

AMNESTY INTERNATIONAL PUBLIC STATEMENT

11 January 2018
AI Index: EUR 37/7713/2018

Poland: Amnesty International's position on the proposal to further restrict access to abortion in Poland

January 2018

On 10 January 2018 in the late evening, the MPs of the lower chamber of Poland's parliament supported the proposal of anti-choice organization to severely restrict access to legal abortions in Poland. 277 MPs voted for the draft law to be referred to the parliamentary Committee for Social Policy and Family Affairs. 134 MPs were against. If the draft gets the support of the Committee, it will go back to the plenary. After that it will proceed for the final vote in the Senate.

How does the new proposal restrict access to abortion?

The proposed amendment to the 1993 Law on Family Planning would remove foetal impairment from the permitted grounds for termination of pregnancy. If adopted, the amendment would further restrict already limited access to abortion that would then be allowed only in two situations:

- if the pregnancy endangers the woman's life or health;
- where there is a legitimate suspicion that the pregnancy is the result of a criminal act.

Under existing Polish law, those who perform or assist in performing an abortion that does not meet the conditions set out in the law are subject to criminal prosecution. The existing law does not criminalize a woman who seeks or obtains an abortion and the draft amendment does not introduce criminalization of women either.

The current proposal was drafted by an anti-choice organization *Fundacja Zycie i Rodzina* (Life and Family Foundation) in November 2017. The draft amendment, supported by more than 800,000 signatures was submitted to the lower chamber of parliament (Sejm) at the end of November 2017. It is expected to go for the first hearing on 10 January 2018.

The media has widely referred to abortion on grounds of foetal impairment as "eugenic abortion", implying that termination of pregnancy in cases of severe or fatal foetal impairments is actually a form of "selection" based on foetal characteristics, as opposed to a pregnant woman's right to make decisions that safeguard her physical and mental health, both in the short and long-term.

Severe or fatal foetal impairments are serious medical conditions which often mean that the foetus may not survive birth, or for very long after birth. According to official statistics the majority (96% in 2016) of abortions in Poland are carried out on these grounds. Hence, if passed, the bill will have devastating consequences for the rights of women and girls in Poland who will have to travel abroad for a termination or resort to unsafe abortions in the country in turn risking their lives.

What is Amnesty International's position on access to abortion?

As a human rights organisation, Amnesty International's position on abortion is based on international human rights law and standards that are legally binding on Poland as a party to key human rights treaties. Sexual and reproductive rights are human rights. They guarantee that everyone should be able to make their own decisions about their bodies; get accurate information about their health care options; and have access to sexual and reproductive health services, goods and information.

Women and girls in Poland **have a human right to access** the full range of sexual and reproductive health information and services, including access to abortion services. In order to comply with international human rights law, governments must provide access to abortion not just in theory but also in practice. States have a legal obligation to ensure that access to abortion is effectively available to women and girls and free from any barriers or unnecessary delays.

International organisations like the World Health Organisation and UN human rights bodies agree that limiting abortion to only certain circumstances creates a [barrier](#) for women in accessing abortion services, even when they qualify for a legal abortion. Women are more likely to be able to access abortion services when they are available in a more general manner, for example, [on request in the early stages of pregnancy or on broad socio-economic grounds](#).

According to international human rights law, the minimum grounds under which women and girls should have access to safe and legal abortion include when the pregnancy is the result of rape or incest; when the pregnancy poses a risk to the woman's health; or in cases of severe or fatal foetal impairment. Abortion "on request" should be available without [restrictions](#) for adolescent girls, guaranteeing their best interests, and ensuring in law and practice that their views are always heard and respected in abortion decisions.

International law calls for the decriminalisation of abortion in all circumstances. No woman or girl should ever face criminal charges for having had an abortion regardless of their circumstances. Additionally, no medical professional should be prosecuted solely for providing abortion-related care to a woman who consented to an abortion. This does not prevent the state from prosecuting an abortion provider for criminal negligence, as in any other medical negligence case. Decriminalisation means removing the criminal sanctions that medical professionals face if found guilty of having administered or assisted in administering an abortion. Decriminalising abortion does not mean that abortion-related services will be unregulated.

What is Amnesty International's position on abortion on grounds of severe or fatal foetal impairment?

All women and girls should have the option to decide whether or not to continue a pregnancy, including in cases of severe or fatal foetal impairment. Severe or fatal foetal impairments are serious medical conditions which [often mean](#) that the foetus may not survive birth, or live for very long after birth. Amnesty International has followed the lead of human rights bodies in calling for access to safe and legal abortion services in cases of severe or fatal foetal impairment where women or girls wish to terminate the pregnancy on these grounds.

UN human rights bodies call for states to ensure access to abortion services in cases of foetal impairment.¹ These expert bodies have not limited their calls for access to abortion to cases in

¹ CEDAW Concluding Observations: Dominican Republic, CEDAW/C/DOM/CO/6-7 (2013), para. 37(c); CRC Concluding Observations: Costa Rica, CRC /C/CRI/CO/4 (2011), para. 64(c); CESCR Concluding Observations: United Kingdom of Great Britain and Northern Ireland, E/C.12/GBR/CO/5 (2009), para. 25.

which foetal impairments are such that stillbirth or death immediately after birth is a virtual certainty. UN treaty bodies have also made general calls for access to “therapeutic abortions,” meaning abortions that are indicated for medical reasons, without specifying what those medical reasons might be.²

The UN Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), which monitors state compliance with the Convention of the same name, has called for access to abortion in cases of “severe” foetal impairment in recent concluding observations.³ The CEDAW also recommended to Peru in July 2014 that it extend grounds for the legalization of abortion to cases of rape, incest and severe foetal impairment. Poland is a party to CEDAW.

Along these lines, in October 2016, the [UN Committee on Economic, Social and Cultural Rights](#), which monitors state compliance with the International Covenant on Economic, Social and Cultural Rights, criticised Poland regarding barriers to accessing safe and legal abortions and its “extremely restrictive legislation”.

International human rights bodies have repeatedly made clear that the denial of access to abortion in cases of severe or fatal foetal impairment is a violation of a woman’s fundamental human rights, including her rights to privacy, health and freedom from torture and other ill-treatment.⁴

In the case of *K.L. v Peru* (2005)⁵, a 17 year-old Peruvian girl was denied an abortion when she requested one after learning she was carrying an anencephalic fetus, even though Peruvian law provides for access to a safe and legal abortion when the life or health of the woman or girl is in danger. K.L. sought accountability for the denial of a safe and legal abortion by taking her case against Peru to the UN Human Rights Committee (HRC). K.L. was forced to deliver the baby and to breastfeed the baby for the four days the baby survived. K.L.’s forced pregnancy resulted in K.L. suffering physical and psychological health problems.⁶ For many women and girls, carrying such a pregnancy to term can be extremely traumatic and have lasting physical and mental health implications.

The HRC concluded that the government of Peru had violated K.L.’s human rights, including her right to be free from cruel, inhuman, and degrading treatment. The HRC also stated that Peru was under a duty to protect K.L.’s special rights given her status as a minor.

The UN Human Rights Committee concluded in two other cases - *Mellet v Ireland* and *Whelan v Ireland* – that prohibiting and criminalizing abortion in situations of fatal foetal impairment subjected these women to “conditions of intense physical and mental suffering”, and that no

² CAT Concluding Observations: Nicaragua, UN Doc. CAT/C/NIC/CO/1 (2009) para. 16.

³ In its July 2014 concluding observations on Peru, for example, the CEDAW Committee recommended that the state “[e]xtend the grounds for legalization of abortion to cases of rape, incest and severe foetal impairment.” CEDAW Concluding Observations: Peru, UN Doc. CEDAW/C/PER/CO/7-8 (2014) para. 36(a); CEDAW Concluding Observations: Chile, UN Doc. CEDAW/C/CHL/CO/5-6 (2012) para. 34; CEDAW Concluding Observations: United Kingdom (regarding Northern Ireland), UN Doc. CEDAW/C/GBR/CO/7 (2013), para. 51.

⁴ See for example, *K.L. v. Peru*, HRC, UN Doc. CCPR/C/85/D/1153/2003 (2005); HRC Concluding Observations: Ireland, UN Doc. CCPR/C/IRL/CO/4 (2014) para. 9; CEDAW Concluding Observations: Chile, UN Doc. CEDAW/C/CHL/CO/5-6 (2012) para. 34.

⁵ *K.L v Peru*, Human Rights Committee, Final judgement, Human Rights Committee, UN Doc. CCPR/C/85/D/1153/2003 (22 November 2005) para 3.2 (a) and (b).

⁶ An anencephalic foetus lacks most of the brain and spinal cord, and typically dies shortly after birth, if the foetus even survives to term.

justification could be invoked or extenuating circumstance relied upon to excuse such harm.⁷ In August 2017, the UN Committee against Torture confirmed this assessment of the suffering inflicted on women by Ireland's abortion law.⁸

Isn't there a risk that abortions based on selective characteristics of the foetus could reinforce discrimination against people with disabilities and against women and girls?

Limiting access to abortion will not enhance the rights of persons with disabilities. The best way for governments to promote the rights of persons with disabilities and combat discrimination against them is to directly address the underlying causes of such discrimination, including through putting in place laws and policies that support the autonomy and rights of all persons with disabilities, as outlined in [the Convention on the Rights of Persons with Disabilities \(CRPD\)](#). Governments should also provide pregnant women and their families with accurate, non-biased information about the health of their foetus, as well as provide any support they may need to raise their children living with disabilities. Moreover, governments should implement laws, policies and practices to combat stigma against people living with disabilities and ensure that they can participate as equal members of society.

Some advocates call on states to prohibit provision of prenatal testing and information about the health status of the foetus. However, in line with international human rights law, Amnesty International calls for governments to refrain from denying or limiting equal access for all persons to sexual and reproductive health information; such information must not be withheld or intentionally misrepresented.

Does international human rights law recognize the right to life of the foetus?

Terminating a pregnancy is not incompatible with the right to life. International and regional human rights treaty provisions protecting the right to life do not extend prenatally (for example, article 1 of the Universal Declaration of Human Rights states: "All human beings are born free and equal in dignity and rights.") No human rights body has ever found abortion to be incompatible with human rights.

Some people believe that life begins at the point of conception and from that moment forward a foetus is entitled to the same protections as a birthed baby. For many, that is a deeply held personal view, but it has no basis in human rights law.

International human rights standards are clear that right to life protections apply only after birth.

The standards do permit state measures to support the development of the foetus, but through the protection of the pregnant woman or girl's human rights and not through prenatal right to life protections.⁹

No international human rights body has ever recognized the foetus as a subject of protection under the right to life or other provisions of international human rights treaties, including the Convention on the Rights of the Child. The UN Committee for Civil and Political Rights likewise rejects the proposition that the protection of the right to life, in Article 6(1), applies before birth.¹⁰

⁷ Communication No. 2324/2013, Human Rights Committee, UN Doc. CCPR/C/116/D/2324/2013 (2016).

⁸ Committee against Torture, Concluding Observations: Ireland, para. 31, (2017).

⁹ See, for example, Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, E/C.12/2000/4, para. 14.

¹⁰ The history of the negotiations on the Covenant indicates that an amendment was proposed and rejected that stated: "the right to life is inherent in the human person from the moment of conception, this right shall be protected by law." UN GAOR Annex, 12th Session, Agenda Item 33, at 96, A/C.3/L.654; UN GAOR, 12th Session, Agenda Item 33, at 113, A/3764, 1957. The Commission ultimately voted to adopt Article 6, which has no reference to conception, by a vote of 55 to nil, with 17 abstentions.

The UN Human Rights Committee has repeatedly emphasized the threat to women's and girls' lives posed by prohibitions on abortion that cause women to seek unsafe abortions, and has called upon states to liberalize laws on abortion,¹¹ a position that would be problematic if the Covenant's protection of the right to life applied before birth.¹² In addition, in its General Comment No. 28, the authoritative interpretation of the principle of equality protected by the Covenant, the Committee has also emphasized states' responsibility to reduce maternal mortality from clandestine abortions and has recognized that restrictive abortion laws could violate women's and girls' right to life.¹³ Notably, the Committee has also criticized one state party's Constitution, which grants the right to life of the "unborn" on an equal footing with a pregnant woman's right to life. The Committee recognized the negative impact this has on women's access to abortion and called for reform of the Constitutional provision and liberalization of the abortion law.¹⁴

UN bodies have also recognized that prenatal interests can be protected through promoting the health and wellbeing of pregnant women, and through adequate maternal health care, information and goods and services.¹⁵

What is Amnesty International's position on abortion when a woman or girl is pregnant as a result of rape or incest?

International human rights law is clear that survivors of sexual violence have a right to access safe and legal abortion. The physical and mental trauma that women and girls experience when they are forced to continue with a pregnancy that is a result of rape or incest has been well documented.¹⁶ Forcing a woman or girl under such circumstances to maintain a pregnancy is a serious violation her rights, including to be free from ill-treatment and the right to health. Not all women will choose a termination, but some will. It is a decision that rests with the woman or girl herself, together with the medical professionals and loved ones she chooses to involve.

Several UN treaty monitoring bodies, including the UN Committee against Torture, have concluded that denying abortion in these circumstances can amount to torture or other ill treatment. The Committee against Torture has found that the denial of safe and legal abortion services for rape victims constitutes a breach of a victim's right to be free from cruel, inhuman and degrading treatment under Article 16, as well as their right to redress and reparation under Article 14 of the Convention against Torture.¹⁷

The World Health Organisation has recommended that women and girls be provided with access to safe, legal abortion services based on their complaint of rape, and should not be compelled to undergo any unnecessary administrative or judicial procedures such as pressing charges against the perpetrator or identifying the rapist.

¹¹ Human Rights Committee, Concluding Observations on Poland, CCPR/CO/82/POL, para. 8.

¹² Human Rights Committee, Concluding Observations on Poland, CCPR/C/79/Add.110, para. 11.

¹³ Human Rights Committee, General Comment 28, Article 3 (The equality of rights between men and women), CCPR/C/21/Rev.1/Add.10, paras 10, 20.

¹⁴ Human Rights Committee, Concluding observations on Ireland, CCPR/C/IRL/CO/4, para. 9.

¹⁵ See, for example, Committee on Economic, Social and Cultural Rights, General Comment 14, The right to the highest attainable standard of health, E/C.12/2000/4, para. 14.

¹⁶ See, for example, P. and S. v. Poland, EctHR (App.No. 5735/08) (2012), paras. 167-169; LMR v. Argentina, Human Rights Committee, 2011, para.9.2; L.C. v Peru, CEDAW Committee, 2011, para. 8.15;

¹⁷ See, for example, Committee against Torture, Concluding observations on Peru, CAT/C/PER/CO/5-6, para 15.

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