

**MINISTERUL  
MUNCII, PROTECȚIEI  
SOCIALE ȘI FAMILIEI AL  
REPUBLICII MOLDOVA**



## Feasibility Study

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Ratification of the Optional Protocol to the International Covenant on  
Economic, Social and Cultural Rights: Challenges or Opportunities?

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## Executive Summary

This paper was commissioned by the Ministry of Labour, Social Protection and Family and the Office of the United Nations High Commissioner for Human Rights. It examines the feasibility for the Republic of Moldova to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). Pursuant to an overview of the Protocol, it examines the Moldovan legislation and case law against the provisions of the Covenant. The paper further analyses the opportunities and obstacles to ratification.

The preliminary findings point to the fact that ratification is feasible. During meetings with relevant stakeholders in Moldova, a range of benefits for the Republic of Moldova as a State-party of the Optional Protocol has been identified both at national and international level. At the international level the ratification of the Optional Protocol will strengthen the international legal system and affirm Moldova's place as a good faith participant in the international system of human rights protection, as well as confirm its commitment to the equal protection of the civil, political, economic, social and cultural rights and ensure respect for human rights and human dignity.

Accordingly, the ratification of this document by Moldova reaffirms its commitment to engagement in constructive, participatory and capacity building process created by individual complaints mechanism within the international system of human rights protection and ensures equal access to international individual complaints procedures with regard to all human rights. By ratifying the OP-ICESCR Moldova can take a leadership position in the region as well as within the Eastern Partnership in economic, social and cultural rights protection.

Moldova will also play a role in the development of the international rights jurisprudence on economic, social and cultural rights. A particular advantage thereof would be further clarifying and concretizing its positive duties set out in the International Covenant on Economic Social and Cultural Rights. The concretization of the obligations and legal clarity will improve awareness and understanding of social, economic and cultural rights in Moldova. Better understanding helps in strengthening the implementation of and compliance with those rights.

Through the complaints procedure, the government will be also encouraged to take steps towards the full incorporation of the ICESCR into domestic law and policies as well as to consider consequences for economic, social and cultural rights of all their actions. In this way, the Protocol may lead the government to mainstream social rights into all their activities and enhance accountability for its actions relating to economic, social and cultural rights (ESC rights). It is also worth noting that an individual complaints' mechanism foreseen in the Optional Protocol requires moving from abstract principles to concrete cases. Thus, the procedure basing on Committee's decisions concerning real-life situation could be used by the government as a valuable means in identifying and suggesting solutions for actual problems on the ground.

Article 3 of the OP-ICESCR requires the exhaustion of all available domestic remedies (judicial and quasi-judicial) before a complaint can be heard by the CESCR Committee. This encourages the use,

development and strengthening of effective remedies system at the national level, rather than facing the prospect of a negative outcome of an international procedure. Accordingly, the necessity to exhaust domestic remedies will require individuals and groups to become much more informed about their State, their rights, and the interaction between the two. In many cases, they will learn about the limits as well as the possibilities for demanding attention to economic and social rights in their domestic context. In this manner, the individual complaints mechanism is also an important tool for the civil society empowerment. Using the complaints mechanism individuals will often discover that their government is in fact fulfilling its obligations or at least making a good faith effort to do so. Individuals will not only get a lesson on empowerment, they will also be educated on the limits of their claims as well.

As far as the costs of ratification are concerned, it should be noted that the ratification does not imply additional cost for Moldova, since the Optional Protocol does not provide for any new substantive obligations above those already recognized by the Republic of Moldova becoming the Party to the ICESCR. Accordingly, this instrument provides for strict admissibility criteria such as strict time limits on claims, exhaustion of remedies at national level, the prevention of duplication of claims between treaty bodies. Taking into account arguments outlined above, and efforts made by Moldova to promote the implementation of social, economic and cultural rights, as well as the experience of Moldova with similar individual communication procedures within other UN human rights treaty bodies, there is little reason to assume that accession to the Protocol will result in a large number of complaints. Consequently, the ratification of the Optional Protocol will not create additional problems for the Republic of Moldova in terms of increasing workload and expenses.

It should be also underlined, that besides benefits for a State as a party of the Optional Protocol, individual complaints mechanism brings clear and positive benefits for people – including both vulnerable or pariah groups, as well as the population-at-large.

The findings of the report are not exhaustive, subject to further comments from relevant stakeholders.

## Introduction

During its 2011 review of the Republic of Moldova, the UN Committee on Economic, Social and Cultural Rights (CESCR Committee) urged the Republic of Moldova to ratify the Optional Protocol to the treaty. Later the same year, during the first Universal Periodic Review (UPR) of the Republic of Moldova, the following recommendations were made:

“76.1. Ratify or accede to, as appropriate, the Optional Protocol to ICESCR<sup>1</sup>, CED<sup>2</sup>, ICRMW<sup>3</sup>, and the Optional Protocol to CRPD<sup>4</sup> (Uruguay);

76.2. Sign and ratify the Optional Protocol to ICESCR and CRPD; and ratify CED (Spain);”

In December 2012, the Parliament of the Republic of Moldova adopted a revised National Human Rights Action Plan (NHRAP) 2011-2014, aiming to incorporate Moldova’s UPR recommendations into the Plan. The revised NHRAP includes as an action the carrying out of a feasibility study on possibilities to ratify the Optional Protocol during 2013.

Against this background, this paper is considering the question whether it is feasible to ratify the new Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR). Adopted by the UN General Assembly on 10 December 2008, the Protocol permits individual victims to make complaints to the UN Committee on Economic, Social and Cultural Rights if a member State had failed to observe its obligations under the Covenant. Before sending a communication to the Committee domestic remedies must be exhausted and the comparatively strict admissibility criteria must be met. While the function of the Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision, ,

The study questions addressed by this report are:

- Does the national legal framework incorporate the rights enshrined in the International Covenant on Economic, Social and Cultural Rights?
- Are remedies available at national level in case of violations of ESC rights? Is there any relevant case law?
- What are the challenges and opportunities regarding the ratification of the OP-ICESCR;
- If ratification is feasible, what should be done to facilitate the ratification process? What actions are required in order to provide an efficient and workable complaint mechanism?

This paper is structured into three chapters. The first chapter provides an overview of the UN framework on ESC rights. Specifically, it considers the rights enshrined in the ICESCR, the nature of

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights.

<sup>2</sup> International Convention for the Protection of all Persons from Enforced Disappearance.

<sup>3</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

<sup>4</sup>International Convention on the Rights of Persons with Disabilities.

Moldova's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR), and provides an overview of the Optional Protocol to the ICESCR.

The second Chapter examines the national legal framework from the perspective of the rights enshrined in the Covenant. It considers remedies available in case of violations of economic, social and cultural rights and relevant case-law.

The third chapter provides a comprehensive analysis of the challenges perceived by national actors and opportunities regarding the subsequent ratification of the complaints procedure. The final part of the paper provides a brief overview of the main findings and recommendations.

## **Chapter 1. UN framework on economic, social and cultural rights “ESC rights”**

This chapter will provide a short overview of the UN framework on ESC rights. The first section will look into the rights enshrined in the ICESCR and the nature of Moldova's obligations under the Covenant. The second section provides an overview of the Optional Protocol to the ICESCR.

### **1.1 The International Covenant on Economic, Social and Cultural Rights and Moldova's Obligations under the Treaty**

The International Covenant on Economic, Social and Cultural Rights is the main treaty in the United Nations human rights system to address economic, social and cultural rights. It encompasses the following **rights**:

#### **Right to work (Articles 6, 7, 8 and 10)**

The right to work entitles workers to have the possibility to earn their living by the work of their choice (Article 6) and to working conditions that are safe and healthy and are not demeaning to human dignity. Workers must be guaranteed a fair wage that allows for a decent life for them and their families. There should be no discrimination of any kind in employment and promotion. Equal work should be compensated with equal pay, and employers should provide their workers with periodic and paid holidays (Article 7). The right to work also includes the right to associate with one another and bargain for better working conditions, the right to join the trade union of their choice and the right to strike as long as it is in conformity with the laws of the country (Article 8). Forced labour is illegal under international law and is a grave violation of human rights (article 10).<sup>5</sup>

#### **Right to social security including social insurance (Article 9)**

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<sup>5</sup> UN, CESCR, The right to work (Art. 6), General Comment 18, E/C.12/GC/18, 6 February, 2006

States must recognize the right of everyone to social security, including social insurance, which embraces the guarantee that everyone will be provided with the minimum goods and services required for a dignified life. It is the duty of the State to make sure that everyone in its territory is afforded protection without discrimination from “(a) lack of work-related income caused by sickness, disability, maternity, employment injury, unemployment, old age, or death of a family member; (b) unaffordable access to health care; (c) insufficient family support, particularly for children and adult dependents.”<sup>6</sup>

### **Right to food (Art. 11)**

The right to food is essential for a dignified life and is vital for the realization of many other rights, such as the right to health and adequate standards of living. It is not limited to just having a certain amount of calories and necessary nutrients in one’s diet. It means that everybody should have physical and economic access to food or the means.<sup>7</sup>

### **Right to an adequate standard of living, including housing (Art. 11)**

This right encompasses all those elements in a living abode that are essential to a life with dignity: security from outside threats, a healthy living environment and freedom to choose one’s place of settlement. Government must develop national policies that will guarantee this right to all its citizens. Special consideration should be given to vulnerable groups such as minorities and the elderly.<sup>8</sup>

### **Right to water and sanitation (Art. 11)**

The right to water requires that everyone has access to an adequate amount of drinking water for personal and domestic uses. The full enjoyment of this right means access to water that is affordable, clean and physically accessible. The fulfillment of the right to water is crucial for the fulfilment of other rights.<sup>9</sup>

### **Right to the highest attainable standard of physical and mental health (Art. 12)**

The right to health is related to the fundamental right of each person to live in dignity. It entitles people to enjoy the best available health care. The right to health also entitles people to have control over their bodies and their health.<sup>10</sup>

### **Right to education (Articles 13 and 14)**

The right entails two broad components: (i) enhancement of access for all to education on the basis of equality and non-discrimination and (ii) freedom to choose the kind and content of education.

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<sup>6</sup> UN, CESCR, The right to social security (Art. 9), General Comment 19, E/C.12/GC/19, 18 February , 2008

<sup>7</sup> UN, CESCR, The right to adequate food (Art. 11), General Comment 12, E/C.12/1999/5, 12 May , 1999

<sup>8</sup> UN, CESCR, The right to adequate housing (Art. 11 (1)), General Comment 4, E/1992/23, 13 December , 1991

<sup>9</sup> UN, CESCR, The right to water, General Comment 15, E/C.12/2002/11, 20 January , 2003

<sup>10</sup> UN, CESCR, The right to the highest attainable standard of health, General Comment 14, E/C.12/2000/4, 8 August , 2000



Universal primary education must be compulsory and should be guarded against violations by parents or government.<sup>11</sup>

### **Right to take part in cultural life and to benefit from scientific progress (Art. 15)**

People have the right to freely determine their identity, chose their religion and decide their own political beliefs. Education plays an important role in promoting cultural diversity and forging tolerance among different groups. Moreover, education imparts individuals with the necessary skills and knowledge needed to actively participate in cultural and scientific life. Governments should recognise and protect the cultural diversity of their citizens. Particular attention should be given to the cultural rights of minority groups and indigenous peoples. They should be allowed cultural autonomy within the limits of national laws. Cultural rights cannot be used, however, as a justification for practices that discriminate against specific groups or violate human rights.<sup>12</sup>

Ratification of the Covenant entails legally binding obligations to respect, protect and fulfil the human rights recognized under the treaty.

The **obligation to respect** means that the state should refrain from interfering directly or indirectly with the enjoyment of the rights. This is an immediate obligation and includes respecting persons' efforts to realize their own rights.

Under the **obligation to protect** states should take pro-active measures that prevent third parties from interfering with the enjoyment of the right. Such measures include: preventing, investigating, punishing and ensuring redress for the harm caused by abuses of human rights by third parties, such as private individuals, commercial enterprises or other state and non-state actors. This is also an immediate obligation.

The **obligation to fulfil** (*facilitate*) means the State must proactively engage in activities intended to strengthen persons' access to and utilization of resources and means to ensure their livelihood, including food security. For example, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (*provide*) that right directly.

State obligations under the ICESCR are subject to available resources, and many of these obligations do not require large amounts of financial resources. Under the obligations to respect and protect, the costs are limited to those of monitoring and enforcing legislation.

The obligation to fulfil rights may require the use of significant amounts of public resources, but to a limit of their availability. This means that in a state where social and cultural rights are not realised due to a genuine lack of resources, there is no violation of such rights. In such cases the state has to

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<sup>11</sup> CESCR, The right to education (Art. 13), General Comment 13, E/C.12/1999/10, December 8, 1999

<sup>12</sup> International NGO Coalition for the Optional Protocol to the ICESCR, Booklet 1: Refreshing Your Knowledge About the International Covenant on Economic, Social and Cultural Rights, p. 4

prove that all actions have been undertaken to advance ESC rights, including legislative, financial, administrative and other appropriate measures, as well as international cooperation,

It is worth mentioning that ESC Rights are to be realized progressively. Article 2 of the ICESCR states that State parties to the Covenant undertake to take steps, to the maximum of its available resources, with the view to achieving progressively the full realization of the ESC rights. The concept of progressive realization constitutes recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time

## **1.2 Overview of the Optional Protocol to International Covenant on Economic, Social and Cultural Rights**

In the early 1990s, the Committee on Economic, Social and Culture Rights (CESCR Committee) started discussing the possibility of drafting an Optional Protocol to the ICESCR. In preparation for the 1993 World Conference on Human Rights in Vienna, civil society also began advocating for the adoption of such an instrument. As a result, the World Conference made a specific request to the United Nations Commission on Human Rights (the body that was replaced by the Human Rights Council in 2006), in cooperation with the Committee on Economic, Social and Cultural Rights, to examine the development of an Optional Protocol.

In 2001, the UN Commission on Human Rights decided to nominate an Independent Expert on the question of a draft Optional Protocol to the ICESCR who, after a series of reports, recommended the adoption of an Optional Protocol to the ICESCR. In 2002, the Commission on Human Rights established a process whereby all States were able to discuss the possibility of an Optional Protocol to the ICESCR, known as an open-ended working group.

In 2006, the open-ended working group began negotiations on the text of the Optional Protocol. In 2008, the States in the working group sent an agreed text to the Human Rights Council for consideration and approval. The Human Rights Council adjusted Article 2 of the text to include all rights in the ICESCR. It then approved the OP-ICESCR by consensus.

Finally, on December 10, 2008, the 60th Anniversary of the Universal Declaration of Human Rights, the Optional Protocol was adopted by the United Nations General Assembly.<sup>13</sup> The OP-ICESCR entered into force on 5 May 2013 upon ratification or accession by ten states.<sup>14</sup>

The Optional Protocol does not grant any additional substantive rights above those already recognized in the ICESCR. The Optional Protocol establishes three procedures pursuant to which the

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<sup>13</sup> International NGO Coalition for the Optional Protocol to the ICESCR, Booklet 2. Overview: The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights describes the procedures and mechanisms introduced by the Optional Protocol, the adoption and ratification process and the competence of the Committee to receive and consider complaints against States Parties, p. 10-11.

<sup>14</sup> It had been ratified by Argentina, Bolivia, Bosnia and Herzegovina, Ecuador, El Salvador, Mongolia, Portugal, Slovakia, Spain and Uruguay and 32 other states had signed but not yet ratified: [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3-a&chapter=4&lang=en) (status as at 10 May 2013).

Committee may consider complaints alleging violations of rights guaranteed under the ICESCR: the individual communication procedure; the inter-state complaints procedure; and the inquiry procedure.

The Committee can only receive and examine complaints using the above procedures if a State has ratified both the ICESCR and the Optional Protocol thereto.

The OP-ICESCR adheres fairly closely to the models for communications and inquiry procedures previously established within the universal human rights system. However, it contains some changes and innovations (presented below), which are minor and have mainly drawn inspirations from regional instruments.

The **Individual Communication Procedure** permits individuals or groups of individuals to submit a complaint of an alleged violation of any of the rights contained in the ICESCR to the Committee and to seek redress for that violation. Complaints can only be brought by, or on behalf of, victims who are ‘under the jurisdiction’ of a State party to the Optional Protocol. It also allows complaints to be submitted on behalf of the alleged victim(s), even without their consent, when there are appropriate grounds for doing so (Article 2).

Not all complaints will be considered by the Committee. The Optional Protocol sets out the strict admissibility requirements that must be met before the Committee will consider the merits of a complaint as part of the individual complaints mechanism. It provides that:

- For a communication must have been exhausted all available domestic remedies, except for situations where the application of such remedies has been unreasonably prolonged: Art 3(1);
- Generally, a communication must be made within a year of exhausting domestic remedies: Art 3(2)(a);<sup>15</sup>
- The communication must not concerns facts which pre-date the date on which the Optional Protocol entered into force for the State party, except for cases in which ‘those facts continued after that date’: Art 3(2)(b);
- The communication must not already be the subject of examination by the Committee or another international investigation (or a prior examination or investigation): Art 3(2)(c);
- A communication must not be incompatible with the provisions of the Covenant: Art 3(2)(d);
- A communication will be inadmissible if it is: manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media<sup>16</sup>: Art 3(2)(e); an

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<sup>15</sup> It should be noted that other treaties from the universal system do not provide for such a requirement except for article 14, paragraph 5, of the International Convention on the Elimination of All Forms of Racial Discrimination (six months). See also, rule 96(c) of the Rules of procedure of the Human Rights Committee. This requirement is also stipulated in regional human rights systems (see European Convention on Human Rights, Article 35.1).

<sup>16</sup> The requirement is an innovation. The purpose of this addition is to ensure that communications submitted on behalf of victim(s) without their consent comply with a minimum standard of proof and meet a minimum degree of reliability.

abuse of the right to submit a communication: Art 3(2)(f); or anonymous or not in writing: Art 3(2)(g).

In addition, the Committee may decline a communication if it determines that it does not reveal that ‘the author has suffered a clear disadvantage’ (Article 4). This clause is new to communications procedures established under human rights treaties within the universal system. This provision mirrors a similar condition included in Protocol 14 to the European Convention on Human Rights, by which European countries have tried to address the vast volume of complaints in Strasbourg. A similar rationale was behind the addition of the criterion here. It is meant to give a tool to the Committee with which it can protect itself from being flooded by frivolous communications.

The Optional Protocol establishes the following participatory procedure for examination of admissible complaints. First the Committee will bring the matter to the attention of the State party concerned. The State party will then have six months in which to respond to the complaint, with a written explanation or statement with any clarification of the matter and details of any remedies that may have been provided by the State party. The Committee will consider the merits of the case in closed meetings, in light of all the documentation, including relevant material from UN bodies, specialized agencies as well as regional human rights system<sup>17</sup>. When assessing communications, the Committee should base on parameters set out in Article 8.4 of the OP-ICESCR i.e. ‘the reasonableness of the steps taken by the State’ in order to effectively implement the rights enshrined in ICESCR and ‘the range of possible policy measures’ the State can take.<sup>18</sup> This provision reflects the principle of progressive realization and the reference to ‘available resources’ set out in Article 2(1) of the ICESCR. This innovation could be also seen as a safeguard that prevents States from being confronted with demands that are impossible to meet.

After examining a communication, the Committee transmits its ‘views’ on the communication, together with any ‘recommendations’, to the parties. The State party will have six months in which to submit a written response, including information on any action taken in the light of the views and recommendations of the Committee. In addition, the Committee can ask the State party to submit any further information on measures taken in relation to its views and recommendations in the State party’s subsequent reports under Article 16 and 17 of the Covenant (Article 9).<sup>19</sup> It is worth underlining that this is the first time that a follow-up procedure has been expressly included in the

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<sup>17</sup> Paragraph 3 introduces an innovation by comparison with other individual communications procedures within the universal human rights system since it offers a procedural solution during which relevant regional communications or complaints procedures could be taken into account.

<sup>18</sup> The most important innovation contained in Article 8 by comparison with other communications procedures is paragraph 4. No other instrument had previously established a standard of review or judgment criterion that the Committee in question should adopt when assessing communications. It was included at the insistence of several States who believed that a provision was needed to clearly set parameters against which the Committee would assess whether States had complied with their obligations under the ICESCR.

<sup>19</sup> See also Rule 18 of Provisional Rules of Procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, adopted by the Committee at its forty-ninth session (12-30 November 2012), available at: <http://www2.ohchr.org/english/bodies/cescr/docs/E.C.12.49.3.pdf>

text of an Optional Protocol. It builds on the existing practice of other UN human rights treaty bodies.

In 'exceptional circumstances', the Committee may also make an urgent request to a State party, prior to determining on the merits of the case, asking that it take **interim measures** to avoid possible irreparable damage to the victim/s of the alleged violations (Article 5). The possibility of adopting the interim measures is a fundamental guarantee designed to ensure that the rights established in the ICESCR are not irreparably damaged while the communication is being processed and the ESCR Committee is reaching its decision. In cases in which interim measures are requested while a communication is being processed, the adoption of such measures does not imply that any kind of judgment has been made on the admissibility or merits of the communication. This stems precisely from the preventive nature of such measures which, since it does not replace examination of the merits of the case, introduces a different and stricter standard for determining their appropriateness.<sup>20</sup>

As part of individual complaints mechanism, friendly settlements procedure could be used, through which both parties agree to resolve the complaint by reaching an agreement (Article 7). It could be a useful mechanism in order to speed up proceedings and establish a direct channel of dialog between the victims and the State through which the remedy to be adopted can be discussed.<sup>21</sup> It is worth noting that it is an innovation since this is the first time it is explicitly included in an individual complaints procedure within the UN system. In other treaty bodies within the universal system this procedure is only proposed with regard to inter-State communication procedures.

The Optional Protocol also contains **an Inter-State communication procedure** (Article 10). This procedure allows the Committee to consider communications from one State party alleging that another State party is not fulfilling its obligations under the ICESCR. As for the procedure itself, it should be noted that by contrast, and unlike communications submitted by victims, although the Committee sessions are also closed, in the case of inter-State communications the States parties concerned have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing. The Inter-State communication procedure is an 'opt-in' procedure. This means that it will only be available where both States involved are party to the Optional Protocol and have made the necessary declarations recognizing the competence of the Committee in this regard.

The Optional Protocol also establishes **an inquiry procedure** (Article 11), which allows the Committee, upon receipt of reliable information, to initiate inquiries into grave or systemic violations by a State party of any of the rights contained in the ICESCR. Whereas the individual communication mechanism aims to provide individual redress for human rights violations, the inquiry mechanism seeks to provide remedies for systematic human rights abuses within a State. The inquiry procedure is confidential. If the Committee deems that the conditions for opening an inquiry have been met, it

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<sup>20</sup> Inter-American Institute of Human Rights/International Commission of Jurists, *Commentary on the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights* (2008), p. 73.

<sup>21</sup> Inter-American Institute of Human Rights, p. 76.

makes the information available to the State concerned and invites it to submit its observations. From those observations and other reliable information it has obtained, the Committee may appoint one or several of its members to conduct an inquiry and request the State to cooperate with it. If necessary, the person or persons in charge of the inquiry may, as long as the State concerned consents, conduct an on-site visit. Once the findings of the inquiry have been considered by the full Committee and comments and recommendations have been formulated, these are sent to the State which has six months to comment on them. The Committee may, after consultation with the State concerned, decide to include a summary account of the results of the inquiry in its annual report. The Committee may also follow-up on the inquiry by inviting the State party to provide details of any measures taken in response to an inquiry, or it may invite the State party to include such information in its periodic reports to the Committee.

As with the Inter-State complaint mechanism, the inquiry procedure requires States party to the Optional Protocol to 'opt-in' to the inquiry procedure by making a declaration that it recognizes the Committee's competence to conduct such an inquiry.

As discussed above, at the conclusion of the Committee's consideration of individual communications, Inter-State communications and inquiries, the Committee is variously empowered to provide views, findings, comments and recommendations. Committee 'views' are not binding in the way that decisions of domestic courts are binding, nor are States free to disregard them at will. The legal force of Committee views lies between these two extremes, requiring that States act in good faith in cooperating with the Committee and treating the view as an 'authoritative determination by the organ established under the Covenant itself'.<sup>22</sup>

Article 14 of the OP-ICESCR allows the Committee, with the consent of the State concerned, to draw the attention of United Nations specialized agencies, funds and programmes and other competent bodies, to technical advice or assistance needs and other international measures mentioned in the Committee's findings, conclusions and recommendations. This can be done in the context of both communications procedures and inquiry procedures. 'Transmission of the Committee's views or recommendations concerning communications and inquiries can be important for cases or situations in which it is evident that the State concerned was unsuccessful in its efforts to obtain resources from international assistance and cooperation.<sup>23</sup> In addition, a trust fund will be established which is specifically aimed at cases in which, as a result of the communications or inquiry procedures, the need has arisen to provide expert and technical assistance to States parties so that the exercise of the rights set forth in the ICESCR can be promoted. The intention, in so doing, is to help build national capacities in the area of economic, social and cultural rights.

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<sup>22</sup> This issue was addressed by the Human Rights Committee in relation to the legal status of its views in General Comment No 33: The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights, Ninety-fourth session, Geneva, 13-31 October 2008.

<sup>23</sup> Inter-American Institute of Human Rights/International Commission of Jurists (...), p.105.

### 1.3. Conclusions

The International Covenant on Economic, Social and Cultural Rights is the main treaty in the United Nations human rights system to address economic, social and cultural rights. It encompasses the following rights: right to work; right to social security including social insurance; right to food; right to housing; right to water and sanitation; right to the highest attainable standard of physical and mental health; right to education; right to take part in cultural life and to benefit from scientific progress.

State obligations under the ICESCR are subject to available resources as well as progressive realization of the rights, and many of these obligations do not require large amounts of financial resources. Under the obligations to respect and protect, the costs are limited to those of monitoring and enforcing legislation. The obligation to fulfil rights may require the use of significant amounts of public resources. However, Article 2 of the ICESCR states that State parties to the Covenant undertake to take steps, to the maximum of its available resources, with a view to achieving progressively the full realization of the ESC rights. The concept of progressive realization constitutes recognition of the fact that full realization of all economic, social and cultural rights will generally not be able to be achieved in a short period of time. Accordingly, because State obligations under the ICESCR are subject to available resources, where economic, social and cultural rights are not realized due to a genuine lack of resources, there is no violation of such rights as far as the State has set up plans to progressively realize the rights to the maximum of the available resources.

The OP-ICESCR does not provide for any additional substantive rights. The protocol creates new supervision procedures such as individual complaint, Inter-State procedure and inquiry mechanism for obligations that already exist under the ICESCR. While the function of the Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions. The admissibility criteria are comparatively strict. The Inter-State complaint mechanism and the inquiry procedure requires State parties to the Optional Protocol to 'opt-in' to the procedures by making a declaration that it recognizes the Committee's competence in this regard.

## Chapter 2. Economic, Social, and Cultural Rights in Moldova

This chapter will analyze the national legal framework on ESC Rights. The first section will consider the extent to which ESC rights are incorporated into the national legislation. The second section will consider relevant case law at national level and remedies in case of a violation of ESC Rights.

## 2.1. National Legislation on economic, social and cultural rights

Since the ratification of the ICESCR (1993) the Republic of Moldova has developed a comprehensive framework on social, economic and cultural rights. The national system on human rights is based on the Constitution of the Republic of Moldova of July 29, 1994, the national legislation and international instruments, which the Republic of Moldova is a party to. Title II of the Constitution “Fundamental Rights, Freedoms and Duties” stipulates detailed political, civil, economic, social and cultural rights. The **Constitution also consecrates the supremacy of international norms on human rights standards in relation to national legislation** and, namely, according to Article 4 it guarantees that “human rights and freedoms shall be understood and implemented in accordance with the Universal Declaration of Human Rights, and with other conventions and treaties endorsed by the Republic of Moldova, and wherever disagreements appear between conventions and treaties on human rights signed by the Republic of Moldova and her own national laws, priority shall be given to international regulations.”

The principles of **non-discrimination, universality and equality of rights** are provided by Constitution and represent the basis of the system of human rights protection in Moldova. Article 16 (2) of the Constitution prohibits discrimination on such criteria as race, nationality, ethnicity, language, religion, social origin, sex, opinion, political affiliation, personal property or social origin. These constitutional norms are strengthened through the Law on Ensuring Equality of 25 May 2012 which guarantees equal rights to all people residing in Moldova, “irrespective of race, color, nationality, ethnic origin, language, religion or belief, sex, age, disability, opinion, political affiliation or any other similar criteria”. The bill also expressly encompasses equal employment rights for everyone irrespective of sexual orientation. The Bill stipulates the establishment of the Council for the Prevention and Elimination of Discrimination and Ensuring Equality.

During the recent years, an important legal and regulatory framework was developed on **gender equality and women’s empowerment**: Law No. 5-XVI of February 9, 2006 on ensuring equal opportunities for women and men (Official Gazette of the Republic of Moldova No. 47-50/200 of March 24, 2006); Law No. 45-XVI of March 1, 2007 on Preventing and Combating Domestic Violence (Official Gazette of the Republic of Moldova No. 55-56 of March 18, 2008); Law No. 241-XVI of October 20, 2005 on Preventing and Combating Trafficking in Human Beings (Official Gazette of the Republic of Moldova No. 164-167/812 of December 9, 2005); National Programme on Ensuring Gender Equality for 2010-2015 (G.D. No. 933 of 31 December 2009), gender equality being approached as a crosscutting issue of human rights.

Moldova is a party to the Convention on the Elimination of All forms of Discrimination against Women (CEDAW) and ratified the Optional Protocol to CEDAW in 2006, allowing the Committee on the Elimination of Discrimination against Women to hear complaints from individuals or inquire into grave or systematic violations of the Convention.

The Moldovan Constitution provides for the **prohibition of forced labour** (Article 44) and recognizes **the right to work and to the enjoyment of just and favourable conditions of work** in Article 43 of the Moldovan Constitution. The Constitutional norms are enforced through a comprehensive body of



legislation including, but not limited to: Law on Employment and Social Protection of the Persons Looking for a Job (No. 102-XV of 13 March 2003); the National Strategy on Employment Policies for 2007–2015, approved by the Government Decision No. 605 of May 31, 2007; Labour Code of the Republic of Moldova (adopted on 28 March 2003); Law No. 140-XV from 10 May 2001 on Labour inspection; National Development Strategy, Priority 1 “Aligning the education system to labor market needs in order to enhance labor productivity and increase employment in the economy”, the Law on Remuneration No. 847-XV of February 14, 2002; the Contravention Code No. 218-XVI of October 24, 2008 (Articles 55-7), Criminal Code of the Republic of Moldova (Article 173).

The **right of everyone to form trade unions and rights of trade unions** are enshrined in Article 42 of the Constitution. The **right to strike** is guaranteed in Article 45, which provides that “strikes may be started only if aimed at defending the economic, social and professional interests of employees”. These provision are enforced through Law on Trade Unions No. 1129-XIV of July 07, 2000; Law No. 140-XV from 10 May 2001 on Labour Inspection; Labour Code, No. 154-XV of March 28, 2003. In the case of violations of the trade union rights, the respective facts are sanctioned in accordance with Article 61 of the Contravention Code. Article 68 of the Contravention Code stipulates that the coercion or prevention to go on strike by threatening to apply force or by taking advantage of the coerced person’s dependency is punishable by a fine of 40 to 50 conventional units or by unpaid community work from 30 to 60 hours.

The **right to social protection and assistance** is guaranteed under Article 47 (2) of the Moldovan Constitution, which provides that citizens have the right to insurance in case of: unemployment, sickness, disability, widowhood, old age or in other cases of lack of subsistence means, as a result of the circumstances beyond their control. Relevant legislation governing social protection and social assistance includes, but is not limited to Law No. 1585-XIII of February 27, 1998 on the Right to Compulsory Health Insurance; Law on Temporary Disability Benefits and other Social Insurance Benefits No. 289-XV of July 22, 2004; Law on Insurance against Occupational Accidents and Occupational Diseases No. 756-XIV of December 24, 1999; the Law on Employment and Social Protection of the Persons Looking for a Job No. 102-XV of March 13, 2003; Law on Social Assistance No. 547-XV of December 25, 2003; Law on Social Aid No. 133-XVI from June 13, 2008; Law No.156-XIV of 14 October 1998 regarding the State Social Insurance Pensions.

According to article 48 of the Constitution of the Republic of Moldova **the family** is the natural and fundamental element of the society and has the **right to protection from the society and the state**. These provisions are enforced through Law No. 827-XIV from 18 February 2000 on the Republican Fund and Local Funds of Social Support of Population. The Labour Code provides for maternity leave and partially paid leave for childcare to employed women and apprentices, as well as to wives supported by male employees (including a prebirth leave of 70 days and after birth leave of 56 days).

Provisions on the **protection and assistance of children and teenagers** are enshrined in Article 50 of the Constitution, Article 46 of the Labour Code, and Article 6 of the Law on the Rights of Children. These are enforced through a system of administrative and criminal sanctions included in the Contraventional Code (Articles 41, 41/3) and Criminal Code (Articles 165, 206, 208, 210, 220, 302), The

Law on Preventing and Combating Domestic Violence No. 45 of 01 March 2007.; Law No. 241-XVI of 20.10.2005 on Preventing and Combating Trafficking in Human Beings. The enhancement of the normative framework in the field of **education of children in difficulty** is supported by the development of the Residential System Reform Strategy and the Action Plan for its implementation.

The **right to a decent standard of living** is guaranteed by Article 47 (1) of the Moldovan Constitution which provides that the State is obliged to take measures in order to provide every citizen with a decent standard of living, which ensures his/her and his/her family's health and welfare, including food, clothing, housing, healthcare and social services. Specific laws include but are not limited to: Law No. 115-XVI from 09.06.2005 on the Ecological Food Production, Law No. 78-XV from 18.03.2004 on Food Products, the Law No. 257-XVI from 27.07.2006 on Management and Functioning of the Agricultural and Food Markets; The Housing Code, No. 306 from 03 June 1983; the Land Code, No. 828 from 25 December 1991; Law on Special Social Protection of Certain Categories of Population No. 933-XIV from 14 April 2000; Law No. 1515 of 16 June 1999 on Environmental Protection and Water Code.

The Moldovan Constitution provides in Article 36 that the **right to healthcare** is guaranteed. Comprehensive policies and legislative acts have been developed to enforce this constitutional norm, including the following: Law on Health Protection No. 411-XIII of March 28, 1995; National Healthcare Policy for 2007–2021, approved by the Government Decision No. 886; Healthcare System Development Strategy for 2008–2017; Law No. 1402-XIII from 16 December 1997 on Psychiatric Assistance; National Reproductive Health Strategy for 2005–2015, approved by Government Decision No. 913 of August 26, 2005; the Law on Mandatory Health Insurance No. 1585-XIII; the Law of the Republic of Moldova on the Prophylaxis of HIV/AIDS Infection No. 23 of 16 February 2007, the Law on the Patient's Rights and Obligations No. 263 of October 27, 2005; and others.

The **right to education** is enshrined in Article 35 (1) of the Constitution, which stipulates that the right is ensured through the general mandatory education, the lyceum and professional education, through higher education, as well as through other forms of education and training. A comprehensive legal framework was developed to ensure observance of the rights, including Education Law No. 547 of 21 July 1995; Law on the Functioning of Languages No. 3465 as of 01 September 1989; the Program for the Development of Inclusive Education in the Republic of Moldova for 2011-2020; Action Plan to support Roma people in the Republic of Moldova for 2007–2010 (art. 2, paragraph 2, section 4), joint order of the Ministry of Education and Youth (No. 409 of 01 May 2009), Ministry of Justice (No. 217 of 04 May 2009), Ministry of Local Public Administration (No. 63 of 01 May 2009) and the Ministry of Finance (No. 48 of 04 May 2009) was signed regarding the opening, from 01 September 2009 training classes of juvenile detainees in prisons.

The **right to take part in cultural life** is recognized and ensured in accordance with Article 10 (2) of the Constitution of the Republic of Moldova, which stipulates that the “State recognizes and guarantees all its citizens the right to preserve, develop and express their ethnic, cultural, linguistic and religious identity”. Specific legislation includes Law on the Functioning of Languages No. 3465 as of 01 September 1989, the Code on Science and Innovation of the Republic of Moldova No. 259-XV

from 15 July 2004, Law on Culture No. 413-XIV from 27 May 1999. The **right to enjoy the benefits of scientific progress and its applications** is ensured through the Code on Science and Innovation of the Republic of Moldova, No. 259-XV from 15 July 2004 and the Law on Copyright and Related Rights No. 293 from 23 November 1994.

The Republic of Moldova developed comprehensive national policies to advance ESC Rights. The Moldovan Parliament passed the National Human Rights Action Plan for 2011-2014 (NHRAP), through decision 90 of 12 May 2011. Following the Universal Periodic Review Recommendations, the NHRAP was amended on 27 December 2012 with provisions designed to advance the rights of migrants, stateless and refugees, right to non-discrimination; freedom of thought conscience, and religion; rights of persons with disabilities; human rights in health interventions, etc.

Pursuant to the 2011 Concluding Observations of the Committee on Economic, Social and Cultural Rights the Moldovan Government developed an Action Plan for their implementation. The implementation of the Action Plan is foreseen during 2012-2015.

Moldova has also set up a comprehensive **institutional framework for human rights protection** including the following:

*Government Committee for Equality between Women and Men (Gender Equality)* - consultative body, subordinated to the Moldovan Government, having the following competences: promotion of gender equality; coordination of the activity of the central and local public administration in issues related to gender equality; development of cooperation of state structures with the civil society in issues related to gender equality.

*The National Council for Child's Rights Protection* – governmental body intended to provide guidance and monitoring of central and local public authorities and of the civil society in order to ensure observance of rights of children in the Republic of Moldova.

*National Committee for Combating Human Trafficking* – the Government's advisory body, coordinates the activities on preventing and combating human trafficking, the cooperation of public authorities with international organizations, NGOs, and other institutions; The Committee has a Standing Secretariat, which is meant to streamline the coordination and management of anti-traffic activities, performed by all Government and Non-Government players in the area.

*Government Council for the Issues of Persons with Disabilities* – consultative body set up in order to develop and promote state policy, programs, plans and actions for prevention and rehabilitation of persons with disabilities and ensure their equal opportunities with other citizens of Moldova in order to help them enjoy their constitutional rights and freedoms.

*National Commission for Population and Development* – consultative body set up to coordinate the process of demographic security policy, programs and action plans in the short, medium and long term.

*National Commission for the Implementation of the National Human Rights Action Plan* – body that coordinates, monitors and evaluates implementation of NHRAP *Government Commission for the Reintegration of the Country*, which coordinates the actions aimed at identifying solutions for problems related to the Transnistrian dispute and ensuring their implementation.

*The Centre for Human Rights* is the National Human Rights Protection Institution, accredited according to the Paris Principles with B status. During their mandate, given for a period of 5 years by majority vote of the elected MPs, the ombudsperson shall ensure observance of the constitutional rights and freedoms of individuals in their relations with central and local public authorities, organizations, and enterprises, regardless of the type of ownership, public associations and persons in positions of responsibility at any level. Ombudsperson have the right to ask the Constitutional Court to review the constitutionality of laws and parliamentary decisions, decrees of the President of Moldova, Government decisions and provisions, on their compliance with the generally accepted principles and international legal acts on human rights.

The Centre for Human Rights of Moldova consists of 4 ombudspersons with equal rights, one of whom is specialized in child rights protection (Child's Ombudsperson), staff persons and three representative offices located in: Balti, Cahul and Comrat (Autonomous Territorial Unit of "Gagauz-Yeri"), operating as territorial subdivisions of the institution. During the reporting period, with few exceptions, the gender ratio among ombudspersons was 50/50.

*Coordinating Council of Ethno-Cultural Organizations* – public advisory consultative body of the national minorities' NGOs that operates under the Bureau of Interethnic Relations. The major objective of this structure is to ensure the maintenance of a continuous dialogue between the Government and ethnic communities.

Council for the Prevention and Elimination of Discrimination and Ensuring of Equality - is a collegial statutory body established to ensure protection against discrimination and equality of all persons who consider themselves to be victims of discrimination. The Non-Discrimination Council consists of 5 members, politically non-affiliated, appointed by Parliament for a period of five years; three members are representatives of civil society.

Moldova has already ratified a number of treaties which enable international human rights bodies to review individual communications. Moldova is a party to the Optional Protocol to the Convention on the Elimination of Discrimination Against Women, Optional Protocol to the Convention Against Torture, Optional Protocol to the International Covenant on Civil and Political Rights. The Moldovan Government deposited the declaration of **Art. 14 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)** on May 8, 2013. This will enable the UN Committee on the Elimination of Racial Discrimination to review individual complaints and petitions, provided that the subject matter of the complaints is not under review by another international body.

## 2.2. Relevant case-law and available remedies at national level

The previous section proved that the Republic of Moldova has an extensive legal framework on ESC Rights and already ratified a number of treaties, which enables individuals to submit individual complaints to international human rights treaty bodies. This section will consider whether there are any relevant cases at national level and corresponding remedies.

### Decision of Constitutional Court no. 5 from 10 April 2012

On 9 June 2011 the Moldovan Parliament passed the Law no. 56, amending the Law 289-XV of 22 July 2004 on Social Allowances for Temporary Labour Inability. Under the approved amendments, the employees should bear the costs of the first day of their sick leave, whereas the employer will bear the payment of the social allowances for the second, third and fourth day of temporary work inability. Starting from the fifth day, the financial resources will be allotted from the state social insurances budget.

On 29 December 2011, the Parliamentary Advocate (Ombudsperson), Mrs. Aurelia Grigoriu, submitted an inquiry to the Constitutional Court on the compliance of the amendments to the Law 289-XV of 22 July 2004 with the provisions of the Moldovan Constitution, especially Article 47 (1, 2) of the Constitution.<sup>24</sup>

The Constitutional Court declared as unlawful the amendments to the law on Social Allowances for Temporary Labour Inability, which envisage that the employees should bear the costs of the first day of their sick leave. The Constitutional Court sent an address to the Parliament, urging the legislators to address the legislative vacuum related to the source of funding of the first day of sick leave. Subsequently, through Law no. 202 of 27 September 2012, the parliament amended Law 289-XV with provisions stipulating that the costs for the first, second and third day of sick leave shall be covered by the employer. Starting with the fourth day, these costs will be covered from the social insurances budget.<sup>25</sup>

### Case „M.O.” Right to social assistance

In September 2010 Mr. M.O. was assisted by the Balti Legal Clinic to submit two consecutive requests to the Direction of Social Aid and Family Protection from Balti, along with the completed application, in order to benefit from the social aid under the Law no. 133 of 13 June 2008 on Social Aid. The written request stipulated argued that the beneficiary complied with all the exhaustive criteria provided under the law. On September 14, 2010 the Direction of social aid and family protection from Balti issued a written refusal, based on the fact that the person has a fridge and therefore is not eligible for the financial aid.

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<sup>24</sup>[http://www.constcourt.md/public/files/file/Sesizari/2011/39a\\_29.12.2011.pdf](http://www.constcourt.md/public/files/file/Sesizari/2011/39a_29.12.2011.pdf)

<sup>25</sup>[http://www.constcourt.md/public/files/file/Actele%20Curtii/acte%202012/h\\_05.pdf](http://www.constcourt.md/public/files/file/Actele%20Curtii/acte%202012/h_05.pdf)

The Balti Legal Clinic initiated a legal action contesting the decision of the Direction of Social Aid and Family Protection from Balti. On September 04, 2012 the Court of Appeal in Balti issued the judgment, recognizing the right of the complainant to benefit from social aid.

#### **Case S.V. Right to work and social security**

In July 2012 Mrs. S.V. addressed to the Balti Legal Clinic for legal assistance, claiming that she was dismissed illegally by her employer. Mrs. S.V. has a 2 years old son and benefitted from the right to take maternity leave up to three years. During the maternity leave she was informed by the human resources department of the enterprise where she was working that she was dismissed (the reason stipulated in the employment book was “dismissed on her own initiative”).

The Balti Legal Clinic initiated a preliminary inquiry to the employer and to the Labour Inspection from Balti municipality. A legal process under the civil code was initiated. On January 2013 the Balti Court issued the judgment, which recognised that Mrs. S.V. was dismissed illegally and ordered compensation of material and moral damages.

#### **Inquiry of the Center for Human Rights to the Ministry of Education. Discrimination in the area of Education**

Throughout 2012 the Moldovan Center for Human Rights received complaints regarding alleged discrimination in access to education based on the age criterion. Against this background, in 2013 the Parliamentary Advocate, Mr. Anatolie Munteanu submitted its opinion to the Ministry of Education regarding the provisions of paragraph 25 of the Regulation on the Organisation and the Admission in Higher Education Institution, approved through Decision of the Ministry of Education, Youth and Sports no. 6.1. of 27 April 2006, which stipulates that only persons up to 35 years old are eligible to apply for the admission in full-time higher education. The inquiry argued that the aforementioned norm is discriminatory on the ground of age and is not in compliance with national law (i.e. the Moldovan Constitution, the Law on Education) as well as a number of international human rights treaties to which Moldova is a party, including, ICESCR, ICCPR<sup>26</sup>. Pursuant to the examination of the opinion the Ministry of Education acknowledged that the aforementioned provisions are discriminatory and initiated corresponding amendments to the Regulation on the Organisation and the Admission in Higher Education Institution.

#### **Case C.M. Rights of persons with disabilities**

More than 2 years a young person with motor disabilities from Balti was trying to privatise the apartment where he lived with his mother. After his mother’s death he was hospitalised into the psychiatric hospital. Multiple times he submitted requests to the Balti mayoralty to process the

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<sup>26</sup>International Covenant on Civil and Political Rights.

documents for the privatisation of the apartment. His requests were refused on the legal ground that the person does not have legal capacity.

Against this background, Mr. C.M. submitted a complaint to the Center for Human Rights. Following the examination of the complaint, the Parliamentary Advocate found that the arguments of the local public administration were unfounded and submitted an opinion to the Balti Mayoralty, urging the local public administration to eliminate the obstacles in processing the application to privatise the apartment. In parallel, the ombudsperson submitted complaints to the Prosecutor's office and initiated a court action against the Direction on Family Protection and Social Assistance.

Pursuant to the aforementioned measures the local public authorities conducted the following actions: (i) following a comprehensive assessment, an individual action plan was developed to support social integration of Mr. C.M; (ii) he was released from the psychiatric hospital and provided with relevant support, counselling and rehabilitation services provided by the "Sotis" family crisis Center; (ii) the apartment was privatised and support was provided to improve the living conditions.

#### **Case N.C. Non-discrimination regarding social entitlements for military personnel**

On 28 March 2011 Mrs. N.C. initiated a court action against the Ministry of Defence, requested the inclusion of maternity leave period in her work record for the correct calculation of her pension allowance. The complainant argued that Ministry of Defence did not include the 3-years period of maternity leave in the calculation of her record of serving in the military service.

In addition, through the Center for Human Rights an inquiry was submitted to the Constitutional Court regarding the provisions of the Art. 32 para. 4 of the Law 162-XVI of 22 July 2005, on the Status of Military Personnel and Other Subordinated Normative Acts which stipulates, in paragraph (j) that for **women** military personnel the period of maternity leave will be included in the general work record but not be considered in the calendar record of military service. Until the expiration of this term, women have the right to continue military service.

Through the Decision of the Court of Appeal the petition was dismissed, based on the fact that whenever there is a divergence between the general and special normative acts, the latter takes precedence. The Decision was contested, invoking that the limitation provided in the aforementioned law does not pursue a legitimate aim, does not comply with the international human rights law, and is un-constitutional and discriminatory.

On 23 May 2012 the Supreme Court of Justice endorsed the latter arguments and obliged the Ministry of Defence to include the maternity leave period in the calculation of the record of military serving.

On 1 November 2012 the Constitutional Court issued the Decision no. 12, which stated that "States enjoy a large margin of appreciation in the area of national security, including armed forces and that rights of military persons may be more restricted in some cases as compared to the authorised limits in case of civilians.

At the same time, the Court considered as unfounded the alleged risk for the operational efficiency of the Army, because of lack of compelling evidence which would prove that extending the period of maternity leave for the **male** military persons would damage the power of fighting and operational efficiency of the army, and that a similar entitlement to female military persons would not imply such a risk.

The Court stated that such a general and automated restriction, imposed to a group of persons, on the ground of sex, exceeds the area of application of an acceptable margin of appreciation, whatever extensive it were, and is therefore incompatible with the Constitutional norms.

For the Court, it is possible to realise the legitimate aim of protecting the national security through other means rather than through limitation of the right to take leave in order to take care of the child for the female military personnel and rather than denying this right to male military persons.

Meanwhile, the Court stated that, taking into consideration the special requirements of the army, limiting the paternity/maternity leave may be justified with regard to a military person, male or female, who, in virtue of some factors, such as hierarchic position, rarity of technical clarifications or participation in field military operation, may not be replaced in his/her duties”.<sup>27</sup>

### 2.3. Conclusions

The Republic of Moldova has an advanced legal framework on social, economic and cultural rights. The national system on human rights is based on the Constitution of the Republic of Moldova of July 29, 1994, the national legislation and international instruments, which the Republic of Moldova is a party to. The Republic of Moldova developed comprehensive national policies to advance ESC Rights, including the National Human Rights Action Plan for 2011-2014 (NHRAP), and a plan for the implementation of Concluding Observations of the Committee on Economic, Social and Cultural Rights. Moldova has also set up a comprehensive **institutional framework for human rights protection**. There is extensive **case-law** pointing to the justifiability of ESC Rights and to a system of remedies available at national level.

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<sup>27</sup>[http://www.constcourt.md/public/files/file/Actele%20Curtii/acte%202012/h\\_12.2012.rom.pdf](http://www.constcourt.md/public/files/file/Actele%20Curtii/acte%202012/h_12.2012.rom.pdf)



## Chapter 3. Benefits and challenges regarding ratification of the Optional Protocol to International Covenant on Economic, Social and Cultural Rights

This chapter examines the challenges articulated by various actors at the domestic level and seeks to respond to them. It also considers the opportunities that may arise pursuant to the ratification of Optional Protocol establishing a complaints mechanism.

### 3.1. Perceived Challenges

During meetings the representatives of the relevant governmental institutions mentioned some obstacles and practical impediments as well as fears. They are presented below with some explanations how to overcome or mitigate them.

#### **“An unfeasible financial burden for Moldova as a result of a complaints procedure”**

Some interlocutors raised fear that a complaint procedure foreseen in the Optional Protocol would impose large financial burdens on States. The fear reflects misunderstanding of both the character of the Optional Protocol as a procedural instrument and the nature of different types of obligations relating to ESC rights. The OP-ICESCR as a procedural instrument does not provide for any new substantive obligations above those already recognized by the Republic of Moldova by becoming the State party to the ICESCR. It should be also noted, that the ICESCR does not impose unreasonable resource-related obligations upon States. According to the Article 2 of the ICESCR State Party undertakes to take steps, to the maximum of its available resources with a view to achieving progressively the full realization of ESC rights. Accordingly, not all of obligations immediately set out in the ICESCR require large amounts of financial resources. As mentioned in Section 2.1. (supra) the ICESCR provides for three different types of obligations on States: the obligation to respect, protect and fulfil. In many instances, the realization of ESCR only requires governments to abstain (e.g. abstaining from certain behavior) or to regulate the actions of third parties (e.g. health professionals).

The obligation to fulfil ESC rights may require the use of significant amounts of public resources, but always limited to the maximum available resources of Moldova with a view to achieving progressively the full realization of ESC rights. Consequently, where economic, social and cultural rights are not realized due to a genuine lack of resources, there is no violation of such rights. As rightly mentioned by experts “[t]he CESCR may only find that a violation has occurred where the government has failed to reasonably implement a measure that was within its power or where it has unnecessarily taken an action that undermines existing access to an economic, social or cultural right. Many violations of ESCR occur for reasons that do not relate to the lack of resources and capacity, e.g., subsidy programmes that exclude the poorest people in law or practice, failure to consider the needs of disadvantaged and marginalized groups when constructing public policy or

denial of a public service on arbitrary grounds. A government that believes it is taking reasonable steps to realise economic, social and cultural rights within its available capacity and resources should have no concern about allowing those living under its jurisdiction to test this belief before the CESCR.”<sup>28</sup>

Taken into account information presented above, in particular the provision of Article 2 of ICESCR and the nature of obligations set out in the ICESCR, we can conclude that this fear is ungrounded.

### **“Inefficient realization of economic, social and cultural rights enshrined in ICESCR in some fields due to limited financial resources”**

During meetings sometimes arose fear that limited financial resources cause inefficient realization of ESC rights and the violation thereof. In this context, it should be noted that Article 2 of the ICESCR states that State Party undertakes to take steps, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the ICESCR. While States have a wide discretion as far as the measures to be adopted in order to fulfil ESC rights are concerned, the principle of maximum available resources is wrongly interpreted by some of them as a defence. States should ensure that there was a plan for progressive realization, that measures were appropriate and sufficiently focused on addressing the most disadvantaged, devoted sufficient resources (within constraints) and there was a framework for monitoring progress. There is no violation of rights if a state progressively implements rights enshrined in the ICESCR within the framework of available resources taking concrete, deliberate and targeted measures.

Moreover, it is worth noting that some governments which have ratified OP-ICESCR are in materially far more troubling circumstances than the Republic of Moldova, and they have access to far fewer sources of international cooperation support.

### **“Judicial remedies are not effective in realizing economic, social and cultural rights”**

Interlocutors sometimes argued that judicial or quasi-judicial remedies alone are not able to trigger systematic changes necessary for full realization of the ESC rights. It should be noted that the judicial or quasi-judicial remedies are aimed at providing adequate redress to victims of human rights violations, as well as to guarantee non-repetition of the violation in question. Thus, remedies may sometimes be limited in terms of their ability to address or change an entire country’ situation. Nevertheless, decisions of CESCR as part of individual complaints mechanism could provide guidance to governments, courts and civil society as to what constitutes human rights compliance. Above all, the Committee’s decisions can be highly valuable for bringing added value to legislative changes and understanding of ESC rights.

### **“The OP-ICESCR creates new economic, social and cultural rights”**

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<sup>28</sup> International NGO Coalition for the Optional Protocol to the ICESCR, Booklet 3: Why Should States Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights?, p. 9.

From meetings a concern also emerged, that the Optional Protocol creates new rights. As mentioned before, the OP-ICESCR is a procedural protocol and thus it does not impose any new obligations on States above those already recognized in the ICESCR.

#### **“There is a danger of a large number of complaints”**

Some interlocutors seem to fear that there is a danger of a large number of complaints. In addressing the issue, there are key factors that should be taken into account. Firstly, as already mentioned, the OP-ICESCR does not impose new substantive obligations. The substantive norms are in the ICESCR – and they have been accepted by Moldova and are part of the domestic legal order. Secondly, this Protocol provides for strict admissibility criteria such as strict time limits on claims, exhaustion of remedies at national level, the prevention of duplication of claims between treaty bodies. Thirdly, as mentioned in Chapter 2, the Republic of Moldova made efforts to promote the implementation of social, economic and cultural rights. Finally, the experience of Moldova with similar individual communication procedure within other UN human rights treaty bodies has not revealed a flood of complaints. Thus, the ratification of the OP-ICESCR is unlikely to subject the Government of Moldova to a flood of complaints.

#### **“Ratification can be expensive”**

A concern also arose that the ratification of the Optional Protocol can be expensive. In fact, the concern is ungrounded since the Optional Protocol could be ratified with relative ease taking into account current legal system in the Republic in Moldova and will not impose any direct costs. Accordingly, as mentioned above, there is little reason to assume that accession to the Protocol will result in a large number of complaints. Thus, it should be said, that it is unlikely that the ratification of the Optional Protocol will create significant problems for the Republic of Moldova in terms of increasing workload and expenses.

### **3.2. Benefits**

Based on meetings and online consultations with the representatives of relevant ministries, governmental institutions and non-governmental organizations in Moldova various benefits have been identified for the Republic of Moldova. In particular, the following arguments can be advanced for ratification.

#### **Affirming by the Republic of Moldova the equal protection of the civil, political, economic, social and cultural rights and ensuring respect for human rights and human dignity**

The Optional Protocol was heralded as ending the international debate on the indivisibility of human rights. The UN High Commissioner for Human Rights, Navanethem Pillay, greeted the Optional

Protocol by saying that it “is of singular importance...closing a historic gap in human rights protection under the international system.”<sup>29</sup> Taking into account the fact that human rights are indivisible, interrelated and interdependent, and should be treated in a fair and equal manner according to the Vienna Declaration, the ratification of the OP-ICESCR by the Republic of Moldova would affirm the equal protection of the civil, political, economic, social and cultural rights in Moldova.

### **Complementing and strengthening the protection of economic, social and cultural rights in Moldova**

Through the communications and inquiry procedures, the government would be encouraged to take steps towards the full incorporation of the ICESCR into domestic law and policies. Individual complaints mechanisms at the international level have been associated with rights improvements. “The possibility that an individual right of standing before a body of experts helps improve rights outcomes on average provides a strong rationale for ratification”<sup>30</sup>.

### **Improving awareness and understanding of economic, social and cultural rights through engagement of the government in constructive, participatory and capacity building process created by the OP- ICESCR**

The OP-ICESCR requires each State party to distribute and publicize both the ICESCR and the Optional Protocol as well as information about decisions of the Committee, particularly where decisions concern the State party (Article 16). This obligation will promote public awareness of the ICESCR and procedures under the Optional Protocol as well as contribute to better understanding of ESC rights’ content and the obligations arising from the ICESCR. Even though the Committee has done a considerable amount of work to this end, especially in its General Comments, the recommendations of the Committee as part of individual complaints mechanism could bring an added value for governments to identify with more precision their obligations under the Covenant. The concretizations of the obligations and legal clarity will further improve implementation and compliance with the ESC rights. The Optional Protocol could also create an additional platform for groups, social movements and civil society to mobilize and enhance public understanding of ESC rights.

### **Reaffirming Moldova’s commitment to constructive engagement with the international system of human rights protection**

Moldova has already committed to allowing individual complaints procedures under the ICCPR, the Convention Against Torture (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The ratification of the OP-ICESCR by Moldova reaffirms its commitment to

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<sup>29</sup> Statement by the High Commissioner for Human Rights, Ms Navanethem Pillay, Official Records, 6 th Plenary meeting, U.N. Doc. A/63/PV. 66, Wednesday 10 December 2008, 3pm.

<sup>30</sup> Simmons, B (2009). Should states ratify? Process and consequences of the Optional Protocol to the ICESCR. 27(1) Nordic Journal of Human Rights, p.66.

engagement in constructive, participatory and capacity building process created by individual complaints mechanism within UN human rights system. Accordingly, Moldova will ensure equal access to international individual complaints procedures with regard to all human rights. In this context, it is also noteworthy that it is a basic principle of international human rights law that the obligation to respect, protect and fulfil human rights includes a duty to provide effective remedies to victims where their rights have been breached.

### **Playing a role in the development of the international rights jurisprudence made by the Committee**

The Optional Protocol provides an important venue for the development of international jurisprudence on ESC rights. Experiences of individual complaints and inquiries procedures within other UN treaties showed that they helped in developing more concrete findings that give a fuller expression to universally applicable principles. A particular advantage would be further clarifying and concretizing the positive duties in the ICESCR. It is important to note that this jurisprudence will need to respect the terms of the ICESCR, which provides for the progressive realization of rights within maximum available resources. In addition, the Optional Protocol provides in Article 8(4) significant space for states in their decisions over relevant policy options: “the Committee shall consider the reasonableness of the steps taken by the State Party” and “shall bear in mind that the State Party may adopt a range of possible policy measures for the implementation of the rights”.

### **Using the individual complaints mechanism as an important complement to the dialog between the Committee and the State**

“Governments and stakeholders alike have a strong interest in clear understandings about the nature of their obligations under the ICESCR. The reporting system has been helpful in this respect, but it has been driven primarily by the agenda of the Committee and the States Parties. As is well-known, States are sometimes late with their reports and often not sufficiently self-critical in their reporting. The submission of shadow reports is helpful, but there is still a risk that these periodic assessments become ritualized and formulaic. Allowing individuals to lodge complaints can be an important part of the process of gradually coming to a clearer understanding about what social and economic rights entail and what constitutes a good faith effort on the part of states parties to comply with their international legal obligations. The individual complaints mechanism is an important complement to the dialog between the oversight committee and each state party. Individual complaints require the discussion of rights to move from abstract principles to concrete cases. It is difficult to define in the abstract what constitutes steps taken to “the maximum of available resources” without a concrete instance in which what is ‘available’ and what a reasonable ‘maximum’ might be. But in the limited set of cases in which concrete allegations have been litigated in national courts, some progress on these issues has been made. For example, in South Africa, concrete cases have led to rulings that the constitutional right to housing does not mean housing on demand, but rather it means a reasonable program to ensure emergency housing relief.”<sup>31</sup>

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<sup>31</sup> Simmons, B (2009); Should states ratify? (...), p. 68-69.

The rationale of the procedure is to help states fulfil their obligations under the Covenant by considering individual cases and decisions based on real-life situations. The decisions will provide guidance in situations that States face in practice. The views of the Committee will highlight issues that the state possibly overlooked or misinterpreted. Any State that is serious about good faith fulfilment of international obligations will welcome the individual complaints mechanism as valuable means of helping identify and suggest solutions for actual problems on the ground. This will be an indication both for the governments and international community of what kind of issues to address.

### **Enhancing accountability for government's actions relating to economic, social and cultural rights**

A complaint-based system can act as a systematic warning device. The outcomes of the individual complaints mechanism can support better democratic governance and policy-making by highlighting problems in the design and implementation of policies. A good international example of the potential of complaint-based system is the first collective complaint filed under the European Social Charter, which was against Portugal. It was alleged that they had taken insufficient steps to eliminate exploitative child labour with official statistics showing 200000 children under the age of 15 were working. The Committee agreed and found that the law was too permissive and the number of labour inspectors insufficient. The response of Portugal was to amend its constitution, reform its legislation and triple the number of labour inspectors. Five years later, Portugal reported a radical reduction in the level of child labour".<sup>32</sup>

### **Encouraging government to take economic, social and cultural rights into account in their developmental and social planning**

The ratification of the Optional Protocol could encourage government to consider consequences for ESC rights of all their actions and to devise concrete plans for furthering the realization of social rights in its policy and decision-making processes. "In this way, the Protocol may lead governments to mainstream social rights into all their activities. Mainstreaming social rights is needed to prevent violations in the first place. Thus, the Protocol will strengthen domestic implementation of the Covenant. This also implies that allowing individual adjudication of social rights is not an expensive way to achieve justice for individuals. On the contrary, at most times the decision will have a systemic effect. Besides providing a possible remedy for the actual petitioner, states will have a chance to adjust their practices which will often positively affect a much wider population"<sup>33</sup>

### **Encouraging the development and use of domestic remedies**

Article 3 of the OP-ICESCR requires the exhaustion of all available domestic remedies (judicial and quasi-judicial) before a complaint can be heard by the Committee ESCR. This encourages the use, development and strengthening of effective remedies system at the national level, rather than

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<sup>32</sup> Langford M. (2011); Reasonable or Risky? Norwegian Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; University of Oslo, Norwegian Centre for Human Rights, p. 46

<sup>33</sup> Kratochwil J., Realizing a Promise: A Case for Ratification of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights, p. 33.

facing the prospect of a negative outcome of an international procedure. In addition, “the necessity to exhaust domestic remedies will require individuals and groups to become much more informed about their State, their rights, and the interaction between the two. In many cases, they will learn about the limits as well as the possibilities for demanding attention to economic and social rights in their domestic context.”<sup>34</sup>

### **Strengthening national mechanisms for the enforcement of economic, social and cultural rights**

Individual cases could encourage the government to change public policies, priorities as well as, as already mentioned, to use and develop available in practice domestic remedies. On the other hand, the findings of the Committee could be useful for civil society in framing demands to government and legislatures in terms of ESC rights.

### **Empowering individuals and civil society**

The individual complaints mechanism is an important form of civil society empowerment. ‘New evidence on human rights treaty effects suggests that ratification of agreements has consequences in domestic politics, mobilizing publics to view their rights and roles in new ways, focusing and legitimating demands, and creating new possibilities for domestic coalitions.’<sup>35</sup> Being involved in individual complaints mechanism individuals will often realize that their government is in fact fulfilling its obligations or at least making a good faith effort to do so. Individuals will not only get a lesson on empowerment, they will also be educated on the limits of their claims as well.

### **Encouraging other States to ratify this document**

States tend to ratify Optional Protocols when their neighbouring peers do so. Modest peer pressure will in time encourage others to ratify and broaden the access of individuals to an authoritative interpretation of their economic, social and cultural rights. “Governments look to others in their region for signs of what is appropriate and expected. They often know their reputations will be judged in comparison to others in their region”.<sup>36</sup> By ratifying the OP-ICESCR Moldova can take a leadership position in the region as well as within the Eastern Partnership<sup>37</sup> in ESC rights protection.

## **3.3. Conclusions**

Any decision on ratification should rest on the weighing of the challenges and benefits. In order to facilitate the process an overview of arguments for and against the ratification is presented below.

Arguments against ratification	Arguments in favour of ratification
An unfeasible financial burden for Moldova as a result of a complaints procedure	OP-ICESCR ratification does not imply additional costs due to the following reasons:

<sup>34</sup> Simmons, B (2009); Should states ratify? (...), p. 69.

<sup>35</sup> Simmons, B (2009); Should states ratify? (...), p. 69.

<sup>36</sup> Simmons, B (2009); Should states ratify? (...), p. 80.

<sup>37</sup> The EUSR for Human Rights has identified ESC rights as one of his thematic, and the Eastern Partnership countries as one of his regional priorities.

	<p>(i) The OP does not provide for any new substantive obligations above those already recognized by the Republic of Moldova becoming the Party to the ICESCR;</p> <p>(ii) The implementation of ESC is subject to the resources available in Moldova.</p>
Judicial remedies are not effective in realizing ESCR	<p>Judicial remedies can be useful in defining what constitutes human rights compliance, as well as bring added value to legislative changes and understanding of ESC rights.</p> <p>In case of Portugal a decision of the European Committee helped to end child labour once and for all.</p>
Large number of potential complaints against Moldova	<p>Ratification is an opportunity to strengthen the national mechanism for enforcing ESC Rights:</p> <p>(i) OP-ICESCR requires the exhaustion of all available domestic remedies before a complaint can be submitted to the Committee;</p> <p>(ii) The OP-ICESCR provides for strict admissibility criteria;</p> <p>(iii) The Republic of Moldova makes efforts to promote the implementation of social, economic and cultural rights;</p> <p>(iv) The experience of Moldova with similar individual communication procedure within other UN human rights treaty bodies points to a small number of complaints.</p>
The OP-ICESCR creates new ESC rights	<p>The OP-ICESCR is a procedural protocol and thus it does not impose any new obligations on States above those already recognized in the ICESCR.</p>
Excessive costs of the ratification	<p>The Optional Protocol could be ratified with relative ease taking into account current legal system in the Republic in Moldova and will not impose any direct costs, as well as significant problems in terms of increasing workload and expenses.</p>
	<p>OP-ICESCR ratification will affirm Moldova's commitment to the equal protection of the civil, political, economic, social and cultural rights and ensure respect for human rights and human dignity.</p>



	OP-ICESCR ratification will improve awareness and understanding of ESC rights through engagement of the government in constructive, participatory and capacity building process created by the OP- ICESCR.
	OP-ICESCR ratification will reaffirm Moldova's commitment to constructive engagement with UN treaty bodies.
	By ratifying the OP-ICESCR, Moldova will play a fundamental role in the development of the international rights jurisprudence made by the Committee.
	OP-ICESCR ratification will encourage the development and use of domestic remedies.
	OP-ICESCR ratification will empower individuals and civil society.
	OP-ICESCR ratification will offer new possibility for combating poverty.
	OP-ICESCR ratification will encourage other States to ratify this document.

## Conclusions and Recommendations

Many of Moldova's obligations under the ICESCR do not require large amounts of financial resources. The obligation to fulfil rights may require the use of significant amounts, but limited to the available resources.

The OP-ICESCR does not provide for any additional substantive rights. While the function of the Committee in considering individual communications is not, as such, that of a judicial body, the views issued by the Committee under the Optional Protocol exhibit some important characteristics of a judicial decision. They are arrived at in a judicial spirit, including the impartiality and independence of Committee members, the considered interpretation of the language of the Covenant, and the determinative character of the decisions. The admissibility criteria are comparatively strict. The Inter-State complaint mechanism and the inquiry procedure requires States party to the Optional Protocol to 'opt-in' to the procedures by making a declaration that it recognizes the Committee's competence in this regard.

The Republic of Moldova has an advanced legal framework on social, economic and cultural rights and developed comprehensive national policies to advance these rights. There is extensive case-law pointing to the justifiability of ESC rights and to a system of remedies available at national level.

Comprehensive analysis of the concerns raised vis-à-vis the prospects of ratification shows that the arguments against do not stand. The reasons in favour of ratification include, but are not limited to the following:

- OP-ICESCR ratification does not imply additional costs;
- OP-ICESCR ratification will help to further develop the system of judicial remedies which are extremely useful in addressing individual violations but also in defining what constitutes human rights compliance;
- Ratification is an opportunity to strengthen the national mechanism for enforcing ESC rights;
- The OP-ICESCR is a procedural protocol and thus it does not impose any new obligations on States above those already recognized in the ICESCR;
- OP-ICESCR ratification will affirm Moldova's commitment to the equal protection of the civil, political, economic, social and cultural rights and ensure respect for all human rights and human dignity;
- Ratification will strengthen the international legal system and affirm Moldova's place as a good faith participant in the international system of human rights protection;
- OP-ICESCR ratification will improve awareness and understanding of ESC rights through engagement of the government in constructive, participatory and capacity building process created by the OP- ICESCR;

- OP-ICESCR ratification will reaffirm Moldova's commitment to constructive engagement with UN treaty bodies;
- By ratifying the OP-ICESC, Moldova will play a fundamental role in the development of the international rights jurisprudence made by the Committee;
- OP-ICESCR ratification will empower individuals and civil society;
- OP-ICESCR ratification will encourage other states to ratify this treaty;

In light of the aforementioned, it is recommended to pursue ratification of the OP-ICESCR. Specific recommendations include:

- Advance the added value of new instrument, in order to enhance the realization of the ESC rights and to involve all relevant entities within the government in order to fulfil recommendations of the Committee;
- Conduct training for judges in order to disseminate international and regional jurisprudence relating to ESC rights and decisions directly referring to the ICESCR;
- Strengthen cooperation between the government and NGO's in terms of drafting, planning and the realization of policy, law, action plans as to ESC rights.

## **Annexes**

### **Annex 1. List of meeting and consultations**

Ministry of Labour, Social Protection and Family

Ministry of Health

Ministry of Foreign Affairs and European Integration

Ministry of Education

Ministry of Justice

National Legal Aid Council

Balti Legal Clinic (NGO)

Amnesty International Moldova (NGO)

Center of Legal Assistance for Persons with Disabilities (NGO)

Ministry of the Foreign Affairs in Spain

Ministry of the Foreign Affairs in Slovakia

Ministry of the Foreign Affairs in Portugal

## **Annex 2. Proposed draft law on ratification of OP-ICESCR**

### **Draft Law on the ratification of the Optional Protocol to the Covenant on Economic, Social and Cultural Rights**

#### **Article 1**

The Optional Protocol to the Covenant on Economic, Social and Cultural Rights adopted on 10 December 2008 in New York is ratified.

#### **Article 2**

The implementation of this law is entrusted to the Ministry of Foreign Affairs.

#### **Article 3**

The Minister (Ministry) of Labour, Family and Social Protection is determined as competent governing body to coordinate the implementation of the Optional Protocol. The Ministry of Labour, Family and Social Protection shall implement the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights in close cooperation with ministries within their competences related to economic, social and cultural rights.

#### **Article 4**

With regard to the Article 10 of the Optional Protocol to the Government of Moldova makes the following declaration:

“With respect to article 10, the Government of the Republic of Moldova hereby declares that it recognizes the competence of the Committee on Economic, Social and Cultural Rights to receive and consider communications to the effect that a State party claims that another State party is not fulfilling its obligations under the Covenant’.

#### **Article 5**

With regard to the Article 11 of the Optional Protocol to the Government of Moldova makes the following declaration:

“With respect to article 11, the Government of the Republic of Moldova hereby declares that it recognizes the competence of the Committee on Economic, Social and Cultural Rights provided for under the article”

### **Annex 3. Information on the experience of Spain regarding the OP-ICESCR.**

#### **Benefits of the ratification by Spain of the Optional Protocol:**

The Optional Protocol of the International Covenant on Economic, Social and Cultural Rights marks a watershed in the international protection of human rights as it introduces for the first time in history protection mechanisms for the rights included in the International Covenant on Economic, Social and Cultural Rights. Thus individuals will be allowed to submit communications to the Committee on Economic, Social and Cultural Rights. This will allow the Committee to develop international jurisprudence regarding these human rights, like the jurisprudence already developed in the field of civil and political rights. Furthermore the possibility of accepting an inquiry procedure by the Committee and of submitting interstate communications will also reinforce the protection given to these human rights, enhancing coherence within the UN human rights' system.

This Protocol is a procedural Protocol, so it does not imply any obligation to States apart from those that they have already accepted ratifying the International Covenant on Economic, Social and Cultural Rights. The main benefit of this ratification is that this Optional Protocol will help to guarantee the implementation of this international Covenant.

#### **Legal and practical barriers and impediments to the ratification as well as proposals how you overcame or mitigated them:**

No legal or practical barriers and impediments appeared during the ratification process of the Optional Protocol of the International Covenant on Economic, Social and Cultural Rights.

The Spanish legal system requires several steps to be taken in order to ratify and international legal instrument. According to law, during this ratification process the Ministry for Foreign Affairs had to consult other Ministries and institutions that could be affected by its entry into force. The answer from all Ministries was that they had no objection to this ratification process. The only question posed came from the Ministry of Economy and Finance that wanted more information about the budgetary consequences of the ratification by Spain of this Protocol. This Ministry was informed by the Ministry for Foreign Affairs and Cooperation that the ratification of the Optional Protocol did not imply any budgetary commitment.

Another step had to do with the need for the authorization of the Council of Ministers. In order to check if this authorization of the Council of Ministers was necessary, the Ministry for Foreign Affairs and Cooperation consulted the Council of State that has an advisory mandate to the government. The Council of Ministers was also consulted regarding this aspect. Finally it was decided that to ratify this Optional Protocol the authorization of the General Courts was necessary. Once this authorization was achieved, the Ministry for Foreign Affairs and Cooperation opened the needed ratification file that was signed by the King of Spain and countersigned by the Minister for Foreign Affairs and Cooperation.

Afterwards on the 25th February 2013 the text of the Optional Protocol was published in the State Official Bulletin (BOE).

**Any other recommendations as to ratification process:**

The ratification of this Optional Protocol by a wide number of States will help to guarantee that equality and interdependence between human rights exist. This is the reason why Spain encourages Moldavia to ratify this Optional Protocol and thus reinforce the protection of the human rights included in the International Covenant on Economic, Social and Cultural Rights.