

4 RECOMMENDATIONS

In light of the foregoing analysis, a series of recommendations are offered to the government of Moldova. These recommendations are offered in order to enable Moldova to meet its obligations under international law to respect, protect and fulfil the rights to non-discrimination and equality both by strengthening the protection from discrimination through improving the legal and policy framework in respect to equality and through other means.

All recommendations are based on international law related to equality, and on the Declaration of Principles on Equality, a document of international best practice which consolidates the most essential elements of international law related to equality. Recommendations are also based on conclusions reached at the ends of Parts 1, 2 and 3 of this report.

Recommendation 1: Strengthening of International Commitments Related to Equality

Moldova should ratify the following United Nations and European human rights instruments, which are relevant to the rights of equality and non-discrimination:

United Nations Human Rights Instruments

- the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (2008);
- the Optional Protocol to the Convention on the Rights of Persons with Disabilities (2006);
- the Third Optional Protocol to the Convention on the Rights of the Child (communicative procedure) (2011);
- the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990);
- the International Convention for the Protection of All Persons from Enforced Disappearances (2006);
- the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (1956); and
- the Domestic Workers Convention of the International Labour Organisation (No. 189) (2011).

European Human Rights Instruments

- Protocol No. 12 to the European Convention of Human Rights (2000);
- the European Charter for Regional or Minority Languages (1992);
- the Additional Protocol to the European Social Charter Providing for a System of Collective Complaints (1995);
- the Convention on Preventing and Combating Violence against Women and Domestic Violence (2011).

Recommendation 2: Constitutional and Legislative Reform

Moldova should undertake a review of certain provisions of the Constitution,¹ as well as all legislation and policy, in order to (i) assess their compatibility with the rights to equality and non-discrimination as defined under the international instruments to which it is party and (ii) amend and, where necessary, repeal existing laws, regulations and policies that conflict with the right to equality. A number of the provisions which should be addressed are:

Constitution

- Article 16, paragraph 2, which guarantees the right of equality to citizens of Moldova only, and which contains an exhaustive list of prohibited grounds to the exclusion of such grounds as age, disability, HIV status and sexual orientation;
- Article 27, paragraph 2, which guarantees the right to freedom of movement to Moldovan citizens only;
- Article 32, which guarantees the right to freedom of opinion and expression to Moldovan citizens only;
- Article 33, paragraph 2, which guarantees the right to intellectual property protection to Moldovan citizens only;
- Article 39, which guarantees the right to participate in the administration of state affairs and public functions to Moldovan citizens only;
- Article 41, which guarantees the right to associate in political parties and other socio-political organisations to Moldovan citizens only;

¹ Constitution of the Republic of Moldova, 29 July 1994.

- Article 43, paragraph 2, which, in stipulating that “protecting measures” are to be implemented regarding working conditions for women and young people, sanctions the paternalistic treatment of such persons (the Article should simply endorse positive action);
- Article 47, which guarantees the right to social welfare to Moldovan citizens only;
- Article 50, paragraph 3, which employs the term “handicapped” to describe persons with disabilities;
- Article 51, which employs the term “handicapped” to describe persons with disabilities and which guarantees to such persons “normal” conditions instead of equal conditions; and
- Article 52, which guarantees the right to petition public authorities to Moldovan citizens only.

Law on Ensuring Equality (Law No. 121 of 25 May 2012)

- Article 1, paragraph 2, which provides that the scope of the Law does not extend to discrimination in the areas of family (including marriage), adoption relations and religious institutions in respect of religious beliefs;
- Article 2, which does not include anticipatory measures in its definition of “reasonable accommodation”; and
- Article 9, paragraph 4, which preserves the right of religious educational institutions to refuse to admit a person to study in certain circumstances, without stipulating that the refusal must be legitimate and justified.

Law on Ensuring Equal Opportunities between Women and Men (Law No. 59 February 2006)

- Article 2, to the extent that it defines the harm necessary for conduct to count as discriminatory as a “limitation or impediment of recognition, exercise, and implementation” instead of the broader definition of discriminatory harm as “less favourable treatment”;
- Article 2, to the extent that it requires a facially neutral provision or practice to have an “unequal” effect in order to constitute indirect discrimination, instead of simply requiring that the provision or practice put a person at a “particular disadvantage”;

- Article 2, to the extent that it does not include discrimination by association and victimisation amongst the types of discriminatory conduct prohibited under the Law (this may be addressed through promulgation of the Law on Amendments and Addenda to Certain Legislative Acts (Law No. 180 of 15 May 2014)); and
- Article 5, paragraph 6, which frames positive action (or “affirmative measures”) as an exception to indirect discrimination instead of a necessary component of non-discrimination.

Law on Social Inclusion of Persons with Disabilities (Law No. 60 of 30 March 2012)

- The Law should be amended so as to guarantee to persons with disabilities the right to independent life and integration into the community.

Civil Code (Code No. 1007 of 6 June 2002)

- Article 24, which allows courts to deprive persons with “intellectual disabilities” of legal capacity without reference to other facts.

Civil Procedure Code (Law No. 225 of 30 May 2003)

- Article 305, which provides that judicial orders that a person be forcefully referred to psychiatric care are not subject to appeal; and
- Article 306, which provides that the hearing of an application for a declaration of legal incapacity does not require the person whose capacity is being contested to be present, instead requiring only the presence of a representative from the Guardianship and Trusteeship Body.

Criminal Code (Law No. 985 of 18 April 2002)

- Article 176, paragraph 1(d), which suggests that multiple discrimination is necessarily more severe than single status-based discrimination;
- Article 77, sub-paragraph (d), which contains a closed list of prohibited grounds which does not include grounds such as sex, gender identity and sexual orientation; and

- Article 346, which criminalises certain forms of conduct, which may violate the right to freedom of expression, for example, acts aimed at “the humiliation of national honour and dignity”.

Labour Code (Law No. 154 of 28 March 2003)

- Article 8, paragraph 2, which provides that distinctions in the context of employment due to the “specific requirements” of a job are not discriminatory, without requiring that such distinctions are genuine occupational requirements or can be justified against strictly defined criteria;
- Article 248, which prohibits women from undertaking certain work including “hard labour and hurtful and underground works” as well manual labour involving weights “exceeding the maximum standards established”;
- Article 250, to the extent that it equates pregnancy and childrearing with a reduction in capacity or productivity; and
- Articles 8, 32, 62, 76, 77, 85, 96, 97, 100, 103, 105, 110, 111, 116, 120, 121, 128, 183, 249, 318, which use the terms “invalid” or “handicapped” to describe persons with disabilities.

Family Code (Law No. 1316 of 26 October 2000)

- Article 2, which defines marriage as only being between a man and a woman; and
- Article 15, which expressly prohibits same-sex marriage.

Law on Mental Health (Law No. 1402 of 16 December 1997)

- Article 11, paragraph 1, which establishes that consent to treatment is not required when applying coercive medical measures in accordance with the Criminal Code and in the case of admission to hospital under Article 28; and
- Article 28, which provides that a person may be hospitalised without consent and in the absence of a court judgment where the person’s condition is severe and there is a direct social threat or serious risk to the individual’s health, potentially allowing for the arbitrary deprivation of liberty or inhuman treatment.

Recommendation 3: Implementation and Enforcement of the Law on Ensuring Equality

The Moldovan government should ensure the full and effective implementation of the Law on Ensuring Equality, in particular by:

- Ensuring that there are suitable mechanisms to secure remedies and sanctions in cases of discrimination;
- Conducting a full review of the powers of the CPEDEE and considering whether additional powers, such as an ability to impose sanctions and an ability to bring cases before the Constitutional Court may be workable and effective;
- Training legal-aid lawyers who are specialists in discrimination and equality law, who may help victims of discrimination to enforce their rights under the Law on Ensuring Equality.
- Providing training for (senior) public decision makers, including law enforcement and the judicial personnel to obtain a better understanding of discriminatory concepts and practice.

Recommendation 4: Implementation and Enforcement of Other laws Aimed at Prohibiting Discrimination

The Moldovan government should introduce reforms to ensure the full and effective implementation of other legislative provisions aimed at prohibiting equality. For this purpose:

- The Moldovan government should undertake a comprehensive review of all legislation which prohibits discrimination including (i) the Law on Ensuring Equality, (ii) the Law on Ensuring Equal Opportunities between Women and Men, (iii) the Law on Social Inclusion of Persons with Disabilities and (iv) stand-alone non-discrimination provisions in other pieces of legislation. The review should seek to harmonise the provisions so that the relationship between the different protections offered is clear and complementary, and should consider the repeal or amendment of provisions which have been, in practice, superseded by the Law on Ensuring Equality.
- The Moldovan government should amend the Law on Ensuring Equal Opportunities between Women and Men to introduce remedies for

breach of the duties created by the Law, particularly in respect of those duties that go beyond the non-discrimination obligations in the Law on Ensuring Equality, such as the duty on employers under Article 10(1) of the Law on Ensuring Equal Opportunities between Women and Men to cooperate with employees and trade union representatives to establish internal regulations to prevent discrimination at work.

- The Moldovan government should amend the Law on Social Inclusion of Persons with Disabilities so as to establish a mechanism through which the obligation under Article 34(4) on employers with at least 20 staff to create or reserve jobs for disabled people amounting to 5% of their total number of employees can be monitored and enforced.
- The Moldovan government should amend the Law on Social Inclusion of Persons with Disabilities such that the prohibition of discrimination in Article 8 applies to non-state entities generally, instead of only applying to such entities in certain contexts such as employment.

Recommendation 5: The Implementation of National Policies

- The Ministry of Justice should ensure that future national policies contain strong, measurable actions and targets in respect of non-discrimination and that such policies are monitored and reviewed regularly to ensure that they are being implemented, including through the collection of disaggregated data.
- The Ministry of Justice should develop a new National Human Rights Action Plan following the lapsing of the 2011 Plan² and the Ministry's stated commitment to finalising a new plan by the fourth quarter of 2015.
- The Ministry of Labour, Social Protection and Family should finalise and implement the 2016–2020 National Gender Equality Programme.
- The CPEDEE should publish instructions for the collection of disaggregated data as to discrimination in various fields.
- The government should introduce a new national policy regarding persons with disabilities, given the lapsing of the 2010–2013 Strategy on Social Inclusion of People with Disabilities³ in 2013.

2 Decision approving the 2011–2014 National Human Rights Action Plan (Government Decision No. 90 of 12 May 2011), available at: <http://lex.justice.md/md/339395>.

3 Law Approving the 2010–2013 Strategy on Social Inclusion of People with Disabilities 2010–2013 (Law No. 169 of 9 July 2010).

- The Bureau for Interethnic Relations should introduce a national policy regarding Roma persons following the lapse of the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova,⁴ to build on developments introduced under the former policy including the introduction of community mediators.

Recommendation 6: Actions to Address Discrimination Against Specific Groups

Moldova should take specific actions to address the discrimination and disadvantage faced by different groups in Moldova, including all of those highlighted in Part 2 of this report. Such steps should be taken in addition to improving protection from discrimination in law by acting on recommendations 2, 3 and 4. These steps should include, but not be limited to, the following:

Gender

- Parliament should amend all legislative provisions set out in Recommendation 2 above which discriminate on the basis of gender;
- Parliament should consider the adoption of legislation providing for specific positive action measures in respect of those areas in which women remain underrepresented;
- Competent public authorities should, in accordance with Article 5, paragraph 2 of the Law on Ensuring Equal Opportunities between Women and Men, refrain from promoting policies or allowing the performance of actions which are inconsistent with the notion of equal opportunity between men and women.
- Heads of central and local public administration authorities should, in accordance with Article 6(3) of the Law on Ensuring Equal Opportunities between Women and Men, ensure equal access to public office, without discrimination as to sex.
- In accordance with the Concluding Observations of the Committee on the Elimination of Discrimination against Women as to Moldova's

⁴ Decision approving the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova (Government Decision No. 494 of 8 August 2011), available at: <http://lex.justice.md/index.php?action=view&view=doc&lang=1&id=339319>.

fourth and fifth periodic reports,⁵ the government should develop a comprehensive strategy across all sectors, targeted at both sexes, to overcome patriarchal and gender-based stereotypical attitudes concerning the roles and responsibilities of women.

- The government should establish a mechanism through which Article 11 of the Law on Ensuring Equal Opportunities between Women and Men can be enforced. Pursuant to this Article, various actions of employers are deemed to be discriminatory, including the placing of job advertisements with criteria implying that priority will be given to a particular sex.
- The government should take immediate steps to address the gender pay gap, especially in light of Article 11(e) of the Law on Ensuring Equal Opportunities between Women and Men, which states that it is discriminatory for an employer to, on the basis of sex, apply different conditions of remuneration for work of equal value.
- The Ministry of Labour, Social Protection and Family should take immediate actions to address the problem of domestic violence against women, including through appropriate training for police officers, social workers, prosecutors and judges.
- The government should ensure that civil servants and all other public officials, including the police and judges, receive specific training on gender equality, with ongoing refresher courses available.
- The government should implement the Law on Preventing and Combatting Domestic Violence (Law No. 45 of 1 March 2007) as a matter of urgency. Article 201 of the Criminal Code, which makes it an offence to engage in domestic violence, should be used to prosecute the perpetrators of domestic violence.
- The government should introduce measures aimed at improving police responses to domestic violence, in light of the spate of ECtHR judgments in which government responses to prolonged patterns of domestic violence were found to be inadequate and discriminatory.⁶
- The government should ensure that there is at least one domestic violence placement centre in each district, which offers rehabilita-

5 Committee on the Elimination of Discrimination against Women, *Concluding Observations: Moldova*, UN Doc. CEDAW/C/MDA/CO/4-5, 29 October 2013, Para 18(b).

6 *Eremia v Republic of Moldova*, European Court of Human Rights, Application No. 3564/11, 28 May 2013; *Mudric v Republic of Moldova*, European Court of Human Rights, Application No. 74839/10, 16 July 2013; *T. M. and C. M. v The Republic of Moldova*, European Court of Human Rights, Application No. 26608/11, 28 January 2014.

tion services for the victims of domestic violence. Further, the government should ensure that such centres provide shelter to victims regardless of their normal place of residence.

- Local laws should be enacted in the Transnistrian region regarding domestic violence and gender discrimination, given that the lack of *de facto* control over this region means that national domestic violence laws are unenforceable.

Disability

- The government should review all relevant national legislation with a view to completing the transition from a medical model of disability to the social model envisaged by the Law on the Social Inclusion of Persons with Disabilities and the CRPD, with a focus on eliminating barriers faced by persons with disabilities.
- The government should enforce legal provisions requiring reasonable accommodation to be provided to persons with disabilities, such as Article 8 of the Law on Social Inclusion of Persons with Disabilities, particularly in relation to access to infrastructure and information.
- The extent to which the 2010–2013 Strategy on Social Inclusion of People with Disabilities was implemented should be evaluated.
- Planning and construction laws should be brought into line with the Law on Social Inclusion of Persons with Disabilities such that all new buildings are accessible to persons with disabilities.
- The government should reform all educational institutions including higher education institutions and boarding schools, to ensure that students with disabilities are able to participate on an equal basis with others.
- The government should introduce procedures to ensure the effective participation of women with disabilities in elected office, particularly in light of potential amendments to the Law on Government (Law No. 64 of 31 May 1990) imposing a minimum proportion of female candidates on election lists.
- The government should reform the legislative framework through which persons with disabilities are deprived of legal capacity, so as to bring it into conformity with international law, including Article 24 of the Civil Code and Article 305 of the Civil Procedure Code.
- The CPEDEE should draft guidelines for lawyers containing standards as to the defence or representation of persons with disabilities.

- In accordance with the Concluding Observations of the Committee on the Elimination of Discrimination against Women as to Moldova's fourth and fifth periodic reports,⁷ the government should effectively investigate all cases of sexual assault against women with disabilities in residential institutions, facilitate access by such women to reproductive health care and ensure that all medical interventions are based on informed consent.

Sexual Orientation and Gender Identity

- The government should review legislation and ensure that references to sexual orientation and gender identity are in line with international standards.
- The Parliament and the Government should reject all attempts to introduce legislation which discriminates on grounds of sexual orientation or gender identity, or which abrogates existing legislation which protects against discrimination on the grounds of sexual orientation or gender equality.
- Regardless of whether an amendment is made to Article 1(1) of the Law on Ensuring Equality to expressly include sexual orientation as a prohibited ground, the judiciary should find unequivocally that sexual orientation comes within the phrase "or other similar criteria."

Health Status

- The Ministry of Health should take steps to counter discrimination against persons living with HIV or Tuberculosis in healthcare facilities, both public and private.
- The Ministry of Health should ensure that people living with HIV/AIDS or Tuberculosis have equal access to employment and education services.
- The Bureau of Migration should refrain from any mandatory HIV testing of asylum seekers.
- The Bureau of Migration should ensure that the health status of asylum seekers does not affect whether they are able to access Accommodation Centres.

7 See above, note 5, Para 38(d).

- The government should enforce Article 22 of the Law on Prevention of HIV/AIDS Infection (Law No. 23-XVI of 2007) prohibiting discrimination based on HIV status at all stages of employment.
- The government should enforce privacy and confidentiality safeguards for persons living with HIV/AIDS under the Law on Prevention of HIV/AIDS Infection (Law No. 23-XVI of 2007), to prevent the disclosure of a person's HIV status to third parties.
- The government should monitor the extent to which employers make decisions based on the HIV status of candidates, and must prevent employers from demanding medical certificates from applicants in contravention of Article 15 of the Law on Prevention of HIV/AIDS Infection.
- The government should ensure that persons living with Tuberculosis are not forcibly detained and treated pursuant to the Regulation on Coercive Temporary Hospitalisation in Anti-Tuberculosis Specialised Healthcare Institutions of Persons with Contagious Tuberculosis who Refuse Treatment.

Race and Ethnicity

- The Bureau for Interethnic Relations should introduce training for all law enforcement agencies on preventing ill-treatment of ethnic minorities and foreign nationals.
- The Bureau for Interethnic Relations and the General Prosecutor's Office should ensure that any law enforcement agent found to have ill-treated a person on the basis of their ethnicity, nationality or skin colour, or to have failed to protect persons with such characteristics from hate crime, should face appropriate disciplinary proceedings.
- The government should allocate adequate funding to national policies and action plans aimed at eliminating all forms of discrimination against Roma, especially women and girls.
- Given the lack of statistical data in the Bureau for Interethnic Relations report on the implementation of the 2011–2015 Action Plan for the Support of Roma People from the Republic of Moldova, the Bureau should conduct further statistical analysis of progress made in respect of equality and non-discrimination of Roma.
- The government should introduce appropriate policies in order to ensure equal and non-discriminatory access for Roma to public services provided by public and private entities.

- The General Prosecutor’s Office should adopt internal regulations ensuring that hate crimes against ethnic minorities are properly investigated.
- The General Police Inspectorate should introduce training for all law enforcement agencies to ensure that all hate crimes against ethnic minorities and foreign nationals are properly investigated.

Language

- The Supreme Court of Justice should promulgate an advisory opinion or guidelines as to the use of language in court proceedings, taking into account Article 13 of the Constitution, which provides that the state is required to protect the right to the “preservation, development and use” of both Russian and other languages.
- The Ministry of Justice should ensure that courts accommodate applicants who do not speak Romanian, in light of the CPEDEE’s findings of continued discrimination in access to justice on grounds of language.⁸

Religion

- The government and Parliament should ensure the application in practice of Article 31 of the Constitution providing for a separation of religion and state.
- The Ministry of Education should ensure that teaching staff are instructed on the importance of freedom of religion as preserved in the Law on Freedom of Conscience, Thought and Religion (Law No. 125 of 2007) and Article 31 of the Constitution.
- The government should monitor the extent to which Article 15 of the Law on Freedom of Conscience, Thought and Religion is used as a basis for privileging adherents to the Moldovan Orthodox Church in terms of access to public services and public sector positions.

8 See, for example, Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *Activity Report*, 2014, p. 19, available at: <http://egalitate.md/media/files/Moldovan-Equality-Body-Activity-Report-2014.docx>; and Council on the Prevention and Elimination of Discrimination and Ensuring Equality, *General Report on the Situation in the Field of Prevention and Combating Discrimination in Moldova: 2015, 2016*, p. 10, available at: <http://egalitate.md/media/files/Raport%20general%202015.pdf>.

- Agreements between the Ministry of Defence and the Moldovan Orthodox Church, under which adherents to the Church are able to access special privileges in the army, should be dismantled.
- The Ministry of Justice should ensure that religions other than the Moldovan Orthodox Church, including Muslim groups such as the Spiritual Gathering of Muslims of Moldova, are able to register as religious denominations under Law on Freedom of Conscience, Thought and Religion.
- If and when Transnistria returns to the *de facto* control of Moldovan authorities, the Ministry of Justice should take immediate steps to ensure that persons in the region that do not belong to the Russian Orthodox Church are not discriminated against on grounds of religion (including under Article 3 of the Law on Freedom of Conscience and Religious Organisations (1995)).

Age

- Parliament should enact legislation stipulating that the reaching of retirement age is not a legitimate basis for terminating a person's employment.⁹
- The government should ensure that there is no bar on persons above a certain age from being considered for particular positions unless the bar is an objectively justified means of achieving a legitimate aim.

Recommendation 7: Data Collection

During the research for this report, it has been established that there is a lack of information, including statistics, in relation to key indicators of equality in Moldova. State authorities should collect and publicise information, including relevant statistical data, in order to identify inequalities, discriminatory practices and patterns of disadvantage, and to analyse the effectiveness of measures to promote equality. Wherever statistics are collected in relation to key indicators of equality, they should be disaggregated in order to demonstrate

⁹ In Constitutional Court, Decision No. 6 of 22 March 2011, the Constitutional Court found that termination on this basis did not amount to age-related discrimination.

the different experiences of disadvantaged groups within Moldovan society. Hate crime statistics must be collected and publicised, including statistics on gender-based violence. Moldova should further ensure that such information is not used in a manner that violates human rights.

**Recommendation 8:
Education on Equality**

Moldova should take action to raise public awareness about equality, and to ensure that all education establishments, including private, provide suitable education on equality as a fundamental right. Such action is particularly necessary in order to modify social and cultural patterns of conduct and to eliminate prejudices which are based on the idea of the superiority or inferiority of one group within society in relation to another.

**Recommendation 9:
Prohibition of Regressive Interpretation**

In adopting and implementing laws and policies to promote equality, Moldova should not allow any regression from the level of protection against discrimination that has already been achieved.