



*Eurasian Coalition
on Male Health*



GENDERDOC-M

Rights Violations of Trans* Women in the Republic of Moldova

**An "alternative report"
as a commentary on the Replies to the List of Issues CEDAW/C/MDA/RQ/6
by the Republic of Moldova
and the Committee's List of Issues CEDAW/C/MDA/Q/6**

To the UN Committee on Elimination of All Forms of Discrimination against Women
for consideration at 75th Session

January 2020

Rights Violations of Trans* Women in the Republic of Moldova. An “alternative report” as a commentary on the Replies to the List of Issues CEDAW/C/MDA/RQ/6 by the Republic of Moldova and the Committee’s List of Issues CEDAW/C/MDA/Q/6. To the UN Committee on Elimination of All Forms of Discrimination against Women for consideration at 75th Session.

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I. INTRODUCTION

1. The Republic of Moldova acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (hereinafter referred to as Convention) in 1994 and has a 'State Party' status within the framework of the Convention. Moldova submitted its Replies related to its sixth periodic report on 16 December 2019, which included its response to the List of Issues on the previous report it had submitted to the Committee on the Elimination of Discrimination Against Women (hereinafter, the Committee).

2. The current Alternative Report - a commentary on the Replies to the List of Issues CEDAW/C/MDA/RQ/6 and the List of Issues CEDAW/C/MDA/Q/6 - is submitted as per the invitation of the Committee that welcomes "alternative reports" from regional NGOs regarding the observation of the Convention by a State party, in this case, by the Republic of Moldova.

3. In its List of Issues CEDAW/C/MDA/Q/6 (hereinafter, List), among other issues, the Committee raised concerns about the fact that women are still perceived to have a derogatory and narrow public image as participants of the civil and democratic society and life in Moldova. Specifically, the Committee pointed out that "the State party indicates that women are still considered to have the primary responsibility for child-caring and domestic tasks" (List para 7). The Committee asked for Moldova to develop "a comprehensive strategy across all sectors to overcome patriarchal stereotypical attitudes concerning the roles and responsibilities of women and men in the family and in society" (List para 7). The Committee also inquired that Moldova invests in developing "public awareness and training programmes for decision makers, employers, young people and disadvantaged groups of women on women's rights" (List para 7). To that end, ECOM and GENDERDOC-M would like to emphasize that not only should Moldova revisit the role of a person who is a woman in terms of biologically ascribed sex but also reimagine of what it means to be a woman in the modern society, specifically, when it concerns trans* people, namely, trans* women. At present, this vulnerable social group is utterly marginalised and receives no governmental attention even when it comes to its basic human rights, like the right to health, freedom of expression, thought and beliefs. Currently, trans* women in Moldova have no legal leverage to compensate for the existing discrimination and stigmatization, which results in them having no effective legislative means to protect their fundamental rights and freedoms, especially, such an invaluable right as the right to health. Such a case, consequently, undermines all of their other areas of life, deterring them from prosperity and thriving as a human being in a contemporary legal state.

4. Before providing our alternative commentary report on the above-mentioned issues of the reality of being a trans* woman in Moldova, ECOM and GENDERDOC-M would like to express its understanding the state of economic development that State Party is in and of the wide spectrum of areas the government requires to improve based on the Committee's List of Issues. Therefore, we are well aware that it is challenging for the government to observe all human rights areas in its country because of the financial, human, and mental resources that have to be dedicated to fulfil the Committee's inquiries and recommendations. ECOM is a regional NGO that specializes in working with gay men, other MSM, and trans* people, specifically, in the area of ensuring their right to health, which makes it competent in revealing the disparities in state healthcare services and offering professional recommendations to amend them, which the general civil servants may lack due to not having the training to work with these minority groups, particularly, when it comes to trans* women. GENDERDOC-M is

the first non-governmental organization protecting and advancing the rights of LGBT people in Moldova. GENDERDOC-M Information Centre is the only organization that is offering legal and psychological assistance for transgender people with legal gender recognition and discrimination based on gender identity and gender expression. We maintain a support group for transgender and gender non-conforming people which aims to create a safe space for socialization and informing. Hence, the following commentary and reports on the right to health in Moldova are forwarded by ECOM and GENDERDOC-M in the hopes to participate in alleviating the burden that befalls trans* women in this country due to the ongoing current lack of understanding of this marginalised group by the government and the general public, and because of the absent legal mechanisms that would decrease discrimination and stigma that targets them, which would help them enjoying better integration into the society of Moldova and raising the quality of their lives.

5. As NGOs that work to ensure equality and non-discrimination of trans* women, and to ensure full realisation of their right to health, ECOM and GENDERDOC-M commend Moldova's efforts to follow the Committee's recommendations to actualise the role of modern women in their society. Notably, following the Committee's recommendations related to the State Party's fourth and fifth periodic reports, it passed a set of laws to enhance the current imbalance of sexes within its country. The State Party included paternity leave in its Labour Code; increased the quota of representation to 40% in terms of including both sexes in the political and public decision-making process; obliging mass media not to use sexist language and to represent men and women through the prism of equal rights in the spheres of public and private life (Replies to the List of Issues CEDAW/C/MDA/RQ/6, hereinafter, Replies, para 1). Moldova also adopted a Strategy for ensuring equality between men and women in 2017 and has been following it since, taking one step at a time. We also welcome Moldova's activities in including civil society organisations to help train senior government officials and civil servants in identifying gender-based discrimination in official documents (Replies para 13 (1)), assembling government groups to consolidate knowledge in integrating the gender dimension in the public sector policies (Replies para 13 (2)), and such.

6. It is highly commendable that Moldova included civil society organisations in preparing an evaluation report called "Statistical Indicators on Sexual Health and Reproduction and on Gender-based Violence in the Health System of the Republic of Moldova," (Replies para 40), the purpose of which was to identify and analyse statistical indicators in the health system in the fields of sexual health, reproduction and gender-based violence at the national and international level and develop recommendations on improving it. This and other steps in removing the imbalance of sexes in Moldova's society are to be respected and acknowledged. However, if the State Party wants to really eliminate all forms of discrimination against women, trans* women are to be included in the work of the government. Throughout all the many pages of the Replies, Moldova mentions once that, since 2015, primary healthcare institutions ensure the procurement of rapid HIV tests and standard sets of medicines for the treatment of urogenital infections, except for syphilis and gonococcal infection, for people in vulnerable groups and medical and social risk groups. It is unclear whom the government implies to be included in those groups. Trans* people are not included anywhere in the country's rhetoric on gender equality. ECOM and GENDERDOC-M acknowledge the aforementioned efforts, the ongoing work of the governmental commission on amending the national legislation to remove legal gaps that hinder the effective elimination of discrimination against women and other activities of the Moldova government on its quest to abide by its obligations under the Convention.

7. That being said, the Replies do not mention any training being provided to law enforcement officers, medical workers, or other civil servants about the equality of human rights with regards to sexual orientation and gender identity issues, directly related to trans* women, as well as there are no statements regarding training on how to work with people who live with HIV/AIDS (PLHIV) if they happen to be transgender. The trans* community is a minority group with a highly sensitive and specific profile and needs that arise due to double stigmatization and high level of discrimination on the general public's part — for being non-cisgender. Thus, additional governmental efforts, policies, and programmes are desperately required in order to expel discrimination from how the government and the general public perceive them, thereby ensuring their equality and the observation of their human rights and freedoms on the same level as the general population enjoys them. Simply ignoring trans* women invests in them being forced into dangerous living and sexual practices, in their needs as a misunderstood, yet legal, minority being overlooked and in them being abused and otherwise discriminated without punishing the ones at fault. Trans* women are a key population group that requires special attention and legal mechanisms that will help ensure the realisation of their right to health, privacy, dignity, and freedom of gender identity and expression on par with everyone else.

8. The Replies and its Annex have no statements regarding the ensuring of equality of people in Moldova based on sexual orientation and gender identity, and there is no reference to trans* people anywhere in its legislation or the Replies as being tended to as a minority group. The List (para 17), the Committee asked the State Party to provide "information on measures taken to establish monitoring mechanisms for the equality, transparency, safety and accessibility of healthcare services in the State Party and to allocate sufficient human, technical and financial resources to improve access by women to primary healthcare." Although the Committee did not inquire the State Party to provide any information on the matter, trans* women are a key population group with a high HIV-prevalence rate, and they should be expressly included in Moldova's national HIV-programmes as a separate category. Sensitisation, awareness-raising, education, and legal mechanisms require introduction on the state-wide scale to ensure that this minority group is not discriminated any further. The Replies provide no status of the current legal provisions that would ensure a broad scope of protection from discrimination based on sexual orientation and gender identity in their combined SOGI perspective. There is no information regarding the observation of human rights of the trans* women, in relation to their right to health, which is vital for the possibility of them enjoying all the other natural, social, economic, and cultural rights. Despite the highly admirable milestones achieved by the Moldova government in terms of primary healthcare of cisgender women, the issues of gender identity and how discrimination and stigmatisation of trans* women affects their lives have not been mentioned in the Replies.

9. Article 18 section 1 of the Convention states that "State Parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted to give effect to the provisions of the present Convention and on the progress made in this respect." ECOM and GENDERDOC-M considers that, within the scope of the right to equality (article 2 of the Convention) and the right to health (article 12 section 1; article 14 section 1 para (b) of the Convention), Moldova's report does not provide the Committee with the ability to fully grasp the situation in the country regarding the right to health, considering the interests of the trans* community, especially trans* women. The given Alternative Report is meant to serve as additional information regarding the non-discrimination of trans* women in Moldova, the observation of their right to health and as an instrument to advance positive changes to

amend the current underwhelming position in which the mentioned minority group tends to find itself.

II. ABSENCE OF NON-DISCRIMINATION LEGISLATIVE FRAMEWORK

10. Despite the outlined general information about the activities Moldova has conducted to further the equality of sexes, there is little information about the name and official numbering/naming of laws that exist to uphold that policy. Moldova has adopted the Human Rights Action Plan 2018-2022, in which it outlines its intention of introducing non-discrimination provisions that would protect the equality based on SOGI,¹ but formal laws to further the cause have not been adopted yet. ECOM and GENDERDOC-M finds it necessary to stress that section 2 of article 16 of the Moldova Constitution does not include the word "gender". The article declares, "All of the citizens of the Republic of Moldova are equal before the law and authorities regardless of their race, nationality, ethnic origin, language, religion, sex, beliefs, political affiliation, material status and social background."² Gender and sex are different categories and imply different things, where "sex" refers to a person's assigned-at-birth sex (man/woman), based on their sexual characteristics, while "gender" "refers to males and females, within the context of society. This definition acknowledges the social construction of gender, and the accompanying roles, behaviour, activities, and attributes assigned to men and women, and to girls and boys."³ The Constitution of Moldova does not include the words "gender" or "gender identity" anywhere. The list of grounds protected from discrimination in this article is closed (no "or any other circumstances/grounds/attributes"), and the article limits the protection being extended only to the citizens of Moldova. The list is left open and extended to "persons or group of people" in the Moldova Criminal Code article 176. Nonetheless, no general, specialised, or constitutional documents in Moldova include SOGI expressly or implicitly as protected grounds. Therefore, this law is aimed only at eliminating discrimination based on biological sex. The activities mentioned in the Replies and the ongoing changes that are introduced to the Moldova legislation do not define gender as a social-behavioural construct and do not mention "gender identity" as a notion or as a protected attribute, rendering the changes faulty as defining these notions clearly on a legislative level is mandatory to create a solid foundation for effective legal protection. Such discrepancy and inconsistency in protecting gender equality create ineffective legal practices.

11. The absence of a specialised legal mechanism of protection people (and not only citizens) based on grounds of sexual orientation and gender identity creates a gap that does not allow to effectively protect the rights of trans* women if they happen to be violated based on them being a minority group. There is also no comprehensive or generalised legislation that would offer a broad definition to what "discrimination" means, and there is also no ability for a trans* woman to argue a case of being a victim of gender-based discrimination as there is no notion in the law of what such a discrimination would constitute. Respectively, even if certain forms of discrimination happen that are outside of the above-mentioned closed list of protected grounds, there is no way to use the law effectively in trying to prove a case of transphobia. There is also no reputable precedent for a trans* woman to appeal to as a successful case of protection against SOGI-based discrimination. Article 176 section 1 of the Criminal Code

¹ *Annual Review of Moldova by ILGA Europe*, <https://www.ilga-europe.org/sites/default/files/moldova.pdf>

² *Constitution of the Republic of Moldova*, <http://www.presedinte.md/titul2#2>

³ *The Office of the Prosecutor of the ICC, Policy Paper on Sexual and Gender-based Crimes*, 3 (June 2014), <https://www.icc-cpi.int/iccdocs/otp/otp-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>

of the Republic of Moldova protects the list of grounds defined in Article 16 of the Constitution, namely, "Any diversification, exclusion, limitation or favour in the rights and freedoms of a person or a group of people, any facilitation of discriminatory conduct in the political, economic, social, cultural, and other areas of life based on race, nationality, ethnic origin, language, religion or beliefs, sex, age, limited abilities, views, political affiliation and also based on any other ground" is subject to punishment by a respective form of criminal liability.⁴ Unfortunately, the open list of protected grounds is not even nearly enough since homophobia and transphobia in Moldova, like in other EECA countries, is quite persistent and creates impairments for trans* women in all areas of life, particularly in healthcare. That is why a multi-dimensional governmental approach is necessary to support and integrate this minority group into the day-to-day social life.

12. Article 172 section 1 of the Criminal Code of Moldova states, "Homosexuality or the satisfaction of sexual passion in perverted forms with the use of physical or psychological coercion of a person or with the use of the person's inability to protect themselves or express their will" is subject to punishment by a respective form of criminal liability.⁵ The word "homosexuality" is homophobic in the given context and refers to coercion to same-sex conduct and is outlined in an individual article. Such an article of the Moldova Criminal Code should expel the word "homosexuality" and be removed at all, and find a new formulation to protect men, women, and transgender people, including trans* women, from involuntary coercion of them to engage in sexual activities with perpetrators who threaten their health, property and material independence or that of other people. The word "homosexuality" and any other homophobic language should be excluded from the Criminal Code of Moldova and its other legislative acts overall, and all people, regardless of their sex, sexual orientation, and gender identity should be equally protected from rape or other coercive actions of sexual character that they are forced to perform because of violence or the threat of using violence. Since such homophobic terms are still present in the Criminal Code, they enforce the public stereotype of same-sex sexual conduct being wrong.

13. ECOM and GENDERDOC-M welcomes Moldova's attempts in trying to raise the public awareness, especially among youth and adolescents, about sexual and reproductive health, as stated in the Replies (para54). Unfortunately, they only focus on heterosexual sexual reproductive health and teaching children how to be responsible parents later on. There is a national uncertainty about how to perceive the LGBT community by the general, heteronormative public, civil servants and medical workers. There is no public discussion about non-heterosexual sexual diversity and non-binary, fluid, or nonconforming gender identities. The only case, at present, that had success in proving the presence of homophobia was in *Mikhail D. v. the Occupy Pedophilia Group* in 2015, where a court verdict was rendered, finding the group members (three underage men) guilty in committing a crime breaching equality.⁶ Otherwise, trans* women and other LGBT persons are afraid to turn to law enforcement for protection as they fear they will be antagonised further. The topic of sexuality is not happily discussed in families, schools, or in public. As a result of the combination of the aforementioned factors, trans* women keep a low profile and silence their gender identity and sexual orientation out of fear of being abused by their friends, family, medical workers or law enforcement officers. If educational establishments included sensitised personnel that could raise the awareness about different kinds of sexuality and gender identities, would offer counselling and medical aid to youth, adolescents, and grown-ups who do not fall

⁴ *Criminal Code of the Republic of Moldova*, <https://www.wipo.int/edocs/lexdocs/laws/ru/md/md099ru.pdf>

⁵ *Ibid.*

⁶ *ECOM's Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries 2018*

into the binary gender and sexuality system, then much hate and stigmatisation could be avoided.

III. OBSTRUCTING THE RIGHT TO HEALTH OF THE TRANS* WOMEN

14. Any transphobic and homophobic language in the country's legislation related to gaps in Moldova's legislation that incite or bolster transphobia or homophobia should be removed and properly addressed. Effective legal mechanisms of protection from discrimination, particularly on the grounds of sexual orientation and gender identity, should be adopted as they are detrimental for ensuring equal protection of the fundamental human rights and freedoms of the LGBT, especially, their right to health. Article 24 section 2 of the Moldova Constitution declares: "Nobody can be subjected to torture, cruel, inhuman or other punishment or behaviour that breaches their dignity."⁷ That said, the unique needs trans* women have regarding their mental and physiological health are currently overlooked or misconstrued by the Moldova government. ECOM and GENDERDOC-M understand the burden that the government faces on its way to becoming a free, democratic, and economically powerful state, following the Committee's recommendations but considers it necessary to report on the actuality of the right to health of the LGBT, especially trans* women, since their human rights, freedoms, and dignity are currently obstructed in Moldova. At present, despite there being no legal punishment for being LGBT, homophobia and transphobia are two factors that impede the ability of trans* women to lead healthy and fulfilled lives in their home country.

15. Moldova has an obligation before its people, and the international community, to ensure the reality of living a healthy fulfilling life for people who reside within its borders, including trans* women. Article 36 of the Moldova Constitution indicates that "The right to healthcare is guaranteed." Unfortunately, trans* women in Moldova meet many obstacles in successfully realising their constitutional right to healthcare, which infringes their right to health. Trans* women are reluctant to turn for medical and legal aid since they are afraid of being abused by medical workers and law-enforcement officers. The stigma forces them to keep a low profile, and the inability to express their sexuality and identity forces them into unsafe life practices, including unsafe sexual practice. Trans* women have no means to acquiring satisfactory healthcare services because of the danger of the secrecy of their health, including their HIV/AIDS status, being infringed, or them being harassed or blackmailed by medical workers or law enforcement officers. No HIV data is gathered on trans* women or transgender individuals at all. Trans* women are often bundled up under the men who have sex with men (MSM) category. In this regard, HIV-prevalence among MSM only in Chisinau has reached 9% in 2018.⁸ Since there is a serious lack of data gathering in terms of HIV in all key population groups, including trans* women, it is unclear which percentile of these 9% is trans* and how trans* women are faring in terms of HIV-prevalence and HIV-services coverage. This is the direct result of the government not catering to trans* women as a key population group. There are no national healthcare programmes that would gather statistics on the population of trans* women, their HIV/AIDS status, and there are no national HIV programmes that would consider their special needs as a key population group. No sensitization is being conducted among the medical personnel to lower stigma and teach them how to behave when trans* women are involved. Because of this, trans* women are scared to undergo testing and, if diagnosed, to seek HIV-treatment; they are afraid of not only being harassed for being trans* but for being HIV+ as well. The

⁷ Constitution of the Republic of Moldova, <http://www.presedinte.md/titul2#2>

⁸ <https://ecom.nqo/wp-content/uploads/2018/07/Brief-Overview-about-HIV-in-Moldova-eng.pdf>

combination of the mentioned factors creates a danger to the lives of trans* women in the short and long run since not only do they not receive regular healthcare and legal protection in case they are harassed, they are also discriminated in receiving HIV/AIDS-services that the country is bound to qualitatively provide to all, while observing human rights and dignity of everyone.

16. The right to health is a fundamental right of all people that should be unequivocally protected by every state, including Moldova. Article 25 section 1 of the Universal Declaration of Human Rights states that "everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including [...] medical care and necessary social services [...]."⁹ In combination with the above-mentioned national and international norms, trans* women are entitled to an adequate, healthy living standard in Moldova, which should be ensured by the government without any discrimination. In conformity with the OHCHR Fact Sheet No. 31, among others, the right to health means that "non-discrimination is a key principle in human rights and is crucial to the enjoyment of the right to the highest attainable standard of health. [...] Non-discrimination and equality further imply that States must recognize and provide for the differences and specific needs of groups that generally face particular health challenges, such as higher mortality rates or vulnerability to specific diseases."¹⁰ Because of stigmatisation and discrimination, trans* women conclude a minority group that is vulnerable to increased health risks, including higher HIV/AIDS-risks. Apart from this, the constant reality of living in fear of being harassed or abused by regular folk, medical workers or law-enforcement officers already contradicts the Preamble of the Constitution of the World Health Organisation, which outlines that health is "a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity."¹¹

17. Considering the practice of the Committee, trans* women fall under the protection of the Convention and comprise a minority group that deserves special attention under the CEDAW framework. Trans* women are a key population group acknowledged by UNAIDS to be especially vulnerable to HIV.¹² In its Concluding Observations CEDAW/C/MKD/CO/6 (para 37(e)), the Committee inquired the former Yugoslav Republic of Macedonia to provide "information about the stigma experienced by lesbian, bisexual, and transgender women and intersex persons when endeavouring to access health care." Further on, during its 70th Session, the Committee, in its CEDAW/C/COK/CO/2-3 (para 44), recommended that Cook Islands "make the legislative changes necessary to prohibit intersecting forms of discrimination against lesbian, bisexual and transgender women, and conduct awareness-raising activities to address their stigmatization within society." In CEDAW/C/MEX/CO/9 (para 12(d)), the Committee advised Mexico to "adopt a road map that includes adequate resources, a timeline and measurable targets requiring authorities at the federal, state, and local levels to implement relevant laws to prevent and eliminate all forms of de facto discrimination against women, in particular [...] lesbian, bisexual, transgender and intersex women." Therefore, within the context of this Alternative Report and its stipulations, ECOM and GENDERDOC-M considers that trans* women in Moldova fall under the protection of the CEDAW framework and deserve the attention of the Committee as an institution that, currently, is the only beacon of hope in alleviating the burden which stigma in their country has on their health and overall quality of life.

⁹ Universal Declaration of Human Rights, <https://www.un.org/en/universal-declaration-human-rights/>.

¹⁰ OHCHR Fact Sheet No. 31: Right to Health, <https://www.ohchr.org/Documents/Publications/Factsheet31.pdf>, pp. 4, 7

¹¹ Constitution of WHO, https://www.who.int/governance/eb/who_constitution_en.pdf.

¹² <https://www.unaids.org/en/topic/key-populations>

18. Considering the fact that LGBT NGOs are not receiving sufficient grants from the government, there is no way for them to effectively provide their communities with HIV-services. It also raises suspicion about discrimination being the primary reason for such a situation. Therefore, ECOM and GENDERDOC-M considers it worthy to mention the widely distributed and appreciated UNAIDS 90-90-90 Strategy. Firstly, NGOs who work with key population groups (those that are at a higher HIV-infection risk) should be perceived by governments the same as other applicants that deal with other health concerns and they should relay special attention to their specific needs. Consequently, a tailored approach on the Moldova government's part is necessary to follow the global action plan to fight the HIV epidemic. The UNAIDS 90-90-90 Strategy encourages states to follow the principle of community-based HIV-services that should be provided by LGBTQ NGOs to their respective communities directly. Representatives of these communities should be invited by the government when any HIV-related regulations or regulations that may impact the HIV-services distribution are being discussed in order to tailor such laws correctly, avoiding discrimination and reach the community better with respective medical services. Additionally, the 90-90-90 Strategy recommends that HIV-services that are provided to key population groups should be decentralised.¹³ In other words, the services should be provided by the community for the community, and LGBT NGOs should be entitled to coordinate their activity directly with the government, other donors, and financing institutions in conformity with their individual programmes that abide by and fit the national HIV-prevention action plan or programme but without extensive governmental control, inaction, or interference. Usually, governmental institutions lack the knowledge, proficiency, and expertise in working with the delicate needs of the key population groups, especially trans* women, which is why UNAIDS advises them to simplify the governmental financing, granting, and operations procedures for NGOs that deal with key populations and for governments to encourage the invaluable work of such organisations, instead of ostracising or treating them like any other NGOs that do not deal with vulnerable groups.

19. Trans* women, as an internationally acknowledged key population group with increased risks of exposure to HIV/AIDS, should be expressly identified in the Moldova national HIV-programme. The latter does not offer any additional leverage for trans* women and their NGOs to receive and provide HIV-services effectively. Apart from this, it also means that trans* women communities receive no funds to conduct other activities in terms of particularities of them being a minority group (aimed at increasing visibility, mobilisation, public and civil servant awareness-raising and education, etc.) Under the Moldova national HIV-prevention policy, no funds are allocated to raise the awareness and education of the law-enforcement and medical workers regarding sexual orientation, gender identity and nuances of working with the vulnerable group of trans* women, particularly in terms of HIV-prevention. On top of there being no effective anti-discrimination legislation to protect them from discrimination based on sexual orientation and gender identity, there are no policies and funds to educate the medical workers and law-enforcement officers on these matters and decrease stigmatization and discrimination on their part. The current policy of inaction and ignorance enforces the intersectional discrimination that trans* women experience. They are left on their own, at the mercy of fate, or forced to emigrate to other countries, but the worst thing is that, either way, their mental and physiological health is in perpetual danger, considering the given conditions of the public attitude and governmental impassiveness.

¹³ UNAIDS 90-90-90 Strategy, https://www.unaids.org/sites/default/files/media_asset/90-90-90_en.pdf

IV. TRANS* HEALTH

20. Overall, trans* persons in Moldova, like in other EECA countries, continue to be *the* most vulnerable key population group – one that is virtually ignored by the law, with little to no policies to let them uphold, protect, and defend their human rights and freedoms effectively. Every individual is unique. Some people, as they develop, discover that the heteronormative behavioural axis only along the typically understood female or male behaviour rigidly ascribed to the respective biological sex – woman or man – does not suit their individuality. The person’s “self” is not predefined for them at birth. In *A.R. Coeriel and M.A.R. Aurik v. The Netherlands*, the HRCtee observed that, *inter alia*, article 17 of the [International] Covenant [on Civil and Political Rights] includes “the notion of privacy [that] refers to the sphere of a person’s life in which he or she can freely express his or her identity, be it by entering into relationships with others or alone.”¹⁴ Article 4 of the Moldova Constitution indicates that “The constitutional provisions about rights and freedoms are defined and applied in conformity with the Universal Declaration of Human Rights, covenants and other treaties to which the Republic of Moldova is a Party.”¹⁵ Apart from that, *A.R. Coeriel and M.A.R. Aurik v. The Netherlands* mentions that “the HRCtee is of the view that a person’s surname constitutes an important component of one’s identity and that the protection against arbitrary or unlawful interference with one’s privacy includes the protection against arbitrary or unlawful interference with the right to choose and change one’s own name.” Defining one’s name to accommodate one’s desire to communicate with the world as effectively and ecologically as possible, in conformity with one’s gender identity and without any express or implied harm to others, is crucial in ensuring the protection of such a person’s right to (mental) health and privacy. The WHO excluded gender dysphoria from the list of its mental and behavioural disorders; the Global Manual of Diagnoses does not include such a term anymore.¹⁶ Any person, based on the availability of a strong discord between their gender identity and their birth-assigned sex, should be entitled to opt for another identity that will ensure their healthy development as a human being. Since Moldova has acknowledged the obligation to endeavour to create the highest attainable standard of health for its people and considering that people sometimes happen to develop strong discord between their gender identity and the birth-assigned sex (which is not a mental disease), the state should create the necessary mechanisms for them to be able to express and enjoy their gender identity legally and lead healthy, fulfilling lives.

21. Moldova is a country that has an option of gender confirmation. However, according to ECOM’s *Legislative Analysis Related to LGBTQ Rights and HIV in 11 CEECA Countries 2018*, there is only one document related to the procedure, which is Order #1268 dated 17 December 2012 “On Establishing a Gender Dysphoria Registration Commission.” Notably, a trans* person would need a certificate from such a commission to validate every step of the procedure: to get a prescription for a hormone therapy course; undergo surgery; change documents if necessary, etc. Trans* persons can change documents only through court. The current governmental approach to gender confirmation and gender reassignment obstruct the right of every person to self-determine their gender identity freely, their privacy, dignity, and the right to health. It is far from truth that *all* trans* individuals want the sex reassignment surgery. The person may just want to alter their gender and name legally or undergo hormonal

¹⁴ OHCHR *Selected Decisions of the HRCtee Under the Optional Protocol*, vol. 5, <https://www.ohchr.org/Documents/Publications/SDecisionsVol5en.pdf>, p. 75

¹⁵ *Constitution of the Republic of Moldova*, <http://www.presedinte.md/titul1>

¹⁶ “Transgender No Longer Recognised as ‘Disorder’ by WHO”, *BBC*, <https://www.bbc.com/news/health-48448804>; ICD-11, WHO, <https://icd.who.int/browse11/l-m/en#/http://id.who.int/icd/entity/411470068>

therapy in addition but without the sex reassignment surgery. The current approach of the Moldova legislation in relation to gender confirmation lacks information and adequate regulation. The State Party should simplify the procedures and make the laws more elaborate so that respective government institutions know how to act tolerantly and correctly every step of a person's journey of gender transition.

22. On top of not being covered by HIV-services effectively due to governmental inaction, there is also no national support for the transition before, during, and after the gender reassignment procedure. Unfortunately, the predominant majority of transphobic cases remain undocumented. Creating an effective, comprehensive legislative framework that would govern the correct definition of gender and gender identity and the procedure of gender confirmation and gender or sex reassignment is a part of the trans* persons' right to health, privacy and to self-determine their sexual orientation and gender identity. Because of the inability to express themselves, they live in constant stress, depression, and anxiety that distort their lives because of their fragile and strained mental health, which is then translated into their declining physiological state. In addition, they are subjected to transphobia by the general public, medical workers and law-enforcers because neither of those consider them as healthy, adequate human beings. They are perceived as psychiatrically ill. Trans* people are victims of intersectional stigmatisation since not only are they at higher risks of getting infected with HIV due to the reasons gay men or MSM have, but they are also discredited by the medical workers as non-cisgender, creating higher risks of being abused or denied even the common healthcare services. Currently, trans* people are far from being equal compared to the heterosexual population in Moldova. Their gender identity is ignored by the law; and those who should uphold the law, *inter alia*, their right to health and privacy, ignore them. At present, trans* women avoid subjecting themselves to these procedures, live in the shadows, have unsafe living and sexual practices, are afraid to turn for medical, psychological, legal, or social help and wither away in misery, watching their lives fade away, being bullied, ignored, and violated.

V. CONCLUDING NOTE

23. Article 1, section 1 of the Constitution of Moldova proclaims: "The Republic of Moldova is a democratic legal state, in which the person's dignity, his rights and freedoms, free development of human individuality, justice and political pluralism are the highest values and they are guaranteed."¹⁷ Democratic, secular, and legal states create laws to quell chaos and create the conditions that allow their nation to thrive. Sadly, trans* women have absolutely no means of even closely obtaining any level of thriving because of the stigma and absence of legal mechanisms that would protect them from discrimination and ensure their equality on par with the heterosexual, cisgender population. The right to health is a fundamental right of every person. Without dedicated assurance of the right to health, it is impossible for people to realise their other rights since their very existence is endangered. Considering the Committee's practice and the framework of the Convention, the LBT should have their rights protected and observed on the same level as any other person, while observing their needs as a key population group to avoid disproportion in power compared to the majority. Currently, trans* women do not enjoy their right to health, privacy, dignity, freedom of expression, and freedom to self-determine their gender identity because the legislation and governmental practices are lacking the required mechanisms for them to obtain the highest attainable standard of health and development in the Republic of Moldova. They are denied a framework of protection of their rights based on sexual

¹⁷ Constitution of the Republic of Moldova, <http://www.presedinte.md/titulul1>

orientation and gender identity as attributes that are universally protected by the Convention, the Universal Declaration, both Covenants and other international treaties ratified by the State Party. Considering Moldova's momentous developments since the last recommendations of the Committee, ECOM and GENDERDOC-M file this Alternative Report in hopes that the Moldova government will direct its attention to trans* women as a key population group that has special needs that require specialised regulations, particularly in the realm of HIV-prevention, to decrease discrimination and stigma that currently impales their ability to lead healthy and fulfilling lives.

VI. RECOMMENDATIONS

All things considered, to uphold the highest attainable standard of health for trans* women, to ensure that the fundamental human rights and freedoms are observed equally for all, and in conformity with the Convention on the Elimination of All Forms of Discrimination Against Women, recognized by Moldova,

ECOM and GENDERDOC-M recommend that the Committee uses its authority over the Republic of Moldova and inquires it to follow its international obligations under the Convention, as well as its national obligations, before its people in a multi-dimensional fashion, and that the Republic of Moldova swiftly undertakes respective activities and steps to secure the rule of law and equality of all people, trans* women included, before the law on all its territory. With this consideration in mind, ECOM and GENDERDOC-M ask the Committee on the Elimination of Discrimination Against Women, during its 75th Session:

- To amend Article 1 of the Law on Ensuring Equality by including such criteria as social origin, material situation, health status, sexual orientation, gender identity, and gender expression in the main list of criteria protected from discrimination;
- To advise Moldova to separate the crimes committed out of hate based on the victim's sexual orientation and/or gender identity into a distinct, individual category of crimes, and to identify sexual orientation and gender identity as protected grounds that construe aggravating circumstances if they are the motive for committing a crime;
- To recommend that Moldova undertakes activities aimed at eradicating all homophobic and transphobic language from its legislation, particularly the Criminal Code, as a part of its journey to becoming a free, democratic, secular state;
- To suggest Moldova to adapt its governmental healthcare policies and programmes in the area of HIV-prevention to suit the needs of the LGBT community, particularly the key population group of trans* women;
- To urge Moldova to create a framework for non-discriminatory procedures of performing the gender confirmation procedures ensuring a successful transition and legalising its aftermaths, i.e. changing the trans* person's legal name and sex (gender) in their identifying documents;
- To suggest that Moldova allocates human, technological, and financial resources to sensitise its law-enforcement and healthcare workers when it comes to dealing with the needs of trans* women as a key population group and as a minority group that needs protection from discrimination;
- To encourage Moldova to create programmes for progressive and multi-dimensional sexual and reproductive education in schools in all geographic areas that will teach children and youth about the pluralism when it comes to love and gender identity, overcoming the currently damaging patriarchal teachings that bolster intolerance and hate based on SOGI.