



International Organization for Migration, Mission to the Republic of Moldova (IOM), Individual Submission for the Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15(B) of resolution 5/1 of the Human Rights Council

FIRST UNIVERSAL PERIODIC REVIEW OF THE REPUBLIC OF MOLDOVA

March 2011

I. Introduction

1. This memorandum was prepared by the International Organization for Migration, Mission to the Republic of Moldova (IOM). Due to space constraints, this document is not exhaustive, but rather highlights key human rights issues related to IOM's area of expertise. Further details on any of the matters discussed below are available at IOM Moldova.

II. Background and framework

A. Scope of international obligations

2. The Republic of Moldova is party to seven of the nine core international human rights treaties.¹ It is also party to OP CEDAW, both Optional Protocols to the Convention on the Rights of the Child and both Optional Protocols to the International Covenant on Civil and Political Rights, the Convention against Transnational Organized Crime and its two Protocols (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol on Smuggling of migrants by land, air and sea), ILO Conventions no. 29, 111, 182. Moldova is applying also the UN Resolution no. 63/156 of 18 December 2008 on trafficking in women and girls and the UN Economic and Social Council Recommended Principles and Guidelines on Human Rights and Human Trafficking. Moldova has not yet ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

B. Constitutional and legislative framework

3. Article 15 of the Moldovan Constitution which says that "The Constitution in conjunction with other laws grants the **citizens** of the Republic of Moldova their rights and freedoms and also lays down their duties upon them" is problematic as it reveals a differential treatment for citizens and non-citizens. This article could be considered discriminatory in light of the International Convention on the Elimination of All Forms of Racial Discrimination and thus should be changed in a manner as to secure the universality of human rights². In this case paragraph 1 of article 19 from the Constitution³ could be excluded. The protection of foreigners' rights on the territory of Moldova is ensured by the Law on foreigners in force from 2010 and other additional laws. The protection of the rights of the victims of human trafficking, victims of domestic violence is ensured by the Law on prevention and combating trafficking in human beings (2006) and Law on prevention and combating domestic violence (2008) and related laws and regulations.

C. Institutional and human rights structure

¹ International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC), Convention on the Rights of Persons with Disabilities (CRPD).

² A possible formula could be: "The citizens of the Republic of Moldova as well as foreign citizens and stateless persons benefit of all rights and freedoms secured by the Constitution and other laws and bear the obligations provided by them"

³ Article 19 (1) Constitution: "Except in cases where the law has different rulings, aliens and stateless persons shall enjoy the same rights and shall have the same duties as the citizens of the Republic of Moldova"

4. All public bodies in Moldova have positive human rights duties under law. Moldovan Centre for Human Rights (created in 2009) and the Parliamentary committee on Human Rights is the only one to have an exclusive human rights defense mandate. Ministry of Labor, Social Protection and the Family, Ministry of Interior, General Prosecutor's Office; the Ministry of Justice have taken the lead on the human rights implementation in respect of migrants, victims of human trafficking, victims of domestic violence and persons at risk.

D. Policy measures

5. A four-year National Human Rights Action Plan (2004-2008) lapsed at the end of 2008. A new NHRAP is being elaborated currently to cover 2011-2014. There is a National Plan on Migration and Asylum (2010-2011), a National Plan on prevention and combating trafficking in human beings and domestic violence (2010-2011) as well as a National Program on Gender Equality 2010-2015.

III. Promotion and protection of human rights on the ground

A. Cooperation with international human rights mechanisms

6. The Republic of Moldova in the main undertakes timely reporting under international treaty review. For example, Ministerial delegations report to the Human Rights Committee, and Committee on Economic, Social and Cultural, but the Bureau on Interethnic Relations, a Soviet-era cultural institute, reports to CERD. Moldova has had successful and productive visits by Special Rapporteurs on Torture and Violence against Women. Moldova reported on the implementation of the UN Resolution no. 63/156 of 18 December 2008 on trafficking in women and girls in 2010 as well as on implementation of other international instruments related to trafficking in human beings.

B. Implementation of international human rights obligations

1. Right to Life, Liberty and Security of the Person

7. Violence Against Women: The UN Special Rapporteur on Violence Against Women has noted that, in Moldova, "Violence against women, within the family and in formal institutions, is said to be a widespread phenomenon. Domestic violence ... is, by and large, accepted as a normal aspect of private life by men and women alike and not considered as a problem warranting legal intervention." According to IOM data, domestic violence is one of the main push factors for trafficking in human beings (90% of victims of trafficking were previously victims of domestic violence). Important progress was made during the period September 2009-present in improving system-responses to domestic violence, with the first circa 40 protection orders issued by certain courts to victims under the 2008 Law on domestic violence. In addition, in September 2010, amendments were made to a number of laws to heighten the efficacy of the legal framework for combating domestic violence and other forms of violence against women (i.e. criminalization of domestic violence, etc.). Nevertheless, effective protection to victims in the main remains unavailable, particularly in rural areas. Measures to combat domestic violence and end impunity in this area can and should be considerably enhanced. Serious attention should be paid to expanding the number, coverage and capacities of shelters for victims of domestic violence, development of services for perpetrators and proper monitoring of cases by social assistants and police. Training and support efforts are needed to ensure that all jurisdictions in Moldova are aware of the legal framework for the protection of victims of domestic violence, and apply it effectively.

8. Trafficking in Human Beings: Vulnerable women and girls remain at risk of trafficking for sexual exploitation, while an increasing number of men are exposed to trafficking for labor exploitation purposes, particularly in the agricultural and construction sectors. Children are also trafficked, for forced labor and begging in neighboring countries. In addition, the breakaway region of Transnistria, in eastern Moldova, is beyond the control of the central government and remains a significant source and transit area for trafficking in persons. Fortunately, it was possible to establish a network of NGOs which partner with IO's and NGOs from the right bank of Moldova in the process of identification, referral and assistance of victims of trafficking (an increased number of victims is being currently identified and referred for assistance through this network). The US Government placed Moldova on its Tier 2 Watch

List for the second consecutive year in 2010, signaling very high concern in the area of impunity for trafficking.

9. New trends of trafficking have appeared in the recent years. In comparison to the past, the duration of exploitation for sexual services decreased, while conditions of exploitation became softer, traffickers resorting to manipulative techniques to make the victims fall under an illusion of “well-being”. As a consequence, this creates challenges in identification of trafficking.

10. Since 2006 till present National Referral System for Assistance and Protection of Victims and Potential Victims of Trafficking (NRS) has been implemented by the Government in cooperation with international partners. NRS is a system of cooperation between governmental, intergovernmental, and non-governmental agencies involved in combating human trafficking and domestic violence, aimed at protecting the rights of victims and persons at risk of being trafficked. Till present NRS was extended through comprehensive trainings of multidisciplinary teams - local/regional operational units of the NRS – and currently covers 32 administrative units of Moldova, including 29 rayons, 2 municipalities and one town. One major focus of the NRS since its creation is the “pro-active prevention” focusing on vulnerable persons who, because of their difficult situation, are at risk of being trafficked. Thus, since 2010 till present 2624 persons at risk (potential victims of trafficking) have been assisted through IOM programs, which is almost equal to the number of victims of trafficking assisted during 2000-2010 (2741 victims). The first one-year NRS Strategy Implementation Report was published in March 2010 and serves for the further development of NRS a second report is expected at the end of March 2011.

11. While the assistance of victims of trafficking registers certain improvement in Moldova, there is still poor capacity of law enforcement agencies in identifying victims of trafficking and in investigating cases of trafficking in persons and related cases. Regrettably, in Moldova, trafficking in persons is often confused with irregular migration and traffickers are often treated favorably compared to small recruiters and even victims of trafficking. Furthermore, previous efforts on monitoring activities of the judiciary identified the lack of transparency as a problem⁴. Only in few cases victims of trafficking are offered a just satisfaction (compensation) for the non-pecuniary damage caused to them. Therefore, further identification of systemic problems in the criminal investigation and trail of cases of trafficking in persons is required and follow up activities are required to strengthen the capacities of the law enforcement agencies and courts in examining cases of human trafficking and protection of victims of human trafficking within the criminal proceedings. Also, creation of an adequate normative framework for building up special compensation fund designed for victims of human trafficking based on state confiscation of perpetrators’ assets is required.

2. Migrants’ Rights

12. **Immigrants (foreigners).** Moldova punishes illegal border crossing as a criminal offence in spite of recommendations from the side of international experts to move into the Contravention Code, so any attempt of entering or exiting the Moldovan border is punishable under the Criminal Code (article 362)⁵. According to data provided by the Ministry of Interior (MoI), during 2010, 440 criminal cases under these articles have been initiated out of which 241 have been transmitted to courts.

13. Although the Moldovan Government ratified in 2005 the Palermo Protocol on Smuggling of migrants by land, air and sea relative to the UN Convention on Transnational Organized Crime, it failed to adjust its domestic legislation in line with the provisions of the Protocol, especially in what regards the de-criminalization of illegal migration by ensuring that smuggled migrants are not liable on the basis

⁴ (OSCE Analytic Report on Observance of Fair Trial Standards and Corresponding Rights of Parties During Court Proceedings, www.osce.org/documents/mm/2008/06/31833_en.pdf)

⁵ Article 362 “Illegal crossing of state border” from the Criminal Code in its first paragraph incriminates the simple non-aggravated crossing of Moldovan state border, which is punishable with a fine of up to 400 Conventional Units, unpaid labor for the community up to 200 hours or with imprisonment of up to 2 years.

of having been smuggled⁶. Thus, presently the smuggled migrants are criminally charged for illegal crossing of border just as any other illegal migrants are (under article 362 Criminal Code).

14. Documentation of human rights issues concerning third-country nationals -- including migrants and refugees – as well as of stateless persons, is neither qualitatively nor quantitatively adequate at present. There is a particular need for better research and documentation of, inter alia: (1) the numbers of stateless persons in Moldova and factors giving rise to statelessness; (2) racial discrimination and other forms of negative treatment of dark-skinned migrants; (3) treatment of irregular migrants on Moldovan territory.

15. As concerns treatment of irregular migrants in Moldova, a number of issues might merit attention:

1. **Detention of Children** in the Migrants' Accommodation Center (MAC)⁷ should be regarded as an issue. There have been recent cases of minors placed in the MAC. Special norms avoiding detention of minors should be established.

2. **Detention period.** Upon deciding on expulsion, a judge may place the illegal migrant in MAC for a period not exceeding 6 months (art. 40 of the Contravention Code). However, Moldovan courts often interpret this provision as “for 6 months” rather than “up to 6 months”. This compels the respective migrants to serve their entire term even when an earlier return opportunity is available. In 2010 the Chisinau Court of Appeal ruled in two separate cases in favor of earlier release of applicants from MAC, after which courts started establishing shorter terms of detention. In the same context, it should be a matter of concern that Moldovan legislation does not provide “voluntary return” as an alternative to the already known procedure through the national law enforcement agencies (apprehension, trial and expulsion with temporary interdiction of return)⁸. The new Law on foreigners (2010) provides that in case the immigrant chooses to return voluntarily, the duration of the re-entering ban is reduced to one half, however, it doesn't provide voluntary return as alternative and skipping the above mentioned procedure.

3. **Mental Health.** Migrants apprehended in Moldova after an illegal entry/overstay are placed in the MAC. A general physician and a nurse work in MAC on a daily basis. However, those migrants who present symptoms of Post Traumatic Stress Disorder or any mental health issues symptoms are not being taken care of by a specialist. Although there is a Psychologist included in the staff list of the MAC, the position is currently vacant.

16. A new law on foreigners was adopted in July 2010 as well as a new National Action Plan in the field of Migration and Asylum for 2010-2011. With the new law the Government started the implementation of “one-stop shop”⁹ with the main purpose of ensuring quick receiving, processing and issuing of

⁶ Paragraph 4 of article 362 of the Criminal Code (illegal crossing of border) exempts from criminal liability asylum seekers and victims of trafficking, but it is silent in respect of smuggled migrants, who according to the Protocol mentioned above shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of smuggling. This omission should be rectified, by adding in paragraph 4 of article 362 the smuggled migrants as exempted from criminal liability under this article.

⁸ The Moldovan legislation in force provides that an irregular migrant identified as such by the law enforcement agencies on the territory of the Republic of Moldova or when exiting the Moldovan territory is to be brought before the domestic court, which could apply a fine either with or without expulsion from the territory of the Republic of Moldova. In the first case, the migrant will be given short term to exit the country, with possibility of returning legally to Moldova whenever he chooses, while in case of expulsion, the migrant won't be able to come back for a certain period of time (5 years). Anyhow, in both cases a regular migrant who became irregular due to various circumstances and wishes to go back home voluntarily (without being “cached”) will not be able to return back to his homeland except following the above procedure as far as at border he would be identified as irregular and subsequently brought to court. Different states in cooperation with IOM worldwide thought of using assisted voluntary return as a legal alternative to forced return imposed by the court. At the moment in Moldova this innovation cannot be applied alternatively, but only following the above administrative procedure, which doesn't motivate third country nationals to apply for voluntary return.

⁹ Up until now the documentation of immigrants, including for business/labor purposes to Moldova was quite sinuous because of the distribution of migration competences among the Ministry of Interior (MoI), Ministry of Labor, Social Protection and Family (MLSPF), and the Ministry of Information Technologies and Communications (MITC), which implies bureaucracy and tergiversation. On 20 December 2010, the Government approved the Decision to create the one stop-shop within the Ministry of Interior, which is supposed to be the only place a foreigner should submit and receive documents legalizing their stay for a period exceeding 90 days.

documents for legalizing immigrants' stay in Moldova, reduce bureaucracy and exhaustion of immigrants.

17. During 2008-2010, progress was made by the Ministry of Interior, Bureau for Migration and Asylum to meet the highest international standards by refurbishing the flats of the MAC. Monitoring and quality control of detention conditions of irregular migrants in the MAC has furthermore been increased through the creation of an Observatory Mechanism (monthly reports, periodical visits of representatives of various International Organizations, diplomatic missions, NGOs as well as local authorities). The accessibility of assistance for asylum seekers and detained migrants increased considerably through the conclusion in February 2010 of a Memorandum of Understanding between the Ministry of Interior, the Institute for Penal Reform (IPR), the Legal Centre for Advocates (LCA) and IOM which provides for referral to legal, psychological and humanitarian assistance, including through a special hotline available to migrants within and outside of the Centre.

18. The "Assisted Voluntary Return" option for both Moldovan nationals and third country nationals became available to the migrants since 2009. It allows Moldovans and the irregular third country nationals to return back to their country of origin voluntarily avoiding deportation and having all travel expenses covered. Since the launch of the program at least 20 third country nationals and at least 96 Moldovans¹⁰ have been successfully returned to Moldova and, respectively, to their homeland.

19. Moldovan Government signed with EU states Protocols to the Readmission Agreement of 10.10.2007, in particular with the Republic of Hungary (19.02.2010), Republic of Estonia (01.12.2009); Romania/25.03.2010 (01.12.2009). There are ongoing negotiations with Austria, Belgium, Bulgaria, Germany, Italy, Latvia, Luxembourg, Malta, Netherland, Portugal, Slovakia.

20. **Emigrants.** In a representative in-crisis survey (March 2009) 43.2% of Moldovan migrants reported that the authorities from the host country became more severe and 37.1% noted that the attitude of local people became negative or hostile. That remittances have plummeted while absolute figures of migration have remained approximately the same, indicates that many migrants find themselves in precarious situations in countries of destination and at risk of being exposed to human rights violations. The Moldovan Government is actively seeking to improve its outreach and assistance capacity towards Moldovans abroad, notably through improved and specialized services given by Moldovan diplomatic missions and in October 2010 the creation of a specialized Government agency to cater for needs of the Diaspora was announced.

21. As regards the right to free movement of persons, Moldova concluded agreements on coordination of social security with Portugal, Bulgaria, Romania and Luxemburg, is carrying out negotiations with Greece, Italy, Spain, Belgium, Austria, Poland and Estonia and intends to start negotiations with Czech Republic and Cyprus and is actively pursuing the establishment of a visa-free travel regime with EU for its citizens.

22. Out of country voting (OCV). Participation of Moldovans abroad in the country's political life has been improved. CEC and MFAEI have improved their capacity to organize and facilitate voting abroad for Moldovan migrants, including outside official Moldovan missions and in the countries where Moldova doesn't have diplomatic presence. The improved capacity contributed to the increase of migrants' voter turnout in the elections, especially considering that Moldova features a high number of its citizens residing abroad. Consequently, the last parliamentary elections from 28 November 2010 have eloquently proved the efficiency of these efforts. In these elections 64 201 persons voted abroad, which represented more than 3.6 times increase comparing to the last parliamentary elections as of 29 July 2009 which counted 17,484 voters. As a result, Moldovans living abroad would become more actively involved in political processes of Moldova and democratic electoral procedures would be strengthened. Subsequently, good governance would be improved and accountability of the government would be increased.

¹⁰ IOM administrative data