To: The Romanian Parliament
To the attention of: Mr. Daniel Buda, President of the Special Joint Commission for the Debate on the Merits, in the Emergency Procedure, of the Criminal Code, Criminal Procedure Code, Civil Code, and the Civil Procedure Code
Mr. Victor Ponta, President of the Sub-committee on the Criminal Code and the Criminal Procedure Code

CC: Mr. Mircea Geoană, President of the Romanian Senate
Ms. Roberta Anastase, President of the Romanian Chamber of Representatives
Mr. Constantin Traian Igaş and Mr. Mircea-Nicu Toader, Leaders of the Parliamentary Group of the Liberal Democratic Party
Mr. Ion Toma and Mr. Viorel Hrebenciuc, Leaders of the Parliamentary Group of the Political Alliance between the Social Democratic Party and the Conservative Party
Mr. Puiu Haşotti and Mr. Călin Popescu Tăriceanu, Leaders of the Parliamentary Group of the National Liberal Party
Mr. Béla Markó and Mr. Árpád-Francisc Márton, Leaders of the Parliamentary Group of the Democratic Union of Hungarians in Romania
Mr. Pambuccian Varujan, Leader of the Parliamentary Group of the National Minorities

Re: Proposals to modify the criminal legislation in the field of abortion within the debate on the Draft of the New Criminal Code
Date: 5 May 2009

The undersigned national, regional and international organizations and networks express their concern with regards to the negative impact the adoption of the proposals for the amendments related to abortion under debate in the Romanian Parliament will have on women in Romania, particularly the limitation of therapeutic abortion conducted after the 24th week from conception (Article 199 of the Draft of the New Criminal Code and the proposed definition of the person in the context of the Draft of the New Criminal Code as including the fetus after the 24th week from conception). The adoption of such provisions will lead to Romania being the only Member State of the European Union that prohibits abortion in situations when the life of the pregnant woman is endangered. Such a legislative measure would represent a regress in ensuring fundamental rights such as the right to life, the right to health, the right not to be subjected to inhuman and degrading treatment and the right not to be subjected to discrimination on the ground of sex.

1. Impact on medical standards and practices and on women’s rights

Therapeutic abortion is conducted when the life or the physical or mental health of the pregnant woman is endangered by continuing the pregnancy. The necessity for a therapeutic abortion after the 24th week is a rare medical situation which is determined on a case by case basis by the medical provider and her or his patient. While naturally, during the pregnancy, doctors are concerned about the development of the fetus, they should take into account that the fetus is intrinsically connected with the pregnant woman, as recognized by the European Court of Human Rights in the case of Paton v. UK and cannot and should not be separated from the pregnant woman’s concerns. Consequently, health care providers should give priority to the health and life of the pregnant woman. In addition, the pregnant woman is the providers’ patient and hence has the obligation towards his patient to preserve her life and health.
According to Romania’s current legislation, abortion conducted to save the life or health of the pregnant woman is allowed irrespective of the term of the pregnancy (Article 185 of the Criminal Code). Imposing a 24 week limit after which a therapeutic abortion is prohibited, as well as defining the “person” to include the fetus after the 24th week from conception will have a chilling effect on doctors in providing medical care, even in cases where such an intervention would be necessary to save the life or health of the pregnant woman. According to the proposed amendments, the fetus after the 24th week from conception is a “person” in the context of the criminal law and consequently any criminal offence can be inflicted on the fetus as in the case of any ‘born’ person, from the criminal offence of murder to inflicting bodily harm, to not assisting a person in need or impeding other persons to provide help. Consequently, under the amendment, pregnant women whose conduct results in their miscarriage could lead to their criminal prosecution. In addition, medical personnel or other individuals who negligently cause a woman’s miscarriage or cause bodily harm of the fetus could also lead to their criminal prosecution. Recently, the European Court of Human Rights has recognized the negative “chilling effect” on doctors when confronted with the possibility of being the subject of a criminal investigation or prosecution. In the case of *Tysiac v. Poland*, the Court recommended the adoption of legislation that is formulated in such a way as to alleviate this effect. The prohibition of therapeutic abortion after the 24th week from conception and the inclusion of the fetus after this gestational period as persons protected by the criminal code are unnecessary and potentially harmful in preventing the provision of care based on sound medical decisions between the doctors and their patients. The proposed provisions could place the doctor in the position of refusing to provide a necessary termination of pregnancy.

Legal permission for late term abortions is necessary for the protection of woman’s life and her physical and mental health. Restricting late term abortion can contribute to high rates of mortality and morbidity as women may seek illegal and hence, unsafe abortions if they are unable to undergo legal terminations. Studies have shown that women who experience unsafe abortion are much more likely to experience severe complications from abortions in the second trimester. In addition, many severe fetal abnormalities are not detected until late in the pregnancy because of the nature of the condition or a lack of access to advanced medical facilities and equipment. It is impossible to diagnose many fetal abnormalities before 21-22nd week of pregnancy. Therefore, the Romanian Parliament should take into account its obligations to respect, protect and fulfill women’s rights and allow for therapeutic abortion throughout the pregnancy.

2. **Comparative law standards and international law standards**

Legal standards of Member States of the European Union and international law in the field of human rights protection recognize that providing legal access to therapeutic abortion is necessary to protect women’s right to life, health and non-discrimination and to prevent inhumane and degrading treatment.

Member States of the European Union allow abortion throughout pregnancy when the life of the pregnant woman is endangered. In addition, constitutional courts from Member States of the European Union have consistently recognized the lawfulness of abortion to save the pregnant woman’s life or health in accordance with women’s rights to physical and mental health and personal autonomy. The recognition in legislation and jurisprudence of Member States of the European Union to protect the health and life of the pregnant woman reflects the emphasis placed on protecting women’s human rights above any interest the state may have in protecting the fetus.

The United Nations Human Rights Treaty Monitoring Bodies interpret the human rights to life, health and non-discrimination, and the freedom from cruel, inhuman and degrading treatment or punishment, as requiring state parties to lawfully permit abortion where necessary to protect the woman’s health. These
bodies have consistently advised state parties to amend national laws on abortion to permit abortion where necessary to protect the woman’s life or health.

The United Nations Committee on Economic, Social and Cultural Rights (CESCR), which monitors state compliance with the *International Covenant on Economic, Social and Cultural Rights* (ICESCR), has expressly advised state parties to permit or consider permitting abortion for therapeutic reasons. The United Nations Human Rights Committee (HRC), which monitors state compliance with the *International Covenant on Civil and Political Rights* (ICCPR), has expressed concern that national laws prohibit abortion in all cases, except where necessary to save the woman’s life. In *K.L. v. Peru*, the HRC reasoned that state failure to enable the complainant to benefit from a therapeutic abortion caused the depression and emotional distress she experienced, and thus constituted a violation of Article 7 (freedom from torture or cruel, inhuman or degrading treatment or punishment). According to the United Nations Committee on the Elimination of All Forms of Discrimination Against Women and the Committee on Economic, Social and Cultural Rights, the refusal of a state party “to provide legally for the performance of certain reproductive health services for women” is discrimination on the ground of sex.

The Romanian State through its competent authorities should ensure its laws are in compliance with international and regional human rights standards and should consider the laws of other EU Member States when reviewing its abortion-related legislation and adopting any amendments.

### 3. Civil society’s proposal with regards Art. 199 (Abortion) and the proposed definition of person from the Draft of the New Criminal Code, under debate in the Parliament

In view of the comments and standards mentioned above and in support of the Parliamentary Commissions’ work on the Draft of the New Criminal Code, we would like to provide the following proposals with regards to the text of the draft law:

<table>
<thead>
<tr>
<th>Draft law (proposed by the Government)</th>
<th>Amendments proposed by the special Parliamentary Subcommission</th>
<th>Civil society’s proposal</th>
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<tbody>
<tr>
<td><strong>CHAP. IV AGGRESSION ON THE FETUS</strong></td>
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<td><strong>Art. 199 Abortion</strong></td>
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<tr>
<td>(1) The termination of pregnancy</td>
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<td>conducted in any of the circumstances:</td>
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<td>a) outside medical units or medical private practices authorized for this aim;</td>
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<td>b) by a person who is not an OB-GYN medical doctor with a right to practice this medical specialty;</td>
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<tr>
<td>c) if the term of the pregnancy is more than fourteen weeks, is punishable with imprisonment from 6 months to 3 years or a fine and the interdiction of certain rights.</td>
<td>- not modified</td>
<td>Modify the title of the chapter: CHAPTER IV ABORTION - The text of the first paragraph: not modified</td>
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<tr>
<td><strong>Art. 199 Abortion</strong></td>
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<tr>
<td>(2) The abortion conducted in any circumstances, without the consent of the pregnant woman, is punishable with imprisonment from 2 to 7 years and the interdiction of certain</td>
<td>- not modified</td>
<td>- not modified</td>
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<td>Art. 199 Abortion</td>
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<tr>
<td>(3) If the acts prescribed by paragraphs (1) and (2) caused to the pregnant woman a bodily harm, the punishment is imprisonment from 3 to 10 years and the interdiction of certain rights and if the act had as a consequence the death of the pregnant woman, the punishment is imprisonment from 6 to 12 years and the interdiction of certain rights.</td>
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<td>- not modified</td>
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<tr>
<td>(4) When the facts have been committed by a medical doctor, the punishment consisting in the interdiction of the exercise of the medical profession will apply in addition to the punishment of imprisonment.</td>
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<td>- not modified</td>
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<tr>
<td>(5) The attempt to commit the criminal offences prescribed by paragraphs (1) and (2) is punishable.</td>
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<td>- not modified</td>
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<tr>
<td>(6) Conducting a therapeutic abortion by an OB-GYN medical doctor is not a criminal offence.</td>
</tr>
<tr>
<td>(6) Conducting a therapeutic abortion by an OB-GYN medical doctor up until the term of pregnancy is 24 weeks is not a criminal offence.</td>
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<tr>
<td>- Maintain the Government’s version:</td>
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<tr>
<th>Art. 200 Harming the fetus</th>
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<tbody>
<tr>
<td>(1) Harming the fetus during birth, which prevented the installation of the life outside the uterus, is punishable with imprisonment from 3 to 7 years.</td>
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<tr>
<td>(2) Harming the fetus during birth, which subsequently caused a bodily harm of the child, is punishable with imprisonment from 1 to 5 years, and, if it caused the death of the child, is punishable with imprisonment from 2 to 7 years.</td>
</tr>
<tr>
<td>(3) Harming the fetus during the pregnancy, which subsequently caused a bodily harm of the child, is punishable with imprisonment from 3 months to 2 years, and, if it caused the death of the child, is punishable with imprisonment from 6 months to 3 years.</td>
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<tr>
<td>- Art.200 will be removed. We will introduce an article having the following text, in the final part of the Criminal Code about definition of terms: „After 24 weeks, the fetus is considered a person in the context of the criminal law.”</td>
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<tr>
<td>Remove Article 200.</td>
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Rejecting the amendment proposed by the Parliamentary Subcommission aiming to include in the definition of a person the fetus after the 24th week from conception.
(4) Harming the fetus during birth perpetrated by the mother who is in a state of psychical disorder is punishable with the same punishment prescribed by paragraphs (1) and (2), reduced by half.

(5) If the facts prescribed in paragraphs (1)-(4) have been committed by negligence the limits of the punishment are reduced by half.

(6) When the facts prescribed by paragraphs (1)-(3) and (5) have been committed by a medical doctor, the punishment consisting in the interdiction of the exercise of the medical profession will apply in addition to the punishment of imprisonment.

(7) Harming the fetus during the pregnancy by the pregnant woman is not punishable.

We offer our appreciation for the time you devote to considering these comments and reflections on the proposed legal provisions. We offer them in the spirit of hope that Romania will continue its efforts to ensure women’s health and rights.

Respectfully,

Dr. Borbala Koo
Executive Director
Societatea de Educație Contraceptivă și Sexuală
85 Calea 13 Septembrie, BI.77C, Unit 74
Bucharest, 5th District, Romania, 7000
Tel: +4021.310.33.14/87
Fax: +4021.310.33.86
borbala.koo@secs.ro

Daniela Drăghici
Policy Advocacy Expert
Societatea de Analize Feministe – ANA
Bucharest, Romania
Cell: +4 0722.706.468
Tel/Fax: +4031.101.1162
daniela.draghici@gmail.com

Romanian organizations supporting this letter:
Agenția de Dezvoltare Comunitară Împreună, Romania
Alianța Civică a Romilor din România
Asociația ACCEPT, Romania

Florin Buhuceanu
Executive President
Centrul Euroregional pentru Inițiative Publice
27-33 Nicolae Bălcescu Bulevard, unit 90
Bucharest, 1st District, Romania
Tel: +40728.530.729
Fax: +4021.233.97.89
florinbuhuceanu@yahoo.com

Iustina Ionescu
Legal Fellow for Europe
Center for Reproductive Rights
120 Wall Street, New York, NY, USA 10005
Cell +40.722.253 789
Fax +1.917.637.3666
iionescu@reprorights.org
Centrul Parteneriat pentru Egalitate (CPE), Romania
Centrul pentru Politici si Servicii de Sanatate (CPSS)
Centrul FILIA, Romania
Fundacja Proiectul de Educatie Civica si Dezvoltare Academica (FPECDA)
Galați EU-RO Consult, Romania
GRADO, Romania
Population Service International (PSI), România

International, regional organizations and networks supporting this letter:
Abortion-information, ZolliKofen / Switzerland
Article 42 of the Constitution, Georgia
Asian-Pacific Resource and Research Centre for Women (ARROW)
Association for Equal Opportunities, Tg Jiu, Romania
ASTRA - CEE Women's Network for Sexual and Reproductive Health and Rights
Bulgarian Gender Research Foundation
Catholics for Choice, USA and Europe
Center for Population and Development, Albania
Citizen and Democracy, Slovakia
Eastern European Alliance for Reproductive Choice
Family Federation of Finland
Family Planning Association, Portugal
Family Planning and Sexual Health Association, Lithuania
Federation for Women and Family Planning, Poland
French Family Planning Movement
Grupo de Interes Espanol en Población, Desarrollo y Salud Reproductiva, Spain
Gynuity Health Projects, Georgia
International Planned Parenthood Federation European Network (IPPFEN)
Ipas, USA
Irish Family Planning Association
Marie Stopes International (MSI), UK
Metropolitan Community Churches (MCC), USA
Network of East-West Women, Poland
Population Action International (PAI), USA
Pro Choice Slovakia
“Pro Familia” German Association for Family Planning, Sexuality Education and Sexual Counselling
Reconstruction Women's Fund, Serbia
Regional Centre for Minorities, Serbia
Reproductive Health Training Center, Moldova
Safe and Legal in Ireland Abortion Rights Campaign
Slovak-Czech Women’s Fund
Slovak Family Planning Association
The Sexuality Information and Education Council of the United States (SIECUS), USA
The Swedish Association for Sexuality Education (RFSU)
Voice of Difference, Serbia
Women's association "Refleksione", Albania
Women's Center, Georgia
Women’s Safe House, Montenegro

Also supporting this letter:
Albena Koycheva, Lawyer, Bulgaria
Angelika Graf, Deutscher Bundestag
Anissa Helie, Professor, Algeria, USA
Arina Khitrina, Directing Attorney, American Bar Association /Rule of Law Initiative, Russia
Carmen Popian, Lawyer, România
Cesarina Manassero, Researcher in Constitutional Law, University of Turin/Barrister of the Board of Lawyers of Turin, Italy
Crina Marina Morteanu, PhD candidate, Facultatea de Stiinte Politice, Bucharest, Romania
Cristina Vaileanu, Gender Policy Expert
Derek Rebro, Literary critic and university teacher, Slovakia
Flavia Cherry, Caribbean Association for Feminist Research & Action (CAFRA)
Heili Einasto, Lecturer, Tallinn University, Estonia
Isabel Marcus, J.D., M.A., Ph.D., Professor, School of Law, Director, International and Graduate Programs
Janka Debreceniova, Human Rights Lawyer, Slovakia
Judy Norsigian, Executive Director, Our Bodies Ourselves, USA
Linda Svilane, Lawyer, Latvia
Luba Kobova, PhD candidate, Comenius University, Slovakia
Maria-Carmen Pantea, Hungary
Marije Nederveen, The Netherlands
Natalie McDonnell, Barrister at Law, The Law Library, Dublin, Ireland
Monica Vaseile, Secretary of State, Member of the Steering Committee of the National Council for Combating Discrimination, Romania
Renate Weber, Romania
Dr. med. Regula E. Bürki, USA
Sonia Jaffé Robbins, founding member, Network of East-West Women, USA
Victoria Stoiciu, Fundatia Friedrich Ebert, Romania

1 In the case of Malta, there is no statutory exception for the access to abortion. It is unclear whether an abortion could be legally performed to save the life of a pregnant woman under the general criminal law principles of necessity. See Criminal Code of Malta (Chapter 9 of the Laws of Malta), arts. 241-43 [hereinafter Criminal Code of Malta].

2 See Paton v. UK (X v. UK) (1980) 19 DR 244; (1981) 3 EHRR 48, paras. 7-9, 19. In addition, despite the new-born and the woman, the fetus is not covered by the protection of human rights. In this sense, Article 3 of the Universal Declaration on Human Rights specifically limits that right to those who have been ‘born’. The UN General Assembly that adopted the text of the declaration rejected an amendment proposing the elimination of the term “new-born” and the protection of the right to life from the moment of conception; see GA OR 3rd Comm., A/PV/99 (1948), pp. 110-124. The history of negotiation of the International Covenant on Civil and Political Rights shows that a similar amendment was also proposed an rejected; see GA OR Annex, 12th session (1957), Agenda Item 33 at 96, A/C.3/L.654, para. 113. The Commission on Human Rights adopted by a vote of 55 to nil, with 17 abstentions Article 6 that does not make any reference to conception; see GAOR, 12th Session, Agenda Item 33, A/3764 (1957), para. 119(q). In a similar way, the travaux preparatoires and the interpretation given to the International Covenant on Civil and Political Rights confirms that the convention protects life from birth; see Commission on Human Rights, Question of a Convention on the Rights of a Child: Report of the Working Group, 10 March 1980, E/CN.4/L/1542.


