



Individual Advanced Research Opportunities Program

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Lori Mann
Independent Consultant
Organization for Security and Cooperation in Europe (OSCE)
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Dead Letter Law: Domestic Violence & Trafficking in Moldova

Topic of Research

Dead Letter Law explored factual and legal links between domestic violence and trafficking in the Republic of Moldova, through primary, secondary and legal research into the situation at the grass roots, legal, national political and international policy level.

The recognition of violence against women as a subject of international human rights law remains in its early stages. The inclusion of women's rights as international human rights has been limited by the traditional legal demarcations between domestic/international that mirror the private/public dichotomy, and which relegate women's rights to the private, domestic sphere and thus outside of the traditional scope of protection.

Obtaining recognition for harms most common to women requires on the one hand a shift in the existing conceptual framework that defines international law, and on the other hand, arguing that women's human rights violations should be included within the ambit of the existent definitions.

Despite the fact that much work remains to be done to ensure women's inclusion in international human rights mechanisms for protection, reliance on international

standards remains absolutely crucial in advocating for women's rights at the national level. In the face of overwhelming cultural and political resistance, potential censure from the international community is one of the primary means of obtaining the attention of national governments. At the same time, international standards constitute universal, minimum requirements whose application must be translated into national and cultural contexts.

Against the background of human rights, *Dead Letter Law* examined the continuum of violence against women in Moldova that begins in the home and extends from their communities across international borders. Observation of political processes on these issues exposed the inner workings of a nascent post-Soviet democracy, and, more specifically, the particular cultural and political limitations of the system in responding to issues concerning violence against women.

Relevance and Contribution to the Field

Domestic violence and trafficking are inter-related to such an extent in Moldova, that it makes little sense to address one issue without the other. Clarifying the precise nature of the links will ideally foster policy shifts in order to more effectively address victims' needs as well as to establish legal enforcement mechanisms to protect victims and punish perpetrators.

For example, victim profiles for domestic violence and trafficking are typically the same: young, poor women, many with children and often from rural areas. Police intervention, or lack thereof, results in additional violations of their rights, and offers little or no protection. Effective judicial redress occurs in a very limited number of trafficking cases, and not at all in the field of domestic violence.

With respect to victim assistance, the lack of psychological services to meaningfully address the traumas of psychological, physical and sexual abuse remains the clearest obstacle to their reintegration into society. Given donor emphasis on measurable indicators, the almost complete absence of professional psychological services in Moldova remains wholly unaddressed. Rather, with extremely marginal success, donor initiatives, particularly U.S.-based funds, focus on job placement services.

The findings of *Dead Letter Law* specifically identify where and how each of these aspects, the grass roots situation, national political processes, the legal framework and interventions by the international community break down in attempting to address the rights and needs of victims of domestic violence and trafficking. On this basis the project findings will result in concrete recommendations for addressing violence against women in Moldova. At the same time, many of the issues addressed by the research are not unique to Moldova, or the region, and can be applied to these issues in other parts of the world.

Approach and Methodology

Given my background as a human rights lawyer, *Dead Letter Law* was undertaken with a decidedly advocacy approach. Drawing upon prior work experience in Moldova, collaboration with local and international advocacy groups provided access to the bulk of

information sought. Collaborative work with non-governmental organizations, international organizations and state agencies working at the grass roots level in the fields of human trafficking and domestic violence provided the means for obtaining factual information not generally available to lawyers and international advocates.

Through previously-established contacts with key international organizations in the field, such as the OSCE and IOM, I was able to obtain access to the Moldovan government's internal political processes in its efforts to combat domestic violence and trafficking, including meetings of the Ministry of Social Protection, Parliamentary working groups and formal debates and hearings of the Criminal Court of Appeals. Exposure to these processes enabled me to observe the inner workings of a nascent post-Soviet democracy, and, more specifically, the particular cultural and political limitations of the system in responding to issues concerning violence against women. Similarly, my presence on the ground enabled me to obtain the text of numerous national laws and regulations.

In many instances, my services were offered in exchange for access to previously inaccessible information. For example, by offering my services, I was able to obtain access to the case files of Moldova's first and only domestic violence shelter. Similarly, I submitted memoranda to the Ministry of Social Protection on two occasions, with extremely positive results. In a brief memorandum outlining existing social welfare laws and international standards, I was able to obtain its support in ensuring that the draft Law on Preventing and Combating Family Violence provides victims of domestic violence the right to access social welfare benefits.¹

On another occasion, in exchange for the ability to meet with social workers assisting victims of trafficking at the grass roots level, I drafted a second memo based on my meetings, recommending standardized procedures based on international norms for working with victims of trafficking and domestic violence. I was subsequently invited to attend numerous "internal" meetings to offer my ideas and support.

My research methodology varied in certain aspects from initial plans in order to take advantage of evolving opportunities in the field. Domestic violence unexpectedly came to the fore in Moldova during the grant period, and there exists almost no basic information on available on the issue. At the same time, unforeseen limitations and obstacles prevented collaborative endeavors with certain organizations, such as the U.S. Embassy and the Centre for the Prevention of Trafficking in Women (CPTW).²

The length of the grant period and my participation in numerous events, including monthly technical coordination meetings hosted by the OSCE, provided a "bigger picture" with respect to the implications of U.S., European and U.N. policies and their respective impact on the field. At the same time, my presence on the ground enabled

¹ Unfortunately, although passed by Parliament, President Vronin refused to sign the draft Law on Preventing and Combating Family Violence based on budgetary constraints in providing social welfare benefits to domestic violence victims.

² Due to a major turnover in staff, and other reasons, the U.S. Embassy failed to provide assistance initially offered. Meetings with CPTW's Director and other organizations in the field of trafficking revealed unethical practices precluding my initial proposal to work with them.

me to obtain the text of numerous national and local laws and regulations. Interviews were conducted primarily in Chisinau, but also in Balti, Moldova's second largest city, and Calarasi a small town in Central Moldova. A list of organizational interviewees is attached as Appendix I.

This methodology resulted in at least one significant obstacle, namely resource constraints that limited the scope and complexity of each analytical undertaking. Working single-handedly, I realized upon my arrival in Moldova that the closed-file case study on domestic violence, planned as an integral aspect of my proposal, was unfeasible. In addition to requiring translation assistance given the challenges of understanding legal parlance, I learned upon meeting with U.S. Embassy staff that they employed a team of national lawyers to conduct their closed-file study on trafficking victims. Similarly, preparing a case for the European Court of Rights in collaboration with the Centre for the Prevention of Trafficking in Women (CPTW) would require years of work and substantial funds.

Summary of Research Findings and Preliminary Conclusions

Summaries and examples of findings with respect to each of the topics researched, excepting legal research on the jurisprudence of the European Court of Human Rights, is attached.

Recommendations for the U.S. Policy Community

The distance between U.S. Embassy and USAID personnel and the rest of the international community in the field of anti-trafficking became increasingly apparent over the length of the grant period. In general, U.S.-funded organizations seemed to have the lowest impact. Of the one American funded organizations with a real and successful presence on the ground, Winrock International, I was told by a USAID staff person was in disfavored for reasons he could not understand.

Anti-trafficking programs are currently "popular" among donors, drawing increasing amounts of money to a serious, but complicated problem. At the same time, a number of donor-driven projects have arisen that do not necessarily reflect the actual reality in Moldova. What becomes evident upon cataloguing the list of services available is the duplication of efforts, the gaps and the lack of precisely tailored programs.

Monthly Technical Coordination Meetings, hosted by the OSCE since 2003, attempt to ensure coordination among those working in the field of trafficking in Moldova. However, meetings are attended more frequently by implementing agencies than by other actors, such as State agencies and donors. Unfortunately, absent parties include even those with the largest budgets, such as the U.S. Embassy. In other words, work must be done to ensure conscientious and coordinated funding

Appendix I

List of Governmental and Non-governmental Organizations Interviewed

American Bar Association, Rule of Law Initiative
Casa Marioarei
Centre for the Prevention of Trafficking in Women
Center for Partnership in Development
La Strada
IOM
 -Rehabilitation Centre
OSCE
U.S. Embassy
Ministry of Social Protection
 -Local State Social Welfare Assistants, Calarasi, Balti
 -National Trafficking Coordinator
General Prosecutor's Office
National Employment Agency
UNDP
Terre des Hommes
Winrock International
Women's Consortium

Summary of Research Findings and Preliminary Conclusions

Dead Letter Law's findings demonstrate the convergence of the multiple forces of inequality and violence coupled with structural poverty affect women's lives in the Republic of Moldova. Two of Moldova's greatest human rights concerns today include domestic violence³ and trafficking in persons. Notably, both disproportionately affect women. Indeed, "[v]iolence against women is perhaps the most pervasive human rights abuse in the world."⁴ While Moldova is widely recognized as one of the biggest source countries for victims of human trafficking in the region,⁵ domestic violence has only recently become recognized as a pressing social concern in Moldova.

Victims' Profiles

Examination of the profiles of victims of trafficking and domestic violence in Moldova reveals that the two phenomena are inextricably inter-related. The overwhelming majority of trafficking victims also report being victims of domestic violence. Between 70 – 95% of trafficking victims suffer violence in their homes, including incest and other sexual abuse, prior to their being trafficked.⁶ Interviews with the staff at IOM's rehabilitation center in Chisinau revealed prior abuse in the lives of most beneficiaries, (estimates varied from between 50% to *all* of them).⁷ The State social assistant in Calarasi estimated that 80% of trafficking victims are also victims of domestic violence, and that between 65 – 70% return to violent homes.

At the same time, victim profiles for both trafficking and domestic violence are extremely similar: young, poor women, many with children and often from rural areas. *Women at Risk in the Republic of Moldova* ("*Women At Risk*"), found that 41% of women between the ages of 16 and 35 reported experiencing one or more forms of violence

³ Domestic violence violates women's fundamental human rights, including: right to life; right to the highest attainable standard of physical and mental health; right not to be subject to torture or other cruel, inhuman or degrading treatment or punishment; right to liberty and security of person; right to equal protection of the law; right to respect for family and private life; right to be free from all forms of discrimination; right to equality; the right to a remedy. *See*, U.N. Declaration on the Elimination of Violence against Women, G.A. Res. 48/104 (1993) (defining violence against women as including "physical, sexual and psychological abuse occurring in the family.")

⁴ Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, p. 1. Domestic violence is also included as one of the many forms of violence against women. The United Nations first officially recognized violence against women as a human rights violation in the Vienna Declaration and Programme of Action. U.N. DOC. A/CONF. 157/24 (1993).

⁵ *Trafficking in Persons: Global Patterns*, UNODC (2006). Since 2000, the destination countries for victims of Moldova have shifted from primarily Balkan states, to Turkey and Russia, with a large increase in trafficking to other countries such as Italy, the United Arab Emirates, Israel and Poland. IOM Statistical Profile (2006) p. 1.

⁶ *Second Annual Report on Victims of Trafficking in South-Eastern Europe, Country Report on the Republic of Moldova*, IOM (2005), pp. 9-16.

⁷ IOM Staff reported that the majority of minor beneficiaries were either sexually or physically abused by their parents or by neighbors before being trafficked. Incest and sexual abuse was reported as a significant factor motivating victims' desire to escape their homes and communities.

(psychological, physical, social, economic and sexual).⁸ Eighteen percent of them reported having suffered physical violence.⁹

Most identified adult trafficking victims are young women, between the ages of 18 and 25.¹⁰ Many victims of trafficking are young women with children. According to IOM staff, single young mothers are 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. Domestic violence is also substantially more prevalent in families with dependent children.¹¹

Moldova is frequently cited as the poorest country in Europe. The average annual income is approximately U.S. \$400,¹² and “[o]ver 82 percent of Moldovans live under what is referred to as the official ‘sustenance minimum.’”¹³ It is within this economic context that victims are identified as poor by Moldovan standards. *Women At Risk* identified poverty as one of various factors relating to domestic violence in Moldova. It found that 83% of victims come from “families whose standard of living is considered to be below decency.”¹⁴ The *Demographic and Health Survey* also found “that as wealth increases, reporting of violence decreases.”¹⁵ In fact, the percentage of reported violence more than doubles when comparing the wealthiest and poorest quintiles of the population, 17% and 35%, respectively.¹⁶

Seventy percent of victims of trafficking also come from poor or very poor families by Moldovan standards. It is also of interest to note that as of 2005 there has been an increase in mentally disabled victims of trafficking, as they are less apt to be influenced by anti-trafficking campaigns in the media, and are more susceptible to fall prey to the promises of traffickers.¹⁷

Upon their return, trafficking victims face harsh stigmatization and discrimination as “prostitutes” from members of their communities, families, police and potential employers for the mere fact of their having been abroad.¹⁸ Many victims have been forced to leave

⁸ Winrock International, *Women At Risk in the Republic of Moldova*, 2005, p. 6. Given that most violence goes unreported for reasons related to fear and shame, the statistical results of such studies are generally thought to represent only the tip of the iceberg.

⁹ Winrock International, *Women At Risk in the Republic of Moldova*, 2005, p. 6. Over one quarter of all women in Moldova, 27%, report having experienced physical violence since the age of 15. National Scientific and Applied Center for Preventive Medicine & Ministry of Health and Social Protection, *Moldova: Demographic and Health Survey*, 2005, p. 207.

¹⁰ For the years 2004-2005, more than half of the victims assisted by IOM were between the ages of 19 and 24, but predominantly between the ages of 19 and 21 years old. IOM Statistical Report (2006) p. 1.

¹¹ Winrock International, *Women At Risk in the Republic of Moldova*, 2005.

¹² World Bank (2001).

¹³ <http://www.fairfund.org/subpage.asp?P=about&S=countries&T=moldova>, last checked, 26 July 2007.

¹⁴ Winrock International, *Women At Risk in the Republic of Moldova*, 2005, p. 6.

¹⁵ National Scientific and Applied Center for Preventive Medicine & Ministry of Health and Social Protection, *Moldova: Demographic and Health Survey*, 2005, p. 210.

¹⁶ National Scientific and Applied Center for Preventive Medicine & Ministry of Health and Social Protection, *Moldova: Demographic and Health Survey*, 2005, p. 210.

¹⁷ *CEDAW Assessment Tool Report for Moldova*, American Bar Association Central Europe and Eurasia Law Initiative, August 2006, p. 45.

¹⁸ The vast majority of the victims assisted by IOM in 2004-2005, 79%, were trafficked for the purpose of sexual exploitation. IOM Statistical Report (2006) p. 1.

their community due to overwhelming discrimination. Most of this failed reintegration occurs outside of Chisinau.¹⁹ Thus, in addition to their struggles against poverty, violence and exploitation, both victims of trafficking and domestic violence are deprived of their homes and communities in the face of discriminatory stigmas and threats to their physical safety.

Violence both disproportionately affects society's most vulnerable, and at the same time exacerbates their vulnerability, perpetuating a vicious cycle. Because women face a continuum of violence and discrimination before, during and after being trafficked, from the point of view of victim rehabilitation, it makes little sense to address the issues of domestic violence and trafficking separately. Addressing one of the main push factors for trafficking also constitutes a means of prevention.

Moldovan Cultural Context

"A wife that is not beaten is like a house that is not swept."

--Popular Moldovan Saying

It is important to recall that violence against women occurs within all cultural and socio-economic contexts around the world. Yet, what is actually recognized as violence may vary across cultures, in large part because "in many societies women are socialized to accept, tolerate and even rationalize domestic violence and to remain silent about such experiences."²⁰ Moldova is no exception in this regard. At the same time it is important to recognize that cultural differences and the practical realities of specific country conditions require diverse strategies.

Traditionally, domestic abuse has been tolerated in Moldova, and thought by some to be an appropriate way for a man to discipline his wife. One report observed, "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."²¹

The concept of the Moldovan family remains closely aligned with the traditional patriarchal family, in which men are the breadwinners, and women care for the house and the children.²² The *CEDAW Assessment Tool Report for Moldova* notes the "tendency of women to be submissive and serve men."²³ It states:

¹⁹ *CEDAW Assessment Tool Report for Moldova*, American Bar Association Central Europe and Eurasia Law Initiative, August 2006, p. 48.

²⁰ National Scientific and Applied Center for Preventive Medicine & Ministry of Health and Social Protection, *Moldova: Demographic and Health Survey*, 2005, p. 205.

²¹ 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).

²² Indeed, gender stereotypes and social roles pervade Moldovan society and are not generally called into question even though statistics indicate that in fact women make up half the heads of households in both rural and urban areas. Female head of households, however, maintain poorer quality of living standards. See, Central European and Eurasia Law Initiative, *CEDAW Assessment Report for Moldova*, 2006, pp. 37-8, ("CEDAW Report").

²³ Central European and Eurasia Law Initiative, *CEDAW Assessment Report for Moldova*, 2006, p. 38.

First and foremost women are discriminated against in the family. . . . They do all the housework. Men do not get involved because they do not consider this type of work appropriate for themselves.²⁴

One domestic violence victim wrote, "I don't know why he did this to me [referring to the beatings], I was doing all the work around the house. I was taking care of the children. Everything was clean, washed. I cooked. I always tried to cook something for the children even when we didn't have anything."²⁵ Another accused the aggressor "of irresponsibility, her being in fact the head of the family while he only considers himself to be in charge of things."²⁶

Societal acceptance of family violence, and its treatment until recently as an individual problem, has a direct impact on women's ability to challenge what is perceived as men's prerogative, and creates additional obstacles impeding women's ability to escape violence. As one study noted, "[b]ecause of traditional values and limited support for abused women in the community, many women suffer alone and accept the abuse."²⁷ Pressure not to seek help was evident in one case presented to *Casa Marioarei* in which both the victim's husband and son expressly disapproved. The case report notes her husband's statement that "his wife should come home where they would decide what to do without anyone from outside being involved," and her son's statement that "the garbage shouldn't be taken out of the house."²⁸

Government and advocates' response to trafficking and domestic violence are embedded with such traditional cultural values. For example, the first version of the draft law to address domestic violence in Moldova was entitled the *Law on Family Unification*, and later drafts held as the main objective "consolidation of the family."²⁹ During the drafting and debating process in Parliament, lawmakers insisted on referring to domestic violence as family violence, limiting its application to traditional family structures.³⁰ Social emphasis on preserving family unity continues to mask the devastating effects of domestic violence on individual family members.³¹

Sex Discrimination

Given this cultural context, one of the key obstacles in addressing violence against women in Moldova are its sexist norms, and the absence of any understanding of the concept of discrimination. CEDAW defines violence against women as constituting one form of discrimination. It states:

²⁴ Central European and Eurasia Law Initiative, *CEDAW Assessment Report for Moldova*, 2006, p. 38.

²⁵ *Casa Marioarei*, Case No. 18.

²⁶ *Casa Marioarei*, Case No. 2.

²⁷ Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, p. 6.

²⁸ *Casa Marioarei*, Case No. 6. The cases are referred to by number only to maintain victim confidentiality.

²⁹ *Draft Law on Preventing and Combating Family Violence*, 15 December 2005, on file with the author and the OSCE Mission to Moldova.

³⁰ Notes on legislative drafting sessions 9, 15, 21 November 2006, on file with the author.

³¹ Bernadette Dunn Sewell, *History of Abuse: Societal, Judicial, and Legislative Responses to the Problem of Wife Beating*, 23 *Suffolk University Law Review* 983 (1989).

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.³²

Discrimination within society and the family, grounded in cultural tradition, further create concrete economic hardship, pushing women to seek risky employment opportunities abroad. Women face rampant employment discrimination in Moldova. They earn approximately 72% of men's salary, and consistently occupy lower-paid positions across sectors.³³ Such discrimination is frequently attributed to women's traditional role in the family:

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 employees, irrespective of gender, express doubt about hiring women. It is more difficult for women in Moldovan society to demonstrate their worth.³⁴

Yet, most legal and policy strategies to combat domestic violence and trafficking in Moldova, national and international, ignore sex discrimination as one of the root causes of the problem.

Psychological Assistance

One of *Dead Letter Law's* most important findings relates to a major gap in service provision to both victims of trafficking and domestic violence: psychological services. The absence of psychological services impedes real, lasting recovery and consequently victims' ability to take full advantage of other services being offered.

One of the most important services provided by *Casa Marioarei* is psychological assistance. Psychological violence is reported as the most pervasive form of domestic violence in Moldova, as it accompanies all other forms of violence.³⁵ *Women At Risk* found that suicidal ideations among victims was double that of non-victims.³⁶ As psychological counseling is not offered as part of either State or private medical insurance plans, were it not for the psychological care victims receive at *Casa Marioarei*, they would most likely receive none.

Similarly, those providing rehabilitation services to victims of trafficking have stated that victims' initial and immediate needs often concern emotional and related behavioral problems. Social welfare assistants in Balti and staff at La Strada believe that the need for psychological counseling to be the biggest problem faced by victims. Added to their poverty and the lack of economic opportunity that conditions their existence, their vulnerability due to their sex and young age and their experience of domestic violence,

³² General Recommendation No. 19, CEDAW, ¶ 6.

³³ Central European and Eurasia Law Initiative, *CEDAW Assessment Report for Moldova*, 2006, pp. 80-82.

³⁴ Central European and Eurasia Law Initiative, *CEDAW Assessment Report for Moldova*, 2006, p. 81.

³⁵ Winrock International, *Women at Risk in the Republic of Moldova*, June 2005, p. 63.

³⁶ *Id.*

trafficking victims return to Moldova severely traumatized psychologically. As one IOM publication explains, “[m]any victims of trafficking have been subject to lack of parental care, abandonment and domestic violence. The trafficking experience reinforces psychological disorders and traumas.”³⁷

Because many trafficking victims receive no assistance upon their return, their psychological condition becomes increasingly exacerbated over time. The resulting emotional disturbances are what drive them to eventually seek help, which they do only when the problem has reached crisis proportions. Winrock and IOM Shelter staff expressed the need for advanced, long-term counseling.

Presently, the IOM Rehabilitation Centre, Winrock, La Strada and the State provide varying levels of psychological support for victims of trafficking. The IOM Rehabilitation Shelter reportedly provides excellent psychological services for beneficiaries during their stay. Local actors stated that beneficiaries have difficulty returning home after their stay in the Rehabilitation Centre after having received for the first time quality care. La Strada also provides psychological support, but only as a means of crisis intervention during initial interviews with victims and in conjunction with case monitoring. The sessions are sporadic, responding to the victim’s crisis-related needs.

Both IOM and La Strada are located in Chisinau, and thus the psychological services they provide do not extend outside of the city. Winrock does maintain a full-time psychologist at each of its five regional centres. However, current funding only permits the centers to pay transportation costs for two visits, precluding many victims from receiving necessary psychological assistance. Significantly, it is the psychologists at Winrock who, in providing psychological assistance to their beneficiaries, often identify them as victims of trafficking.

According to social welfare assistants, the State provides psychological counseling with the number of sessions depending on need. The State social assistant in Calarasi stated that she limits victims to approximately six sessions as some victims want to come every day. Other actors in the field stated that the State does not actually provide psychological care. Indeed, interviews with State welfare workers revealed a poor understanding of both the importance of psychological counseling to victims of trauma as well as what the provision of psychological services actually entails.³⁸

Most of the treatment received is for post-traumatic stress disorder. La Strada also reports that most victims have issues with control. In other words, because their lives have been so out of control, they attempt to control everything. According to the State social assistant in Calarasi, it is a common experience for victims to be rejected by their family upon their return. For example, the La Strada psychologist described one family in which the husband rejected his wife upon her return and convinced their child to do the same. She stated that without assistance, this victim would very likely be re-trafficked.

Both IOM and La Strada report an increase in victims with psychiatric disorders. An IOM report revealed that the number of victims with a diminished mental capacity rose 10.4%

³⁷ “The most widespread [problems] include neurotic disorders, diminished mental capacity, personality disorders and substance abuse (mostly related to alcohol).” IOM Statistical Report (2006) p. 2.

³⁸ Interviews, IOM Rehabilitation Centre, Winrock International, National Trafficking Coordinator, Ministry of Social Protection.

over the last year; those with neurotic disorders 56.9% and those with personality and emotional disorders 11.5% and 6.1%, respectively.³⁹ This is attributed to various causes. The first is that psychiatric illness renders victims easier to manipulate. One NGO report explained that these figures might:

be attributed 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.⁴⁰

Serious psychological and psychiatric problems complicate victim assistance. For example, if diagnosed with schizophrenia, the victim is treated for one month in the State hospital and is then sent home with a prescription for drugs that either cannot be found in Moldova or are prohibitively expensive.

In sum, the need for psychological services is overwhelming. However, after the crisis stage, there is almost no opportunity for victims to obtain basic psychological assistance.

It is significant to note in this regard that there appears to be disproportionate and marginally successful attempts to employ victims of trafficking suffering major psychological trauma without attending to the greater stability issue. This is undoubtedly caused by a number of factors, including the role of donors, who increasingly seek quantifiable outputs. Indeed, most U.S.-funded programs to assist victims of trafficking focus on employment and training.

A presentation by Catholic Relief Services on *Rapid Employment Needs Assessment* demonstrated that women with full-time jobs make negligibly more than unemployed women.⁴¹ Furthermore, recent research also demonstrates that many trafficking victims are graduates of the vocational programs funded by U.S. and other international donors. Thus, while these programs are clearly successful at reaching their target audience, they are not successful at assisting women in seeking sustainable employment alternatives.

National Policies & Legal Framework on Violence against Women

Extreme poverty coupled with violence renders victims especially vulnerable and in need of increased financial assistance in order to escape abuse and to prevent trafficking, and the recent phenomenon of re-trafficking. President Vronin's refusal to sign the draft Law on Preventing and Combating Family Violence because it provides victims of domestic violence with the right to social assistance runs counter to years of counter-trafficking assistance efforts by the international community. Unfortunately, it reflects the Moldovan Government's refusal to take issues of violence against women seriously.

³⁹ IOM Statistical Profile 2004/2005 Update (2006), p. 8.

⁴⁰ *CEDAW Assessment Tool Report for Moldova*, American Bar Association Central Europe and Eurasian Law Initiative, August 2006, p. 45.

⁴¹ Catholic Relief Services/Moldova Employment and Training Alliance, *Rapid Employment Needs Assessment*, 15 February 2007 (finding that 37.9 % of employed women and 37.6% of unemployed women make only enough to provide for minimum necessities).

For example, in a study of domestic violence in Moldova in 1999, the Ministry of Labour, Social Protection and Family reported:

the frequency of domestic violence, whose victims are women and children, is acquiring alarming proportions. Unfortunately, it is very difficult for the state to control domestic violence since in most of the cases it is reported only when there are severe consequences to the violence, the other cases being considered *just family conflicts*.⁴²

The Government also refers to, and minimizes, domestic violence as “ordinary family conflicts” in both of the official reports submitted to the CEDAW Committee.⁴³ Such language reveals that the Government considers family violence to be an individual and not a systemic problem, and thus beyond the subject of State intervention.

Although internationally recognized as a form of violence against women and a criminal offence, as of October 2007, still no specialized legal framework exists in Moldova for effectively punishing acts of domestic violence and protecting victims from acts of aggression. Furthermore, existing criminal provisions are not effectively applied to cases of domestic violence, leaving victims without legal recourse.

The Moldovan Constitution and legislative provisions establish a domestic legal framework for human rights protection. The Constitution declares, “it is the foremost duty of the State to respect and protect the human person.”⁴⁴ It also 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 treatment or punishment.”⁴⁵ Yet, ingrained social attitudes concerning violence against women are often reflected in institutionalized responses to the problem, including the criminal justice system.

Physical violence, public or private, constitutes assault pursuant to existing legislation, which is punishable under both the Criminal Code⁴⁶ and the Code on Administrative Offences.⁴⁷ However, general assault provisions are rarely applied to punish perpetrators of domestic abuse.⁴⁸ It is important to note in this regard that Moldova’s failure to apply generalized assault provisions in cases of domestic violence, a crime that disproportionately affects women, constitutes systemic discrimination and violates international human rights law.⁴⁹

One of the most important aspects of the draft Law on Preventing and Combating Family Violence is the establishment of protection measures for victims. This constitutes a

⁴² Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, p. 6 (citing the Center for Information and Documentation of the Council of Europe, *Human Rights Report* (1999), p. 33).

⁴³ See, Initial Report of the Republic of Moldova, CEDAW, 26 October 1998, ¶ 64, and Combined 2nd and 3rd Periodic Reports of the Republic of Moldova, CEDAW, CEDAW/C/MDA 2-3, 10 November 004, p.15.

⁴⁴ Article 16(1), Constitution of the Republic of Moldova.

⁴⁵ Article 24, Constitution of the Republic of Moldova.

⁴⁶ See, Articles 97(6), 145, 150, 151(2)(a), 152(2)(c), 154(2)(a), Criminal Code, Law No. 985-XV, 18 April 2002, published in Official Monitor No. 128-129/1012, 13 September 2002.

⁴⁷ See, Article 47, Code of Administrative Offences.

⁴⁸ Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, p. 19.

⁴⁹ See, Report No. 54/01, Inter-American Commission on Human Rights, Brazil, Case No. 12.051 (Maria da Penha Maia Fernandes), 6 April 2001.

major gap in the application of existing laws to date.⁵⁰ The draft Law creates a clear legal mechanism by which victims can apply for and receive a restraining order keeping the aggressor away from the victim's residence, workplace or school.

Moldova has made great strides over the last few years in developing a national legal framework for prosecuting traffickers and providing assistance to victims. At the end of 2005, the Moldovan Government passed the Law on the Prevention and Combating of Trafficking in Human Beings⁵¹ ("Anti-Trafficking Law") consistent with its National Plan to Prevent and Combat Trafficking in Human Beings ("National Plan").⁵² Aligned with, and even surpassing in some instances, its obligations under the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons ("Palermo Protocol"), the Anti-Trafficking Law provides a solid normative base for setting forth standards concerning the provision of services to, and the protection of, victims of trafficking in Moldova. However, serious problems plague the prosecution of traffickers, and the judicial system's capacity, or willingness, to provide redress to victims.

Law Enforcement

Neither the judiciary nor law enforcement effectively enforce the law to protect victims of gender-based violence. On the contrary, law enforcement intervention tends to exacerbate victim vulnerability without providing either effective protection or redress. In a fact-finding investigation conducted in 2000 on domestic violence in Moldova, Minnesota Advocates for Human Rights found that the "police generally do not respond appropriately to calls from female victims of domestic violence. Many women reported that the police either did not respond to a call at all, or when they did respond, they did not provide women with protection from their abusers when they arrived."⁵³

Multiple studies on domestic violence in Moldova have found that many victims are reluctant to call the police, for a number of reasons. Primarily, victims express fear of repercussions by the abuser for contacting the police. One stated, "[e]very time he was beating me up and I was leaving him, I was coming back because I had no place to go. I was afraid to call the police."⁵⁴ Another stated, "I didn't notify the police because he threatened to kill me and throw me in the Nistru."⁵⁵ Indeed, in many cases police sanctions "do nothing but worsen the situation."⁵⁶

Often, when police are contacted, their response is to merely fine the aggressor.⁵⁷ The fines are taken from the family budget, with immediate and negative impact on the

⁵⁰ The Criminal Procedural Code provides for preventive arrests. Criminal suspects can be arrested and detained when the suspect lacks a permanent place of residence in Moldova and, significantly, when the suspect has breached the conditions of other preventive measures applied to him or her. Preventive arrests are limited to 72 hours. Articles 11, 176, 185, Code of Criminal Procedure. Police, however, do not generally apply these measures to ensure the physical protection of women in cases of domestic violence.

⁵¹ Law on the Prevention and Combating Trafficking in Human Beings, No. 241-XVI, 20 October 2005.

⁵² Government Decision No. 903, 25 August 2005.

⁵³ Minnesota Advocates for Human Rights, *Domestic Violence in Moldova*, December 2000, pp. 2-3.

⁵⁴ *Casa Marioarei*, Case No. 4.

⁵⁵ *Casa Marioarei*, Case No. 18.

⁵⁶ *Casa Marioarei*, Case No. 5.

⁵⁷ *Casa Marioarei*, Case No. 5 (noting "aggressor has been fined and warned.")

victim, and without deterring the abuse.⁵⁸ For example, in a case in which the beatings resulted in the victim's loss of hearing and the case report described the aggressor as "mentally ill, who only thinks of how to kill his wife, set her on fire, etc.," the police limited its intervention to fining him.⁵⁹

Victims of trafficking have similar fears. La Strada reports that many young women call several times, sometimes over an extended period of time, before finally presenting themselves. Each time they call, they tell a part of their story, testing the organization's response. Victims reportedly tend to do this out of the need to ensure that La Strada is not working with the police, that the services are free of charge, and that they are not required to reveal their true identity.⁶⁰

Police reportedly treat trafficking victims in a discriminatory manner, particularly outside of Chisinau. A social worker from La Strada stated that victims fear the police officers more than they do actually testifying in court. The situation does seem to have improved a great deal over the last year. The OSCE, UNODC, IOM and CPTW have conducted extensive trainings on victim identification and interviewing techniques with local law enforcement personnel, including judges and border guards.

The Response of Moldova's Judicial System

After suffering fundamental violations of their human rights as victims of trafficking and domestic violence, in the courtroom victims face a myriad of obstacles to justice: procedural violations, misapplication of the law and mistreatment by insensitive prosecutors and judges. Observation of criminal trials revealed consistent sex bias in the types of violations affecting victims and witnesses in cases of trafficking and domestic violence.

The consistent absence of procedural safeguards to protect victims of sexual and domestic violence, forced confrontations with traffickers and abusers, inappropriate, sexist comment by judges, prosecutors and defense attorneys, substantive misapplications of the law in cases concerning violence against women all reveal systemic discrimination against women by Moldova's judicial system.

The OSCE report after six months of trial monitoring found that the rights of victims of domestic violence and trafficking are not fully respected in court. It concluded:

They were often treated abusively and insensitively and forced to confront defendants informally while waiting in corridors. Judges and prosecutors did not always intervene when defendants approached victims and witnesses to try to intimidate them and influence their testimony, nor did judges prevent all irrelevant and humiliating questions.⁶¹

⁵⁸ Conversation with Tatiana Tofan, October 2006.

⁵⁹ *Casa Marioarei*, Case No. 5.

⁶⁰ Many organizations in the field work with presumed victims, providing services without requiring the victim to tell his or her story.

⁶¹ OSCE Mission to Moldova, *Six-Month Analytic Report: Preliminary Findings on the Experience of Going to Court in Moldova*, 30 November 2006, p. 3.

For example, in one domestic violence case:

The husband-defendant had severely injured his wife-victim, and she repeatedly stated in court that her husband, who had already been given an administrative sanction for domestic violence, kept beating her. Before the trial hearing commenced, monitors saw the defendant intimidate the victim and instruct her to say that she forgave him. Women from the same community who were witnesses testified that the defendant threatened them and said that if they testified against him, then he would make sure that they suffered just like his wife. Despite this, the prosecutor did not react and did not request that the defendant be placed under arrest. In the same case, the defendant's daughter, who was a witness to the domestic abuse, was not informed that she had the right to refuse to testify against her father.⁶²

Given the poor treatment of victims by the court generally, and the lack of awareness concerning issues surrounding violence against women specifically, establishing legal advocates to assist victims during criminal proceedings is strongly recommended.

Trial monitoring also revealed that ingrained social attitudes concerning violence against women are often reflected in responses to the problem by institutions such as the judiciary and the criminal justice system. Blaming the victim and trivializing the violence suffered by women through inappropriate, sexist comments by judges and lawyers demonstrates a clear absence of understanding among legal professionals within Moldova's criminal justice system concerning human rights norms, and sends a strong message to victims that the legal system does not take their claims seriously.

Trial monitors recorded numerous instances in which victims were asked irrelevant and humiliating questions. For example, one judge asked a trafficking victim, "tell me, did you actually do this out of necessity or from sheer pleasure?" ("Ia spune, tu asta ia facut chiar din necesitate, sau din placere.") In another trafficking case, the judge asked the victim how many clients she had to entertain each day and how much time she had spent with each of them. In other cases the judges called victims of trafficking "those girls, if we may call them that," "the so-called injured party," and more blatantly "that prostitute."

In a commentary that revealed not only the judge's lack of sensitivity, but also scant understanding of the phenomenon of trafficking, the judge explained:

These young ladies are prostitutes, they go abroad and prostitute themselves, then they are not happy with the money they get, so upon their return, they complain they were trafficked. But I know their kind, I've seen their pictures, they're all smiling while dancing, and then they say that they were trafficked. By the way, prostitution is perfectly legal in Turkey.

In a domestic case, the judge, prosecutor and defense attorney all agreed to postpone the trial until after an upcoming wine festival "to see what happens," and thus knowingly jeopardizing the physical safety of the victim. That the threat of physical violence to the victim appears humorous to judges, prosecutors and defense attorneys alike reveals an

⁶² OSCE Mission to Moldova, *Six-Month Analytic Report: Preliminary Findings on the Experience of Going to Court in Moldova*, 30 November 2006, p. 44.

egregious lack of awareness concerning women's human rights. This anecdote further reflects an overall problem with Moldova's judicial systems, which tends to emphasize eliciting additional evidence, rather than on protecting victims and witnesses.

No courthouse in Moldova has separate facilities to secure the safety of victims and witnesses. There are no separate entrances and no special waiting rooms. Accordingly, victims and witnesses must use the same entrance and wait in the same corridors as defendants and defendants' friends and relatives. This results in uncomfortable, even traumatizing, experiences for victims and witnesses in cases of trafficking and domestic violence. Standard practices with regard to scheduling cases further exacerbate the situation. Courts schedule all cases for 10 am, requiring some parties to sit all day, waiting for their cases to be heard. Such scheduling practices also overburden those from rural areas traveling long distances to attend the proceedings.

Frequent delays and postponements have the same effects. Delays increase time victims and witnesses wait around in corridors, where they are forced to confront defendants and their family and friends. The postponement of hearings results in multiple confrontations.

Prosecutors fail to seek preventive measures against defendants, including for defendants with criminal background in the face of claims from victims and witnesses that the defendant was threatening them. Judges also fail to intervene in cases in which defendants approached victims and witnesses to try to intimidate them or influence their testimony; nor did they intervene to protect them from humiliating questions by lawyers.

With respect to civil proceedings, in cases of domestic violence, judges often invoke *sua sponte* a reconciliation period in divorce proceedings if the divorce is requested by only one of the spouses. Given the tendency of aggressors to become more violent as the victim attempts to escape, the results of judicially imposed reconciliation periods have been fatal. According to Ms. Tofan, in the last case in which she was assisting a victim to obtain a divorce, the aggressor murdered the victim and burnt her body during the reconciliation period.⁶³

⁶³ Interview, Tatiana Tofan, October 2006.