

Mandates of the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; 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 situation of human rights defenders; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on violence against women, its causes and consequences and the Working Group on discrimination against women and girls

REFERENCE:
AL POL 1/2020

20 January 2021

Excellency,

We have the honour to address you in our capacities as Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur in the field of cultural rights; Special Rapporteur on the right to education; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on freedom of religion or belief; Special Rapporteur on violence against women, its causes and consequences and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 41/18, 43/20, 37/12, 26/17, 43/4, 41/12, 42/16, 34/5, 40/10, 41/17 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning increased instances of alleged violence and discrimination, including hate speech against lesbian, gay, bisexual, trans and gender diverse ("LGBT") persons, in particular with reference to and in the context of (i) the creation of so-called "LGBT Free" zones by municipalities, (ii) restrictions on and attacks against Pride marches, (iii) a proposed bill to criminalize sexuality education, (iv) restrictions on Polish schools' initiative "Rainbow Friday", (v) initiatives or discussion on the possible withdrawal from the Istanbul Convention, and (vi) the Polish Episcopal Conference's calls for the creation of "conversion therapy" clinics.

According to the information received:

1. "LGBT-Free" Zones

On 18 February 2019, the municipality of Warsaw, its mayor, and local equality NGOs signed the Warsaw LGBT+ Declaration. This Declaration, intended to highlight the capital's hospitality and openness towards all people without discriminating on the basis of their sexual orientation or gender identity, foresaw, among other measures, the introduction of sexuality education in schools and the creation of a crisis intervention hostel and community centre.

Some activists have publicly opposed to the Declaration, reportedly considering it as promoting paedophilia, by setting up tents in city centres and calling to protest the Declaration. Also, the leader of the ruling party Law and Justice (*Prawo i Sprawiedliwość*; PiS), condemned the Declaration as “an attack on the family and children”, and claimed that non-heteronormative relations are an “imported” ideology and that sexuality education will lead to the sexualization of children.

At the same time, some regions, counties and municipalities took a stand against the Declaration by passing resolutions declaring themselves free from a so-called “LGBT ideology”. This position reportedly appears to promote the idea that the human rights of LGBT persons are not protected under international and national law. Some regional and local governments have also adopted “Regional Charters of Family Rights” or key provisions from these charters, which allegedly contain discriminatory provisions against a single parent and LGBT families. These charters and resolutions contain provisions purportedly call for local governments to refrain from encouraging tolerance towards LGBT persons, refrain from financially providing for NGOs working to promote equal rights, educating on anti-discrimination or in any other way supporting the rights of LGBT persons. Since the beginning of 2019, there have reportedly been over 100 instances where local governments have adopted such resolutions.

These measures, and in particular the creation of “LGBT Free” or “LGBT-ideology Free” zones, have reportedly exacerbated prejudice against the LGBT community in Poland and led to increased hatred against LGBT persons and in some cases even extended to elected officials. In May 2019, a pro-LGBT politician from a left-wing party was attacked with a knife by her neighbour. During the attack, the perpetrator exclaimed, “We should clean Poland from the LGBT plague, which Hitler should have dealt with long ago”.

Other incidents where LGBT persons have been subject to violence, hate speech and discrimination, including spearheaded by politicians, State-sponsored media and religious authorities, have been recorded as follows:

Politicians and the Catholic Church's statements:

- In August 2019, the archbishop of Krakow allegedly called “LGBT ideology” a “rainbow plague.” A few weeks later, the leader of the ruling party PiS supported the archbishop's statement by calling

LGBT persons a threat to family and Christian values and comparing “LGBT ideology” to Nazi ideology.

- In September 2019, the governor voivodship (a highest-level administrative division of Poland) of Łódzkie compared LGBT persons to zoophiles (a person who is emotionally or sexually attracted to non-human animals) on his Facebook page. Also, during a radio interview, the leader of PiS stated that same-sex couples would adopt children “for fun”, which allegedly implying that they would abuse children sexually.
- In September 2019, before the Equality march in Szczecin, a PiS elected official and a council member of the city of Szczecin joined a group named National Revival of Poland (*Narodowe Odrodzenie Polski*; NOP) and called people to show disapproval of the “spread of pests and LGBT pollution”.
- In June 2020, a PiS elected official and a member of the President’s campaign office stated in a live television broadcast that “[we] should stop listening to LGBT ideology. They are not equal to normal people”.
- In June 2020, the Polish President said in a campaign speech that the promotion of LGBT rights is a “foreign ideology” that is worse than communism. Also, he published a set of campaign promises that he has called a “Family Charter”, committing to prevent gay couples from marrying or adopting children, and to ban teaching Polish students about LGBT issues in school to “protect children from LGBT ideology”.

Media portrayals:

- In July 2019, a conservative newspaper issued “LGBT-Free Zone” stickers to readers. The Warsaw district court ordered the newspaper to stop distributing the stickers, given that the publication of the stickers may cause far-reaching effects in the form of exclusion of LGBT persons from the public sphere, as well as further harassment and discrimination. However, the newspaper continued to do so by modifying the slogan to “LGBT-ideology Free Zone”.
- Telewizja Polska (TVP, a Polish state media company and the largest Polish television network) often portrays LGBT persons in a prejudiced manner, considering them as a threat to families and children. Also, TVP broadcasted a self-styled documentary called

Invasion which promised to reveal “the inside story, aims, methods, and money behind the LGBT invasion of Poland.”

Anti-LGBT campaign

- In recent years, NGO Fundacja Pro runs anti-LGBT campaigns that portray homosexuals as paedophiles. This NGO drives vans through city centres broadcasting anti-LGBT messages over loudspeakers and displaying them on large banners.
- In Białystok, in north-eastern Poland, a meeting of an LGBT support group was disturbed by a group from a local nationalistic organization, who tried to force themselves in. Also, in Poznań, in western Poland, unknown perpetrators destroyed the venue of an LGBT organization.
- On Twitter, LGBT persons are often subject to cyberbullying and cyberattacks including by using hashtags “LGBT ideology”, “rainbow plague”, “rainbow terror”, and “stop rainbow plague”, among others.

Efforts by LGBT individuals and organizations to respond to these anti-LGBT campaigns have reportedly been hindered by the lack of explicit mention of sexual orientation or gender identity as grounds in the hate crime law in Poland. OKO.press research conducted by IPSOS in September 2019 showed that Polish society sees LGBT and gender as one of the biggest threats to Poland in the 21st century.¹ Moreover, according to the report prepared by Front Europejski (an initiative jointly created by several NGOs), LGBT was the most popular subject of misinformation during the election period from March to October 2019.

On 14 July 2020, the provincial administrative court in Gliwice ruled that the “LGBT ideology Free Zone” resolution passed by the council in Istebna violated Poland’s Constitution. The court found that the phrase “LGBT ideology” has a discriminatory effect on LGBT persons by excluding them from the community due to their sexual orientation or gender identity, which is harmful and strengthens a sense of threat against them. The court further noted that the resolution violated Article 32 of the Constitution, which sets out “all persons shall be equal before the law” and “have the right to equal treatment by public authorities”, and that “no one shall be discriminated against in political, social or economic life for any reason whatsoever”. In addition, the court found that the

¹ <https://oko.press/mezczyzni-najbardziejziej-boja-sie-gejow-i-gender-kobiety-zapasci-služby-zdrowia-wspolny-strach-o-klimat/>

resolution violated the right of people to raise their children in line with their beliefs by limiting the scope of subjects that could be taught in school.

On 15 July 2020, the provincial administrative court in Radom also annulled an “LGBT ideology” resolution adopted in Klwów. On the other hand, courts in Kraków, Kielce and Poznań had rejected similar cases submitted by the Polish Commissioner for Human Rights who argued that such resolutions violated the Polish Constitution.

On 28 July 2020, the European Commissioner for Justice and Equality confirmed on Twitter that applications for a European twinning programme by six Polish cities (including the town of Tuchow) all of whom adopted the “LGBT Free zones” or “Regional Charters of Family Rights” resolutions, were rejected. She mentioned “EU values and fundamental rights must be respected by Member States and state authorities”.

On 18 August, however, the Justice Minister decided to fund the town of Tuchow from the ministry’s Justice Fund. He told “we are supporting a municipality that has a pro-family agenda, promotes support for well-functioning families, and fights against the imposed ideology of LGBT and gender, which is being pushed by the European Commission”. The Justice Minister further stated that the Ministry would reach out to the other municipalities whose application for European twinning programme was rejected by the European Commissioner.

2. Restrictions on Pride Marches

Since 2018, public authorities have continuously banned Pride marches throughout Poland (including in cities, such as Lublin, Gniezno, Rzeszow, Kielce, Gorzow Wielkopolski, and Nowy Sacz) and that most of the bans were formally attributed to concerns for the safety of participants and city residents. While courts overturned the decision of the first or second instance to ban the marches (and therefore, they took place as planned), organizers had to endure additional workload and pressure, and were allegedly subject to discriminatory attitudes and continuous harassment in both public and private spheres. As illustrated below, counter-demonstrators physically attacked or insulted participants of Pride marches:

- In July 2019, a Pride parade took place in the city of Białystok. According to the information at our disposal, police estimated there were about 1,000 participants and roughly 4,000 counter-protesters who attempted to disrupt the event by shouting insults, physically attacking the participants, throwing firecrackers, cobblestones or eggs toward them. The presence of about 700 police officers was not sufficient to protect the participants, and at least 40 of them were reportedly injured.

- In September 2019, a married couple was arrested and sentenced to one year in prison each, after having brought homemade explosive materials reportedly intended for using against the participants of the Equality march in Lublin.
- In October 2019, a man with a knife in both hands who attempted to attack the Equality march in Wrocław was arrested around 30 minutes before the official start of the march. No one was injured by this incident.

Also, people were reportedly attacked, interrogated or arrested when they were holding the Polish national flag with rainbow elements or trying to stick some of those posters on bus stops. A person was allegedly arrested on 6 May 2019, for creating posters of the Virgin Mary with a rainbow halo.

We have also received information about the instances of harassment of supporters of Pride marches. For instance, when a bishop conducted his yearly mass in front of the Pride parade in Warsaw in June 2019, some counter-protesters reported him to the police claiming that he offended their religious beliefs by conducting a mass in support of the Pride event. In October 2019, the bishop and two of his colleagues were summoned to the Warsaw chief prosecutor's office and charged with offending religious feelings by insulting an object of worship in the form of a Roman Catholic Mass. Further, since this mass took place in a public place, the bishop was recorded by some journalists, and a hateful media campaign was reportedly launched against him.

It is alleged that these incidents have created a chilling effect among organizers and participants of Pride marches.

3. Bill to Criminalize Sexuality Education

On 17 July 2019, a draft bill called "Stop Paedophilia" was submitted to the Sejm (the Parliament) by a citizens' initiative to amend Article 200b of the Penal Code. Its authors explained that the purported purpose of the bill was to amend the existing laws on preventing and tackling paedophilia.

The bill was a "popular initiative" requiring 100,000 signatures for parliamentary consideration. The drafted law's explanatory statement was misleading and based on false information, implying a link between homosexuality and paedophilia. For instance, it stated, *inter alia*, that:

- in Western Europe and the United States, sexuality education was introduced by persons convicted of paedophile offences;

- through sexuality education, children get used to sex from an early age, and that sexuality education destroys natural defence mechanisms as well as children's innocence; and
- children arouse sexually and become accustomed to homosexuality through sexuality education, which is being used by a so-called "LGBT lobby" as a tool to realize the radicalization of political goals, *e.g.*, to legalize the children's adoption by homosexuals in Poland. In countries that have allowed similar practice, tragedies occurred in this field.

People and organizations providing sexuality education or information on sexual and reproductive health rights, including teachers, outreach workers, authors, and health care personnel, have expressed concerns that the vague and broad scope of the draft law undermines access to comprehensive sexuality education. If approved, the bill could negatively affect educators, activists, human rights defenders, healthcare providers, psychologists, publishers and journalists and even parents or legal guardians, among others, who may fear being incarcerated for doing their jobs.

On 16 April 2020, the Parliament sent the bill back to a subcommittee for "further work", hence postponing further consideration to a later stage.

4. Restrictions on "Rainbow Friday"

The Rainbow Friday action is an initiative by Campaign Against Homophobia (a Polish LGBT rights organization) to show support to LGBT youth in schools and ensure their safety and well-being. It has regularly been taking place on the last Friday of October since 2016. However, public authorities have allegedly repeatedly hindered this initiative.

In October 2018, 211 schools from all over Poland volunteered to take part in this campaign. However, it has drawn criticism from conservatives, including in the Government and the Catholic Church. For instance, the Minister of Education is reported to have stated on this occasion that "every director who has made a decision to organize Rainbow Friday without procedures has violated the law on education" and indicated that principals who allowed it would face negative repercussions. Consequently, many schools needed to cancel the event. Some school principals have reportedly summoned students who participated in this initiative for disciplinary conversations, collected testimonies about their participation in the event, controlled their clothing, confiscated items related to the action (*e.g.*, pins), or threatened them with lowering their behaviour scores.

In October 2019, the Ministry of Education (MEN) encouraged students and teachers to participate in an alternative event called the "School Remembers" and organize "patriotic trips" for students such as visiting memorials and cemeteries.

This event was aimed at discouraging schools from participating in Rainbow Friday. School supervisors' offices, which are under the supervision of the Government, sent a letter to schools around the country and warned, "If parents know that a child at school is attending an event contrary to their values, they have the right to express their strong objection".

The Commissioner for Children's Rights wrote on Twitter, "school should be free from ideology posing as tolerance. MEN should check if schools celebrated the Rainbow Friday". The education supervisor of the Małopolska province claimed that the Rainbow Friday is a foreign ideology that spoils children, and therefore is illegal and unacceptable.

5. Possible Withdrawal from the Istanbul Convention

On 25 July 2020, the Justice Minister said that his Ministry would submit a request to the Ministry of Family, Labour and Social Policy to begin the process of withdrawing from the Council of Europe Convention on preventing and combating violence against women and domestic violence ("Istanbul Convention"). Poland ratified the Istanbul Convention in 2015.

The Justice Minister is reported to have said that recent legal reforms introduced in Poland provided sufficient protection for victims of domestic violence. Further, he claimed the Istanbul Convention is "harmful" because it "contains elements of an ideological nature" requiring schools to teach children about gender, which, in his view, violates parents' right.

On 26 July, PiS officials noted that decision over the Istanbul Convention has not yet been made. On 31 July, the Prime Minister said that the Istanbul Convention should be checked by the Constitutional Tribunal to see if it was compatible with the Polish Constitution.

6. Polish Episcopal Conference's Calling for the Creation of "Conversion Therapy" Clinics

Following the three-day Polish Episcopal Conference (*Konferencja Episkopatu Polski*; KEP, the central organ of the Catholic Church in Poland) ended on 30 August 2020, Poland's Catholic episcopate has adopted an official "position on the questions of LGBT+". The 27-page document rejects a series of postulates associated with the LGBT movement, which the bishops explained is aiming to "force moral and cultural transformation by gradually accustoming society to behaviours that until recently were considered morally reprehensible".

The statement acknowledges that "[t]he requirement of respect for all people, including people identifying with LGBT+, is entirely correct, and a democratic state with the rule of law should ensure that none of the fundamental rights of

these people are violated”. However, it makes it clear that the fundamental rights of LGBT persons do not include anything “clearly contrary to human nature and the common good (such as same-sex relationships or the adoption of children by such couples)”. It also discards “the right of a person to self-determine their gender without reference to objective criteria determined by their genome and anatomy”, and rejects in particular the “radical separation between biological sex and cultural gender”.

Further, the document writes that “it is necessary to create clinics (including with the assistance of the church) to help people who want to regain their sexual health and natural sexual orientation.”

The bishops admit that this idea “stands in clear contradiction to positions regarded as scientific, as well as to so-called ‘political correctness’”. However, they claim that the clinics would help people who realize that their sexuality is “a symptom of wounds on various levels of their personality” and who wish to “regain a healthy identity and spiritual harmony”.

While we do not wish to prejudge the accuracy of the information made available to us, we are seriously concerned by the use of discriminatory language by public figures, including some politicians, the Catholic Church leaders and the media, which exacerbate hatred and prejudice against LGBT persons. We are particularly concerned about the declarations by local authorities of “LGBT-ideology Free” zones or “LGBT Free” zones. It is unclear what the practical consequence of differentiating between “LGBT-Free” or “LGBT-ideology Free” zones is, as in both cases it appears that the objective is to eliminate the possibility of LGBT persons to enjoy their rights, including their right to freedom of movement and residence, and to freely express their sexual orientation and gender identity publicly. The State, which is responsible for the acts of its local authorities, must therefore take all necessary measures to respect the rights of LGBT persons at central and at local levels of government and to prohibit the incitement to discrimination against LGBT persons. However, no investigation is known to have been instigated or no one is known to have been held accountable. Failure to enforce the prohibition can engage the responsibility of the State. We further note the general obligation of the State to ensure human rights, including to act with due diligence to prevent violence and discrimination against LGBT persons by private actors.

Also, we express our concern at the allegedly discriminatory restrictions placed on individuals exercising their rights to freedom of expression, peaceful assembly and association so as to uphold the human rights of LGBT persons. The organization of Pride marches throughout the country is a manifestation of the rights to freedom of peaceful assembly and of association and the right to take part in the cultural life of LGBT persons and those who support them.

We are equally concerned that LGBT human rights defenders and advocacy groups have been targeted due to their engagement in activities for the advocacy of human rights related to sexual orientation and gender identity.

Further, we express our concern that the “Stop Paedophilia” bill deliberately conflates LGBT and paedophilia to feed fear and intolerance, creating a narrative that discriminates against LGBT persons and is hostile to sexual and gender diversity. The bill appears to run contrary to the State’s obligations to promote gender equality, non-discrimination, and the right to the highest attainable standard of health. We are equally concerned that the bill is inconsistent with students’ right to receive comprehensive sexuality education, as it will restrict their access to information about health and sexuality education that is non-discriminatory and scientific. We are also concerned about the threat to sanction anyone who teaches sexuality education, including sexual and reproductive health education, which appears to represent an undue infringement on their rights to freedom of expression and the right to health of all.

In addition, we wish to express our concern that prohibiting Polish schools’ initiative “Rainbow Friday” appears to not only hinder teachers and students from embracing sexual and gender diversity, but it also creates a hostile environment for LGBT adolescents in school, which may expose them to bullying, violence, and harassment. This appears to be in contrary to the State’s obligation to take effective action to protect LGBT students from all forms of violence and discrimination, including bullying.

Also, we are seriously concerned about the remark by Justice Minister Zbigniew Ziobro that proposed to withdraw from the Istanbul Convention. Withdrawing from the Istanbul Convention would cause a detrimental effect on the protection of women from all forms of violence.

Lastly, we express our concern about the recent statement by the Polish Episcopal Conference that promotes so-called “conversion therapy” practices. Such practices provoke profound psychological and physical damage in LGBT persons in all age, and are by their nature degrading, inhuman and cruel and create a significant risk of torture. Poland must protect LGBT persons from such practices by any actors, including faith-based organizations.

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

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 on the allegations mentioned above.
2. Please indicate what measures have been taken by your Excellency's Government to ensure that no law or policy discriminate individuals on the basis of their sexual orientation and gender identity, including by revoking local governments' resolutions declaring themselves free from "LGBT ideology" or adopting discriminatory provisions within "Regional Charters of Family Rights". If no measures have yet been taken, please explain why.
3. Please clarify whether any administrative, civil or criminal proceedings have been taken against those involved in hate speech, including politicians, Catholic Church leaders, media, NGOs and others.
4. Please provide information on any other measures taken by the authorities to prevent further calls for, and acts of discrimination, incitement, hostility and violence against the LGBT community, such as any plans to enact legislation that would include the grounds of sexual orientation and gender identity as prohibited grounds for discrimination, incitement to hatred, violence and hate crimes.
5. Please indicate the measures taken to ensure that human rights defenders, including those participating in Pride marches and working towards the protection from violence and discrimination based on sexual orientation and gender identity, can carry out their human rights activities, including the exercise of their rights to freedom of expression, peaceful assembly and association, and their right to take part in cultural life without discrimination, in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort.
6. Please explain measures taken by your Excellency's Government to ensure that all individuals and groups have access to comprehensive sexuality education, including non-discriminatory, evidence-based, scientifically accurate and age-appropriate information on all aspects of sexual and reproductive health, including diversity in sexual orientations and gender identities or expressions.
7. Please provide information on measures taken by your Excellency's Government to protect LGBT youth from violence and discrimination in the school environment, including bullying, harassment, stigmatization, and ostracization.
8. Please provide information on measures taken by your Excellency's Government to prevent, investigate and punish violence and discrimination

based on sexual orientation and gender identity perpetrated by both State and non-State actors, as well as to provide reparations to victims. Please also indicate how many complaints have been lodged within the last year, how many investigations are ongoing, and what the results of these investigations are.

9. Please provide information on measures your Excellency's Government has taken to halt and publically condemn homo-, bi and transphobic attitudes, to raise awareness about diversity in sexual orientations and gender identities, and to foster acceptance and inclusion.
10. Please provide information regarding on plans, by your Excellency's Government, regarding the withdrawal of the Istanbul Convention.
11. Please provide information on measures by your Excellency's Government to protect LGBT persons from practices of "conversion therapy", including any plans to enact legislation that would prohibit such practices by State and non-state actors, including faith-based organizations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations. Also, we urge your Excellency's Government to engage in dialogue with the Polish Episcopal Conference and the Holy See to raise awareness about the human rights violations connected to practices of "conversion therapy" in order to protect LGBT persons from such practices.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that other letters were also sent to the Polish Episcopal Conference and the Holy See regarding "6. Polish Episcopal Conference's Calling for the Creation of 'Conversion Therapy' Clinics" with a view of seeking clarification on the allegation and requesting additional information. A copy of this allegation letter was also shared with them.

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

Victor Madrigal-Borloz
Independent Expert on protection against violence and discrimination based on sexual
orientation and gender identity

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or
punishment

Karima Bennoune
Special Rapporteur in the field of cultural rights

Koumbou Boly Barry
Special Rapporteur on the right to education

Irene Khan
Special Rapporteur on the promotion and protection of the right to freedom of opinion
and expression

Clement Nyaletsossi Voule
Special Rapporteur on the rights to freedom of peaceful assembly and of association

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

Mary Lawlor
Special Rapporteur on the situation of human rights defenders

Ahmed Shaheed
Special Rapporteur on freedom of religion or belief

Dubravka Šimonovic
Special Rapporteur on violence against women, its causes and consequences

Elizabeth Broderick
Chair-Rapporteur of the Working Group on discrimination against women and girls

Annex
Reference to international human rights law

1. Non-discrimination based on sexual orientation and gender identity

The principles of equality and non-discrimination are part of the foundations of the rule of law and human rights. Under Articles 1 and 2 of the Universal Declaration of Human Rights (“UDHR”), “[a]ll human beings are born free and equal in dignity and rights”, and “[e]veryone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. This principle is reaffirmed by other human rights treaties, including Article 2 (1) of the International Covenant on Civil and Political Rights (“ICCPR”), ratified by Poland on 18 March 1977, and Article 2 (2) of the International Covenant on Economic, Social and Cultural Rights (“ICESCR”), ratified by Poland on 18 March 1977. The jurisprudence, general comments and concluding observations of United Nations treaty bodies have consistently held that sexual orientation and gender identity are prohibited grounds of discrimination under international law.

The Human Rights Council, in its resolutions 17/19, 27/32, 32/2 and 41/18, expressed grave concern at acts of violence and discrimination, in all regions of the world, committed against individuals because of their sexual orientation and gender identity.

The United Nations High Commissioner for Human Rights echoed this concern and emphasized that States have an obligation to ensure equal protection before the law, freedom from discrimination, to prohibit and prevent discrimination in private and public spheres and to diminish conditions and attitudes that cause or perpetuate such discrimination (A/HRC/29/23, para. 16). He further stated that to this end, States should enact comprehensive anti-discrimination legislation that includes sexual orientation and gender identity among protected grounds, that States should review and repeal discriminatory laws and address discrimination against LGBT and intersex (“LGBTI”) persons, including in the enjoyment of the rights to health, education, work, water, adequate housing and social security (*Ibid.*, paras. 16 and 79 (c), A/HRC/19/41, para. 84 (e)).

In this vein, we believe it is pertinent to refer to the last Universal Periodic Review (UPR) of Poland (A/HRC/36/14), drawing particular attention to the recommendations in paragraph 120.49, which state that Poland should: “Amend the Act on Equal Treatment in order to prohibit discrimination, in a comprehensive manner, including on the basis of sexual orientation and gender identity, in all areas and sectors, in particular taking into account access to education, health, social protection and housing”, and 120.50, which states that it should: “Extend its anti-discrimination laws and hate crime legislation to ensure equal treatment and broad protection for all from

discrimination, regardless of sexual orientation and gender identity.” These were partially accepted by Poland and considered under implementation. Also, we would like to refer to the recommendation in paragraph 120.71, which recommends that: “Combat violence and discrimination against lesbian, gay, bisexual, transgender and intersex persons”, which was accepted by Poland and considered under implementation.

2. Preventing incitement to violence and hate speech

The right to freedom of opinion and expression is guaranteed under Article 19 of both UDHR and ICCPR, which affirms that everyone has the right to hold opinions without interference and to seek, receive and impart information and ideas of all kinds through any media and regardless of frontiers. The exercise of the right to freedom of expression, however, should not be aimed at the violation of any of the rights and freedom of others, as with all human rights. In particular, Article 20 (2) of ICCPR explicitly provides that any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence is to be prohibited by law.

The former United Nations High Commissioner for Human Rights expressed concern at rhetoric used to incite homophobic and transphobic hatred and related violence used by some political and community leaders to promote negative stereotypes, stir up prejudice and harass particular individuals, especially during electoral periods (A/HRC/29/23, para. 33). In light of this, he recommended that States address violence by prohibiting incitement of hatred and violence on the grounds of sexual orientation and gender identity, and holding to account those responsible for related hate speech (*Ibid.*, para. 78 (d)). In addition, he recommended to States to address discrimination by supporting public education campaigns to counter homophobic and transphobic attitudes, and addressing negative, stereotypical portrayals of LGBT persons in the media (*Ibid.*, para. 79 (j)).

In this regard, we wish to remind your Excellency’s Government of the Concluding Observations of 14 November 2014 of the Committee on the Elimination of Discrimination against Women (“CEDAW”), in which it recommended that Poland evaluate and strengthen measures to counter negative stereotypes against lesbian, bisexual, transgender and intersex women (CEDAW/C/POL/CO/7-8, para. 23 (e)).

The Special Rapporteur on freedom of religion or belief rejected any claim that religious beliefs can be invoked as a legitimate “justification” for violence or discrimination on the basis of their sexual orientation or gender identity (A/HRC/43/48, para. 70). In addition, he recommended States: (i) reaffirm that traditional, historical, religious or cultural attitudes must not be used to justify violation of human rights, (ii) combat all forms of violence and coercion perpetrated against LGBT persons justified with reference to religious practice or belief, ensure their personal safety and liberty, and hold accountable perpetrators of such violence and ensure victims obtain redress, and (iii) publicly condemn expressions of hostility against, and the perpetuation of harmful gender stereotypes of LGBT persons, and human rights defenders promoting gender equality,

including by religious figures or “justified” with reference to religious belief; and instead express active support for gender equality. Further, he recommended that faith leaders publicly oppose expressions of hostility against, and negative stereotypes of LGBT persons and human rights defenders promoting gender equality, including by faith leaders; and express solidarity with and support for LGBT persons (*Ibid.*, paras. 77 (a) (i), (iv), (vii), and (b) (i)).

In this regard, we further wish to recall Your Excellency’s Government the Special Rapporteur in the field of cultural rights’ report on the visit conducted in Poland in 2020. She recommended that Poland revise the Criminal Code to add *inter alia* gender, gender identity and expression, and sexual orientation to the list of prohibited grounds for hate crimes requiring investigation and prosecution (A/HRC/43/50/Add.1, para. 96(i))

On 18 December 2019, the European Parliament strongly condemned discrimination against LGBTI people and their fundamental rights by public authorities, including hate speech by public authorities and elected officials, as well as the recent declarations of zones in Poland free from so-called ‘LGBT ideology’. The European Parliament described “LGBT Free” zones as a part of “a broader context of attacks against the LGBTI community in Poland, which include growing hate speech by public and elected officials and public media, as well as attacks and bans on Pride marches and awareness-raising programmes and actions such as Rainbow Friday”. The European Parliament called on Poland to firmly condemn discrimination against LGBTI people, including when it originates from local authorities, and to revoke resolutions attacking LGBTI rights, including local provisions against “LGBT ideology”.

3. Protecting freedom of expression, peaceful assembly and association from discriminatory measures, attacks and threats

States have an obligation to guarantee to everyone the rights to freedom of expression, association, and peaceful assembly, without discrimination (Articles 19 and 20 (1) of UDHR, Articles 19 (2), 21, and 22(1) of ICCPR, Articles 1, 2, 5 and 6 of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms). Limitations on these rights that are based on sexual orientation or gender identity violated international human rights norms and standards. For instance, in a joint statement on free expression and association, UN and regional human rights experts stated that they “categorically reject arguments that such restrictions to the rights of LGBTI people are necessary to protect public morals, health or the well-being of vulnerable people.”²

² Joint statement by UN Special Rapporteurs on freedom of opinion and expression, freedom of peaceful assembly and of association, right to health, and human rights defenders African Commission on Human and Peoples’ Rights, Special Rapporteur on Human Rights Defenders in Africa, Inter-American Commission on Human Rights and OSCE Representative on Freedom of the Media, “Free expression and

The Human Rights Committee noted that States parties should put in place effective measures to protect against attacks aimed at silencing those exercising their right to freedom of expression (CCPR/C/GC/34, para. 23). Also, State parties must respond appropriately to patterns of violence against categories of victims, including violence against persons on the basis of their sexual orientation or gender identity under Article 9 of ICCPR (CCPR/C/GC/35, paras. 3 and 9).

In this regard, we wish to draw attention to the Concluding Observations of 23 November 2016 of the Human Rights Committee, in which it expressed concern about the reported increase in incidents of violence, hate speech and discrimination based on sexual orientation, among others, as well as the lack of reference to “sexual orientation or gender identity” as grounds for hate crimes in the Penal Code (CCPR/C/POL/CO/7, para. 15). In light of this, the Committee recommended to Poland to continue strengthening its efforts to prevent and eradicate all acts of homophobia by, inter alia: (i) amending the Penal Code so that crimes motivated by discrimination on any grounds under the Covenant are investigated and prosecuted as aggravated forms of criminal conduct, (ii) taking measures to prevent and swiftly and effectively respond to any incidents of hate speech, discrimination, violence or alleged hate crime, including through the Internet, (iii) thoroughly investigating alleged hate crimes, prosecuting perpetrators and, if convicted, punishing them, and providing victims with adequate remedies, and (iv) continuing work on awareness-raising and educational campaigns aimed at promoting respect for human rights and tolerance for diversity (*Ibid.*, paras. 16 (a), (b), (c), and (f)).

We further wish to draw attention to the Concluding Observations of 29 August 2019 of the Committee against Torture (“CAT”), in which it recommended that Poland ensure that all cases of hate crime are reported and that reasons for the gross underreporting of such crimes are addressed as a matter of urgency through appropriate measures, including training of the police and trust-building activities among police officers. CAT further recommended Poland to take all necessary measures to combat discrimination and violence against LGBT people and to take effective measures to prevent all manifestations of hate crime and ensure prompt and effective investigation of all such incidents, with appropriate prosecutions (CAT/C/POL/CO/7, para. 36 (e)).

In addition, we would like to refer to the Concluding Observations of 30 October 2015 of the Committee on the Rights of the Child (“CRC”), in which it recommended Poland amend the Penal Code to define hate speech and other hate crimes motivated by homophobia as specific punishable offences and ensure that such incidents are thoroughly investigated and that perpetrators are brought to justice (CRC/C/POL/CO/3-4, para. 17 (b)).

association key to eliminating Homophobia and Transphobia” (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

The United Nations High Commissioner for Human Rights acknowledged that LGBT defenders and supporters of related rights had been subjected to violence and harassment when convening meetings or cultural events, or participating in LGBT “equality marches” (A/HRC/19/41, para. 64). He further noted that States have obligations to protect rights to freedom of thought and expression, association and peaceful assembly without discrimination on the grounds of sexual orientation or gender identity (A/HRC/29/23, para. 18). To that end, he recommended States (i) enact hate crime laws that establish homophobia and transphobia as aggravating factors for purposes of sentencing, (ii) conduct prompt, thorough investigations of incidents of hate-motivated violence against LGBT persons, holding perpetrators to account, and providing redress to victims (iii) ensure that individuals can exercise their rights to freedom of expression, association and peaceful assembly in safety without discrimination on grounds of sexual orientation and gender identity; and (iv) implement appropriate sensitization and training programmes for police, prison officers, border guards, immigration officers and other law enforcement personnel (A/HRC/19/41, paras. 84 (f) and (g), A/HRC/29/23, paras. 78 (a), (b), and (e)).

The Special Rapporteur on the rights to freedom of peaceful assembly and of association emphasized that the rights to freedom of peaceful assembly and of association play a key role in empowering individuals belonging to groups most at risk (including LGBT people) to claim other rights and overcome the challenges associated with marginalization. Such rights must therefore not only be protected, but also facilitated. It is the responsibility of all stakeholders to ensure that the voices of individuals belonging to groups most at risk are heard, and taken into account, in compliance with the principles of pluralism of views, tolerance, broadmindedness and equity (A/HRC/26/29, para. 72). In this regard, he called upon States to: (i) ensure that no individual belonging to a group most at risk is criminalized for exercising his/her rights to freedom of peaceful assembly and of association, nor is subject to threats or use of violence, harassment, persecution, intimidation or reprisals; (ii) ensure that any restrictions on the rights of freedom of peaceful assembly and of association, for individuals belonging to groups most at risk, are prescribed by law, necessary in a democratic society and proportional to the aim pursued, and do not harm the principles of pluralism, tolerance and broadmindedness; (iii) provide individuals belonging to groups most at risk exercising their rights to freedom of peaceful assembly and of association with the protection offered by the right to freedom of expression; (iv) ensure that administrative and law enforcement officials are adequately trained in relation to the respect of the rights of individuals belonging to groups most at risk to freedom of peaceful assembly and of association, in particular in relation to their specific protection needs; and (v) ensure that individuals belonging to groups most at risk who are victims of violations and abuse of their rights to freedom of peaceful assembly and of association have the right to a timely and effective remedy and obtain redress (*Ibid.*, paras. 74 (a), (b), (d), (e) and (g)).

The former Special Rapporteur on the situation of human rights defenders highlighted that defenders promoting the rights of LGBT persons are often the target of numerous attacks and the lack of any protection under the law or in practice exacerbates

the vulnerability of those defenders (A/70/217, para. 65-66). Therefore, he recommended that States adopt the following measures: (i) do more to disseminate the work of defenders and to support their work through campaigns and specific communication and information activities that pay tribute, in particular, to the contributions made by certain categories of defenders, such as the rights of LGBT persons, (ii) conduct impartial investigations and ensure that the perpetrators of violations against the rights of defenders are brought to justice, and (iii) provide State agents, especially those who are in direct contact with communities of defenders, with the necessary training regarding the role and rights of defenders and regarding the Declaration on human rights defenders (*Ibid.*, paras. 93 (a), (e) and (i)).

In this regard, we further wish to recall Your Excellency's Government the Special Rapporteur in the field of cultural rights' report on the visit conducted in Poland in 2020. She found that acts of hate and hate speech against LGBT persons and their cultural events continue, including by those in official positions (HRC/43/50/Add.1, para. 70). Therefore, she recommended that Poland develop an effective overall response to hate crimes and adopt measures to make clear that hate speech and incitement to discrimination are not tolerated, including by facilitating civil suits by victims, thoroughly investigating all allegations that hate speech is inciting or has incited acts of violence and holding perpetrators accountable. (*Ibid.*, para. 96 (h)).

In addition, we believe it is pertinent to refer to the last UPR of Poland (A/HRC/36/14), drawing particular attention to the recommendations in paragraphs 120.46, 120.72 – 120.74 (being accepted by Poland), which recommended that Poland ensure that LGBT people are fully protected against discrimination, hate speech and hate crimes based on sexual orientation and gender identity by amending the Criminal Code, investigating and prosecuting those hate crimes.

4. Protecting cultural rights

Everyone has the right to take part in cultural life, without discrimination, as well as both scientific and artistic freedoms, and the right to benefit from scientific progress (Article 15 of ICESCR).

In this regard, we wish to recall Your Excellency's Government the Special Rapporteur in the field of cultural rights' report on the visit conducted in Poland in 2020. She recognized the use by some LGBT persons of a flag that combines the rainbow flag and the Polish eagle symbol as an exercise of cultural rights to express identity and inclusion. Hence, she regretted that this practice has sometimes been harshly criticized and that people carrying such a flag have reportedly faced questioning by law enforcement officers. (A/HRC/43/50/Add.1, para. 68). Therefore, she recommended that the Polish authorities recommit to a vibrant and plural cultural life and take greater steps to ensure that all sectors of Polish societies are included, including LGBT persons (*Ibid.*, para, 90).

5. Protecting freedom of movement

Article 12 (1) of ICCPR sets out that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

The Human Rights Committee interpreted that citizens of a State are always lawfully within the territory of that State (CCPR/C/21/Rev.1/Add.9, para. 4). The Committee further stated that the enjoyment of this right must not be made dependent on any particular purpose or reason for the person wanting to move or to stay in a place, and therefore any restrictions must be in conformity with Article 12 (3) (*Ibid.*, para. 5). The application of the restrictions permissible under Article 12 (3) needs to be consistent with the other rights guaranteed in the Covenant and with the fundamental principles of equality and non-discrimination. Thus, it would be a clear violation of the Covenant if the right enshrined in Article 12 (1) was restricted by making distinctions of any kind, such as on the basis of sex (*Ibid.*, para. 18).

6. Ensuring comprehensive, non-discriminatory, evidence-based sexuality education

Providing and receiving sexuality education without fear of persecution is protected under the freedom of opinion and expression as guaranteed by Article 19 of UDHR and Article 19 of ICCPR. This right includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media (Article 19 (2) of ICCPR).

Also, Article 13 of ICESCR provides that education should be aimed at the full development of the human personality and the sense of its dignity, and should strengthen respect for human rights and fundamental freedoms. The Committee on Economic, Social and Cultural Rights (“CESCR”) emphasizes that the right to education can only be enjoyed if staff and students throughout the education sector are entitled to academic freedom (E/C.12/1999/10, para. 38). Members of the academic community, individually or collectively, are free to pursue, develop and transmit knowledge and ideas, through research, teaching, study, discussion, documentation, production, creation or writing (*Ibid.*, para. 39). Academic freedom includes the liberty of individuals to express freely opinions about the institution or system in which they work, to fulfil their functions without discrimination or fear of repression by the State or any other actor (*Ibid.*).

Further, Article 12 (1) of ICESCR protects the right to physical and mental health. In its General Comment 14, CESCR interprets the right to health as an inclusive right, which extends not only to timely and appropriate health care but also to access to health-related education and information, including on sexual and reproductive health (E/C.12/2000/4, para. 11). Accordingly, States are under an obligation to respect the right to health by, inter alia, refraining from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information,

as well as abstaining from preventing people's participation in health-related matters (*Ibid.*, para. 34). Obligations of the right to health further include the promotion of health education, as well as information campaigns, in particular with respect to sexual and reproductive health (*Ibid.*, para. 36).

CESCR further states that the right to sexual and reproductive health, combined with the right to education (Articles 13 and 14 of ICESCR) and the right to non-discrimination and equality between men and women (Articles 2 (2) and 3 of ICESCR), entails a right to education on sexuality and reproduction that is comprehensive, non-discriminatory, evidence-based, scientifically accurate and age-appropriate (E/C.12/GC/22, para. 9). All individuals and groups, including adolescents and youth, have the right to evidence-based information on all aspects of sexual and reproductive health (*Ibid.*, para.18). Such information must be provided in a manner consistent with the needs of the individual and the community, taking into consideration, for example, age, gender, language ability, educational level, disability, sexual orientation, gender identity and intersex status (*Ibid.*, para.19). States violate the obligation to fulfil when they fail to take measures to ensure that up-to-date, accurate information on sexual and reproductive health is publicly available and accessible to all individuals, in appropriate languages and formats, and to ensure that all educational institutions incorporate unbiased, scientifically accurate, evidence-based, age-appropriate and comprehensive sexuality education into their require curricula (*Ibid.*, para. 63).

In this regard, we would like to draw your attention to the Concluding Observations of 26 October 2016 of CESCR, in which it called upon Poland (i) to ensure access to sexual and reproductive health services and information and to affordable, safe and effective contraceptives, for everyone, and (ii) to promote comprehensive and age-appropriate sexual and reproductive education for both sexes in schools and informal settings (E/C.12/POL/CO/6, paras. 49 (a) and (b)).

The Convention on the Elimination of All Forms of Discrimination against Women (ratified by Poland on 30 July 1980) guarantees women and girls' right to access specific educational information to help to ensure the health and well-being of families, including information and advice on family planning (Article 10 (h)). CEDAW recommended States to develop and introduce age-appropriate, evidence-based, scientifically accurate mandatory curricula at all levels of education covering comprehensive information on sexual and reproductive health and rights in order to curtail violence against girls and women associated with educational institutions and schooling thereby protecting their right to be treated with respect and dignity (CEDAW/C/GC/36, para. 69 (i)).

In this regard, we wish to recall Your Excellency's Government the Concluding Observations of 14 November 2014 of CEDAW, in which it recommended Poland to provide mandatory, comprehensive, age-appropriate education on sexual and reproductive health and rights to girls and boys, as part of regular school curricula, including as regards responsible sexual behaviour and the prevention of early pregnancies

and sexually transmitted diseases, to be taught by appropriately trained personnel (CEDAW/C/POL/CO/7-8, para. 31 (c)).

CRC observes that LGBTI adolescents commonly face a lack of access to sexual and reproductive health services and information (CRC/C/GC/20, para. 33). CRC underscored that there should be no barriers to commodities, information and counselling on sexual and reproductive health and rights, and particular efforts need to be made to overcome barriers of stigma and fear experienced by, inter alia, LGBTI adolescents, in gaining access to such services (CRC/C/GC/20, para. 60). All adolescents should have access to free, confidential, adolescent-responsive and non-discriminatory sexual and reproductive health services, information and education, available both online and in person (*Ibid.*, para. 59). Therefore, CRC urged States to adopt comprehensive gender and sexuality-sensitive sexual and reproductive health policies for adolescents, emphasizing that unequal access by adolescents to such information, commodities and services amounts to discrimination (*Ibid.*). CRC further noted that age-appropriate, comprehensive and inclusive sexual and reproductive health education, based on scientific evidence and human rights standards and developed with adolescents, should be part of the mandatory school curriculum and reach out-of-school adolescents (*Ibid.*, para. 61).

In this regard, we further wish to draw attention to the Concluding Observations of 30 October 2015 of CRC, in which it recommended Poland to expand the scope of the compulsory Family Life Education course to provide comprehensive, age-appropriate education on sexual and reproductive health, including information on family planning and contraceptives, the dangers of early pregnancy and the prevention and treatment of sexually transmitted diseases (CRC/C/POL/CO/3-4, para. 39 (a)).

The United Nations High Commissioner for Human Rights acknowledged that limiting or obstructing information related to sexuality or using materials that contain stereotypes and prejudices can contribute to violence and expose young LGBT persons to health risks. Therefore, he recommended States to provide comprehensive age-appropriate sexuality education, since it is part of the right to education and can be a tool for combating discrimination (A/HRC/29/23, paras. 57 and 79 (f); A/HRC/19/41, para. 61).

The World Health Organization has also highlighted the need for a curriculum-based process of teaching and learning about the cognitive, emotional, physical and social aspects of sexuality. It pointed out that there is strong evidence for the positive effects of comprehensive sexuality education on increasing adolescents' knowledge and improving their attitudes related to sexual and reproductive health. On the other hand, there is no evidence that comprehensive sexuality education increases sexual activity, sexual risk-taking behaviour, or rates of HIV or other sexually transmitted infections.³

³ WHO recommendations on adolescent sexual and reproductive health and rights, available at <http://www.who.int/reproductivehealth/publications/adolescent-srhr-who-recommendations/en/>

The Special Rapporteur in the field of cultural rights stressed that, concerning Article 15 1 (b) of ICESCR (the right to enjoy the benefits of scientific progress and its applications), access to scientific knowledge increases the range of available options to choose a life with dignity, thereby strengthening people's capacity for self-determination and empowerment (A/HRC/20/26, paras. 19-20). The right to have access to scientific knowledge implies a right to science education, understood as a right to be introduced to and informed about main scientific discoveries and their applications, regardless of frontiers. It also entails education instilling a spirit of scientific inquiry (*Ibid.*, para. 27).

Similarly, the Special Rapporteur on the right to physical and mental health has stressed that lack of access to safe reproductive health services and information contributes to adolescent girls being among the most at risk of dying or suffering from serious or lifelong injuries associated with early pregnancies and childbirth (A/HRC/32/32, para. 5). He recommends States to introduce measures to raise adolescents' awareness of their rights to sexual and reproductive health and to services and goods at the family, school and community levels and insisted that age-appropriate, comprehensive and inclusive sexuality education, based on scientific evidence and human rights, should be part of the mandatory school curriculum, with special attention given to relationships, sexuality, gender equality and identity and sex characteristics, including non-conforming gender identities, responsible parenthood and sexual behaviour, and preventing early pregnancy and sexually transmitted infections (*Ibid.*, para. 91).

In this regard, we wish to recall Your Excellency's Government the report by the former Special Rapporteur on the health's report on the visit conducted in Poland in 2010. He urged Poland to adopt mandatory, age-appropriate, comprehensive, science and evidence-based, non-discriminatory and gender-sensitive sexuality education taught by appropriately trained personnel, including non-judgmental information and education on healthy relationships and family life, sex and relationships, and comprehensive sexual and reproductive health (A/HRC/14/20/Add.3, para. 85 (b)).

The Working Group on discrimination against women and girls highlighted the need for access to unbiased, quality education, including evidence-based, comprehensive sexuality education, to ensure access to health care (A/HRC/32/44, para. 95). The Working Group emphasized that States have an obligation to allow information about health matters to flow freely, without State interference on moral or other grounds, and to allow non-State actors to disseminate information, including in relation to sexuality and sexual and reproductive health services (*Ibid.*, para. 96).

In this regard, we further wish to recall the recommendations of the Working Group in its report on the visit to Poland. It recommended Poland (i) to provide comprehensive age-appropriate, scientifically based sexuality education and remove any stereotypical teaching material and content from education, and (ii) to ensure respect for freedom of expression in all educational institutions and the continuous operation of academic programmes on gender equality (A/HRC/41/33/Add.2, para. 84 (e) and (f)).

Additionally, we would like to refer to the last UPR of Poland (A/HRC/36/14), drawing special attention to the recommendation in paragraph 120.136 (being accepted by Poland), which states that Poland should: “Expand the scope of the compulsory course on family life education to provide a comprehensive and age-appropriate education on sexual and reproductive health and rights and to ensure unimpeded access to sexual and reproductive health services, including to safe and legal abortions”.

The European Parliament expressed concerns on 5 November 2019 that the bill would de facto seek to criminalize the dissemination of sexuality education to minors by all persons due to its extremely vague broad and disproportionate provisions. It also condemned the harsh, inappropriate and erroneous content of the justification provided for the bill. In conclusion, it called on the Polish parliament to refrain from adopting the proposed bill to ensure that young people have access to comprehensive sexuality education and that those who provide such education and information are supported in doing so in a factual and objective manner.

7. Combating discrimination and violence against LGBT youth

LGBT youth frequently experience bullying, violence, and harassment in school from classmates and teachers. CRC, for instance, noted that LGBTI adolescents commonly face persecution, including abuse and violence, stigmatization, discrimination, bullying, exclusion from education and training, as well as a lack of family and social support. In extreme cases, they face sexual assault, rape and even death. These experiences have been linked to low self-esteem, higher rates of depression, suicide and homelessness (CRC/C/GC/20, para. 33). Under Article 2(1) of the Convention on the Rights of the Child (ratified by Poland on 7 June 1991), States parties should take effective action to protect all LGBTI adolescents from all forms of violence, discrimination or bullying by raising public awareness and implementing safety and support measures (CRC/C/GC/13, paras. 60 and 72 (g); CRC/C/GC/20, para. 34).

In this regard, we wish to draw attention to the Concluding Observations of 30 October 2015 of CRC, in which it was concerned that LGBT children face discrimination and may become targets of hate crimes, and that acts of homophobia are increasing. In light of this, it recommended Poland (i) amend the Law on equal treatment so that it covers the issue of discrimination based on all grounds in all areas, including gender and sexual orientation, in the fields of education, health care, social protection, housing, and private and family life, and provides for the definition of multiple forms of discrimination, and (ii) review and strengthen its measures to prevent and eliminate stereotypes, intolerance and discrimination among the general public and national and local authorities (CRC/C/POL/CO/3-4, paras. 17 (a) and (c)).

The United Nations High Commissioner for Human Rights acknowledged that many children and adolescents perceived as LGBT or gender non-conforming experience discrimination, harassment and, in some cases, violent abuse both in and outside of school. Such abuse can force students to skip or drop out of school, and can lead to

feelings of isolation and depression, even suicide (A/HRC/29/23, para. 55). Confronting this kind of prejudice and intimidation requires concentrated efforts from school and education authorities and integration of principles of non-discrimination and diversity in school curricula and discourse. The media also have a role to play by eliminating negative stereotyping of LGBT people, including in television programmes popular among young people (A/HRC/19/41, para. 58). In this regard, he recommended States (i) address discrimination by establishing national standards on non-discrimination in education; developing anti-bullying programmes and establishing helplines and other services to support LGBT and gender-non-conforming youth, and (ii) support public information campaigns to counter homophobia and transphobia among the general public and targeted anti-homophobia campaigns in schools (A/HRC/29/23, para. 79 (f); A/HRC/19/41, para. 84 (g)).

In this regard, we further wish to recall Your Excellency's Government the Special Rapporteur in the field of cultural rights' report on the visit conducted in Poland in 2020. She concerned that there are no specific policies and standards ensuring equal treatment and safety of LGBT person in schools, both teachers and students (A/HRC/43/50/Add. 1, para. 69). She further noted that LGBT students report experiencing homophobic behaviour not only from other students but also from teachers and educators, and in particular in the context of religion classes (*Ibid.*). In light of this, she recommended that Poland strength efforts to prevent and eradicate all acts of homophobic violence and hate speeches (*Ibid.* para. 96 (g)).

Also, we would like to refer to the last report of the Working group on UPR of Poland (A/HRC/36/14), drawing special attention to the recommendation in paragraph 120.161 (being accepted by Poland), which calls on Poland to: "Continue to reinforce actions aimed at the protection of children against violence and other forms of maltreatment".

8. Protecting women from violence and discrimination under the Istanbul Convention

The Istanbul Convention is the first European legally binding instrument providing a comprehensive prevention, protection, prosecution and support framework, signalled the country's strong commitment to combating gender-based violence against women. The Working Group on discrimination against women and girls considers violence against women the most egregious form of discrimination against women, and therefore, is concerned about recent attacks on the concept of gender in the Convention in Central and Eastern European countries.⁴

⁴ Position paper by the Working Group on discrimination against women and girls, "Gender equality and gender backlash", 2020, available at <https://www.ohchr.org/Documents/Issues/Women/WG/Gender-equality-and-gender-backlash.docx>.

In this regard, we wish to recall Your Excellency's Government the Working Group's report on the visit conducted in Poland in 2019. It concerned that opponents labelled the content of the Convention as the "gender ideology", and there were attempts to withdraw from the Convention (A/HRC/41/33/Add.2, para. 65). In light of this, it recommended Poland to ensure a comprehensive approach to combating gender-based violence against women, in line with the Istanbul Convention (*Ibid.*, para. 87 (a)).

9. Prohibiting so-called "conversion therapy" practices

"Conversion therapy" is used as an umbrella term to describe interventions of a wide-ranging nature, all of which are premised on the belief that a person's sexual orientation and gender identity, including gender expression, can and should be changed or suppressed when they do not fall under what other actors in a given setting and time perceive as the desirable norm, in particular when the person is lesbian, gay, bisexual, trans or gender diverse (A/HRC/44/53, para. 17).

Practices of "conversion therapy" target a specific group on the exclusive basis of sexual orientation and gender identity, with the specific aim of interfering in their personal integrity and autonomy. In that sense, such practices are per se discriminatory, as it has been ascertained by several United Nations treaty bodies, including the Human Rights Committee (*See*, for instance, CCPR/C/KOR/CO/4, paras. 14-15) and CEDAW (*See*, for instance, CEDAW/C/MYS/Q/3-5, para. 21).

Also, every person, without distinction, should be able to enjoy the highest attainable standard of physical and mental health (Article 12 of ICESCR) and freedom from non-consensual medical treatment (E/C.12/2000/4, para. 8). Furthermore, the right to sexual and reproductive health encompasses the right of persons to be fully respected for their sexual orientation and gender identity. CESCR found that regulations requiring that LGBTI persons be treated as mental or psychiatric patients or requiring that they be "cured" by so-called "treatment", were a clear violation of their right to sexual and reproductive health (E/C.12/GC/22, para. 23).

Further, practices of "conversion therapy" may amount to torture, cruel, inhuman or degrading treatment. The Committee against Torture has issued explicit reproaches against the treatments that are forced, involuntary or otherwise coercive or abusive (*See*, for instance, CAT/C/CHN/CO/5, paras. 55-56, CAT/C/ECU/CO/7, paras. 49-50). In addition, the Committee on the Rights of the Child urged States to eliminate such practices since those practices are in violation of the rights of all adolescents to freedom of expression and respect for their physical and psychological integrity, gender identity, and emerging autonomy (CRC/C/GC/20, para. 34).

In this regard, we wish to draw attention to the Concluding Observations of 29 October 2018 of the Committee on the Rights of Persons with Disabilities, in which it was concerned at reports of so-called "conversion therapy" being conducted by public and private health entities on LGBT persons without their consent, and based upon the

presumed psychosocial impairment of the person (CRPD/C/POL/CO/1, para. 30). In light of this, it urged Poland to put an end to the use of “conversion therapy” (*Ibid.*, para. 31).

The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concluded that, given that “conversion therapy” can inflict severe pain or suffering, given also the absence both of a medical justification and of free and informed consent, and that it is rooted in discrimination based on sexual orientation or gender identity or expression, such practices can amount to torture or, in the absence of one or more of those constitutive elements, to other cruel, inhuman or degrading treatment or punishment (A/74/148, para. 50. *See also* A/56/156, para. 24; A/HRC/43/49, para. 84 (e)). In light of this, he recommended that States explicitly prohibit, prevent, investigate and ensure appropriate accountability and redress for forced “conversion therapy” (A/74/148, para. 75).

The Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity is mindful and respectful of the right to freedom of conscience and religions and freedom of expression and acknowledged that individuals might choose to avail themselves of mechanisms of support and counselling, which may be based on religious approaches. However, he concluded that none of them could claim “conversion” as an outcome, just as none can claim that diverse sexual orientation or gender identity is an illness or disorder requiring therapy (A/HRC/44/53, para. 66-70). In light of this, he recommended States (i) ban the practices of “conversion therapy”, and (ii) foster dialogues with key stakeholders, including faith-based organizations, to raise awareness about the human rights violations connected to practices of “conversion therapy” (*Ibid.*, paras. 87 (a) and (e)).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.