



*Polish Federation for Women and
Family Planning*



**Memorandum for the Members of the Polish Parliament with Respect to the Bill “On the Protection of Human Life from the Moment of Conception”
August 2011**

The Federation for Women and Family Planning (Warsaw) and the Center for Reproductive Rights (New York) respectfully submit this memorandum to the esteemed Members of the Polish Parliament that will review the draft bill “On the protection of human life from the moment of conception” [Print No. 4222] (the “Bill”).¹ The Bill aims to protect human life from the moment of conception and would impose an absolute ban on abortion in Poland.

The Federation for Women and Family Planning is a Polish nongovernmental organization acting for gender equality by defending women’s and girls’ reproductive rights, including the right to legal and safe abortion, both at the national and international level.² The Center for Reproductive Rights is an international human rights nongovernmental legal advocacy organization that provides international and comparative legal analysis on reproductive health-related issues to governments, inter-governmental bodies, including the United Nations, the Council of Europe and the European Union, and to non-governmental organizations around the world.³

This memorandum demonstrates that the Bill is inconsistent with the jurisprudence of national-level European courts on the right to life in the context of abortion and with the vast majority of the European countries’ laws. Moreover, it violates international and regional human rights standards and has the potential to jeopardize women’s health and lives.

We urge the Parliamentary Health Committee and the Social Policy and Family Committee to recommend rejection of the Bill to the Parliament and we urge the Parliament to reject the Bill in the first reading. We urge Polish policymakers to take into consideration their own constitutional law, the experiences of fellow European countries, as well as Poland’s obligations under international human rights law before adopting the Bill and to consider less restrictive means of pursuing an interest in the protection of prenatal life, which would ensure the effective exercise and protection of women’s constitutional rights.

I. Comparative Standards on the Right to Life in the Context of Abortion

Several national level courts in Europe have addressed the legal status of the fetus in the context of abortion. For example, in 2007, the Constitutional Court of the Slovak Republic declined to recognize a right to life for the fetus and recognized the constitutionality of the law permitting abortion on request in the first 12 weeks of pregnancy. It found that while prenatal life has constitutional value and may be worthy of some state protection, it is not on par with women’s constitutional rights, primarily the right to private life, read in conjunction with the liberty principle and the fundamental right to human dignity.⁴

The Court held that “[t]he constitutional value of unborn human life can therefore be protected only to such extent, that this protection did not cause an interference with the essence of woman’s liberty and her right to privacy ...”⁵ Additionally, the Constitutional Courts of Austria and The Netherlands have rejected “fetal rights” challenges to national legislation liberalizing access to abortion.⁶ Furthermore, in 1975, France’s *Conseil Constitutionnel* upheld its abortion law, implicitly adopting the view that a fetus is not a “child” entitled to constitutional protection.⁷

In Germany, although the Federal Constitutional Court has recognized a constitutional right to prenatal life and the state duty to protect this right, it established that this right must be weighed against the rights of pregnant women.⁸ In 1975, the Court affirmed the authority of the legislature to permit lawful abortion where necessary to protect a woman’s right to life and health. It reasoned that a woman’s “‘right to life and bodily inviolability’ [] is at stake, the sacrifice of which cannot be expected of her for the unborn life.”⁹ It emphasized that in these cases “another interest equally worthy of protection, from the standpoint of the constitution, asserts its validity with such urgency that the state’s legal order cannot require that the pregnant woman must, under all circumstances, grant precedence to the right of the unborn.”¹⁰ In 1993, the Court recognized that the legislature could permit lawful abortion during the first 12 weeks of pregnancy upon request if the woman participated in counseling services and was subject to a waiting period.¹¹ In 1995, the legislature decriminalized abortions in the first trimester with these procedural requirements.¹²

It is true that in the spring of 2011, the Hungarian parliament voted to adopt a new Hungarian Constitution that contains a provision protecting the life of the fetus from the moment of conception.¹³ This is the only European constitution with explicit recognition of the protection of life from conception, and the Hungarian constitutional reform is thus unique in this regard in Europe.¹⁴ The wording is problematic from a human rights standpoint and it has been strongly criticized because of its potential to jeopardize Hungarian women’s reproductive health and rights.¹⁵

The laws on abortion adopted by the majority of European states respect women’s choice during the first trimester of pregnancy, and protect their rights to life, health and privacy throughout the pregnancy.¹⁶ Only Poland and five other Council of Europe Member States - Andorra, Ireland, Lichtenstein, Malta and San Marino - of the 47 Member States have maintained severe restrictions on access to abortion in contravention of this norm.¹⁷ Poland is thus already out of the step with the overwhelming majority of European countries with permissive abortion laws. The Bill’s adoption would not only be starkly inconsistent with these laws and leading jurisprudence; it would render Poland’s abortion law one of the most restrictive in the world.

II. International and Regional Standards Do Not Extend Human Rights Protections Before Birth and International Bodies Recognize the Threat Posed by Abortion Bans to Women’s Lives and Health

International and European human rights treaties that Poland has ratified reject granting human rights protections at conception or prenatally, recognizing that granting such rights could hinder access to reproductive health services, in violation of women’s human rights.

a. International Standards

Universal Declaration of Human Rights

Article 1 of the Universal Declaration of Human Rights (UDHR) states that “[a]ll human beings are *born* free and equal in dignity and rights.”¹⁸ The history of the negotiations (*travaux préparatoires*) indicates

that the word “born” was used intentionally to exclude any antenatal application of human rights. An amendment that would have deleted the word “born”, in part, to protect the right to life from the moment of conception, was proposed and rejected. One drafter, a French representative, explained that this article meant that the right to freedom and equality was “inherent from the moment of birth.”¹⁹ This article was adopted by 45 votes, with nine abstentions.²⁰ Thus, a fetus is not a holder of rights under the UDHR.

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights (ICCPR)²¹ also rejects the proposition that the protection of the right to life, in Article 6(1), applies before birth. The *travaux préparatoires* indicate that an amendment stating “the right to life is inherent in the human person from the moment of conception ...”²² was proposed and rejected. The Human Rights Committee, which interprets and monitors States’ compliance with the ICCPR, has repeatedly recognized the threat to women’s lives posed by restrictive abortion laws that cause women to seek unsafe abortions. It has already explicitly addressed this concern with Poland, reiterating “its deep concern about restrictive abortion laws in Poland, which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health.”²³ Furthermore, in an authoritative interpretation of the principle of equality protected by the ICCPR, the Committee emphasized States’ responsibility to reduce maternal mortality from clandestine abortions and recognized that restrictive abortion laws could violate women’s right to life.²⁴ It has also repeatedly called for the liberalization of abortion laws, including Poland’s abortion law.²⁵

In the decision of *K.L. v. Peru*, the Human Rights Committee established that denying access to therapeutic abortion violated a woman’s most basic human rights. It reasoned that the State’s failure to enable the applicant to procure a therapeutic abortion caused her depression and emotional distress, which constituted a violation of Article 7 of the ICCPR (freedom from torture or cruel, inhuman or degrading treatment or punishment).²⁶ This finding did not depend on the lawfulness of therapeutic abortion. Article 7 may therefore be interpreted to require a State to guarantee, at a minimum, lawful abortion where necessary to protect the woman’s physical or mental health. This decision highlights the potential conflict between legislation protecting life from the moment of conception and a country’s commitment to protect key civil and political rights.

Convention on the Rights of the Child

Similarly, the *travaux préparatoires* and the interpretation by the Committee on the Rights of the Child, the expert treaty body that interprets and applies the Convention on the Rights of the Child (Children’s Rights Convention)³⁰, demonstrate that the Convention protects the right to life from birth. Although Paragraph 9 of the Preamble indicates that the child “needs special safeguards and care, including appropriate legal protection, before as well as after birth,”²⁷ the *travaux* indicate that these safeguards “before birth,” which are interpreted to involve providing nutrition, health care and support to the pregnant woman, must not affect a woman’s choice to terminate a pregnancy. The original draft of the Preamble did not reference protection “before as well as after birth,” although this phrase was used in the earlier Declaration on the Rights of the Child. The Holy See proposed to add this phrase, stating “that the purpose of the amendment was not to preclude the possibility of an abortion”.²⁸ Although this phrase was accepted, its limited purpose was reinforced by the statement that “the Working Group does not intend to prejudice the interpretation of Article 1 or any other provision of the Convention ...”²⁹ For the purposes of the Convention, Article 1 defines “child” as “every human being below the age of 18 years....”

The Committee also has not recognized a fetal right to life. It has expressed repeated concern about adolescent girls’ access to safe abortion services and the need for States “to provide access to sexual and reproductive health services, including... safe abortion services.”³⁰ Furthermore, it has recognized that

safe abortion is part of adolescents' right to adequate health and noted that "high maternal mortality rates, due largely to a high incidence of illegal abortion" contribute significantly to inadequate local health standards.³¹ The Committee explicitly called for "review of [state practices]... under the existing legislation authorising abortions for therapeutic reasons with a view to preventing illegal abortion and to improving protection of the mental and physical health of girls"³² Thus, the Convention's definition of "a child" does not include a fetus.

Convention on the Elimination of All Forms of Discrimination against Women

While the text of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³³ does not explicitly protect the right to life or refer to abortion at all, its Preamble reaffirms the UDHR's recognition that "all human beings are born free and equal in dignity and rights" and states that "everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, including distinction based on sex..." CEDAW also provides the general foundation for reproductive rights in Article 16(1)(e) guaranteeing women "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".

As a result of the inextricable connection between the right to make reproductive decisions and women's equal right to life, the Committee on the Elimination of Discrimination against Women (CEDAW Committee) has frequently addressed abortion in the context of women's equality. In the General Recommendation on Health,³⁴ it recognizes the close link between women's right to health during pregnancy and childbirth and their right to life. It explains that "it is discriminatory for a State party to refuse to legally provide for the performance of certain reproductive health services for women." Furthermore, it has criticized barriers to realizing women's health, such as "laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures."³⁵ The Committee has repeatedly called upon states to eliminate laws and other barriers restricting access to safe abortion and expressed concern about maternal mortality due to unsafe abortion, framing the issue as involving a woman's right to life.³⁶

Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Similarly, the Committee Against Torture, the expert treaty body that interprets and applies the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, has expressed concern about absolute bans on abortion and restrictive abortion laws, calling on States to review such restrictive legislation.³⁷ The Committee has noted the grave consequences that such legislation poses to women's health and lives. Additionally, it has indicated that the failure of States to "take steps to prevent acts that put women's physical and mental health at grave risk"³⁸, such as enacting legislation that denies access to abortion in all circumstances, which may force women to procure unsafe abortions, constitutes cruel and inhuman treatment.³⁹

World Health Organization

Additionally, the World Health Organization (WHO) has encouraged the liberalization of abortion laws throughout the world. It has recognized that "women all over the world are highly likely to have an induced abortion when faced with an unplanned pregnancy – irrespective of legal conditions."⁴⁰ In situations in which abortion is restricted or prohibited, women faced with an unwanted pregnancy are often forced to resort to untrained providers or self-induce abortion, which puts their health and lives at risk. Notably, with the exception of Eastern Europe, countries with abortion laws that permit the procedure on broad grounds have low or nonexistent rates of unsafe abortion and low abortion rates.⁴¹ In

Western Europe⁴² where all of the countries benefit from liberal abortion laws, the abortion rate and the rate of maternal mortality due to unsafe abortion are the lowest in the world.⁴³ A major contributing factor is the widespread accessibility of contraception and sexuality education in this region.⁴⁴ Conversely, in countries that impose legal restrictions on abortion, most abortions are unsafe and abortion rates are still high.⁴⁵ Thus, the Bill, which grants a right to life to the fetus from the moment of conception and bans abortion in Poland, not only violates international human rights standards but will most likely lead to an increase in rates of clandestine abortion and maternal mortality and morbidity.

b. European Standards

i. European Standards on the Right to Life

European human rights norms do not grant a right to life before birth. The drafters of the European Convention for the Protection of Human Rights and Fundamental Freedoms relied heavily on the Universal Declaration of Human Rights and, according to the history, did not even debate the question of dating rights from conception.⁴⁶ They based the European Convention's protection of everyone's right to life in Article 2 on parallel language in the UDHR.⁴⁷ The Preamble repeatedly cites the UDHR and declares that the purpose of the Convention is to "take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration."⁴⁸ Thus, the term "everyone" used throughout the European Convention as well as in Article 2 protecting the right to life likewise does not apply before birth.

The jurisprudence of the European Commission on Human Rights and the European Court of Human Rights further establishes that fetuses and embryos are not legally considered persons entitled to the "right to life" under Article 2(1) of the Convention and, that granting this human right would place unreasonable limitations on women's rights. In the 1980 *Paton v. United Kingdom*⁴⁹ case by a husband seeking to prevent his wife from undergoing an abortion, the Commission explicitly rejected the claim that the right to life in Article 2 covered the fetus. It held that the word "everyone" in Article 2, and elsewhere in the Convention, did not include fetuses. Further, recognizing the inseparability of the fetus and the pregnant woman, it gave precedence to the woman's rights under Article 2.⁵⁰ The Court and Commission also sustained the liberal abortion laws at issue in *R.H. v. Norway* (1992)⁵¹ and *Boso v. Italy* (2002),⁵² cases brought by male partners seeking to prevent their female partner's abortions based on the claimed right to life of the fetus.

Furthermore, in *Vo v. France* (2004),⁵³ the Court refused to extend the right to life to fetuses. The applicant, who lost a wanted pregnancy due to her doctor's negligence, contended that criminal sanction against the doctor based on unintentional homicide was required to vindicate the fetus' claimed right to life.⁵⁴ The Court recapitulated the earlier jurisprudence, and concluded that "the unborn child is not regarded as a 'person' directly protected by Article 2 ... and that, if the 'unborn' do have a 'right' to 'life', it is implicitly limited by the mother's rights and interests."⁵⁵

Evans v. United Kingdom (2006)⁵⁶ reaffirmed the *Vo* judgment. In this case, the applicant alleged a violation of her rights under the Convention due to her partner's withdrawal of consent for use of embryos they had frozen for future implantation. She claimed in part, that the provisions of English law requiring the destruction of the embryos once her partner withdrew his consent to their continued storage violated the embryos' right to life. The Court again refused to extend Article 2 protection to the embryos. Referring to the lack of any European consensus on the scientific and legal definition of when human life begins, it left this decision to the states' margin of appreciation. Additionally, it recalled English law under which "...an embryo does not have independent rights or interests and cannot claim – or have claimed on its behalf – a right to life under Article 2."⁵⁷ In the Court's analysis and balancing of the rights

of the applicant to preserve the embryos and those of her partner to have them destroyed, it did not include any “embryonic interests” into this balancing test, thus indicating that the Convention does not require protection of such arguable interests.

If the fetus or embryo was as a subject under Article 2 of the Convention, the aforementioned cases would have been incorrectly decided, and jeopardized women’s rights to reproductive health care. Additionally, the Charter of Fundamental Rights of the European Union (EU),⁵⁸ which is also part of the EU Constitution, reaffirms in its Preamble the rights of the European Convention and its jurisprudence. As discussed above, history indicates that the Convention adopted the approach of the UDHR, which accorded rights only after birth.

ii. European Standards on Abortion

Furthermore, European standards recognize a right to access abortion derived from a constellation of rights guaranteed by the Convention. The recent Parliamentary Assembly of the Council of Europe resolution, *Access to Safe and Legal Abortion in Europe*, states that abortion should not be banned within reasonable gestational limits and affirms that banning abortions “does not result in fewer abortions but mainly leads to clandestine abortions ...”⁵⁹ It also reaffirms the discriminatory effect of restrictions on access to abortion and insists that “respect for [women’s] physical integrity and freedom to control their own bodies [requires that] ... the ultimate decision on whether or not to have an abortion should be a matter for the woman concerned ...”⁶⁰

Additionally, European Court jurisprudence, particularly with respect to Poland’s positive obligations under the Convention, has underscored the human rights foundations of access to abortion. In *Tysic v. Poland* (2007)⁶¹, the Court held that Poland violated its positive obligations to ensure practical and effective access to legal abortion. The Court also reaffirmed the connection between pregnancy and the woman’s private life, stating “whenever a woman is pregnant her private life becomes closely connected with the developing fetus.”⁶² It then indicated that private life includes physical and psychological integrity, and the State has a positive obligation to effectively secure the physical integrity of a pregnant woman.⁶³ The Bill is incompatible with this obligation. Prohibiting a woman from terminating her pregnancy in all circumstances, even if her health or life is at risk, fails to secure her physical integrity.

Furthermore, in *R.R. v. Poland* (2011)⁶⁴, the Court found that the applicant’s repeated denial of genetic tests, which prevented her from obtaining timely information about the fetus’s health and hindered her from seeking a legal abortion on grounds of fetal impairment, violated her rights under the Convention. It established a violation of the right to be free from inhuman and degrading treatment because of the suffering she experienced due to the knowledge that she could not terminate her pregnancy even though the fetus could have had an incurable deformity and she was entitled to have an abortion under the Polish law.⁶⁵ The Court emphasized that “she had to endure weeks for painful uncertainty concerning the health of the foetus, her own and her family’s future and the prospect of raising a child suffering from an incurable ailment.”⁶⁶ If Poland adopts the Bill, women will be subjected to inhuman and degrading treatment in an even more heightened fashion, since all prospects for abortion will be denied to them, even in cases of fetal impairment. Women who learn that their fetuses have malformations, similar to the applicant in this case, are likely to experience suffering, when confronted with the impossibility of choosing to terminate their pregnancy. This reality would be particularly cruel for women carrying fetuses with malformations that are incompatible with life.

III. The Adoption of the Bill Will Place Women’s Health and Lives at Risk, Which Will Consequently Have a Deleterious Effect on Polish Society as a Whole

a. Grave Consequences for Women's Lives, Health and Equality

Furthermore, the practical implications of the Bill on women's health and lives are potentially catastrophic. The recognition of a fetal "right to life" would make this right equivalent to a woman's right to life, thereby placing these two rights in direct conflict. Considering the "interests" of a fetus separately from the pregnant woman has the potential to create a situation in which the interests of the fetus are prioritized over or improperly compete with the health and life interests of the pregnant patient.⁶⁷ Health care providers could deny women life-saving medical treatment in order to protect the fetus. In a recent case in Poland, which is pending before the European Court, a woman was denied treatment for an infection because her doctors feared the treatment might pose a risk to the fetus she was carrying. Ultimately, this led to a miscarriage and to her preventable death.⁶⁸

Additionally, as shown above, banning abortion does not decrease its incidence. Instead, abortion bans lead to high numbers of unsafe abortions and can increase maternal deaths. For example, in Romania, in 1966, the Communist government restricted the availability of abortion in order to increase the size of the population.⁶⁹ Between 1967 and 1983, maternal mortality rates skyrocketed and the birthrate decreased by 40%.⁷⁰ Between 1980 and 1989, 80% of maternal deaths were due to unsafe abortions.⁷¹ Following the fall of Communism in 1989, the abortion law was repealed and maternal mortality rates dramatically decreased, falling 50% in the first year after the law's repeal.⁷² Thereafter, the registered number of maternal deaths caused by abortion dropped 76%.⁷³ Poland may face a similar demographic trend if it adopts the Bill.

Moreover, restricting abortion in Poland will increase rates of abortion tourism because Polish women who seek to terminate their pregnancies will travel to neighboring countries with liberal abortion laws. Currently, women in Poland are forced to pursue clandestine abortions, estimated at 80,000-200,000 per year, or they travel to other European countries to obtain abortions.⁷⁴ Also, a ban on abortion will disproportionately affect poor, minority and young women who lack the financial resources to purchase safe clandestine abortion services or travel elsewhere.⁷⁵ In many cases, women will be forced to keep their pregnancies or to put their health and lives at risk.

Furthermore, a complete ban on abortion violates the right to gender equality enshrined in Poland's constitution and upheld as a fundamental value by the European Union.⁷⁶ The denial of reproductive health services that only women need, including abortion, has been recognized as a form of discrimination against women.⁷⁷ Thus, the adoption of restrictive abortion laws or bans is discriminatory and in a stark opposition to gender equality. Ensuring access to safe abortion services is crucial for realizing the equal treatment of men and women.

b. Embracing Human Rights Norms is the Most Effective Way to Protect Prenatal Life and Women's Health and Lives

As demonstrated above, protecting the right to life from the moment of conception and banning abortion will not safeguard prenatal life. Instead, it will place both the life and health of women at risk. International human rights standards support prenatal life by ensuring safe pregnancies and supporting family planning. CEDAW recognizes that measures to protect prenatal life must be pursued consistently with the human rights of women.⁷⁸ Such measures include state provision of safe motherhood services and prenatal assistance, the reduction of spontaneous miscarriages, and welfare provisions to ease the social and economic burdens of pregnant women.⁷⁹ Also, the U.N. Committees reference achieving reductions in abortion rates through increased access to family planning services and sexuality education.⁸⁰

IV. Conclusion

Accordingly, we urge the Parliamentary Health Committee and Social Policy and Family Committee to recommend rejection of the Bill to the Parliament and urge the Parliament to reject the Bill in the first reading. The Bill is inconsistent with practice of European states generally, as well as with Poland's international and regional human rights treaty obligations, and would gravely jeopardize women's lives and health.

¹ Druk nr 4222 [Print No. 4222], Draft bill "On the protection of human life from the moment of conception," 26 May 2011 (Pol.), *available at*

[http://orka.sejm.gov.pl/Druki6ka.nsf/0/23E6F9AA70A2F2DFC125789B004349F5/\\$file/4222.pdf](http://orka.sejm.gov.pl/Druki6ka.nsf/0/23E6F9AA70A2F2DFC125789B004349F5/$file/4222.pdf).

² See Federation for Women and Family Planning (2011), <http://www.federa.org.pl/>.

³ See Center for Reproductive Rights (2011), <http://reproductiverights.org/>.

⁴ *Nález Ústavného súdu Slovenskej republiky* [Decision of the Constitutional Court of the Slovak Republic], PL. ÚS 12/01-297, pt. II.A.2., pt. II.B.4. (4 Dec.2007).

⁵ *Nález Ústavného súdu Slovenskej republiky* [Finding of the Constitutional Court of the Slovak Republic], PL. ÚS 12/01-297, pt. II.A.2.4 (4 Dec. 2007).

⁶ *Erkenntnisse und Beschlüsse des Verfassungsgerichtshofes* [Decision of the Constitutional Court] (1974), *summarized in* ANNUAL REVIEW OF POPULATION LAW, vol. I, 49 (1974); *Juristenvereinig Pro Vita v. De Staat der Nederlanden*, *summarized in* ANNUAL REVIEW OF POPULATION LAW, vol. 19(5), 179-80 (1991).

⁷ Conseil constitutionnel [CC] [Constitutional Court] decision No. 74-54, 15 Jan. 1975, *Loi relative à l'interruption volontaire de la grossesse* [Voluntary Interruption of Pregnancy Act] (Fr.), *available at* <http://www.conseil-constitutionnel.fr/decision/1974/7454dc.htm>.

⁸ *Entscheidungen des Bundesverfassungsgerichts* [BverfGE] 39, 1 (F.R.G.) (explaining that life exists "in any case, from the 14th day of conception"), *translated in West German Abortion Decision: A Contrast to Roe v. Wade* 605, 637 (Robert E. Jonas, John D. Gorby, trans., John Marshall J. Prac. & Proc., 1976).

⁹ *Id.* at 648.

¹⁰ *Id.*

¹¹ *Id.* at 282–283, 285.

¹² STRAFGESETZBUCH [Penal Code], 1971 art. 218 (Ger.) (unofficial trans., C.H. Beck, 1997). Nanette Funk, *Abortion Counseling and the 1995 German Abortion Law*, 12 CONN. J. INT'L L. 51–52 (1996); FRANKFURTER ALLGEMEINE ZEITUNG, *Grosse Mehrheit für das neue Abtreibungsrecht. Fristenregulierung mit Beratungspflicht beschlossen*, 30 June 1995.

¹³ The Hungarian Constitution is scheduled to enter into force on Jan. 1, 2012. The Irish Constitution is the only constitution in Europe that recognizes "right to life of the unborn". Since passage of this amendment in 1983 there have been numerous legislative and court battles regarding the constitutionality of abortion in certain circumstances, the right to distribute and receive abortion information, and the right to travel to obtain an abortion. See e.g., U.N. Department of Economic and Social Affairs, Population Division, *Abortion Policies: A Global Review, Ireland*, at 69 (2002), *available at* <http://www.un.org/esa/population/publications/abortion/profiles.htm>; *Attorney General v. X and Others* [1992] 1 I.R. (Ir.) (case granting right of suicidal pregnant teenager to have abortion under Constitutional right to life of pregnant 'mother'); *Roche v. Roche* [2009] I.R. (Ir.) (case rejecting that embryos are protected by the Constitutional provision granting the right to life of the 'unborn').

¹⁴ HUNGARIAN WOMEN'S LOBBY & CENTER FOR REPRODUCTIVE RIGHTS, *Written Comments on Protection of the Right to Life from the Moment of Conception in the General Principles Guiding Hungary's Constitution and the proposal of the constitution issued by Fidesz-KDNP*, Mar. 2011, *available at* http://patent.org.hu/CRR_HWL_Constitution_comments_Hungary_March_2011.pdf.

¹⁵ See e.g., Cillian Donnelly, *Hungarian constitution faces criticism from EU*, NEWS EUROPE, 25 Apr. 2011, <http://www.neurope.eu/articles/106072.php> (last visited 4 Aug. 2011); HUMAN RIGHTS WATCH, *Hungary: New Constitution Enshrines Discrimination*, 19 Apr. 2011, <http://www.hrw.org/en/news/2011/04/19/hungary-new-constitution-enshrines-discrimination> (last visited 4 Aug. 2011).

¹⁶ CENTER FOR REPRODUCTIVE RIGHTS, *Factsheet: The World's Abortion Laws* (2009).

¹⁷ *Id.*

¹⁸ Universal Declaration of Human Rights, *adopted* Dec. 10, 1948, art. 1, G.A. Res. 217A (III), U.N. Doc. A/810 at 71 (1948) [hereinafter UDHR]. Information in this section is primarily taken from the amicus brief submitted to the Constitutional Court of the Slovak Republic by the Center for Reproductive Rights, International Women’s Human Rights Law Clinic (City University of New York, School of Law), Slovak Family Planning Association and ProChoice Slovakia, Apr. 2007.

¹⁹ U.N. GAOR 3rd Comm., 99th mtg., at 110–124, U.N. Doc. A/PV/99 (1948).

²⁰ U.N. GAOR 3rd Comm., 183rd mtg., at 119, U.N. Doc. A/PV/183 (1948).

²¹ International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), U.N. GAOR, 21st Sess., Supp. No. 16, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 (*entered into force* Mar. 23, 1976).

²² U.N. GAOR Annex, 12th Sess., agenda item 33, at 96, U.N. Doc. A/C.3/L.654 (1957); U.N. GAOR, 12th Sess., agenda item 33, at 113, U.N. Doc. A/3764 (1957). The Commission ultimately voted to adopt Article 6, which has no reference to conception, by a vote of 55 to nil, with 17 abstentions.

²³ Human Rights Committee, *Concluding Observations: Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL/Rev. 1 (2004).

²⁴ Human Rights Committee, *General Comment No. 28: Equality of Rights Between Men and Women (Art. 3)* (68th Sess., 2000), *reprinted in* Compilation of General Comments and General Recommendations, *adopted by* Human Rights Treaty Bodies, para.10, U.N. Doc. HRI/GEN/Rev.7 (2004).

²⁵ *See* Human Rights Committee, *Concluding Observations: Chile*, para.15(e), U.N. Doc. CCPR/C/79/Add.104 (1999); *Argentina*, para. 14, U.N. Doc. CCPR/CO/70/ARG (2000); *Costa Rica*, para. 11, U.N. Doc. CCPR/C/79/Add.107 (1999); *United Republic of Tanzania*, para. 15, U.N. Doc. CCPR/C/79/Add.97 (1998); *Venezuela*, para. 19, U.N. Doc. CCPR/CO/71/VEN (2001); *Bolivia*, para. 22, U.N. Doc. CCPR/C/79/Add.74 (1997); *Poland*, para. 8, U.N. Doc. CCPR/CO/82/POL/Rev. 1 (2004), (“[Poland] should liberalize its legislation and practice on abortion”).

²⁶ Human Rights Committee, *K.L. v. Peru*, Communication No. 1153/2003, U.N. Doc. CCPR/C/85/D/1153/2003 (2005).

²⁷ Convention on the Rights of the Child, *adopted* Nov. 20, 1989, *preamble*, G.A. Res. 44/25, annex, U.N. GAOR, 44th Sess., Supp. No. 49, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter CRC].

²⁸ U.N. Commission on Human Rights, *Question of a Convention on the Rights of a Child: Report of the Working Group* (36th Sess.), U.N. Doc. E/CN.4/L/1542 (1980).

²⁹ U.N. Commission on Human Rights, *Report of the Working Group on a Draft Convention on the Rights of the Child*, at 10, U.N. Doc. 45th Session, E/CN.4/1989/48 (1989), *quoted in* JUDE IBEGBU, RIGHTS OF THE UNBORN IN INTERNATIONAL LAW 145 (2000); L.J. LEBLANC, THE CONVENTION ON THE RIGHTS OF THE CHILD: UNITED NATIONS LAWMAKING ON HUMAN RIGHTS 69 (1995); J. IBEGBU, RIGHTS OF THE UNBORN CHILD IN INTERNATIONAL LAW 146–147 (2000)..

³⁰ Committee on the Rights of the Child, *General Comment No.4: Adolescent health and development in the context of the Convention on the Rights of the Child* (33rd Sess., 2003) *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, para. 31, U.N. Doc. HRI/GEN/Rev.7 (2004) (emphasis added).

³¹ Committee on the Rights of the Child, *Concluding Observations: Guatemala*, para.40, U.N. Doc. CRC/C/15/Add.154 (2001); *Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Nicaragua*, para. 35, U.N. Doc. CRC/C/15/Add.108 (1999).

³² Committee on the Rights of the Child, *Concluding Observations: Chad*, para. 30, U.N. Doc. CRC/C/15/Add.107 (1999); *Nicaragua*, para. 35, U.N. Doc. CRC/C/15/Add.108 (1999).

³³ Convention on the Elimination of All Forms of Discrimination against Women, *adopted* Dec. 18, 1979, G.A. Res. 34/189, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (*entered into force* Sept. 3, 1981) [hereinafter CEDAW].

³⁴ Committee on the Elimination of Discrimination against Women (CEDAW Committee), *General Recommendation No. 24: Article 12 of the Convention (women and health)*, (20th Sess., 1999), *in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, at 358, para.14, U.N. Doc. HRI/GEN/1/Rev.9 (Vol. II) (2008) [hereinafter CEDAW Committee, *General Recommendation No. 24*].

³⁵ *Id.* para.14.

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- ³⁶ CENTER FOR REPRODUCTIVE RIGHTS & UNIVERSITY OF TORONTO, INTERNATIONAL PROGRAMME ON REPRODUCTIVE AND SEXUAL HEALTH LAW, BRINGING RIGHTS TO BEAR: AN ANALYSIS OF THE WORK OF THE U.N. TREATY MONITORING BODIES ON REPRODUCTIVE AND SEXUAL RIGHTS (2002). *See e.g.*, CEDAW Committee, *Concluding Observations: Philippines*, para. 28, U.N. Doc. CEDAW/C/PHI/CO/6 (2006); *Mauritius*, para. 31, U.N. Doc. CEDAW/C/MAR/CO/5 (2006); *Honduras*, para. 25, U.N. Doc. CEDAW/C/HON/CO/6 (2007).
- ³⁷ Committee against Torture, *Concluding Observations: El Salvador*, para. 23, U.N. Doc. CAT/C/SLV/CO/2 (2009); *Nicaragua*, para. 16, U.N. Doc. CAT/C/NIC/CO/1 (2009); *Peru*, para. 23, U.N. Doc. CAT/C/PER/CO/4 (2006).
- ³⁸ *See* Committee against Torture, *Concluding Observations: Peru*, para. 23, U.N. Doc. CAT/C/PER/CO/4 (2006).
- ³⁹ *See id.*
- ⁴⁰ WORLD HEALTH ORGANIZATION (WHO), UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF THE INCIDENCE OF UNSAFE ABORTION AND ASSOCIATED MORTALITY IN 2008, 6 (6th ed., 2011) [hereinafter WHO, UNSAFE ABORTION (2011)]. *See also*, Sedgh et al., *Induced abortion: estimated rates and trends worldwide* 370(9595) LANCET 1338-1345 (2007).
- ⁴¹ WHO, UNSAFE ABORTION (2011), *supra* note 40, at 6.
- ⁴² Western Europe includes Austria, Belgium, France, Germany, Luxembourg, Netherlands and Switzerland. *Id.* at 54.
- ⁴³ GUTTMACHER INSTITUTE, *Facts on Induced Abortion Worldwide*, IN BRIEF 1 (2011).
- ⁴⁴ *Id.*
- ⁴⁵ WHO, UNSAFE ABORTION (2011), *supra* note 40, at 6.
- ⁴⁶ Committee on Legal and Administrative Questions Report, sec. 1, para. 6, 5 Sept. 1949, in *Collected Edition of the Travaux Préparatoires*, vol. 1, at 194 (1975) [hereinafter *Comm. on Legal & Admin. Questions Rep.*].
- ⁴⁷ UDHR, *supra* note 18, art.1; *Comm. on Legal & Admin. Questions Rep.*, *supra* sec. 1, para. 6.
- ⁴⁸ Convention for the Protection of Human Rights and Fundamental Freedoms, *adopted* 4 Nov. 1950, 213 U.N.T.S. 222, Eur. T.S. No. 5 (*entered into force* 3 Sept. 1953), *as amended by protocols* 4, 6, 7, 12 & 13.
- ⁴⁹ *Paton v. UK*, App. No. 8317/78, Eur. Comm'n H.R., 3 Rep.408 (1981).
- ⁵⁰ *Id.*
- ⁵¹ *RH v. Norway*, , App. No.17004/90, 73 Eur. Comm'n H.R., Dec. & Rep. 155 (1992) (decision on Admissibility).
- ⁵² *Boso v. Italy*, App. No.50490/99, Eur. Comm'n H.R. (Sept. 2002). *See also*, American Declaration, OAS Off. Rec. OEA/Ser.L/V/II.82, Doc.6, Rev.1 (1948).
- ⁵³ *Vo v. France*, App. No. 53924/00, Eur. Ct. H.R. (2004).
- ⁵⁴ *Id.* para. 50.
- ⁵⁵ *Id.* para. 80.
- ⁵⁶ *Evans v. the United Kingdom*, App. No. 6339/05, Eur. Ct. H.R. (2006).
- ⁵⁷ *Id.* para. 46.
- ⁵⁸ Charter of Fundamental Rights of the European Union, OJ 2000/C 364/01.
- ⁵⁹ *Id.* para. 4.
- ⁶⁰ *Id.*
- ⁶¹ *Tysiac v. Poland*, App. No. 5410/03, Eur. Ct. H.R. (2007).
- ⁶² *Id.* para. 106, (*citing* case from the Eur. Comm. H.R., *Bruggeman and Scheuten v. Germany*).
- ⁶³ *Id.* para. 107.
- ⁶⁴ *R. R. v. Poland*, App. No. 27617/04, Eur. Ct. H.R. (2011).
- ⁶⁵ *Id.* paras. 159 - 162.
- ⁶⁶ *Id.* para. 159.
- ⁶⁷ Bernard Dickens & Rebecca Cook, *Ethical and legal approaches to 'the fetal patient'*, 83 INT'L J. OF GYNECOLOGY & OBST. 85, 87 (2003).
- ⁶⁸ *Z v. Poland*, App. No. 46123/08, Eur. Ct. H.R. (2008).
- ⁶⁹ *See* U.N. Department of Economic and Social Affairs, Population Division, *Abortion Policies: A Global Review, Romania*, at 53-54 (2002), *available at* <http://www.un.org/esa/population/publications/abortion/profiles.htm>.
- ⁷⁰ Ronald D. Bachman, ed., *Romania: A Country Study*, LIBRARY OF CONGRESS (1989), *available at* <http://lcweb2.loc.gov/frd/cs/rotoc.html>.
- ⁷¹ *See id.*

⁷² See *id.*; WHO, *Introduction, UNSAFE ABORTION: GLOBAL AND REGIONAL ESTIMATES OF INCIDENCE OF A MORTALITY DUE TO UNSAFE ABORTION WITH A LISTING OF AVAILABLE COUNTRY DATA* (3rd ed., 1997).

⁷³ See UNITED NATIONS CHILDREN'S FUND, INTERNATIONAL CHILD DEVELOPMENT CENTRE, *WOMEN IN TRANSITION* 117, tbl. 2.8 (1999); ASTRA NETWORK, *SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS IN EUROPE: REPORT TO THE EUROPEAN UNION* 20 (2006).

⁷⁴ See Polish Federation for Women and Family Planning, *Women in Poland: Sexual and Reproductive Health and Rights, Independent Report submitted to the U.N. Human Rights Committee* (Sept. 2004), available at <http://www.federa.org.pl/?page=article&catid=808&lang=2>.

⁷⁵ WHO, *SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS* (2003).

⁷⁶ CONSTITUTION OF THE REPUBLIC OF POLAND (2 Apr. 1997) (No. 78, item 483, article 33(1) says that "*Men and women shall have equal rights in family, political, social and economic life in the Republic of Poland.*"). See Treaty on European Union, 29 July 2011, O.J. (C 191), arts. 2, 3(3); Treaty on the Functioning of the European Union, 2008, O.J. (C 115), art. 8.

⁷⁷ Resolution 1607, Access to safe and legal abortion in Europe, Eur. Parl. Assemb., para. 2 (2008); CEDAW Committee, *General Recommendation No. 24*, *supra* note 34, para. 14.

⁷⁸ See *e.g.*, CEDAW Committee, *General Recommendation No. 24*, *supra* note 34, para. 31 (c).

⁷⁹ Véronique Filippi et al., *Maternal Health in Poor Countries: The Broader Context and a Call for Action*, 368 LANCET 1535 (2006).

⁸⁰ See *e.g.*, Human Rights Committee, *Concluding Observations: Ecuador*, para. 11, U.N. Doc. CCPR/C/79/Add.92 (1998); *Burundi*, para. 62, U.N. Doc. A/56/38 (2001); *Chile*, para. 229, U.N. Doc. A/54/38 (1999); *Chile*, para. 20, U.N. Doc. CEDAW/C/CHI/CO/ (2006); *Georgia*, para. 112, U.N. Doc. A/54/38 (1999); *Greece*, para. 208, U.N. Doc. A/54/38 (1999); *Ireland*, para. 186, U.N. Doc. A/54/38 (1999); *Kazakhstan*, paras. 76 & 106, U.N. Doc. A/56/38 (2001); *Lithuania*, para. 159, U.N. Doc. A/55/38 (2000); *Mongolia*, para. 274, U.N. Doc. A/56/38 (2001); *Nicaragua*, para. 301, U.N. A/56/38 (2001); *Slovenia*, para. 119, U.N. Doc. A/52/38/Rev.1 (1997).