

NGO information to the United Nations Committee on the Rights of Persons
with Disabilities

For consideration when compiling the List of Issues on the First
Periodic Report of the Republic of Moldova under the Convention on the
Rights of Persons with Disabilities

Submitted by the
Mental Disability Advocacy Centre (MDAC)
&
Moldovan Institute for Human Rights (IDOM)

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I. OVERVIEW

1. This written submission provides an outline of issues of concern with regard to the Republic of Moldova's compliance with the provisions of the Convention on the Rights of Persons with Disabilities (hereinafter "the Convention"), with particular focus on the enjoyment of those rights by persons with intellectual and psychosocial disabilities.
2. The submission has been written by the Mental Disability Advocacy Centre (MDAC) and the Moldovan Institute for Human Rights (IDOM). MDAC is an international human rights organisation which uses the law to secure equality, inclusion and justice for people with mental disabilities worldwide. MDAC's vision is a world of equality where emotional, mental and learning differences are valued equally; where the inherent autonomy and dignity of each person is fully respected; and where human rights are realised for all persons without discrimination of any form. MDAC has participatory status at the Council of Europe, and observer status at ECOSOC. For more information, please visit www.mdac.org.
3. The Moldovan Institute for Human Rights (IDOM) is a nongovernmental organisation formed by human rights experts with the aim to contribute to raising awareness, promoting and protecting rights and liberties guaranteed by national and international legal frameworks. IDOM engages in the following areas of activity: human rights and health (the rights of people living with HIV/AIDS, the rights of people with mental disabilities, patient's rights, reproductive rights); the rights of people with mental disabilities; social, economic and cultural rights and the right to freedom from torture, or cruel, inhuman or degrading treatment or punishment.

II. Women with disabilities in institutions: gender based violence and access to justice (Article 6, 13,15 and 16)

4. In the past years many allegations of gender-based human rights violations have surfaced from Moldovan institutions for people with disabilities. Such allegations include rape, forced abortion and non-consensual insertion of intra-uterine contraceptive devices. One of the most notorious such cases related to 18 women with disabilities from the neuropsychiatric facility in Balti (under the competence of Ministry of Labour, Social Protection and Family) who were allegedly sexually assaulted by 2 male perpetrators, including the director of the institution and a senior doctor. The cases were reported in 2013. Victims have alleged being subjected to coercive measures including forced abortion. Criminal proceedings initiated at the first instance court Balti have been long and protracted (April 2014-present). No criminal proceedings have been initiated into allegations of forced abortion. Three of the alleged victims are now dead.¹
5. One other relevant case was from Cocieri Neuropsychiatric Institution. Allegations of sexual assault of women there were first reported in 2008 by the Council of Europe's Committee for the Prevention of Torture² Allegations again concerning two orderlies

¹ United Nations Human Rights Office of the High Commissioner, Mental Disability Advocacy Centre et. al. (2015). *The Human Rights of People with Mental or Intellectual Impairments in the Republic of Moldova. An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities*, p. 61, available at http://www.mdac.org/sites/mdac.info/files/moldova_report_2015_english.pdf

² European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). (2008). Report to the Government of the Republic of Moldova related to CPT's visit in from 14-24 September 2007. CPT/Inf (2008) 39m paras. 146 and 149, available [in French] at <http://www.cpt.coe.int/documents/mda/2008-39-inf-fra.pdf>

resurfaced in 2013. In November 2013, Dubasari police and prosecutors declined to open criminal proceedings, apparently on grounds that women in neuro-psychiatric residential institutions provide inherently unreliable testimony. Under international pressure, a criminal investigation was reportedly re-opened, but the status of proceedings is not currently known.³

Suggested questions to the Government of the Republic of Moldova:

Please provide details on the investigations into gender based violence against women with disabilities at Balti and Cocieri Neuropsychiatric Residential Institutions.

How many of the people living in institutions have received counselling on family planning and reproductive health from 2013 until the present day (as dictated by Article 8 (12) and Article 42 (12) of Law no. 60 of 30.03.2012 on the social inclusion of people with disabilities and indicated by the Government in its first report sent to the Committee⁴)?

What legal, policy and practical measures are the Government taking to address gender-based violence against women with disabilities, including those in institutions, and to ensure prevention, investigation, punishment and redress are warranted regarding the human rights violations of women living in institutions, as required?

III. The right to equal recognition before the law (Article 12)

6. In Moldova, people with disabilities continue to be deprived of their legal capacity through judicial procedures which sometimes they are not allowed to attend or are not even informed about. Guardians can be appointed without the person concerned having any say. Moldovan legislation vests wide decision-making powers in guardians, and many guardians choose to place people with disabilities in closed institutions against their will, using their disability allowances and controlling the assets of persons under their guardianship.⁵
7. Reform of the Moldovan legislative framework in relation to legal capacity has been under debate for many years. However, legislative reforms have not been made. Although there is a law proposal aimed at awarding people the right to vote and the right to have direct access to courts to contest their placement under guardianship,⁶ the draft has yet to be adopted. This despite the fact that the Government itself has committed, in its first report sent to the Committee, to enact provisions “to guarantee the right to vote to all persons, including those with intellectual and psychosocial disabilities.”⁷

³ United Nations Human Rights Office of the High Commissioner, Mental Disability Advocacy Centre et. al. (2015). *The Human Rights of People with Mental or Intellectual Impairments in the Republic of Moldova. An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities*, p. 61, available at http://www.mdac.org/sites/mdac.info/files/moldova_report_2015_english.pdf

⁴ (2013). *Initial report of States parties due in 2012- Republic of Moldova*. CRPD/C/MDA/1, para. 32, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/066/46/PDF/G1506646.pdf?OpenElement>

⁵ For more details see United Nations Human Rights Office of the High Commissioner, Mental Disability Advocacy Centre et. al. (2015). *The Human Rights of People with Mental or Intellectual Impairments in the Republic of Moldova. An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities*, pp. 45-63, available at http://www.mdac.org/sites/mdac.info/files/moldova_report_2015_english.pdf

⁶ Draft Law 36 of 8 May 2015 on amending and completing a number of legislative acts, available at http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2015/iulie/Proiect_24.07.2015L.pdf

⁷ (2013). *Initial report of States parties due in 2012- Republic of Moldova*. CRPD/C/MDA/1, para. 276, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/066/46/PDF/G1506646.pdf?OpenElement>

8. The Government also claimed that “the legal and regulatory framework in the justice field guarantees access to justice for all citizens, including persons with disabilities.”⁸ That is incorrect. Persons deprived of legal capacity cannot bring civil cases to courts.⁹ All legally significant acts performed by persons deprived of their legal capacity are considered void. Civil cases on behalf of persons deprived of legal capacity can only be brought to court by the public prosecutor,¹⁰ or by a person’s guardian.¹¹ People with disabilities have no enforceable right to appeal a decision through which they have been placed under guardianship.
9. The Government is also in the process of drafting a law proposal aimed at reforming the guardianship system. While not yet finalised, we consider this Draft law to fall beneath the standards required under Article 12 the Convention as it maintains the current guardianship system. It does not abolish the system of guardianship, or replace it with a system to ensure persons with disabilities can access the support they require in exercising their legal capacity; instead it merely attempts to patch up a the creaking guardianship system.

Suggested questions to the Government of the Republic of Moldova:

What is the Government’s legislative timeline for abolishing guardianship of persons with disabilities, and replacing it with the provision of support for persons with disabilities to exercise their legal capacity?

Please provide reasoning for current legislative reforms related to legal capacity and explain how are they implementing the Convention.

How many people are currently under guardianship in the Republic of Moldova?

IV. Institutionalisation and the right to live in the community (Articles 12, 15, 16 and 19)

10. Almost 2,500 children and adults with mental disabilities in Moldova are required to live in segregated institutions which are cut off from their community.¹² Life in such institutions means denial of basic liberties and dignity for residents: strong smells of faeces, urine, sweat and dust are common, people can only leave the premises with prior authorisation, violence and abuse perpetrated by staff and other residents are commonplace and residents are neglected and denied medical care.¹³
11. While there is a plan for the deinstitutionalisation of children,¹⁴ there is no official deinstitutionalisation strategy for adults.
12. There are also problems regarding to the independent monitoring of these institutions. Technically, the Republic of Moldova has two state bodies officially responsible for

⁸ (2013). *Initial report of States parties due in 2012- Republic of Moldova*. CRPD/C/MDA/1, para. 99, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G15/066/46/PDF/G1506646.pdf?OpenElement>

⁹ Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 58.

¹⁰ Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 71 (2).

¹¹ Republic of Moldova, Civil Procedural Code, Law No. 225 of 30 May 2003, Article 58.

¹² Ministry of Labour, Social Protection and Family, “Annual Social report for the year of 2011”, 2012. Available [in Romanian] from <http://mpsf.gov.md/file/rapoarte/RSA%202011%2020.07.12MMPSF.pdf>.

¹³ For more details see United Nations Human Rights Office of the High Commissioner, Mental Disability Advocacy Centre et. al. (2015). *The Human Rights of People with Mental or Intellectual Impairments in the Republic of Moldova. An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities*, pp. 64-76, available at http://www.mdac.org/sites/mdac.info/files/moldova_report_2015_english.pdf

¹⁴ National Reform Strategy for Social Care Institutions for Children adopted through the Government Decision No. 784 of 9 July 2010.

monitoring institutions: the National Preventive Mechanism (NPM)¹⁵ and the Ombudsperson for Psychiatric Institutions.¹⁶ After a series of legislative reforms regarding the NPM, members of body have yet to be appointed. As a result the body has not been functioning for several months. As for the Ombudsperson for Psychiatric Institutions, its mandate was officially institutionalised by the State and received financial support from the UN Partnership to Promote the Rights of Persons with Disabilities Moldova up until December 2015. Its current position remains unclear as funding appears to be insufficient for proper functioning. In such circumstances monitoring of institutions is insufficient, being only conducted by non-governmental organisation, such as IDOM and MDAC.

Suggested questions to the Government of the Republic of Moldova:

When will the Government adopt and implement an official nation-wide deinstitutionalisation strategy for adults?

Please provide details on the steps taken by the Government to ensure the deinstitutionalisation of children and adults. Please include details on:

- specific budgetary allocations for this purpose;
- the number of people deinstitutionalised from 2011 until the present day.
- the forms of living facilities available for people with disabilities and which constitute an alternative to institutionalisation, including the numbers of people with disabilities benefiting from them; and
- the forms of personal assistance available which are necessary to encourage and support independent living in the community of persons with disabilities, and to prevent isolation or segregation, plus the numbers of people with disabilities benefiting from such schemes.

When is the NPM expected to begin again its functioning?

What are the measures taken by the Government to ensure the proper functioning of the institution of the Ombudsperson in psychiatry (including in terms of budgetary allocations) after the UNPRPD has terminated its support?

Please provide information on the number of complaints made by people with disabilities in institutions and their status, since ratification of the Convention.

Please provide information on the number of criminal cases initiated following complaints related to torture, inhuman or degrading treatment against persons with disabilities resident in institutions.

V. Inclusive education (Article 24)

13. Moldova inherited an education system based on segregation from the Soviet era, in which children who did not meet certain standards would be hidden away. Today however, circa

¹⁵ Established due to the obligations the state assumed by ratifying, on 24 July 2006, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Article 17).

¹⁶ Officially *Avocat al pacienților din staționarele de psihiatrie* ("Advocate for patients in psychiatric units").

3,500 children who need enhanced support, including children with disabilities, are included in mainstream education.¹⁷

14. While acknowledging this success, it is important to note that 1,716 children with intellectual or psychosocial disabilities remain in segregated educational settings,¹⁸ and not all children are receiving the support they need to access inclusive schooling.

Suggested questions to the Government of the Republic of Moldova:

What are the steps the Government is taking to ensure all children with disabilities, including those with high support needs, can access inclusive education in the general education system?

Please list the specific steps taken by the Government to facilitate the inclusion in mainstream education of the children living in the two homes for children with mental disabilities in Orhei and Hincesti.

What are the measures the Government is taking to ensure that all children who need support in mainstream educational settings receive this?

For further information, please contact:

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¹⁷ United Nations Human Rights Office of the High Commissioner, Mental Disability Advocacy Centre et. al. (2015). *The Human Rights of People with Mental or Intellectual Impairments in the Republic of Moldova. An Assessment of Key Aspects of the Domestic Law and Policy Framework in Light of the UN Convention on the Rights of Persons with Disabilities*, p. 16, available at http://www.mdac.org/sites/mdac.info/files/moldova_report_2015_english.pdf

¹⁸ Institute for Public Policy, "The Implementation of inclusive education in the Republic of Moldova. A study on public policies", 2014, p. 62. Available [in Romanian] from http://www.ipp.md/public/files/Proiecte/Studiu_Cara_Angela.pdf.