



**Association of Women with Disabilities ONE.pl and Women Enabled International
Submission to the CRPD Committee for its Review of Poland
July 31, 2018**

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Description of author organizations:

Association of Women with Disabilities ONE.pl, established in 2004, is the first non-governmental organization in Poland devoted to addressing the intersection of gender and disability as well as disablism and sexism. It is also the first Polish non-governmental organization funded and run by disabled women for other disabled women but also allies of disabled women and disabled people in general. It focuses on educational, raising-awareness and advocacy initiatives – and has initiated a variety of pioneering projects, which gained recognition in Poland and abroad. ONE.pl represents disabled women in the media, variety of expert bodies in Poland (e.g. Polish Ombudsman Office) as well is active in pan-European initiatives (e.g. organized by the European Disability Forum).

Women Enabled International (WEI) works at the intersection of women’s rights and disability rights to advance the rights of women and girls with disabilities around the world. Through advocacy and education, WEI increases international attention to—and strengthens international human rights standards on—issues such as violence against women, sexual and reproductive health and rights, access to justice, education, legal capacity, and humanitarian emergencies. Working in collaboration with women with disabilities rights organizations and women’s rights organizations worldwide, WEI fosters cooperation across movements to improve understanding and develop cross-cutting advocacy strategies to realize the rights of all women and girls.

Submission Summary

This submission describes human rights violations against women and girls with disabilities in Poland. These violations include discrimination, stereotypes, exclusion from public participation, and lack of data collection; higher rates of gender-based violence; sexual and reproductive rights violations including forced sterilization and abortion as well as lack of access to respectful maternal health care, contraception, and abortion services and comprehensive sexuality education; discrimination in education and employment; and denial of legal capacity. This submission also outlines how Poland’s reservations to the CRPD impact women and girls with disabilities and violate the object and purpose of the treaty, calling on Poland to withdraw those reservations.

Through this submission, our organizations make the following key recommendations:

- Engage women and girls with disabilities and their organizations in consultation, design, implementation, monitoring, and evaluation of programs, initiatives, policies, and laws that affect them.
- Collect data on gender-based violence that is disaggregated by disability, and specifically address the forms of gender-based violence experienced particularly by women and girls with disabilities.

- Ensure that sexual and reproductive health information and services is available, accessible, acceptable, and of good quality for women and girls with disabilities and is always provided on the basis of free and informed consent.
- Take targeted measures to address the low rate of employment of women with disabilities, including by addressing barriers to education for women and girls with disabilities.
- Abolish the existing laws the permit deprivation of legal capacity. Replace these laws with flexible instruments through which an individual can obtain decision-making support, when needed and requested.“
- Immediately withdraw all reservations to the CRPD.
- Ratify the Optional Protocol to the CRPD.



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I. Introduction

Association for Women with Disabilities ONE.pl and Women Enabled International (WEI) welcome the opportunity to contribute to the upcoming review of Poland by the Committee on the Rights of Persons with Disabilities (CRPD Committee).

According to statistics from Eurostat, 22.4% of women in Poland report having a disability.¹ Despite the large number of women and girls² with disabilities in Poland, their rights and specific needs are frequently overlooked. Indeed, issues affecting women with disabilities are rarely included in public discourse or policymaking, or in data, statistics, research, and relevant academic scholarship. Furthermore, several types of human rights abuses experienced by women or by persons with disabilities in Poland have a disproportionate impact on women with disabilities, including deprivations of legal capacity, gender-based violence, discrimination in employment and education, and barriers to exercising sexual and reproductive rights. Despite these issues, Poland's state report to the CRPD Committee specifically addresses the rights of women and girls with disabilities in only one paragraph, pertaining to Article 6 of the Convention on the Rights of Persons with Disabilities (CRPD), and then only as a list of legislation that applies to women more broadly.³ Poland's state report does not directly address girls with disabilities at all.⁴ Furthermore, Poland issued three reservations upon its ratification of the CRPD that all have a disproportionate impact on women with disabilities, and its state report outlines no plans to withdraw those reservations. (Note that our organizations were unable to thoroughly review Poland's response to the CRPD Committee's List of Issues because, at the time of writing, that reply was not readily available in English or Polish.)

This submission briefly outlines some of the human rights violations faced uniquely and disproportionately by women and girls with disabilities in Poland, in contravention of Poland's obligations under the CRPD. This submission also outlines how Poland's reservations to the CRPD affect women and girls with disabilities and violate the object and purpose of the CRPD. Finally, this submission provides suggested recommendations that the CRPD Committee should give to Poland as part of its upcoming review and concluding observations.

II. Important Issues Affecting Women and Girls with Disabilities in Poland

A. Discrimination, Stereotypes, Public Participation, and Statistics (arts. 5, 6, 8, 29, 31)

Data from the Polish Central Statistical Office in 2014 shows that, according to its definition of disability (based on the "biological notion of disability,"⁵ which involves either "some or severe activity limitation due to disability"⁶) there are about 4.3 million women with disabilities in Poland.⁷ This accounts for about 56% of all persons with disabilities under this definition and about 22% of all women nationwide. It should be noted, however, that the "biological" notion of disability that the Central Statistical Office uses is employed in line with the European Union's (EU) methodology⁸ but is not consistent with legal definitions of disability in Poland, which are used to obtain certain benefits.⁹ According to the Central

Statistical Office's estimates, about 22% of people with disabilities who are severely limited in their activity have not obtained the legal status of a person with disability, though this data is not disaggregated by gender.¹⁰

Like women with disabilities around the world, women with disabilities in Poland are subjected to discrimination and negative stereotypes based on both their gender and disability that impact their exercise of rights. In particular, women with disabilities in Poland are perceived as being unfeminine and asexual, and unable to take on the role of motherhood or be good parents,¹¹ thus undermining their confidence and affecting which types of and how services are delivered to them and in what way.¹² As the Committee on the Elimination of Discrimination against Women (CEDAW Committee) noted in its 2014 concluding observations to Poland, there has been "limited effectiveness, if any, of measures to counter negative stereotypes against ... women with disabilities."¹³

Evidence indicates that Polish society is ill-equipped to include women with disabilities in a meaningful way. This is repeatedly reflected in accounts of women with disabilities themselves, as noted below. Given that society is not prepared to support persons with disabilities, it tends to measure women with disabilities against "general" or "normal" standards, overlooking the fact that persons with disabilities in general, and women with disabilities in particular, are often unable or unwilling to conform to those standards. This in many cases only further isolates disabled women, both culturally and socially. One woman notes, "[the] grounds [of obstacles to functioning in the society for women with disabilities] are, first, psycho-physical faculties, which encumber or fully hinder the development of the [desired] social competences, and secondly – the environment and the society capable to neither accommodate the needs nor use the skills of the people with disabilities."¹⁴ Another woman reports "fear of being confronted with the disability problem" as the underlying social emotion towards people with disabilities. There seems to be a societal "fear of being unable to interact with such a person [with a disability], and fear of being obliged to constant support. Sometimes, there still is a fear of 'contracting' disability (depending on its type)."¹⁵ Furthermore, because women with disabilities are represented in the labor force in lower numbers than others (described in more detail below), few individuals in Poland have the opportunity to interact with women with disabilities and there are thus limited opportunities to break down these social barriers and stereotypes.¹⁶

Additionally, according to a 2017 case study from the EU on employment for women with disabilities in Poland, "[a]t the moment, women with disabilities do not exist in public discourse as a specific group with specific needs. As a consequence, their problems are not being tackled."¹⁷ A rare exception to date has been a 2016 debate on women with disabilities organized by the Polish Disability Forum (PDF), with funds from the EU.¹⁸ However, even in this case, it appears that the focus on women with disabilities may have been because PDF was sponsoring debates on each of the CRPD articles, not because there was a recognized specific need to address issues affecting women with disabilities, so this debate likely does not indicate a shift in thinking to recognize women with disabilities as a specific group.¹⁹ Also, these debates were not sponsored by the Polish government and thus do not demonstrate any government action on these issues.

As civil society organizations and the Polish Ombudsman have stressed, the CRPD is far from being implemented in Poland by successive governments. This situation leads to sustained and grave discrimination and marginalization, including of women with disabilities.²⁰ Hence, Kongres Osób Niepełnosprawnych (Congress of People with Disabilities) together with the support of the Polish Ombudsman created a holistic program for a new system of support called "Za Niezależnym Życiem" (For Independent Living/Life) that aims to translate the CRPD into Polish realities.²¹ While this program was presented to the Polish Prime Minister Mateusz Morawiecki,²² the government's planned reforms to the system of assessing disability and interrelated state support stand in contrast to the CRPD's purpose and principles.²³ One of the main critiques of the government's approach is that it assesses disability

based on categories of “niesamodzielność” (“dependence”) and its degrees. Classifying people as dependents rather than as rights holders is contradictory to the CRPD, and as Polish advocates have noted, will detract from efforts to ensure that disabled people can achieve independent living.²⁴ As the Polish Ombudsman argues, reforms of systems assessing disability should highlight the potential of people with disabilities, identifying individual means of support, and should not stigmatize them by focusing on their “dysfunctions.”²⁵ Because women with disabilities in Poland are already socially and culturally excluded and viewed as dependent and vulnerable, as noted above and outlined in more detail regarding specific human rights issues below, the government’s planned reforms, if implemented, would have a disproportionate impact on that group and solidify their socio-political and cultural invisibility.

Furthermore, issues affecting women with disabilities are very rarely addressed in data and statistics collected by Poland, beyond the most basic population data collected by the Census (which, since the transition of the State in 1989, has been conducted only twice). Moreover, although men with disabilities have been represented in the Polish parliament, there is no representation of women who have explicitly identified as being persons with disabilities in this key government institution, and anecdotal evidence indicates there has been no systematic efforts to include and consult women with disabilities in policymaking. The exclusion of women with disabilities in the public discourse is nowhere more apparent than in Poland’s state report to the CRPD, in which women with disabilities are only specifically addressed in one paragraph, and then only as a list of legislation that applies to women more generally.²⁶ Given that women with disabilities account for more than half the population of persons with disabilities in Poland and almost one-quarter of the total female population,²⁷ their exclusion from the public discourse is particularly problematic.

Recommendations to Poland on Discrimination, Stereotypes, Public Participation, and Statistics

- Create educational programs and trainings to inform women and girls with disabilities about their rights and provide them the tools to be empowered members of society. Include the community of women with disabilities who lead civil society organizations devoted to tackling the intersection of disability and sexism (and other types of oppression) in formulating these programs, and give them the platform to serve as role models and mentors, especially to younger members of this population.
- Engage women and girls with disabilities in policymaking and the implementation of programs that affect their rights, and ensure their representation in decision-making bodies, including political bodies. In particular, women and girls with disabilities and their organizations should be included in consultation, design, implementation, monitoring, and evaluation of programs and initiatives that tackle intersectional discrimination.
- Fund research that targets the intersection of gender and disability, including quantitative research to enable data disaggregation by various variables, e.g. age, gender, and disability, as well as qualitative research to focus on the lived experiences of women and girls with disabilities that also position them as experts.
- Reform initiatives to assess and provide support to women and girls with disabilities so that they are viewed as rights holders rather than as dependents.
- Conduct nationwide social campaigns about the challenges and detrimental effects of the medical model of disability and generic approaches to disabled people, as well as the intersections of disabling and sexist stereotypes regarding notions of femininity and womanhood.
- Ratify the Optional Protocol to the CRPD to allow the CRPD Committee to adjudicate individual complaints and conduct inquiries, so as to better ensure the implementation of the CRPD.

B. Violence against Women and Girls with Disabilities (arts. 5, 6, 16, 31)

Gender-based violence against women with disabilities worldwide takes many unique forms. According to the former UN Special Rapporteur on Violence against Women, Rashida Manjoo, women with disabilities are two to three times more likely to experience gender-based violence, and violence against women with disabilities can be of a “physical, psychological, sexual or financial nature and include neglect, social isolation, entrapment, degradation, detention, denial of health care, forced sterilization and psychiatric treatment.”²⁸ Violence against women with disabilities also has unique causes, including violence that is perpetuated by stereotypes “that attempt to dehumanize or infantilize, exclude or isolate them, and target them for sexual and other forms of violence.”²⁹

The CRPD Committee has consistently called on States to exercise due diligence to ensure that women with disabilities are free from violence.³⁰ In its General Comment No. 3, the CRPD Committee recognizes that women with disabilities experience gender-based violence at disproportionate rates and in unique forms, as compared to other women³¹ and further notes that women with disabilities are at higher risk of economic exploitation that can lead to violence.³² In particular, the Committee notes that “[s]ome women with disabilities, in particular, deaf and deafblind women, and women with intellectual disabilities, may be further at risk of violence and abuse because of their isolation, dependency or oppression.”³³ The Committee has found that this violence is often the result of harmful stereotypes based on both gender and disability, including those “that infantilize women with disabilities, call into question their ability to make judgements, and perceptions of women with disabilities as being asexual, or hypersexual; and erroneous beliefs and myths, heavily influenced by superstition, which increase the risk of sexual violence against women with albinism.”³⁴ It further notes that some forms of gender-based violence against women with disabilities may amount to torture or ill-treatment.³⁵ The Committee has expressed particular concern where shelters and other services for victims of gender-based violence are not accessible to women with disabilities.³⁶ It has then called on States to criminalize violence against women with disabilities, including by prohibiting its unique forms such as forced sterilization, forced abortion, and forced contraception or other forced gender and/or disability-related medical treatment.³⁷

Prevalence of Violence against Women with Disabilities in Poland

Comprehensive data on violence against women with disabilities in Poland is not currently available. This is because existing research and statistics fail to include either the gender or the disability category. For instance, police statistics classify victims of violence according to their gender, age, and social status, but not as to their disability.³⁸ According to one Polish Ombudsman report, since 2007, the Ministry of Family, Labor and Social Policy includes in its research on domestic violence the situation of people with disabilities,³⁹ but this data does not reflect violence experienced by women with disabilities in other settings, especially in institutions.⁴⁰ Furthermore, this data has not been made readily available to the public.

Although there is a lack of readily-available data addressing violence against women with disabilities, data on violence against the wider population of people with disabilities and the wider population of women indicates that there are likely high rates of violence against women with disabilities in Poland. One 2009 survey conducted by the Institute of Psychology of the Polish Academy of Sciences found that over 30% of Poles knew of cases of violence against persons with disabilities.⁴¹ These abuses included hitting or beating, tugging or pushing, isolating or locking up individuals, and depriving them of material goods.⁴² Of the Poles surveyed, 19.7% knew of cases of sexual violence against persons with disabilities.⁴³

Concerning the wider population of women, all women in Poland are at significant risk of gender-based violence, including sexual violence and domestic violence. According to the EU Agency for Fundamental Rights, one out of every five Polish women has experienced physical or sexual violence since the age of 15.⁴⁴ As the CEDAW Committee found in its 2014 review of Poland, there continues to be a “high prevalence” of gender-based violence in Poland, with significant gaps in the legal framework on this issue

and low numbers of prosecutions, creating a situation where women are inadequately protected from violence.⁴⁵ In 2016, the Polish Ministry of Justice put gender-based violence services in jeopardy by stripping funding from some significant women's rights groups providing services for victims of gender-based violence, because those groups did not also provide services to men, a situation that continued through 2017.⁴⁶ The current government has also threatened to withdraw from the Istanbul Convention, a seminal European regional human rights treaty that ensures additional protections for women from gender-based violence.⁴⁷

A 2013 qualitative study on gender-based violence by the Polish Ombudsman does address the particular situation of women with disabilities and older women above the age of sixty-five.⁴⁸ Officers interviewed for the purpose of this study, including social workers and members of other services dedicated to the prevention of violence, admit to having very limited experience with women with disabilities.⁴⁹ At the same time, these workers suspected that women with disabilities and older women disproportionately experienced domestic, institutional, and other kinds of violence.⁵⁰

Access to Justice for Violence against Women with Disabilities in Poland

Although data on access to justice in Poland for women with disabilities following violence is not currently available, it is likely that a relatively small number of abuses against women and girls with disabilities are reported and brought to justice. This may be in part because the system of support for victims of violence, including domestic violence, does not address the specific needs and situations of women with disabilities. In particular, the 2013 Ombudsman study and other reports identify that there is a lack of independent supervision over the situation of people with disabilities living in institutions or private homes;⁵¹ police stations are inaccessible⁵² as are support services;⁵³ there are communication challenges between persons with disabilities and support services providers and law enforcement;⁵⁴ and finally, there is insufficient economic and organizational support to women with disabilities, which leaves them in the power of their abusers who are often also their caregivers.⁵⁵ In particular, women with disabilities in Poland are more likely, than other women to be economically dependent on their abusers.⁵⁶ Besides these disability-related challenges, women with disabilities experience difficulties with seeking help and redress for violence that are similar to those experienced by other victims of violence, including shame, codependency, justifying the perpetrator's behavior, and feelings of weakness and helplessness.⁵⁷ All of these issues intersect to isolate women with disabilities, both physically and socially, rendering them more vulnerable to violence than men with disabilities and other women.

Furthermore, law enforcement officers—including police, prosecutors and judges—have insufficient awareness about the situation of women with disabilities as victims of violence. The 2016 debate on women and girls with disabilities, noted above, highlighted that there are no judges or prosecutors with disabilities.⁵⁸ This lack of participation of women with disabilities in positions of authority within the justice system means that the justice system actors frequently do not understand their needs and situations. For instance, one Polish court found it appropriate to discuss whether a female victim of sexual violence with intellectual disability is capable of feeling grievance or injury for the crime committed against her.⁵⁹ As one researcher observed, “[u]nder this [the court's] approach, a person with disability is deprived of human dignity and there is no equal treatment and protection of persons with disabilities against violence and abuse.”⁶⁰

Many cases of violence against women with disabilities fall through the cracks of Polish criminal law, because judges and prosecutors inadequately apply the law to the situation of women with disabilities. For instance, in 2017, a woman with intellectual disabilities was raped in a cemetery by a man.⁶¹ Because the woman did not defend herself, the prosecutor concluded that the perpetrator had not forced himself on the woman and investigated instead whether the woman understood her conduct and the meaning of the sexual act. Based on expert opinion that confirmed the woman's awareness of the sexual act itself, the prosecutor dismissed the case against the man entirely.⁶² The treatment of this case by the prosecutor

shows a lack of understanding both about the nature of consent and about the particularly vulnerable situation of women with disabilities in the context of sexual violence.

In 2014, the CEDAW Committee recommended that Poland adopt a comprehensive strategy to prevent and eliminate all forms of violence against women, specifically including women with disabilities.⁶³ It is unclear, however, if Poland has adopted such a plan, and whether that plan does include women with disabilities.

Concerning access to justice for violence against women with disabilities, the CRPD Committee in its General Comment No. 3 has found that, due to intersectional discrimination based on both gender and disability, “women with disabilities may face barriers when reporting violence, such as disbelief and dismissal by police, prosecutors and courts,” as well as lack of procedural and reasonable accommodations.⁶⁴ The Committee has noted that these barriers, combined with negative law enforcement attitudes, “may intimidate victims or discourage them from pursuing justice” and lead to impunity that can make violence last for extended periods.⁶⁵ It has further found that, to uphold their obligation to ensure due diligence in preventing and prosecuting violence, States should promote “the training of professionals in the justice sector to ensure there are effective remedies for women with disabilities who have been subjected to violence.”⁶⁶

Recommendations to Poland on Violence against Women and Girls with Disabilities

- Encourage civil society organizations tackling gender-based violence, through training and funding among other activities, to mainstream disability into their activities and involve in their initiatives women with disabilities who are survivors of violence themselves.
- Provide training to future lawyers and practicing lawyers and judges, held by experts including women with disabilities, on the rights of women and girls with disabilities, including on forms of violence they experience, intersectional discrimination against women and girls with disabilities, and reasonable accommodations and support measures for accessing justice. Also provide trainings on communication and anti-discrimination procedures to relevant personnel dealing with women and girls with disabilities who are victims of violence.
- Develop targeted strategies for tackling violence against women with disabilities, including by creating safe spaces online and offline and funding accessible assistance and victim support services.
- Exercise due diligence to ensure that perpetrators of violence against women and girls with disabilities are held accountable and punished accordingly. Ensure that all forms of violence experienced uniquely and disproportionately by women with disabilities—including forced and coerced reproductive health procedures, abandonment, neglect, isolation, withholding of medications or mobility aids, economic violence, and psychological violence—are prohibited by law.
- Raise awareness about and stigmatize violence against women with disabilities by creating nationwide social campaigns, including those that offer support to women with disabilities to encourage them and their allies to report when they have been the victims of violence.
- Collect data disaggregated by gender, age, and disability status, among other factors, on gender-based violence.

C. Violations of Sexual and Reproductive Rights (arts. 5, 6, 15, 17, 23, 25)

Women with disabilities in Poland experience significant barriers to exercising their sexual and reproductive rights, including accessing sexual and reproductive health (SRH) information and services and making autonomous decisions about their sexual and reproductive health. In its state report, Poland briefly addresses the provision of SRH information and services. However, the state report focuses almost

entirely on the issue of prenatal genetic testing for all women, rather than on wider access to human rights-based information and services for women with disabilities.⁶⁷ This is a significant gap that the CRPD Committee should ask Poland to address as part of its review.

Barriers to accessing SRH information and services in Poland frequently stem from stereotypes about women with disabilities, including that they are asexual or hypersexual, cannot become pregnant, and cannot be good parents, as well as from discriminatory attitudes towards their disability, including that they may pass along that disability to a child. For instance, a 2015 study involving interviews with women with physical and sensory disabilities in Poland found that Polish society consistently lacked acceptance of women with disabilities as mothers and also questioned the quality of parenthood these women could provide, undermining their confidence.⁶⁸ Indeed, although Polish women with disabilities maintain the right to biological and adoptive parenthood, their reproductive rights are considered a taboo subject, as is their sexuality.⁶⁹ The study also revealed that women with disabilities may be deterred from applying for services to help them with caring for their children because of the fear that they will have to prove they are good parents and will not “measure up.”⁷⁰

Maternal Health Services

Polish women with disabilities who become pregnant or who wish to have children face numerous barriers to accessing needed care. A 2015 study on motherhood and maternal health services for women with disabilities found that the Polish health care system was not prepared “to take care of and support pregnant women with disabilities.”⁷¹ Interviewees identified that the health care system was not equipped to offer them specialized services in the context of pregnancy, and because they were considered a “high risk group,” women with disabilities reported that they had trouble finding a doctor or midwife willing to provide them with care.⁷² Indeed, women with disabilities reported that there was generally a lack of specialized care available to them.⁷³ Interviewees also reported that gynecological rooms and equipment were frequently not adapted to persons with disabilities; for instance, chairs and tables were not at a height accessible to women who use wheelchairs, leaving them to need assistance that at least one woman considered humiliating.⁷⁴

Furthermore, the attitudes of health care personnel providing pregnant women with disabilities with maternal health care in Poland create significant barriers to women receiving quality care. For instance, according to the 2015 study cited above, health care providers’ attitudes towards pregnant women with disabilities ranged from indifference, to patronizing treatment, to explicitly expressing negative opinions about their plans to have children or about their disabilities.⁷⁵ Several women experienced degrading treatment in maternity wards, including aggressive and disproportionately frequent observation, lack of communication, misunderstandings about their disabilities, and lack of respect for their decisions about how to give birth.⁷⁶ This treatment increased their sense of isolation, vulnerability, and lack of self-determination.⁷⁷ Furthermore, several women with disabilities reported that medical staff tried to convince them to have abortions or put their babies up for adoption, rather than supporting them through their pregnancies and giving them information about assistance to raise their children.⁷⁸

Similar conclusions follow from a 2016 debate on women with disabilities in Poland.⁷⁹ The participants in the 2016 debate noted that, since the ratification of the CRPD by Poland in 2012, awareness by Polish gynecologists of the situation of women with disabilities has not improved.⁸⁰ Participants noted that, in general, medical personnel do not understand or recognize the human rights of women with disabilities to be mothers, partners, or spouses and that these attitudes are also held by gynecologists.⁸¹ This is coupled with, and probably exacerbated by, the lack of special training for the medical staff who provide pregnancy services. The attitudes of members of medical and health services seem to have deeper roots in stereotypes and convictions strong in Polish society about women with disabilities as people in need of care rather than rights holders, and as asexual persons unable to successfully take on the roles of partners and mothers.⁸²

Although the CRPD Committee has not consistently addressed maternal health services for women with disabilities, other treaty bodies have provided guidance on States' human rights obligations in this regard. As the CEDAW Committee and Committee on Economic, Social, and Cultural Rights (ESCR Committee) have found, all women have a right to available, accessible, acceptable, and good quality maternal health services as part of their rights to health and to gender equality.⁸³ In particular, the ESCR Committee has noted that acceptable maternal health services include those that are physically accessible, disability sensitive, and delivered without discrimination.⁸⁴ In particular, ESCR Committee has found that "reasonable accommodation must be made to enable persons with disabilities to fully access sexual and reproductive health services on an equal basis, such as physically accessible facilities, information in accessible formats and decision-making support, and States should ensure that care is provided in a respectful and dignified manner that does not exacerbate marginalization."⁸⁵

Comprehensive Sexuality Education

In its state report, Poland provides some details about the content of its sexuality education program and reports that "the content and forms of teaching match the needs of children with various disabilities, both in mainstream schools and special schools at different levels of education."⁸⁶ The content, as described by Poland, fails to match international standards for comprehensive sexuality education, including for inclusion of persons with disabilities. In January 2018, the United Nations Educational, Scientific and Cultural Organization (UNESCO) updated its technical guidance on comprehensive sexuality education (UNESCO guidance), which provides that comprehensive sexuality education should aim to "equip children and young people with knowledge, skills, attitudes and values that will empower them to: realize their health, well-being and dignity; develop respectful social and sexual relationships; consider how their choices affect their own well-being and that of others; and, understand and ensure the protection of their rights throughout their lives."⁸⁷

In particular, the UNESCO guidance notes that young people with disabilities "are all sexual beings and have the same right to enjoy their sexuality within the highest attainable standard of health, including pleasurable and safe sexual experiences that are free of coercion and violence; and to access quality sexuality education and SRH services."⁸⁸ Specifically, the UNESCO guidance calls on states to ensure that comprehensive sexuality education builds skills "to treat others with respect, acceptance, tolerance and empathy," including persons with disabilities.⁸⁹ It further calls on states to ensure that this education includes ongoing discussions about relationships and vulnerability, including gender and power inequalities that may be based on discrimination, including discrimination based on disability and information specifically about the SRH needs of young people with disabilities.⁹⁰

The participants in the 2016 debate on women with disabilities cited above indicated that there is a lack of educational programs concerning both sexuality and family planning and maternity, including for women and girls with intellectual disabilities.⁹¹ The same follows from a 2015 NGO alternative report to the CRPD Committee, which stresses that sexuality education for women and girls with disabilities should be tailored according to the type of disability and therefore contemplate at least the distinction into the physical and intellectual disability.⁹² The lack of tailored sexuality education means that many women and girls with disabilities lack important information about their sexual and reproductive health. For instance, a study from 2012 shows that women with disabilities may lack knowledge about whether their disability prevents them from having children, although many of them declare that they would like to found a family and have children.⁹³ As one of them notes "I am aware how important maternity for a woman is. But I do not know, whether I can have a baby."⁹⁴ Another interviewee declares similar uncertainty "I would like to marry and have a child, but my concern is, whether this is possible in my situation."⁹⁵

As the CRPD Committee noted in its General Comment No. 4, “[p]ersons with disabilities, on an equal basis with others, must be provided with age-appropriate, comprehensive and inclusive sexuality education, based on scientific evidence and human rights standards, and in accessible formats.”⁹⁶ It is not clear that Poland’s sexuality education program is actually being provided to persons with disabilities, particularly young persons with disabilities, let alone that it contains any of the information specifically about persons with disabilities recommended by UNESCO. Indeed, Poland’s state report fails to include information about how its sexuality education is made accessible and relevant to persons with disabilities, both inside and outside the classroom. The state report also does not make clear whether sexuality education is actually provided to persons with disabilities, but only that it could be provided to them.

Contraception, including Sterilization

Due to stigma, the strong influence of religion in Poland, and other social factors, all women in Poland face significant barriers to accessing contraception in order to prevent unwanted pregnancy.⁹⁷ These difficulties are likely compounded for women with disabilities in Poland, because, as noted above they are perceived as asexual or unable to control their sexuality, and thus may not be offered contraception at all. Additionally, legislation in Poland has recently restricted access to emergency contraception, a method of contraception to prevent unwanted pregnancies when other methods fail, when a woman has unprotected sex, or when a woman is the victim of sexual violence.⁹⁸ Given the higher risk of gender-based violence faced by women and girls with disabilities, as well as the barriers they face in accessing other forms of contraception, restrictions on emergency contraception have a disproportionate impact on their ability to control their fertility and to decide on the number and spacing of their children on an equal basis with others.

Furthermore, it is unclear whether consensual sterilization, even with consent, is legal under Polish law. Under Article 156, para. 1 of the Criminal Law, “imperiling anyone’s reproductive capacities” comes with a punishment of no less than three years in prison. There is no exception in the Criminal Law, or elsewhere, for a gynecologist performing sterilization upon a patient’s request, although it is not illegal for a woman to request and give consent for sterilization. Consequently, it is legal for a woman to ask for sterilization, but possibly illegal for a physician to perform it. Given this legal environment, gynecologists are afraid to perform sterilizations on women in Poland. Nevertheless, some women with disabilities reported that when they are informed that another pregnancy could expose them to substantial health or life hazard, they resort to despite the legal ambiguity.⁹⁹ It is unclear, whether those women requested and were provided with sterilization in Poland or whether they traveled to neighboring countries. In the latter case, the situation disproportionately limits access to sterilization for women with disabilities who may not have the financial means or may face accessibility issues to travel. Also, for some women with disabilities, sterilization might be the only form of contraception medically advisable or available, especially if they may not take hormonal contraception.¹⁰⁰ Also for this reason, legal obstacles to obtaining sterilization in Poland disproportionately affect women with disabilities.

Despite the legal ambiguity surrounding sterilization, recent research conducted specifically on women with disabilities suggests that women with intellectual disabilities living in institutions are sterilized against their will or without their informed consent.¹⁰¹ The issue of forced and coerced sterilization of women and girls with disabilities in Poland is otherwise not yet well documented. Poland does not include any information on this topic in its state report. The CRPD Committee has consistently found that forced reproductive health interventions violate Article 23 of the CRPD and has recommended that States exercise due diligence to prevent and prosecute these violations,¹⁰² while other treaty bodies have classified forced reproductive health interventions as forms of torture or ill-treatment.¹⁰³ There are no laws in Poland that specifically permit forced sterilization, but given evidence that forced sterilization still occurs, Poland should undertake vigorous steps to eliminate this practice and also to fund academic research on this topic.

Abortion

All women and girls in Poland face both legal and practical barriers to accessing abortion, in violation of their rights to health and to reproductive autonomy. Under Poland's laws, women can access abortion only under three restrictive conditions—in cases of rape or incest, when the woman's health or life is at risk, and in cases of "severe fetal impairment."¹⁰⁴ Otherwise, abortion is illegal.¹⁰⁵ In practice, it can be extremely difficult for a woman to obtain a legal abortion even under these circumstances, as doctors frequently refuse to perform such procedures, a practice known as conscientious objection, while at the same time abusing this privilege by refusing to provide referrals to other doctors who will perform abortions, in violation of human rights and medical ethics standards.¹⁰⁶ As a result of both this practice and the restrictive abortion law, it is estimated that tens of thousands of women in Poland seek out illegal and unregulated abortions every year, putting their health and lives at risk, or travel to other countries to obtain abortion, while only about 1,000 legal abortions are performed each year.¹⁰⁷ These illegal abortions are also incredibly expensive, accounting for the average monthly wage for a Polish person (4,256 zloty),¹⁰⁸ which is significantly higher than the monthly wage for a woman with disabilities (see below). Indeed, according to the European Court of Human Rights in specific cases of denial of access to legal abortion and information to inform a woman's reproductive decision-making, Poland has repeatedly violated women's rights to privacy and to be free from inhuman and degrading treatment.¹⁰⁹

Current barriers to accessing abortion in Poland are compounded for women with disabilities because of barriers to accessing sexual and reproductive health services generally, attitudes of health care professionals towards them and their decisions, and their limited incomes. In Ireland, another country with highly restrictive abortion laws, a 2018 policy statement from Inclusion Ireland, an organization working on the rights of persons with intellectual disabilities, noted that these laws disproportionately limit the ability of women with disabilities to access abortion.¹¹⁰ This is because these laws require that women have the money and physical ability to travel to another country to obtain an abortion, and women with disabilities frequently have lower incomes, lack access to needed information about traveling for abortion, may need to be treated by a practitioner familiar with their health history, and often face accessibility barriers to travel.¹¹¹ Viewed in this light, laws that restrict access to abortion mean that women with disabilities cannot obtain sexual and reproductive health care on an equal basis with others, as required by Article 25 of the CRPD.

Despite these human rights abuses, in January 2018, the Polish government rejected a measure that would have removed all legal restrictions on abortion within the first 12 weeks of pregnancy.¹¹² Instead, in July 2018, there was a renewed attempt to push a law through the Polish Parliament that would further limit access to abortion by penalizing abortion in cases of fetal impairment,¹¹³ which account for the vast majority of legal abortions in the country.¹¹⁴ The passage of this bill would contribute to an already restrictive environment for the provision of SRH information and services and would disproportionately affect women with disabilities.

The CRPD Committee has previously expressed concern about situations in which women with disabilities are prevented from accessing abortion, including in situations where the unavailability and inaccessibility of abortion services disproportionately impact women with disabilities. In its 2017 concluding observations to Canada, the CRPD Committee expressed concern about barriers women and girls with disabilities face in accessing safe abortion, including "the limited number of clinics that provide termination of pregnancy services" and the "physical, financial and attitudinal barriers to accessing information and health care services, ... notably abortion...."¹¹⁵ It recommended that Canada "prevent the denial of health-care services, including abortion" and "[e]stablish special measures to ensure that people with disabilities, including transgender and gender-diverse persons with disabilities, have equal access to health services, including surgical and medical abortion services, and gender-affirming comprehensive health care."¹¹⁶

Recommendations to Poland on Sexual and Reproductive Rights

- Train medical personnel on an ongoing basis on the rights of women and girls with disabilities, particularly in the context of sexual and reproductive health. Ensure that medical personnel are trained on the human rights and social model of disability; respect the rights, will, and preferences of women and girls with disabilities in the context of health care; and do not allow stereotypes and discrimination to influence health care delivery.
- Fund research to identify concrete barriers and specific needs of women and girls with disabilities in the context of sexual and reproductive health care and address barriers to accessibility of sexual and reproductive health information and services, including physical, informational, and financial barriers to such access.
- Provide childcare assistance especially to single mothers with disabilities, shaped together with experienced women with disabilities.
- Create and implement programs of comprehensive sexuality education for girls and women with disabilities that is accessible to and reflects the lived experiences of all women and girls with disabilities, including women and girls with different and intersecting types of disabilities.
- Respect all rights and laws in regards to informed consent to medical interventions by women with disabilities, and ensure adequate punishments, including criminal punishments, for those who do not adhere to the principle of informed consent.

D. Legal Capacity and Its Impact on the Rights for Women and Girls with Disabilities (arts. 12, 13, 15, 16, 17, 23)

Poland's state report outlines that a person with intellectual or psychosocial disabilities can be deprived of "the capacity to perform legal acts" if the person is "unable to control his behavior or conduct."¹¹⁷ Although the state report claims that "[d]isability is not a premise that justifies incapacitation,"¹¹⁸ it also notes that, under its laws, "mental illness, a mental deficiency or other mental disorder" is a precondition to being stripped of legal capacity, in that no other person under the law could be stripped of legal capacity for his or her inability to control behavior or conduct.¹¹⁹ Those adults stripped of legal capacity, either fully or partially, are assigned a guardian or "curator" to make decisions on their behalves,¹²⁰ and the state report describes a range of protections from abuse in this context.¹²¹ Although the state report classifies some of this as "supported decision-making," the schemes it describes do not appear different from those of the guardianship or curatorship outlined above.¹²² Furthermore, Poland has issued a reservation on this issue, which will be discussed in more detail below, which further limits the prospects that it will amend its laws to comply with the CRPD.

Deprivation of legal capacity, either fully or partially, has a disproportionate impact on the rights of women with disabilities. Worldwide, women with disabilities who are stripped of legal capacity are at higher risk of forced sterilization and abortion, performed without their informed consent and only with the consent of a guardian.¹²³ Furthermore, women and girls with disabilities who are stripped of legal capacity may be prohibited from testifying in court as witnesses or victims, a situation that is particularly acute in cases of gender-based violence in which the victim is frequently also the primary witness.¹²⁴ Even if they are not legally prohibited from testifying, the fact that they are deprived of legal capacity may lead law enforcement and judicial officials to take their accounts of violence less seriously. As a result, these women are denied effective access to justice and are at higher risk of experiencing gender-based violence at the hands of perpetrators who know they will be able to act with impunity.¹²⁵

The CRPD Committee has consistently called on States to transform systems that deprive persons with disabilities of legal capacity to ones that support decision-making for persons with disabilities. Regarding women with disabilities in particular, the Committee has consistently recognized the link between depriving women with disabilities of legal capacity and forced medical treatment, including forced

reproductive health interventions.¹²⁶ The Committee has recommended that States abolish or amend laws and directives that allow for forced sterilization or abortion without the informed consent of persons with disabilities, including laws that allow a third party to provide consent for these procedures.¹²⁷

Consistent with the above observations and recommendations of the CRPD Committee, the Polish Ombudsman, in a 2016 study on “Access of Persons with Disabilities to Justice” also suggests, that the deprivation of legal capacity hinders access to justice, because it results in lack of standing in any legal proceedings.¹²⁸ Thus a person deprived of her legal capacity cannot independently file a complaint in a court of law, request a review of any court or administrative decision, make a motion, or conduct other legal business.¹²⁹ In the Ombudsman’s view, this limits access to justice to such an extent, that it infringes on the human and constitutional right to access justice.¹³⁰ Consequently, the Ombudsman recommends with regard to persons with disabilities that Poland replace the system of deprivation of the legal capacity with various forms of supported decision-making.¹³¹ On February 21, 2018 the Ombudsman updated its official website about the reaction of the Ministry of Justice to this recommendation. That update indicated that the Minister of Justice recognized the need to replace the instrument of deprivation of legal capacity with supported decision-making; however, creating the relevant legal provisions and turning them into law was not a priority of the current administration.¹³²

There is a provision under current Polish laws, which, if interpreted in line with Article 12 of CRPD, could be employed by courts to order a guardian of a person with an intellectual disability to provide support to her both in legal and other decision-making, as well as to potentially act on her behalf as a legal representative. Pursuant to Article 183 of the Family and Guardianship Law (FGL), “[a] guardian may be appointed to pursue a person with disability in conducting her affairs, whether all of them, or a particular kind or a particular matter. It is for the court to determine the scope of the guardian’s powers and duties.”¹³³ This provision has been used to appoint guardians to act other than as legal representatives of persons with disabilities, thus, limited only to support other than legal representation.¹³⁴ However, as the above-mentioned 2016 Ombudsman study suggests, in the light of Art. 32 of the Polish Constitution, appointing a legal representative for a person with an intellectual disability can also occur under Article 183 of the FGL.¹³⁵ Unfortunately, many judges still have a stereotypical view of persons with intellectual disabilities,¹³⁶ and consequently, courts and officials of local and governmental administration tend to recommend to the parents of adults with intellectual disabilities that they undertake deprivation of legal capacity proceedings, rather than seek support for the person’s autonomous decision-making.¹³⁷ In particular, the 2016 Ombudsman study refers to a decision of a lower court in Poland, where the court refused to appoint a guardian to offer supported decision-making to a woman with intellectual disabilities under Article 183 of the FGL. Apparently, the court did so even though it failed to inquire whether, given the needs and the state of the woman, she could be offered support for her decision-making.¹³⁸ Instead, the court only ordered expert opinions to establish whether the woman met the conditions for deprivation of legal capacity, either partial or full, rather than even trying to establish whether the woman could be offered supported decision-making instead.¹³⁹

This approach to legal capacity by judges and other authorities is evidence that they are not aware of or sensitive to the particular situation of persons with disabilities and, thus, less willing to use the existing laws to ensure their rights to autonomy and access to justice. To fill this gap, the Ombudsman suggested that, consistent with Article 13 of the CRPD, all officers of law enforcement, notwithstanding their position and function, should be trained repeatedly about specifics of various disabilities and about reasonable accommodations for people with disabilities.¹⁴⁰

Recommendations to Poland on Legal Capacity

- Prepare and implement policies and practices that ensure that women with disabilities deprived of legal capacity are treated in a respectful manner and reasonably accommodated by law

enforcement officers, so as to ensure that they are heard and consulted when a court or other authority makes a decision about their rights.

- Immediately withdraw the reservation to Article 12 of the CRPD and amend the laws accordingly.
- Raise awareness and conduct social campaigns to remove stigma surrounding people with disabilities, and specifically women and girls with disabilities, who have historically and traditionally have been deprived of legal capacity, with interconnected disabling socio-legal and cultural consequences, to change societal attitudes about these groups and their abilities.
- Replace the existing laws that allow deprivation of legal capacity with a system of flexible legal instruments that will permit supported decision-making for persons with disabilities. Implement a state-sponsored and integrated Personal Assistance services program that will provide decision-making support to persons with disabilities who need or request it.
- Until such time as these new instruments of supported decision-making are introduced, apply Art. 183 of the Family and Guardianship Law in line with Article 12 of the CRPD, ensuring that persons with disabilities are not deprived of legal capacity but are rather provided with support to make decisions, when needed and requested.

E. Discrimination in Employment and Education (arts. 5, 6, 24, 27, 31)

According to an extensive EU study in 2017 on employment for women with disabilities in Poland, 66.4% of women reporting difficulties in performing basic activities were also inactive in the labor market, as opposed to 58% of men in the same category.¹⁴¹ The report specifically notes that there are no Polish statistics on this topic, as labor statistics in Poland are only disaggregated by gender and not by disability.¹⁴² According to the 2011 Polish census, however, 20.4% of men with disabilities were active in the labor market, as opposed to 13.1% of women with disabilities.¹⁴³ The income of women with disabilities was also significantly less than the average income for adults in Poland, and slightly less than that of men with disabilities.¹⁴⁴ Overall, the study concluded that women with disabilities in Poland, particularly those in rural areas, live in worse socio-economic conditions than do men with disabilities, and measures in Poland aimed at improving conditions in the labor market for persons with disabilities do not take the person's specific characteristics—including gender—into account.¹⁴⁵

The high rates of unemployment for women with disabilities in Poland challenges the dominant narrative that there are not enough workers in Poland. Instead, systemic barriers remain that perpetuate their unemployment.¹⁴⁶ The limited research that does exist on the lived experiences of women with disabilities relating to employment stresses that there are significant mental, architectural, and procedural barriers that permeates even those workplaces which do seek to include women with disabilities.¹⁴⁷ Anecdotal evidence indicates that employers and non-disabled fellow employees often hold negative attitudes towards women with disabilities, for instance viewing them as burdens to the company, that undermine their effectiveness at work. The opportunities for working in the open market are very limited even for highly educated women with disabilities. On the other hand, from the perspective of women with disabilities who were employed, work normalized and stabilized their lives and increased their chances of socio-economic integration with the mainstream society. As one Polish woman put it, "Employment enables me to gain resources for living on a decent level which gives me a chance for independence. Work constitutes for me an indicator of independence and resourcefulness. By working the personality develops, it is an occasion for social interaction and gives me a higher sense of self-value and satisfaction. It also guards from passivity and boredom"¹⁴⁸

Men with disabilities also are generally more educated than women with disabilities in Poland, which opens up more opportunities for men in the labor market.¹⁴⁹ The geographical location of girls with disabilities and the socio-economic status and cultural situation of their parents/family affects their

educational trajectory starting from the early stages of development. Anecdotal evidence indicates that in urban settings and wealthier parts of Poland, the chance of getting into an accessible and inclusive education program with well-trained teachers and educators is higher. Parents and families play also a critical role in supporting girls with disabilities both mentally and financially to enter into and continue their education,¹⁵⁰ and the more economic and cultural capital within a given family, the higher chances girls with disabilities will successfully finish their education, including university.¹⁵¹

However, such success stories are rare, because existing structures in the education system, cultural norms (stereotypes, gender roles, tradition), and the low socio-economic status of the majority of families/parents of girls with disabilities perpetuate their segregation and exclusion in all levels of education. In particular, schools and universities across the country remain architecturally inaccessible.¹⁵² Hence, a lot of girls with disabilities end up in segregated (“special education”) settings even though they could get their education in mainstream schools and according to inclusive education standards.¹⁵³ Due to the scarcity of funding in the education system, teachers and educators are often inadequately equipped with new knowledge and skills that would reflect the CRPD principles. While at school, girls with disabilities report experiencing further gendered discrimination that manifests in getting less attention from teachers than their male peers, isolation, overprotection, and lack of support for setting more ambitious educational goals.¹⁵⁴ Moreover, girls with disabilities are exposed to few good models within educational settings directly, as women with disabilities are rarely hired as teachers, educators, lecturers, and academics. One of the Polish respondents of a sociological study evaluated the current system as follows:

Education should be of a different character. It should concentrate on how the specificity of a particular disability or illness could be used in a positive manner. How to tap into those experiences in a way that they would serve as an example for others as well as be treated as valuable assets. Women with disabilities should not live with a preconception that illness excludes active living and personal development. It would be beneficial to cultivate approaches that (re)affirm that a given disability is a way of living/being and not a barrier that isolates and separates able-bodied from disabled people. Education should also include families/carers of people with disabilities because they have great impact on shaping their life choices and outlooks.¹⁵⁵

Unfortunately, recent developments concerning the Polish educational system indicate that the government continues to believe that education for some children with disabilities should be segregated, rather than inclusive. For instance, following a decision by the Ministry of Education, starting in September 2018, many children with disabilities that were offered individual education within public schools will be denied this educational trajectory and instead will have to be homeschooled and remain isolated from their peers.¹⁵⁶ As the authors of a recent grassroots petition about this issue argue, “regardless of the Ministry of Education assertion and standpoint that emerged from social consultation – the currently existing provisions result in practice in exclusion of certain pupils with disabilities.” Therefore they urge the Ministry to immediately clarify the provisions of the Regulation of Ministry of Education of 9th and 29th August 2017 so that they guarantee individualized education at schools to pupils who need it.¹⁵⁷

The CRPD Committee consistently recommends that States ensure access to inclusive education for all children with disabilities, noting in particular the lower rates of education for women and girls, and that States adopt policies targeted at ensuring employment for persons with disabilities. In at least one instance, the Committee has also recognized the need to ensure gender equality when pursuing employment programs targeted at persons with disabilities.¹⁵⁸

Recommendations to Poland on Employment and Education

- Provide individualized support to women and girls with disabilities, regardless of their socio-economic status and geographic location, to ensure their access to quality inclusive education and job opportunities on the basis of non-discrimination. Require that schools and employers provide reasonable accommodations to women and girls with disabilities that takes into account barriers they face due to both their gender and disability.
- Provide ongoing nationwide monitoring on the local, regional, and national levels regarding the correlation between spending and educational and therapeutic effects – through a intersectional perspective.
- Train teachers, educators and academics regarding anti-discrimination standards and on effective inclusive education, especially concerning girls and women with disabilities.
- Promote and implement policies that increase the numbers of teachers, educators, academics with disabilities in schools and academic institutions.
- Monitor the accessibility of the employment sector (both private and public) and promote the mainstreaming of good practices from different employment fields.
- Collect consistent data, disaggregated by age, gender, and disability, on employment, to reflect the current lived experiences of women with disabilities in this sector.
- Clarify the provisions of the Regulations of Ministry of Education of 9th and 29th August 2017 to ensure reasonable accommodations, support, and individualized education for children with disabilities in integrated and inclusive schools.

F. Poland’s Reservations to the CRPD (arts. 1, 3, 12, 15, 23, 25)

Poland issued three significant reservations to the CRPD upon its ratification, related to legal capacity, abortion, and the right to marry and found a family. These reservations not only undermine Poland’s commitment to the rights of persons with disabilities, but also disproportionately impact women with disabilities and likely violate international law.

First, Poland has made a reservation concerning Article 12 of the CRPD, noting that Poland interprets the CRPD to allow it to still deprive persons with intellectual or psychosocial disabilities of legal capacity.¹⁵⁹ As the CRPD Committee found in its General Comment No. 1, equality before the law, including in the context of exercise of legal capacity, “is a basic general principle of human rights protection and is indispensable for the exercise of other human rights.”¹⁶⁰ The CRPD Committee has previously found that a less broad reservation to Article 12 that permitted substitute decision-making “contradicts the object and purpose of the Convention as enshrined in article 1 and prevents the State party from fully implementing and addressing all human rights of persons with disabilities in compliance with the human rights model of disability.”¹⁶¹ As such, given the scope of Poland’s reservation to Article 12, it also contravenes the object and purpose of the CRPD, violating the general principles of the CRPD itself as set out in Article 3, particularly “[r]espect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons.”¹⁶² This reservation should thus be considered invalid.

Second, Poland issued a reservation upon its ratification of the CRPD concerning the issue of abortion, stating that “The Republic of Poland understands that Article 23.1 (b) and Article 25 (a) shall not be interpreted in a way conferring an individual right to abortion or mandating state party to provide access thereto, unless that right is guaranteed by the national law.”¹⁶³ It is important to note that Poland is also a party to CEDAW, which guarantees the rights of women, including women with disabilities, to health and to decide on the number and spacing of children, and Poland has not made any reservations to CEDAW.¹⁶⁴ The CEDAW Committee has consistently found that, as part of ensuring women’s rights to health and to decide on the number and spacing of children, they must have access to abortion in a wide variety of circumstances.¹⁶⁵ The CRPD requires that Poland ensure human rights for persons with

disabilities on an equal basis with others as part of its purpose and general principles,¹⁶⁶ and specifically concerning the right to health, including and reproductive health information and services.¹⁶⁷

Under the Vienna Convention on the Law of Treaties, the CRPD Committee cannot accept a reservation that is “incompatible with the object and purpose of the treaty.”¹⁶⁸ As noted above, the CRPD Committee has previously found a reservation in violation of this “object and purpose” requirement when it violated one of the general principles of the CRPD. Poland’s refusal to recognize the right to access a reproductive health service needed specifically by women, including women with disabilities, in order to control their fertility and make important decisions about their lives violates the CRPD’s purpose of ensuring equality in human rights for persons with disabilities and its general principles of autonomy, equality between men and women, and non-discrimination, and as applied to women with disabilities it would be incompatible with the object and purpose of the CRPD.¹⁶⁹ Furthermore, given that Poland is under an obligation to ensure access to abortion for all women under CEDAW, the CRPD also requires as part of its mandate that abortion be available to women with disabilities. A reservation that allows States to implement restrictions on abortion that would disproportionately impact women with disabilities, such as those in Poland noted above, violates the object and purpose of the CRPD, because it allows for inequality in the treatment of women with disabilities.

Finally, Poland issued a reservation to the CRPD that severely restricts the rights of persons with intellectual or psychosocial disabilities to marry and found a family, stating that it will not apply Article 23(1) until it amends its own domestic legislation.¹⁷⁰ This reservation has been interpreted to not only impact the right of men and women with disabilities to marry on an equal basis with others, but also on their right to become parents.¹⁷¹ As such, it could serve to justify forced or coerced reproductive health procedures against women and girls with disabilities, including forced sterilization, abortion, and contraception.¹⁷²

Restrictions on marrying and founding a family violate at least two general principles of the CRPD, including autonomy and equality between men and women.¹⁷³ Furthermore, the Committee against Torture and the Special Rapporteur on Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment have found that forced and coerced sterilization and abortion can amount to torture or ill-treatment, one of the most severe human rights violations in international human rights law.¹⁷⁴ Given the gravity of the violations that could result from this reservation, as well as the reservations incompatibility with the object and purpose of the CRPD to ensure autonomy and equality for persons with disabilities, including women with disabilities, the CRPD Committee should not accept this reservation and should question Poland about its plans to withdraw it.

Recommendation

- Immediately withdraw all reservations to the CRPD and ensure that the CRPD is implemented in a manner that respects the rights of all persons with disabilities, including women and girls with disabilities.

III. Conclusions

Thank you again for the opportunity to contribute to the CRPD Committee’s review of Poland. If any questions should arise, please do not hesitate to contact the authors of this report at a.mcrae@womenenabled.org and m.szarota@lancaster.ac.uk.

¹ Eurostat, *Statistics on Poland: People reporting a longstanding health problem or a basic activity difficulty by age and sex*, <http://ec.europa.eu/eurostat/web/health/disability/data/database>.

² For purposes of this submission, the term “women” should be interpreted to include both women and girls throughout the lifecycle, unless otherwise noted.

³ CRPD Committee, *Initial Report of State Party: Poland*, ¶ 50, U.N. Doc. CRPD/C/POL/1 (2015), available at http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fPOL%2f1&Lang=en [hereinafter CRPD Committee, *Poland State Report*].

⁴ *Id.*

⁵ Central Statistical Office, *Stan zdrowia ludności Polski w 2014 r.* [*Health Status of the Population of Poland in 2014*] at 105, 106 (2016), available at <https://stat.gov.pl/obszary-tematyczne/zdrowie/zdrowie/stan-zdrowia-ludnosci-polski-w-2014-r-,6,6.html> [hereinafter Central Statistical Office, *Health Status of the Population of Poland in 2014*].

⁶ *Id.* at 106. See also Central Statistical Office, *Stan zdrowia ludności Polski w 2014 r. – tablice* [*Health Status of Population in Poland in 2014 – Tables*] (2016), available at <https://stat.gov.pl/obszary-tematyczne/zdrowie/zdrowie/stan-zdrowia-ludnosci-polski-w-2014-r-,6,6.html> [hereinafter Central Statistical Office, *Health Status of Population in Poland in 2014 – Tables*].

⁷ Central Statistical Office, *Health Status of Population in Poland in 2014 – Tables*, *supra* note 6.

⁸ Central Statistical Office, *Health Status of the Population of Poland in 2014*, *supra* note 5, at 106.

⁹ *Id.* at 105, 108, 109. As the Central Statistical Office explains, “the legal characterization of persons with disabilities in Poland is complex and less than clear. The legal provisions use divergent notions of disability, depending on the time of their enactment. Various institutions render the legal status of a person with disability for divergent purposes.”

¹⁰ *Id.* at 110.

¹¹ Beata Borowska-Beszta, *Females in Cultural Encryption: A Review of Eight Polish Discourses on Females with Disabilities*, 2(5) INT’L RESEARCH J. FOR QUALITY IN EDU. 1, 3 (2015).

¹² Agnieszka Wołowicz-Ruszkowska, *How Polish Women With Disabilities Challenge the Meaning of Motherhood*, in 40(1) PSYCH. OF WOMEN QUARTERLY 80, 86 (2015), available at <http://journals.sagepub.com/doi/pdf/10.1177/0361684315600390>.

¹³ CEDAW Committee, *Concluding Observations: Poland*, ¶ 22, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

¹⁴ Anna Nowak, *Zagrożenie wykluczeniem społecznym kobiet niepełnosprawnych* [*A Danger of Social Exclusion of Disabled Women*] at 271 (2012) (unofficial English translation) [hereinafter Anna Nowak, *A Danger of Social Exclusion of Disabled Women*].

¹⁵ *Id.*

¹⁶ Beata Borowska-Beszta, *Females in Cultural Encryption: A Review of Eight Polish Discourses on Females with Disabilities*, 2(5) INT’L RESEARCH J. FOR QUALITY IN EDU. 1, 4 (2015).

¹⁷ European Parliament, *Study on Discrimination and Access to Employment for Female Workers with Disabilities* 21 (2017), available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602067/IPOL_STU\(2017\)602067\(ANN04\)_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/602067/IPOL_STU(2017)602067(ANN04)_EN.pdf) [hereinafter European Parliament, *Employment Study*].

¹⁸ Debate “*Introduction to the Subject Matter of Women with Disabilities in Poland*” [hereinafter 2016 Debate – *Introduction to the Subject Matter of Women with Disabilities in Poland*] was a part of the project “*Implementation of the UN Convention on Rights of Disabled Persons – a common cause*” launched by the Polish Disability Forum and co-funded by the EU’s European Social Fund. See <http://www.pfon.org/wdrazenie-konwencji-o-prawach-osob-niepelnosprawnych-wspolna-sprawa?id=694>. The analysis of the 2016 Debate is presented in Urszula Tomczyk, *Raport tematyczny nt. kobiet niepełnosprawnych* [*Thematic Report regarding Disabled Women*] (2017), available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwj2hsPCg7zcAhWOKywKHX5oAcMQFggqMAA&url=https%3A%2F%2Fwww.dzp.pl%2Ffiles%2Fshares%2Fpublikacje%2FRaport_tematyczny_art.6.pdf&usq=AOvVaw10yVRZABkqNx09AFQZF1EH [hereinafter Urszula Tomczyk, *Thematic Report regarding Disabled Women*].

¹⁹ See information regarding the debates organized within the Project “*Implementation of the UN Convention on Rights of Disabled Persons – a common cause*” available at <https://www.pfon.org/debaty>.

²⁰ Komitet Społeczny #Jesteśmy, *Apel o pełne i pilne wdrożenie w Polsce Konwencji ONZ o Prawach Osób z Niepełnosprawnościami* [Social Committee #We Are, *Call For Full and Urgent Implementation in Poland the CRPD*], (May.5, 2018), <https://www.facebook.com/notes/komitet-spo%C5%82eczny-jeste%C5%9Bmy/o-pe%C5%82ne-i-pilne-wdro%C5%BCenie-w-polsce-konwencji-onz-o-prawach-os%C3%B3b-z-niepe%C5%82nosprawn/175269563066482/>; see Statement by the Polish Ombudsman, (Oct. 25, 2017), available at <https://www.rpo.gov.pl/pl/content/iii-kongres-osob-z-niepelnosprawnościami-za-niezaleznym-zyciem>; and (Nov. 5,

2018), <https://www.rpo.gov.pl/pl/content/apel-rpo-w-sprawie-potrzeby-przyj%C4%99cia-kompleksowych-rozwi%C4%85za%C5%84-w%C2%A0zakresie-systemu-wsparcia-os%C3%B3b-z>.

²¹ Kongres Osób z Niepełnosprawnościami, *Założenia do projektów ustaw dla Nowego Systemu Wsparcia, wersja 3.0* [Congress of Persons with Disabilities, *Guiding Principles for Policies for the New System of Support, Version 3.0*], available at <https://www.rpo.gov.pl/sites/default/files/III%20Kongres%20ON%20-%20Za%C5%82o%C5%BCenia%20dla%20projekt%C3%B3w%20ustaw%20dla%20Nowego%20Systemu%20Wsparcia%20os%C3%B3b%20z%20niepe%C5%82nosprawno%C5%9Bciami%20v2.0%202017.10.23.pdf>

²² See at <http://konwencja.org/list-do-prezesa-rady-ministrow/>.

²³ Grzegorz Osiecki, *Prezes ZUS zapowiada reformę orzecznictwa. Powstanie centralny rejestr orzeczeń o niepełnosprawności* [President of ZUS announces reform of assessment of disability. A central record of disability degree certificates to be launched], *GAZETA PRAWNA* (June 28, 2018), <http://praca.gazetaprawna.pl/artykuly/1153564,centralny-rejestr-orzeczen-o-niepelnosprawnosci-i-niesamodzielnosci.html>.

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²⁷ Eurostat, *Statistics on Poland: People reporting a longstanding health problem or a basic activity difficulty by age and sex*, <http://ec.europa.eu/eurostat/web/health/disability/data/database>.

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²⁹ *Id.*, ¶ 32.

³⁰ See, e.g., CRPD Committee, *General Comment No. 3 (2016): Article 6: Women and girls with disabilities*, ¶ 26, U.N. Doc. CRPD/C/GC/3 (2016) [hereinafter CRPD Committee, *Gen. Comment No. 3*].

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³² *Id.*, ¶ 34.

³³ *Id.*, ¶ 33.

³⁴ *Id.*, ¶ 30.

³⁵ *Id.*, ¶ 32.

³⁶ *Id.*, ¶ 48.

³⁷ *Id.*, ¶ 62(a)(ii).

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⁴⁷ *Id.*

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- ⁴⁸ Stanisław Trociuk (ed.), *Counteracting Violence Against Women*, *supra* note 39, at 3.
- ⁴⁹ *Id.*
- ⁵⁰ *Id.* at 88.
- ⁵¹ *Id.* at 3; Krystyna Mrugalska, Monika Zima, *Experiencing violence by disabled people*, *supra*, note 38, at 3.
- ⁵² Urszula Tomczyk, *Thematic Report regarding Disabled Women*, *supra*, note 18, at 41.
- ⁵³ Stanisław Trociuk (ed.), *Counteracting Violence Against Women*, *supra*, note 39, at 88.
- ⁵⁴ *Id.*
- ⁵⁵ *Id.* at 89.
- ⁵⁶ Agnieszka Wołowicz-Ruszkowska, *How Polish Women With Disabilities Challenge the Meaning of Motherhood*, in 40(1) *PSYCH. OF WOMEN QUARTERLY* 80, 82 (2015), <http://journals.sagepub.com/doi/pdf/10.1177/0361684315600390> (“Polish women with disabilities often remain in partner relationships because of economic dependency, inadequate social policy, and structural constraints.”).
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- ⁵⁸ Urszula Tomczyk, *Thematic Report regarding Disabled Women*, *supra*, note 18, at 41.
- ⁵⁹ Krystyna Mrugalska, Monika Zima, *Experiencing violence by disabled people*, *supra*, note 38, at 1.
- ⁶⁰ *Id.*
- ⁶¹ NEWSWEEK (Sept. 28, 2017), <http://www.newsweek.pl/polska/spoleczenstwo/zgwalcil-niepelnosprawna-kobieta-na-cmentarzu,artykuly,416664,1.html>.
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- ⁶³ CEDAW Committee, *Concluding Observations: Poland*, ¶ 25, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).
- ⁶⁴ CRPD Committee, *Gen. Comment No. 3*, *supra* note 30, ¶¶ 17(e) & 52.
- ⁶⁵ *Id.*
- ⁶⁶ *Id.*, ¶ 26.
- ⁶⁷ CRPD Committee, *Poland State Report*, *supra*, note 3, ¶¶ 315-17.
- ⁶⁸ Agnieszka Wołowicz-Ruszkowska, *How Polish Women With Disabilities Challenge the Meaning of Motherhood*, in 40(1) *PSYCH. OF WOMEN QUARTERLY* 80, 86 (2015), <http://journals.sagepub.com/doi/pdf/10.1177/0361684315600390>.
- ⁶⁹ *Id.*
- ⁷⁰ *Id.* at 81
- ⁷¹ *Id.* at 84.
- ⁷² *Id.*
- ⁷³ *Id.* at 85.
- ⁷⁴ *Id.* at 84.
- ⁷⁵ *Id.* at 85.
- ⁷⁶ *Id.*
- ⁷⁷ *Id.*
- ⁷⁸ *Id.*
- ⁷⁹ 2016 Debate – *Introduction to the Subject Matter of Women with Disabilities in Poland*, *supra*, note 18.
- ⁸⁰ Urszula Tomczyk, *Thematic Report regarding Disabled Women*, *supra*, note 18, at 40.
- ⁸¹ *Id.*
- ⁸² Agnieszka Król, *Niepelnosprawność i sprawiedliwość reprodukcyjna. Zarys wybranych zagadnień dotyczących kobiet z niepełnosprawnościami [Disability and Reproductive Justice. Overview of the Selected Problems Regarding Women with Disabilities]* at 4 [hereinafter Agnieszka Król, *Disability and Reproductive Justice*].
- ⁸³ CEDAW Committee, *General Recommendation No. 24: Article 12 of the Convention (women and health)*, ¶ 2, U.N. Doc. CEDAW/C/GC/24 (1999); ESCR Committee, *General Comment No. 22 on the right to sexual and reproductive health*, ¶ 45, U.N. Doc. E/C.12/GC/22 (2016).
- ⁸⁴ ESCR Committee, *General Comment No. 22 on the right to sexual and reproductive health*, ¶ 16 & 45, U.N. Doc. E/C.12/GC/22 (2016).
- ⁸⁵ *Id.*, ¶ 24.
- ⁸⁶ CRPD Committee, *Poland State Report*, *supra*, note 3, ¶ 318.
- ⁸⁷ UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO), *INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION: AN EVIDENCE-INFORMED APPROACH, REVISED EDITION 17* (Jan. 2018), http://www.unaids.org/sites/default/files/media_asset/ITGSE_en.pdf.
- ⁸⁸ *Id.* at 25.
- ⁸⁹ *Id.* at 16.

⁹⁰ *Id.* at 18.

⁹¹ Urszula Tomczyk, *Thematic Report regarding Disabled Women*, *supra*, note 18, at 39.

⁹² Jacek Zadrozny (ed.), *Spoleczny Raport Alternatywny z Realizacji konwencji o prawach osób z niepełnosprawnościami w Polsce* [Alternative Report from the Realization of the Convention of the Rights of People with Disabilities in Poland] at 16 (2015),

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⁹³ Anna Nowak, *A Danger of Social Exclusion of Disabled Women*, *supra*, note 14, at 51 (unofficial English translation).

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ CRPD Committee, *General Comment No. 4 (2016) on the right to inclusive education*, ¶ 54, U.N. Doc. CRPD/C/GC/4 (2016).

⁹⁷ *See, e.g.*, CEDAW Committee, *Concluding Observations: Poland*, ¶ 36, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

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¹⁰⁰ *Id.*

¹⁰¹ Agnieszka Wołowicz, *Macierzyństwo kobiet z niepełnosprawnością intelektualną*. [Maternity of Women with Intellectual Disabilities], Unpublished research, (2018).

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¹⁰³ *See, e.g.*, CAT Committee, *Concluding Observations: Slovakia*, ¶ 12, U.N. Doc. CAT/C/SVK/CO/3 (2015); *Peru*, ¶ 19, U.N. Doc. CAT/C/PER/CO/5-6 (2013); *Kenya*, ¶ 27, U.N. Doc. CAT/C/KEN/CO/2 (2013); *Czech Republic*, ¶ 12, U.N. Doc. CAT/C/CZE/CO/4-5 (2012); *Slovakia*, ¶ 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); *Peru*, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (2006).

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¹⁰⁵ *Id.*

¹⁰⁶ Human Rights Council, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover: Mission to Poland*, ¶¶ 49-55, U.N. Doc. A/HRC/14/20/Add.3 (2009), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/134/03/PDF/G1013403.pdf?OpenElement>; ASTRA Central and Eastern European Women's Network for Sexual and Reproductive Rights and Health, "Abuse of Conscientious Objection in Poland: Short Summary of Doctor Chazan Case" (2014), <http://www.astra.org.pl/repronews/295-abuse-of-conscientious-objection-in-poland-short-summary-of-doctor-chazan-case.html>; Human Rights Watch, "Dispatches: Abortion and 'Conscience Clause' in Poland" (Oct. 22, 2014), <https://www.hrw.org/news/2014/10/22/dispatches-abortion-and-conscience-clause-poland>

¹⁰⁷ "How Poland's far-right government is pushing abortion underground," THE GUARDIAN (Nov. 30, 2017), <https://www.theguardian.com/news/2017/nov/30/how-polands-far-right-government-is-pushing-abortion-underground>

¹⁰⁸ *Id.*

¹⁰⁹ *See P. and S. v. Poland*, No. 57375/08, Eur. Ct. H.R. (2012); *RR v. Poland*, No. 27617/04, Eur. Ct. H.R. (2011); *Tysiac v. Poland*, No. 5410/03, Eur. Ct. H.R. (2007).

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¹¹⁶ *Id.*, ¶ 46.

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¹¹⁸ *Id.*, ¶ 130.

¹¹⁹ *Id.*, ¶ 128.

¹²⁰ *Id.*, ¶ 130.

¹²¹ *Id.*, ¶ 134.

¹²² *Id.*, ¶ 135.

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¹²⁴ *Id.*, ¶ 47; SRVAW, *Report on women with disabilities*, *supra* note 12, ¶ 41.

¹²⁵ CRPD Committee, *Gen. Comment No. 3*, *supra* note 30, ¶ 52.

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¹³⁰ *Id.*

¹³¹ *Id.*

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¹³³ Family and Guardianship Law, art. 183 (Poland) (unofficial English translation).

¹³⁴ Henryk Haak, Anna Haak-Trzuskawska, *Komentarz do Art. 145-184 KRO regulujących opiekę i kuratelę* [*Commentary to Art. 145-184 FGL relating to Guardianship and Curatorship*], ¶ 5 (2017).

¹³⁵ The exact language of the 2016 Ombudsman report reads as follows: “Taking into account Art. 32 of the Polish Constitution, and also Art. 12 CRPD, a contention is legitimate that an appointment of a guardian for a person with intellectual disability, who might need, for certain matters, a legal representative or other support that will enable her to exercise an autonomous decision-making, falls within a scope of Art. 183 FGL.” Given the mention of the “need of a legal representative,” this argument can only be read to include the appointment of a legal representative within the scope of Art. 183 FGL, in contrast to the traditional view on Art. 183 FGL.

¹³⁶ Anna Błaszczak-Banasiak et al., *Access to Justice for Persons with Disabilities*, *supra*, note 127, at 26.

¹³⁷ *Id.* at 25.

¹³⁸ *Id.* at 26.

¹³⁹ *Id.* at 26.

¹⁴⁰ *Id.* at 73.

¹⁴¹ European Parliament, *Employment Study*, *supra*, note 17, at 10.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Id.* at 11.

¹⁴⁵ *Id.* at 12.

¹⁴⁶ Agata Gawska, *Brakuje rąk do pracy? Milion osób z niepełnosprawnością mogłoby podjąć zatrudnienie. Polska marnuje ich potencjał* [*One million of people with disabilities could take up work. Poland is wasting their potential*], OKO PRESS (July. 8, 2018), <https://oko.press/brakuje-rak-do-pracy-milion-osob-z-niepelnosprawnościami-mogloby-podjac-zatrudnienie-polska-marnuje-ich-potencjal/>.

¹⁴⁷ See Statement by the Polish Ombudsman, (June 8, 2018), available at <https://www.rpo.gov.pl/pl/content/rpo-oniewystarczaj%C4%85cej-pomocy-osobom-z-niepe%C5%82nosprawno%C5%9Bciami-we-wchodzeniu-na-otwarty-rynek-pracy>.

¹⁴⁸ Anna Nowak, *A Danger of Social Exclusion of Disabled Women*, *supra*, note 14, at 307.

¹⁴⁹ *Id.* at 10.

¹⁵⁰ See System Informacji Oświatowej [System of Education Information], <http://www.cie.men.gov.pl/index.php/dane-statystyczne/139.html>.

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- ¹⁵³ CERMI Committee, *Recognizing the Rights of Girls and Women with Disabilities. An Added Value for Tomorrow's Society*, European Conference, Part on Poland (2007), <http://cms.horus.be>.
- ¹⁵⁴ Maria Chodkowska, *Kobieta niepełnosprawna. Socjopedagogiczne problemy postaw [Disabled Woman. Sociopedagogical problems with approaches]* 60-86 (1993).
- ¹⁵⁵ Anna Nowak, *A Danger of Social Exclusion of Disabled Women*, *supra*, note 14, at 361.
- ¹⁵⁶ Magdalena Gałczyńska, *Dzieci niepełnosprawne znikną ze szkół? "Decyzja MEN niehumanitarna. Domowe getta" [Disabled people will disappear from schools? „Decision of the Ministry of Education is inhumane. Home ghettos”]*, ONET.pl (July 5, 2018), <https://lodz.onet.pl/dzieci-niepelnosprawne-znikna-ze-szkol-decyzja-men-nieludzka-domowe-getta/k3008xj>.
- ¹⁵⁷ See the petition NASZA DEMOKRACJA (June-July 2018), <https://naszademokracja.pl/petitions/pozwolcie-dzieciom-niepelnosprawnym-z-nauczaniem-indywidualnym-uczyc-sie-w-szkole-1>.
- ¹⁵⁸ CRPD Committee, *Concluding Observations: Canada*, ¶ 48, U.N. Doc. CRPD/C/CAN/CO/1 (2017).
- ¹⁵⁹ Convention on the Rights of Persons with Disabilities, *Declarations and Reservations: Poland* (Sept. 25, 2012), available at https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=_en#EndDec [hereinafter CRPD, *Poland Reservations*] (“The Republic of Poland declares that it will interpret Article 12 of the Convention in a way allowing the application of the incapacitation, in the circumstances and in the manner set forth in the domestic law, as a measure indicated in Article 12.4, when a person suffering from a mental illness, mental disability or other mental disorder is unable to control his or her conduct.”).
- ¹⁶⁰ CRPD Committee, *General Comment No. 1 (2014): Article 12: Equal recognition before the law*, ¶ 1, U.N. Doc. CRPD/C/GC/1 (2014).
- ¹⁶¹ CRPD Committee, *Concluding Observations: Canada*, ¶ 7, U.N. Doc. CRPD/C/CAN/CO/1 (2017).
- ¹⁶² Convention on the Rights of Persons with Disabilities, adopted Dec. 13, 2006, art. 3, G.A. Res. A/RES/61/106, U.N. GAOR, 61st Sess., U.N. Doc. A/61/611, (entered into force May, 3 2008) [hereinafter CRPD].
- ¹⁶³ CRPD, *Poland Reservations*, *supra* note 155.
- ¹⁶⁴ Convention on the Elimination of All Forms of Discrimination against Women, adopted Dec. 18, 1979, arts. 12 & 16, G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46, U.N.T.S. 13 (entered into force Sept. 3, 1981).
- ¹⁶⁵ See, e.g., CEDAW Committee, *Concluding Observations: Trinidad and Tobago*, ¶ 33, U.N. Doc. CEDAW/C/TTO/CO/4-7 (2016); *United Republic of Tanzania*, ¶ 35, U.N. Doc. CEDAW/C/TZA/CO/7-8 (2016); *Myanmar*, ¶ 39, U.N. Doc. CEDAW/C/MMR/CO/4-5 (2016); *Japan*, ¶ 39, U.N. Doc. CEDAW/C/JPN/CO/7-8 (2016); *United Kingdom of Great Britain and Northern Ireland*, ¶ 51, U.N. Doc. CEDAW/C/GBR/CO/7 (2013).
- ¹⁶⁶ CRPD, *supra* note 161, arts. 1 & 3.
- ¹⁶⁷ CRPD, *supra* note 161, arts. 23 & 25.
- ¹⁶⁸ Vienna Convention on the Law of Treaties, art. 19, 1155 U.N.T.S. 331, 8 I.L.M. 679 (entered into force Jan. 27, 1980).
- ¹⁶⁹ *Id.*
- ¹⁷⁰ CRPD, *Poland Reservations*, *supra* note 155 (“Article 23.1(a) of the Convention refers to the recognition of the right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses. By virtue of Article 46 of the Convention the Republic of Poland reserves the right not to apply Article 23.1(a) of the Convention until relevant domestic legislation is amended. Until the withdrawal of the reservation a disabled person whose disability results from a mental illness or mental disability and who is of marriageable age, cannot get married without the court's approval based on the statement that the health or mental condition of that person does not jeopardize the marriage, nor the health of prospective children and on condition that such a person has not been fully incapacitated. These conditions result from Article 12 § 1 of the Polish Code on Family and Guardianship (Journal of Laws of the Republic of Poland of 1964, No. 9, item 59, with subsequent amendments).”).
- ¹⁷¹ Agnieszka Wołowicz-Ruszkowska, *How Polish Women With Disabilities Challenge the Meaning of Motherhood*, in 40(1) PSYCH. OF WOMEN QUARTERLY 80 (2015), available at <http://journals.sagepub.com/doi/pdf/10.1177/0361684315600390>.
- ¹⁷² See CRPD Committee, *Gen. Comment No. 3*, *supra* note 30, ¶ 44.
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¹⁷⁴ See, e.g., CAT Committee, *Concluding Observations: Slovakia*, ¶ 12, U.N. Doc. CAT/C/SVK/CO/3 (2015); *Peru*, ¶ 19, U.N. Doc. CAT/C/PER/CO/5-6 (2013); *Kenya*, ¶ 27, U.N. Doc. CAT/C/KEN/CO/2 (2013); *Czech Republic*, ¶ 12, U.N. Doc. CAT/C/CZE/CO/4-5 (2012); *Slovakia*, ¶ 14, U.N. Doc. CAT/C/SVK/CO/2 (2009); *Peru*, ¶ 23, U.N. Doc. CAT/C/PER/CO/4 (2006); Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment*, Juan E. Méndez, U.N. Doc. A/HRC/22/53 (2013).