



October 7, 11

Human Rights Committee
Office of the United Nations High Commissioner for Human Rights
Attention: Kate Fox
kfox@ohchr.org

Re: Submission to Country Report Task Forces for the adoption of lists of issues for Republic of Moldova, Scheduled for Review by Human Rights Committee during 103rd Session

Dear Committee Members,

This letter is submitted to you by the Center for Reproductive Rights (the Center) and the Institutul pentru Drepturile Omului din Moldova (the Moldovan Institute for Human Rights or IDOM). The Center is a non-governmental organization based in New York that uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect, and fulfill. IDOM is a non-governmental organization based in Chişinău, Moldova that aims to contribute to the education, promotion, and protection of human rights according to national and international law.

Our organizations wish to further the work of the Human Rights Committee's (the Committee) Country Report Task Force for the adoption of lists of issues for Republic of Moldova (Task Force) by providing independent information concerning the rights protected by the International Covenant on Civil and Political Rights (the ICCPR).¹

This letter is submitted in accordance with the new optional reporting procedure (LOIPR) under the ICCPR which Moldova has agreed to submit under. We hope that the Task Force's list of selected issues will cover several areas of concern related to the status of the reproductive health and rights of women and adolescents in the Republic of Moldova as discussed below.

I. GENERAL INFORMATION ON HUMAN RIGHTS ISSUES

The majority of the issues discussed in the present letter were raised in the letter sent by our organizations on 10 September 2009 to supplement the periodic report submitted by the Republic of Moldova for the Committee's Review during the 97th Session. The lack of measures and developments undertaken by the Republic of Moldova since 2009 on the reproductive rights issues discussed reinforces some of the concerns expressed in that submission. Notably, the Committee's recommendations since the consideration of the previous report called on the state party to ensure the provision of affordable contraception and introduce reproductive and sexual health education in school curricula and for the

broader public.² Despite the Committee's recommendations, there continues to be a lack of mandatory sexual education in schools and numerous barriers to accessing contraceptive services (see relevant sections below). The Committee also called on Moldova to "[c]onsistently apply the law so that women who undergo abortions are not prosecuted for murder or infanticide" and "[p]rovide appropriate health care in prison facilities to women who have undergone abortions."³ The Republic of Moldova, however, has failed to implement any type of political or administrative reform to address shortcomings in the judicial system that threaten women's human rights, particularly with regard to the denial of due process in criminal trials, conditions of detention, and the sex discrimination that is present within the judiciary (see relevant section below).

II. LIST OF ISSUES OF CONCERN

In our view, four issues reflect shortcomings in the Republic of Moldova's compliance with the provisions of the ICCPR related to reproductive rights: 1) the treatment of a woman who is serving a 20 year prison sentence for undergoing a late-term abortion; 2) the absence of mandatory sexuality education in schools; 3) lack of access to affordable modern contraception; and 4) the parental consent and notification requirement for minors to access medical services.

(1) The Case of Z (Articles 2, 3, 6, 7, 9, 10, 14, 15, 17 and 26 of the ICCPR)⁴

In May 2006, Z, a poor young woman, induced an abortion at a late stage of her pregnancy at her home. When she was taken to the hospital for hemorrhagic shock, doctors reported her to the police. She was then charged with intentional murder, even though medical records show she had an abortion and there is no criminal penalty for women who illegally terminate their pregnancy.⁵ In December 2006, Z was found guilty of murder and sentenced to 20 years in prison, which she is currently serving.

United Nations Treaty Monitoring Bodies (UNTMBs), namely the Committee on Economic, Social and Cultural Rights' (ESCR Committee),⁶ Committee on the Elimination of Discrimination against Women (CEDAW Committee),⁷ the Committee on the Rights of the Child,⁸ the Committee against Torture,⁹ and this Committee,¹⁰ have criticized legislation that criminalizes or severely restricts abortion as violating human rights, including the right to life.¹¹ This Committee urged Moldova in its 2009 Concluding Observations to apply Moldovan law so that women who undergo abortions are not prosecuted for murder or infanticide, and to release any woman currently serving sentences on such charges.¹² The conviction and punishment of Z for aborting was due, in large part, to serious discriminatory attitudes towards unwed pregnant women and the stigmatization of abortion in Moldova. It also had to do with the lack of information and training of law enforcement authorities and medical personnel with regard to the Moldovan abortion legislation, which is liberal, and women's rights in general and reproductive rights in particular.¹³

Z's case also highlights shortcomings in Moldova's health and detention systems that run afoul of Articles 2, 3, 6, 7, 9, 10, 14, 15, 17 and 26 of the ICCPR. While Z continued having vaginal bleedings and stomach aches for one month during her pre-trial detention, she received no post-abortion medical care. Her poor health condition was exacerbated by the absence of basic sanitary facilities in custody, such as a shower, toilet, water, sanitary pads, bedding, and clothing to withstand the cold in her cell. Moldovan detention conditions thus do not provide for the specific needs of women, such as access to reproductive health care and proper sanitation. As General Comment No. 21 of the Committee explains, at a minimum, a state should be able to provide basic sanitation, health care and clothing to all persons deprived of their liberty.¹⁴ In its previous case law, the Committee concluded that denial of proper access to health care for a specific condition constituted a violation of Article 10.¹⁵ General Comment No. 14 of the ESCR Committee makes clear that the state is prohibited from denying access to health services to

prisoners and that “discriminatory practices relating to women’s...needs” are prohibited.¹⁶ In its 2009 Concluding Observations on Moldova, this Committee already expressed concern about the lack of healthcare in prison for women who have undergone abortion and urged the country to change the situation.¹⁷ Finally, mandating health care providers to report women who have aborted their pregnancy to the police is troublesome and has been condemned by this Committee.¹⁸ It is in conflict with the Hippocratic Oath doctors are required to take, which includes the right to patient confidentiality, and creates a dangerous barrier to access to health care for women.

(2) Absence of Mandatory Sexuality Educations in Schools (Articles 2, 3, 6, and 26 of the ICCPR)

We would also like to raise with the Task Force the absence of mandatory sexuality education in Moldova. Unbiased, comprehensive, and accurate sexuality education has the potential to strengthen women’s health and rights, and can for example contribute to the reduction of unwanted pregnancies and sexually transmitted diseases.¹⁹ Several UNTMBs, including this Committee, have established an international obligation to provide sexuality education in schools, noting that a lack of such education is an obstacle to states’ compliance with their treaty obligations to ensure the right to life, health, non-discrimination, education and information.²⁰

This Committee has urged the removal of barriers to adolescents’ access to information about safe sexual practices, such as condom use.²¹ It has expressed concern over a state party’s elimination of sexuality education from the school curriculum and asked the state party to reintroduce it in public schools.²² In a subsequent concluding observation issued to the same state party, the Committee expressed concern about the contents of the sexuality education program and encouraged the Ministry of Education to ensure that curricula include accurate and objective sexuality education.²³ In the latest Concluding Observations to Moldova, this Committee recommended “introducing reproductive and sexual health education in school curricula and for the broader public.”²⁴ Similarly, the CEDAW Committee has expressly recommended to Moldova that sexual and reproductive health education be made a mandatory and robust component of all students’ schooling,²⁵ including vocational schools.²⁶ Furthermore, in 2011 the ESCR Committee noted with concern that a special course on sexual and reproductive health rights had been withdrawn from the curriculum in public schools in Moldova and called upon the state to “include education in the school curriculum on sexual and reproductive rights.”²⁷ To meet its obligations under the ICCPR, and in particular under Article 6, Moldova should thus realize a national, comprehensive and accurate sexuality education program.

(3) Lack of Access to Affordable Modern Contraception (Articles 2, 3, 6 and 26 of the ICCPR)

A third matter of concern we wish to raise with the Task Force is the lack of access to affordable modern contraception. Inadequate government funding for contraceptives, and logistical problems with contraceptive distribution, as well as dwindling donor support for family planning facilities all contribute to the low use of modern contraceptive methods. This Committee has recognized that women’s lack of access to contraceptives, including their high cost, is discriminatory and has called upon a state party to make “a comprehensive range of contraceptives widely available at an affordable price and [to include] them on the list of subsidized medicines.”²⁸ In 2009, this Committee urged Moldova to “[t]ake steps to eliminate the use of abortion as a method of contraception by, inter alia, ensuring the provision of affordable contraception.”²⁹ The ESCR Committee has previously called upon Moldova to strengthen its efforts to promote awareness of sexual and reproductive health, including safe contraceptive methods.³⁰ In addition, the CEDAW Committee has called upon the government of Moldova to improve the availability, acceptability and use of modern contraceptives.³¹

(4) Parental Consent and Notification (Articles 2, 3, 6, 17, 24 and 26 of ICCPR)

Finally, we would like to raise the issue of parental consent and notification. Minors in Moldova are not allowed to access medical services without their parents' involvement. Under the Law Regarding the Rights and Responsibilities of the Patient, the age of majority is set at 18 and any medical information concerning a patient below that age should be presented to his or her legal representative. Conversely, the Law Regarding Health Protection stipulates that minors under the age of 16 need consent from their legal representative before they may access health care services. This discrepancy in age creates uncertainty as to the rights of minors and undermines their right to life, liberty and non-discrimination.

Further, what is central is that parental consent and notification requirements create barriers to access to health care for minors, and thus raise questions as regards their compatibility with Article 6, 17 and 24 of the ICCPR. Barriers to access for minors can be especially problematic in the area of sexual and reproductive health care, and can have devastating consequences. According to unpublished information from the Moldovan medical community, a 13-year-old girl committed suicide in Moldova in 2008 after being asked by her gynecologist to bring in her parents to obtain parental consent before she could undergo an abortion.³² UNTMBs are aware of the problems parental consent requirements can cause, and both the Committee on the Rights of the Child and the CEDAW Committee have urged states parties to remove such requirements for reproductive health services.³³

III. QUESTIONS TO MOLDOVAN GOVERNMENT

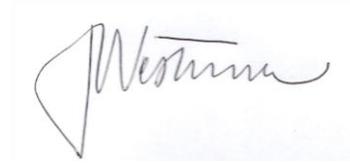
In light of the above, we hope that the Task Force will consider selecting the above-mentioned issues for the state to report on, and also consider asking the following questions to the Moldovan Government:

1. What measures is the state taking to ensure that women detainees receive appropriate health care, including post-abortion care, and have proper sanitary facilities to their availability?
2. What measures is the state taking to ensure that women are not being penalized for illegally terminating their pregnancy?
3. What measures is the state taking to release any women currently serving sentences on charges related to abortion?
4. What measures is the state taking to ensure that a mandatory, comprehensive, and accurate sexual and reproductive education program becomes part of its national school curriculum?
5. What steps is the state taking to ensure that there is access to affordable modern contraception?
6. What measures is the state taking to ensure that minors have access to information and medical services without the mandated involvement of their legal representatives?

We hope that the information provided in this letter will be useful to the Task Force in drafting the list of issues to be addressed to the Moldovan Government for its third periodic review.

Please do not hesitate to contact us should you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read 'Westeson', with a large, stylized initial 'W' on the left.

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A handwritten signature in black ink, appearing to read 'Vanu Jereghi', with a large, stylized initial 'V' on the left.

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¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc A/6316 (1966), 999 U.N.T.S. 171 (entered into force Mar. 23, 1976).

² Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009).

³ *Id.* para. 17(b) & (d).

⁴ Z requests that her real name not be used and made public for fear of retaliation from law enforcement officials. Information about this case was also provided by the Center for Reproductive Rights and IDOM in the letter submitted to the Human Rights Committee on 10 September 2009.

⁵ Article 159 of the Criminal Code establishes the criminal offence of “illegally inducing abortion.” According to this article, a woman who undergoes an illegal abortion is not held criminally liable even if she illegally induced the abortion herself and irrespective of the term of pregnancy. Only third parties who perform the illegal abortion without being professionally qualified and/or perform the abortion outside of the regulatory framework are held criminally liable. In addition, a pregnant woman is never held criminally responsible for spontaneous abortion, irrespective of the term of pregnancy. Criminal Code, art. 159 (2002) (Mold.).

⁶ *See, e.g.*, Committee of Economic, Social and Cultural Rights (ESCR Committee), *Concluding Observations: Chile*, para. 53, U.N. Doc. E/C.12/1/Add.105 (2004); *Kuwait*, para. 43, U.N. Doc. E/C.12/1/Add.98 (2004); *Malta*, para. 41, U.N. Doc. E/C.12/1/Add.101 (2004); *Nepal*, para. 55, U.N. Doc. E/C.12/1/Add.66 (2001).

⁷ *See, e.g.*, Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Antigua and Barbuda*, para. 258, U.N. Doc. A/52/38/Rev.1, Part II (1997); *Bolivia*, para. 82, U.N. Doc. A/50/38 (1995); *Chile*, para. 139, U.N. Doc. A/50/38 (1995); *Chile*, para. 228, U.N. Doc. A/54/38 (1999); *Chile*, para. 19, U.N. Doc. CEDAW/C/CHI/CO/4 (2006); *Cyprus*, para. 55, U.N. Doc. A/51/38 (1996); *Dominican Republic*, para. 337, U.N. Doc. A/53/38 (1998); *Ireland*, para. 185, U.N. Doc. A/54/38 (1999); *Jordan*, para. 180, U.N. Doc. A/55/38 (2000); *Liechtenstein*, para. 169, U.N. Doc. A/54/38 (1999); *Luxembourg*, para. 210, U.N. Doc. A/52/38/Rev.1, Part II (1997); *Mauritius*, para. 196, U.N. Doc. A/50/38 (1995); *Mauritius*, para. 30, U.N. Doc. CEDAW/C/MAR/CO/5 (2006); *Namibia*, para. 111, U.N. Doc. A/52/38/Rev.1, Part II (1997); *Nepal*, paras. 139, 147, U.N. Doc. A/54/38 (1999); *Panama*, para. 201, U.N. Doc. A/55/38/Rev.1 (1998); *Paraguay*, para. 131, U.N. Doc. A/51/38 (1996); *Peru*, para. 339, U.N. Doc. A/53/38/Rev.1 (1998); *Portugal*, para. 345, A/57/38 (2002); *Saint Vincent and the Grenadines*, para. 140, U.N. Doc. A/52/38/Rev.1 (1997); *Suriname*, para. 29, U.N. Doc. CEDAW/C/SUR/CO/3 (2007); *United Kingdom of Great Britain and Northern Ireland*, para. 309, U.N. Doc. A/55/38 (1999); *Venezuela*, para. 236, U.N. Doc. A/52/38/Rev.1 (1997); *Zimbabwe*, para. 159, U.N. Doc. A/53/38 (1998).

⁸ *See, e.g.*, Committee on the Rights of the Child, *Concluding Observations: Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Chile*, para. 55, U.N. Doc. CRC/C/CHL/CO/3 (2007); *Palau*, para. 46, U.N. Doc. CRC/C/15/Add.149 (2001); *Uruguay*, para. 51, U.N. Doc. CRC/C/URY/CO/2 (2007).

⁹ *See* Committee against Torture, *Concluding Observations: Chile*, para. 6 (j), CAT/C/CR/32/5 (2004).

¹⁰ *See* Human Rights Committee, *Concluding Observations: Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000); *Bolivia*, para. 22, U.N. Doc. CCPR/C/79/Add.74 (1997); *Costa Rica*, para. 11, U.N. Doc. CCPR/C/79/Add.107 (1999); *Ecuador*, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); *Guatemala*, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001); *Honduras*, para. 8, U.N. Doc. CCPR/C/HND/CO/1 (2006); *Lesotho*, para. 11, U.N. Doc. CCPR/C/79/Add.106 (1999); *Mauritius*, para. 9, U.N. Doc. CCPR/CO/83/MUS (2005); *Morocco*, para. 29, U.N. Doc. CCPR/CO/82/MAR (2004); *Paraguay*, para. 10, U.N. Doc. CCPR/C/PRY/CO/2 (2006); *Peru*, para. 20, U.N. Doc. CCPR/CO/70/PER (2000); *Poland*, para. 11, U.N. Doc. CCPR/C/79/Add.110 (1999); *Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL (2004); *Sri Lanka*, para. 12, CCPR/CO/79/LKA (2003); *Venezuela*, para. 19, U.N. Doc. CCPR/CO/71/VEN (2001).

¹¹ *See, e.g.*, CEDAW Committee, *Concluding Observations: Belize*, para. 56, U.N. Doc. A/54/38 (1999); *Chile*, para. 228, U.N. Doc. A/54/38 (1999); *Dominican Republic*, para. 337, U.N. Doc. A/53/38 (1998); *Paraguay*, para. 131, U.N. Doc. A/51/38 (1996).

¹² Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17(b) & (c), U.N. Doc. CCPR/C/MDA/CO/2 (2009).

¹³ WORLD HEALTH ORGANIZATION ET AL., „N.TESTEMIȚANU”, EVALUAREA STRATEGICĂ A ASPECTELOR DE POLITICI, CALITATE ȘI ACCES ALE SERVICIILOR DE CONTRACEPȚIE ȘI AVORT ÎN REPUBLICA MOLDOVA [STRATEGIC ASSESSMENT OF POLICIES, QUALITY OF, AND ACCESS TO, CONTRACEPTION AND ABORTION SERVICES IN THE REPUBLIC OF MOLDOVA] para. 4.2, at 35 (2006).

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- ¹⁴ See Human Rights Committee, *General Comment No. 21: Replaces General Comment No. 9 concerning humane treatment of persons deprived of liberty (Art. 10)*, (44th Sess., 1992), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 203, para. 5, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. I) (2008); see also *Standard Minimum Rules for the Treatment of Prisoners (adopted Aug. 30, 1955)* U.N. Doc. A/CONF/611, annex I, E.S.C., res. 663C, 24 U.N. ESCOR Supp. (No. 1) at 11, U.N. Doc. E/3048 (1957), amended E.S.C. res. 2076, 62, U.N. ESCOR Supp. (No. 1) at 35, U.N. Doc. E/5988 (1977).
- ¹⁵ *Morrison v. Jamaica*, Judgements Human Rights Committee, Communication No.663/1995 (64th Sess.), para. 8.8, U.N. Doc. CCPR/C/64/D/663/1995 (1998).
- ¹⁶ ESCR Committee, *General Comment No. 14: The Right to the Highest Attainable Standard to Health*, (22nd Sess., 2000), para.34, U.N. Doc. E/C.12/2000/4 (2000).
- ¹⁷ Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17(d), U.N. Doc. CCPR/C/MDA/CO/2 (2009).
- ¹⁸ See Human Rights Committee, *Concluding Observations: Venezuela*, para. 19, U.N. Doc. CCPR/CO/71/VEN (2001).
- ¹⁹ See Human Rights Committee, *Concluding Observations: Lithuania*, para. 12, U.N. Doc. CCPR/CO/80/LTU (2004); ESCR Committee, *Concluding Observations: Poland*, para. 20, U.N. Doc. E/C.12/1/Add.26 (1998).
- ²⁰ See, e.g., Human Rights Committee, *Concluding Observations: Poland*, para. 9, U.N. Doc. CCPR/CO/82/POL (2004); see also CEDAW Committee, *Concluding Observations: Burundi*, para. 62, U.N. Doc. A/56/38 (2001); *Republic of the Congo*, para. 228, U.N. Doc. A/55/38 (2000); *Jamaica*, para. 224, U.N. Doc. A/56/38 (2001); *Kazakhstan*, para. 106, U.N. Doc. A/56/38 (2001); *Lithuania*, para. 25, CEDAW/C/LTU/CO/4 (2008); *Slovakia*, para. 19, CEDAW/C/SVK/CO/4 (2008); Committee on the Rights of the Child, *Concluding Observations: Bhutan*, para. 45 (a-b), U.N. Doc. CRC/C/15/Add.157 (2001); *Cambodia*, para. 53, U.N. Doc. CRC/C/15/Add.128 (2000); *Comoros*, para. 36, U.N. Doc. CRC/C/15/Add.141 (2000); *Egypt*, para. 44, U.N. Doc. CRC/C/15/Add.145 (2001); ESCR Committee, *Concluding Observations: Bolivia*, para. 43, U.N. Doc. E/C.12/1/Add.60 (2001); *China*, para. 100, U.N. Doc. E/C.12/1/Add.107 (2005); *Poland*, paras. 28, 50, U.N. Doc. E/C.12/1/Add.82 (2002); *Senegal*, para. 47, U.N. Doc. E/C.12/1/Add.62 (2001); *Ukraine*, para. 31, U.N. Doc. E/C.12/1/Add.65 (2001).
- ²¹ See, e.g., Human Rights Committee, *Concluding Observations: Poland*, para. 11, U.N. Doc. CCPR/C/79/Add.110 (1999); see also, ESCR Committee, *Concluding Observations: Zambia*, para. 53, U.N. Doc. E/C.12/1/Add.106 (2005).
- ²² See Human Rights Committee, *Concluding Observations: Poland*, para. 11, U.N. Doc. CCPR/C/79/Add.110 (1999).
- ²³ See Human Rights Committee, *Concluding Observations: Poland*, para. 9, CCPR/CO/82/POL (2004).
- ²⁴ Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17 (a), U.N. Doc. CCPR/C/MDA/CO/2 (2009).
- ²⁵ See, e.g., CEDAW Committee, *Concluding Observations: Lithuania*, para. 25, U. N. Doc. CEDAW/C/LTU/CO/4 (2008); *Republic of Moldova*, para. 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006); *Turkmenistan*, para. 31, U.N. Doc. CEDAW/C/TKM/CO/2 (2006).
- ²⁶ See CEDAW Committee, *Concluding Observations: Republic of Moldova*, para. 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006).
- ²⁷ ESCR Committee, *Concluding Observations: Republic of Moldova*, para. 27, U.N. Doc. E/C.12/MDA/CO/2 (2011).
- ²⁸ See, e.g., Human Rights Committee, *Concluding Observations: Poland*, para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010).
- ²⁹ Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009).
- ³⁰ ESCR Committee, *Concluding Observations: Republic of Moldova*, para. 49, U.N. Doc. E/C.12/1/Add.91 (2003).
- ³¹ CEDAW Committee, *Concluding Observations: Republic of Moldova*, para. 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006).
- ³² Information from Dr. Rodica Comendant, Reproductive Health Training Center, obtained at Reproductive Rights Training Seminar, (Feb. 6, 2010) (on file with the Center for Reproductive Rights and IDOM).
- ³³ See, e.g., Committee on the Rights of the Child, *Concluding Observations: Austria*, para.15, U.N. Doc. CRC/C/SR.507-509 (1999); *Barbados*, para. 25, U.N. Doc. CRC/C/15/Add.103 (1999); *Benin*, para. 25 U.N. Doc. CRC/C/15/Add.106 (1999); CEDAW Committee, *Concluding Observations: Australia*, para. 404, U.N. Doc. A/49/38 (1994).