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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 capacities 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 resolution 16/4, 15/21, and 16/5.

In this connection, we would like to bring to your Excellency's Government's attention information we have received concerning **alleged bans on public activities organized by Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons in several municipalities in Moldova.**

On 25 May 2012, the Parliament of the Republic of Moldova adopted the Bill on Ensuring Equality. The bill was signed into law by President Nicolae Timofti on 28 May. The new law contains a broad definition of discrimination, and provides for the establishment of a mechanism of redress for victims of discrimination: the Council for Preventing and Combating Discrimination and Ensuring Equality. However, while the law contains important provisions against discrimination, it does not explicitly prohibit discrimination on the basis of sexual orientation and gender identity.

Allegations of LGBTI rights violations were the subject of previous communications to your Excellency's Government, including a recent allegation letter sent on 31 May 2011 by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, and the Special Rapporteur on the situation of human rights defenders. We thank your Excellency's Government for its response.

According to the information received:

In March 2012, the City Council of Bălți, Moldova's second largest city, adopted a municipal ordinance prohibiting public activities "propagandizing" homosexuality. The Council declared the city a zone in support of the Moldovan Orthodox Church banning any "aggressive propaganda of non-traditional sexual

orientation”. Allegedly, at least 4 other municipalities, Cahul, Ceadr-Lunga, Drochia and Soroca, the districts of Anenii Noi and Basarabasca, and the village of Hiliuti, also took similar actions. It is reported that these discriminatory measures are intended to ban LGBTI persons from exercising their rights to freedom of opinion and expression and to peaceful assembly. In the village of Chetris, however, a similar act was repealed after intervention of the Chancellery of the State.

It is reported that the only open legal proceedings in any of the cases concerns the ban in Bălți, and that this legal challenge was initiated by civil society. It is alleged that proceedings in this case have recently been suspended. It has been reported that although the Prosecutor and the State Chancellery both have the power under Moldovan law to initiate legal proceedings against acts by local public authorities, neither entity has to date done so in connection with any of the remaining bans.

The adoption of the municipal ordinance by the city of Bălți was followed by a number of comments against LGBTI rights by the former President of Moldova and leader of the Communist Party, Vladimir Voronin. Calling it an “abomination”, the former President allegedly invited all municipalities to “rebel” against LGBTI people. It is also reported that the heads of two other major political parties – Mr. Mihai Ghimpu (Liberal Party) and Mr. Marian Lupu (Democratic Party), both members of the governing Alliance of European Integration – have also recently made high-profile homophobic statements.

According to reports received, the police in Bălți, had previously conducted raids in two churches in search of promotional materials on LGBTI rights. On 2 April, it is reported that police had detained a member of the Social Democratic Party, Mr. Sergiu Coropceanu, for apparently having been found in possession of more than 1,000 leaflets with information on homosexuality.

Should this information be corroborated, we would like to express our serious concern for the alleged acts of discrimination against LGBTI persons wishing to exercise their legitimate rights to freedom of opinion and expression and of peaceful assembly and for the statements of political leaders who bear special responsibility for promoting inclusiveness and tolerance. We are preoccupied with the new Law on Ensuring Equality not containing provisions on sexual orientation and gender identity, and it lacks sufficient safeguards for the protection of LGBTI persons. We are concerned that such lack of specific legal provisions for the protection of sexual minorities and the alleged bans on public activities promoting LGBTI rights arbitrarily restrict the peaceful and legitimate work of human rights defenders working for the promotion and protection of the rights and freedoms of LGBTI communities in the Republic of Moldova.

We would like to refer your Excellency's Government's 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’s the following provisions of the Declaration, and in particular to the article 6 points b) and c) which provide that everyone has the right, individually and in association with others as provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms; and to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

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 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 former Special Representative of the Secretary-General on the situation of human rights defenders has, in her 2007 report to the General Assembly (A/62/225, paras. 46 and 99), called on 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. Furthermore, the current Special Rapporteur has further encouraged States, in her report to the Human Rights Council in 2011 (A/HRC/16/44, para. 23), 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.

We would further like to appeal to your Excellency’s Government’s to take all necessary steps to secure the right to freedom of opinion and expression in accordance with fundamental principles as set forth in article 19 of the International Covenant on Civil and Political Rights (ICCPR), which provides that “Everyone 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.”

In this connection, we would like to call on your Excellency's Government’s to ensure that the rights to freedom of peaceful assembly and of association, as recognized in articles 21 and 22 of the ICCPR, are duly respected without discrimination, including

on the grounds of gender and sex. In this connection, we wish to recall the recent ruling of the European Court of Human Rights of 12 June 2012 in the case of *Genderdoc-M v. Moldova*: the Court found the banning of an assembly for the promotion of the rights of sexual minorities in violation of article 11 (freedom of assembly and association), and of articles 13 (right to an effective remedy) and 14 (prohibition of discrimination) in conjunction with article 11 of the European Convention.

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. Has a complaint been lodged by any party regarding the passing of the aforementioned municipal acts?
3. Has there been consultation in any form with relevant stakeholders, including civil society and LGBTI communities, before the adoption of the aforementioned municipal acts?
4. Please provide the full legal basis for the formulation of the law and its compatibility with international human rights law, including articles 2, 19 and 21 of the ICCPR. Please explain how the Council for Preventing and Combating Discrimination can provide protection for LGBTI persons.
5. Please provide information on the measures taken to ensure that activists and human rights defenders, including defenders of LGBTI rights, are able to conduct their activities in a safe and enabling environment without fear of intimidation or harassment.

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's 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.

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freedom of opinion and expression

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