



April 14, 2011

Secretary, Committee on Economic, Social and Cultural Rights  
UNOG-OHCHR  
1211 Geneva  
Switzerland

**The Committee on Economic, Social and Cultural Rights**

Re: Supplementary Information on Moldova, Scheduled for Review by the Committee on Economic, Social and Cultural Rights during its 46<sup>th</sup> Session

Dear Committee Members:

This letter is intended to supplement the periodic report submitted by the government of Moldova, which is scheduled to be reviewed during the 46th session of the Committee on Economic, Social and Cultural Rights (“the Committee”). The Institutul pentru Drepturile Omului din Moldova, based in Chișinău, Moldova and The Center for Reproductive Rights, based in New York are non-governmental organizations that hope to further the work of the Committee by providing independent information concerning the rights protected in the International Covenant on Economic, Social and Cultural Rights (hereinafter “ICESCR”).

Reproductive rights are fundamental to women’s health and social equality, and an explicit part of the Committee’s mandate under the ICESCR. The commitment of states parties to uphold and ensure these rights deserves serious attention. We hope that the Committee’s review 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. This letter is intended to provide a summary of the issues of greatest concern, as well as a list of questions that we hope the Committee will raise with the official delegation from the Republic of Moldova.

**The Right to Reproductive Health Services (Articles 2(2), 3, 10(2), and 12(1) of the ICESCR)**

Reproductive health and rights receive broad protection under the ICESCR. Article 12(1) recognizes “the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.”<sup>1</sup> In interpreting the right to health, this Committee, in General Comment 14, has explicitly defined this right to “include the right to control one’s health and body, including sexual and reproductive freedom.”<sup>2</sup> The Committee defines “[r]eproductive health” to include “the freedom to decide if and when to reproduce and the right to be informed and to have access to safe, effective, affordable and acceptable methods of family planning...services that will, for example, enable women to go safely through pregnancy and childbirth.”<sup>3</sup> The right to health also contains entitlements, which include “the right to a system of health

protection which provides equality of opportunity for people to enjoy the highest attainable level of health.”<sup>4</sup> Articles 2(2) and 3 guarantee all persons the rights set forth in the ICESCR without discrimination, specifically as to “sex,...social origin...or other status.”<sup>5</sup> The Committee has characterized the duty to prevent discrimination in access to health care as a “core obligation” of the state.<sup>6</sup>

The Committee has further asserted that states parties are required to take “measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information.”<sup>7</sup> General Comment 14 also specifically states that “[t]he realization of women’s right to health requires the removal of all barriers interfering with access to health services, education and information, including in the area of sexual and reproductive health.”<sup>8</sup>

The Committee has urged states parties to adopt and implement national sexual and reproductive health programs.<sup>9</sup> Specifically, it has repeatedly emphasized the need for access to contraception and family planning information and services.<sup>10</sup> The Committee has framed the lack of such access as a violation of the right to health and has noted that a state’s failure to ensure access to reproductive health care for women constitutes discrimination in that it deprives them of their ability to fully enjoy their economic, social and cultural rights on an equal basis with men.<sup>11</sup>

In its previous concluding observations to Moldova the Committee has included specific recommendations to improve the status of women’s reproductive health, and has called upon the State Party to “strengthen efforts to promote awareness of sexual and reproductive health, safe contraceptive methods and the health risk of using abortion as a method of birth control, and to report on the results of such measures in its next periodic report.”<sup>12</sup>

We would like to raise four issues of particular concern that reflect shortcomings in the Republic of Moldova’s compliance with the provisions of the ICESCR 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 lack of access to affordable modern contraception; (3) the absence of mandatory sexuality education in schools, and (4) the parental consent and notification requirement for minors to access medical services.

## **I. The Case of Z<sup>13</sup>**

In May 2006, Z, a pregnant and poor young woman aborted at home at a late stage in her pregnancy. She was unaware of the pregnancy because of irregular menstruation and lack of knowledge on reproductive health issues. When she was taken to a local hospital for hemorrhagic shock, the doctors reported her to the police. Eleven days later, the woman found herself charged with intentional murder, despite the fact that her medical record showed that she had an abortion and according to national legislation the term of pregnancy and the weight of the fetuses were below the minimum to qualify as birth.<sup>14</sup> In addition, it is important to note there is no criminal penalty under Moldovan law for a pregnant woman who aborts.<sup>15</sup> Z was found guilty of murder and in December 2006 was sentenced to 20 years in prison, which she is now serving.

Women in Moldova have limited access to second semester abortion due to the following: “the requirement to present a special board resolution permitting II semester abortion, which violates women’s confidentiality and postpones the abortion until illegal resort; poor information distribution and limited access to contraception, lack of information about the population rights, possibilities to obtain gratis or long-term services, illegal abortion risks, poverty, high prices.”<sup>16</sup> The access is especially limited for poor and rural women due to lack of money, additional travel and expenses, lack of information, as well as

lack of support from the family or the partner.<sup>17</sup> Moreover, many aspects of the regulations concerning abortion appear to be in disarray. For example, the “terms used in Ministry of Health Statistics: mini abortion, legal abortion, medical abortion, and criminal abortion are not described or specified in the regulatory documents.”<sup>18</sup> Further, the mechanism of obtaining free-of-charge abortion does not function in practice because those who render abortion services are not informed and insist that women pay for the services, which makes abortion completely inaccessible for women who cannot afford to pay for it.<sup>19</sup> These barriers are reflected in the case of Z and the rampant rights violations she experienced by Moldova’s law enforcement.

While Z continued having vaginal bleedings and stomach aches for approximately a month during detention, she received no post-abortion medical attention. The poor living conditions in detention exacerbated the problem. Moreover, prison guards mistreated Z because of the nature of the crime she had allegedly committed.

Z faced blatant sex discrimination by the prosecution and the courts. For example, the prosecutor’s statements presented before the courts show bias towards women which he specifically applied to Z when arguing the *intent*, *motive* and *premeditation* of committing the alleged crime. In addition, the Moldovan courts not only tolerated such discriminatory interpretations, arguments, and remarks, but also relied on them in their decision-making.

### **i. Conditions of Detention**

Z’s case highlights shortcomings in Moldova’s health and detention systems that run afoul of Articles 2, 3, 10 and 12 of the ICESCR. 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 14 of the Committee explains, basic sanitation is included in the right to health.<sup>20</sup> The same Comment 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.<sup>21</sup> The Human Rights Committee in its 2009 Concluding Observations on Moldova already expressed concern about the lack of healthcare in prison for women who have undergone abortion and urged the country to change the situation.<sup>22</sup>

### **ii. Criminal Punishment for Aborting**

We would like to emphasize the international human rights standards concerning the criminalization of abortion and severely restrictive abortion laws, as well as the protections established with regard to reporting unlawful abortions. United Nations Treaty Monitoring Bodies (UNTMBs), namely the Human Rights Committee,<sup>23</sup> the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW Committee),<sup>24</sup> the Committee on the Rights of the Child (CRC Committee),<sup>25</sup> the Committee Against Torture,<sup>26</sup> and this Committee<sup>27</sup> have criticized legislation that criminalizes or severely restricts abortion as violating human rights, including the right to life and health.<sup>28</sup> Also this Committee has asked several states parties to legalize and decriminalized abortion.<sup>29</sup> Thus, the Moldovan authorities’ treatment of Z as a criminal and the conviction and punishment for aborting raises concerns on the State’s effective compliance in practice with these standards.

In addition, requiring health care providers to report women to the police when they suspect them of having illegally terminated their pregnancy is in conflict with international human rights law. As a party to several international treaties Moldova is required to uphold the rights enshrined in their provisions.

United Nations Treaty Monitoring Bodies overseeing these treaties have repeatedly criticized reporting requirements as violating the right to life, the right to health, and the right to equality and privacy.<sup>30</sup> In Moldova, although doctors are required to take the Hippocratic Oath and patients' rights include the right to confidentiality, reports show that such rules are not observed.<sup>31</sup> While patients are acutely aware that doctors do not maintain confidentiality concerning their consultations, they may not be aware of professional ethical requirements or applicable legislation.<sup>32</sup> Respondents consistently report that violations of confidentiality are the primary reason they refused to seek reproductive health care, as well as their reason for seeking clandestine abortions.<sup>33</sup> In the case of Z, the gynecologist who examined her in the hospital reported her to police because she suspected that Z underwent an illegal abortion. While national law does not punish women who undergo illegal abortions it does punish those who perform the abortions and national law requires medical institutions' supervisors "to inform the competent authorities on illegal activities of performing abortions at the local level."<sup>34</sup>

Moreover, punishing women who have undergone abortions for murder would require recognition of the foetus as a person with rights under the law. The major human rights treaties conferring the right to life indicate that that right to life does not extend to fetuses.<sup>35</sup>

### iii. Sex Discrimination

Under the international human rights treaties the Moldovan Government has an immediate obligation to respect and to ensure non-discrimination based on sex in the exercise of the rights mentioned above. The case of Z raises serious concerns with regard to Moldova's compliance with the standards of non-discrimination based on sex set forth by the international human rights standards.<sup>36</sup>

First, the conditions of detention do not take into account the biological specificities and the specific needs of women; especially the Moldovan authorities did not ensure Z sanitary conditions, access to reproductive health care, including post-abortion care.

Second, the prison personnel appear to lack basic fundamental training with regard to treatment of detainees and inmates, including the respect of the rules of confidentiality and the private and intimate life. In relations with women detainees in particular, body search regulations, specific sanitary and medical needs of women, and reproductive rights of women are not respected.

Third, Z was not effectively protected against discrimination since there is no anti-discrimination law and mechanisms of protection against discrimination and sanctioning discrimination in Moldova, a concern raised by the UN Committee on the Elimination of Racial Discrimination and European monitoring bodies.<sup>37</sup>

Fourth, 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 abortion legislation, women's rights, and in particular reproductive rights.<sup>38</sup>

Fifth, the police's, prosecution's and courts' discriminatory acts and remarks based on gender stereotypes and anti-abortion attitudes raise concerns under the international human rights standards. For example, the prosecution argued the *intent* to murder by using the facts that Z hid her pregnancy and did not go for prenatal visits to her doctor; the "shame towards people from the village and her parents of having children out-of-wedlock" was used as the only proof of the  *motive* of committing the alleged murder; furthermore, Z's punishment was intended to be an example to other women who disregard women's traditional role in society. In addition, the Moldovan courts not only tolerated such discriminatory interpretations, arguments, and remarks, but also took them into account in their decision-making: the court based all its decisions to arrest or prolong Z's arrest as well as finding aggravating circumstances which led to higher sentencing on such stereotypes. Furthermore, the law enforcement authorities ignored numerous pieces of critical evidence from the file indicating the fact that Z aborted, failed to produce key

evidence from Z's medical file pointing to her innocence, disregarded the existing Moldovan laws and regulations on the concept of birth, new-born, person, and foetus.<sup>39</sup> Such behavior from the part of the law enforcement authorities demonstrates that they do not have specific information and training on the relevant traditional historical, religious or cultural attitudes that may cause improper gender-based discrimination in the enforcement of the rights, as well as training on women's rights, reproductive rights and anti-discrimination.

#### **iv. Lack of Knowledge of Reproductive Health**

The case of Z raises the issue of state obligations to ensure that young people have access to reproductive health care information in the form of sexuality education. U.N. treaty-monitoring bodies, including the ESCR Committee, establish an international obligation to provide sexuality education in schools. The treaty-monitoring bodies have identified inadequate access to sexual and reproductive health education as a barrier to state party compliance with the obligation to ensure the rights to life, health, non-discrimination, education and information and they frequently ask states parties to implement sexuality education programs in schools.<sup>40</sup> The Committee has urged Moldova "to reinforce its efforts to reduce infant and maternal mortality by increasing health coverage for women and children" and "to strengthen efforts to promote awareness of sexual and reproductive health, safe contraceptive methods ...."<sup>41</sup> 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,<sup>42</sup> including vocational schools.<sup>43</sup>

In addition, the Human Rights Committee has urged the removal of barriers to adolescents' access to information about safe sexual practices, such as condom use.<sup>44</sup> 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.<sup>45</sup> 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.<sup>46</sup> In the latest Concluding Observations to Moldova, the Human Rights Committee recommended "introducing reproductive and sexual health education in school curricula and for the broader public".<sup>47</sup>

## **II. Lack of Access to Affordable Modern Contraception**

The Committee has interpreted the right to health to encompass the right to sexual and reproductive health. It has emphasized that this right entails an obligation on the part of states to ensure that health facilities, goods, and services are available, accessible, and acceptable to all without discrimination.<sup>48</sup> The Committee has underlined the need for states parties to provide a full range of high-quality and affordable family planning services and required states parties to remove all barriers to information in sexual and reproductive health.<sup>49</sup>

The Committee has also consistently urged the states parties to address the need for access to contraception and family planning information and services<sup>50</sup> and has framed the lack of such access as a violation of the right to health.<sup>51</sup> It has previously called upon Moldova to strengthen its efforts to promote awareness of sexual and reproductive health, including safe contraceptive methods.<sup>52</sup> In addition, the CEDAW Committee has called upon the government of Moldova to improve the availability, acceptability and use of modern contraceptives.<sup>53</sup>

Furthermore, the Human Rights 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.”<sup>54</sup> In 2009, the Human Rights 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.”<sup>55</sup>

Women and adolescent girls in Moldova face numerous barriers to contraceptive access. 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. According to the UNFPA study, the contraceptive prevalence rate for modern methods in Moldova is just 44%.<sup>56</sup> This may be a function of financial barriers to access and/or attitudes in Moldova toward contraception and reproductive health.<sup>57</sup> The UNFPA further points out that “[l]ack of universal access to family planning and reproductive health services, as well as a low contraceptive prevalence rate and unmet contraceptive needs, are putting a strain on the sexual and reproductive health on men and women.”<sup>58</sup> There is evidence to suggest “the apparent inequities of access resulting from financial barriers and/or unequal distribution of resources may be increasing.”<sup>59</sup>

### **III. Absence of Mandatory Sexuality Education in Schools**

Sexuality education can strengthen women’s health and rights, and can for example contribute to reducing unwanted pregnancies and sexually transmitted diseases.<sup>60</sup> 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.<sup>61</sup> This Committee, in General Comment 14, has stated that the right to health includes “access to health-related education and information, including on sexual and reproductive health.”<sup>62</sup> The Committee has also, on multiple occasions, urged states parties to “implement adequate programmes in sexual and reproductive education in national school curricula.”<sup>63</sup>

As concerns Moldova, in 2003 the Committee already noted with concern that sexuality education is “almost non-existent” in parts of the country<sup>64</sup> and called upon the state to “to strengthen efforts to promote awareness of sexual and reproductive health.”<sup>65</sup> The Committee has also recommended that Moldova use sexuality education and awareness campaigns as ways to combat maternal and child mortality,<sup>66</sup> and as a means to prevent the spread of HIV/AIDS and other STIs.<sup>67</sup> To meet its obligations under the ICESCR, and in particular under Article 12, Moldova should thus realize a national, comprehensive and accurate sexuality education program.

In addition, the CEDAW Committee has called upon Moldova to provide sexuality education systematically in schools, including vocational schools.<sup>68</sup> The CRC Committee has recommended that Moldova (1) strengthen efforts in adolescent sex and reproductive health education to reduce the number of teenage pregnancies, (2) develop education and awareness programs with a view to reducing teenage pregnancies, and (3) allocate resources to developing youth-sensitive and confidential counseling, care and rehabilitation facilities.<sup>69</sup> The CRC Committee has also emphasized the importance of providing adequate resources for the education of adolescents on STIs, particularly HIV/AIDS, and recommended the use of peer education as an integral component of its strategies.<sup>70</sup> Similarly, the Human Rights Committee has urged Moldova to introduce “reproductive and sexual health education in school curricula and for the broader public.”<sup>71</sup>

Moldova’s laws provide for the right to access sexuality information, education and services. Article 9 of Law no. 263 and article 6 of Law no. 185-XV state the right of each person to the information, education and services necessary for sexual life and reproductive health provided by public and private healthcare institutions holding license for this type of activities within their competencies. Furthermore, under Law no. 23-XVI, the state is responsible for developing HIV/AIDS education programs targeted at

adolescents, that shall be a mandatory part of the life-skills education course included in school, professional school, university and post-university curricula and during educational activities among institutionalized youth, disabled youth, and members of the armed forces.<sup>72</sup>

Despite the legal obligations sexuality education in Moldova remains inadequate. There is no mandatory sexuality education program in schools. In 2004, Moldova developed curricula and training materials for “Life Skills Education” classes, which included information regarding different types of violence and sexual and reproductive health. About 3,000 trainers were trained to teach these classes. However, the compulsory program was never instituted in schools. The representatives of the Orthodox Church opposed the teaching of this subject in schools and influence the government not to institute it.

#### **IV. 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. In addition, the laws undermine minors’ right to have access to information, which is part of the right to health under Article 12 of the ICESCR.<sup>73</sup>

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 12 of the ICESCR. 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.<sup>74</sup> UNTMBs are aware of the problems parental consent requirements can cause, and both the CRC Committee and the CEDAW Committee have urged states parties to remove such requirements for reproductive health services.<sup>75</sup> In addition, this Committee has stated in General Comment 14 that “[t]he realization of the right to health of adolescents is dependent on...confidentiality and privacy and includes appropriate sexual and reproductive health services.”<sup>76</sup>

**In light of the above, we hope that the Committee will 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 is the unmet need for contraception among women and what measures is the State taking to increase access to a wide range of modern contraceptive methods by making them affordable to all and ensuring that they are covered by public health insurance? What specific measures have been taken to improve access to contraceptive information?

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 measures is the State taking to ensure that minors have access to information and medical services without the mandated involvement of their legal representatives?

There remains a significant gap between the provisions of the International Covenant on Economic, Social and Cultural Rights and the reality of women's reproductive health and lives. We appreciate the active interest that the Committee has taken in the reproductive health and rights of women in the past, stressing the need for governments to take steps to ensure the realization of these rights.

We hope that this information is useful during the Committee's review of the Moldovan government's compliance with the ICESCR. If you have any questions, or would like further information, please do not hesitate to contact us.

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<sup>1</sup> International Covenant on Economic, Social and Cultural Rights, *adopted* Dec. 16, 1966, art. 12(1), G.A. Res. 2200A (XXI), U.N. GAOR, Supp. No. 16, U.N. Doc. A/6316 (1966) (*entered into force* Jan. 3, 1976) [hereinafter ICESCR].

<sup>2</sup> Committee on Economic, Social and Cultural Rights (ESCR), *General Comment No. 14, The Right to the Highest Attainable Standard of Health*, (22<sup>nd</sup> Sess., 2000), para. 8, U.N. Doc. E/C.12/2000/4 (2000) [hereinafter ESCR Committee, *General Comment No. 14*].

<sup>3</sup> *Id.* note 12 (Defining reproductive health in the context of Art. 12.2 (a), para. 14).

<sup>4</sup> *Id.* para. 8.

<sup>5</sup> ICESCR, *supra* note 1, art. 2(2), 3.

<sup>6</sup> ESCR Committee, *General Comment No. 14, supra* note 2, para. 19.

<sup>7</sup> *Id.* art. 12.2 (a), para. 14.

<sup>8</sup> *Id.* para. 21.

<sup>9</sup> CENTER FOR REPRODUCTIVE RIGHTS, *Family Planning is a Human Right: Government Duties to Ensure Access to Contraceptive Services and Information*, in BRINGING RIGHTS TO BEAR 9 (2008) [hereinafter *Family Planning is a Human Right*, BRB]. *See, e.g.*, ESCR Committee, *Concluding Observations: Bolivia*, para. 43, U.N. Doc.

- E/C.12/1/Add.60 (2001); *People's Republic of China–Hong Kong Special Administrative Region*, para. 100, U.N. Doc. E/C.12/1/Add.107 (2005); *Guatemala*, para. 43, U.N. Doc. E/C.12/1/Add.93 (2003); *Kuwait*, para. 43, U.N. Doc. E/C.12/1/Add.98 (2004); *Ukraine*, para. 31, U.N. Doc. E/C.12/1/Add.65 (2001); *Yemen*, para. 34, U.N. Doc. E/C.12/1/Add.92 (2003).
- <sup>10</sup> *Family Planning is a Human Right*, BRB, *supra* note 9, at 9. See, e.g., ESCR Committee, *Concluding Observations: Armenia*, para. 15, U.N. Doc. E/C.12/1/Add.39 (1999); *Cameroon*, para. 25, U.N. Doc. E/C.12/1/Add.40 (1999); *Chile*, para. 54, U.N. Doc. E/C.12/1/Add.105 (2004); *Dominican Republic*, para. 22, U.N. Doc. E/C.12/1/Add.6 (1996); *Honduras*, para. 27, U.N. Doc. E/C.12/1/Add.57 (2001); *Lithuania*, para. 50, U.N. Doc. E/C.12/1/Add.96 (2004); *Paraguay*, para. 16, U.N. Doc. E/C.12/1/Add.1 (1996); *Poland*, para. 28, U.N. Doc. E/C.12/1/Add.82 (2002); *Poland*, para. 12, U.N. Doc. E/C.12/1/Add.26 (1998); *Saint Vincent and the Grenadines*, para. 12 U.N. Doc. E/C.12/1/Add.21, (1997).
- <sup>11</sup> CENTER FOR REPRODUCTIVE RIGHTS, *Preventing Maternal Mortality and Ensuring Safe Pregnancy: Government Duties to Ensure Pregnant Women's Survival and Health*, in BRINGING RIGHTS TO BEAR 11 (2008) See, e.g., ESCR Committee, *Concluding Observations: Dominican Republic*, para. 15, U.N. Doc. E/C.12/1/Add.16 (1997).
- <sup>12</sup> ESCR Committee, *Concluding Observations: Republic of Moldova*, para. 49, U.N. Doc. E/C.12/1/Add.91 (2003).
- <sup>13</sup> The information about this case was also provided by the Center for Reproductive Rights and IDOM in the letter submitted to the Committee's Pre-Sessional Working Group in May 2010.
- <sup>14</sup> See Ordinul nr.44/347/100 din 11.10.2005 al Ministrului dezvoltării informaționale, Ministrului sănătății și protecției sociale și Directorului general al Biroului Național de Statistică cu privire la aprobarea în redacție nouă a Ordinului nr.110/51/56 din 23 aprilie 2002 "Cu privire la aprobarea certificatului medical constatator al nașterii" (forma nr.103/e-2002) [Ministry of the Development of Information, Ministry of Health and Social Protection, Directorate General of the National Bureau of Statistics, Order No.44/347/100 of 11.10.2005 regarding the approval of the new Order No. 110/51/56 of 23 April 2002, "Regarding the Approval of the Certificate Ascertaining Birth" (form nr.103/e-2002)] aannex 1, point 4.2 (Mold.) [hereinafter Order on Birth Registration (Mold.)].
- <sup>15</sup> Criminal Code, art. 159, amended by Law No. 277-XVI (2009) (Mold.) [hereinafter Criminal Code]. (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.)
- <sup>16</sup> WORLD HEALTH ORGANIZATION (WHO) ET AL., 4.2 Avort [4.2 Abortion], in "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] 38 (2006) [hereinafter STRATEGIC ASSESSMENT (2006)].
- <sup>17</sup> See *id.* at 42-43.
- <sup>18</sup> *Id.* at 31.
- <sup>19</sup> See *id.* at 43.
- <sup>20</sup> ESCR Committee, *General Comment No. 14*, *supra* note 2, para. 4.
- <sup>21</sup> *Id.* para. 34.
- <sup>22</sup> Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17, U.N. Doc. CCPR/C/MDA/CO/2 (2009).
- <sup>23</sup> 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); *Chile*, para. 15, U.N. Doc. CCPR/C/79/Add.104 (1999); *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); *Gambia*, para. 17, U.N. Doc. CCPR/CO/75/GMB (2004); *Guatemala*, para. 19, U.N. Doc. CCPR/CO/72/GTM (2001); *Honduras*, para. 8, U.N. Doc. CCPR/C/HND/CO/1 (2006); *Kuwait*, para. 15, U.N. Doc. CCPR/CO/69/KWT, A/55/40 (2000); *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. 15, U.N. Doc. CCPR/C/79/Add.72 (1996); *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); *Senegal*, para. 12, U.N.

- Doc. CCPR/C/79/Add 82 (1997); *Sri Lanka*, para. 12, CCPR/CO/79/LKA (2004); *Venezuela*, para. 19, U.N. Doc. CCPR/CO/71/VEN (2001).
- <sup>24</sup> See, e.g., Committee on the Elimination of Discrimination against Women (CEDAW Committee), *Concluding Observations: Andorra*, para. 48, U.N. Doc. A/56/38 (2001); *Antigua and Barbuda*, para. 258, U.N. Doc. A/52/38/Rev.1, Part II (1997); *Belize*, para. 56, U.N. Doc. A/54/38 (1999); *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); *Colombia*, para. 393, U.N. Doc. A/54/38 (1999); *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).
- <sup>25</sup> See, e.g., Committee on the Rights of the Child (CRC), *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).
- <sup>26</sup> See Committee against Torture, *Concluding Observations: Chile*, para. 6, CAT/C/CR/32/5 (2004).
- <sup>27</sup> See, e.g., 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 (2005); *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).
- <sup>28</sup> 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); *Colombia*, para. 393, 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).
- <sup>29</sup> See ESCR Committee, *Concluding Observations: Nepal*, para. 55, U.N. Doc. E/C.12/1/Add.66 (2001); *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 (2005).
- <sup>30</sup> See Human Rights Committee, *Concluding Observations: Chile*, para. 15, U.N. Doc. CCPR/C/79/Add.104 (1999); *Venezuela*, para. 19, U.N. Doc. CCPR/CO/71/VEN (2001); CEDAW Committee, *Concluding Observations: Chile*, para. 229, U.N. Doc. A/54/38 (1999).
- <sup>31</sup> See Legea Nr. 263-XVI [Law No. 263-XVI], *Law on Patients' Rights and Responsibilities*, art. 12(1), published in Official Monitor No. 176-181/867 (2005) (Mold.); see also, Legea Nr. 185-XV [Law No. 185-XV], *Law on Healthcare, Reproductive Health and Family Planning*, art. 12, published in Official Monitor No. 34/373 (2001) (Mold.).
- <sup>32</sup> See A.B.A., CENTRAL EUROPEAN AND EURASIAN LAW INITIATIVE, CEDAW ASSESSMENT TOOL REPORT FOR MOLDOVA 100 (2006), available at <http://apps.americanbar.org/rol/publications/moldova-cedaw-2006-eng.pdf>.
- <sup>33</sup> See STRATEGIC ASSESSMENT (2006), *supra* note 16, at 10.
- <sup>34</sup> Ministry of Health, Order No. 152/1994, *regarding the protection of the woman's health and the reduction of the number of abortions*, point 1.7, at 4 (1994) (Mold.).
- <sup>35</sup> The ICCPR's negotiation history indicates that an amendment was proposed and rejected which stated: 'the right to life is inherent in the human person from the moment of conception, this right shall be protected by the law'. (See GAOR Annex (12<sup>th</sup> Sess.), Agenda Item 33, at 96, para. 113, U.N. Doc. A/C.3/L.654 (1957).) The Commission on Human Rights ultimately voted to adopt Article 6, which has no reference to conception, by a vote of 55 to nil, with 17 abstentions. (See GAOR (12<sup>th</sup> Sess.), Agenda Item 33, at 119(q), U.N. Doc. A/3764 (1957).) Article 3 of the UDHR specifically limits that right to those who have been 'born'. A proposed amendment to remove the term and protect the right to life from the moment of conception was denied. (See GAOR, 3<sup>rd</sup> Comm., at 110-124, U.N. Doc. A/PV/99 (1948).) Along similar lines, the ICRC's travaux preparatoires and its interpretation by the CRC confirm that the ICRC's protections concerning life begin at birth. (See, e.g., Commission on Human Rights, *Question of a Convention on the Rights of a Child: Report of the Working Group*, U.N. Doc. E/CN.4/L/1542 (1980).)
- <sup>36</sup> See Human Rights Committee, *General Comment No. 28: Equality of rights between men and women* (Art. 3), (68<sup>th</sup> Sess.), para. 4, U.N. Doc. CCPR/C/21/Rev.1/Add.10 (2000).

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- <sup>37</sup> See Committee on the Elimination of Racial Discrimination, *Concluding Observations: Republic of Moldova*, para. 10, U.N. Doc. CERD/C/MDA/CO/7 (2008); *see also, e.g.*, European Commission against Racism and Intolerance, *Third Report on Moldova*, at 6, 12-13, CRI(2008)23 (Apr. 29, 2008), *available at* [http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle\\_03/03\\_CbC\\_eng/MDA-CbC-III-2008-23-ENG.pdf](http://hudoc.ecri.coe.int/XMLEcri/ENGLISH/Cycle_03/03_CbC_eng/MDA-CbC-III-2008-23-ENG.pdf).
- <sup>38</sup> See STRATEGIC ASSESSMENT (2006), *supra* note 16, at 35.
- <sup>39</sup> Article 145 of the Moldovan Criminal Code sanctions the criminal offence of murdering a person. (*See* Criminal Code, *supra* note 15, art. 145.) The Moldovan law and jurisprudence does not define “person” to include foetus; according to Articles 17 and 18 of the Civil Code of Republic of Moldova “person” is someone who has been born. (*See* Civil Code, art. 17-18 (Mold.)) The conditions for registration of births, in force in 2006 were prescribed by the Order on Birth Registration. (*See* Order on Birth Registration *supra* note 14, annex 1, point 4.2.) Also, article 3.(1) and article 56.(6) of Law No.100 states that these registrations are the authentic State acts that confirm facts or events regarding the beginning, modification or ending of a person’s rights and obligations. (Legea Nr.100 [Law No. 100], arts. 3(1), 56(6), (2001) (Mold.)) The case of Z does not fall under either of these last two pieces of legislation.
- <sup>40</sup> *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); *see also*, CRC, *Concluding Observations: Bhutan*, para. 45, 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); *see also*, 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).
- <sup>41</sup> ESCR Committee, *Concluding Observations: Republic of Moldova*, para. 49, U.N. Doc. E/C.12/1/Add.91 (2003).
- <sup>42</sup> *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).
- <sup>43</sup> *See* CEDAW Committee, *Concluding Observations: Republic of Moldova*, para. 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006).
- <sup>44</sup> *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).
- <sup>45</sup> *See* Human Rights Committee, *Concluding Observations: Poland*, para. 11, U.N. Doc. CCPR/C/79/Add.110 (1999).
- <sup>46</sup> *See* Human Rights Committee, *Concluding Observations: Poland*, para. 9, CCPR/CO/82/POL (2004).
- <sup>47</sup> Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17, U.N. Doc. CCPR/C/MDA/CO/2 (2009).
- <sup>48</sup> ESCR Committee, *General Comment No. 14*, *supra* note 2, para. 12.
- <sup>49</sup> *Id.* paras. 14, 21.
- <sup>50</sup> *Family Planning is a Human Right*, BRB, *supra* note 9, at 9. *See, e.g.*, ESCR Committee, *Concluding Observations: Armenia*, para. 15, U.N. Doc. E/C.12/1/Add.39 (1999); *Benin*, para. 23, U.N. Doc. E/C.12/1/Add.78 (2002); *Cameroon*, para. 25, U.N. Doc. E/C.12/1/Add.40 (1999); *Chile*, para. 54, U.N. Doc. E/C.12/1/Add.105 (2004); *Dominican Republic*, para. 15, U.N. Doc. E/C.12/1/Add.16 (1997); *Dominican Republic*, para. 22, U.N. Doc. E/C.12/1/Add.6 (1996); *Lithuania*, para. 50, U.N. Doc. E/C.12/1/Add.96 (2004); *Paraguay*, para. 16, U.N. Doc. E/C.12/1/Add.1 (1996); *Poland*, para. 28, U.N. Doc. E/C.12/1/Add.82 (2002); *Poland*, para. 12, U.N. Doc. E/C.12/1/Add.26 (1998); *Saint Vincent and the Grenadines*, para. 12, U.N. Doc. E/C.12/1/Add.21, (1997).
- <sup>51</sup> *Family Planning is a Human Right*, BRB, *supra* note 10, at 9.
- <sup>52</sup> ESCR Committee, *Concluding Observations: Republic of Moldova*, para. 49, U.N. Doc. E/C.12/1/Add.91 (2003).
- <sup>53</sup> CEDAW Committee, *Concluding Observations: Republic of Moldova*, para. 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006).
- <sup>54</sup> *See, e.g.*, Human Rights Committee, *Concluding Observations: Poland*, para. 11(b) U.N. Doc. CCPR/C/79Add.110 (1999); *Poland*, para. 12, U.N. Doc. CCPR/C/POL/CO/6 (2010).

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- <sup>55</sup> Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009).
- <sup>56</sup> UNITED NATIONS POPULATION FUND (UNFPA), A REVIEW OF PROGRESS IN MATERNAL HEALTH IN EASTERN EUROPE AND CENTRAL ASIA 74 (2<sup>nd</sup> ed., 2010), available at <http://unfpa.dextero.com/webdav/site/eeca/shared/documents/publications/2010/MaternalHealthPublicationSecondEdition%20A.pdf> [hereinafter UNFPA, A REVIEW OF PROGRESS IN MATERNAL HEALTH].
- <sup>57</sup> *Id.*
- <sup>58</sup> UNFPA, MOLDOVA COUNTRY ACTION PROGRAM PLAN 2007-2011 4 (2011), available at [http://un.md/com\\_con\\_prg\\_pr/cpaps/UNFPA\\_CPAP\\_engl.pdf](http://un.md/com_con_prg_pr/cpaps/UNFPA_CPAP_engl.pdf).
- <sup>59</sup> UNFPA, A REVIEW OF PROGRESS IN MATERNAL HEALTH, *supra* note 56, at 78.
- <sup>60</sup> See Human Rights Committee, *Concluding Observations: Lithuania*, para. 12, U.N. Doc. CCPR/CO/80/LTU; ESCR Committee, *Concluding Observations: Poland*, para. 20, U.N. Doc. E/C.12/1/Add.26 (1998).
- <sup>61</sup> 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); see also, CRC, *Concluding Observations: Bhutan*, para. 45, 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); see also, 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).
- <sup>62</sup> ESCR Committee, *General Comment No. 14*, *supra* note 2, para. 11.
- <sup>63</sup> ESCR Committee, *Concluding Observations: Poland*, para. 31, U.N. Doc. E/C.12/POL/CO/5 (2009). See also, e.g., 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).
- <sup>64</sup> ESCR Committee, *Concluding Observations: Republic of Moldova*, para. 26, U.N. Doc. E/C.12/1/Add.91 (2003).
- <sup>65</sup> *Id.* para. 49.
- <sup>66</sup> *Id.* para. 49.
- <sup>67</sup> *Id.* para. 48.
- <sup>68</sup> CEDAW Committee, *Concluding Observations: Republic of Moldova*, para. 31, U.N. Doc. CEDAW/C/MDA/CO/3 (2006).
- <sup>69</sup> CRC, *Concluding Observations: Republic of Moldova*, para. 55, U.N. Doc. CRC/C/MDA/CO/3 (2009).
- <sup>70</sup> *Id.* para. 57.
- <sup>71</sup> Human Rights Committee, *Concluding Observations: Republic of Moldova*, para. 17(a), U.N. Doc. CCPR/C/MDA/CO/2 (2009).
- <sup>72</sup> Legrea Nr. 23-XVI [Law No. 23-XVI], art. 5(2) (Mold.).
- <sup>73</sup> ESCR Committee, *General Comment No. 14*, *supra* note 2, para. 12.
- <sup>74</sup> Information obtained by the Center and IDOM at Reproductive Rights Training Seminar from Dr. Rodica Comendant, Reproductive Health Training Center, Moldova (Feb. 6, 2010).
- <sup>75</sup> See, e.g., CRC, *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).
- <sup>76</sup> ESCR Committee, *General Comment No. 14*, *supra* note 2, para. 23.