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PROCEDURES SPECIALES DU
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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Working Group on the issue of discrimination against women in law and in practice; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and the Special Rapporteur on the situation of human rights defenders

REFERENCE: OL G/SO 214 (67-17) Assembly & Association (2010-1) G/SO 214 (107-9) Health (2002-7)
MDA 4/2013

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Excellency,

We have the honour to address you in our capacities as Chairperson-Rapporteur of the Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolution 23/7, 16/4, 15/21, 15/22, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning the **adoption of Law n°117 completing the Contravention Code which could potentially limit the rights to freedom of expression, association and peaceful assembly of lesbian, gay, bisexual and transgender (LGBT) persons and advocacy organizations.**

According to information received:

The Parliament of the Republic of Moldova adopted on 23 May 2013 Law n°117 which amended the Contravention Code n°218-XVI of 28 October 2008. Article 90¹ on public activity with a negative impact on minors was reportedly modified and paragraph two now states that the distribution of public information with or without criminal intent in order to spread prostitution, paedophilia, pornography or relations other than those of the family and marriage as specified in the Family Code will entail sanctions. These are allegedly fines in function of the legal position of the accused and can entail the suspension of the right to exercise certain activities from three months to a year.

There are serious concerns that the language used in Article 90¹ which provides for penalization for the so-called “propagation of any other relations than those related to marriage and family in accordance with the Constitution and the Family Code”, may allegedly be used to limit the actions of advocacy groups for LGBT rights. According to the Family Code n°1316 of 26 October 2010, Article 15(h), a marriage cannot be concluded between individuals of the same sex. The notion of distribution of public information on relations other than those of the family and marriage could reportedly be interpreted in a way which would render unlawful the distribution of public information with regard to LGBT relations, as these are not recognized in the Family Code. Also, information received points to some procedural shortcomings in relation to the adoption process of Law n°117, such as the lack of transparency and the absence of public debate around the text.

The contravention measures could reportedly threaten the right to freedom of assembly of advocacy groups for LGBT rights. The right to undertake activities can allegedly be suspended from three months to a year if an infraction to Article 90¹ is recognized.

There are thus grave concerns that the legislation will have significant and detrimental impacts on the rights to freedom of expression, association and peaceful assembly of LGBT individuals and advocacy groups.

Furthermore, we are concerned about the impact that the law’s alleged penalization of the distribution of public information with regard to LGBT relations will have on the promotion of the right to health in the Republic of Moldova, including among LGBT persons. Concern is also expressed about the law’s detrimental impact on combatting the spread of HIV/AIDS in the country.

While we do not wish to prejudge the accuracy of these allegations, we would like to refer your Excellency’s Government to the following provisions of the International Covenant on Civil and Political Rights (ICCPR), which Moldova acceded to on 26 January 1993:

- Article 19 which provides that “[e]veryone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice”;
- Article 21 which provides that “[t]he right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interest of national security of public safety, public order (ordre public), the protection of public health or morals of the protection of the rights and freedoms of others”; and

- Article 22 which provides that “[e]veryone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests”.

In this connection, we would like to further refer to Human Rights Council resolution 21/16, and in particular operative paragraph 1 that “reminds States of their obligation to respect and fully protect the rights of all individuals to assemble peacefully and associate freely, online as well as offline, including in the context of elections, and including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of peaceful assembly and of association are in accordance with their obligations under international human rights law.”

We would also like to refer to the European Convention of Human Rights which under Article 10 provides that “[e]veryone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.” Article 11 further states that “[e]veryone has the right to freedom of peaceful assembly and to freedom of association with others, including the right to form and to join trade unions for the protection of his interests.”

Moreover, we would like to draw your attention to the Communication No. 1932/2010, dated 31 October 2012, from the Human Rights Committee about the case of *Irina Fedotova v the Russian Federation* on the subject of a regional law which declared that propaganda of homosexuality was an administrative offence. It was concluded by the Committee (CCPR/C/106/D/1932/2010, para.10.6) “that the State party ha[d] not shown that a restriction on the right to freedom of expression in relation to “propaganda of homosexuality” – as opposed to propaganda of heterosexuality or sexuality generally – among minors [wa]s based on reasonable and objective criteria.” Under the facts of the case, the Committee was of the view that the author, by publically displaying posters that declared her homosexuality, was giving expression to her sexual identity and seeking understanding for it and concluded that this did not amount to public actions aimed at involving minors in any particular sexual activity or at advocating any particular sexual orientation (para 10.7). The Committee further concluded that the author’s conviction for an administrative offence of “propaganda of homosexuality among minors” amounted to a violation of her rights under article 19, paragraph 2, read in conjunction with article 26 of the Covenant.

In this connection, we would like to mention the General Recommendation n°28 from the CEDAW (CEDAW/C/GC/28) which in its paragraph 18 underlines the question of intersectionality of different forms of discrimination against women including when it is based on sexual orientation. The Committee emphasizes the need for state parties to legally recognise and adopt policies to eliminate occurrences of intersectionality in discrimination.

Furthermore, we would like to recall the recommendations made following the visit of the Working Group on the issue of discrimination against women in law and in practice to the Republic of Moldova in 2012 (A/HRC/23/50/Add.1). It was stated that (para.88):

“(a) The Council to Prevent and Combat Discrimination and Ensure Equality should develop jurisprudence and work practices in conformity with international law, and establish a comprehensive ban on discrimination covering all grounds under international law, including sexual orientation and gender identity.

(b) The Centre for Human Rights and its successor should develop a mechanism for the protection of human rights defenders, with immediate priority for Lesbian, Bisexual and Transgender (LBT) defenders and LBT women, and marginalized groups, in particular Romani women.”

In this connection, we would like to also refer your Excellency's Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly referred to as the Declaration on human rights defenders, and in particular articles 1 and 2 which state that "everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels" and that "each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice”.

With regard to article 7 of the Declaration on human rights defenders, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas is enshrined in the Declaration on Human Rights Defenders as an important provision for the on-going development and articulation of human rights. Article 7 provides for the right to discuss and advocate for human rights ideas and principles that, in some contexts, are perceived as new or unpopular because they address human rights issues that might challenge tradition and culture. In this connection, the Special Rapporteur has encouraged States to do the necessary to guarantee the principle of pluralism and recognize the right of defenders to promote and advocate for new human rights ideas or ideas that are perceived as new. She has further encouraged States to take additional measures to ensure the protection of defenders who are at greater risk of facing certain forms of violence and discrimination because they are perceived as challenging accepted sociocultural norms, traditions, perceptions and stereotypes, including about sexual orientation and gender identity.

We would also like to recall resolution 17/19 of the Human Rights Council, where the Council expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

Regarding allegations of the law's penalization of the distribution of public information with regard to LGBT relations and its detrimental impact on the promotion of the right to health in the Republic of Moldova, including among LGBT persons, we would like to stress that the right of everyone to the enjoyment of the highest attainable standard of physical and mental health is reflected, *inter alia*, in article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – ratified by your country on 26 January 1993. This includes an obligation on the part of all State parties to ensure that health facilities, goods and services are accessible to everyone, especially the most vulnerable or marginalized sections of the population, without discrimination. Furthermore, article 2 of the ICESCR requires States to guarantee that all rights enunciated in the Covenant will be exercised without discrimination of any kind.

In this connection, I would like to refer your Excellency's Government to General Comment 14 of the Committee on Economic, Social and Cultural Rights, which interprets the right to health as an inclusive right extending not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health (para. 11). The Committee also stated that the right to health, like all human rights, imposes three types or levels of obligations on States parties: the obligations to *respect*, *protect* and *fulfil* (para.33). States are under the obligation to *respect* the right to health by, *inter alia*, abstaining from enforcing discriminatory practices as a State policy (para.34). An example of the violation of the obligation to respect would include “the adoption of laws or policies that interfere with the enjoyment of any of the components of the right to health” (para.50). Furthermore, health facilities, goods and services have to be accessible to everyone without discrimination, and such accessibility includes the right to seek, receive and impart information and ideas concerning health issues (para. 12(b)).

Concerning the law's detrimental impact on combatting the spread of HIV/AIDS in the Republic of Moldova, it has been shown that penalization of vulnerable populations, including LGBT people, makes HIV and AIDS prevention, treatment and education efforts less accessible to these groups. It has an adverse effect on the ability of individuals to access appropriate health facilities, goods and services due to the stigma attached to criminalization. In addition, penalization of distribution of public information with regard to LGBT relations means that national health plans and policies will not reflect the specific needs of LGBT persons. On the other hand, decriminalization combined with efforts to address stigma and discrimination against those vulnerable populations constitutes a far more effective approach to HIV/AIDs prevention.

Since it is our responsibility under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your cooperation and your observations on the following matters:

1. Is the above information pertaining to the content of the law accurate?

2. Have any safeguards been adopted or envisaged to prevent the abovementioned legislation from being interpreted in a way in which it could prejudice the human rights of LGBT individuals and advocacy groups?

3. Which provisions are in place to ensure the protection of the rights of LGBT individuals and advocacy groups?

We would appreciate a response within sixty days. Your Excellency's Government's response will be made available in a report to the Human Rights Council for its consideration.

While waiting for your response, we urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of the above mentioned persons and organisations are respected.

Please accept, Excellency, the assurances of our highest consideration.

Frances Raday
Chairperson-Rapporteur of the Working Group on the issue of
discrimination against women in law and in practice

Frank La Rue
Special Rapporteur on the promotion and protection of the right to
freedom of opinion and expression

Maina Kiai
Special Rapporteur on the rights to freedom of peaceful assembly and
of association

Margaret Sekaggya
Special Rapporteur on the situation of human rights defenders

Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the
highest attainable standard of physical and mental health

