



Poland's Compliance with the International Covenant on Economic, Social, and Cultural Rights

Suggested List of Issues Relating to Women's Rights

Submitted by The Advocates for Human Rights,

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Founded in 1983, **The Advocates for Human Rights** ("The Advocates") is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publication. The Advocates is the primary provider of legal services to low-income asylum seekers in the Upper Midwest region of the United States.

EXECUTIVE SUMMARY

1. Poland fails to uphold its obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR).
2. Domestic violence remains prevalent in Poland. Despite advances in legislation for expanded protections, the law still does not cover incidents of violence involving unmarried intimate partners or former and/or non-cohabiting intimate partners. Psychological violence is rarely charged without a corresponding charge of physical violence. System actors treat charges of threats of violence or coercion as separate incidents, instead of patterns of behavior. Due to the gaps in legislation, many victims are left unprotected and without remedies.
3. Women face significant barriers to safe abortion access. A recent Constitutional Court ruling effectively eliminated one of three grounds for legal abortion, leaving many women either to seek unsafe abortion or go outside the country. One woman died as a result of delayed abortion care since the ruling. These restrictions leave women at risk of mental and physical harm amounting to torture or cruel and inhumane treatment.

I. Domestic Violence (Concluding Observations para. 30)

4. In its 2016 Concluding Observations, the Committee on Economic, Social, and Cultural Rights (“Committee”) expressed concern about insufficient implementation of protection measures for domestic violence victims.¹ The Committee recommended Poland ensure protection orders are immediately enforced, increase the number of shelters available to victims of domestic violence, and conduct awareness-raising campaign about the harms of violence against women.²
5. Poland ratified the Istanbul Convention on August 1, 2015.³ Claims that the Istanbul Convention promotes “gender ideology” and will destroy the traditional family, however, have led to threats to withdraw from the treaty. These threats became reality in 2020, when Justice Minister Zbigniew Ziobro filed an “official request” with the Ministry for Family, Work and Social Policy (“Labour Ministry”) to begin the process of withdrawing from the Istanbul Convention.⁴ These efforts to withdraw from the domestic violence treaty threaten the safety of domestic violence victims and embolden perpetrators.
6. The Polish Government undertook the important step of criminalizing stalking in 2011 under Article 190a of the Criminal Code, increasing the penalties for the crime in 2020.⁵

¹ Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the Sixth Periodic Report of Poland*, 26 October 2016, U.N. Doc. E/C.12/POL/CO/6. ¶30.

² Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the Sixth Periodic Report of Poland*, 26 October 2016, U.N. Doc. E/C.12/POL/CO/6. ¶31.

³ Council of Europe, “Chart of Signatures and Ratifications of Treaty 210,” (Accessed July 7, 2021), <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/210/signatures?module=signatures-by-treaty&treaty=210>.

⁴ Claudia Ciobanu, “Poland’s Replacement for Istanbul Convention Would Ban Abortion and Gay Marriage,” *Balkan Insight* (Mar. 15, 2021), <https://balkaninsight.com/2021/03/15/polands-replacement-for-istanbul-convention-would-ban-abortion-and-gay-marriage/>.

⁵ Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 60 (accessed Jan. 18, 2022).

As many of the current statutes exclude former intimate partners from their scope, the criminalization of stalking is an important mechanism for protecting victims. The introduction of ex-officio prosecution in rape cases is another welcome step and has the potential to decrease the number of statements a victim must make in criminal prosecution.⁶ This change is a step forward in potentially reducing the burden and traumatization victims face when reporting sexual violence.

7. Despite some legislative advances, large gaps remain. Both the Law on Combating Family Violence and the National Programme on Equal Treatment view the issue of domestic violence with a “family focused” lens and a “one size fits all” solution, instead of working within a framework that recognizes that the majority of victims are women.⁷ This approach limits the type of assistance available to victims and ignores the specific needs of women, such as economic empowerment and housing. The law and programme also neglect to mention dating violence or former and/or non-cohabiting intimate partners, as do the criminal statutes addressing psychological and physical violence.⁸ These gaps leave many victims unprotected. When it comes to psychological violence, addressed by Articles 33 and 207(1) of the Criminal Code, GREVIO reported that these instances are often charged only when accompanied by physical violence. Finally, the current criminal statutes on threat and coercion are designed to address isolated incidents, not patterns of behavior.
8. Under Poland’s civil law, child custody legislation is particularly concerning. Both the proposed law and the revised draft National Programme on Equal Treatment, published April 2021, do not take into account the dynamics of domestic violence nor reflect best practice standards. The current Law on Family and Guardianship “sets out the principle that decisions on child custody and any limitations of parental authority shall be taken on the basis of the best interest of the child.”⁹ This can become problematic when determining child custody and can be construed as children should have contact with both parents in most circumstances, even when one parent is a victim of abuse. For instance, a civil society petition being debated, titled “Stop Parent Alienation,” would make shared custody the default in cases of separation or divorce.¹⁰ It would also mandate up to 2 years of imprisonment for a parent to impede the visitation rights of another parent.¹¹ The mandatory shared custody and visitation, if determined to be in the interest of the child, ensures there is continued contact between the parties.¹² When the legal system fails to take into account domestic violence in custody and visitation decisions, it places the victim at

⁶ Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 70 (accessed Jan. 18, 2022).

⁷ Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 18 (accessed Jan. 18, 2022).

⁸ Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 60 (accessed Jan. 18, 2022).

⁹ Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 56 (accessed Jan. 18, 2022).

¹⁰ Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 58 (accessed Jan. 18, 2022).

¹¹ Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 58 (accessed Jan. 18, 2022).

¹² Council of Europe, “GREVIO Baseline Evaluation Report: Poland,” <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 58 (accessed Jan. 18, 2022).

continued risk of abuse at the hands of her abuser. Without proper training for systems actors and appropriate infrastructure to prevent an abuser from exerting power and control through visitation and custody, victims remain at serious risk.

9. Poland's Blue Card procedure and services,¹³ a set of measures intended to standardize law enforcement response to domestic violence, are welcomed as a multi-agency cooperation, but there are several areas that need improvement. There is insufficient cooperation between law enforcement and the judiciary, leaving victims vulnerable.¹⁴ The services connected with the Blue Card procedure are gender-neutral, failing to address the specific needs of female victims, such as finding employment and long-term housing to reduce their dependency on offenders.¹⁵ The Blue Card procedure also fails to address harassment, intimidation, control or abuse in the context of dating violence or former and/or non-cohabiting intimate partners.¹⁶
10. Training for law enforcement is lacking. In November 2020, an amendment was passed that enabled law enforcement to issue eviction and restraining orders that remain in place for 14 days.¹⁷ The amendment, while still needing revision, has long been lobbied for by human rights activists.¹⁸ However, proper training is necessary for law enforcement to effectively issue the orders.¹⁹

11. Suggested questions relating to domestic violence:

- What steps has the government of Poland taken to ensure former and/or non-cohabiting partners are included in the Criminal Code definitions of domestic violence and psychological violence and on what timeframe?
- What measures has the government of Poland taken to ensure that assistance and services are specialized and meet the specific needs of women victims of violence?
- What trainings on domestic violence has the government of Poland required for individuals determining child custody in instances where domestic violence is involved? How often are these trainings delivered and how are NGOs that serve domestic violence victims involved in such trainings?
- What provisions are in place to determine whether domestic violence is present and to ensure systems actors take such violence into account when determining child custody and visitation?

¹³ <https://eige.europa.eu/gender-based-violence/methods-and-tools/poland/blue-card-police-procedure>

¹⁴ Council of Europe, "GREVIO Baseline Evaluation Report: Poland," <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 41 (accessed Jan. 18, 2022).

¹⁵ Council of Europe, "GREVIO Baseline Evaluation Report: Poland," <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 42 (accessed Jan. 18, 2022).

¹⁶ Council of Europe, "GREVIO Baseline Evaluation Report: Poland," <https://rm.coe.int/grevio-baseline-report-on-poland/1680a3d20b>, p. 61 (accessed Jan. 18, 2022).

¹⁷ Email with NGO, on file with author

¹⁸ Email with NGO, on file with author

¹⁹ Email with NGO, on file with author

- Please provide details on the measures in place to reduce harm to victims under the measures envisioned by the “Stop Parent Alienation” petition, i.e. default shared child custody and visitation.
- How has the government of Poland ensured it remains committed to the Istanbul Convention and its implementation? What reasons does the government have for considering withdrawal from the Istanbul Convention?
- Please provide details on what, if any, trainings are provided to law enforcement on the effective use of eviction and restraining orders?

II. Sexual and Reproductive Health (Concluding Observations para. 46)

12. In its 2016 Concluding Observations, the Committee expressed concern about Poland’s highly restrictive abortion laws and the number of unsafe abortions performed. The Committee was also concerned that medical professionals who invoke conscientious objection grounds against performing an abortion are not required to refer a woman to other services.²⁰ The Committee recommended Poland ensure abortion services are easily accessible and take measure to prevent unsafe abortion as well as provide post-abortion care.²¹ The Committee further recommended Poland establish an effective referral mechanism in cases where conscientious objection is invoked.²²
13. Poland’s “The Family Planning, Human Embryo Protection, and Conditions of Permissibility of Abortion Act” limits legal abortion to three cases: 1) if the pregnancy poses a threat to the health of the mother; 2) if there is a high probability of severe birth defects; or 3) if the pregnancy is found to be the result of an unlawful act, such as rape or incest.²³
14. In October 2020, the Polish Constitutional Tribunal found that the severe or fatal fetal anomaly exception to the abortion law violated the Polish Constitution.²⁴ In 2019, prior to the October ruling, an estimated 98 percent of abortions were administered on the grounds of a high probability of birth defects.²⁵ The ruling effectively constituted a full abortion ban.

²⁰ Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the Sixth Periodic Report of Poland*, 26 October 2016, U.N. Doc. E/C.12/POL/CO/6. ¶46.

²¹ Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the Sixth Periodic Report of Poland*, 26 October 2016, U.N. Doc. E/C.12/POL/CO/6. ¶47.

²² Committee on Economic, Social, and Cultural Rights, *Concluding Observations on the Sixth Periodic Report of Poland*, 26 October 2016, U.N. Doc. E/C.12/POL/CO/6. ¶47.

²³ The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act of 7 January 1993, Art. 4a. Available online at <https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/Polish%20abortion%20act--English%20translation.pdf>.

²⁴ Monika Pronczuk, "Poland Court Ruling Effectively Bans Legal Abortions," *The New York Times* (Oct. 23, 2020 updated Nov. 4, 2020), <https://www.nytimes.com/2020/10/22/world/europe/poland-tribunal-abortion.html>. The provision allowed abortions in cases of fetal abnormalities; the other two exceptions, for rape or to save the life of the mother, are rarely invoked although they remain legal. "Human Rights Defenders Coalition Meeting III," (November 2020). Source on file with authors.

²⁵ *Poland Enforces Controversial Near-Total Abortion Ban*, BBC News, 28 January 2021, <https://www.bbc.com/news/world-europe-55838210>.

15. These obstacles to abortion access have prompted more people to seek abortions outside the country or by unsafe means. Even before the October 2020 ruling, some 100,000 women sought abortions outside the country each year.²⁶ The Human Rights Committee has found that forcing women to travel to another country for an abortion for non-viable pregnancies, due to criminalization in their home country, amounts to cruel, inhuman or degrading treatment or punishment.²⁷ Within a mere six months period after the ruling, Abortion Without Borders received calls from 17,000 women in Poland and continues to receive about 800 calls a month from Poland.²⁸ Women are afraid to seek abortion in medical institutions and some seek abortions through illegal means, which could result in significant harm to their health and wellbeing.²⁹
16. Poland's restrictive abortion legislation has had a chilling effect for both women trying to access abortion and medical professionals providing it. Doctors may face up to three years in prison for carrying out an abortion outside the confines of the law.³⁰ In the most extreme cases, it violates the right to life. In November 2021, a 30-year-old woman died 22 weeks into her pregnancy because doctors did not intervene. Her family claims that the doctors refused to provide medical care to her because they feared facing the ramifications of the abortion law.³¹
- 17. Suggested questions relating to sexual and reproductive health:**
- What steps has the government of Poland taken to ensure women do not experience cruel, unusual, or inhumane treatment amounting to torture when accessing abortion care?
 - What measures has the government of Poland put in place to ensure doctors and other medical professionals provide access to safe abortion for women whose lives or health are in danger as a result of pregnancy?
 - What steps has the government of Poland taken to ensure doctors do not face criminal sanctions for providing abortion care?
 - What steps has the government of Poland taken to remove stigma and barriers around abortion access to prevent discrimination and violence against women?

²⁶ Office of the High Commissioner for Human Rights, "Poland Has Slammed the Door Shut on Legal and Safe Abortions – UN Experts," (27 October 2021), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26434&LangID=E>.

²⁷ *Mellet v. Ireland*, para. 9; *Whelan v. Ireland*, para. 9.

²⁸ *Poland: A Year On, Abortion Ruling Harms Women*, Human Rights Watch, 19 October 2021, <https://www.hrw.org/news/2021/10/19/poland-year-abortion-ruling-harms-women>.

²⁹ Human Rights Council General Assembly, *Visit to Poland: Report of the Working Group on the issue of discrimination against women in law and practice*, (25 June 2019) U.N. Doc. A/HRC/41/33/Add.2. ¶52.

³⁰ Federation for Women and Family Planning, "Systemic Rollback on Women's Rights – Update on Poland," <https://en.federa.org.pl/srhr-update-on-poland-apr-2021/>.

³¹ *Poland Clarifies Abortion Law After Protests Over Mother's Death*, BBC News, 8 November 2021, <https://www.bbc.com/news/world-europe-59206683>.