POLAND

SUBMISSION TO THE UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 76TH SESSION, 9-27 SEPTEMBER 2024





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Amnesty International is submitting the following information to the UN Committee on Economic, Social and Cultural Rights (hereinafter "the Committee") ahead of the third periodic report of the government of the Republic of Poland (hereinafter "Poland") at the Committee's 76th session in September 2024.

1. INTRODUCTION

Amnesty International is submitting the following information to the UN Committee on Economic, Social and Cultural Rights (hereinafter "the Committee") ahead of the third periodic report of the government of the Republic of Poland (hereinafter "Poland") at the Committee's 76th session in September 2024.

This submission sets out some of Amnesty International's key concerns and recommendations related to the implementation of the International Covenant on Economic, Social and Cultural Rights (hereinafter "the Covenant") by Poland. It highlights the human rights violations experienced by refugees and migrants in Poland; discrimination against LGBTI individuals; and the continued challenges around access to sexual and reproductive health services, the impacts of the criminalization of abortion, and the persecution of women human rights defenders.

Most issues cover the period from 2015-2023 when the Law and Justice Party was in government. Since then, a new government has come into power in December 2023, and has committed to introducing reforms relating to the independence of the judiciary and respect for human rights more generally. So far, no concrete reforms have been introduced in the areas covered in this submission.

2. GENDER EQUALITY (ARTICLES 2 AND 3)

Sexual and reproductive rights

Poland has one of Europe's most restrictive abortion laws. In Poland today, abortion is only legal when the health or the life of the pregnant person is at risk or when the pregnancy is the result of rape or incest. Performing your own abortion or the possession of abortion pills for a self-managed abortion is not a crime under Polish law, but any person or doctor who helps pregnant people with an abortion outside the two permitted grounds in the law may face up to three-years in prison. In practice, however, it is almost impossible for those eligible for a legal abortion to obtain one. Every year thousands of women leave Poland to access abortion care in other European countries, while others import medical abortion pills or seek extra-legal abortion in Poland. Polish women, particularly those in difficult socio-economic situations, have to depend on the crucial help from civil society organizations, with often limited resources. 2

On 22 October 2020, Poland's Constitutional Tribunal ruled that abortion on grounds of "severe and irreversible fetal defect or incurable illness that threatens the fetus' life" was unconstitutional. The ruling followed a case filed by members of the Polish Parliament and formally supported by the Prosecutor General. The ruling came into force on 27 January 2021.³

The ruling eliminated one of few legal grounds for abortion under Poland's highly restrictive law and its entry into force means that there is now effectively a near-total ban on abortion in Poland. Previously, over 90% of the approximately 1,000 legal abortions annually performed in Poland were on this ground. The ruling came as the COVID-19 pandemic restrictions made travel for abortion care prohibitively difficult and costly. It spurred the country's largest public protests in decades, led by women human rights defenders. Activists and women's rights organizations report that the ruling is having a significant chilling effect as medical professionals fear repercussions even in situations where abortion remains legal. Women human rights defenders and civil society organizations advocating for the ruling to be overturned and for reform of

¹ Oko Press, "46 tys. osób mogło przerwać ciążę w ostatnim roku dzięki Aborcji Bez Granic", 23 October 2023, https://oko.press/aborcja-bez-granic-raport

² Center for Reproductive Rights, "Poland: A Year On, Abortion Ruling Harms Women", 19 October 2021, https://reproductiverights.org/poland-a-year-on-abortion-ruling-harms-women/

³ Amnesty International. "Polska: Regres w dostępie do aborcji zagraża życiu i zdrowiu kobiet", 27 January 2022, https://www.amnesty.org.pl/polska-regres-w-dostępie-do-aborcji-zagraza-zyciu-i-zdrowiu-kobiet/

⁴ Oko Press, "Drastycznie zaniżone dane. Oficjalnie tylko 161 kobiet przerwało ciążę w 2022 roku. To fałsz", 28 July 2023, https://oko.press/161-tyle-kobiet-oficjalnie-przerwalo-ciaze-w-ostatnim-roku

⁵ Rzeczpospolita, "Szpital odmówił aborcji. "Lekarze obawiają się odpowiedzialności karnej", 6 December 2021, https://www.rp.pl/ochrona-zdrowia/art19170571-szpital-odmowil-aborcji-lekarze-obawiaja-sie-odpowiedzialności-karnej

Poland's abortion law have faced threats of violence and several protestors have been prosecuted by the government for creating an "epidemiological threat" due to protesting during the Covid-19 pandemic. ⁶

Women Human Rights Defenders

Women human rights defenders face harassment and persecution for their work. For example, in November 2021, the public prosecutor brought charges against Justyna Wydrzyńska a doula, an activist and cofounder of Women on the Web and Abortion Dream Team an informal initiative to educate and destigmatize abortion) - for "helping with an abortion" and "possession of medicines without authorisation for the purpose of introducing them into the market". Justyna Wydrzyńska supported a pregnant woman, who said she had been suffering from domestic violence, to access abortion pills. The woman never used the pills as they were found by her partner who notified the police. However, Justyna was accused and found guilty of the offence of helping with abortion. Justyna was sentenced to 8-months of community service. She appealed the verdict, and her case is still pending. It was the first time in Europe in which an activist is being prosecuted for aiding an abortion by providing abortion pills and when a human rights defender advocating for access to abortion has been sentenced under such law. At this time, there are several other cases brought against family members or activists who allegedly helped with an abortion being investigated or being processed in courts in Poland.⁸

Gender based violence

Under Polish law, rape is defined as "bringing another person to sexual intercourse" by "violence, unlawful threat or deception". The aggravated forms of this crime, which carry more severe penalties, are set out in paragraphs 3 and 4 of Article 197. This is not consistent with a consent-based definition of rape, and with what international human rights law standards require. One consequence of the wording of Article 197 is that trials tend to focus on how the victim "resisted" and how the perpetrator "overcame that resistance". Prosecutors and judges, concentrate on establishing whether the alleged perpetrator used force, illegal threats or deceit to overcome the victim's "resistance". This leads the authorities to focus not on the survivor's absence of consent, but rather on the level of opposition, how that was communicated, and for how long. An amendment to this law has recently been passed but has not yet entered into force. As per the new definition, which unequivocally recognizes that sex without consent is rape, rape is defined as "bringing another person to sexual intercourse by violence, unlawful threat, deception or otherwise despite the lack of his or her consent."

Recommendations:

Amnesty International recommends that the government of Poland:

- Provide access to comprehensive sexual and reproductive health services, goods and information, and enact a regulatory framework for abortion care aligned with the 2022 WHO Abortion Care Guideline
- Immediately drop all charges against human rights defender Justyna Wydrzyńska and refrain from bringing any other charges with the intention to criminalize her or other activists for providing support to people seeking an abortion.
- Remove Article 152, which criminalizes abortion, from the Criminal Code
- Enforce the amended definition of rape in the Criminal Code to recognize that sex without consent is rape, bringing it in line with international human rights standards.

⁶ Human Rights Watch, "Poland: Escalating Threats to Women Activists", 31 March 2021, https://www.hrw.org/news/2021/03/31/poland-escalating-threats-women-activists

Amnesty International, "Poland: Charges against activist accused of aiding an abortion must be dropped", 13 July 2022,
 https://www.amnesty.org/en/latest/news/2022/07/poland-charges-against-activist-accused-of-aiding-an-abortion-must-be-dropped-2/
 Amnesty International, An unstoppable movement: A global call to recognize and protect those who defend the right to abortion (Index: POL

^{40/7420/2023), 24} November 2023, https://www.amnesty.org/en/documents/pol40/7420/2023/en/

⁹ European Court of Human Rights, *M.C. v. Bulgaria*, Application 39272/98, judgment 4 December 2003.

¹⁰ Judgment of the Supreme Court of 18 February 2014 (case no. II KK 19/14), http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/II%20KK%2019-14.pdf

3. EQUALITY AND NON-DISCRIMINATION (ARTICLE 2)

The Equality Law has been the subject of multifaceted criticism from various entities, including NGOs, academics, legal practitioners. One of its criticisms is that the definition of discrimination in the act is narrow, and not consistent with the Polish Constitution or international human rights law. The Constitution, in Article 32(2), states that: "No one shall be discriminated against in political, social or economic life for any reason." The Equality Law on the other hand enumerates specific criteria: gender, race, ethnic origin, nationality, religion, denomination, beliefs, disability, age or sexual orientation, while omitting others, such as gender identity, socio-economic status, family status or marital status. As a result, certain groups, such as those living in poverty and other marginalized groups, are not protected by the law. Therefore, it should be urgently amended.

LGBTI rights defenders faced ongoing criminal and civil proceedings. Some, like activists who created the interactive map 'Atlas of Hatred', were subject to Strategic Lawsuits Against Public Participation (SLAPPs) by the government. In January 2022, during court proceedings brought by one activist who had been arbitrarily detained for 24 hours after the so-called Rainbow Night protest in 2020, the police officer who arrested him admitted: "We were instructed to stop all persons displaying the colours of LGBT, regardless of how they behaved." 12

These various discriminatory acts were also possible because Polish criminal law does not sufficiently protect against hate crimes, especially those committed against LGBTI people. This is well illustrated by the wording of Article 119 of the Criminal Code, which states that:

§ 1. Whoever uses violence or unlawful threat against a group of persons or an individual because of his national, ethnic, racial, political, religious affiliation or because of his irreligiousness, shall be subject to a penalty of imprisonment from 3 months to 5 years.

Similarly, Article 257 of the Criminal Code states that:

Whoever publicly insults a group of people or an individual person because of his national, ethnic, racial, religious affiliation, or because of his irreligiousness, or for such reasons violates the bodily integrity of another person, is punishable by imprisonment of up to 3 years.

These provisions contain several key gaps. They exclude several marginalized groups who often experience hate crimes in Poland, including LGBTI persons, women or human rights defenders. Furthermore, police are not obliged to investigate discriminatory motives in crimes as a part of routine investigation, as a result of which it is hard to officially identify a hate crime.

Recommendations:

Amnesty International recommends that the government of Poland:

- Amend the existing law in order to ensure that:
 - a. the list of protected characteristics included in Article 119 is an open-ended list and, as a minimum, explicitly includes age, disability, gender, gender identity, sexual orientation and social or economic status as protected characteristics;
 - b. extend the scope of the provision of art. 257 to an open-ended list of protected characteristics, which, as a minimum, should also include age, disability, gender, gender identity, sexual orientation and social or economic status;
 - c. any discriminatory motive associated with any other violent offence under Polish Criminal law is fully investigated in the prosecution and trial of suspects and reflected in court records.
- Comply with the relevant concluding observations of the UN treaty monitoring bodies regarding the
 obligation to respect, protect and fulfil the rights of LGBTI people as well as the recommendations
 made by the UN special procedures such as the UN Independent Expert on sexual orientation and

¹¹ Zofia Jabłońska, Karolina Kędziora, Krzysztof Śmiszek, and Maciej Kułak, *Ustawa o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania: komentarz*, 2017

¹² Adam Ploszka, *Status społeczno-ekonomiczny jednostki jako niedopuszczalne kryterium różnicowania sytuacji prawnej jednostki*, Państwo i Prawo, no. 2/2023, pp. 59-76.

- gender identity, UN Special Rapporteur on the situation of human rights defenders, Special Rapporteur on the rights to freedom of peaceful assembly and of association.
- Provide anti-discriminatory training to the police addressing LGBTI rights as an integral part of police trainings. Documents and implementation reports should be accessible to the public.

4. RIGHTS OF REFUGEES AND MIGRANTS (ARTICLES 2 AND 11)

Since 2017 there have been ongoing reports of Polish authorities intercepting people seeking international protection at Poland's border with Belarus, mainly in Terespol. ¹³ The UN Human Rights Committee and the ECtHR have found violations in cases concerning events of 2017, where it was alleged that Border Guards did not allow people at the border to submit asylum applications and that they were summarily returned to Belarus, in violation of the international obligation of non-refoulement. ¹⁴¹⁵¹⁶ Since 2021 a significant number of people have been trying to cross the Polish-Belarusian border outside official border crossings points. This resulted in more cases pending before the ECtHR, concerning the events at the Poland-Belarus border since 2021. ¹⁷

In August 2021, the situation on the Polish-Belarusian border worsened; a group of 32 Afghan asylum seekers complained that they were stranded at the border between Belarus and Poland for around seven weeks in inadequate conditions, and that Polish border guards had summarily returned them back to Belarus. Despite two interim measures by the ECtHR, Poland failed to provide the group with food, water, shelter, medical assistance and access to lawyers when they were in Poland. Their case remains pending before the Grand Chamber of the ECtHR. ¹⁸

In 2021, Poland summarily returned thousands of refugees and migrants at the border with Belarus. ¹⁹ Amnesty International reported "evidence of abuses [that] highlight[ed] 'hypocrisy' of unequal treatment of asylum seekers", with authorities violating rights of asylum seekers, including strip searches and other degrading treatment, in overcrowded detention centres. Nearly all people Amnesty International spoke with reporting "consistently disrespectful and verbally abusive behaviour, racist remarks and other practices that indicated psychological ill-treatment". ²⁰

On 20 August 2021, the Polish authorities suspended access to people seeking asylum at the border and ordered their immediate and summary expulsion from its territory. In October 2021, parliament adopted amendments to the Law on Foreigners and the Law on Granting Protection to Foreigners, granting the Polish Border Guard powers to reject any application for international protection without examination and

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https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001536/0/D20211536.pdf

¹³ European Court of Human Rights (ECtHR), M.K. and Others v. Poland, applications nos. 40503/17, 42902/17 and 43643/17, Judgement of the ECtHR, 23 July 2020, https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-203840%22]}; Amnesty International, Concerns Regarding the Amendment of the Law on Asylum, Letter to the Polish Ministry of Interior, 10 May 2017, https://www.amnesty.org.pl/wp-content/uploads/2017/06/37.2017.002-Blaszczak.pdf

¹⁴European Court of Human Rights (ECtHR), Judgement in the case of M.K. and Others v. Poland, applications nos. 40503/17, 42902/17 and 43643/17, Judgement of the ECtHR, 23 July 2020, https://hudoc.echr.coe.int/eng#[%22itemid%22:[%22001-203840%22]]

¹⁵ European Court of Human Rights (ECtHR), Sherov and Others v. Poland, applications nos. 54029/17 and 3 others), Judgement of the ECtHR, 4 Aprill 2024, https://hudoc.echr.coe.int/fre#[%22tabview%22:[%22document%22],%22itemid%22:[%22001-231867%22]}

¹⁶ Amnesty International, "Unia Europejska: Nowe dowody na przemoc na granicach i regularne pushbacki", 07 October 2021,

https://amnesty.org.pl/unia-europejska-nowe-dowody-na-przemoc-na-granicach-i-regularne-pushbacki/

¹⁷ European Court of Human Rights (ECtHR), H. K. and Others v. Poland, application no. 12752/22, published 12 June 2023, https://hudoc.echr.coe.int/eng#[%22itemid%22:[%22001-225423%22]]

¹⁸ European Court of Human Rights (ECtHR), *Court indicates interim measures in respect of Iraqi and Afghan nationals at Belarusian border with Latvia and Poland*, 25 August 2021, https://hudoc.echr.coe.int/app/conversion/pdf/?library=ECHR&id=003-7100942-9612632&filename=Interim%20measures%20Poland-Latvia-Belarus%20border.pdf

¹⁹ Oko Press, "Ile osób naprawdę pokonuje granicę polsko-białoruską? Dane niemieckich służb ujawniają skalę", 17 August 2023, https://oko.press/ile-osob-pokonuje-granice-polsko-bialoruska-dane-niemieckie

²⁰ Amnesty International, "Poland/Belarus: New evidence of abuses highlights 'hypocrisy' of unequal treatment of asylum seekers", 11 April 2022, https://www.amnesty.org/en/latest/news/2022/04/poland-belarus-new-evidence-of-abuses-highlights-hypocrisy-of-unequal-treatment-of-asylum-seekers/
²¹ Poland, Ordinance of the Minister of Internal Affairs and Administration amending the Ordinance on temporary suspension or restriction of border traffic at certain border crossing points (position 1536), 20 August 2021,

remove persons from Polish territory without providing any effective means of challenging an adverse decision.22

On 2 September 2021, the President declared a state of emergency on the border, limiting access to the area, including to journalists, media workers and NGOs.²³ When the constitutional time limit for the state of emergency expired, amendments to the Law on Border Protection, adopted in November 2021, gave powers to the Minister of Interior to impose further restrictions on freedom of movement in that area. With the only exception of Poland's Human Rights Commissioner's Office, humanitarian and human rights organisations, and human rights monitors are not allowed to access the so-called "exclusion zone". 24

People who entered Poland and were fortunate enough to eventually avoid a pushback to Belarus have consistently ended up in months-long detention in one of the closed centres for foreigners. The number of people held in the centres has increased significantly, including families with children. For example, in the first half of 2021, 482 persons were put in the closed centres, while in the second half of 2021, at least 3570 were placed in these centers. Detention has been automatically applied to persons crossing the Polish-Belarusian border regardless of individual factors which should influence decisions behind the application of detention.

According to Polish law, the minimum living space in these centers is of 2 m² per person. This is less than the standard in Polish prisons and twice as low as the standards under international law.²⁵ This leads to overcrowding in facilities and worsening conditions there. These centers provide little privacy, the people held in them have limited contact with the outside world, as well as limited access to sanitary facilities, doctors, psychologists or legal assistance. Persons detained in these centers for foreigners also draw attention to poor treatment by Border Guard officers, consisting of disrespectful and insulting behavior, even racist remarks.²⁶ Since mid-2021 until the end of 2023 at least 55 migrants and refugees were reported by Oko Press journalists²⁷ to have died due to lack of medical care, malnutrition and exhaustion while stranded in the Polish-Belarrusian border area, where they lack the access to basic services and necessities.²⁸

As of January 2024, around 42,200 refugees from Ukraine were still living in group housing centres. despite their temporary nature, and faced challenges finding more permanent rental accommodation in Poland.²⁹ According to an amendment to the so called "special assistance act" adopted on January 13, 2023³⁰, refugees from Ukraine are required to cover part (up to 75%) of the cost of their stay in group housing centers which many people found unaffordable.31

On 13 June 2024 the Polish government decided for a second time to introduce a 90-day "exclusion zone" along 60 km of its border with Belarus. According to the regulations, journalists and civil society organizations cannot access the exclusion zone.³² and are therefore unable to legally observe the actions of Polish officials and report violations, shielding the authorities from public scrutiny. In the "exclusion zone", people on the move would also lack access to life-saving humanitarian aid and medical support.

On 12 July 2024, a further concerning amendment to the Criminal Code was introduced. Amongst other things, the amendment excuses public officials carrying weapons from liability where they use weapons in "self-defense" or 'pre-emptively' when the 'life, health and freedom' of law enforcement officials are

²² Poland, Law amending the Law on Foreigners and certain other laws (Statute book 2021, position 1918), 14 October 2021, https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001918/T/D20211918L.pdf

²³ Poland, Decree of the President of the Republic of Poland on the introduction of a state of emergency in the area of part of the Podlaskie Voivodeship and part of the Lubelskie Voivodeship (position 1612), 2 September 2021,

https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210001612/0/D20211612.pdf

²⁴ Law on the Amendments to the Law on State Border Protection and Certain Other Laws (Statute Book 2021, position 2191), 17 November 2021, https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20210002191/T/D20212191L.pdf

²⁵ Amnesty International, "Ośrodki all inclusive", Petition, https://www.amnesty.org.pl/osrodki-all-inclusive/

granicy

²⁷ Oko Press, "Miał zaledwie 23 lata. 55. ofiara śmiertelna kryzysu na granicy", 4 November 2023, https://oko.press/mial-23-lata-ofiara-smiertelna-na-

²⁸ Polish Ombudsman, Letter from the Ombudsman to the President of the Regional Court in Krosno, 25 January 2022, https://bip.brpo.gov.pl/sites/default/files/2022-02/RPO_sad_25.1.2022.pdf

²⁹ Amnesty International, "Summary of the annual research project "Refugees from Ukraine in Poland", 2023, https://www.amnesty.org.pl/wpcontent/uploads/2023/06/Podsumowanie-rocznego-projektu-badawczego-Uchodzcy-z-Ukrainy-w-Polsce EN.pdf

³⁰ Poland, Law on Amending the Law on Assistance to Citizens of Ukraine in Connection with the Armed Conflict on the Territory of That Country and Certain Other Laws (Statute Book 2023, position 185), 13 January 2023, https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20230000185/T/D20230185L.pdf

³¹ Rzeczpospolita, "Od września zmiany we wsparciu dla uchodźców z ukrainy. Ochrona nie dla wszystkich", 23 January 2024, https://www.rp.pl/polityka/art39729861-od-wrzesnia-zmiany-we-wsparciu-dla-uchodzcow-z-ukrainy-ochrona-nie-dla-wszystkich

Notes from Poland, "The renewed Poland-Belarus border crisis explained", 12 June 2024, https://notesfrompoland.com/2024/06/12/the-renewedpoland-belarus-border-crisis-explained

threatened during an 'unlawful attack on the inviolability of the state border'. The provision in question states as follows:

- "A Police officer, a Border Guard officer or a soldier of the Military Police does not commit a criminal offence, if in breach of rules on the use or application of means of direct coercion or firearms in the event of a direct and unlawful attack on the inviolability of the State border, uses or applies such means or firearms in connection with the performance of the following official activities or duties:
- 1) repelling a direct and unlawful attempt on the life, health or liberty of that police officer, Border Guard officer, Military Police soldier or other person or
- 2) counteracting activities directly aimed at an attempt on the life, health or freedom of that police officer, Border Guard officer, Military Police soldier or other person, or
- 3) resisting a person who disobeys a call to immediately abandon a weapon, explosive or other dangerous object, the use of which may endanger the life, health or freedom of that Police officer, Border Guard officer, Military Police soldier or other person, or who attempts to unlawfully seize the weapon from that Police officer, Border Guard officer, Military Police soldier or other person entitled to possess it- should circumstances require immediate action".33

Ahead of the vote on the amendment, Amnesty International expressed concern that this provision would increase refugees and migrants' risk of experiencing potentially lethal force by law enforcement, and reduce the possibilities of seeking accountability for the actions of police and border guards. It also noted that situations in which guards would be excused from liability under the amendment are extremely expansive and vaguely defined and the notion of 'pre-emptive' self-defence is not in line with international law and standards on the use of force and prone to abuse. 34

Recommendations:

Amnesty International recommends that the government of Poland:

- Respect the principle of non-refoulement and immediately stop pushbacks and collective expulsions of migrants and refugees at the border.
- Ensure access to asylum proceedings in Poland to all those seeking international protection at the border, and ensure an individual assessment of all asylum claims.
- Ensure that media, humanitarian and other civil society organization can access the border areas to provide assistance to people who may need it and to monitor and report on government actions
- Refrain from passing any law or amendment which would allow for the excessive use of lethal force of polish state officials against migrants and refugees.

https://www.sejm.gov.pl/Sejm10.nsf/PrzebiegProc.xsp?id=388E6C00C0BCACE9C1258B470043D88C

³³Poland, Project Law On Amending Certain Laws To Improve The Operations Of The Armed Forcesof The Republic Of Poland, The Police And The Border Guard

In The Event Of A Threat To State Security, 26 July 2024,

³⁴ Amnesty International, "Poland New Firearms Regulations Risk Undermining the Rule of Law", 10 July 2024, https://www.amnesty.eu/news/polandnew-firearms-regulations-risk-undermining-the-rule-of-law/

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