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# ADVANCE UNEDITED VERSION

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## Human Rights Committee

### Concluding observations on the third periodic report of the Republic of Moldova\*

1. The Committee considered the third periodic report of the Republic of Moldova (CCPR/C/MDA/3) at its 3309<sup>th</sup> and 3311<sup>th</sup> meetings (see CCPR/C/SR.3309 and 3311), held on 18 and 19 October 2016. At its 3329<sup>th</sup> meeting, held on 31 October 2016, it adopted the present concluding observations.

#### A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for submitting its third periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/MDA/Q/3/R.1/Rev.1), albeit with a delay of more than two years. It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the adoption by the State party of the following legislative measures:

- (a) Law No. 60 on the Social Inclusion of Persons with Disabilities, on 30 March 2012;
- (b) Law No. 121 on Ensuring Equality, on 25 May 2012;
- (c) Law No. 140 on the Special Protection of Children at Risk and of Children Separated from their Parents, on 14 June 2013;
- (d) Law No. 325 on Institutional Integrity Testing, on 23 December 2013;
- (e) Law No. 137 on Rehabilitation of Victims of Crimes, on 29 July 2016.

4. The Committee also welcomes the ratification of, or accession to, a number of international instruments by the State party, including:

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\* Adopted by the Committee at its 118<sup>th</sup> session (17 October – 4 November 2016).

- (a) The Convention on the Rights of Persons with Disabilities, on 21 September 2010;
- (b) The Rome Statute of the International Criminal Court, on 12 October 2010;
- (c) The Convention on the Reduction of Statelessness, on 19 April 2012;
- (d) The Convention on the Status of Stateless Persons, on 19 April 2012.

## C. Principal matters of concern and recommendations

### Applicability of the Covenant

5. The Committee notes the information provided by the State party in its report on the measures that it has taken to ensure the respect for human rights in the Transnistrian region, and welcomes the commitment expressed by the State party's delegation during the dialogue to take all appropriate measures to ensure the effective protection of human rights in the Transnistrian region of the Republic of Moldova. The Committee remains concerned, however, that individuals in the Transnistria region are unable to enjoy the same level of protection of their rights under the Covenant as their counterparts in the rest of the Republic of Moldova (art. 2).

**6. The State party should review its policies and take all appropriate measures to ensure that individuals in Transnistria can effectively enjoy their rights guaranteed under the Covenant, including those rights which were the subject matter of the recommendations made by the United Nations senior expert on human rights in the Transnistrian region of the Republic of Moldova, Thomas Hammarberg.**

### National human rights institution and the Equality Council

7. While noting the adoption of Law No. 52 on the People's Advocate (Ombudsman) of the Republic of Moldova in 2014, which is designed to strengthen the independence and the effectiveness of the national human rights institution, the Committee expresses concern at the lack of financial and human resources necessary to effectively carry out its mandate. Similarly, while welcoming the establishment of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality (the "Equality Council") in 2013, the Committee is concerned that the Equality Council lacks the necessary resources to effectively carry out its mandate, including the availability of adequate premises (art. 2).

**8. The State party should ensure that the Office of the Ombudsman and the Equality Council have the financial and human resources necessary to effectively and independently carry out their mandates in accordance with the Paris Principles (General Assembly resolution 48/134, annex).**

### National human rights framework

9. While welcoming the adoption of the National Human Rights Action Plan (NHRAP) 2011- 2014 and taking note of the intention expressed by the State party to adopt a new plan which will incorporate *inter alia* the recommendations contained in the present concluding observations, the Committee expresses concern at the lack of a new action plan, albeit of an interim nature, since the expiration of the NHRAP. It also expresses concern at the limited implementation of the previous NHRAP due to insufficient human and financial resources (art. 2).

**10. The State part should:**

- (a) Adopt promptly a new NHRAP based on consultations with all relevant stakeholders;**

- (b) Allocate sufficient human and financial resources to ensure the effective implementation of the former and new NHRAP; and**
- (c) Ensure that the implementation of the former and new NHRAP is regularly reviewed and evaluated.**

**Non-discrimination**

11. While welcoming the measures adopted by the State party to combat discrimination, including the adoption of Law No. 121 and the Strategy on Inclusive Diversity 2016-2026, the Committee remains concerned about reports that individuals belonging to certain groups continue to face *de facto* discrimination, including lesbian, gay, bisexual and transgender (LGBT) persons, Roma, and Muslims (art. 2 and 26).

**12. The State party should ensure that all individuals belonging to groups which have faced discrimination in the past are effectively protected from violations of their rights under the Covenant, including by:**

- (a) Ensuring that the rights of LGBT persons are effectively protected under Law No. 121, and combating stereotypes and prejudice against LGBT persons through awareness-raising campaigns;**
- (b) Strengthening its efforts to combat discrimination and marginalization of Roma, including by allocating sufficient human and financial resources to effectively implement the new Roma Action Plan 2016 - 2020, and ensuring that all Roma have access to identity documents; and**
- (c) Ensuring that all law enforcement personnel and immigration officials are trained on the inadmissibility of ethnic and religious profiling.**

**Gender equality**

13. While welcoming the measures adopted by the State party to promote gender equality, including legislative initiatives to establish a mandatory 40 per cent quota of female candidates on the lists of political parties, the Committee remains concerned that women remain underrepresented in Parliament and in decision-making positions within the government (arts. 2 and 3).

**14. The State party should intensify its efforts to address the root causes that prevent women from participating in public and political life, particularly in decision-making positions, and undertake awareness-raising and capacity-building campaigns on the importance of full and non-discriminatory participation of women in all aspects of public and political life.**

**Domestic violence**

15. While noting the measures taken by the State party to combat domestic violence and to establish rehabilitation centres for victims of domestic violence, the Committee is concerned about reports of an increasing number of cases of domestic violence in the State party, as well as the lack of prompt and effective investigation and prosecution of such cases (arts. 3 and 7).

**16. The State party should:**

- (a) Adopt and implement a comprehensive strategy to prevent and suppress domestic violence against women, including by ensuring that all allegations of domestic violence are promptly, thoroughly and effectively investigated, that the perpetrators are prosecuted and, if convicted, punished with commensurate sanctions, and that the victims have access to effective remedies and means of protection;**

- (b) Adopt awareness-raising measures to eradicate stereotypes which regard women as objects or commodities; and**
- (c) Provide training to State officials, in particular law enforcement officials, judges and prosecutors, to ensure that they are able to respond promptly and effectively to cases of domestic violence.**

#### **Unplanned pregnancies**

17. While noting the legislative framework in the State party which enables women and girls to voluntarily terminate pregnancies within a certain timeframe, and welcoming the measures taken to increase access to contraceptives, the Committee remains concerned about the rate of unplanned pregnancies, particularly among adolescents, due to limited use of contraceptives and family planning services, which hinder the ability of women to make independent and informed choices about their health and reproduction (arts. 3, 17 and 24).

#### **18. The State party should:**

- (a) Take further steps to raise awareness and ensure access to affordable contraceptives throughout the State party, particularly in rural areas and the Transnistrian region, so as to reduce the number of unplanned pregnancies, especially among adolescents; and**
- (b) Include sexual education and education on reproductive health in the school curricula.**

#### **Trafficking in persons**

19. While welcoming the measures taken by the State party to combat trafficking in persons and the progress achieved, including in the field of rehabilitation of victims, the Committee nevertheless remains concerned that women and children continue to be trafficked for purposes of sexual exploitation and forced labour, including in the Transnistrian region. It is also concerned about the limited degree of accountability of persons who are reportedly involved in or are complicit in trafficking in persons, including public officials (arts. 2, 3, 7, 8, and 24).

**20. The State party should strengthen its efforts to investigate, prosecute and, if convicted, punish individuals involved in trafficking in persons, including, where relevant, public officials, with penalties commensurate with the gravity of the crime, and provide victims with access to effective remedies, including rehabilitation. It should also broaden the implementation of measures to assist the social integration of victims and to provide access to quality health care and counselling services throughout the State party.**

#### **Torture and ill-treatment**

21. While noting the steps taken to strengthen the legal protection against torture and cruel, inhuman or degrading treatment, including the use of video cameras to monitor the treatment of individuals in police custody, the Committee remains concerned at reports of torture and cruel, inhuman or degrading treatment in the State party, particularly by police officers during arrest and the preliminary investigation period. The Committee also expresses concern at deficiencies in the response of the State party to cases of torture or cruel, inhuman or degrading treatment which fall short of the relevant international human rights standards, particularly with regard to: (a) prompt, thorough and effective investigations into all allegations of torture and cruel, inhuman or degrading treatment; (b) prosecution and punishment of those found responsible with appropriate penalties commensurate with the gravity of the offence; and (c) the provision of effective remedies to victims. It is also concerned that the national preventive mechanism has yet to function effectively (arts. 2, 7 and 14).

**22. The State party should take urgent measures to:**

- (a) Promptly, thoroughly and effectively investigate all allegations of torture and cruel, inhuman or degrading treatment, prosecute and, if convicted, punish the perpetrators with penalties commensurate with the gravity of the offence, and provide effective remedies to victims, including rehabilitation;
- (b) Guarantee individuals in custody access to lawyers immediately after arrest and during all stages of detention;
- (c) Integrate the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) in all training programmes for law enforcement officials; and
- (d) Enable the national preventive mechanism to effectively carry out its functions without further delay, including regular and unannounced visits to all places of detention.

**Abuse and ill-treatment in residential institutions and psychiatric hospitals**

23. While noting the steps taken by the State party to promote and protect the rights of persons with disabilities, including policies designed to substitute institutionalization with community living arrangements and to strengthen the monitoring of residential institutions, the Committee expresses concern at:

- (a) The forced detention of and the non-consensual administration of psychiatric treatment to persons with disabilities on the grounds of mental or intellectual incapacity;
- (b) Reports of serious abuse and ill-treatment committed by caregivers, health professionals and staff of psychoneurological residential institutions and psychiatric hospitals, including rape, forced contraceptive measures, forced abortions, neglect, restraint and seclusion, noting in particular the gravity of the situation in Balti neuropsychiatric institution, Cocieri neuropsychiatric institution and Orhei institution for boys and young men with disabilities; and
- (c) The legislation in the State party which allows non-consensual termination of a pregnancy on the grounds of psychosocial or intellectual impairment (arts. 3, 7, 9 and 16).

**24. The State party should take urgent action to:**

- (a) Revise its laws and practices on forced detention on grounds of mental or intellectual disability, with a view to ensuring that detention is applied, if at all, as a measure of last resort and for the shortest appropriate period of time, and that the existence of a disability shall never in itself justify a deprivation of liberty;
- (b) Promote psychiatric care aimed at preserving the dignity of patients, both adults and minors, and ensure that non-consensual use of psychiatric treatment is generally prohibited and applied, if at all, in exceptional cases as a measure of last resort where absolutely necessary for the benefit of the person concerned, provided that he or she is unable to give consent, for the shortest possible time and without any long-term impact;
- (c) Protect persons with disabilities from further abuse and ill-treatment, including by adopting a comprehensive, effective and independent monitoring system in all residential institutions and psychiatric hospitals;
- (d) Conduct prompt, impartial and thorough investigations into all allegations of abuse and ill-treatment by persons with disabilities, hold the perpetrators to account, and provide effective remedies to victims; and
- (e) Ensure that women with disabilities are able to enjoy their right to sexual and reproductive health, including by repealing legislation which allows for the non-consensual termination of pregnancy.

### **Pretrial detention**

25. The Committee is concerned that persons suspected of having committed an offence can be detained for a period of 72 hours before being brought before a judge (art.9).

**26. The State party should bring its legislation and practice into compliance with article 9 of the Covenant, taking into account the Committee's general comment No.35 (2014) on liberty and security of persons, which generally considers a period of 48 hours as sufficient to bring arrested individuals before a judge.**

### **Conditions of detention**

27. While noting the measures taken by the State party to improve conditions of detention, including through the construction of new detention facilities, the Committee remains concerned that problems of overcrowding, inter-prisoner violence, poor hygiene conditions, and lack of access to proper health care continue to persist. It expresses particular concern at the situation in Soroca prison (art. 10).

**28. The State party should take concrete steps to improve conditions in prisons and detention facilities in line with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). In this regard, the State party should consider not only the construction of new prison facilities but also the wider application of alternative non-custodial sentences, such as electronic monitoring, parole and community service.**

### **Right to fair trial and administration of justice**

29. While welcoming the measures taken by the State party to reform the justice sector, the Committee remains concerned at reports that corruption remains endemic and systemic in the judiciary, thus undermining the effective administration of justice in the State party. It also expresses concern at the initiation of criminal investigations against Judge Domnica Manole following her decision to validate the referendum initiated by the "Dignity and Truth Platform" civic movement. The Committee also reiterates its previous concern that judges are initially appointed for five years and that their appointment may become permanent only after this period (art.14).

**30. The State party should take concrete and effective measures to ensure the proper administration of justice in accordance with article 14 of the Covenant, and taking into account the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. In particular, it should:**

- (a) Ensure that the remuneration of judges is sufficient and that their tenure is sufficiently long to guarantee judicial independence and integrity;**
- (b) Ensure prompt, thorough, independent and impartial investigations into any allegations of interference with the independence of the judiciary, and prosecute and hold responsible those found guilty, including judicial officers who may be complicit; and**
- (c) Ensure that judges are generally shielded in law and in fact from any sanction or act of retribution for unpopular judicial decisions, and that exceptional legal proceedings against judges are conducted in accordance with fair procedures ensuring objectivity and impartiality as set out in the Constitution or law.**

### **Freedom of expression**

31. While noting the steps taken by the State party to reform the broadcasting code and to increase media pluralism and transparency, the Committee is concerned about the continued concentration of media ownership, and that the media is heavily influenced by political and private interests which may not reflect public interest. It also reiterates its concern at the use of civil defamation laws against independent journalists (art.19).

**32. The State party should step up its efforts to increase media pluralism and diversity of views and information accessible to the public, taking into account the Committee's general comment No. 34 (2011) on freedoms of opinion and expression. It should also ensure that independent journalists and media outlets can fulfil their functions without undue interference.**

#### **Freedom of assembly**

33. While noting the high number of assemblies that are organized in the State party, the Committee expresses concern about: (a) the significant number of reported violations of the Law on Assemblies and the Code on Administrative Offences, which may suggest the assemblies are excessively regulated; (b) the nature of cases that have led to the prosecution of organizers of assemblies, which may create a chilling effect on the enjoyment of the right to freedom of assembly; and (c) reports that law enforcement officials have warned individuals against participating in political assemblies (art. 21).

**34. The State party should guarantee the right to freedom of assembly without any undue restrictions and obstacles in law and in practice, and take appropriate measures to ensure that organizers and participants of assemblies do not face any acts of intimidation, including police interference prior to the organization of assemblies.**

#### **Violations committed in the aftermath of the 2009 elections**

35. The Committee expresses concern about the delay in investigating and prosecuting the violations committed by law enforcement officials in the aftermath of the elections in 2009 and the failure to impose on those responsible sanctions commensurate with the gravity of their offences (arts. 2, 6, 7 and 21).

**36. The State party should speed up its process to thoroughly and effectively investigate all allegations of abuse by law enforcement officials in connection with the April 2009 elections, ensure that those responsible are promptly brought to justice, and that victims are provided effective remedies, including adequate compensation and rehabilitation.**

#### **Freedom of association**

37. While noting the planned reforms of the laws governing the registration of associations in the State party, the Committee expresses concern at the lengthy and burdensome process of registering a non-governmental or religious organization under the current laws and procedures. It is also concerned that numerous non-governmental and religious organizations have been refused registration on grounds that appear to lack clear legal bases (art. 22).

**38. The State party should review its laws and practice for registering organizations to ensure their compliance with article 22 of the Covenant, and in particular with the need to develop transparent legal criteria that would meet requirements of necessity and proportionality. It should also consider transferring the responsibility of registering an organization to an independent authority.**

#### **Juvenile justice**

39. While noting the multiple measures taken by the State party to establish a "child-friendly justice system", the Committee remains concerned at reports that: (a) no time limit has been established with regard to pre-trial detention of children throughout the entire legal process; (b) education and psychological support in detention remains inadequate; (c) the quality of lawyers assisting children in conflict with the law is uneven; (d) solitary confinement can be used for several days as a disciplinary measure; and (e) children convicted of crimes are sometimes held in adult detention facilities (arts. 10, 14 and 24).

**40. The State party should intensify its efforts to develop a comprehensive and effective juvenile justice system that takes into account the age, specific needs and**

**vulnerability of children who come into conflict with the law. It should also ensure that appropriate legal assistance is made available to minors, and that detention and incarceration is used only as a last resort and for the shortest periodic of time.**

#### **Children in residential institutions**

41. While welcoming the measures adopted by the State party to reform the residential care system for children in vulnerable situations, the Committee remains concerned at reports of ongoing separation and institutionalization of children, and of insufficient number and inadequate quality of alternative services (arts. 23 and 24).

**42. The State party should allocate sufficient human and financial resources to implement the reform of the residential care system of children, and step up its efforts to provide appropriate and high-quality social services to children in vulnerable situations as alternatives to residential institutions in a manner that takes into account their individual circumstances and needs. It should also provide adequate follow-up and reintegration support and services for children who leave institutional care.**

#### **D. Dissemination and follow-up**

43. The State party should widely disseminate the Covenant, its two Optional Protocols, its third periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

44. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 10 (national human rights framework), 24 (abuse and ill-treatment in residential institutions and psychiatric hospitals) and 28 (conditions of detention) above.

45. The Committee requests the State party to provide in its next periodic report, due for submission on 4 November 2022, specific, up-to-date information on the implementation of all its recommendations and on the Covenant as a whole. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its fourth periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.

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