

Recommended Principles for the Formation of a Commission of Inquiry into Illegal Sterilization Practices in Slovakia*

7 July 2003

This document has been prepared by the Center for Reproductive Rights and Center for Civil and Human Rights (Poradna pre občianske a ľudské práva) and sets forth principles for the formation of a commission to examine the practice of forced and coerced sterilization in Slovakia.

Background

Practice under Communism

The current practices of forced and coerced sterilization are grounded in previous state policies. Coerced and forced sterilization was perpetrated under both the Nazi and Communist regimes in the territory of Czechoslovakia. Toward the latter years of the communist era, Romani women were the targets of a Czechoslovak government program that offered monetary incentives to all citizens that underwent sterilization. Although the program made these incentives available to all persons, regardless of race or ethnicity, government documents and independent international and national reports indicate that the government took specific measures to influence Romani women to undergo sterilization.¹ The post-communist government of the Czech and Slovak Republics have never publicly condemned nor fairly investigated the coerced and discriminatory sterilization policies and practices that took place under communism, despite calls from prominent Czechoslovak human rights groups² and criminal complaints filed by human rights activists in the early 1990s.³

Although the policy that resulted in the coerced sterilization of Romani women has been formally rescinded,⁴ the practice has continued.

Recent Reports

Recent cases of coerced sterilization of Romani women in eastern Slovakia were raised in the 2001 report by the Open Society Institute entitled, *On the Margins-Slovakia*.⁵ The chapter on health care presents reports of recent cases of coerced and forced sterilization. In January 2003, the Center for Reproductive Rights and Poradňa issued the report, *Body and Soul: Forced Sterilization and Other Assaults on Reproductive Freedom in Slovakia*, which further documents cases of forced and coerced sterilization throughout the post-communist period up until July 2002. In addition, in April 2003, The European Roma Rights Center stated that they also have found cases 'indicating that there is serious cause for concern with respect to allegations that sterilizations have in the recent past been performed on Romani women in Slovakia absent full and informed consent.'⁶

Slovak Government's recent response

* The principles outlined in this document are based in part on the United Nations Office of the High Commissioner for Human Rights Background Note on National Commissions of Inquiry into Human Rights Violations, Geneva 13 April 2000.

Shortly after the release of *Body and Soul*, Slovak law enforcement officials and the Ministry of Health launched separate investigations into the findings of the report. The launch of these two investigations is a positive response by the government. However, each investigation thus far has been similarly flawed: each governmental entity has reached hasty conclusions, ignored key facts and created an intimidating atmosphere for victims that has tended to dissuade them from voluntarily coming forward.⁷

Call for Creation of Commission of Inquiry

Even a properly conducted investigation would not be able to address the extent and nature of, and explore creative remedies for forced and coerced sterilization practices over many decades. In addition, women theoretically can seek remedies through the court system; however, litigation involves limitations: the daunting, slow, and costly nature of obtaining counsel and pursuing a case; the extremely high evidentiary standards; and the well-known failure of the Slovak court system to deal sensitively with the needs of the Romani people, both generally and specifically on past forced and coerced sterilization cases.

Slovakia must confront the past and present illegal sterilization practices in order to move towards a future that respects human rights. A commission is needed to shed historical light on the specifics of why and how illegal sterilizations were and are being performed. Nations which have had similar policies and practices of forced and coerced sterilization have realized the need to acknowledge and address this issue or risk continuing harm to their societies. For example, Sweden, the United States, and Norway are confronting the truth with regards to past sterilization policies and practices which resulted in grave violations of reproductive rights. They have or are setting up commissions to survey the extent of the practice, offering recommendations for reform and compensating persons whose rights have been violated. In these countries, there had been virtually no present-day allegations of such practices, yet responsible government officials understood the need to address past harms.

We call on the Slovak government to form a commission to confront this most important issue and as one concrete step towards demonstrating a new era of respect for the human rights of all its citizens, especially the Roma.

Definition and Purpose of a Commission

The Slovak sterilization commission (the “Commission”) should be a body composed of independent individual international and Slovak experts which should be established by competent Slovak authorities on a temporary basis to examine the practice of forced and coerced sterilization in Slovakia and report about its findings. Its purpose should be to ascertain relevant facts in order to clarify the cause, nature and extent of the practice, both under communism and during the post-communist period. The Commission should issue recommendations related to its findings, including for example, institutional, legal and administrative measures to prevent the recurrence of the practice. It also should recommend financial and other reparations for victims.

Sources of Authority, Composition

- The Commission should be established by competent Slovak state authorities and should be delegated the necessary authority to perform its tasks through a governmental decree. Although the Commission would be established under domestic law, it should be empowered to examine the observance of both domestic law and international human rights standards. The decree should specify the duration of the Commission’s mandate and set forth the privileges and immunities of its members. The Commission should be allocated necessary logistical and administrative

support, including adequate and self-administered funding.

- The Commission should be based on the principles of impartiality, independence and competency. Its composition and the appointment of its members should be established in accordance with procedures which guarantee the respect of these principles. Pluralistic participation should be paid due attention. This includes participation by representatives of civil society, including national and international human rights non-governmental organizations (NGOs) and Romani NGOs, and respected legal and medical experts from the national and international community.

The Commission should be established with the financial and technical assistance of the international community.

Competence and Responsibilities

Broadly speaking, the commission should be authorized to:

- **Conduct inquiries and report findings of fact on the nature and prevalence of coercive and forced sterilization practices under communism and during the post-communist period through to the present.** The role of the commission should be to gather and analyze information with a view to establishing facts, assessing the scale and the nature of the practice of forced and coerced sterilization, identifying patterns and mechanisms and determining collective (not individual) responsibility. This includes researching how and why the policy under communism came into existence, its implementation, its extent, the reasons for its repeal, and the medical practices and social norms which allowed this practice to continue. A genuine inquiry must expose the patterns of racial and gender discrimination underlying the violations, and establish accurately the dimensions of them. It should also look at the nature and the effectiveness of the past and present governments', including the legal and administrative system's, attempts to address the allegations.
- **Propose changes in health care and legal systems.** Once the factual understanding of events has been established, the Commission should put forward proposals regarding legal, regulatory, judicial and other changes that would prevent such practices from occurring in the future. The recommendations should respect internationally recognized human rights standards, including reproductive rights.
- **Propose financial compensation and reparations for those harmed.** The commission should put forward proposals concerning financial compensation for those persons who were sterilized against their will, absent free and informed consent. The commission should determine and formulate the compensation scheme and standards by which compensation would be evaluated. Compensation should be payable for damage resulting from human rights violations. Implementation of the compensation scheme should be determined by the commission.

Other non-financial reparations may consist of acknowledgement of the practice; formal apology by the Slovak government; guarantees against repetition, such as more adequate complaint mechanisms, and rehabilitative measures, including reverse sterilization when medically appropriate and psychological counseling.

- **Determine mechanism which would receive complaints** from persons who have been illegally

sterilized. The complaint process should be confidential and the privacy of victims should be protected. This ensures that victims would not fear having their name exposed, as they would in a criminal or civil proceeding, and that they would be protected from stigmatization or other personal attacks by, among others, local authorities.

Terms of Reference

The mandate and terms of reference for the Commission should be set forth by a governmental decree. The terms of reference should be broad enough to conduct an inquiry into all instances of forced and coerced sterilization. It should set forth the *parameters of the commission's investigative powers*, including:

- **The category of abuses that it is empowered to investigate.** Practices investigated should include forced and coerced sterilization, including but not limited to violations of bodily integrity and harm to health as well as genocide. The Commission should evaluate whether genocide occurred as a final stage of its inquiry. In examining the various crimes, the Commission should consider the form and nature of coercion, timing, the conditions under which 'consent' was given, and if the practice disproportionately impacts one particular group of persons, including racial or ethnic group, among other issues. A detailed investigative methodology should be developed by the members of the commission.
- **The time frame and geographic scope of the inquiry.** This should include practices throughout the country during communism and the post-communist period, up until the present.
- **Identify collective responsibility.** Upon completion of its inquiry the Commission should determine if there is any collective responsibility for the violations. Publicly identifying specific individuals responsible for violations should not be within the Commission's purview.

The Commission should act independently of any ongoing criminal investigation and should not function as a judicial body. Thus, rules of evidence, statutes of limitations, and other rules of civil or criminal procedure should not apply.

The terms of reference should provide *the framework for the conduct of an independent inquiry*. To that end, the commission should enjoy the following minimum powers:

- **Unimpeded access to all documents**, including classified documents, medical files and all other files that may be relevant to the practice of forced and coerced sterilization, whether held by the Ministries of Health, Interior or Judiciary or any other state authority.
- **Enjoy unhindered and unrestricted freedom of movement and access to any place** which may contain relevant information, including but not limited to all medical facilities.
- **Summon any witnesses**, including state officials.

It is imperative that the Commission performs its functions in a transparent manner and in close contact with the groups concerned by the inquiry. Thus, the establishment of the Commission should be made public and all relevant information about the Commission's status, mandate and work should be publicized. The Commission itself must undertake to reach out to the communities most concerned, specifically the Romani community.

The Commission should be readily accessible to whoever may wish to contact it for the purposes of

providing or sharing information.

Methodology

In accordance with its terms of reference and domestic and international standards, the Commission, to guarantee its autonomy, should itself decide on its methods of work and rules of procedure. The Commission should define the rules of the inquiry, and should stipulate the methodology of inquiry, including all coordination and cooperation with other national and international bodies and organizations.

Rules of Procedure. The commission should develop rules that define the organization of meetings, principles of decision-making, confidentiality measures to be adopted, powers of the chairperson, role of the secretariat, principles of interaction with individuals, civil society organizations and other international and national entities, basic rules of inquiry, records, reporting and other procedural matters.

Information gathering. The process of gathering information and its management should ensure confidentiality, protection of witnesses and victims and preservation of evidence. A secure information management system should be developed to store and preserve the information gathered by the commission during the course of inquiry. The State should support the Commission by providing maximum protection to witnesses. The Commission should take precautions when identifying, approaching and interviewing sources so as not to jeopardize their privacy and safety.

Report. The end result should be the production of a historical record to establish the truth. This record or report should be widely disseminated and should constitute the basis for victims' financial and other reparations and recommendations for legal and policy reform.

Conclusion

There must be a serious and genuine commitment on the part of the Slovak government to redress illegal sterilization practices in particular and to protect the human rights of all its citizens more generally. The Commission should be established to investigate and address these violations with full authority conferred by the government to ensure its authority and legitimacy. The success of the Commission will depend on the selection of reputable and competent national and international members, and on its ability to have unfettered access to information. The credibility of the commission will rest on its mandate and terms of reference, especially on the authority it will have to pursue the inquiry and see to the implementation of its recommendations.

¹ HUMAN RIGHTS WATCH (HRW), STRUGGLING FOR ETHNIC IDENTITY: CZECHOSLOVAKIA'S ENDANGERED GYPSIES (1992) 20 [hereinafter HRW, CZECHOSLOVAKIA'S ENDANGERED GYPSIES]; Ruben Pella & Zybnek Andrs, Statistical Evaluation of the Cases of Sexual Sterilization of Romani Women in (East) Slovakia-Appendix to the "Report on the Examination in the Problematics of Sexual Sterilization of Romanies in Czechoslovakia" 6; CENTER FOR REPRODUCTIVE RIGHTS & PORADNA, BODY AND SOUL: FORCED STERILIZATION AND OTHER ASSAULTS ON ROMA REPRODUCTIVE FREEDOM IN SLOVAKIA (2003) 42-44.

² See Charter 77 in 1990, document On Sterilization of Roma Women, Document of the Charter 77, No.3/1990 from January 28, 1990 (signed by Spokesman of Charter 77 ěÈHslav Lehky et. Al); see also HRW, CZECHOSLOVAKIA'S ENDANGERED GYPSIES, *supra* note 1, at 20.

³ See Decree of the General State Prosecutor of the Slovak Republic, No.III/2 Gn 482/90 from 16 Jan. 1991, signed by JUDr. Magvasiove, General State Prosecutor of the Slovak Republic; HRW, Czechoslovakia's Endangered Gypsies, *supra* note 1, at 33;

⁴ Relevant provisions of the law were abolished by Decree NO. 590/1990 of the Coll.L. Decree of the Ministry of Labor and Social Affairs of the Slovak Republic from 20 December 1990, On the Amendment and Modification of the Decree of the Ministry of Health and Social Affairs of Slovak Socialist Republic No. 151/1988 of the Coll. L. as Subsequently Amended, available at <http://www.mvcr.cz/sbirka/1990/sb099-90.pdf> (last visited July 1, 2003).

⁵ See INA ZOON, ON THE MARGINS, SLOVAKIA: ROMA AND PUBLIC SERVICES IN SLOVAKIA (2001).

⁶ See Joint Statement of the European Roma Rights Center (ERRC), the International Helsinki Federation for Human Rights (IHF) & the Slovak Helsinki Committee (SHC) on the Issue of Coercive Sterilizations of Romani Women, on the Occasion of the OSCE Supplementary Human Dimension Meeting on Roma and Sinti, Vienna, April 9, 2003.

⁷ For detailed information on the investigation, see Center for Reproductive Rights & Poradna, *The Slovak Government's Response to Reproductive Rights Violations against Romani Women: Analysis and Recommendations* (2003), available at <https://www.poradna-prava.sk/en/documents/analysis-and-recommendations-to-the-slovak-governments-investigation-into-reproductive-rights-violations-against-romani-women> (last visited July 1, 2003).