

19 August 2010

Memorandum

To: Office of the High Commissioner for Human Rights
UNOG
CH 1211 Geneva 10
Switzerland
Email: registry@ohchr.org

Re: Human Rights Council resolution 13/11 – “Human Rights of Persons with Disabilities: national implementation and monitoring and introducing as the theme for 2011 the role of international cooperation in support of national efforts for the realization of the rights of persons with disabilities”

Responding to the request of 5 August 2010 from the Office of the High Commissioner for Human Rights for information relevant for study to enhance awareness of the role played by international cooperation of national efforts for the realization of the purposes and objectives of the Convention, the United Nations Country Team Moldova has the honor to present the following information, organized as requested by the office:

A) Key measures adopted at national level to implement the Convention on the Rights of Persons with Disabilities, and relevant budgetary allocations;

On July 9, 2010, the Parliament of the Republic of Moldova approved ratification of the Convention. Once this decision is promulgated, the Convention will be law in Moldova. As a result of Article 4 of the Constitution of the Republic of Moldova, international treaties take precedence over domestic law where the two may conflict or abrade.

As a parallel measure, in July, Parliament also approved an Action Plan for the Strategy of the Social Inclusion of Persons with Disabilities 2010-2013.

Relevant budgetary allocations are included in the Action Plan for the Strategy of the Social Inclusion of Persons with Disabilities 2010-2013. Not all actions include budget allocations.

B) Challenges and obstacles to the full implementation at national level of the Convention on the Rights of Persons with Disabilities:

The Government faces great challenges in implementing the Convention, since the purposes and objectives of the treaty require a near-total system transformation. Key issues include, but are not necessarily limited to: (1) intensely medicalized views of persons with disabilities embedded in the relevant professions, as well as throughout government; (2) strong stigma on persons with disabilities, as well as on their families; (3) the very nascent state of Moldova's social worker network; (4) a rigid system of classifying "invalids", which in practice *inter alia* excludes the majority of persons with disabilities from access to social inclusion measures; (5) lack of effective distinctions between persons with intellectual disabilities on the one hand, and persons who may be a genuine (temporary) threat to themselves or others on the other; (6) the lack of anti-discrimination law providing an effective ban on discrimination on grounds of disability,¹ combined with patterns and practices of unchallenged discrimination against persons with disabilities; (7) deep reliance on the use of institutions to address disability – in particular mental and intellectual disabilities – as well as related social issues; (8) lack of effective measures for release from institutional care,² or access by family members to persons in institutional care; (9) the durability of "pity" or "charity" models among social workers, service-providing civil society organizations, and other parties in regular professional contact with persons with disabilities and members of their families; (10) the lack of mechanisms for the integration of persons with disabilities into the work force;³ (11) de facto exclusion of persons with disabilities from schooling, as well as non-provision of equal schooling in institutions for the mentally disabled, social care homes, and related institutions; (12) strong barriers in practice on the right to marry and found a family by persons with disabilities; (13) construction practices in the main excluding persons with physical disability from a range of public places, including official public institutions; (14) habits and practices in government of carrying out health, social assistance and educational policy measures in isolation from each other; (15) lack of available resources on the part of the state, as well as the misdirection of social assistance to classes of persons who may not necessarily be most in need;⁴ (16) as well as a range of other issues.

Indeed, a number of issues may not yet have been adequately assessed. For example, human rights issues as related to persons placed under "guardianship" or "trusteeship" -- issues which appear to

¹ A draft anti-discrimination law was put on the Parliamentary agenda in 2008, but then withdrawn because of Church opposition. The most recent draft of the bill released for public comment did not include a requirement of "reasonable accommodation" as per the Convention. The Moldovan Constitution's equality provision at Article 16 is problematic for providing no ban on discrimination on grounds of disability or health status, as well as for not providing an "other status" ground which might capture a ban on discrimination on ground of disability or health status.

² The European Court of Human Rights has found Moldova in violation of Article 5(1) of the European Convention in connection with the arbitrary detention of a man who appeared at a psychiatric hospital for an assessment, and who was not permitted to leave (see Case of David v. Moldova, (*Application no. 41578/05*), Judgment of 27 November 2007).

³ Moldova was found in violation of provisions of the European Convention on Human Rights in 2009, in a case concerning the summary termination of a woman employed as a carpet-maker following the loss of the use of her hands. The European Court ruled on the case as a length-of-proceedings case and found Moldova in violation of European Convention Article 6 (see Case of Panzari v. Moldova (*Application no. 27516/04*), Judgment of 29 September 2009).

⁴ For example, public housing and public housing assistance in Moldova is allocated according to a series of rigid categories which are dominated by professions, including police officers, prosecutors and judges. Moldova is in the early stages of a reform to provide social assistance based primarily on need, but is as yet only in the early stages of implementation of that system. At present, although a very large proportion of the state budget goes toward social assistance measures, civil society organizations and think tanks report that the primary beneficiaries of such assistance is to persons who would not necessarily require such assistance.

be prevalent throughout Central and Southeastern Europe and the former Soviet Union,⁵ have not yet been the subject of any competent study in Moldova.

C) The existence, scope and content of policies and/or guidelines adopted at national level to guide international cooperation in support of the Convention;

As noted above, the Moldovan Parliament adopted in July 2010 an Action Plan for the Strategy on the Social Inclusion of Persons with Disabilities 2010-2013. This document should guide and provide a framework for international assistance in this area for the named period.

D) Forms of international cooperation at bilateral and multinational level that, as a complement to national efforts, can play a key role in assisting the realization of the Convention at national level;

The continued presence of a Human Rights Adviser (HRA) to the Resident Coordinator can assist the United Nations Country Team in undertaking appropriate assistance action in this area (see below). A visit by the High Commissioner, with a remit including support and promotion for efforts in this area, would be very important and useful, as would attention to these issues in the UPR and MDG contexts. Prioritization of system transformation in this area in the context of Moldova's aspirations for European integration can facilitate progress in this area. Facilitated experience-sharing among professionals is advisable, as is support for greater inter-Ministerial cooperation as part of system transformation.

This issue also highlights the need for OHCHR to devote further attention to the particular human rights issues arising in the context of the major systems transformations ongoing in Central and Southeastern Europe and the countries of the former Soviet Union, and the particular types of human rights issues arising in these countries.

E) Examples of engagement in international cooperation and assessment of their impact on promoting the realization of the Convention

The United Nations Country Team has prioritized assistance in this area. The Resident Coordinator has regularly raised and discussed issues concerning Convention ratification and implementation with government counterparts. A team including UNDP, UNICEF, UNFPA, the ILO and the Human Rights Adviser (HRA) to the Resident Coordinator worked throughout the second half of 2009 and the first half of 2010 to clarify the conceptual and legal elements of the Convention for Government, NHRI and civil society counterparts, with a view to paving the way for ratification of the Convention. These efforts were crucial to overcoming deep misgivings in a number of corners of Government – misgivings based, not least, on perceived cost. They bore fruit on July 9, 2010, when Parliament decided to ratify the Convention.

For the period 2010, agencies including UNDP, UNFPA, UNICEF and DESA have devoted material and expert resources to assisting partners with efforts to implement the Convention. The

⁵ See European Court of Human Rights, Case of Stanev v. Bulgaria, Application no. 36760/06, Admissibility decision of 29 June 2010.

World Bank has also apparently committed resources to this area. Preliminary assistance actions have included, in addition to the expert assistance detailed above, plans to assist the Ministry of Labour, Social Affairs and the Family in work to amend the framework for assessment of persons with disabilities, with a view to transformation from medical to social inclusion models. In addition, the Human Rights Adviser has been involved in training civil society organizations in the provisions of the Convention and related relevant international law.

The presence of a Human Rights Adviser (HRA) to the Resident Coordinator and available to the Country Team and counterparts for expert support in this area has been crucial for ensuring a human rights basis for these reform efforts. Supporting Convention ratification and implementation is a key element of the HRA Work Plan for 2010-2011, designed in close consultation with the UN Country Team.

It is still too early to assess the long term, durable impact of these efforts. They nevertheless point to possibilities for extensive coordinated support by the international community for deep system reforms to the treatment of persons with disabilities, carried out on a human rights basis. There is some hope that, if reforms continue at their current level during the coming period, in several years one may possibly point to the Republic of Moldova as a positive model of reform in this area.