



## POLAND

### Joint Submission to the UN Universal Periodic Review 41<sup>st</sup> Session of the UPR Working Group

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**Submission by CIVICUS: World Alliance for Citizen Participation,  
NGO in General Consultative Status with ECOSOC**

**And**

**Committee for the Defence of Democracy (KOD)**

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## 1. Introduction

- 1.1. CIVICUS is a global alliance of civil society organisations (CSOs) and activists dedicated to strengthening citizen action and civil society around the world. Founded in 1993, CIVICUS has members in more than 180 countries throughout the world.
- 1.2. Committee for the Defence of Democracy – Komitet Obrony Demokracji (KOD) is a grassroots civic movement founded in 2015. Its goal is to protect the rule of law, democracy and human rights, defend European values and strengthen civil society.
- 1.3. In this submission, the authors examine the Government of Poland’s compliance with its international human rights obligations to create and maintain a safe and enabling environment for civil society. Specifically, we analyse Poland’s fulfilment of the rights to the freedoms of association, peaceful assembly and expression and unwarranted restrictions on human rights defenders (HRDs) since its previous UPR examination in 2017. To this end, we assess Poland’s implementation of relevant recommendations received during the 3<sup>rd</sup> UPR cycle and provide follow-up recommendations.
- 1.4. During the 3<sup>rd</sup> UPR cycle, the Government of Poland received 12 recommendations relating to the space for civil society (civic space). Of these recommendations, ten were supported, one was partially supported and one noted. An evaluation of a range of legal sources and human rights documentation addressed in this submission demonstrates that the Government of Poland has not implemented any of the recommendations relating to civic space.
- 1.5. While the government has persistently failed to address unwarranted restrictions on civic space since its last UPR examination, acute implementation gaps were found with regard to the rights to peaceful assembly and association and issues relating to HRDs.
- 1.6. We are concerned by the ruling Law and Justice (PiS) party’s dismantling of judicial independence and the rule of law, which has been used as a tool to violate civic freedoms in Poland. Additionally, women HRDs (WHRDs) advocating for reproductive justice<sup>1</sup> and LGBTQI+ defenders are facing judicial harassment and intimidation.<sup>2</sup>
- 1.7. We are further alarmed by the repeated attempts to diminish media independence through restrictive legislation, government allies acquiring ownership of major

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<sup>1</sup> Poland: Escalating threats to women activists, CIVICUS, 31 March 2021, <https://www.civicus.org/index.php/media-resources/news/5017-poland-escalating-threats-to-women-activists>.

<sup>2</sup> Crackdown on LGBTI rights continue; feminist protest over withdrawal from domestic violence treaty, CIVICUS Monitor, 5 October 2020, <https://monitor.civicus.org/updates/2020/10/05/crackdown-lgbti-rights-continues-feminists-protest-over-withdrawal-domestic-violence-treaty/>.

media outlets<sup>3</sup> and the filing of Strategic Lawsuits Against Public Participation (SLAPPs) against independent media.<sup>4</sup>

**1.8.** As a result of these developments, civic space in Poland is currently classified as ‘obstructed’ by the CIVICUS Monitor, indicating the existence of significant civic space restrictions.<sup>5</sup>

- Section 2 of this submission examines Poland’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of association.
- Section 3 examines Poland’s implementation of UPR recommendations and compliance with international human rights standards related to the freedom of peaceful assembly.
- Section 4 examines Poland’s implementation of UPR recommendations and compliance with international human rights standards related to the protection of HRDs, civil society activists and journalists.
- Section 5 examines Poland’s implementation of UPR recommendations and compliance with international human rights standards concerning the freedom of expression, media freedom and access to information.
- Section 6 contains recommendations to address the concerns raised and advance implementation of recommendations under the 3<sup>rd</sup> cycle.
- An annex on the implementation of 3<sup>rd</sup> cycle UPR recommendations related to civic space is in Section 7.

## **2. Freedom of association**

**2.1.** During Poland’s examination under the 3<sup>rd</sup> UPR cycle, the government received four recommendations on the right to the freedom of association and creating an enabling environment for CSOs. Among other recommendations, the government committed to safeguarding the freedom of association including by ‘taking further steps to ensure prompt investigations of physical attacks and/or threats against civil society’. The government supported the four recommendations, but has failed to take adequate measures to realise and implement them.

**2.2.** Article 58 of the Polish Constitution<sup>6</sup> guarantees the right to the freedom of association. Moreover, article 22 of the International Covenant on Civil and Political Rights (ICCPR), to which Poland is a state party, guarantees the freedom

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<sup>3</sup> The politicisation of the Polish National Broadcasting Council (KRRiT): a new front in Poland’s rule-of-law conflict with the European Union?, Szymon Ananicz: Stefan Batory Foundation, July 2021, [https://www.batory.org.pl/wp-content/uploads/2021/07/Ananicz\\_The-politicisation-of-the-Polish-National-Broadcasting-Council.pdf](https://www.batory.org.pl/wp-content/uploads/2021/07/Ananicz_The-politicisation-of-the-Polish-National-Broadcasting-Council.pdf).

<sup>4</sup> Poland: The Gazeta Wyborcza newspaper received 63 lawsuits and legal threats, Mapping Media Freedom, 20 April 2021, <https://mappingmediafreedom.usahidi.io/posts/23957>.

<sup>5</sup> CIVICUS Monitor: Poland, <https://monitor.civicus.org/country/Poland>.

<sup>6</sup> Constitution of the Republic of Poland, Sejm pl, 2 April 1997, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.

of association. However, despite these commitments, the government has continued to obstruct the work of CSOs through enacting or attempting to enact restrictive legislation.

- 2.3. For example, in October 2017, President Andrzej Duda signed into law the National Freedom Institute Act, which introduces a new institute responsible for distributing funds to civil society. Its council is appointed by the Committee for Public Benefit Activity, chaired by a member of the Polish Cabinet, with only five of the 11 seats held by civil society representatives. Additionally, the Institute's director has full discretion on how funds are distributed.<sup>7</sup> According to civil society the act is a 'systemic threat to the independent operation and development' of CSOs.<sup>8</sup> In practice, the Institute has allocated funds to pro-government and nationalist organisations.<sup>9</sup> Additionally, Ordo Iuris, a conservative Catholic organisation that attacks women's and LGBTQI+ rights, is one of the organisations which sits on the Institute.<sup>10</sup>
- 2.4. Amendments to the Provisions of the Act on Counteracting Money Laundering and Financing of Terrorism, coming into effect in October 2021, introduced an obligation for foundations and associations registered in the National Court Register to report their beneficial owners<sup>11</sup> to the Central Register of Beneficial Owners. CSOs covered by this obligation were selected in an 'arbitrarily and schematic manner'<sup>12</sup> as several types of CSOs, such as ordinary associations and church organisations, were not included in this obligation. The identification of beneficial owners in associations and foundations is challenging, which makes this new obligation difficult to implement. Incorrect implementation may result in penalties.<sup>13</sup>
- 2.5. In July 2021, the draft government act on NGO reporting was made public, without prior consultation with CSOs. It imposes new reporting obligations, including an

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<sup>7</sup> The Situation for Civil Society Organisations in Poland, Helsinki Foundation for Human Rights, September 2019, [https://www.hfhr.pl/wp-content/uploads/2017/09/HFHR\\_situation\\_ngos\\_in\\_Poland\\_brief.pdf](https://www.hfhr.pl/wp-content/uploads/2017/09/HFHR_situation_ngos_in_Poland_brief.pdf)

<sup>8</sup> HFHR Opinion on the National Freedom Institute Bill, Helsinki Foundation for Human Rights, August 2017, [https://citizensobservatory.pl/wp-content/uploads/2017/08/hfhr\\_opinion\\_national-freedom-institute.pdf](https://citizensobservatory.pl/wp-content/uploads/2017/08/hfhr_opinion_national-freedom-institute.pdf)

<sup>9</sup> In Poland public funding is given to those threatening liberal democracy, Open Democracy, 22 July 2021, <https://www.opendemocracy.net/en/countering-radical-right/poland-public-funding-given-those-threatening-liberal-democracy/>.

<sup>10</sup> Ordo Iuris conquests: It is a rushing political machine of fundamentalists. Anna Mierzyńska: OKO Press, 6 January 2020, <https://oko.press/podboje-ordo-iuris/>.

<sup>11</sup> Beneficial owners are defined as natural persons who exercise direct or indirect control over a given company or those on whose behalf economic relations and occasional transactions are established. See: Thousands of Polish companies still haven't declared their beneficial owners in CRBR register, Medium, September 2021, <https://medium.com/transparent-data-eng/thousands-of-polish-companies-still-havent-declared-their-beneficial-owners-in-crbr-register-483c80a4cf8b>.

<sup>12</sup> European Civic Forum response to the 2022 European Commission stakeholder consultation on rule of law in the European Union: Poland, European Civic Forum and National Federation of Polish NGOs, January 2022, <https://civicspacewatch.eu/wp-content/uploads/2022/01/Poland.pdf>

<sup>13</sup> Ibid.

obligation to disclose the data of individual donors and for all CSOs to report to one governmental entity on all funding received from all foreign entities.<sup>14</sup>

- 2.6.** The Act on Employee Capital Plans imposes burdensome reporting obligations on CSOs employing staff, even when incidentally and temporarily, which at the minimum must conclude an agreement with a financial institution, introduce appropriate procedures within the organisation and create regulations, among other requirements. Most CSOs do not meet the eligibility criteria for exemption from the obligation to apply the Act.<sup>15</sup>
- 2.7.** Amendments to the Act on Public Benefit and Volunteer Activity in 2021 make provision for the Ministry of Foreign Affairs to transfer resources to a designated organisation – the State Treasury Foundation – without organising a tender. Such an exception may establish a precedent for other ministries or institutions to apply similar policies, negating public tender processes.<sup>16</sup>
- 2.8.** CSOs have raised concerns over the ‘Lex Czarnek’ bill,<sup>17</sup> which limits their access to schools by giving power to regional educational welfare officers (superintendents) – appointees of the current government – to approve the content of extracurricular workshops in schools.<sup>18</sup> The bill would limit educational freedom and give the government the power to limit or prevent extracurricular activities and educational workshops from taking place in schools on themes such as anti-discrimination, gender equality, LGBTQI+ rights and comprehensive sexuality education. Shortly after the bill was passed by the Sejm, parliament’s lower house, a so-called ‘blacklist’ of CSOs providing education in schools on civic rights, women’s rights and exclusion was published, warning that these organisations are harmful to children.<sup>19</sup> At the beginning of March 2022 President Duda vetoed the bill, citing the need for solidarity due to the Ukraine crisis.<sup>20</sup>
- 2.9.** Civil society groups that have expressed critical views on PiS face harassment. Specifically, CSOs working on women’s rights, democracy and migrants’ rights have been targeted.
- 2.10.** In October 2017, police raided the offices of two women’s empowerment organisations: Baba and the Women’s Rights Centre. Police confiscated 25 files from Baba and spent nine hours interrogating the director of the association. Both

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<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Polish Minister tightens the states control over educational systems, ASTRA Network, January 2022, <https://astra.org.pl/polish-minister-tightens-the-states-control-over-educational-system/>.

<sup>18</sup> An appeal to reject the draft amendment to the Education Law Act (the so-called Lex Czarnek), Ogólnopolska Federacja Organizacji Pozarządowych OFOP, 8 December 2021,

<https://ofop.eu/apel-o-odrzucenie-projektu-nowelizacji-ustawy-o-prawie-oswiatowym-tzw-lex-czarnek/>

<sup>19</sup> The Curator Nowak collaborates with Ordo Iuris and anti-vaccines. He already has a list of unwanted organisations on his desk. Anton Ambroziak: OKO Press, 19 January 2022, <https://oko.press/kurator-nowak-wspolpracuje-z-ordo-iuris-i-antyszczepionkowcami-na-biurku-ma-juz-liste-niepozadanych-organizacji/>.

<sup>20</sup> President Andrzej Duda vetoed “Lex Czarnek”. Agata Kondzińska, Paulina Nodzyńska, Wyborcza.pl, 2 March 2022, <https://wyborcza.pl/7,75398,28174540,prezydent-andrzej-duda-lex-czarnek.html>.

organisations had participated in protests against attempts to restrict reproductive rights.<sup>21</sup>

- 2.11.** Since August 2017, the government has regularly and publicly accused human rights CSO Open Dialogue Foundation (FOD) of criminal activity and of using illegal funding sources after it expressed criticism of PiS.<sup>22</sup> In August 2018, FOD's head, Lyudmyla Kozlovska, a Ukrainian citizen living in Poland at the time, was expelled from the Schengen territory after being accused of 'criminal activity'. Kozlovska was detained at Brussels airport after being listed as a 'threat to national security', the highest alert, and placed on the Schengen Information System,<sup>23</sup> resulting in her immediate deportation to Ukraine.<sup>24</sup> The Polish government has not proved the accusations against Kozlovska or presented information about her criminal activities to European partners. Despite this, she has been unable to return to Poland for over three years.<sup>25</sup>
- 2.12.** In June 2021 the Lublin-West District Court issued a three-month arrest warrant for Bartosz Kramek, a FOD board member and Lyudmyla Kozlovska's husband. He was detained in Warsaw at the request of the Regional Prosecutor's Office in Lublin, which intended to charge him with false certification of services amounting to 5.3 million PLN (approx. US\$1.2 million). Kramek spent almost three weeks in custody before being released on bail.<sup>26</sup>
- 2.13.** In September 2021, President Duda issued a decree introducing a state of emergency at the Poland/Belarus border due to the arrival of refugees. Since August 2021 humanitarian aid groups have not been allowed into the zone and cases of harassment, including stop and search operations, smear campaigns,<sup>27</sup>

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<sup>21</sup> "Sound the Alarm; Take an interest in Poland" says NGO after raid, CIVICUS Monitor, 17 October 2017, <https://monitor.civicus.org/updates/2017/10/17/authorities-raid-womens-organisations-after-protest/>.

<sup>22</sup> Waszczykowski wanted to suspend the management of the Open Dialog Foundation. The court disagreed, Wyborcza. Pl, Maciej Orłowski, 19 December 2017, <https://wyborcza.pl/7,75398,22803849,waszczykowski-chcial-zawiesic-zarzad-fundacji-otwarty-dialog.html>.

<sup>23</sup> On the basis of the negative opinion of the Internal Security Agency, Poland included her in the Schengen Information System, which allows for the screening of people crossing the border of the Schengen area. See more: The Lyudmyla Kozlovska's case timeline (updated), Open Dialogue Foundation, 20 March 2019, <https://en.odfoundation.eu/a/8984,the-lyudmyla-kozlovska-case-timeline-updated/>

<sup>24</sup> Ibid.

<sup>25</sup> Deportation of Lyudmyla Kozlovska: World Media write about the expulsion of the head of the Dialogue Foundation from the EU, Gazeta.pl, 22 August 2018, <https://wiadomosci.gazeta.pl/wiadomosci/7,114881,23811562,deportacja-ludmily-kozlovskiej-swiatowe-media-pisza-o-wydaleniu.html>.

<sup>26</sup> Bartosz Kramek is released from custody after paying PLN 300,000. Złoty, Marcin Wyrwał: Onet.pl, 15 July 2021, <https://wiadomosci.onet.pl/kraj/bartosz-kramek-wychodzi-z-aresztu-po-wplaceniu-300-tys-zl/nj51mym>.

<sup>27</sup> Statement - Police activities at the KIK Crisis Intervention Point, Catholic Intelligentsia Club in Warsaw: ngo.pl, 16 December 2021, <https://publicystyka.ngo.pl/oswiadczenie-dzialania-policji-w-punkcie-interwencji-kryzysowej-kik>.



detentions and criminal charges against activists involved in providing assistance have been documented.<sup>28</sup>

- 2.14.** For example, on 15 December 2021, a police raid was carried out against the Club of Catholic Intelligensia, a humanitarian aid group. Four of its volunteers were questioned by the police throughout the night and the group's phones and laptops were confiscated.<sup>29</sup>

### **3. Freedom of peaceful assembly**

- 3.1.** During Poland's examination under the 3<sup>rd</sup> UPR cycle, the government received two recommendations on the right to the freedom of peaceful assembly. The government committed to 'guarantee freedom of expression and assembly, including by civil society organizations, notably in the context of public gatherings'. One recommendation was supported and one noted. However, the government has failed to realise both.
- 3.2.** Article 57 of the Polish Constitution guarantees the right to the freedom of peaceful assembly. Article 21 of the ICCPR also guarantees this right.
- 3.3.** The Assemblies Act regulates peaceful assembly. In 2017, the law was amended to prioritise 'cyclical assemblies';<sup>30</sup> a government representative determines this status.<sup>31</sup> This restricts the ability of civil society to stage counter protests or spontaneous protests at the same time as a designated cyclical protest.
- 3.4.** Additionally, the Law on Anti-Terrorist Operations 2016 grants the authorities wide-ranging powers to restrict the right to peaceful assembly. For example, when a sufficiently high 'state of alarm' is declared, the Minister of Internal Affairs may order a prohibition on public assembly, without evidentiary support of such a state of alarm.
- 3.5.** During the COVID-19 pandemic, parliament adopted the Covid Act,<sup>32</sup> after the government declared a 'state of epidemic emergency' and later a 'state of

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<sup>28</sup> The Situation at the Poland/Belarusian border: "This is a humanitarian crisis", Helsinki Foundation for Human Rights, 2 January 2022, [https://www.hfhr.pl/na-granicy-pl-by/?fbclid=IwAR25opSE1P6WAlZLtCb9Sffp4qrg7aiC0FMCDvJtqrg5dxGyb\\_HucnXyCo](https://www.hfhr.pl/na-granicy-pl-by/?fbclid=IwAR25opSE1P6WAlZLtCb9Sffp4qrg7aiC0FMCDvJtqrg5dxGyb_HucnXyCo).

<sup>29</sup> Ongoing violations of civic freedoms at the Poland Belarus border; further threats to LGBTQI rights, CIVICUS Monitor, 21 January 2022, <https://monitor.civicus.org/updates/2022/01/21/ongoing-violations-civic-freedoms-polandbelarus-border-further-threats-lgbtqi-rights/>.

<sup>30</sup> Cyclical assemblies are defined as assemblies organised on an annual basis within the last three years or at least four times a year. See more: Crowd Control: New Verdict threatens Freedom of Assembly in Poland. Malgorzata Szuleka: Liberties EU, 28 May 2017, <https://www.liberties.eu/en/stories/polands-amendment-to-assemblies-act-is-constitutional/11623>.

<sup>31</sup> Ibid.

<sup>32</sup> Its full name is the Act on specific solutions related to the prevention and combating COVID and other infectious diseases and crises they caused. See more: Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications: Poland, Fundamental Rights Agency and Helsinki Foundation for Human Rights, 24 March 2020, [https://fra.europa.eu/sites/default/files/fra\\_uploads/poland-report-covid-19-april-2020\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/poland-report-covid-19-april-2020_en.pdf).

epidemic'. Under these declarations, various restrictions on public gatherings were introduced.<sup>33</sup>

- 3.6. The Polish government has continued to violate the right to peaceful assembly through the detention of protesters and use of excessive force. The COVID-19 pandemic has been used as a pretext to arbitrarily restrict this right.
- 3.7. For example, during pro-abortion protests sparked by the Constitutional Tribunal's de facto abortion ban ruling, which took place during the pandemic, at least 150 protesters were detained.<sup>34</sup> Authorities used excessive force, including kettling and physical violence,<sup>35</sup> actions incompatible with minimising the spread of COVID-19. In his report, the Polish Ombudsman noted further concerns such as 'unjustified transport of detainees' to police stations located far from the initial place of detention and challenges in accessing legal representation.<sup>36</sup>
- 3.8. In addition, LGBTIQ+ protests during August 2020, sparked by the detention of queer, non-binary activist Margot S, faced repression. Forty-eight people were arrested in total, with some protesters denied access to food and water and interrogated at night-time. Only five were officially charged with active participation in a gathering, while others were charged over an attack on a police officer and damage to property. In February 2022 a police officer revealed during his court testimony that the authorities received an 'order to detain all LGBTI branded persons on the night of the protest, regardless of how they behaved'.<sup>37</sup>
- 3.9. In June 2019 a pride parade in Rzeszow was initially banned on grounds of security due to several applications for counter demonstrations. The ban was later overturned by a court. When the march took place, around 30 masked counter protesters threw eggs at the participants as they marched behind a police cordon.<sup>38</sup>

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<sup>33</sup> In March 2020 the Minister introduced several regulations, which included a ban on organising mass events and public assemblies attended by more than 50 people. Later in April 2020, under the state of epidemic, a total ban on gatherings was introduced, which was amended in May 2020 to allow for up to 150 persons to gather. See more: Ibid.

<sup>34</sup> During the first 100 days of protest 150 arrests were made leading to 81 people being kept in police custody overnight. See more: Impact of the Coronavirus pandemic on the criminal justice system, Helsinki Foundation for Human Rights, November 2021, <https://www.hfhr.pl/wp-content/uploads/2021/11/Wolnos%CC%81c%CC%81-zgromadzen%CC%81-brief.pdf>.

<sup>35</sup> Poland: Concerns over intimidation, violence and detention of peaceful protesters, CIVICUS, 23 December 2020, <https://www.civicus.org/index.php/media-resources/news/4807-poland-concerns-over-intimidation-violence-and-detentions-of-peaceful-protesters>.

<sup>36</sup> Report of the National Mechanism for the Prevention of Torture, Office of the Ombudsman, 1 November 2021, <https://www.rpo.gov.pl/sites/default/files/Raport%20KMPT%20z%20wizytacje%20pomieszcze%20C5%84%20policyjnych%20po%20demonstracjach%20zwi%20C4%85zanych%20z%20wyrokiem%20TK%20-%2011.01.2021.pdf>.

<sup>37</sup> "Rainbow Night" policeman: We have been ordered to detain all LGBT branded, Anton Ambroziak: OKO Press, 3 February 2022, <https://oko.press/policjant-o-teczowej-nocy-otrzymalismy-polecenie-zatrzymania-wszystkich-oznakowanych-barwami-lgbt/>.

<sup>38</sup> Poland faced EU legal action over reforms undermining judicial independence, CIVICUS Monitor, 16 August 2019, <https://monitor.civicus.org/updates/2019/08/16/Poland-faces-EU-legal-action-over-reforms-undermining-judicial-independence/>.



- 3.10.** A month later, an LGBTQI+ parade in Białystok faced violent anti-LGBTQI+ counter protests, resulting in the arrest of 25 people.
- 3.11.** During March 2021 the Opposition Street Brigade and KOD Bydgoszcz protested against President Duda and Prime Minister Mateusz Morawiecki's participation in the celebrations of Bydgoszcz March '81, where workers held a strike over violence against the Solidarity trade union.<sup>39</sup> The activists, who were not allowed into the designated protest area agreed upon with City Hall, were violently removed from the protest site, with one being dragged to the ground and another arrested for assaulting a police officer.<sup>40</sup>

#### **4. Harassment, intimidation and attacks against human rights defenders, civil society activists and journalists**

- 4.1.** Under Poland's previous UPR examination, the government received no recommendations on the protection of HRDs and journalists. However, concerning developments have been noted in this regard.
- 4.2.** Article 12 of the UN Declaration on Human Rights Defenders mandates states to take the necessary measures to ensure the protection of HRDs. The ICCPR further guarantees the freedoms of association, peaceful assembly and expression.
- 4.3.** In practice, over the last four years the government has used the Polish Penal Code to target HRDs and has failed to protect HRDs, as illustrated by the cases below.
- 4.4.** In June 2017, KOD activist Andrzej Majdan was attacked by a group of nationalists during a demonstration on the anniversary of the workers Radom June '76 protests. A case opened against the attackers was discontinued by the public prosecutor's office. Later a court in Sieradz rejected a complaint against the decision.<sup>41</sup> In addition, a criminal case was opened against Majdan in relation to charges of being an accomplice in riots. Despite being acquitted by a lower court, the prosecutor continued prosecution by appealing against the sentence.<sup>42</sup> Majdan has also faced death threats.
- 4.5.** In January 2019, Paweł Adamowicz, the Gdansk mayor and one of the main critics of PiS, was murdered. Adamowicz, who defended migrants, refugees and LGBTQI+

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<sup>39</sup> President Duda and Prime Minister Morawiecki visit Bydgoszcz. The police detained a participant in the picket, Wyborcza.pl, 19 March 2021,

<https://bydgoszcz.wyborcza.pl/bydgoszcz/7,48722,26900517,wizyta-prezydenta-dydy-i-premiera-morawieckiego-w-bydgoszczy.html>.

<sup>40</sup> 40<sup>th</sup> anniversary of Bydgoszcz March event, KOD, 19 March 2021, <https://ruchkod.pl/40-rocznica-bydgoskich-wydarzen-marcowych/>.

<sup>41</sup> In the car of a KOD activist beaten by the nationalists in Radom, someone cut a fuel line, Małgorzata Rusek: Wyborcza.pl, 19 February 2020, <https://radom.wyborcza.pl/radom/7,48201,25712302,zamach-na-dzialacza-kod-w-samochodzie-andrzeja-majdana-przecieto.html>.

<sup>42</sup> Skopane by the nationalists the prosecutor accused of participating in the fight. She lost. He wants a cassation appeal in the Supreme Court, Krzysztof Boczek: OKO Press, 9 February 2022, <https://oko.press/skopanego-przez-nacjonalistow-oskarzala-o-udzial-w-bojce-chce-kasacji/>.

people, was regularly subjected to personal attacks on social media and pro-government media outlets. The initial investigation concluded that the man accused of the murder was mentally ill, meaning he could not face criminal liability. However, following media reports that a letter written by the accused, provided by an anonymous source, disclosed that the act was conscious and premeditated, and after various assessments, the man was deemed fit to stand trial and charges were brought against him in December 2021.<sup>43</sup>

- 4.6. WHRDs advocating for reproductive justice face judicial harassment and intimidation from state and non-state actors. In March 2021, women's rights activists and organisations<sup>44</sup> advocating for the right to abortion faced violent threats,<sup>45</sup> including bomb threats, rape threats and death threats, sent via email and social media.<sup>46</sup> Complaints were filed to the police, but investigations did not proceed any further. However, in a welcome move, in October 2021, Marta Lempart, the Polish Women's Strike co-leader, was assigned police protection in public in response to escalating threats made on her life.<sup>47</sup>
- 4.7. WHRDs staging pro-abortion protests are facing criminal charges, including of causing an 'epidemiological threat', insulting police officers and insulting people due to religious affiliation. For example, Marta Lempart faces over 90 criminal charges related to her role in protests.<sup>48</sup> Katarzyna Augustynek, an older Polish woman, was charged and detained under poor conditions<sup>49</sup> in late January 2021 for insulting police officers and violating officers' bodily integrity during a December 2020 protest.

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<sup>43</sup> Prosecutors charge Gdansk Mayor murderer, TVP World, 10 December 2021, <https://tvpworld.com/57388412/prosecutors-charge-gdansk-mayor-murderer>.

<sup>44</sup> They include the Abortion Dream Team, Federation for Women and Family Planning, Feminoteka, FundacjaFOR, Helsinki Foundation for Human Rights, Polish Women's Strike and Women's Rights Centre. See more: Escalating threats to women activists, CIVICUS, 31 March 2021, <https://www.civicus.org/index.php/fr/medias-ressources/112-news/5017-poland-escalating-threats-to-women-activists>.

<sup>45</sup> "I am not safe here": Women's rights activists under attack for work on abortion rights, CIVICUS Monitor, 9 April 2021, <https://monitor.civicus.org/updates/2021/04/09/i-am-not-safe-here-womens-rights-activists-under-attack-work-abortion-rights/>.

<sup>46</sup> Marta Lempart, Twitter, 23 March 2021, <https://twitter.com/martalempart/status/1374357613715070976?s=20>.

<sup>47</sup> Police Protection for WHRD after escalating threats; Press Freedom concerns at Poland/Belarus border, CIVICUS Monitor, 25 October 2021, <https://monitor.civicus.org/updates/2021/10/25/police-protection-whrd-after-escalating-threats-press-freedom-concerns-polandbelarus-border/>.

<sup>48</sup> Government attempts to muzzle independent media by controversial anti TVN law, CIVICUS Monitor, 2 September 2021, <https://monitor.civicus.org/updates/2021/09/02/government-attempts-muzzle-independent-media-controversial-anti-tvn-law/>.

<sup>49</sup> Augustynek alleges that she was verbally abused, 'brutally undressed in a dirty toilet' and denied access to food, water, warm clothes and medication for her chronic health condition during detention in January 2021. See more: Grandma Kasia, a known Warsaw activist, accuses police of physical and verbal abuse. Police deny the allegations, Zuzanna Bukłaha: Whyborcza.pl, 2 December 2021, <https://wyborcza.pl/7,173236,26748236,grandma-kasia-a-known-warsaw-activist-accuses-police-of-physical.html>.

- 4.8. Currently, there are no special provisions for LGBTQI+ people in relation to the freedoms of peaceful assembly and expression.<sup>50</sup> The ‘Stop LGBT’ bill, submitted to the Sejm by the Life and Family Foundation in November 2020, aims to ban gatherings that promote, among other things, ‘sexual orientations other than heterosexuality’. The bill is currently with the interior affairs commission.<sup>51</sup>
- 4.9. LGBTQI+ rights defenders experience repeated persecution under article 196 of the Polish Penal Code. In March 2021, three LGBTQI+ activists were acquitted<sup>52</sup> on charges of ‘offending religious beliefs’ after displaying posters depicting the Virgin Mary with a rainbow halo symbolic of the LGBTQI+ flag during 2019. Despite being acquitted by a lower court, in December 2021 the prosecutor appealed against the outcome. However, in January 2022, the appeal was dismissed.<sup>53</sup>
- 4.10. LGBTQI+ rights defenders are facing legal harassment for campaigning against so-called ‘LGBT-free zones’ declared by municipal governments.<sup>54</sup> In July 2021, ‘LGBT-free’ municipalities opened six lawsuits against The Atlas of Hate, a website that maps local administrations that have passed anti-LGBTQI+ resolutions.
- 4.11. In September and October 2021, four towns filed defamation lawsuits under article 23 of the Civil Code against LGBTQI+ rights defender Bart Staszewski, following his awareness campaign<sup>55</sup> about municipalities that declared

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<sup>50</sup> LGBTI Rights in Poland. Transgender Europe (TGEU), October 2018, [https://tgeu.org/wp-content/uploads/2018/10/COE-Report-Oct18-poland\\_1.pdf](https://tgeu.org/wp-content/uploads/2018/10/COE-Report-Oct18-poland_1.pdf).

<sup>51</sup> Thousands urge Polish MP to kill horrific LGBT+ “promotion” bill that would ban pride. Mishti Ali: PinkNews UK, 11 December 2021, <https://www.pinknews.co.uk/2021/12/11/poland-stop-lgbt-petition/>.

<sup>52</sup> Poland : Prosecution of women who put up posters of Virgin Mary with rainbow halo smacks of state-sponsored homophobia. Amnesty, 7 December 2021, <https://www.amnesty.org/en/latest/news/2021/12/poland-prosecution-of-women-who-put-up-posters-of-virgin-mary-with-rainbow-halo-smacks-of-state-sponsored-homophobia/>.

<sup>53</sup> Poland: After acquitting rainbow halo women authorities must end their witch hunt against activists, Amnesty, 12 January 2022, <https://www.amnesty.org/en/latest/news/2022/01/poland-after-acquitting-rainbow-halo-women-authorities-must-end-their-witch-hunt-against-activists/>.

<sup>54</sup> Over 100 municipalities had declared themselves so-called ‘LGBT-free zones’, by adopting non-binding resolutions ‘against LGBT propaganda’ which pledge to refrain from taking any action to encourage tolerance of LGBTQI+ people. Several Polish regions have revoked anti-LGBT declarations due to the threat of losing funds from the European Union, after the European Commission wrote to five Polish regional councils in September 2021 urging them to abandon declarations to receive recovery funding. See more: More Polish regions revoke anti LGBT declarations over EU funds withdrawal, Euro News, 27 September 2021, <https://www.euronews.com/2021/09/27/more-polish-regions-revoke-anti-lgbt-declarations-over-eu-funds-withdrawal>. New Law set to erode judicial independence and municipalities declared LGBTI free zones, CIVICUS Monitor, 16 March 2020, <https://monitor.civicus.org/updates/2020/03/16/new-law-set-erode-judicial-independence-and-municipalities-declared-lgbti-free-zones/>.

<sup>55</sup> Poland: People are more understanding and supportive of LGBTQI issues than politicians, CIVICUS, 1 April 2020, <https://www.civicus.org/index.php/media-resources/news/interviews/4362-poland-people-are-more-understanding-and-supportive-of-lgbtqi-issues-than-politicians>.

themselves as ‘LGBT-free’.<sup>56</sup> Staszewski has faced public vilification and death threats.<sup>57</sup>

**4.12.** In the context of the ongoing violations of the rule of law by the current government, judges active in the independent judicial associations Iustitia and Themis are facing harassment and pressure from the unconstitutional ‘Disciplinary Chamber’ of the Supreme Court. This includes disciplinary cases against Piotr Gąciarek, Paweł Juszczyszyn, Beata Morawiec, Igor Tuleya, Dorota Zabłudowska and Waldemar Żurek, among others<sup>58</sup> and, as a result, suspension from sitting for Piotr Gąciarek,<sup>59</sup> Paweł Juszczyszyn,<sup>60</sup> Beata Morawiec<sup>61</sup> and Igor Tuleya,<sup>62</sup> and withdrawal of judicial immunity for Beata Morawiec and Igor Tuleya. In addition, the National Prosecutor's Office wants to bring criminal charges against Judge Krystian Markiewicz, the President of Iustitia, for making statements about the implementation of judgments of the Court of Justice of the European Union.<sup>63</sup> Prosecutors involved in the Lex Super Omnia association, including Krzysztof Parachimowicz and Ewa Wrzosek, have also received disciplinary charges because they wrote that the so-called Muzzle Law<sup>64</sup> against judges and prosecutors is unconstitutional. Other members of Lex Super Omnia have also received charges.<sup>65</sup>

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<sup>56</sup> Ibid.

<sup>57</sup> Poland: Bart Staszewski facing SLAPPS for legitimately defending LGBT rights, UN Special Rapporteur on Human Rights Defenders, 19 January 2022, <https://srdefenders.org/poland-bart-staszewski-slapps-for-legitimately-defending-lgbt-rights-joint-communication/>.

<sup>58</sup> Judges at the KOD convention. The disciplinary spokesman initiated proceedings, TVN24, 21 February 2022, <https://tvn24.pl/polska/sedziowie-waldemar-zurek-pawel-juszczyszyn-piotr-gaciarek-i-dorota-zabludowska-na-konwencji-kod-rzecznik-dyscyplinarny-wszczal-postepowanie-5607208>

<sup>59</sup> Judge Piotr Gąciarek suspended by the Disciplinary Chamber. This is a clear breach of the CJEU’s security, OKO Press, 24 November 2021, <https://oko.press/sedzia-piotr-gaciarek-zawieszony-przez-izbe-dyscyplinarna/>.

<sup>60</sup> The Disciplinary Chamber is trying to silence Juszczyszyn. She suspended him from his duties as a judge and cut his salary, OKO Press, 4 February 2020, <https://oko.press/izba-dyscyplinarna-probuje-uciszyc-juszczyszyna-zawiesila-go-w-obowiazkach-sedziego-i-obciela-pensje/>.

<sup>61</sup> Spokesman for the Disciplinary Chamber: Beata Morawiec cannot adjudicate. The judge answers, TVN24, 14 October 2020, <https://tvn24.pl/polska/sprawa-sedzi-beaty-morawiec-rzecznik-izby-dyscyplinarnej-morawiec-nie-moze-orzekac-sedzia-odpowiada-4720832>.

<sup>62</sup> The Disciplinary Chamber of the Supreme Court issued a decision. Igor Tuleya loses his immunity. Aleksandra Krzysztofoszek: Euractiv.pl, 19 November 2020, <https://www.euractiv.pl/section/demokracja/news/izba-dyscyplinarna-sad-najwyzszy-igor-tuleya-immunitet-prokuratura/>.

<sup>63</sup> The prosecutor’s office will hit the President of Iustitia Markiewicz. He is facing charges for appeals to comply with the CJEU judgment. OKO Press, 9 January 2022, <https://oko.press/prokuratura-uderzy-w-prezesa-iustitii-markiewiczza-groza-mu-zarzuty-za-apele-o-wykonanie-wyroku-tsue/>

<sup>64</sup> New law set to erode judicial independence and municipalities declared LGBTI free zones, CIVICUS Monitor, 16 March 2020, <https://monitor.civicus.org/updates/2020/03/16/new-law-set-erode-judicial-independence-and-municipalities-declared-lgbti-free-zones/>.

<sup>65</sup> Another blow to prosecutors from Lex Super Omnia The disciplinary spokesman for Ziobro is after them. OKO Press, 17 March 2021, <https://oko.press/kolejne-uderzenie-w-niezaleznych-prokuratorow-z-lex-super-omnia/>.

- 4.13.** Journalists face intimidation and harassment from both state and non-state actors, with little to no action taken against perpetrators. On 28 October 2020 reporter Joanna Urbańska-Jaworska from the independent media outlet Gazeta Wyborcza was dragged and thrown to the ground by a masked counter protester during a pro-abortion protest. While the District Prosecutor's Office in Wrocław filed a motion for the arrest of the man suspected of assaulting Urbańska-Jaworska, the following day the motion for arrest was withdrawn by the same court.<sup>66</sup>
- 4.14.** Police officers have used physical violence and excessive force, such as teargas,<sup>67</sup> against journalists during protests. On 23 November 2020, despite having shown her press ID,<sup>68</sup> photojournalist Agata Grzybowska was attacked, arrested and charged<sup>69</sup> with 'violating the [police officer's] physical integrity' while covering pro-abortion demonstrations in Warsaw.<sup>70</sup>

## **5. Freedom of expression, media freedom and access to information**

- 5.1.** Under the 3<sup>rd</sup> UPR cycle, the government received six recommendations relating to the freedom of expression, media freedom and access to information. For example, the government pledged to 'take decisive steps to decrease political control over State-owned media and to ensure independence of private and State-owned media'. Of the recommendations received, five were supported and one was supported/noted. However, the government did not take effective measures to implement any of these recommendations.
- 5.2.** Article 19 of the ICCPR guarantees the right to the freedoms of expression and opinion. Article 54 (1) of the Constitution of Poland states that the 'freedom to express opinions, to acquire and to disseminate information shall be ensured to everyone'. Article 54 (2) of the Constitution prohibits 'preventive censorship of the means of social communication'.<sup>71</sup>
- 5.3.** However, the Polish Penal Code introduces limitations. It is a criminal offence to 'offend religious feelings' by slandering publicly religious objects or places (article

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<sup>66</sup> Government stalls near abortion ban while women protest leaders face threats on their safety, CIVICUS Monitor, 5 November 2021, <https://monitor.civicus.org/updates/2020/11/05/government-stalls-near-abortion-ban-while-women-protest-leaders-face-threats-their-safety/>.

<sup>67</sup> Democracy declining: Erosion of media freedom in Poland. Mapping Media Freedom Rapid Response, 11 February 2021, [https://ipi.media/wp-content/uploads/2021/02/20210211\\_Poland\\_PF\\_Mission\\_Report\\_ENG\\_final.pdf](https://ipi.media/wp-content/uploads/2021/02/20210211_Poland_PF_Mission_Report_ENG_final.pdf).

<sup>68</sup> OKO Press, Facebook, 23 November 2020, <https://www.facebook.com/oko.press/videos/390154428771632/>.

<sup>69</sup> Charges against Polish photojournalist Agata Grzybowska must be dropped, International Press Institute, 24 November 2020, <https://ipi.media/charges-against-polish-photojournalist-agata-grzybowska-must-be-dropped/>.

<sup>70</sup> Civic space under threat: protesters intimidated, journalists attacked, LGBTI rights targeted, CIVICUS Monitor, 26 January 2021, <https://monitor.civicus.org/updates/2021/01/26/civic-space-under-threat-protesters-intimidated-journalists-attacked-lgbti-rights-targeted/>.

<sup>71</sup> Constitution of the Republic of Poland, Sejm pl, 2 April 1997, <https://www.sejm.gov.pl/prawo/konst/angielski/kon1.htm>.



196) or to 'disturb a religious ceremony' (article 195). Slander of 'the Polish Nation or Republic of Poland' (article 133), the president (article 135) or Polish state symbols (article 137) are criminal offences.<sup>72</sup> Further, article 212 criminalises defamation, article 226 criminalises insulting a constitutional authority, article 224 criminalises influencing official activities and article 256 criminalises the promotion of fascism.<sup>73</sup>

- 5.4. In practice, the government continues to violate the right to the freedom of expression, including press freedom and media independence.
- 5.5. While under article 21(1) of the Broadcasting Act 1992, public broadcaster Telewizja Polska (TVP) must provide services that are 'pluralistic, impartial, well-balanced, independent and innovative, as well as of high quality and integrity', in practice concerning developments regarding media independence have been documented at TVP, which is run by pro-government executives and journalists.<sup>74</sup> During the 2020 presidential election campaign, press freedom groups found that TVP was biased in its reporting of President Duda. TVP has also publicly vilified those who are critical of the government.<sup>75</sup> Additionally, media regulatory bodies such as the National Broadcasting Council (KRRiT) have failed to actively deal with complaints against TVP. TVP has also instituted legal proceedings against independent journalists under the Penal Code.<sup>76</sup>
- 5.6. The government has also made concerning moves to diminish media pluralism by bringing foreign-owned media outlets under the control of its supporters. In December 2020, Polska Press, one of Poland's largest media publishers, was taken over by state-owned oil company PKN Orlen, whose CEO has close ties with PiS. Although a court order suspended the takeover pending review, eight editors-in-chief have been dismissed or pushed out, with other editors resigning due to 'ownership changes'.<sup>77</sup>
- 5.7. In another attempt to diminish media pluralism, in December 2021, the Sejm passed amendments to the Broadcasting Act (known as the 'Lex-TVN' bill) which limits media ownership by organisations from outside the European Economic Area (EEA) to no more than a 49 per cent stake in any Polish media firm. These

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<sup>72</sup> LGBTI Rights in Poland. Transgender Europe (TGEU), October 2018, [https://tgeu.org/wp-content/uploads/2018/10/COE-Report-Oct18-poland\\_1.pdf](https://tgeu.org/wp-content/uploads/2018/10/COE-Report-Oct18-poland_1.pdf).

<sup>73</sup> Code of Criminal Procedure, Legislation online in English, [https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997\\_am%202003\\_en.pdf](https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997_am%202003_en.pdf)

<sup>74</sup> Monitoring of the 2019 European Parliament election campaign in the main news programme of Polish public TV, Stefan Batory Foundation, 10 June 2019, [https://www.batory.org.pl/upload/files/Programy%20operacyjne/Masz%20Glos/RaportTDEnglFin\\_June%2010N.pdf](https://www.batory.org.pl/upload/files/Programy%20operacyjne/Masz%20Glos/RaportTDEnglFin_June%2010N.pdf).

<sup>75</sup> TVP Barks, activists receive threats: "Soon you will die, blood for blood", OKO Press, 12 March 2021, <https://oko.press/tvp-szczuje-dzialaczki-dostaja-grozby/>.

<sup>76</sup> Monitoring of repressions against free media 2015-2021, Journalism Society, 21 March 2021, <http://towarzystwodziennikarskie.pl/2021/05/21/monitoring-represji-wobec-wolnych-mediow-2015-2021/>.

<sup>77</sup> Teenage pro-abortion protesters targeted for participation, "Hungary style takeover" of media, CIVICUS Monitor, 2 July 2021, <https://monitor.civicus.org/updates/2021/07/02/teenage-pro-abortion-protesters-targeted-participation-hungary-style-takeover-media/>.



amendments would have directly affected private broadcaster TVN, in which the USA-based Discovery group would have had to sell its 51 per cent stake, potentially enabling government-allied entities to acquire stakes in TVN. However in the face of mass protests, on 27 December 2021, President Duda vetoed the amendments, stating that it would lead to diplomatic tensions with the USA.<sup>78</sup> In another attempt to obstruct TVN, KRRiT failed to renew its licence for almost two years, only doing so on 23 September 2021.

- 5.8.** Journalists face legal harassment under the Polish Penal Code. A report by the Society for Journalism documented 58 criminal cases against journalists between 2015 and 2021, of which 25 were brought under Penal Code article 212 on defamation.<sup>79</sup>
- 5.9.** For example, in November 2021, Ewa Siedlecka, of the weekly news magazine *Polityka*, was convicted of defamation and ordered to pay a fine of 3,000 zlotys (approx. US\$688) in an indictment initiated by two judges acting in a private capacity, after she published blog posts and articles about the judges and the so-called 'hate campaign affair'<sup>80</sup> that occurred in Poland in 2019.<sup>81</sup> Siedlecka intends to appeal against the guilty verdict.<sup>82</sup>
- 5.10.** On 29 October 2021, the District Prosecutor's Office in Gdańsk questioned *Gazeta Wyborcza* journalist Katarzyna Włodkowska in connection with her reporting about the 2019 murder investigation of Paweł Adamowicz.<sup>83</sup> In October 2021, the Court of Appeal in Gdańsk upheld a previous court ruling ordering her to reveal her confidential source who provided information about the alleged murderer's mental state. Włodkowska has refused to identify her source. In November 2021, she was ordered to pay a fine of PLN 500 (approx. US\$117). She could be fined again or arrested for 30 days if she does not comply with the order. The case is currently under appeal.<sup>84</sup>

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<sup>78</sup> Polish President says he vetoed the media law, Reuters, 27 December 2021, <https://www.reuters.com/business/media-telecom/polish-president-says-he-vetoed-media-law-2021-12-27/>.

<sup>79</sup> Monitoring of repressions against free media 2015-2021, Journalism Society, 21 March 2021, <http://towarzystwodziennikarskie.pl/2021/05/21/monitoring-represji-wobec-wolnych-mediow-2015-2021/>.

<sup>80</sup> The hate campaign affair revealed that representatives of the Ministry of Justice orchestrated and coordinated a hate campaign to target several judges who openly opposed the government's controversial judicial changes, which included the creation of a disciplinary chamber. See more: Poland: Journalists criminal defamation conviction may further impair freedom of expression, 1 December 2021, <https://www.article19.org/resources/poland-journalists-criminal-defamation-conviction-may-further-impair-freedom-of-expression/>.

<sup>81</sup> Ibid.

<sup>82</sup> Polish court fines journalist Ewa Siedlecka for criminal defamation. Committee to Protect Journalists, 15 December 2021, <https://cpi.org/2021/12/polish-court-fines-journalist-ewa-siedlecka-for-criminal-defamation/>.

<sup>83</sup> Court orders journalist Katarzyna Włodkowska to reveal confidential source, Mapping Media Freedom, 29 October 2021, <https://www.mapmf.org/alert/24338>.

<sup>84</sup> Poland: Access to public information must not be constrained, Article 19, 15 November 2021, <https://www.article19.org/resources/poland-access-to-public-information-must-not-be-constrained/>.

- 5.11.** In addition, independent media outlets face smear campaigns and SLAPPs. For example, PiS leader Jarosław Kaczyński has accused Gazeta Wyborcza of disseminating ‘liberalism, anti-traditionalism, anti-Catholicism’. Gazeta Wyborcza has faced 63 legal suits from different state actors, including from PiS and its leader. Investigative news outlet ONET is facing at least eight lawsuits, while OKO.press is currently facing at least nine lawsuits.<sup>85</sup>
- 5.12.** The Access to Public Information Act 2001 regulates access to information in Poland.<sup>86</sup> However, in practice access to information is being limited at the Poland/Belarus border after the government declared a state of emergency and initially restricted access to the area for journalists and CSOs working on humanitarian relief. Several violations against journalists covering the migration situation have been documented, including journalists being intimidated, physically attacked, arbitrarily detained and criminally charged with staying in a prohibited area and for illegally filming border infrastructure.<sup>87</sup>
- 5.13.** Regulations introduced in November 2021 stipulated that the local Border Guard Commander has the right to arbitrarily select media workers to be admitted to the border zone, who will be granted a permit and will have to undergo training and sign a declaration, details of which are unknown.<sup>88</sup>

## **6. Recommendations to the Government of Poland**

- 6.1.** CIVICUS and KOD call on the Government of Poland to create and maintain, in law and in practice, an enabling environment for civil society, in accordance with the rights enshrined in the ICCPR, the UN Declaration on Human Rights Defenders and Human Rights Council resolutions 22/6, 27/5 and 27/31.
- 6.2.** At a minimum, the following conditions should be guaranteed: the freedoms of association, peaceful assembly and expression, the right to operate free from unwarranted state interference, the right to communicate and cooperate, the right to seek and secure funding and the state’s duty to protect. In the light of this, the following specific recommendations are made:

### **Freedom of association**

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<sup>85</sup> Poland: The Gazeta Wyborcza newspaper received 63 lawsuits and legal threats, Mapping Media Freedom, 20 April 2021, <https://mappingmediafreedom.usahidi.io/posts/23957>

<sup>86</sup> Act 6 of September 2001 Access to Information, 2001, <http://isap.sejm.gov.pl/isap.nsf/DocDetails.xsp?id=WDU20011121198>.

<sup>87</sup> Police protection for WHRD after escalating threats for; press freedom concerns at Poland/Belarus border, CIVICUS Monitor, 25 October 2021, <https://monitor.civicus.org/updates/2021/10/25/police-protection-whrd-after-escalating-threats-press-freedom-concerns-polandbelarus-border/>.

<sup>88</sup> Ongoing violations on civic freedoms at Poland/Belarus border; further threats to LGBTQI rights, CIVICUS Monitor, 21 January 2022, <https://monitor.civicus.org/updates/2022/01/21/ongoing-violations-civic-freedoms-polandbelarus-border-further-threats-lgbtqi-rights/>.

- Take measures to foster a safe, respectful and enabling environment for civil society, including by removing legal and policy measures that unwarrantedly limit the freedom of association.
- Remove all undue restrictions on domestic and international funding for CSOs and ensure that funding is allocated in an open and transparent manner, in line with best practices articulated by the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association.
- Cease unwarranted raids on CSOs and unjustifiable disruptions of legitimate activities organised by CSOs.
- Amend laws to remove undue restrictions on the freedom of association to bring laws into compliance with ICCPR articles 21 and 22.
- Reverse the deportation and restriction to the Schengen area of Open Dialogue Foundation head, Lyudmyla Kozlovska's .
- Refrain from harassment and intimidation of humanitarian organisations working at the Poland/Belarus border and allow CSOs full access to carry out their work in line with international standards.

### **Protection of human rights defenders**

- Provide civil society members, HRDs and journalists with a safe and secure environment in which to carry out their work without obstruction and legal harassment, conduct impartial, thorough and effective investigations into all cases of attacks, harassment and intimidation against them and bring the perpetrators of such offences to justice.
- Immediately and unconditionally drop charges against all HRDs, including journalists and bloggers, for exercising their fundamental rights to the freedoms of association, peaceful assembly and expression, and review their cases to prevent further harassment.
- Ensure that government officials and non-state actors perpetrating intimidation and harassment against WHRDs and LGBTQI+ defenders are effectively investigated.
- Systematically apply legal provisions that promote and protect human rights and establish mechanisms that protect HRDs, including by adopting a specific law on

the protection of HRDs in accordance with Human Rights Council resolution 27.31.

- Refrain from further persecuting independent judges who uphold the rule of law and drop all criminal charges against them.

### **Freedom of expression, media freedom and access to information**

- Ensure the freedom of expression and media freedom by bringing all national legislation into line with international standards.
- Reform the Polish Penal Code in conformity with ICCPR article 19.
- Take steps to lift restrictions on the freedom of expression and adopt a framework for the protection of journalists from persecution, intimidation and harassment.
- Respect the right to access information and allow journalists and media outlets full access to report from the Poland/Belarus border and refrain from obstructing their reporting.
- Drop all SLAPPs against journalists and media outlets and refrain from further legal harassment against independent media.
- Take decisive steps to decrease political control over state-owned media and ensure independence of private and state-owned media

### **6.4 Freedom of peaceful assembly**

- Adopt best practices on the freedom of peaceful assembly, as put forward by the 2012 report of the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association, which calls for simple processes for the notification of assemblies being held rather than permission being required, and by General Comment No. 37 on the right to peaceful assembly adopted by the UN Human Rights Committee in 2020.
- Unconditionally and immediately drop charges against all protesters, HRDs and journalists detained for exercising their right to the freedom of peaceful assembly and review their cases to prevent further harassment.
- Review and update existing human rights training for police and security forces, with the assistance of independent CSOs, to foster the more consistent

application of international human rights standards, including the UN Basic Principles on the Use of Force and Firearms.

- Publicly condemn at the highest levels all instances of the use of excessive force by security forces in response to protests, launch formal investigations into such instances and bring the perpetrators to justice.
- Provide recourse to judicial review and effective remedy, including compensation, in cases of unlawful denial of the right to the freedom of peaceful assembly by state authorities.
- Respect the right of LGBTQI+ people to assemble peacefully and scrap the 'Stop LGBT' bill. Drop all charges against LGBTQI+ people for exercising their right to peaceful assembly

### **6.5 Access to UN Special Procedures mandate holders**

- The Government should extend a standing invitation to all UN Special Procedure mandate holders and prioritise official visits by the: 1) Special Rapporteur on the situation of human rights defenders; 2) Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression; 3) Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association; 4) Special Rapporteur on the independence of judges and lawyers; and 5) Working Group on Arbitrary Detention.

### **6.6 State engagement with civil society**

- Implement transparent and inclusive mechanisms of public consultations with CSOs on all issues mentioned above and enable the more effective involvement of civil society in the preparation of law and policy.
- Systematically engage and consult with civil society at the different stages of UPR engagement and on the implementation of UPR recommendations.
- Incorporate the results of this UPR into action plans for the promotion and protection of all human rights, taking into account the proposals of civil society, and present a midterm evaluation report to the Human Rights Council on the implementation of the recommendations of this session.

## 7. Annex: Assessment of implementation of civic space recommendations under the 3<sup>rd</sup> cycle

Recommendation	Position	Assessment/Comments on level of implementation
120.24 Ensure comprehensive implementation of the international human rights instruments ratified during the past several years (Ukraine); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 4
120.78 Consider to increase the level of official development assistance (Sierra Leone); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 2
120.33 Establish an independent body that is authorized to receive complaints on violence and abuses by the police (Russian Federation); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 4
120.72 Amend the Criminal Code to provide that crimes motivated by discrimination on the grounds of sexual orientation or gender identity are investigated and prosecuted as hate crimes (Belgium); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 4
120.73 Amend the Penal Code to provide that crimes motivated by discrimination on any grounds, gender identity and expression and sexual orientation, are investigated and prosecuted as hate crimes (Iceland); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 4
120.48 Harmonize the Act on Equal Treatment with the international human rights instruments ratified by Poland (Honduras); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 4
120.45 Take steps to ensure the acceptance and the general public knowledge of the existing law on anti-discrimination and to increase the practical use of the law (Sweden); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 4
120.44 Amend its anti-discrimination law in order to ensure that discrimination on any	Supported	Status: Not implemented



grounds is prohibited in all areas of life (Finland); Source of position: A/HRC/36/14/Add.1		Source: Section 4
120.105 Guarantee freedom and independence of the media and ensure that rules regarding media ownership comply with European Union law (no discrimination and no retroactive legislation) (Germany); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 5
120.106 Ensure that the implementation of its legislation in the field of media respects the independence and pluralism of the media, by, inter alia, applying the decision of the Constitutional Tribunal of 13 December 2016, which aims at restoring the competences of the National Broadcasting Council (Switzerland); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 5
120.109 Guarantee freedom of expression and assembly, including by civil society organizations, notably in the context of public gatherings (France); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 3 and 5
120.104 Take decisive steps to decrease political control over State-owned media and to ensure independence of private and State-owned media (Sweden); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 5
120.107 Promote the right of access to information by protecting the freedom of press and the use of mass communication (Holy See); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 5
120.112 Ensure a transparent and enabling environment for non-governmental organisations that allows them to benefit from available support and contribute to the development of a vibrant civil society (Austria); Source of position: A/HRC/36/14/Add.1	Supported	Status: Not implemented  Source: Section 2
120.113 Take concrete steps to enhance the broad and full participation of civil society in all political and societal life, by ensuring	Supported	Status: Not implemented  Source: Section 2

<p>transparent distribution of NGO funding and by safeguarding that the freedoms of expression and association can, in line with the International Covenant on Civil and Political Rights, be exercised in practice, including by taking further steps to ensure prompt investigations of physical attacks and/or threats against civil society actors (Finland); Source of position: A/HRC/36/14/Add.1</p>		
<p>120.111 Ensure a legal and financial framework that allows non-governmental organizations to operate (Norway); Source of position: A/HRC/36/14/Add.1</p>	Supported	<p>Status: Not implemented</p> <p>Source: Section 2</p>
<p>120.108 Guarantee the full right to freedom of expression, through amendments to laws adopted from 2015 that limit the independence of the media, undermine trust on its impartiality and, in anti-terrorism cases, could violate privacy (Mexico); Source of position: A/HRC/36/14/Add.1 &amp; Annex to A/HRC/36/Add.1</p>	Partially Supported	<p>Status: Not implemented</p> <p>Source: Section 5</p>
<p>120.123 Review its procedures, practices and legislation to ensure that any interference with the right to privacy is consistent with international human rights standards, especially with the principles of legality, necessity and proportionality (Brazil); Source of position: A/HRC/36/14/Add.1 &amp; Annex to A/HRC/36/Add.1</p>	Partially Supported	<p>Status: Not implemented</p> <p>Source: Section 4</p>
<p>120.122 Ensure that regulations pertaining to the right to privacy are in line with the principles of legality, necessity and proportionality. Establish an independent and effective oversight mechanism (Germany); Source of position: A/HRC/36/14/Add.1 &amp; Annex to A/HRC/36/Add.1</p>	Partially Supported	<p>Status: Not implemented</p> <p>Source: Section 4</p>
<p>120.110 Repeal the restrictive amendments on the Law on Assemblies to restore full freedom of peaceful assembly, in keeping with Poland's international obligations (Canada); Source of position: A/HRC/36/14/Add.1</p>	Noted	<p>Status: Not implemented</p> <p>Source: Section 3</p>