

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report

Universal Periodic Review: 3rd Cycle, 40th Session

REPUBLIC OF MOLDOVA

I. BACKGROUND INFORMATION

The Republic of Moldova acceded to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*) in 2002. The Republic of Moldova acceded to the *1954 Convention relating to the Status of Stateless persons* and the *1961 Convention on the Reduction of Statelessness* (the *1954 Convention* and the *1961 Convention* respectively) in 2012.

Moldovan asylum legislation is largely in line with international standards. The current *Law on Asylum*¹ entered into force in March 2009 and was drafted with the participation of UNHCR and civil society. Four types of protection are provided for by the Law: refugee status, international humanitarian protection, temporary protection (in cases of mass influx) and political asylum which can be granted at the discretion of the Moldovan President. However, temporary protection has never been granted and no official figures on asylum granted by the Moldovan President are provided.

Moldova is a country of origin, transit and destination of migrants and persons in need of international protection.

As at 1 May 2021, the Republic of Moldova hosted 67 asylum-seekers, 422 refugees, 1,904 stateless persons, and 1,501 persons with undetermined citizenship.

From 2000 to 1 May 2021, a total of 2,861 persons applied for asylum in Moldova. In the last ten years on average 143 asylum applications per year have been registered. The main countries of origin are Turkey, Uzbekistan, Ukraine, the Syrian Arab Republic and Romania. Out of the total 86 applications in 2020, 44 were submitted by Turkish nationals, 8 by Uzbeks and 5 by Ukrainians. 30% of the total applicants in 2020 were female and 15% children.²

The number of asylum applicants at the border decreased in the past five years from 11 in 2016 to 0 in 2020, and the total number of applicants per year did not exceed 150. There were 11 asylum applications at the border in 2020 compared to 15 in 2019, 11 in 2018 and none in 2017.

Generally, refugees and asylum-seekers are not detained and are granted access to the territory and asylum procedures although some ad hoc incidents have been reported since the 2nd Universal Periodic Review cycle. Foreigners who file an asylum application in the Migrant Accommodation Centre (MAC), a detention centre under the responsibility of the

¹ Law No. 270 of 2010 on Asylum in the Republic of Moldova, 13 March 2009, available at: https://www.legis.md/cautare/getResults?doc_id=110614&lang=ro.

² According to data provided to UNHCR by the Bureau for Migration and Asylum.

Bureau for Migration and Asylum (BMA), are released from custody by court decisions.

In 2011, the Republic of Moldova adopted legislation establishing a statelessness determination procedure (SDP).³ This legislation contains detailed provisions on how the procedure is to be conducted.⁴ Between the start of the SDP and May 2021, 1,358 persons applied for statelessness status and 413 were granted status. In 2014, the Moldovan 2000 *Law on Citizenship* was amended to introduce a definition of a stateless person and measures to prevent statelessness, in line with the 1954 *Convention* and the 1961 *Convention*.

II. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS

Issue 1: Access to the territory and asylum procedures

The right to seek asylum is enshrined in Article 19 of the Constitution of the Republic of Moldova⁵ while the Law on Asylum governs issues relating to international protection. Pursuant to Articles 9(1), 11(1), 41, 52, 54(3) of the Law on Asylum, the Border Police are responsible for receiving, registering and transferring applications for asylum to the Asylum and Integration Directorate. Moldovan law does not provide for a border procedure, but information on the right to seek asylum is available in several languages and individuals may apply for asylum at the border.

In 2018, five asylum-seekers from Turkey were refouled⁶ and some asylum applicants were admitted to the territory only after UNHCR's intervention. In 2019, the Ombudsperson's office reported three cases at the Chisinau International Airport entry point in which the authorities failed to provide access to the asylum procedure; immediately returned individuals to their countries of origin or to the countries of transit; detained individuals at the airport for prolonged periods (e.g. four days); or failed to inform the Bureau for Migration and Asylum about asylum applicants at the border.⁷

UNHCR emphasizes that the prohibition of refoulement is applicable wherever a State exercises jurisdiction. Accordingly, States shall not reject asylum-seekers and refugees at the border and shall allow them access to the territory and to fair and efficient asylum procedures.⁸

Recommendations:

UNHCR recommends that the Government of the Republic of Moldova:

- a) Ensure respect for the principle of non-refoulement and access to the territory and the asylum procedure and provide information on the right to seek asylum.

Issue 2: Access to basic rights and essential services for asylum seekers

³ See Chapter X of the Law No. 200 of 2010 on Foreigners in the Republic of Moldova, 24 September 2010, available at: https://www.legis.md/cautare/getResults?doc_id=112700&lang=ro

⁴ See also UNHCR, *Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, July 2020, available at: <https://www.refworld.org/docid/5f203d0e4.html>.

⁵ Constitution of the Republic of Moldova, adopted on 27 July 1994, available at: http://www.legis.md/cautare/getResults?doc_id=111918&lang=ro; unofficial translation available on the Presidency's website: <http://www.presedinte.md/eng/constitution>.

⁶ *Ozdil and Others v. Moldova*, Application no. 42305/18, Council of Europe: European Court of Human Rights, 11 June 2019, available at: <http://hudoc.echr.coe.int/eng?i=001-193614>.

⁷ Moldovan Ombudsperson's Office, *Upholding the Rights of the Foreigners in State Custody*, 2019, available at: https://ombudsman.md/wp-content/uploads/2019/12/Studiul_Situatia_str%C4%83inilor_FINAL.pdf.

⁸ Executive Committee, Conclusion No. 81 (XLVIII), 1997, para. (h); Conclusion No. 82 (XLVIII), 1997, para. (d)(iii); Conclusion No. 85 (XLIX), 1998, para. (q); Conclusion No. 99 (LV), 2004, para. (l). UNHCR, *A Thematic Compilation of Executive Committee Conclusions (7th Edition)*, June 2014, available at: <https://www.refworld.org/docid/5698c1224.html>; UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 24 ff. and 43, available at: <https://www.refworld.org/docid/45f17a1a4.html>.

Asylum-seekers are obliged to stay at the Government-run Temporary Accommodation Centre (TAC) during the asylum procedure. The TAC offers shelter, psycho-social counselling and a limited range of medical services provided through the Border Police. However, the TAC does not provide food or other basic needs, including sanitary and hygiene materials which are to be covered by the asylum-seekers themselves. As per article 28 of the Law on Asylum, asylum-seekers are allowed to work from the very moment of submitting an asylum application. In practice, they need several weeks to find a job.

Asylum-seekers who are neither legally employed, nor enrolled in an educational institution, do not have access to health insurance. As a result, unless they have the means to afford out-of-pocket expenses for specialized health care, their access is limited to free-of-charge primary and pre-hospital emergency health care.⁹

UNHCR advocates for access of both refugees and asylum-seekers to quality health services (primary health, emergency services and specialized care) at a level similar to that of nationals.¹⁰ Furthermore, UNHCR recommends that vulnerable refugees and asylum-seekers be provided with a suitable safety net to ensure access to preventative and curative health services.¹¹

Special services intended to facilitate integration of refugee and stateless women, children and other vulnerable groups of people with specific needs require further development including in the area of psycho-social support, health, education, self-reliance, and access to State/community support. In addition, many people with special needs have extremely limited resources and are unable to meet their basic needs.

UNHCR is pleased that the Government of Moldova presented pledges at the Global Refugee Forum¹² in 2019 aimed at ensuring asylum-seekers' basic needs, including access to health insurance.

Recommendations:

UNHCR recommends that the Government of the Republic of Moldova:

- a) Ensure asylum-seekers' have their basic needs covered, while accommodated in the Temporary Accommodation Center;
- b) Provide asylum-seekers with access to the State health insurance scheme;
- c) Ensure early identification, referral to specialized services, counselling and appropriate support is provided to asylum-seekers, including those with specific needs.

Issue 3: Detention safeguards and alternatives to detention

Asylum-seekers are in general not detained as their residence in the territory is considered legal. Nevertheless, in 2020, 7% of the asylum-seekers applied for asylum while in detention ('public custody') in the Migration Accommodation Centre (MAC), where foreigners are placed pending removal. They were released only after UNHCR's intervention.

⁹ See Section 28 of the Law on Asylum.

¹⁰ UNHCR, *Ensuring Access to Health Care: Operational Guidance on Refugee Protection and Solutions in Urban Areas*, 2011, pp. 8-9, available at: <https://www.refworld.org/docid/4e27d8622.html>.

¹¹ UNHCR, *A Guidance Note on Health Insurance Schemes for Refugees and other Persons of Concern to UNHCR*, pp. 3 and 8, available at: <https://www.unhcr.org/4f7d4cb1342.pdf>.

¹² Pledges made by the Republic of Moldova are available at: <https://globalcompactrefugees.org/channel/pledges-contributions>.

¹³ Law No. 200 of 2010 on Foreigners in the Republic of Moldova, 13 March 2009, available at: https://www.legis.md/cautare/getResults?doc_id=112700&lang=ro#.

Pursuant to Section 64 of the Law on Foreigners¹³ public custody is a measure of restriction of freedom of movement, ordered by the court¹⁴. Unlike the criminal procedure where there is a wide variety of measures alternative to detention, in the migration field there is only detention in the form of public custody without any alternatives to detention.

While domestic law¹⁵ provides for safeguards in detention, such as access to information, legal representation and rules pertaining to confidentiality and visits, UNHCR observed that the detainees in the MAC are often not well informed about their rights, the reasons for detention and the possibility to apply for asylum. They are often informed late about the date and hour of their next court hearing (10-15 minutes before leaving the detention center) hence they cannot notify their lawyers. Visits by relatives are limited to 5-10 minutes. There are no services by social workers and psychologists in the center. UNHCR has also received complaints that guards frequently address detainees in an inappropriate manner and the food provided is not adapted to religious beliefs.

UNHCR's *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*¹⁶ ('Guidelines on Detention') foresee that detention for asylum seekers and refugees must be only used as a last resort, be subject to minimum procedural safeguards, conditions of detention must be humane and dignifying, and special circumstances and needs of asylum-seekers must be taken into account.¹⁷ Alternatives to detention should also be available in law and applied in practice.¹⁸

Detained asylum-seekers have access to legal counselling through UNHCR's partner who refers them to public defenders. However, limited interpretation services available for public legal aid makes it difficult for asylum-seekers to communicate with their lawyers and to substantiate their claims.

Recommendations:

UNHCR recommends that the Government of the Republic of Moldova:

- a) Introduce alternatives to immigration detention in law and apply them in practice;
- b) Provide conditions of immigration detention that are humane and dignified, and take into account the situation of persons with specific needs, including vulnerable individuals.

Issue 4: Prevention and reduction of statelessness

Until recently, Moldovan law provided a safeguard for all children born on the territory who would otherwise be stateless to acquire Moldovan nationality automatically at birth. However, legislative amendments introduced in 2018¹⁹ require at least one parent to have legal residence in Moldova. This poses a risk of statelessness for some children born in

¹³ Law No. 200 of 2010 on Foreigners in the Republic of Moldova, 13 March 2009, available at: https://www.legis.md/cautare/getResults?doc_id=112700&lang=ro#.

¹⁴ Public custody can be ordered to a foreigner: who did not execute the return decision or who could not be returned; who crossed or tried to cross irregularly the border; who entered the country during the interdiction period previously ordered; whose identity could not be established; who has been declared as undesirable; against whom the expulsion has been ordered; or, who is at risk of being abducted.

¹⁵ Government Decision no. 492 of 2011 on the approval of the Regulation of the Migration and Accommodation Center, 7 July 2011, available at: https://www.legis.md/cautare/getResults?doc_id=23382&lang=ro.

¹⁶ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <https://www.refworld.org/docid/503489533b8.html>.

¹⁷ In relation to the concerns described in the preceding paragraph, please refer in particular to Guideline 7, paras. 47 (i), (ii), (vi), (viii), (ix); Guideline 8, paras. 48 (vi), (vii), (ix), (x), (xi), (xvi); and Guideline 9. UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012.

¹⁸ UNHCR, *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, Guideline 4.3.

¹⁹ See Section 11 of the Law No. 1024 of 2000 on citizenship for the Republic of Moldova, 10 August 2000, available at: https://www.legis.md/cautare/getResults?doc_id=114102&lang=ro

Moldova if they are born to parents without a legal residence and is contrary to Moldova's international obligations. In the case of foundlings, adopted children, children born abroad to Moldovan nationals and children born in Moldova where one parent has legal residence, legal provisions are in place to ensure children acquire Moldovan nationality.

Although Moldovan law provides for free birth registration and stipulates that all children must be registered, efforts to prevent statelessness are hindered by administrative and practical barriers to universal free birth registration. Parents must be documented to register birth, and therefore some parents face challenges with birth registration, including members of the Roma community. Since 2018, Moldovan authorities are required to recognise civil status acts issued in the Transnistrian Region, thus facilitating birth registration and access to Moldovan citizenship for children born to Transnistrian parents in Moldova.

International human rights law recognizes the right of every child to acquire a nationality and to be registered at birth.²⁰ In addition, the *1961 Convention* requires that a state grants its nationality to a person born in its territory who would otherwise be stateless.²¹ Birth registration is also essential to the implementation of safeguards for children who would otherwise be stateless, including the safeguards contained in the *1961 Convention*.²²

The Republic of Moldova has a statelessness determination procedure in place, but effective access to this procedure requires further improvement. In 2020, UNHCR identified 72 people without identity documents in penitentiary institutions, and 47 people with undetermined nationality who required access to the statelessness determination procedure. In addition, 278 people were identified with expired identity documents. To benefit from protection under the *1954 Convention*, individuals must be granted effective access to the statelessness determination procedure.²³ Stateless persons can apply for naturalization if they have legally resided in Moldova for more than eight years. This is a shorter period of residence than is required for foreigners, which is a minimum of ten years. However, it is recommended that the residency requirement is facilitated further.

Recommendations:

UNHCR recommends that the Government of the Republic of Moldova:

- a) Amend domestic law to reinstate safeguards that ensure that all children born on the territory who would otherwise be stateless acquire Moldovan nationality automatically at birth, regardless of the residence status of their parents;
- b) Remove all legal and practical barriers to birth registration with a particular focus on minority groups, including Romani communities, so that all children born in Moldova are registered immediately after birth regardless of their parents' status;
- c) Ensure the prompt identification of stateless individuals and those at risk of statelessness, including individuals without documents and/or detained in penitentiary institutions and other residential institutions, and ensure their referral to

²⁰ Article 24(2) and (3) of the International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, available at: <https://www.refworld.org/docid/3ae6b3aa0.html>; Article 7(1) of the Convention on the Rights of the Child, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3, available at: <https://www.refworld.org/docid/3ae6b38f0.html>. See also, UN Human Rights Committee (HRC), General Comment No. 17: Article 24 (Rights of the Child), 7 April 1989, para. 8, available at <http://www.refworld.org/docid/45139b464.html>.

²¹ Article 1 of the 1961 Convention. See also UNHCR, *Guidelines on Statelessness No. 4: Ensuring Every Child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness* (21 December 2012), HCR/GS/12/04, available at: <http://www.refworld.org/docid/50d460c72.html>; UNHCR, *Global Action Plan to End Statelessness*, 4 November 2014, Action 2, available at: <https://www.refworld.org/docid/545b47d64.html>; UNHCR, *Good Practices Paper - Action 2: Ensuring that no child is born stateless*, 20 March 2017, available at: <https://www.refworld.org/docid/58cfab014.html>.

²² Articles 1-4 of the 1961 Convention. See also UNHCR, *Guidelines on Statelessness No. 4*, para. 55; UNHCR, *Global Action Plan to End Statelessness*, Action 7; UNHCR, *Good Practices Paper - Action 7: Ensuring birth registration for the prevention of statelessness*, November 2017, available at: <https://www.refworld.org/docid/5a0ac8f94.html>.

²³ See UNHCR, *Good Practices Paper - Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons*, July 2020, Section 2, available at: <https://www.refworld.org/docid/5f203d0e4.html>.

the statelessness determination procedure.

UNHCR
July 2021

ANNEX I

Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review,
Concluding Observations from UN Treaty Bodies and Recommendations of Special
Procedures mandate holders

UNHCR would like to bring to the attention the following excerpts from the 2nd cycle UPR recommendations and UN Treaty Monitoring Bodies' Concluding Observations relating to issues of interest and persons of concern to UNHCR with regards to the REPUBLIC OF MOLDOVA.

I. Universal Periodic Review (Second Cycle – 2016)

Recommendation	Recommending State/s	Position
121.61 Ensure the collection of statistical data on incidents of anti-Semitism, xenophobia and racial discrimination (Russian Federation)	Russian Federation	Supported
121.84 Improve access to medical, psychosocial and mental health services for all persons in detention, especially for those belonging to vulnerable groups	Austria	Supported

II. Treaty bodies

Committee against Torture

Concluding observations on the third periodic report of Republic of Moldova, 21 December 2017, CAT/C/MDA/CO/3

Non-refoulement

27. While noting the information provided by the State party during the dialogue, the Committee is concerned about the decline in the number and percentage of asylum seekers who have obtained refugee status or humanitarian protection in the State party. It is also concerned about the increased detention of asylum seekers and the increase in the number of expulsion decisions.

28. The State party should facilitate rapid and equitable access to an individualized refugee status determination procedure; promptly provide information on the right to seek asylum; refrain from detaining asylum seekers; detain undocumented migrants only as a measure of last resort and for as short a time as possible, including by using alternatives to detention; and ensure full respect for the principle of non-refoulement.

Committee on Economic, Social and Cultural Rights

Concluding observations on the third periodic report of the Republic of Moldova, 19 October 2017, E/C.12/MDA/CO/3

Right to health

56. The Committee is concerned at the challenges facing the health-care system in the State party, in particular:

- a) The compulsory health insurance system leaves around 20 per cent of the population uncovered;
- b) The optimization process in the health-care sector further restricts access to health-care services, particularly in rural areas;
- c) The overall quality of health-care services is poor and no mechanisms are in place to monitor and control public health facilities;
- d) Roma, persons with disabilities, persons living with HIV/AIDS, refugees and asylum seekers and other disadvantaged and marginalized individuals and groups are discriminated against in accessing health-care services (arts. 2 (2), 9 and 12).

57. The Committee recommends that the State party take all measures necessary to:
- Ensure that the compulsory health insurance system covers every person in the State party;
 - Ensure that the optimization process does not restrict the accessibility and affordability of health-care services, particularly among persons with disabilities, older persons and persons living in rural areas;
 - Improve the quality of health-care services by securing a sufficient number of qualified medical professionals, modernizing medical equipment and facilities, and putting in place regulatory mechanisms for public health facilities;
 - Address the discrimination faced by disadvantaged and marginalized individuals and groups, particularly Roma, persons with disabilities, persons living with HIV/AIDS, refugees and asylum seekers in accessing health-care services, and sensitize medical professionals to their special needs.

Committee on the Elimination of Racial Discrimination

Concluding observations on the combined tenth and eleventh periodic reports of the Republic of Moldova, 7 June 2017, CERD/C/MDA/CO/10-11

Hate speech and hate crimes

12. The Committee notes that article 346 of the Criminal Code was amended in 2016 and renamed Intentional Actions Aimed at Inciting Ethnic, Racial or Religious Hatred, Differentiation or Discord. The Committee is concerned that this amendment is not fully in line with the prohibition on hate speech in article 4 of the Convention. It is also concerned about the lack of hate crime legislation in effect in the State party and welcomes information provided by the State party that Parliament is considering amending the Criminal Code to address this concern. The Committee is further concerned at the reported promulgation of racist stereotypes and hate speech in the media and political sphere against members of certain groups, such as ethnic minority Muslims, Roma, Jews and asylum seekers or refugees, and the lack of accountability for such acts (arts. 2, 4, and 6).

13. The Committee, recalling its general recommendation No. 35 (2013) on combating racist hate speech, recommends that the State party:

- Ensure that article 346 of the Criminal Code is fully in line with article 4 of the Convention and that the amended article is enforced to prosecute incidents of hate speech;
- Adopt comprehensive legislation criminalizing hate crimes and ensure that such legislation is in line with the Convention and that racial motivation is listed as an aggravating circumstance;
- Conduct educational campaigns to address the root causes of prejudices and promote tolerance and respect for diversity, including in particular with a focus on the role and responsibilities of journalists and public officials;
- Ensure all incidents of hate crimes and hate speech are investigated and prosecuted and that the perpetrators are punished, regardless of their official status, and provide data on numbers of hate crimes and hate speech cases reported, prosecutions and convictions, and compensation to victims;
- Reinforce the role of the prosecutors in supporting victims of racial discrimination to report violations.

Situation of non-citizens

22. The Committee appreciates the statistics provided by the State party during the dialogue on the numbers of refugees and asylum seekers in the State party. However, it regrets the lack of comprehensive detailed information on the implementation and impact of the National Strategy for Migration and Refugees 2011-2020, and the Action Plan 2016- 2020 on the ability of non-citizens such as migrants, refugees and asylum seekers to have access without discrimination to education, employment, housing, health care and basic services (arts. 5 and 7).

23. Recalling its general recommendations No. 30 (2004) on discrimination against non-citizens and No. 22 (1996) on article 5 of the Convention on refugees and displaced persons, the Committee recommends that the State party ensure that noncitizens are given access to education, housing, health care and employment, without discrimination. The Committee recommends that the State party provide information on the implementation and impact of the National Strategy for Migration

and Refugees 2011-2020, and the Action Plan 2016-2020 on the ability of non-citizens such as migrants, refugees and asylum seekers to have access without discrimination to employment, housing, health care and basic services.