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Joint Stakeholder Submission

Joint Stakeholder Report on LGBTI rights and Sexual and Reproductive Health and Rights in Romania Submitted by:

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Hate crimes, hate speech, LGBTI rights, sexual orientation, gender identity, marriage equality, comprehensive sexuality education, access to information, access to sexual and reproductive health services, access to contraception, abortion.

Executive Summary

1. The Romanian Constitution guarantees equal treatment of all citizens before the law and public authorities, without any privilege or discrimination. This includes explicit reference to sexual orientation as a protected ground, and legal protection against hate crimes. Despite this, Romania is not respecting, protecting and fulfilling a broad range of rights related to sexuality and gender, particularly as pertains to sexual and reproductive health and rights. This failure is marked by an inability to provide adequate access to contraceptives, the lack of accessibility and availability of abortion services despite abortion being legal in the country, and the failure to invest in HIV/AIDS programming to prevent new cases in the country.
2. LGBT people face discrimination. While same-sex relations were decriminalised in 2001, public discourse remains hostile to sexual and gender minorities, their right to freedom of movement is not respected, and LGBT individuals and gatherings are attacked without legal recourse. Further, the Civil Code prohibits same-sex marriage, and does not recognise civil partnership.

Introduction

3. The Romanian Constitution guarantees equal treatment of all citizens before the law and public authorities, without any privilege or discrimination. Article 30 (7) prohibits '*any instigation... to national, racial, class or religious hatred, any incitement to discrimination*'. Anti-discrimination legislation (*Governmental Ordinance 137/2000*) contains explicit reference to sexual orientation as a protected ground, while legal protection against hate crimes is ensured through an aggravating circumstance under Article 77.h. of the Criminal Code covering "gender" and "sexual orientation", among other protected grounds. None of these important legal provisions covers gender identity as explicit protected ground.
4. Romania is not respecting, protecting and fulfilling a broad range of rights related to sexuality and gender, particularly as pertains to sexual and reproductive health and rights. This failure is marked by an inability to provide adequate access to contraceptives, the lack of accessibility and availability of abortion services despite abortion being legal in the country, and the failure to invest in HIV/AIDS programming to prevent new cases in the country.
5. Additionally LGBT people in Romania experience discrimination. Romania only decriminalised same-sex relations in 2001, and since then the public discourse has remained hostile to sexual and gender minorities. Romania has been repeatedly condemned by European Courts in the last few years, for having failed to prevent and prosecute attackers who targeted LGBT individuals and gatherings, for not respecting the right to freedom of movement in the case of LGBT families, and for lacking a clear and

foreseeable legal framework for legal gender recognition. In 2018 State authorities backed a national referendum to exclude same-sex families from constitutional protection despite the fact that the current legislation already does not recognize family rights for members of this minority group.

6. Finally, fundamental rights such as the rule of law, the rights of children, the rights of LGBT people and media rights are threatened by new legal initiatives tabled in Parliament to ban the dissemination of information concerning sexual orientation and gender identity in schools and public spaces, under the false pretext of protecting children and families.

Equality & non-discrimination

7. Romania received multiple recommendations on equality and non-discrimination including the following recommendations that is accepted:
 - 114.39 (Cuba), Implement its strategies on equality, inclusion and diversity, as well as the corresponding operational plans, which will allow it to continue to make progress in the fight against discrimination (Accepted)
 - 114.40 (Germany), Adopt as quickly as possible the Multi-Annual Strategy on Preventing and Combating Discrimination (Germany); (Accepted)
 - 114.41 (Indonesia), Expedite the approval of the “Equality, Inclusion, Diversity” Strategy 2016–2020 and its Operational Plan aiming at combating discrimination and hate crimes (Indonesia); (Accepted)
 - 114.42 (Honduras), Review its national anti-discrimination legislation and polices so as to incorporate all non-discrimination criteria, including gender identity and sexual orientation (Honduras)(Accepted and considers already implemented)
 - 114.62 (Australia), Continue efforts to combat discrimination and protect vulnerable groups, particularly lesbian, gay, bisexual, transgender and intersex people, and take steps to fully implement, monitor and evaluate the national strategy on equality and non-discrimination (Australia) (Accepted)
8. It also received three recommendations on comprehensive sexuality education, on the basis that, “that topics pertaining to sexual education⁴ are taught within the mandatory school curricula (biology, civic education, counselling) or the corresponding optional school subjects provided at national, regional and local levels or included in the educational offer of schools. Such topics are also approached in extracurricular activities.” The noted recommendations were the following:
 - 114.143 Implement and ensure equal access to mandatory gender equality and age-appropriate comprehensive sexuality education within the formal education system (Australia) (Noted)
 - 114.144 Introduce education for sexual and reproductive health in the core curriculum for secondary education, including by setting out a concrete timeline of implementation of such a measure (Slovenia); (Noted)
 - 114.145 Take steps to introduce comprehensive and evidence-based sexuality education in the core curriculum for secondary education, as well as to ensure sufficient teacher training on sexuality education (Finland); (Noted)

9. During the third cycle, Romania received five recommendations focused on equality and non discrimination, which it accepted, indicating that it considered some of the recommendations as having been already implemented. Through the recommendations it made commitments to introduce or adopt various strategies such as the Equality, Inclusion and Diversity Strategy and the Multi-annual strategy on Preventing and combatting Discrimination.
10. Unfortunately since the last review, the Romanian State has not yet adopted any national human rights strategy, and there hasn't been an anti-discrimination strategy or a related plan of measures in place since 2014. In such an unfavorable context, no public authority in Romania has proposed a set of concrete and measurable plans of measures aimed at equality and combating discrimination based on the criteria of sexual orientation, gender identity and gender expression.
11. Whilst Romania during the last review considered that it had already, "review[ed] its national anti-discrimination legislation and polices so as to incorporate all non-discrimination criteria, including gender identity and sexual orientation" there has been regression on this issue since the last review. In practice the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family, including LGBTI persons, is a far off proposition as evidenced by a series of prohibitions and continued unequal treatment. There still isn't marriage equality in Romania, and indeed, there are concerted efforts to remove the discussion of gender and sexuality from the public sphere under the guise of protecting children and the family, implying that sexual and gender diversity is somehow inherently harmful to society.
12. Concerning family matters, the Civil Code contains a prohibition of same-sex marriage, while civil partnership is not recognised.¹ In June 2018, the European Court of Justice ruled that the term "spouse", for the purpose of granting a right of residence to non-EU citizens, includes same-sex spouses- regardless of whether Romania or any other the EU country recognises same-sex marriages or not. This decision is not respected nor applied by Romanian authorities, violating the right to family life and the right to free movement for LGBTI citizens, as well as their social and economic rights.² Lack of access to financial support from the national budget for organisations providing services, information or safe spaces for LGBTI people, etc. also indicates structural inequalities in terms of economic, social and cultural rights that are unaddressed by the Romanian authorities at the national, regional or local level. Despite all these inequalities affecting LGBT people and other minority groups vulnerable to discrimination such as Roma, Romania does not allow the Committee on Economic, Social and Cultural Rights to carry out the functions provided for in the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

¹ Art. 277 / Lege 289/2009 privind Codul Civil [Law 289/2009 on the Civil Code] (17.07.2009) reads as follows: "(1) marriage between same sex persons is prohibited; (2) Marriages between same-sex persons closed or contracted abroad, either rby Romanian or foreign citizens are not recognized in Romania: (3) Civil partnerships between different Or same-sex persons closed abroad either by Romanian or foreign citizens are not recognized in Romania; (4) Legal provisions on freedom of movement in Romania of EU and EEA member states citizens remain applicable."

² 7 Judgement in Case C-673/16, Relu Adrian Coman and Others v Inspectoratul General pentru Imigrări and Others, 5.6.2018, Court of Justice of the European Union (CJEU).

13. In 2020 Parliament voted in favour of *Law 87/ 17.02.2020: Proposal to modify and complete the Law Regarding National Education nr.1/ 2011* prohibiting gender-related education and the so-called "gender identity theory" in the educational space at all levels. The law adopted by the Romanian Parliament introduced a problematic paragraph in article 7 of the National Education Law, prohibiting education regarding the so-called "gender identity theory" and refused to accept the current scientific consensus which distinguishes between gender and biological sex. This legislation was later rejected as unconstitutional by the Romanian Constitutional Court in Decision 907 of 2020. The Constitutional Court that explicitly stated that censorship around themes such as gender, gender equality and gender identity in schools, universities, technical colleges and within professional development courses and apprentices infringes the right to freedom of expression, freedom of thought, and the right to information, as well as the principle of the non-discrimination.
14. Despite this decision by the Constitutional Court, an amendment to law 272/2004 regarding the protection and promotion of children's rights, was introduced in parliament in 2021 and adopted by the Romanian Senate in April 2022. The amendment proposes to restrict access of minors to information and education on topics concerning sexual orientation and gender identity in the educational space and the entire public space, including in mass media. This proposal bans dissemination, by any means, of information concerning sexual orientation and gender identity among minors and also "freezes" the gender identity of the child until the age of 18. The amendment bill is currently on the table of the decisional Chamber of the Parliament, the Chamber of Deputies.
15. The repeated modification between 2019 and 2021 of the child's rights law made to limit the access of children and adolescents to educational information³ that is essential for their health and identity, by different political parties in Parliament, and without consulting those directly affected by these legislative changes. As a direct result of these legal changes that became operational in 2022, the right of children and adolescents to sexual education was removed from the very text of the law that protects and promotes their rights.
16. It is difficult to advocate for the human rights of children in Romania - and to challenge these changes in international forums, as Romania does not allow individual children and adolescents or groups of children and adolescents to use voluntary institutional mechanisms via the communication procedure to submit complaints, appeals and petitions addressed to the United Nations in order to defend their rights and ask for remedies or changes in legislation and public policies affecting their rights.

Hate crimes against LGBT people

17. Romania received 7 recommendations on hate crimes and hate speech and accepted all of them, including some that it considered to have been implemented already:

³ art.46 i) from Law 272/2004 that replaced access to sexuality education with education for health, while the educational discipline Education for Health is accessed by 6% of pupils in the public educational field.

- 114.52 Take urgent measures to investigate and sanction acts of hatred such as discrimination against migrants, minorities and lesbian, gay, bisexual, transgender and intersex persons, in particular those acts carried out by public officials (Argentina) (Accepted and considers already implemented)
 - 114.73 Take measures to effectively combat hate speech and hate crimes, notably by ensuring that all their forms are specifically addressed and punished by law, as recommended by the treaty bodies (Belgium) (Accepted)
 - 114.77 (Germany): Systematically collect and publish disaggregated statistical data concerning hate crimes, which should include information on the motives of the perpetrators. (Accepted)(Accepted)
 - 114.64 (Canada), Develop and implement programmes to counter discrimination against lesbian, gay, bisexual, transgender and intersex persons, including public awareness campaigns and specialized training for law enforcement officials (Canada)(Accepted)
 - 114.68 (Austria), Ensure that acts of discrimination and violence against lesbian, gay, bisexual and transgender persons and persons belonging to other vulnerable groups are properly investigated and perpetrators held accountable (Austria); (Accepted)
18. In the addendum to the working group report, Romania indicated that "from January 2018, the Prosecutor General started to collect disaggregated data on criminal offences on the discrimination criteria provided by the Criminal Code. Since 2017, the Romanian Police have taken measures to collect disaggregated data and to initiate a methodology for investigating hate crimes (recommendations 76 and 77)." However, feedback on the ground indicates that there is still a long way to go not only in disaggregating data, but in ensuring that the criminal justice system is conducive for LGBT people who are victims of crimes to be able to safely report offences, and to have their complaints investigated without discrimination.
19. The Romanian state has failed to develop a common methodology for investigating hate crimes at the level of the Romanian Police and the General Prosecutor's Office. The police do not carry out efficient investigations in the field of hate crimes, and they do not send the prosecutor sufficient evidence for the indictment of hate crimes, considering the very low rates of cases solved and of cases indicted.
20. In 2020 only 4% of LGBTI victims of crimes in Romania went to the police units to report physical or sexual attacks, a figure lower than the average across the EU which was 14% across the EU-28. Hate crimes remain severely underreported, while the number of criminal complaints affecting LGBTI individuals and groups that have not been resolved is constantly growing.
21. According to the answer of the General Inspectorate of the Romanian Police to the ACCEPT Association in February 2021 regarding public information about hate crimes in Romania in 2020 under Art. 297.(2) of the Criminal Code (Abuse of office motivated by discrimination), out of 50 criminal notifications received on various grounds, only in three cases were the preliminary criminal investigations started and their files sent to the Prosecutor's Office. Out of 96 criminal notifications for the crime of incitement to hatred or discrimination, only in 15 cases were preliminary criminal investigations started and the files sent to the Prosecutor's Office. Out of 13 criminal notifications based on Government Ordinance No. 31/2002 on the prohibition of fascist organizations and racist or xenophobic symbols, only one case has been sent to the Prosecutor's Office. Additionally, at the level of the Prosecutor's Offices in 2020, only five hate crimes were

- solved by indictment, out of a number of 150.
22. These figures are particularly astounding considering that Romania indicated in the addendum to the working group report on its third cycle review that, "Regarding recommendation 68, according to the Criminal Procedure Code, victims of hate crimes and of a criminal offense due to prejudices or discrimination are considered vulnerable persons and benefit from specific protection measures provided by the law. Hate crimes and hate speech cases are investigated by the Romanian Police by applying fines or initiating criminal cases. Cases exceeding their competence are referred to NCCD"
 23. Authorities, with the support of ACCEPT, have organised several trainings in the field of hate crimes for law enforcement, judges and prosecutors, including information about homophobia and transphobia. Despite this, there is no systematic planning on how professionals are going to be trained on this topic, the timeline and the budgetary allocations for this program on a national scale.
 24. Likewise, there is a lack of information campaigns on the rights of victims and the procedure for notifying criminal prosecution, and Romanian authorities have not exhibited any serious intention to structure nor launch campaigns such as these in cooperation with the organisations offering support and counselling to victims. The perception of victims or the bias indicators that can be traced in the case of an investigation are ignored in the process of data collection, and no mechanism to verify, compare or assess the accuracy and quality of the data is operational.
 25. Despite sexual orientation being a protected ground of discrimination in Romania, the committee established by the Prime Minister in February 2022 to monitor the implementation of the National Strategy on the prevention and combating of antisemitism, xenophobia, radicalization and hate speech, and its plan of action for the period 2021-2023, is not addressing hate crimes and hate speech targeting LGBTI persons. Further, the plan does not envision any involvement or consultation with any LGBTI organisations that protect the rights of the victims.

Access to sexual and reproductive health information and services

26. Romania received one recommendation on sexual and reproductive health and rights which it accepted:
 - 114.135 Accelerate the adoption and budgeting of the national HIV/AIDS strategy 2018–2020 and the national strategy on sexual and reproductive health and rights (Germany)
27. Romania places barriers to attaining the right to information and education on sexual and reproductive health and rights, through the lack of access to sexual education in schools for young people and adolescents, as well as a lack of state-funded HIV/AIDS prevention campaigns in the public space. The elimination of sexual education from the law of the rights of the child in 2019, as well as the poor access to health education in schools in Romania means that adolescents and young LGBTI people do not have essential information about their identity and health determinants.
28. Romania still hasn't complied with the recommendations made to it in 2014 by the Committee on Economic, Social and Cultural Rights, which requested the Romanian state to adopt a National Strategy on Sexual and Reproductive Health, including the implementation of a comprehensive and mandatory program on sexual health and

- reproductive education in schools.
29. Romania has a high adolescent birth rate, when compared to the rest of Europe, a situation exacerbated by a collapse in access to family planning centres and subsidised contraceptives due to the lack of a national program explicitly intended for this purpose. The current program of the Ministry of Health for Mothers and Children does not comprehensively cover these needs operationally and budgetarily.
 30. The number of family planning centres has been reduced by more than 50% since the withdrawal of funding for them. Prior to EU accession in 2007, funding for these centres was overwhelmingly sourced from external financial funds, and the Romanian Government failed to replace these sources of funding with domestic funding so that it could continue those activities that focused on sexual and reproductive health. Family planning centres now exist in only a very few state hospitals, and the services there are limited to consultations and medical advice – which make them irrelevant to beneficiaries in the absence of any offer of contraception and services.
 31. Abortion is legal in Romania on demand until the 14th week, and available on medical grounds, and in the interests of the mother thereafter. However, abortion on request can be very expensive and the costs of accessing one are not subsidized, despite the law allowing for liberal access to abortion services. Meanwhile over 30% of public hospitals - the most accessible source of health services, are refusing to provide legal abortions. Given the financial constraints that many women face, the lack of information about the medical procedure for termination of pregnancy, the refusal of state medical units to fulfill their legal obligations to perform this medical intervention in accordance with the law, and the lack of access to emergency contraception, women in Romania continue to resort to illegal and unsafe abortions putting their health and life at risk. Thus abortion services are neither available nor accessible.
 32. The situation has worsened since the beginning of the COVID pandemic, as the government introduced restrictions in accessing various sexual and reproductive services in hospitals. Additionally abortion wasn't listed under the government's "essential emergency list". Adding to this is the growing presence of an anti-abortion movement aiming to deter women from accessing sexual and reproductive healthcare directly or indirectly through the anti-abortion counselling in the so-called "pregnancy crisis centers", and we see an increase in hostility to the women's exercise of the right to bodily autonomy and de facto restrictions on abortion.
 33. For more than a decade, the Romanian state has not addressed any of these obstacles to sexual and reproductive health, disregarding the imperative need to adopt a National Strategy on Sexual and Reproductive Health, and an operational budgeted plan based on this strategy. Consequently, the Concluding Observations made in December 2014 by the U.N. Committee on Economic, Social and Cultural Rights are deliberately ignored, as are the written concerns expressed by the U.N Working Group on Discrimination against Women and Girls during its visit to Romania in 2020.
 34. At the same time, the WHO standards of depathologization of gender identity (ICD 11) have not yet been adopted at national level, implemented nor communicated as such by the Ministry of Health in relation to the medical providers offering services to transgender people. In the absence of any public policies or awareness-raising campaigns for the LGBT population, transgender people are disproportionately affected. They are exposed to health risks due to the lack of specialised services in supporting medical transition,

generalised lack of expertise in this specific health area, the high costs of tests, treatments and interventions, and lack of necessary commodities in pharmacies such as hormones.

35. The observations made by U.N Working Group on Discrimination against Women and Girls during its visit to Romania in 2020 remain entirely accurate: "Transgender persons face problems with legal recognition of their assumed identity, in many cases being obliged to undergo full medical transition, including sterilization: this requirement is incompatible with human rights standards."

HIV/AIDS: prevention and programming

36. Romania received four recommendations on HIV/AIDS during the third cycle all of which it accepted, including:
- 114.70 Launch an awareness-raising programme for the public against negative prejudice and discrimination against persons based on their sexual orientation or gender identity and against persons with HIV/AIDS (Czechia)
 - 114.133 Introduce a national HIV prevention strategy and work with civil society for its implementation (Australia)
 - 114.135 Accelerate the adoption and budgeting of the national HIV/AIDS strategy 2018–2020 and the national strategy on sexual and reproductive health and rights (Germany)
37. Despite stating in the addendum to the Working Group Report on its third cycle review that Romania is regressing in the field of preventing and combating HIV/AIDS, with a disproportionately severe impact on vulnerable groups, including LGBTI people. In the absence of governmental political will, there has been no National AIDS Strategy since 2007. Romania only has a National HIV/AIDS Program under the coordination of the Ministry of Health, focused mainly on treatment, as part of the National Public Health Programs.
38. Romania has no budgeted annual plan of programming attached to this strategy focusing on HIV testing and prevention at the national level - although such measures are mandatory according to national legislation, namely law number 584/2002 regarding measures to prevent the spread of AIDS in Romania, and to protect people infected with HIV or suffering from AIDS. These measures are also mandatory according to the international agreements in this field signed by Romania. These measures were proposed to the Ministry of Health by a specialised and temporary body on HIV and Tuberculosis (CCM Romania) since the year 2017, but they did not receive approval and especially funding from the Romanian Government.
39. The guarantor of compliance with the international obligations undertaken by Romania at the United Nations level in the field of HIV/AIDS was removed from the law by the Government of Romania in August 2021 without any explanations nor consultations with the most vulnerable groups and key populations. The abolition of the National AIDS Commission in the absence of any consultations with the organisations representing the rights of people living with HIV and other key populations blocks interministerial and intersectoral cooperation required by law for the financing of prevention and treatment, including the adoption and practical implementation of the AIDS National Strategy. A legislative human rights vacuum is thus created, especially in terms of monitoring and tracking the progressive fulfilment of the most high standard of health, according to Art.

12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

40. In the absence of the interministerial and intersectoral coordination mechanism with the direct involvement of civil society, the Government cannot fulfil international obligations to end the AIDS epidemic by 2030, assumed by the Romanian state at the level of the United Nations/UNAIDS in 2021.
41. The abolition of the National AIDS Commission, the institution with the legal mandate to initiate and propose the adoption of the national HIV strategy, goes against international recommendations addressed to Romania in the third UPR cycle by member states such as Australia and Germany. Romania has also ignored similar recommendations regarding the need to adopt a strategy and an action plan in the field of HIV/AIDS, made by treaty monitoring bodies of the United Nations human rights system such as the Committee on the Rights of the Child, and the need to take anti-discrimination measures and ensure access to health services for women living with HIV as recommended by the Committee on the Elimination of Discrimination against Women and the Committee on the Economic, Social and Cultural Rights.

Recommendations

1. Establish an inter-sectoral and inter-ministerial mechanism of coordination on hate crimes in general, and on data collection regarding hate crimes that publishes reports periodically on the status of investigations of hate crime and hate speech cases, and is cooperating with the most affected communities.
2. At a national level, develop an operational plan of systematic training for a significant number of law enforcement agents focused on hate crimes and hate speech, including sexual orientation and gender identity as protected criteria, taking into consideration the needs of the victims.
3. Provide funds for support services for LGBTI victims of hate crimes provided by NGOs, and for educational campaigns reducing the level of intolerance in the general public on the grounds of sexual orientation and gender identity.
4. Raise the level of awareness among the general public on equality, non-discrimination and LGBTI issues through public campaigns funded by Romanian authorities in partnership with LGBTI organizations.
5. Adopt and implement an operational plan to combat homophobia and transphobia in all areas of life in cooperation with LGBTI organizations.
6. Impose obligations upon public authorities to condition the allocation of public funds based on meeting the protected anti-discrimination grounds, including sexual orientation, gender, and gender identity.
7. Ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure
8. Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
9. Take active measures to prevent discrimination against LGBTI families by implementing the decisions and following jurisprudence established by the EU Court of Justice and European Court of Human Rights, and introduce civil partnership in the Romanian legislation.

10. Reinstate the National HIV/AIDS Commission as a functional inter-sectoral and inter-ministerial mechanism of coordination, adopt and finance the National HIV/AIDS Strategy and its operational plan with a focus on prevention among vulnerable groups and key populations at increased risk of HIV and provide uninterrupted treatment for people infected with HIV.
11. Establish comprehensive, rights- and evidence-based and age-appropriate sexuality education in the national school curricula and equip teachers with the necessary skills to teach this educational discipline based on the collaboration between Ministry of Education, Ministry of Health and Ministry of Youth and Family,
12. Adopt and budget for the National Strategy on Sexual and Reproductive Health and its operational plan, and increase access to free contraceptives for adolescents and vulnerable women.
13. Ensure that access to sexual and reproductive health services are offered by every specialized medical clinic and ensure that these institutions do not use conscientious objection as a reason to refuse access to legal abortion.
14. Adopt medical protocols and implement training for professionals on providing healthcare services for transgender persons.
15. Adopt and implement the WHO standards of depathologization of gender identity (ICD 11).
16. Ensure that essential trans-specific healthcare services (access to endocrinologist supervising hormonal transition, hormone panels and blood tests) and essential hormones that are part of the WHO essential medicine list are available free of charge for transgender persons as part of National Health Insurance schemes.