

Mandates of the Working Group on discrimination against women and girls; 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 and the Special Rapporteur on violence against women, its causes and consequences

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7 April 2022

Excellency,

We have the honour to address you in our capacity as Working Group on discrimination against women and girls; 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 and Special Rapporteur on violence against women, its causes and consequences, pursuant to Human Rights Council resolutions 41/6, 42/16, 43/16 and 41/17.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **imminent court hearing of Ms. Justyna Wydrzyńska, a woman human rights defender facing criminal charges for assisting a victim of gender-based violence in obtaining a voluntary termination of her pregnancy through medication. This unprecedented hearing is scheduled to take place on Friday 8 April 2022 in Warsaw.**

We take this opportunity to recall two joint communications dated 30 January 2018 (POL 1/2018) and 2 May 2016 (POL 1/2016) whereby several Special Procedures mandate holders expressed concern about legislative reforms aimed at prohibiting and criminalizing termination of pregnancy. We thank the Government for its replies to these communications but regret the continued erosion of women's sexual and reproductive health rights since the Constitutional Court Decision on 22 October 2020, which ruled unconstitutional a provision of the 1993 Act on the Admissibility of Abortion, that allowed abortions to take place in cases where a prenatal test or other medical considerations indicated a high probability of a severe and irreversible foetal defect or an incurable illness that threatened the foetus' life. In response, we publicly expressed concern that the Constitutional Court's decision violated international human rights standards (see also [recent Amicus Brief presented to the European Court of Human Rights](#)).

According to the information received:

Ms. Wydrzyńska is a 47-year-old woman human rights defender, mother of three children and a survivor of gender-based domestic violence. She is one of the founders of an activist collective that campaigns against abortion stigma in Poland since 2006 and offers trainings and unbiased counselling on how to obtain safe abortion. Since 2019, the collective is part of a regional organization that provides information, counselling, funding and practical support to women

in Poland who need an abortion abroad, or access to reliable online sources to benefit from medicines that enable safe self-managed abortions at home.

In February 2020, at the beginning of the COVID-19 pandemic, and in the framework of her activism, Ms. Wydrzyńska provided assistance to a woman victim of intimate partner violence who was seeking support to voluntarily terminate her pregnancy. The victim had tried to travel to a clinic abroad to benefit from abortion care but was prevented from doing so by her abusive husband. The victim sought information online for help and found the above-mentioned collective that helps facilitating medical abortions. She contacted the organization seeking a solution to voluntarily end her unwanted pregnancy. On 24 February 2020, Ms. Wydrzyńska provided her with the necessary medication upon the victim's request. Once she arrived home, the pregnant woman faced police forces who confiscated the pills and could therefore not benefit from abortion care. Her violent husband had contacted the police and denounced her intention to terminate her pregnancy.

On 7 May 2021, the Prosecutor in Warsaw-Praga issued a warrant to confiscate several items from Ms. Wydrzyńska's home, including all means of telecommunication, after having received information about her involvement in supporting a woman who sought help to benefit from abortion care.

On 1 June 2021, the police carried out a house-search of Ms. Wydrzyńska's home, during which medicines in the form of pills, a computer, pen drives and mobile phones belonging to her and her children were confiscated.

On 22 November 2021, the Prosecutor brought charges against Ms. Wydrzyńska for facilitating an abortion (a crime under Article 152.2 Penal Code) and for possession of medicines without authorisation for the purpose of introducing them into the market (a criminal and administrative fault under Article 124 Pharmaceutical Code). The pills confiscated by the police in her residence contained Mifepristone and Misoprostol, two medicines included in the Essential Medicines List of the World Health Organisation (WHO). The Prosecutor argued that two of the medicines confiscated did not have authorisation in Poland. The first court hearing on the case is expected on Friday 8 April 2022 in Warsaw. Ms. Wydrzyńska could serve up to three years in prison, if convicted.

Poland's abortion legislation is among the most restrictive in Europe. Currently, abortions under the scope of the health system are only permitted on two grounds: when the pregnancy endangers the life or health of the pregnant woman and when it is the result of a rape or incest. Even in those situations, multiple barriers limit women's access to abortion in practice, particularly those from low-income and rural communities. In addition, the 2020 ruling is having a significant chilling effect as medical professionals, fear repercussions even in situations where abortion remains legal, exacerbating the health risks for women seeking an abortion. Mere possession or self-management of abortion-inducing

medicines is not a crime in Poland but any person or doctor who helps pregnant women to obtain an abortion outside the limited grounds permitted in the law is liable to sanctions of up to three-years in prison. Legal restrictions and other barriers, including abortion stigma, mean that women find it difficult or impossible to access medicines and quality abortion care and they risk inducing abortion themselves using unsafe methods or seeking abortion from unskilled providers. Those who can afford, attempt to travel abroad to terminate their pregnancy. Against this backdrop, people in Poland in need of a safe abortion rely on non-governmental organizations and human rights defenders for trustworthy information and lifesaving support. Their work remains even more crucial now as thousands of refugees fleeing armed conflict are arriving in Poland with critical healthcare needs, including around sexual and reproductive health.

While we do not wish to prejudge the accuracy of the information received, we would like to express serious concern that the charges against Ms. Wydrzyńska appear intended to punish her work as a human rights defender and to instill fear among all of those who are supporting Polish women in accessing safe abortion care, and who are already working in a hostile environment. It is of grave concern to us that women human rights defenders in Poland are being prosecuted for acts that should never be a crime. The activism of individuals like Ms. Wydrzyńska is the only chance to provide a safe abortion in Poland where services to terminate a pregnancy are, in practice, made unavailable by the various restrictions in place. These activists should be protected, not prosecuted.

In view of the above, we respectfully call upon your Excellency's Government as a matter of urgency to transmit this urgent appeal to the competent judicial authorities who should drop all charges brought against Ms. Wydrzyńska. We further urge your Excellency's Government to abide by its international obligations and revise its legislation with a view to decriminalizing abortion and making it legal and accessible. Polish authorities should also ensure adequate access to essential medicines required for the purpose of safe self-management of abortions in an affordable and non-discriminatory manner, including by using telemedicine in line with recent WHO guidelines on abortion care. We would also like to appeal to the Polish Government to cease targeting human rights defenders in Poland, in particular those who advocate against the country's restrictive abortion law.

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

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned persons in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to clarify all cases brought to our attention, we would be grateful for your observations and/or considerations concerning the case. While awaiting a reply, we recommend that prompt steps be taken to guarantee women human rights defenders' rights to participate in public life, due access to justice and to a process with all the guarantees necessary for their defense, as well as women and girls' equal rights to physical and mental health, including reproductive health, to physical integrity and to live free from violence to prevent such human rights violations, if they take place, from reoccurring.

Given the importance and urgency of the matter, we may consider to publicly express our concerns in this case as, in our view, the information at hand is sufficiently reliable to indicate a matter warranting undivided attention. We indeed believe that given the above circumstances the public should be alerted to these concerns and the human rights implications of the case. Any public statement on our part would indicate that we have been in contact with your Government to clarify the issue in question, and recall the State's international legal obligations.

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.

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

Melissa Upreti
Chair-Rapporteur of the Working Group on discrimination against women and girls

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

Reem Alsalem
Special Rapporteur on violence against women, its causes and consequences

Annex

Reference to international human rights law and standards

In connection with above alleged facts and concerns, we would like to reiterate to your Excellency's Government the obligations of Poland through its ratification in 1980 of the International Convention on the Elimination of Discrimination against Women (CEDAW), in particular Article 7 which provides that 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.

As stressed by the Working Group on discrimination against women and girls in one of its reports to the Human Rights Council (A/HRC/23/50), stigmatization, harassment, criminalization and outright attacks are used to silence and discredit women who are outspoken as leaders, community workers and human rights defenders. Violence against women defenders is sometimes condoned or perpetrated by State actors. The Working Group recommends accelerating efforts to eliminate all forms of violence and criminalization against women human rights defenders, in order to fulfil women's human rights and to improve the enabling conditions for women's participation in political and public life.

In a joint declaration, the Working Group on discrimination against women and girls emphasized that women human rights defenders face unique challenges, driven by deep-rooted discrimination against women and stereotypes about their appropriate role in society. Those working on rights contested by fundamentalist groups such as women's sexual and reproductive rights are at heightened risk to attacks and violence. (<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20938&LangID=E>)

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.

We would like to refer to article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) ratified by Poland in 1977, which enshrines the right to health. As clarified by the Committee on Economic, Social, and Cultural Rights in general comment No. 22 the right to sexual and reproductive health is an integral part of the right to health that encompasses unhindered access to a range of quality sexual and reproductive health facilities, services, goods including safe abortion services (paras 5 and 45). As part of their obligations under ICESCR article 12, States

should respect, protect, facilitate and promote the work of human rights advocates and other members of civil society with a view to assisting groups in vulnerable or marginalized situation in the realization of their right to health. (CESCR, General Comment 14, para 62).

In its General Recommendation 33 on women's access to justice, the CEDAW Committee stressed that stereotyping and gender bias in the justice system have far-reaching consequences for women's full enjoyment of their human rights. They impede women's access to justice in all areas of law. Stereotyping distorts perceptions and results in decisions based on preconceived beliefs and myths rather than relevant facts. Often, judges adopt rigid standards about what they consider to be appropriate behaviour for women and penalize those who do not conform to those stereotypes. Stereotyping also affects the credibility given to women's voices, arguments and testimony. Such stereotyping can cause judges to misinterpret or misapply laws. In all areas of law, stereotyping compromises the impartiality and integrity of the justice system, which can, in turn, lead to miscarriages of justice.

In its General Recommendation 35 on gender-based violence against women, the CEDAW Committee provides that violations of women's sexual and reproductive health and rights, such as forced sterilization, forced abortion, forced pregnancy, criminalization of abortion, denial or delay of safe abortion and/or post-abortion care, forced continuation of pregnancy, and abuse and mistreatment of women and girls seeking sexual and reproductive health information, goods and services, are forms of gender-based violence that, depending on the circumstances, may amount to torture or cruel, inhuman or degrading treatment.

In the report on its visit in Poland in 2018 (A/HRC/41/33/Add.2), the Working Group on discrimination against women and girls stressed that restrictive laws on abortion increase maternal mortality and morbidity rates due to unsafe abortions and are not efficient in reducing the rate of abortion. It recommended to ensure that legal abortion is accessible in practice by removing existing barriers and abortion stigma, including through the proper monitoring and regulation of the practice of conscientious objection and by improving the effectiveness of the complaint mechanism, and consider liberalizing abortion law.

In a report to the Human Rights Council (A/HRC/32/44), the Working Group on discrimination against women in law and in practice called on States to decriminalize the termination of pregnancy, repeal restrictive abortion laws and to ensure that access to health care, including reproductive healthcare, is autonomous, affordable and effective.

Finally, in a report to the General Assembly (A/74/137), the Special Rapporteur on violence against women underscored that different forms of mistreatment and violence women experience in reproductive health services go beyond obstetrical and gynaecological violence and are a continuum of the violations that occur in the wider context of structural inequality, discrimination and patriarchy.