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**NGO information for the Committee on the Elimination of Discrimination against Women
(CEDAW)**

**For consideration of the 4th and 5th Periodic Review of the Republic of Moldova under the
Convention on the Elimination of All Forms of Discrimination against Women**

Submitted by the Mental Disability Advocacy Center (MDAC)

13 September 2013

1. This submission is to assist the Committee on the Elimination of Discrimination against Women (hereafter, CEDAW Committee) in its consideration of the Republic of Moldova's Fourth and Fifth Periodic Reports, specifically with regards to women with disabilities in psychiatric and social care institutions.
2. The Republic of Moldova ratified the Convention on the Elimination of All Forms of Discrimination against Women (hereafter, CEDAW) in July 1994 and the Convention on the Rights of Persons with Disabilities (hereafter, CRPD) in September 2010. Many women with disabilities are subject to discrimination on the basis of gender and disability; we urge the CEDAW Committee to review Moldova's compliance with the CEDAW in a manner consistent with CRPD standards and to mainstream the rights of women with disabilities into its concluding observations.
3. The Mental Disability Advocacy Center (hereafter, MDAC), the author of this submission, is an international human rights organisation which advances the human rights of children and adults with intellectual disabilities and psycho-social (mental health) disabilities. MDAC has special consultative status with ECOSOC and participatory status with the Council of Europe. MDAC has

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The Mental Disability Advocacy Center is an international human rights organisation which advances the rights of children and adults with intellectual disabilities and psycho-social disabilities. Our 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.



been monitoring the situation of people with disabilities in Moldova since 2010, including through fact-finding visits, advocacy, as well as training for central government, health professionals and NGO activists. MDAC has carried out this work in cooperation with local civil society and UN agencies.

4. On the basis of the List of Issues made public by the CEDAW Committee on 19 March 2013, MDAC's submission focuses on the following issues: torture and ill-treatment (including inhuman material conditions of detention, restraints and seclusion, forced abortions, and sexual violence); unlawful detention and deprivation of legal capacity.

Principle of non-discrimination and the right to be free from torture, cruel, inhuman or degrading treatment of punishment (Articles 1, 2, 12 of CEDAW)

5. In December 2010 and March 2013 MDAC carried out monitoring visits to the Chisinau Psychiatric Hospital and in March 2012 to the Balti Psychiatric Hospital. During March and June 2012, the Institutional Ombudsperson of Psychiatric Hospitals visited all psychiatric hospitals in the country and met with 205 inpatients.¹ During these visits she documented several violations to the rights of women with disabilities, including inhuman and degrading hygienic conditions, seclusion and restraints, including forced medication.

Material conditions

6. During a visit to the Chisinau Psychiatric Hospital in December 2010 MDAC monitored psychiatric wards for women and found overcrowded rooms. Toilets and showers lacked curtains or walls to separate one woman from others. There was a complete lack of patients' personal objects. In March 2012 MDAC visited the Balti Psychiatric Hospital and interviewed 15 residents and five staff on the women's ward. All interviewees said that sanitary pads and tampons are not provided to patients. Consequently, women who cannot afford to buy these items or have their family provide them are forced to bleed into their clothes and beds during their periods. MDAC encourages the CEDAW Committee to find that a State withholding sanitary items in a place where women have no choice but to be detained there, constitutes discriminatory treatment contrary to the Convention.
7. Article 15 of the CRPD calls on states to ensure the right of people with disabilities to be free from torture, cruel, inhuman, and degrading treatment or punishment – an absolute right in international human rights law. In his 2008 thematic report on disability and torture, the UN Special Rapporteur on Torture affirmed that material conditions in psychiatric and social care institutions may constitute torture, cruel, inhuman, or degrading treatment or punishment.² MDAC submits that this is the case in the Chisinau Psychiatric Hospital with regard to how women inpatients are treated.

Restraints and seclusion

¹ Report on the Observance of Patients' Rights in the Psychiatric Hospitals in the Republic of Moldova. Institutional Ombudswoman of Psychiatric Hospitals. April-September 2012.

² Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak from 28 July 2008, A/63/175.

8. During its 2010 visit to Chisinau hospital and its 2012 visit to Balti hospital, MDAC found that female patients deemed by staff to be “challenging” were routinely placed in seclusion rooms. MDAC visited these rooms, which it estimated to be 40m². Each room was shared by between 15 to 20 women in both institutions at the time of MDAC’s visits. Beds touched each other given the lack of space. Women were routinely injected with psychiatric medication, sedating them heavily. MDAC monitors observed overmedication, women tied to their beds with bed sheets, and staff manually restraining women. All of these were common practices in these institutions. These findings were affirmed in a 2012 report by the Institutional Ombudswoman of Psychiatric Hospitals.³
9. Practices of restraints and seclusion against women with disabilities can constitute torture, cruel, inhuman or degrading treatment or punishment. In his 2013 report on torture in healthcare, Juan E. Méndez, the UN Special Rapporteur on Torture, called for an absolute ban on any duration and form of restraint and seclusion, including forced medication against people with disabilities.⁴ MDAC encourages the CEDAW Committee to ask the Moldovan government for evidence that these practices have been stopped, since MDAC observed them in 2010 and 2012.

Forced abortions

10. The Institutional Ombudsman of Psychiatric Hospitals recorded in her 2012 report that forced abortions in psychiatric and social care institutions is common as a measure to prevent births which are unwanted by institutional staff. She found that abortions are relied on by the staff instead of providing women with accessible information about reproductive and sexual health, family planning and methods of contraception. Abortions are often used in lieu of contraception, as no alternatives are offered.⁵ This places women detained by the State in psychiatric institutions at the mercy of the State in their sexual and reproductive rights because they are a person labeled with a disability (a mental health diagnosis constitutes a disability, per Article 1 of the CRPD) and because they are female. In this way these women are victims of multiple forms of discrimination, contrary to both CEDAW and the CRPD. Further, they are victims of Article 25 of the CRPD which sets out the right to health, including the right for each person with disabilities to access sexual and reproductive health on an equal basis with others.

Sexual violence

11. Local human rights defenders and the Institutional Ombudswoman have reported that more than a dozen rapes have been committed by staff against women with disabilities in the Balti institution. Two cases are currently at court.⁶ The cases have remained unreported by the victims

³ Report on the Observance of Patients’ Rights in the Psychiatric Hospitals in the Republic of Moldova. Institutional Ombudswoman of Psychiatric Hospitals. April-September 2012.pp 18-20.

⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez from 1 February 2013, A/HRC/22/53.

⁵ Institutional Ombudsman of Psychiatric Hospitals, 2012, Available at http://dis.md/wp-content/uploads/2012/02/RAPORTUL-FINAL_6luni-apr-sept-20121.pdf.

⁶ Cases 1-701/2013 and 1-563/2013, Florea Stanislav Ion accused of breaching the Art.171 (Rape) of the Criminal Code.

and concealed by the staff for more than ten years. Women with disabilities who are segregated in large residential institutions and are under total control of the staff are placed in an impossible position to report such cases, causing a serious blockage to them accessing justice (as set out in Article 13 of the CRPD). During MDAC's 2010 visit to the Chisinau Psychiatric Hospital, monitors interviewed residents who were forcibly injected with psychiatric medication and restrained right after complaining about mistreatment.

12. Under international human rights law, Moldova has the obligation to prevent sexual abuses against women with disabilities, as well as to conduct thorough investigations concerning reports of rape and other forms of sexual abuse. In its General Recommendation 19 (1992), the CEDAW Committee reiterated that CEDAW protects women against gender-based sexual violence on the basis of its anti-discrimination clauses.

Unlawful detention and deprivation of legal capacity (Articles 1, 2, 15 of CEDAW)

13. There are 2,200 people with disabilities in large residential psychiatric and social care institutions in Moldova. Many become institutionalised because they are deprived of their legal capacity. Under the Civil Code of 2002, adults of maturity age have, as a rule, full legal capacity. This is defined in law as having, "the ability to acquire and enjoy civil rights, create and fulfill civil obligations by their own acts". However, legal capacity can be deprived on the grounds of a "mental disorder" within a procedure prescribed by law.
14. The CRPD binds States to ensure that people with disabilities enjoy the right to legal capacity on an equal basis with others. In its 2008 judgment of *Shtukaturov v Russia*, the European Court of Human Rights stated that a mental illness cannot be the sole reason to justify deprivation of legal capacity and that such deprivation is not a ground to deprive a person of their liberty.⁷
15. The CRPD also affirms that no one shall be deprived of their liberty on the basis of disability (Article 14) and the people with disabilities have the right to live in the community on an equal basis with others (Article 19). In 2009 the Commissioner for Human Rights of the Council of Europe was one of the first human rights officials to point out that the CRPD, "questions the very existence of these large institutions".⁸ Community living, with appropriate support, is a human right clarified in the CRPD. In harmony with this, the UN Special Rapporteur on Torture has called on States to abolish any legislation allowing for the institutionalisation of people on the basis of their disability.⁹
16. Depriving women of their legal capacity is a breach of Article 15 of CEDAW and remains one of the biggest challenges to advancing the rights of women with disabilities. Declaring a woman

⁷ *Shtukaturov v Russia*, judgment of the European Court of Human Rights, Application No. 44009/05, 27 March 2008.

⁸ Thomas Hammarberg, "Inhuman Treatment of Persons with Disabilities in Institutions", October 2010. See also his extended Issue Paper, "The Rights of People With Disabilities to Live Independently and be Included in the Community", March 2012, CommDH/IssuePaper(2012)3.

⁹ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Juan E. Méndez, 1 February 2013, A/HRC/22/53.

incapacitated renders her invisible. Without legal capacity to challenge rights violations, a woman with an intellectual disability or psycho-social disability is more likely than those without disabilities to be subjected to exploitation, violence and abuse. And once these violations have been carried out, a woman deprived of legal capacity is legally blocked from accessing justice, and therefore totally restricted from seeking a remedy. Without remedies being made available, abuses continue with impunity, and the vicious circle continues. MDAC asks the CEDAW Committee to investigate this as a matter of urgency.

Recommendations

17. MDAC respectfully asks the CEDAW Committee to make the following recommendations to the Moldovan government in its concluding observations:
 - a) Repeal legal provisions that allow forced and non-consensual medical interventions against women with disabilities, including the use of restraints and seclusion, and recognise these practices as torture and ill-treatment.
 - b) Provide sanitary and health items for women in psychiatric and social care institutions.
 - c) Ensure access to reproductive and sexual health services to women in healthcare and social care settings.
 - d) Prosecute healthcare professionals who carry out abortions of women with disabilities without their free and informed consent.
 - e) Conduct prompt, impartial and effective investigations, without unjustified delays, into allegations of all forms of sexual violence in particular by professionals working in institutions and forced abortions in psychiatric and social care institutions. This should be done by using a protective approach to ensure that proceedings do not aggravate the trauma of victims and that adequate safety measures to avoid intimidation and retaliation are implemented to protect witnesses who may also be living in these institutions.
 - f) Abolish laws which deprive or restrict people with disabilities, including women, from their legal capacity. Ensure that legislation provides supports for people with psycho-social and intellectual disabilities to exercise their legal capacity (as set out in Article 12(3) of the CRPD).
 - g) Prohibit the institutionalisation of women with disabilities in psychiatric and social care institutions, and ensure their right to live in the community with choices on an equal basis with others and supports to enable them to do so (as set out in Article 19 of the CRPD).
 - h) Ensure that women with disabilities have the possibility and means, including supports, to challenge their legal capacity status, especially if they are detained against their will in psychiatric or social care institutions.
 - i) Provide support to girls and women with disabilities and their relatives who make complaints with regard to their human rights with adequate and effective multi-disciplinary programmes. Such programmes must ensure that the complainants are informed and understand their rights at every stage of the procedure via age-appropriate and easy-to-read leaflets, accessible helplines, and adapted advice from legal representation which should be made available as early as possible in the proceedings. Victims should have the right to be heard, to supply evidence and to choose the means of having their views, needs and concerns presented – directly or through an intermediary – and considered.



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