

Mandates of the Working Group on the issue of discrimination against women in law and in practice; 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 torture and other cruel, inhuman or degrading treatment or punishment; and the Special Rapporteur on violence against women, its causes and consequences

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Excellency,

We have the honour to address you in our capacities as Working Group on the issue of discrimination against women in law and in practice; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; and Special Rapporteur on violence against women, its causes and consequences pursuant to Human Rights Council resolutions 23/7, 24/6, 25/13, and 23/25.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning a **draft law proposed by a civic committee, which would prohibit and criminalize termination of pregnancy under any circumstances.**

According to the information received:

The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993 regulates the termination of pregnancy in Poland. The legislation states that a termination of pregnancy may only be performed by a doctor under certain circumstances, being in cases of threat to the life and health of the woman (article 4a (1) point 1), when the foetus suffers from a "severe and irreversible foetal defect or incurable illness [threatening] the foetus' life" (article 4a (1) point 2), and when the pregnancy results from unlawful acts, including rape and incest (article 4a (1) point 3).

Under article 152 of the Penal Code of 1997, a woman is not subject to punishment if she decides to terminate her pregnancy on any other grounds than the ones previously mentioned. She is also exempted from punishment if the foetus suffers any injury (article 157a §3 of the Penal Code).

In March 2016, several non-governmental organizations, including the Right to Life Foundation (Fundacja Pro- Prawo do życia), the Ordo Iuris Institute for Legal Culture, the Centre for Supporting Initiatives for Life and Family, the Piotr Skarga Institute, and the Life Foundation, started an initiative to request the Prime Minister to pass a law that would impose a total ban on abortion. Several politicians, including the Prime Minister herself as well as several political leaders have reportedly expressed their support to this initiative.

On 14 March 2016, a notice of establishment of the Legislative Initiative Committee “Stop abortion” was submitted to the Marshal of the Sejm (lower house of the Parliament), with a draft law aiming at reforming the Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993 and the Penal Code of 1997 by introducing a complete ban on abortion.

The draft law includes the following revisions:

- The term “human foetus” would be replaced by “conceived child” or “unborn child” claiming that life needs to be under the protection of the law from the moment of conception, meaning the “fusion of female and male gametes” (article 1).
- All existing provisions related to abortion would be repealed. Termination of pregnancy will be prohibited under any circumstances, including in cases of danger for the life and health of a pregnant woman, rape, incest or foetal impairment.

The draft law stipulates that material assistance and care will be provided by the public administration and local self-government bodies to families “raising children who are seriously handicapped or who suffer from a life-threatening illness” and women and their children who are born out of “unlawful acts” (article 2.2a in the draft law). This revision will repeal the guarantee of free access to information and prenatal tests as provided in the current legislation.

Article 4 of the Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993, providing for sexuality education in school curriculum, would be replaced by “family life education, including the knowledge on the principle of responsible parenthood as well as family values and the values of human life since conception until natural death” and written consent from the parents will be required to participate in these classes. Knowledge about “human sexual life” would no longer be provided as set in the current legislation.

- Article 152 of the Penal Code would integrate a new offense for “prenatal murder” carrying a three months up to five year imprisonment sentence for any person performing or taking part intentionally in any kind of procedure with the

aim to remove the foetus, including for the woman herself (article 152 §1 in the draft law). If a person unintentionally injures the “conceived child”, the perpetrator shall be punished by deprivation of liberty up to three years (article 152 §2 in the draft law).

- If a pregnant woman intentionally causes the death, a bodily injury or an impairment to the health of the “conceived child”, the draft law provides that “the court may apply the extraordinary mitigation of punishment and even renounce its imposition” (articles 152 §5 and 157a §4 in the draft law). This suggested provision leaves discretion to a court, meaning that an investigation has to be opened for every case and then presented to a court which will decide.

Women who unintentionally suffer miscarriages or stillbirths or who unintentionally cause bodily injury or damage the health of the “conceived child”, will not be held accountable for “prenatal murder” (articles 152 §6 and 157a §5 in the draft law). The draft law does not provide guarantees that doctors will not report women after a miscarriage to the police.

- Physicians who performed therapeutic actions necessary to prevent an imminent danger to the life of a pregnant woman and which may result in miscarriages, will not be held accountable for the offense of “prenatal murder” (article 152 §4 in the draft law)

On 6 April 2016, the Legislative Initiative Committee “Stop abortion” was registered by the Marshal of the Sejm and the aforementioned draft law was accepted for consideration by the Parliament. From the date of registration of the draft law by the lower house of the Parliament, the Committee will have three months to collect 100.000 signatures supporting the legislative initiative.

In addition, the Ministry of Health has announced in March 2016 that the prescription requirement for emergency contraception (ellaOne) would be reinstated, despite the 2015 European ruling requesting that emergency contraception should be available over the counter for all women aged above fifteen years old.

We wish to express our serious concern regarding this draft law which will impose a total ban on abortion as well as its criminalization. The criminalization of abortion under all circumstances would violate the human rights of women and girls, including their rights to life, to the highest standard of physical and mental health as well as their right to be free from ill-treatment.

Furthermore, the reinstatement of the prescription requirement to obtain emergency contraception despite the 2015 European Commission ruling is of serious concern. In countries where access to emergency contraception and abortion services is severely restricted, terminating a pregnancy often becomes a privilege only available for the wealthy sectors of the society. Under these circumstances, women with fewer

resources have to resort to unsafe and illegal abortion services often causing irreversible injuries, even death, making this issue a major public health concern.

In connection with the above alleged facts and concerns, please refer to the **Reference to international law Annex** attached to this letter which cites international human rights instruments and standards relevant to these issues.

As it is our responsibility, under the mandates entrusted 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 or comment you may have on the above-mentioned allegations.
2. Please provide detailed information on how the Government intends to proceed with regard to the aforementioned draft law, those revisions seem in contradiction with its international human rights obligations.
3. Please provide detailed information about the next steps the Government intends to take after the Ministry of Health's announcement to reinstate a prescription requirement for emergency contraception (ellaOne), despite the 2015 European Commission ruling.
4. Please provide detailed information about the measures taken, or intended to be taken, to ensure that the rights of women and girls to sexual and reproductive health, including access to adequate health services, to physical and mental integrity, and to life, in light with international human rights standards.

Given the urgency of the issues addressed in this letter, we would appreciate that your Excellency's Government could forward a copy of the present letter to the Marshal of the Sejm, Mr. Marek Kuchciński.

It is our intention to publicly express our concerns as, in our view, the information upon which the press release will be based is sufficiently reliable, warranting immediate attention by the public opinion. The press release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

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

Frances Raday
Chairperson-Rapporteur on behalf of the Working Group on the issue of discrimination
against women in law and in practice

Dainius Pūras
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable
standard of physical and mental health

Juan E. Méndez
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Annex

Reference to international human rights law

In connection with the above concerns, we would like to refer your Excellency's Government to the International Covenant on Civil and Political Rights (ICCPR), which Poland ratified on 18 March 1977. The ICCPR underlines that the State shall respect and ensure the rights of all individuals, without any distinction of any kind, including of sex (art.2), to be free from inhuman and degrading treatment or punishment (art.7), and the right to one's privacy and family (art.17). The right to the highest attainable standard of health of young women and girls (art.12) as set forth in the International Covenant on Economic, Social and Cultural Rights (ICESCR), acceded by Poland also on 18 March 1977 is also relevant to the matters discussed in this letter. .

General Comment 14 of the Committee on Economic, Social and Cultural Rights highlights that the right to health contains both freedoms and entitlements and that these freedoms include the right to control one's health and body, including sexual and reproductive freedom, and the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation (para.8). It also indicates that States shall respect the right to health by, inter alia, abstaining from imposing discriminatory practices relating to women's health status and needs as well as by refraining from limiting access to contraceptives and other means of maintaining sexual and reproductive health (para.34). In addition, with the aim to eliminate discrimination against women, General Comment 14 refers to the need to develop and implement policies to provide women with access to high quality and affordable sexual and reproductive services (para.21), further indicating that "the provision for the reduction of the stillbirth rate and of infant mortality and for the healthy development of the child" may be understood as requiring measures to improve child and maternal health, sexual and reproductive health services, including access to family planning, pre- and post-natal care, emergency obstetric services and access to information, as well as to resources necessary to act on that information (para.14).

We would like also to refer your Excellency's Government to General Comment 22 of the Committee on Economic, Social and Cultural Rights, which stipulates that the right to sexual and reproductive health is an integral part of the right to health enshrined in article 12 of the Covenant, which includes a set of freedoms and entitlements, including the right to make free and responsible decisions and choices, free of violence, coercion and discrimination, over matters concerning one's body and sexual and reproductive health (para. 5). The Committee recalled that States parties should aim to ensure universal access without discrimination for all individuals to a full range of quality sexual and reproductive health care, including maternal health care, contraceptive information and services and safe abortion care (para.45) and that States parties have a core obligation repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine individual's or particular group's access to sexual and reproductive health facilities, services, goods and information and to take measures to prevent unsafe abortions and to provide post-abortion care and counselling for those in need (para. 49 a) & e)).

The total ban on abortion and regarding access to emergency contraception undermines a number of rights and principles guaranteed under the Convention on the Elimination of all forms of discrimination against women (CEDAW), ratified by Poland on 30 July 1980. The Convention condemns all forms of discrimination against women and girls (art.2), requires the modification of social and cultural patterns of conduct in order to eliminate discrimination against women and girls (art.5), guarantees their right to access health care services and goods without discrimination, including appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation (art.12), as well as their 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 (art.16).

In its General Recommendation n°24 on “women and health”, the Committee on the Elimination of all forms of discrimination against women specified that it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women. For instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers (para. 11). The Committee also recalled the obligation to respect rights requiring States parties to refrain from obstructing action taken by women in pursuit of their health goals (para.14).

In 2014, the CEDAW Committee also recommended to your Excellency’s Government (CEDAW/C/POL/CO/7-8) to (a) enhance women’s access to health care, in particular to sexual and reproductive health services, including by amending the 1993 Act on family planning, human foetus protection and preconditions for the admissibility of abortion, to make the conditions for abortion less restrictive, (b) establish clear standards for a uniform and non-restrictive interpretation of the conditions for legal abortion so that women may access it without limitations owing to the excessive use of the so-called conscientious objection clause by doctors and health institutions and ensure effective remedies for contesting refusals of abortion, within the revision of the Act on Patient Rights, (c) mandate, support and finance research, study and data collection, as previously recommended (CEDAW/C/POL/CO/6, para. 25), on the scope, causes and consequences of unsafe illegal abortion and its impact on women’s health and life, in order to obtain evidence-based elements for a revision of the law, and (d) ensure the accessibility and affordability of modern contraception for women and girls, including women in rural areas, through the reimbursement of modern and efficient methods of contraception by the public health system (para. 37).

We would like to remind your Excellency’s Government of the absolute and non-derogable prohibition of torture and other ill-treatment as codified in articles 2 and 16 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), which Poland ratified on 26 July 1989.

We would like to bring to Your Excellency's attention Article 1 of the United Nations Declaration on the Elimination of Violence against Women which provides that the term "violence against women" means any act of gender-based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life.

At the occasion of the adoption of 2030 Agenda for Sustainable Development, the Special Rapporteurs on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, on violence against women, its causes and consequences, and the Working Group on discrimination against women in law and in practice, along with other regional experts, stated that "the criminalization of or other failure to provide services that only women require, such as abortion and emergency contraception, constitute discrimination based on sex, and is impermissible" and called for "States to consider diligently the discriminatory and public health effects of laws which criminalize abortion in all circumstances, to remove punitive measures for women who undergo abortion, and at the very minimum, legalize abortion in cases of sexual assault, rape, incest, and where the continued pregnancy endangers the mental and physical health of the woman or the life of the woman. Moreover, women should always be provided with access to safe, quality post-abortion care".¹

The Special Rapporteur on violence against women, its causes and consequences highlighted in her report (E/CN.4/1999/68/Add.4) that acts deliberately limiting the freedom of women to for contraception or to have an abortion constitute violence against women by subjecting women to excessive pregnancies and childbearing against their will, increasing the risk of maternal mortality when it could be avoided (para. 57). She added, moreover, that in countries where abortion is illegal or where safe abortions are unavailable, women suffer serious health consequences, even death. Women with unwanted pregnancies are forced to resort to life-threatening procedures when an abortion performed under appropriate conditions would otherwise be safe (para.59). The fact that the government does not take positive steps to ensuring access to appropriate health-care services that enable women to safely give births and safely have an abortion when pregnant against her will, may constitute a violation of the right to life of women, as well as a violation of their reproductive rights. Similarly, the fact that the government did not provide conditions that enable women to control their fertility and reproduction, as well as to bring voluntary pregnancies constitutes a violation of the right to personal security of women (para.66).

In this context, we would also like to refer to the report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (A/ 66/254), which reiterates that the criminalization of sexual and reproductive health services for women generates and perpetuates stigma; restricts their ability to make full use of the products available for their sexual and reproductive health services and information; denies their full participation in society; hinders their access to

¹ See <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16490&LangID=E>

health services; and it affects women's empowerment. Furthermore, the criminalization of abortion has a negative impact on physical and mental health of women and can increase the likelihood that women resort to unsafe and clandestine abortions.

Finally, we would like to refer to the 2013 thematic report of the Special Rapporteur on torture (A/HRC/22/53) wherein he noted that international and regional human rights bodies have begun to recognize that ill-treatment of women seeking reproductive health services can cause enormous and lasting physical and emotional suffering based on gender, and he highlighted as a prime example facto denial of legally available health services such as abortion and post-abortion care (para.46). In this regard, the Special Rapporteur called upon all States to ensure that women have access to emergency medical care, including post-abortion care without fear of criminal sanctions or reprisals. He also recommended that States whose national law permits abortions in various circumstances must ensure the effective availability of services without adverse consequences for the woman or the health professional (para.90).