

**United Nations Human Rights Council**  
12<sup>th</sup> session of the Working Group on Universal Periodic Review,  
3-14 October 2011

**Submission of the Moldovan Institute for Human Rights (IDOM) to the  
Universal Periodic Review of the Republic of Moldova**

The present submission will focus on human rights violations in the field of discrimination of people living with HIV/AIDS in the Republic of Moldova, violations of patients' rights, violations of the rights of people with mental disabilities and ineffective remedies for victims of torture.

**INTRODUCTION**

The Moldovan Institute for Human Rights (*IDOM*) welcomes this opportunity to present its submission to the Universal Periodic Review (UPR) of the Republic of Moldova. IDOM is an independent, non-profit organization founded in 2007 by a group of lawyers and defenders of human rights. The major aim of IDOM is to contribute to education, promotion and defence of the rights and liberties guaranteed by national and international legislation. IDOM carries out activities in the following main areas: the rights of people living with HIV/AIDS, the rights of people with mental disabilities, patient's rights, reproductive rights, the rights of detainees, and defence of the victims of torture and ill-treatment.<sup>1</sup>

**I. DISCRIMINATION OF PEOPLE LIVING WITH HIV/AIDS**

Since January 2010, IDOM has been running the project "Reducing HIV-related burden in the Republic of Moldova" under the Global Fund Round 8 Grant, which is focused on monitoring, protection and promotion of the rights of people living with HIV/AIDS from the perspective of eliminating discrimination and stigmatization. The lawyers of the Litigation Program, through legal routine consultancies and strategic litigation,<sup>2</sup> identified the violations referring to the rights of people living with HIV in the Republic of Moldova.

On 01 June 2010, 5,999 persons affected by HIV have been officially registered, inclusively 1,891 in the Transnistrian region. HIV infection is registered among youth, working able persons, sexually active persons, thus 86,02% from the total number of people are between 15-39 age, 23,77% – are of ages between 20-24 and 24,99% – are 25-29 years old.<sup>3</sup> During 1987–2009, 990 persons died of HIV/AIDS in Moldova. AIDS has been diagnosed in case of 887 persons.

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<sup>1</sup> The members of IDOM contribute to writing reports on diverse violations of human rights. The reports result from various sources, as the analysis of the situation and of cases, the comparison of national legislation with international acts in the domain of human rights and from recommendations for improvement, such as: Alternative Reports to the UN Committees: UN Committee for Civil and Political Rights, available at [http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO\\_IDOM\\_Moldova97.pdf](http://www2.ohchr.org/english/bodies/hrc/docs/ngos/CreDO_IDOM_Moldova97.pdf) (27.02.2011), List of issue presented in 2010 to the UN Committee for Social, Economic and Cultural Rights, available at <http://www2.ohchr.org/english/bodies/cescr/cescrwg44.htm> (27.02.2011) ; UN Committee against Torture, available at [http://www2.ohchr.org/english/bodies/cat/docs/ngos/CRDO\\_IDOM\\_CNR\\_Moldova43.pdf](http://www2.ohchr.org/english/bodies/cat/docs/ngos/CRDO_IDOM_CNR_Moldova43.pdf) (27.02.2011).

<sup>2</sup> During 2010 the lawyers consulted 142 persons living with HIV/AIDS and undertook 29 strategic cases, litigated extra-judiciary or within national judicial courts.

<sup>3</sup> Governmental Decision of the Republic of Moldova nr. 1143 of 16 December 2010, regarding the approval of the National Program on prevention and control of HIV/AIDS and sexual transmitted infections during 2011-2015, <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=337100> (27.02.2011).

In January 2011, the Sociological study “Perception of the Moldovan population regarding the phenomena of discrimination”,<sup>4</sup> conducted by the Soros Foundation-Moldova indicated that 56% of persons who participated in the study consider that the most frequently discriminated are people living with HIV. In the study it is also mentioned that the tolerance indicator towards the people living with HIV status is of only 5%, according to the methodology of UNAIDS.

The respect and protection of the intimate, family and private life is guaranteed by the Constitution of the Republic of Moldova.<sup>5</sup> The Moldovan Law on prophylaxis of HIV/AIDS infection<sup>6</sup> and the Law on patients’ rights and responsibilities<sup>7</sup> guarantee the confidentiality and respect for the intimate and private life. The Law on protection of personal data<sup>8</sup> ensures the obligations of the holders of personal data to protect their confidentiality.

**The main human rights violations faced by the people living with HIV/AIDS in the Republic of Moldova are related to<sup>9</sup>:**

- illegal disclosure by doctors to third parties of the data regarding the patients’ HIV status;
- coding or otherwise distinguishing with special signs the medical cards and/or medical referral forms of HIV-positive patients by medical personnel;
- marking with similar distinguishing signs the medical cards of the children whose parents are HIV positive by doctors;
- mandatory inclusion of the code of diseases in the official sick leave forms issued by doctors – to be presented to employer for official records;
- absolute medical contraindication for persons, including also foreigners, with HIV/AIDS to adopt children<sup>10</sup> and also children with HIV/AIDS status are impede to be adopted;<sup>11</sup>
- refusals by the Bureau of Migration and Asylum within the Ministry of Interior to issue immigration certificates to HIV/AIDS positive foreign citizens<sup>12</sup> already married to Moldovan citizens;
- mandatory medical examination, including testing for HIV/AIDS, for all persons as a precondition for presenting application for marriage;
- refusal by the Social Assistance Office to place a person living with HIV in the residential state social institutions due to the HIV status;<sup>13</sup>
- unjustified practice of mandatory HIV/AIDS medical testing for being employed in a variety of jobs (tattoo specialist, police officer, confectioner, military services).

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<sup>4</sup> Sociological Study „Perception of the Moldovan population regarding the phenomena of discrimination”, available at <http://soros.md/files/publications/documents/Studiu%20Sociologic.pdf> (27.02.2011), 1<sup>st</sup> ed., January 2011, 3,5.

<sup>5</sup> Constitution of the Republic of Moldova, Article 28, which stipulates that “the State shall respect and protect the intimate, family and private life.”, [http://www.constcourt.md/index\\_en.html](http://www.constcourt.md/index_en.html) (10.01.2011).

<sup>6</sup> Law of the Republic of Moldova on prophylaxis of HIV/AIDS infection, No. 23-XVI, 16 February 2007.

<sup>7</sup> Law of the Republic of Moldova on patients’ rights and responsibilities, No. 263, 27 October 2005.

<sup>8</sup> Law of the Republic of Moldova on protection of personal data, No. 17-XVI, 15 February 2007.

<sup>9</sup> Findings of the Litigation Program of the Moldovan Institute for Human Rights, based on consultations provided to 142 persons living with HIV/AIDS and 29 litigated strategic cases during 2010; Report of the Litigation Program (January-March 2010), p.5-9, IDOM, <http://aids.md/aids/files/223/idom-report-programme-litigation-january-march-2010-en.pdf>.

<sup>10</sup> Decision of the Moldovan Government regarding the approval of the list of medical contraindications for persons who intend to adopt children, No. 512 of 25 April 2003.

<sup>11</sup> Joint Ordinance of the Moldovan Ministry of Education (no. 113 of 11 April 1994), Ministry of Health (no. 64 of 5 April 1994) and Ministry of Justice (no. 47 of 11 April 1994).

<sup>12</sup> Article 24 of the Law of the Republic of Moldova on prophylaxis of HIV/AIDS infection, No. 23-XVI, 16 February 2007.

<sup>13</sup> Instruction regarding the accommodation into social institutions under the jurisdiction of the Ministry of Labor and Social Protection, adopted on 16 February 2000 between the Ministry of Health and the Ministry of Labor and Social Protection.

**Recommendations:**

The Human Rights Council is called to encourage the Government of the Republic of Moldova to:

1. *monitor and evaluate the negative practices of breaching the confidentiality in medical institutions and stop breaches of confidentiality and negligent attitude of the medical staff towards people living with HIV/AIDS in order to ensure that people living with HIV have adequate and equal access to quality health care;*
2. *eliminate the mandatory indication of the disease codes in all medical sick leave forms in the country;*
3. *introduce and implement human rights courses for medical students and provide human rights trainings for medical staff on patients' rights, human rights and HIV/AIDS;*
4. *amend the inter-ministerial regulatory framework and the Decision of the Moldovan Government no. 512 of 25 April 2003 in order to permit the adoption of children with HIV/AIDS, as well as the adoption of children by persons with HIV/AIDS;*
5. *improve regulatory framework and practice with regard to mandatory HIV/AIDS testing for being employed, providing a renewed and updated list of jobs for which a medical testing is needed, as well as for ensuring that persons living with HIV/AIDS are not unjustifiably limited to the right to equal job opportunity;*
6. *eliminate barriers to access residential state social institutions with regard to persons in need of special social care.*

**II. VIOLATIONS OF THE RIGHT TO PRIVATE LIFE**

Sharing the personal information regarding patients who are injecting drug users between the medical and state institutions constitutes unjustified interference in the private life. The Republic of Moldova has an automatic and mandatory transmission system<sup>14</sup> used by narcological institutions to send to internal affairs bodies the information on patients registered at the narcologists. Police officers monitor the private life of people registered at the narcologists, supervise their behavior, and sometimes use abusive detention and permanent searches of their homes. The persons have to report to the Police Station once per month by giving written explanation.<sup>15</sup> Police officers have a strict evidence of medical records for each person.

**Recommendation:**

1. *amend the Order and Regulation on preventive measures against the antisocial actions of patients suffering from chronic alcoholism and drug addiction, by excluding the sharing of monthly information to internal affairs bodies on the names and surnames of people registered at the narcologists.*

Compulsory treatment is approved without any court decision in general medical institutions to people who suffer from alcohol abuse and/or use drugs or psychotropic substances. Thus, according to Law on control and prevention of alcohol abuse, illegal use of drugs and other psychotropic substances, people may be committed for inpatient or outpatient treatment in narcological institutions or general medical institutions of the Ministry of Health.<sup>16</sup> According to the mentioned law, the court order for compulsory treatment is issued only for the compulsory treatment in narcological institutions of the Ministry of Health, meaning that the law does not provide expressly the necessity of issuing a court decision stipulating the compulsory placement of patient for treatment in general medical institutions of the Ministry of Health.

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<sup>14</sup> Point 8-16 from the *Regulation on the collaboration between the health protection agencies and the internal affairs bodies in order to prevent the antisocial actions of patients suffering from chronic alcoholism or drug addiction, approved by the joint Order of the Ministry of Health and Social Protection and the Ministry of Internal Affairs No. 350/433 of 06/18.10.2006 on preventive measures against the antisocial actions of patients suffering from chronic alcoholism and drug addiction.*

<sup>15</sup> Recent interviews with beneficiaries of IDOM Project "Reducing HIV-related burden in the Republic of Moldova" within legal consultancies.

<sup>16</sup> Article 15 from the Law No. 713/XV of 06.12.2001 on Control and prevention of alcohol abuse, illegal use of drugs and other psychotropic substances.

Moreover, the law does not provide the compulsory need to attach the narcological expertise to the legal action in court, because according to it, the legal action is accompanied by the supporting documents such as the notification of the narcological commission and the expertise, if such an expertise was conducted.

**Recommendations:**

1. amend Article 15 of the Law No. 713/XV of 06.12.2001 on Control and prevention of alcohol abuse, illegal use of drugs and other psychotropic substances by including the obligation of issuing court decision in cases when compulsory treatment is ordered in narcological institutions or general medical institutions of the Ministry of Health;
2. amend Article 15 by stipulating the mandatory attachment of the narcological expertise report to the legal action on requesting the compulsory treatment.

### III. INEFFECTIVE REMEDIES FOR VICTIMS OF TORTURE

Although the Moldovan authorities committed themselves to eliminate torture and ill-treatment incidents, they failed to take steps in investigating allegations of the use of torture and ill-treatment during the demonstrations that took place in April 2009. The following issues are still of great concern:

- the initiation of criminal proceedings is slowed down in cases on the events of April 2009;<sup>17</sup>
- the law of criminal procedure does not provide a time limit for the initiation and conduct of criminal prosecution;
- overlap in the interpretation and appliance of the components of crime (torture/power abuse) which leads to impunity of responsibility for the crime of torture;
- deficient implementation mechanism of safety measures for victims and witnesses.<sup>18</sup>

**Recommendations:**

1. introduce in the Criminal Procedure Code a legal provision on the establishment of a term or time limit so that not to exceed the term in which a person requests the reparation of the violated right;
2. organize trainings for prosecutors and judges regarding the appliance of legal provisions on the crime of torture;
3. amend the relevant articles of the Criminal Procedure Code and the Law on protective measures according to which the Ministry of Interior should not be responsible for establishing protective measures for victims and witness in cases on use of torture or ill treatment by police officers;
4. evaluate the practice of using protective measures, the deficiency of the use, as well as conditions in which they are used.

### IV. VIOLATIONS OF THE RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

There are almost 5000 persons detained in the psychiatric institutions in Moldova. Only 20% of them are detained and treated according to the legislation in force, the rest of persons are detained illegally, hospitalized and treated without a court order and their free consent. *De jure*, almost 80% of the persons are placed with their free consent, they being forced to sign an agreement on their hospitalization or

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<sup>17</sup> The 2009 civil unrest in Moldova began on April 7, 2009, after the results of the 2009 Moldovan parliamentary election were announced. The demonstrators claimed that the elections, which saw the governing Party of Communists of the Republic of Moldova (PCRM) win a majority of seats, were fraudulent, and alternatively demanded a recount, a new election, or resignation of the government. Similar demonstrations took place in other major Moldovan cities, including the country's second largest, Bălți, where over 7,000 people protested. On the night following April 7, around 1 a.m., police forces routed the remaining crowds in the main square and arrested about 200 of participants. On the following day, more arrests were issued, with demonstrators beaten and transported away in police cars.

<sup>18</sup> Interviews with regard to the cases from April events within IDOM Project "Advocacy of human rights in the frame of the crisis associated with the April 2009 Parliamentary Elections in the Republic of Moldova": the victims and witnesses stated they have been contacted by the representatives of police officers who forced them to withdraw their complaints against the criminal prosecution body by threatening the witnesses, and witnesses' relatives.

discharge provided they will be discharged. Although the persons are *de jure* hospitalized with their free consent, they cannot leave the psychiatric institution at their will.<sup>19</sup>

A more severe problem exists in the psycho-neurological boarding houses, where persons are hospitalized for life without a court order for hospitalization or for the lack of expertise capacity. Although the persons placed in these boarding houses are *de jure* capable and do not have any court orders limiting their freedom, they cannot leave the institutions. Persons placed here are not treated accordingly, because these institutions are social entities, so their placement here is limited only to detention. There are unique cases when persons placed in these institutions have been discharged, as for the rest, they are detained for life.

Women detained for life are subjected to forced abortions, without a court order, legal provisions or their free consent. The state is treating these women as incapable and irresponsible, in the absence of a legal or medical finding.

There are no internal investigations of violations of the rights of people with mental disabilities placed in specialized institutions. Although it was required by law that an independent commission should be created under the Ministry of Health<sup>20</sup> in order to monitor the patients' rights in psychiatric institutions, such commission does not exist till present.

The psycho-neurological institutions in Moldova are under the Ministry of Labour, Social Protection and Family. Some of them (ex., the psycho-neurological internat from Cocieri village, Dubasari district) have a disciplinary cell, i.e. a room without furniture with an iron barred door, where the persons are detained for certain "disciplinary violations". The incarceration decision is made by the nurse, who has also the keys to this disciplinary cell. Persons are detained for hours, and even for days, being constrained to sleep on the bare floor or dirty mattress, without access to sanitation facilities and drinking water. The disciplinary cell is on the hallway, where other detained persons are walking, so this is a method to punish and educate other patients.

Another method used in psycho-neurological internats (Brinzeni village, Edinet district) is to chain the persons by foot to bed or radiators.

### **Recommendations:**

1. *monitor and evaluate the existing conditions, the standards of medical treatment and the situation with regard to the respect of human rights in psychiatric hospitals and psycho-neurological institutions/internats;*
2. *provide training on human rights issues for the staff of psychiatric institutions and psycho-neurological institutions/internats;*
3. *eliminate all forms of torture and conduct legal investigation of abuse cases;*
4. *eliminate the practice of forced abortions.*

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<sup>19</sup> Decision of the European Court for Human Rights, Case David v. Moldova from 27 November 2007, application 41578/05, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=2&portal=hbkm&action=html&highlight=David%20%20v.%20%20Moldova&sessionId=68352345&skin=hudoc-en>; case of John Onoje, a refugee from Leone who was released after Moldovan Institute for Human Rights' visit to the Costiujeni psychiatric institution, <http://curaj.tv/local/chisinaiu/mai-sunt-internati-ilegal-la-costiujeni-2/> ( para 14); European Committee for Prevention of Torture, Report on Moldova (14-24 September 2007) [http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.htm#\\_Toc196046523](http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.htm#_Toc196046523).

<sup>20</sup> Article 37 of the Law on Mental Health no. 1402 of 16 December 1997.