

September 24, 2012

Ewa Kopacz  
Marshall of the Sejm of the Republic of Poland  
Ul. Wiejska 4/6  
PL – 00-902 Warsaw

Madam Marshall,

The Center for Reproductive Rights respectfully submits the following letter to the esteemed Members of the Polish Parliament for their consideration and deliberation on the draft bill “Conscious Parenthood” [print no. 562] (the Bill). The Bill aims to liberalize current regulations on abortion, making it legal until the 12th week of pregnancy, introduce free/subsidized contraception, and ensure the right to prenatal genetic tests and comprehensive sexuality education in schools.

The Center for Reproductive Rights (the Center) is an international human rights non-governmental legal advocacy organization that provides international and comparative legal analysis on reproductive health related issues to governments, inter-governmental bodies, including the United Nations, the Council of Europe and the European Union, and to non-governmental organizations around the world. The Center strongly urges the Polish Parliament to support the Bill as it is necessary to ensure the basic reproductive rights of Polish women. If adopted, this law would yield widespread positive outcomes for women's health and wellbeing and, thus, for the wellbeing of the Polish population in its entirety.

As it stands now the existing Polish law allows for termination of pregnancy only in cases of serious threats to women’s life and health, severe and irreversible fetal impairment, and when a pregnancy is the result of a crime. However, in practice, women are often unable to obtain even the abortions to which they are legally entitled. Pregnant women have been denied crucial health care services due to the fact that the current law on abortion is unclear and lacks monitoring mechanisms. Further, the legal framework and practice currently function as a shield to doctors who object to performing abortions based on their conscience, and has no effective mechanisms by which to ensure that women are referred to non-objecting providers. The existing legal situation also, as pointed out repeatedly by the European Court of Human Rights, stifles the willingness of providers of reproductive health care services to provide any care that might possibly have an effect on the fetus for fear of repercussions.<sup>1</sup> As a result, women often procure clandestine abortions that may

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<sup>1</sup> See *Tysi c v. Poland*, App. No. 5410/03 Eur. Ct. H.R., para. 116 (2007); *R.R. v. Poland*, App. No. 27617/04 Eur. Ct. H. R. para. 193 (2011).

occur in unsafe conditions, posing a risk to their health or lives, or they travel to other European countries to obtain a legal abortion, which can impose a significant financial and psychological burden. Currently an estimated 80,000-200,000 women per year in Poland are forced to pursue clandestine abortions.<sup>2</sup> Notably lack of access to safe and legal abortions disproportionately affects poor, minority and young women who lack the financial resources to purchase safe clandestine abortion services or travel elsewhere.<sup>3</sup>

The European Court of Human Rights has recognized the dangers and human rights violations to which Poland's exceedingly restrictive and unclear abortion law framework exposes women. In *Tysi c v. Poland* (2007) and *R.R. v. Poland* (2011) the Court found that Poland violated its positive obligations under the European Convention on Human Rights to ensure practical and effective access to legal reproductive health services, including abortion and genetic prenatal testing.<sup>4</sup> These judgments, as well as two currently pending cases before the Court, reflect the continuing human rights violations scores of women in Poland face every day by the repeated denial of necessary and legal medical care.

In fact, international bodies have frequently impressed upon Poland that their abortion law is contrary to human rights law. As far back as 1999, the U.N. Human Rights Committee noted "with concern... [Poland's] strict laws on abortion which lead to high numbers of clandestine abortions with attendant risks to life and health of women."<sup>5</sup> A decade later, in 2009, the U.N. Committee on Economic, Social and Cultural Rights urged Poland to ensure women do not have to "resort to clandestine, and often unsafe, abortion because of refusal of physicians and clinics to perform the legal operations...."<sup>6</sup> In 2010, the U.N. Special Rapporteur on the Right to Health remarked that "access to certain reproductive health services, such as contraception, prenatal testing and legal abortion, is seriously impeded."<sup>7</sup>

As demonstrated by the situation in Poland, when access to safe and legal abortion is limited, women resort to unsafe abortion, with devastating consequences for their health, lives, and families. Evidence has consistently shown that women who wish to terminate their pregnancies will do so, whether or not abortion is legal.<sup>8</sup> As such, legal grounds largely shape the course for women towards a safe or an unsafe abortion. The U.N. Special Rapporteur on the Right to Health recently

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<sup>2</sup> See Polish Federation for Women and Family Planning, *Women in Poland: Sexual and Reproductive Health and Rights, Independent Report submitted to the U.N. Human Rights Committee* (Sept. 2004), available at [http://www.federa.org.pl/index.php?option=com\\_content&view=article&id=224&Itemid=141](http://www.federa.org.pl/index.php?option=com_content&view=article&id=224&Itemid=141).

<sup>3</sup> WORLD HEALTH ORGANIZATION (WHO), *SAFE ABORTION: TECHNICAL AND POLICY GUIDANCE FOR HEALTH SYSTEMS* 68 (2012) [hereinafter WHO, *SAFE ABORTION* (2012)].

<sup>4</sup> See *Tysi c v. Poland*, App. No. 5410/03; *R.R. v. Poland*, App. No. 27617/04.

<sup>5</sup> Human Rights Committee, *Concluding Observations: Poland*, para. 10, U.N. Doc. CCPR/C/79/Add.110 (1999).

<sup>6</sup> Committee on Economic, Social and Cultural Rights, *Concluding Observations: Poland*, para. 28, U.N. Doc. E/C.12/POL/CO/5 (2009).

<sup>7</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover – Addendum – Mission to Poland*, para. 24, U.N. Doc A/HRC/14/20/Add.3 (May 20, 2010) [hereinafter SRRH, *Mission to Poland* (2010)].

<sup>8</sup> WHO, *SAFE ABORTION* (2012), *supra* note 4, at 17.

released a report discussing criminalization of sexual and reproductive health services, which recommends that States decriminalize abortion and establish policies and programs to ensure access to safe and legal abortion services.<sup>9</sup> The report indicates that broad criminalization of abortion perpetuates and exacerbates stigma around this issue and results in women seeking illegal, and likely unsafe, abortions.<sup>10</sup> Similarly, the report recommends States to ensure the availability, accessibility and quality of modern contraceptives, and to standardize national curricula to ensure that sexual and reproductive health education is comprehensive and evidence-based.<sup>11</sup>

Accordingly, a more sound and effective approach to women's reproductive health in Poland would be to expand access to the full range of affordable and acceptable modern contraceptives and ensure mandatory comprehensive, evidence-based sexuality education in schools, as established by the Bill. The U.N. Special Rapporteur on the Right to Health notes that research confirms that Poland has one of the lowest rates of use of modern contraceptive methods in Europe — only 19 per cent compared with 81 per cent for Great Britain, 38.9 per cent for Italy and 29.5 per cent for Romania — and that this is most likely due to the many barriers Polish women face seeking to access contraceptives.<sup>12</sup> In addition, current sexuality education focuses narrowly on marriage and family and touch only to a very limited extent on issues of sexuality and procreation, merely promoting abstinence and traditional methods of family planning.

Poland's restrictive abortion law, lack of implementation even in the cases when the procedure is legal, and failure to ensure access to modern contraceptives and comprehensive sexuality education, are all serious shortcomings that are incompatible with international human rights law. Guaranteeing safe abortion services, prenatal testing, contraceptive access, and comprehensive sexuality education would both be good public health policy and is essential to protecting women's and adolescents' fundamental human rights.

Accordingly, we urge the Parliament to refer the Bill for the first reading followed by the parliamentary debate on its content or, as a minimum, to refer it for further work in relevant parliamentary committees.

We thank you for your kind consideration of this letter. Should you need further assistance, please do not hesitate to contact us.

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<sup>9</sup> Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, *Interim rep. of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, transmitted by Note of the Secretary-General*, para. 65(h), U.N. Doc A/66/254 (Aug. 3, 2011) (by Anand Grover).

<sup>10</sup> *Id.* paras. 34-36.

<sup>11</sup> *Id.* para. 65.

<sup>12</sup> SRRH, *Mission to Poland* (2010), *supra* note 8, at 8.

Sincerely,

Johanna Westeson  
Regional Director for Europe  
Global Legal Program  
Center for Reproductive Rights  
Phone: +46 8 642 20 11/ +46 708 806 116  
Email: [jwesteson@reprorights.org](mailto:jwesteson@reprorights.org)  
[www.reproductiverights.org](http://www.reproductiverights.org)