CEDAW ASSESSMENT TOOL REPORT FOR MOLDOVA
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INTRODUCTION

This report assesses the status of women in Moldova under the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Despite tough hurdles to face—traditional perceptions regarding women’s role in society, economic hardship, workplace discrimination and family violence—women in Moldova continue to make important strides towards equality. Women are graduating from high schools and universities in equal or greater numbers than their male counterparts and are increasingly playing more prominent roles in Moldova’s political and economic sectors. Recent legislation in areas such as trafficking in persons and gender equality promises to create more opportunities for women’s advancement by establishing a legal prohibition against discrimination against women. Despite these important gains, however, women continue to confront widespread discrimination and other violations of their rights under international standards. This assessment focuses on the most serious obstacles to women’s equality in Moldova.

Over the last several years, the Republic of Moldova has undertaken important legislative reform in an effort to bring its laws into compliance with international standards, particularly those of the European Union. In the 1990s, it ratified several international human rights conventions including CEDAW (1994), the International Labor Organization (ILO) Convention Concerning Discrimination in Employment and Occupation (1995), the ILO Convention Concerning Equal Remuneration of Men and Women Workers for Work of Equal Value (1999) and, in 2001, the Revised European Social Charter. Significantly, each of these documents contains provisions that proscribe discrimination between the sexes in a variety of fields. The Republic of Moldova directly incorporates international law into its national legal system without requiring implementing legislation. The Constitution obligates the state to observe the treaties to which it is a party. In case of any conflict between international and national law, international law prevails. Consequently, CEDAW can be interpreted directly by national courts.

1 See, Gender Analysis of the Legislation of the Republic of Moldova, UNIFEM (2004), p. 11. Given the importance of the European Union in the region, the Supreme Court of Justice of Moldova issued a plenary decision specifically on the implementation of the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter, ECHR). It ruled that the ECHR forms an integral part of national law and is directly applicable in national courts. Like other international and regional human rights treaties, the ECHR supersedes national law in Moldova if any conflict arises between the two. See Decision of the Supreme Court of Justice on the Application in the Judiciary Practice by Judicial Institutions of Certain Provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, #17, 19 June 2000, para. 2 & 3.

In October 1998, the Republic of Moldova submitted its initial report to the CEDAW Committee. This report, together with an NGO alternative report, was reviewed in June 2000. The Committee made various recommendations at that time, some of which are referenced in this assessment. In November 2004, Moldova submitted its combined second and third periodic report. This combined report was reviewed by the Committee in August 2006, together with an NGO alternative report. The results were not available in time to be considered for this assessment.

At the national level, in the period of 2005-2006 alone, Moldova has implemented significant legislative reforms in the area of women’s rights. Anti-trafficking legislation that is now in force contains the country’s first explicit anti-discrimination clause. A law dedicated solely to issues of gender equality also is in force, and defines both sex discrimination and sexual harassment in legal terms for the first time. As of August 2006, the Moldovan Parliament is developing a new law on domestic violence.

Yet, even with the passage of these laws, significant gaps remain within the existing legal framework. As of August 2006, criminal legislation still fails to criminalize domestic violence as a distinct offense and the law on gender equality fails to create an enforcement scheme for workplace harassment.

Equally problematic is the absence of effective implementation of applicable legal norms as well as the lack of precise legislative guidance to facilitate this process. As local gender experts stated, “[a] gender analysis of national legislation demonstrates the necessity of ensuring the practical enjoyment by women of existing legal guarantees and legal protection against discrimination.”3 The introduction in early 2006 of anti-discrimination legislation has yet to be judicially enforced to offer meaningful protection. In other words, the government of Moldova has yet “to transform equality into an effective legal reality, including the equality principle in the national Constitution and in other legislative acts, and to ensure through law the protection of women’s rights.”4

Given the force of international law within Moldova’s national legal system, this assessment attempts to identify those areas where Moldova’s legal obligations under CEDAW can be directly utilized to foster changes in existing laws and practices that run contrary to CEDAW’s guarantee of women’s equality.

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4 Id. at 8.
**Methodology**

This study was conducted using the CEDAW Assessment Tool developed by the American Bar Association Central European and Eurasian Law Initiative (ABA/CEELI) as a resource to measure the status of women through the lens of CEDAW.

The CEDAW Assessment Tool measures the status of women as reflected in a country’s laws and based on the degree to which women, in practice, enjoy the rights and protections guaranteed by CEDAW. More difficult than identifying legislative (de jure) deficiencies is the task of determining the degree to which women, in practice, are accorded the rights and status guaranteed to them under CEDAW (de facto). A major focus of the diagnostic tool is on de facto or “real life” impediments to equality, many of which are not necessarily a product of poorly drafted or non-existent legislation. Therefore, the tool is divided into two major sections: a de jure assessment and a de facto analysis.

The de jure assessment, using a template of 66 standard questions, was conducted in 2005 by four Moldovan lawyers, Mr. Igor Dolea, Professor of Criminal Law and Director of the Institute of Penal Reform, Mr. Radu Foltea, IOM Counter-Trafficking Law Enforcement Assistant, Mrs. Ala Mîndicanu, National Gender Expert and Associate Professor, who also coordinated the de jure team, and Mr. Eugen Rusu, Chief of Department, Department for Minors and Human Rights Protection, General Prosecutor’s Office. The CEDAW assessor and ABA/CEELI’s Moldova office updated the de jure assessment in 2006 prior to publication.

The de facto research was coordinated in 2005 by ABA/CEELI’s partner organization, Winrock International’s (WI) project “New Perspectives for Women” (NPW). The de facto assessment was conducted in four stages.
The WI staff divided the interviewers into two teams. The first consisted of four national experts who conducted interviews with central governmental authorities in Chişinău. The second team worked in the five regions where WI was operating Regional Support Centers (RSC): Balți, Cahul, Comrat, Edineț and Hîncești. The corresponding RSC Director conducted interviews in each region. A coordinator for team two collected the information while team one synthesized all of the information and forwarded it to ABA/CEELI.

The WI team produced a series of written reports that included a summary and analyses of the interviews collected as well as the texts of the interviews themselves. Both the expert analyses and the respondents’ commentaries are cited throughout the report. Respondents participated in the study anonymously. The experts who made this research possible include: Elena Aculai, Director of the NGO Cerinde (Research, Education and Development), Colonel Anatolie Donciu, Chief of General Department for Analytics, Prognosis and Prevention at the Center for Combating Economic Crimes and Corruption, Janeta Hanganu, Project Manager, Efficient Administration of Justice in Moldova, Center for Legal Studies and Policies, United Nations Development Program, Ecaterina Mardarovici, Director of the “50/50” Club of Women in Politics, and Sofia Șuleanschi, Program Coordinator, Economic Empowerment Program, Winrock International, New Perspectives for Women.

Before beginning the assessment, each team underwent a training covering the historical context and substantive content of CEDAW. Interviews were conducted in rural areas as well as the capital. Respondents were chosen according to their substantive expertise in the fields covered by CEDAW. Researchers for the de facto portion of the assessment attempted to interview an equal number of women and men. Given the fact that most persons occupying high-ranking positions are men, including an equal number of women interviewees required considerable efforts.

It should be noted that despite the establishment of a rigorous methodology for the de facto portion of this assessment, obtaining access to high-level officials to discuss the government’s commitment to CEDAW proved to be nearly impossible. Researchers interpreted the absence of participation by high officials as demonstrating both a lack of interest in, as well as comprehension of, the importance of CEDAW.

Lastly, the report contains information from interviews conducted by the CEDAW assessor during various trips to Moldova during the period from April 2005 through March 2006.
DE JURE COMPLIANCE: AN OVERVIEW

Moldova acceded to CEDAW on 1 July 1994 and to CEDAW’s Optional Protocol on 28 February 2006 and is thus legally bound by the two instruments. The country’s commitment to fulfill its obligations to CEDAW can be seen in the significant legislative reforms undertaken over the last year on critical issues with respect to women’s rights.

The entry into force in March 2006 of the Law to Assure Equal Opportunities between Women and Men (Gender Equality Law), defining for the first time in Moldovan law the concept of discrimination specifically within the context of sex discrimination, constitutes a major advance. Significantly, the law’s definition of discrimination against women mirrors the definition provided under Article 1 of CEDAW. In addition, the law calls for its own implementation to be determined in the context of “international treaties to which the Republic of Moldova is a party,” inviting an interpretation of the law that is consistent with CEDAW.

An Anti-Trafficking Law⁶ that entered into force in late 2005 and the preparation of draft legislation on domestic violence signal the closing of major gaps in the protection of women’s human rights under national law. Nonetheless, even these new legislative advances leave much to be desired when compared with international standards. Provisions that remain largely declarative, or so overbroad as to be unenforceable, characterize much of the content of the Gender Equality Law.

In more general terms, one of the key characteristics of the current Moldovan legal system is its inability to enforce judgments. There is an entire body of jurisprudence addressing this issue at the European Court of Human Rights.⁷ Both women and men are unable to obtain redress through the courts for violations of their human rights, most importantly in the form of compensation for damages, material and otherwise.

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**DE FACTO COMPLIANCE: AN OVERVIEW**

There is a striking difference between the equality afforded to women pursuant to the Moldovan Constitution and legislation and the realities that determine women’s lives. Women experience discrimination, to a greater or lesser extent, in all fields: employment, finance, social security, politics, the justice system, education, healthcare and, most significantly, within the family.

It remains to be seen how and to what extent the Gender Equality Law will be implemented to effect change in women’s access to opportunities in all fields in Moldova. The *de facto* research conducted for this report revealed that women experience discrimination in employment and access to economic opportunities. No special provisions foster women’s access to financial credit and opportunities in the business sector. The existing scheme for determining pensions constitutes sex discrimination based on standards articulated at the European Court of Human Rights.

Although women participate in the political system, research revealed that, for the most part, they do not occupy positions with real decision-making authority. Their participation as members of Parliament, as ministers of government and as diplomats is far from equal to that of men. Despite this fact, Parliament declined to include any provision for special temporary measures to foster increased women’s participation in the political field in the final version of the Gender Equality Law.

The enforcement of judicial decisions is critical for any government based on the rule of law. The lack of such enforcement remains a major obstacle in the protection of human rights in Moldova. This generalized problem, coupled with a lack of gender sensitivity within the courts and among law enforcement authorities, results in a denial of women’s access to justice in numerous ways and exacerbates existing human rights violations. This is particularly true in cases concerning violence against women.

Although equal access to education is a cornerstone for women’s increased participation in public life, as educators women remain in low-level and low-paid positions. Despite women’s majority in the field of education, men continue to occupy higher-level positions where they are able to make management decisions. The overwhelming number of women working as primary school teachers fosters stereotypes about women as caretakers of children.

Similarly, while approximately 80% of healthcare workers are women, they are significantly under-represented as highly-paid specialists, such as surgeons and senior administrative staff. Furthermore, less attention is paid to illnesses that affect women.
Women’s experience within the family, as the nucleus of society, can be characterized as very discriminatory. High levels of domestic abuse that remain unrecognized as a serious social concern in Moldova play a major role in the problem. The additional workload women acquire with their entry into the workforce, without men’s corresponding increased participation in caring for children and the household, is another critical factor contributing to inequality within the home.
ANALYSIS OF CEDAW IN MOLDOVA

Article 1

For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.

Article 1 Areas of Concern:

• Neither the general populace nor legal professionals in Moldova have a clear understanding of discrimination either as a violation of law or as a social phenomenon.

Article 1 De Jure Compliance

In February 2006, the Moldovan Parliament passed the Law to Assure Equal Opportunities between Women and Men (Gender Equality Law). The law became effective in March 2006 and defines sex discrimination as:

[A]ny distinction, exclusion, restriction or preference made on the basis of sex, having the intention or effect or purpose of impairing or nullifying the recognition, enjoyment or exercise of the fundamental human rights and freedoms on the basis of equality for women and men.

This definition clearly mirrors the definition set forth in Article 1 of CEDAW. Article 1 ensures equality in political, economic, social and cultural life. Significantly, however, the definition in the Gender Equality Law omits a key clause found in Article 1: “irrespective of their marital status.” Thus, the law does not recognize marital status as a basis of discrimination. For example, it would not recognize as employment discrimination the refusal to hire a married woman based upon the assumption that she will devote more time to her family than to her job.

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8 Law to Assure Equal Opportunities between Women and Men, Law No. 5-XIV, 9 February 2006, published in Official Monitor No. 47-50/200, 24 March 2006 (hereafter, Gender Equality Law.)

9 Article 2, Gender Equality Law.
Another important yet subtle difference is that Article 1 of CEDAW defines “discrimination against women;” whereas, the Gender Equality Law defines *sex discrimination*, and sex is defined as “biological differences between men and women.” Such a narrow definition fails to consider distinctions based on cultural and traditional practices. In addition, although the Gender Equality Law does define the term *gender* to include and to recognize the broad set of social relations that exist between men and women, it prohibits discrimination only based on *sex* not *gender*; and thus, by its terms, reaches only discrimination relating to the biological differences between men and women, rather than the broader political, economic, cultural and social aspects of the relationships between men and women.

Nevertheless, the Gender Equality Law is a significant advance in that it specifically employs and defines the term “discrimination.”

**Article 1 De Facto Compliance**

It is important to note that the *de facto* investigation for this report was undertaken prior to the Gender Equality Law entering into force. Nevertheless, because of the short period of time since enactment of the law, the investigation sets the context for the law’s implementation and enforcement. Among the experts interviewed, many expressed their belief that discrimination against women is deliberately not officially acknowledged. For example, one stated that, “if there were [legal] provisions meant to eliminate discrimination, this would be a form of admitting the existence of discrimination.”

Despite the fact that no specific anti-discrimination provisions existed at the time that the *de facto* portion of this assessment was completed, respondents generally believed that Moldovan legislation sufficiently provided for equality between men and women.

At the same time, respondents in each sector clearly identified discriminatory practices in their fields as well as discrimination against women in family life. One respondent indicated that discrimination against women occurred “in all fields, especially at high levels.” Another stated, “women are limited in general, they have been and will be

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10 Id.
12 Id. at 81.
limited in the future, even inside the very cell of society, the family.”13 Another underscored the exploitation of women’s labor, most particularly, trafficking.14

Despite the nearly universal recognition that legal rights accorded to women were not always observed, those interviewed were disinclined to use the term discrimination as too “harsh.”15 This preference by respondents indicates they may have a discomfort with the term and its connotations in Moldovan society, even as they recognize the pervasiveness of discrimination. The reticence to use the term “discrimination” presents a challenge to a constructive public discourse about these issues.

13 Id. at 70.
14 Id. at 28.
15 Id. at 6.
**Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

(c) 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;

(d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation;

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

(g) To repeal all national penal provisions which constitute discrimination against women.

**Article 2 Areas of Concern:**

- The Gender Equality Law is largely declarative in nature with no mechanism for implementing the guarantees provided therein;

- The Gender Equality Law contains no sanctions for those who violate women’s rights to equality, including sexual harassment in the workplace;

- Special benefits provided to mothers with small children within the penal code, such as protection against arrest, serving life sentences, and community service, should be extended to fathers and other family members caring for small children;

- National asylum law should be brought into conformance with international standards and ensure that gender-based persecution is recognized.
Article 2 *De Jure* Compliance

(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;

The Constitution states: “[a]ll citizens of the Republic of Moldova are equal under the law and before public authorities, irrespective of race, nationality, ethnic origin, language, sex, opinion, political affiliation, property or social origin.”\(^{16}\) The Code of Criminal Procedure also contains a clause providing for “equality before the law and public authorities.”\(^{17}\) The Civil Code, Criminal Code, Code of Civil Procedure, Family Code and Labor Code, the Law on Parties and the Law on the Execution of Sentences also contain such provisions.\(^{18}\)

The Gender Equality Law marks a significant advancement in protecting the rights of women on an equal basis with men and in establishing the country’s first legal framework for prohibiting sex discrimination. The Law aims “to ensure equality of rights and equal opportunities to women and men in the political, economic, social, cultural and other spheres.”\(^{19}\)

(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;

One of the aims of the Gender Equality Law is “to prevent and eliminate all forms of discrimination on the grounds of sex.”\(^{20}\) While the Anti-Trafficking Law, in force since December 2005, contained, for the first time in Moldovan legislation, an anti-discrimination provision, the Gender Equality Law marks the first step in establishing a comprehensive legal framework for addressing the practice of discrimination in general and against women in particular.

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\(^{16}\) Article 16(2), Constitution of the Republic of Moldova.


\(^{19}\) Article 1, Gender Equality Law.

\(^{20}\) Id.
The prohibition against sex discrimination is articulated as the guarantee of equal rights, freedoms and opportunities, and the prohibition of actions that limit equal treatment as well as judicial acts “containing discriminatory provisions on grounds of sex.”21 Although it creates a scheme delineating what is required legally to assert or to prove instances of discrimination, these specific provisions of the law apply only with respect to employment discrimination rather than to claims for discrimination in all spheres.

The Gender Equality Law distinguishes between direct and indirect discrimination, defining the former as any discriminatory action, and the latter as any “requirement, norm or practice” that has an unequal effect.22 Both are explicitly prohibited.23 Moreover, the law specifically proscribes, inter alia, placing employment ads with criteria based on sex; creating more favorable working conditions for one sex, including remuneration and distribution of duties; refusing to hire or terminating a labor contract based on sex; and, asking job applicants information about their family and private life. It places the burden of proof on the employer to show that there was no direct or indirect discrimination. Finally, the law also prohibits retaliatory actions against a complainant.24

At the same time, the law provides women with the equal opportunity to participate in the electoral sphere, entrepreneurial activities and mass media, and establishes equal access to healthcare and to education and training. However, these provisions are purely declarative, with absolutely no framework defining the content of such assurances or the means for their implementation or enforcement. For example, Article 12 states: “[t]he [S]tate ensures equal chances to women and men for carrying out entrepreneurial activity,” adding no other explicit obligations to make such equal opportunities a reality. The law also includes an overbroad provision concerning images of women in the mass media. It provides that any images that debase women “shall be deemed inadmissible and shall be counteracted in accordance with this law.”25 Without further explanations and requirements, there is no manageable framework for the enforcement of such a provision.

\[
\text{(c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;}
\]

The Constitution declares that respect for and protection of the person is the overriding duty of the state,26 an obligation that should apply to women’s participation in legal

21 Article 5(1)-(3), Gender Equality Law.
22 Article 2, Gender Equality Law.
23 Articles 2 & 5(3), Gender Equality Law.
24 Article 12(2)(a)-(j), (3), Gender Equality Law.
25 Article 8, Gender Equality Law.
26 Article 16(1), Constitution of the Republic of Moldova.
procedures. The Code of Criminal Procedure requires that all institutions and persons participating in legal proceedings must respect the rights, freedoms and dignity of the person.\textsuperscript{27}

Special courtroom procedures exist under the Witness Protection Law to ensure protection for and prevention of re-traumatizing victims and witnesses, including:

- The non-disclosure of personal identity by using a false name in court;
- Allowing the protected person to identify the perpetrator without face-to-face confrontation;
- Interviewing victims and witnesses in a confidential environment;
- Allowing the protected person to testify via affidavit, video link or audio link, without having to appear in court personally.\textsuperscript{28}

The Code of Criminal Procedure also provides for the protection of the victim of a crime by allowing him or her to testify before a magistrate in an undisclosed location or via video or audio link, employing sound or image distortion.\textsuperscript{29} The Code provides measures for protecting privacy, ensuring “the confidentiality of one’s intimate and family life.” It states, “[n]o one may interfere arbitrarily and unlawfully with a person’s private life during criminal proceedings.”\textsuperscript{30}

Upon the request of a party, evidence concerning one’s private and intimate life may be examined in a closed hearing, but with the parties present.\textsuperscript{31} The court can also forbid entry to the press or the general public in cases in which “publicity may damage the interests of justice.”\textsuperscript{32} The actual implementation of such special court room procedures can be particularly important for victims of such crimes as trafficking in persons and domestic violence, in which the act of testifying and direct confrontation with the defendant can be extremely traumatizing.

\textsuperscript{29} Article 110, Code of Criminal Procedure, (simultaneously emphasizing the defendant’s right to examine evidence, and balancing witness protection measures with the accused’s due process rights).
\textsuperscript{30} Article 15(1), Code of Criminal Procedure.
\textsuperscript{31} Article 15(4), Code of Criminal Procedure.
\textsuperscript{32} Article 18(2), Code of Criminal Procedure.
The Gender Equality Law states:

The promotion of a policy or the performance of actions that do not ensure the equality of opportunity between women and men shall be deemed discrimination and must be eliminated by the competent public authorities in accordance with the law.33

Prior to the passage of the Gender Equality Law and the Anti-Trafficking Law, the only legislation in effect approximating a prohibition of discrimination was the Criminal Code, which established sanctions for the infringement of rights “on grounds of sex” committed by state actors. It states:

The infringement of citizens’ rights and freedoms, guaranteed by the Constitution and by other laws, on grounds of sex, race, color, language, religion, political opinions or any other opinions, national or social origin, membership to a national minority, wealth, birth or any other situation, when: a) committed by an official person; b) resulting in considerable damages.34

Infringement of the right to equality can result in a fine, up to three years imprisonment and/or deprivation of the right to hold certain positions for two to five years.35

The Gender Equality Law requires that the Ombudsman ensure the “observance of equality between women and men” as an integral element of constitutional and human rights law.36 The Law also creates a new Governmental Commission on Equality, as

33 Article 5(2), Gender Equality Law.
34 Article 176, Criminal Code. According to legal experts, this article is invoked very infrequently.
35 Article 176, Criminal Code. The Code of Criminal Procedure also affords the right to counsel free of charge to a person claiming prejudice, such as for claims of infringements to the right to equality. Article 60(1)(18), Code of Criminal Procedure.
a consultative body that coordinates the activity of central and local public administration, as well as coordinating between the state and NGOs.37

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

For the first time, the Gender Equality Law defines sexual harassment as, “any form of physical, verbal or non-verbal behavior of a sexual nature that abases a person or creates an unpleasant, hostile, degrading, humiliating or insulting situation.”38 It requires employers “to undertake measures for preventing sexual harassment of women and men at their place of work.”39 The law does not, however, establish any framework for the complaint process, such as evidentiary standards or burdens of proof.

During 2005-2006, the government of Moldova has taken great strides in establishing legislation to create a legal framework for advancing women’s rights and equality. As explained in the National Human Rights Action Plan:

The judicial reform going on in Moldova is gradually eliminating the inconsistency between national law and international human rights standards. The new Criminal Code and Code of Criminal Procedure that came into force in 2003 include chapters setting forth liability for crimes against the life and health of a person, against the freedom, dignity and honor of a person, against civil, social, political rights, against the family and infants, against justice, as well as setting forth the liability of judiciary and investigation bodies for the violation of human rights and freedoms. Significant guarantees of human rights and freedoms, as well as the protection of human dignity are included in the new Civil Code, the Family Code, the Labor Code and the Code of Administrative Procedure.40

The passage of the Gender Equality Law and Anti-Trafficking Law, combined with the prospect of a law targeted to domestic violence, signify the state’s recognition of women’s human rights. At the same time, each piece of legislation falls short of the standards set forth under CEDAW.

38 Article 2, Gender Equality Law.
39 Article 10(3)(d), Gender Equality Law.
(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women;

Because the Republic of Moldova became an independent state in 1991, there are few overtly discriminatory laws that require revocation or annulment. One exception is the difference in retirement ages for social security. Currently, men receive their pensions at 62 years of age while women receive theirs at 57 years of age.\textsuperscript{41} The contribution period required for a person to receive his or her full pension is the same irrespective of sex, 30 years, although if a worker contributes between 20 and 30 years, he or she is entitled only to a pro-rated pension.\textsuperscript{42} The age disparity for receipt of pensions results in men having the opportunity to obtain longer contribution periods than women, and consequently higher pensions upon retirement. Another exception includes the different minimum age requirements for marriage.\textsuperscript{43}

Finally, women are categorically prohibited from working in certain “hazardous” jobs, such as: boiler maker, brick layer, locksmith, riveter and welder.\textsuperscript{44} Women are also excluded by law from manual, heavy lifting over a certain prescribed maximum standard, which is limited to 10 kilograms.\textsuperscript{45} These provisions are overbroad and overtly discriminatory and should be abolished.

\textit{Gender-Based Asylum}

One area of law that requires reform concerns the protection provided to asylum seekers. While the Law on Refugee Status ensures that asylum laws are to be applied in a non-discriminatory manner, including on grounds of sex, it only provides for asylum based on political grounds.\textsuperscript{46} Similarly, non-deportation for fear of persecution as defined under the Migration Law only protects those who would be persecuted on the basis of their race, religion, nationality, or political opinion.\textsuperscript{47}

\textsuperscript{42} Article 42 and Article 15(b), Law on State Social Insurance Pensions.
\textsuperscript{43} See, Article 14, Family Code.
\textsuperscript{44} Article 248, Labor Code, Law No. 154-XV of 28 March 2003, published in Official Monitor No. 159-162/648, 29 July 2003; and The catalogue of jobs of hard and harmful labor conditions, in which the utilization of women’s labor is forbidden, as well as the maximum norms allowed for women in cases of manual lifting and transporting of weights, Government Decision No. 624, 6 October 1993, published in Official Monitor No. 10/315, 30 October 1993.
\textsuperscript{45} Id.
contains no mention of sex or of membership in a particular social group (the latter generally considered to include gender), making it extremely difficult to prevail on a claim of gender-based persecution. These laws do not comport with the UN Refugee Convention, which defines a refugee as a person having a well-founded fear of persecution based on race, religion, nationality, political opinion or membership in a particular social group.\(^{48}\) In contrast, other states either have explicitly recognized gender-based grounds for asylum or grant asylum based on humanitarian or compassionate factors.\(^{49}\) Moldova recognizes neither.

In July 2006, Moldova adopted a National Plan of Action in the Field of Migration and Asylum, which requires that national migration and asylum legislation be brought into accordance with international standards.\(^{50}\) This provides an excellent opportunity to amend existing asylum law to include all five grounds of persecution under international law and ensure that issues of gender-based asylum are addressed.

Asylum seekers in Moldova do have the right to be interviewed by a person of the same sex, recognizing the need for sensitivity in the application process.\(^{51}\) It should also be noted that Moldova has ratified the 1951 Convention Relating to the Status of Refugees and the 1967 Protocol Relating to the Status of Refugees.\(^{52}\)

| (g) To repeal all national penal provisions which constitute discrimination against women. |

There are no penal provisions that apply solely or more harshly to women. Indeed, several provisions of the Criminal Code, Code of Criminal Procedure and Code of Administrative Offenses carve out special, more lenient, treatment for certain categories

\(^{48}\) Gender-based grounds for asylum are generally granted under the category “membership in a particular social group.” See, Article 33 Refugee Convention, GA RES 429 (V) 28 July 1951 and the 1967 Protocol, GA RES 2198 (XXI) 4 October 1967. See, e.g., Matter of Kasinga, 21 I&N Dec. 357 (BIA 1996) (a case from the United States Board of Immigration Appeals in which asylum was granted to a young woman from Togo whose risk of being subjected to female genital mutilation was found to establish fear of persecution on account of membership in a particular social group).

\(^{49}\) See, e.g., Denmark Refugee Board Decision, BR9, 30 June 2000, unpublished (where the Refugee Board in Denmark granted asylum to a Colombian woman who had been trafficked based on her well-founded fear of persecution by her ex-employers, a manager of a massage parlor convicted for procuring prostitutes and his wife who had threatened applicant and her relatives in Colombia). Text available at www.womenslinkworldwide.org, last visited 26 May 2006.


of women. These special provisions apply in sentencing decisions and to pregnant women and mothers of small children. For example, women with children under eight years old cannot be sentenced to community service.\(^{53}\) Pregnant women and women caring for a child under eight years old shall have their sentences suspended until their child turns eight, at which time it can be commuted, reduced, or enforced.\(^{54}\) Women with children under 12 years old cannot be held under administrative arrest.\(^{55}\) Women with children under the age of eight shall receive suspended sentences for crimes delineated in the penal code.\(^{56}\) Finally women cannot receive life sentences.\(^{57}\)

**Article 2 De Facto Compliance**

\begin{tabular}{|l|}
\hline
\textbf{(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle;}
\hline
\end{tabular}

According to experts, although no legal constraints impede women’s formal equality with men, gender equality remains an abstract notion for those who are responsible for its implementation. “Legally we are all equal. In reality there are many problems. We have a lot to do before legal and de facto equality of men and women exists,” explained one respondent.\(^{58}\)

Legislation regarding equality of the sexes remains primarily declarative in nature, the two exceptions being portions of the Gender Equality Law and the sanctions created by Article 176 of the Criminal Code, as described above.

\begin{tabular}{|l|}
\hline
\textbf{(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;}
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\end{tabular}

As noted, prior to the Gender Equality and Anti-Trafficking Laws, there were no statutory anti-discrimination provisions. Consequently, popular understanding of what constitutes discrimination is virtually non-existent. As one respondent indicated, “we carried out an opinion poll among elderly people and most of the interviewees had difficulty understanding the term discrimination.”\(^{59}\)

\(^{53}\) Article 67(4), Criminal Code.

\(^{54}\) Article 96(1), (3), Criminal Code.

\(^{55}\) Article 31, Code of Administrative Offenses.

\(^{56}\) Article 469, Code of Criminal Procedure.

\(^{57}\) Article 71(3), Criminal Code.

\(^{58}\) **CELA**W De Facto Study on Health, Education and Social Assistance, p. 36.

\(^{59}\) Id.
A clear legal framework and an education campaign about the framework thus remain important next steps in establishing and enforcing sanctions against discriminatory behavior.\textsuperscript{60}

| (c) 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; |

Although the “main component of the mechanism of human rights protection is the judicial system . . . [a]t the same time, the execution of court decisions is a serious problem. . . . [A]lmost forty thousand court decisions have not been fulfilled.”\textsuperscript{61} Furthermore, the judicial system does not adequately function to ensure women’s access to justice in Moldova, although women are reportedly successful in bringing claims for illegal dismissal on grounds of maternity.\textsuperscript{62}

Special courtroom procedures provided for in the Witness Protection Law, which are critical for victims of crimes that disproportionately affect women, such as trafficking in persons and domestic violence, are not consistently implemented. Neither the courts nor law enforcement officials give careful attention to the privacy rights of individuals participating in criminal proceedings, even in sensitive cases such as trafficking.

For example, in one case, despite a victim’s request for confidential participation in proceedings against her trafficker, the court mailed notice of the proceedings to various members of her family. Neither her family nor her fiancé had knowledge of her being trafficked, and, as a result, the breach in confidentiality by the judiciary caused serious problems within her family.\textsuperscript{63}

| (d) To refrain from engaging in any act or practice of discrimination against women and to ensure that public authorities and institutions shall act in conformity with this obligation; |

Officials within the government structure, the Ombudsman’s Office,\textsuperscript{64} the Parliament’s Permanent Commission on Human Rights and National Minorities as well as

\textsuperscript{60} See, \textit{CELA WDe Facto Study on Women in Rural Areas}, Winrock International New Perspectives for Women and ABA/CEELI Moldova (June 2005) p. 5. (hereafter, \textit{CELA WDe Facto Study on Women in Rural Areas}.)


\textsuperscript{62} \textit{CELA W De Facto Study on Health, Education and Social Assistance}, p. 12

\textsuperscript{63} Interview, Tatiana Cătănă, Lawyer, Center for the Prevention of Trafficking in Women (CPTW), March 2006.

\textsuperscript{64} National Human Rights Action Plan for 2004 – 2008, p. 3.
 Parliamentary Advocates all work to monitor the implementation of human rights within Moldova. Three independent Parliamentary Advocates are selected for a five-year term to examine complaints and to investigate violations of human rights. They also are charged with providing legal analyses and advice to the government and promoting human rights through the mass media and participation in conferences.65

(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;

It is important to note that despite the recognition of sexual harassment as discrimination in the Gender Equality Law, it is not yet socially recognized as a problem. This remains true even within the judiciary.

The case Busuioc v. Moldova is indicative of the judiciary’s failure to recognize sexual harassment. After exhausting the requisite domestic remedies and losing in Moldovan courts, the applicant appealed to the European Court of Human Rights. The case involved a journalist sanctioned by the courts for defaming public employees in an article about government corruption. Significantly, one of the public employees was accused in the article of being drunk at work and sexually harassing female co-workers. At trial, the applicant proved both to be true by producing official company complaints. One of the complaints stated:

I was silent for a long time about the sexual harassment I was exposed to from the head of the Staff Unit, until recently when he came to my office and invited me to his summer cottage. I refused but he started to touch me. I struggled free of his hands and threatened to hit him with a telephone if he would not stop . . . . Once, when I entered C.M.’s office for work-related purposes, he closed the door and asked me to show him my breasts.66

As noted by the European Court of Human Rights, “[a]s to the statements of the two female witnesses, the [national] court did not make any assessment of them.” Despite the existence of such proof, the district court found that C.M. had been defamed. The European Court of Human Rights reversed the decision of the national court with respect to C.M., finding that there had been proof for the statements made.67

65 Id.
67 Id., at paras. 73-75, and holding no. 2.
Gender-Based Asylum

Moldova receives a relatively small, but increasing number of immigrants. In 2003 and 2004, it received 140 and 184 applications for asylum, respectively. Most significantly, the number of male applicants far exceeds the number of female applicants. In 2004, 30 women applied for asylum in Moldova as compared to 154 men, and in 2003, 20 women applied, compared to 120 men. Such stark differences in applicant numbers by sex may reflect the fact that the substantive law does not provide asylum for the types of persecution that primarily affect women.

Knowledge of the Convention

Of the interviews obtained with managers of governmental agencies related to issues addressed in CEDAW, only half of respondents had heard of the Convention. Several of those interviewed could not give a precise definition of the term discrimination, and hesitated to use the term, despite the fact that they openly recognized the infringement of women’s rights.

Interviews among experts in other sectors revealed the same lack of knowledge. One noted that approximately:

[E]leven years have passed since the Convention has been ratified and I am sure there are few people that know about it. . . . common people and sometimes even representatives of local and central [governmental] authorities are not aware of this Convention.

Other respondents commented on the absence of any public dissemination of information concerning the Convention and its contents, as well as among relevant professional circles, such as among the medical community.

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68 In 2004, the recorded number of immigrants was 1706, 482 of them women. Women and Men in the Republic of Moldova, UNDP (2005) p. 23.
70 Id.
71 CEDAW De Facto Study on Health, Education and Social Assistance, p. 4.
72 Id. at 36.
73 Id. at 42.
(g) To repeal all national penal provisions which constitute discrimination against women.

Because of the high numbers of women migrating in search of employment abroad, many of them leaving children behind, there are an increased number of fathers and other family members maintaining sole responsibility for children. In cases where these persons are sentenced to community service or are arrested under either criminal or administrative offences, children, especially young children, under their charge can be, and sometimes are, left in extremely vulnerable situations. Benefits in the penal code for mothers with children eight years old or younger should thus be extended to fathers and other family members caring for small children.74

74 See, Articles 67, 68, 71 & 96, Criminal Code; Article 31, Code of Administrative Offenses; and, Article 469, Code of Criminal Procedure.
Article 3

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

Article 3 Areas of Concern:

- Gender issues and women’s rights should be mainstreamed into all national mechanisms implementing human rights in Moldova;
- Adequate resources should be dedicated to strengthening national machinery to implement the rights provided for in the Convention.

Article 3 De Jure Compliance

In 2003, the government promulgated a National Plan for the Promotion of Gender Equality in Society for 2003-2005 (Gender Equality Plan). Its objectives were to eliminate gender discrimination in the labor market, increase public awareness about gender-related problems, educate society about gender equality, develop a legal framework, promote the protection of health and maternity, and combat violence against women. The Gender Equality Plan was primarily declarative and lacked any specific recommendations concerning legislative reform.

As part of its efforts to increase gender equality in the field of professional training, the Moldovan Parliament passed the Concept on Counseling, Education and Professional Training of Human Resources. Addressing the same issues, the government adopted a Plan of Action on Revising and Amending the Effective Legislation in Force for the Purpose of Harmonization with the Provisions of the Revised European Social Charter.

75 National Plan for the Promotion of Gender Equality in Society for 2003–2005, Government Decision No. 218, 28 February 2003, published in Official Monitor No. 35-37/230, 7 March 2003. Significantly, National Plans remain declaratory in nature and have no binding authority. At the time this report was going to press, an updated Gender Equality Plan was being developed by the government.


In addition, the government also adopted a National Human Rights Action Plan for 2004 – 2008. It was drafted taking into consideration the comments issued by those United Nations treaty bodies to which Moldova is a party. It contains a chapter addressing “women’s rights in the context of equal opportunities.” It calls for the amendment of legislation to foster equality of the sexes, such as amending the law that establishes unequal minimum ages for marriage. The Plan provides for the restoration of the Equal Opportunities Sub-Commission within the Moldovan Parliament. It also creates a scheme to advance legal protection for victims of domestic violence, and to promote women’s equality in employment and business.

The National Plan for Preventing and Combating Trafficking in Human Beings culminated in the passing of the Anti-Trafficking Law. Most significantly, the Plan identifies specific provisions for further legislative reform to ensure the state’s conformity with international standards. The Plan also targets relevant international treaties that Moldova has yet to adopt and establishes the National Committee for Combating Human Trafficking which is charged with monitoring the Plan. Importantly, the Gender Equality Law calls for the mainstreaming of its principles into all governmental “policies, strategies, programs, normative acts and financial investments.”

The 2000 CEDAW Committee recommended that Moldova:

assess the capacity of the national machinery for the advancement of women, including its location, mandate and resources, with a view to providing it with the full political support, human and financial resources required to lead the Government’s efforts to implement the Convention.

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79 Id. at 1.
80 Id. at 5.
85 Chapter I, paragraph 1.1, National Plan for Preventing and Combating Trafficking in Human Beings.
86 Chapter I, paragraph 1.2(a)(2), National Plan for Preventing and Combating Trafficking in Human Beings, (targeting the International Convention on the Rights of the Child).
87 Annex No. 3, paragraph 5, National Plan for Preventing and Combating Trafficking in Human Beings.
88 Article 17, Gender Equality Law.
It thus remains important that the government strengthen existing commitments to ensure women’s rights and equality.

**Article 3 De Facto Compliance**

The introduction to the National Human Rights Action Plan acknowledges that, “[n]owadays most of the people who, according to the Constitution, should ensure the observance of human rights are not aware of it and human rights have not become a component of the legal culture.” It further states that “[a]t the same time, citizens know very little about their rights and the available mechanisms for their protection.”

Similarly, with respect to the Gender Equality Plan, in the regions, “[n]o one has heard about such plan.”

The National Plan to Combat Trafficking falls short of actually establishing a budget for the critical issue of victim/witness protection. At the same time, it relegates much of the state’s responsibility to local and international NGOs.

The state’s anti-trafficking efforts are discussed at length under Article 6 below.

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91 *CELAW De Facto Study on Women in Rural Areas*, p. 12.
92 See, e.g., Chapter 3, paragraph 3.4 (failing to provide a budget for witness protection); see also, Law on State Budget for 2006, Law No. 291-XVI, 16 November 2005, published in Official Monitor, No. 164-167/810, 9 December 2005 (failing to provide a budget amount for witness protection). According to information provided by the Centre for Combating Trafficking in Persons (27 July 2006), the Ministry of Internal Affairs allocated 960,300 lei (approximately US $72,200) for the year 2006 designated specifically for salaries and repairs.
**Article 4**

1. Adoption by States Parties of temporary special measures⁹⁴ aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.  
2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

**Article 4 Areas of Concern:**

- Temporary special measures with respect to women’s participation in politics should be adopted as an amendment to the Gender Equality Law and should be implemented in practice;
- Temporary special measures should also be undertaken in other fields, such as education, to draw men into the field of teaching and women into higher-level administrative posts.

**Article 4 De Jure Compliance**

The Gender Equality Law defines “affirmative action” among its basic terms, and calls for “affirmative actions to promote balanced participation of women and men in exercising specific professions where disproportionate representation of one sex is identified.”⁹⁵

The National Human Rights Action Plan lists as one of its goals to “[s]et up mechanisms for ensuring equal representation at all levels of [S]tate authorities and executive bodies.”⁹⁶

In considering Moldova’s initial report to the CEDAW Committee, the Committee expressed concern “that there is no clear understanding of Article 4.1 of the Convention.”⁹⁷

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⁹⁴ “Temporary Special Measure” refers to measures aimed at promoting de facto equality between men and women through the use of numerical goals, gender quotas, quantitative targets, and timetables.  
⁹⁵ Articles 2 & 13(3), Gender Equality Law.  
⁹⁷ Concluding Observations of the Committee on the Elimination of Discrimination against Women: Republic of Moldova 27/6/2000, A/55/38, paras. 97-98 (noting that stereotyped attitudes are reflected in the low level of women’s political participation).
Article 4 De Facto Compliance

1. Adoption by States Parties of temporary special measures aimed at accelerating de facto equality between men and women shall not be considered discrimination as defined in the present Convention, but shall in no way entail as a consequence the maintenance of unequal or separate standards; these measures shall be discontinued when the objectives of equality of opportunity and treatment have been achieved.

Although temporary special measures aimed at increasing the number of women who hold political office were included in the draft Gender Equality Law considered by the Moldovan Parliament, those measures were specifically eliminated from the final version of the law that passed.98 According to a Parliamentary Report on the second reading of the draft law, the Committee on Economic Policy, Budget and Finance opposed the language requiring the “proportion of at least 30%” of women on electoral lists, which was replaced by language “[e]nsuring representation without discrimination based on the criteria of gender against women or men on the electoral lists.”99

Experts noted the public perception that fixed quotas “can lead to a loss of quality.”100 In other words, people fear that there are not enough qualified women to fill political posts.

In addition, the Parliament has twice rejected the introduction of temporary special measures into the Electoral Code, once in 1995 and again in 1999.

2. Adoption by States Parties of special measures, including those measures contained in the present Convention, aimed at protecting maternity shall not be considered discriminatory.

The Gender Equality Law clearly excepts from discrimination the “provision of special conditions to women during pregnancy, childbirth and nursing.”101 This ensures the maintenance of anti-discrimination measures with respect to the firing of women in connection with pregnancy, as well as maternity leave and longer breaks during the

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98 See, Article 7(2)(b), Gender Equality Law.
100 cELAW De Facto Study: The Legal System, Winrock International New Perspectives for Women and ABA/CEELI Moldova (2005) p. 9 (hereafter, cELAW De Facto Study: The Legal System.)
101 Article 5(4)(a), Gender Equality Law.
work day for nursing. Some experts as well as members of the general populace believe that such privileges actually result in fewer women being hired, because of the added expenses associated with maternity leave, which constitutes sex discrimination. At the same time, other experts and members of the public have noted that in practice few employers actually provide the benefits and leave entitled to expectant mothers according to the law.
Article 5

States Parties shall take all appropriate measures:

(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

(b) To ensure that family education includes a proper understanding of maternity as a social function and the recognition of the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

Article 5 Areas of Concern:

- Traditional expectations regarding women’s roles as housekeepers and family caretakers in Moldova impede their ability to participate in economic and public life.

Article 5 De Jure Compliance

The Constitution guarantees respect for family life and declares the family to be a natural and fundamental element of society that should be protected by the state.\(^{102}\) It also declares the family to be based on the freely accepted marriage between a man and a woman and on their equal rights and equal duties.\(^{103}\) These passages are further reflected in the Family Code.\(^{104}\)

The Culture Law contains an equality clause, providing that participation in cultural activities constitutes an inalienable right for all.\(^{105}\) It is noteworthy that the definition of discrimination contained in the Gender Equality Law, while repeating the language set forth in Article 1 of the Convention, stops short of explicitly ensuring equality between the sexes in social and cultural fields.\(^{106}\)

Commenting on the initial report submitted by the Republic of Moldova, the 2000 CEDAW Committee noted with concern “the persistence of stereotyped attitudes and behaviour patterns about the roles of women and men in the family and in

\(^{102}\) Articles 28 & 48(1), Constitution of the Republic of Moldova.

\(^{103}\) Article 48(2), Constitution of the Republic of Moldova.

\(^{104}\) See, Articles 2(3), 5(1) & 16(1), Family Code.


\(^{106}\) Article 2, Gender Equality Law.

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society.”  

It further recommended that “the government take urgent measures to overcome stereotyped and patriarchal societal attitudes” including, for example, information and public awareness-raising campaigns.  

**Article 5 De Facto Compliance**

“A wife keeps the house; the wolf goes about.”

— Moldovan Proverb

“Our society is full of traditions and stereotypes that discriminate against women,” stated one respondent.  

At the same time, more than one gender expert noted that women need to improve their self-confidence about their skills and potential and “their role in political, economic, social and cultural life.”

Despite traditions that assign women to housework and childcare, and men to the role of breadwinner, in reality women make up half of the heads of household in both rural and urban areas.  

However, female heads of household fare worse with respect to standards of living than male heads of households.  

While 24.8% of male heads of household maintain a “bad” standard of living, that number rises to 33.3% for women.  

Conversely, those households reported to have a “good” standard of living drops markedly when compared by sex: for men it is 4%, for women 2.8%.  

In other words, higher numbers of female-headed households maintain a poorer standard of living, and fewer maintain a better quality standard of living.

**Discrimination within the Family & the Double Workload**

One respondent made a comment about the double workload women face due to stereotypes concerning women in the home: “[w]omen know they have a lot to shoulder, housework, doing homework with their children until 10 or 11 p.m.”  

Others stated: “women have to keep house, take care of the children, cook, and work to earn money.  

You can see how [over-]loaded women are” and, “[i]n many cases

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108 Id. at para. 98.


women have to shoulder double responsibilities, their own and men’s.” At the same time, “men are considered the head of the family.”113

In addition to the double workload, other respondents commented on the social/cultural “tendency of women to be submissive and serve men,” and that “the tradition of being submissive and waiting upon men is the result of a lack of education.”114

It is interesting to note that when asked about the fields in which women face the largest obstacles concerning discrimination, and given options such as politics, healthcare and education, respondents indicated that the family was the institution in which women faced the most discrimination. When asked to give an example of discrimination against women generally, one respondent commented:

First and foremost women are discriminated against in the family. However, they are discriminated in many other fields too. They do all the housework. Men do not get involved because they do not consider this type of work appropriate for themselves.115

**Paternity Leave**

With respect to childcare, as several respondents indicated, few Moldovan fathers take paternity leave to raise their children. According to respondents, those who do, do so only in cases where their wives make more money, rather than out of an interest in child rearing. One respondent stated, “I doubt men’s ability to take care of children as well as women.”116

Another respondent explained, “[i]n this country practices of this kind are not very popular. In an unstable economy, many men are jobless, that is why they may go on paternity leave and take care of their children.”117 At the same time, it was openly acknowledged that “men have higher salaries than women. So from the financial point of view, it is preferable that women take maternity leave.”118

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113 *CEDAW Le Facto Study on Health, Education and Social Assistance*, p. 75.

114 Id. at 52.

115 Id. at 58.

116 Id. at 62.

117 Id. at 67.

118 Id.
**Article 6**

*States Parties shall take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women.*

**Article 6 Areas of Concern:**

- The state should assume all costs with respect to identification and documentation services for victims of trafficking;
- Law enforcement officials and the judiciary should maintain confidentiality with respect to the identity of trafficking victims, and protect victims’ safety and right to privacy;
- Legislative reform should ensure that the victim’s consent should not become relevant at trial in the event that, even when the *means* of trafficking have been established, the prosecutor cannot obtain enough evidence to prove all of the elements of trafficking and thus files the case under a lesser charge;
- Legislative reform should be implemented to ensure that trafficking victims are not prosecuted for crimes committed as a consequence of being trafficked, particularly in cases in which the prosecutor has not obtained enough evidence to allege the crime of trafficking, and thus trafficking cases are prosecuted under other charges;
- The state should assume greater responsibility in providing material assistance and rehabilitation services to victims;
- Soliciting prostitution should be punished under penal or administrative law.

**Article 6 De Jure Compliance**

**Trafficking**

Trafficking is a crime and is considered one of the many forms of violence against women.\(^{119}\) Article 6 of CEDAW is of particular importance in Moldova because it is recognized as a country of origin for trafficking in persons, particularly women, with the phenomenon occurring at significant rates.\(^{120}\)

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One of the most significant advances in the law pertaining to women’s human rights is the passage in Moldova of the Law on the Prevention and Combating of Trafficking in Human Beings (Anti-Trafficking Law).\textsuperscript{121} It constitutes the culmination of the development of the National Plan, first established in 2001 and amended in 2005.\textsuperscript{122} Under the National Plan, the government established a National Committee for the Combating of Trafficking in Human Beings which is in charge of monitoring the National Plan.

The National Plan calls for the creation of a legislative framework, including the passage of new laws, the modification of existing codes and the ratification of additional relevant international conventions. The Anti-Trafficking Law brings national legislation into closer conformance with the international standards set forth in the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol)\textsuperscript{123} and the Council of Europe Convention on Action against Trafficking in Human Beings.\textsuperscript{124}

\textit{Criminalization & Prosecution}

As a protocol to the Convention against Transnational Organized Crime, the focus of the Palermo Protocol is on the criminalization of trafficking. The Council of Europe Convention on Action against Trafficking also applies to both transborder and internal trafficking.

At the national level, the Moldovan Criminal Code penalizes trafficking of adults and minors separately,\textsuperscript{125} mirroring the legal scheme set forth in the Palermo Protocol. Indeed, the National Plan requires the Moldovan government to “[w]ork out national legislation in compliance with international instruments on combating trafficking in human beings and international standards of human rights.”\textsuperscript{126}


\textsuperscript{124} The Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, was adopted by the Committee of Ministers on 3 May 2005 and opened for signature on 16 May 2005. It was signed by Moldova on 19 May 2005. The Convention is not yet in force. The convention is available at http://www.coe.int/T/E/human_rights/trafficking/PDF_Cov_197_Trafficking_E.pdf.

\textsuperscript{125} Article 165, Criminal Code (trafficking in human beings) and Article 206, Criminal Code (trafficking in children.)

\textsuperscript{126} Article 1.2(a), National Plan for Preventing and Combating Trafficking in Human Beings.
Both national and international standards divide the crime into three elements: acts, means and purpose, all three of which must be proven to establish the offense of trafficking in persons.\textsuperscript{127} Similarly, both ensure that once the means are established—inter alia, threats of physical or mental violence, kidnapping, seizure of identity or travel documents, servitude for non-reimbursement of debt, deceit, the abuse of power—the victim’s consent become irrelevant.\textsuperscript{128} Pursuant to the Palermo Protocol, the consent of an adult victim is irrelevant where coercive or deceptive means have been used.\textsuperscript{129} The issue of consent can never be raised in cases concerning the trafficking of minors.\textsuperscript{130} Furthermore, the Protocol indicates that trafficking of children qualifies as an offense without the trafficker having threatened, physically forced, or applied any other illicit or coercive means.\textsuperscript{131} Thus, the issue of consent should not come up in scenarios where minors have been trafficked.

The Council of Europe Convention on Action against Trafficking requires that states incorporate within their national legal systems the “possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so.”\textsuperscript{132} Other regional agreements to which Moldova is a party require that “victims of trafficking must not be treated as offenders with regard to prostitution, migration and labor laws.”\textsuperscript{133} The OSCE Action Plan requires states to ensure that victims are not subject to criminal proceedings “solely as a direct result” of having been trafficked.\textsuperscript{134} Both the Criminal Code and the Anti-Trafficking Law absolve trafficking victims from liability for acts committed in connection with being trafficked.\textsuperscript{135}

\textsuperscript{127} Acts include the recruitment, transportation, transfer, harboring or receipt of persons. Means consist of “the threat or use of force or other forms of coercion, of abduction, of fraud, of deception or the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person;” and, the purpose must be for exploitation. Exploitation includes “at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs.” Article 3(a), Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the U.N. Convention against Transnational Organized Crime (Palermo Trafficking Protocol), Doc. A/55/383, 25 December 2003.

\textsuperscript{128} Articles 2(4) & 30(3), Law on Preventing and Combating of Trafficking in Human Beings.

\textsuperscript{129} Article 3(b), Palermo Trafficking Protocol.

\textsuperscript{130} Id.

\textsuperscript{131} Art. 3(c), Palermo Trafficking Protocol.

\textsuperscript{132} Article 26, Council of Europe Convention on Action against Trafficking, CETS No. 197, 16 May 2005.

\textsuperscript{133} Special Protection Measures for Trafficking Victims Acting as Witnesses, Stability Pact for South Eastern Europe, Portoroz, Slovenia, 26-27 March 2003, p. 2.

\textsuperscript{134} Section 1.8, OSCE Action Plan to Combat Trafficking in Human Beings, PC.DEC/557, 24 July 2003.

**Victim Protection**

The Moldovan Constitution declares that respect for and protection of the person is the overriding duty of the state.\(^{136}\) In addition, the Code of Criminal Procedure requires that all institutions and persons participating in legal proceedings must respect the rights, freedoms and dignity of the person, including the victim.\(^{137}\) The Anti-Trafficking Law provides generally for the social rehabilitation of victims, offering “legal and material assistance, their psychological, medical and professional rehabilitation, employment and granting of a dwelling space.”\(^{138}\) It also provides that “persons who are recognized victims of trafficking must be provided free emergency medical treatment.”\(^{139}\)

In sum, Moldova remains obligated to conform both its law and its practice to the international human rights standards to which it is committed.\(^{140}\) International law requires Moldova to provide protection and services for victims of trafficking, including freedom from criminal prosecution; ensuring victim protection whether or not the victim agrees to testify; effective procedural protections in the court room ensuring the irrelevance of consent to any aspect of the crime; and the provision of basic human services.\(^{141}\)

**Anti-Discrimination**

The Anti-Trafficking Law states:

The implementation of the provisions of the present law, especially of the measures of protection of the rights of the victims of trafficking, is ensured without discrimination through any criteria, namely: sex, race, language, religion, political opinion or other kind, social or national origin, association with an ethnic minority, etc.\(^{142}\)

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136 Article 16(1), Constitution of the Republic of Moldova.
137 Article 10, Code of Criminal Procedure.
138 Article 16, Law on Preventing and Combating Trafficking in Human Beings.
139 Article 20(2), Law on Preventing and Combating Trafficking in Human Beings (all emphasis added).
140 Article 3, Law on Preventing and Combating Trafficking in Human Beings. Article 4(1), (2), Constitution of the Republic of Moldova; Article 8, Constitution of the Republic of Moldova (on Observance of International Laws and Treaties). See also, Decision of the Constitutional Court on Interpretation of Certain Provisions of Article 4 of the Constitution of the Republic of Moldova # 55, 14 October 1999, paras. 6, 8, 11, n.6 (ruling that universally recognized norm and principles of international law are binding on Moldova to the extent it has agreed to be bound; that international treaties represent an integral part of the national legal framework and supercede national law in any conflict between the two).
141 See generally, The Human Trafficking Assessment Tool Report for Moldova, ABA/CEELI, June 2005, for further information related to issues surrounding human trafficking in Moldova.
142 Article 5, Law on Preventing and Combating Trafficking of Human Beings.
Noteworthy as the first express anti-discrimination provision within Moldovan law, victims of trafficking are to receive special protection from being discriminated against based on the grounds enumerated.

Identification & Documentation

The Anti-Trafficking Law states that the identification of victims “shall be carried out by the competent public administration authorities and non-governmental organizations.”\(^{143}\) The Anti-Trafficking Law also commits the state to process the reception and repatriation of victims to Moldova, including confirming the citizenship of the victim and issuing travel documents “without undue delay,” taking into account victims’ security needs.\(^{144}\)

With respect to Moldovan citizens who have returned to the country, the government is required to replace lost passports.\(^ {145}\) “[I]dentification cards are issued by competent bodies to the owner or his lawful representative in person under a signature.”\(^ {146}\) Moldovan law ensures the right of return to citizens, their descendants and stateless persons.\(^ {147}\) The Anti-Trafficking Law requires that identity papers be issued to victims promptly and free of charge.\(^ {148}\) There is no similar provision for papers related to citizenship. The National Plan proposes an amendment to the Governmental Order governing the charging of consular fees, the issuance of temporary and permanent identity documents, and certificates of citizenship to make these available without charge to trafficking victims.\(^ {149}\)

\(^ {143}\) Article 15(2), Law on Preventing and Combating Trafficking in Human Beings (emphasis added).

\(^ {144}\) Article 19(1)-(3), Law on Preventing and Combating Trafficking in Human Beings. The OSCE Action Plan to Combat Trafficking in Human Beings also requires states to ensure the provision of documents “as a first step to clarifying the victim’s identity.” Section 5.1, OSCE Action Plan, PC.DEC/557 24 July 2003.


\(^ {148}\) Article 22(1)(b), Law on Preventing and Combating Trafficking in Human Beings.

\(^ {149}\) See, Article 1.2(l)(2), National Plan for Preventing and Combating Trafficking in Human Beings, on the “possibility of modifying” Government Order No. 1, 26 September 2000.
The Right to Privacy

The Constitution provides that the state “shall respect and protect private and family life.”150 The National Plan calls for the introduction of legislation to ensure the protection of personal information concerning victims of trafficking, regulating the procedure for its collection, analysis and distribution.151 The Anti-Trafficking Law states, “[t]he private life and identity of the victim of trafficking in human beings is protected.” It also contains explicit provisions protecting the identity and personal information concerning the victim “only during the criminal proceedings.”152

Sexual Assault

The Anti-Trafficking Law sets forth as its basic implementation principles the “observance of human rights and fundamental freedoms;” “legality;” and “ensuring security” to victims.153 Sexual assault by law enforcement authorities, those required to protect victims, constitutes an egregious violation of human rights. Sexual assault includes sexual abuse, rape and sexual harassment. It can be defined as sexual gestures imposed by intimidation, threat or verbal and/or physical violence.

The Moldovan Criminal Code prohibits rape, including compelled sexual intercourse through blackmail or exploitation of the victim’s dependence, and sexual assault.154 The crime of rape is defined solely in terms of sexual intercourse.155

Prostitution

Prostitution is an offense under the Code of Administrative Offenses, punishable by a fine or detention. The penalties rise if the offense is committed more than once during the same one-year period.156 The advertisement or sale of prostitution services through

150 Article 28, Constitution of the Republic of Moldova (on Private and Family Life.)
151 Article 1.4(d) National Plan for Preventing and Combating Trafficking in Human Beings.
152 Article 21(1), Law on Preventing and Combating Trafficking in Human Beings. The Council of Europe Convention on Action against Trafficking requires that each State Party “protect the private life and the identity of the victims.” Article 11, Council of Europe Convention on Action against Trafficking. No temporal restriction is made, underscoring the necessity of the right to privacy from the moment of identification throughout relevant legal procedures and beyond.
153 Article 4(1), (4), (7), Law on Preventing and Combating Trafficking in Human Beings.
154 Articles 171-175, Criminal Code.
155 Although rape is consistently and significantly under-reported, according to Moldova’s initial report to the CEDAW Committee, “[r]ape accounts for the largest percentage of all crimes committed against the person,” increasing from 71% of reported crimes against the person in 1994 to 91.5% in the first quarter of 1998. Initial Report by the Republic of Moldova, CEDAW, 26 October 1998, paras. 67 & 68.
156 Article 171/1, Code of Administrative Offenses.
the media also creates administrative liability resulting in a fine.\textsuperscript{157} Pimping is considered a criminal offense.\textsuperscript{158} There are no laws that criminalize the maintenance of brothels.\textsuperscript{159}

In contrast, it is not against the law to solicit prostitution services in Moldova. Given the relationship between prostitution and human trafficking, the Council of Europe Convention on Action against Trafficking requires states to consider adopting legislation criminalizing “the use of services which are the object of exploitation with the knowledge that the person is a victim of trafficking of human beings.”\textsuperscript{160} Moreover, Article 6 of CEDAW requires signatory states to take all actions to suppress “the exploitation of prostitution of women.”

The National Human Rights Action Plan provides for amending current “legislation regarding the prosecution for prostitution in order to sanction equally the prostitute and the client.”\textsuperscript{161}

\section*{Article 6 De Facto Compliance}

\textbf{Trafficking}

Trafficking is a major problem in Moldova, which is widely recognized as one of the biggest source countries in the region for victims of trafficking.

One survey found that mental disability has become increasingly prevalent among trafficking victims in 2005.\textsuperscript{162} For example, the number of victims with a diminished mental capacity has risen to 10.4%; those with neurotic disorders, 56.9%; and, those with personality and emotional disorders, 11.5% and 6.1%, respectively.\textsuperscript{163} This could be attributed at least in part to an increased awareness of the problem among the general population due to mass information campaigns since 2003, since such campaigns could reasonably be expected to be less successful in reaching those with mental disabilities, thereby increasing their relative representation among victims. Staff at one victims’ center noted that while there is no indication that mentally retarded people are targeted by traffickers, mentally disabled persons may be more susceptible to fall prey to traffickers.\textsuperscript{164}

\begin{thebibliography}{99}
\bibitem{157} Article 171/2, Code of Administrative Offenses.
\bibitem{158} Article 220, Criminal Code.
\bibitem{159} Previously, Article 222 of the Criminal Code penalized the maintenance of brothels.
\bibitem{160} Article 19, Council of Europe Convention on Action against Trafficking, CETS No. 197, 16 May 2005.
\bibitem{162} Interviews, IOM Rehabilitation Center, January 2006.
\bibitem{164} Interviews, IOM Rehabilitation Center, January 2006.
\end{thebibliography}
Criminalization & Prosecution

While national legal provisions mirror international standards, the actual application of the new standards remains cause for concern. For example, police are not always able to obtain sufficient evidence to prove all three elements of the crime. Proving purpose, which involves the exploitation of the victim, is particularly difficult as the evidence is primarily found in the countries of destination and government investigators lack both the resources and the training to conduct international investigations pursuant to mutual legal assistance treaties. Consequently, prosecutions that do occur are often for other, related crimes.

Victims should be immune from prosecution for crimes committed as a result of being trafficked. According to the interpretation of the law offered by staff at the Center for Combating Human Trafficking within the Ministry of Interior, which is responsible for prosecuting cases of human trafficking, however, victims are not immune from crimes committed afterward even if the victim’s subsequent crime is a direct consequence of being trafficked. Thus, victims have been criminally charged for changing their testimony in trafficking cases, without regard to the motive for the change. Charges of prostitution have also been brought against victims, and could be brought for violations of migration law such as residence without a passport, and labor laws, even if the actions constituting the crime were committed while the victim was under the control of the trafficker.

Moreover, victims might be prosecuted in instances when the prosecutor has insufficient proof of the trafficking offense or when the trafficker is found guilty of a

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165 Interview, Radu Foltea, Counter-Trafficking law Enforcement Assistant, IOM, January 2006.
166 Related crimes may include, among others, money laundering, fraud, kidnapping, serious bodily injury, slavery, rape and withholding of identity documents.
167 For example, a victim could be prosecuted for changing her testimony even if she was intimidated by the defendant or his associates into doing so. See, Articles 311 & 313, Criminal Code (criminalizing the refusal of a witness or injured party to make statements and establishing the crime of slanderous denunciation, which can be alleged in cases in which victims change their minds and decide not to testify.)
168 In Moldova, prostitution constitutes an administrative offense, punishable through monetary fines or “administrative arrest.” Article 171(1), Code of Administrative Offenses.
lesser offense such as pimping. While it is important to prosecute traffickers on any grounds, it remains doubtful whether the protections and resources offered to victims of trafficking will be applied in cases in which the victim was indeed trafficked, but due to lack of evidence, the prosecution must allege other crimes. Technically, protection from prosecution only applies to victims under the Anti-Trafficking Law and under the anti-trafficking provisions of the Criminal Code.\textsuperscript{170} The law also remains open to interpretation as to whether the victim’s consent can be raised in cases in which the crime alleged is not trafficking due to lack of proof.

As recognized internationally, prosecuting victims of trafficking for acts committed in the course of being trafficked, such as possessing forged documents, illegal border crossing, begging or engaging in prostitution, is a highly counterproductive policy.\textsuperscript{171} Prosecuting victims of trafficking not only deters them from reporting trafficking to law enforcement authorities, but it also precludes them from identifying themselves as victims in order to access health and legal services that they need to break free of their traffickers and to rebuild their lives. Indeed, the Council of Europe Convention on Action against Trafficking in Human Beings recommends that States not impose penalties on victims “for their involvement in unlawful activities, to the extent that they have been compelled to do so.”\textsuperscript{172}

\textit{Documentation, Identification \& Services}

One of the primary obstacles identified by legal staff at the IOM Rehabilitation Center concerns the lack of cooperation by local public authorities in issuing required documentation for victims or performing services that are part of their work duties. There is an evident reluctance by state employees to assist trafficking victims and numerous instances of discriminatory behavior.

For example, government authorities have refused to recognize documents issued by authorities in the disputed Transnistrian region of Moldova. This creates a significant

\textsuperscript{170} Article 32, Anti-Trafficking Law; Article 165(4) Criminal Code.
problem as a number of trafficking victims come from or through the Transnistrian region. Refusal to provide services based on one’s “national” or “social” origin can be qualified as discrimination under the Anti-Trafficking Law.173

One of the most critical factors concerning the state’s provision of victim protection and assistance services to trafficking victims is its ability and willingness to assume the costs. In order to effectuate the Anti-Trafficking Law’s requirements, the state must modify its regulatory framework to ensure that basic but threshold services, such as processing required identity documentation, are free of charge. It also must pay for the provision of all enumerated services: legal, medical, psychological and the costs associated with rehabilitation, such as establishing housing, employment and childcare.

Currently, without assistance from international organizations and NGOs such as IOM and the Center for the Prevention of Trafficking in Women (CPTW), victims are required to pay out-of-pocket for documentation and others services.174 Costs related to services should not be assumed by victims, as most services would remain essentially unattainable.

In addition, the state’s ineffectiveness in providing employment counselling and job placement, and the existence of contradictory regulatory provisions that require a great deal of time and energy to resolve, create additional problems for the successful rehabilitation and reintegration of victims. The state itself has explicitly recognized that the “eradicat[ion] of red tape and the violation of ethics by the staff of central and local public administration bodies” remain key obstacles to the observation of human rights.175

Anti-discrimination

Staff at IOM’s Rehabilitation Center and CPTW reported that state employees continuously refer to victims as “prostitutes.” Local authorities have a strong influence over community sentiments, and beneficiaries have been forced to leave certain localities as they are unable to integrate into the community. The bulk of the problem lies in the municipalities outside of Chișinău.176

173 Interviews, IOM Rehabilitation Center, January 2006.
176 Interviews, IOM Rehabilitation Center, and Ion Vizdoagă, Director and Attorney at Law, Center for the Prevention of Trafficking in Women, (CPTW), January 2006.
It should be noted in this regard that, in order to obtain the benefits accorded to victims of trafficking under the Anti-Trafficking Law, victims must identify themselves as such. Given their poor treatment by local authorities, identifying themselves for the purpose of receiving benefits renders them vulnerable to discrimination and other illegal acts. However, if the crime of trafficking cannot legally be alleged (whether due to lack of admissible evidence or other cause), it remains in doubt whether victims of trafficking will be recognized as such for the purpose of receiving benefits that the state is required to provide.

Conflicts: Victim Protection vs. Law Enforcement

In practice, there is a conflict of interest between the objectives of law enforcement efforts and victim rehabilitation and protection. IOM staff report past problems with police coming to its Rehabilitation Center unannounced to interrogate beneficiaries or to take them elsewhere to identify the accused trafficker. Police have taken beneficiaries, including minors, without their legal representatives or social assistants on a number of occasions. Police also allegedly insist on meeting victims at certain times, which are not mutually convenient, either for IOM’s staff or the victim.177

The conflict between victim protection advocates and the police centers on the victims’ accessibility to the police and their willingness to provide information. For example, the IOM Rehabilitation Center maintains a policy of waiting three days after the victim’s arrival before conducting an initial assessment interview. This enables the victim to become accustomed to the environment and to take care of basic needs, such as obtaining food and clothing. Yet, when victims are referred to the Center by police, the latter frequently insist on immediate follow-up questioning of the victim in violation of the Center’s policy.178

Because repatriated victims are often minors, and there is increasing evidence that some are mentally disabled,179 advocates have a policy to accompany them during police interrogations. According to victim advocates, the police want to interrogate victims unaccompanied despite the fact that the presence of social assistants during police questioning helps the victims to relax and facilitates their ability to communicate effectively and to provide accurate information.180

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177 Interviews, IOM Rehabilitation Center, January 2006.
178 Id.
180 Interviews, IOM Rehabilitation Center, January 2006.
There is an inherent tension between law enforcement’s primary agenda, which is to obtain the victim’s cooperation in order to gather the necessary evidence to prove the crime, and protection policies. Such policies may create obstacles to obtaining information, particularly with regard to the victim’s direct participation in investigation procedures, such as by naming traffickers and recruiters and/or their methods of operation, as well as providing in-court testimony.

Ion Vîzdoagă, Director of CPTW, explained that when his organization attempts to report a crime of trafficking to local law enforcement authorities, they refuse to open a case if the victim is not present in Moldova and/or without the name of the trafficker, despite the existence of other evidence provided by CPTW.¹⁸¹

**Sexual Assault**

Current and former police officers are also reported to be involved in trafficking.¹⁸² There have been several reports of sexual violence committed against victims by police officers. CPTW Director Vîzdoagă stated that CPTW has handled many such cases.¹⁸³ Senior law enforcement officers deny that the alleged cases of rape by police officers reflect upon the police as a whole. In Moldova prosecutions for rape are extremely rare.¹⁸⁴

**The Continuum of Abuse: Domestic Violence & Trafficking**

Advocates have recently become aware of the link between domestic violence as a root cause of trafficking.¹⁸⁵ IOM staff reports the presence of prior abuse in the lives of most of its beneficiaries, (estimates varied from between 50% to all of them). The majority of minor beneficiaries have been either sexually or physically abused by their parents or by neighbors prior to being trafficked.¹⁸⁶ Incest and sexual abuse were reported as significant factors motivating victims’ desires to escape their homes and communities.¹⁸⁷ As previously described above, in Moldova domestic violence continues to be viewed as a private concern.¹⁸⁸

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¹⁸¹ Interview, Ion Vîzdoagă, Director and Attorney at Law, CPTW, January 2006. This further signals an over-reliance on the victim’s testimony in the investigation and prosecution of traffickers, as discussed below.
¹⁸² Interviews, Ion Vîzdoagă, Director and Attorney at Law, CPTW and IOM Rehabilitation Center, January 2006.
¹⁸³ Id.
¹⁸⁵ *See generally, Women at Risk in the Republic of Moldova*, Winrock International (June 2005); and Interview, Antonia DeMeo, Senior Anti-Trafficking/Human Rights Officer, Organization for Security and Co-operation in Europe Mission to Moldova, April 2005.
¹⁸⁶ Interviews, IOM Rehabilitation Center, January 2006.
¹⁸⁷ Id.
¹⁸⁸ Id.
In addition to physical violence, it is important to recognize the impact that economic hardship and psychological violence has on women in Moldova, particularly with respect to their willingness to seek a life abroad. According to IOM staff, single young mothers remain the most vulnerable to being trafficked for sexual exploitation as they are willing to work as prostitutes in order to send money home for their children.

**Prostitution**

The fact that prostitution is an offense, while soliciting such services is not, reflects the social acceptance and respectability accorded to clients, while “prostitutes themselves are held very much in disdain.” This dichotomy contradicts the ban on exploitation of prostitution, which is explicitly delineated in Article 6 of CEDAW.

One report from an international NGO found that in Moldova, “[m]any young women glamorize prostitution and do not have a realistic idea about the harsh conditions in which women in prostitution are often forced to work. One observer noted:”

No one has started a dialogue with women who have worked in prostitution. They are treated as though all of their problems are their own fault. Society is very rigid. In one college, a social opinion poll was conducted. More than 50% of the girls said they wanted to be hard currency prostitutes because they have fancy clothes, fancy cars, lots of money, and they go to fancy restaurants. For many young girls, prostitution seems to be an adventure; they do not understand that they do not get all of the money. Some of them get sick, some die. For police, it is easier to write up the prostitute than the man.

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190 Interviews, IOM Rehabilitation Center, January 2006.
192 Id.
Article 7

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:
(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;
(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

Article 7 Areas of Concern:
- Temporary special measures should be established to ensure women’s full participation in the activities of political parties, Parliament and other state and local governmental offices.

Article 7 De Jure Compliance

(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;

Both the Moldovan Constitution and the Electoral Code provide for universal suffrage.193 The Constitution declares that all citizens are entitled to be elected.194 The Electoral Code also provides for the right to run for office free from discrimination.195

The Gender Equality Law explicitly obligates the Central Electoral Commission, and local electoral councils and bureaus to “ensure the observance of the principle of equality between men and women in the electoral sphere.” It also “binds” political parties to ensure male and female representation in the composition of their management as well as on lists of candidates for office.196 The order in which parliamentary candidates are placed on their party list is critical because once the percentage vote for a particular party has been ascertained; the order of individual

194 Article 38(3), Constitution of the Republic of Moldova
195 Article 3, Electoral Code.
196 Article 7, Gender Equality Law.
appointment to the Parliament will follow according to the order of the list. Despite significant efforts to include a provision creating a quota to ensure either 30% or 40% of women’s participation in Parliament in the Gender Equality Law, it was removed before the law’s final passage.

In addition to Parliament’s rejection of temporary special measures concerning the inclusion of women on electoral lists in the recent Gender Equality Law, it has twice rejected the introduction of similar measures into the Electoral Code, once in 1995 and again in 1999.

(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;

The Constitution declares that all citizens are entitled to participate directly in the administration of public affairs, through access both to their elected representatives and to holding public sector jobs. The Law on Public Service reiterates the right of each citizen to equal opportunity in holding public jobs, depending on aptitude and professional skill. It also establishes the individual’s right to be employed in public service irrespective of one’s race, nationality, sex and religion, as long as one has permanent residency status.

The Gender Equality Law provides equal access to public office for women. It proscribes sex discrimination in the “announcement, organization and admittance to contest for public office.” It further places a positive obligation on the “leaders of central and public authorities” as well as those holding executive offices to ensure “equal access to public offices, according to professional requirements without distinction between the applicants on the grounds of sex.”

(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.

The Moldovan Constitution provides for the right to free association. The Law on Parties and Other Social and Political Organizations establishes the

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197 Article 39, Constitution of the Republic of Moldova.
199 Article 13(1), Law on Public Service.
200 Article 6(1), (2), Gender Equality Law.
201 Article 41, Constitution of the Republic of Moldova.
same right to freely associate in political and social organizations, including political parties.\footnote{202}{Article 2(1), Law on Political Parties and Other Social and Political Organizations, Law No. 718-XII, 17 September 1991, published in Official Monitor No. 11-12/106, 30 December 1991.}

The Gender Equality Law requires political parties “to ensure equal rights and opportunities to men and women” through the development of a policy on gender equality, as well as by ensuring gender equality in their executive bodies.\footnote{203}{Article 7(2)(a), Gender Equality Law.} The Law on Parties further requires political organizations to “respect the gender equality principle within their decision-making bodies” at all levels.\footnote{204}{Article 9(7), Law on Political Parties and Other Social and Political Organizations.} However, neither of these laws establishes quotas or sanctions for violations.

**Article 7 De Facto Compliance**

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(a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;  \\
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Nothing in practice impedes women’s access to their right to vote. Respondents and experts alike attributed women’s low participation in contests for public office as related both to the “patriarchal mentality” as well as to women’s lack of self-esteem or self-confidence.\footnote{205}{CEALAW De Facto Study: Political Participation, Civil Society and Human Trafficking, Winrock International New Perspectives for Women and ABA/CEELI Moldova (July 2005) p. 7 (hereafter, *CEALAW De Facto Study: Political Participation, Civil Society and Human Trafficking*).}

Perceptions varied widely among respondents as to women’s electoral participation. While some highlighted women’s activism in the electoral sphere, others characterized women’s voting participation by its absenteeism.\footnote{206}{Id. at 9.}

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(b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government;  \\
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As of August 2006, there are no female ministers among the current 14 state ministry heads. As of such date, the office of the Minister of Justice, formerly held by a female, remained vacant.\footnote{207}{Victoria Iftodi was named Minister of Justice in 2004, www.gov.md, last checked 1 June 2006, and subsequently Ambassador to France, on 2 August 2006.} At the local level, in 2005, out of 32 directors of county administration, two were women. Out of 898 mayors, 133, or 14.8%, were
women. The Chair of the Supreme Court of Justice was a woman, and there were many female judges. Overall, there were almost twice as many men as women who are senior-level public administrators.

One respondent commented, “I like the idea that women be more involved in political life because male politicians rarely think about women’s problems.”

Women’s low political participation is often attributed to stereotypes regarding women’s role in the family. As described below, this is the explanation for discrimination against women in employment as well. One respondent explained, “[t]he idea is that they are too busy with housework, family and jobs, and that they have no time for politics. Women are considered to have fewer abilities in politics, which is why men prevail in this field.” Women have been able to obtain positions in public office in domains dealing with issues of family and child protection or social assistance.

Despite the reportedly rising number of female members of Parliament, with a rate of approximately 21% as of August 2006, respondents questioned women’s real involvement in political decision-making.

With respect to public functions, it is important to note that women have been virtually prohibited from enrolling in both military and police academies, although this practice is said to be changing in the police academy. This precludes them from access to two fields of employment, and the types of financial and other benefits provided by the state to these categories of employees.

\[
\text{(c) To participate in non-governmental organizations and associations concerned with the public and political life of the country.}
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As stated by one expert, “[i]t is important to emphasize the significant number of non-governmental organizations which are involved in the field of gender,” approximately 250. These include: the Forum of Women’s NGOs, which functions as a network, the Center of Information and Documentation for Women, the Gender

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209 Id. at 26.
210 *CELA*W *De Facto Study on Health, Education and Social Assistance*, p. 58.
211 *CELA*W *De Facto Study: Political Participation, Civil Society and Human Trafficking*, p. 7.
213 See text accompanying footnotes 246, 254, *infra*.
215 *CELA*W *De Facto Study: Political Participation, Civil Society and Human Trafficking*, p. 2.
Center and Women’s Political Club 50/50. Created in 1998, the National Council on Women is another NGO whose main goals are to promote women in decision making positions and to contribute to the implementation of CEDAW. The great majority of NGOs working on women’s issues are located in Chişinău and other urban areas of the country.216

In general terms, the state:

[C]oordinates poorly with non-governmental organizations in consulting with them in the development of normative documents... The lack of communication between the State and NGOs negatively affects the quality of administrative decisions, because now the basic work on discrimination against women is conducted by NGOs, and they are sponsored by international organizations.217

In contrast, one expert stated that “women’s NGOs maintain certain importance among [S]tate authorities and have the necessary capacity to establish an efficient partnership with them.”218

Political parties are not generally “focused on a female audience.”219 During parliamentary elections in 2005, all but one party signed a memorandum agreeing that 30% of their electoral lists would be comprised of women. The Christian Democratic People’s Party refused to sign the memorandum, but their list contained 50% women. However, very few of the parties who signed the memorandum actually fulfilled their obligations thereunder.220

In May 2006, two female members of Parliament “divorced” the Christian Democratic People’s Party, “claiming their opinion was systematically ignored and they were subjected to discrimination.”221

216 Id. at 6.
217 CEDAW De Facto Study on Women in Rural Areas, p. 11.
218 CEDAW De Facto Study: Political Participation, Civil Society and Human Trafficking, p. 6.
219 Id.
220 Id. at 6 & 7.
Article 8

States Parties shall take all appropriate measures to ensure to women, on equal terms with men and without any discrimination, the opportunity to represent their Governments at the international level and to participate in the work of international organizations.

Article 8 Areas of Concern:

- The Moldovan government should appoint more women to diplomatic posts.

Article 8 De Jure Compliance

There is no law explicitly establishing an equal right to represent the Moldovan government at the international level without regard to sex. The anti-discrimination provisions from the Gender Equality Law regarding equality in access to public employment cited above presumably apply to both national and international level public positions.222

The right to free association as established in the Constitution of Moldova and the Law on Parties and Other Social and Political Organizations should apply to women’s equal participation in the work of international organizations.223

Article 8 De Facto Compliance

As of August 2006, women fill four of the 26 available appointments as ambassador or chief of mission.224 In contrast, during the periods for which such information was available, there were consistently twice the number of women as men in administrative and technical staff in the international arena. In 2000, 46 women were employed as administrative staff in comparison to 23 men; in 2001, 49 women and 24 men; in 2002, 51 women and 26 men.225

222 See, Article 6(1), (2), Gender Equality Law.
223 Article 41, Constitution of the Republic of Moldova; Article 2(1), Law on Parties and Other Social and Political Organizations.


**Article 9**

1. States Parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband.

2. States Parties shall grant women equal rights with men with respect to the nationality of their children.

**Article 9 Areas of Concern:**

- As required by current law, the Moldovan government should take steps to streamline and expedite the replacement of identity and travel documents for repatriated victims of trafficking in persons and their children, including waiving all fees that normally would be required.

**Article 9 De Jure Compliance**

The Constitution of Moldova makes no distinction with regard to sex as to the right of citizens to obtain as well as change their citizenship.\(^{226}\) The Law on Citizenship establishes the right to obtain citizenship free from discrimination. It also proscribes any arbitrary limitations to or deprivation of this right. Marriage to a foreigner or the decision of one spouse to change his or her citizenship does not have any effect on the other spouse.\(^{227}\) Naturalization can be requested by the spouse of a citizen after three years of marriage, upon written request.\(^{228}\)

The citizenship of children is to be determined by the consent of both parents. If they cannot come to an agreement, assuming they are not citizens of the same country, or if the child is adopted from abroad, the citizenship of the child will be determined by the court, taking into account the best interests of the child.\(^{229}\) Children automatically become citizens if they are born in Moldova or have at least one parent who is a citizen of Moldova. Children found in Moldova are presumed to be Moldovan until they reach the age of 18 if it cannot be proven that they are from another country.\(^{230}\)

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\(^{226}\) Article 17(1), (2), Constitution of the Republic of Moldova.


\(^{228}\) Article 17(1)(a), Law on Citizenship.

\(^{229}\) Articles 13, 14, 15, 17, Law on Citizenship.

\(^{230}\) Article 11, Law on Citizenship.
Moldovan law ensures the right of return to citizens, their descendants and stateless persons.\textsuperscript{231} With respect to Moldovan citizens who have returned, the government is required to replace lost passports.\textsuperscript{232} “[I]dentification cards are issued by competent bodies to the owner or his lawful representative in person under a signature.”\textsuperscript{233} The Anti-Trafficking Law commits the state to process the reception and repatriation of trafficking victims, including confirming the citizenship of victims and issuing travel documents “without undue delay,” taking into account victims’ security needs.\textsuperscript{234}

**Article 9 De Facto Compliance**

In the *de facto* interviews, there were no reports that the equality provisions of the Law on Citizenship are being violated in Moldova either with regard to women’s citizenship in marriage or children’s citizenship derived through their mothers. However, government failures to enforce citizenship and documentation rights adequately have a significant impact on victims of trafficking.

Traffickers often confiscate victims’ travel and identity documents in order to prevent their escape. Trafficking victims currently experience difficulty in obtaining national identity documents, including proof of citizenship, upon their return to Moldova. Obtaining identity documentation is the first step in a victim’s rehabilitation process. The problem is primarily due to a generalized lack of cooperation by local public authorities in assisting trafficking victims.\textsuperscript{235} For example, local public authorities refuse to issue certificates of residency, claiming that they have no data on the individual, or because the person has debts, such as for utilities, or because the individual has been deleted from the list of residents after having been abroad for a long time.\textsuperscript{236}

Despite the stated intention to provide documentation services free of charge to trafficking victims in the National Plan,\textsuperscript{237} the government continues to charge victims

\textsuperscript{231} Article 1(1), Exit and Entry Law; Article 20(1), Law on Migration. The right of return signifies the right of those people who belong to an ethnic or national group, irrespective of national origin, to immigrate and naturalize in the country that they consider to be their homeland.


\textsuperscript{234} Article 19(1)-(3), Law on Preventing and Combating Trafficking in Human Beings.

\textsuperscript{235} Interviews, IOM Rehabilitation Center, January 2006.

\textsuperscript{236} Interview, Ion Vizdoagă, Director and Attorney at Law, CPTW January 2006.

\textsuperscript{237} Article 3(3), National Plan for Preventing and Combating Trafficking in Human Beings.
for such services, a practice that in many instances, poses an undue burden on victims’ access to services to which they are entitled.\textsuperscript{238} Government authorities also refuse to recognize documents issued by authorities in the Transnistrian region, which creates a significant problem as a number of victims of trafficking come from this region.\textsuperscript{239}

Documenting the identity of children born abroad to victims of trafficking is also a serious problem.\textsuperscript{240} Such difficulties may be due to the fact that children may have their mother’s false identity on their birth certificate; and, when fleeing from traffickers, victims do not always have documentation with them upon repatriation.\textsuperscript{241} According to staff at the IOM, it takes approximately one year to obtain a new birth certificate from the Ministry of Interior, a document without which children cannot access their right to free medical care or kindergarten.\textsuperscript{242}

\textsuperscript{238} Interview, Tatiana Căitană, Lawyer, CPTW, May 2005.
\textsuperscript{239} Interviews, IOM Rehabilitation Center, January 2006.
\textsuperscript{240} Interview, Tatiana Căitană, Lawyer, CPTW, May 2005; interviews, IOM Rehabilitation Center, January 2006.
\textsuperscript{241} Interviews, IOM Rehabilitation Center, January 2006.
\textsuperscript{242} Id.
Article 10

States Parties shall take all appropriate measures to eliminate discrimination against women in order to ensure to them equal rights with men in the field of education and in particular to ensure, on a basis of equality of men and women:

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;

(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;

(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;

(d) The same opportunities to benefit from scholarships and other study grants;

(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

(f) The reduction of female student dropout rates and the organization of programmes for girls and women who have left school prematurely;

(g) The same opportunities to participate actively in sports and physical education;

(h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.

Article 10 Areas of Concern:

• Women should be permitted to enroll in military and police academies;
• Men dominate management positions in secondary and higher educational institutions;
• No temporary special measures exist in the field of education to attract men to teaching positions in primary schools, or women to fields traditionally held by men;
• In light of the withdrawal of the “Life Skills” curriculum, educational information on health and well-being, specifically information on reproductive health and family planning, should be made widely available to girls and young women.
**Article 10 De Jure Compliance**

The Moldovan Constitution provides for mandatory primary and secondary education, and access to university and professional education and training. The Law on Education guarantees the right to education regardless of one’s nationality, sex, age, social origin, political or religious affiliation or criminal record. An amendment to the Law provides that one of its main objectives is to prepare children to live in a free and tolerant society based on gender equality.

The Gender Equality Law prohibits both direct and indirect discrimination in the field of education. The Law’s definition of direct discrimination includes discriminatory acts based on pregnancy and maternity thus prohibiting discrimination in educational institutions on the basis of maternity. Ideally this law should protect girls and young women from being prohibited from attending school because they are pregnant or have children, or at the very least ensure that they have access to comparable educational services and facilities. The Law also ensures equal access to “educational and training institutions of armed forces,” meaning military and law enforcement academies.

Moldovan law provides the right for all students to participate in physical education, to practice sports, both at the amateur and professional levels, and to receive rehabilitative physical therapy. There is no specific provision addressing women’s participation in sports.

The Culture Law contains an equality clause, providing that participation in cultural activities constitutes an inalienable right.

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245 Articles 2 & 13(2), Gender Equality Law.
246 Article 13(4), Gender Equality Law.
Article 10 De Facto Compliance

(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training.

In terms of access to education, both the experts interviewed in the field as well as statistical data revealed no generalized discrimination against women.249 Women account for half or more than half of all students from primary through graduate school, with the exception of vocational schools, where they comprise 37.8% of student bodies.250 All students have the same curriculum, teachers and access to educational equipment. However, the educational system is generally inadequate in ensuring access to disabled persons, including disabled girls and women.251

Publicly-funded kindergartens lack sufficient financial resources. Too few exist, they frequently close in the winter due to lack of heat, classes are often over-crowded, and the physical infrastructure of the buildings do not comply with safety requirements.252 Many respondents noted a chronic shortage of teachers at kindergartens and at the primary level, and most attributed the problem to salaries that do not meet the minimal cost of living requirements.253

Education is generally gender-mixed, with the exception of physical education, where boys and girls are separated. Technical schools also divide students by gender. Women’s access to police and military academies is totally restricted, consequently limiting their access to a variety of professions.254 It is important to note that in 1998 the police academy opened its doors to women and trained a class of 25 female students, all of whom graduated in 2003.255 However, additional women were not admitted until 2005 and even these women only participated in their studies through correspondence courses.256 Reportedly, as of 2006 the Ministry of Education has required a change in this practice to provide equal admission to all students without regard to gender.257

249 Please see later discussion in this Article, subsection (f), infra, however, which does note educational access problems for pregnant adolescents and young women.
251 CELAW De Facto Study on Health, Education and Social Assistance, p. 81.
252 Id. at 68 & 81.
253 Id. at 62.
254 Id. at 7 & 82. It is interesting to note that the National Human Rights Action Plan contains a chapter “ensuring the rights of military men,” Chapter 13, National Human Rights Action Plan for 2004 – 2008 (emphasis added.)
256 Telephone call with Police Academy Admissions Office Staff, 8 June 2006.
257 Id.
Social factors impact women’s academic advancement in certain fields. For example, women equal or outnumber men in the sciences up until the Master’s level after which the number of female doctoral candidates declines drastically. Although women comprised half of all doctoral candidates, in 2004, almost seven times the number of men (232) conducted Ph.D. research and development projects than women (35). With respect to post-doctoral research and development projects, in 2004, 583 were conducted by men, 370 by women.  

One expert explained the phenomenon in terms of social and cultural barriers, those addressed under Article 5 of the Convention, “[w]omen are overloaded with family work. Masters’ degrees are undertaken when people are quite young; while to receive a Ph.D. takes time. It is difficult for a devoted wife to conduct research for two years.” Family obligations are also considered a factor in impeding women’s advancement in the field of education.  

Experts noted:  

Disproportion by sex with respect to the exercise of the right to education can be caused by a range of factors, among which are the stereotypes taught within families and schools that encourage girls and boys to pursue studies in fields that are considered traditional for them, and also by the promotion of these stereotypes through the mass media.  

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259 CELAW: Le Facto: Study on Health, Education and Social Assistance, p. 82.  
principals, usually men, have poor knowledge in matters of such reform.”

One manager of a top educational institution commented that with respect to curricular reform, “[t]here are few steps taken in this direction. Nonetheless, they are made in accordance with Council of Europe recommendations.”

(3) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programs and the adaptation of teaching methods;

Women and men are basically equally represented both as teachers and as administrators at secondary, vocational and university-level institutions. At the primary level, however, teaching positions are overwhelmingly occupied by women, contributing to, and probably a function of, the stereotypes regarding appropriate professions for women. While, overall, women occupy approximately 80% of the positions in the field of education, virtually all high-level positions are held by men.

One respondent commented, “most of the teachers are women, and you know why? Because teaching means patience and hard work. Men do not believe that this type of work is appropriate for them, and it is not paid well.” There has, to date, been no female Minister of Education.

According to experts in the field, the government has not taken steps, such as temporary special measures to recruit men as primary school teachers and much could be done in the field of professional guidance.

(d) The same opportunities to benefit from scholarships and other study grants;

All students in Moldova have the same opportunities to benefit from scholarships and study grants. The government acknowledges the low level of scholarships provided, which “negatively affect[s] the opportunities for the fulfillment of the right to education.”

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262 CILEA Le Facto Study on Health, Education and Social Assistance, p. 83
263 Id. at 8 & 78.
(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;

Continuing education in the form of night school for those who leave school prematurely is accessible, for a modest fee, to everyone. There are also continuing education courses available to improve one’s qualifications or to re-qualify in another field. Women make up approximately 60% of those participating in secondary school and university non-attendance programs, which are flexible, lower cost degree programs that are largely based on independent study and periodic consultations with teachers after normal class hours.

(f) The reduction of female student dropout rates and the organization of programmes for girls and women who have left school prematurely;

Pregnant girls are commonly expelled from school for “inappropriate and immoral behavior.” According to one respondent in the field, there is no legal basis for this practice. Students are required to observe the rules of the institution in which they study, each of which establishes its own rules.

At the university level, pregnant students are allowed to continue their studies, and some universities undertake special measures, such as financial aid, to support students who are mothers or fathers.

(g) The same opportunities to participate actively in sports and physical education;

Equal opportunities exist for both men and women in the field of physical education, including compulsory tests. Yet, classes and tests vary according to sex. A student’s access to sports facilities is free when related to his or her curriculum. Other access is possible, but for a small fee.

268 CEJAW Le Facto Study on Health, Education and Social Assistance, p. 83.
270 CEJAW Le Facto Study on Health, Education and Social Assistance, p. 84.
271 Id.
273 CEJAW Le Facto Study on Health, Education and Social Assistance, p. 83.
In more general terms, experts opine that there is a lack of sports education in Moldova. According to one, “we practice sports, [we do] not educate professional athletes.” With respect to women, social and cultural barriers influence their tendency to practice sports. The same expert added, “[i]n accordance with our traditions, women are not encouraged to practice those sports thought to be appropriate for men.”

(h) Access to specific educational information to help to ensure the health and well being of families, including information and advice on family planning.

Educational information regarding health and family planning is generally provided through NGOs, both national and international, with governmental cooperation. However, a program entitled “Life Skills” was developed and introduced in 2004-2005 year in 35 schools around the country, on an experimental basis. This compulsory class for grades 1 through 12 introduced children to issues concerning adult and family life, inter-personal issues, gender discrimination, legal and illegal migration, drug and alcohol abuse and HIV/AIDS. After conflict with the Orthodox Church, the Ministry of Education decided to withdraw the course from the curriculum.

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274 Id. at 78-9.
275 Id. at 79; Interview, Nadejda Velicico, Chief of the Department of Secondary Education, Ministry of Education and Youth, May 2005.
276 See, “Christians are ready to undertake protest actions against the course “Life Skills”, Novopress.info, http://chisinau.novopress.info/?p=42 (last checked 28 July 2006) (reporting that based on the Decision of the Ministry of Education, Health and Sport No. 473, 4 October 2005, the course “Life Skills” was withdrawn); The course “Life Skills” raises disputes, BBC Chișinău, http://www.bbc.co.uk/romanian/news/story/2005/10/051026_curs_moldova.shtml (last checked 28 July 2006) (reporting spokesperson for the Metropolitan Church of Chișinău as stating “Life Skills” is an antisocial course that attacks the family- the cell of the society. It is a course that propagates values like gender relations, untraditional family as normal values.”)
Article 11

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
   (a) The right to work as an inalienable right of all human beings;
   (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
   (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
   (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
   (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
   (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:
   (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
   (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
   (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
   (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

Article 11 Areas of Concern:

- While sexual harassment is defined in the Gender Equality Law, the law provides no framework for penalizing such behavior. The definition of sexual harassment should be incorporated into Moldova’s Labor Code and sanctioned;
• The age for retirement should be the same for both men and women in order to give women an equal chance to reach the contribution period required to receive full pensions;
• Anti-discrimination law should be enforced to ensure that pregnant women and mothers with young children who can obtain additional benefits under the Labor Code do not face discrimination by employers in hiring practices;
• Overly broad labor protections for women, preventing them from engaging in a variety of professions, are discriminatory and should be repealed.

**Article 11 De Jure Compliance**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:
   
   (a) The right to work as an inalienable right of all human beings;

The Moldovan Constitution states, “[e]very person has the right to freely choose his/her work. . . as well as to be protected against unemployment.”

Employers found to illegally deprive someone of the right to work are required to pay material and moral damages. Moral damages are damages for mental or physical suffering. According to Article 1422 of the Civil Code, prevailing employees are compensated regardless of the existence and extent of material damage.

Illegal deprivation of work could arise from an ungrounded refusal to hire, an illegal dismissal, failure to mark the employee’s workbook or to pay a salary or paid leave.

   (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

As mentioned above, the Gender Equality Law proscribes sex discrimination in both public and private sector employment. It prohibits “any direct or indirect restrictions [in the] announcement, organization and admittance to contest for public office.” It places a positive obligation on the “leaders of central and public authorities”

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277 Article 43(1), Constitution of the Republic of Moldova.
as well as those holding executive offices to ensure “equal access to public offices, according to professional requirements without distinction between the applicants on the grounds of sex.”

Specifically concerning state-sector employment, “[t]he [S]tate guarantees the equal right to employment to women and men.” It also obliges itself to provide equal opportunities for men and women in entrepreneurial activities.

With respect to private employment, the Gender Equality Law obligates employers to provide equal employment opportunities for men and women and to implement affirmative action policies. While provisions within the Labor Code permit employers to refuse an applicant on the preliminary verification of “personal data,” without defining the term, the Gender Equality Law makes the existence of family obligations an impermissible factor in the decision making process. It also prohibits employers from inquiring into an applicant’s marital status.

Concerning workplace discrimination, the Gender Equality Law requires employers to “cooperate with employees” for the purposes of instituting internal regulations ensuring equality in the workplace and prohibiting sex discrimination. Gender equality must also be included in collective work contracts, “as employees’ and employers’ responsibilities.” In addition to obliging employers to create internal anti-discrimination policies, the Gender Equality Law requires them “to mobilize the necessary resources and working conditions that will permit” women and men to work on an equal basis, including providing “equal remuneration for equal work value” as well as applying equal criteria for assessing work quality, conditions for reprimand and dismissal.

The law distinguishes between direct and indirect discrimination, defining the former as any discriminatory action, and the latter as any “requirement, norm or practice” which has an unequal effect. Both forms of discrimination are explicitly prohibited in the employment context. The law proscribes, inter alia, placing employment ads with criteria based on sex; creating more favorable working conditions for one sex, including remuneration and distribution of duties; refusal to hire or terminating a

279 Article 6(1), (2), Gender Equality Law.
280 Article 8(1), Gender Equality Law.
281 Article 9, Gender Equality Law.
282 Article 8(2), Gender Equality Law.
283 Article 59, Labor Code; Articles 11(1)(h), 2(c), Gender Equality Law.
284 Article 10(1), (2), Gender Equality Law.
285 Article 11(1)(a), (d), (e), Gender Equality Law.
286 Article 2, Gender Equality Law.
287 Article 12(1), Gender Equality Law.
labor contract based on sex; and, asking job applicants information about their family and private life. It places the burden of proof on the employer to show that there was no direct or indirect discrimination. Finally, the Gender Equality Law also prohibits retaliatory actions taken against a complainant.  

Significantly, the Gender Equality Law entitles victims of discrimination to request of the employer a written explanation of the reason for the allegedly discriminatory employment decision. The employer has 30 days to respond.

The Labor Code of Moldova also prohibits arbitrary dismissal and refusal to hire, and the provision of certain direct or indirect advantages or benefits to employees based upon, inter alia, sex, race and ethnicity. Employers are required to pay material compensation to the injured party for illegal deprivation of possibility to work.

**Sexual Harassment**

The legal recognition of sexual harassment is extremely new in Moldova. Under the Gender Equality Law, sexual harassment is defined as, “any form of physical, verbal or non-verbal behavior of sexual nature that abases a person or creates an unpleasant, hostile, degrading, humiliating or insulting situation.” However, the law does not contain any specific provision actually prohibiting sexual harassment. Nor does it set standards of proof or sanctions.

<table>
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<tr>
<th>(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;</th>
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The Constitution of Moldova provides for the right to freely choose one’s work, “and to benefit from equitable and satisfactory working conditions.” The Labor Code also establishes the equal right to choose one’s profession and occupation.

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288 Article 11, Gender Equality Law.
289 Article 11(4), (5), Gender Equality Law.
290 Article 47(2), Labor Code.
292 Article 2, Gender Equality Law.
293 Article 10(3)(d), Gender Equality Law.
294 Article 43(1), Constitution of the Republic of Moldova.
295 Article 5, Labor Code.
The Gender Equality Law prohibits discrimination in admittance to professional skills training programs and ensures equal access to educational and training institutions of all kinds.296

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

The Gender Equality Law obliges employers “to ensure equal remuneration for labor of equal value.” At the same time it prohibits discrimination in the form of different remuneration based on sex.297 The Labor Code also disallows discrepancies in salary based on the standard enumerated grounds, including sex.298 Finally, the Law on Remuneration contains an equality clause that requires equal remuneration on the basis of sex.299

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

The Moldovan Constitution guarantees “the right to a decent living,” one that ensures health and well-being.300 It also ensures benefits to citizens in cases of unemployment, sickness, disability, upon the death of a spouse, old age and in cases of loss of the breadwinner.301 The Law on State Social Insurance Pensions also establishes the right to pensions in cases of old age, disability and survivorship.302

The social security law establishes different ages for men and women to receive their pensions. Currently, men receive their pensions at 62 years of age; women receive theirs at 57 years of age.303 The contribution period required to receive a full pension however, is the same irrespective of sex, 30 years. Moreover, benefits increase for longer contributions periods.304 The European Court of Human Rights

296 Articles 11(1)(d) & 13(1), Gender Equality Law.
297 Articles 10(3)(c) & 11(1)(e), Gender Equality Law.
298 Article 128(2), Labor Code. This is consistent with Moldova’s obligations as signatory to the Revised European Social Charter to which it is a signatory. See, Article 4(3), ETS No. 163, 3 May 1996.
300 Article 47(1), Constitution of the Republic of Moldova.
301 Article 47(2), Constitution of the Republic of Moldova. This is consistent with Moldova’s obligations under Articles 12 & 13 of the Revised European Social Charter, ETS No. 163, 3 May 1996.
303 Article 41, Law on State Social Insurance Pensions.
304 Article 16(2), Law on State Social Insurance Pensions.
has found social security schemes that differentiate benefits based on sex and/or marital status to violate the European Convention for the Protection of Human Rights and Fundamental Freedoms.\(^{305}\)

Women with children below the age of 6 and women with disabled children 16 years old and younger are allowed to work nights or continuous shifts, weekends and national holidays only after the employer obtains their written consent. Employers are required to inform them of their right to refuse such work.\(^{306}\) Pregnant women, women on post-natal leave and women with children under 3 are not permitted to work overtime.\(^{307}\)

Women with children under 16 are entitled to take their vacation only during the summer, unless upon written application they request vacation at a different time of year.\(^{308}\) Women with children up to 14 years old or disabled children up to 16 years old are entitled to an extra 4 days of paid vacation, and an extra 14 days of unpaid vacation, which they can add to their annual leave.\(^{309}\)

\[\text{(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.}\]

The Constitution provides all employees with the “right of work protection,” including, inter alia, “work security and hygiene, [and] working conditions for women and young people.”\(^{310}\) Women are categorically prohibited from working in specific jobs, such as boiler maker, brick layer, locksmith, riveter and welder.\(^{311}\) The law also prohibits women from performing manual, heavy lifting over a prescribed standard of 10 kilograms.\(^{312}\) At the same time, the Labor Code stipulates that salaries shall be based, in part, on working conditions. Employees in hazardous occupations are granted shorter hours and bonuses based on the difficulty of their work.\(^{313}\)

\(^{305}\) See, e.g., Wessels-Eegerv\ëet v. The Netherlands, Application No. 34462/97, 4 June 2002; Willis v. The United Kingdom, Application No. 36042/97, 11 June 2002; and, Schuler-Zgraggen v. Switzerland, Application No. 14518/89, 24 June 1983.


\(^{307}\) Article 105(1), Labor Code.

\(^{308}\) Article 116, Labor Code.

\(^{309}\) Articles 120 & 121, Labor Code.

\(^{310}\) Articles 47(2) & 50(2), Constitution of the Republic of Moldova.

\(^{311}\) Article 248, Labor Code, and The catalogue of jobs of hard and harmful labor conditions, in which the utilization of women’s labor is forbidden, as well as the maximum norms allowed for women in cases of manual lifting and transporting of weights, Government Decision No. 624, 6 October 1993, published in Official Monitor No. 10/315, 30 October 1993.

\(^{312}\) Id.

\(^{313}\) See, Articles 96, 100, 139, 222 & 227, Labor Code.
Women with children under the age of three are entitled to longer lunches and additional breaks for feeding their child for 30 minutes every three hours, and for one hour for two or more children.\textsuperscript{314}

\begin{quote}
2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
\end{quote}

The Gender Equality Law prohibits the refusal to employ any person based on “the existence of family obligations,” as well as an employer’s inquiry into an applicant’s civil status.\textsuperscript{315} It explicitly excludes from the prohibition of discrimination the “provision of special conditions to women during pregnancy, childbirth and nursing.”\textsuperscript{316}

The Labor Code prohibits the termination of, and refusal to employ, pregnant women and women with children six-years-old or younger.\textsuperscript{317} Indeed, it is illegal to dismiss a pregnant woman, women with children under the age of six and women on maternity leave.\textsuperscript{318} The Labor Code and the Code of Administrative Offenses establish sanctions in the form of fines on employers who breach such laws.\textsuperscript{319}

Although employees are entitled to maternity leave,\textsuperscript{320} payments made during this leave are not considered “wages;” rather, the Labor Code provides that employment contracts are considered suspended during the maternity leave period,\textsuperscript{321} which includes the “suspension of the rendering of labor by the employee and payment of salary rights (wage, increase, other payments) by the employer.”\textsuperscript{322}

\textsuperscript{314} Article 108, Labor Code.
\textsuperscript{315} Article 11(1)(b), (2)(c), Gender Equality Law.
\textsuperscript{316} Article 5(6)(a), Gender Equality Law.
\textsuperscript{317} Articles 47 & 247, Labor Code.
\textsuperscript{318} Articles 86 & 251, Labor Code.
\textsuperscript{319} Articles 41 & 41/2, Code of Administrative Offenses; Articles 374(2)(b) & 381, Labor Code.
\textsuperscript{320} Article 124, Labor Code.
\textsuperscript{321} Article 76(a), Labor Code.
\textsuperscript{322} Article 75(2), Labor Code.
Article 90 of the Labor Code of Moldova also stipulates in cases of illegal dismissal:

1) In case of restoration to the workplace of the transferred or illegally dismissed from service employee, the employer has the obligation to compensate the damage caused to him/her. 
2) Compensation by the employer of the damage caused to the employee consists of: 
   a) obligatory payment of compensation for the entire period of forced absence from work in an amount not less than the average wage of the employee for this period; 
   b) compensation of additional expenditures connected with the appeal of the transfer or dismissal from work (consultation of specialists, costs, etc.); 
   c) compensation for moral damage caused to the employee. 
3) The size of compensation of moral damage is determined by the court, taking into consideration the date of action of the employer, but not less than one month’s average salary of the employee. 
4) Instead of restoration to the workplace, with the consent of the employee, the court can require the employer to pay additional compensation in an amount equal to at least three months’ average salary of the employee.323

(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;

As a general matter, social security legislation in Moldova ensures pensions as well as maternity benefits.324 Parent caretakers are granted social security contributions for the time spent raising children under the age of three. This benefit is granted to both mothers and fathers.325 Maternity leave can be taken for up to 70 days, with an additional 56 days for post-natal leave. Women are also permitted to add maternity leave to their annual leave.326

After the expiration of maternity leave, either parent can take partially-paid leave to care for a child until he or she reaches three years old. These funds are paid through the state social security budget.327 This is consistent with Moldova’s obligations

323 Article 90, Labor Code. 
326 Articles 124(1) & 125, Labor Code. 
327 Article 124(2)-(4), Labor Code.
under the Revised European Social Charter, which requires a minimum of fourteen weeks of paid maternity leave. 328

Additional unpaid leave is available for child care until the child is six years old without loss of one’s position. Supplementary unpaid leave is available for both men and women for children between the ages of three and six years old, and the time taken is to be included in the employees’ length of service for the purpose of vacation and other benefits. Upon written application, employees can work part-time or at home in lieu of taking unpaid leave. 329

A mother can also take leave to care for a sick child until the child turns three. The law provides that a health certificate shall be issued with preference to the mother, regardless of whether another family member is available to take care of the ill child. 330

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

The Gender Equality Law requires employers to “ensure equal conditions for women and men as regards combining service duties with family obligations.” 331 Employers must provide men and women with equal opportunities to combine work responsibility with family life “according to legislation.” 332 The National Human Rights Action Plan “promote[s] flexible work schedules accessible both to men and women with under-aged children.” 333 The Law on Healthcare also states, “[w]omen shall be provided conditions for combining work with maternity and shall be guaranteed protection of their rights, as well as material and moral support.” 334

Public servants with a minimum of three years on the job have the right to paid maternity leave, paid childcare for children up to three years of age and compensation for costs associated with a child’s illness until the child reaches

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329 Article 126(1)-(4), Labor Code.
331 Article 10(3)(c), Gender Equality Law.
332 Article 11(1)(g), Gender Equality Law.
seven years of age.\textsuperscript{335} This includes compensation for pre-natal care. Employees are also entitled to unpaid leave to care for children between the ages of three and six years. Time taken for maternity leave is included in measuring seniority for the purpose of determining employment-related benefits.\textsuperscript{336}

As noted above, women can also obtain leave for the purpose of caring for sick children. Certificates for such leave are issued to another member of the family, such as the father, only when the mother is absent, sick herself or does not have custody.\textsuperscript{337} Similarly, only mothers are granted time to care for hospitalized children under the age of three. Leave can be granted to either parent to care for disabled children under the age of 16.\textsuperscript{338}

\begin{center}
(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.
\end{center}

The Labor Code of Moldova provides that pregnant women, women who are breast feeding and women with children up to three years of age are entitled to lighter work loads without a reduction in their salaries.\textsuperscript{339} Compensation during maternity leave is drawn from the state social security budget.\textsuperscript{340}

The Labor Code prohibits women from working in unsafe conditions and hard labor, including underground work. Pregnant women and minor children are prohibited from working in the cultivation, harvest and processing of tobacco.\textsuperscript{341}

Pregnant women and women with children under three are proscribed from taking business trips.\textsuperscript{342} Women with children from three to fourteen years old may be sent on business trips only upon their written consent.\textsuperscript{343} It should be noted that expectant mothers, women on post-natal leave, and women with children under

\begin{flushleft}


\textsuperscript{337} Section II(B)(29), Government Decision Concerning the Approval of the Issuance of Health Certificates, Decision No. 469, 24 May 2005, published in Official Monitor No. 77-79/529, 3 June 2005.

\textsuperscript{338} Section II(B)(27), Government Decision Concerning The Approval of the Issuance of Health Certificates.

\textsuperscript{339} Article 250, Labor Code.


\textsuperscript{342} Article 249(1), Labor Code.

\textsuperscript{343} Article 249(2), Labor Code.
\end{flushleft}
three do not have the option of taking business trips. The fact that women can be prohibited from taking business trips without their consent and without reference to their particular needs or desires for almost four years per child could affect women’s development, promotion, and training in business, and thus constitute sex discrimination.

Pregnant and lactating women must either be transferred to a position involving easier labor, or be temporarily released from work requirements, “preserving their average salary.”

Compliance with safety regulations is to be ensured by a state inspection control system. The Agency for Labor Inspection oversees the implementation of the Labor Code. Trade unions also monitor the implementation of labor legislation. Employers who fail to comply either with labor protection legislation or with laws that proscribe discrimination on the grounds of sex or maternity face criminal sanctions, including fines, community service and up to two years of imprisonment.

The Labor Code provides different complaint procedures for individual employment disputes and collective employment disputes. The final place for appealing complaints in both situations is in a court of law.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

The Moldovan Labor Code sets forth in detail the employer’s responsibilities with respect to protection. It includes ensuring, “the well-functioning of the systems of

344 Article 250, Labor Code. See, Article 8(5) Revised European Social Charter, ETS No. 163, 3 May 1996 (prohibiting “the employment of pregnant women, women who have recently given birth or who are nursing their infants in underground mining and all other work which is unsuitable by reason of its dangerous, unhealthy or arduous nature and to take appropriate measures to protect the employment rights of these women.”) See also, Article 3 ILO Convention 103 on Maternity Protection (providing “that pregnant or breastfeeding women are not obliged to perform work which has been determined by the competent authority to be prejudicial to the health of the mother or the child, or where an assessment has established a significant risk to the mother’s health or that of her child.”)
346 Article 1(2), Law on Labor Inspection (providing that the Agency for Labor Inspection oversees the implementation of the labor legislation by private and public employers, and local and central public authorities).
347 Article 183, Criminal Code.
348 Articles 354-356 (regarding claims by individual employees), and Articles 357-361, Labor Code (regarding resolution of collective employment disputes). See also Articles 328-332 and 348-352, Labor Code.
protection devices, of measuring and control apparatus, as well as of installations of collecting, retention and neutralization of harmful substances escaping in the unfolding of technological processes.”

The Code requires employers to establish an annual labor protection plan, but does not stipulate whether that plan should include annual inspections. The Law on Labor Protection requires periodic reviews of technical safety, but does not set the length of period for such reviews.

Employer violations of technical safety requirements are criminalized if the violation “resulted in accidents involving people or other severe consequences.” Penalties include fines and up to two years of imprisonment. If the violation resulted in death, the sentence increases to imprisonment from two to seven years and the inability to hold certain positions for three years.

**Article 11 De Facto Compliance**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

   (a) The right to work as an inalienable right of all human beings;

Infringements with respect to labor rights in the private sector are common. They include failure to report an employee’s actual salary and to register employees through use of their workbooks. The state reportedly “does not take any measures to control the implementation of legislation in the private sector.”

Among registered workers, there is a dramatic difference between the number of women who are considered “unemployed” and those considered “inactive.” In 2004, 46,400 women claimed to be unemployed, while 794,100 claimed to be inactive. While there is also a comparable difference between unemployed and inactive men in the workforce, the number of “unemployed” women was about 40% that of men, and the number of “inactive” women exceeded that of men by approximately 140,000. In other words, larger numbers of non-working women are choosing not to become active in the workforce, probably reflecting traditional cultural patterns.

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340 Article 225(r), Labor Code.
349 Article 225(h) & 237(2), Labor Code.
350 Law on Labor Protection, Law No. 625-XII, 2 July 1991 (note that, although this law was adopted by the Parliament, it never was officially published in the Official Monitor.)
351 Article 183, Criminal Code; see also, Article 244, Labor Code.
352 CELEAW De Facto Study on Women in Rural Areas, pp. 9 &10.
It is extremely important to note, when discussing labor issues as they affect women in Moldova, that at least 130,000 Moldovan women currently work abroad, attempting to earn money for families that they have left behind.\footnote{Migration and Remittances in Moldova, International Organization for Migration, European Union Food Security Programme and International Monetary Fund (July 2005), p. 7.} Many respondents raised this issue when asked questions about women’s equality in labor, as gender is a highly significant factor in labor migration. The lack of job opportunities for women is one of the root causes of trafficking in women.

The National Employment Agency reportedly has problems placing repatriated trafficking victims in positions given the reluctance of private employers to hire them. The Agency was said to offer victims extremely low-paid jobs (most beneficiaries do not have job skills), as well as jobs in which the employer refuses to mark the employees’ labor workbooks, which is necessary for receiving state benefits such as medical insurance and pensions.\footnote{Interviews, IOM Rehabilitation Center, January 2006.}

Staff at the IOM Rehabilitation Center stated that given the extremely low salaries, most beneficiaries placed by the National Employment Agency end up returning to the Center seeking further assistance. Indeed, it is highly probable that the absence of legitimate and decent employment opportunities results in a number of women being re-trafficked.\footnote{Id.}

(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;

With respect to overall national employment rates, in 2002, 55.1\% of men were employed, as were 51.7\% of women.\footnote{Women and Men in the Republic of Moldova, UNDP (2005) p. 24, table 5.2.} Over the last several years, private sector employment has increased, while public sector employment has declined. In 2000, 26\% of the population worked in the public sector and 68.4\% worked in the private sector; in 2002 the ratio was 22.4\% to 72.3\%.\footnote{Hotels and construction constitute two of the main private sector industries in Moldova. Gender Analysis of the Legislation of the Republic of Moldova, UNIFEM (2004) p.34.}

One respondent described the situation in general terms, “[w]omen are frequently discriminated against in the field of employment. Young mothers practically have no chances of being hired. Most of the unemployed and job seekers are women.” One of the leading factors in discrimination against women in employment concerns stereotypes regarding women’s role in the family. Another stated, “women are

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356 Interviews, IOM Rehabilitation Center, January 2006.
357 Id.
considered to have more social obligations than men, to be concerned about their families and thus less productive.”  

One manager, not registering his comments as evidencing discrimination, stated:

> Women have to shoulder double responsibilities. They have to do housework and take care of their children and at the same time have a job. For this reason employers, irrespective of their gender, express doubt about hiring women. It is more difficult for women in Moldovan society to demonstrate their worth.  

One female respondent in a high-level professional position commented that “[w]omen occupy lower-paid positions, and men in higher-ranking positions are paid higher salaries than women in the same positions.”  

Classified employment ads frequently specify the desired applicants by sex. No special program exists to support employment opportunities for disabled women.

**Sexual Harassment**

Sexual harassment remains one of the most entrenched forms of discrimination against women, particularly because it is simply not socially recognized as a problem. In interviews conducted for this assessment, male managers in the business world admitted to its existence but made such statements as “[t]he persons responsible are women from the staff;” and, “I support the idea that this problem does not exist, so I do not see any reason to discuss it.”

In contrast, one respondent noted the need for the law to recognize sexual harassment as a crime and to set up a legislative scheme as “[i]t is practically impossible for a woman to prove that she was harassed.” The same respondent signaled the importance of making sure that women are informed of their rights. This is particularly true with respect to sexual harassment, a newly-defined term under the Gender Equality Law. It will be important to monitor the success in the implementation of the provisions on sexual harassment in the law.

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360 *CEDAW Le Facto Study on Health, Education and Social Assistance*, p. 42.
361 Id. at 58.
362 Id. at 5.
363 *CEDAW Le Facto Study on Health, Education and Social Assistance*, p. 66.
364 Id. at 67.
(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;

Despite the existence of extensive labor laws, and a specialized agency tasked with their enforcement, respondents claim that the laws are continuously infringed: salaries are not paid on time, employees are not paid during official leaves of absence, and holidays are not observed.

While women account for half or more than half of all students from primary school through graduate school, they only comprise 37.8% of students in vocational schools. 365 Continuing education in the form of night school for those who left school prematurely remains accessible, for a modest fee, to everyone. Continuing education courses also exist for improving one’s qualifications or re-qualifying in another field. 366

(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;

With respect to wage differentials, experts estimate that women’s salaries constitute 71.9% that of men’s. For example, women telecommunications operators earn 698 lei per month (approximately US $52), making 38% less than men. Women accountants earn 901 lei per month (approximately US $68), 19% less than men in the same position. 367

The percentages appear higher in statistics generated by UNDP that measure the percentage of women’s salaries to men’s in a variety of fields. In fishing and extractive industry, the latter dominated by women, women’s salaries actually exceeded men’s. In all other fields, women earned between 68% and 97% of wages earned by men. 368

(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;

As acknowledged by the government, “[p]ensions, scholarships and social allowances are very low and negatively affect opportunities for the fulfillment of the rights to

368 Women and Men in the Republic of Moldova, UNDP (2005) p. 34.
education, health, adequate housing and food, as well as other social, economic and cultural rights.\textsuperscript{369}

Social security in the form of retirement, unemployment, sickness, disability and paid leave are ensured only for those workers who both are legally employed and hold an official worker’s card or workbook. Employers are required to contribute to the state social security scheme regardless of the employee’s gender.

Yet, given the difference in retirement ages based on sex, women’s contribution period is significantly lower than men’s. The discrepancy with respect to the age of retirement also impedes women from accumulating more than 30 years of contribution and the resultant increases in pension. Furthermore, given the fact that pensions are calculated based on salaries, the fact that women earn less than men results in a further comparative loss of pension. In 2002, the average monthly pension of women between the ages of 60 – 65 was 145.72 lei (approximately US $11) while men of the same age collected 166.07 lei (approximately US $12.50). In order to help correct this discrepancy, retirement ages should be the same for both sexes.\textsuperscript{370}

Significantly, a majority of those persons working illegally or without the official use of their workbook are women, resulting in a situation of \textit{de facto} discrimination against women with respect to the receipt of social security benefits.\textsuperscript{371} Additionally, in family-owned businesses and agricultural work, earnings are frequently reported through the male head-of-household, and thus other members of the family, wives in particular, do not receive any social security benefits.\textsuperscript{372}

At least one case has been documented in which the National Employment Agency referred two victims of trafficking to a private employer who illegally refused to register their workbooks and paid them less than a livable wage.\textsuperscript{373}

\begin{quote}
(f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.
\end{quote}

Among registered workers, 8,081 women were found to be working under conditions that did not meet sanitary, labor inspection or labor security standards, or were

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\textsuperscript{371} \textit{CEDAW De Facto Study on Health, Education and Social Assistance}, p. 66.
\textsuperscript{372} Id.
\textsuperscript{373} Draft Assessment of the Legal Services Provided to Beneficiaries at the International Organization for Migration’s Rehabilitation Center in Chişinău, IOM, February 2006, p. 25. \textit{See also}, text accompanying footnote 356, supra.
\end{flushright}
performing hard physical labor. The majority of violations occur within the processing and extractive industries, as well as in healthcare and social assistance professions.\textsuperscript{374}

On the one hand, the Moldovan Labor Code ensures women’s right to safe working conditions, including the possibility to make an informed choice regarding undertaking work that might affect her reproductive health. The one exception to this is the limitation on pregnant women and women with children under the age of three to travel for business. On the other hand, however, these protections reportedly have the secondary effect of discouraging employers from hiring women, given the additional costs associated with their exercise of special rights.\textsuperscript{375}

\textbf{2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:}
\begin{itemize}
  \item \textit{(a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;}
\end{itemize}

Despite continuing dismissals on the grounds of pregnancy, women are reportedly successful at legal challenges to discrimination based on their taking maternity leave.\textsuperscript{376} Women are either offered their former position or are granted a small amount of compensation out of a state fund.

\begin{itemize}
  \item \textit{(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;}
\end{itemize}

As noted, women are granted additional benefits with respect to pregnancy and maternity leave. Although women are entitled to paid maternity leave, the established amounts are insignificant in comparison with the cost of living. As a result, many women decline to claim their rights to compensation for leave. Single mothers, for example, are unable to survive on the funds provided.

Although paternity leave is available by law, few men take leave to care for their children. In general, only when men are paid less than their wives do they stay home and care for the children and claim family leave. In some cases, fathers take sick leave in order to care for their children, rather than the paternity leave available to

\textsuperscript{374} Women and Men in the Republic of Moldova, UNDP (2005) p. 37. \\
\textsuperscript{376} CEEAW Le Facto Study on Health, Education and Social Assistance, p. 12.
them pursuant to law. Respondents noted that the government has done little in the way of encouraging men to take paternity leave.

It is significant to note that although the Labor Code provides for social security contributions during parental leave, it does not indicate the source of funding for such contributions.

(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;

Government provided child-care is almost non-existent and private child-care facilities are prohibitively expensive for most families. Publicly funded kindergartens lack sufficient financial resources. Those that exist are over crowded and do not always have heat during the winter months. In addition, the physical infrastructure of the buildings does not always comply with safety requirements. Furthermore, it is difficult to attract educators to fill positions as the salaries are incredibly low, between 100 and 300 lei per month (approximately US $8-23). Professionals in the field also report that government agencies attempt to impede the establishment of private educational institutions by creating bureaucratic obstacles.

The creation of a child-care network for school-age children for parents who work as well as the promotion of flexible working hours would greatly assist men and women in combining work and family obligations.

The current legal framework that grants leave to women for the purposes of caring for sick children but to fathers only in cases in which it is impossible for the mother to care for the child, denies fathers the opportunity to care for their children. The law should be changed to foster both parents’ active participation in caring for their children.

(d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

As noted above, according to the Labor Code of Moldova, with a proper medical certificate, pregnant and lactating women who work under conditions unfavorable to pregnancy must be transferred to positions in which the workload is easier, or be

377 Articles 124, 125, Labor Code.
378 CEAW Le Facto Study on Health, Education and Social Assistance, p. 68.
temporarily dismissed from their work obligations while still receiving their previous salary.\textsuperscript{380}

\begin{table}[h]
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3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary. \\
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\end{tabular}
\end{table}

According to actors in the field, no local research is conducted as to the toxicity levels and noxious effects of new industrial products. Existing legislation is a remnant of the Soviet system and work-safety information is drawn from research conducted in other countries.\textsuperscript{381} Failure to update research on the dangers of noxious elements in production may have a disparate impact upon women, who work in greater numbers in both the processing industries and the health care profession.

\textsuperscript{380} CEDAW Date Fact Study on Health, Education and Social Assistance, pp. 14 & 45.
\textsuperscript{381} Id. at 68.
**Article 12**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

**Article 12 Areas of Concern:**

- Breaches in confidentiality between doctors and patients is a serious concern in Moldova as they can impede women from seeking necessary medical attention as well as result in a violation of their privacy rights;
- Domestic violence is widespread and is not adequately addressed by healthcare or police officials;
- As of August, 2006, there is no law in effect specifically addressing domestic violence, although a draft Law on Preventing and Combating Violence in the Family is under consideration;
- Any domestic violence law should provide for temporary restraining orders (the draft under consideration as of August, 2006 does not);
- Any domestic violence law should provide un-married and non-cohabiting couples and their children protection from domestic abuse on the same basis as married couples (the draft under consideration as of August, 2006 does not);
- Law enforcement authorities frequently fail to respond to or process complaints concerning domestic violence.

**Article 12 De Jure Compliance**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

The Moldovan Constitution establishes the right to health care and guarantees a minimal level of health insurance to be provided by the state.\(^{382}\) Citizens have the

\(^{382}\) Article 36, Constitution of the Republic of Moldova.
right to state-provided health insurance on a non-discriminatory basis.\textsuperscript{383} The Gender Equality Law specifically proscribes sex discrimination in access to “all levels of medical assistance.”\textsuperscript{384}

Several laws provide the right of access to free medical care to vulnerable groups. A Government Decision on the Protection of Certain Categories of Vulnerable Persons provides that disabled persons, war veterans, and persons diagnosed with HIV/AIDS, cancer and other grave diseases are to receive free medical care.\textsuperscript{385} A separate provision establishes the same right of access to healthcare services for those who cannot afford to contribute to the compulsory medical insurance scheme.\textsuperscript{386} Finally, a Governmental Decision ensures the access of disabled persons to all medical establishments, and specialized, adequate care.\textsuperscript{387}

Under the Law on Compulsory Medical Insurance, the unemployed, children, the disabled and retired persons are entitled to medical care. For unemployed women, this includes entitlement to ante- and post-natal care. Significantly, the Law on Compulsory Medical Insurance requires patients to pay for those medicines or procedures that do not appear on the list of what is to be provided free of charge, calling into question the extent of the actual coverage provided in practice.\textsuperscript{388}

\textit{Reproductive Health \& Family Planning}

The Law on Healthcare declares that “the State fosters maternity and protects the health of the mother and the child.”\textsuperscript{389} In 1999, the state established a National Program on Reproductive Health and Family Planning (1999-2003).\textsuperscript{390} The National Program was established to respond to the low number of live births; the high rates of infant and maternal mortality and abortion; the low usage rates of contraception;

\textsuperscript{384} Article 14, Gender Equality Law.
\textsuperscript{385} Article 2, Annex 1, Government Decision on the Protection of Certain Categories of Vulnerable People and on the Optimization of the Import of Medicines and Medical Equipment, Decision No. 163, 2 April 1993.
\textsuperscript{388} Article 8, annex 1, Law on Compulsory Medical Insurance, Law No. 1593-XV, 26 December 2002, published in Official Monitor No. 18-19/57, 8 March 2003.
and, the inadequate educational programs and legal structures to address issues of reproductive health and family planning. The main goals of the National Program include:

- Sensitize the public, NGOs and governmental institutions on issues of family planning;
- Provide quality social services in the reproductive health field;
- Localize medical assistance in the field of family planning and reproductive health;
- Create a national information center to provide information on reproductive health and family planning to the public;
- Establish national educational programs on reproductive health and family planning.

The Program has created a center for reproductive health care and family planning in each rayon, or district, of Moldova. The law establishes, “[i]n each rayonal center [] family planning clinics, abortion clinics, centers for consultations with adolescents, consulting, tests and confidential treatment services.”

Pregnancy can only be interrupted during the first trimester and only within a public health institution. Obtaining an abortion after the first twelve weeks of pregnancy, outside of medical institutions authorized to perform abortions, performing an abortion in unsanitary conditions or by an unqualified person or when an abortion is medically counter-indicated is criminalized and can result in fines and up to two years of imprisonment. The Ministry of Health has also issued a rule that requires any pregnant teen to obtain the consent of at least one parent prior to obtaining an abortion. There is no alternative, including recourse to a court of law, delineated by this rule in the event that the adolescent is unable or unwilling to obtain parental consent.

394 Annex No. 3, para. 2, Ministry of Health Disposition No. 152, on the Measures for Protecting Women and Decreasing of the Number of Abortions in the Republic of Moldova, 3 August 1994.
395 In any event, adolescents do not have legal capacity for this purpose. Articles 19-22, Civil Code.
Sterilization procedures must be performed on a voluntary basis with the “written agreement” of the patient and in a medical institution approved to perform such procedures by the Ministry of Health and Social Protection. Legislation requires the person performing such procedure to have the adequate medical knowledge to do so. Sterilization procedures not performed under these conditions are to be penalized.\footnote{Article 31(1), (2), Law on Healthcare, Law No. 411-XIII, 28 March 1995, published in Official Monitor No. 34/373, 22 June 1995.}

Illegal sterilization committed by a doctor is punished with a fine and/or the deprivation of the right to hold certain positions or conduct certain practices for up to three years. If performed by an unqualified person or in unauthorized locations, it shall be punished with a fine and/or imprisonment for up to three years and/or deprivation of the right to hold certain positions or conduct certain activities for five years. Both the repeated commission of the crime and severe bodily injury or the patient’s death resulting from the procedure are punished with imprisonment from three to ten years.\footnote{Article 160, Criminal Code.}

Everyone has the right to free and anonymous testing for the HIV/AIDS virus and other sexually transmitted infections.\footnote{Article 1, Law on the Prophylaxis of HIV/AIDS, Law No. 1460-XII, 25 May 1993, published in Official Monitor No. 7/214, 30 July 1993.} There is a national plan particularly targeted to “pregnant women and people between the ages of 15-24 years old. . . . to ensure in all cases a prophylactic treatment both for the pregnant women diagnosed with HIV and for new-born children.”\footnote{Government Decision on the Prophylaxis and Control Measures of the HIV/AIDS Infection and Sexually Transmitted Infections, Decision No. 948, 5 September 2005, published in Official Monitor No. 126-128, 23 September 2005.}

With respect to the AIDS virus generally, the law provides for free medical and social assistance if the results are positive. Anyone who tests HIV positive “will be taken under medical supervision.”\footnote{Articles 1(1), 3(2) & 8(1), Law on the Prophylaxis of HIV/AIDS, Law No. 1460-XII, 25 May 1993, published in Official Monitor, No. 7/214, 30 July 1993.} A 2005 Government Decision provides all infected persons with the right to benefit from treatment and counseling, and prohibits discrimination against persons on the basis of being infected with the AIDS virus.\footnote{Article 8(2), Law on the Prophylaxis of HIV/AIDS, Law No. 1460-XII, 25 May 1993, published in Official Monitor, No. 7/214, 30 July 1993; and Government Decision on the Prophylaxis and Control Measures of the HIV/AIDS Infection and Sexually Transmitted Infections, Decision No. 948, 5 September 2005, published in Official Monitor No. 126-128/1048, 23 September 2005.} The law also specifically proscribes employment and educational institutions from discharging or dismissing persons who are HIV positive or carry the AIDS virus.\footnote{Article 8(3), (4), Law on the Prophylaxis of HIV/AIDS.}
Confidentiality

Doctors are required to take the Hippocratic Oath, which contains a confidentiality clause. Legislation governing the medical profession requires doctors to exhibit high moral and ethical standards, including the principle to “do no harm.”

In addition, pursuant to patients’ rights legislation, all patients have the right to confidentiality concerning their diagnosis, prognosis and treatment, which is to be guaranteed, even after death. Patients have the right to be kept informed about their own medical conditions. Relatives, and in some circumstances close friends, also have the right to receive information about a patient’s medical condition. Patients have the right to receive such information in writing. All persons have the right to obtain complete and truthful information specifically concerning their reproductive health, as well as on issues concerning family planning. Couples are required to inform each other of any outstanding health conditions upon marriage. Patients have the right to file legal complaints for any violation of this right.

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

Women are accorded the right to make autonomous decisions concerning motherhood, including the number of children and birthing methods. The law provides for the universal right to reproductive healthcare and family planning. However, while the Law on Healthcare provides this “right,” it creates no legal framework for its enforcement, and is merely declarative in nature. It does not ensure that such services are provided free of charge.

The Law on Compulsory Medical Insurance does set up a scheme, establishing free medical services for certain categories of persons and provides free services for

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407 Article 11(2) Family Code.
408 Article 17, Law on the Rights and Responsibilities of the Patient.
409 Article 5(1), Law on Healthcare, Reproductive Health and Family Planning; see also, Article 32(1), Law on Healthcare.
410 Article 7, Law on Healthcare, Reproductive Health and Family Planning.
impoverished and unemployed women. The government does not provide free ante-natal and post-natal care for women who are employed. This obligation is to be assumed by employers.\textsuperscript{411}

Reproductive health services include the choice of available methods of contraception, abortion within the first trimester of pregnancy, and family planning counseling services.\textsuperscript{412} The adoption in December 2005 of the Unique Program on Compulsory Medical Insurance significantly changed the coverage of reproductive healthcare services to include pregnancy, ante-natal and post-natal care, and any birthing or post-birthing complications.\textsuperscript{413} Free reproductive health care is also available for women with complications during pregnancy, at and after birthing, extra-uterine pregnancy, uterine trauma and bleeding, in addition to other complications.\textsuperscript{414}

There are no state guarantees concerning the provision of adequate standards of nutrition for pregnant or lactating women.

\textit{Violence Against Women}

In its General Recommendation No. 19, the CEDAW Committee has read into its general ban on gender discrimination the right of women to be free from gender-based violence, explaining:\textsuperscript{415}

\begin{quote}
The Convention in article 1 defines discrimination against women. The definition of discrimination includes gender-based violence, that is, violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.\textsuperscript{416}
\end{quote}

\begin{itemize}
\item \textsuperscript{411} Articles 4 & 8, Annex 1, Law on Compulsory Medical Insurance, Law No. 1593-XV, 26 December 2002, published in Official Monitor No. 18-19/57, 8 February 2003
\item \textsuperscript{414} Chapter I(C)(56), (57), Government Decision on the Unique Program on Compulsory Medical Insurance for 2006.
\item \textsuperscript{415} See, \textit{CEDAW General Recommendation 19}, U.N. GAOR, 1992, Doc. No. A/47/38, para. 6 (stating that “[g]ender-based violence may breach specific provisions of the Convention, regardless of whether those provisions expressly mention violence.”)
\item \textsuperscript{416} Id.
\end{itemize}
Trafficking in persons and domestic violence are two of the most prevalent human rights violations in Moldova. Both are internationally recognized as forms of violence against women and as criminal offenses. Although domestic violence affects all sectors of society and people of all ages, like trafficking, it disproportionately affects women. Although “one of the commonest forms of violence against women, it remains the least visible.”\textsuperscript{417} It has been legally defined as:

\begin{quote}
[A]ny action or non-action committed within the family by one of the members thereof which threatens the life, physical or psychological integrity or freedom of another member of that family and seriously damages his/her personality development.\textsuperscript{418}
\end{quote}

As of August 2006, no Moldovan law establishes a framework for punishing acts of domestic violence and protecting victims from further acts of aggression or during the legal process. A draft law is currently under consideration.\textsuperscript{419}

The Constitution provides that “everybody [has] the right to life and to physical and mental integrity,” and that, “[n]o one may be subject to torture or to cruel, inhuman or degrading punishment or treatment.”\textsuperscript{420} It also declares that “it is the foremost duty of the State to respect and protect the human person.”\textsuperscript{421}

\textsuperscript{417} Paragraph 4, Council of Europe Parliamentary Assembly Recommendation 1450 on Violence against Women in Europe (2000).

\textsuperscript{418} Council of Europe Committee of Ministers Recommendation No. R 85(4) on Violence in the Family (1985).

\textsuperscript{419} Moldova’s National Human Rights Action Plan calls for the establishment of shelters for victims of domestic violence, and for the development of a “legal framework for, and mechanisms to, intervene with respect to different types of violent men, including the evacuation of abusive partners from their dwelling in order to protect family members.” Part II, Chapter 11(b), 1(d) & (e) National Human Rights Action Plan for 2004 – 2008, p. 45. However, the first draft of the domestic violence legislation presented by the government did not include any legal framework for temporary restraining orders, nor for the removal of the aggressor from the family home. Draft Law on Preventing and Combating Violence in the Family, Draft Law No. 468, presented to the Parliament by the Government of the Republic of Moldova through the Social Protection, Health and Family Commission, on 10 February 2006 and 21 February 2006.


\textsuperscript{421} Article 16(1), Constitution of the Republic of Moldova. In its general recommendations, the CEDAW committee has stated that state parties should take appropriate and effective measures to overcome all forms of gender-based violence, whether by public or private act.” General Recommendation No. 19 (11th Session, 1992), para. 24(a). \textit{See also,} Andreea Vesa, \textit{International and Regional Standards for Protecting Victims of Domestic Violence,} 12(2) Journal of Gender Social Policy & the Law 309, at 333-334 (2004).
Generalized assault provisions from the Criminal Code and Code of Administrative Offenses can be applied in cases of domestic violence. While the Code of Administrative Offenses contemplates more expedited procedures than a standard criminal trial, offenses under the Code of Administrative Offenses are not included in the aggressor’s record, impeding a subsequent application of aggravated circumstances for repeated offenses. The Criminal Code does establish as an aggravating circumstance intentional injury to, and the murder of, one’s spouse.

Under both the Criminal Code and the Code of Administrative Offenses, the victim is required to sustain debilitating injuries resulting in the loss of capacity to work or disfigurement in order to bring a claim. Consequently, violence that does not prevent work or leaves no mark is not punishable.

With respect to sexual violence, rape is defined solely in terms of sexual intercourse. There is no legal provision explicitly prohibiting marital rape. The pregnancy of the victim constitutes an aggravating circumstance to the crime of rape. Statutory rape, defined as sexual relations with persons under the age of sixteen, is also criminalized. It is punishable by imprisonment for up to seven years, but only if the perpetrator “knew with certainty” the age of the victim.

With respect to economic abuse, the failure to pay child support by either spouse is criminalized.

Significantly, Moldova’s National Human Rights Action Plan recognizes failures in police response to domestic violence. It calls for the drafting of a “Code of Principles on Combating Domestic Violence that would oblige public officials to respond to domestic violence irrespective of the victim’s attitude toward the act of violence.” It also seeks to “[s]trengthen the law enforcement sector in combating domestic violence.”

423 Articles 145, 150, 151(2)(a), 152(2)(c), 154(2)(a), Criminal Code.
424 Article 47(1), (2), Code of Administrative Offenses; Article 151(1), Criminal Code.
425 Articles 171-175, Criminal Code.
426 Article 164, Criminal Code.
428 Article 202, Criminal Code.
At the same time, the Moldovan Criminal Code penalizes the failure to prevent a crime, which would apply in cases where police do not respond to, and/or do not fully investigate, complaints of domestic violence (see below) and where the victim, therefore, is subject to further abuse.\textsuperscript{430} Failure to respond adequately may also give rise to negligence claims. Negligence that causes “great prejudice to the public interests or to the rights and interests protected by law of . . . physical and legal persons” also carries sanctions such as fines, imprisonment and/or deprivation of the ability to hold certain positions. The sanctions increase if such negligence results in death or other “serious” consequences.\textsuperscript{431}

The failure of law enforcement or other public officials to protect women from violence that affects them disproportionately constitutes discrimination. The Criminal Code protects against infringements of the right to equality as guaranteed by the Constitution when such breaches are committed by a public official. It provides for damages to the victim and the deprivation of both freedom and the right to hold certain public positions for a certain period of time for the public official.\textsuperscript{432}

Model legislation on domestic violence offered by the United Nations Special Rapporteur on Violence against Women provides that “[p]olice officers shall not assign a lower priority to calls concerning alleged abuse by family and household members than to calls alleging similar abuse and violations by strangers.”\textsuperscript{433} Further, the Parliamentary Assembly of the Council of Europe has recognized that:

Member states have an obligation under international law to act with due diligence to take effective steps to end violence against women, including domestic violence, and to protect its victims/survivors. If they do not themselves want to be held responsible, states must take effective measures to prevent and punish such acts by individuals and to protect the victims/survivors.\textsuperscript{434}

\textsuperscript{430} Article 331, Code of Criminal Procedure.
\textsuperscript{431} Article 329, Criminal Code.
\textsuperscript{432} Article 176, Criminal Code.
Government authorities are required to exercise due diligence to prevent, investigate, and, in accordance with national legislation, punish acts of violence against women whether those acts are perpetrated by the state or by private persons.435

Trafficking is also considered one of the many forms of violence against women in addition to it being an internationally recognized criminal offense.436 It is fully addressed in the discussion under Article 6.

**Article 12 De Facto Compliance**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of health care in order to ensure, on a basis of equality of men and women, access to health care services, including those related to family planning.

In December 2005, the state established the Unique Program on Compulsory Medical Insurance.437 According to experts, implementation of this system has improved access to healthcare among a variety of disadvantaged groups, including the poor, women and other vulnerable populations. Yet, one respondent from the field stated that there remain people who for “different reasons don’t benefit from health insurance.” For example, one respondent indicated that women from socially disadvantaged groups do not know that they have the right to access certain medical benefits.438

According to medical professionals, there is no overt discrimination against women in their access to health care services. Yet, the state medical insurance scheme remains inadequate in providing women with quality basic healthcare. The system is

435 Article 4(c), United Nations General Assembly Declaration on the Elimination of Violence against Women, A/RES/48/104, 85th Plenary Meeting, 20 December 1993. See also, Velázquez Rodríguez v. Honduras, Inter-American Court of Human Rights (series C), No. 4 (July 29, 1988), a case interpreting a provision in the Inter-American Convention on Human Rights on the state party’s duty to ensure all rights recognized in the treaty. The court explained that the duty “to ensure” requires a state to take reasonable steps to prevent violations of rights recognized in the treaty, investigate violations, prosecute those responsible, and ensure the victim receives adequate compensation. The court stated that a government “has failed to comply with [this] duty . . . when the State allows private persons or groups to act freely and with impunity to the detriment of the rights recognized by the Convention[,]” and, Report No. 54/01, Brazil, Case No. 12.051 (Maria da Penha Maia Fernandes), 6 April 2001, available at http://www.cladem.org/english/regional/litigio_internacional/cas21i.asp.


438 CEDAW De Facto: Study on Women in Rural Areas, p. 34.
organized by district and therefore limits the choice of doctors. In addition, doctors can prescribe for free only those drugs that appear on a pre-established list by the National Chamber for Health Insurance.

Furthermore, the “integral system” provided by the compulsory plan allows for a limited number of examinations and/or tests.\(^{439}\) If the patient requires additional tests in order to confirm a diagnosis, the patient will have to pay for them, which may render them inaccessible. For example, an ultrasound examination is considered a specialized service and costs 70 - 100 lei (approximately US $5.25-7.50).\(^{440}\) Specialized care is reportedly offered, however, in cases of emergency. Further, in practice, fees are charged for basic services that are in theory guaranteed to be covered free-of-charge by the state. For example, doctors frequently refuse to assist patients, including for child delivery, if not paid a cash bribe. Personal anecdotes concerning corruption in the health care sector are extremely common.\(^{441}\)

In addition, there is a difference in the quality of health care services offered in Chișinău and those offered in rural areas, as well as a difference between services offered in private and public institutions.

The absence of research concerning the practical implications of health care policies given the biological differences between men and women also characterizes the present system. For example, no special policy initiatives address domestic and sexual abuse, other than to document serious cases for statistical purposes. Psychosocial issues that affect women, such as post-natal depression and menopause, are also not specifically addressed. Significantly, female senior citizens outnumber males. Elderly and disabled women benefit from the same package of medical services as the rest of the population, despite their additional needs.

Since 1998, breast cancer has remained the number one environmentally-related cause of death for women. Breast cancer is the most common form of cancer in Moldova.\(^{442}\)

\(^{439}\) CELAW Le Facto Study on Health, Education and Social Assistance, p. 47.

\(^{440}\) Id. 38.

\(^{441}\) See also, Maureen Lewis, Governance and Corruption in Public Health Care Systems, Center for Global Development, January 2006, pp. 14-15, (showing that in Moldova the health care sector ranked first as the most corrupt sector in society), and, Svetlana Pinzari, Lilia Carasciu, and Ianina Spinei, Diagnosis of Erilery in Business, Transparency International Moldova, Chișinău 2005, p. 44 (in a survey of households, customs (41.3%), police (41.1%), health care institutions (39.9%), and education institutions (27.7%) were classified among the institutions where bribes are most frequently made).

\(^{442}\) CELAW Le Facto Study on Health, Education and Social Assistance, p. 44; see also, http://www.mpsg.gov.md/healthcare/ServiciulPresa/ComunicatePresa/Comunicat_31_05_04 (identifying breast cancer as the most common cancer in Moldova at 11.8%) (last checked 1 June 2006).
The rate among adolescent girls for syphilis is almost double that for boys of the same age, while the rate among girls up to 14 years of age for gonorrhea is ten times that of boys. Cancer rates among adolescent girls are also more than double that of adolescent boys.

Reproductive Health & Family Planning

Because of investment by international organizations, such as the United Nations Family Planning Agency and the World Bank, into the Ministry of Health and Social Protection’s family planning programs, services in this field are improving. There are now reproductive health specialists, including midwives in each district.

While officially the state system covers testing and treatment for sexually-transmitted diseases and HIV/AIDS, in practice, patients have to pay for tests and often for treatment as well. It is only through the fiscal sponsorship of the National Center of AIDS Control by international organizations that HIV/AIDS victims are able to receive treatment. Free contraception is only offered by public health care services for a limited period of time. Given the costs associated with contraception, the vast majority of women resort to sterilization or to using an intrauterine device, which only needs to be replaced every few years.

There has been a major decline in the number of abortions since 1992, from 71,430 that year, to 17,965 in 2004. At the same time, the percentage of abortions performed in the first trimester dropped from more than half in 1992 to less than 1/3 in 2004. In other words, women are aborting later in their pregnancies with resultant increases in risks. In 2004, 8.9% of the abortions were performed for adolescents. Most abortions are performed for women ages 20-34.

Coupled with inadequate access to quality health care, discrimination against women in the family further compromises their health, particularly reproductive health, and their rights in that regard. For example, women are considered both socially and

446 Id. at 54.
449 Id.
financially responsible for obtaining contraception, and other family planning issues, such as obtaining an abortion.

One respondent noted cases in which pregnant women were forced by their families to marry to avoid bringing shame on the family. One stated, “[a]bortion in this country is a prohibited subject, we are afraid to provoke too much discussion. . . . Education regarding abortion and the negative aspects of illegal abortion is not socially promoted.”

One NGO worker who is involved in public education concerning abortion stated, “[m]any women have died because of complications resulting from illegal abortions. [Yet,] it is practically impossible to prove that a woman underwent an illegal abortion.”

Women seeking abortion services are required to undergo tests for syphilis and HIV/AIDS. Women are not always told that they are undergoing such tests. This is particularly problematic given the failure of doctors to observe patient confidentiality requirements, (see below). While legally women under the age of 18 are not entitled to obtain an abortion without parental consent, in practice this law is primarily applied to women under the age of 17.

A surgical abortion costs 165 lei (approximately US $12.50) while one obtained medicinally costs between 200-300 lei (approximately US $15-23). Because such procedures are not currently covered by the state medical insurance plan, women who cannot afford such services undergo illegal abortions.

One respondent commented:

> It is women who must decide whether to keep the pregnancy or have an abortion given the limited access to reproductive health services. We had a case in which a 20-year-old woman with three children came to request an abortion at 20 weeks. When asked why she came so late, she said that her husband was against the abortion. When he left for Moscow she decided to appeal to the doctors.

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451 CEDAW De Facto Study on Health, Education and Social Assistance, p. 56.
452 Id.
453 Id. at 34.
454 Id. at 15 & 56.
455 Id. at 5.
Additionally, in cases in which women do not work, they must request money from their husbands or family members to undergo reproductive health procedures that are only provided for a fee. Poverty and male dominance in the family can thus intersect to inhibit women’s full exercise of choice concerning their reproductive lives.

Women face a variety of obstacles in their access to reproductive health care: violations of confidentiality, financial difficulties and the pressure and influence of family members.

Confidentiality & Professional Ethics

Another significant problem within the healthcare sector is the lack of observance of rules concerning confidentiality. Respondents in the medical profession admitted to such breaches. One respondent went so far as to state that the “most acute issues in health care are those concerning [the] observation of patients’ rights to confidentiality.”456 While patients seem to be aware of the fact that doctors do not maintain confidentiality concerning their consultations, they may not be aware of professional ethical standards in medicine, the doctor-patient confidentiality requirement in particular.

While HIV counseling is to be undergone voluntarily and confidentially457 such requirements are not observed. Breaches of confidentiality in cases of HIV/AIDS have been documented in over eleven medical establishments.458 Furthermore, on a number of occasions, doctors treating trafficking victims in rural areas have failed to maintain confidentiality concerning the victims’ HIV positive status. These cases result in the victims being subject to further incidents of discrimination.459

Another reportedly key issue is the failure of doctors to provide “objective and genuine information, and not convey the diagnosis as the doctor wants to see it.” One doctor admitted, “[s]ometimes we don’t tell the patient his or her diagnosis, but rather talk to relatives.”460

Of several respondents interviewed from the medical profession, only one had heard of a sexual harassment complaint against a doctor. It appears that complaints

456 Id. at 30.
458 CEAW Le Facto Study on Health, Education and Social Assistance, p. 56.
459 Interview with Tatiana Catană, Lawyer, CPTW, March 2006; interviews, IOM Rehabilitation Center, January 2006.
460 CEAW Le Facto Study on Health, Education and Social Assistance, p. 43.
procedures for violations of patients’ rights are institution-specific, if they exist at all.\footnote{Id. at 56.}

\textit{Violence against Women}

\textit{“A wife that is not beaten is like a house that is not swept.”}

- Popular Moldovan Saying

A recent field study of domestic violence in Moldova found that 41% of the respondents had been victims of domestic violence at one point in their lives.\footnote{This number is quite high, given the tendency of women to under-report violence. \textit{Women at Risk in the Republic of Moldova}, Winrock International, (June 2005) p. 63. In a recent report, the percentages of women who said they had been abused by an intimate partner ranged from 48% in Zambia to 18% in Cambodia. Robert Lalasz, Domestic Violence in Developing Countries: An Intergenerational Crisis, Population Reference Bureau, http://www.prb.org Template.cfm?Section=PRB&template=/ContentManagementContentDisplay.cfm&Content ID =11634, last visited 2 June 2006.} The study, \textit{Women at Risk in the Republic of Moldova}, found that the life-long global rate of domestic violence is significantly higher for women aged 25 to 35 years old. The rate of violence is also higher for those women with less education as well as women in the northern and southern regions of the country, in other words, rural areas. Women with children also suffer higher rates of domestic violence than women without children.\footnote{The study included physical, sexual, psychological, economic and social violence, and interviewed 900 women between the ages of 16 and 35 from throughout Moldova. \textit{Women at Risk in the Republic of Moldova}, Winrock International, (June 2005) p. 63.}

Importantly, the most pervasive form of domestic violence in Moldova is psychological violence that accompanied all other forms of reported violence. Thirty-nine percent of the women who reported being victims of violence stated that psychological violence was the most hurtful.\footnote{Id. at 64.} Investigations conducted by international human rights organizations have revealed striking data. One report “observed that women in Moldova are generally ashamed to come forward about domestic violence. This is often due to common perceptions that violence is permissible to put women in their place or that women provoke the violence.”\footnote{Stop Violence Against Women, http://www.stopvaw.org/Moldova.html, last visited 5 June 2006, (citing Women 2000: An Investigation into the Status of Women’s Rights in Central and South-Eastern Europe and the Newly Independent States).}

\footnote{Id. at 64.}
Another study in Moldova revealed that:

[R]apes of women who have three or more children were almost always committed by their intimate partners. The report also showed that of the women who reported being raped in the survey, 73% had histories of physical abuse by a partner in the past. Of all the women who reported being raped, one in two was forced to have sexual intercourse by her husband/partner or ex-husband/ex-partner; 11% were raped by a boyfriend or ex-boyfriend; and 14% were raped by a date or acquaintance.\footnote{Domestic Violence in Moldova, Minnesota Advocates for Human Rights (December 2000) p. 30 citing, Reproductive Health Survey, Moldova, 1997, by the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, p. 262 (emphasis added).}

It is also important to note that in Moldova, “[r]ape accounts for the largest percentage of all crimes committed against the person,” increasing from 71% in 1994 to 91.5% in 1998. Significant rises in the rape of minors as well as gang rapes have also been reported.\footnote{Initial Report of the Republic of Moldova, CEDAW, 26 October 1998, paras. 67 & 68.}

In Moldova, police generally neither investigate claims of domestic violence, nor arrest perpetrators, nor remove the abusers from their home. Another major obstacle arises even when police do decide to report a case officially; they often fail to prepare the file for the court in a timely manner, resulting in the dismissal of a case. A review of district court level cases found that 40% of the domestic violence cases were dismissed because police had failed to forward the file to the court within the 2 month time period mandated by law.\footnote{Minnesota Advocates for Human Rights, Domestic Violence in Moldova, (December 2000) p. 19.}

While provisions within the Criminal Code and Code of Administrative Offenses criminalize assault, murder and rape,\footnote{See, e.g., Articles 95-98, 101, 124, 151(1), (2)(a), 171-175, Criminal Code; Article 47, Code of Administrative Offenses.} “the government rarely prosecutes domestic assault crimes under its general assault laws.”\footnote{Domestic Violence in Moldova, Minnesota Advocates for Human Rights (December 2000) pp. 3, 30 (also finding stating “judges and women’s advocates report that very few [rape] cases are ever brought to court.”)} Moldova’s initial report to the CEDAW Committee stated:

[T]he number of cases of violence in the family, whose victims are women and children, are constantly increasing. Unfortunately, it is very difficult for the State to control violence in the family, usually because the authorities are informed only in the complicated situations, the others being considered as family conflicts.\footnote{Initial Report of the Republic of Moldova, CEDAW, 26 October 1998, para. 64 (emphasis added).}
Again in its 2004 report to the CEDAW Committee, the government of Moldova described its response to domestic violence complaints as “[a] very difficult task.” It reiterated that “often, resort bodies get involved only in cases with severe consequences, others being categorized as ordinary domestic conflicts.”

Police failure to enforce these laws effectively has resulted in women’s unwillingness to report incidents of domestic violence. It is not surprising then that when asked why they did not seek help, almost half of the victims, aged 16 to 24 years old, answered “it is useless.” Thirty-seven percent of victims aged 25 to 35 answered similarly.

The government of Moldova is currently in the process of developing a family violence law. It is unclear, however, whether the legal framework, once developed, will be effectively enforced. Meanwhile, the absence of a specific legal framework to protect victims of domestic violence, the majority of whom are women, constitutes systemic discrimination according to international and regional standards. In addition, the existing legal scheme functions poorly and in a discriminatory manner to protect women from violence.

While the Criminal Code does include aggravating circumstances for intentional injuries and murder between spouses, these provisions should be extended to violence within non-marital relationships, for example, to couples who live together outside of marriage as well as to non-cohabitating couples.

A recent report on domestic violence in Moldova revealed the health impact that domestic violence has on women’s lives, in addition to the direct injuries sustained by violent acts. Women report increased headaches, stress, fatigue and back pains, higher rates of abortion and suicidal thoughts.

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472 Combined 2nd and 3rd Periodic Reports of the Republic of Moldova, CEDAW, CEDAW/C/MDA 2-3, 10 November 004, p. 15.
475 The Republic of Moldova recently has been found liable in a series of cases before the European Court of Human Rights for failing to provide its citizens with an effective remedy under Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. See, e.g. Corsacov v. Moldova, Application no. 18944/02, Judgment dated 6 April 2006, para. 82.
476 See, e.g., Report No, 54/01, Brazil, Case No. 12.051 (Maria da Penha Maia Fernandes), 6 April 2001 (in which the Inter-American Commission on Human Rights found Brazil in violation of the right to equal protection, the right to a fair trial and the right to judicial protection for its failure to prosecute the applicant’s husband for attempted murder which left the applicant paralyzed. The case languished in the courts for 15 years. The Commission found that given the high incidence of domestic violence in Brazil and the extremely low prosecution rate, the case represented a pattern of state-condoned violence against women).
Yet, as noted above, the state medical system has not developed any programs specifically addressing sexual and domestic violence. As noted by one doctor, “The phenomenon of violence is not considered a serious problem even by doctors. They believe that the police are responsible for dealing with this issue.”

It is, however, being introduced as an issue in continuing education courses for those specializing in family medicine. Statistical data is collected by doctors, however, as they “are obliged to inform the police” in cases of certain types of trauma or obvious indications of physical violence.

Women in the Medical Profession

The number of women within the medical profession has been rising over the last decade. Yet, although women constitute approximately 80% of health workers, “almost all high-level positions are held by men.” For example, women are under-represented in higher-ranking positions, such as surgery or gynecology. The absence of female doctors may influence the quality of care received by women within the system. In contrast, approximately 70% of the medical professionals in Moldova are nurses, 99% of whom are women. There are only two female representatives in the trade union for the medical profession. The Center for Mother and Child Health Care in Chişinău is run by a woman.

Doctors and nurses are required to attend continuing education courses in their field of specialization every five years. Yet, they are required to pay for transportation and lodging for such training out of their personal funds. Further, they are not paid their salary during their absence. A month-long course costs approximately 750 lei (approximately US $56).

2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.

The government is obligated to provide free health services to women during pregnancy, confinement and the post-natal period. However, in practice services

478 CEDAW Le Facto Study on Health, Education and Social Assistance, p. 32.
479 Id. at 40.
480 Id. at 33.
481 For the academic year 2004/5, women comprised 85.6% of college students studying healthcare professions, and 65% at the graduate level. Women and Men in the Republic of Moldova, UNDP (2005) pp. 63, 67.
482 CEDAW Le Facto Study on Health, Education and Social Assistance, p. 37.
are often offered for a fee. At the same time, the quality of services is questionable enough “that women are put in situations where they must decide whether to keep the pregnancy or not as the access to reproductive health services is so limited. The new mandatory health insurance package does not fully cover reproductive health care and family planning.”

Forty-eight percent, almost half, of pregnant women suffer from anemia, which in 2004 accounted for 25% of all delivery complications. With the introduction of the mandatory healthcare system came a minor increase in nutrition expenditures for pregnant women during their hospital stays, from 3 to 16 lei (approximately US $ 0.22-1.20). Pregnant women also receive nutritional supplements containing iron and folic acid free of charge. Outpatients with more than five children can receive milk and other nutritional supplements such as iron and folic acid. In fact, one respondent noted that such supplements are prescribed even when they are not necessarily needed since they are free of charge. Despite this aid, there is a widespread lack of public information on nutritional needs during pregnancy.

483 Id. at 14.
Article 13

1. States Parties shall take all appropriate measures to eliminate discrimination against women in other areas of economic and social life in order to ensure, on a basis of equality of men and women, the same rights, in particular:
   (a) The right to family benefits;
   (b) The right to bank loans, mortgages and other forms of financial credit;
   (c) The right to participate in recreational activities, sports and all aspects of cultural life.

Article 13 Areas of Concern:

- State support for paternity leave would foster a more egalitarian approach to childrearing in Moldova and reduce stereotypes of women as homemakers;
- Temporary special measures should be employed in the financial sector to promote women’s business development;
- Women and girls should be encouraged to participate in all sports activities.

Article 13 De Jure Compliance

(a) The right to family benefits;

Social assistance can be provided in either the form of social services or monetary benefits.485 Intended beneficiaries include vulnerable families, such as single-parent families and families without income; disabled children; elderly persons; disabled persons; and, “other categories of people and families at risk.”486

Nominative compensation is available as a right to disabled persons, including disabled war veterans and those disabled in the course of employment as well as at birth; vulnerable families, including families with four or more children, single parent families and single pensioners; and veterans. Such nominative compensation can be in the form of payment for: utilities, electricity, gas, coal and firewood.487

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486 Article 7, Law on Social Assistance. This is consistent with Moldova’s obligations under Articles 23 & 30 of the Revised European Social Charter, ETS No. 163, 3 May 1996 (providing the right of aged persons to social security, and the rights of all persons to protection against poverty and social exclusion).
The Law on the Public System of Social Insurance contains an equality provision, which includes equality based on sex.\textsuperscript{488}

As noted above, women can receive financial assistance for maternity leave, child care, medical treatment for ill children, and for the care of ill children under the age of seven.\textsuperscript{489} A one-time payment for the birth of each child is established expressly for “insured female parties, wives who are supported by their employed husbands and unemployed female workers.”\textsuperscript{490} Monthly compensation for child care also is paid to mothers who are caring for young or disabled children or, under certain conditions, to a caretaker who is the child’s father, guardian, grandparent or other relative.\textsuperscript{491}

Further, pursuant to the Labor Code, women are entitled to 70 days paid maternity leave that can be used either before or after childbirth. Women are also entitled to an additional 56 days of paid post-natal leave. This post-natal leave can be extended in cases of complications. Partially paid leave can be taken any time until the child reaches the age of three. Unpaid maternity leave is available until the child reaches six years old.\textsuperscript{492} Fathers, grandparents and other relatives are limited to taking partially paid leave to care for the child until the child is three years old, and unpaid leave for childcare until the child is six.\textsuperscript{493}

(b) The right to bank loans, mortgages and other forms of financial credit;

There is no explicit law proscribing sex or marital status discrimination in the field of financial credit. The laws governing financial institutions make no reference to the sex of the applicants for financial credit.\textsuperscript{494}

The Gender Equality Plan included the promotion of women’s business development.\textsuperscript{495} Similarly the National Human Rights Action Plan calls for the


\textsuperscript{489} Articles 1(2), 5(d), 16, 18 & 19, Law on Compensation for Temporary Work Incapacity and Other Compulsory Social Services, Law No. 289-XV, 22 June 2004, published in Official Monitor, No. 168-170/773, 10 September 2004 (hereafter Law on Compensation for Temporary Work Incapacity.)

\textsuperscript{490} Article 16(1), Law on Compensation for Temporary Work Incapacity.

\textsuperscript{491} Articles 6, 18(2) & 19, Law on Compensation for Temporary Work Incapacity.


\textsuperscript{493} Article 124(4) & 126(1), Labor Code.


development of a “legislative framework to grant preferential loans in order to promote business women, especially in small and medium-sized businesses.”496 These Plans are declaratory in nature and do not have the force of binding law.

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

Moldovan law provides the right to physical education, to practice sports, both at the amateur and professional level, and to rehabilitative physical therapy.497 There is no specific provision addressing women’s participation in sports.

Article 13 De Facto Compliance

(a) The right to family benefits;

Concerns regarding discrimination against women in hiring decisions due to the extra costs associated with maternal health protections were expressed by de facto respondents. Ensuring the legal right and the cultural acceptance of paternity leave would provide a more egalitarian solution as it would further reduce stereotypes relegating childcare to women.

(b) The right to bank loans, mortgages and other forms of financial credit;

Temporary special measures should be implemented in the financial sector to promote women’s business development such as: reduced fees for the registration of women’s businesses, tax breaks for the first year or years of business, special benefits in the granting of business licenses, special consideration in the participation in tenders for the procurement of state contracts and special programs in obtaining business loans.

(c) The right to participate in recreational activities, sports and all aspects of cultural life.

As stated above, equal opportunities exist for both men and women in the field of physical education, including compulsory tests. Yet, classes and tests vary according to sex.498 Free access to sports facilities is available when related to a student’s curriculum. Additional access is possible, but for a modest fee.

496 Part II, Chapter 11(a), 3(b), National Human Rights Action Plan for 2004 – 2008, p. 44.
498 CELAW De Facto Study on Health, Education and Social Assistance, p. 83.
Experts opine that there is a lack of sports education in Moldova. According to one, “we practice sports, [we do] not educate professional athletes.” With respect to women, social and cultural barriers influence their tendency to practice sports. The expert added, “[i]n accordance with our traditions, women are not encouraged to practice those sports thought to be appropriate for men.”499

Art school at the college level is equally comprised of male and female students. At the graduate level, women comprise 64.2% of the students.500

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499 Id. 78-9.
**Article 14**

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:
   (a) To participate in the elaboration and implementation of development planning at all levels;
   (b) To have access to adequate health care facilities, including information, counseling and services in family planning;
   (c) To benefit directly from social security programmes;
   (d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;
   (e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;
   (f) To participate in all community activities;
   (g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;
   (h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

**Article 14 Areas of Concern:**

- There are no regulations concerning sanitary conditions in Moldova’s rural areas, where sewage systems and electricity often do not work, and not all villages have access to clean water;
- There is a stark difference between the quality of healthcare received in rural areas and that received in the city;
- Not all villages have access to public transport;
- Social security benefits should be provided to women who work in family-owned and agricultural businesses;
- There is a lack of information on the status of rural women in Moldova.
Article 14 De Jure Compliance

National legislation pertaining to rural life explicitly grants women priority of right in rearing and educating children and provides that the state must ensure the social development of villages both by promoting demographic policies aimed at youth retention and creating favorable conditions for women to raise children in rural areas.501

Women have the right to own land and other productive resources as stipulated in the land privatization program set forth in the Law on Privatization. The Law on Privatization identifies the right to free access to privatization and equality for all participants as one of its principles.502

The Gender Equality Plan included provisions promoting women’s business and entrepreneurial activities in the rural sector.503

The CEDAW Committee expressed concern in 2000 regarding “the lack of information about the various aspects of the situation of rural women in the Republic of Moldova” contained in the initial report.504 The lack of comprehensive information on women in rural areas persists.

Article 14 De Facto Compliance

1. States Parties shall take into account the particular problems faced by rural women and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetised sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of this Convention to women in rural areas.

There is a general lack of research and statistical data concerning women in rural areas. However, it remains clear that in the rural areas, “society is still very far away from conformity to the requirements of the Convention.” Indeed, in the regions, the


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general public “does not know about the existence of the Convention and is not interested in the problem of gender inequality.”

With respect to the Gender Equality Plan, in the regions, “[n]o one has heard about such plan.” Neither have respondents from rural areas heard about temporary special measures.

Interviews conducted in rural areas among local elites revealed diverse understandings of the term “discrimination,” as well as a diversity of opinion concerning the existence of discrimination against women in Moldova as a social problem. While some recognized that “the problem of inequality on the basis of sex is widespread,” others claimed that discrimination does not exist. As one expert explained:

We should note that the opinion concerning the absence of discrimination very often contradicts further statements by respondents who later admit in the interview the existence of sex discrimination in many forms. It’s possible to conclude that the concept of discrimination is defined incorrectly, even by elites, and that its meaning is not realized in society, even by women.

Consequently, court cases involving sex discrimination in rural areas are extremely rare. Cases regarding sex discrimination in hiring and firing do exist. However, researchers noted that law enforcement personnel were not always able to answer questions concerning the existence of national anti-discrimination legislation, a clear indication that such legislation is underutilized.

**Economic Well-Being**

Implementation of the mutual legal responsibility of parents towards children born out-of-wedlock is increasingly important as the number of extra-marital births has significantly increased over the last five years, particularly in rural areas. Between 2000 and 2004, in rural areas the number of children born out-of-wedlock increased by almost 31.6% while the urban rate of increase was only 10.9%.

Despite laws requiring both parents to care for their children, even those born out-of-wedlock, men often fail to pay child support. Even in cases where child support

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505 CEEAW De Facto Study on Women in Rural Areas, pp. 6, 11 & 12.
506 Id. at 12 & 13.
507 Id. at 4.
508 Id. at 6 & 7.
is paid, it ranges from 150 to 200 lei per month (approximately US $11-15), approximately one-sixth of what is required to cover minimal basic needs. In an increasing number of instances, grandparents, relatives and neighbors care for children whose parents travel abroad in search of work. In 2004, the government of Moldova itself acknowledged that these numbers were increasing and “estimated that parents of approximately 20,000 children worked abroad and placed their children with boarding schools or entrusted them to relatives.”

2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:

(a) To participate in the elaboration and implementation of development planning at all levels;

The government of Moldova has not undertaken any programs aimed directly at supporting rural women. Women generally participate on an equal basis with men in development projects.

(b) To have access to adequate health care facilities, including information, counseling and services in family planning;

The recent implementation of a compulsory medical insurance plan has reportedly increased access to healthcare facilities to people living in rural areas. However, medical professionals state that there is a distinct difference between the quality of healthcare services provided in Chișinău as compared to the quality of services provided in rural areas. For example, emergency medical care is very poor in rural areas, as is access to counseling. There is little knowledge about the medical services available outside of one’s village.

In 2004, the maternal mortality rate in rural areas was almost five times (33 per 100,000 live births) that in urban areas (7.1 per 100,000 live births). The stark difference between these numbers reflects a decline in maternal mortality rates among the urban population, without a parallel decline in rural areas.

511 CELAW De Facto Study on Women in Rural Areas, p. 40.
512 Id.
Violations of confidentiality requirements create acute problems, particularly for adolescents, in rural areas where everyone knows each other. One respondent from the medical profession noted the tendency of adolescents to seek gynecological care in district centers, rather than in their own villages, where they are afraid both of breaches of confidentiality and simply being seen going to the gynecologist. However, the problem is not confined to adolescents. One respondent stated that patients in general “are afraid to see a doctor, especially in rural areas, because everyone knows each other in villages.”

**Violence against Women**

With respect to women’s health, it is important to note that rural women suffer a significantly higher “lifelong global rate of domestic violence” than do urban women in Moldova. At the same time, such violence is socially tolerated, “[t]here exists an opinion that this is how it should be.”

**(c) To benefit directly from social security programmes;**

In general, women can participate in the social security system irrespective of where they live. Women who work in small, family-run businesses and family farms in rural areas tend to experience de facto discrimination in their receipt of social security as the benefits generally accrue to the male head of the family. In such cases, women run the risk of having no social security benefits either in the event of illness or upon retirement.

**(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;**

Primary educational facilities exist in even remote locations, and almost all children attend school. A child’s failure to attend school can most often be attributed to the economic needs of the family and the parents’ attitude toward education. However,
in rural areas, students are often not separated by age. In such cases, the older students reportedly have a negative effect on the younger students, exposing them to many of the unhealthy practices of adolescent and pre-adolescent behavior.\textsuperscript{521}

Schools in rural areas also have over-crowded classrooms, and teachers in rural areas make “miserable salaries,” resulting in a “brain drain” and the hiring of teachers who may not be qualified.\textsuperscript{522}

The state does not undertake educational programs in rural areas to increase women’s economic independence. Further, there are no educational programs in rural communities directed toward changing traditional cultural practices, with the exception of what is taught in schools.\textsuperscript{523}

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(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment; \\
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The state has not created any special programs aimed to foster business opportunities for women in rural areas.\textsuperscript{524} In addition, nepotism remains a serious problem in impeding economic opportunities.\textsuperscript{525}

Respondents in rural areas noted a significant level of \textit{de facto} employment discrimination on the basis of age and sex, indicating that it is extremely difficult for a woman over the age of forty to find a job. Discrimination on the basis of ethnic origin, particularly with regard to language, is another significant problem. Respondents claimed that legal cases regarding sex discrimination in hiring and firing do exist in rural areas, but mostly challenging discrimination based on maternity.\textsuperscript{526}

While the growth of women’s participation in the labor force was noted, the best paid jobs are in Chișinău, resulting in migration to the city. However, these jobs often require a higher level of skills. In addition, women coming from rural areas to work in Chișinău encounter problems accessing both medical care for themselves

\textsuperscript{521} Interview, Igor Țurcanu, Lawyer, Law Firm of Igor Țurcanu, Edineț, May 2005.
\textsuperscript{522} Id.
\textsuperscript{523} \textit{ELAW De Facto Study on Women in Rural Areas}, pp. 10 & 41.
\textsuperscript{524} Id. at 41.
\textsuperscript{525} Interview, Igor Țurcanu, Lawyer, Law Firm of Igor Țurcanu, Edineț, May 2005.
\textsuperscript{526} \textit{ELAW De Facto Study on Women in Rural Areas}, pp. 7 & 10.
and their children, and kindergartens, both of which require registered residence in Chișinău. 527

Roma women reportedly rarely work outside the home, increasing their financial dependence upon their husbands. 528

(f) To participate in all community activities;

In general, women participate in all community activities and can be said to be more actively engaged in cultural activities than men. Existing obstacles to their participation include poverty and/or religious or traditional norms. 529

(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;

Reportedly 60% of the landowners in the rural areas researched for this report are women. This is attributed to the fact that, during the period of registration, many men had left to seek work abroad, and thus did not have the requisite work experience on a collective farm. 530

With respect to agrarian reform, women have the right to participate on an equal basis with men. During the agrarian reform program, women comprised 60-70% of the privatization committee and approximately 20% of the land committee.

In principle, women have the same access to agricultural credit and loans as men. However, in practice, women in rural areas have less access to loans and technology, including communication technology. No special programs for women in rural areas exist to foster resource distribution or access to loans. 531

527 It would seem that the policy requiring persons to access services to which they have a legal right only in their place of domicile would violate the right to freedom of movement as guaranteed in the Moldovan Constitution. See Article 27(1), (2) Constitution of the Republic of Moldova (on The Right to Free Movement.)
528 CELAW De Facto Study on Women in Rural Areas, pp. 7 & 10.
529 Id. at 41.
530 CELAW De Facto Study on Women in Rural Areas, pp. 41 & 42.
531 Id. at 36 & 37.
(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

Many rural communities in Moldova do not have access to sanitary water supplies. Water sanitation projects are sponsored by the international community not the state. Sewage systems do not always function, neither does electricity. There are no regulations concerning sanitary housing conditions.\textsuperscript{532}

Transportation connecting villages to district centers is also a problem, as often the only available means is a fixed-rate taxi service. While rural areas do have telephone services, there is little or no access to the internet.\textsuperscript{533}

\textsuperscript{532} Id. at 42.
\textsuperscript{533} Id.
Article 15

1. States Parties shall accord to women equality with men before the law.
2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.
3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.
4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

Article 15 Areas of Concern:

- Law enforcement authorities must provide adequate information to trafficking victims regarding their role in and the status of legal proceedings in which they are participating as a party or a witness.

Article 15 De Jure Compliance

1. States Parties shall accord to women equality with men before the law.

The Moldovan Constitution provides that all citizens “shall be equal before the law and public authorities, irrespective of race, nationality, ethnic origin, language, religion, sex, opinion, political affiliation, property or social origin.”

Marital status is not included as a basis for discrimination in the definition of sex discrimination provided in the Gender Equality Law. The law does declare women’s equality in access to public office, business, education, employment, healthcare and the media.

The Code of Criminal Procedure requires that all institutions and persons participating in legal proceedings must respect the rights, freedoms and dignity of the person. In addition, the Code of Criminal Procedure and the Witness Protection Law provide victims of crimes, such as trafficking and domestic violence, with special courtroom measures, fostering women’s access to justice.

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534 Article 16(2), Constitution of the Republic of Moldova.
535 Article 2, Gender Equality Law.
536 See generally, Articles 6, 8, 9, 12, 13 & 14, Gender Equality Law.
537 Article 10, Code of Criminal Procedure.
The Civil Code and Civil Procedure Code should be applied according to principles of equality. The Civil Code contains an equality clause particularly with respect to civil capacity.

The right to possess private property is protected by the state without regard to sex. No law prohibits women’s legal capacity to own or administer property based upon her gender or marital status. As noted below, the spousal property is held in common, unless stipulated otherwise by contract.

All citizens of Moldova, irrespective of their sex, encounter major obstacles in accessing lawyers and tribunals in order to pursue their rights. In a large majority of the cases brought against Moldova to the European Court of Human Rights, the Court has found the state in violation of the European Convention for the Protection of Human Rights and Fundamental Freedoms for failing to execute judgments.

Right to Legal Information to Access Courts

The Moldovan Constitution provides that the “State ensures the right of everybody to know their rights and duties. For that purpose the State shall publish all its laws and regulations and make them accessible to everybody.” Under criminal

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538 Article 22, Code of Civil Procedure; Article I(1), Civil Code.
539 Article 23(1), (2), Civil Code.
540 Article 46, Constitution of the Republic of Moldova; Articles 1(1) & 316(1), Civil Code.
541 See, Articles 20-22, Family Code (governing spousal rights concerning the possession, use and division of joint and personal property).
543 Article 23(2), Constitution of the Republic of Moldova (on the Right of Each Person to Know his/her Rights and Duties.)
procedure, a victim has a right to be informed about matters relating to his or her status as such.\textsuperscript{544}

More specifically, anti-trafficking legislation requires that the “competent public authorities shall inform victims of trafficking in human beings of their rights, about the authorities, institutions and organizations that have competencies in the field of prevention and combating of trafficking…and protection and assistance of the victims.”\textsuperscript{545} The National Plan for the Prevention and Combating of Trafficking in Human Beings contains a provision ensuring “that all trafficked persons are informed about their rights” through legal counseling.\textsuperscript{546}

The Palermo Protocol obligates states to provide victims of trafficking with information on relevant court and administrative proceedings and with counseling and information about their legal rights in a language they can understand.\textsuperscript{547} Further, victims should be given “full warning, in advance, of the difficulties inherent in protecting identities and should not be given false or unrealistic expectations regarding the capacities of law enforcement agencies in this regard.”\textsuperscript{548}

In addition, all victims, not just trafficking victims, “should have the right to ask for a review by a competent authority of a decision not to prosecute, or the right to institute private proceedings.”\textsuperscript{549} Victims who request information concerning the status of the proceedings are entitled to such, including the outcome of the complaint, “the conduct of the criminal proceedings regarding the person prosecuted for the Offenses concerning them,” and the court’s sentence. Importantly, states must notify victims, in cases that may pose a danger to them, “when the person prosecuted or sentenced for an Offense is released.”\textsuperscript{550}

\textit{Victim’s Rights to Compensation}

Pursuant to the Anti-Trafficking Law, victims are entitled to recover damages and to compensation.\textsuperscript{551} The National Plan contemplates the establishment of a compensation

\textsuperscript{544} Article 58(2)-(4), Code of Criminal Procedure.
\textsuperscript{545} Article 20(5), Law on Preventing and Combating Trafficking in Human Beings.
\textsuperscript{546} Article 3.3(c),(1), National Plan for Preventing and Combating Trafficking in Human Beings.
\textsuperscript{547} Article 6(2)(a), (3)(b), Palermo Trafficking Protocol.
\textsuperscript{548} UNHCHR, Guidelines, 5.8 & 6.6.
\textsuperscript{549} Article (1)(B)(6), (7), Council of Europe Recommendation No. R (85) 11 on the position of the victim in the framework of criminal law and procedure.
\textsuperscript{550} Article 4(2)(a)-(c), (3), European Council Framework Decision on the standing of victims in criminal proceedings.
\textsuperscript{551} Article 23(2), Law on Preventing and Combating Trafficking in Human Beings.
fund for victims of trafficking.\textsuperscript{552} The fund is to be continually replenished through the confiscation of the assets of traffickers.

In addition to anti-trafficking legislation, the Constitution declares that “[e]ach individual shall be entitled to effective satisfaction on the part of the competent courts of law against acts that violate his/her lawful rights, liberties and interests.”\textsuperscript{553} Further, the Gender Equality Law entitles victims of sex discrimination to claim damages.\textsuperscript{554} Criminal courts can require convicted defendants to “offer financial support to the victim’s family” and to compensate the victim for damages caused within a specific time limit set by the court.\textsuperscript{555}

A civil party is entitled to sue for damages against the perpetrator, for costs incurred in the criminal case and for damages caused by illegitimate government action taken in a case.\textsuperscript{556} A victim can also seek to be compensated for the costs incurred in joining the criminal proceedings. To do so, they must be legally recognized as an “injured party,” and assume obligations to give statements before national authorities concerning the crime.\textsuperscript{557} They may also sue for damages if law enforcement authorities fail to perform their duties legitimately.\textsuperscript{558}

Victims also have the right under Moldovan criminal procedure to be recognized as a “civil party” in a suit attached to the criminal case against the same perpetrator.\textsuperscript{559} In such instances, if the victims suffered moral or material prejudice as a result of the crime, he or she can sue the perpetrator for civil damages.\textsuperscript{560} The status of a “civil party,” like that of an “injured party,” allows the victim to seek compensation for costs incurred in the criminal case as well as damages caused by illegitimate government action.\textsuperscript{561}

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\textsuperscript{552} Article 1.2(e), National Plan for Preventing and Combating Trafficking in Human Beings.
\textsuperscript{553} Article 20(1), Constitution of the Republic of Moldova (on Free Access to Justice.)
\textsuperscript{554} Article 24, Gender Equality Law.
\textsuperscript{555} Article 90(6)(d), (e), Criminal Code.
\textsuperscript{556} Article 62(1)(19), Code of Criminal Procedure.
\textsuperscript{557} Articles 58(3)(3), (5), 59 & 60, Code of Criminal Procedure.
\textsuperscript{558} Article 60(1)(16), Code of Criminal Procedure.
\textsuperscript{559} Article 58(3)(6), Code of Criminal Procedure.
\textsuperscript{560} Article 61, Code of Criminal Procedure.
\textsuperscript{561} Article 62(1)(19). Code of Criminal Procedure.
The Moldovan Civil Code further provides for the possibility of a remedy for damages: caused by an unlawful administrative decision or as a result of a failure by a public authority or public official to act upon a request made within the statutory time-limit. Individuals shall be entitled to claim general damages caused as a result.\textsuperscript{562}

International standards require that “[t]rafficked persons, as victims of human rights violations, have an international legal right to adequate and appropriate remedies.”\textsuperscript{563} The Palermo Protocol and the Convention against Transnational Organized Crime oblige States Parties to establish appropriate procedures to provide victims with access to compensation and restitution.\textsuperscript{564}

In addition, the European Convention for the Protection of Human Rights and Fundamental Freedoms also provides, “[e]veryone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority.”\textsuperscript{565} It is significant that the European Court of Human Rights has issued ten cases in which it found Moldova to be in violation of the Convention for failing to enforce judgments that provided remedies in the form of financial compensation to prevailing parties.\textsuperscript{566} None of the cases addresses human trafficking, however.

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

Under Moldovan law, natural persons are not to be deprived of their legal capacity. The Civil Code renders null and void contracts intended to limit the rights of persons

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\textsuperscript{562} Article 1404(1), (2), Civil Code.

\textsuperscript{563} UNHCHR, Guideline 9.

\textsuperscript{564} Article 25(2), TOC Convention; see also Article 6(6), Palermo Trafficking Protocol.

\textsuperscript{565} Article 13, ECHR. See also, Article 8 of the Universal Declaration of Human Rights, Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948, (stating, “[e]veryone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.”)

\textsuperscript{566} Fedorov v. Moldova, Application No. 74153/01, 18 January 2005, para 54; Fedyan v. Moldova, Application No. 49806/99, 18 May 2004, para. 52; Scutari v. Moldova, Application No. 20864/03, 26 July 2005, para. 23; Ecuncea and Others v. Moldova, Application Nos. 18872/02, 20490/02, 18745/02, 6241/02, 6236/02, 21937/02, 18842/02, 18880/02, 18875/02, 6 October 2005; Cricaru v. Moldova, Application No. 18882/02, 20 October 2004; Fasteli and Others v. Moldova, Application Nos. 9898/02, 9863/02, 6255/02 and 10425/02, 15 September 2004, para. 21; Lunte and Others v. Moldova, Application Nos. 2916/02, 21960/02, 21951/02, 21941/02/21933/02, 20491/02, 2676/02, 23594/02 21956/02, 21953/02, 21943/02, 21947/02 and 21945/02, 15 September 2004, para. 32; Sirbu and Others v. Moldova, Application Nos. 7562/01, 73565/01, 73712/01, 73744/01, 73972/01 and 73973/01, 10 November 2004, para. 23; Timbal v. Moldova, Application No. 22970/02, 12 September 2004, para. 18; and, Lumbraveanu v. Moldova, Application No. 20940/03, 24 May 2005.
\end{flushleft}
who are not parties. The Family Code renders null and void any contract that limits the exercise of either spouse’s legal capacity or rights.

The Family Code also provides that, “[o]ne of the spouses cannot cancel the rental contract of the house, sell the house or the apartment or limit, by legal documents, the right of the other to the house, without the express consent of the other spouse.”

It requires both signatures for the disposal of joint goods, and provides that the court can declare as null and void any contract through which the right to “joint property is diminished or suppressed.”

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

The Constitution of Moldova provides all citizens with the right to choose their local residence, to exit and enter the country and to emigrate. The Family Code provides that, “spouses determine their domicile freely and independently.”

Moldovan citizens and stateless persons are ensured the right of return. At the same time, Moldovan citizens, their descendants, and under certain circumstances permanent residents, are ensured the right to repatriation. The government must replace lost passports for returning citizens.

The Anti-Trafficking Law commits the state to process “without undue delay” the reception and repatriation of victims of trafficking, including confirming their citizenship and issuing travel documents while taking into account victims’ security needs.

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567 Article 23(4) Civil Code.
568 Article 29(6), Family Code.
569 Article 21(5), Family Code.
570 Article 21(2), (3), Family Code.
572 Articles 16(3), Family Code.
573 Article 1(1), Exit and Entry Law. The right of return signifies the right of those who belong to an ethnic or national group, but irrespective of national origin, to immigrate and naturalize in the country they consider to be their homeland.
574 Article 20(1), Law on Migration. The right to repatriation applies to displaced and/or stateless persons, irrespective of national origin.
576 Article 19(1)-(3), Law on Preventing and Combating Trafficking in Human Beings.
The OSCE Action Plan to Combat Trafficking in Human Beings requires states to ensure the provision of documents “as a first step to clarifying the victim’s identity.”577

With respect to foreign and stateless persons, the state is obliged to assist with the victim’s voluntary repatriation to his or her country of origin, including assistance with the replacement of lost and stolen identification and travel documents.578 The law prohibits the expulsion or repatriation of foreign victims to their home or third countries if “reasons are found to presume that his/her personal safety or the safety of his/her family will be endangered.”579 Victims of trafficking who participate in criminal proceedings against their traffickers are entitled to temporary residence permits for the duration of the proceedings.580 In addition, the Anti-Trafficking Law both provides a reflection period of thirty days during which no expulsion order can go into effect and ensures that protection and assistance services are not conditioned upon the willingness of victims to make statements or to participate in the prosecution of traffickers.581

In their efforts to combat human trafficking, states must at the same time ensure that measures taken “do not have an adverse impact on the rights and dignity of persons, including their freedom of movement.”582 The right to liberty of movement, including the freedom “to leave any country, including [one’s] own” is a fundamental principle of international human rights law.583

**Article 15 De Facto Compliance**

1. States Parties shall accord to women equality with men before the law.

As noted throughout this report, there is a stark difference between the *de jure* equality afforded to women in the Republic of Moldova and the *de facto* reality that

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578 Article 24(5), Law on Preventing and Combating Trafficking in Human Beings.
579 Article 24(1), Law on Preventing and Combating Trafficking in Human Beings.
580 Articles 17 & 24(6), Law on Preventing and Combating Trafficking in Human Beings.
582 Section IV, 5.2, OSCE Action Plan; *see also* UNHCHR, Guideline 1(6).
583 *See*, Article 13(2), Universal Declaration of Human Rights, and Article 12(2), International Covenant on Civil and Political Rights, (adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976.)
determines their lives. Both the lack of temporary special measures and effective mechanisms to enforce the law contribute to women’s inequality, fostering violations of their fundamental human rights. Disparities in the treatment and experiences of women who live in villages as compared to women who live in the city result in additional violations of the rights of rural women.

2. States Parties shall accord to women, in civil matters, a legal capacity identical to that of men and the same opportunities to exercise that capacity. In particular, they shall give women equal rights to conclude contracts and to administer property and shall treat them equally in all stages of procedure in courts and tribunals.

In general terms, “people don’t believe in the justice system. It is associated with corruption.”584 As one expert commented, the judicial system is “imperfect” in implementing judgments.585 Little work has been done with respect to sensitizing the judiciary on gender issues.586 As a result the judicial system does not adequately function to address and redress violations of women’s rights. This is particularly apparent with respect to domestic violence and trafficking. For example, victims very rarely receive compensation for damages as a result of being trafficked.587

Anti-Trafficking Prosecutions

The lack of gender sensitivity within the judiciary becomes extremely evident in trafficking cases. Social assistants at the IOM Rehabilitation Center explain that being forced to confront the defendant in identification procedures and being forced to repeat their testimony can be very traumatic for victims.588 In addition, judges reportedly interrogate victims in an intimidating manner and do not stop defense attorneys from invoking irrelevant character evidence, such as that pertaining to the victim’s past sexual experiences.589

“[C]ases can languish in the prosecutor’s office for years,” according to one IOM staff member. The IOM further reports a great reluctance on the part of trafficking victims to participate in legal procedures, requiring staff to “hold their hand” through the whole process. Advocates express frustration concerning the difficulties in

586 Interview, Valentina Bodrug-Lungu, President, Gender-Center, April 2005.
588 Interviews, IOM Rehabilitation Center, January 2006.
589 Interview, Tatiana Cătănă, Lawyer, CPTW, March 2006.
representing trafficking victims in litigation, given their tendency to drop out of the process before their case is decided.  

**Right to Legal Information**

In order to foster their participation, it is important that victims understand their various options in participating in the proceedings, as well as the overall importance of the case for discouraging and preventing future trafficking. The task of explaining these options to the victim and ensuring that the victim’s participation is undertaken with knowledge of all the consequences is the legal responsibility of law enforcement authorities. IOM staff stated that victims repeatedly ask about the status of their cases and that police are neither cooperative nor forthcoming in providing information concerning cases to victims. Victims’ experiences with the legal system are reportedly so bad that they are disinclined to continue cooperating with law enforcement, including providing in-court testimony.

During the initial stages of contact, authorities should communicate effectively to victims participating as witnesses about what will be required of them at each step of the proceedings. Victims should be able to obtain information on the outcome of the police investigation. They should also be informed, upon request, of the final decision concerning prosecution.

Access to information is a crucial and determinative starting point for victims’ participation in legal proceedings. Information familiarizes them with the legal procedures, their role and the necessary knowledge to exercise their rights. Trafficking victims have the right to make autonomous decisions concerning the extent of their cooperation with the police as well as their participation as a witness in criminal proceedings, while understanding fully the implications of their decision in terms of their personal anonymity, physical safety and that of their families.

**Victim’s Right to Compensation**

Victims of trafficking rarely receive financial compensation for damages suffered.

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590 Interviews, IOM Rehabilitation Center, January 2006.
591 Interviews, IOM Rehabilitation Center, January 2006.
593 A recent Bulletin issued by the Moldovan Supreme Court reports two exceptions. One decision from the Edineț District Court, 15 November 2004, which awarded 10,000 lei to each victim (approximately US $ 752). Another decision from the șoldănești District Court, 22 April 2004, awarded the victim U.S. $700. See, Information regarding the results of the generalization of the legal practice on cases of trafficking in human beings, trafficking in children, illegal withdrawal of children from the country and pimping, Bulletin No. 5, 2006.
In addition to a general lack of budgetary resources, one of the challenges facing Moldova with respect to the creation of a victim compensation fund is that proceeds from trafficking generally are found in countries of destination, and Moldova is a country of origin. While international criminal law as well as bilateral agreements on cooperation in criminal prosecutions create the legal possibility for Moldova to confiscate criminal assets abroad, including assets held under the names of the family members of traffickers, in practice such confiscation rarely occurs. 594

Given the absence of funds, according to the Chief of Department for the Department for Minors and Human Rights Protection of the General Prosecutor’s Office, neither prosecutors, nor judges comply with legal provisions providing for the compensation of victims. 595 Furthermore, it is not the practice of lawyers representing trafficking victims to seek compensation for their clients. 596

3. States Parties agree that all contracts and all other private instruments of any kind with a legal effect which is directed at restricting the legal capacity of women shall be deemed null and void.

CPTW, IOM and La Strada each reported having several cases in which husbands, or other family members, had sold a woman’s house in her absence while she was working abroad. As of August, 2006 CPTW was litigating several such cases in court. 597

4. States Parties shall accord to men and women the same rights with regard to the law relating to the movement of persons and the freedom to choose their residence and domicile.

While there are no legal restrictions on women’s freedom of movement, economic and cultural factors impede movement, namely employment opportunities and traditions that dictate that a woman must follow her husband. 598 For example, if a person’s national identification document indicates that the person lives a particular locality, that person is not eligible to receive social welfare assistance or register

594 The fact that assets are primarily held in third countries and not under the names of traffickers were cited as the two main obstacles to the confiscation of assets related to trafficking. More training and resources are needed to assist law enforcement in engaging in the process of asset recovery to provide for victim compensation. Victims have received compensation from funds confiscated from their traffickers on three occasions, setting some precedent. Interview Eugen Rusu, Chief of Department, Department for Minors and Human Rights Protection, General Prosecutor’s Office, 20 January 2006.

595 Id.

596 Interview, Ion Vizdoagă, Director and Attorney at Law, CPTW, January 2006.

597 Id.; Interview, Irina Todorova, Reintegration Program Coordinator, IOM, January 2006; and Interview, Tatiana Moca, Hot Line coordinator, International Center for Women’s Rights Protection and Promotion La Strada, January 2006.

598 CEEAW Le Facto Study: Women in Rural Areas, p. 44.
their children to attend school in another locality. In other words, if a person is dependent upon social services, that person does not have freedom of movement within the state.

**Trafficking Victims**

In Moldova, victims of trafficking confront problems concerning freedom of movement in various ways. As an initial matter, trafficking typically involves the violation of the victim’s right to freedom of movement because the victim is often held against her will and her identity and travel documents are confiscated by traffickers.599 Because human trafficking constitutes a human rights violation primarily affecting women, it violates the equality principle as applied to the state’s responsibility to ensure the right to freedom of movement as well to protect human rights of people within its territory.600

Often, victims do not want to reveal their true identities so that they can travel abroad to work in the future, usually to the same country of destination.601 In other words, identifying themselves as victims of trafficking using their true identities in order to access necessary benefits and protection services, results in victims being penalized for their prior illegal presence in the countries of transit and destination, restricting their freedom to travel to those countries in the future.602

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599 Article 2, Council of Europe Recommendation 1545 (2002), Campaign against Trafficking in Women (noting that trafficking violates “women’s dignity and integrity, their freedom of movement”) (emphasis added).

600 The European Court of Human Rights has found state responsibility for the acts of private persons that constituted a violation of the rights secured under the European Convention of Human Rights and Fundamental Freedoms in a variety of cases including, inter alia, private individuals who maintained a minor female undocumented immigrant in conditions of domestic servitude (see, *Siliadin v. France*, Application No. 73316/01, 26 July 2005); the date-rape of a minor by two young men (see, *M.C. v. Bulgaria*, Application No. 39272/98, 4 March 2004); the murder of a man and the wounding of his son by a private individual (see, *Osman v. United Kingdom*, Application No. 23452/94, 28 October 1998); and child abuse in the family (see, *Z. and Others v. United Kingdom*, Application No. 29392/95 10 May 2001; *A v. United Kingdom*, Application No. 25599/94, 22 September 1998). *See also*, *Ilascu and Others v. Moldova and Russia*, Application No. 48787/99, 8 July 2004, (finding both Moldova and Russia in violation of Article 1 of the ECHR for failing to assume their positive obligations to protect the human rights of persons within their territories,) and Inter-American Commission and Court, *Velásquez Rodríguez v. Honduras*, Series C, No. 4 29 July 1988. It is important to note that the ECHR is binding jurisprudence in Moldova. *See*, Article 4, Constitution of the Republic of Moldova and Decision of the Constitutional Court on Interpretation of Certain Provisions of Article 4 of the Constitution #55, 14 October 1999.

601 Interviews, IOM Rehabilitation Center, January 2006.

602 Interviews, IOM Rehabilitation, Center, January 2006; Interview, Tatiana Cătană, Lawyer, CPTW, May 2005 (also identifying the risk of further threats of violence to themselves and their families by traffickers and breaches of confidentiality by law enforcement as other causes for resistance to identifying themselves as victims of trafficking).
Delays in the receipt of replacement national identification documents, including passports, constitutes an additional problem for repatriated trafficking victims despite the expedited procedure set forth in the Anti-Trafficking Law. In a recent assessment conducted among lawyers, social workers and beneficiaries of the IOM, the lack of cooperation by public authorities in processing national identification and other documentation requests was the single most frequent complaint. 603

The absence of identity documents precludes access to services to which trafficking victims, and Moldovan citizens generally, have a right. At the same time, the national identification scheme, coupled with the current system for accessing social services, which can only occur in one’s place of registered residence, creates an enormous obstacle to the victims’ rights to freedom of movement.

Another significant obstacle is that government authorities also refuse to recognize documents issued by authorities in the Transnistrian region, which has a disproportionate impact on trafficking victims as many come from this region. 604 Significantly, refusal to provide services based on one’s “national” or “social” origin constitutes discrimination under the Constitution, the new Anti-Trafficking Law, as well as under Moldova’s commitments under CEDAW and other international treaties. 605

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603 Draft Assessment of the Legal Services Provided to Beneficiaries at the International Organization for Migration’s Rehabilitation Center in Chișinău, Moldova, IOM, February 2006, pp. 4, 5.
604 Id. at 4.
605 Article 16(2) Constitution of the Republic of Moldova; Article 5, Law on Preventing and Combating Trafficking of Human Beings (stating, that “the implementation of the provisions of the present law, especially of the measures of protection of the rights of the victims of trafficking, is ensured without discrimination through any criteria, namely: sex, race, language, religion, political opinion or other kind, social or national origin, association with a ethnical minority, etc.”) (emphasis added); Article 2, Universal Declaration of Human Rights; Articles 2(1), 3, 26, International Covenant on Civil and Political Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A(XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49; Articles 1 & 6, CEDAW.
Article 16

1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
   (a) The same right to enter into marriage;
   (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
   (c) The same rights and responsibilities during marriage and at its dissolution;
   (d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
   (e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights,
   (f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
   (g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;
   (h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Article 16 Areas of Concern:

- The minimum age for marriage should be the same for young men and women in Moldova;
- Court-administered reconciliation periods between spouses in cases in which only one spouse seeks divorce should be prohibited in domestic violence cases.
**Article 16 De Jure Compliance**

(a) The same right to enter into marriage;

The Moldovan Constitution establishes the right to consensual marriage based on principles of equality between spouses.606 The Family Code prohibits same sex marriage.607

Every marital contract must be registered. It can be done at the time of the marriage or at any time during the marriage. It must be authenticated by a notary. The marital contract comes into force on the date of its registration. Violation of the above requirements can result in the nullification of the contract.

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

The Family Code of Moldova reiterates the requirement that marriage is valid only upon mutual spousal consent and further asserts the principle of equality of rights and obligations in marriage.608 This includes mutual obligations regarding “moral and material support,” providing family maintenance; and for the education and care for children.609

(c) The same rights and responsibilities during marriage and at its dissolution;

A marriage may be dissolved upon the request of one or both spouses and dissolution must be registered through a marriage registrar’s office or through a court.610 A husband cannot file for divorce during his wife’s pregnancy.611 One spouse can request a divorce in the event that the other has become disabled, declared missing or sentenced to imprisonment for longer than three years.612 If one spouse is against the divorce, the court will order a reconciliation period for a period of one to six months.613

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606 Article 48(2), Constitution of the Republic of Moldova.
607 Article 15(h), Family Code.
608 Articles 2(3), 5(1), 11(1) & 16(1), Family Code.
609 Articles 2(3), 16(4), 18(2) & 82(1), Family Code.
610 Articles 33 & 35, Family Code.
611 Article 34, Family Code.
612 Article 36(2)(a), (b), (c), Family Code.
613 Article 37(4), Family Code.
The law provides the right for the wife to claim spousal support upon divorce if she is pregnant. Ex-spouses who require financial support to continue raising children below the age of three or disabled children up to the age of 18 are also entitled to seek support. If one spouse becomes unable to work within one year of the dissolution of the marriage, he or she is also entitled to seek support.\(^6\)\(^1\)\(^4\)

Exemptions from the requirement to pay spousal support can be obtained if the spouses were married less than five years; the marriage was dissolved due to the guilt or amoral conduct of the spouse seeking support; and if the inability to work of the spouse in need is due to drug or alcohol addiction or the commission of a premeditated crime.\(^6\)\(^1\)\(^5\)

The marital contract can be used, for example, to modify the legal status of joint and personal property. It cannot, however, limit either spouse’s legal capacity or the rights and obligations between the spouses and their children.\(^6\)\(^1\)\(^6\) A court can declare a marital contract null and void if it contains clauses that “injure the rights and interests of one of the spouses, of minor children or of other persons protected by law.”\(^6\)\(^1\)\(^7\)

\[
(d) \text{ The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;}
\]

The Family Code provides that, “relations between spouses are based on mutual respect and support, on common obligations regarding family support, childcare and education.”\(^6\)\(^1\)\(^8\) Parental rights and obligations for the care and education of their children extend both to children born of a marital relationship as well as children born out-of-wedlock. No gender differentiation is made between the spouses with respect to responsibilities concerning a child’s education or financial support.\(^6\)\(^1\)\(^9\)

In cases of separation or divorce, both spousal and parental rights and support obligations are determined according to national legislation.\(^6\)\(^2\)\(^0\) The custody of and support obligations for children whose parents are residents of different countries shall be determined by an agreement of the parents until the child is 14 years old. If

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6\(^1\)\(^4\) Article 83(a)-(d), Family Code.
6\(^1\)\(^5\) Article 85 (a)-(d), Family Code.
6\(^1\)\(^6\) Article 29(1), (2), (6), Family Code.
6\(^1\)\(^7\) Article 31(3), Family Code.
6\(^1\)\(^8\) Article 16(4), Family Code.
6\(^1\)\(^9\) Articles 58(1), 60, & 74, Family Code.
6\(^2\)\(^0\) Article 38, Family Code.
the parents cannot come to an agreement, child custody and support will be determined by the court.\textsuperscript{621} A parent can only prohibit contact between the child and the non-custodial parent in cases where such contact is detrimental to the best interests of the child.\textsuperscript{622} Non-payment of child support results in a fine of 1\% of the amount owed for each day of the delay.\textsuperscript{623}

Under the Family Code “foreign and stateless citizens having residence in the territory of the Republic of Moldova have the same rights and obligations as citizens of” Moldova.\textsuperscript{624}

\begin{quote}
\textit{(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights,}
\end{quote}

Women are accorded the right to make autonomous decisions concerning motherhood, including the number of children and birthing methods.\textsuperscript{625}

\begin{quote}
\textit{(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;}
\end{quote}

The Family Code provides that, “[p]arents’ rights cannot be exercised contrary to their children’s interests.”\textsuperscript{626} The law permits “[p]ersons of both sexes who reached the age of 25” to adopt.\textsuperscript{627} Adoption by one spouse requires the written consent of the other; “[a]doption will not be permitted for an unmarried couple.”\textsuperscript{628}

\begin{quote}
\textit{(g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;}
\end{quote}

Upon marriage, either spouse can assume the other’s surname, spouses can join their surnames to form a common surname, or can each maintain their prior surnames.

\textsuperscript{621} Articles 63 & 64, Family Code.
\textsuperscript{622} Articles 64(1) & 71, Family Code; see also, Articles 67-73, Family Code (outlining the procedures regarding deprivation of parental rights).
\textsuperscript{623} Article 106(1), Family Code.
\textsuperscript{624} Article 154, Family Code.
\textsuperscript{626} Article 62(1), Family Code.
\textsuperscript{627} Article 121(1), Family Code.
\textsuperscript{628} Articles 121(3) & 128(1), Family Code.
The surname change of one spouse does not require a change of the other’s surname.\textsuperscript{629}

Each spouse “is entitled to continue or to choose independently his/her profession or job.”\textsuperscript{630} The Labor Code establishes the equal right to choose one’s profession and occupation.\textsuperscript{631}

\begin{center}
(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.\end{center}

Absent a marital contract to the contrary,\textsuperscript{632} property obtained by either spouse during a marriage is considered common property and both have a right to its possession, even if held under only one name. Any goods purchased during the marriage from spousal income, work, entrepreneurship and intellectual activity as well as from common income sources, are to be considered as common property.\textsuperscript{633} The right to joint property extends to spouses who did not have a source of income during the marriage due to working in the home, caring for children or other reasons.\textsuperscript{634} Spouses thus have the right to possess, use and dispose of common goods.\textsuperscript{635} At the request of either spouse, joint property can be divided both during the marriage and upon divorce.\textsuperscript{636}

Both spouses are legally entitled to request financial support from the other upon divorce. Upon divorce, the division of common goods can be contested, including those pertaining to separate households during the period of matrimony.\textsuperscript{637} The division of property is to be made on an equal basis, “unless the marital contract provides otherwise.” Further, the “court is entitled to differentiate the shares of joint property for each of the spouses, by taking into account the interests of one of the spouses and/or of the minor children.”\textsuperscript{638}

\textsuperscript{629} Article 17(1), (3), Family Code.
\textsuperscript{630} Article 16(2), Family Code.
\textsuperscript{631} Article 5, Labor Code.
\textsuperscript{632} Articles 19(2), 27 & 29(1), (2), (4), (5), Family Code (providing spouses the ability to determine their rights and obligations upon the division of property and to modify the legal status of joint and personal property).
\textsuperscript{633} Article 20(1), (2), Family Law.
\textsuperscript{634} Article 20(4), Family Law.
\textsuperscript{635} Articles 19(1), 20(1) & 21(1), Family Code.
\textsuperscript{636} Article 25(1), Family Code.
\textsuperscript{637} Articles 20 (5) & 25(3), Family Code.
\textsuperscript{638} Article 26(1), (2), Family Code.
2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

The minimum age for a man to enter into marriage is 18 years of age; for a woman it is 16. Men can entered into marriage at a younger age only with permission from the parents of the betrothed and the local public authorities. 639 Marriage between under-aged persons can be judicially nullified.640

The National Human Rights Action Plan sets forth as one of its goals to “[a]mend Article 14 of the Family Code regarding the minimum marriage age. 641

Article 16 De Facto Compliance

(a) The same right to enter into marriage;

There appears to be no differentiation with respect to sex on the right to enter into marriage.

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

Forced marriages occur in Moldova in cases in which after being raped, a woman’s family members pressure her into marrying the rapist. 642

(c) The same rights and responsibilities during marriage and at its dissolution;

According to one expert, as a rule, upon the dissolution of a marriage, marital property is divided equally between spouses, even in cases in which only one spouse provided income during the length of the marriage.643 In practice, marital contracts are concluded rarely. The contract can be annulled if it contradicts the rights set forth in pertinent legislation. Child support must be paid to the spouse who is granted custody of any children. Generally custody is granted to the mother. 644

639 Articles 11(1) & 14, Family Code.
640 Article 42(a)(1), Family Code.
642 CELAW De Facto Study on Women in Rural Areas, pp. 45 & 46.
643 Id. at 46.
644 Id.
It is important to note that courts can and frequently do establish a reconciliation period in the event that a divorce is only sought by one spouse. This practice can have a serious adverse affect upon women seeking to separate from abusive spouses, as violence usually escalates upon a woman’s attempt to leave an abusive partner.

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

While legislation accords equal parental rights to men and women, in practice, upon separation or divorce, courts generally accord custodial rights to the mother, except under circumstances in which it is clear that the mother is unable to care for the child.\textsuperscript{645} Men do not generally participate in child rearing after separation or divorce.\textsuperscript{646} Significantly, one respondent signaled that women face discrimination in the courts with respect to obtaining child support, particularly with respect to enforcement of such awards.\textsuperscript{647}

Effectuating joint legal responsibility of parents towards children born out-of-wedlock is increasingly important as the number of extra-marital births has significantly increased over the last five years, particularly in rural areas. In 2004, 6,276 children were born out-of-wedlock in rural areas and 3,105 among the urban population.\textsuperscript{648} The Family Code establishes a presumption of paternity and a method of challenging that presumption when a child is born either to a married couple or within 300 days of the dissolution of marriage.\textsuperscript{649} It also establishes a process for determining a child’s paternity either by agreement and registration, or through a court action.\textsuperscript{650} The increase in number of out-of-wedlock births combined with the large number of parents working abroad make establishing paternity and the right to child support difficult.

In addition, there are increased instances of child abandonment, by both mothers and fathers, connected with the parents seeking work abroad.\textsuperscript{651}

\textsuperscript{645} Id. at 47.
\textsuperscript{646} Id. at 46.
\textsuperscript{647} CELAW Le Facto Study: The Legal System, p. 9.
\textsuperscript{648} Women and Men in the Republic of Moldova, UNDP (2005), p. 12.
\textsuperscript{649} Articles 47, 49, Family Code.
\textsuperscript{650} Articles 47, 48, Family Code.
\textsuperscript{651} CELAW Le Facto Study on Women in Rural Areas, pp. 46 & 47.
(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights,

As noted under Article 10, women are considered both socially and financially responsible for contraception and family planning. One respondent commented:

   It is women who must decide whether to keep the pregnancy or have an abortion given the limited access to reproductive health services. We had a case in which a 20-year-old woman with three children came to request an abortion at 20 weeks. When asked why she came so late, she said that her husband was against the abortion. When he left for Moscow she decided to appeal to the doctors.\textsuperscript{652}

Given the fact that many reproductive health services are actually only provided for a fee, poverty and male dominance in the family can intersect to inhibit women’s full exercise of choice concerning their reproductive lives.

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

Generally, upon the dissolution of a marriage, the child remains with the mother.\textsuperscript{653}

(g) The same personal rights as husband and wife, including the right to choosing a family name, a profession and an occupation;

One expert explained, “[a]s a rule, out of respect, the woman chooses the family name of the man. But there are some cases when the man chooses the wife’s family name.”\textsuperscript{654}

\textsuperscript{652} CEDAW Le Facto Study on Health, Education and Social Assistance, p. 5.
\textsuperscript{653} CEDAW Le Facto Study on Women in Rural Areas, p. 47.
\textsuperscript{654} Id. at 48.
(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.

While both spouses have equal legal rights with respect to the administration of property, the increased migration of women seeking employment abroad has resulted in cases in which their husbands have disposed of common property in their absence.655

2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Of the registered marriages in 2004, 10 were of girls under the age of 16. Among adolescents, 5,294 young women between the ages of 16 and 19 married, as compared with 861 young men of the same age.655 As one respondent noted, if a woman marries at the age of 16 she becomes a legal adult at that age as well.657

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655 Interview, Tatiana Moca, Hot Line Coordinator, International Center for Women’s Rights Protection and Promotion La Strada, January 2006.
657 CELAW Le Facto Study: The Legal System, p. 9; see also, Article 20(2), Civil Code.
APPENDIX 1

COMPLETE LIST OF AREAS OF CONCERN

Article 1

• Neither the general populace nor legal professionals in Moldova have a clear understanding of discrimination either as a violation of law or as a social phenomenon.

Article 2

• The Gender Equality Law is largely declarative in nature with no mechanism for implementing the guarantees provided therein;
• The Gender Equality Law contains no sanctions for those who violate women’s rights to equality, including sexual harassment in the workplace;
• Special benefits provided to mothers with small children within the penal code, such as protection against arrest, serving life sentences, and community service, should be extended to fathers and other family members caring for small children;
• National asylum law should be brought into conformance with international standards and ensure that gender-based persecution is recognized.

Article 3

• Gender issues and women’s rights should be mainstreamed into all national mechanisms implementing human rights in Moldova;
• Adequate resources should be dedicated to strengthening national machinery to implement the rights provided for in the Convention.

Article 4

• Temporary special measures with respect to women’s participation in politics should be adopted as an amendment to the Gender Equality Law and should be implemented in practice;
• Temporary special measures should also be undertaken in other fields, such as education, to draw men into the field of teaching and women into higher-level administrative posts.
Article 5

- Traditional expectations regarding women’s role as housekeepers and family caretakers in Moldova impede their ability to participate in economic and public life.

Article 6

- The state should assume all costs with respect to identification and documentation services for victims of trafficking;
- Law enforcement officials and the judiciary should maintain confidentiality with respect to the identity of trafficking victims, and protect victims’ safety and right to privacy;
- Legislative reform should ensure that the victim’s consent should not become relevant at trial in the event that, even when the means of trafficking have been established, the prosecutor cannot obtain enough evidence to prove all of the elements of trafficking and thus files the case under a lesser charge;
- Legislative reform should be implemented to ensure that trafficking victims are not prosecuted for crimes committed as a consequence of being trafficked, particularly in cases in which the prosecutor has not obtained enough evidence to allege the crime of trafficking, and thus trafficking cases are prosecuted under other charges;
- The state should assume greater responsibility in providing material assistance and rehabilitation services to victims;
- Soliciting prostitution should be punished under penal or administrative law.

Article 7

- Temporary special measures should be established to ensure women’s full participation in the activities of political parties, Parliament and other state and local governmental offices.

Article 8

- The Moldovan government should appoint more women to diplomatic posts.

Article 9

- As required by current law, the Moldovan government should take steps to streamline and expedite the replacement of identity and travel documents for repatriated victims of trafficking in persons and their children, including waiving all fees that normally would be required.
Article 10

- Women should be permitted to enroll in military and police academies;
- Men dominate management positions in secondary and higher educational institutions;
- No temporary special measures exist in the field of education to attract men to teaching positions in primary schools, or women to fields traditionally held by men;
- In light of the withdrawal of the “Life Skills” curriculum, educational information on health and well-being, specifically information on reproductive health and family planning, should be made widely available to girls and young women.

Article 11

- While sexual harassment is defined in the Gender Equality Law, the law provides no framework for penalizing such behavior. The definition of sexual harassment should be incorporated into Moldova’s Labor Code and sanctioned;
- The age for retirement should be the same for both men and women in order to give women an equal chance to reach the contribution period required to receive full pensions;
- Anti-discrimination law should be enforced to ensure that pregnant women and mothers with young children who can obtain additional benefits under the Labor Code do not face discrimination by employers in hiring practices;
- Overly broad labor protections for women, preventing them from engaging in a variety of professions, are discriminatory and should be repealed.

Article 12

- Breaches in confidentiality between doctors and patients is a serious concern in Moldova as they can impede women from seeking necessary medical attention as well as result in a violation of their privacy rights;
- Domestic violence is widespread and is not adequately addressed by healthcare or police officials;
- As of August, 2006, there is no law in effect specifically addressing domestic violence, although a draft Law on Preventing and Combating Violence in the Family is under consideration;
- Any domestic violence law should provide for temporary restraining orders (the draft under consideration as of August, 2006 does not);
• Any domestic violence law should provide un-married and non-cohabiting couples and their children protection from domestic abuse on the same basis as married couples (the draft under consideration as of August, 2006 does not);
• Law enforcement authorities frequently fail to respond to or process complaints concerning domestic violence.

Article 13
• State support for paternity leave would foster a more egalitarian approach to childrearing in Moldova and reduce stereotypes of women as homemakers;
• Temporary special measures should be employed in the financial sector to promote women’s business development;
• Women and girls should be encouraged to participate in all sports activities.

Article 14
• There are no regulations concerning sanitary conditions in Moldova’s rural areas, where sewage systems and electricity often do not work, and not all villages have access to clean water;
• There is a stark difference between the quality of healthcare received in rural areas and that received in the city;
• Not all villages have access to public transport;
• Social security benefits should be provided to women who work in family-owned and agricultural businesses;
• There is a lack of information on the status of rural women in Moldova.

Article 15
• Law enforcement authorities must provide adequate information to trafficking victims regarding their role in and the status of legal proceedings in which they are participating as a party or a witness.

Article 16
• The minimum age for marriage should be the same for young men and women in Moldova;
• Court-administered reconciliation periods between spouses in cases in which only one spouse seeks divorce should be prohibited in domestic violence cases.