



## **MOLDOVA:**

**Submission to the Committee on the Elimination of Discrimination against Women for the Adoption of the List of Issues during the 54<sup>th</sup> Session (11 February – 1 March 2013), in preparation for the 56<sup>th</sup> Session (October 2013)**

**by**

**The Advocates for Human Rights, a non-governmental organization in special consultative status pursuant to HRC resolution 5/1 of 18 June 2007**

**and**

**Women's Law Center, Chisinau, Moldova, a non-governmental organization**

Statement of Interest:

1. Founded in 1983, The Advocates for Human Rights (The Advocates) is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.
2. Founded in 2009, The Women's Law Center is a non-governmental organization established by women lawyers in Chisinau, Moldova. The organization was founded to promote women's human rights by ensuring that a gender perspective is applied during the law-making process and in the implementation of law. The organization has been involved in the 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.
3. In partnership with the Bulgarian Gender Research Foundation, The Advocates and the Women's Law Center conducted fact-finding in 2011 and 2012 to monitor the implementation of Moldova's domestic violence legislation.
4. The Advocates for Human Rights and the Women's Law Center submit the following suggested issues for adoption by the Committee on the Elimination of Discrimination

## Background on Moldova and Applicable Provisions of CEDAW

5. Domestic violence is a serious problem in Moldova. A 2011 study found that 63.4% of women in Moldova aged 15 or older had experienced physical, psychological, or sexual violence from an intimate partner over their lifetimes.<sup>1</sup> Moldova's legislation on domestic violence provides for a protective order;<sup>2</sup> yet as of August 2012, only approximately 600 protective orders had been issued since the law was first implemented in 2010.<sup>3</sup> Article 201<sup>1</sup> of the Moldovan Criminal Code provides sanctions for all levels of family violence; however prosecutors and police have been slow to apply Article 201<sup>1</sup> to cases of low-level injuries and often require repeated incidences of violence before charging or pursuing a case.<sup>4</sup> Judicial attitudes and a lack of timeliness in issuing protective orders also impede domestic violence victims' access to justice.<sup>5</sup>
6. States are to establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination.<sup>6</sup> Violence against women is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.<sup>7</sup> In addition, General Recommendation 19 recognizes that “[u]nder general international law and specific human rights covenants, States may also be responsible for private acts if they fail to act with due diligence to prevent violations of rights or to investigate and punish acts of violence...”<sup>8</sup>
7. Moldova's combined fourth and fifth periodic report, submitted to the Committee on the Elimination of Discrimination against Women in September 2011,<sup>9</sup> recognizes

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<sup>1</sup> National Bureau of Statistics of the Republic of Moldova, in collaboration with the United Nations Development Program, UN Women, and the United Nations Population Fund, [Violence against Women in the Family in the Republic of Moldova](#) (2011).

<sup>2</sup> Law Number 45-XVI of March 2007, Article 15 (hereinafter “Law 45”). The law entered into force in 2008 but it lacked the necessary procedural mechanisms until the legislature adopted Law No. 167 in July 2010.

<sup>3</sup> The Advocates for Human Rights, [Implementation of the Republic of Moldova's Domestic Violence Legislation: A Human Rights Report](#) (2012) p. 2.

<sup>4</sup> *Id.*, p. 3.

<sup>5</sup> *Id.*, p. 3.

<sup>6</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 2(c).

<sup>7</sup> General Recommendation No.19 (11<sup>th</sup> session 1992) (1).

<sup>8</sup> *Id.*, (9).

<sup>9</sup> *Consideration of reports by States parties under article 18 of the Convention on the Elimination of All Forms of Discrimination against Women*, [U.N. Doc.CEDAW/C/MDA/4-5](#), 15 September 2011.

domestic violence as a violation of women's human rights.<sup>10</sup> The State Party acknowledges gaps in its regulatory framework and the need to improve the procedure concerning the issue and enforcement of the protection order and the protection and support of victims of violence.<sup>11</sup> The State Party also notes that government authorities have instituted a system for accrediting the social services system as well as a national computerized data system.<sup>12</sup>

8. In its concluding comments in 2006, the Committee on the Elimination of Discrimination against Women expressed concern about the prevalence of domestic violence in Moldova and about whether or not the then-draft law 45 would adequately ensure prosecution and punishment of perpetrators.<sup>13</sup> It urged the State Party to guarantee that all women who are domestic violence victims have immediate access to protection orders and access to a sufficient number of shelters and legal aid.<sup>14</sup> It also called upon the State Party to ensure that law enforcement personnel, health care professionals, and social assistance professionals are fully trained on Law 45 and on how to provide a sensitive response to victims of violence.<sup>15</sup>
9. Moldova has taken important steps to combat domestic violence. Moldovan Criminal Code Article 201<sup>1</sup> defines family violence as deliberate verbal or physical action committed by a family member against another family member and provides sanctions which increase with the level of bodily injury. In the civil system, Law 45 provides for 10 types of protective measures to be issued within 24 hours after the court receives the claim, including: temporarily evicting the aggressor from the home; obliging the aggressor to refrain from approaching the victim; obliging the aggressor to refrain from contacting the victim or the victim's dependants; prohibiting the aggressor from visiting the victim's place of work or residence; obliging the aggressor to contribute to temporary maintenance of his children; obliging the aggressor to pay for medical expenses and damaged assets; restricting the unilateral disposal of assets; obliging the aggressor to undergo treatment or counseling if so ordered; establishing a temporary visitation schedule for minor children; and prohibiting the aggressor from keeping or handling firearms. Implementation of the domestic violence legislation, however, shows that there are several areas where the Moldovan government is not in compliance with its obligations under the CEDAW.

### List of Issues and Suggested Questions

10. **NGO shelters and maternal center shelters lack adequate governmental funding and support.** United Nations standards recommend that one dedicated shelter should

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<sup>10</sup> *Id.*, para. 305

<sup>11</sup> *Id.*, para. 309.

<sup>12</sup> *Id.*, para 309.

<sup>13</sup> Committee on the Elimination of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Republic of Moldova, [U.N. Doc. CEDAW/C/MDA/CO/3](#), 25 August 2006, para. 22.

<sup>14</sup> *Id.*, para. 23.

<sup>15</sup> *Id.*, paras.22-23.

exist for every 10,000 citizens.<sup>16</sup> The population of Moldova is 3,545,000.<sup>17</sup> There are only approximately 106 shelter beds, including maternal center beds, which are not dedicated for victims of domestic violence - for the entire country of Moldova.<sup>18</sup> There is only one NGO shelter in Moldova dedicated to the needs of domestic violence victims and its capacity has been limited due to lack of financial support.<sup>19</sup> The eight maternal centers in Moldova primarily serve mothers with very young children who have no place to live, regardless of whether they are victims of domestic violence. Yet, for many victims of domestic violence, these maternal centers may be the nearest place of refuge. There is no common standard of assistance for domestic violence victims in the maternal centers; services available to domestic violence victims therefore vary by location. And if NGO or maternal center shelters are full, victims of domestic violence are referred to community centers, centers for homeless people, or to other institutions, all of which lack services for and the capacity to counsel victims of domestic violence.

*Suggested Questions:*

- What steps will the State Party take to increase the number of dedicated shelters in Moldova?
- What steps will the State Party take to ensure that maternal centers offer standardized, sensitive, and knowledgeable assistance to victims of domestic violence?

**11. Law 45 does not require the government to fund shelters for domestic violence victims.** Moreover, in 2012 the Ministry of Labour, Social Protection and Family began allocating funding to maternal centers but that funding was contingent on maternal centers becoming public institutions. Maternal centers thereby lost their independent status as NGOs.<sup>20</sup> At present, there is no legal mechanism that would enable the state to fund shelters operated solely by NGOs. A recent accreditation framework contains many technical requirements that may constitute barriers for a civil society-sponsored shelter.<sup>21</sup> However, the State Party is drafting law on procuring services, which may establish a mechanism for the state to procure services from service providers irrespective of their status as an NGO or a public institution.<sup>22</sup>

*Suggested Questions:*

- What steps is the State Party taking to ensure that shelters and maternal centers receive adequate funding?
- How will the State Party provide adequate and regular funding to increase the number of available shelters located in both rural and urban areas to meet international standards?

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<sup>16</sup> UN Division for the Advancement of Women, [Handbook for Legislation on Violence against Women](#) (2010), Section 3.6.1.

<sup>17</sup> UN Statistics Division, [Social Indicators](#), June 2011.

<sup>18</sup> The Advocates, *supra* note 3, at 41.

<sup>19</sup> The Advocates, *supra* note 3, at 40.

<sup>20</sup> The Advocates, *supra* note 3, at 37.

<sup>21</sup> Law on Accreditation of Services (June 2012); The Advocates, *supra* note 3, at 42, n. 336.

<sup>22</sup> The Advocates, *supra* note 3, at 37, n. 282.

- How will the State Party ensure that the current NGO shelter receives adequate funding to maintain its standards that prioritize victim safety and dignity and how will the State Party ensure that the law on procuring services will facilitate the creation of additional NGO shelters?

12. **Domestic violence victims do not receive adequate legal assistance.** Law 45 states that victims may receive legal assistance pursuant to the Law on state-guaranteed legal aid, but that Law restricts critical access to legal assistance for victims of domestic violence.<sup>23</sup> It does not apply to victims who are applying for a protective order before having started a civil or criminal case because it requires victims to be a party to a legal case.<sup>24</sup> Moreover, it imposes financial eligibility requirements. United Nations standards state that free legal assistance in all legal proceedings should be available to victims of violence to ensure access to justice and avoid secondary victimization.<sup>25</sup> In addition, paralegals in Moldova lack knowledge on domestic violence and are not part of the National Referral System, a primary source of assistance for victims of domestic violence.<sup>26</sup> The few NGOs that provide free legal assistance are concentrated in urban areas.<sup>27</sup>

*Suggested Question:*

- What steps will the State Party take to ensure that all domestic violence victims throughout the country receive free legal assistance regardless of income and including during the protective order process as well as during criminal or civil proceedings?
- What steps will the State Party take to ensure that paralegals are trained in the dynamics of domestic violence and how to aid domestic violence victims?

13. **Professionals across sectors urgently need mandatory and regular training on international best practices on the dynamics of domestic violence.** Law 45 codifies a comprehensive multi-sectoral response to domestic violence and mandates a multi-disciplinary team (MDT) is formed for each victim of domestic violence in 5 pilot regions of the country. These first responders are critical to the implementation of Law 45 and its intent to protect victim safety. However, many of the professionals who comprise the MDT lack training on domestic violence, coercive control, and a gender-sensitive response to victims. Police often blame victims or minimize criminal behavior, resulting in fewer police reports, prosecutions, protective orders, and sanctions.<sup>28</sup> Health care professionals do not know how to identify cases of domestic violence or how to respond to them.<sup>29</sup> Social assistants are unaware of Law 45, blame victims for violence, and do not do a safety plan with victims.<sup>30</sup> Additionally, judges and prosecutors commonly are reluctant to pursue or sanction cases of domestic

<sup>23</sup> Law on state-guaranteed legal aid (2012).

<sup>24</sup> *Id.*, Article 19.

<sup>25</sup> UN Division for the Advancement of Women, *supra* note 16, section 3.9.3

<sup>26</sup> The Advocates, *supra* note 3, at 44.

<sup>27</sup> Angelina Zaporojan-Pirgari, *Report on the response to domestic violence in Moldova* (2011), sec. 2.3; Mihaela Vidaicu, *Domestic Violence Against Women in Moldova*, p.2.

<sup>28</sup> The Advocates, *supra* note 3, at 3.

<sup>29</sup> The Advocates, *supra* note 3, at 47.

<sup>30</sup> The Advocates, *supra* note 3, at 42.

violence; they instead blame victims, minimize the violence, and accuse victims of lying to manipulate the system.<sup>31</sup>

*Suggested Questions:*

- What steps will the State Party take to mandate immediate, gender-sensitive training on the dynamics of domestic violence and Law 45 for all police, judges, prosecutors, health care professionals, and social assistants?
- Will the State Party ensure that such trainings are created in consultation with NGOs that serve domestic violence victims and are grounded in international human rights standards that prioritize victim safety and offender accountability?
- Will the State Party ensure that multi-disciplinary teams are implemented throughout Moldova in the next six months?

**14. Police and prosecutors infrequently and inconsistently use the Criminal Code provision on Family Violence.**<sup>32</sup> Less than 15% 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>33</sup> Police frequently take no action to pursue criminal charges even in serious cases. They more often file an administrative case under Contravention Code Article 78, which covers light injuries between any two persons.<sup>34</sup> This reliance on Article 78 results in fewer arrests and detention of perpetrators and continued vulnerability for victims. Additionally, prosecutors, like police, rarely view domestic violence as a crime unless it is repeated or results in severe injury or death - despite the language of Criminal Code Article 201<sup>1</sup> that incorporates all levels of injury.<sup>35</sup>

*Suggested Question:*

- What steps will the State Party take to ensure that police and prosecutors more proactively investigate and prosecute cases of domestic violence under Article 201<sup>1</sup>?

**15. A gap in Law 45 excludes protection for victims of domestic violence who have never lived with the aggressor although they are or have been in an intimate relationship with him.** The scope of Law 45 extends only to intimate partners who are cohabitants, unless they are married or the children or dependants of married persons.<sup>36</sup> Thus, many intimate or formerly intimate partners do not have access to Law 45's protections and remedies.

*Suggested Question:*

- Will the State Party eliminate the gap in Law 45 to protect victims of domestic violence who are in or have been in an intimate relationship with the aggressor but have never lived with him?

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<sup>31</sup>The Advocates, *supra* note 3, at 21, 27.

<sup>32</sup>Criminal Code, Article 201<sup>1</sup>.

<sup>33</sup>Statistics from the Ministry of Internal Affairs, July 2012.

<sup>34</sup>The Advocates, *supra* note 3, at 18.

<sup>35</sup>The Advocates, *supra* note 3, at 21.

<sup>36</sup>Law 45, Article 3.

**16. Mandatory reporting laws and policies compromise victim safety and autonomy.**

Notification policies may place a victim in greater peril because the danger to her escalates when the aggressor finds out that she has sought help. It is therefore important for an adult female victim of domestic violence to make her own decision to report the domestic violence - she is the best judge of the potential danger her abuser poses to her. Yet Law 45 requires medical professionals and teachers to report cases of family violence to the guardianship authority and to the police.<sup>37</sup> Domestic violence victims may avoid seeking necessary medical care if they are not yet ready for the criminal justice system to intervene. Further, a victim's confidence in the medical profession is an important determinant of whether or not they will seek help.<sup>38</sup> Law 45 also requires social assistance and family protection department professionals to "[c]ollaborate with the administrative bodies of the interior to identify persons inclined to commit acts of family violence,"<sup>39</sup> a duty that social assistants frequently interpret as a requirement to notify police whenever a victim comes forward.<sup>40</sup> The increased danger that arises when well-intentioned service providers contact police undermines victim autonomy and may deter a victim from reporting domestic violence.

*Suggested Questions:*

- Will the State Party amend Law 45 to repeal the mandatory reporting requirement for medical professionals and teachers, except in cases involving children or other particularly vulnerable victims?
- Will the State Party amend Law 45 to clarify that social assistance and family protection department professionals are not required to report cases of domestic violence to police, except in cases involving children or other particularly vulnerable victims?

**17. Law 45 imposes criminal penalties for violations of protective orders only for violations subsequent to a first offense.**<sup>41</sup> Only after an aggressor violates a protective order repeatedly will he be held liable under Article 320 of the Criminal Code for non-observance of a court order.<sup>42</sup> The first time an aggressor violates a protective order police often give him a warning or an administrative punishment constituting a fine. These "first-time" responses are counterproductive, dangerous, and an insufficient response to a violation of a court order. And, a fine punishes the entire family: fear of a financial penalty deters domestic violence victims from seeking help.<sup>43</sup> Victims are exposed to substantial risk of future harm if aggressors are not held criminally accountable for their first violation of a court order.

*Suggested Question:*

- Will the State Party amend Law 45 and the Criminal Code to provide that every violation of a protective order is a crime?

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<sup>37</sup> Law 45, Article 8(4) - (5).

<sup>38</sup> European Court of Human Rights, *Z v Finland*, Appl. No. 22009/93, 25 February 1997, para. 95.

<sup>39</sup> Law 45, Article 8(3).

<sup>40</sup> The Advocates, *supra* note 3, at 39.

<sup>41</sup> Law 45, Article 17; Contravention Code, Article 318.

<sup>42</sup> The Advocates, *supra* note 3, at 15, n. 133.

<sup>43</sup> La Strada, [Trust Line for Women Activity Report](#) (2012), p. 11.

**18. The protective order scheme inadequately addresses a victim’s urgent need for safety.** Law 45 requires police to submit the application for a protective order to the court within one workday<sup>44</sup> and it requires courts to issue protective orders within 24 hours of receiving the application.<sup>45</sup> However, these processes are often delayed for days or weeks. Police sometimes wait to see if the couple will reconcile or to see if injuries are repeated before submitting an application.<sup>46</sup> Judges often insist on evidence beyond the statutory requirements of Law 45 before they will issue a protective order, further delaying the process.<sup>47</sup> These delays can be particularly harmful in Moldova because Civil Procedure Code Article 318<sup>3</sup> requires notification of the aggressor when an application for a protective order is submitted to court.<sup>48</sup> This notification may cause an enraged aggressor to commit more violence or may prompt a manipulative aggressor to coerce the victim into withdrawing the application for protection.

*Suggested Question:*

- Will the State Party amend Law 45 to include an emergency order for protection that is issued immediately by a court or by law enforcement and which requires no other evidence other than the statement of the victim?

**19. Mediation and conciliation are inappropriate in domestic violence cases.**

Mediation assumes that the parties have equal bargaining power which is rarely the case in domestic violence cases. Law 45 allows for mediation “at the request of the parties”<sup>49</sup> but a violent or manipulative offender can easily intimidate a victim into agreeing to mediation. Criminal Code Article 276(5) requires prosecutors and courts to stop a case if they determine that the victim’s willingness to reconcile is expressed freely and that she has had effective access to assistance and protection.<sup>50</sup> But prosecutors and courts do not have clear protocols that incorporate an understanding of the dynamics of domestic violence or formal risk assessment tools. In fact, judges and prosecutors often require a victim to discuss – in the presence of the aggressor - whether the settlement is voluntary or whether she needs additional protection.<sup>51</sup> This does not support the victim’s safety or give her a chance to speak privately and without intimidation.

*Suggested Question:*

- Will the State Party amend Law 45 and the Criminal Code to repeal provisions on mediation and conciliation in cases of domestic violence?

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<sup>44</sup> Law 45, Article 14(3).

<sup>45</sup> Law 45, Article 15(1).

<sup>46</sup> The Advocates, *supra* note 3, at 14.

<sup>47</sup> The Advocates, *supra* note 3, at 30.

<sup>48</sup> Civil Procedure Code, Article 318<sup>3</sup>.

<sup>49</sup> Law 45, Article 11(4).

<sup>50</sup> Criminal Code, Article 276(5).

<sup>51</sup> The Advocates, *supra* note 3, at 23, 28.