Re: Supplement Information on Romania Regarding Adoption of List of Issues Prior to Reporting, Scheduled by the Human Rights Committee during its 110th Session

Distinguished Committee Members:

The Center for Reproductive Rights (New York) and Euroregional Center for Public Initiatives (Romania), both independent non-profit organizations, respectfully submit this letter to the Human Rights Committee (HRC) with regard to the adoption of list of issues prior to reporting on Romania during its 110th session. This letter provides information on the status of human rights protected by the International Covenant on Civil and Political Rights (the ICCPR) in the context of reproductive rights and gender identity.

The letter identifies several human rights concerns that we hope the HRC will consider as it formulates the list of issues on Romania. These concerns are divided into two sections: the first section addresses key reproductive rights issues in Romania, and the second section focuses on discrimination of transgender people with regard to civil status.

I. Key Reproductive Rights Issues in Romania (Arts. 2, 3, 6, 7, 17, 19, 26)

The practices and policies presented in this section violate fundamental human rights guaranteed in the ICCPR, namely the rights to life, non-discrimination, equality, privacy, information, and freedom from cruel, inhuman or degrading treatment. We are particularly concerned about (a) the lack of state action to prevent maternal mortality, (b) the state’s failure to ensure access to safe and legal abortion services demonstrated through abortion-related complications and the inadequately regulated practice of conscientious objection, and (c) discrimination of women living with HIV/AIDS in access to reproductive health services.

These policies and practices violate an interdependent and indivisible set of human rights protected under the ICCPR. Cutting across all of these violations is the government’s failure to ensure the rights to non-discrimination and substantive equality for women in Romania. Under the ICCPR states parties are obliged to ensure that all individuals are able to enjoy equally and fully all rights guaranteed in the ICCPR, without any discrimination, including on the ground of
sex. The HRC has clarified that matters pertaining to reproductive health may affect women’s equal enjoyment of ICCPR rights. In addition, the Committee has repeatedly reproached countries for their failure to provide sexual and reproductive health information and services, acknowledging that such failure jeopardizes women’s ability to participate equally in all social and economic aspects of public life, which increases unwanted pregnancy and clandestine and unsafe abortions, and, correspondingly, maternal mortality.

In respect to Romania, the HRC as well as other United Nations Human Rights Treaty Monitoring Bodies (UNTMBs) have expressed concern about discrimination against women as well as the inadequacy of reproductive health information and services. In addition to violating the rights to life, privacy, information, and freedom from ill-treatment, the examples below show that Romania has failed to take effective and proactive measures to ensure that women do not continue to suffer systemic discrimination in access to reproductive health care. In clarifying the obligations of the Romanian government with respect to the issues raised in this section, it is critical for the HRC to identify both positive and negative duties to ensure women’s rights to equality and non-discrimination.

I.1. Lack of State Action to Prevent Maternal Mortality

A. Issue Summary

Despite a noticeable decline of maternal mortality rate in Romania since the 1990s, the rate continues to be high compared to other European Union (EU) Member States. According to the state official data, in 2012, twenty-three women died in Romania due to direct or indirect causes related to pregnancy, out of which eleven women died due to a direct obstetrical cause.

In 2011, the number of maternal deaths per 100,000 live births was 25.48. This is four times higher than the average rate at the level of the EU (5.69), making the maternal mortality rate in Romania to be the highest out of all EU countries. For instance, in 2011, the maternal death rate in Poland was 2.32, in Bulgaria 2.82, and in Hungary 10.22.

According to the National Center for Statistics and Information in the Field of Public Health of the Ministry of Health, the extent and causes of maternal deaths remain insufficiently analyzed due to inadequate reporting and analysis. The reporting and analysis of maternal deaths is not carried out in a consistent and reliable manner by the relevant health care authorities. Despite the existence of an administrative confidential investigation procedure into the causes of maternal deaths, the local inspectors responsible for carrying out this investigation have failed to report properly to the Ministry of Health.

To exemplify this, in 2012, in three out of the eleven maternal deaths mentioned above that resulted from a direct obstetrical cause, the inspectors failed to provide any information at all about the maternal deaths to the Ministry of Health. In another three cases the information was delivered late.

The inconsistent and unreliable reporting on maternal deaths and their ineffective analysis prevent the state from identifying the real causes behind maternal mortality and accurately
assessing the extent of the problem, which ultimately inhibit the government from adopting proactive measures to tackle this issue efficiently.

The UNTMBs have already raised concerns over high maternal mortality rates in Romania and deficiencies in the prenatal care for pregnant women. The Committee on the Elimination of Discrimination against Women (CEDAW Committee) has repeatedly noted the high maternal mortality rates in Romania.\textsuperscript{14} The Committee on the Rights of the Child found that the child mortality rates were amongst the highest of countries in Europe and that these high rates can be traced back to deficiencies in mother malnutrition and low quality of medical services, amongst other reasons, and recommended a particular focus on pre-natal and post-natal services.\textsuperscript{15} Up to date, Romanian government has not taken effective measures to implement this recommendation.

B. Recommended Issues to be Addressed by the Romanian Government

1. Please provide statistical data and other information on the causes and extent of maternal deaths in Romania and highlight the steps that the government is taking to address and eliminate obstetrical risks, as well as other direct and indirect factors contributing to maternal deaths.

2. Please include information on reporting requirements and procedures for documenting maternal deaths by health care authorities and indicate what measures the government is taking to ensure consistent and reliable reporting and analysis of maternal deaths in Romania.

I.2. Barriers in the Access to Safe and Legal Abortion Services

Barriers inhibiting women’s access to legal abortion services – such as biased counseling, conscientious objection, and limitations on information about abortion services – institutionalize discriminatory stereotypes that women are not competent decision-makers and that their primary role is motherhood. Such restrictions are based on the notion that women themselves are not competent to make informed, rational decisions about their bodies; in this sense, they demean women as decision-makers.\textsuperscript{16} Lack of access to safe abortion services particularly affect women who are already burdened by inequality. This has been recognized by the World Health Organization (WHO), which has stated that restrictions on and unavailability of induced abortion result in unequal access to safe abortion services, disproportionately forcing poor women to seek abortion services from unsafe providers.\textsuperscript{17}

I.2.a. High Number of Abortion-Related Complications

A. Issue Summary

In Romania, the right of a woman whether to have a child or not is stipulated in Article 28 of the Law 46/2003 on Patient’s Rights.\textsuperscript{18} Article 185 of the Penal Code criminalizes persons that perform unlawful abortions. Abortion is considered unlawful if it is performed outside the health care units specially authorized to provide abortion; if it is provided without a woman’s consent; or when the pregnancy is over 14 weeks, except in cases when abortion is necessary to save a woman’s life, health or bodily integrity from an imminent danger or for therapeutic reasons.\textsuperscript{19} Abortion without restriction as to reason is thus allowed in the first 14 weeks. However, abortion
on request is not subsidized; a woman must pay an out-of-pocket fee that ranges between 100 Euros and 200 Euros. Despite the relatively liberal abortion regulation, women in Romania continue to resort to illegal and unsafe abortions. According to the state’s official data, the number of illegal abortions (i.e. abortions performed outside the legal framework), after which women needed post-abortion care due to complications that occurred in connection with the illegal abortion, has increased over the last years. There have been 53 cases of illegal abortions registered in 2009, 54 cases in 2010, 83 cases in 2011 and 119 cases in 2012.20

The state has an obligation to assess the reasons for women resorting to illegal and unsafe options despite the fact that abortion is legal and should be made available and widely accessible in Romania. Those reasons may include lack of information among women about the conditions for obtaining a legal abortion, lack of information on and access to emergency contraception, and lack of access to medical abortion in health care units despite the fact that this method is legal in Romania.

B. Recommended Issues to be Addressed by the Romanian Government

1. Please provide statistical data and other information on the reasons why women resort to illegal and unsafe abortions in Romania despite the legality of the procedure. Please indicate the methods the government is using to collect and assess data on the underlying causes of illegal and unsafe abortions.

2. Please provide information on measures taken by the government to ensure that women have access to accurate information about the availability of legal and safe abortion, including low-income women, women living in rural areas, and adolescents. In that regard, please provide information on measures that the government is taking to improve access to emergency contraception and medical abortion, including access to accurate information on both methods and the conditions under which women can obtain them.

I.2.b. Inadequately Regulated Practice of Conscientious Objection to Abortion

A. Issue Summary

While abortion on request is legally permitted in Romania in the first 14 weeks, women’s access to safe and legal abortion is obstructed by the practice of conscientious objection among individual health professionals as well as entire hospitals. According to a research conducted by Euroregional Center for Public Initiatives (ECPI) in the period of December 2010 - May 2011, out of 67 public hospitals 6 hospitals did not perform abortion at all, 13 hospitals did not perform abortion during religious holidays such as Christmas and Easter, 39 hospitals did not perform abortion during Easter (including the week before Easter), and 25 hospitals did not perform abortion during Christmas holidays (out of which 12 discontinued providing abortion up to 2-3 weeks after holidays). Only 5 hospitals out of the 67 performed abortion irrespective of any religious holidays.21
Some of the hospitals that refuse to provide abortion are located in remote, predominantly rural areas (e.g. Orăştie, Reghin, Roman, Călineşti, Târgu Neamţ, Alexandria), where women need to travel long distances and pay for incurring expenses in order to get to a hospital where they can have an abortion. Adolescent girls and women belonging to vulnerable groups such as rural women, women living with HIV, women living in violent relationships, low-income women, and women who used to be in the childcare protection system, are particularly affected by this practice, since they lack resources, information, and skills to overcome such barriers.

Existing legal framework does not allow conscientious objection in health care settings. The laws, government decisions and ministerial orders do not address this issue. Yet, the practice shows that there are numerous instances when doctors and even entire hospitals refuse to perform abortion based on conscientious objection. The only instrument that addresses conscientious objection is the Medical Doctors’ Deontological Code. According to the Code, a doctor may refuse to provide health care assistance if the health service requested by the patient is affecting the doctor’s moral values. The objecting doctor should inform the patient about the reasons behind the refusal and “make sure that the life or health of the respective person is not endangered.” The Code also stipulates that “when the refusal is based on moral convictions, [the objecting doctor should] direct the person to another colleague or another health care unit.”

The Code is an internal document of the medical doctors’ profession adopted by the Medical Doctors’ Association. Therefore, it only applies to doctors as part of their professional duties, but it is not legally binding. However, even the Code does not impose minimal requirements related to conscientious objection to abortion such as a duty to inform a woman of all existing alternatives and a duty of relevant state authorities to ensure that alternative providers are available.

Moreover, the state has failed to adopt legislation banning whole institutions from invoking conscientious objection. Conscientious objection is based on personal or spiritual conscience and thus “is not available to institutions, such as hospital corporations, which may have an artificial legal personality but not a spiritual personality protected by human rights laws.” The institutions “have no eternal soul that they may claim an entitlement to protect.”

The state has also failed to adopt measures that would ensure continuity in providing legal reproductive health care. Since 2007, there is no national strategy in force in the field of sexual and reproductive health.

B. Recommended Issues to be Addressed by the Romanian Government

1. Please provide information on the regulation of conscientious objection to abortion in Romania and the measures that the government is taking to ensure that the application of conscientious objection does not jeopardize women’s access to lawful abortion services. In this regard, please particularly comment on access to safe and legal abortion for rural women, adolescent girls and other vulnerable groups.

2. Please indicate what steps the government is taking to formulate and implement a comprehensive national strategy in the field of sexual and reproductive health and rights.
I.3. Discrimination of Women Living with HIV/AIDS in Access to Reproductive Health Services

A. Issue Summary

Approximately 10,000 children contracted HIV within the health care system in Romania between 1986 and 1991. Their infections are attributable to breaches of safety standards by Romanian health care facilities. Twenty years later, these children are adults with needs in the field of sexual and reproductive health. Their needs, however, are not met by the Romanian health care system. An ECPI and Uniunea Nationala a Organizatiilor Persoanelor Afectate de HIV/SIDA report, published in June 2011, documents various human rights violations in respect to women living with HIV/AIDS in Romania. The report shows that women living with HIV/AIDS are often denied access to sexual and reproductive health services, such as medical assistance during childbirth, gynecological consultations, post-abortion care, abortions on request, and ARV treatment. Health care facilities also frequently fail to comply with medical and safety standards and do not take special measures to prevent HIV transmission from mother to child. Furthermore, women frequently face discrimination in the health care sphere on the ground of their HIV status. Medical personnel display discriminatory behavior and segregate women with HIV positive status by moving them from Obstetrics-Gynecology hospitals to Infectious Disease hospitals or isolating them alone in the room. The report also shows that the right to confidentiality of women living with HIV/AIDS is often breached by health care providers.

Discrimination of women living with HIV/AIDS in access to reproductive health care is also demonstrated in a case of a woman who was refused birth assistance by cesarean section for eight days by the chief of an Obstetrics and Gynecology Clinic in Bucharest due to her HIV status. Only after several non-governmental organizations pleaded for her being accepted to give birth by cesarean section, the woman was provided the necessary health care that she needed to prevent HIV transmission from mother to child. In 2013, a district court found that she was discriminated on the grounds of her HIV status in the access to health care.

B. Recommended Issues to be Addressed by the Romanian Government

I. Please provide information on access to sexual and reproductive health services for women living with HIV/AIDS, including maternal health care. Please highlight the measures the government is taking to ensure the access of women with HIV/AIDS status to such services and to eliminate discrimination against them within the health care system. In this regard, please also comment on the prevention of discriminatory attitudes of health care providers towards women living with HIV/AIDS.

II. Discrimination of Transgender People with Regard to Civil Status (Arts. 7, 26)

The international community has widely recognized that “[e]ach person’s self-defined sexual orientation and gender identity is integral to their personality and is one of the most basic aspects of self-determination, dignity and freedom.” In addition, international human rights treaties,
including the ICCPR, impose the obligation on states to protect transgender individuals from
discrimination on account of their gender identity.  The HRC has made clear that states should
express “clearly and officially that [they do] not tolerate any form of social stigmatization of …
transexuality, or discrimination or violence against persons because of their … gender
identity.” The CEDAW Committee has further emphasized that states must ensure that
transgender women enjoy the full range of rights, “including civil, cultural, economic, political
and social as well as sexual and reproductive rights.”

A. Issue Summary

There are no legal regulations regarding access to gender reassignment medical procedures in
Romania. In addition, no independent legal provision addresses the recognition of gender
reassignment before the law. The law governing a legal change of gender identity is scattered
over two confusing and incoherent provisions regulating civil status.

The first provision is Article 43(i) of the Law 119/1996 Regarding the Civil Status Acts. Article 43(i) requires “a court decision allowing the sex change” as a prerequisite for changing the gender in identification documents. The law, however, does not define what is understood by “sex change” and whether a completed reassignment surgery is mandatory. It also does not detail any procedural or evidentiary requirements for obtaining a court decision or what exactly a change of civil status includes.

The second relevant provision is Article 4(2)(l) of the OG 41/2003 governing name changes by administrative means. To change her/his surname, a person must present a court decision allowing gender reassignment and a “forensic-medical certificate” confirming the new gender. First, Article 4(2)(l) contradicts Article 43(i) by creating a second requirement in addition to a judicial decision. Second, the institute that issues these certificates is part of the government’s executive branch. Thus, Article 4(2)(l) infringes on the power of the judiciary to make determinations on civil status, which constitutes an impermissible intermingling of government branches. Last, requiring a forensic-medical certificate delegates the absolute power to deny or acknowledge an individual’s gender to the forensic medical institute. This is troublesome since there are no regulations or guidelines urging the institute to recognize the gender of transgender individuals without completed reassignment surgery.

Moreover, Romanian courts have been inconsistent in ruling on requests of legal recognition of a new gender identity when gender reassignment surgeries are not completed.

B. Recommended Issues to be Addressed by the Romanian Government

1. Please provide detailed information on the process of and requirements for changing civil status for transgender individuals in Romania. Please also comment on the steps the government is taking to ensure access to gender reassignment surgery for transgender individuals in Romania (male to female and female to male).

2. Please indicate what steps the government is taking to adopt and implement comprehensive and clear legislation allowing changing civil status with respect to gender identity.
3. Please indicate what steps the government is taking to ensure that the case law regarding legal recognition of transgender persons is consistent throughout the country and in compliance with human rights standards, such as the right to private life and personal integrity and the rights not to be subjected to coercion and discrimination.

There remains a significant gap between the provisions of the International Covenant on Civil and Political Rights and the reality of women’s reproductive lives in Romania as well as the lives of transgender individuals. We appreciate the active interest that the Committee has taken in the reproductive rights of women and the rights of transgender individuals in the past, stressing that governments are under an obligation to ensure the realization of these rights.

We hope that this information is useful during the Committee’s adoption of list of issues prior to reporting on Romania. If you have any questions, or would like further information, please do not hesitate to contact us.

Sincerely,

Adriana Lamačková
Legal Adviser for Europe
Center for Reproductive Rights
New York, USA
alamackova@reprorights.org

Iustina Ionescu
Program Manager
Euroregional Center for Public Initiatives
Bucharest, Romania
iionescu@ecpi.ro

---

2 ICCPR, supra note 1, arts. 2(1), 3, 6(1), 7, 17, 19, 26.
4 Id. paras. 10, 11, 20.

8 European Health for All Database (HFA-DB), WORLD HEALTH ORGANIZATION (WHO) REGIONAL OFFICE FOR EUROPE, http://data.euro.who.int/hfadb/ (last updated July 2013).

9 Id.

10 MINISTRY OF HEALTH, THE ASSISTANCE OF PREGNANCY WOMEN, supra note 7.

11 Id.

12 Id. at 14.


17 Id. at note 6, para. 314; Id. at note 7.


23 According to The HIV during Pregnancy Clinical Guide, pregnant women are entitled to ARV throughout pregnancy and postpartum and the newly born are entitled to ARV treatment immediately after birth; this treatment is free. See Ministry of Health Order No. 1.524/2009 Ghidul clinic privind infecția HIV în sarcină [The HIV During Pregnancy Clinical Guide] published in the Official Journal No. 88/09.02.2010 (Rom.).
32. Safety standards are laid out in the Order of the Ministry of Health No. 994/2004 Regarding the Approval of the Guidelines for the Supervision and Control of Nosocomial Infections in Sanitary Units. Annex V, pt.1 (Rom.)
33. Legea 584/2002 privind măsurile de prevenire a răspândirii maladii SIDA în România și de protecție a persoanelor infectate cu HIV sau bolnave de SIDA [Law 584/2002 Regarding Preventive Measures Against AIDS Spread in Romania and for the Protection of Persons Infected with HIV or Having AIDS], art. 6.f (Rom.). See ECPI, SEXUAL AND REPRODUCTIVE RIGHTS, supra note 29, at 20-22.
34. Id. at 26-28.
35. Id. at 32-34.
42. Ordonanța nr. 41 din 30 ianuarie 2003 privind dobândirea și schimbarea pe cale administrativă a numelui persoanelor fizice [Ordinance No. 41 of 30 January 2003 Regarding Obtaining and Changing the Names of Individuals Through Administrative Procedure] (Rom.).
43. Compare, e.g., Judecătoria Sector 1 București, Civil Judgment No.14136/2011, 18 Aug. 2011 (Rom.) (ruling that a completed reassignment surgery is not a condition for granting recognition to the new gender), with Tribunalul București, Civil Decision No.491A, 10 May 2012 (Rom.) (holding that the forensic medical certificate is a prerequisite for acknowledging the new gender).