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HIGH COMMISSIONER FOR HUMAN RIGHTS

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Mandates of the Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Chair-Rapporteur of the Working Group on Arbitrary Detention and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment pursuant to General Assembly resolution 60/251 and to Human Rights Council resolutions 15/18 and 16/23.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the detention and alleged ill-treatment in Moldova of Mr. X.

According to the information received:

On 16 April 2011, Mr. X was taken into police custody at central Mol isolator in Chisinau KPZ-13. Mr. X is allegedly the suspect of the sexual assault and murder of a young couple in Hincesti, Moldova (registered criminal case No. 2010013595).

On 18 April 2011, Mr. X was remanded into custody for a period of 30 days by a decision of the Central District Court of Chisinau. The term was extended for an additional 30-day period on 13 May 2011 and 13 June 2011, respectively. While in police custody, Mr. X was allegedly made to lie face down and his hands and legs were bound together behind his back. He was allegedly lifted by a rope by the legs and police officers allegedly put a gas mask on his face and placed wires on his legs and on the soles of his feet. Mr. X was allegedly subjected to electric shocks.

On 13 July 2011, the Central District Court of Chisinau examined the request of the Prosecutor to transfer Mr. X to a psychiatric facility. This request was made on the basis of the psychiatric assessment report No. 61S-2011 dated 24 June 2011. In the report it was established that Mr. X suffers from *paranoid schizophrenia*. It was also established that the moment of the commission of the alleged crime, Mr. X did not have the capacity to control his actions and should therefore incur no criminal responsibility. The report established that there are sufficient reasons for Mr. X to be held in isolation and under constant psychiatric treatment. It is stated in the decision of the court that Mr. X and his lawyer had agreed with the Prosecutor's request to transfer Mr. X from the central Mol isolator in Chisinau KPZ-13 to the Public Medical Sanitary Institute of the Clinical Hospital of Psychiatry in Chisinau. In accordance with the relevant provisions of the Criminal Procedure Code, the Central District Court of Chisinau decided to accept the request of the Prosecutor and to authorize Mr. X's transfer to the aforementioned psychiatric facility for a term of 60 days. The term expired on 13 September 2011.

It is alleged that neither Mr. X nor his lawyer have received any judicial decision extending Mr. X's detention beyond 13 September 2011.

Concern is expressed at the allegation of ill-treatment inflicted upon Mr. X while in pretrial detention. Similarly, concern is expressed that his detention in a psychiatric facility after the expiry of the court's order lapsed lacks of any legal basis.

Without expressing at this stage an opinion on the facts of the case and on whether the detention of Mr. X after 13 September 2011 is arbitrary, we would like to appeal to your Excellency's Government to take all necessary measures to guarantee his right not to be deprived arbitrarily of his liberty and to fair proceedings before an independent and impartial tribunal, in accordance with articles 9 and 10 of the Universal Declaration of Human Rights (UDHR) and articles 9 and 14 of the International Covenant on Civil and Political Rights (ICCPR).

We would like to remind your Excellency's Government that "persons deprived of their liberty on health grounds...must have judicial means of challenging their detention" (E/CN.4/2004/3, para. 81). Importantly, pursuant to Article 9, paragraph 4 of the ICCPR, "the necessity whether to hold the patient further in a psychiatric institution shall be reviewed regularly at reasonable intervals by a court or a competent independent and impartial organ and the patient shall be released if the grounds for his detention do not exist any longer". In the present case, we are concerned that such review has not

taken place after the expiry on 13 September 2011 of the Court's order dated 13 July 2011.

While we do not wish to prejudge the accuracy of these allegations, we wish to draw your Excellency's attention to the right to physical and mental integrity of Mr. X.

Without in any way implying any conclusion as to the facts of the case, we should like to appeal to your Excellency's Government to seek clarification of the circumstances regarding the case of Mr. X. We would like to stress that each Government has the obligation to protect the right to physical and mental integrity of all persons. This right is set forth inter alia in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

In this context, we would like to draw the attention of your Excellency's Government to paragraph 1 of Human Rights Council Resolution 16/23 which "Condemns all forms of torture and other cruel, inhuman or degrading treatment or punishment, including through intimidation, which are and shall remain prohibited at any time and in any place whatsoever and can thus never be justified, and calls upon all States to implement fully the absolute and non-derogable prohibition of torture and other cruel, inhuman or degrading treatment or punishment."

We would like to draw the attention of your Excellency's Government to article 12 of the CAT, which requires the competent authorities to undertake a prompt and impartial investigation wherever there are reasonable grounds to believe that torture has been committed, and article 7 of the CAT, which requires State parties to prosecute suspected perpetrators of torture.

We would also like to draw your Excellency's Government's attention to paragraph 7b of Human Rights Council Resolution 16/23, which urges States "to take persistent, determined and effective measures to have all allegations of torture or other cruel, inhuman or degrading treatment or punishment investigated promptly, effectively and impartially by an independent, competent domestic authority, as well as whenever there is reasonable ground to believe that such an act has been committed; to hold persons who encourage, order, tolerate or perpetrate such acts responsible, to have them brought to justice and punished in a manner commensurate with the gravity of the offence, including the officials in charge of the place of detention where the prohibited act is found to have been committed; and to take note, in this respect, of the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the updated set of principles for the protection

of human rights through action to combat impunity as a useful tool in efforts to prevent and combat torture.”

We urge your Excellency's Government to take all necessary measures to guarantee that the rights and freedoms of Mr. X are respected and, in the event that your investigations support or suggest the above allegations to be correct, the accountability of any person responsible of the alleged violations should be ensured. We also request that your Excellency's Government adopt effective measures to prevent the recurrence of these acts.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of Mr. X in compliance with the above international instruments.

Moreover, it is our responsibility under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Human Rights Council, we would be grateful for your cooperation and your observations on the following matters, when relevant to the case under consideration:

1. Are the facts alleged in the summary of the case accurate?
2. Please provide information concerning the legal grounds for the arrest and detention of Mr. X and how these measures are compatible with international norms and standards as recognized, inter alia, in the UDHR and the ICCPR and CAT.
3. Please inform whether the decision of the Central District Court of Chisinau to place Mr. X in a psychiatric facility has been extended after 13 September 2011 and if such an extension was granted, please explain why Mr. X and his lawyer have not yet received the decision. Moreover, please provide details regarding the medical evaluation justifying such an extension.
4. Please provide information on the measures taken to ensure the safety of Mr. X.

We undertake to ensure that your Excellency's Government's response to each of these questions is accurately reflected in the report we will submit to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

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Chair-Rapporteur of the Working Group on Arbitrary Detention

Juan E. Méndez
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