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**AMNESTY
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Dear Prime Minister Szydło,

CONCERNS REGARDING THE PROPOSED CHANGES IN THE LAWS REGULATING ACCESS TO ABORTION

I take this opportunity to write to you regarding the recent citizen's initiative, spearheaded by pro-life group Fundacja Pro (Pro Foundation), proposing an amendment of the 'Act on Family Planning' and changes to the Criminal Code.

Amnesty International considers that these amendments, if enacted, constitute a retrogressive measure under international human rights law and will place Poland in clear breach of its international, regional and national legal obligations.

The proposals would ban access to abortion in all circumstances except in cases where medical health professionals have provided an abortion as the only means available to save the woman's life. The reforms would also criminalize women and girls who are considered to have sought or obtained an abortion, and anyone who assists or encourages them to do so, and increases the maximum jail term for people who perform abortions from two years to five.

If passed into law, this proposal will violate women's and girls' human rights including their right to life, health and to be free from torture and other cruel, inhuman or and degrading treatment or punishment (other ill treatment), as well as their right to privacy, to information and to equality and non-discrimination. The proposal will also have negative implications for the rights and ability of health professionals to provide the life-saving and health preserving services that women and girls need and have a right to access.

Amnesty International's assessment is based on international human rights treaties and conventions that Poland has ratified, expert recommendations and advice provided to states by the World Health Organization (WHO) and the United Nations (UN), as detailed in the Annex of the letter. The organization has also conducted its own detailed investigations into the impact on women and girls of restrictive abortion laws in Ireland, El Salvador, Nicaragua, and Paraguay, some of the few remaining countries in the world where similarly restrictive laws as the one now proposed in Poland exist. Our research confirmed that women and girls pay the high price for a ban on safe and legal abortion, and they pay it with their lives, health and well-being.

The current legal framework governing abortion in Poland is already one of the most restrictive in Europe. The European Court of Human Rights has ruled in three cases, namely *RR v Poland*, *Tysiac v Poland* and *P and S v Poland*, finding that unacceptable obstacles and delays in women and girls' accessing safe and legal abortion services under the current legal framework in Poland constitute breaches of human rights under the European Convention on Human Rights (ECHR). In the case of *P and S v Poland*, the European Court found that Poland had violated the rights of a 14 year-old rape victim to be free from inhuman and degrading treatment because of obstacles and delays impeding her access to safe and legal abortion services.

Given that Poland has already been found in breach of the European Convention in cases regarding women's and girls' right to access safe and legal abortion services within its current legislative framework, a further restriction of the legal framework around abortion and further limiting access to services would defy these prominent rulings and bring Poland in violation of a wide range of international and regional human rights obligations. In addition to breaching multiple human rights standards, the legal reforms proposed could constitute a retrogressive measure, not justified according to international law¹.

For the reasons highlighted above, Amnesty International urges you to ensure, as Prime Minister, that the Polish government does not support the proposed changes to the legislation which would amount to an unauthorized retrogressive measure that poses serious implications for the women and girls who live in Poland, violating their fundamental human rights. Amnesty International further calls on the Polish government and lawmakers to take all necessary measures to guarantee an effective implementation of the ECHR's judgements and to bring the country into compliance with regional and international human rights obligations for women and girls.

Yours sincerely,



Salil Shetty
Secretary General

¹ As clearly stated by the UN Committee on Economic Social and Cultural Rights in the General Comment No. 14 on the Right to the Highest Attainable Standard of Health (article 12, para 32): “[R]etrogressive measures taken in relation to the right to health are not permissible. If any deliberately retrogressive measures are taken, the State party has the burden of proving that they have been introduced after the most careful consideration of all alternatives and that they are duly justified by reference to the totality of the rights provided for in the Covenant in the context of the full use of the State party's maximum available resources.”

Annex: Specific concerns regarding the proposed changes in the laws regulating access to abortion

Proposed amendments violate international and regional human rights law

International human rights law and standards require states to both decriminalize abortion and to ensure access to abortion, at a minimum, when a woman or girl's life or physical and mental health are at risk, in cases of rape or incest and in cases of severe and fatal foetal impairment. United Nations' expert treaty bodies, including the Committee against Torture, the Committee on the Rights of the Child, the Human Rights Committee, the Committee for the Elimination of all forms of Discrimination against Women and the Committee on Economic, Social and Cultural Rights, have consistently found that countries that criminalize abortion and do not guarantee women and girls access to safe and legal abortion services on such minimum grounds in law and in practice violate numerous human rights.

The UN's expert on the Right to Health has repeatedly expressed serious concerns about the danger that criminal laws prohibiting abortion pose to women and girls. In 2011 then Special Rapporteur Anand Grover stated: "Criminal laws penalizing and restricting induced abortion are the paradigmatic examples of impermissible barriers to the realization of women's right to health and must be eliminated. These laws infringe women's dignity and autonomy by severely restricting decision-making by women in respect of their sexual and reproductive health. Moreover, such laws consistently generate poor physical health outcomes, resulting in deaths that could have been prevented, morbidity and ill-health, as well as negative mental health outcomes, not least because affected women risk being thrust into the criminal justice system."²

The UN Committee against Torture has also recognized that where abortion is criminalized in cases of rape or incest, and women and girls who wish to terminate their pregnancies are denied access to the procedure, "the women concerned are constantly reminded of the violation committed against them, which causes serious traumatic stress and carries a risk of long-lasting psychological problems."³ The Committee against Torture has further expressed concern about the long-standing psychological consequences of banning abortion in "cases of sexual violence, incest, or when the fetus is not viable".⁴ Similar concerns were echoed by the Human Rights Committee that expressed concern about criminalization of abortion and "the severe mental suffering caused by the denial of abortion services to women seeking abortions due to rape, incest, fatal foetal abnormality or serious risks to health."⁵

Criminalization of abortion services puts women and girls' lives at risk

Is particularly important to highlight that criminalization of abortion will not reduce the need for abortion services, on the contrary, it increases the number of unsafe and clandestine abortions and rates of maternal mortality and morbidity. The World Health Organization has noted that "the legal status of abortion has no effect on a woman's need for an abortion, but it dramatically affects her access to safe abortion."⁶ While abortion is a safe procedure when performed by skilled health care providers in sanitary conditions, illegal abortions are generally unsafe and lead to high rates of complications and to maternal deaths and morbidity.⁷ According to the World Health Organization, the way to reduce maternal deaths is to ensure that women and girls have access to contraception, sexual

² UN Special Rapporteur on health, Report to the UN General Assembly A/66/254, para 21 (2011).

³ UN Committee against Torture, concluding observations, Nicaragua, CAT/C/NIC/CO/1, para 16.

⁴ UN Committee against Torture, concluding observations, Paraguay, CAT/C/PRY/CO/4-6, para 22.

⁵ UN Human Rights Committee, concluding observations, Ireland, CCPR/C/IRL/CO/4, para 9.

⁶ WHO, "Safe abortion: technical and policy guidance for health systems", second edition, 2012, p. 19.

⁷ WHO, Safe Abortion Guidance, 2012, pp. 23 & 47-49. The World Health Organization defines unsafe abortion as a procedure for terminating a pregnancy that is performed by an individual lacking the necessary skills, or in an environment that does not conform to minimal medical standards, or both.

and reproductive health information and to safe abortion services. This will reduce unwanted pregnancies and unsafe abortions.⁸

The criminalization of abortion also puts at risk women's and girls' access to vital post-abortion care when they suffer complications following an illegal abortion or miscarriage by making them a target for the criminal justice system. The risk of being accused or investigated for having a miscarriage or an abortion can lead to women and girls' delaying or not seeking the medical assistance they need and have a right to.

These proposed amendments have serious and harmful implications for all women and girls. However, if the proposal is adopted and enacted into law it is likely to have a particularly harmful impact on women and girls who are young, poor or from disadvantaged groups, as they will not have the economic resources to travel abroad in order to seek safe and legal abortions in other countries. This may also result in women and girls from such marginalized groups resorting in greater numbers to unsafe, clandestine abortions that put their health and lives at risk⁹.

Criminal sanctions against health professionals impede access to life-saving and health preserving services for women and girls

Of additional concern for Amnesty International is the proposal to increase the maximum prison term for people who perform abortions from two years to five. Further criminalizing health professionals for providing abortion services to women and girls who need them will likely result in a chilling effect, where doctors who fear potential criminalization will decline or refuse to provide services to women and girls. Amnesty International has researched the impact of the threat of criminal sanctions on doctors in Nicaragua and found that such sanctions inhibited their capacity to have honest conversations with their patients about their treatment options, and put into question their professional judgment.¹⁰

The European Court of Human Rights has also recognized the "chilling effect" a criminal penalty has on the provision of healthcare services in the cases of *Tysiāc v Poland*, *RR v Poland* and *ABC v Ireland*.¹¹ In *ABC v Ireland*, the Court found it 'evident' that the risk of criminal conviction and imprisonment in the context of abortion restrictions, 'would constitute a significant chilling factor for both women and doctors in the medical consultation process, regardless of whether or not prosecutions have in fact been pursued...'¹²

The European Court of Human Rights has found other barriers to lawful abortion in Poland in violation of the Convention obligations, which require states to ensure access to abortion where lawful. These include the unregulated practice of conscientious objection¹³, hospital breach of confidentiality,¹⁴ state failure to ensure access to information that would be determinate in exercising the right to access

⁸ Ibid.

⁹ UN Human Rights Committee: Concluding Observations, Argentina, CCPR/CO/70/ARG, para 14

¹⁰ Amnesty International, "Nicaragua: The total abortion ban in Nicaragua: Women's lives and health endangered, medical professionals criminalized" (AMR 43/001/2009), available at: <http://www.amnesty.org/en/news-and-updates/report/shocking-abortion-ban-denies-life-saving-treatment-girls-women-nicaragua-20090727>

¹¹ *Tysiāc v Poland*, 5410/03, 45 ECHR (2007), para. 116; *RR v Poland*, 27617/04, ECHR (2011), para. 193; *ABC v Ireland*, [2010] ECHR 2032, para. 254.

¹² *ABC v Ireland*, [2010] ECHR 2032, para. 254

¹³ *P & S v. Poland*, Appl. No. 57375/08, European Court of Human Rights, (2012), para. 106 and 112; *RR v. Poland*, Appl. No. 27617/04, European Court of Human Rights, (2011), para. 206.

¹⁴ *P & S v. Poland*, Appl. No. 57375/08, European Court of Human Rights, (2012), paras. 134-137.

lawful abortion services¹⁵ and abortion related harassment.¹⁶ The Court has consistently held that states must ensure access to abortion where lawful, by ensuring adequate legal and administrative frameworks in place and by removing barriers to services.¹⁷

¹⁵ *RR v. Poland*, Appl. No. 27617/04, European Court of Human Rights, (2011), paras 197-198.

¹⁶ *P & S v. Poland*, Appl. No. 57375/08, European Court of Human Rights, (2012), paras. 167-169.

¹⁷ *Tysiac v. Poland*, Appl. No. 5410/03, European Court of Human Rights, (2007); *ABC v. Ireland*, Appl. No. 25579/05, European Court of Human Rights, (2010); *P & S v. Poland*, Appl. No. 57375/08, European Court of Human Rights (2012).