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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Report of the Special Rapporteur on the situation of human rights defenders on his visit to the Republic of Moldova

Comments by the State*

* The present document is being issued without formal editing.

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Comments of the Government of the Republic of Moldova on the advanced version of the “Report of the Special Rapporteur on the situation of human rights defenders on his mission to the Republic of Moldova”

1. The Government of the Republic of Moldova expresses its appreciation to the Special Rapporteur on the situation of human rights defenders for his contribution to the promotion and protection of human rights.
2. After studying the advanced unedited version of the Report which was prepared by the Special Rapporteur’s Office, following his mission to the Republic of Moldova from 25 – 29 June 2018, the Government of the Republic of Moldova would like to submit the following comments and observations:

Paragraph 15

3. The third National Human Rights Action Plan was developed through an extensive consultation process with civil society and development partners.
4. Given the complexity of the document and learning from the experience of previous action plans, the present action plan resulted in a document containing 31 objectives, 51 strategic targets, across 16 areas of intervention. This third NHRAP represents an “umbrella-like” policy document that encompasses the objectives of the sectoral strategies and was drafted in line with the recommendations made by international human rights mechanisms, including UPR, recommendations that our State has committed to implement.
5. After consultations within a drafting working group, the draft document was sent to all public authorities concerned for comments or formal endorsement, to civil society organizations for comments and recommendations, and to other interested parties. At each stage of the drafting process the plan has been made available for the public on the official website of the Ministry of Justice (www.justice.gov.md) according to the national legislation on transparency in the decision making process¹.
6. In this context, we would like to point out that, under the law on transparency in decision making, the Government is required to conduct consultations with civil society representatives in order to draw on their expertise and listen to their perspectives. While we may not be able to give effect to all of the recommendations provided by civil society through these discussions, the views shared extensively inform policy development.
7. Furthermore, the conclusion of the UN Rapporteur regarding the lack of a mechanism that would ensure the participation of civil society in the implementation of the NHRAP is an erroneous one, as the Plan itself attributes to civil society organizations the quality of **partners** in implementing the actions and achieving the objectives. Moreover, civil society representatives are included in the composition of the National Human Rights Council, that once created, will be responsible for the coordination, monitoring and evaluation of the implementation of the plan.

Paragraph 16

8. With regard to the reference in para 16 to one of the recommendations of the UN Committee against Torture on "transfer of responsibility for the medical units of the penitentiary institutions to the Ministry of Health" we would like to underline that as a follow up to this recommendation several interinstitutional working meetings have been organised resulting in the modification of the internal working regulations, as well as the inclusion of the recommendation into the Strategy for the development of the penitentiary system for the years 2016-2020 (approved by GD no.1462 / 2016), which is the main policy document for

¹ For verification purposes, we recommend consulting the NHRAP narrative part (Section 2 of Part I), where the evolution of the concept and the contribution of civil society are thoroughly described.

the development of the penitentiary system, containing provisions, *inter alia* with regard to the access to quality medical services for persons deprived of their liberty, equivalent to those provided in the public health system.

9. The implementation of this recommendation in the exact format indicated by the UN Committee against Torture is not feasible for the Republic of Moldova at this moment. Nevertheless, the Ministry of Justice is actively seeking an optimal institutional solution that would take into account both the financial and human resources constraints. One of the envisaged solutions that is currently being discussed is the transfer of the responsibility to the Director of National Penitentiary Authority, which is an institution subordinated to the Ministry of Justice, as opposed to the current situation, where the medical representatives are subordinated to the head of the penitentiary institution.

10. Secondly, regarding the reference to the recommendation on the need to ensure that temporary detention facilities have “protocols and qualified staff to interact with persons with mental or intellectual disabilities”, we would like to inform that the implementation of this recommendation was included in the Government Decision no 748 of 20.09.2017 on the approval of the 2017 – 2020 Action Plan on reducing ill treatment, abuse and discrimination against persons in Police custody. The plan was designed in order to implement the objectives of the 2016-2020 Police Development Strategy and its subsequent Action Plan, in particular the Objective no 2 – “Applying human rights law in a fair, effective and efficient manner in the work of the Police, and ensuring the right of inmates to qualitative medical examination”.

11. Following these explanations and taking into account that the NHRAP is an “umbrella-like” policy document, we consider the phrasing of paragraph 16 to be misleading since it jumps from the reference to the creation of the Permanent Human Rights Secretariat to the fact that two specific recommendations had been excluded from the NHRAP, while ignoring the fact that these two specific recommendations are being extensively dealt with within the appropriate sectoral frameworks.

Paragraph 17

12. Referring to the Special Rapporteur's remark on the establishment and functioning of the National Human Rights Council, we would like to inform that on 14 December 2018, the Ministry of Justice submitted the draft Government Decision on the National Human Rights Council for approval to the Government. The document will establish the composition and rules of procedure of the Council, as well as the regulation of the work of the Human Rights Coordinator, this unit representing the main contact point between the Permanent Secretariat with each central and local public authority.

13. Since the aim of the project is to create an efficient national mechanism that will be in charge of coordinating the elaboration and implementation of human rights policy documents, monitoring and evaluation of these policies and ensuring compliance with international human rights treaties to which the Republic of Moldova is a party to, the coordination mechanism will thus be established at two levels. At the level of central inter-sectoral strategic coordination, the National Human Rights Council will monitor the implementation of national human rights policy as well as international treaties in the field, and at a technical level, the Standing Human Rights Secretariat will ensure the work of the Council and serve as a link between the Council and its local structures and, on the other hand, between the implementing public authorities and the Council. The functions of the Permanent Secretariat are to be carried out by a subdivision of the State Chancellery.

14. In order to unite the efforts and involvement of all relevant actors in the public and associative sector, the Council will include representatives of the three government pillars (legislative, executive and judiciary), national authorities for the protection and promotion of human rights (the Ombudsman Office and the Council for eliminating discrimination and ensuring equality), local public administration authorities and civil society.

Paragraph 21

15. We consider the allegations contained in para 21 of the report with regard to the perceived shortcomings of the procedure for obtaining and maintaining the status of beneficiary of the 2% allocation scheme for civil society organisations to be unfounded.

16. We would like to highlight that, pursuant to paragraph 3 of the Regulation on the percentage designation mechanism, approved by the Government Decision no. 1286/2016, in order to obtain the capacity of beneficiary of the percentage designation, the applicants must file a request for registration with the Ministry of Justice (in the future, the Public Services Agency) and should meet cumulatively three conditions:

(a) To carry out **public utility activities**² in accordance with art. 30 of the Law no 837/1996 regarding the public associations (in the case of public associations, foundations and private institutions) or to carry out social, moral, cultural or charitable activities according to art. 15 par. (6) of the Law no. 125/2007 on freedom of conscience, thought and religion (for religious cults and their constituent parts);

(b) To have been **active for at least one year** before requesting to be enrolled in the List of beneficiaries of percentage designation;

(c) It should **not have any debts** to the national public budget for previous tax periods.

17. We consider the requirements for the 2% designation to be necessary and proportionate.

18. In 2018, 594 organizations were granted a percentage designation; for the year 2019 - 163 applications were filed, of which registration was refused to only five organizations for failing to comply with the eligibility criteria, namely, the applications did not provide information related to the public utility activities implemented by the organization and/or for failing to provide basic information as the bank account details to which the percentage designation amounts would eventually be transferred. Moreover, in the spirit of transparency, the List of beneficiaries of the 2% designation is publicly available on website of the Ministry of Justice³, online media outlets⁴ having published extensively about the mechanism.

19. We also note that beneficiary organizations included in the List of beneficiaries of percentage designation for previous years are being **automatically** entered into the List of beneficiaries for the following year.

Paragraph 30

20. We consider the Special Rapporteur's conclusion on the slow progress of reform in the justice sector to be faulty, since the visit did not include a mandate to conduct an objective overall assessment of the justice sector.

21. The latest progress report on the implementation of the Justice Sector Reform Strategy (CSR) for 2011-2016 cites data from independent research and surveys on developments in the judiciary, according to which for the year 2016 there was a sufficiently positive dynamic manifested by increasing confidence in justice and the decrease in the perception of corruption in the judiciary. The April 2017 latest public opinion survey (Public Opinion Barometer) data shows an evolution in this sector, the dramatic fall in confidence in the autumn of 2016 (8%) being followed by a triple increase in the spring of 2017 (24%). In this context, we have to highlight that this value is 6% higher compared to the November 2011 survey when the Strategy was approved.

² The Ministry of Justice has prepared, in cooperation with development partners a Guide for the civil society organisations that carry out public utility activities - <http://www.justice.gov.md/public/files/don/webmail.pdf>.

³ http://justice.gov.md/public/files/don/2018/ianuarie/Lista_2p_20182201.p.

⁴ <http://moldnova.eu/ro/cum-vor-cheltui-banii-organizatiile-care-au-beneficiat-de-legea-2-24026.html>/
<http://monitorul.fisc.md/editorial/start-la-desemnarea-2.html>.

22. In the same line, according to Transparency International-Moldova's latest survey, a positive development was attested: the number of businessmen who consider the judiciary to be corrupt decreased from 60.6% in 2014 to 43, 5% in 2015, a decrease of almost 17 percentage points, as well as, the households' perception of corruption in the judiciary, having decreased from 41.4% to 31.9%. Subjects questioned in the International Republican Institute (IRI) survey of March 2017 also showed a 28% favorable opinion of the courts, up 14% compared to the IRI similar poll conducted in September 2016.

23. The provisions of article 11 of Law no 26/2008 on assemblies expressly stipulate how decisions should be taken in the case of simultaneous meetings. Therefore,

“(1) Where several applicants have submitted prior declarations regarding the organization of public gatherings in the same place and at the same time, the competent authority of the local public administration shall hold a meeting with the participation of all the applicants in order to find the right solution for running all the simultaneous meetings.

(2) If, taking into account the venue and the expected number of participants in the gatherings, the participants in the meeting conclude that it is possible to hold all simultaneous meetings, recommendations will be given to the organizers on the spatial allocation of the venue, as well as indications to the police on the maintenance of public order.

(3) If, following discussions between the designated authority and the organizers of the meetings, it is concluded that it is not possible to hold all the announced simultaneous meetings/gatherings/assemblies at the requested place and with the expected number of participants, the body concerned shall propose to the organizers the change of time, place or form of assembly. This proposal is made orally at the meeting for the organizers present and is sent in writing, within 24 hours as of the end of the meeting, to those who did not attend it.

(4) If, after the discussions referred to in paragraph (3) none of the applicants accept to change the time, place or form of the meeting, the organizer who submitted the first prior declaration shall have priority in organizing their assembly.” Note: “first come, first served” principle shall be applied.”

Paragraph 54

24. According to article 18 of Law no. 837/1996 regarding the public associations, the deadline for issuing the decision on the registration of a public association is 30 day. Upon expiration of this deadline, the state registration body is obliged to take one of the following decisions: either to register the public association or refuse to register it. The reasons for the refusal are expressly regulated by law. Therefore, the claim that some organizations reported that they were refused registration on grounds of lack of legal basis is a subjective and unsubstantiated one. In order to clarify the reasons for the adoption of a supposed decision to deny registration, it is necessary to provide the details for the situation invoked in the report.

25. Equally, the statement in this paragraph that foreigners or stateless persons are forbidden to set up public associations is inconsistent with national law. Thus, according to article 11 (4) of the above-mentioned Law, [...]:

"Foreign citizens and stateless persons domiciled in the Republic of Moldova may establish public associations on the same basis as the citizens of the Republic of Moldova, unless otherwise provided by the legislation on the distinct types of public associations".

Paragraph 57

26. As a result of the assessment exercise carried out by the Council of Europe on Law no. 298/2012 on the activity of the Council for preventing and eliminating discrimination and ensuring equality and Law no 121/2012 on Equality, the Ministry of Justice has initiated a

draft law for amending and completing some legislative acts, regarding the strengthening of the normative framework regulating the activity and competencies of the Council for preventing and eliminating discrimination and ensuring equality. The purpose of the project is to clarify and provide clearer regulation of the Council's competence; to extend the criteria of non-discrimination (national origin and social status, gender identity, health, any opinions other than political, wealth, birth); to improve data collection on equality, non-discrimination and diversity, to monitor, evaluate and report annually the results, and to strengthen the institutional framework in order to ensure better implementation of the principle of equality and non-discrimination.

27. The draft law provides for the modification of a number of legislative acts, including: the Criminal Code, the Code of Contravention, the Law on Equality and the Council's Rules of Procedure, and so on.

28. Additionally, according to the same legislative initiative, it is foreseen to extend the list of subjects with the right to refer the Constitutional Court, the Council being given the prerogative to initiate proceedings in order to assess the constitutionality of the laws that, according to the Council, include discriminatory regulations. This will contribute to the consolidation of the pro-active role of the Council in ensuring the standards of non-discrimination in national law. The project was approved by the Government Decision no 635/2018 and registered in Parliament with no 235 of 6 July 2018.

Paragraph 63

29. With regard to the concern expressed by the Special Rapporteur on the absence of a legal framework to regulate hate crimes, we emphasize that the Republic of Moldova aims to adopt changes in legislation in this sense, intensify efforts to investigate and counteract hate speech and hate crimes, as well as to ensure effective access to justice for the victims. Therefore, the draft law amending the Criminal Code in this regard was approved by Parliament in its first reading on 8 December 2016. This process will resume once the new parliamentary term begins.

Paragraph 73

30. We consider this paragraph to be misleading as it refers to a law that is currently only a draft text having only been examined by the Parliament in first reading. Moreover, there is no reference whatsoever in the draft law to any register of "foreign agents" as mentioned in paragraph 73 of the report.

Paragraphs 75, 77

31. In order to enhance the role of the Ombudsman and consolidate the promotion of human rights, it was proposed that the institution of the People's Advocate be included in the Constitution. Thus, by Law no. 70/2017, Title II of the Constitution of the Republic of Moldova was supplemented by Chapter III¹ entitled "The People's Advocate". The chapter contains Article 59 "The Statute and the role of the People's Advocate" and contains provisions on the appointment of the People's Advocate, its mission, immunities and guarantees, provisions regarding the independence and incompatibilities of the People's Advocate. The purpose of this amendment to the Constitution was to consolidate the institution of the People's Advocate and the human rights protection system in general, this being as well in line with the recommendations of the Venice Commission, according to which "in order to protect the independence of the Ombudsman's institution from political fluctuation, it would be preferable to guarantee the existence of this institution and its core activities in the Constitution."

32. Subsequently, through Law no. 224/2017 amendments were operated to the Law no. 335/2005 regarding the salary system in the budgetary sector, thus increasing the salary of the People's Advocate according to international standards and recommendations. At the same time, we note that a new legislative framework has been recently adopted that

establishes a unitary pay system in the budgetary sector and includes the principles, rules and procedures for determining wage rights in relation to the hierarchy of functions in the budgetary sector (Law No 270 / 2018 on the unitary pay system in the budgetary sector, in force since 01.12.2018). The unitary character applies to all categories of employees in the budgetary sector.

33. The adoption of these measures has led to the Ombudsman being accredited as a Status A National Human Rights Institution, according to the Paris Principles.
