

## International Standards on Subsidizing Contraceptives

### *Article 7 (5) of the Slovak Constitution*

International treaties on human rights and fundamental freedoms, international treaties for whose exercise a law is not necessary, and international treaties which directly confer rights or impose duties on natural persons or legal persons and which were ratified and promulgated in the way laid down by a law shall have precedence over laws.

Slovakia has ratified all major UN treaties in the field of human rights. The Slovak Constitution gives priority to these provisions over national laws. Below is information on international human rights law standards regarding access to affordable family planning and contraceptives, which confirm Slovakia's obligation to subsidize contraceptives, especially for women belonging to marginalized groups.

### **I. OBLIGATION TO SUBSIDIZE CONTRACEPTIVES**

International human rights law and medical standards obligate states to subsidize contraceptives.

#### **Human Rights Standards**

**Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): Article 10(h) (the right to access specific educational information on health), Article 12(1) (the right to non-discrimination of women in the field of health), Article 14(2)(b) (the right to non-discrimination of rural women in the field of health), Article 16(1)(e) (the right to non-discrimination of women in deciding on the number and spacing of their children).**

The CEDAW Committee, which monitors state compliance with CEDAW and interprets the Convention, has frequently expressed concern to states over women's lack of access to and low use of contraceptive and family planning services and information.<sup>1</sup> The Committee has identified cost<sup>2</sup> and lack of medical insurance coverage<sup>3</sup> as obstacles to accessing contraception. The Committee has regularly encouraged state parties to improve access to contraception through increased insurance cover-

age<sup>4</sup> and greater attention to the cost of contraceptive and family planning services.<sup>5</sup>

CEDAW mandates that men and women enjoy the same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights,<sup>6</sup> which has been interpreted by the Committee to mean that women are entitled to decide on the number and spacing of their children.<sup>7</sup>

The Committee considers the subsidization of contraceptives an obligation under the right to health, repeatedly reaffirming that access to health care, including reproductive health, is a basic right under CEDAW. Thus, States are required to take appropriate legislative, judicial, administrative, budgetary, economic and other measures to the maximum extent of their available resources to ensure that women realize their rights to health care.<sup>8</sup>

Furthermore, the Committee has urged governments to take measures to ensure that women do not seek unsafe medical procedures, such as illegal abortion, because of lack of appropriate services in regard to fertility control.<sup>9</sup> The Committee has expressed concern about countries where "while there are no legal barriers, the need for contraception remains unmet,"<sup>10</sup> and has encouraged countries to "continue . . . efforts to ensure women, particularly poor women, access to family planning programs and related information to increase women's choices and as a means of empowerment."<sup>11</sup>

*CEDAW Committee Recommendations to Slovakia (2008) on Making Family Planning Services Affordable*

The Committee is also concerned at the persisting high rate of abortion, which is a consequence of the lack of information and access of women to family planning. The Committee is further concerned at the difficulties women belonging to vulnerable communities experience in accessing health care due to the cost of related services. Furthermore, the Committee expresses concern at the lack of a holistic and life-cycle approach to women's health. . . . **The Committee urges the State party to take measures to increase the access of women and adolescent girls to affordable health-care services, including reproductive health care, and to increase access to information and affordable means of family planning for women and men.**<sup>12</sup>

**International Covenant on Civil and Political Rights (ICCPR): Article 3 (the right to equality of men and women), Article 6(1) (the right to life), Article 17 (the right to private life), Article 26 (the right to non-discrimination)**

The Human Rights Committee, which monitors state compliance with the ICCPR and interprets the Covenant, has clearly stated that under the ICCPR, women should be ensured effective access to contraception, including through programs addressing financial barriers to contraceptives.<sup>13</sup>

**Human Rights Committee Recommendations to Poland on Funding Oral Contraceptives**

The high cost of contraception, the reduction in the number of refundable oral contraceptives, the lack of free family planning services . . . are also of concern to the Committee [...]The State party should assure the availability of contraceptives and free access to family planning services and methods...<sup>14</sup>

The Committee notes with concern: . . . (b) limited accessibility for women to contraceptives due to high prices and restricted access to suitable prescriptions; [...]The State party should introduce policies and programmes promoting full and non-discriminatory access to all methods of family planning...<sup>15</sup>

The Committee recognizes that access to contraception protects women's lives.<sup>16</sup> In particular, it has recommended that states take adequate measures to help women prevent unwanted pregnancies and avoid resorting to life-threatening abortions, and adopt appropriate family planning programmes to overcome the unmet need for access to contraception and family planning.<sup>17</sup>

The Committee has also examined issues related to women's reproductive lives and functions under the right to privacy.<sup>18</sup> The Committee asks state parties to report on laws, public actions, or private practices that interfere with women's equal enjoyment of the right to privacy, and to take measures to eliminate such interferences.<sup>19</sup>

In addition, the Committee views these issues under the framework of non-discrimination. The Committee has said that states should adopt measures to achieve the effective and equal empowerment of women and should report on any laws and public or private actions that interfere with the equal enjoyment by women of their privacy rights under article 17. They should also report on measures taken to eliminate and protect against such interference.<sup>20</sup>

**International Covenant on Economic, Social and Cultural Rights (ICESCR): Article 2(2) (the right to non-discrimination), Article 3 (the right to equality of men and women), Article 6 (the right to work), Article 7 (the right to just and favourable conditions of work), Article 11 (the right to an adequate standard of living), Article 12(1) (the right to the enjoyment of the highest attainable standard of physical and mental health), Article 13 (the right to education)**

The Committee on Economic, Social, and Cultural Rights, which monitors state compliance with ICESCR and interprets the Covenant, has recommended that contraceptives be available at affordable prices.<sup>21</sup> The Committee has noted that the ICESCR's right to the highest attainable standard of physical and mental health<sup>22</sup> includes access to sexual and reproductive health care.<sup>23</sup> The Committee emphasized that health facilities, goods and services have to be accessible to everyone without discrimination, especially for the most vulnerable and marginalized, and must be affordable for all.<sup>24</sup> The Committee stated that providing all drugs on the WHO Model List is a core obligation; this includes oral contraceptives (see below).<sup>25</sup>

**International Consensus Documents<sup>26</sup>**

The International Conference on Population and Development (ICPD), adopted in 1994, recommends the provision of universal access to reproductive health

services, including family planning and sexual health and says that all countries should strive for universal access to a full range of safe and reliable family-planning methods.<sup>27</sup> Similarly, the Beijing Declaration and Platform for Action calls on governments to ensure a reliable, continuous stock of high-quality pharmaceutical and contraceptive supplies and equipment.<sup>28</sup> The Declaration emphasizes social realities that have an adverse impact on women's health: the limited power many women have over their sexual and reproductive lives and their lack of influence in decision-making.<sup>29</sup> Women's limited power in relationships prevents them from exercising the right to decide the number and spacing of their children.

### Medical Standards

#### World Health Organization (WHO)

WHO *Model List (Revised 2005)* presents a list of minimum medicine needs for a basic health care system, listing the most efficacious, safe and cost-effective medicines for priority conditions. WHO includes contraceptives on its "core list" of essential drugs, meaning that it considers contraceptives a minimum need in a basic healthcare system and they should thus be accessible and affordable to all.<sup>30</sup>

#### International Federation of Gynecology and Obstetrics (FIGO)<sup>31</sup>

FIGO's statement of professional and ethical responsibilities concerning sexual and reproductive rights states that members agree to advocate for the rights of women to make choices about sexual relationships, as well as for appropriate resources for women seeking better reproductive and sexual health to ensure the rights to the highest attainable standard of health.<sup>32</sup> According to FIGO, "[w]omen have the right to make a choice on whether or not to reproduce and should therefore have access to legal, safe, effective, acceptable and affordable methods of contraception."<sup>33</sup>

## II. PROTECTION OF MARGINALIZED GROUPS

*Substantive equality* is concerned ... with the effects of laws, policies and practices and with ensuring that they do not maintain, but rather alleviate, the inherent disadvantage that particular groups experience.<sup>34</sup>

Committee on Economic, Social and Cultural Rights, *General Comment 16, Article 3: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights*.

International human rights standards have paid special attention to marginalized groups in terms of subsidization of contraceptives. Indicators such as maternal deaths, contraceptive prevalence, and teenage pregnancies show disparities in the use of reproductive health care services among subgroups of populations based on for example, urban/rural residence, education, ethnicity, and income.<sup>35</sup>

Addressing these differences, the Committee on Economic, Social, and Cultural Rights has noted that health facilities, goods and services have to be accessible to everyone without discrimination, especially the most marginalized or vulnerable and they must be affordable for all.<sup>36</sup> In addition, the Human Rights Committee has stated that state parties should ensure that contraceptives are available to the general public especially in rural areas.<sup>37</sup> Similarly, the CEDAW Committee has frequently underscored the need for special efforts to accommodate vulnerable population groups and their need for contraceptive and family planning services, particularly women and girls in rural or resource-poor areas.<sup>38</sup>

#### Convention on the Rights of the Child (CRC):

**Article 2(1) (the right to non-discrimination), Article 6(1) (the right to life), Article 16 (the right to private life), Article 24(1) (the right to the enjoyment of the highest attainable standard of health), Article 27 (the right to an adequate standard of living), Article 28 (the right to education)**

Adolescents are particularly affected by the lack of affordability of contraceptives. The Committee on the Rights of the Child has noted that governments have a duty to ensure that adolescents enjoy access to sexual and reproductive information and services, including on family planning and contraceptives.<sup>39</sup> The Committee encourages states parties to ensure that health services offer free or low-cost contraceptive methods and services<sup>40</sup> and allocate more resources to family planning programs.<sup>41</sup> Similarly, the ICPD Programme of Action emphasizes the importance of providing these services to adolescents and, especially, to low-income adolescents.<sup>42</sup>

In conclusion, international human rights standards expressly recognize states' obligation to subsidize contraceptives as a way to ensure human rights for women, in particular women belonging to vulnerable groups.

## ENDNOTES

- <sup>1</sup> See, e.g., CEDAW Committee, *Concluding Observations* to: Greece, ¶ 207, U.N. Doc. A/54/38 (1999); Hungary, ¶ 254, U.N. Doc. A/51/38 (1996); Ireland, ¶ 186, U.N. Doc. A/54/38 (1999); Lithuania, ¶ 158, U.N. Doc. A/55/38 (2000); Mongolia, ¶ 273, U.N. Doc. A/56/38 (2001).
- <sup>2</sup> See, e.g., CEDAW Committee, *Concluding Observations* to: Armenia, ¶ 50, U.N. Doc. A/52/38/Rev.1, Part II (1997); Hungary, ¶ 254, U.N. Doc. A/51/38 (1996); Iceland, ¶ 84, U.N. Doc. A/51/38 (1996); Israel, ¶ 167, U.N. Doc. A/52/38/Rev.1, Part II (1997); Kazakhstan, ¶ 106, U.N. Doc. A/56/38 (2001); Luxembourg, ¶ 210, U.N. Doc. A/52/38/Rev.1, Part II (1997); Mongolia, ¶ 274, U.N. Doc. A/56/38 (2001).
- <sup>3</sup> See, e.g., CEDAW Committee, *Concluding Observations* to: Georgia, ¶ 112, U.N. Doc. A/54/38 (1999); Luxembourg, ¶ 221, U.N. Doc. A/52/38/Rev.1, Part II (1997).
- <sup>4</sup> See CEDAW Committee, *Concluding Observations* to: Luxembourg, ¶ 221, U.N. Doc. A/52/38/Rev.1, Part II (1997).
- <sup>5</sup> See, e.g., CEDAW Committee, *Concluding Observations* to: Belarus, ¶ 374, U.N. Doc. A/55/38 (2000); Croatia, ¶ 117, U.N. Doc. A/53/38 (1998); Estonia, ¶ 112, U.N. Doc. A/57/38 (2002); Greece, ¶ 207, U.N. Doc. A/54/38 (1999); Hungary, ¶ 260, U.N. Doc. A/51/38 (1996); Israel, ¶ 181, U.N. Doc. A/52/38 Rev.1, Part II (1997); Mongolia, ¶ 274, U.N. Doc. A/56/38 (2001); Slovakia, ¶ 92, U.N. Doc. A/53/38/Rev.1 (1998).
- <sup>6</sup> See Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/180, U.N. GAOR, 34<sup>th</sup> Sess., Supp. No. 46, at 193, art. 16(1)(e), U.N. Doc. A/34/46 (1979) (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].
- <sup>7</sup> See Committee on the Elimination of Discrimination Against Women, *General Recommendation 21 Equality in marriage and family relations*, ¶¶ 21-23 (Thirteenth session, 1994).
- <sup>8</sup> See Committee on the Elimination of Discrimination Against Women, *General Recommendation 24: Women and Health (Article 12)*, ¶ 17 (Twentieth session, 1999).
- <sup>9</sup> See, e.g., CEDAW Committee, *Concluding Observations* to: Chile, ¶ 20 (2006), U.N. Doc. No. CEDAW/C/CHI/CO/4; Bosnia and Herzegovina, ¶ 35, U.N. Doc. CEDAW/C/BIH/CO/3 (2006); Estonia, ¶ 111, U.N. Doc. A/57/38 (2002); Georgia, ¶ 111, U.N. Doc. A/54/38 (1999); Greece, ¶ 207, U.N. Doc. A/54/38 (1999); Hungary, ¶ 260, U.N. Doc. A/51/38 (1996); Kazakhstan, ¶¶ 105–106, U.N. Doc. A/56/38 (2001); Kyrgyzstan, ¶¶ 136–137, U.N. Doc. A/54/38 (1999); Lithuania, ¶ 158, U.N. Doc. A/55/38 (2000); Luxembourg, ¶¶ 210, 221, U.N. Doc. A/52/38/Rev.1, Part II (1997); Mongolia, ¶ 273, U.N. Doc. A/56/38 (2001); Romania, ¶ 314, U.N. Doc. A/55/38 (2000); Slovakia, ¶¶ 91–92, U.N. Doc. A/53/38/Rev.1 (1998); Slovenia, ¶¶ 107, 119, U.N. Doc. A/52/38/Rev.1 (1997).
- <sup>10</sup> CEDAW Committee, *Concluding Observations* to Belize ¶ 56-57 (1999), U.N. Doc. No. A/54/38.
- <sup>11</sup> CEDAW Committee, *Concluding Observations* to South Africa ¶ 134 (1998), U.N. Doc. No. A/53/38/Rev.1.
- <sup>12</sup> CEDAW Committee, *Concluding Observations* to Slovakia, ¶¶ 42-43 (2008), Part of A/63/38.
- <sup>13</sup> See Human Rights Committee, *Concluding Observations* to Argentina ¶ 14 (2000), U.N. Doc. No. CCPR/CO/70/ARG.
- <sup>14</sup> Human Rights Committee, *Concluding Observations* to Poland, ¶ 9 (2004), U.N. Doc. No. CCPR/CO/82/POL.
- <sup>15</sup> Human Rights Committee, *Concluding Observations* to Poland, ¶ 11 (1999), U.N. Doc. No. CCPR/C/79/Add.110.
- <sup>16</sup> See, e.g., Human Rights Committee, *Concluding Observations* to: Hungary, 19/04/2002, U.N. Doc. CCPR/CO/74/HUN, ¶ 11; Paraguay, 24/04/2006, U.N. Doc. CCPR/C/PRY/CO/2, ¶ 10.
- <sup>17</sup> See, e.g., Human Rights Committee, *Concluding Observations* to: Vietnam, ¶ 15 (2002), U.N. Doc. No. CCPR/CO/75/VNM; Albania, 02/12/2004, U.N. Doc. CCPR/CO/82/ALB, ¶ 14; Georgia, 01/04/1997, U.N. Doc. CCPR/C/79/Add.75, ¶ 12; Hungary, 19/04/2002, U.N. Doc. CCPR/CO/74/HUN, ¶ 11; Mongolia, 27/03/2000, U.N. Doc. CCPR/C/79/Add.120, ¶ 8(b). See also General Comment No. 4, Adolescent health and development in the context of the Convention on the Rights of the Child, U.N. Doc. CRC/GC/2003/4, ¶¶ 28, 34 (2003) (in the case of access to contraceptives for adolescents).
- <sup>18</sup> See Human Rights Committee, *General Comment 28: Equality of rights between men and women (article 3)*, ¶ 20 (2000), U.N. Doc. CCPR/C/21/Rev.1/Add.10 [hereinafter General Comment 28].
- <sup>19</sup> *Id.*
- <sup>20</sup> See General Comment 28, *supra* note 18, ¶¶ 3, 20.
- <sup>21</sup> See Committee on Economic, Social and Cultural Rights, *Concluding Observations* to Poland, ¶ 50 (2002), E/C.12/1/ADD.82.
- <sup>22</sup> See Committee on the Rights of the Child, *General Comment No. 3, HIV/AIDS and the right of the child*, ¶ 11 (2003), U.N. Doc. CRC/GC/2003/3 [hereinafter General Comment No.3].
- <sup>23</sup> See Committee on Economic, Social and Cultural Rights, *General Comment 14, The right to the highest attainable standard of health*, ¶ 11 (Twenty-second session, 2000), U.N. Doc. E/C.12/2000/4 (2000) [hereinafter General Comment 14].
- <sup>24</sup> See General Comment 14, *supra* note 23, ¶ 12.
- <sup>25</sup> See General Comment 14, *supra* note 23, ¶¶ 43-44.
- <sup>26</sup> International Consensus Documents are documents agreed by consensus at governmental level, issued at international conferences. The International Consensus Documents state forth standards agreed to by Slovakia and all other states participating to these events.
- <sup>27</sup> *Programme of Action of the International Conference on Population and Development*, Cairo, Egypt, Sept. 5-13, 1994, ¶¶ 1.12, 7.16, U.N. Doc. A/CONF.171/13/Rev.1 (1995) [hereinafter ICPD Programme of Action].
- <sup>28</sup> *Beijing Declaration and the Platform for Action, Fourth*

*World Conference on Women*, Beijing, China, Sept. 4-15, 1995, U.N. Doc. A/CONF.177/20 (1995) [hereinafter Beijing Declaration and Platform for Action].

- 29 Beijing Declaration and Platform for Action, *supra* note 28, ¶ 94.
- 30 The core list includes oral hormonal contraceptives, injectable hormonal contraceptives, intrauterine devices, barrier methods such as condoms and diaphragms. See WHO Model List (Revised 2005), available at [http://whqlibdoc.who.int/hq/2005/a87017\\_eng.pdf](http://whqlibdoc.who.int/hq/2005/a87017_eng.pdf) (last visited Jun.11, 2009). See also Interagency List of Essential Medicines for Reproductive Health (2006), WHO Department of Reproductive Health and Research, available at <http://www.who.int/reproductive-health/> (last visited Jun.11, 2009); *Declaration of Alma-Ata*, International Conference on Primary Health Care, Alma-Ata, USSR, 6-12 September 1978, VII point 3.
- 31 Slovakia is a member country of FIGO.
- 32 International Federation of Gynecology and Obstetrics, *Professional and Ethical Responsibilities Concerning Sexual and Reproductive Rights*, available at <http://www.figo.org/default.asp?id=6137> (last visited Jun.11, 2009).
- 33 International Federation of Gynecology and Obstetrics, Ethical Issues in Obstetrics and Gynecology, *Ethical Aspect of Induced Abortion for Non-medical Reasons*, Recommendation 2, at 80 Cairo, March 1998, available at <http://www.figo.org/files/figo-corp/docs/Ethics%20Guidelines%20-%20English%20version%202006%20-2009.pdf> (last visit June 22, 2009).
- 34 Committee on Economic, Social and Cultural Rights, *General Comment 16, Article 3: the equal right of men and women to the enjoyment of all economic, social and cultural rights*, ¶ 7 (Thirty-fourth session, 2005), U.N. Doc. E/C.12/2005/3 (2005).
- 35 United Nations Population Fund, *Measuring Access to Reproductive Health Services, Report of WHO/UNFPA*, Technical Consultation, 2-3 December 2003.
- 36 General Comment 14, *supra* note 23, ¶ 12.
- 37 Human Rights Committee, *Concluding Observations to Paraguay* ¶ 10 (2006), U.N. Doc. No. CCPR/C/PRY/CO/2.
- 38 See, e.g., CEDAW Committee, *Concluding Observations to: Lithuania*, ¶ 159, U.N. Doc. A/55/38 (2000); *Ukraine*, ¶ 287, U.N. Doc. A/51/38 (1996). See also CEDAW, *supra* note 12, art. 14(2)(b).
- 39 General Comment No.3, *supra* note 22, ¶ 30.
- 40 Committee on the Rights of the Child, *General Comment 3: HIV/AIDS and the Rights of the Child*, ¶ 20, U.N. Doc. CRC/GC/2003/3 (2003).
- 41 See, e.g., Committee on the Rights of the Child, *Concluding Observations to: Czech Republic*, 27/10/1997, U.N. Doc. CRC/C/15/Add.81, ¶ 34; *Latvia*, 26/01/2001, U.N. Doc. CRC/C/15/Add.142, ¶ 40; *Lithuania*, 26/01/2001, U.N. Doc. CRC/C/15/Add.146, ¶ 40; *Turkey*, 09/07/2001, U.N. Doc. CRC/C/15/Add.152, ¶ 54.
- 42 ICPD Programme of Action, *supra* note 27, ¶ 7.43.