



ORAL intervention (3 MINUTES) at the 14th session of the Human Rights Council
TO THE REPORT OF THE SPECIAL RAPPORTEUR ON THE RIGHT OF EVERYONE TO THE
ENJOYMENT OF THE HIGHEST ATTAINABLE STANDARD OF PHYSICAL AND MENTAL
HEALTH
MISSION TO POLAND

4 JUNE 2010

The Center for Reproductive Rightsⁱ welcomes the report of the UN Special Rapporteur on the right to health on his visit to Poland. We share the concerns voiced by the Special Rapporteur in his report, particularly on issues concerning sexual and reproductive health and rights. The Center has been working in Poland in cooperation with the Federation for Women and Family Planningⁱⁱ for over a decade on these issues, raising concerns at the UN, providing trainings, and filing cases at the European Court of Human Rights.

The Center welcomes this report in adding to the ever-growing concern by international and regional human rights bodies on Poland's failure to ensure access to abortion, to make contraceptives accessible to women and to provide comprehensive, evidence-based sexuality education in schools. The response of the Polish government to these violations has been erratic and divisive, contributing directly to violations of women's human rights. As a result, women continue to suffer in silence and those who speak out or attempt to exercise their right often pay a price, experiencing isolation and harassment at the hands of both those opposing abortion and of authorities. The UN Special Rapporteur's report is thus critical to holding Poland accountable for its continuing violations, and to reiterate that women must be guaranteed access to abortion and other necessary reproductive health care services and information.

Although Poland has one of the most restrictive abortion regimes in Europe and recognizes the right to life of the fetus, its law does allow termination of pregnancy in limited circumstances.ⁱⁱⁱ However, in practice, women are often unable to undergo abortions to which they are legally entitled.^{iv} Moreover, some pregnant women have also been denied – sometimes life-saving – health care services because the legal framework around termination of pregnancy is so repressive that doctors are unwilling to provide care that might possibly have an effect on the fetus for fear of criminal repercussions.^v This is the case of a woman from Pila who was carrying a wanted pregnancy and needed treatment for an infection. She was denied care which led her to miscarry and tragically, shortly thereafter to her death.^{vi}

For over a decade, UN human rights bodies have impressed upon Poland that these conditions and restrictive laws are problematic and contrary to international law. A decade later the situation has not improved, as evidenced not only by the UN human rights bodies, but also by the Council of Europe Commissioner for Human Rights and the European Court of Human Rights. In addition to the Court's decision in *Tysiac v Poland*, as mentioned by the Special Rapporteur in his report, and which Poland has still failed to implement,^{vii} there are numerous other cases currently pending before the Court that highlight the dangers and human rights violations to which Poland's exceedingly restrictive and unclear abortion law framework exposes women.

These cases are just a slight reflection of the complete situation in Poland. As is well-known, restrictions on abortion do not eliminate the practice. The Council of Europe Commissioner for Human Rights has noted the low government figures for lawful abortions as a "warning signal" that

“illegal abortions are taking place in high numbers” with increased risk for women undergoing the intervention.^{viii} And, as far back as 1999, the Human Rights Committee also noted this concern.”^{ix} NGOs estimate that between 80,000 and 190,000 abortions are performed annually in the so-called ‘abortion underground,’ where doctors terminate pregnancies illegally for high fees.^x

In conclusion, while women are being denied access to abortions, the state has done little to support measures to prevent unwanted pregnancy. We welcome the UN Special Rapporteur’s emphasis on sexuality education in recognizing the state’s failure to implement in schools mandatory, comprehensive, evidence based sexuality education. Moreover, the Special Rapporteur’s concern about the existing of so called ‘family life education’ is well founded and supported the UN CESCR’s General Recommendation 14.^{xi}

Finally, the Center for Reproductive Rights would like to commend the Special Rapporteur’s recommendation on ensuring access to contraceptives, particularly on making them affordable to women. As noted by the Rapporteur, the Committee on Economic, Social and Cultural Rights has also recently addressed this issue in its concluding observations to Poland.^{xii}

The Center for Reproductive Rights submits that these findings reflect a continuing lack of recognition by the Polish authorities of the human rights violations occurring on a daily basis in Poland and their failure to respect, protect and fulfill the rights enshrined in the Covenant and other international human rights treaties.^{xiii}

The Center for Reproductive Rights urges the government of Poland to act swiftly to implement the recommendations contained in the report of the Special Rapporteur as well as the November 2009 recommendations of the UN Committee on Economic, Social and Cultural Rights, and to report back to the Human Rights Council on the measures taken.

The Center would also like to welcome the Special Rapporteur’s report on **maternal mortality in India**, a field that the Center has been advocating and litigating on with our partners in India for many years. We welcome the Rapporteur’s important contribution to addressing maternal mortality as a human rights issue and urge the government of India to fulfill its obligations under the Covenant by applying a rights-based approach to maternal mortality (see Section III of Report A/HRC/14/20/Add.2).

ⁱ The Center for Reproductive Rights is a non-governmental organization that uses the law to advance reproductive freedom as a fundamental human right that all governments are legally obligated to protect, respect and fulfill, and has had Special Consultative Status with the Economic and Social Council of the United Nations since 1997.

ⁱⁱ The Polish Federation for Women and Family Planning is a non-governmental organization that works to advance gender equality and reproductive rights. They have had Special Consultative Status with the Economic and Social Council of the United Nations since 1999.

ⁱⁱⁱ FEDERATION FOR WOMEN AND FAMILY PLANNING, REPRODUCTIVE RIGHTS IN POLAND: THE EFFECTS OF THE ANTI-ABORTION LAW 12 (Wanda Nowicka ed., 2008), available at http://www.federa.org.pl/publikacje/report%20Federa_eng_NET.PDF [hereinafter FWFP, The Effects of the Anti-Abortion Law].

^{iv} FWFP, The Effects of the Anti-Abortion Law, *supra* note iii, at 17-18.

^v FWFP, The Effects of the Anti-Abortion Law, *supra* note iii, at 21.

^{vi} Z v Poland, European Court of Human Rights communicated cases, 19 June 2009, <http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=46132/08&sessionid=54639017&skin=hudoc-cc-en>.

^{vii} Council of Europe, Current State of Execution, http://www.coe.int/t/DGHL/MONITORING/EXECUTION/Reports/Current/Poland_en.pdf.

^{viii} Memorandum to the Polish Government, *Assessment of the progress made in implementing the 2002 recommendations of the Council of Europe Commissioner for Human Rights*, 20 June 2007, available at <https://wcd.coe.int/ViewDoc.jsp?id=1155005&Site=CommDH&BackColorInternet=FEC65B&BackColorIntranet=FEC65B&BackColorLogged=FFC679>, para 98.

^{ix} *Concluding Observations of the Human Rights Committee: Poland*, 66th Sess., para. 10, U.N. Doc. CCPR/C/79/Add.110 (1999). The Human Rights Committee is the independent United Nations body that monitors compliance with the International Covenant on Civil and Political Rights by its State parties.

^x FWFP, *The Effects of the Anti-Abortion Law*, supra note iii, at 27.

^{xi} Committee on Economic, Social and Cultural Rights, *General Comment 14: The Right to the Highest Attainable Standard of Health (Art. 12)* (22nd Sess., 2000), § 34, U.N. Doc. E/C.12/2000/4 (“States should refrain from limiting access to contraceptives and other means of maintaining sexual and reproductive health, from censoring, withholding or intentionally misrepresenting health-related information, including sexual education and information...”).

^{xii} *Concluding Observations of the Committee on Economic Social and Cultural Rights: Poland*, 43rd Sess., para. 27, UN Doc. E/C.12/POL/CO/5 (2009) (The state party “does not guarantee basic services in the area of sexual and reproductive health, and that it does not ensure the provision of contraception and family planning services in the public health system.” CESCR further regretted “the decision of the State party not to include family planning services in the State budget.” The Committee reiterated its earlier recommendation calling on Poland “to provide family planning services through the public health-care system, including making contraceptives available at affordable prices.”)

^{xiii} See, e.g., *Concluding Observations of the Committee on Economic Social and Cultural Rights: Poland*, 43rd Sess., para. 27, UN Doc. E/C.12/POL/CO/5 (2009) (“The Committee notes with concern that the State party did not take sufficient measures to implement its previous recommendation with regard to these issues. The Committee recommends that the State party provide adequate access to basic services in the area of sexual and reproductive health.”).