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## **The Equal Rights Trust - Universal Periodic Review Submission:**

### **Moldova (21 March 2011)**

1. The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. ERT works from the unified perspective on equality, which emphasises the integral role of equality in the enjoyment of all human rights, and seeks to overcome the fragmentation of the field of equality law and policies. ERT has extensive expertise in monitoring violations of the rights to non-discrimination and equality and experience in documenting discrimination cases in a number of countries around the world.
2. In this submission, ERT highlights some of the most significant challenges and problems facing the government of Moldova in fulfilling its obligations to prevent discrimination against women, and particularly, its obligation to prevent gender-based discriminatory ill-treatment<sup>1</sup> in accordance with its international human rights law obligations, with particular reference to the prevalence of domestic violence. Despite progress being made through the enactment of legislation which should address many of the issues involved, problems with implementation combined with deeply entrenched societal attitudes serve to ensure that gender-based discriminatory ill-treatment remains a fundamental human rights concern in Moldova. It is our view that in order to meet its international legal obligations, Moldova must take action to address the issue of gender discrimination and gender-based ill-treatment through legislative amendments, policy development and capacity building.

### **International law and Domestic Anti-Discrimination Law**

3. As a party to the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), Moldova must: (i) ensure the equal rights of men and women;<sup>2</sup> (ii) “prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as (...) sex”;<sup>3</sup> and (iii) “pursue by all means and without delay a policy of eliminating discrimination against women”.<sup>4</sup> The Committee on the Elimination of Discrimination against Women has confirmed that “gender-based violence is

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<sup>1</sup> For the purposes of this document, “discriminatory ill-treatment” means any act of torture or cruel, inhuman or degrading treatment or punishment, as defined in the UN Convention against Torture and interpreted by the Committee against Torture, when such an act is related to a particular characteristic of the victim, such as racial or ethnic origin, colour of skin, religion, sex, sexual orientation, disability, etc., which is, or should be, a prohibited ground of discrimination.

<sup>2</sup> ICCPR, Article 3.

<sup>3</sup> ICCPR, Article 26.

<sup>4</sup> CEDAW, Article 2.

a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men".<sup>5</sup>

4. Moldova does not currently have a comprehensive anti-discrimination law, which is essential to ensure that vulnerable groups within society, such as women, are protected from discrimination. There is currently a draft anti-discrimination law being considered by the Moldova Parliament but this has yet to be enacted. Moldova does, however, have a law prohibiting gender discrimination. Law No. 5-XVI on ensuring equal opportunities for women and men has, however, been widely criticised for failing to protect Moldovan women from discrimination due to several inadequacies.
5. Most notable is that whilst Law No. 5-XVI defines direct and indirect discrimination and confirms that discrimination on the grounds of sex is prohibited, it fails to establish a mechanism through which women can seek remedies when they are subjected to such discrimination. Article 15 vests responsibility with various public entities, including the Parliament, the Government, the Governmental Committee for equality between women and men and the Ministry of Health and Social Protection, but it fails to establish a role for the courts in adjudicating in such cases. Article 24 provides that individuals subjected to sex discrimination are entitled to damages, and that those responsible for discrimination must bear liability for such damages, but the act provides no mechanism through which such liability shall be established. As a result of the inadequacies in this legislation, the courts lack the knowledge and understanding required to make reasonable findings of liability for gender discrimination and adjudicate compensations. There are currently two cases pending before the domestic courts in which the plaintiffs request that specific advertisements be banned as they are sexist, offensive and therefore discriminatory towards women. There are, however, no known cases of any official body making a finding of gender discrimination against any person in Moldova.

#### Gender-based Discriminatory Ill-Treatment and Domestic Violence

6. ERT submits that the prevalence of gender-based discriminatory ill-treatment in Moldova, and particularly the concerning record on domestic violence, is an important example of the Government's failures to adequately protect women from discrimination.
7. ERT has identified the following patterns of discriminatory ill-treatment faced by women in Moldova, all of which involve behaviours which are highlighted by the Committee on the Elimination of Discrimination against Women as forms of gender-based discriminatory ill-treatment:
  - (i) Domestic violence;<sup>6</sup>
  - (ii) Sexual violence;<sup>7</sup>
  - (iii) Sexual harassment in the workplace;<sup>8</sup>
  - (iv) Trafficking for sexual and labour exploitation;<sup>9</sup> and
  - (v) Forced sterilisation.<sup>10</sup>
8. With regard to domestic violence, in her report of May 2009, the UN Special Rapporteur on violence against women, its causes and consequences stated that, in Moldova, "domestic violence in particular is widespread, largely condoned by society and does not receive

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<sup>5</sup> UN Committee on the Elimination of Discrimination against Women, *General Recommendation 19: Violence against Women*, 11<sup>th</sup> Session, 1992, Para 1.

<sup>6</sup> *Ibid.*, Para 23.

<sup>7</sup> *Ibid.*

<sup>8</sup> *Ibid.*, Para 18.

<sup>9</sup> *Ibid.*, Para 13.

<sup>10</sup> *Ibid.*, Para 22.

appropriate recognition among officials, society and women themselves, thus resulting in insufficient protective infrastructure for victims of violence”.<sup>11</sup> This conclusion was based upon the findings of a visit to Moldova in July 2008, since which two legislative developments relating to domestic violence have taken place. Firstly, in September 2008, Law No. 45-XVI on Preventing and Combating Domestic Violence (Law No. 45-XVI) came into force. Perhaps most notably, Article 15 of Law No. 45-XVI introduced the Protection Order - the legal instrument by which the court can apply measures which offer protection to the victims of domestic violence. Secondly, in September 2010, the enactment of Law No. 167 inserted a new Article 201<sup>1</sup> into the Criminal Code of Moldova, according to which domestic violence is established as a criminal offence.

9. Despite these two positive legislative developments, there has been no notable improvement for victims of domestic violence due to the failure of the Moldovan authorities, including the judiciary and law enforcement officials, to adequately enforce the new provisions. The following examples demonstrate some of the issues involved.

#### Case examples

10. **Case X:** This case concerns a woman of 71 years of age subjected to domestic violence. Over the last year, numerous complaints have been made to the police and the Prosecutor's office, and requests have been made to the Social Assistance Department and the Ministry of Internal Affairs by her legal representative. Whilst three Protection Orders have been obtained, none of them have been enforced. Following the complaints made by the legal representative, certain police officers were sanctioned and subsequently resigned, but their replacements have been similarly ineffective. The aggressor has not been removed from the victim's house and he continues to beat her. The legal representative asked the Prosecutor to explain what measures were being taken, but his office insists in its responses that the aggressor suffers from schizophrenia and cannot be brought to account. The subsequent attempts of the victim's lawyer to ensure that the aggressor be housed in a psychiatric unit – given the danger he continues to present to the victim – have been met with no response. In light of the above, the victim has lodged an application with the European Court of Human Rights (ECtHR), claiming that she is being discriminated against by the Moldova Government on the ground of her gender, because it is denying her legal protection from violence while allowing the aggressor to act with impunity.
11. **Case Y:** The victim in this case divorced her husband in 2003 but continues to share a flat with him after the court divided the flat into quarters which were allocated to the victim, her two daughters and her ex-husband. The kitchen, bathroom and corridor remain as common spaces where incidents of violence against the victim continue to occur. In response to the victim's complaint of her ex-husband violent behaviour, the district court issued a Protection Order on 22 June 2010. However, the ex-husband ignored the Protection Order and the violence continued. Therefore, on 22 September 2010, a criminal complaint was made, in accordance with Article 201<sup>1</sup> of the Criminal Code. The victim's lawyer also submitted to the Social Assistance Department a request for information on the actions taken by the social worker to ensure enforcement of the Protection Order and to prevent further acts of violence. The response received by the victim's lawyer on 11 November 2010 confirmed that a case file had been opened, and that the situation will be monitored over time. Following a further violent incident against the victim by her ex-husband and his mistress on 29 November 2010, another complaint was made to the Ministry of Internal Affairs. On 10 December 2010, a Protection Order was urgently requested on the basis that the previous Protection

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<sup>11</sup> UN General Assembly, *Report of the Special Rapporteur on violence against women, its causes and consequences, Yakin Ertürk: Mission to the Republic of Moldova*, A/HRC/11/6/Add.4, 8 May 2009, p. 2.

Order had not been executed and the victim continued to suffer violence at the hands of her ex-husband. On 13 December 2010, the victim's lawyer was informed that the request of 10 December 2010 had not been recorded in the court computer. Since then, further complaints have been made on behalf of the victim.

#### Summary of concerns

12. On the basis of ERT's knowledge of similar cases, the following inadequacies in the implementation of the legislative framework have been identified:
  - (i) **Delay in issuing Protection Orders:** Despite the 24-hour time-limits imposed by both the civil and criminal legislation, in many cases, the issuance of a Protection Order is delayed and therefore fails to prevent the victim from being subjected to further violence.
  - (ii) **Refusal to issue Protection Orders:** The judiciary often refuses to issue Protection Orders because the aggressor does not recognise the acts of violence, and is able to present witnesses who submit statements in their favour. In such situations, the statements of the victim are often disregarded. Further, despite Law No. 45-XVI referring to a range of violent behaviours, including physical, sexual, psychological, spiritual and economic violence, the court often restricts domestic violence to physical violence and disregards other forms of violence, and the risk which victims face is not minimised.
  - (iii) **Failure to enforce Protection Orders:** Protection Orders are frequently not enforced by those public authorities who are, by law, responsible for their implementation. Local police officers and social workers often remain unaware of the existence of the Protection Order, and even when they are aware, they limit their own involvement in implementation to informing the aggressor of the order's existence.
  - (iv) **Dependence on intervention by active Non-Governmental Organisations (NGOs):** Protection Orders have only been issued in a limited number of district jurisdictions, namely Anenii Noi, Causeni, Chisinau, Falesti, Rezina, Vulcanesti, and it is a point of concern that these are jurisdictions where an activist NGO is present. In the cases where Protection Orders have been issued, this is often the result of the intervention of several active NGOs.
13. In September 2010, in relation to three separate cases of domestic violence in which Protection Orders have not been enforced, ERT submitted letters of concern to each of Mr Valeriu Zubco (Prosecutor-General), Ms Valentina Buliga (Minister of Labour, Social Protection and Family) and Mr Victor Catana (Minister of Interior) which requested full implementation of the recent legislative amendments concerning the prevention and combat of family violence so as to protect these victims of domestic violence from the harm they continue to suffer at the hands of the perpetrators. ERT has not received any response to its letters of concern and has been informed by the lawyers instructed on the three cases that no improvements have been seen and the victims continue to suffer violence at the hands of their aggressors.
14. At a press conference held on 3 November 2010, the Prosecutor-General – Valeriu Zubco - declared that in cases where victims of domestic violence face indifference and lack of professionalism on the part of the police, prosecutors and social workers, they should complain to the superior authorities such as the Prosecutor-General and the Ministry of Internal Affairs. ERT expresses concern that in suggesting that the responsibility for challenging non-implementation of Protection Orders falls on the shoulders of the victims

who are often unable to make such challenges, the Moldovan authorities are failing to meet their international law obligations to take the necessary steps to protect women from domestic violence.

### Recommendations

15. Despite positive achievements in recent years, Moldova's failure to ensure effective protection from discrimination for women within its territory represents a failure to give effect to its obligations under international human rights treaties, including the ICCPR, the ICESCR and CEDAW.
16. ERT therefore recommends that the Human Rights Council urge the Government of Moldova to:
  - (i) Take steps **to adopt comprehensive anti-discrimination legislation and policies**. A draft anti-discrimination law is currently before Parliament and the Government should be encouraged to prioritise its finalisation and enactment.
  - (ii) Take steps to amend Law No. 5-XVI on ensuring equal opportunities for women and men in **order to guarantee that women have an adequate means of legal redress for the harm they suffer as a result of widespread discrimination**, and more specifically, discriminatory ill-treatment.
  - (iii) Take steps to develop and support **an information campaign on gender equality and the roles of men and women in Moldovan society**, with the aim of overcoming the stereotypes and prejudices that contribute to gender discrimination.
  - (iv) Create an **independent equality body** which would have strong powers, including the provision of assistance to victims of discrimination, research and recommendations on improving legislation, and public education on equality, including gender equality.
  - (v) Take steps to ensure **more effective enforcement of the existing legislation intended to protect women from domestic violence**. Such steps should include:
    - a. **Training of the judiciary and law enforcement officials** to recognise the specific factors and challenges involved in both prosecuting in cases of domestic violence and ensuring that Protection Orders are adequately enforced.
    - b. Allocation of funding to provide **adequate shelters for victims of domestic violence** to ensure that they are not required to remain in shared accommodation with their aggressor.
    - c. **Training of social assistants** to provide immediate assistance to victims of domestic violence.