no stipulated deadlines for processing administrative cases. As a result, criminal prosecutions for repeat violations are blocked from proceeding further until the administrative sanctions are processed.
27. **Lack of safe housing and services for victims of domestic violence.** Law 45 does not provide for a dedicated source of funding for shelters and victim services.<sup>73</sup> Nevertheless, vital services continue to be provided by NGOs with only donor funding, such as hot-line, legal counseling center and the only NGO-run national shelter "Association Against Domestic Violence-Casa Marioarei" dedicated exclusively to domestic violence victims, with a limited capacity of 21 places.<sup>74</sup> There are few shelters in Moldova<sup>75</sup> and even when protective orders are issued, the relevant authorities are not making sufficient efforts to provide alternative accommodation for the victims of domestic violence. The NGOs and public entities which provide crucial services to victims struggle to raise sufficient funds from inadequate governmental support and private donations.<sup>76</sup> Services for victims remain seriously underdeveloped and under-funded.<sup>77</sup> Eight public entities - five maternal centers and three centers - in Moldova assist mothers with very young children who have no place to live, but who are not necessarily domestic violence victims; thus services for those victims vary. Two of the three public supported centers (apart the center providing support to victims of trafficking) accommodate 36 women, and coupled with the maternal centers, the total capacity is 106 beds for the entire country.<sup>78</sup> Only 181 victims of violence benefit from shelter places with at least 175 places still missing. In total, Moldova needs to provide 356 more shelter spaces to comply with the Council of Europe Taskforce Recommendations.<sup>79</sup> There is also a lack of any specialized services for victims of sexual violence.

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<sup>72</sup> Promo-LEX, *Analytical Note: The Uneven Application of the Legislation in Cases of Restraining Order Violation (2015)*

<sup>73</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report (2012)*, ¶ 2.

<sup>74</sup> Women Against Violence Europe, *Country Report 2013*, ¶148.

<sup>75</sup> The Advocates for Human Rights, *Implementation of Moldovan legislation on Domestic Violence: A Human Rights Report (2012)*, ¶ 2.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid; Oak Foundation, Women Against Violence Europe and Women's Law Center "Capacity Gap Analysis study of the Service Providers working with Women Victims of Domestic Violence in Moldova" (2014), ¶¶ 16-17,

<sup>78</sup> Women Against Violence Europe, *Country Report 2013*, ¶ 149; The Advocates for Human Rights, et.al, *Implementation of the Republic of Moldova's Domestic Violence Legislation: A Human Rights Report (2012)*, ¶ 41; Oak Foundation, Women Against Violence Europe and Women's Law Center "Capacity Gap Analysis study of the Service Providers working with Women Victims of Domestic Violence in Moldova" (2014), ¶¶ 16-17,

<sup>79</sup> Women Against Violence Europe, *Country Report 2013*, 32. The Council of Europe Convention on preventing and combating violence against women and domestic violence explanatory report Article 23 (Shelters) stipulated the need of 1 shelter place per 10,000 inhabitants.

28. **Reporting domestic violence without victim consent.** Law 45 requires health professionals to report all cases of domestic violence to police.<sup>80</sup> Social service professionals often report violence without victim permission, as well. Notification provisions and policies that ignore victims' own choices may expose victims to further harm from violent aggressors and deter women from seeking medical or social assistance before they are ready to seek a legal remedy.
29. **Sexual violence is one of the least recognized and reported forms of violence against women in Moldova.** The majority of cases of sexual violence are not reported to the authorities. Sexual violence in the domestic or family context is not even reported as such, as sexual intercourse is perceived as the duty of the wife, as confirmed by a 2015 survey. There are several factors that contribute to this problem: (i) stereotypical social norms, where masculinity is associated with domination and aggressiveness, and femininity with submissiveness; (ii) victim-blaming; and (iii) fear of reporting such cases to avoid blame and marginalization.<sup>81</sup>
30. **Evidentiary barriers preclude victims from presenting critical psychological documentation that would facilitate their successful application for protective orders.** While psychiatric institutions provide reports that courts accept as evidence, these reports focus primarily on the psychiatric aspects of domestic violence. Reports by psychologists, who actually provide direct services to victims, however, are not accepted as direct evidence by the courts for purposes of issuing a protective order. Furthermore, psychologists are not recognized as accredited judicial experts.<sup>82</sup> Thus, courts are excluding critical information from psychological direct service providers that could support a woman's application.
31. **Data collection and reporting of sexual violence.** While the Ministry of Interior has developed an appropriate mechanism of collection and reporting per crime, there is a high discrepancy between the numbers reported by the police and the numbers reported by the Ministry of Labor, Family and Social Affairs. For example, the police reported 7338 cases of domestic violence in 2014,<sup>83</sup> while the Ministry of Labor, Family and Social Affairs reported approximately 400 cases.<sup>84</sup> The discrepancy should be addressed as the Ministry of Labor, Family and Social Affairs should have access to more data since they continue the follow-up on cases regardless if they are formally registered as police complaints. The Ministry of Health does not provide any data on the number of cases of domestic violence.

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<sup>80</sup> Law 45, Article 8(5)b, "The role of central and local public administration authorities".

<sup>81</sup> International Center "La Strada" *Ensuring Access of Victims of sexual violence to adequate legal and social protection* Research, 2015.

<sup>82</sup> UNDP, *Feasibility study on the forensic infrastructure in the Republic of Moldova*, 2009/pg.71 - [http://www.undp.md/publications/Forensics\\_Feasibility\\_External%20Audit\\_Report\\_EN.pdf](http://www.undp.md/publications/Forensics_Feasibility_External%20Audit_Report_EN.pdf)

<sup>83</sup> Official statistics of the Ministry of Interior, November 2014.

<sup>84</sup> Ministry of Labor, Family and Social Affairs *Report regarding the national referral system* (2014).

#### IV. RECOMMENDATIONS

As a result, we consider it still necessary to implement recommendations made during Moldova's prior UPR that remain to be implemented, in addition to CEDAW's recommendation. The authors make additional recommendations that reflect the current situation for women victims of violence in Moldova:

- Create a comprehensive policy about violence against women and especially domestic violence that prevents, punishes, and eradicates these issues, especially in rural areas;
- Create a plan of action on domestic violence to monitor the effectiveness of the domestic violence law and provide adequate funding for its implementation;
- Initiate and promote amendments to the Law on Prevention and Fight against Domestic Violence and Criminal Code to increase penalties for domestic violence, and to comply with international standards;
- Initiate and promote amendments to the Law on Prevention and Fight against Domestic Violence and Criminal Code to criminalize every violation of a protective order, ensure their enforcement, and to comply with international standards;
- Develop mechanisms for the monitoring of the effective implementation of the domestic violence law and effective police investigations into complaints;
- Initiate and promote amendments to the national legislation to prohibit mediation in all cases of domestic and sexual violence. National law should prohibit "friendly agreements" that allow for the payment of compensation and other means of reconciliation in cases of sexual violence;
- Sign and ratify the Convention of the Council of Europe on preventing and combating violence against women and domestic violence (Istanbul Convention);
- Develop guidelines and protocols for prosecutors and criminal investigation officers, in accordance with international standards on human rights and the Istanbul Convention;
- Ensure State Guaranteed Legal Aid to all victims of violence in due time, irrespective of the distances and vulnerabilities;
- Create an emergency protection order that can be issued immediately by a police officer. This emergency order for protection should remain in place until and if either party requests a hearing, at which point the court may issue a long-term protection order. If no hearing is requested by either party, the emergency order for protection should remain in place for at least the UN Women-recommended duration of one year, subject to extensions as needed.
- Create sanctions for system professionals who fail to enforce or properly implement the provisions of the Law and enforce the provision of the protective order;
- Ensure the security and welfare of victims of domestic and sexual violence by guaranteeing effective remedies and through effective access to social, medical, legal and psychological victim assistance programs;
- Improve and expand rehabilitation centers for domestic violence victims, especially in rural areas, and increase capacity and coverage of domestic violence shelters;

- Address the root causes of domestic violence with the aim of conducting public awareness campaigns focused on: actions to address domestic and sexual violence; the risks and consequences of these offences; and existing services for domestic and sexual violence victims;
- Train law enforcement, judiciary, prosecutors, health care and social workers on responding to domestic violence;
- Create and train teams, in consultation with women's NGOs, for intervention in cases of domestic and sexual aggression, including direct victim service providers, forensic experts, criminal investigation officers and prosecutors. These teams should be mandated to respond promptly to cases of reported violence with a victim-centered response;
- Develop an appropriate inter-ministerial reporting and data collection system.