



**Preliminary Submission to the CRPD Committee for the
Pre-Sessional Working Group on Poland
January 31, 2018**

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Description of author organizations:

Association of Women with Disabilities ONE.pl 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. Human Rights Defender Office) as well is active in pan-European initiatives (e.g. organized by the European Disability Forum).

WEI works at the intersection of women's rights and disability rights to advocate and educate for the human rights of all women and girls, emphasizing women and girls with disabilities, and works to include women and girls with disabilities in international resolutions, policies, and programs addressing women's human rights and development, in collaboration with disabled women's rights and women's rights organizations worldwide.



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I. Introduction

ONE.pl and Women Enabled International (WEI) welcome the opportunity to contribute to the pre-sessional working group for the upcoming review of Poland by the Committee on the Rights of Persons with Disabilities (CRPD Committee). This is a preliminary submission intended to establish and address particular issues raised in Poland's state report, in order to inform the CRPD Committee's list of issues to Poland. We will submit a more detailed shadow letter for the review of Poland in September 2018.

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.

This preliminary 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. These violations include discrimination against and the exclusion of women with disabilities from laws, policies, programs, research, statistics, and politics in Poland; gender-based violence; sexual and reproductive rights violations; deprivations of legal capacity; and discrimination in employment and education. 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 questions that the CRPD Committee should pose to Poland to gather more information about its response to these violations.

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

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

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,⁵ thus undermining their

confidence and affecting the way services are delivered to them.⁶ As the Committee on the Elimination of Discrimination against Women (CEDAW Committee) noted in its 2014 concluding observations to Poland, there had been “limited effectiveness, if any, of measures to counter negative stereotypes against ... women with disabilities.”⁷ 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 stereotypes.⁸

Additionally, according to a 2017 case study from the European Union on employment for women with disabilities in Poland, “[a]t the moment, women with disabilities do not exist in a public discourse as a specific group with specific needs. As a consequence, their problems are not being tackled.”⁹ Indeed, issues affecting women with disabilities are rarely addressed in data and statistics collected by Poland, beyond the most basic population data collected by the Census, which is only conducted about every 10 years. Furthermore, although men with disabilities have been represented in the Polish parliament, there is no representation of women who have identified as being persons with disabilities in this key government institution and 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.¹⁰ 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,¹¹ their exclusion from the public discourse is particularly problematic.

Suggested Questions to Poland for the List of Issues

- What steps is Poland taking to raise public awareness and institute educational programs about the rights, contributions, and capabilities of women and girls with disabilities, as a means of overcoming negative and harmful stereotypes based on both disability and gender?
- What steps is Poland taking to ensure that women with disabilities are serving as public representatives and that women and girls with disabilities are otherwise actively engaging in the public discourse on issues that affect them?
- What steps is Poland taking to disaggregate all relevant data by age, gender, and disability, to ensure adequate data and research on the situation of women and girls with disabilities?

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

Gender-based violence against women and girls with disabilities worldwide takes many unique forms. According to the former UN Special Rapporteur on Violence against Women, Rashida Manjoo, 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.”¹² 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.”¹³ In its General Comment No. 3 on women with disabilities, the CRPD Committee has found 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.”¹⁴

Specific information on gender-based violence against women with disabilities in Poland is not currently available. However, 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.¹⁵ These abuses included hitting or beating, tugging or pushing, isolating or locking up individuals, and depriving

them of material goods.¹⁶ Of the Poles surveyed, 19.7% knew of cases of sexual violence against persons with disabilities.¹⁷

Furthermore, all women in Poland are at significant risk of gender-based violence, including sexual violence and domestic violence. According to the European Union Agency for Fundamental Rights, one out of every five Polish women has experienced physical or sexual violence since the age of 15.¹⁸ 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.¹⁹ 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 2017.²⁰ The current government has also threatened withdrawal from the Istanbul Convention, a seminal European regional human rights treaty that ensures additional protections for women from gender-based violence.²¹

These issues will disproportionately affect women and girls with disabilities in Poland, who are likely more economically dependent on their abusers than are other women,²² and, as the CRPD Committee has found, are also more likely to face significant barriers to accessing support services and to accessing justice.²³ 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.²⁴ It is unclear, however, if Poland has adopted such a plan, and whether that plan does include women with disabilities. It would be helpful to hear from the Polish government what steps it has taken to include women and girls with disabilities in efforts to combat gender-based violence.

Suggested Questions to Poland for the List of Issues

- Has Poland adopted a national strategy to prevent and eliminate violence against women, and how does that strategy specifically address issues faced by women and girls with disabilities? What mechanisms and monitoring processes are in place to assess the impact of such a national strategy, and how does Poland include women and girls with disabilities in those mechanisms?
- Does Poland collect statistics on violence against women that are disaggregated by age and disability? If so, how is that information being gathered and by which institutions, and is the process centralized or does it vary by region or voivoidship? If this information is gathered, how many women and girls with disabilities in Poland have experienced gender-based violence? Is this information publicly available, and how often is it updated?
- Does Polish law recognize and prohibit the forms of violence against women experienced uniquely or disproportionately by women and girls with disabilities, including forced and coerced reproductive health procedures, abandonment, neglect, isolation, withholding of medications or mobility aids, economic violence, and psychological violence?
- What steps has Poland taken to ensure that gender-based violence support services are accessible to women and girls with disabilities, that staff of such support services are trained to work with women with disabilities, that these services are adequately funded, and that these services are monitored to ensure their accessibility and inclusiveness?

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, rather than on wider access to human rights-based

information and services for women with disabilities.²⁵ This is a significant gap that the CRPD Committee should ask Poland to address as part of its List of Issues and 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.²⁶ 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.²⁷ 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.”²⁸

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.”²⁹ 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.³⁰ Indeed, women with disabilities reported that there was generally a lack of specialized care available to them.³¹ 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.³²

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.³³ Several women experienced degrading treatment in maternity wards, including aggressive observation, lack of communication, misunderstandings about their disabilities, and lack of respect for their decisions about how to give birth.³⁴ This treatment increased their sense of isolation, vulnerability, and lack of self-determination.³⁵ Furthermore, several women 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.³⁶

Comprehensive Sexuality Education

In its state report, Poland provides some details about its 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.”³⁷ 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.”³⁸

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.”³⁹ 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.⁴⁰ 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.⁴¹

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.”⁴² 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

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.⁴³ 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.⁴⁴ Given the higher risk of gender-based violence likely faced by women 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, women with disabilities in Poland may also only be offered permanent forms of contraception, such as sterilization. The issue of forced and coerced sterilization of women and girls with disabilities in Poland is not yet well documented, but given the cultural taboos surrounding motherhood for women with disabilities, the fact that many persons with disabilities are stripped of legal capacity and placed under guardianship as described in more detail below, and the seeming lack of explicit standards on sterilization and informed consent for persons with disabilities in Poland, it is likely that forced and coerced sterilization of women and girls with disabilities does occur. Poland does not include any information on this topic in its state report.

Abortion

Women and girls in Poland face both legal and practical difficulties in 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.”⁴⁵ Otherwise, abortion is illegal.⁴⁶ 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.⁴⁷ 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, while only about 1,000 legal abortions are performed each year.⁴⁸ These illegal abortions are also incredibly expensive, accounting for the average monthly wage for a Polish person (4,256 złoty),⁴⁹ which is significantly higher than 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 that could lead to legal abortion, Poland has repeatedly violated women’s rights to privacy and to be free from inhuman and degrading treatment.⁵⁰

Current barriers to accessing abortion in Poland are compounded for women and girls 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. 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.⁵¹ Instead, the government of Poland is currently attempting to adopt a law that would further limit access to abortion by banning abortions in cases of fetal impairment,⁵² which account for the vast majority of legal abortions in the country.⁵³ 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.

Suggested Questions to Poland for the List of Issues:

- What training does Poland mandate for doctors and other health care personnel about persons with disabilities, and particularly the sexual and reproductive health of women and girls with disabilities? What requirements does Poland have, beyond providing sign language interpretation, to ensure that health facilities and information are accessible to women and girls with disabilities?
- What steps is Poland taking to ensure that women and girls with disabilities have legal and practical access to the full range of sexual and reproductive health services—such as contraception (including emergency contraception), maternal health services, abortion, and post-abortion care—in accordance with its obligations under human rights treaties, including the CRPD?
- What steps is Poland taking to ensure that its sexuality education curriculum is comprehensive, meets international standards, addresses the specific issues and problems experienced by persons with disabilities, and is inclusive of and provided in accessible formats to young persons with disabilities? What percentage of students with disabilities receive sexuality education each year, disaggregated by gender, age, and type of disability?

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.”⁵⁴ Although the state report claims that “[d]isability is not a premise that justifies incapacitation,”⁵⁵ 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.⁵⁶ Those adults stripped of legal capacity, either fully or partially, are assigned a guardian or “curator” to make decisions on their behalves,⁵⁷ and the state report describes a range of protections from abuse in this context.⁵⁸ 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.⁵⁹ 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.⁶⁰ 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.⁶¹ 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.⁶²

Suggested Questions to Poland for the List of Issues

- What are Poland's plans to remove its reservation related to Article 12 of the CRPD and to amend its laws to ensure that persons with disabilities can exercise legal capacity in all its forms on an equal basis with others and receive support in doing so?
- What specific steps is Poland taking to ensure that women with disabilities receive support to make important life decisions for themselves and are not subjected to medical treatment, including reproductive health procedure such as sterilization or abortion, without their full, free and informed consent?
- What specific steps is Poland taking to ensure that women with disabilities who are currently deprived of legal capacity can access justice, particularly when they are the victims of gender-based violence, without legal restrictions on their ability to testify? What training is Poland providing to law enforcement and judicial officers to ensure that prejudices about the capabilities of women and girls with disabilities do not impede their access to justice?

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

According to an extensive study in 2017 of employment for women with disabilities in Poland, conducted by the European Union, 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.⁶³ 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 disability.⁶⁴ 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.⁶⁵ 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.⁶⁶ 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.⁶⁷ Furthermore, 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.⁶⁸ As noted above, Poland's state report does not address these issues as they apply specifically to women with disabilities.

Suggested Questions to Poland for the List of Issues

- What efforts is Poland making to collect and disaggregate data on employment and education by both gender and disability as well as geographical location (rural vs. urban), so as to ensure that situation of women with disabilities is reflected in those statistics?

- What temporary and permanent special measures has Poland taken specifically targeted at women and girls with disabilities to overcome discrimination in employment, particularly on the open market, and education, particularly in non-segregated settings, to ensure their effective access to quality, inclusive education and decent work, and to ensure income equality with others, including non-disabled men and women?

F. Poland's Reservations to the CRPD (arts. 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.⁶⁹ 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."⁷⁰ 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."⁷¹ 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."⁷² 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."⁷³ 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.⁷⁴ 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.⁷⁵ Given that the CRPD requires that Poland ensure the right to health on an equal basis with others and ensure equal access specifically to sexual and reproductive health information and services on that basis,⁷⁶ and given that Poland is under an obligation to ensure access to abortion for all women under CEDAW, the CRPD also requires that it ensure access to abortion in a wide variety of circumstances for women and girls with disabilities.

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."⁷⁷ 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 core 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 core 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.⁷⁸

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.⁷⁹ 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.⁸⁰ As such, it could serve to justify from forced or coerced reproductive health procedures against women and girls with disabilities, including forced sterilization, abortion, and contraception.⁸¹

Restrictions on marrying and founding a family violate at least two core principles of the CRPD, including autonomy and equality between men and women.⁸² 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.⁸³ 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.

Suggested Questions to Poland for the List of Issues

- What is Poland's timeline for withdrawing its reservations to the CRPD?
- What steps has Poland taken to adopt laws and policies in line with the CRPD and its other human rights obligations concerning access to abortion, the right to marry and found a family, and the right to exercise legal capacity?
- What steps has Poland taken or will it take to monitor the implementation of the (to be) changed laws and policies regarding all three reservations? What legal consequences are foreseen for those bodies/institutions which are/will violate those laws and policies?

III. Conclusions

Thank you again for the opportunity to contribute to the CRPD Committee's pre-sessional working group and its consideration of Poland's state report. 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 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).

⁶ 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>.

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

⁸ 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).

⁹ 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*].

¹⁰ CRPD Committee, *Poland State Report*, *supra*, note 3, ¶ 50.

¹¹ 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>.

¹² UN Special Rapporteur on Violence against Women, *Report of the Special Rapporteur on violence against women, its causes and consequences*, ¶ 31, U.N. Doc. A/67/227 (2012) [hereinafter SRVAW, *Report on women with disabilities*].

¹³ *Id.*, ¶ 32.

¹⁴ CRPD Committee, *General Comment No. 3 (2016) on women and girls with disabilities*, ¶ 33, U.N. Doc. CRPD/C/GC/3 (2016) [hereinafter CRPD Committee, *Gen. Comment No. 3*].

¹⁵ Institute of Psychology of the Polish Academy of Sciences, *Study on violence against persons with disabilities inside the family* (2009)

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ European Union Agency for Fundamental Rights, *Violence against women survey: Poland* (2017), <http://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>.

¹⁹ CEDAW Committee, *Concluding Observations: Poland*, ¶ 24, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

²⁰ Human Rights Watch, “Poland No Friend to Women: Government Refuses to Fund Women’s Support Groups” (Dec. 3, 2017), <https://www.hrw.org/news/2017/12/03/poland-no-friend-women>

²¹ *Id.*

²² Agnieszka Wołowicz-Ruszkowska, *How Polish Women With Disabilities Challenge the Meaning of Motherhood*, in 40(1) PSYCH. OF WOMEN QUARTERLY 80, 82 (2015), available at <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.”)

²³ CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶¶ 48, 52.

²⁴ CEDAW Committee, *Concluding Observations: Poland*, ¶ 25, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).

²⁵ CRPD Committee, *Poland State Report*, *supra*, note 3, ¶¶ 315-17.

²⁶ 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>.

²⁷ *Id.*

²⁸ *Id.* at 81

²⁹ *Id.* at 84.

³⁰ *Id.*

³¹ *Id.* at 85.

³² *Id.* at 84.

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- ³³ *Id.* at 85.
- ³⁴ *Id.*
- ³⁵ *Id.*
- ³⁶ *Id.*
- ³⁷ CRPD Committee, *Poland State Report*, *supra*, note 3, ¶ 318.
- ³⁸ UNITED NATIONS EDUCATIONAL, SCIENTIFIC AND CULTURAL ORGANIZATION (UNESCO), INTERNATIONAL TECHNICAL GUIDANCE ON SEXUALITY EDUCATION: AN EVIDENCE-INFORMED APPROACH, REVISED EDITION 17 (Jan. 2018), *available at* http://www.unaids.org/sites/default/files/media_asset/ITGSE_en.pdf.
- ³⁹ *Id.* at 25.
- ⁴⁰ *Id.* at 16.
- ⁴¹ *Id.* at 18.
- ⁴² CRPD Committee, *General Comment No. 4 (2016) on the right to inclusive education*, ¶ 54, U.N. Doc. CRPD/C/GC/4 (2016).
- ⁴³ *See, e.g.*, CEDAW Committee, *Concluding Observations: Poland*, ¶ 36, U.N. Doc. CEDAW/C/POL/CO/7-8 (2014).
- ⁴⁴ HUMAN RIGHTS WATCH, *ERODING CHECKS AND BALANCES: RULE OF LAW AND HUMAN RIGHTS UNDER ATTACK IN POLAND* (2017), *available at* <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>.
- ⁴⁵ The Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act (Jan. 7, 1993) (Poland), *available at* <http://worldabortionlaws.com/map/> (unofficial English translation).
- ⁴⁶ *Id.*
- ⁴⁷ 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), *available at* <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>
- ⁴⁸ “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>
- ⁴⁹ *Id.*
- ⁵⁰ *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).
- ⁵¹ “Poland’s lawmakers reject plan to ease strict abortion law,” ASSOCIATED PRESS (Jan. 10, 2018), <https://www.apnews.com/296623aec33140fc8002411d9d0b6ab2/Poland's-lawmakers-reject-plan-to-ease-strict-abortion-law>.
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- ⁵³ *Id.*
- ⁵⁴ CRPD Committee, *Poland State Report*, *supra*, note 3, ¶ 128.
- ⁵⁵ *Id.*, ¶ 130.
- ⁵⁶ *Id.*, ¶ 128.
- ⁵⁷ *Id.*, ¶ 130.
- ⁵⁸ *Id.*, ¶ 134.
- ⁵⁹ *Id.*, ¶ 135.
- ⁶⁰ *See* CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 44.
- ⁶¹ *Id.*, ¶ 47; SRVAW, *Report on women with disabilities*, *supra* note 12, ¶ 41.
- ⁶² CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 52.
- ⁶³ European Parliament, *Employment Study*, *supra* note 9, at 10.
- ⁶⁴ *Id.*
- ⁶⁵ *Id.*
- ⁶⁶ *Id.* at 11.
- ⁶⁷ *Id.* at 12.

⁶⁸ *Id.* at 10.

⁶⁹ 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.”).

⁷⁰ CRPD Committee, *General Comment No. 1*, para. 1.

⁷¹ CRPD Committee, *Concluding Observations: Canada*, ¶ 7, U.N. Doc. CRPD/C/CAN/CO/1 (2017).

⁷² 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].

⁷³ CRPD, *Poland Reservations*, *supra* note 69.

⁷⁴ 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).

⁷⁵ *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).

⁷⁶ CRPD, *supra* note 72, arts. 23 & 25.

⁷⁷ 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).

⁷⁸ *Id.*

⁷⁹ CRPD, *Poland Reservations*, *supra* note 69 (“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).”).

⁸⁰ 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>.

⁸¹ *See* CRPD Committee, *Gen. Comment No. 3*, *supra* note 14, ¶ 44.

⁸² CRPD, *supra* note 72, art. 3.

⁸³ *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).