

Joint Submission by:

The Romanian Sexual and Reproductive Rights Coalition

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The Global Justice Institute, New York

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The Sexual Rights Initiative

SUBMISSION PREPARED BY THE ROMANIAN SEXUAL AND REPRODUCTIVE RIGHTS COALITION, THE GLOBAL JUSTICE INSTITUTE, NEW YORK, AND THE SEXUAL RIGHTS INITIATIVE

FOR THE UNIVERSAL PERIODIC REVIEW OF ROMANIA BY THE HUMAN RIGHTS COUNCIL

KEY WORDS: Abortion; child marriage; discrimination on the basis of HIV status; sexuality education; right to health; right to privacy; rights of the child

INTRODUCTION

1. This compilation of information has been produced in June 2012 by The Romanian Sexual and Reproductive Rights Coalition,^{*} an informal coalition of NGOs working in the field of sexual and reproductive health and rights, non-discrimination, and gender equality in Romania, The Global Justice Institute, and The Sexual Rights Initiative*. The submission focuses on sexual and reproductive rights as human rights. The crosscutting element of this submission is the concept that the enjoyment of sexual and reproductive rights is at the core of gender equality and non-discrimination. The focus of the submission is on women and also on vulnerable categories of people that are often subjected to multiple forms of discriminations – women living with HIV, adolescents and children.
2. The submission is relevant for the implementation of the following recommendations accepted by Romania at UPR 2008: 4, 5, 7, 9, 10, 11, 14, 27, 28, and 29.

The right to privacy, the right to health, the right to non-discrimination
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3. Given the biological differences between women and men, especially with regards to pregnancy and maternity, the State needs to take measures to ensure women's effective capacity to control

* The Romanian Sexual and Reproductive Rights Coalition is based in Bucharest and is formed of the following non-governmental organizations: Euroregional Center for Public Initiatives (ECPI), Societatea de Educatie Sexuala si Contraceptiva (SECS), Centrul Parteneriat pentru Egalitate (CPE), Centrul FILIA, Uniunea Nationala a Organizatiilor Persoanelor care Traiesc cu HIV/SIDA (UNOPA).

*The Global Justice Institute is a human rights entity based in New York, USA, combating religious-based homophobia and promoting sexual and reproductive rights in various countries and regions.

*The Sexual Rights Initiative is a coalition including: Action Canada for Population and Development (Canada); Coalition of African Lesbians (South Africa), Creating Resources for Empowerment and Action (India), AKAHATA (Latin America), Egyptian Initiative for Personal Rights (Egypt), Federation for Women and Family Planning (Poland), and others.

their fertility, decide freely and responsibly on the number and spacing of children, and have a safe and healthy pregnancy.

Access to safe and legal abortion:¹

4. Abortion is legal in Romania up to the 12th week of gestation, however, women face significant administrative and regulatory barriers that impede access to necessary services:

- The existing practice of the health care personnel of refusing to perform abortion on request around or during the Christian-Orthodox Holidays;²
- Lack of specific and clear legal provisions regarding the objection to perform medical services on the grounds of religious or conscientious reasons;³
- Lack of regulations to ensure continuity in providing health care services when the doctor objects to performing abortion on request;⁴
- The Draft Law on mandatory counseling for “pregnancy crisis”, currently under debate in the Romanian Parliament,⁵ is disregarding international medical standards (WHO, FIGO) and human rights and it infringes upon patient’s rights, by imposing mandatory counseling, whereas the patient is entitled to refuse receiving information about the medical procedure she is supposed to undergo;
- The proposed mandatory counseling results in the bureaucratization of the medical procedure, additional expenses that need to be paid by women out-of-pocket, and unnecessary waiting periods, which may lead women to seek unsafe illegal abortions, with consequent risks to their health and lives and contributing to a rise in maternal mortality;
- The proposed counseling itself represent a series of actions that traumatize the patient and inflict feelings of guilt, even making her sign and agree to the fact that she is “terminating a human life”.

5. Recommendations:

- ✓ To adopt the National Strategy in the Area of Sexual and Reproductive Health and Rights;
- ✓ To strengthen measures aimed at ensuring women’s right to decide freely and responsibly on the number and spacing of their children and thus at prevention of unwanted pregnancies. In this context, the State party is requested to make a wide array of family planning methods, such as a comprehensive range of contraceptives, including emergency contraception, more widely available and affordable, provide mandatory sexual education in schools and increase knowledge and awareness about family planning among women as well as men;
- ✓ To adequately regulate the invocation of conscientious objection by health professionals so as to ensure that women’s access to health and reproductive health is not limited;
- ✓ To elaborate a minimal protocol to be followed by health care providers, in order to ensure continuity of the medical care in the case of doctors’ conscientious objection and include it among the criteria necessary for the authorization of health care units and their continuous monitoring;
- ✓ To ensure that legislative measures, such as the Draft Law on mandatory counseling for “pregnancy crisis”, currently under debate in the Romanian Parliament, do not interfere with

women's human rights and accordingly will not force women to seek unsafe medical procedures, such as illegal abortion, which may seriously risk their health and lives.

Women living with HIV/AIDS⁶

6. Between 1986 and 1991, approximately 10,000 children contracted HIV in Romania. Now, the survivors of the disease have reached maturity age. Like everybody, these people have important needs related to sexuality and reproductive health. In the recent years, the number of pregnancies and births among HIV positive women raised significantly.

7. Denial of access to sexual and reproductive health services

- Denial of access or significantly hindering access to medical assistance during childbirth for women living with HIV;
- Healthcare providers' failure to comply with medical standards and respect of universal precautions;⁷
- Healthcare providers' failure to take special measures of preventing HIV transmission from mother to child;⁸
- Frequent ARV medicine stock-outs occurring in the last years, with a negative impact upon PLHIV's health, including pregnant women living with HIV;⁹
- Public health care units refusing gynecological consultations, post-abortion health care or the performance of an abortion on request, leading to cases when patients do not treat their diseases, resort to self-medication or unsafe abortion, do not declare their HIV status when accessing future health care services.

8. Discrimination on the ground of HIV positive status¹⁰

- Segregation by moving women living with HIV from the obstetrics-gynecology hospital to the infectious diseases hospital immediately after birth by cesarean section, or isolating women living with HIV from the other patients and placing them alone in the room;
- Medical personnel behaving in a discriminatory manner against pregnant women due to HIV positive status: placing them in humiliating and degrading situations, ignoring, neglecting or debasing them, disadvantaging them compared to other patients;
- Medical personnel judging, blameing, and sermonizing women living with HIV for becoming pregnant or for choosing to take the pregnancy to term, although such a decision should be respected as the woman's personal choice.

9. Medical personnel breach confidentiality regarding the HIV positive status¹¹

- Women reported experiencing situations when breaches of confidentiality occurred in documents issued by the health care units or due to medical personnel's behavior.

10. Recommendations:

- ✓ To adopt the National Strategy on HIV/AIDS and the National Strategy on Sexual and Reproductive Health and Rights;

- ✓ To improve medical and legal standards regarding universal precautions and the *HIV during Pregnancy Clinical Guide*;
- ✓ To sanction violations of the *Law on Patient's Rights*, including the right to confidentiality and non-discrimination on the ground of HIV positive status;
- ✓ To take measures to ensure information and training of the medical personnel from all levels on *HIV during Pregnancy Clinical Guide*, patients' rights in general, sexual and reproductive rights of the persons living with HIV, develop communication skills and non-discriminatory attitudes;
- ✓ To improve cooperation between health care units in order to provide quality services in situations when an interdisciplinary approach is needed to handle cases of pregnant women living with HIV;
- ✓ To improve collaboration between health care units and non-governmental organizations.

The rights of the child

11. Teen pregnancy and child marriage¹²

- The live birth rate for girls under 15 years old has been increasing since 1990 until today,¹³ the total number of live births for this category of population being the largest in European Union,¹⁴ in the same time, the live birth rate for 15-19 years olds decreased constantly since 1990 until today, the total number of live births for this category of population remaining high;¹⁵
- The Government took no measures to monitor and address the issue of teen pregnancy;
- Sexual and reproductive health education in schools is provided on a limited scale and there is no publicly available evaluation of its impact;
- According to the law, parental consent for accessing sexual and reproductive health care services is required until 16 years old,¹⁶ although the legal age of consent for sexual relations is 15 years old.¹⁷ Nevertheless, in practice, health care providers require parental consent until 18 years old;
- The Government took no measures to monitor and address the issue of child marriage;¹⁸
- The legal framework does not discourage child marriages – the Civil Code recognizes the marriage of minors between 16 and 18 years old on some conditions. These conditions are built around the permission to child marriage given by parents and other relevant state authorities, not around the actual minor's wish to become married;¹⁹
- Lack of specific legal provisions that eliminate child marriages;²⁰
- Lack of a special protocol for competent public authorities managing situations related to child marriages;²¹
- Recent sociological studies show that child marriages negatively affect participation to education, particularly in case of women.²²

12. Recommendations:

- ✓ To adopt the National Strategy on Sexual and Reproductive Health and Rights;
- ✓ To take measures to prevent teenage pregnancy and ensure services for supporting teenage mothers to continue their education and have access on the labor market;
- ✓ To include mandatory comprehensive sexual and reproductive health education in schools;
- ✓ To centralize information regarding child marriages in a national database;

- ✓ To adopt a legislation that forbids child marriages and provides efficient punishments and means of protection for minors;
- ✓ To adopt and apply a series of special protocols for competent public authorities when dealing with situations of child marriages;
- ✓ To consider the opportunity of eliminating the provisions of the Civil Code that allow marriage between the age of 16 and 18;
- ✓ To work with the rural communities and Roma community to prevent and combat child marriage;
- ✓ To make interventions at different levels: behavioral change and communication, monitoring and individual assistance in order to prevent child marriage, and counseling and assistance for couples that have already been through child marriage;
- ✓ To engage into developing the capacity and establishing competences of professional orientation and counseling centers, social workers, child workers, and family planning centers to monitor, identify and assist the cases at risk of school abandonment, child marriage, and early pregnancy;
- ✓ To immediately take firm measures to redress rights violations and ensure protection of children involved, according to the principle of best interest of the child: sanctioning the persons responsible for breaching the law and endangering the health and rights of the children, providing individualized counseling and assistance to the victims of child marriage, domestic violence, and providing counseling to the married children with regards to continuing their education, professional opportunities, child rearing, etc.

13. Sexuality education

- Sexuality education in Romania continues to be a controversial topic, despite the fact that this education is critically important to the pupils' psychological, mental and social development and empowers them to understand and claim their sexual and reproductive rights. It is not addressed by the authorities, politicians or media during the public discourse because it is still considered a taboo.
- Sexuality education is not a subject in the Romanian public education curricula. The curricula of "Education for Health" subject, included in the curricula in 2004 by Ministry of Education, contains a list of issues on sexuality education taught throughout the grades I-XII. However, this is an optional subject at the school's decision. Hence it is mostly not pupils' choice to study Education for Health, but rather an administrative decision of the headmaster accommodating the need for working hours of various teachers. Furthermore, Education for Health comes in competition with other optional subjects at school's decision – computer sciences, sports, etc. There is no official information on the number of pupils that study Education for Health, in which grades, the training the teachers received, the education materials used, etc.
- As a practice, Education for Health is taught by biology teachers. Without training and skills for teaching issues related to sexuality education, it is not rare that teachers are reluctant to talk about issues connected to puberty and sexuality, hence they often prefer to talk about health in a general way and leave out the sex related subjects. Moreover, sexual orientation, gender norms, gender identity, preventing unwanted pregnancies, and accessing safe and legal abortion are not discussed and explored.
- Not surprisingly Romanian youth believe that the teachers who handle sexuality education at schools do not have the necessary skills and knowledge while the information they receive is not rights-based and age-appropriate. As schools don't provide the young people with the knowledge

on sexuality and the parents are too reluctant and afraid to talk about these issues, young people often turn to peers, media and Internet for knowledge on sex.

14. Recommendations:

- ✓ To take steps to ensure sexuality education is compulsory and mandatory in all schools;
- ✓ To ensure that the content of sexuality education curricula is evidence-based, gender sensitive, non-discriminatory and in accordance with other international standards;
- ✓ To ensure that topics such as sexual orientation, gender norms, gender identity, preventing unwanted pregnancy and accessing safe and legal abortion are addressed in an accurate and non-discriminatory way in school curricula;
- ✓ To appropriately train and educate teachers on sexuality education.

¹ Abortion on request, like any other health care service, is part of the health care system. See World Health Organization, *Safe Abortion: Technical and Policy Guidance for Health Systems, 2003* and Council of Europe Parliamentary Assembly, *Resolution no.1607 (2008) Access to Safe and Legal Abortion in Europe*. In Romania, abortion on request is available legally until the 12th week of gestation.

² This conclusion resulted from the Report “Objection on the Grounds of Conscience or Religion to Performing Pregnancy Termination in Romania”, published by ECPI in May 2011, <http://www.ecpi.ro/> [hereinafter *The Report*]. The Report monitored at a national level the practice of refusing to perform abortions demanded by pregnant women around Easter and Christmas Holidays. Out of the 67 hospitals monitored in the Report, 13 did not perform abortions during any religious Christian-Orthodox Holiday; 39 do not perform abortions in the week before Easter and 25 in the week before Christmas; 6 refuse to perform abortions, irrespective of the religious significance of the date.

³ According to the Romanian legal frame, Law no. 95/2006 with regard to the reform in the public health area, the doctor (not the other medical personnel) is allowed to terminate his/her relationship with the patient in two situations: when referring the patient to another doctor with higher competence and if the patient manifests a hostile behavior towards the doctor. Consequently, terminating the relationship on the ground of religious or conscientious reasons falls outside the scope of the law. However, the Deontological Code of the Medical Profession allows doctors to refuse performing abortions “without explanation”. This provision comes into clear conflict with Law no. 95/2006, which has a higher legal force than the Deontological Code.

⁴ The Deontological Code of the Medical Profession does not impose upon the doctor the obligation to refer the patient to another specialist, when he/she objects to performing an abortion (as opposed to the situation when the doctor objects to performing any other medical procedure).

⁵ The Draft Law on the Establishment, Operation and Organization of Centers for Pregnancy Crisis Counseling was registered by the Deputies Chamber of Parliament on March 13, 2012 and is currently undergoing the legislative procedure (L275/2012). The Draft Law imposes mandatory counseling for women seeking abortion on request or abortion on health grounds and a 5 day waiting period before being provided with pregnancy termination medical services.

⁶ The findings from this submission are the result of a report carried out by ECPI and UNOPA, *The Sexual and Reproductive Rights. The case of Women Living with HIV*, June 2011, available at <http://www.ecpi.ro/raport-hiv/?lang=en> [hereinafter *The HIV Report*]. The Report consists in in-depth interviews carried out with women living with HIV in different parts of Romania.

⁷ Universal precautions are laid out in *Ordinul Ministerului Sănătății nr.994/2004 privind aprobarea Normelor de supraveghere și control a infecțiilor nosocomiale în unitățile sanitare, Anexa V, pct.1 [mai departe OMS 994/2004]*.

⁸ Women reported numerous cases when these special measures were not taken, which is contrary to the existing medical standards. In 2009, *The HIV during Pregnancy Clinical Guide* (“*Ghidul clinic privind infecția HIV în sarcină*”) was adopted via a Ministry of Health order. The guide recommends birth by programmed cesarean section at thirty-eight weeks of pregnancy for women living with HIV, yet this preventive measure is not always implemented.

⁹ According to the *The HIV during Pregnancy Clinical Guide*, pregnant women are entitled to ARV medicine throughout pregnancy and postpartum, and the newly born is entitled to ARV medicine immediately after birth. This treatment is provided for free all throughout the necessary period of time.

¹⁰ Romanian legislation (in Governmental Ordinance No. 137/2000) explicitly forbids and sanctions discrimination against persons living with HIV. However, there are numerous situations of discrimination against women living with HIV related to the right to health presented in The HIV Report.

¹¹ “*The HIV status of women should be kept confidential and their medical records available only to health workers with a direct role in their care or care for their infants*” United Nations Populations Fund, World Health Organisation, *Sexual and reproductive health of women living with HIV/AIDS: Guidelines on care, treatment and support for women living with HIV/AIDS and their children in resource-constrained settings* (2006), p. 30. <http://www.who.int/hiv/pub/guidelines/sexualreproductivehealth.pdf>

¹² We are of the opinion that child marriage in Romania is not a cultural practice of the Roma community nor is exclusively practiced by Roma, although it occurs more often in traditional Roma communities compared to non-Roma communities. See Centrul Educația 2000+, UNICEF, *Sarcina și căsătoria timpurie în cazul tinerelor Roma* [Early pregnancy and early marriage in the case of young Roma women], September 2004, p.3. See Institutul pentru Cercetarea Calității Vieții, *Indicatori privind comunitățile de Romi din România*, Editura Expert, Bucharest, 2002, p.8.

¹³ See Anuarul Statistic al României.

¹⁴ European Commission, Health & Consumer Protection Directorate-General, Directorate C - Public Health and Risk Assessment Eurostat (NewCronos Database), Live births by mother's age at last birthday - total number and % of total, 2005.

¹⁵ See Anuarul Statistic al României.

¹⁶ See Art.650 of the Law 95/2006 regarding the reform in the field of health care.

¹⁷ See Art.198 of the Penal Code.

¹⁸ As shown in the Reply of the Ministry of Labour, Family and Social Protection, No. DGPC/ et/ 9482, August 3, 2010, the General Directorate for Child Protection claims that „there is no centralized data at the level of our institution regarding child marriages”

¹⁹ As provided by Law No. 288/2007 that allows the marriage of minors between 16 and 18 for „solid reasons”, after the issuing of a medical certificate, with the consent of the parents or only one of the parents when the other is unable to provide consent and with the authorisation of the General Directorate for Social Assistance and Child Protection.

²⁰ The only legal provisions applicable are general ones, that are not tailored for the situation of child marriages. Such provisions are „Sexual Intercourse with a Minor” (Art. 198 of the Romanian Criminal Code) – but it is unclear if a person between 16 and 18 is punishable for having sexual intercourse with another minor – or „Desertion of Family” (Criminal Code, Art. 305) and „Ill Treatment Applied to Minors” (Criminal Code, Art. 306).

²¹ As shown in the Reply of the Ministry of Labour, Family and Social Protection, No. DGPC/ et/ 9482, August 3, 2010. In such situations, the General Directorate for Social Assistance and Child Protection applies the general rules for the protection of children, families, single parents, elder persons, disabled persons and persons in need.

²² See Romani CRISS, *Roma School Participation, Non-Attendance, and Discrimination in Romania*, Bucharest, Vanemonde, 2011, p.57. See also Duminica, Gelu, and Ana Ivasiuc, *One School for All? Access to quality education for Roma children*, Buzau, Alpha MDN, 2011, p.88.