United Nations CEDAW/C/POL/IR/1

# Convention on the Elimination of All Forms of Discrimination against Women

Distr.: General
12 December 2024

Original: English
English, French and Spanish only

**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 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. 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.

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 providing assistance to obtain an abortion is criminalized, punishable by a maximum sentence of three years' imprisonment, and access to abortion is severely restricted. They allege that the abortion laws and practice of Poland discriminate against women and violate their rights by nullifying their reproductive autonomy and denying them access to essential reproductive health services, all of which constitute 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

* 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.

to the woman's private life; and that the woman's right to respect for her private life must be weighed against other 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 obligations under the Convention and asserted that no revision of its legislation was envisaged.

5. During its seventy-seventh 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 secretariat members met with officials from the Ministry of Health, the Patients' Rights Ombudsman, the Plenipotentiary for Equal Treatment of the Ministry of Family, Labour and Social Policy, the Ministry for Foreign Affairs and the National Public Prosecutor's Office. They interviewed healthcare 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 organizations.

# IV. Legal framework on termination of pregnancy in Poland

7. The 1993 Act on family planning, human fetus protection and preconditions for the admissibility of abortion regulates abortion. It replaced the 1956 Law on the conditions of legal pregnancy termination, which allowed abortion on social grounds in addition to the legal grounds.

8. Under the 1993 Act, abortion is illegal. The Act 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 results from a crime, in which case abortion is legal during the first 12 weeks of pregnancy, which is conditional upon formal authorization from a prosecutor. When the life or health of the woman is in danger, abortion must be performed in a hospital. A woman seeking abortion must provide written consent, or, where applicable, the authorization of her legal guardian or guardianship court. A third exception codified in article 4 (a), section 1, point 2 of the 1993 Act allowed termination of pregnancy in situations of "severe and irreversible fetal defect or incurable illness that threatens the foetus's life", until the foetus reached viability, was found inconsistent with article 38 read in conjunction with article 30 and article 31, section 3, of the Constitution in a 2020 judgment of the Constitutional Court. The judgment took effect on 27 January 2021.

9. The provision of assistance to women in order to obtain abortion outside the provisions of the 1993 Act is criminalized and can entail a prison sentence up to three years, according to article 152 of the Penal Code. According to data from the National Public Prosecutor's Office, a total of 426 cases were examined under article 152 between 2018 and 2022; 207 were discontinued and 40 cases resulted in convictions. A known case is that of a man sentenced in 2021 to six months in prison for buying abortion medication for his girlfriend. In March 2023, a woman human rights defender working for the organization Abortion Dream Team was sentenced to eight months of community service, having been convicted under article 152 for sending abortion pills to a woman in an abusive relationship. Proceedings are currently pending against a gynaecologist for providing abortion medication.

10. The right of doctors to invoke conscientious objection as a reason to refuse care, unless a delay in care could pose a risk of death, serious bodily harm or health deterioration for the patient, is regulated in the Act of 5 December 1996 on medical and dental practitioners and also applies to the provision of abortion. In practice, this conscience-based refusal has also been used by entire hospitals and pharmacists to refuse to sell abortion-inducing medication. Such refusals, while in violation of the law, have been met with impunity. Previously, doctors who refused care on the basis of a conflict of conscience had a legal obligation to refer the patient to another doctor. This requirement was invalidated by the Constitutional Court in its judgment of 5 December 2015, finding it to be in contravention of the constitutional protection to freedom of thought, conscience and religion. It 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 the case of a threat to the life or health of the pregnant woman is not complemented by an official guidance protocol for medical professionals. The lack of such a protocol leaves the meaning of "threat to life or health" open to interpretation and often results in the fear of wrongly qualifying a situation as such, in violation of the law, and to a reluctance to carry out a medical abortion. It also leads to arbitrarily restrictive interpretations, such as dismissing certain health risks. The members also learned about cases in which doctors required several tests to determine a health risk and made women wait for the result until the period for abortion had passed. Such cases have resulted in a lack of trust among women with regard to 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 in some instances, hospitals have applied those unofficial protocols.

#### (b) Erroneous interpretation of the exception

12. The 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 as to be considered life-threatening. This has led to cases in which medical personnel have waited for sepsis or other life-threatening conditions before performing an abortion. Equally, medical professionals are often under the erroneous belief that fetal heartbeat must have stopped before an abortion may be performed under the exception. There were cases in which women were left to wait in hospital in a severely deteriorating state of health until either the fetal heartbeat had stopped, or their own condition had become life-threatening. The interpretation of life-threatening also depends on the individual doctor in charge. Doctors are frequently afraid to carry out abortion "too early", in violation of the law.

#### (c) Cases of pregnancy-related deaths

13. The members were informed about six cases of deaths of pregnant women that could have likely been prevented by abortion. The deceased women are Agnieszka T., Izabela, Agata, Marta, Anna and Justyna. After the inquiry visit, another woman,

Dorota L., died in similar circumstances. The 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 refusal by the 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 L., that new guidelines on the provision of abortion care would be developed.

#### (d) Difficulties faced in accessing abortion on the basis of threat to the woman's mental health

14. The diagnosis of severe fetal impairment, including impairments that could lead to stillbirth or newborn death, carries a serious mental health impact for pregnant women. Women seeking medical help in such cases often suffered from adjustment disorder. Many of the patients who sought psychiatric treatment had resignation or suicidal thoughts. In these cases, carrying the pregnancy to term constituted a concrete threat to mental health and even to life. Certificates provided by psychiatrists were, while ultimately accepted, at times initially rejected by medical personnel, including by belittling the patients' situations or trying to instil guilt. The lack of official guidance enables hospitals to determine their own procedure as to when to carry out an abortion based on the danger to mental health, including procedures that stipulate excessive requirements such as a need for two certificates, additional tests or a certificate by a Catholic psychologist. Such resistance by medical personnel cause additional stress and suffering to patients. Anti-abortion lobbyists also discredit the ground of risk to mental health, stating in self-developed "guidelines" that abortion based on such grounds is illegal. In March 2023, a woman who was refused abortion by a public hospital in 2021, despite a certified danger for her mental health, won her case before the Patients' Rights Ombudsman. The decision of 13 March 2023 confirms that denying abortion to a woman in possession of a certificate confirming that continuation of the pregnancy threatens her mental health is illegal.

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

15. The criminalization of abortion, except in few narrowly defined cases, creates an atmosphere of fear, in which doctors are afraid to even discuss abortion with patients. In addition to cases in which patients are made to wait until the danger to health has deteriorated into a danger to life, medical personnel also hesitate to perform an abortion because of insecurity, fear or an erroneous interpretation of the law. Doctors are reluctant to be the ones taking the decision and seek authorization from superiors. One victim described how a doctor waited for the doctor of the following 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.

### 2. Pregnancies resulting from a crime

16. In order 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 so as to obtain a prosecutor's certificate confirming that an investigation has been opened, thereby enabling the hospital to perform an abortion. There is no time limit for issuance of the certificate, but the period during which an abortion may be performed is limited to the first 12 weeks of pregnancy. Petitions submitted by civil society to introduce a time limit within which prosecutors must issue the required certificates have been unsuccessful. Furthermore, the non-victim-friendly context in which certificates must be requested is characterized by an unreasonable amount of doubt displayed by authorities. In order

to reach the prosecution stage, a victim's 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 questions implying co-responsibility. In view of the very onerous and painful protocol, victims are often reluctant to seek abortion through this procedure and instead mostly order pills online. This procedure is also a deterrent to accessing sexual and reproductive health services, for example to prevent sexually transmitted infections, when women want to conceal a potential pregnancy in order 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, as opening an investigation into a crime that hasn't 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 a potentially illegal abortion has taken place must notify authorities. There are also cases where doctors call the police when they notice the absence of a previously recorded pregnancy. Women can then be questioned in order to identify from whom they had received assistance. In October 2022, a "pregnancy register" was introduced, in which every pregnancy is registered and followed. According to information received, if the absence of a previously recorded pregnancy is documented in the system, such an event would result in a notification to the prosecutor and ensuing interrogation of the woman. The State party based this register on a directive from the European Union that requires the collection of important health data in order for patients to receive medical treatment from one European country to another. The Committee notes, however, that the State party is the only country collecting pregnancy data. The members were also informed of two cases in which the reporting of miscarriages to the police resulted in searches of the women's houses, including emptying one woman's septic tank, and the questioning of a woman's neighbour to identify whether she had had an abortion. In another case, a woman who had had an abortion through the use of abortion pills and had contacted her psychiatrist because of anxiety was admitted to hospital, whereupon her laptop and phone were confiscated by police and she was questioned about the abortion. She was also 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 such violations, as people who are not fully familiar with the law will be reluctant to defend themselves. The members also learned about proactive measures taken by authorities in order to identify women who had had abortions. For example, if a fetus is found in a lavatory, the woman will be actively sought in order to determine whether it was a miscarriage or an unlawful abortion.

#### (b) Refusal of care based on conscientious objection

18. An important de facto barrier to abortion is the possibility for doctors to deny women an abortion on the basis of the conscientious objection clause. The barrier was further strengthened by the Constitutional Court decision of 2015 (see para. 10 above), in which it invalidated the previously existing obligation of doctors invoking that clause to refer patients to doctors who would carry out the procedure. The members learned that the conscientious objection clause is also illegally applied by entire hospitals through unilateral declarations, or by making all staff sign a conscientious objection declaration regarding abortions. The application of the clause is not regulated by law, and there is no list of doctors applying it, so women need to

ask in advance or see the doctors to learn about their conscience-based refusal, thereby losing time. The members learned about a case in which a woman was not informed by her doctor about a fetal malformation. 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 members also learned about a case in which two hospitals, invoking the conscientious objection clause, refused to perform an abortion on a woman with an intellectual disability, who was pregnant because of a rape and who had a prosecutor's certificate.

### (c) Insufficient training and inaccurate methods

19. Medical students and doctors are either not trained or are insufficiently trained in abortion management and unfamiliar with the *Abortion Care Guideline* of the World Health Organization. Official guidelines on abortion are absent and hospitals often use the very outdated method of abortion by curettage, which could seriously damage the woman's body, and which WHO recommends against. When hospitals use abortion pills, they often only provide two, leading to contractions and pain, which would be avoidable through the use of a greater number of pills. Even in cases of sepsis, the measure frequently employed is to induce birth, rather than perform an abortion. Doctors who wish to perform abortion according to modern methods can learn about these methods only from colleagues abroad and from external resources, for example through webinars, and follow the guidelines developed in other countries. Modern tools, such as suction instruments, are quasi-impossible to obtain and need to be ordered from abroad. Doctors are trained and operate in a context in which abortion is silenced and is not considered a regular medical procedure. Many doctors do not remember the time when abortion was legal in Poland. While there is a new generation of doctors wanting to learn about and perform abortions, they are prevented from doing so by hospital management and by older colleagues whom, according to established practice, younger staff have to obey, or by general hospital policies requiring the application of the conscientious objection clause.

### (d) Inadequate complaints procedure

20. A complaints procedure established under article 31 of the 2008 Act on Patients' Rights and the Patients' Rights Ombudsman is open to women whose doctor refuses to provide them with specific treatment or information, including abortion, a prenatal test or corresponding information. Such a procedure can last up to 30 days. In view of the 12-week time frame within which access to abortion is legal, this shortens the window of time within which to have the need for an abortion certified, particularly when the refusal concerns a prenatal test, as has happened in several cases. Furthermore, the complaints procedure is very cumbersome, requiring patients to specify which articles of the 2008 Act have been violated, which is unfeasible without a strong knowledge of the law, therefore leading to the majority of complaints being dismissed on procedural grounds. In addition, decisions by the medical board are not subject to judicial review. Consequently, most patients consider the complaints procedure not to be effective as an immediate remedy, but more as a procedure by which to obtain reparations post facto.

### (e) Geographical limitations

21. In practice, severe discrepancies based on geographic location exist with regard to abortion access. The members learned that access is particularly difficult in eastern and southern municipalities (voivodeships), where some hospitals declare abortion to be inaccessible in their premises. Such a violation of the law is frequently met with impunity. In some municipalities in the south-east regions, no hospital perform abortions, all invoking the conscientious objection clause. There are also stark

discrepancies regarding access to abortion and contraception in big cities compared with smaller villages. In villages, where people know each other well, there is a lot of social control and an increased chilling effect on doctors. Villages also have a small number of doctors or in some cases only one doctor, with limited opening hours, thereby significantly weakening access to care, particularly emergency contraception, which is only available by prescription.

#### (f) Lack of information

22. Women are not always aware that they will not be sanctioned for seeking or undergoing an abortion. There is no publicly accessible information on steps to accessing abortion or on hospitals where abortions are performed, creating a situation that instils fear in many women. Women can only find this information through the networks of civil society organizations that also provide 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 fetal defect or incurable illness that threatens the viability of the fetus

23. The members interviewed women whose fetus had been diagnosed with severe and irreversible defect or incurable illness threatening its viability. In such cases women could no longer legally abort, pursuant to a judgment issued by the Constitutional Courtin 2021, whereas cases of that nature had constituted the majority of abortion causes until the law passed in 1993. The women interviewed testified as to their distress at learning of the condition of their fetus and, above all, the obligation to continue their pregnancy to term.

24. Z discovered in the twentieth week of her pregnancy that her fetus had life-threatening abnormalities. Given the stage of her pregnancy, she urgently, and without waiting for a third round of medical tests, travelled to Spain to obtain an abortion. She had to cover travel expenses of 2,000–3,000 zlotys and accommodation costs for three to four nights, adding up to about 8,000 zlotys; she also had to take leave from work. Z could not bury the fetus as other parents could. To this day, Z is 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, whom she paid out of pocket: 170 zlotys for each visit at a rate of one visit a month for the first six months, then once every three months. She also had to take psychotropic pills for some time. Today Z does not know if she will consider getting pregnant again.

25. Being forced to carry a problematic pregnancy to term jeopardizes women’s health, particularly their mental health. Witnesses interviewed as part of the inquiry stated that the Government had announced that help, including psychological assistance, would be provided to women suffering from such pregnancies, but such assistance has not been provided. The Government offers 4,000 zlotys to women who give birth to a child with a severe and irreversible fetal defect or incurable illness. Parents taking care of children with disabilities are given a monthly allowance of 500 zlotys, an allowance that they will lose if they take on work (full or part-time).

26. According to data from the Ministry of Health, 1,076 legal abortions were performed in 2020, while in 2021, there were only 107 abortions. In 2020, 21 abortions were performed on the grounds of the threat to the woman’s health and life; 32 abortions on those grounds were performed in 2021. In 2020, two abortions were performed on the basis of suspicion that the pregnancy resulted from rape; in 2021 and 2022, no abortions were performed on those grounds. In 2020, 1,053 abortions were performed for severe or fatal fetal impairment; in 2021, there were only 75

abortions performed for that reason (until 27 January 2021, when the ban on abortion on those grounds entered into force). The most recent statistics show that there were a total of 161 abortions performed in hospitals in 2022. In 9 out of 16 municipalities, no legal abortions were performed in 2022. The latter results attest to the fact that most women do not have access to abortion services as a consequence of the State party's law and practice.

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

27. Many witnesses have attested to the fact that access to and information about prenatal tests was restrained by medical personnel, out of a fear of being seen as assisting abortion. According to witnesses, access to information regarding prenatal tests by telephone from the National Health Fund or the Patients' Rights Ombudsman is theoretical: patients put their trust and their health in the hands of their doctors and hospital, and typically will not have the confidence to go beyond their recommendations.

28. The members also heard from witnesses that there was no legal obligation for doctors to inform patients of prenatal test results. Ministry of Health representatives indicated that failure to disclose results and restricting information regarding prenatal tests constituted a procedural violation. However, the members received no information as to any corresponding prosecutions or sanctions.

### 3. Impact on the quality of care

29. Witnesses attest to a general decrease in access to, and the quality of, health services since the criminalization of abortion. The number of newborn deaths has increased and the access to perinatal care has decreased. While perinatal clinics in Poland were previously assessed as examples of best practice, the law has affected the practice of healthcare specialists, instilling the fear of being accused of having killed a baby if anything goes wrong. Young doctors are leaving the country and the health system is underfinanced.

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

30. Restrictions on abortion access have different consequences depending on women's geographical and social position. Women who are better educated, have resources and live in large cities are more aware of other options and may have the possibility of travel to neighbouring countries, where abortion is legal. Women travel to Austria, Czechia, France, Germany, Slovakia or Spain. The Government is aware of this possibility: in May 2021 the press reported the words of the former Prime Minister and President of the conservative party "Law and Justice", Jarowslaw Kaczynski: "there are advertisements in the press that any person of average intelligence understands and can arrange such an abortion abroad, cheaply or expensively".[1] 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 makes it inaccessible for many women. Furthermore, having to seek abortion abroad causes women significant harm by separating them from family and support structures, and forcing them to navigate a foreign healthcare system in a foreign language.

31. Conversely, marginalized women, including economically and socially disadvantaged women, women living in rural areas, survivors of violence, women

[1] See https://notesfrompoland.com/2021/05/25/there-is-no-abortion-ban-in-poland-says-kaczynski-women-can-arrange-abortions-abroad/.

with disabilities, adolescent girls and migrant women are at higher risk of unwanted pregnancies owing to a lack of access to affordable modern contraceptives. They also face multiple intersecting obstacles in travelling abroad to access safe and legal abortion services, including geographical, economic and social barriers. Marginalized women who need an abortion may resort to dangerous alternatives and resort in greater numbers to clandestine and unsafe abortions. The latter run more risks, as witnesses mentioned that the National Public Prosecutor's Office monitors everything directly or indirectly related to abortion, carrying out investigative work at the slightest suspicion of abortion, including cases of miscarriage.

32. Despite the lack of specific information on sexual and reproductive health and rights for women with disabilities during the visit, the Committee notes the barriers that they face when seeking access to abortion, owing to the lack of information about, and the lack of accessible, sexual and reproductive health and rights services, and also notes that they are not protected against forced abortion and are reportedly subjected to forced sterilization, according to the Committee on the Rights of Persons with Disabilities(CRPD/C/POL/CO/1, paras. 30, 43 (e) and 44 (e)).

33. Witnesses indicated that refugees from Ukraine are at particular risk as they have limited information about and awareness of abortion law and practice in Poland, and the Ukrainian refugee community is the main source of information, which at times is inaccurate information. Many community members remain in touch with specific groups such as churches, which can exert pressure and affect freedom of choice. Victims of conflict-related sexual violence are often referred to hospital emergency departments, although hospitals often do not understand which services victims need.

### 5. Reality of clandestine abortions in Poland

34. The staff of non-governmental organizations (NGOs) who were interviewed testified to the law's chilling effect on women's support networks. NGOs that help individuals with access to abortion indicated that they had provided support to 78,000 women since 2020, through the provision of information, travel support and funding. They also reported receiving 700 calls for help every month. The inquiry was told that 90 per cent of women seeking assistance are within the first 12 weeks of pregnancy and most of them need help to obtain abortion pills from a trusted online provider. Although they are considered to be safe, abortion pills can still threaten women's lives and health when used outside of the healthcare system. The inquiry was also told that 1 per cent of women in need of assistance with an abortion are in the second or third trimester when they request assistance. They must therefore travel abroad for an abortion through a medical procedure.

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

35. Witnesses and members of civil society organizations interviewed attest to the fact that post-abortion care does not formally exist. Women who undergo an illegal abortion or an abortion abroad keep it secret. Civil society organizations met with many women who were afraid to go to the hospital after an abortion, fearing questions from doctors. Instances of doctors calling the police to investigate suspicions of abortion are well known and cause women to fear the consequences of seeking medical care.

### 7. Intimidation of protesters, human rights defenders and civil society

#### (a) Human rights defenders and civil society

36. Human rights defenders interviewed described a clear risk and legitimate fear, for any women's rights activist, of being prosecuted. NGO representatives receive

threats on their own lives and directed at their families in their private emails. The police does not act upon such complaints, so many human rights defenders have stopped filing them. Many suffer burnout and post-traumatic stress disorder.

37. Witnesses evoke a broader attack on human rights defenders and NGOs since 2017, as part of investigations into abortion assistance, and some report being constantly summoned to police stations for questioning. A member of Abortion Dream Team, which supports women's sexual and reproductive health and rights, was sentenced to community service for dispatching abortion pills (see para. 9 above). NGOs that have organized demonstrations were also investigated. This trend appears to be part of a strategy of harassment aimed at all human rights defenders, with the aim of exhausting them and exhausting their resources through repeated investigations.

38. The members learned that public funding for women's rights organizations that do not share the views of the Government has stopped. For example, in 2016, financial support was withdrawn from Women's Rights Center, which works to combat violence against women, as its activities were allegedly found to "discriminate against men". Witnesses spoke of an attempt to normalize an anti-woman agenda. Women's rights were shrinking, as was civic space.

### (b) Protesters

39. The ruling of the Constitutional Court in which it declared abortion based on fetal defects to be unconstitutional was announced in October 2020 and was followed by protests. The full verdict and reasoning were delayed until January 2021 so as to avoid further protests, which had already lasted for over a month. Witnesses stated that the pandemic was used as a pretext to suppress protests. Police officers were attacked by far-right groups, which prompted a harsh response. Peaceful protesters, including adolescents and their teachers, were also targeted, with reports indicating that the police were instructed to treat them the same as violent demonstrators, detaining some for up to 48 hours.

40. In large cities, activists organized to support protesters, but in smaller towns, this was more challenging. In the town of Oleśnica, for example, a 17-year-old activist was repeatedly summoned to the police station and interrogated for having participated in protests.

41. Massive protests erupted again in November 2021 after the death of Izabela (see para. 13 above). Thousands gathered in Warsaw and other cities to denounce the restrictive abortion law.

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

42. The members learned about the strong influence of anti-abortion lobbying organizations, including through lobbying efforts for the appointment of their representatives in public administration sectors such as education and health, and in the courts.

43. According to witnesses, such organizations gather evidence, provide it to the police and the National Public Prosecutor's Office, mobilize people to reporting individuals and file lawsuits and bring lawsuits against human rights defenders. They drafted a guide for prosecutors and provide legal advice to the National Public Prosecutor's Office. As of November 2022, they had filed between 130 and 150 cases against Abortion Dream Team. These organizations have also successfully requested to become a civil party in certain trials (e.g. in the case concerning a member of Abortion Dream Team, see para. 9 above). They have also drafted guidelines for hospitals on handling abortion requests. Witnesses describe them as government-backed, rich and powerful, feared by doctors and human rights defenders.

### 8. Psychological effect on women

44. A 2022 poll by the CBOS Foundation shows that 68 per cent of Polish women (aged 18–45) do not want children or do not know whether they want any children; obstacles cited included possible health problems and the climate of hate speech against women. Witnesses reported that women fear pregnancy, especially if they have pre-existing health problems. They know that they will not receive support in case of a problematic pregnancy and that special support or places in school are lacking for children with disabilities. Pregnant women fear visiting a hospital to seek care and being left to die there, based on previous infamous cases, opting instead to immediately travel abroad for assistance with a health problem – a journey likened to "torture", according to witnesses. NGOs report having received many calls from women in hospital with a problematic pregnancy, who were in fear for their lives. Given that assisting an individual to obtain an abortion can be prosecuted and penalized, doctors invoke the risk of being imprisoned as a reason to refuse to help, which makes women feel abandoned. Many women who have had an abortion based on the threat to their life or their health do not try to get pregnant again, fearing that they will not survive another pregnancy.

45. The members interviewed witnesses who knew each other, each of whom had had an abortion outside the exception. The witnesses did not dare talk to each other about it in public, for fear of being overheard and reported to their supervisors at work.

## C. Inadequacy of family planning support

### 1. Access to sexual and reproductive health services and contraceptives

#### (a) Access to hormonal contraception, including emergency contraception and sterilization

46. Hormonal contraception can only be accessed by prescription, and not all types of contraceptive pills can be fully or partly refunded by health insurance. New generations of contraceptive pills with fewer side effects are less likely to be refundable than older generations. Women need to pay for hormonal contraception and then submit a request for refund, and can only be refunded if the request is approved.

47. Emergency contraception is non-refundable and is only available with a doctor's prescription. That restriction significantly hampers access to emergency contraception at evenings, nights and weekends, which are the times when the need will be greater. Women in small villages face additional obstacles owing to limited medical and transportation infrastructure. Such constraints reduce the likelihood of their being able to take the medication within the window of 72 hours during which it is effective. As a result, women can often only resort to doctors' prescriptions through an online service, which cost 90 zlotys. In addition, emergency contraception is not available in all pharmacies.

48. Women who are not digitally literate or who have no access to pharmacies, no access to funds or no autonomous access to funds face significant barriers. Patients under the age of 18 require consent from a parent or guardian, further restricting access.

49. Conscientious objection can be invoked by doctors regarding prescriptions, including for emergency contraception, and is at times illegally invoked by pharmacists.

50. Article 156 (1), point 1 of the Penal Code stipulates 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, effectively banning sterilization for women. For men, vasectomy remains possible, as it is considered to be reversible. Women and girls with disabilities reportedly continue to be forcibly sterilized.

### (b) Access to sexual and reproductive health services

51. Women need to wait between two and three months for a gynaecological appointment in the public health system, which leaves insufficient time to identify a pregnancy and any possible complications and to access abortion before the 12-week mark. Such delays particularly affect women without the financial means to consult private healthcare providers. Women who are irregular migrants cannot access medical services. Since 2016, in vitro fertilization is not available under the National Health Fund and financial support for the procedure is for heterosexual couples only. A naprotechnology programme was introduced instead in vitro fertilization, consisting of a counselling session to pray for pregnancy.

52. Legal procedures relating to obstetric treatment are not always followed, according to a report by the Supreme Chamber of Control. The requirement of having a birth plan was often not met, leading to cases of treatment provision not being agreed to beforehand by women. The members heard about the case of a doctor who refused to perform a hysterectomy on woman who needed the procedure owing to very severe endometriosis. According to witnesses, healthcare professionals feel they need to maintain women's capacity to give birth.

53. Despite the possibility of accessing abortion under certain circumstances, there is no formalized pre-and post-abortion care; there is only care provided under medical personnel's general duty of care.

## 2. Sexual health education and information

54. Education regarding sexual and reproductive health and rights is not part of the school curriculum. The members learned that students only had access to voluntary lessons on "education for family life" that were offered during weekends by personnel who were not trained teachers, for example personnel affiliated with a church, who taught students that they should not drink, smoke or have sexual relations and who at times screened anti-abortion films during such lessons. Only one study, from 2011, has studied the effects of the lack of education regarding sexual and reproductive health and rights, and concluded that the lack of such education resulted in increased risk-taking behaviour. The members learned about the influential role of the church and anti-abortion lobbyists with respect to the education curriculum, notably cases of parents filing complaints against schools for providing education on sexual and reproductive health and rights and instances of anti-abortion lobbyists bringing court cases against teachers and local governments for informing children about contraception or abortion.

55. The members learned that the absence of formalized education on sexual and reproductive health and rights left a vacuum that had left many young people to resort to pornography for information about sex. Aside from the fact that pornography does not provide relevant information, it also exposes young people to a frequently very gender-biased vision of sexuality that associates sexuality with violence against women and with the oppression of women.

### D. Social context of abortions in Poland

56. Starting in the late 1960s and until the law adopted in 1993, abortion was available upon request in Poland and was performed free of charge in public hospitals. Contraception, including emergency contraception, was fully accessible. Pressure from the church and anti-abortion lobbying after the fall of the former Soviet Union led to the legislative changes.

57. Witnesses testified to a surge in regressive positions aimed at controlling women and imposing a specific role for women, including through the denial of reproductive rights, and witnesses observe a general deterioration in women's rights. A standing committee in the Government is legally obliged to discuss every legislative proposal with the Catholic Church, upon request.

58. A poll from November 2022 shows that 70 per cent of respondents supported full legalization of abortion up to the twelfth week of pregnancy. Another recent poll shows that young women tend to be pro-choice, while young men tend to be anti-choice. However, witnesses observe growing engagement of younger generations since the protests in 2020, in which adolescent boys and girls participated. Witnesses stressed that discussions in the media about abortion were mostly among men.

## VI. Legal findings

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

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

60. Article 2 (c), (d), (f) and (g) stipulates the obligation to establish legal protection of the rights of women on an equal basis with men and to refrain from engaging in acts or practices that are discriminatory to women, and to take appropriate measures, including legislation, to modify or abolish existing laws, particularly penal laws, that are discriminatory to women. Article 2, read in conjunction with article 1, requires that appropriate measures be taken 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 which constitute discrimination against women. Article 5 addresses gender stereotypes, including social and cultural patterns of conduct. Read in conjunction with articles 12 and 16, it requires the elimination of 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 healthcare, sexuality and reproduction.

61. 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 only needed by women are barriers to women's access to healthcare. Since abortion is a service that only women require, the Committee found a violation when access was unduly restricted. In paragraph 11 of the general recommendation, the Committee states that measures to eliminate discrimination against women are considered inappropriate if a healthcare system lacks services to prevent, detect and treat illnesses

specific to women. It is equally applicable if the service is available in theory, but the implementation thereof 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.

62. In *Da Silva Pimentel v. Brazil* (CEDAW/C/49/D/17/2008) and in paragraph 27 of 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. Safe motherhood cannot be guaranteed if women are denied information and access to health services and are compelled to carry pregnancies to full term where this poses a mental health threat. Optimal health for pregnant women cannot be attained if abortion access is denied when it is the safest option to address threats to physical or mental health.

63. 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 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 circumstances, may amount to torture or cruel, inhuman or degrading treatment.

64. 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).

65. Criminal regulation of abortion serves no known deterrent value. When faced with restricted access, women often engage in clandestine abortions, including self-administering abortifacients, risking their life and health. Criminalization, albeit with 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 fear for their own safety when providing medical assistance.

66. Access to high quality contraceptives, including emergency contraception, should always be available to all women and girls. Any obstacles, including socioeconomic status or geographical 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. 32).

67. 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 where 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)).

68. Rural, migrant, asylum-seeking and refugee women and women in situations of conflict and poverty face additional barriers in access to healthcare. 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 healthcare 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 healthcare, including sexual and reproductive healthcare, was often extremely limited for rural women. In paragraph 39 (b) of general recommendation No. 34, it recommended that States parties provide adequate financing of healthcare systems in rural areas, particularly with regard to sexual and reproductive health and rights.

69. 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, 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 women at the centre of policymaking and lawmaking related to sexual and reproductive health services, including abortion care.

70. In its statement entitled "Access to safe and legal abortion: urgent call for United States to adhere to women's rights convention", the Committee indicates 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". It further indicates that "access to reproductive rights is at the core of women['s] and girls' autonomy, and ability to make their own choices about their bodies and lives, free of discrimination, violence and coercion". In that statement, the Committee indicated that it had repeatedly stressed in its dialogues with States parties, its concluding observations and its jurisprudence under the Optional Protocol 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 […] Convention".

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

## B. Violations of rights under the Convention

### 1. Criminalization of abortion

72. The criminalization of abortion, its availability only on limited grounds and the dysfunctional access to abortion within those parameters compel women to carry their pregnancy to term, to navigate a medical system without the certainty of adequate medical care and/or information, or to navigate a criminal procedure system where they risk being retraumatized and facing gender-biased treatment in a victim-unfriendly setting. The only reason why women need not resort to dangerous procedures of self-administered abortion is as a result of a civil society network that provides information and support on safe steps. Most women in need of an abortion will order abortive pills online or travel abroad.

73. The criminalization of abortion also subjects women to the criminal law system, as they may be interrogated, as despite the fact that the law does not criminalize them for seeking or undergoing an abortion, they can be interrogated, which subjects them to stress, in particular when they seek to protect persons who may have assisted them. They can also become victims of violations by law enforcement and the judiciary.

74. Recalling its general recommendations No. 19 and No. 35, discrimination against women includes gender-based violence, which is defined as violence which is directed against a woman because she is a woman or that affects women disproportionately. The restriction on abortion, which affects only women, prevents them from exercising reproductive choice and results 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,[2] in violation of articles 2 and 5, read in conjunction 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 exceptions relating to the physical or mental health of the woman or the threat to her life, owing to restrictive interpretation

75. 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, the ensuing chilling effect on doctors, which often prevents them from prioritizing the patient's well-being, the cases of arbitrary interpretation of the wording of the law by medical personnel, the possibility of doctors invoking the conscientious objection clause, and the very inadequate access to a legal review of medical decisions, severely hamper women's

[2] The Human Rights Committee and the Committee against Torture have found that denial of access to abortion services can result in cruel, inhuman and degrading treatment. See *Whelan v. Ireland* (CCPR/C/119/D/2425/2014); *Mellet v. Ireland* (CCPR/C/116/D/2324/2013*); Llantoy Huamán v. Peru* (CCPR/C/85/D/1153/2003); *L.M.R. v. Argentina* (CCPR/C/101/D/1608/2007); CAT/C/PER/CO/5-6, para. 15; and CAT/C/IRL/CO/1, para. 26; see also the Committee's general recommendation No. 35.

access to abortion on the grounds of threat to their life or physical or mental health. It notes that abortions are performed under this exception, but that the number of such abortions is small and that women may need to be subjected to a difficult and painful ordeal of finding and/or convincing a doctor to perform abortion based on the condition they are invoking, which will frequently be performed in an unnecessarily painful manner. The Committee is severely concerned that in the 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 and the death of seven women.

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

76. The Committee considers that the requirement for the victim to press charges in order to obtain an abortion, the lack of any time limit within which the prosecutor must certify the opening of an investigation and an investigative system that seems to expose victims of sexual violence to gender stereotypes and unreasonably questions their credibility, without any guarantee that the necessary certificate would be obtained in a timely manner, do not constitute a realistic option for victims of sexual violence to obtain an abortion. The Committee finds that this is reflected by the particularly low number of women aborting on the grounds of sexual violence (see para. 26 above). It also finds that this particularly low number conveys an incorrect impression of the prevalence of sexual violence 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 under this exception. The Committee also notes that even with a certificate from a prosecutor, victims do not have legal security in practice to access abortion.

**(c) Restricted access to contraception, including emergency contraception**

77. 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 non-autonomous access to funds. It also considers that the extension of the requirement of a prescription for contraception to emergency contraception, unreasonably delays access, thereby defeating its purpose. It also finds that the prohibition of sterilization for women but not for men constitutes gender-based discrimination.

**(d) Disproportionate hardship for rural women, women in situations of poverty or other form of vulnerability**

78. The Committee considers that marginalized women, including women with disabilities, economically and socially disadvantaged women, women in rural areas, survivors of violence and adolescent girls experience distinct and disproportionate hardships in accessing legal abortion services, including because of the lack of available services and owing to financial and geographical barriers. They are at a higher risk of unwanted pregnancies owing to lack of access to affordable modern contraceptives, including emergency contraception. They also face multiple intersecting obstacles in travelling abroad to access safe and legal abortion services, including geographical, economic and social barriers. Consequently, they are more likely to undergo clandestine and unsafe abortions 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 recommended in early pregnancy and some marginalized women may not be able to seek care within this time frame. Women who cannot afford a clandestine abortion in Poland or to travel abroad to access abortion are compelled to carry 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 careers and becoming financially independent.

#### (e) Absence of post-abortion care

79. The Committee considers that the lack of formal post-abortion care, combined with the fear instilled among women through the criminalization of abortion and the resulting reluctance to seek medical assistance, creates a high risk for their health and lives. Post-abortion care helps to address the consequences of unsafe abortion, reduce maternal morbidity and mortality and improve women's reproductive health. Women in Poland have no access to quality services for the management of complications resulting from abortion, nor to post-abortion counselling, education and family planning services, thereby impacting their right to health and to life.

### 3. Discriminatory gender stereotypes

80. A range of gender stereotypes and assumptions regarding sexual and reproductive health are reflected in laws and policies that restrict women's autonomy and are particularly pervasive. As it is commonly assumed that the predominant and natural role of women is as mothers and caregivers, a woman's decision to access abortion services is often deemed to be contrary to that role and to the view that women should prioritize childbearing. It is often assumed that women are emotional or incompetent decision makers, resulting in their decisions not to carry a pregnancy to term often being questioned and disrespected. Moreover, restrictive abortion laws usually embody assumptions that a pregnant woman's human rights are legitimately subordinated to the protection of the fetus. The Committee has explicitly held that restrictive abortion laws and practices embody gender stereotypes.

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

### 4. Lack of access to sexual health education

82. The Committee finds that the State party has failed to prioritize the prevention of unplanned pregnancy through the provision of high-quality sexuality education, providing instead voluntary lessons given by persons without the necessary expertise and with an anti-abortion agenda. Its lack of provision of an age-appropriate, culturally sensitive, comprehensive and scientifically accurate curriculum on relationship and sexuality education, including on contraceptive use, safe abortion and post-abortion care, violates article 10 (h) of the Convention.

### 5. Findings

83. The State party's abortion laws and practice result in discrimination against women and inequality before the law. They discriminate against women on the grounds of sex by prohibiting a type of healthcare that only women require. The rights to equality and non-discrimination require States parties to ensure that health services accommodate the fundamental biological differences between men and women in reproduction.[3] The State party's abortion laws and practice are discriminatory because they deny women the moral agency related to their reproductive autonomy. There are no similar restrictions on health services needed only by men. It thus treats men and

[3] See *Whelan v. Ireland* (CCPR/C/119/D/2425/2014).

women differently based on sex for the purposes of article 2 (c), (d), (f) and (g) of the Convention.

84. The State party's abortion laws and practice constitute intrusive interference in a woman's decision as to how best to cope with her pregnancy and violate article 16 (1) (e) of the Convention. A woman's decision to abort falls within the scope of her right to privacy, and the prohibition and criminalization of abortion interfere with her decision not to continue her pregnancy. Decisions as to whether to have children or not must not be limited by Government. Women in Poland seeking 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. None of the options 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 party interferes arbitrarily in their decision-making.

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

86. The State party's abortion laws and practice fail to provide women with the healthcare they require and violate their rights to non-discrimination and equal access to healthcare, in violation of article 2 (c), (d), (f) and (g) and article 12 of the Convention. The State party's abortion laws and practice deny women, based on sex, access to medical services they need to preserve their autonomy, dignity and physical and psychological integrity. In contrast, male patients are not expected to disregard their health needs and moral agency in relation to their reproductive functions.

87. The State party's abortion laws and practice cause serious harm to women by severing the continuum of reproductive healthcare and violate article 12 of the Convention. The obligation to respect women's rights to access healthcare, in line with article 12, requires States parties to refrain from obstructing action taken by women in pursuit of their health goals. Women seeking abortion are, under the law, unable to continue receiving medical care and health insurance coverage for their treatment from the healthcare system. The ordeal they endure could be avoided by lifting the prohibition on terminating their pregnancy under the care of health professionals whom they trust or in the familiar environment of their country. The legal framework's chilling effect on doctors further disrupts the provision of medical care and advice that women need.

88. The State party's abortion laws and practice force women to choose between continuing their pregnancy, seeking clandestine abortion services or travelling to another country in order to access legal abortion services subject women to conditions of intense physical and mental suffering and result in cruel, inhuman or degrading treatment.[4] Women deciding to end a pregnancy must seek clandestine abortion

[4] See *Mellet v. Ireland* (CCPR/C/116/D/2324/2013).

services or travel abroad and bear the psychological, physical and financial burdens that pursuing this solution imposes on them. Women suffer a high level of mental anguish amounting to cruel, inhuman or degrading treatment as a direct result of the State party's abortion laws and practice.

89. The State party'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 women's right to health. It violates women's and girls' right to access information and advice on family planning.

90. The State party's abortion law and practice disproportionately harms women in marginalized and vulnerable situations who, for a range of reasons, face particular barriers in accessing legal abortion services and who cannot easily leave the country to access safe abortion services abroad. Consequently, they are forced to either continue an unwanted pregnancy or seek clandestine and unsafe abortion services, with the resulting consequences for their health and lives.

91. The State party's abortion laws and practice also undermine 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. Abortion law and practice in the State party undermine women's equal enjoyment of their rights to education and employment, since child-rearing responsibilities often disproportionately fall on women to fulfil.

92. The State party'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;[5] to access health services; and to access information and advice on family planning; as guaranteed under articles 2 (c), (d), (f) and (g), 5, 10 (h), 12, 14 (2) (b), 15 and 16 (1) (e) of the Convention.

## C. Principal findings of violations under the Convention

93. 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) and (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 (2010) on the core obligations of States parties under article 2 of the Convention, 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.

## D. Grave or systematic nature of the violations

### Grave

94. The Committee's jurisprudence allows an understanding of what is defined as a grave violation. In the inquiry concerning the Philippines, the Committee stressed that its "determination regarding the gravity of the violations takes into account,

[5] Ibid.

notably, the scale, prevalence, nature and impact of the violations found" (CEDAW/C/OP.8/PHL/1, para. 47). In the inquiry concerning the United Kingdom of Great Britain and Northern Ireland, the Committee assessed "the 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" (CEDAW/C/OP.8/GBR/1, para. 81).

95. 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 whose cases fall outside the exceptional circumstances under which abortion is legal and accessible have no legal entitlement to end a pregnancy safely and legally inside the State party. Instead, they are compelled to pursue one of three options: (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 the trauma associated to such an ordeal. Moreover, women qualifying for abortion services under the law often cannot access those services in practice, meaning 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 lifelong health implications and, at times, death as result.

96. 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, which constitutes gender-based violence against women.

**Systematic**

97. The Committee has interpreted the term systematic by looking at the persistent pattern of acts that do not result from a random occurrence, or which are not isolated acts. Following its jurisprudence on Mexico in this regard, in the inquiry concerning the Philippines, the Committee 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 the light of the presence of a significant and persistent pattern of acts that do not result from a random occurrence."

98. The State party'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. 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 and 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 or to seek clandestine and potentially unsafe abortion services.

# VII. Recommendations

99. **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 (CEDAW/C/POL/CO/7-8) and recommends the following to the State party.**

## A. Legal and institutional framework

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

(a) **Ensure that access to abortion be provided 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 centre of policymaking and lawmaking related to sexual and reproductive health services, and therefore make the legal amendments necessary towards the 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, that they receive sexual and reproductive education, and that they have 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 healthcare professionals and private individuals providing any form of assistance to women who need an abortion;**

(e) **Adopt evidence-based protocols for healthcare professionals in line with the *Abortion Care Guideline* of the World Health Organization, ensure the training of medical students and continuous training on the protocols and prohibit the dissemination and usage of guidelines for healthcare professionals developed by anti-abortion lobbyists;**

(f) **Take effective measures to ensure that women can make autonomous decisions about all aspects of their sexual and reproductive health and 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 misuse of the conscientious objection is prosecuted;**

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

(i) **Develop and implement a comprehensive strategy aimed at community and religious leaders, teachers, girls and boys, and women and men so as to eliminate 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;**

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

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

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

## B. Sexual and reproductive health rights and services

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

(a) **Provide non-biased, scientifically accurate and rights-based counselling and information on sexual and reproductive health and rights 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 with respect to safe and modern contraception, including oral, long-term and permanent forms of contraception, and 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, and 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 the 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 and rights and services, including on access to modern contraception;**

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

(i) **Stop collecting data on pregnancies and dismantle the "pregnancy register";**

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