



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

MOLDOVA

1. The Committee considered the second periodic report submitted by the Republic of Moldova (CCPR/C/MDA/2) at its 2559th and 2560th meetings, held on 13th and 14th October 2009, and adopted at its 2582nd meeting, held on 29 October 2009, the following concluding observations.

A. Introduction

2. The Committee welcomes the second periodic report of the Republic of Moldova, which includes useful information on measures adopted by the State party to further the implementation of the Covenant. It notes, however, that while the report contains information on legislative and other measures, it does not deal adequately with the implementation or impact of such measures. The Committee expresses its appreciation for the responses given orally by the delegation and for the written responses to the list of issues which, regrettably, were only submitted a few days before the examination of the State party's report. The Committee wishes to underscore the importance of the timely submission of the replies to the list of issues as they facilitate a more comprehensive discussion of the implementation of the Covenant.

B. Positive aspects

3. The Committee welcomes the following legislative and other measures adopted since the examination of the State party's initial report:

- (a) the removal from the Supreme Law, pursuant to Law No. 185-XVI of June 2006, of the provision allowing for the application of the death penalty “for acts committed upon war or threat of war”;
- (b) the amendment, in 2005, of the Criminal Code to include a provision criminalising torture;
- (c) the Law on Equal Chances for Women and Men adopted in February 2006;
- (d) the 2004 National Strategy for the Prevention and Combatting of Corruption;
- (e) the National Plan for the Promotion of Gender Equality in Society for the period 2006-2009; and
- (f) the ratification of the Second Optional Protocol to the Covenant, the Optional Protocol to the Convention against Torture and other cruel, inhuman or degrading treatment or punishment and the Optional Protocol to the Convention on the Elimination of Discrimination against Women.

C. Principal subjects of concern and recommendations

4. The Committee expresses its concern at the lack of significant progress in the implementation of many of the Committee’s previous recommendations, particularly those relating to conditions in detention facilities; trafficking in human beings; the duration of pre-trial detention; the independence of the judiciary; the exercise of the right to religious freedom; the participation of women in senior decision-making positions in the public and private sectors; reliance on abortion as a method of contraception; and the discrimination faced by minorities such as the Roma.

The State party should strengthen its efforts to implement the Committee’s recommendations in these areas.

5. The Committee takes note of the State party’s information that its inability to exercise effective control over the territory of Transnistria continues to impede the implementation of the Covenant in that region. It notes, however, the State party’s continuing obligation to ensure respect for the rights recognised in the Covenant in relation to the population of Transnistria within the limits of its effective power.

The State party should renew its efforts to resolve the impediments to the implementation of the Covenant in Transnistria and should provide, in its next report, information on the steps taken in this regard.

6. The Committee notes that, under the State party’s Constitution, human rights provisions are to be interpreted in compliance with the Universal Declaration of Human Rights and international agreements to which it is a party and that international human rights obligations take precedence over domestic law. It notes, however, that the provisions of the Covenant are not, in practice, invoked in the State party’s courts of law. (art. 2)

The State party should make serious efforts to disseminate knowledge of the provisions of the Covenant among judges to enable them to apply the Covenant in relevant cases and among lawyers and the public to enable them to invoke its provisions before the courts. The State party should include in its next periodic report detailed examples of the application of the Covenant by the domestic courts.

7. The Committee notes with concern that the State party has not adopted comprehensive anti-discrimination legislation to prevent and combat discrimination in all areas. (arts. 2 and 26)

The State party should adopt comprehensive non-discrimination legislation which expressly outlaws all the grounds of discrimination set out in the Covenant, as well as provisions on adequate sanctions and compensation.

8. The Committee expresses its concern at credible reports of grave human rights violations committed against protesters following post-election demonstrations in April 2009. In this regard, the Committee takes note of the delegation's statement that law enforcement officers "acted outside of their powers". It is particularly concerned at reports of arbitrary arrests, violent crowd control tactics, including beatings, and the torture and ill-treatment of persons detained in connection with the post-election demonstrations. (arts. 2, 6, 7, 9 and 21)

The State party should:

(a) thoroughly investigate allegations of abuse by law enforcement officials during the April 2009 demonstrations through an independent and impartial body, whose findings should be made public;

(b) take measures to ensure that law enforcement officers found responsible for the torture and ill-treatment of protestors, including those with command responsibility, are held accountable through prosecution and appropriate disciplinary measures and that, during the conduct of the investigation, officers implicated are suspended from duty;

(c) ensure that adequate compensation is paid to victims of torture and other forms of ill-treatment which occurred during the April 2009 demonstrations irrespective of the outcome of criminal prosecutions against the perpetrators, and that adequate medical and psychological rehabilitation measures are made available to victims; and

(d) ensure respect for the right to freedom of assembly in accordance with article 21 of the Covenant, including through the enforcement of the 2008 Law on Assemblies and put in place safeguards, such as appropriate training, to ensure that such violations of human rights by its law enforcement officers do not occur again.

9. The Committee notes with serious concern the incidence of torture and ill-treatment in police stations and other detention facilities in the State party. Despite the delegation's information that the law requires prosecutors to conduct daily inspections of temporary holding facilities, during which time the State party has indicated that detainees may speak freely with the prosecutor, the Committee is concerned that the use of torture is widespread. The Committee expresses its concern that complaints of torture are often not properly recorded or investigated and that there is a tendency to reject complaints as being "manifestly unfounded". In addition, the Committee notes the inadequacy of existing avenues for redress, namely in that the Complaints Commission is not functional and the Parliamentary Advocate to whom complaints may also be made has very limited means of addressing complaints. (art. 2, 7 and 10)

The State party should:

- (a) take urgent measures to put an end to torture in police custody and other places of detention, including through the provision of appropriate training to police and prison officials, the investigation of all complaints of torture and other forms of ill-treatment, the prosecution and punishment of those responsible and the enforcement of the law prohibiting the admission of evidence obtained through torture; and**
- (b) ensure the availability of effective avenues of redress, with provision for compensation, as appropriate, for victims of torture and other forms of ill-treatment.**

10. The Committee notes with concern that the National Preventative Mechanism on Torture (NPM) appears to be under-resourced and is yet to recruit a full complement of experts. The Committee further notes that several visits to detention facilities already undertaken have been notified in advance. (art. 2, 7, 10)

The State party should strengthen the NPM and bolster its independence, in particular by:

- (a) increasing the financial resources allocated to it;**
- (b) expediting the recruitment of qualified experts to the NPM;**
- (c) ensuring that all persons involved in the administration of places of detention are aware of the rights of the NPM to access, unaccompanied and without any form of prior notice, any detention facility; and**
- (d) publishing and disseminating the annual reports of the NPM.**

11. The Committee is concerned that the Centre for Human Rights is inadequately funded and is dependent on the Executive for its funding. It also notes with concern that the majority of complaints addressed to the Centre for Human Rights are not formally investigated. The Committee notes the absence of information on the measures taken to

publicise the existence and functions of the Centre for Human Rights and the National Preventative Mechanism. (art. 2)

The State party should take the necessary measures to ensure that the Centre for Human Rights has adequate human and financial resources to exercise its mandate effectively. It should also take active measures to raise awareness of the existence of these mechanisms and of their mandate with a view to ensuring full compliance with article 2(3) of the Covenant.

12. The Committee is concerned that persons infected with HIV/AIDS face discrimination and stigmatisation in the State party, including in the fields of education, employment, housing and health care, and that foreigners are arbitrarily subjected to HIV/AIDS tests as part of the immigration rules framework. In particular, the Committee is concerned that patient confidentiality is not always respected by health care professionals. It is also concerned that legislation prohibits the adoption of children with HIV/AIDS, thereby depriving them of a family environment. (arts. 2, 17 and 26)

The State party should take measures to address the stigmatisation of HIV/AIDS sufferers through, among other things, awareness raising campaigns on HIV/AIDS, and should amend its legislation and regulatory framework in order to remove the prohibition on the adoption of children with HIV/AIDS, as well as any other discriminatory laws or rules pertaining to HIV/AIDS.

13. The Committee notes with concern that, under a regulation promulgated in August 2009, persons with tuberculosis may be subjected to forcible detention in circumstances where he or she is deemed to have “avoided treatment”. In particular, the regulation is unclear as to what constitutes the avoidance of treatment and fails to provide, *inter alia*, for patient confidentiality or for the possibility for the judicial review of a decision to forcibly detain a patient. (arts. 2, 9 and 26)

The State party should urgently review this measure to bring it into line with the Covenant, ensuring that any coercive measures arising from public health concerns are duly balanced against respect for patients’ rights, guaranteeing judicial review and patient confidentiality and otherwise ensuring that persons with tuberculosis are treated humanely.

14. The Committee notes with concern reports that discrimination based on sexual orientation appears to be widespread at all levels of society. (art. 2 and 26)

The State party should take measures to combat discrimination based on sexual orientation, including training programmes for police officers and health-care professionals, as well as campaigns aimed at raising awareness, among potential victims, of their rights and of the existing mechanisms for redress.

15. The Committee notes with concern that the participation of women in the employment market remains considerably lower than that of men and that a significant gender wage gap persists as a result, among other things, of a culture of gender segregation in the workplace.

While acknowledging measures such as the National Plan for the “Promotion of Gender Equality in Society”, which covers the period 2006-2009, and the Law on Equal Chances for Women and Men, it is also concerned that the representation of women in senior positions in both the public and private sectors, most notably in the judiciary, in elected bodies and in academic institutions, remains low. (arts. 3 and 25)

The State party should strengthen the implementation of the existing legal and policy framework to ensure that women enjoy equal access to the labour market and receive equal pay for work of equal value. It should also strengthen efforts to achieve substantive equality between men and women in the exercise of the rights guaranteed by the Covenant and, in this respect, should take measures to encourage increased participation of women in decision-making positions in the public and private sectors.

16. The Committee welcomes the decision on 25 September 2009 by a court in Anenii Noi to issue a protection order in favour of the victim in a case involving domestic violence. Nevertheless, it expresses its concern at domestic violence in the State party, the rarity of intervention measures by the judiciary, the limited number and capacity of shelters for victims of domestic violence, and at reports that domestic violence is deemed to warrant the intervention of the police only in cases where it has resulted in serious injury. (arts. 3, 7 and 26)

The State party should enforce the law on domestic violence and provide support for victims through the establishment of additional shelters, the provision of free counselling services and such other measures as may be necessary for the protection of victims. The Committee urges the State party to take appropriate preventive measures and to provide training on the handling of domestic violence to all professionals involved in such cases, including police officers, prosecutors, judges and social workers, with emphasis on the gender aspects of domestic violence. The State party should also provide information, in its next report, on the incidence of domestic violence, on the measures taken to address it, including the use of restraining orders, and on the impact, if any, of such measures.

17. The Committee is concerned that, despite the National Strategy for Health (2005-2015), the use of abortion as a contraceptive measure is widespread. It notes, in this respect, that the law on compulsory medical insurance, which provides for the inclusion of contraceptives in the Basic Benefits Package, has not been implemented. Furthermore, the Committee is concerned that, although abortion is not prohibited by law, there have been instances where women have been prosecuted for murder or infanticide after having had an abortion and that no after-abortion healthcare is provided to them in prison. (arts. 3, 9 and 10)

The State party should:

- (a) take steps to eliminate the use of abortion as a method of contraception by, *inter alia*, ensuring the provision of affordable contraception and introducing**

reproductive and sexual health education in school curricula and for the broader public;

- (b) consistently apply the law so that women who undergo abortions are not prosecuted for murder or infanticide;**
- (c) release any women currently serving sentences on such charges; and**
- (d) provide appropriate healthcare in prison facilities to women who have undergone abortions.**

18. The Committee welcomes the adoption of the 2005 Law on Preventing and Combating Trafficking in Persons and the establishment of the Rehabilitation Centre for Victims of Trafficking in Human Beings. However, it remains concerned that the State party continues to be a country of origin and transit for trafficking in human beings, particularly women and children, despite the adoption of legislation and policy in this area. (arts. 3, 7, 8 and 26)

The State party should strengthen the implementation of its trafficking laws and policies, including through more concerted efforts to prosecute offenders and to protect victims. The State party should also broaden the implementation of measures to assist the social reintegration of victims and to provide genuine access to health care and counselling in all areas of the country.

19. The Committee notes with concern that the legally prescribed maximum duration of police custody subsequent to arrest is 72 hours and that, moreover, this period is frequently exceeded. Moreover, the Committee is concerned that pre-trial detention is determined by reference to the penalty stipulated for the offence of which the detainee has been accused. The Committee is also concerned that, according to information provided by the State party, this period may be extended by 6 to 12 months depending on the charge, is subject to judicial review only at quarterly intervals and may be prolonged at the discretion of the General Prosecutor. (arts. 9 and 14)

The State party should limit the duration of police custody following arrest and of pretrial detention in line with article 14, paragraph 3(c) of the Covenant and should ensure that the provisions of article 9 are fully respected. In this regard, the State party should take due account of General Comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial and General Comment No. 8 (1982) on the right to liberty and security of persons.

20. The Committee welcomes the measures taken by the State party to employ methods other than detention to address children in conflict with the law, such as probation and mediation, but remains concerned at the frequent use of detention. (arts. 9, 10, 14 and 24)

The State party should:

- (a) continue to broaden its approach to juvenile crime, by addressing underlying social factors and by resorting to imprisonment as a measure of last resort;**

(b) ensure that all professionals involved in the juvenile justice system are trained in relevant international standards, including the United Nations Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (Economic and Social Council res. 2005/20); and

(c) implement policies aimed at reducing recidivism.

21. While noting the significant reduction in the total number of detainees in the State party's prisons, the Committee is concerned at overcrowding in individual facilities and that conditions remain harsh, with insufficient ventilation and lighting, poor sanitation and hygiene facilities and inadequate access to healthcare. The Committee notes the State party's information that all persons taken into custody are entitled to a medical examination upon request but remains concerned at reports that, when carried out, these are frequently perfunctory. (art. 10)

The State party should ensure as a matter of urgency that conditions in places of detention are improved to meet the standard set out in article 10, paragraph 1 of the Covenant.

22. The Committee expresses its concern that the fair trial guarantees provided for under the Covenant are, in practice, frequently violated. In particular, the Committee is concerned that the right to legal counsel and the right to a public hearing are not accorded as a matter of course in legal proceedings. It notes, in this regard, the State party's information that the majority of complaints addressed to the Centre for Human rights relate to alleged violations of fair trial guarantees. (art. 14)

The State party should ensure that legal proceedings are conducted in full accordance with article 14 of the Covenant.

23. The Committee expresses its concern at the challenges facing the administration of justice in the State party, including the non-execution of court decisions, inefficiency and limited professionalism in the administration of the courts, the lack of adequate courtrooms, the shortage of interpreters and the high levels of corruption. (art. 14)

The State party should apply the legislation already in place to address inadequacies in the administration of justice, allocate adequate resources for the support of the justice system and ensure that court officials receive appropriate education and training. The State party should also take steps to investigate and prosecute corruption.

24. The Committee wishes to underscore the crucial role of an independent judiciary to the rule of law and notes that security of tenure is a major component of this independence. In this regard, the Committee notes with concern that judges are initially appointed for five years and that, only after this period, their appointment may become permanent. (art. 14)

The State party reiterates its previous recommendation that the State party should revise its law to ensure that judges' tenure is sufficiently long to ensure

their independence, in compliance with the requirements of article 14, paragraph 1 of the Covenant.

25. The Committee is concerned at the restrictions placed by the State party on the exercise of the right to freedom of religion. In this respect, it notes with concern that, pursuant to the law requiring that religious organisations be registered, administrative sanctions have been applied to individuals belonging to unregistered religious organisations. The Committee is also concerned at reports that many religious organisations have been refused registration. (art. 18)

The State party should take urgent measures to align its law and practice with article 18 of the Covenant.

26. The Committee is concerned at reports of the use, by politically influential interest groups and individuals, of civil defamation laws against independent journalists. It also notes with concern reports of the prosecution of independent television broadcasters. (arts. 19 and 26)

The State party should take urgent steps to protect the exercise, by journalists and the media, of the right to freedom of expression in accordance with article 19 of the Covenant.

27. The Committee notes the State party's information that the extreme poverty prevalent in the Roma community is due to a lack of education and skills. It notes with concern, however, that the Roma remain socially and economically marginalised, with restricted access to social services such as health care, employment, education and housing. It is also concerned about discriminatory attitudes towards the Roma in wider society as evidenced, *inter alia*, by their *de facto* exclusion from participation in public life. (arts. 2, 25 and 26)

The State party should strengthen all the necessary measures to ensure the practical enjoyment by the Roma of their rights under the Covenant on an equal basis with all other social groups, including those aimed at their inclusion and integration into broader society, at the effective enforcement of the ban on racial discrimination, and at raising public awareness of the rights recognised by the Covenant.

28. The Committee notes the State party's acknowledgment that civil society organisations were not invited to consult during the preparation of its report and reiterates its view that civil society organisations can be an important support for the realisation of human rights, including the rights set out in the Covenant.

The State party should facilitate the participation, through an appropriate consultative process, of civil society organisations in the preparation of future reports under the Covenant.

29. The Committee requests the State party to publish the second periodic report and these concluding observations, making them widely available to the general public and to the

judicial, legislative and administrative authorities. Printed copies should be distributed to universities, public libraries, the Library of Parliament and other relevant places in the State party. The Committee also requests the State party to make the second periodic report and these concluding observations available to civil society and to the non-governmental organizations operating in the State party.

30. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, information on the current situation and on its implementation of the Committee's recommendations given in paragraphs 8, 9, 16 and 18 above.

31. The Committee requests the State party, in its next periodic report due to be submitted by 31 October 2013, to provide information on action taken to implement the remaining recommendations and on its compliance with the Covenant as a whole. In this regard, the Committee also requests the State party to submit a report in respect of all parts of the Republic of Moldova.
