



March 21, 2012

Office of the United Nations High Commissioner for Human Rights
Attention: Mr Claudio Grossman
Chair of the Committee against Torture
Palais Wilson
52 Rue des Pâquis
CH-1201 Geneva
Switzerland
jnataf@ohchr.org; registry@ohchr.org

Re: Submission to the Committee against Torture for the adoption of list of issues prior to reporting for the Republic of Moldova, scheduled for review during the 48th 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 Committee against Torture (the Committee) for the adoption of list of issues prior to reporting for the Republic of Moldova by providing independent information concerning the rights protected by the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention or CAT).¹ This letter is submitted in accordance to the new optional reporting procedure (LOIPR) under the Convention which Moldova has agreed to submit under. We hope that the Committee'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

This letter focuses on a case that reflects the types of cruel, inhuman and degrading treatment that violate women's human rights and continue with impunity, particularly regarding coercive and threatening interrogations, conditions of detention, and sex discrimination by law enforcement authorities and the

judiciary in Moldova. The majority of the content discussed in the present letter was raised in the letter sent by our organizations on October 7, 2009 to supplement the periodic report submitted by the Republic of Moldova for the Committee's Review during the 43rd Session. The lack of measures and developments undertaken by the Republic of Moldova since 2009 on the issues discussed reinforces some of the concerns expressed in that submission. Notably, in its Concluding Observations the Committee expressed concern over the "numerous and consistent" allegations of acts of torture and ill-treatment of detainees in police custody and the poor material conditions of police detention facilities and prisons.² The Committee called on Moldova to ensure in practice that every detainee is "afforded all fundamental legal safeguards during his or her detention" and that "effective and efficient measures to ensure the independence of the judiciary" are undertaken.³ In February 2009, the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment concluded that "ill-treatment during the initial period of police custody is widespread."⁴ 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 including lack of appropriate health services, including sexual and reproductive health services, and the sex discrimination that is present within the judiciary.

II. LIST OF ISSUES OF CONCERN

The Case of Z⁵

In our view, the case of Z reflects the shortcomings in the Republic of Moldova's compliance with the provisions of the Convention in regard to sexual and reproductive health and rights and due process. In May 2006, Z, an unmarried, pregnant and poor young woman from rural Moldova, 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 that she had an abortion and there is no criminal penalty for women who illegally terminate their pregnancy.⁶ In December 2006, Z was found guilty of murder and sentenced to 20 years in prison. On January 31, 2012, the Moldovan Pardoning Commission granted pardon to Z, after she had spent over five years in prison. Even though she has now been released, Z has not been exonerated and her case continues to illustrate the need for comprehensive reform in the areas of sexual and reproductive rights in Moldova, as well as an urgent need to combat discrimination of women and degrading treatment on gender grounds in police detention and legal proceedings.

Conditions of Detention and Cruel, Inhuman and Degrading Treatment (Art. 16 of CAT)

In the case of Z, the Moldovan law enforcement authorities violated her right not to be subjected to cruel, inhuman or degrading treatment or punishment (Article 16) and her right not to be discriminated against based on sex. These violations demonstrate the failure of Moldovan authorities to meet further obligations under Articles 10, 11, 12, and 13 when read with Article 16(1)'s substitution of "cruel, inhuman or degrading treatment or punishment" for the word "torture." Z was interrogated several times in a weak medical condition with no lawyer present and forced to re-live a difficult experience in the shadow of harsh stigmatization and previous threatening interrogations by police at the hospital. The coercive interrogations, which led to evidence being used against Z in court proceedings where she received inadequate assistance from her lawyer, represent violations of Z's rights under the Convention.

Z's case also highlights shortcomings in Moldova's health and detention systems that run afoul of Article 16 and the right to non-discrimination. 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. Her experience illustrates that Moldovan detention conditions do not provide for the specific needs of women, such as access to reproductive health care and proper sanitation. Regarding medical services, the United Nations Standard Minimum Rules for the Treatment of Prisoners calls for every institution to have a medical officer available who examines every detained person as soon as possible after admission and thereafter when needed, taking any necessary measures if illness is discovered.⁷ Furthermore, in 2010, the Committee called on Moldova to “[i]ntroduce a procedure of mandatory medical examination for detainees on each entry and departure from the temporary detention facilities”⁸

As part of the obligation to take effective measures to prevent ill-treatment and torture, the Committee has recommended specific actions to assist States parties in complying with the Convention. According to General Comment 2 of the Committee, at minimum detained persons should be informed of their rights, receive prompt, independent legal and medical assistance, have complaints promptly and impartially examined, and be able to challenge the legality of their detention and treatment.⁹ Z experienced ill-treatment at multiple points during her arrest and detention. She experienced coercive interrogations while in the hospital, inhuman conditions of detention, lack of appropriate medical attention, and abusive treatment from prison guards, all in violation of Article 16.

Uncertainty with regards to women’s criminal liability for illegal abortion (Art. 16 of CAT)

In addition, the very investigation, conviction and punishment of Z for aborting were due, in large part, to serious discriminatory attitudes towards unwed pregnant women and the stigmatization of abortion in Moldova.¹⁰ United Nations Treaty Monitoring Bodies (UNTMBs), namely the Committee on Economic, Social and Cultural Rights,¹¹ the Committee on the Elimination of Discrimination against Women,¹² the Human Rights Committee,¹³ the Committee on the Rights of the Child,¹⁴ and this Committee¹⁵ have criticized legislation that criminalizes or severely restricts abortion as violating human rights, including the right to life.¹⁶ The conviction and imprisonment of Z for aborting 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.¹⁷ Continual evaluation and sensitization training is a necessary component of the obligation to take effective measures to protect individuals made vulnerable by discrimination from torture and ill-treatment.¹⁸

III. QUESTIONS TO THE MOLDOVAN GOVERNMENT

In light of the above, we hope that the Committee 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 in the case of women detainees that the conditions of detention within its facilities are non-discriminatory and comply with the standards set out in Article 16 of the CAT, in particular the provision of appropriate health care, including post-abortion care?
2. The Moldovan Criminal Law is unclear with regard to women’s criminal liability for undergoing illegal abortion. What is the State considering doing in order to ensure formal clarification of the inapplicability of this law to cases of women that undergo illegal abortions, including self-induced abortion?
3. What is the law and practice with respect to criminal investigations, including interrogation and arrest of women who find themselves hospitalized and in need of potential life-saving medical treatment due to illegal abortion?

4. What measures is the State taking to release any women currently serving sentences on charges related to abortion?

We hope that the information provided in this letter will be useful to the Committee 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,

Johanna Westeson
Regional Director for Europe
Center for Reproductive Rights

Vanu Jereghi
Executive Director
Institutul pentru Drepturile Omului
Moldovan Institute for Human Rights

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *adopted* Dec. 10, 1984, G.A. Res. 39/46, U.N. GAOR, 39th Sess., Supp. No. 51, U.N. Doc. A/39/51 (1984), 1465 U.N.T.S. 85 (*entered into force* June 26, 1987).

² Committee against Torture, *Concluding Observations: Republic of Moldova*, paras. 8, 18, U.N. Doc. CAT/C/MDA/CO/2 (2010) [hereinafter Committee against Torture, *Concluding Observations: Moldova*].

³ *Id.* paras.10-11.

⁴ Special Rapporteur on Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, Mission to the Republic of Moldova, *Promotion and Protection of all Human Rights, Civil, Political, Economic, Social and Cultural Rights, Including the Right to Development*, at 2, *Summary*, U.N. Doc. A/HRC/10/44/Add.3 (Feb. 12, 2009) (by Manfred Nowak).

⁵ 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 Committee against Torture on October 7, 2009.

⁶ 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, *adopted* by Law nr. 985-XV, art. 159 (Apr. 18, 2002) (Mold.).

⁷ Standard Minimum Rules for the Treatment of Prisoners, *adopted* Aug. 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, paras. 22, 24, 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).

⁸ Committee against Torture, *Concluding Observations: Moldova*, *supra* note 2, para. 10(b).

⁹ Committee against Torture, *General Comment No. 2: Implementation of article 2 by States parties*, (39th Sess., 2007), in *Compilation of General Comments and General Recommendations by Human Rights Treaty Bodies*, at 376, para. 13, U.N. Doc. HIR/GEN/1/Rev.9 (Vol. 2) (2008) [hereinafter Committee against Torture, *Gen. Comment No. 2*].

¹⁰ WORLD HEALTH ORGANIZATION ET AL., 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] 35, para. 4.2 (2006) [hereinafter STRATEGIC ASSESSMENT].

¹¹ See, e.g., Committee on Economic, Social, and Cultural Rights, *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).

¹² 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).

¹³ See, e.g., 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).

¹⁴ 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).

¹⁵ See Committee against Torture, *Concluding Observations: Chile*, para. 6, CAT/C/CR/32/5 (2004).

¹⁶ 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).

¹⁷ STRATEGIC ASSESSMENT, *supra* note 10, 35, para. 4.2.

¹⁸ Committee against Torture, *Gen. Comment No. 2, supra* note 9, paras. 23-24.