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HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of 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; and the Special Rapporteur on the situation of human rights defenders.

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Excellency,

We have the honour to address you in our capacity as 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; and Special Rapporteur on the situation of human rights defenders pursuant to Human Rights Council resolutions 16/4, 15/21, and 16/5.

In this connection, we would like to draw the attention of your Excellency's Government to information we have concerning the physical and psychological integrity of Ms. **Angela Frolov**, Lobby and Advocacy program coordinator of the GENDERDOC-M Information centre, and Ms. **Doina Ioana Straisteanu**, lawyer who represents interests of the organization in court.

GENDERDOC-M is a nongovernmental organization that works for the defence and promotion of the rights of Lesbian, Gay, Bisexual, and Transgender (LGBT) people in the Republic of Moldova. In April 2012, GENDERDOC-M Information Centre launched a lawsuit requesting that the City Council of Bălți be ordered by court to repeal its own Decision #02/16 of 23 February 2012 "On proclamation of the city of Bălți as the zone of support for Moldovan Orthodox Church and inadmissibility of aggressive propaganda of non-traditional sexual orientations in the city of Bălți".

A joint communication was sent on 4 July 2012 by the Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on the right to freedom of opinion and expression and the Special Rapporteur on the rights to freedom of association and peaceful assembly on alleged bans on public activities organized by LGBT people in several municipalities in Moldova, including Bălți, which adopted a municipal ordinances prohibiting public activities "propagandizing" homosexuality. These ordinances were considered potentially discriminatory and unduly restrictive to the

right to freedom of opinion and expression and to peaceful assembly of LGBT people and those advocating for their rights in the Republic of Moldova. We thank your Excellency's Government for its reply to this communication and trust that the right to freedom of opinion and expression and to peaceful assembly will be duly guaranteed without discrimination of any sort.

According to the information received:

On 22 January 2013, representatives of the GENDERDOC-M Information Centre were present at a court hearing on the case "GENDERDOC-M vs. City Council of Bălți". It is reported that at the hearing, besides the plaintiffs, defendants and three accessory interveners, eight other persons also attended the meeting which was open to the public.

According to the information received, as Ms. Frolov, the GENDERDOC-M representative, entered the court room, she was insulted by some of the above-mentioned attendees who reportedly shouted: "Dirty person! Don't sit next to her – isolate her!". During the break announced by the judge to deliver a technical decision, it is reported that eight persons continued uttering derogatory statements and threats against the plaintiffs, their lawyer and LGBT people in the Republic of Moldova.

Information received indicates that following the request of the plaintiffs' lawyer on the basis of article 11 of the Civil Procedure Code, which requires the courts to ensure the safety of those who are part of a trial, the judge established the identity of all individuals present in the courtroom and their personal data were included in the minutes of hearing. Upon the conclusion of hearing, it is reported that these individuals attempted to stop the lawyer and ask her questions with the aim of intimidating her. After legal representative of GENDERDOC-M refused to engage in a discussion with them, one of the men reportedly spat in the direction of the human rights defenders.

According to reports received, on 23 January 2013, GENDERDOC-M denounced these incidents to the Prosecutor Office but are reportedly still waiting for an answer.

Serious concerns are expressed about physical and psychological integrity of Ms. Angela Frolov and Ms. Doina Ioana Straisteanu in the context of the court hearing on the case "GENDERDOC-M vs. City Council of Bălți", particularly in view of the next court hearing scheduled for Monday 11 February 2013. Furthermore, concerns are expressed that their situation is directly linked to their human rights work, more specifically their work in defence and promotion of the rights of the LGBT people in the Republic of Moldova.

We are also concerned that the afore-described incidents are an expression of the serious consequences of the discriminatory ordinances adopted by a number of city and district councils in the spring of 2012 when the respective jurisdictions were proclaimed as “zones free of homosexual propaganda”. These seem to be encouraging the stigmatisation of the LGBT people and those who work for their rights as well as violent expression of homophobia which should be properly addressed by the authorities.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency’s Government to the relevant international standards that are applicable to the issues brought forth by the situation described above.

We would like to refer your Excellency's Government to article 22 of the International Covenant on Civil and Political Rights, which provides that “[e]veryone shall have the right to freedom of association with others...”.

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 right of all individuals to... associate freely... including persons espousing minority or dissenting views or beliefs [and] human rights defenders... seeking to exercise or to promote [this] right, and to take all necessary measures to ensure that any restrictions on the free exercise of the right to freedom... of association are in accordance with their obligations under international human rights law.”

We would also like to mention the first thematic of the Special Rapporteur on the rights to freedom of peaceful assembly and of association to the Human Rights Council, in which he stated that “[t]he right to freedom of association obliges States to take positive measures to establish and maintain an enabling environment. It is crucial that individuals exercising this right are able to operate freely without fear that they may be subjected to any threats, acts of intimidation or violence...” (A/HRC/20/27, para. 63). He called upon States “to ensure that no one... is subject to threats or use of violence, harassment, persecution, intimidation or reprisals [for exercising the rights to freedom of peaceful assembly and of association]” (A/HRC/20/27, para. 84(c)).

Regarding allegations received indicating that the situation of the above-mentioned individuals is directly linked to their human rights work, specifically to their legal action against the ordinance issued by the City Council of Bălți whereby the respective jurisdictions was proclaimed as “zone free of homosexual propaganda”, , we would like to 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, 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”.

Furthermore, we would like to bring to the attention of your Excellency’s Government article 12 paras 2 and 3 of the Declaration which provide that the State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

In addition, the Special Rapporteur on the situation of human rights defenders has stated that the right to develop and discuss new human rights ideas enshrined in article 7 of the Declaration on Human Rights Defenders as an important provision for the ongoing development of human rights. This includes the right to discuss and advocate for human rights ideas and principles that are not necessarily new but that, in some contexts, may be perceived as new or unpopular because they address 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.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned persons in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for

your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the above summary of the case accurate?
2. Sources indicate that alleged victims denounced the incidents to the Prosecutors Office, could you kindly indicate if this was the case and the stage of the complaint?
3. Have any measures been taken to ensure the physical and psychological integrity of the above-mentioned individuals, particularly in view of the next court hearing scheduled for Monday 11 February 2013?
4. Please provide the details, and where available the results, of any investigation, and or other inquiries carried out in relation to this case. If no inquiries have taken place, or if they have been inconclusive, please explain why.
5. Please kindly indicate what measures have been taken to ensure that human rights defenders, particularly those working for the rights of LGBT people, are able to carry out their legitimate work without fear of threats or acts of intimidation and harassment of any sort.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit 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 are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

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

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