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Moldova: Last-minute changes to draft NGO law risk stifling civil society

Amnesty International is concerned that the right to freedom of association would be seriously curtailed in Moldova, and many non-governmental organizations (NGOs) would face the risk of reprisals and potentially closure, if last-minute changes proposed by the government to the law regulating NGOs are passed.

Several NGOs have raised concern in recent months about harassment and intimidation by the authorities and government-spearheaded tactics to discredit Moldova's independent civil society. This latest attempt by the government to introduce new regulations that would unduly restrict the right to freedom of association takes these concerns to a new level.

The proposed changes were introduced by the Ministry of Justice in June 2017, by inserting three additional articles into a draft NGO law that had been developed in close cooperation with civil society and agreed by a Working Group specifically created for this task, which included members of NGOs and a representative of the Office of the High Commissioner for Human Rights (OHCHR).

The latest changes introduced by the government would require NGOs in Moldova that receive foreign funding and are involved in what is broadly defined as "political activities" to publish quarterly and annual financial reports on their websites, disclose the origin and use of their funding, report specifically on expenses towards their "political activities", and disclose the income of their staff and board members. The changes also introduced severe penalties for non-compliance with these requirements, including hefty fines, exclusion from the government-run financial mechanism that facilitates and encourages voluntary donations to NGOs by tax payers (a scheme intended to reduce NGOs' reliance on foreign and government funding),¹ and potential closure (subject to court decision).²

The Ministry of Justice has set the deadline of 11 August for comments on the draft law, which is expected to go before the Parliament as soon as it returns from the summer break in September.

The proposed changes are purported to promote transparency in the way Moldovan NGOs receive and use their funding. However, this argument is inconsistent with the context and details of this initiative, and disproportionately targets civil society organizations, while foreign financial support received by government entities is not subject to any such strict public scrutiny requirements.

Furthermore, stringent reporting requirements for NGOs are already in place, including regarding their finances. Rather, the newly proposed changes to the draft NGO law come across as being intended to discourage, silence and potentially eliminate independent civil society organizations which have a critical opinion of the government or that challenge the authorities.

It is concerning that the proposal comes at a time of growing political confrontation over the recently adopted changes to the electoral system. Many independent NGOs, including those that do not work on

¹ From 2017, citizens of Moldova can select to donate 2% of their declared tax to NGOs or religious organizations of their choice. More information on the mechanism is available at <http://ecnl.org/moldova-launches-new-financing-mechanism-for-civil-society/> (accessed 31 July 2017);

² Articles 27 and 28 of the draft Law on NGOs are available in Romanian at http://justice.gov.md/public/files/transparenta_in_procesul_decizional/coordonare/2017/iulie/11/2017_07_11_proiect_lege_ONG_final.pdf (accessed 31 July 2017); Article 26 is cited below in this document.

electoral issues as such, have denounced these changes as undemocratic and amounting to manipulation of the country's political system by powerful business interests and the mainstream media under their control.³ The same NGOs have been the target of a government-led campaign of harassment and intimidation.

As noted by the national Strategy for the Development of the Civil Society for 2012-2015 (endorsed by the parliament in January 2013), civil society organizations in Moldova "are excessively dependent on outside sources of funding", with external donors support accounting for 80-95% of the total of NGOs' budgets.⁴ The situation has not changed since then. Foreign funding has enabled many NGOs to retain their independence and their role in promoting human rights and the rule of law. The proposed changes to the draft NGO law, if adopted, may jeopardize the independence of an overwhelming majority of Moldovan civil society organizations.

The insertion of the additional three articles into the draft law without prior consultation and contrary to the prior agreements within the Working Group that had worked on the draft NGO law, has been criticized by the NGOs that were part of it. Moldovan NGOs have further denounced the government's move to insert these changes as an encroachment on the right to freedom of association, in an open letter they co-signed.⁵

The right to freedom of association, as set forth in the International Covenant on Civil and Political Rights and the European Convention of Human Rights to which Moldova is a party, not only includes the ability of individuals or legal entities to form and join an association but also to seek, receive and use resources from domestic, foreign and international sources. Funding restrictions that impede the ability of associations to pursue their peaceful activities may constitute an undue interference with this right.

Amnesty International calls on the Moldovan authorities, and in particular the Ministry of Justice, to withdraw the three new articles it recently introduced into the draft NGO law, and ensure that any further proposed changes are consistent with Moldova's obligations under international human rights law, including the right of associations to seek, receive and use resources from foreign sources. The authorities should also ensure that civil society organizations as the stakeholders directly concerned, are consulted and given a genuine opportunity to contribute to the final version of this important piece of legislation before it goes to parliament to be voted on.

Background

International human rights law guarantees the right to freedom of association. In particular, Article 11(2) of the European Convention on Human Rights mandates that "[n]o restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others."

In March 2016, the Ministry of Justice of Moldova invited non-governmental organizations to join a Working Group tasked with drafting a new law on NGOs. The initial draft of the proposed law reflected the discussions by the Working Group's members, and was widely acclaimed by Moldovan civil society organizations.⁶ In June 2017, the Ministry of Justice, without any prior consultation with the Working Group and after formally dissolving it, published a new draft text of the NGO law which contained newly inserted Articles 26, 27 and 28.

³ Amnesty International remote interviews with civil society representatives from Moldova in July 2017;

⁴ See section 2.3. "Financial Viability of CSOs" in Annex 1. "Action Plan for Implementing the Strategy in Moldova", *Strategy for Developing the Civil Society for 2012-2015*, available at http://www.fhi360.md/docs/MD_Strategy_2012-2015_unofficial_translation_ENG.pdf (accessed 31 July 2017).

⁵ The letter, signed by 75 NGOs, is available at <http://crim.org/wp-content/uploads/2017/07/2017-07-11-Declaration-MJ-initiative-contrary-to-law.pdf> (accessed 09 August 2017);

⁶ Amnesty International remote interviews with members from the working group, 20 July 2017.

Article 26, which contains the overly broad definition of “political activities”, in the unofficial translation by European Center for Not-for-Profit Law, reads⁷:

Article 26. Special provisions on the political activities of noncommercial organizations

- (1) The noncommercial organization, members of its managing bodies, can participate, intervene in or carry out political activities, election campaigns, election programs, propaganda, in support or against political parties, political party blocs, alliances of political parties, social-political organizations, election blocs, their leaders or candidates or the independent candidates, actions for promoting them or any other actions launched by them, carried out jointly or separately, both during and outside the elections, in matters subjected to a referendum, may be affiliated with a political organization, in the sense of the Election Code, the Law no.294 of 21 Dec 2007 on Political Parties and other normative acts, in the following conditions [...]
- (2) Activities by noncommercial organizations of research, training and education, protection of human rights, expert examination, support, development, promotion, implementation and monitoring of public policies or other activities that represent the main purpose of their activities other than those mentioned in paragraph (1) do not constitute political activities.

The additions to the draft law made reference to a new, government-managed mechanism which would allow Moldovan taxpayers to donate 2% of their tax to a national NGO or religious organization of their choosing.

⁷ The translation is on file with Amnesty International.