

AMNESTY INTERNATIONAL PUBLIC STATEMENT

20 November 2020 EUR 37/3370/2020

POLAND: THE EXTRAORDINARY WAVE OF PROTESTS ACROSS THE COUNTRY SHOULD BE PROTECTED NOT ATTACKED

As Poland has been facing an extraordinary wave of protests across the country for the past four weeks, Amnesty International calls on the Polish authorities to uphold the right to freedom of peaceful assembly and put an end to human rights violations documented by national and regional organizations and detailed below.

On 22 October 2020, the Polish Constitutional Tribunal issued a ruling further eroding reproductive rights in Poland.¹ This ruling invalidates the constitutionality of access to abortion on the ground of “severe and irreversible fetal defect or incurable illness that threatens the fetus’ life”. This judgement is the latest manifestation of a coordinated systematic wave of attacks on women’s human rights in Poland. Poland already has one of Europe’s most restrictive abortion laws.

The ruling prompted a wave of protests across the country led by women’s rights groups. These protests have since expanded in their calls that now go beyond the defence of reproductive rights and include the protection of social and economic rights. The protests are ongoing and for the past four weeks protesters have faced excessive use of force by police officers and have been subject to arbitrary detentions. Some of them were also disproportionately charged with criminal offences hampering their right to freedom of peaceful assembly. Instead of hampering and preventing, States have a positive duty to enable people to exercise their right to freedom of peaceful assembly, and not to place restrictions on this right that go beyond those expressly permitted under international law. Law enforcement agents must facilitate those wishing to protest peacefully, including by safeguarding protesters against harassment and violent attacks by counter-demonstrators, which have occurred in several instances. Police should never use force or other police tactics to pre-emptively prevent people from exercising their lawful right to participate in a peaceful assembly.

On 11 November 2020, on Independence Day, the march in Warsaw was supposed to take place in cars due to COVID-19 regulations in place. Instead the assembly turned into an actual march with a number of violent incidents by participants and instances of excessive use of force by the police towards journalists.

On 18 November 2020, the Women’s Strike protesters gathered in front of the public TV building in Warsaw to protest what they consider to be a smear campaign against them. According to video footage, police kettled peaceful protesters and used pepper spray directly in their faces.² A total of 13 protesters were detained following this protest. Amnesty International is concerned that as the Women’s Strike protests carry on, the police continue to resort to excessive use of force and criminalization of peaceful protesters.

The right to freedom of peaceful assembly, together with the rights to freedom of association and freedom of expression, right to life, liberty and security of the person and to be free from torture and other cruel, inhuman and degrading treatment or punishment are enshrined in human rights treaties to which Poland is a party.³ The right to freedom of peaceful assembly and participation in such assemblies are also protected by Poland’s Constitution.⁴

Law enforcement officials, as representatives of the State, have an obligation under international law to respect and protect human rights. In the context of the policing of assemblies, the rights of particular concern are those to freedom of expression and peaceful assembly; to liberty of movement; to life, liberty and security of the person; and to be free from torture and other cruel, inhuman or degrading treatment or punishment. As a result, law enforcement officials have the positive obligation to enable people to exercise the right to freedom of peaceful assembly.

¹ Poland’s Constitutional Tribunal Rolls Back Reproductive Rights (22 October 2020) <https://www.amnesty.org/en/latest/news/2020/10/polands-constitutional-tribunal-rolls-back-reproductive-rights/>

² https://twitter.com/przemek_raczek/status/1329194203797217284?s=20

³ Article 21 of the International Covenant on Civil and Political Rights (ICCPR) and article 11, European Convention for the Protection of Human Rights and Fundamental

⁴ Article 57, Constitution of the Republic of Poland

INSTANCES OF EXCESSIVE USE OF FORCE

In the past four weeks, since the Women's Strike protests started, video footage seen by Amnesty show unlawful use of force by the police towards peaceful protesters, journalists and bystanders.

On the night following the constitutional ruling on 23 October 2020, people gathered in front of the Constitutional Tribunal in Warsaw to protest its latest ruling that would impose further severe restrictions on abortion in the country. Video footage shows police officers using pepper spray against a number of peaceful protesters, who were trying to protect their faces and disperse. They did not engage in violence.⁵ Pepper spray is supposed to be used only to stop an individual engaged in violence.⁶ It is not intended to be sprayed randomly at groups of people. That same night, police officers, protected with helmets and shields, dragged a protester on the floor while attempting to arrest her.⁷ The primary role of law enforcement officials in policing assemblies is to ensure the safety of all. In particular, the police must, as far as possible, apply non-violent means before resorting to the use of force.⁸ Whenever the lawful use of force is unavoidable, the police must use it with restraint and in proportion to the seriousness of the law enforcement objective.⁹

On 11 November, during the Independence March in Warsaw, there were a number of violent incidents by participants including violence towards the police and throwing pyrotechnics on balconies which led to the start of a fire in an apartment.¹⁰ In some instances, police resorted to weapons and tactics indiscriminately targeting journalists and bystanders. That afternoon, around 16:00, after the end of march, police proceeded with verbal warnings to disperse the groups of participants who remained near the National Stadium, which currently serves as a hospital. While most bystanders left, journalists remained to document the police operations. The police then used force against small groups who were engaging in violence, as they were throwing rocks, fences and pyrotechnics towards the police. Even in instances where demonstrators act in a violent way, police must use only the minimum force necessary to contain the situation and re-establish public order. When proceeding to stop violence, law enforcement officers must differentiate between those who are acting violently and those who are not, for the purpose of ensuring the safety of all.¹¹ During this operation, the police also used disproportionate force against journalists despite them wearing visible press signs. Video footage shows police officers running with shields and batons on the field, supposedly to tackle ongoing violence. A journalist with a 'PRESS' helmet is seen running in front of them and falling to the ground. The police officer who comes close to this journalist can then be seen hitting her with a baton while she is on the ground and then leaving her there.¹² The journalist filming the incident is then seen helping her to walk as she appears to be injured. Striking someone lying on the ground who has not engaged in any sort of violence is an unlawful punitive action that amounts to cruel, inhumane and degrading treatment. In a statement, a representative of the Warsaw police said "in the course of dynamic action, when we are dealing with numerous hooligan acts, a situation can occur in which outsiders may also be injured... That is why it is important to leave the place of our actions".¹³ The right to receive and impart information is a core component of the right to freedom of expression.¹⁴ Amnesty International is concerned by the statement of the Polish authorities regarding the presence of journalists to the sites of operations. Journalists are also documenting independent information on public assemblies and police operations. Dispersal orders directed at participants in principle should not apply to journalists or media workers as they are third-party actors in public assemblies and should therefore be allowed to report on law enforcement operations after a dispersal order is issued, unless they constitute an obstruction or their safety is endangered.¹⁵ The authorities should, therefore, prohibit any interference with the gathering and recording of such information also during police operations.¹⁶

⁵ <https://twitter.com/MarcinTerlik/status/1319405773882052610?s=20>

⁶ United Nations Human Rights Guidance on Less Lethal Weapons in Law Enforcement, section 7.2.3.

⁷ <https://twitter.com/MarcinTerlik/status/1319414126632984576?s=20>

⁸ Basic Principles on the Use of Force and Firearms, principle 4 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>

⁹ UN Basic Principle 13.

¹⁰ https://twitter.com/democ_de/status/1326529502046941184

¹¹ OSCE *Guidelines on Freedom of Peaceful Assembly*, para. 167.

¹² <https://oko.press/krzyczylismy-ze-jestesmy-z-prasy-dlaczego-policja-spalowala-dziennikarzy/>

¹³ <https://notesfrompoland.com/2020/11/11/clashes-arson-and-use-of-force-by-police-against-journalists-at-polish-independence-march/>

¹⁴ See Article 19 of the ICCPR and Article 10 of the European Convention on Human Rights.

¹⁵ See also the OSCE Handbook on policing assemblies (<https://policehumanrightsresources.org/content/uploads/2016/09/Human-Rights-Handbook-on-Policing-Assemblies.pdf?x96812>) p. 34

¹⁶ See A/HRC/31/66, paras 68-71 and OSCE *Guidelines on Freedom of Peaceful Assembly*, paras 206-210.

ARREST, DETENTION AND CRIMINAL CHARGES TARGETING PEACEFUL PROTESTERS

During Women's Strike protests, more than a hundred protesters were arrested and detained.¹⁷ When authorities are proceeding to arrest protesters, they must ensure their physical integrity, that there is a sound legal ground for arrest, that they will have access to a lawyer and have their rights notified during arrest and detention.¹⁸ On 25 October, the Deputy Commissioner for Human Rights visited the District Police Headquarters in Warsaw where she documented protestors detained in inadequate conditions without compliance with sanitary requirements and with no grounds to detain and charge them.¹⁹ On 9 November, a representative of the National Preventive Mechanism against Torture (NPMT) attempted to visit a woman detained after a protest in Warsaw. The police denied access to the NPMT representative and to her lawyer.²⁰ According to the representative of the NPMT, the woman mentioned that the police threw her on the ground when arresting her and kept her handcuffed for five consecutive hours.²¹ "The ability of NPMT members to access those who have been deprived of their liberty is a key safeguard against torture and other ill treatment. In failing to allow access, Poland is violating its international obligations."²²

Polish authorities used criminal offences against peaceful Women's Strike protesters, violating their right to freedom of peaceful assembly.

On 10 November, Katarzyna Augustynek who is one of the activists known as the "Polish Grandmothers" was arrested in Warsaw while she was protesting peacefully.²³ In the video footage available online, Katarzyna appears to be talking with three police officers, when a fourth one approaches and encircles her. She refused to show her identity card as police did not provide a legal basis for an identity check. When a police van arrived and the police attempted to arrest her without providing a legal ground, Katarzyna tried to resist the arrest and lied on the ground. The four officers then carried her into the van by force and closed the door. Katarzyna was arrested and brought to the police station on Wilcza Street in central Warsaw. She was then charged for "violating the physical integrity of an officer on duty".²⁴ Under Polish law, this offence can be punished with up to three years in prison. From the footage available to Amnesty International, this charge appears to be unjustified.

On the evening of 9 November, Gabriela Lazarek, a prominent activist, was violently arrested while she was protesting peacefully in front of the Ministry of National Education.²⁵ The protest continued to Unia Lubelska Square where police officers were blocking the passage and preventing a bystander from passing through. Gabriela intervened and asked the police officer why they would not let the woman pass. Gabriela had only verbal exchanges with the police when one officer grabbed her arm, threw her on the ground and brought her in the police car to drive her to the police station. Gabriela told Amnesty International she was interrogated for three hours while handcuffed and without access to a lawyer. She spent the night in detention. Her lawyer could not reach her when she was arrested, and the police only informed her lawyer once Gabriela was released the morning after. Gabriela is now charged of "unlawfully influencing by force or threat the official acts of authorities"²⁶ which is punishable by up to three years in prison, and "insulting a public official"²⁷, where she could face up to one year in prison. From the footage and evidence available to Amnesty International, such charges appear unjustified.

In view of hampering protesters in exercising their right to freedom of peaceful assembly, Polish authorities also misused criminal offences relating to public health. The Public Prosecutor Bogdan Święczkowski formally instructed prosecutors to assess the organization and participation to a protest in view of the threat to health and life as it will be "causing an epidemiological threat".²⁸ Under Polish law, this offence is punishable with up to eight years of imprisonment.²⁹ In this

¹⁷ <https://monitor.civicus.org/updates/2020/10/28/thousands-protest-constitutional-tribunal-imposes-near-ban-abortion/>

¹⁸ Article 5 of the European Convention on Human Rights and Article 9 of the ICCPR. See also UN Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment

¹⁹ <https://www.rpo.gov.pl/pl/content/kolejne-wizytacje-w-komendach-policji>

²⁰ <https://www.rpo.gov.pl/pl/content/wizytacja-kmpt-w-komendzie-rejonowej-policji-warszawa-vi>

²¹ <https://www.rpo.gov.pl/pl/content/wizytacja-kmpt-w-komendzie-rejonowej-policji-warszawa-vi>

²² Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 20(c)

²³ <https://www.facebook.com/watch/?v=415450372806368>

²⁴ Article 222 §1, Criminal Code of Poland

²⁵ https://katowice.wyborcza.pl/katowice/7,35063,26502384,aktywistka-gabriela-lazarek-spedzila-noc-na-dolku-i-wyszla.html#do_w=45&do_v=124&do_a=424:undefined

²⁶ Article 224 §2, Criminal Code of Poland

²⁷ Article 226 §1, Criminal Code of Poland

²⁸ <https://notesfrompoland.com/2020/10/29/polish-prosecutors-seeks-charges-against-organisers-of-abortion-protests-for-endangering-public/>

²⁹ Article 165, Criminal Code of Poland

letter, the Public Prosecutor alleged that the current protests endanger “the life and health of the entire society”. In May, Amnesty already documented multiple interactions of police with peaceful protesters, often leading to human rights violations, and Amnesty concluded that COVID-19 should not be an excuse to crack down on protests.³⁰ States are permitted under international human rights law to impose restrictions on the rights to freedom of peaceful assembly and movement for the protection of public health or public order. However, they must demonstrate that these restrictions are necessary to achieve a legitimate aim and proportionate to its achievement, and that they do not undermine the right itself. Blanket bans on assemblies are prohibited, the risk must be assessed on case-by-case basis. Similarly, in case of violations of COVID-19 safety measures, the authorities can resort to penalties but only as a last resort where other less stringent measures have failed or would fail. Those penalties must also be proportionate and necessary to a legitimate goal. The use of the criminal offence of “causing an epidemiological threat” to criminalize protesters is likely to exceed what would be permissible under international human rights law by disproportionately restricting the exercise of the demonstrators’ freedoms of peaceful assembly and expression. A participant to a protest should not be held responsible for endangering the life of others and criminally charged for it. Additionally, the threat by prosecutors to use such offence is causing a chilling effect on protesters, aiming to discourage participants with the imposition of a more severe sentence.³¹

In Olsztyn on 26 October, the police reported a 14-year-old-girl to the court for organizing a peaceful protest. On the day of the protest, the girl was holding a banner in front of a protest attended by around 2,000 people. The police stopped her and identity-checked her for “co-organizing an illegal assembly” and blocking the street, as well as for not covering her mouth and nose in view of COVID-19 regulations. They issued a report notifying her to the Family Court on those grounds. Under Polish law, a person under 17 years old cannot be held criminally responsible but the police can seek sanctions before the Family Court. In this case, the Family Court rejected the police's request as “there was no ground to initiate proceedings”. According to a witness of the demonstration“(…) the police came in vans and they started to run after protesters. They managed to catch some minors.” Amnesty International received a question from another young girl fearing these consequences if she joined the protests. This conduct by the police is creating a chilling effect on people, including children who should not be afraid of exercising their right to freedom of peaceful assembly.³²

ATTACK OF PROTESTERS BY COUNTER-DEMONSTRATORS AND PUBLIC OFFICIALS’ INFLAMMATORY SPEECHES

The right to freedom of assembly includes the State’s positive obligation to enable people to exercise the right of peaceful assembly.³³ At the same time, the State must take effective steps to ensure the safety and rights of participants as well as of bystanders.³⁴ Therefore Polish authorities must protect the exercising of these rights against interference by third parties, including other members of the public who might bring harm to peaceful protesters. While the right to freedom of peaceful assembly also protects the rights of counter-protestors to express their views, this must be done peacefully.

During the Women’s Strike protests, private groups with anti-human rights agenda, describing themselves as “nationalists”, attacked protesters and physically dragged them out of churches. Law enforcement officers failed to protect and ensure the safety of those protesters. On 24 October, in Warsaw, a priest called on those groups with anti-human rights agenda to “protect” the church where he officiates from the Women’s Strike protesters. Members of those private groups proceeded to remove by force the women protesting in the church, without the intervention of the police on-site.³⁵

Such violent conduct which puts at risk women fighting for their reproductive rights are often endorsed by the authorities and officials in public speeches. The Deputy Prime Minister on security affairs and leader of the ruling party Law and Justice, Jarosław Kaczyński, at the start of the protests on 27 October, called on all party supporters to counter the

³⁰ Poland: COVID-19 is no excuse to crackdown on protests (Public Statement 29 May) <https://www.amnesty.org/en/documents/eur37/2421/2020/en/>

³¹ “The imposition of any restrictions should be guided by the objective of facilitating the right, rather than seeking unnecessary and disproportionate limitations to it.41 Restrictions must not be discriminatory, impair the essence of the right, or be aimed at discouraging participation in assemblies or causing a chilling effect.” U.N. Human Rights Committee General Comment No. 37 on the right to freedom of assembly, para. 36

³² The right to freedom of peaceful assembly as it applies to children is specifically protected by Article 15 of the UN Convention on the Rights of the Child.

³³ See the joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, A/HRC/31/66, para. 14, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/018/13/PDF/G1601813.pdf?OpenElement>

³⁴ A/HRC/31/66, para. 41.

³⁵ <https://warszawa.wyborcza.pl/warszawa/7,54420,26433361,protest-przed-kosciolem-swietego-krzyza-stop-lamaniu-praw.html>

protests “to defend Polish churches at any cost”.³⁶ By specifically targeting Women's Strike protests, public officials have incited violence by third parties targeting women for peacefully defending their reproductive rights. Polish public officials should refrain from inciting violence against protesters exercising their rights. Instead the authorities must ensure their safety. The State has an obligation to prevent incitement to violence and to refrain from inciting third parties to undertake violent conduct against others.

In view of the severe attack on reproductive rights in Poland and the longstanding demands for the respect of human rights, Amnesty International is calling on the Polish authorities to respect and protect the right to freedom of peaceful assembly and to put an end to the excessive use of force by police, arbitrary arrests and the abuse of criminal law provisions against peaceful protests.

³⁶ <https://apnews.com/article/poland-womens-rights-3ed8662eb28a3e9700863eba27e9b5fc>