



## **UNIVERSAL PERIODIC REVIEW – FOURTH CYCLE**

Submission to the 41<sup>st</sup> session of the Human Rights Council’s Universal  
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**POLAND**

The Center for Family and Human Rights (C-Fam) is a nongovernmental organization which was founded in 1997 and has held Special Consultative Status with the UN Economic and Social Council since 2014. We are headquartered in New York and Washington, D.C. and are a nonprofit, nonpartisan research and advocacy organization that is dedicated to reestablishing a proper understanding of international law, protecting national sovereignty and the dignity of the human person.

## INTRODUCTION

1. Poland's international human rights obligations and commitments do not require Poland to change its internal laws with regard to marriage, family, and the protection of life before as well as after birth. No human rights treaties ratified by Poland require such changes, nor has Poland undertaken such commitments through other UN agreements.

## POLISH LAWS AND POLICIES TO PROTECT LIFE AND FAMILY

2. Since 1993, Poland has had one of the world's most protective laws for children in the womb. Polish law only permitted only eugenic abortion. Specifically, the law allowed abortion in cases where a child in the womb was diagnosed of having a "high probability of serious and irreversible disability" or an "incurable life-threatening illness."<sup>1</sup> This provision in Polish law was estimated to allow for the killing of between 1000 and 2000 unborn disabled children in Poland every year. On October 22, 2020, the Polish Constitutional Court struck down this discriminatory exception to criminal penalties for carrying out an abortion.<sup>2</sup> The Court also ordered the Polish government to enhance social protection and assistance for families that had children with disabilities.
3. Only 31 countries in the world recognize marriage between persons of the same sex.<sup>3</sup> Poland is one of 14 countries in the European Union that does not recognize same-sex unions. Like the vast majority of countries in the world, Poland also does not extend protections singularly reserved for the family in Polish law to homosexual relations, or other relations or household structures that are not equivalent or analogous to the family.
4. Only 15 countries in the world allow individuals to change the sex stated on their identity cards based on subjective self-identification.<sup>4</sup> Poland is among the countries that does not allow individuals to legally change their legally recognized sex based on subjective self-identification. In 2021, a decision of the European Court of Human Rights, found that Polish laws and policies in this regard did not violate the human rights of individuals who want to change sex on their identity cards.<sup>5</sup>

## INTERFERENCE IN POLAND'S POLICIES TO PROTECT LIFE AND FAMILY

5. The EU Parliament has adopted resolutions specifically challenging Poland's constitutional protections for children in the womb and interfering in Poland's domestic policy, citing United Nations expert bodies' interpretations of international human rights law and UN commitments to "sexual and reproductive health."<sup>6</sup> Polish abortion laws are currently being challenged also before the European Court of Human Rights in Strasbourg.<sup>7</sup>
6. The EU Commission began legal infringement proceedings against Poland before the European Court of Justice related to Polish municipal pro-family policies. The Commission specifically cited Polish municipalities' adoption of resolutions that promote strong families and opposed misinformation about families.<sup>8</sup> The EU Court of Justice has sided with the EU Commission against Poland.<sup>9</sup>

## THE RIGHT TO LIFE IN UN HUMAN RIGHTS TREATIES

7. Poland does not have an obligation under human rights treaties to protect or recognize same-sex marriage or adoption by homosexual couples. Nor has Poland made any such commitment in non-binding agreements.
8. Unborn children cannot be said to be excluded from the right to life under international law. To say or imply otherwise is not consistent with the text and history of international human rights treaties. Specifically, Article 6 of the International Covenant on Civil and Political Rights (ICCPR) prohibits the application of the death penalty to pregnant mothers, precisely out of concern for the innocent unborn child, and the Preamble of the Convention on the Rights of the Child (CRC) explicitly recognizes that human rights protections apply both before and after birth. Poland is a signatory to both these treaties and may implement them through protections for children from induced abortion, including complete prohibitions on abortion.
9. Early in the drafting stages of the ICCPR, in 1947, the authors explicitly rejected an obligation to allow abortion in cases where a child is conceived by rape, incest, or when carrying a pregnancy to term might endanger the life of a mother. Even if in 1957 the framers of the covenant decided to exclude a positive obligation to protect the unborn from abortion, it does not remove the presumption that the unborn are included in the protections of the covenant, and certainly does not imply their direct exclusion. It merely gives State Parties a wide margin of appreciation in protecting the right to life before birth.<sup>10</sup>
10. It should also be noted that UN political agreements recognize abortion laws as an exclusively national prerogative. In 2015, when the General Assembly adopted the Sustainable Development Goals, it reaffirmed that any policies related to sexual and reproductive health must be in accordance with the Programme of Action of the International Conference on Population and Development (ICPD), which explicitly rejected an international right to abortion and prohibited interference by the UN system in domestic policymaking on abortion.<sup>11</sup>
11. Many experts in international law and policy agree that abortion is not a right and that international law “may, and indeed should be used” to protect the life of the unborn. Experts also declare that “there exists no right to abortion under international law, either by way of treaty obligation or under customary international law. No United Nations treaty can accurately be cited as establishing or recognizing a right to abortion.” UN bodies that promote abortion of acting beyond their mandate.<sup>12</sup>
12. The government of Poland is moreover one of 34 governments who were the original signatories of the Geneva Consensus Declaration<sup>13</sup>, which expressly reaffirmed that abortion is not an international right and that it is an exclusive domestic prerogative and committed countries to treat it as such.

## PROTECTION OF THE FAMILY IN HUMAN RIGHTS TREATIES

13. Poland does not have an obligation under human rights treaties to protect or recognize same-sex marriage, adoption by homosexual couples, or legal recognition of transgender change based on subjective self-identification. Nor has Poland made any such commitments in non-binding international human rights agreements.

14. International law reserves singular protections for the natural family to which relations between individuals of the same sex are not entitled. As the civil society platform “The Family Articles” states, international law and policy defines the family as “the natural and fundamental group unit of society.”<sup>14</sup> As such, it is “entitled to protection by society and the State” and it is a proper subject of human rights. The family is a pre-judicial entity.<sup>15</sup> That is why it is “entitled” to protection by society and the state.<sup>16</sup>
15. Relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy. Textually, the language on the *right of men and women* to marry and found a family in the ICCPR (Article 23) and the International Covenant on Economic, Social, and Cultural rights (ICESCR) (Article 10) *predicates that “they are entitled to equal rights* as to marriage, during marriage, and at its dissolution” (emphasis added). This is also reflected in the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (Article 16), which refers to equality within marriage as between “men and women” and “husband and wife” in the context of the family. The European Convention on Human Rights (ECHR) (Article 12) and the Inter-American Convention on Human Rights (IACHR) (Article 17) also mirror the language of the Universal Declaration of Human Rights (UDHR) on the right to marry and found a family verbatim.<sup>17</sup>
16. Relations between individuals of the same sex and other social and legal arrangements that are neither equivalent nor analogous to the family are not entitled to the protections singularly reserved for the family in international law and policy. The text and *travaux preparatoire* of the ICCPR, ICESCR, and CEDAW, containing language on the right to marry and found a family, do contemplate same-sex unions. In fact, all UN treaties, with the single exception of the Convention on the Rights of Persons with Disabilities (CRPD), were negotiated when so-called same-sex “marriage”, unions, or legal status of same-sex relations did not exist anywhere in the world. The first nation to ever declare relations between persons of the same sex as capable of constituting “marriage” was the Netherlands in 2001. The first nation to give any type of legal status to relations between individuals of the same-sex was Denmark in 1989.
17. All human beings possess the same fundamental rights by virtue of their inherent dignity and worth. UN Member States have no obligation to enact laws that give individuals any special benefits or protections on the basis of their sexual preferences and behavior or to sanction an individual’s feeling about their gender identity.<sup>18</sup>
18. While the ICCPR recognizes a right to be free of interference in one’s privacy and family,<sup>19</sup> this right cannot be understood to encompass unfettered sexual autonomy. At the time these instruments were negotiated and adopted by UN member states many countries outlawed sodomy and other forms of sexual conduct between consenting adults, including adultery and fornication.
19. There is no consensus among UN member states on the use of the term “sexual orientation and gender identity.” UN declarations and resolutions that mention these

categories are all non-binding in nature and have never been adopted on a consensual basis. Moreover, while treaty bodies, including this committee, have stated their support for including “sexual orientation and gender identity” as categories of non-discrimination alongside race and religion they do not have the power to alter the obligations of State Parties under the Covenant.

20. There is no textual support or any historical record to indicate that State parties ever intended the Covenant to require gender identity laws. The promotion of this notion is particularly egregious in the context of children because of the interest of the rise in reported gender dysphoria among children and the growing practice of supplying them with powerful and expensive treatment and drugs. These drugs and surgeries can have lasting negative effects on their health. It is especially egregious when one notes the subjectivity and fluidity of the notions of “gender identity” and the lack of any scientific or legal precision.<sup>20</sup>

21. The UDHR and binding international human rights treaties recognize that many children are deprived of one or both of their natural parents and must be provided with adequate protection, by providing that “[m]otherhood and childhood are entitled to special care and assistance” and that “all children, whether born in or out of wedlock, shall enjoy the same social protection” (UDHR, Article 25). This provision requires that children be protected regardless of whether they are living with their intact family. It does not entitle adults in a homosexual relation to adopt children.

## CONCLUDING RECOMMENDATIONS

22. Poland should not support recommendations made in the course of this UPR review that purport to commit Poland to liberalizing abortion laws and granting the same protections singularly reserved for the natural family to other types of relations.

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<sup>1</sup> Art. 4a sec. 1 point 2 and art. 4a sec. 2, first sentence of the Act of 7 January 1993 on family planning, protection of the human fetus and conditions for the admissibility of termination of pregnancy.

<sup>2</sup> Constitutional Tribunal of Poland Judgment (October 22, 2020) Case K 1/20, available at <https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11300-planowanie-rodziny-ochrona-plodu-ludzkiego-i-warunki-dopuszczalnosci-przerywania-ciazy>

<sup>3</sup> ILGA Maps, Sexual Orientation Laws, available at <https://ilga.org/maps-sexual-orientation-laws>

<sup>4</sup> France24, Countries that allow transgender people easy status change, available at <https://www.france24.com/en/live-news/20210629-countries-that-allow-transgender-people-easy-status-change>

<sup>5</sup> Court House News Service, Rights court OKs Poland’s refusal to change gender on full birth certificate, February 22, 2022, available at: <https://www.courthousenews.com/rights-court-oks-polands-refusal-to-change-gender-on-full-birth-certificate/>

<sup>6</sup> EU Parliament, Press Releases, Poland: no more women should die because of the restrictive law on abortion, available, November 11, 2021, available at: <https://www.europarl.europa.eu/news/en/press-room/20211108IPR16844/poland-no-more-women-should-die-because-of-the-restrictive-law-on-abortion>; EU Parliament, Report on the situation of sexual and reproductive health and rights in the EU, in the frame of women’s health (2020/2215(INI)), May 21, 2021, available at: [https://www.europarl.europa.eu/doceo/document/A-9-2021-0169\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/A-9-2021-0169_EN.pdf)

<sup>7</sup> Nicolas Bauer, Harassment against Poland in the Council of Europe, ECLJ Blog, available at <https://eclj.org/abortion/coe/acharnement-contre-la-pologne-au-conseil-de-leurope?lng=en>.

<sup>8</sup> Press release, July 15, 2021, Brussels, EU founding values: Commission starts legal action against Hungary and Poland for violations of fundamental rights of LGBTIQ people, available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_3668](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_3668)

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<sup>9</sup> BBC News, Hungary and Poland lose EU funding fight over laws, February 16, 2022, available at: <https://www.bbc.com/news/world-europe-60400112>.

<sup>10</sup> These conclusions are based in the thoughtful analysis of the text and history of the ICCPD in Finegan, Thomas, *International Human Rights Law and the “Unborn”*: Texts and Travaux Préparatoires, Tulane Journal of International & Comparative Law, Winter 2016, Vol. 25 Issue 1, at p. 14-23

<sup>11</sup> 2030 Agenda for Sustainable Development, UN Document A/RES/70/1, target 5.6; Programme of Action of the International Conference on Population and Development, UN Document A/CONF.171/13, paragraph 8.25.

<sup>12</sup> The articles have been presented at UN headquarters in New York, and in parliaments across the world. The articles and footnotes are available at: [www.sanjosearticles.com](http://www.sanjosearticles.com)

<sup>13</sup> Geneva Consensus Declaration on Promoting Women’s Health and Strengthening the Family, Annex to the letter dated 2 December 2020 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, December 7, 2020, UN Document No. A/75/626.

<sup>14</sup> This section reflects verbatim the civil society platform, THE FAMILY ARTICLES, sponsored by C-Fam, available at [www.civilsocietyforthefamily.org](http://www.civilsocietyforthefamily.org)

<sup>15</sup> See Girgis, Sherif and George, Robert and Anderson, Ryan T., What is Marriage? (November 23, 2012). Harvard Journal of Law and Public Policy, Vol. 34, No. 1, pp. 245-287, Winter 2010. Available at SSRN: <http://ssrn.com/abstract=1722155>.

<sup>16</sup> The Universal Declaration of Human Rights (UDHR) defines the family as “the natural and fundamental group unit of society” and declares that it is “entitled to protection by society and the State” UDHR 16. The International Covenant on Civil and Political Rights (ICCPR 23), the International Covenant on Economic, Social, and Cultural Rights (ICESCR 10.1), and the Convention on the Rights of the Child (CRC, Preamble) reflect the UDHR verbatim in their provisions. These binding international norms have not gone unheeded. At least 111 countries have constitutional provisions that echo Article 16 of the UDHR. See World Family Declaration, available at <http://worldfamilydeclaration.org/WFD>. By virtue of these provisions in international law the family is a proper subject of human rights and is a bearer of rights in international human rights law. See Charter of the Rights of the Family, (October 22, 1983), available at

[http://www.vatican.va/roman\\_curia/pontifical\\_councils/family/documents/rc\\_pc\\_family\\_doc\\_19831022\\_family-rights\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_19831022_family-rights_en.html). See also The Family and Human Rights (December 16, 1998), available at [http://www.vatican.va/roman\\_curia/pontifical\\_councils/family/documents/rc\\_pc\\_family\\_doc\\_20001115\\_family-human-rights\\_en.html](http://www.vatican.va/roman_curia/pontifical_councils/family/documents/rc_pc_family_doc_20001115_family-human-rights_en.html).

The outcomes of United Nations conferences have recognized as much. The Programme of Action of the 1994 International Conference on Population and Development, for example, referred to the “rights of families” (UN document A/CONF.171/13, paragraph 5.4). Similarly, the Programme of Action of the 1995 World Summit for Social Development recognized that the family is “entitled to receive comprehensive protection and support” (UN document A/CONF.166/9, paragraph 80).

<sup>17</sup> The European Court of Human Rights has interpreted its provisions on marriage and family—which are identical to those contained in the Universal Declaration of Human Rights and the Covenant—as referring only to the union of a man and a woman. Even though the Court has repeated more than once that relations between individuals of the same sex are entitled to some form of legal recognition it has also specified that States are not required to sanction relations between individuals of the same-sex as if they can constitute a family. See ECHR, Chapin and Charpentier v. France, no. 40183/07 (Judgment (Merits and Just Satisfaction), 9 June 2016. Available at

<http://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-163436%22%5D%7D>; See also *Hämäläinen v. Finland*, no. 37359/09, § 71, ECHR 2014; *Schalk and Kopf v. Austria*, no. 30141/04, § 101, ECHR 2010; *Rees v. UK*, no. 9532/81, § 49, ECHR 1986).

<sup>18</sup> UN General Assembly, Universal Declaration of Human Rights, 10 December 1948, 217 A (III), Preamble and Article 1.

<sup>19</sup> UDHR 17; ICCPR 17.

<sup>20</sup> Lawrence S. Mayer, M.B., M.S., Ph.D. and Paul R. McHugh, M.D., “Sexuality and Gender: Findings from the Biological, Psychological, and Social Sciences,” *The New Atlantis*, Fall 2016, available at [http://www.thenewatlantis.com/docLib/20160819\\_TNA50SexualityandGender.pdf](http://www.thenewatlantis.com/docLib/20160819_TNA50SexualityandGender.pdf)