

Mandates of the Special Rapporteur on the right to education; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the right to privacy; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls

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(Please use this reference in your reply)

1 September 2025

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to education; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the right to privacy; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 53/7, 51/21, 55/3, 50/10 and 59/14.

In this connection, we would like to bring to the attention of your Excellency's Government some observations concerning the draft legislation to amend the Constitution of the Slovak Republic (*Draft constitutional law amending and supplementing the Constitution of the Slovak Republic No. 460/1992 Coll.*, as amended), which was introduced by the Government of the Slovak Republic on 7 March 2025, and passed on first reading by the National Council of the Slovak Republic on 9 April 2025. Following its initial reading, it was then supplemented by two *Amending and Supplementing Proposals by Members of the National Council of the Slovak Republic to the Government Draft of the Constitutional Act of ... 2025, amending and supplementing the Constitution of the Slovak Republic No. 460/1992 Coll., as amended* (Parliamentary print No. 733).

The provisions of the draft constitutional law, including the adopted supplementing proposals (hereinafter "the draft constitutional law"), have been assessed in light of international human rights standards and rule of law principles, resulting in the following conclusions:

General comments

The signatory Special Procedures mandate holders note that, on 7 March 2025, the Government of the Slovak Republic submitted to parliament the draft constitutional law amending and supplementing the Constitution of the Slovak Republic No. 460/1992 Coll., as amended. The draft law had previously undergone the interdepartmental commentary procedure, which provided an opportunity for public bodies and the general public to submit comments, in line with sound parliamentary practice.

Notwithstanding those reviews, the mandate holders consider that the provisions of the draft amendments remain inconsistent with Slovakia's international human rights obligations in several respects.

Legal uncertainty around international legal hierarchy

In article 1, point 1, the draft constitutional law would add the two following paragraphs to article 7 of the constitution:

- “(6) The Slovak Republic retains sovereignty primarily in matters of national identity, consisting in particular of fundamental cultural-ethical issues relating to the protection of life and human dignity, private and family life, marriage, parenthood and the family, public morality, personal status, culture and language, as well as decision-making on related matters in the areas of health, science, education, upbringing, personal status and inheritance.
- “(7) Nothing in this Constitution or in any constitutional laws shall be construed as consent to the transfer of the exercise of any part of the rights of the Slovak Republic in matters constituting its national identity.”

On the surface, these provisions appear to contradict the very constitutional provisions they seek to amend, including article 1, which affirms the rule of law over any specific ideology (“The Slovak Republic is a sovereign, democratic state governed by the rule of law. It is not bound to any ideology or religion.”), as well as article 2, which establishes the supremacy of international legal obligations over the national legal framework (“The Slovak Republic acknowledges and adheres to general rules of international law, international treaties by which it is bound, and its other international obligations.”).

The proposed limitation of the constitutional recognition of the supremacy of international law over domestic law risks being in conflict with article 27 of the Vienna Convention on the Law of Treaties, which provides: “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”

Additionally, there is a lack of legal clarity regarding the terms “national identity” or “cultural-ethical issues”, which are not defined in the constitution and do not carry a single, commonly accepted meaning. As such, they cannot be enshrined in law in an inclusive manner without risking the violation of the rights of others.

In cases where international treaties provide a higher standard of human rights protection than national laws – particularly regarding freedom from discrimination – the proposed provisions would appear to permit limitations on such protections for certain groups, purportedly in order to safeguard “national identity” in relation to “cultural-ethical issues” that are not shared by all rights holders.

The United Nations Human Rights Committee has emphasized that not all rights are absolute, but any restriction must meet strict criteria. Those principles are laid out in general comment No. 27 and general comment No. 34, among others. In particular, restrictions (1) must be provided by law, (2) must pursue a legitimate aim, and (3) must be necessary and proportionate to achieve that aim, without jeopardizing the essence of the right itself.

The communication of 5 March 2025 (AL SVK 01/2025) noted the assertion of a uniform Slovak cultural identity to justify the withdrawal of State support for projects considered inconsistent with that notion. However, the restrictions imposed could be seen as constructing a national identity through exclusion, raising concerns about unequal belonging among Slovak citizens.

Human rights-related legislation should aim to expand protections in line with international law, rather than restrict them. Lawmakers should refrain from limiting the rights of those who may not share their views, including differing understandings of national identity. References to the protection of “Slovak culture” must not serve as a pretext for denying the equal enjoyment of human rights and fundamental freedoms by persons with different cultural values, political opinions or identities.

On 9 April 2025, the draft constitutional law passed its first reading in the National Council of the Slovak Republic with 81 votes in favour, 40 against, and 22 abstentions. A constitutional amendment requires the support of 90 members, representing 60 per cent of the 150-member parliament. In this context, it is important to recall that any constitutional reform should strengthen, rather than weaken, the protection of human rights, in line with international standards.

Non-discrimination

In article 1, point 7, the draft constitutional law (as amended by a proposal tabled by members of parliament) would insert the following provision into the constitution: “The Slovak Republic recognizes only the biologically determined sex of male and female.”

By restricting legal recognition to the binary categories of biologically male and female, the draft provisions could result in discrimination based on sex, gender, sexual orientation and gender identity. With respect to legal gender recognition for transgender persons, the provision could result in denial of access to accurate identity documents. It could also exclude the small minority of individuals who are intersex, failing to guarantee them equal legal recognition and protection.

On a related point, *mutatis mutandis*, the Human Rights Committee in *G. v Australia* (CCPR/C/119/D/2172/2012) observed that, while legal recognition of gender reassignment and protection against discrimination are essential, denying married transgender persons a birth certificate correctly identifying their sex – while granting it to unmarried transgender and non-transgender persons – fails to afford equal protection under the law. The Committee found that such a distinction was neither necessary nor proportionate to a legitimate interest, and was therefore unreasonable and did not meet the relevant human rights criteria under the International Covenant on Civil and Political Rights (ICCPR).

In article 1, point 3, the draft constitutional law (as amended by a proposal tabled by members of parliament) would, in combination with the preceding provision, constitutionally prohibit the adoption of children by persons who do not conform to a binary understanding of sex and gender. It provides: “The parents of a child are the mother and the father; the mother of a child is a woman and the father of a child is a man.” In effect, such a provision would bar same-sex couples, as well as transgender or

intersex persons from adopting children, and prima facie fails to meet the requirements of legal necessity and proportionality to achieve a legitimate aim.

Discriminatory treatment of individuals who diverge from expectations based on biological sex undermines the very foundation of protection against discrimination on the basis of sex. In this case, the proposed amendments could have the effect of removing protection from discrimination for intersex, transgender, and other gender-diverse individuals.

Since March 1994, the Human Rights Committee has consistently affirmed, that the reference to “sex” in articles 2 (1) and 26 of the ICCPR includes sexual orientation (see, *Toonen v. Australia* CCPR/C/50/D/488/1992). In numerous subsequent concluding observations, the Committee has urged State parties to guarantee equal rights to all individuals under the Covenant, irrespective of sexual orientation. This interpretation has become a well-established element of the Committee’s jurisprudence and has been echoed by other United Nations treaty bodies as well as by regional human rights courts.

In relation to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Committee on Economic, Social and Cultural Rights has affirmed that the Covenant’s non-derogable prohibition of discrimination extends to sexual orientation, gender identity, and sex characteristics. Under article 2, State parties are obligated to ensure the enjoyment of all economic, social and cultural rights without discrimination of any kind, including based on sexual orientation or gender identity. The Committee has elaborated this interpretation in several general comments on States’ obligations under the Covenant (see e.g., E/C.12/GC/20, E/C.12/2000/4), and has consistently reaffirmed it in its concluding observations on State party reports. The proposed constitutional amendments, by restricting rights on the basis of sex, gender, sexual orientation, or gender identity, could raise concerns regarding Slovakia’s compliance with its obligations under the Covenant.

In its concluding observations, the Committee has repeatedly called on States to adopt legislation to protect LGBT and intersex persons from discrimination (see, e.g., E/C.12/HND/CO/2, E/C.12/SDN/CO/2, E/C.12/ITA/CO/5, E/C.12/IRQ/CO/4, E/C.12/UGA/CO/1, E/C.12/1/Add.107, and E/C.12/1/Add.80). The Committee has likewise praised States for the adoption of such legislation (see, e.g., E/C.12/ALB/CO/2-3, E/C.12/1/Add.35, E/C.12/1/Add.70, E/C.12/LIE/CO/1, E/C.12/MCO/CO/1, and E/C.12/CO/BRA/2).

In 2016, the Committee clarified that non-discrimination: “encompasses the right of all persons, including lesbian, gay, bisexual, transgender and intersex persons, to be fully respected for their sexual orientation, gender identity and intersex status. [...] States parties also have an obligation to combat homophobia and transphobia, which lead to discrimination”. (See E/C.12/GC/22, general comment No. 22, at para 23.)

Furthermore, as recognized by the Working Group on discrimination against women and girls in its Guidance Document on gender equality and gender backlash, reinforcing the notion of two distinct, dichotomous sexes ignores the reality that gender functions as a hierarchical system (A/HRC/WG.11/41/2). This system leverages “socially constructed identities, attributes and roles for women and men and society’s

social and cultural meaning for these biological differences” (A/HRC/WG.11/41/2, para. 9, citing CEDAW general recommendation 28). Strict adherence to a binary conception of sex and gender obscures the structural nature of gender-based subordination as it manifests across institutions - the family, the economy, the legal and justice systems, the media, and beyond. Furthermore, preserving cultural or religious values cannot be used to justify the denial of rights and discrimination against women and girls (CCPR/C/21/Rev.1/Add.10, A/HRC/56/51).

In addition, as emphasized by the Working Group on discrimination against women and girls through its recently issued guidance document on substantive gender equality (A/HRC/WG.11/42/1), “while often linked with biological differences, gender inequality and gender-based discrimination do not stem from those differences themselves but rather the cultural, political, social and economic priorities of, and the related choices made by, communities” (para. 7). By defining sex and gender as binary and immutable, the draft constitutional law may reinforce gender as an immutable system that disproportionately privileges men, valorize qualities associated with masculinity, and entrench social practices and structures that harm and undermine women.

Right to education

In article 1, point 4, the draft constitutional law (as amended by an amending and supplementing proposal by members of parliament) would limit children’s right to education “in the area of intimate life formation and sexual behavior”, providing that:

- “Parents have the right to decide on the participation of their children in the educational process provided by schools and school facilities, if it is beyond the scope of the state educational programme. Education aimed at the protection of health, bodily integrity, and the prevention of abuse shall form part of the general education of children, in a form appropriate to their age. Teaching and education of children in the area of intimate life and sexual behaviour may only be provided with the consent of the legal guardian.”

The legislative memorandum accompanying the draft constitutional law elaborated:

- “Where parents refuse to allow their children to participate in such an educational process, it may be, for example, an education that is not in accordance with the parents’ religious and philosophical beliefs or their moral and ethical values.”

Constitutional amendments limiting access to comprehensive sexuality education do not conform with international standards in this area, including in relation to the rights of the child.

Limiting age-appropriate education in schools on the basis of prior parental or guardian consent may undermine students’ educational outcomes and well-being, heighten risks of bullying and sexual violence, and have a particular impact on girls including lesbians, as well as gay, bisexual, transgender and other gender-diverse, or

intersex (LGBTI) children.

While the protection of public morals may serve as a basis for limited restrictions on individual freedoms, it cannot be invoked as a pretext for prejudice or discrimination. Moral disapproval of same-sex conduct or trans identities – even if widely held – does not constitute a legitimate basis for restricting human rights.

In its general comment No. 37, the Human Rights Committee clarified that restrictions “should only exceptionally be imposed for the protection of ‘morals’. If used at all, this ground should not be used to protect understandings of morality deriving exclusively from a single social, philosophical or religious tradition, and any such restrictions must be understood in the light of the universality of human rights, pluralism and the principle of non-discrimination. Restrictions based on this ground may not, for instance, be imposed because of opposition to expressions of sexual orientation or gender identity” (CCPR/C/GC/37, para. 46).

For those reasons, the aforementioned provisions of the draft constitutional law are not consistent with the strictly and narrowly construed limitations permitted under international human rights law, including the ICCPR.

In a joint statement issued on 17 May 2015 to mark the International Day against Homophobia, Biphobia and Transphobia, UN Special Procedures mandate holders, the UN Committee on the Rights of the Child, the Special Representative of the UN Secretary-General on Violence against Children, the Council of Europe Commissioner for Human Rights, and regional human rights institutions called for an end to discrimination and violence against LGBT children and young people. They affirmed: “States must act to overcome prejudice and stereotypes through anti-discrimination initiatives in schools and public education campaigns. [...] The health and well-being of all children and young adults must be protected, including through ensuring access to non-discriminatory health services and comprehensive sexuality education, and by protecting the rights of all children and young adults to their identity, autonomy, and physical and psychological integrity.” (Statement available at: <https://www.ohchr.org/en/statements/2015/05/discriminated-and-made-vulnerable-young-lgbt-and-intersex-people-need?LangID=E&NewsID=15941>.)

In March 2023, several Special Procedures mandate holders jointly published a *Compendium on Comprehensive Sexuality Education*, reflecting the broad consensus among international human rights mechanisms that binding obligations require the protection of the rights to education, freedom of expression, and access to information. These obligations include ensuring that all young persons, including LGBT children, have access to comprehensive sexuality education without discrimination, in accordance with international standards. (Compendium available at: <https://www.ohchr.org/sites/default/files/documents/issues/health/sr/Compendium-Comprehensive-Sexuality-Education-March-2023.pdf>.)

Conclusion

We reiterate that Your Excellency’s Government has a legal obligation to ensure that all legislation is free from discrimination on any prohibited ground, including sex/gender, sexual orientation, gender identity and sex characteristics, and to prevent

any discriminatory effect that, directly or indirectly, a given legal reform or policy may hold.

In light of the foregoing observations and in accordance with international human rights law standards, we urge the National Council of the Slovak Republic to reconsider the adoption of the draft constitutional law and to ensure that any constitutional reform is consistent with its international human rights obligations.

As 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, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have regarding the draft constitutional law addressed in this communication, including your Government's views on the above analysis.
2. Please provide details of the process by which the draft constitutional law was developed, including how public expressions of concern were taken into account, as well as any assessment undertaken to ensure that its provisions comply with Slovakia's obligations under international human rights law, particularly with respect to the rights to equality and non-discrimination, education, health, and freedom from arbitrary or unlawful interference with one's privacy and family life.
3. Please provide details of how the domestic legal framework safeguards the rights of all persons of diverse sexual orientations, gender identities and sex characteristics, and how consistency with Slovakia's international human rights obligations will be ensured in the context of the draft constitutional law.

This communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from your Excellency's Government will be made public via the communications reporting [website](#) after 48 hours. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

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

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