

**Mandates of the Special Rapporteur in the field of cultural rights; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on freedom of religion or belief; the Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and the Working Group on discrimination against women and girls**

REFERENCE:  
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Excellency,

We have the honour to address you in our capacities as Special Rapporteur in the field of cultural rights; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on freedom of religion or belief; Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 37/12, 43/4, 43/16, 40/10, 41/18 and 41/6.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received regarding the **charges brought against women human rights defenders [REDACTED], [REDACTED] and [REDACTED] in response to their distribution of posters displaying the Virgin Mary with a rainbow halo, symbolizing the lesbian, gay, bisexual, trans and gender diverse ("LGBT") pride flag.**

Ms. [REDACTED] is a woman human rights defender and a trained psychotherapist, her human rights advocacy focuses on gender equality and the human rights of LGBT persons. In 2017, Ms. [REDACTED] was one of 14 women attacked and spat on by protesters participating in an Independence Day march in Warsaw, which was organised by nationalist and far-right organisations. The women had been holding a banner reading "Stop Fascism" to protest the racist slogans and fascist symbols being used during the march. Ms. [REDACTED] incurred a spinal injury as a result of the attack. In 2016, she was also involved in the organisation of a protest against initiatives to ban abortion in the country, which was attended by thousands of people.

Ms. [REDACTED] is a woman human rights defender, a feminist and an anti-fascism activist who has been involved in a number of different movements and collectives focusing on the promotion of equality and human rights in Poland. She is professionally associated with an NGO that supports women who have been victims of violence.

Ms. [REDACTED] is a woman human rights defender who has been involved in campaigns to promote the rights of LGBT persons, and denounce discrimination and hate speech against them.

A previous communication concerning increased instances of alleged violence and discrimination, including hate speech, against LGBT persons in Poland was sent by a number of Special Procedures mandate holders to your Excellency's Government

on 20 January 2021 (POL 1/2020). This communication raised concerns regarding the creation of “LGBT Free” zones by municipalities, restrictions on and attacks against Pride marches, a proposed bill to criminalize sexuality education, restrictions on Polish schools’ initiative of holding “Rainbow Friday”, the possible withdrawal from the Istanbul Convention and the Polish Episcopal Conference’s calls for the creation of “conversion therapy” clinics with your Excellency’s Government. No response to this communication has yet been received.

According to the information received:

On 29 April 2019, Ms. Podlesna, Ms. [REDACTED] and Ms. [REDACTED] posted posters of a depiction of the Virgin Mary on dustbins, public toilets and other public places around the city of Plock. The particular depiction on the posters referred to as the Black Madonna of Częstochowa, with a rainbow halo to symbolise the LGBT pride flag. The posters were distributed in response to a recent Easter ceremony that had taken place in a nearby church, in which “LGBT” and “gender” were referred to as sins.

Early on the morning of 6 May 2019, police officers raided the home of Ms. [REDACTED] in Plock. Hours before the raid took place, Ms. [REDACTED] had returned from a trip to Belgium and the Netherlands with Amnesty International, where she participated in several advocacy meetings with activists and human rights defenders to raise awareness about the current difficulties faced by peaceful protesters in Poland.

The police searched Ms. [REDACTED] home, reportedly finding copies of the posters of the Black Madonna of Częstochowa with a rainbow halo that she, Ms. [REDACTED] and Ms. [REDACTED] had posted around Plock. During the raid, police seized Ms. [REDACTED] laptop, mobile phone, and memory cards and reportedly asked for CCTV camera footage from her building. She was then arrested by police and taken to a police station where she was questioned for several hours before being released.

A number of high-level government officials welcomed Ms. [REDACTED] arrest on social media.

In July 2020, Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] were charged with “publicly insulting an object of religious worship in the form of this image which offended the religious feelings of others” under article 196 of the Criminal Code for their posting of the posters. The charge carries a maximum sentence of two years imprisonment.

The first hearing, initially due to take place on 4 November 2020 but rescheduled due to COVID-19 restrictions, took place on 13 January 2021. The hearing followed regular procedure with initial statements given and the questioning of witnesses. Ms. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] were represented by lawyers of their choosing.

The next hearing in their case took place on 17 February 2021, during which further questioning of witnesses took place.

While we do not wish to prejudge the accuracy of these allegations, we wish to express serious concern with regard to the charges against Ms. ██████ Ms. ██████ and Ms. ██████ as they appear to have been levied against them in direct retaliation for the legitimate exercise of their right to freedom of expression.

We express concern about the use of vague offences such as the prohibition on “offending religious feelings”. In this regard, we remind that the prohibition of blasphemy or expressions offending religious sensibilities, in law or in practice, is incompatible with Poland’s obligations under article 19 of the ICCPR. Moreover, the abovementioned provision is phrased in vague and broad terms, which would seem to run contrary to the principle of legality under human rights law, as it would permit arbitrary restrictions to the freedom of expression, thus creating a risk of a chilling effect on public debate.

We also wish to express concern with regard to the apparent targeting of Ms. ██████ Ms. ██████ and Ms. ██████ for their efforts to further the rights of LGBT persons in Poland. Such targeting is of particular concern given the wider context of a reported increase in incidents of discrimination, including hate speech, and violence against LGBT persons in Poland, previously raised by a number of mandate holders. We wish to express utmost concern that the criminalisation of human rights defenders for their legitimate and peaceful efforts to promote human rights, appears to be an attempt to intimidate and deter others from engaging in this work. The decision taken by law enforcement officials to search the home of Ms. ██████ in the early hours of the morning, as opposed to issuing an ordinary summons for interview about the alleged concerns appears to be a similar tactic of intimidation.

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 above-mentioned allegations.
2. Please provide information as to the legal and factual basis for the charges of “publicly insulting an object of religious worship in the form of this image which offended the religious feelings of others” brought against Ms. ██████ Ms. ██████ and Ms. ██████, and how they meet principle of proportionality.
3. Please provide information as to the legal and factual basis for the search of Ms. ██████ home and her arrest on 6 May 2019, and whether a search warrant was evidenced.
4. Please provide information as to Ms. ██████ access to legal representation whilst being questioned by police.

5. Please provide information as to the measures taken to ensure that the three above-mentioned individuals are guaranteed their fair trial rights.
6. Please indicate the measures taken to ensure that human rights defenders, including those 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.

We would appreciate receiving a response within 60 days. Passed this deadline, this communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#). 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.

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

Karima Bennoune  
Special Rapporteur in the field of cultural rights

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

Mary Lawlor  
Special Rapporteur on the situation of human rights defenders

Ahmed Shaheed  
Special Rapporteur on freedom of religion or belief

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

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

## **Annex**

### **Reference to international human rights law**

In connection with the above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above. In this regard, we would like to remind your Excellency's Government of the internationally recognized standards on the right to freedom of opinion and expression under Article 19 of the International Covenant on Civil and Political Rights (ICCPR), ratified by Poland in 1977.

Article 19(2) of the ICCPR provides that everyone shall have the right to freedom of expression; and that this right shall include 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 of his or her choice. Paragraph 3 of article 19 further provides that the exercise of the rights provided for in paragraph 2 may be subject to certain restrictions. Any restrictions to the right to freedom of expression must be provided by law, pursue one of the exhaustively enumerated legitimate aims set out in article 19 (3), and be necessary and proportionate.

The Human Rights Committee has affirmed that certain types of restrictions to the freedom of expression in and of themselves would be incompatible with the Covenant. Thus, it has affirmed that that prohibitions of displays of lack of respect for a religion or other belief system are incompatible with the Covenant except with the specific circumstances envisaged in article 20, paragraph 2, of the Covenant.<sup>1</sup> Article 20 (2) of the Covenant places an obligation to prohibit by law "any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence". The provision does not permit the restrictions to the freedom of expression offending religions or religious sensibilities as such. Rather, it covers only those forms of expression that constitute incitement to discrimination, hostility or violence.

The requirement of legality entails that a "norm, to be characterized as a "law", must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public. A law may not confer unfettered discretion for the restriction of freedom of expression on those charged with its execution."<sup>2</sup> Moreover, with the requirement of necessity, the Committee stresses that any restrictions must be "necessary" for a legitimate purpose and not overbroad in their scope (para. 33).<sup>3</sup> The committee emphasizes that before resorting to restrictions, States "must demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken, in particular by establishing a direct and immediate connection between the expression and the threat" (para. 35).<sup>4</sup> Referring to the principle of proportionality, the Committee holds that both the form of expression at issue as well as the means of its dissemination must be taken into account when applying restrictions. Citing its General Comment 27, the Committee states recalls that "restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their

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<sup>1</sup> CCPR/C/GC/34, para. 48.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

protective function; they must be the least intrusive instrument amongst those which might achieve their protective function; they must be proportionate to the interest to be protected...The principle of proportionality has to be respected not only in the law that frames the restrictions but also by the administrative and judicial authorities in applying the law” (para. 34).

In its general comment No. 22, the Committee also insists that “limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner” (para. 8).<sup>5</sup>

The former Special Rapporteur on freedom of religion or belief and the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in a joint report, stressed that whilst alleged “defamation of religions” “may offend people and hurt their religious feelings but it does not necessarily or at least directly result in a violation of their rights, including their right to freedom of religion. Freedom of religion (or belief) primarily confers a right to act in accordance with one’s religion but does not bestow a right for believers to have their religion itself protected from all adverse comment.”<sup>6</sup> In addition, 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.”<sup>7</sup>

Furthermore, we would like to remind your Excellency’s Government of the internationally recognized standards on cultural rights, including the right to take part in cultural life, without discrimination, under Article 15 of the International Covenant on Economic, Social and Cultural Rights, ratified by Poland in 1977. The Special Rapporteur in the field of cultural rights has previously expressed concern that LGBT persons have been criticized and questioned by law enforcement in Poland for the use of national symbols in combination with the rainbow flag, something which she recognized as “an exercise of cultural rights to express identity and inclusion.” (A/HRC/43/50/Add.1, para. 68). Moreover, she expressed further concerns at the lack of adequate legal protections for LGBT persons in Poland, as well as hate speech directed against them and their cultural events, including by some officials (ibid, paras. 69, 70). She recommended that the Polish authorities take greater steps to ensure that all sectors of Polish society are included in cultural life, including lesbian, gay, bisexual and transgender persons, without discrimination (para. 90).

We would like to reiterate to your Excellency’s Government the obligations of Poland through its ratification of the International Convention on the Elimination of Discrimination against Women (CEDAW), in particular Article 7 which provides that

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<sup>5</sup> A/HRC/31/18

<sup>6</sup> A/HRC/2/3

<sup>7</sup> 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 association key to eliminating Homophobia and Transphobia” (May 2014), available at <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14602&LangID=E>

States shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country, including the right to participate in non-governmental organizations and associations concerned with the public and political life of the country.

We would like to refer your Excellency's Government to the fundamental principles set forth in 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, also known as the UN Declaration on Human Rights Defenders. In particular, we would like to refer to articles 1 and 2 of the Declaration which state that everyone has the right to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels and that each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms.

Furthermore, we would like to bring to the attention of your Excellency's Government the following provisions of the UN Declaration on Human Rights Defenders:

- article 6 a), which provides for the right to know, seek, obtain, receive and hold information about all human rights and fundamental freedoms;
- article 6 b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights;
- article 7, which provides for the right to develop and discuss new human rights ideas and principles and to advocate their acceptance;
- article 12, paragraphs 2 and 3, which provides that the State shall take all necessary measures to ensure the protection of everyone against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the Declaration.

We would also like to refer to General Assembly resolution 68/181, adopted on 18 December 2013, on the protection of women human rights defenders. Specifically, we would like to refer to articles 7, 9 and 10, whereby States are called upon to, respectively, publicly acknowledge the important role played by women human rights defenders, take practical steps to prevent threats, harassment and violence against them and to combat impunity for such violations and abuses, and ensure that all legal provisions, administrative measures and policies affecting women human rights defenders are compatible with relevant provisions of international human rights law.

The Working Group on discrimination against women and girls highlighted the vulnerability to discrimination, violence and criminalization of women human rights defenders as those who do not conform to the gender stereotypes that predominate in some cultures and those who openly contest them, including within their own cultural or religious communities (A/HRC/29/40). Women human rights defenders working on the rights contested by the fundamentalist groups, such as women's sexual and

reproductive rights and the rights of lesbian, gay, bisexual and transgender persons have been at heightened risk (A/HRC/38/46). The Working Group underlined the increasing risk faced by women human rights defenders of criminalization and detention as a result of their legitimate public and recommended States to support and protect women's engagement in public and political life, including the work of women human rights defenders (A/HRC/41/33).

The United Nations High Commissioner for Human Rights acknowledged that LGBT defenders and supporters of related rights had been subjected to violence and harassment (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 that States (i) 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 (ii) 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)).

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, paras. 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)).

Moreover, we would like to draw your Government's attention to the principles enunciated by Human Rights Council resolution 24/5, and in particular operative paragraph 2, which "reminds States of their obligation to respect and fully protect the [right] of all individuals to... associate freely, online as well as offline... including human rights defenders... seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the [right] to freedom of... association are in accordance with their obligations under international human rights law".