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Committee on the Elimination of Discrimination against Women

Inquiry concerning Poland conducted under article 8 of the Optional Protocol to the Convention

Report of the Committee*, **

I. Introduction

1. On 28 March 2019, the Committee on the Elimination of Discrimination against Women received information from Koalicja Karat (KARAT Coalition), Federacja na Rzecz Kobiet i Planowania Rodziny (Federation for Women and Family Planning), and the Center for Reproductive Rights, pursuant to article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. Additional information was received on 17 December 2019 and on 23 December 2020. The sources allege that Poland has committed grave and systematic violations of rights under the Convention owing to the restrictive access to abortion for women and girls in Poland.

2. Poland ratified the Convention on 30 July 1980 and acceded to the Optional Protocol on 22 December 2003.

II. Submission by the sources of information

3. The sources submit that, in Poland, the provision of women with assistance to obtain an abortion is criminalized, punishable by a maximum sentence of 3 years' imprisonment, and the availability of abortion is severely restricted. They allege that Poland's abortion laws and practice discriminate against women and violate their rights by nullifying their reproductive autonomy and denying them access to essential reproductive health services, which constitutes grave and systematic violations of rights under the Convention, particularly articles 2, 5, 10, 12, and 14.

III. Procedural history

4. On 8 February 2021, Poland submitted its observations alleging that States have sovereign competence and are entitled to protect the right of the unborn child to life from the time of conception; that the right to respect for private life of the woman cannot be interpreted as meaning that pregnancy and its termination pertain uniquely to the woman's private life; and that the woman's right to respect for her private life must be weighed against other

* Adopted by the Committee at its eighty-seventh session (29 January – 16 February 2024).

** The present report was made public following the expiry of the six-month period provided for in article 8 (4) of the Optional Protocol to the Convention.

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competing rights and freedoms invoked, including those of the unborn child. It indicated that abortion is lawful when the pregnancy places the life or the health of the woman in danger, or when the pregnancy is the result of a crime. Poland denied any breach of its obligations under the Convention and asserted that no revision of its legislation was envisaged.

5. During its seventy-eighth session, the Committee examined all information received and found the allegations to be reliable and indicative of grave or systematic violations of rights under the Convention. It designated Lia Nadaraia and Genoveva Tisheva to conduct an inquiry.

6. On 22 February 2022, Poland agreed in principle to the visit of the designated members depending on the specific dates and the epidemiological situation in the country. It accepted the visit on 1 September 2022. The visit was conducted from 20 November to 2 December 2022. During the visit, the designated members and two members of the secretariat of the Committee met with officials from the Ministry of Health, the Patient's Rights Ombudsman, the Plenipotentiary for Equal Treatment of the Ministry for Family and Social Policy, the Ministry for Foreign Affairs and the National Public Prosecutor's Office. They interviewed health-care professionals, members of Parliament, representatives of civil society, academia and women who had sought or had procured an abortion. They also met with representatives of international organisations.

IV. Legal framework on termination of pregnancy in Poland

7. The 1993 Law on Family Planning, Protection of Human Foetus, and the Conditions of Legal Pregnancy Termination (1993 Law) regulates abortion in Poland. It replaced the 1956 Law on the conditions of legal pregnancy termination, which allowed abortion on social grounds in addition to the legal grounds allowed in the previous Law of 1932, notably risks to health and where the pregnancy resulted from a crime.

8. Under the 1993 Law, abortion is illegal. The 1993 Law provides for two exceptions: (a) the pregnancy places the life or health of the woman in danger, in which case abortion is legal throughout the pregnancy; or (b) the pregnancy is the result of a crime, in which case abortion is legal during the first 12 weeks, conditional upon a formal authorization from a prosecutor. Abortion that places the life or health of the pregnant woman in danger must be carried out in a hospital. Furthermore, a woman seeking abortion must provide her written consent, or, where applicable, present the authorization of her legal guardian or the juvenile court. Assisting women to obtain an abortion is criminalized in all situations beyond these three circumstances and doctors or anyone else who helps a woman obtain an abortion outside of the scope of the law is liable to a three-year prison sentence according to article 152 of the Penal Code. A third exception codified in Art. 4a sec. 1 point 2 of the 1993 Law, allowed the termination of pregnancy in situations of "severe and irreversible foetal defect or incurable illness that threatens the foetus' life", until the foetus reached viability, was found inconsistent with Art. 38 in conjunction with Arts. 30 and 31 sec. 3 of the Constitution of the Republic of Poland in a 2020 judgment of the Constitutional Court. The judgement took effect on 27 January 2021.

9. The provision of women with assistance to obtain an abortion outside of the two categories provided for in the 1993 Law is criminalized and can entail a prison sentence of up to three years. According to data by the Prosecutor's Office, a total of 426 cases were examined under Art. 152 §2 on the provision of assistance to a pregnant woman to terminate her pregnancy, between 2018 and 2022; 207 were discontinued and 40 cases resulted in convictions. A known case is a 2021 case of a man sentenced to a six-month prison sentence for buying abortion medication for his girlfriend. In March 2023 a sentencing for eight months of community service, was pronounced under that law against a woman human rights defender, Justyna W., convicted of assisting in the process of obtaining an abortion. Proceedings against a gynaecologist are currently pending for provision of abortion medication.

10. The right of doctors to refuse care in conflict with their conscience unless a delay in care could pose a risk of death, serious bodily harm, or health deterioration for the patient is regulated in the Law of 5 December 1996 on Physicians and Dentists (1996 Law) and applies

to the provision of abortion as well. In practice, this conscience-based refusal has also been used by pharmacists and entire hospitals to refuse the sale of abortion-inducing medication. While such refusal by pharmacists or entire hospitals is in violation of the law, it has met with impunity. Previously, doctors who refused care based on conscience had a legal obligation to refer the patient to another doctor. This requirement was invalidated by the Supreme Court in its judgement of 5 December 2015, finding it in contravention with the protection afforded in the Polish Constitution to the right to freedom of thought, conscience and religion. The Court further held that the requirement for doctors to provide health services in “other urgent cases requiring immediate treatment” was unconstitutional.

V. Findings of fact

A. Access to legal abortion

1. Pregnancies threatening the life or health of the woman

(a) Absence of an official guidance protocol for medical staff

11. The exception from criminalization in case of a threat to the life or health of the pregnant woman is not paired with an official guidance protocol for medical professionals. The designated members learned that this leaves the meaning of “threat to life or health” open to interpretation and often results in fear of wrongly qualifying a situation as a threat to life or health, in violation of the law, and to reluctance to carry out a medical abortion. It also leads to cases of arbitrarily restrictive interpretations, such as dismissing certain health risks. The designated members also learned about cases where doctors required several tests to determine a health risk and made women wait for the result until the period for accessing abortion had passed. Such cases have resulted in a lack of trust among women in medical professionals. The absence of an official guidance protocol has been used by anti-abortion lobbyists to formulate their own, restrictive, guidance protocols, which they have submitted to hospitals and which, at times, are being applied by hospitals.

(b) Erroneous interpretation of the exception

12. The designated members were informed that the exception from criminalization in cases of risk to life or health is often interpreted erroneously by medical personnel, notably that a health threat needs to be of such seriousness that it actually constitutes a threat to life. This has led to cases where medical personnel waited for a sepsis or other life-threatening condition before conducting an abortion. Equally, medical professionals are often under the erroneous belief that to conduct an abortion under the exception, the heartbeat of the foetus must have stopped. There were cases where women were left to wait in the hospital in a severely deteriorating health status until either the heartbeat of the foetus had stopped, or their own condition had become life-threatening. The interpretation of when a situation becomes life-threatening also depends on the interpretation of the individual doctor in charge. The designated members learned that doctors are frequently afraid that they might be carrying out an abortion “too early”, in violation of the law.

(c) Cases of pregnancy-related deaths

13. The designated members were informed about six cases of deaths of pregnant women that could have likely been prevented by an abortion. The deceased women in these cases are Agnieszka T, Izabela, Agata, Marta, Anna and Justyna. After the inquiry visit, another woman, Dorota L., died. The designated members were informed that the women who died had not received the necessary medical attention, notably access to abortion, which would likely have saved their lives and that the circumstances of their deaths strongly indicate a refusal by the respective medical staff in charge to perform an abortion. The Committee takes note of the announcement by the Minister for Health following the death of Dorota Lalik that new guidelines for hospitals and obstetricians on the provision of abortion care would be developed.

(d) Difficulties faced to access abortion based on a threat for the woman's mental health

14. The designated members learned about the serious impact on the mental health of pregnant women of the diagnosis of a severe foetal impairment, including those that could lead to stillbirth or to the death of the newborn shortly after birth. Women who sought medical help in such cases often suffered from adjustment disorder. Many of the patients who sought psychiatric treatment had resignation or even suicidal thoughts. Carrying the pregnancy to term constituted a concrete threat to mental health and even life in these cases. Certificates by psychiatrists were, while ultimately accepted, at times initially not accepted by medical personnel, including by belittling the patients' situations or by trying to instil guilt. The lack of official guidance moreover enables hospitals to determine their own procedure on when to carry out an abortion based on a danger for mental health, including excessive requirements such as two certificates, additional tests or a certificate by a catholic psychologist. Such resistance by medical personnel caused additional stress and suffering to patients already experiencing severe mental health conditions. Anti-abortion lobbyists also discredit the ground of mental health conditions, stating in their self-developed "guidelines" that abortion based on a mental health condition is illegal. In March 2023, a woman who had been refused abortion by a public hospital in 2021 despite a certified danger for her mental health, won her case before the Patient Rights Ombudsman. The decision of March 13, 2023, ref. no. RzPP-DPR-WPZ.431.362.2021.PS confirms that denying abortion to a woman with a certificate that a continuation of her pregnancy threatens her mental health is in violation of the law.

(e) Chilling effect of the criminalization of abortion on medical personnel

15. The criminalization of abortion except in certain narrowly defined cases creates an atmosphere of fear, where doctors are afraid to even discuss a termination of pregnancy with their patient. In addition to cases, where patients must wait until the health danger has transformed into a danger for life, they also hesitate to seek an abortion because of insecurity, fear or an erroneous interpretation of the law. Doctors on duty are reluctant to be the ones taking the decision and seek authorization from their superiors. One victim described how a doctor waited for the doctor on duty during the next shift to carry out the procedure. The chilling effect on doctors is further exacerbated by monitoring, as hospitals must send a yearly report to the Ministry of Health indicating the number of abortions performed.

2. Pregnancies resulting from a crime

16. To access abortion under the exception of a pregnancy resulting from a crime, notably in a case of rape, incest or sexual relations with a minor, the victim is required to first file criminal charges. This will allow her to obtain a certificate from the prosecutor that an investigation has been opened, enabling the hospital to perform an abortion. There is no time limit for the issuance of the certificate, while the term during which an abortion may be performed is 12 weeks. The designated members learned that petitions submitted by civil society to introduce a time limit had been unsuccessful. Furthermore, victims have to request a certificate from the prosecutor in a non-victim-friendly context characterized by an unreasonable amount of doubt on the part of the authorities. To reach the prosecution stage, victims' credibility first needs to be assessed and confirmed by a psychologist. Only then can the investigation be initiated, and a certificate obtained. Throughout the investigation stage, victims are, at times, subjected to stigma and asked questions implying their co-responsibility. The designated members learned that in view of the very onerous and painful protocol, victims are often reluctant to seek abortion through this procedure, and mostly opt to order pills online. This procedure is also a deterrent to accessing sexual and reproductive health services, for example to prevent sexually transmitted diseases, when women want to conceal a potential pregnancy to be able to obtain a clandestine abortion. While the State party has commendably received a high number of refugees from Ukraine, it is almost impossible for refugee women and girls who are victims of conflict-related sexual violence to access legal abortion in the State party, as opening an investigation for a crime that has not taken place in the State party is more complicated and takes more time.

3. De facto limitations on access to legal abortions in Poland

(a) Reporting obligations and investigations

17. Medical personnel who notice that an abortion has taken place which may not have been subject to the exception under the law, have to report this to the authorities. There were also cases where doctors called the police when they noticed the absence of a previously existing pregnancy in their patient. Women could then be questioned by the police in an attempt to identify who had provided them with assistance. The designated members also learned about the introduction by the government of a "pregnancy register" in October 2022, where every pregnancy is registered and followed. According to the information received, the absence of a previously existing pregnancy in the system would trigger the notification of the prosecutor and ensuing interrogation of the woman. The designated expert learned that the State party based the establishment of this register on an EU Directive, which requires the Ministry of Health to collect important health data so that patients can receive the necessary medical treatment from one country to another. However, the State party is the only EU country who collects data on pregnancy. The designated members were also informed about two cases where miscarriages by women reported to the police triggered searches of their houses, including the emptying of one woman's sceptic tank, and the questioning of the neighbour of a woman in an attempt to identify if she had had an abortion. In another case a woman who had had an abortion via abortion pills and contacted her psychiatrist because of anxiety, was admitted to hospital where her laptop and phone were confiscated by the police and was questioned about the abortion. She also was asked by female police officers to strip naked, squat and cough. While such investigations are disproportionate and unlawful, the Committee finds that the atmosphere of criminalization of abortion facilitates this form of violations as people who are not fully familiar with the law will be reluctant to defend themselves. The designated members also learned about proactiveness on the side of the authorities to identify women who have had abortions. For example, if a foetus was found in a lavatory, the woman would be actively sought for to determine whether it was a miscarriage or unlawful abortion.

(b) Refusals of care based on conscientious objection

18. An important de facto barrier to access abortion was constituted by doctors' possibility to deny women an abortion based on conscientious objection (conscientious objection clause). The barrier constituted by this right of doctors was further strengthened by a 2015 decision of the Constitutional Court which waived the previously existing obligation of doctors invoking it to refer patients to doctors who would carry out the procedure. The designated members learned that the conscientious objection clause was also illegally applied by entire hospitals through a unilateral declaration, or by making all staff sign a conscientious objection declaration regarding abortions. The application of the clause was not regulated by law, and a list of doctors applying it was non-existent, so women needed to ask in advance or see the doctors to learn about their conscience-based refusal, thereby losing precious time. The designated members learned about a case where a woman was not informed by her doctor about the malformation of the foetus. The Committee finds that the lack of regulation of the conscience clause can embolden some doctors to mislead women in such a manner. Following their visit, the designated members also learned about a case where two hospitals, invoking conscientious objection, refused to perform an abortion on a woman with intellectual disability, pregnant as a result of a rape and who had a certificate by a prosecutor.

(c) Insufficient training and inaccurate methods

19. The designated members learned that medical students and doctors were not or insufficiently trained in abortion management and were not familiar with the WHO abortion care guidelines. Official guidelines on abortion were absent and hospitals often used the very outdated method of abortion via curettage which could seriously damage the woman's body, and which was recommended against by the WHO . When hospitals used abortion pills, they often only provided two, leading to contractions and pain, avoidable by providing more pills. Even during sepsis, the measure frequently taken was inducing birth. Doctors wanting to perform abortion according to modern methods could learn about these only from colleagues abroad and external resources such as webinars and used the guidelines by other countries.

Modern tools such as suction instruments were quasi-impossible to obtain in the State party and needed to be ordered from abroad. The designated members learned that doctors were trained and operated in context where abortion was silenced and not considered as a regular medical procedure. Many doctors did not remember the times when abortion was legal. While there was a new generation of young doctors wanting to learn about and carry out abortions, they were prevented from it by hospital management, older colleagues whom, according to established practice, younger staff had to obey, or through a general hospital policy that conscientious objection had to be applied.

(d) Inadequate complaints procedure

20. A complaints' procedure established under Article 31 of the 2008 the Patients' Rights Act is open to women whose doctor refuses to provide them with specific treatment or an information, including abortion, pre-natal test or information on these. Such a procedure can last up to 30 days. In view of the time window of 12 weeks to access abortion, this shortened the procedure further, particularly when the refusal concerned a pre-natal test, as had happened in several cases. Furthermore, the procedure was very cumbersome, requiring patients to refer to the articles that has been violated, not feasible without strong knowledge of the law, leading to majority of complaints being dismissed on procedural grounds. The decisions by the Medical Board are additionally not subject to judicial review. For these reasons, this procedure was by most patients not considered effective to serve as an immediate remedy, but more to obtain reparations post factum.

(e) Geographical limitations

21. In practice, severe discrepancies based on geographic location exist in access to abortion. The designated members learned how access was particularly difficult in the Eastern and Southern voivodeships, where some hospitals declared that abortion would not be accessible at all in their premises . Such a violation of the law was frequently met with impunity. In some voivodeships in the Southeast regions, such as the Podkarpackie Voivodeship, there was not one hospital performing abortions based on the conscientious objection clause. There was also a high difference in access to abortion and contraception between big cities and smaller villages. In villages where people knew each other there was a lot of social control and an increased chilling effect on doctors. Villages also had a small number of doctors, or only one, with limited opening hours, significantly weakening access to care, particularly emergency contraception, only available via prescription.

(f) Lack of information

22. Women did not always know that they would not be sanctioned for an abortion. There was no publicly accessible information on the steps to access abortion or hospitals performing them. This situation instilled fear in many women. Women could only find this information through the networks of civil society who also provided women with information on accessing abortion outside of the cumbersome procedures under the exception.

B. Criminalization of abortion and its effect on women and society

1. Pregnancies involving a severe and irreversible foetal defect or incurable illness that threatens the foetus' viability

23. Women carrying foetuses with severe and irreversible defect or incurable illness that threatens their life can no longer legally abort since the judgment of the Constitutional Court, published in January 2021, whereas these cases constituted the majority of causes for abortion until that date. The designated members interviewed women whose foetus had been diagnosed with severe and irreversible foetal defect or incurable illness that threatened the viability of the foetus testified to their distress at the announcement of the condition or disease of their foetus, their non-viability, and above all the obligation to continue their pregnancy to term.

24. ["A"] discovered in her 20th week of pregnancy that her foetus had life-threatening abnormalities. Given the progress of her pregnancy, urgently and without waiting for a 3rd

round of medical tests results, she travelled to Spain to obtain an abortion in a few days. She had to cover travel expenses of 2-3 thousand zlotys, plus 3-4 nights in a hotel, so a total of about 8000 zlotys; she took leave from work. [“A”] could not bury her child like the other parents; to this day, she's not sure what to tell her gynaecologist, and she feels like a criminal. For a year, she felt "like a vegetable" and had to consult a psychologist to accompany her, whom she paid out of her own pocket: 170 zlotys/visit, every month for 6 months, then every 3 months; she also had to take psychotropic pills, then she stopped. Today [“A”] does not know if she will consider getting pregnant again.

25. The obligation to carry a problematic pregnancy to term jeopardizes the health of women, particularly their mental health. Witnesses interviewed stated that the Government announced that they will provide help for women who suffer from these pregnancies, and that women could obtain mental care, but it did not happen. The government offers a one-off aid of 1,000 euros to families who give birth to a child with a severe and irreversible foetal defect or incurable illness. Experts were informed that parents who take care of children with disabilities obtain a monthly allowance of 500 zlotys (± 110 €), which is the only money they can benefit from, because they cannot work otherwise they will lose the allowance; part-time work is not allowed either.

26. According to the data provided by the Ministry of Health, a total of 1076 legal abortions were performed in 2020 while in 2021 (the Constitutional Court ruling was in force as of 27 January 2021), there were only 107 abortions. In 2020, 21 abortions were performed on the ground of the threat to the woman's health and life, 32 abortions on this ground were performed in 2021. In 2020, two abortions were performed on the basis of the suspicion that the pregnancy resulted from rape, in 2021 and in 2022 there were no abortion were performed on this ground. In 2020, there were 1053 abortions performed for the reason of severe or fatal foetal impairment; in 2021, there were only 75 (until 27 January 2021 when the ban of abortion on this ground entered into force). The most recent statistics show that there were a total of 161 abortions performed in Polish hospitals in 2022. In 9 out of 16 voivodships in Poland, there were zero legal abortions performed in 2022. The latter results attest to the fact that, as a consequence of the State party’s law and practice on abortion, most women have no access to abortion services in Poland.

2. Lack of legal obligation to inform about the result of prenatal tests

27. Many witnesses have attested that access to prenatal tests, and in the first-place access to information on when and where one can obtain prenatal tests, was restrained by medical personnel, in the fear that they would be seen as “assisting a woman to obtain an abortion”. According to witnesses interviewed by the Designated members, access to information on when and where one can obtain prenatal tests by telephone from the Health Fund or the Patients Ombudsman is theoretical: witnesses affirm that patients put their trust and their health in the hands of their doctors and their hospital, and typically will not be confident enough to go beyond their recommendations.

28. The designated members also heard from witnesses that there was no legal obligation for doctors to inform their patients of the results of prenatal tests. When asked, representatives of the Ministry of Health replied that this would constitute a violation of procedure, as well as restricting information on prenatal tests. However, the designated members have no information on prosecutions or sanctions for violation of the procedure.

29. Health care professionals interviewed by the experts confirm that prenatal tests are not linked to illegal abortion but to the state of health of the foetus. Thanks to prenatal diagnosis, treatments can be administered during pregnancy, childbirth and after birth. According to them, hospitals that oppose prenatal testing and impede access to it violate women's access to health.

3. Impact on the quality of care

30. Witnesses attest to the general drop in the quality of health service provided and in the access to health services following criminalization of abortion. There are more new-born deaths and perinatal care decreased. For instance, the Dilo card-based system set up to shorten waiting times between cancer diagnosis and treatment, which allows supervision of care

throughout the whole process, is non-existent for any other condition, including for pregnant women, although this approach would allow the pregnancy to be monitored throughout its duration. While the country used to host the best perinatal clinics where important surgery on the womb of women took place, the law affected the practice of health care specialists, instilling fear of being accused of killing a baby if anything went wrong. Young doctors leave the country and the health system is under financed.

4. Women in situations of poverty and other situations of intersectional discrimination

31. Restrictions on access to abortion have different consequences depending on the geographical and social position of women. Women who are better educated, have resources, and live in large cities, are more aware of other possibilities and may have the possibility to travel to neighbouring countries where abortion is legal. Clinics offering legal abortion welcome Polish women including in the Czech Republic, Slovakia, Austria, Spain, France or Germany. The government is aware of this possibility: the press reported in May 2021 the words of former Prime minister and president of the conservative party "Law and Justice", Jarowslaw Kaczynski: "*There are advertisements in the press that every average-witted person understands and can arrange abortion abroad, more or less expensive*". However, this option is only available to those who can afford the procedure and the associated costs of travel, time off work, and childcare. The cost of the procedure itself will make it unavailable and inaccessible for many women in Poland. In addition, having to seek abortion services in a foreign country causes women significant harm by separating them from their family and support structures, exposing them to health risks and forcing them to navigate a foreign health care system in a foreign language.

32. Conversely, marginalized women, including economically and socially disadvantaged women, women living in rural areas, survivors of violence, women with disabilities, adolescent girls and migrant women are at higher risk of unwanted pregnancies due to their lack of access to affordable modern contraceptives, including emergency contraception. They also face multiple intersecting obstacles in traveling out of Poland to access safe and legal abortion services, including geographical, economic, social and other barriers. Marginalized women who need abortion care may resort to dangerous alternatives to end their pregnancy and resort in greater numbers to clandestine and unsafe abortions. The latter run more risks, as the Office of the Prosecutor is observant of everything directly or indirectly related to abortion. Several witnesses mentioned the strong interest of the Office of the Prosecutor in any question involving an abortion, and its investigative work "*à charge*" of the slightest suspicion of abortion, including cases of miscarriage.

33. Despite the lack of specific information on sexual and reproductive rights and health for women with disabilities during the visit, the Committee notes the barriers faced by them when seeking to gain access to services for safe abortion, owing to the lack of information available on and services relating to their sexual and reproductive health rights, and also notes that they are not protected against forced abortion and are reportedly subjected to forced sterilization, according to the CRPD Committee's concluding observations on the initial report of Poland (paragraphs 30, 43(e) and 44(e), 2018).

34. Witnesses interviewed by the designated members confirm that refugees from Ukraine are at particular risk as they have limited information and awareness of Poland's abortion law and practice, and their community is the main source of information, at times wrongful information. Many community members remain in touch with specific groups such as churches, which can exert pressure on women and impact their freedom of choice. Civil society organization provide the majority of services that are consistent with international standards of care. Many health partners have established into the country, including NGOs and emergency medical teams. The latter provide crucial information and pathways about the medical system, information that is otherwise difficult to obtain because health personnel are scared to provide information. Victims of conflict related sexual violence (CRSV) are often referred to hospital emergency departments, although hospitals often do not understand what services victims need.

5. Reality of clandestine abortions in Poland

35. The provision of women with assistance to obtain an abortion being criminalized and punishable by a sentence of 3 years imprisonment, NGOs interviewed by the designated members testified to the chilling effect the law has on the entourage of women. NGOs supporting access to abortion today mention the number of 78,000 women supported since 2020, through provision of information, support to travel and money. They also cite 700 calls for help each month, coming from all over the country. The vast majority of women (90%) are within 12 weeks of becoming pregnant and mostly need to get abortion pills from a trusted online order. Indeed, women themselves are not criminalized for having an abortion. Although safe, abortive pills can still threaten women's lives and health because they are used outside of the healthcare system.

6. Travelling outside Poland for abortion

36. One percent (1%) of women in need of an abortion are in the 2nd or 3rd trimester of their pregnancy. They must travel abroad for an abortion through a medical procedure. NGOs interviewed say there were more such cases in 2022, following the 'Izabela case' where a woman died in a hospital because medical authorities failed to perform an abortion in time: doctors at the hospital delayed terminating her 22-week pregnancy despite the fact that her foetus lacked enough amniotic fluid to survive. These NGOs have indeed received many calls from women in hospital and fearing for their lives; the women did not know what was happening, but knew that the foetus had an anomaly.

7. Post-abortion care for illegal abortions or those performed outside Poland

37. Witnesses and civil society organisations interviewed attest to the fact that post-abortion care does not formally exist in the country. Women who undergo an illegal abortion or an abortion abroad keep it a secret, will never confess what happened and will never return to the site of the medical intervention. Civil society organisation informed the designated members that they met many women who were afraid to go to the hospital after an abortion because they were afraid that doctors would ask questions. Cases of doctors who called the police to investigate suspicions of abortion are famous and cause women to fear. The case of ["A"] is revealing: to this day, ["A"] does not know what to say to her gynaecologist and she feels "like a criminal"; she had to see a psychologist to help her.

8. Intimidation of protesters, human rights defenders and civil society

(a) Human rights defenders and civil society

38. All of the human rights defenders interviewed said there is clear risk, and legitimate fear, to be prosecuted, for any women's rights activist. NGO representatives receive threats in their private emails, threatening their lives or those of their families. Complaints to the police go nowhere, so human rights defenders have stopped filing complaints. Many suffer from burnout and post-traumatic syndrome. A hotline has been created for targeted activists and legal assistance is provided by some umbrella organizations.

39. Witnesses evoke a broader attack on human rights defenders and NGOs since 2017, who are under investigation for abortion assistance, some constantly summoned to the police station. NGOs that have organized demonstrations have also been investigated either by the internal security services or by the police authorities. This trend displays a strategy not only against women's rights defenders, but against all human rights defenders, whereby they are harassed and exhausted by dint of investigations. Witnesses interviewed described the famous case of human rights defender Justyna Wydrzyńska, member of the NGO Abortion Dream Team. Justyna was sentenced to 8 months of community services for sending abortion pills to a woman in an abusive relationship. The abusive partner found out when he checked his wife's phone and reported her to the police.

40. Legal experts interviewed during the experts' mission stressed the legal absurdity of these prosecutions: while it is legal for women to induce themselves an abortion or to undergo an abortion abroad, how can helping them be a crime and be prosecuted?

41. The designated members learned that the government stopped funding women's rights organizations that did not share their views. For example, in 2016, it withdrew financial support from the Women's Rights Center, which fights violence against women, because their activities allegedly "discriminate against men". No NGO fighting for women's rights is supported by public funds: independent organizations must increase their activities on women's rights, relying on outside funding, and according to some witnesses overall this is an attempt to normalize an anti-women's agenda. Women's rights are shrinking as is the space for civil society.

(b) Protesters

42. The designated members were informed that the decision of the Constitutional Court that the termination of a pregnancy due to a severe and irreversible fetal defect or incurable illness was contrary to the Polish Constitution was announced on 22 October 2020; however, the full verdict and its reasoning were only released in January 2021 to avoid further protests. In the meantime, the government did everything possible to quell dissent and used the pandemic situation to prevent women from protesting any longer, witnesses stated.

43. A month and a half of protests was triggered by the Constitutional Court decision in October 2020. Witnessed interviewed stated that freedom of assembly had been restricted due to the COVID-19 pandemic; the police used arguments linked to the pandemic to restrict assemblies. The protests saw a turning point and became violent and brutal on 11 November 2020, when members of the radical right marched and attacked police and buildings. The police resorted to violence and suppressed demonstrations with gas and batons. Repression was also noted against young adolescents and their teachers accompanying them. The police were instructed to treat peaceful protesters the same as violent protestors and detained the protesters for 48 hours.

44. In large cities, a whole movement of activists tried to defend the protestors, but in small towns it was much difficult to do so. For instance, a 17-year-old young activist living in west Poland (Olesnica) was repeatedly summoned to the police station and interrogated because of her participation in protests.

45. Massive protests took place again after Izabela’s death in 2021, attended by thousands of people. Protesters gathered in Warsaw and many other Polish cities in November 2021 to denounce the restrictive abortion law which they say led to the death of 30-year-old Izabela, a young mother whose pregnancy had medical problems. The demonstrators held up portraits of the woman who died in hospital in southern Poland, following septic shock.

46. The witnesses interviewed spoke of police violence against women, an immediate reaction by the Public Prosecutor to control feminist organizations during demonstrations, on the basis of information provided by anti-abortion lobbyists, as well as a setback in civil rights.

(c) Influential role of anti-abortion lobbyists and activists

47. The designated members found that the anti-abortion lobbying organizations are a beacon in the promotion of ultra-conservative ideas and have succeeded in making their voice heard and promoting their representatives in the Administration sectors in education and health, and in courts. These organizations are infamous for drafting an anti-abortion bill in 2016, which sought to ban it altogether and introduce criminal liability for anyone who causes the death of a conceived child, including its mother.

48. According to witnesses, anti-abortion lobbying organizations investigate across the country and seek opportunities to promote their views and exert its influence. They gather evidence and provides it to the Prosecutor's office, mobilize people for prosecution, and are behind lawsuits against human rights defenders. They have drafted a guide for prosecutors and provide legal advice to the Prosecutor's office. These organizations have also successfully asked to become a civil party in certain trials (e.g. Justyna Wydrzyńska case) and to present their point of view. They also invaded the medical field and drafted guidelines for hospitals on how to handle abortion requests. These organizations report possible “crimes” to the police authorities for their investigation; in November 2022, they reported 130 to 150 cases against the organisation Abortion Dream Team, an organization supporting

women's sexual and reproductive health and rights . Government-backed, rich and powerful, anti-abortion lobbying organizations are influential and feared by doctors as well as human rights defenders.

9. Psychological effect on women

49. Witnesses interviewed by the designated members reported that women in Poland are afraid of having children or even thinking about it, especially if they already have health problems. They know that they will have no support if they have problems with the pregnancy and that there is no special support or place in school for children with disabilities. Today, pregnant women are afraid of going to the hospital and being left to die there - like in the Izabela case and the 6 other famous cases – so they immediately go abroad if there is a health problem. They try to get by, but they are traumatised by their journey to other countries; it is like "torture", witnesses said. Since anyone who helps a women obtain an abortion can be prosecuted and penalized, doctors cite the risk of going to prison to refuse their help; women feel very alone. Many women who have had an abortion because their life or health were threatened do not even try to get pregnant again because they are afraid; they think they will not survive if it happens again.

50. The designated members interviewed witnesses who knew each other and who had both an abortion outside of the exception. They told the experts that they didn't even dare talk about their experience in public, fearing that someone might overhear them and tell their supervisors at work.

51. A poll conducted by the Center of the Research of Public Opinion CBOS in 2022 shows that 68% of Polish women aged 18-45 don't want or don't know if they want to have children. Women they cite obstacles such as possible health problems, socio-economic situation, lack of preschools, lack of labour rights and the current climate of hate speech against women. NGOs now receive calls from pregnant women asking them what to do if they have a foetus with disorders; it is a completely new phenomenon, because before, women did not think about it.

C. Inadequacy of family planning support

1. Access to sexual and reproductive health services and contraceptives

(a) Access to hormonal contraception and sterilization

52. Hormonal contraception can only be accessed via prescription. Not all types of contraceptive pills can be fully refunded or partly refunded by the health insurance. New generations of contraceptive pills with less side effects are less likely to be refundable than older generations. Women need to pay for hormonal contraception up front, then submit a refund request, solely upon validation of which they can obtain a refund. Doctors can invoke the conscientious objection clause and refuse to prescribe contraception, including emergency contraception. While the clause is not applicable to pharmacists, they would also at times illegally invoke conscientious objection.

53. Sterilization is prohibited based on article 156 § 1 p. 1of the Penal Code stipulating that "whoever causes grievous bodily harm in the form of: depriving a human […] of the ability to procreate, […] shall be subject to the penalty of deprivation of liberty for a period of not less than 3 years". The law effectively bans sterilization for women. The designated members learned that, however, for men, vasectomy remained possible in practice, as it is considered reversable. At the same time, women and girls with disabilities reportedly continue to be subjected to forced sterilization.

(b) Emergency contraception

54. Emergency contraception is non-refundable and only available upon a doctor's prescription. This requirement makes access particularly difficult in the evening, at night and during weekends, periods where its need will arise more frequently, a situation further exacerbated for women in small villages with limited medical and transportation

infrastructure. These aspects slow down access to emergency contraception, which needs to be taken within the very limited time window of 72 hours. Women can often only access prescriptions by online doctors during such hours paying 90 zlotys. Women who are not digitally literate, live in a small village without an open pharmacy, do not have access or no autonomous access to funds will more difficultly be able to use this service. Accessing emergency contraception for patients under 18 years is not possible without parental or guardian approval. Doctors can also invoke the conscientious objection clause, and pharmacists also at times - illegally – do so. In addition, emergency contraception is not available in every pharmacy.

(c) Access to sexual and reproductive health and rights services

55. In average, women needed to wait between two to three months to obtain a gynaecological appointment in the public system, insufficient to identify a pregnancy, possible complications and access abortion in time. This particularly affected women who were not able to pay for private providers. Women who are irregular migrants do not have access to medical services. Since 2016 in vitro fertilization was not available anymore under the National Health Fund. Cities and local governments can provide financial support to heterosexual couples only. The State party has introduced a naprotechnology programme instead, a counselling session to pray for pregnancy.

56. The designated members also learned that the legal procedures on treatment of pregnant women were not always followed according to a report by the Supreme Chamber of Control. The requirement of the establishment of a birthplan was often not met. This led to situations where women were given treatment that they had not agreed to beforehand. The designated members also heard of the case of a woman who needed a hysterectomy because she had very strong endometriosis but whose doctor refused to undertake the procedure. According to witnesses, health care professionals feel they need to maintain women’s capacity to deliver children.

57. Despite the possibility of accessing abortion under certain circumstances in the State party, there was no formalized pre- and post-abortion care; care was only accessible under the general duty of care of medical personnel.

2. Sexual health education and information

58. Education on sexual and reproductive health and rights is not part of the official school curriculum. The designated members learned that students only had access to voluntary lessons on “education for family life” during weekends by personnel who were not trained teachers, for instance church personnel. There, it was indicated to students that they should not drink, smoke, or have sexual relations and anti-abortion movies were at times projected. There only study on any effect of this lack was from 2011, and concluded increasing risky behaviour. The designated members learned that the church as well as anti-abortion lobbyists had an influential role in structuring the education curriculum. They also learned about cases where parents complained against the school, or where anti-abortion lobbyists brought court cases against teachers and local governments if children were informed about contraception or abortion.

59. While there were NGOs which provided sexual and reproductive health education via social media, the Committee finds that this cannot replace systematic, comprehensive and age-appropriate sexual and reproductive health and rights education by the public system. The designated members furthermore learned that the absence of formalized education left a vacuum where many young people resorted to pornography for information about sex. While this did not only not provide them with the relevant information, it also exposed them to a frequently very gender-biased vision of sexuality that associated sexuality with violence against- and the oppression of women.

D. Social context of abortions in Poland

60. From the late 1960s, abortion had been available upon request in Poland; abortions were performed free of charge in public hospitals and the country provided a safe space to

exercise the right to termination of pregnancy for women from Sweden or other countries. Official reports from the time mention figures such as 168,000 abortions performed in public hospitals in 1965, and up to 82,000 in 1989. In 1989, an alliance between the Church and opposition parties led to the defeat of Soviet power, which later proved to lead to a deterioration of women's rights. Women's demands were left behind. In 1992, more than a million signatures were gathered to demand the organization of a referendum on abortion, , to no avail. Instead of a referendum, the parliament adopted the 1993 Act on Family Planning, Protection of Human Fetu, called a "compromise". In addition, following growing pressure from the Catholic church and conservative organizations, emergency contraception, which was formerly fully legalized and easily accessible, was banned and made available only by prescription.

61. Access to abortion, which was legal until the 1993 Act on Family Planning, Protection of Human Fetus, has been eroded over the past two decades until it has fallen to a trickle in 2020, following the decision of the Constitutional Court of Poland. Legal experts informed the designated members that the European Court declared that the appointment of 3 judges of the Constitutional Court of Poland was not in accordance with the law, in the case Xero Flor w Polsce sp. 200 v. Poland. This did not prevent the 3 judges considered "illegal" from sitting on the Court and rendering the 2020 decision declaring the termination of pregnancy in situations of "severe and irreversible foetal defect or incurable illness that threatens the foetus' life" inconsistent with the Constitution of the Republic of Poland, a ruling that changed the lives of many women. At the time, the COVID-19 pandemic was in full swing, the rate of infections was rising, there was no vaccine, people were dying, and the Constitutional Court's decision diverted the public's attention. Witnesses consider the decision of the Constitutional Court a "repayment" by the ruling party of the strong support the Catholic Church has provided them with throughout.

62. More than a month and a half of protests took place when the decision of the Constitutional Court was announced in October 2020. At the time, the National Society of Gynaecologists issued a statement warning of the suffering women would experience; neonatal physicians also issued a statement. The repression went strong, especially in Warsaw, where the police were mobilized and used violent force, using gas and batons, arresting protesters. The government ultimately used the COVID-19 law to end the protests, and the Constitutional Court decided to postpone the publication of the reasons for its judgment until January 2021.

63. Witnesses testify to a surge of regressive positions, which aim to control and impose certain ideals on women, a certain role for women in society and the denial of their reproductive rights.. Notably, a standing Committee in the government must, by law, discuss every legislation with the Catholic Church if requested. Interviewees speak of the deterioration of all rights in the country and claim that women have fewer rights today than when the country joined the European Union in 2004.

64. The women's rights movement and progressive parliamentarians have launched many legal initiatives over the past 2 years. With 100,000 signatures gathered within the 3 regulatory months, they were able to present bills opening women's right to abortion in Poland, which were ultimately stopped by the parliamentary majority of the ruling party. A poll from November 2022 shows that 70 % of people are in favour of full legalisation of abortion on request up to 12 weeks, and support the bills opening access to abortion presented by the opposition parties. However, propaganda is polarizing society: there is more violence and extremism, a rise in hateful sexist language and a growing backlash against women. Another poll done 2 or 3 years ago shows that while young women tend to be pro-choice, young men tend to be anti-choice. The public media, which depend on state funding, weigh in on a public debate that is not equal. Witnessed stressed that the media rarely invited women to speak about abortion – the discussions are held among men.

65. The designated members were informed that there is a rise in activism among the younger generation that keeps human rights defenders positive about their work. There is a growing engagement of younger generations in the cause since the 2020 protests when boy and girl teenagers were out in the street. The young generation proves very engaged, progressive and innovative – applying very original and strong slogans in the protests.

VI. Legal findings

A. State party's obligations with regard to the sexual and reproductive health and rights of women under the Convention

66. Article 12 of the Convention, complemented by article 16 (1) (e), guarantees women the right to health, including sexual and reproductive health. The articles require States parties to eliminate discrimination against women in the provision of health care and ensure access to services, including family planning and the right to freely and responsibly decide on the number and spacing of children. Article 12, read with articles 1, 2, 5, 14 and 16 (1) (e), constitutes the legal underpinnings of the Committee's jurisprudence in the area.

67. Under article 2 (c), (d), (f) and (g), States parties are obligated to establish legal protection of the rights of women on an equal basis with men and refrain from engaging in acts or practices discriminatory to women, and to take appropriate measures, including legislation, to modify or abolish existing laws, particularly penal laws, discriminatory to women. Article 2, read with article 1, requires States parties to take appropriate measures to eliminate any restriction having the effect or purpose of impairing or nullifying the enjoyment or exercise by women of human rights in all fields. Article 2 (g) requires States parties to, "repeal all national penal provisions that constitute discrimination against women". Article 5 addresses gender stereotypes, including social and cultural patterns of conduct. Read with articles 12 and 16, it requires States parties to eliminate gender stereotypes that impede equality in the health sector and have a negative impact on women's capacity to make free and informed choices about their health care, sexuality and reproduction.

68. In paragraphs 14 and 31 (c) of its general recommendation No. 24 (1999) on women and health, the Committee states that laws that criminalize medical procedures needed only by women are barriers to women's access to health care. Since abortion is a service that only women require, the Committee found a violation when access was unduly restricted. In paragraph 11 of general recommendation No. 24, the Committee states that measures to eliminate discrimination against women are considered to be inappropriate if a health-care system lacks services to prevent, detect and treat illnesses specific to women. This equally applies if the service is available in theory, but its implementation is severely constricted in practice. In paragraph 11 the Committee also states that it is discriminatory for a State party to refuse to provide legally for the performance of certain reproductive health services for women. The Committee states in this regard that, for instance, if health service providers refuse to perform such services based on conscientious objection, measures should be introduced to ensure that women are referred to alternative health providers.

69. In Da Silva Pimentel v. Brazil (CEDAW/C/49/D/17/2008) and in paragraph 27 of its general recommendation No. 24, the Committee outlined that States parties should ensure women's right to safe motherhood and obstetric services. Safe motherhood encompasses a series of practices and protocols designed to ensure high-quality services to achieve optimal health for both the pregnant woman and the fetus. That cannot be guaranteed if women are denied information and access to health services and are compelled to carry pregnancies to full term where doing so poses a threat to their health. Optimal health for pregnant women cannot be attained if access to abortion is denied when it is the safest option to address threats to their physical or mental health.

70. In paragraph 18 of its general recommendation No. 35 (2017) on gender-based violence against women, updating general recommendation No. 19, the Committee states that the 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.

71. Based on its expertise in interpreting articles 12 (1) and 16 (1) (e), its general recommendation No. 24, read with article 2 (b), (d), (e) and (f), as clarified by general recommendation No. 28, and article 5, as clarified by its general recommendation No. 19 (1992) on violence against women and general recommendation No. 35 (2017) on gender-

based violence against women, updating general recommendation No. 19, the Committee systematically recommends the decriminalization of abortion in all cases. States parties are obligated not to penalize women resorting to, or those providing, such services (see A/54/38/Rev.1, paras. 185 and 309, and A/55/38, para. 180).

72. Criminal regulation of abortion serves no known deterrent value. When faced with restricted access, women often engage in clandestine abortions, including self-administering abortifacients, at risk to their life and health. Criminalization, albeit under a few exceptions, has a stigmatizing impact on women and deprives them of their privacy, self-determination and autonomy of decision, offending women's equal status, constituting discrimination. It also has a chilling effect on doctors, instilling them with fear for their own safety when providing medical assistance.

73. Access to high quality contraceptives, including emergency contraception, should always be available by all women and girls. Any obstacles, including socio-economic status or geographic location need to be removed. In the inquiry concerning the Philippines, the Committee observed that distinctive health features that differed for women in comparison to men included biological factors such as women's reproductive functions. Given that such factors had a bearing on women's reproductive health needs, the Committee considered that substantive equality required that States parties attend to the risk factors that predominantly affect women. Given that only women can become pregnant, lack of access to contraceptives was therefore bound to affect their health disproportionately (see CEDAW/C/OP.8/PHL/1, para. 111).

74. Post-abortion medical services, regardless of whether abortion is legal, should always be available. In the inquiry concerning the Philippines, the Committee emphasized the need to provide high-quality post-abortion care in all public health facilities, especially in cases in which complications arise from unsafe abortions (ibid., para. 52 (e)). In the inquiry concerning the United Kingdom of Great Britain and Northern Ireland, the Committee also emphasized the need to provide high-quality abortion and post-abortion care in all public health facilities, and to adopt guidance on doctor-patient confidentiality in that area (see CEDAW/C/OP.8/GBR/1, para. 86 (c)).

75. Rural, migrant, asylum-seeking and refugee women and women in situations of conflict and poverty face additional barriers to access to health care. In paragraph 52 (c) of its general recommendation No. 30 (2013) on women in conflict prevention, conflict and post-conflict situations, the Committee recommended that States parties ensure that sexual and reproductive health care included safe abortion services and post-abortion care. In paragraph 37 of its general recommendation No. 34 (2016) on the rights of rural women, it observed that access to health care, including sexual and reproductive health care, was often extremely limited for rural women. In paragraph 39 (b), it recommended that States parties provide adequate financing of health-care systems in rural areas, in particular with regard to sexual and reproductive health and rights.

76. In its joint statement with the Committee on the Rights of Persons with Disabilities, on Guaranteeing sexual and reproductive health and rights for all women, in particular women with disabilities (29 August 2018), the Committee highlights that a human rights-based approach to sexual and reproductive health acknowledges that women's decisions on their own bodies are personal and private, and places the autonomy of the woman at the centre of policy and law-making related to sexual and reproductive health services, including abortion care.

77. It its statement of 1 July 2022 "Access to safe and legal abortion: Urgent call for United States to adhere to women's rights convention", the Committee stated that "access to safe and legal abortion and to quality post-abortion care helps to …ensure women's right to freely decide over their bodies". The Committee further endorses the position that "access to reproductive rights is at the core of women and girls' autonomy, and ability to make their own choices about their bodies and lives, free of discrimination, violence and coercion". In this statement, the Committee indicated that it repeatedly stressed in its dialogues with States parties, and in its concluding observations and its jurisprudence under the Optional Protocol to the Convention, and that "denial of access to safe and legal abortion is a severe restriction on women's ability to exercise their reproductive freedom, and that forcing women to carry

a pregnancy to full term involves mental and physical suffering amounting to gender-based violence against women and, in certain circumstances, to torture or cruel, inhuman or degrading treatment, in violation of the CEDAW Convention”.

78. The Committee clarified, in its Statement on the International Day of the Girl Child (11 October 2023), that hampering girls’ – and by extension women’s - access to safe termination of unwanted pregnancies conflicts with States’ obligations to guarantee the rights of girls to equality, autonomy, privacy, and reproductive freedom, the fundamental right to safeguards from hazardous health situations, as well as their freedom from gender-based violence and cruel, inhuman or degrading treatment. It further calls for access to a wide range of contraceptive methods, and for total decriminalization of abortion and the legalization of abortion.

B. Violations of rights under the Convention

1. Criminalization of abortion

79. The criminalization of abortion, its availability only on limited grounds and the dysfunctional access to abortion within those, compels women to carry their pregnancy to term, to navigate a medical system without certainty to receive adequate medical care and/or information or to navigate a criminal procedure system where they risk re-traumatization, victim-unfriendly and gender-biased treatment. The only reason why women do not need to resort to dangerous procedures of self-administered abortion is thanks to a civil society network to whom they can turn for information and support on safe steps. Most women who need an abortion will resort to order abortive pills online or will travel abroad.

80. The criminalization of abortion, also subjects women to the criminal law system, being interrogated, despite the law not criminalizing them, putting them under stress to protect persons who may have assisted them. They are also victims of violations by law enforcement and the judiciary.

81. Recalling its general recommendation No. 19 and general recommendation No. 35, discrimination against women includes gender-based violence, which is defined as violence directed against a woman because she is a woman or that affects women disproportionately. The restriction, affecting only women, preventing them from exercising reproductive choice and resulting in women being forced to carry a pregnancy to full term, involves mental or physical suffering constituting violence against women and potentially amounting to torture or cruel, inhuman and degrading treatment, in violation of articles 2 and 5, read with article 1, of the Convention. It affronts women’s freedom of choice and autonomy and their right to self-determination. The mental anguish suffered is exacerbated when women are forced to carry to term a non-viable fetus or where the pregnancy results from rape or incest. Forced continuation of pregnancy in such scenarios is unjustifiable, State-sanctioned coercion. In defining discrimination, the Convention deliberately adopts a dual “effect” and “purpose” approach in order to capture acts that might have a discriminatory effect even when not intentional. Criminalizing the provision of abortion by medical professionals in effect hinders women’s access to sexual and reproductive health services.

2. Impeded access to sexual and reproductive health services

(a) Very limited availability of abortion under the physical or mental health or threat to life of the woman exceptions owing to restrictive interpretation

82. The Committee considers that the absence of official guidance on the exception of “danger to the life or health of the woman”, the availability of abortion only as an exception in a context of general criminalization and the ensuing chilling effect on doctors which will often prevent them from thinking about their patient first, and the cases of arbitrary interpretation of the law’s wording by medical personnel , possibility of doctors to invoke the conscientious objection clause, as well as the very deficient access of legal review of medical decisions, severely hampers women’s access to abortion when there is a threat to their life or physical or mental health. The Committee notes that abortions are performed under this exception, but that their numbers are small and that women may need to be

subjected to a difficult and painful ordeal of finding and or convincing a doctor to perform an abortion based on the condition they are invoking, which will frequently be performed in an unnecessary painful manner. The Committee is severely concerned that in its worst cases, there seems to have been a direct causal link between doctors' refusal of, delay in or inadequate provision of the necessary medical steps with the death of seven women.[1]

(b) De facto unavailability of abortion under the criminal act exception owing to length/uncertainty/difficulty of procedures

83. The Committee considers that the requirement for the victim to press charges to obtain an abortion, the lack of any time limitation for the prosecutor to certify the opening of an investigation and a sexual violence investigation system that seems to expose victims to gender stereotypes and unreasonably questions their credibility, without any guarantee that the necessary certificate would be obtained in a timely manner does not constitute a realistic option for victims of sexual violence to obtain an abortion under this exception. The Committee finds that this is reflected by the particularly low number of women aborting for sexual violence (two abortions based on the suspicion of rape in 2020 and none in 2021 and 2022 according to data by the Ministry of Health) It also finds that this particularly low number conveys a wrong impression of sexual violence frequency in a country with 20 million women and is a sign that victims do not place any trust in the possibility of obtaining an abortion via this exception. In addition, the Committee notes that even with a certificate by the prosecutor, victims do not have legal security in practice to access abortion under this exception.

(c) Restricted access to contraception, including emergency contraception

84. The Committee considers that the requirement to pay for hormonal contraception up front, the solely partial refund of hormonal contraception, furthermore limited to older generations of hormonal contraception only, particularly hampers access by women with limited or not autonomous access to funds. The Committee also considers that the extension of the requirement of a prescription for contraception to emergency contraception, unreasonably delays access to this form of contraception, thereby defeating its purpose. It also finds that the prohibition of sterilization for women but not for men constitutes gender-based discrimination in access to permanent contraception.

(d) Disproportionate hardship for rural women, women in situations of poverty and vulnerability

85. The Committee considers that marginalized women, including women with disabilities, economically and socially disadvantaged women, women living in rural areas, survivors of violence, and adolescent girls, experience distinct and disproportionate hardships in accessing legal abortion services, including as a result of lack of available services , financial and geographical barriers. They are at higher risk of unwanted pregnancies due to their lack of access to affordable modern contraceptives, including emergency contraception. They also face multiple intersecting obstacles in traveling out of Poland to access safe and legal abortion services, including geographical, economic, social and other barriers. As a result, they are more likely to undergo clandestine and unsafe abortions in Poland and thus face increased risks to their health and lives. Obtaining medical abortion pills may not be accessible for certain groups of women, as this method is only a recommended in early pregnancy and some marginalized women may not be able to seek care within this timeframe. Women who cannot afford to undergo a clandestine abortion in Poland or to travel abroad to access abortion services are compelled to continue unwanted pregnancies to term, which may undermine their health, well-being, and livelihoods. The imposition of motherhood may also prevent women from continuing their education, pursuing their careers, and becoming financially independent.

[1] During their visit, the designated members were informed about six cases of deaths of pregnant women that could have likely been prevented by an abortion. After the visit, another woman died.

(e) Absence of post-abortion care

86. The Committee considers that the lack of formal post-abortion care, combined with the fear instilled among women by the criminalization of abortion and the resulting reluctance to seek medical assistance, creates a high risk for health and life of women in Poland. Post-abortion care helps addressing the problem of unsafe abortion, reduce maternal morbidity and mortality, and improves women's reproductive health. Women in Poland do not have access to quality services for the management of complications resulting from abortion, post-abortion counselling, education and family planning services, which impacts their right to health and to life.

3. Discriminatory gender stereotypes

87. A range of gender stereotypes and assumptions in the area of sexual and reproductive health are reflected in Poland's laws and policies that restrict women's autonomy and are particularly pervasive. It is commonly assumed that the predominant and natural role of women in society is as mothers and caregivers. Thus, a woman's decision to access abortion services is often deemed contrary to this social role and to the view that women should prioritize childbearing. It is often assumed that women are emotional or incompetent decision-makers. This means that their decisions not to carry a pregnancy to term are often questioned and not respected. Moreover, restrictive abortion laws usually embody assumptions that a foetus should receive greater protection than a pregnant woman and that a pregnant woman's human rights are legitimately subordinated to the protection of the foetus. The Committee has explicitly held that restrictive abortion laws and practices embody harmful gender stereotypes.

88. The Committee finds that Poland's abortion law embodies discriminatory gender stereotypes and assumptions because it does not allow women to take autonomous decisions about whether or not to carry a pregnancy to term. It does not allow them to decide over their bodies and on the best course of action to safeguard their health. Instead, it subjects them to the authority of doctors and prosecutors to whom it grants power to determine for them whether they qualify for a legal abortion.

4. Lack of Access to sexual health education

89. The provision of age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education and information is critical to the realization of women's and girls' right to health. Leaving the delivery of the curriculum on relationship and sexuality education to voluntary lessons, taught by persons without the necessary expertise and with an anti-abortion agenda, will inevitably result in poor-quality sexuality education for young people, the indoctrination of anti-abortion and abstinence ethos and a resorting to inadequate and potentially gender-biased resources, including pornography, in young people's quest for information about sexuality.

90. The Committee finds that the State party has failed to prioritize the prevention of unplanned pregnancy through the provision of high-quality sexuality education. Its lack of delivery by schools of an age-appropriate, culturally sensitive, comprehensive and scientifically accurate curriculum on relationship and sexuality education, which is evidence-based and includes contraceptive use, safe abortion and post-abortion care, violates article 10 (h) of the Convention.

5. Findings

91. Poland's abortion laws and practice result in discrimination against women and inequality before the law. Poland's abortion laws and practice deny access to reproductive medical services that only women need, and imposes no equivalent burden on men's access to reproductive health care. It discriminates against women on grounds of sex by prohibiting a type of health care only required by women. The rights to equality and non-discrimination compel States to ensure that health services accommodate the fundamental biological differences between men and women in reproduction. Poland's abortion laws and practice are discriminatory because they deny women the moral agency that is related to their reproductive autonomy. There are no similar restrictions on health services that are needed

only by men. It thus clearly treats men and women differently on the basis of sex for purposes of article 2 (c), (d), (f), (g) (equality and non-discrimination).

92. Poland's abortion laws and practice give rise to an intrusive interference in a woman's decision as to how best to cope with her pregnancy, and violates article 16 (1) (e) of the Convention. A woman's decision to have an abortion falls within the scope of her right to privacy and prohibition and criminalization of abortion interferes with her decision not to continue her pregnancy. Decisions to have children or not must not be limited by Government. Women who seek an abortion have to choose between carrying an unwanted pregnancy to term, seeking clandestine and potentially unsafe abortion services, or travelling abroad to access safe and legal services. Neither option has the potential to preserve their reproductive autonomy and mental well-being. By denying women the only option that would respect their physical and psychological integrity and reproductive autonomy - allowing them to terminate their pregnancy in Poland - the State interferes arbitrarily in their decision-making. Preventing women from terminating their pregnancy constitute an intrusive interference in their decision as to how best to cope with their pregnancy.

93. Poland's abortion laws and practice subject women to a gender-based stereotype according to which the primary role of women is reproductive and maternal, constitutes discrimination and violates both their freedom of self-determination and their right to gender equality, in violation of article 5 of the Convention. The State party's criminalization of abortion reduce women to their reproductive capacity by prioritizing the protection of the "unborn" over their health needs and their decision to terminate their pregnancy. Women are subjected to a gender-based stereotype that women should continue their pregnancies regardless of the circumstances, their needs and wishes, because their primary role is to be mothers and caregivers. Stereotyping women as a reproductive instrument subjects women to discrimination, infringing their right to gender equality.

94. Poland's abortion laws and practice fail to provide women with the health care they require and violate their rights to non-discrimination and equal access to health care, in violation of Articles 2 (c), (d), (f), (g) (equality and non-discrimination) and 12 of the Convention. Poland's abortion laws and practice deny women, on the basis of their sex, access to medical services that they need in order to preserve their autonomy, dignity, and physical and psychological integrity. In contrast, male patients and patients in other situations in Poland are not expected to disregard their health needs and moral agency in relation to their reproductive functions.

95. Poland's abortion laws and practice cause serious harm to women by severing the continuum of reproductive health care, and violates article 12 of the Convention. The obligation to respect women's rights to have access to health care requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. Women seeking an abortion are, under the law, unable to continue receiving medical care and health insurance coverage for their treatment from the health care system. The ordeal they endure could have been avoided if they had not been prohibited from terminating their pregnancy under the care of health professionals whom they knew and trusted or in the familiar environment of their own country. The legal framework's chilling effect on doctors further disrupt the provision of medical care and advice that women need.

96. Poland's abortion laws and practice forcing women to choose between continuing a pregnancy, seeking clandestine abortion services or travelling to another country to access legal abortion services subject women to conditions of intense physical and mental suffering and results in cruel, inhuman or degrading treatment. Women who decide to end a pregnancy must seek clandestine abortion services or travel abroad to access abortion care and bear the psychological, physical and financial burdens this imposes on them. Women suffer a high level of mental anguish that amount to cruel, inhuman or degrading treatment as a direct result of Poland's abortion laws and practice.

97. Poland's abortion laws and practice prevent the provision of age-appropriate, culturally sensitive, comprehensive and scientifically accurate sexuality education and information, which are critical to the realization of women's right to health. It violates women and girls' right to access information and advice on family planning.

98. Poland's abortion law and practice disproportionately harms women in situations of marginalization and vulnerability who, for a range of reasons, face particular difficulties and barriers in accessing legal abortion services in Poland and who cannot easily leave the country to access safe abortion services in another country. As a result, they are forced to either continue an unwanted pregnancy or seek clandestine and unsafe abortion services with resulting consequences for their health and lives.

99. Poland's abortion laws and practice also undermines women's enjoyment of a range of other human rights. Decisions about whether and when to bear children have far reaching consequences for women's ability to pursue their aspirations, personal development, and economic security. Poland's abortion law and practice undermine women's equal enjoyment of their rights to education and employment since childrearing responsibilities often disproportionately fall on women to fulfil.

100. Poland's abortion laws and practice violate women's rights to non-discrimination and equality before the law; to privacy, reproductive autonomy and agency; to be free from gender-based stereotypes; to personal integrity, dignity, physical and mental health and well-being; to access health services; and to access information and advice on family planning, guaranteed under articles **2 (c), (d), (f), (g) (equality and non-discrimination), 5 (elimination of prejudice), 10 (h) (equality in education/family planning), 12 (equality in health), 14 (2) (b) (rural women), 15 (equality before the law) and 16 (1) (e) (marriage & family/number and spacing of children) of the Convention**.

D. Principal findings of violations under the Convention

101. In the light of the foregoing, the Committee finds that the State party has violated the following articles of the Convention: 12 read alone; 12 read with 2 (c), (d), (f), (g), 5 and 10 (h); 10 (h) read with 16 (1) (e); 14 (2) (b) read alone; 15 (read alone) and 16 (1) (e) read alone. Those articles should be read together with the Committee's general recommendation No. 19, general recommendation No. 35, general recommendation No. 21 (1994) on equality in marriage and family relations, general recommendation No. 24, general recommendation No. 26 (2008) on women migrant workers, general recommendation No. 28, general recommendation No. 32 (2014) on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women, general recommendation No. 33 (2015) on women's access to justice and general recommendation No. 34.

E. Grave or systematic nature of the violations

Grave

102. The Committee's jurisprudence allows understanding of the term grave. In the Philippines inquiry the Committee stressed that its "determination regarding the gravity of the violations takes into account, notably, the scale, prevalence, nature and impact of the violations found". In the UK inquiry, the Committee assessed gravity of the violations in Northern Ireland in the light of the suffering experienced by women and girls who carry pregnancies to full term against their will owing to the restrictive legal regime on abortion.

103. The criminalization of abortion and the very limited situations in which it is legal and *de facto* accessible, means that most women in Poland do not have access to safe and legal abortion services. Women who fall outside the exceptional circumstances in which abortion is legal and accessible have no legal entitlement to end a pregnancy safely and legally in Poland. Instead, they are compelled to three options, either: (a) undergo a torturous experience of being compelled to carry an unwanted pregnancy to term; (b) seek clandestine and potentially unsafe abortion services; or (c) travel abroad to access safe and legal services and face trauma associated to such an ordeal. Moreover, women who qualify for abortion services under Polish law often cannot access those services in practice, which means that women whose health or lives are at risk are often unable to access abortion services to which they are legally entitled and thus face life-long health implications and at times death as a result.

104. The Committee observes that women are torn between complying with discriminatory laws that unduly restrict abortion or risking their health and life. It notes the great harm and suffering resulting from the physical and mental anguish of carrying an unwanted pregnancy to full term. It, therefore, finds that Poland has committed grave violations of rights under the Convention, considering that the State party's criminal law compels women to carry pregnancies to full term, thereby subjecting them to severe physical and mental anguish, constituting gender-based violence against women.

Systematic

105. The Committee has interpreted the term systematic by looking at the persistent pattern of acts which do not result from a random occurrence, or which are not isolated acts. Following its jurisprudence on Mexico, the Committee in the Philippines inquiry noted that: *The Committee considers that the systematic denial of equal rights for women can take place either deliberately, namely with the State party's intent of committing those acts or as a result of discriminatory laws or policies, with or without such purpose. The systematic nature of violations can also be assessed in light of the presence of a significant and persistent pattern of acts which do not result from a random occurrence*.

106. Poland's abortion law reflects a deliberate State policy to deny women access to abortion services. Poland has created a regulatory framework of strict State control over women's reproductive health and autonomy. Furthermore, even women who meet the strict legal requirements for abortion services are often not able to exercise this right in practice and the State's failures to guarantee women effective access to legal abortion services are not limited to individual and isolated cases. Rather, the denial of legal abortion services by Polish doctors, as agents of the State, reflects "a significant and persistent pattern of acts" that are not random occurrences. The Committee finds systematic violations of rights under the Convention, considering that Poland deliberately criminalizes abortion, pursues a highly restrictive policy and practice on access to abortion, thereby compelling women to carry pregnancies to full term, to travel outside the country to undergo legal abortion or to seek clandestine and potentially unsafe abortion services.

VII. Recommendations

107. In the light of the foregoing and in line with relevant recommendations addressed to the State party by other United Nations bodies, the Committee refers to its previous concluding observations (see CEDAW/C/POL/CO/7-8) and recommends the following to the State party.

A. Legal and institutional framework

108. **The Committee recommends that the State party urgently:**

(a) **Ensure that access to abortion be provided in a manner that is in line with the Convention's principles of non-discrimination against women and women's substantive equality, and adopt legislation in line with a human rights-based approach to sexual and reproductive health and rights that acknowledges that women's decisions on their own bodies are personal and private, and places the autonomy of the woman at the center of policy and law-making related to sexual and reproductive health services and therefore take the necessary legal amendments towards total decriminalization and legalization of abortion;**

(b) **Recognize the right to abortion as a fundamental right;**

(c) **Take the measures necessary to ensure that the autonomy and decisions of women with disabilities are respected in relation to their sexual and reproductive health and rights, they receive sexual and reproductive education, and that they are given access to safe abortion and protection from forced sterilization and forced abortion;**

(d) **Introduce, as an interim measure towards full decriminalization and legalization, a moratorium on the application of criminal laws concerning abortion and cease all related arrests, investigations and criminal prosecutions of any health-care professionals and private individuals providing any form of assistance to women who need an abortion;**

(e) **Adopt evidence-based protocols for health-care professionals in line with the guidelines on abortion care of the World Health Organization, and ensure training of medical students and continuous training on the protocols and prohibit the dissemination and usage by lobby-driven guidelines for health-care professionals;**

(f) **Take effective measures to ensure that women can make autonomous decisions about all aspects of their sexual and reproductive health and that they have access to evidence-based and unbiased information in this regard;**

(g) **Re-introduce the obligation for medical professionals who invoke conscientious objection to sexual and reproductive health services to refer women to an alternative healthcare provider, and ensure that the misuse of conscientious objection be prosecuted;**

(h) **Establish a mechanism to advance women's rights, including through monitoring authorities' compliance with international standards concerning access to sexual and reproductive health, including access to safe abortions;**

(i) **Develop and implement a comprehensive strategy targeting community and religious leaders, teachers, girls and boys, and women and men to eliminate discriminatory stereotypes regarding the roles and responsibilities of women and men in the family and in society, and develop and introduce a set of targets and indicators to systematically measure the impact of the strategic interventions undertaken;**

(j) **Provide relevant public officials and the media, as well as private sector representatives, with capacity-building to enable them to address discriminatory gender stereotypes, including through gender-responsive language, and promote positive portrayals of women as active drivers of development in the media;**

(k) **Ensure effective, timely and accessible procedures for pregnancy termination;**

(l) **Take measures to ensure that health-care providers are in position to supply full information on safe abortion services without fear of being subjected to criminal sanctions.**

B. Sexual and reproductive health rights and services

109. **The Committee recommends that the State party:**

(a) **Provide non-biased, scientifically sound and rights-based counselling and information on sexual and reproductive health services, including on all methods of contraception and access to abortion;**

(b) **Ensure the accessibility and affordability of sexual and reproductive health services and products for all women, including on safe and modern contraception, including oral, long-term and permanent forms of contraception, as well as prescription-free emergency contraception, and adopt a protocol to facilitate access at pharmacies, clinics and hospitals;**

(c) Ensure that women and girls with disabilities have the right to access abortion and to decide freely on all other matters related to their sexuality, including their sexual and reproductive health, free of coercion, discrimination and violence; to ensure, namely, that no medical procedures may be performed on them without their free, prior and informed consent;

(d) **Provide women with access to high-quality abortion and post-abortion care in all public and private health facilities and adopt guidance on doctor-patient confidentiality in that area;**

(e) **Provide all women, including women and girls with disabilities, with full and legal access to voluntary sterilization with free, prior and informed consent ;**

(f) **Make age-appropriate, comprehensive and scientifically accurate education on sexual and reproductive health and rights a compulsory component of curriculum for adolescents, covering prevention of early pregnancy and access to abortion, provided by experts, and monitor its implementation;**

(g) **Intensify awareness-raising campaigns on sexual and reproductive health rights and services, including on access to modern contraception;**

(h) **Ensure access to prenatal tests and mandatory release of results to pregnant women in all public hospitals and clinics;**

(i) **Stop collecting data on pregnancies and dismantle the Pregnancy Registry;**

(j) **Protect women from harassment by anti-abortion protesters by investigating complaints and prosecuting and punishing perpetrators.**