



**Stakeholder Submission
for the Universal Periodic Review
of the Republic of Moldova**

Second Cycle
March 2016

I. Introduction

- 1.1. This report is submitted by Freedom House to the office of the High Commissioner for Human Rights (OHCHR) to be considered for inclusion in the summary of stakeholder submissions for the Universal Periodic Review (UPR) of the Republic of Moldova, scheduled to take place in November 2016. Founded in 1941, Freedom House (FH) is the oldest non-profit organization in the United States dedicated to promoting and defending democracy and freedom and has a successful record of conducting training programs, targeted assistance, advocacy, research, and monitoring to support democratic governance, human rights, civil society development, and independent media worldwide. FH analyzes the challenges to freedom in its annual indices *Freedom in the World*, *Freedom of the Press*, *Nations in Transit*, and *Freedom on the Net*; advocates for greater political rights and civil liberties in cooperation with local partners; and supports frontline activists to defend human rights. In Moldova, FH works in close cooperation with the Center for Investigative Journalism of Moldova (CIJM) on improving media freedom and reporting on corruption. Freedom House has held ECOSOC status since 1995.
- 1.2. This submission covers the period elapsed since Moldova's last UPR in 2011 and focuses on the implementation of accepted recommendations: (73.53) Make efforts to fully guarantee freedom of expression and information, in accordance with Moldova's international obligations (Norway); and (73.54) Take steps to protect objective and independent media (Germany). In particular, the report examines the existing legal framework and issues pertaining to access to information and media independence and pluralism as key concerns around Moldova's compliance with its international and national human rights commitments on freedom of expression and media freedom.

II. Executive Summary

- 2.1. Access to information and media independence and pluralism remain critical media freedom issues in the Republic of Moldova. Despite repeated calls for media legislation reform, the government of Moldova has not made significant efforts to improve access to information and ensure media diversity in accord with the country's international human rights obligations. Compliance with the national laws regulating media remains weak as no state body has full authority to enforce implementation, and internal procedural regulations are lacking. Conflicting provisions of multiple laws and internal contradictions often allow state institutions to ignore the regulations altogether. Public officials consistently obstruct access to public interest information through refusals, delays, or incomplete answers, and do so with impunity. Access to public meetings of official bodies has become increasingly limited for representatives of the media, while certain types of public interest data is available only on a paid basis. Finally, the existing legal provisions do not effectively regulate concentration of media ownership, and private media remain financially – and editorially – dependent on affiliated businesses and political groups. The government of Moldova should adopt a number of legislative and procedural changes to remove inconsistencies in the statutory language and ensure consistent enforcement of regulations in accord with its international obligations.

III. Legal Framework

- 3.1. The right to access information is guaranteed by the Moldovan Constitution (Article 34) and is regulated by the Law on Access to Information (adopted in 2000), which only restricts public access to state secrets, confidential business information submitted to public institutions under conditions of confidentiality, and personal data, the disclosure of which may be considered interference in one's private life. Yet, compliance with the Law on Access to Information remains weak, as no state body has the full authority to enforce implementation. The People's Advocate (Ombudsman) in Moldova has the authority to oversee the implementation of the law; however, this office lacks the capacity and the resources to exercise control.
- 3.2. The Moldovan Constitution guarantees freedom of expression (Article 32) as does the Law on Freedom of Expression (adopted in 2010). Censorship is prohibited by the Constitution, the Law on Press (1994), the Broadcasting Code (2006) and the Law on Freedom of Expression. However, as a result of poor implementation, the legislative framework has fostered a wide-spread culture of self-censorship among journalists who consistently face denials of their rights and other obstructions to media work.
- 3.3. In 2013, the Criminal Code was amended to include Article 180 (1) "Deliberate Obstruction of Media Work or Intimidation by Criticism," and Article 180 (2) "Censorship," that established fines for intimidation by criticism, obstruction of journalists' and media outlets' work, and unjustified censorship or distortion of journalists' reporting. These additions were derived from the Law on Freedom of Expression as mechanisms needed to safeguard freedom of expression and protect against censorship and are poised to positively affect the media environment in Moldova with proper and consistent enforcement.

IV. Access to Information

- 4.1. Investigative journalists and civic organizations confront numerous challenges when requesting access to public information, including obstruction by government officials, refusals or delays in replying to requests for access to information, and purposefully incomplete or vague responses to requests for information. For example, in 2015 the local civil society organization Pilgrim Demo sent a written request about the decision-making process to the People's Assembly of Gagauzia, which the People's Assembly denied. The decision was later overturned by a district court, but was appealed by the People's Assembly of Gagauzia in the Court of Appeals.
- 4.2. To justify denial of access to what should be public information, public officials frequently cite other laws that contradict the Law on Access to Information, in particular the Law on State Secrets and the Law on Trade Secrets. The Law on Trade Secrets (adopted 1994) contains a number of internal contradictions, which make interpretation ambiguous. For instance, in 2013 the *Panorama* newspaper requested complete information from the Customs Service about all import and export transactions conducted by or through offshore companies through Moldova's customs bureau from 2005 to 2013. The Customs Service cited the Law on Trade Secrets and refused to provide the requested information.

- 4.3. Those who obstruct access to information do so with impunity. The Contravention Code of the Republic of Moldova, for example, imposes insignificant fines on public officers who fail to provide due access to information. In many cases, however, the information supplied by state structures is screened and redacted in the officials' favor, giving the impression that they are formally in compliance with the law though often depriving the requester of the information they are seeking. In addition, many officials do not provide public interest information without prior approval from a supervisor and often refuse to answer telephone calls from journalists, thereby increasing the time it takes to verify certain data.
- 4.4. Access to information is not open to everyone. The Law on Access to Information prevents foreign persons without official Moldova residence and legal entities from requesting information on government's actions, thus limiting the ability of media outlets or civil society organizations to gain official access to government information as part of their work.
- 4.5. While some improvements have been made, fees for public data continue to stymie investigative journalists' efforts to shed light on public interest issues. In October 2014, in what was originally hailed as an important step toward broader accessibility, the Prime Minister's Economic Council introduced a public register through the E-Government service, which offers free access to basic data on companies registered in the country. However, the data about the founders of companies may only be obtained for a fee. The State Company "Cadastru," to which journalists often appeal when investigating subjects of public interest, collects the fees that, if applied to multiple requests over time, may equal thousands of lei. The RISE Project Guide for Investigative Journalism in Moldova and Romania concluded that the limited information provided by "Cadastru" without charge is too little to be useful in an investigative article. Thus, newsrooms must pay large sums of money for investigations, which necessarily limits the amount of information they can request as part of their work in the public interest.
- 4.6. Access to information on public procurement remains difficult, despite some reforms in the recent years, complicating public efforts to monitor state expenditures. Some state institutions continue to maintain secret records about public procurement. In 2015, the Association for Efficient and Responsible Governance (AGER) and the Center for Investigative Journalism of Moldova (CIJM) requested information related to public procurement from the State Company "Calea Ferata," the Agency for Land Relations, and the State Company "Cadastru," yet none of them responded to the requests. Meanwhile, other institutions, including the National Bank of Moldova and the State Chancellery, openly refused to provide access to files on public procurement, invoking the Law on Trade Secrets, citing confidentiality of information, or claiming that by law they are not obliged to provide access to such information.
- 4.7. Since Moldova's last UPR, the Parliament has consistently limited accredited journalists' access to its proceedings. Since 2014, media representatives have been prohibited from openly observing plenary sessions of the Parliament. Instead, journalists are provided with a small room with two monitors showing information that has been selected, redacted, and filtered by Parliament-appointed specialists. Civil society actors regularly demand that the

Parliament ensure better work conditions for accredited journalists, to no avail. In February 2015, the permanent Bureau of the Parliament approved new regulations regarding journalists' accreditation, including restrictive provisions likely to limit the access of certain media institutions to Parliamentary information. Additionally, in 2015, a bill that would terminate live broadcast of plenary sessions of the Parliament passed first reading, generating heavy criticism from civil society wary of its potential to further reduce transparency in the state decision-making.

- 4.8. In February 2016, the Superior Council of Magistrates, a judicial self-administration body, also restricted media representatives' presence at its public sessions.
- 4.9. Local government bodies have also refused access to media during their ostensibly public sessions. In several instances, Orhei City Council denied journalists their right to attend public meetings, most recently on December 29, 2015, when a security guard at Orhei City Hall did not allow *Radio Orhei*'s correspondent to be present at the meeting of the City Council. On December 10, 2015 a representative of *Radio Orhei* had to convince two guards at the entrance that he had the right to attend the meeting of local elected officials. On July 15, 2015 a team from Jurnal TV was assaulted inside Orhei City Hall by a person who, while refusing to introduce himself, forbade the journalists to film inside the public institution.

V. Media Ownership Concentration and Pluralism

- 5.1. Despite repeated calls from media experts to repeal the outdated Law on Press due to its incomplete, redundant and restrictive provisions limiting media pluralism, the legislation remains in place. The 1994 Law on Press prescribes the organization of media operations and contains provisions duplicating other laws, including the Law on Freedom of Expression. Furthermore, the law limits foreign investment in printed press and requires non-governmental organizations seeking to publish a newspaper to register a distinct legal entity, with a management board, separate accounts, monthly reports and other administrative requirements – a burdensome and unnecessary requirement that makes it difficult for new media initiatives to develop.
- 5.2. Private media remains dependent on financial subsidies, direct funding by owners, and advertising revenue from affiliated businesses and political groups; the revenue from subscriptions is minimal. No legal provisions exist to regulate the allocation of subsidies for media institutions or to distribute state advertising in a transparent or fair manner, enabling officials in charge of advertising budgets to play favorites and distribute resources under their control arbitrarily or for personal gain. In several cases advertising agencies and the government colluded to benefit certain media outlets. For example, a December 2014 article by *Ziarul de Garda* revealed that the National Anti-Corruption Center (CNA) signed a contract with Casa Media worth MDL 280,000 (USD 17,000) for advertisements to be broadcast on *Prime* and *Publika TV*, two television channels owned by the politician Vladimir Plahotniuc. Other advertising agencies claimed to not have been aware of the public procurement tender, while CNA spokespersons insisted all market players had been notified.

- 5.3. The much-needed reform of the Broadcasting Code has stalled. In order to improve the national broadcast legislation and align it with international standards, media experts drafted a new version of the Broadcasting Code in 2011, including clear provisions to guarantee pluralism of opinions and to limit the concentration of ownership in mass media. Although the passing of a new Broadcast Code was part of the government's program, it became a legislative initiative only in March 2015 and has made no further progress in the Parliament since.
- 5.4. In a positive development, small amendments to the current Broadcasting Code drafted by the Independent Journalism Center were adopted in 2015. Under the new regulations, media holdings have a timed obligation to publish the names of owners and their share in the capital, as well as the names board members, managers, broadcasters and producers. This is a welcome change increasing ownership transparency of Moldova-based media outlets; however, the amendments still do not mandate the disclosure of ownership behind off-shore companies that have a stake in media organizations.
- 5.5. Editorial independence of media outlets as a fundamental aspect of media diversity in Moldova remains ambiguous. The current legislation regulating media contains no provisions that would oblige outlets to publish information about the editorial policy or political orientation of media organizations, thereby complicating the ability of the public to ensure they have access to a wide variety of opinions. Only press institutions set up by political parties have a declared policy orientation.

VI. Recommendations

- 6.1. Adopt a legal mechanism that would make the Law on Access to Information more functional and facilitate access to public interest information, including adjustments to the Law on Trade Secrets and Law on State Secrets, in accord with international obligations;
- 6.2. Abandon data access fees imposed by the State Company "Cadastru" and the State Registration Chamber and allow journalists free access to public interest information;
- 6.3. Ensure that accredited journalists can attend public sessions and have access to information of national government bodies, in particular the Parliament and the Council of Magistrates, by amending the existing internal regulations of these institutions in compliance with international standards;
- 6.4. Repeal the outdated and redundant Law on Press of the Republic of Moldova;
- 6.5. Adopt comprehensive national legislation in order to limit media ownership concentration, ensure media pluralism, and protect independent media.