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August 19, 2022 6:52AM EDT

Submission to the Universal Periodic Review of Poland

November 2022

Introduction

1. This submission highlights Human Rights Watch's key concerns regarding the Polish government's compliance with its international obligations since its last Universal Periodic Review (UPR) in 2017. Since then, the country's human rights record deteriorated, with the government seriously undermining the rule of law and judicial independence. Since its previous UPR, the Polish government has also strengthened its control over the press and smeared media outlets and journalists critical of the government and ruling Law and Justice party (PiS). The government continued restricting women's rights and reproductive rights, as highlighted by the October 2020 ruling of the Constitutional Court that banned abortion in virtually all cases. The government created a hostile environment for and increasingly discriminated against LGBT people. The situation for migrants at the Polish-Belarusian border continued to be a serious problem, with people facing inhuman conditions without access to fair asylum procedures.

Rule of Law and Judiciary

2. The situation of the rule of law in Poland remains a matter of major concern. During the previous UPR in 2017, Poland accepted recommendations to ensure reforms respect and strengthen judicial independence and improve the delivery of justice. The country was further urged to ensure the

independent functioning and decision-making of the Constitutional Court free from any political interference.^[1] Since then, the situation has deteriorated.

3. The government has failed to address concerns related to the lack of independence and effectiveness of the Constitutional Tribunal, undermined since 2015 as a check on the executive.^[2] In response, in December 2017 the European Commission launched proceedings against Poland under Article 7(1) Treaty of the European Union due to breaches of rule of law, including concerns related to the lack of an independent and legitimate constitutional review.^[3] In its September 2020 rule of law report, the Commission noted that “[c]oncerns over the independence and legitimacy of the Constitutional Tribunal” remain unresolved.^[4] Key concerns extend to questions on the legitimacy of the composition of the Constitutional Tribunal, efforts to undermine its effectiveness and independence, refusal to implement some of its rulings, and its use by the executive to undermine rights.
4. The government has used the politically compromised Constitutional Tribunal to contest the binding nature of EU law in rulings from the Court of Justice of the European Union (CJEU).^[5] The Constitutional Tribunal was further used to undermine access to safe and legal abortion (see below) and to expedite the end of the term of the Polish Ombudsman.^[6]
5. Since the PiS took office, the Polish government sought to give the executive control over the hiring and dismissal of judges at all court levels and has effectively removed some sitting judges from their posts. The government has attacked the independence of the judiciary through politicized appointments to the Constitutional Tribunal and chambers of the Supreme Court, refusing to recognize duly appointed judges to the court and instead appointing its own preferred candidates.^[7] ^[8] The unlawfulness of these actions has been confirmed by the CJEU and the European Court for Human Rights (ECtHR), which ruled that “the procedure for appointing judges to the Civil Chamber of the Supreme Court had been unduly influenced by the legislative and executive powers”.^[9] The government further sought to strengthen its power over the judiciary by introducing a law in 2017 that lowered the retirement age of judges, which the European Commission said violated EU law.^[10] The politicized appointment of judges allowed the ruling majority to use the courts to address politically contentious issues on which it might not have succeeded in achieving legislative change through parliament, such as the de facto ban on access to legal abortions.^[11]

6. In 2017, a package of legislative changes to the judiciary in Poland created a disciplinary system that exposed judges to a threat of politically-motivated sanction. A new Disciplinary Office appointed by the Minister of Justice targeted judges who implemented EU law and spoke out against judicial reforms – an interference with their judicial independence. By late June 2020, the Disciplinary Office had brought 152 disciplinary proceedings against judges.[\[12\]](#)
7. In August 2020, over 1,200 judges were under investigation for having signed a letter addressed to the Organization for Security and Co-operation in Europe (OSCE) asking it to monitor the presidential elections in Poland.[\[13\]](#)
8. A law setting new standards of conduct for the Polish judiciary came into force in February 2020. The bill authorizes the Disciplinary Chamber at Poland's Supreme Court to punish judges for engaging in “political activity.”[\[14\]](#) Under this legislation, any judge who would question judicial independence in Poland may be punished with fines, salary cuts, or dismissal from office.[\[15\]](#) After Poland failed to dissolve the Disciplinary Chamber following a CJEU ruling last year, the EU Commission applied to the CJEU in September 2021 for the imposition[\[16\]](#) of daily fines for non-compliance with the court's order. A draft law recently proposed by President Duda to end the row with the EU over the Disciplinary Chamber fails to address key concerns.[\[17\]](#)
9. *States should urge the government of Poland to:*
 - Abolish the Disciplinary Chamber, immediately halt disciplinary proceedings against judges and prosecutors and review and reinstate judges who have been suspended;
 - Revise the recently proposed bill on the Disciplinary Chamber of the Supreme Court to ensure that it is consistent with EU law and safeguards the independence of the judiciary;
 - Address concerns related to the appointment and dismissal of judges, including the President and Vice-President of the Constitutional Tribunal, as well as concerns on its functioning and lack of independence. Reforms should ensure compliance with ECtHR and CJEU judgments.

Women's Rights

10. During its UPR in 2017, Poland accepted recommendations to ensure protection of women's right to access abortions and other reproductive healthcare and services. It also accepted recommendations to tackle violence against women, including by harmonizing national legislation with the provisions of the Istanbul Convention and providing funding for care centres and shelters for women and children victims of domestic violence. [\[18\]](#) Poland has failed to fulfill these commitments; on the contrary, the government further curbed women's rights in all mentioned areas.
11. An October 2020 ruling of the politically-compromised Constitutional Tribunal banned access to legal abortion in virtually all cases.[\[19\]](#) Since the ruling came into effect in January 2021, at least three women have died after being denied access to abortion.[\[20\]](#)
12. In July 2017, the government limited access to emergency contraceptive pills, which since July 2017 are no longer available over the counter but require prescriptions,[\[21\]](#) despite the European Commission's approval of over-the-counter sales of emergency contraception without a doctor's visit or prescription.[\[22\]](#) Under the "conscience clause," or conscientious objection, medical professionals may refuse to perform abortions or prescribe emergency contraception pills on the grounds of personal or religious belief, adding further barriers of access to reproductive health care.[\[23\]](#) [\[24\]](#)
13. The Polish government has also targeted women's rights groups through raids and denial of public funding. Ruling party officials and leaders and allies including church-backed groups have publicly smeared women's rights organizations and activists, mischaracterizing their work as dangerous to families and traditional values. Government agencies have put state employees who support women's rights protests or collaborate with women's rights groups through disciplinary hearings and threatened their jobs. High-level PiS leaders and civil servants have championed retrogressive laws and policies, sought to reinforce traditional gender roles, disparaged feminism, and publicly discouraged efforts to combat violence against women.[\[25\]](#)
14. Several women's rights defenders have faced detention or politically motivated criminal charges, including for allegedly praising vandalism of churches, obstructing religious services, and creating an "epidemiological threat" for protests held during the Covid-19 pandemic.[\[26\]](#) Some face ongoing charges.
15. Women's rights and other human rights groups have received bomb and death threats for supporting the right to abortion. In some cases, police

minimized the security risks and did not commit to undertaking full investigations into the threats. The sense of insecurity for activists is heightened by government rhetoric and media campaigns aiming to discredit them and their work, which foster misinformation and hate that can put their safety at risk.[\[27\]](#)

16. Measures to prevent and respond to domestic violence and to support victims, such as through provision of shelter spaces and psychological and legal assistance, are inadequate, underfinanced, and do not meet obligations under the Istanbul Convention.[\[28\]](#) Government officials have threatened to withdraw from the Istanbul Convention, with the Minister of Justice in 2020 affirming his intent to pursue withdrawal even as reports of domestic violence increased during Covid-19-related lockdowns.[\[29\]](#) [\[30\]](#)

17. *States should urge the government of Poland to:*

- Decriminalize abortion in all cases, and adopt necessary guidelines to ensure women and girls can access safe and legal abortion, emergency contraception, and other reproductive health care in a timely manner and without barriers or burdensome requirements;
- Uphold rights to freedom of assembly and expression of women's and other human rights defenders, investigate threats against them, ensure they are able to conduct their work safely, and counter public campaigns and rhetoric aimed at spreading misinformation about and generating hatred toward women's and human rights groups;
- Ensure availability of immediate and longer-term protection mechanisms for those experiencing domestic violence and their application and enforcement by police and judicial authorities, including protection orders against abusers.

Sexual Orientation and Gender Identity (SOGI)

18. During the 2017 UPR, Poland accepted the recommendations to prohibit discrimination, in a comprehensive manner, including on the basis of sexual orientation and gender identity, in all areas and sectors, in particular taking into account access to education, health, social protection, and housing, and to combat violence and discrimination against lesbian, gay, bisexual and transgender (LGBT) persons.[\[31\]](#)
19. The situation for people belonging to the LGBT community has deteriorated in recent years. LGBT activists report an increasingly hostile environment. To

date, hate crime provisions in the Criminal Code do not include crimes committed on the basis of sexual orientation or gender identity, and LGBT individuals reported that government response to reported threats or attacks is inadequate.[32]

20. The government's increasing attacks on LGBT rights as part of its "anti-gender ideology" campaign intensified in February 2022, when legislation was passed in Parliament that would give government "educational welfare officers" the authority to decide what extracurricular or educational activities can occur in schools, and establish a complex bureaucracy around approving or refusing such activities. Non-governmental groups are often the only providers of comprehensive sexuality education in Poland, where the school curriculum[33] favors misinformation about reproductive health and sexuality rather than providing evidence-based sex education in line with international[34] and regional[35] standards. When he vetoed the law in March 2022, Poland's President said it should be put aside "for now." [36] An earlier bill that would essentially criminalize sex educators remains with government committees and could be reintroduced at any time.[37] During his reelection[38] Duda repeatedly used hostile rhetoric against LGBT people, pledged to "defend children from LGBT ideology." [39]
21. One-third of Polish localities across the country adopted "Resolution against LGBT ideology" or "Charter of Family Rights." [40] Although such designations do not entail any legal consequences, they contribute to a hostile environment for and discrimination against LGBT people, with some reporting fear for their safety.[41] At least three authorities revoked their anti-LGBT-declarations over fears of losing EU funds.[42]
22. In August 2020, several LGBT activists were arrested on the basis of an overly broad blasphemy law for placing rainbow flags on public monuments. [43] Under Article 196 of Poland's criminal code, a person who "offends the religious feelings of others by publicly insulting a religious object or place of worship" may face up to two years in prison.[44] In May 2019 police invoked this article for arresting an artist over creating and distributing posters of Virgin Mary with a rainbow halo.[45]
23. *States should urge the government of Poland to:*
 - Condemn at highest political level all forms of anti-gender rhetoric, including statements and actions that encourage hostility toward LGBT people;

- Take immediate action on national, regional, and municipal levels to repeal LGBT-Ideology free zone declarations and resolutions discriminating against LGBT people;
- Amend current hate crime provision to include crimes against a person based on their sexual orientation or gender identity;
- Reject proposals to restrict the right to education and the right to health by limiting the provision of comprehensive sexuality education by NGOs, who are often the sole providers of such vital information.

Migrants and Asylum-Seekers

24. The solidarity of Polish people in its open reception of more than 1.9 million refugees from Ukraine, as of March 17, has been extraordinary and laudable. As the humanitarian crisis unfolds, the Polish government must be vigilant in identifying and protecting vulnerable groups, including separated and unaccompanied children, people with disabilities, third country nationals, and others, while managing both to meet the emergency needs of all people displaced from Ukraine as well as taking measures to provide sustained support for what could be a protracted situation.
25. The situation for migrants at the Polish-Belarusian border remains a serious human rights concern in the country. In 2017, Poland accepted recommendations on the protection of migrants' rights and committed to respect the principle of non-refoulement.[\[46\]](#)
26. Instead, credible reports of pushbacks into Belarus increased. Poland also failed to protect migrants' right to fair asylum procedures. Poland adopted problematic legislations that further restricts asylum seekers' access to asylum procedures, including passing an amendment in August 2021 to regulate temporary suspension or restriction of border traffic at certain border crossings. The amendment led to persons who are not authorized to enter Poland being instructed to leave the territory immediately and returned to the state border line. In October 2021, the Polish Parliament amended the Act of Foreigners, effectively giving legal cover for pushbacks.[\[47\]](#)
27. With increasing number of migrants irregularly crossing from Belarus to Poland, in September 2021 the Polish government declared a state of emergency on its border with Belarus, banning journalists, activists, humanitarian aid workers, and others from accessing the border area.[\[48\]](#)

Polish authorities committed serious abuses, including pushbacks, violence, and separation of families.^[49] At least 21 people died at the border area.^[50]

28. According to Poland's deputy commissioner for human rights, as of in February 2022, 1,500 people were held in guarded detention centres under inhuman conditions, including at least 400 children.^[51]
29. By pushing back people to dire conditions in Belarus, including being deprived food and water, where they do not have access to asylum procedures and in some cases are met with violence, and by separating families, Poland breached obligations under EU, human rights, and refugee law including the prohibition on sending anyone to a country where they face a real risk of torture or other prohibited ill-treatment.^[52]
30. *States should urge the government of Poland to:*
 - End summary and collective expulsions of migrants at the border to Belarus;
 - Stop all abuses against migrants at the border with Belarus, including violence and theft and the separation of families; investigate and hold to account those responsible for such abuses, including border and security officials and their commanding officers;
 - Provide migrants at the border access to fair asylum procedures, including the opportunity to lodge claims for protection in Poland and safeguards against refoulement or return to a country where they are likely to face persecution, ill-treatment, or inhuman and degrading conditions;
 - Use immigration detention as an extraordinary measure of last resort, and prohibit the detention of persons with disabilities; children; families with children; and detention based solely on unlawful entry or reentry or detention or solely for having sought asylum.

Freedom of Media and Expression

31. During its previous UPR in 2017, Poland accepted recommendations to guarantee freedom and independence of the media and ensure that rules regarding media ownership comply with EU law.^[53]
32. Instead, Poland continues attacks on independent media. According to Reporters Without Borders (RSF), Poland dropped from 18th to 64th place in its media freedom ranking since PiS came into power in 2015. The government strengthened control over the press and continued its smear

attacks on media outlets and journalists critical of the government and ruling party.^[54] Meanwhile, more than 200 journalists have quit or been fired, following the passing of a law in 2016 that allows the government to dismiss broadcasting executives.^[55]

33. The state of emergency imposed in September 2021 on Poland's border with Belarus bans journalists^[56] from reporting within a two-kilometer radius of the border and prevents them from covering issues of public interest. These restrictions have been condemned by Poland's Supreme Court.^[57]

34. The state of emergency has since been replaced by a new law effectively barring access to journalists, aid workers and human rights investigators to the border area.^[58]

35. *States should urge the government of Poland to:*

- Lift the ban on journalists reporting from the border areas and detention centers, and instead allow them to cover stories of public interest;
- Immediately halt smear attacks against journalists and activists and provide redress to those who fell victim to such attacks;
- Reverse the dismissal of journalists and broadcasting executives and immediately repeal respective legislation accordingly.

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- [13] Human Rights Watch, *World Report 2021*, Poland chapter, <https://www.hrw.org/world-report/2021/country-chapters/poland>.
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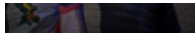
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