

WAR ON RETROGRESSION IN GENDER EQUALITY: THE IMPLICATIONS OF POLAND’S SYSTEMATIC FAILURE TO PROTECT FUNDAMENTAL HUMAN RIGHTS AND THE NEED FOR INTERNATIONAL INTERVENTION

ARIANNA RAPPY*

ABSTRACT

Violence against women is one of the most prevalent human rights violations in the world, yet a significant portion of the population lacks legal protection. Gender-based violence (GBV) is deeply rooted in structural inequalities and power imbalances, endangering the health, safety, dignity, and autonomy of its victims. Due to gaps in criminal law, victim blaming, gender stereotypes, and State failure to adequately combat violence against women, the dangers women face continue to worsen. Although GBV is a global epidemic, this Note specifically examines the status of women in Poland, a country with antiquated laws and a commitment to undermine women’s individual rights. In July 2020, Poland announced its intentions to begin the process of withdrawing from the sole European treaty on violence against women. This Note argues that the Polish government’s decision to leave this treaty, in addition to its continuous failure to prevent and protect survivors from GBV, is a violation of its obligations under international human rights law. Absent international intervention, survivors of domestic violence remain inadequately protected from their perpetrators under Polish law. Further, this Note proposes measures that international organizations could take to strengthen and expand the scope of international law to improve Poland’s compliance and preserve women’s rights.

INTRODUCTION 512

I. HISTORY OF GENDER-BASED DISCRIMINATION IN POLAND 516

 A. EVOLUTION OF THE COMMUNIST ERA: PRE- AND POST-WORLD WAR II POLAND. 516

 B. THE COLLAPSE OF COMMUNISM AND THE RISE OF POLAND’S POPULIST MOVEMENT 517

 C. INTERNATIONAL AND REGIONAL EFFORTS TO PROTECT WOMEN’S RIGHTS 520

* Brooklyn Law School, J.D., 2022. I am incredibly grateful to my family, friends, and especially my partner, Walter Bonné, for their unconditional support and encouragement throughout law school and beyond. I would also like to thank the *Georgetown Journal of Gender and the Law* editorial board, especially Fulton Wald, Rosie Vacanti Gilroy, and Emma Holland, for all of their time, patience, invaluable expertise, and tremendous efforts in bringing this piece to fruition. © 2022, Arianna Rappy.

II. IMPLICATIONS OF POLAND'S WITHDRAWAL FROM THE ISTANBUL CONVENTION	523
A. POLAND'S LEGAL COMPLIANCE WITH INTERNATIONAL AND REGIONAL STANDARDS	525
1. Polish Law Never Fully Implemented the Standards of the Istanbul Convention and Fails to Provide Effective Remedies for Polish Women.	525
2. Poland's Retrogressive Measures on Women's Rights Violate Its International and Regional Treaty Obligations Beyond the Istanbul Convention	528
B. INTERNATIONAL RESPONSE TO POLAND'S WITHDRAWAL FROM THE ISTANBUL CONVENTION	529
III. PROGRESSIVE REFORM: EXPANDING INTERNATIONAL STANDARDS TO PROTECT WOMEN'S FUNDAMENTAL HUMAN RIGHTS	531
A. EU ACCESSION TO THE ISTANBUL CONVENTION	531
B. ESCALATION TO THE EUROPEAN COURT OF HUMAN RIGHTS: INDIVIDUAL JUSTICE.	533
CONCLUSION	534

INTRODUCTION

As violence against women surges on a global scale,¹ Poland is threatening to reduce its international human rights commitments to combat gender-based discrimination.² On July 27, 2020, the Polish Minister of Justice, Zbigniew Ziobro, commenced Poland's withdrawal from the Council of Europe Convention,³ commonly known as the Istanbul Convention, where Poland had previously committed to combating violence against women and domestic violence.⁴ Outraged by years of oppression and neglect of women's rights, thousands of protesters took

1. Phumzile Mlambo-Ngcuka, *Violence Against Women and Girls: The Shadow Pandemic*, U.N. WOMEN (April 6, 2020), <https://www.unwomen.org/en/news/stories/2020/4/statement-ed-phumzile-violence-against-women-during-pandemic>.

2. *Turkey, Poland Consider Leaving Istanbul Convention on Violence Against Women*, INT'L JUST. RES. CTR. (Aug. 6, 2020), <https://ijrcenter.org/2020/08/06/turkey-poland-consider-leaving-istanbul-convention-on-violence-against-women/>.

3. Weronika Galka, *In Depth: Poland's War on Women*, CHERWELL (Sept. 1, 2020), <https://cherwell.org/2020/09/01/in-depth-polands-war-on-women/>.

4. The Istanbul Convention is a human rights treaty of the Council of Europe and the first legally binding set of guidelines that forms "a comprehensive legal framework and approach to combat violence against women" and is aimed at "preventing domestic violence, protecting victims, and prosecuting accused offenders." Jasmin Bauomy, *Istanbul Convention: What is the Domestic Violence Treaty and Has it Had an Impact?*, EURONEWS (July 27, 2020), <https://www.euronews.com/2020/07/27/istanbul-convention-what-is-the-domestic-violence-treaty-and-has-it-had-an-impact>; see Eur. Consult. Ass., *Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, Doc. No. 210 (2011); see also Rory Sullivan, *Poland's Decision to Leave Treaty Aimed at Preventing Violence Against Women Sparks Criticism*, CNN (July 26, 2020), <https://www.cnn.com/2020/07/26/europe/poland-istanbul-convention-withdrawal-criticism-intl/index.html>.

to the streets, inspiring international outcry concerning the Polish government's failure to protect women.⁵ Since the ruling Law and Justice Party (PiS) came to power in 2015, it has moved to abandon Poland's obligations under the Istanbul Convention in an attempt to conserve traditional family values⁶ and denounce the promotion of "gender ideology."⁷

In light of unregulated psychological and physical abuse of women across Europe, the Council of Europe (CoE) adopted the Istanbul Convention in 2011 to protect victims of domestic violence.⁸ The Istanbul Convention is the sole legally binding European treaty created to support survivors of abuse and criminalize all forms of violence against women.⁹ Moreover, Article 12 obliges Member States¹⁰ to "ensure that culture, custom, religion, tradition or so-called 'honour' shall not be considered as justification" for gender-based violence (GBV).¹¹ In 2015, Poland ratified the Istanbul Convention, committing to implement measures to prevent GBV and discrimination, and to prosecute perpetrators.¹² Nevertheless, PiS's conservative nationalist identity and close alliance with the Catholic Church took precedence over the protection of fundamental human rights.¹³ Threatened by women's rights activists and individuals who depart from

5. Marc Santora, *Poland Considers Leaving Treaty on Domestic Violence, Spurring Outcry*, N.Y. TIMES (July 27, 2020), <https://www.nytimes.com/2020/07/27/world/europe/poland-domestic-violence-treaty.html>.

6. Galka, *supra* note 3; *see also* *Contains Provisions Contrary to the Constitution: Marcin Romanowski on the Istanbul Convention*, POLSKIE RADIO (July 27, 2020), <https://www.polskieradio24.pl/130/5553/Artykul/2556318,Zawiera-przepisy-sprzeczne-z-konstytucja-Marcin-Romanowski-o-konwencji-stambulskiej>.

7. Eline Schaart, *Poland to Withdraw from Treaty on Violence Against Women*, POLITICO (July 25, 2020), <https://www.politico.eu/article/poland-to-withdraw-from-istanbul-convention-treaty-on-violence-against-women/>. Gender ideology is a phrase used within ultraconservative religious groups referring to progressive attitudes regarding gender and sexual equality. *See* Elżbieta Korolczuk, *The Fight Against 'Gender' and 'LGBT Ideology': New Developments in Poland*, 3 EUR. J. POL. & GENDER 165 (2019).

8. COUNCIL OF EUR., THE COUNCIL OF EUR. CONVENTION ON PREVENTING AND COMBATING VIOLENCE AGAINST WOMEN AND DOMESTIC VIOLENCE (ISTANBUL CONVENTION): QUESTIONS AND ANSWERS, <https://rm.coe.int/istanbul-convention-questions-and-answers/16808f0b80>.

9. Violence against women exists in many different forms, including intimate partner violence, sexual harassment, gender-based violence, stalking, and psychological violence. Berthe De Vos, *The Intent and Importance of the Istanbul Convention*, SOROPTIMIST INT'L (Sept. 11, 2020), <https://www.soroptimistinternational.org/the-intent-and-importance-of-the-istanbul-convention/>; *see also* Hillary Margolis, *The Breath of the Government on My Back: Attacks on Women's Rights in Poland*, HUM. RTS. WATCH (Feb. 6, 2019), <https://www.hrw.org/report/2019/02/06/breath-government-my-back/attacks-womens-rights-poland>.

10. Member States are countries that become members of the Istanbul Convention and are thus obligated to comply with its provisions by protecting victims, punishing perpetrators, and implementing comprehensive policies. COUNCIL OF EUR., *supra* note 8.

11. Marianne Hester & Sarah-Jane Lilley, *Preventing Violence Against Women: Article 12 of the Istanbul Convention: A Collection of Papers on the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, COUNCIL OF EUR. (2014), <https://rm.coe.int/168046e1f0>.

12. Galka, *supra* note 3; *see also* COUNCIL OF EUR., *supra* note 8.

13. Joanna Plucinska, *Heightening EU Frictions, Poland Queries Pact on Violence Against Women*, REUTERS (July 30, 2020), <https://www.reuters.com/article/uk-poland-politics/polish-tribunal-to-examine-eu-treaty-on-violence-against-women-pm-says-idUKKCN24V1VN?edition-redirect=uk>; *see also*

traditional gender norms, PiS commenced a formal withdrawal process from the Istanbul Convention.¹⁴

Although the Polish government defends its decision to withdraw by claiming that domestic Polish law “surpasses” the Istanbul Convention and that Poland’s “protection of women against violence is constantly improving,”¹⁵ official statistics present a different picture.¹⁶ For instance, figures from 2019 show that over “65,000 women and 12,000 children in Poland reported incidents of, or were found to have been, subjected to domestic violence.”¹⁷ Additionally, a Europe-wide survey¹⁸ discovered a significant correlation between Polish women’s reluctance to report cases of domestic violence and a “lack of faith in the criminal justice system,” as well as “a fear of victims not being believed.”¹⁹ Further, the Polish government’s alignment with the interests of Poland’s Catholic majority, who view the treaty as “incompatible with traditional family values,”²⁰ signifies its allegiance to the conservation of “traditional family units” over the “individual

Suzanne Hruby, *The Church in Poland and Its Political Influence*, 36 J. INT’L AFFS. 317, 318–23 (1982), <http://www.jstor.org/stable/24356444>.

14. Claudia Ciobanu, *Poland Begins Push in Region to Replace Istanbul Convention with “Family Rights” Treaty*, BALKANINSIGHT (Oct. 6, 2020), <https://balkaninsight.com/2020/10/06/family-rights-treaty/>.

15. PiS supports its statement that Poland is successfully combating domestic violence by referring to a recent law that immediately separates victims from perpetrators, which was introduced after over five years of lobbying by NGOs. Juliette Bretan, *New Domestic Violence Law in Poland to Immediately Remove Perpetrators from the Home*, NOTES FROM POL. (May 4, 2020), <https://notesfrompoland.com/2020/05/04/new-domestic-violence-law-in-poland-to-immediately-remove-perpetrators-from-the-home/>.

16. Galka, *supra* note 3, at 4.

17. Nils Muiznieks, *While Tackling COVID-19 Europe is Being Stalked by a Shadow Pandemic: Domestic Violence*, AMNESTY INT’L (July 31, 2020), <https://www.amnesty.org/en/latest/news/2020/07/while-tackling-covid-19-europe-is-being-stalked-by-a-shadow-pandemic-domestic-violence/>.

18. The EU-wide survey was based on interviews with approximately 42,000 women ranging throughout 28 Member States of the European Union illustrating GBV disproportionately impacting women. See EUR. UNION AGENCY FOR FUND. RTS., *VIOLENCE AGAINST WOMEN: AN EU-WIDE SURVEY 3* (2014), https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-vaw-survey-main-results-apr14_en.pdf. Specifically, the survey assessed women’s experiences of physical, sexual, and psychological violence; researchers discovered that one in three women have experienced a form of sexual violence starting around the age of 15. *Id.* at 21. The statistics addressed in this survey are of significant importance because they shed light on the widespread severity of this global phenomenon, especially in countries where women are silenced regarding their personal experiences and reports of GBV are low. *Id.* at 3.

19. Muiznieks, *supra* note 17.

20. Portia Kentish, *Poland’s Withdrawal from Anti-Domestic Violence Treaty Would be ‘Terrifying,’* EMERGING EUR. (July 31, 2020), <https://emerging-europe.com/news/polands-withdrawal-from-anti-domestic-violence-treaty-would-be-terrifying/>. Catholicism serves as a core element of PiS’s conservative identity and plays a major role in the building of Polish society under its rule. Adam Folvarčňý & Lubomír Kopeček, *Which Conservatism? The Identity of the Polish Law and Justice Party*, 16 POL. IN CENT. EUR. 159, 171–72 (2020). Consequently, Catholicism greatly influences PiS’s emphasis on the traditional family as “the basic unit of society with unquestionable rights.” *Id.* at 171. Thus, PiS’s overwhelming support for preserving the traditional family unit and protecting the right to life, including unborn life, led to its rejection of abortion. *Id.*

victim.”²¹ As a result, Polish women live in fear of their perpetrators, deprived of both their rights and access to organizations devoted to providing refuge.²²

This Note argues that Poland’s decision to leave the Istanbul Convention, as well as its past failure to comply with its provisions, is a retrogressive action against domestic violence legislation in violation of international human rights law.²³ Absent international intervention, vulnerable women remain inadequately protected by Polish law due to its limited definitions of domestic violence and rape, and its constraints on restraining orders.²⁴ Moreover, PiS persecutes women’s rights organizations through defamation and denial of government funding.²⁵ Withdrawal from the Istanbul Convention further delegitimizes GBV and fosters an oppressive and discriminatory political climate for Polish women.²⁶ Poland’s continuous failure to protect women’s rights breaches its obligations to international and regional treaties beyond the Istanbul Convention.²⁷ Thus, the protection and promotion of women’s rights in Poland will require the expansion and strengthening of international standards to effectively terminate retrogressive measures and combat all forms of GBV.²⁸

Part I of this Note provides an overview of the historical challenges women have faced in Poland and the retrogression of women’s rights under PiS. It introduces the international organizations and treaties to which Poland is a party, all of which were formed to protect fundamental human rights and promote gender equality. Part II examines the harmful impact Poland’s withdrawal from the Istanbul Convention has on gender equality. It then addresses the legal landscape of Polish women’s rights and the dangers the withdrawal poses on future non-compliance with international human rights law. Finally, Part III proposes ways to expand the scope and strength of international law to ensure compliance among Member States and strict protective measures to prevent GBV.

21. Margolis, *supra* note 9.

22. *See id.* (“The Polish government’s failure to protect and defend women’s rights organizations and activists, provide or support adequate services for survivors of violence, and ensure access to sexual and reproductive health and rights, including sexuality education, violates its international and regional human rights obligations.”).

23. *Poland: Shadow Report on Aspects of the Implementation of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence*, AMNESTY INT’L (2020), <https://www.amnesty.org/download/Documents/EUR3727392020ENGLISH.PDF> [hereinafter *Shadow Report*].

24. *Id.*

25. *Poland: Women’s Rights Activists Targeted*, HUM. RTS. WATCH (2019), <https://www.hrw.org/news/2019/02/06/poland-womens-rights-activists-targeted>.

26. *Shadow Report*, *supra* note 23.

27. Margolis, *supra* note 9.

28. *Id.*

I. HISTORY OF GENDER-BASED DISCRIMINATION IN POLAND

A. EVOLUTION OF THE COMMUNIST ERA: PRE- AND POST-WORLD WAR II
POLAND

In nineteenth-century Poland, women lacked the right to vote or engage in Polish public life.²⁹ In the 1860s, an intellectual movement known as “Positivism” emerged throughout Europe following the January Uprising³⁰ against Russian rule.³¹ Increased access to education, health care, art, and literature inspired feminist consciousness, leading to the emergence of Polish women’s rights activists who defied social convention and promoted women’s liberation.³² With communism on the rise after World War II, Poland became a satellite country of the Soviet Union.³³ Under Poland’s newly formed United Workers’ Party, political leaders tried to eliminate the Catholic Church’s influence, causing socio-economic and political systems to change along with the role of women in society.³⁴ Since the male-female ratio was significantly altered as a result of the war, many women became their family’s sole source of income.³⁵ The destabilization of gender relations in post-war Poland enable women to demand employment opportunities through organized demonstrations.³⁶

During Poland’s communist era, both men and women were theoretically guaranteed equal rights to access to the workforce; however, there was little emphasis on gender equality within the labor market.³⁷ For instance, in response to Polish women’s struggle to balance the burdens of work-life and responsibilities at

29. Anna Żarnowska, *Family and Public Life: Barriers and Interpenetration – Women in Poland at the Turn of the Century*, 5 WOMEN’S HIST. REV. 469, 476–77 (1996) (discussing democratization in Poland and the implications on women’s rights).

30. See Brian A. Porter, *The Social Nation and Its Futures: English Liberalism and Polish Nationalism in Late Nineteenth-Century Warsaw*, 101 AM. HIST. REV. 1470, 1470 (1996).

31. See *id.* at 1490–91.

32. See WOMEN’S VOICES AND FEMINISM IN POLISH CULTURAL MEMORY 32–33 (URSULA CHOWANIEC & URSULA PHILLIPS EDS., 2013).

33. Agnieszka Zembrzaska, *The Socialist Model of Woman in Poland and Its Soviet Prototype*, 6 TOPICS IN FEMINISM, HIST. AND PHIL., IWM JUNIOR VISITING FELLOWS CONFS. 1, 1 (2000). Poland existed as a satellite state of the Soviet Union after World War II, meaning Poland essentially transformed into a “prolonged arm of Soviet Union,” resulting in the adoption of a new constitution mirroring the Soviets’. Agata Ewa Kosuda, *The Nature of Polish-Russian Relationships After the Year of 1989: The Legacy of the Past* (2007) (Master’s thesis, Iowa State University) (on file with the Iowa State University Digital Repository).

34. See Ronald C. Monticone, *The Catholic Church in Poland, 1945-1966*, 11 POLISH REV. 75, 88–90 (1966); see also Renata Siemienska, *Women in the Period of Systemic Changes in Poland*, 5 J. WOMEN’S HIST. 70, 70 (1994).

35. Malgorzata Fidelis, *Equality Through Protection: The Politics of Women’s Employment in Postwar Poland*, 63 SLAVIC REV. 301, 309–10 (2004).

36. *Id.*

37. Sandra L. Hanson & Kaja Gadowska, *Catholicism, Country, and the Construction of Gender: Catholic Women in Poland and the U.S.*, 127 POLISH SOCIO. REV. 353, 356 (1999).

home, the Polish government implemented protective regulations which restricted women's occupational capacities.³⁸

Additionally, in 1956, the Polish government granted women a narrow right to obtain abortions on the grounds of difficult, limited life conditions, such as when "pregnancy poses a threat to the life or health of a pregnant woman," "prenatal tests or other medical indications indicate a high probability of severe and irreversible impairment of the fetus or an incurable life-threatening disease," and when "there is a justified suspicion that the pregnancy resulted from a criminal act."³⁹ The purported intent of the legislation liberalizing abortion was to protect women from the damaging effects of illegal abortions. However, the Ministry of Health and Social Welfare⁴⁰ imposed restrictions based on the belief that "a woman has complete freedom of choice with regard to becoming pregnant or not, but if pregnancy occurs, the woman ceases to be the sole decision maker with regard to termination."⁴¹

B. THE COLLAPSE OF COMMUNISM AND THE RISE OF POLAND'S POPULIST MOVEMENT

As the Polish government shifted from a centralized economy to a free market under the rule of Solidarity leaders,⁴² women's newly guaranteed rights and social benefits under the socialist government dwindled in the face of workplace discrimination and the rise of traditional views regarding gender roles.⁴³ The fall of communism reintroduced widespread conservative religious ideology and brought the role of Polish women into question.⁴⁴ Consequently, a majority of

38. Polish labor law encompassed protective legislation for women disguised as an attempt to "ease their dual burdens" by prohibiting them from more "masculine" occupations or overtime work, which usually resulted in ineligibility for higher compensation. Kristina Aberg et al., *Domestic Violence in Poland*, MINNESOTA ADVOCS. FOR HUM. RTS. 7 (July 2002), <http://docplayer.net/14935147-Domestic-violence-in-poland.html>.

39. Act of 27 April 1956 on Permissibility Conditions for Termination of Pregnancy (OJ 1956 No. 12 item 61); Aberg et al., *supra* note 38. The 1956 abortion law stemmed from high maternal mortality rates given women's sole option to pursue unsafe "underground" abortions; however, it did not genuinely recognize a woman's "right" to abortion due to barriers, including the requirement to consult with two doctors. Wanda Nowicka, *The Struggle for Abortion Rights in Poland*, 167 SEXPOLITICS: REPS. FROM FRONTLINES 169 (2007).

40. The Ministry of Health and Social Welfare is responsible for supervising the health departments of regional governments and predominately handles health care in Poland. See *Health Care Systems in Transition: Poland*, EUR. OBSERVATORY ON HEALTH CARE SYS. 8 (1999).

41. This made it difficult for women who did not meet the criteria to obtain abortions, leading to the use of private clinics at a much higher price. Eleonora Zielinska, *Recent Trends in Abortion Legislation in Eastern Europe, with Particular Reference to Poland*, 4 CRIM. L. FORUM 47, 65 (1993).

42. The Solidarity Trade Union, a nationwide leader in lobbying for government reform, formed in 1980 and was largely comprised of the Polish population and supported by the Catholic Church. Johanna Bond et al., *Employment Discrimination and Sexual Harassment in Poland*, MINNESOTA ADVOCS. FOR HUM. RTS. 8–10 (July 2002), https://www.theadvocatesforhumanrights.org/Res/poland_discrimination_2002.PDF. This Solidarity movement largely valued traditional societal norms and the recommendations for reform placed emphasis on women's role in the home and discouraged women in the workplace. *Id.*

43. Aberg et al., *supra* note 38, at 9.

44. *Id.*

society viewed the political transformation as an opportunity for women to return home from the workplace in order to strengthen the Polish family.⁴⁵ In 1993, the Polish government imposed strict abortion regulations, allowing for termination only when a woman's life is threatened, there is irreversible damage to the fetus, or the pregnancy is caused by criminal behavior such as rape or incest.⁴⁶

In 2015, PiS won Poland's presidency and subsequently secured parliamentary majority in general elections.⁴⁷ Currently, PiS politically aligns with the Catholic Church and receives widespread support from religious, socially conservative populations.⁴⁸ Threatened by the concept of "gender ideology," PiS disproportionately targets women's rights by championing retrogressive laws and policies, dismantling mechanisms and institutions intended to ensure gender equality, and publicly mischaracterizing women's rights groups as "a danger to families and traditional values."⁴⁹ In 2016, PiS proposed a bill imposing a near-total ban on abortion, limiting terminations to cases where the mother's life was in direct danger.⁵⁰ The proposal, labeled as a "serious backsliding on women's rights" by the CoE, aimed to further extend the ban to cases of rape and incest.⁵¹ Following an eruption of over 100,000 protesters throughout Poland, lawmakers rejected the proposal 352 to 58.⁵² In April 2020, protesters once again filled the streets of Warsaw after a modified version of the bill, which sought to criminalize abortions stemming from fetal abnormalities, came due for mandatory review upon resubmission to Parliament in 2018.⁵³ Although Parliament has deferred a final decision on this particular bill, Poland continues to maintain one of Europe's most restrictive abortion laws.⁵⁴ Consequently, many Polish women travel abroad or

45. Glenn E. Curtis, *The Role of Women, in POLAND: A COUNTRY STUDY* (1992), <http://countrystudies.us/poland/36.htm>.

46. Marge Berer, *Abortion Law and Policy Around the World: In Search of Decriminalization*, 19 HEALTH HUM. RTS. 13 (2017). Although abortion was available to women, this restrictive law placed barriers where a pregnant woman's life is threatened by requiring the attestation of two physicians, and criminal behavior, specifically cases of rape and incest, must be confirmed by a prosecutor. *Id.*

47. Joanna Fomina & Jacek Kucharczyk, *Populism and Protest in Poland*, 27 J. DEMOCRACY 58 (2016).

48. *See id.* at 66; *see also* Phillip S. Swallow, *Explaining the Rise of Populism in Poland: The Post-Communist Transition as a Critical Juncture and Origin of Political Decay in Poland*, 10 INQUIRIES J. 1 (2018).

49. Margolis, *supra* note 9.

50. Pawel Sobczak & Marcin Goettig, *Polish Parliament Rejects Near-Total Abortion Ban After Protests*, REUTERS (Oct. 6, 2016), <https://www.reuters.com/article/us-poland-abortion/polish-parliament-rejects-near-total-abortion-ban-after-protests-idUSKCN1260Q0>.

51. *Polish Lawmakers Push on with Near-Total Ban on Abortion*, GUARDIAN (Sept. 23, 2016), <https://www.theguardian.com/world/2016/sep/23/polish-lawmakers-anti-abortion-bill>.

52. Sobczak & Goettig, *supra* note 50.

53. Shaun Walker, *Concerns Over Polish Government Tightening Abortion Laws During Covid-19 Crisis*, GUARDIAN (Apr. 14, 2020), <https://www.theguardian.com/world/2020/apr/14/concerns-over-polish-government-tightening-abortion-laws-during-covid-19-crisis>.

54. Jessica Bateman & Marta Kasztelan, *In Poland, Abortion Access Worsens Amid Pandemic*, FOREIGN POL'Y (May 1, 2020), <https://foreignpolicy.com/2020/05/01/poland-abortion-access-worsens-coronavirus-pandemic/>.

illegally attempt abortions in secrecy, relying on drugs from unregulated pharmacies.⁵⁵

In the months following the April 2020 protests, the Minister of Justice declared that Poland would begin the withdrawal process from the Istanbul Convention.⁵⁶ Adopted by the CoE in 2011 and ratified in 2014, the Istanbul Convention is Europe's first comprehensive framework for preventing violence against women.⁵⁷ The Convention establishes standards for the prosecution of perpetrators and policies providing services for victims.⁵⁸ Domestic violence against women in Poland is both widespread and severely underreported, impacting approximately 800,000 women per year.⁵⁹ The European Union Agency for Fundamental Rights estimates that about four million Polish women have encountered both physical and sexual violence beginning at the age of fifteen.⁶⁰

Ratified in Poland under the prior centrist government before the 2015 election, the Istanbul Convention stood as a symbol of hope for women suffering from all forms of GBV.⁶¹ However, upon rising to power, PiS publicly criticized the Istanbul Convention and underenforced its application.⁶² As a result, decision-makers have not taken action to address GBV and gender-based discrimination in Poland.⁶³ Both police and the legal system have failed to sufficiently protect women seeking to exercise their legal rights after instances of domestic violence.⁶⁴ Beyond law enforcement, there are a limited number of government-funded support systems, mostly managed by non-governmental organizations (NGOs), that provide services for survivors.⁶⁵

Following a second narrow election victory in July 2020, the Polish Minister of Justice publicly announced the government's intention to withdraw from the treaty.⁶⁶

55. *Id.*

56. Sullivan, *supra* note 4.

57. *Id.*

58. Mridula Shrestha, *Istanbul Convention Poised to Enhance Global Efforts to Eradicate Violence Against Women and Domestic Violence*, 19(4) AM. SOC'Y INT'L L. (2015).

59. Marc Santora, *Poland Considers Leaving Treaty on Domestic Violence, Spurring Outcry*, N.Y. TIMES (Oct. 27, 2020), <https://www.nytimes.com/2020/07/27/world/europe/poland-domestic-violence-treaty.html>.

60. *Survey on Violence Against Women in EU (2012)*, EUR. UNION AGENCY FOR FUND. RTS., <https://fra.europa.eu/en/publications-and-resources/data-and-maps/survey-data-explorer-violence-against-women-survey>.

61. Galka, *supra* note 3; Liliana Religa, *CEDAW and Poland: Backtracking on Gender Equality*, GREEN POL. FOUND. (Dec. 10, 2019), <https://www.boell.de/en/2019/12/10/cedaw-and-poland-backtracking-gender-equality>.

62. Margolis, *supra* note 9.

63. Religa, *supra* note 61.

64. Galka, *supra* note 3.

65. Margolis, *supra* note 9; *see also* Magdalena Grzyb, *Making Domestic Violence Visible in Poland*, GLOB. DIALOGUE: MAGAZINE INT'L SOC. ASS'N (Mar. 22, 2018), <https://globaldialogue.isa-sociology.org/articles/making-domestic-violence-visible-in-poland>.

66. Marc Santora, *Poland Considers Leaving Treaty on Domestic Violence, Spurring Outcry*, N.Y. TIMES (July 27, 2020), <https://www.nytimes.com/2020/07/27/world/europe/poland-domestic-violence-treaty.html>.

He rationalized this by alleging that the Polish Constitution had “a higher level of protection of women than [is included in] in the convention,” and that the elements of an “ideological nature” contained in the Convention were “harmful.”⁶⁷ Following the lead of the Catholic Church, PiS promotes “traditional values” while labeling concepts of equality as “gender ideology,” which is perceived as a threat to traditional notions of marriage and family.⁶⁸ Further, PiS has been reluctant to condemn campaigns portraying the Istanbul Convention as a danger to both family and traditional values, labeling its efforts to advance gender equality as “an invention, a feminist creation aimed at justifying gay ideology.”⁶⁹ Alternatively, the Polish government initiated a replacement “Family Rights Convention,” which ultraconservative organizations drafted⁷⁰ to fortify the function of traditional families within society while weakening state interference in family life, affording parents increased control over their children’s education.⁷¹

C. INTERNATIONAL AND REGIONAL EFFORTS TO PROTECT WOMEN’S RIGHTS

The Polish government has a duty to adopt legislation and policies in compliance with its obligations under the human rights treaties to which it is party.⁷² In

67. *Id.*

68. Galka, *supra* note 3.

69. Although this Note focuses on women’s rights, it notes that PiS has also targeted LGBTQ+ rights through its anti-LGBTQ+ rhetoric, saying the affirmation of same-sex unions, marriage, and the right to adopt children threatens the Polish family and Christian civilization. Santora, *supra* note 66.

70. Ordo Iuris and the Christian Social Congress are ultraconservative groups within Poland which actively supported the government’s decision to withdraw from the Istanbul Convention through a “Family yes, Gender – no” initiative. Ciobanu, *supra* note 14; see also David F. Forte, *Commentary on the Draft of the Convention on the Rights of the Family*, ORDO IURIS INST. FOR LEGAL CULTURE (2018), https://ordoiuris.pl/pliki/dokumenty/Convention_on_the%20Rights_of_the_Family_Commentary.pdf.

71. Ciobanu, *supra* note 14.

72. Internationally, these human rights bodies include the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and the International Covenant on Civil and Political Rights (ICCPR). Regionally, Poland must fulfill its obligations under the Istanbul Convention, the European Convention on Human Rights (ECHR), and the Charter of Fundamental Rights of the European Union. Lydia Gall, *Eroding Checks and Balances: Rule of Law and Human Rights Under Attack in Poland*, HUM. RTS. WATCH (Oct. 24, 2017), <https://www.hrw.org/report/2017/10/24/eroding-checks-and-balances/rule-law-and-human-rights-under-attack-poland>. CEDAW places emphasis on funding for women’s non-profit organizations and effective access to involvement in government. See Convention on the Elimination of All Forms of Discrimination Against Women, opened for signature Mar. 1, 1980, 1249 U.N.T.S. 13 (entered into force Sept. 3, 1981); ICESCR also focuses on equal enjoyment of rights and nondiscrimination. See International Covenant on Economic, Social and Cultural Rights art. 2, ¶ 2, Dec. 16, 1966, 993 U.N.T.S. 3. See also Convention on the Rights of the Child art. 2, ¶ 1, Nov. 20, 1989, 1577 U.N.T.S. 3; Convention on the Rights of Persons with Disabilities art. 3, Dec. 13, 2006, 2515 U.N.T.S. 3; International Covenant on Civil and Political Rights art. 2, ¶ 1, Dec. 19, 1966, 999 U.N.T.S. 171; Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, May 11, 2011, C.E.T.S. No. 210; see also Sullivan, *supra* note 4; European Convention on Human Rights, Oct. 2, 2013, C.E.T.S. No. 213; Charter of Fundamental Rights of the European Union art. 51, 2010 O.J.C. 83/389 [hereinafter Charter of Rights]; see generally Fact Sheets of the European Union, *The Protection of Fundamental Rights in the EU* (Dec. 2019), <https://www.europarl.europa.eu/factsheets/en/sheet/146/the-protection-of-fundamental-rights-in-the-eu>.

1979, the United Nations General Assembly adopted the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), an international human rights treaty that addresses women's rights.⁷³ Specifically, CEDAW obliges State parties to take measures to terminate all forms of discrimination against women, including in education, health care, the legal system, and politics.⁷⁴ CEDAW recognizes that "[t]he discrimination of women based on sex and gender is inextricably linked with other factors that affect women, such as race, ethnicity, religion or belief, health, status, age, class, caste, and sexual orientation and gender identity," and asks its members to "legally recognize and prohibit such intersecting forms of discrimination and their compounded negative impact on the women concerned."⁷⁵ The CEDAW Committee has also placed pressure on its members to "decriminalize abortion in all cases" and legalize it "in cases of threats to [a woman's] health, pregnancies resulting from rape or incest, and cases of severe fetal impairment."⁷⁶

Poland ratified CEDAW in 1980 during the communist era when it committed to improving equality for women and girls.⁷⁷ Since 2006, the CEDAW Committee has continuously criticized the lack of separate government authority controlling gender equality policies. In 2014, after voicing concerns regarding the Polish government's refusal to advocate for women's rights, the CEDAW Committee called on the Polish government to denounce any actors' efforts to "to downplay or degrade the pursuit of gender equality by labeling such measures as 'ideology.'"⁷⁸ In overseeing the implementation of the Istanbul Convention in Poland, CEDAW discovered insufficient funding of NGOs, preventing proper protection of women's rights.⁷⁹ This stood in contrast with CEDAW's recommendation that State parties maintain sufficient funding of women's rights NGOs by producing "clear criteria for rendering and ensuring governmental financial support on the national and local level for the work of women's nongovernmental

73. Overview of the Convention on the Elimination of All Forms of Discrimination Against Women, U.N. ENTITY FOR GENDER EQUAL. AND THE EMPOWERMENT OF WOMEN (Dec. 31, 2007), <https://www.un.org/womenwatch/daw/cedaw/> [hereinafter Overview of the Convention].

74. *The U.N. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW): Issues in the U.S. Ratification Debate*, CONG. RES. SERV. REPORTS (Aug. 7, 2009, updated July 23, 2015), <https://www.everycrsreport.com/reports/R40750.html>.

75. Agnieszka-Fal Dutra Santo, *No Peace Without Rights: Discrimination Against LGBTQ Persons as a Barrier to the Implementation of WPS Commitments in Poland*, LSE CTR. FOR WOMEN, PEACE, AND SEC. (Aug. 12, 2020), <https://blogs.lse.ac.uk/wps/2020/08/12/no-peace-without-rights-discrimination-against-lgbtq-persons-as-a-barrier-to-the-implementation-of-wps-commitments-in-poland/>.

76. Margolis, *supra* note 9; *see, e.g.*, CEDAW Committee Concluding Observations on Chile, U.N. Doc. CEDAW/C/CHL/CO/7 (2018); Fiji, U.N. Doc. CEDAW/C/FJI/CO/5 (2018); Marshall Islands, U.N. Doc. CEDAW/C/MHL/CO/1-3 (2018); Republic of Korea, U.N. Doc. CEDAW/C/KOR/CO/8 (2018).

77. Religa, *supra* note 61; *see also* Richard Nelson, *The Birth of Solidarity in Poland: Archive 1980*, GUARDIAN (Sept. 18, 2019, 11:20 GMT), <https://www.theguardian.com/world/from-the-archive-blog/2019/sep/18/the-birth-of-solidarity-in-poland-archive-1980>.

78. Margolis, *supra* note 9.

79. *Id.*

organizations.”⁸⁰ The CEDAW Committee also requested that the Polish government amend its restrictive abortion law after expressing concerns about Poland’s limited access to contraception, reproductive health information, and services.⁸¹ In 2018, the CEDAW Committee and the Committee on the Rights of Persons with Disabilities (CRPD Committee) issued a statement emphasizing States’ duties to preserve women’s essential rights by providing access to safe and legal abortion, reproductive health information services, and ensuring that all women can exercise “autonomous decision-making . . . regarding their sexual and reproductive health well-being.”⁸²

The CoE, often described as the preeminent human rights organization, is comprised of forty-seven Member States, twenty-eight of which are also members of the EU.⁸³ All Member States in the CoE are party to the ECHR, a treaty formed to protect human rights, the rule of law, and democracy.⁸⁴ In 1991, Poland became the twenty-fifth Member State of the CoE and the eighteenth Member State to ratify the Istanbul Convention in 2015.⁸⁵ The Istanbul Convention, the most influential human rights treaty to address violence against women, enables the CoE to maintain its status as a global leader in combating GBV.⁸⁶

Member States established the EU in 1993 to foster collaboration in the wake of World War II.⁸⁷ Comprised of twenty-seven European countries, this union

80. *Id.*; CEDAW Committee, *Initial and Second Periodic Reports: Lithuania, Part Two: Report of the Committee on the Elimination of Discrimination Against Women on Its Twenty-Third Session*, U.N. Doc. A/55/38 ¶ 154-55 (2000), <https://undocs.org/A/55/38>.

81. CEDAW Committee and CRPD Committee, *Guaranteeing Sexual and Reproductive Health and Rights for All Women, in Particular Women with Disabilities*, Joint Statement (Aug. 29, 2018), <https://www.ohchr.org/Documents/HRBodies/CRPD/Statements/GuaranteeingSexualReproductiveHealth.DOCX>; see also Margolis, *supra* note 9.

82. *Id.*

83. *About the Council of Europe*, COUNCIL OF EUR., <https://www.coe.int/en/web/yerevan/the-coe/about-coe> (last visited Apr. 12, 2022).

84. *European Union Accession to the European Convention on Human Rights - Questions and Answers*, COUNCIL OF EUR., <https://www.coe.int/en/web/portal/eu-accession-echr-questions-and-answers> (last visited Apr. 12, 2022).

85. *Poland*, COUNCIL OF EUR., <https://www.coe.int/en/web/data-protection/poland> (last visited Apr. 12, 2022).

86. *The Istanbul Convention: A Powerful Tool to End Gender-Based Violence*, COUNCIL OF EUR. (Nov. 2019), <http://www.assembly.coe.int/LifeRay/EGA/WomenFFViolence/2019/2019-HandbookIstanbulConvention-EN.pdf>.

87. Matthew J. Gabel, *European Union*, BRITANNICA (Mar. 15, 2022), <https://www.britannica.com/topic/European-Union>.

aims to enhance economic and social unity throughout the continent.⁸⁸ Poland became a member of the EU in 2004 under the Accession Treaty.⁸⁹ To address gender equality and non-discrimination, the Treaty on European Union (TEU)—one of the primary treaties of the EU, which incorporates Article 2—states that the values common to the Member States include “[r]espect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.”⁹⁰ The Charter of Fundamental Rights also exists to guarantee dignity, equality, and prohibit all discrimination on the grounds of sex.⁹¹ Regarding the EU’s commitment to combating GBV, the EU adopted guidelines on violence against women in 2008⁹² and created the Strategic Engagement for Gender Equality, which exists as a framework for efforts to achieve gender equality.⁹³ While legal instruments have been created in various areas where women can be victims of violence, such as sexual harassment and human trafficking, the EU does not presently provide a binding instrument specifically developed to protect women from violence.⁹⁴

II. IMPLICATIONS OF POLAND’S WITHDRAWAL FROM THE ISTANBUL CONVENTION

The consequences of Poland’s departure from the Istanbul Convention would be devastating for millions of women and girls, as well as organizations offering

88. Ireneusz Paweł Karolewski & Maciej Wilga, *Poland and the European Union*, OXFORD RES. ENCYCS. (Feb. 26, 2018), <https://oxfordre.com/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-258>.

89. *Id.*

90. Consolidated Version of the Treaty on European Union 2012 O.J. (C 326).

91. *Violence Against Women in the EU*, EUR. PARL. DOC. PE 644.190, at 6 (2019), [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644190/EPRS_BRI\(2019\)644190_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/644190/EPRS_BRI(2019)644190_EN.pdf).

92. *EU Guidelines on Violence Against Women and Girls and Combating All Forms of Discrimination Against Them*, (Dec. 8, 2008), https://ec.europa.eu/anti-trafficking/eu-guidelines-violence-against-women-and-girls-and-combating-all-forms-discrimination-against-them_en.

93. European Commissioner for Justice, Consumers and Gender Equality, *Strategic Engagement for Gender Equality 2016-2019*, at 7 (Jan. 22, 2016), https://ec.europa.eu/anti-trafficking/strategic-engagement-gender-equality-2016-2019_en.

94. “These instruments concern, among other things, equal treatment and non-discrimination, which includes a ban on sexual harassment (Directive 2006/54/EC, a recast of Directive 2002/73/EC, concerning equal treatment as regards access to employment and working conditions, Directive 2010/41/EU on the application of the principle of equal treatment between men and women engaged in an activity in a self-employed capacity, and Directive 2004/113/EC on equal treatment in the access to and supply of goods and services); trafficking in human beings (Directive 2011/36/EU on combating trafficking and Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking); and protecting victims by strengthening the rights of victims whatever their nationality and wherever in the EU the crime takes place, including if the victims travel or move within the EU (Directive 2012/29/EU on the rights and protection of victims of crime, Directive 2011/99/EU on the European protection order in criminal matters, and Regulation (EU) No 606/2013 on mutual recognition of protection measures in civil matters18).” *Violence Against Women in the EU*, *supra* note 91; *see also* Directive 2012/29, of the European Parliament and of the Council of 25 October 2012 Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime, and Replacing Council Framework Decision 2001/220/JHA, 2012 O.J. (L 315/57).

asylum to survivors of sexual assault, rape, and domestic violence.⁹⁵ Violence against women remains one of the most pervasive human rights violations, imposing physical, sexual, psychological, and economic harm on women.⁹⁶ The Istanbul Convention obliges ratifying countries to comply with its crucial safeguards to prevent, protect, and produce integrated policies to combat violence against women.⁹⁷ Thus, withdrawal from the Istanbul Convention would constitute a retrogressive step in the universal fight for gender equality and destroy Polish women's remaining faith in the protection of their safety and personal wellbeing.⁹⁸

On top of PiS's countless efforts to abolish human rights protections for women, including sexual and reproductive rights, this unprecedented decision⁹⁹ communicates the government's disregard for women's lives and lack of support for vulnerable populations.¹⁰⁰ According to Dragina Nadazdin, director of Amnesty International Poland,¹⁰¹ the government's plan to revoke Poland's membership from the Istanbul Convention "[s]hows a complete misunderstanding of how important and complex the convention is, not only about reacting to gender-based violence, but as an astute part of prevention, building awareness and equal rights."¹⁰² Essentially, the Istanbul Convention is a political statement that sheds light on the adversity women and girls face in raising societal consciousness and achieving gender equality.¹⁰³

95. Kentish, *supra* note 20.

96. Approximately one in three women, around 736 million total, experience physical or sexual violence by an intimate partner or non-partner across their lifetime. *Devastatingly Pervasive: 1 in 3 Women Globally Experience Violence*, WORLD HEALTH ORG. (Mar. 9, 2021), <https://www.who.int/news/item/09-03-2021-devastatingly-pervasive-1-in-3-women-globally-experience-violence>. In Poland, specifically, 63% of women report experiencing some form of domestic violence throughout their lives. Daniel Tilles, *Over 60% of Women in Poland Have Experienced Domestic Violence, Finds Leaked Report*, NOTES FROM POL. (Aug. 17, 2020), <https://notesfrompoland.com/2020/08/17/over-60-of-women-in-poland-have-experienced-domestic-violence-finds-leaked-report/#:~:text=Eastern%20Europe%20Newsletter-,Over%2060%25%20of%20women%20in%20Poland%20have,domestic%20violence%2C%20finds%20leaked%20report&text=A%20study%20commissioned%20%E2%80%93%20but%20still,%2C%20the%20figure%20is%2063%25.>

97. *Poland Threatens to Withdraw from the Convention on Preventing and Combating Violence Against Women*, AMNESTY INT'L (Dec. 9, 2016), <https://www.amnesty.org/download/Documents/EUR3753092016ENGLISH.pdf>.

98. Muiznieks, *supra* note 17.

99. No Council of Europe Member State has ever withdrawn from the Istanbul Convention. *See* AMNESTY INT'L, *supra* note 97, at 2.

100. *See id.* at 1–2.

101. Amnesty International is a non-governmental organization, headquartered in the United Kingdom, with a mission to combat human rights abuses on a global scale. *See Who We Are*, AMNESTY INT'L, <https://www.amnesty.org/en/who-we-are/> (last visited April 19, 2022).

102. Kentish, *supra* note 20.

103. COUNCIL OF EUR., *supra* note 8.

A. POLAND'S LEGAL COMPLIANCE WITH INTERNATIONAL AND REGIONAL STANDARDS

The Polish government's failure to take measures to respect, protect, and promote women's rights is a violation of Poland's international and regional obligations.¹⁰⁴ International human rights law, binding on all states, requires the prohibition of GBV through the implementation of effective measures to eliminate gender-based stereotypes and discriminatory attitudes towards women.¹⁰⁵ Therefore, government action that obstructs the prevention of GBV in any form, including restrictions on the advocacy of human rights defenders, constitutes a violation of that State's international human rights obligations.¹⁰⁶ Further, State ratification of an international instrument requires it to guarantee *all* citizens the rights set out in that instrument and ensure measures to prevent violations of those rights.¹⁰⁷ Accordingly, PiS's refusal to fully implement the Istanbul Convention—combined with its decision to withdraw—is a violation of international human rights law, as well as Poland's legally binding commitments to both international and regional human rights treaties.¹⁰⁸ To review Polish law's failure to protect and defend women's rights, this Section examines Poland's compliance with the provisions of the Istanbul Convention, as well as international and regional treaty obligations.

1. Polish Law Never Fully Implemented the Standards of the Istanbul Convention and Fails to Provide Effective Remedies for Polish Women

Since ratifying the Istanbul Convention in 2015, Poland has disobeyed its provisions in three ways: by omitting the crime of economic violence from Polish law, narrowing the scope of the criminalization of rape, and failing to issue restraining orders to perpetrators of domestic violence.¹⁰⁹ The Istanbul Convention defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim.”¹¹⁰ In Poland, the Law on

104. See generally *Women's Human Rights*, INT'L JUST. RES. CTR., <https://ijrcenter.org/thematic-research-guides/womens-human-rights/> (last visited April 19, 2022).

105. See Tatsiana Ziniakova, *Gender-Based Violence in International Human Rights Law: Evolution Towards a Binding Post-Binary Framework*, 27 WM. & MARY J. WOMEN & L. 709, 740 (2021), <https://scholarship.law.wm.edu/wmjowl/vol27/iss3/4>.

106. Margolis, *supra* note 9, at 25.

107. UNHCR Division of International Protection Services (DIPS), *UNHCR Handbook for the Protection of Women and Girls: Chapter 6: The International and Regional Legal Framework*, 333, 335 (Mar. 6, 2008), <https://www.unhcr.org/47cfad542.pdf>.

108. See *id.*

109. *Shadow Report*, *supra* note 23.

110. Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence art. 3, May 11, 2011, C.E.T.S. No. 210.

Counteracting Domestic Violence¹¹¹ defines domestic violence¹¹² to include physical, psychological, and sexual violence, but deviates from the Istanbul Convention by excluding economic violence.¹¹³ The omission of economic violence indicates that Polish law does not recognize withholding financial resources as an act of domestic violence.¹¹⁴ Moreover, the Polish Criminal Code does not define domestic or economic violence. Thus, perpetrators gain impunity for the crime of economic violence, and Poland fails to comply with measures necessary to ensure victims' access to justice and protection.¹¹⁵

Polish law also does not define the crime of rape, in breach of its obligations under the Istanbul Convention.¹¹⁶ Under Article 36 of the Istanbul Convention, States must ensure that legislation criminalizes all non-consensual acts of sexual violence, such as rape.¹¹⁷ Specifically, intentional acts that require criminalization include:

[E]ngaging in non-consensual vaginal, anal or oral penetration of a sexual nature of the body of another person with any bodily part or object; engaging in other non-consensual acts of a sexual nature with a person; causing another person to engage in non-consensual acts of a sexual nature with a third person.¹¹⁸

Additionally, the Istanbul Convention states that consent must be given voluntarily “as the result of the person’s free will assessed in the context of the

111. Ustawa z dnia 29 lipca 2005 r. o przeciwdziałaniu przemocy w rodzinie, Dz.U. Nr 180, poz. 1493 z późn. zm, <https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU20051801493/T/D20051493L.pdf>.

112. Canada: Immigration and Refugee Board of Canada, *Poland: Domestic Violence, Including Protection, Services and Recourse Available to Victims (2007 - October 2010)* (Nov. 8, 2010), <https://www.refworld.org/docid/4e4391cf2.html>; see also Agata Bzdyń, *Poland: National Legal Framework on Case Law and Violence Against Women*, CTR. OF EXCELLENCE FOR PROF'L EDUC. & TRAINING, <http://elf-fae.eu/wp-content/uploads/2018/05/Legal-framework-and-case-law-on-violence-against-women-in-Poland-Agata-Bzdyn.pdf>.

113. Economic violence is recognized as a consequence of systematic gender discrimination, which places women in a vulnerable position by relying on men financially. See *Shadow Report*, *supra* note 23.

114. Eur. Inst. for Gender Equal., *Glossary of Definitions of Rape, Femicide and Intimate Partner Violence* (June 7, 2017), <https://eige.europa.eu/publications/glossary-definitions-rape-femicide-and-intimate-partner-violence>.

115. Article 5(2) of the Istanbul Convention states that “Parties shall take the necessary legislative and other measures to exercise due diligence to prevent, investigate, punish and provide reparation for acts of violence covered by the scope of this Convention that are perpetrated by non-State actors.” Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence art. 5, May 11, 2011, C.E.T.S. No. 210.

116. Athena Christofi et al., *Violence Against Women and the EU Accession to the Istanbul Convention: Study for the FEMM Committee* EUR. PARLIAMENT (2017), [https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596815/IPOL_STU\(2017\)596815_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2017/596815/IPOL_STU(2017)596815_EN.pdf).

117. Nigel Chidombwe, *Violence Against Women And International Law: A Robust Approach Is Needed*, HUMAN RTS. PULSE (Oct. 7, 2020), <https://www.humanrightspulse.com/mastercontentblog/violence-against-women-and-international-law-a-robust-approach-is-needed>.

118. Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence art. 36, May 11, 2011, C.E.T.S. No. 210.

surrounding circumstances.”¹¹⁹ Article 197 of the Polish Criminal Code criminalizes rape where the act was committed by “force, illegal threat or deceit,” or where “the offender forces another person to submit to another sexual act or to perform such an act in the manner specified.”¹²⁰ Consequently, Polish law does not consider the survivor’s absence of consent in its definition of rape, making Poland’s definition unlike that of organizations such as the European Institute for Gender Equality.¹²¹ Rather, many legal scholars in Poland interpret the Polish Criminal Code to criminalize rape only in circumstances where a victim “actively and continuously resist[s] or demonstrate[s] their lack of consent by means of loud protests, requests or screaming.”¹²²

Finally, Polish law falls short of its obligations under the Istanbul Convention by failing to provide accessible restraining orders to protect domestic violence victims from perpetrators.¹²³ Article 53¹²⁴ of the Istanbul Convention requires Member States to take necessary legislative measures to allow immediate police intervention through temporary restraining orders, which would be available to victims irrespective of legal proceedings.¹²⁵ In 2016, the Human Rights Committee¹²⁶ expressed concern regarding Poland’s lack of mechanisms offering immediate protection to victims. The concern stemmed from low numbers of restraining orders issued, few emergency shelters, and limited prosecutions of domestic violence perpetrators.¹²⁷ In response, the Ministry of Labour and Social Policy of Poland (the Ministry)¹²⁸ concluded that the current provisions regarding

119. *Id.*

120. *Shadow Report*, *supra* note 23.

121. *Id.*

122. *Id.*

123. Bretan, *supra* note 15.

124. Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence art. 53, May 11, 2011, C.E.T.S. No. 210.

125. “Restraining orders can also be imposed by the prosecutor after the formal opening of criminal proceedings.” Dunja Mijatovic, *Report of the Commissioner for Human Rights of the Council of Europe Following Her Visit to Poland from Eleven to Fifteen March 2019*, COUNCIL OF EUR. 3 (June 28, 2019), <https://rm.coe.int/report-on-the-visit-to-poland-from-11-to-15-march-2019-by-dunja-mijato/168094d848>; *see also* Council of Europe, Convention on Preventing and Combating Violence Against Women and Domestic Violence, art. 53, Nov. 11, 2011, C.E.T.S. 210.

126. The Human Rights Committee is described as a body of eighteen independent experts of high moral character, responsible for monitoring the implementation of the International Covenant on Civil and Political Rights (ICCPR) based on consideration of State reports. *See Human Rights Committee*, INT’L JUST. RES. CTR., (Apr. 28, 2022), <https://ijrcenter.org/un-treaty-bodies/human-rights-committee/>.

127. *Social Institutions & Gender Index 2019 Results: Poland*, ORG. FOR ECON. CO-OPERATION AND DEV. (2019), <https://www.genderindex.org/wp-content/uploads/files/datasheets/2019/PL.pdf>.

128. The Ministry of Labour and Social Policy of the Republic of Poland is responsible for coordinating actions relating to the improvement of women’s status and gender stereotypes prevalent in Polish society, as well as combating all forms of discrimination. *See* U.N. ECON. COMM’N FOR EUR., RESPONSE OF THE POLISH GOVERNMENT TO THE QUESTIONNAIRE ON IMPLEMENTATION OF THE BEIJING DECLARATION AND PLATFORM FOR ACTION (1995) AND THE OUTCOME OF THE TWENTY-THIRD SPECIAL SESSION OF THE GENERAL ASSEMBLY (2000) (2009), <https://www.globalwps.org/data/POL/files/Overview%20of%20achievements%20and%20challenges%20in%20promoting%20gender%20equality%20and%20women%E2%80%99s%20empowerment.pdf>.

restraining orders were not sufficient.¹²⁹ In May of 2020, the Ministry passed legislation amending the Polish Civil Procedure Code,¹³⁰ empowering law enforcement to issue orders to remove perpetrators of domestic violence from a household.¹³¹ Nevertheless, the Ministry's attempt to reform Polish law failed to conform to Article 53 of the Istanbul Convention because it withheld immediate accessibility to temporary restraining orders.¹³²

2. Poland's Retrogressive Measures on Women's Rights Violate Its International and Regional Treaty Obligations Beyond the Istanbul Convention

Human rights are inherent to all human beings and rooted in fundamental principles of respect for equality, dignity, and non-discrimination.¹³³ As a party to the ICCPR, ICESCR, and CEDAW, the Polish government's measures addressing violence against women must sufficiently protect the rights recognized in those treaties.¹³⁴ CEDAW requires Member States to eliminate discrimination against women through appropriate measures to ensure the "exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men."¹³⁵ Article 1 of CEDAW clearly defines violence against women as a form of discrimination and thus binds parties to eliminate it.¹³⁶ Further, Articles 10 to 14 oblige State parties to eliminate gender-based discrimination in education, employment, health, economic, social, and cultural life.¹³⁷ Lastly, General Recommendation 19 of CEDAW oversees its implementation and lists recommendations for Member States, such as gender-sensitivity training for judicial law enforcement as well as the creation of effective criminal penalties, and civil and social remedies to support victims of domestic violence.¹³⁸ The principles of human rights are also enshrined in ICCPR,¹³⁹ which affirms the right to self-determination, freedom of thought, conscience and religion, equal protection of the laws, and the right to be free from discrimination.¹⁴⁰

129. *Shadow Report*, *supra* note 23.

130. *Id.*, at 6; *see also* LAW AMENDING THE CIVIL PROCEDURE CODE AND SOME OTHER LAWS 956 J. OF L. 1 (2020), [http://orka.sejm.gov.pl/opinie9.nsf/nazwa/279_u/\\$file/279_u.pdf](http://orka.sejm.gov.pl/opinie9.nsf/nazwa/279_u/$file/279_u.pdf).

131. Bretan, *supra* note 15.

132. *Shadow Report*, *supra* note 23, at 6.

133. Bregje Blokhuis, *Violation of Women's Rights: A Cause and Consequence of Trafficking in Women*, LA STRADA INT'L (Mar. 8, 2008), <https://documentation.lastradainternational.org/doc-center/1431/violation-of-women%E2%80%99s-rights-a-cause-and-consequence-of-trafficking-in-women>.

134. Aberg et al., *supra* note 38, at 51–54.

135. Overview of the Convention, *supra* note 73, at art. 3.

136. Comm. on the Elimination of Discrimination Against Women, *Thirty Years Working for Women's Rights* 13 (2012), <https://www.ohchr.org/Documents/HRBodies/CEDAW/30thAnniversaryCEDAW/CEDAWCommemorativePublication.pdf>.

137. *Id.* at 12.

138. Aberg et al., *supra* note 38, at 7.

139. International Covenant on Civil and Political Rights art. 2, ¶ 1, Dec. 19, 1966, 999 U.N.T.S. 171.

140. COLUM. L. SCH. HUM. RTS. CLINIC, HUMAN RIGHTS & DOMESTIC VIOLENCE: AN ADVOCACY MANUAL 36 (2010).

Additionally, ICESCR is the principle human rights treaty encompassing economic and social rights, which similarly prohibits all forms of discrimination and promotes gender equality.¹⁴¹ While Article 2(1) of ICESCR recognizes the progressive realization of entitlements embodied in the treaty, it prohibits retrogressive measures by Member States that suppress or restrict guaranteed rights.¹⁴² Finally, as a party to ECHR and the Charter of Fundamental Rights of the European Union, Poland must prohibit discrimination, ensure freedom from torture, and reject inhumane or degrading treatment.¹⁴³ Consequently, Poland's failure to sufficiently address human rights violations stemming from domestic violence, as well as its decision to withdraw from the Istanbul Convention, is a violation of its international obligations imposed by these treaties.¹⁴⁴

B. INTERNATIONAL RESPONSE TO POLAND'S WITHDRAWAL FROM THE ISTANBUL CONVENTION

Alarmed by Poland's decision to withdraw from the Istanbul Convention, human rights leaders representing international organizations promptly expressed their concerns.¹⁴⁵ The CoE, and its secretary general, Marija Pejčinović Burić, condemned PiS's announcement by emphasizing that the Istanbul Convention's sole objective was to "combat violence against women," labeling Poland's decision as a "major step backwards in the protection of women."¹⁴⁶ The General Committee on Democracy, which is part of the Organization for Security and Co-operation in Europe's (OSCE)¹⁴⁷ Parliamentary Assembly, along with Human

141. *Id.* at 37.

142. INT'L COMM'N OF JURISTS, COURTS AND THE LEGAL ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMPARATIVE EXPERIENCES OF JUSTICIABILITY (2008), <https://www.refworld.org/pdfid/4a7840562.pdf>.

143. See Charter of Fundamental Rights of the European Union, art. 4, 2000, 1025 O.J. (C 364) 1, 9; Ronagh McQuigg, *Domestic Violence as a Human Rights Issue: Rumor v. Italy*, 26 EUR. J. OF INT'L L. 1009 (2016).

144. *Women's Human Rights*, INT'L JUST. RES. CTR., <https://ijrcenter.org/thematic-research-guides/womens-human-rights/> (last visited Apr. 20, 2022).

145. Agence France-Presse, *Council of Europe 'Alarmed' at Poland's Plans to Leave Domestic Violence Treaty*, GUARDIAN (July 26, 2020), <https://www.theguardian.com/world/2020/jul/26/poland-withdraw-from-treaty-violence-against-women-istanbul-convention>; UN Women echoed the concerns expressed by the CoE and other EU policymakers by placing emphasis on recent data illustrating the intensification of domestic violence during the COVID-19 crisis: "[t]his is the shadow pandemic growing amidst the COVID-19 crisis and we need a global collective effort to stop it. As COVID-19 cases continue to strain health services, essential services, such as domestic violence shelters and helplines, have reached capacity." Lorna Hutchinson, *EU Policymakers Condemn Poland Over Withdrawal From Istanbul Convention*, PARLIAMENT POL., POL'Y AND PEOPLE MAG. (July 27, 2020), <https://www.theparliamentmagazine.eu/news/article/eu-policymakers-condemn-poland-over-withdrawal-from-istanbul-convention>.

146. Istanbul Convention Action Against Violence Against Women and Domestic Violence, *Poland Should Not Withdraw from the Istanbul Convention*, Says Secretary General, COUNCIL OF EUR. (July 26, 2020), <https://www.coe.int/en/web/istanbul-convention/-/poland-should-not-withdraw-from-the-istanbul-convention-says-secretary-general>.

147. The OSCE is known as the world's largest security-oriented intergovernmental organization, which addresses a wide variety of security-related issues, including human rights, policing strategies,

Rights and Humanitarian Affairs Chair Kyriakos Hadjiyianni (MP, Cyprus), Vice-Chair Michael Georg Link (MP, Germany), and Rapporteur Kari Henriksen (MP, Norway), issued a statement expressing serious concerns regarding Poland's possible withdrawal from the Istanbul Convention. The officers recognized GBV in all forms as one of the most "pervasive human rights violations throughout the OSCE region" and called upon the Polish authorities "to reconsider withdrawal from the convention. Matters of interpretation as well as disputes should be discussed and addressed within its framework."¹⁴⁸ The Committee specifically referenced the duty of Member States, including Poland, "to pass legislation consistent with international norms and standards that addresses domestic and sexual violence, harassment, including workplace harassment and abuse of authority."¹⁴⁹

The CoE Commissioner for Human Rights also released a statement regarding Poland's intentions to withdraw,¹⁵⁰ expressing his concerns with Polish public officials' misinterpretation of the Istanbul Convention's purpose.¹⁵¹ The Commissioner stressed that the underlying purpose of the Istanbul Convention is to obligate Member States to protect the life and health of a vulnerable population and that Poland's withdrawal is "a manifestation of lack of respect for victims of violence."¹⁵² Finally, the European Parliament called on the Polish government to reconsider and requested to "engage in an open and transparent dialogue with Poland and other Member States on their reservations based on facts, rather than on ideology."¹⁵³ This statement emphasized the urgency for the EU to assert Poland's retrogressive actions and ensure women's protection in Poland.¹⁵⁴

democratization, security-building measures, and economic and environmental activities. See Organization for Security and Co-operation in Europe [OSCE], *Who We Are*, <https://www.osce.org/whatistheosce> (last visited Mar. 27, 2022).

148. Press Release, Org. for Sec. and Co-operation in Europe, OSCE PA Human Rights Leaders Concerned over Poland's Announced Withdrawal from Treaty on Violence Against Women (July 27, 2020), <https://www.osce.org/parliamentary-assembly/458161>.

149. Specifically, the OSCE Berlin Declaration of 2018 contains a Resolution on Preventing and Combating GBV, which urges Member States to ensure that "participating States should address prejudice and violence to ensure that women can exercise their fundamental human and political rights." ORG. FOR SEC. AND CO-OPERATION IN EUR., BERLIN DECLARATION AND RESOLUTIONS ADOPTED BY THE OSCE PARLIAMENTARY ASSEMBLY (2018), <https://www.oscepa.org/documents/alldocuments/annual-sessions/2018-berlin/declaration-26/3742-berlin-declaration-eng/file>.

150. See Statement, Adam Bodnar, Commissioner, Statement of the Commissioner for Human Rights Concerning Plans to Withdraw from the Istanbul Convention, Commissioner for Human Rights (July 29, 2020), <https://www.rpo.gov.pl/en/content/statement-commissioner-human-rights-concerning-plans-withdraw-istanbul-convention>.

151. See *id.*

152. See *id.*

153. Press Release, European Commission, Call on the Polish Government to Reconsider its Intention to Withdraw from the Istanbul Convention (Dec. 14, 2016), <https://www.europarl.europa.eu/news/en/press-room/20161214IPR56095/istanbul-convention-polish-government-asked-to-reconsider-intention-to-withdraw>.

154. See *id.*

III. PROGRESSIVE REFORM: EXPANDING INTERNATIONAL STANDARDS TO PROTECT WOMEN'S FUNDAMENTAL HUMAN RIGHTS

International human rights organizations must remain unified in response to Poland's intentions to withdraw from the Istanbul Convention by urging the Polish government to work towards the adoption of a national strategy to cease all retrogressive measures on women's rights.¹⁵⁵ To bring international awareness to this issue, the UN Special Rapporteur on Human Rights Defenders and the Special Rapporteur on Violence Against Women should conduct an investigation into the limitations placed on women's rights activists and release their findings.¹⁵⁶ This Section outlines two potential ways international intervention could offer protection and support to survivors of domestic violence. First, the EU Trade Unions¹⁵⁷ must pressure the EU to ratify the Istanbul Convention, in an attempt to strengthen protections and ensure full implementation of its existing obligations among Member States.¹⁵⁸ Second, Poland's obligations under the ECHR empower individual victims of domestic violence to file complaints with the European Court of Human Rights (ECtHR)¹⁵⁹ to receive international intervention.¹⁶⁰

A. EU ACCESSION TO THE ISTANBUL CONVENTION

One measure for strengthening the legal framework of violence against women in Poland is EU accession to the Istanbul Convention.¹⁶¹ In 2015, the European Commission (EC) produced a "roadmap" on the accession process, emphasizing that this move could establish a unified EU-level framework to combat violence against women—and would drastically improve protective and preventative measures in support of victims.¹⁶² Although the accession process commenced in

155. Margolis, *supra* note 9, at 25.

156. *Id.*

157. The European Union Trade Union Confederation (ETUC) is a major trade union organization representing the voices of forty-five million workers in Europe. *See* EUROPEAN TRADE UNION CONFEDERATION, <https://www.etuc.org/en> (last visited Apr. 17, 2022).

158. *ETUC: EU Must Ratify Istanbul Convention on Violence Against Women After Poland Withdrawal Reports*, EUROPEAN TRADE UNION CONFEDERATION (July 27, 2020), <https://europeanmovement.eu/news/etuc-eu-must-ratify-istanbul-convention-on-violence-against-women-after-poland-withdrawal-reports/>.

159. The ECtHR is an international court and protector of human rights that is made up of a number of judges equivalent to the amount of Member States of the CoE. It is located in Strasbourg, France. *See* COUNCIL OF EUR., EUROPEAN COURT OF HUMAN RIGHTS: QUESTIONS AND ANSWERS 3 (2016), https://www.echr.coe.int/documents/questions_answers_eng.pdf.

160. *See, e.g.,* Carmelo Danisi, *How Far Can the European Court of Human Rights Go in the Fight Against Discrimination? Defining New Standards in Its Nondiscrimination Jurisprudence*, 9 INT'L J. CONST. L., 793–94 (2011).

161. Gema Fernández Rodríguez de Liévana, *The Accession of the European Union to Istanbul Convention: A Mere Gesture?*, HEINRICH-BÖLL-STIFTUNG (Dec. 4, 2017), <https://eu.boell.org/en/2017/12/04/accession-european-union-istanbul-convention-mere-gesture>.

162. *EU Accession to the Council of Europe Convention on Preventing and Combatting Violence Against Women ('Istanbul Convention')*, EUR. PARLIAMENT (Feb. 2016), <https://www.europarl.europa.eu/legislative-train/theme-civil-liberties-justice-and-home-affairs-libe/file-eu-accession-to-the-istanbul-convention#:~:text=EU%20accession%20to%20the%20Council,Convention%20%2F%202016%20>

2017, with the EU Commissioner for Justice, Consumers, and Gender Equality's signing of the Istanbul Convention, it still requires the consent of the European Parliament on the CoE's decision on the competences of the Convention on behalf of the EU.¹⁶³

Throughout the process, Parliament has consistently supported accession and expressed that the ratification of the Istanbul Convention would signal the EU's dedication to eliminating violence against women and enhance the existing legal framework for doing so.¹⁶⁴ However, Parliament has released a few concerns and recommendations regarding the CoE's decisions on the conclusion of the Convention.¹⁶⁵ First, in addition to EU accession, Parliament raised legal uncertainties regarding the overall scope of the Istanbul Convention, such as restrictions in the areas of judicial cooperation in criminal matters and non-refoulement.¹⁶⁶ Additionally, international criticism and misinterpretation of the Istanbul Convention has caused Parliament to rethink its promotion of the treaty.¹⁶⁷ Parliament's hesitation towards EU accession to the Istanbul Convention is misguided; in fact, EU accession would be a monumental step toward ensuring the protection of vulnerable women and girls.¹⁶⁸ Ultimately, ratification would expand EU law to criminalize all forms of violence against women, create establish a superior technique for data collection for GBV at the EU level, increase monitoring procedures and international cooperation, and legally bind all EU Member States who are not a party to the Istanbul Convention to ensure the protection of women's rights.¹⁶⁹ Presently, the EC affirmed its commitment to EU accession to the Istanbul Convention in a 2021 work programme¹⁷⁰ while also producing a new proposal to combat GBV.¹⁷¹

2D03&text=It%20establishes%20a%20comprehensive%20framework,supporting%20victims%20and%20punishing%20perpetrators.

163. In 2016, the CoE and the EC entered into negotiations regarding the signing and concluding of the Istanbul Convention, which involves the making of decisions about the EU's legal competence in relation to violence against women. *Id.*; Fernández Rodríguez de Liévana, *supra* note 161.

164. EUR. PARLIAMENT, *supra* note 162.

165. Parliament is particularly concerned that EU accession to the Istanbul Convention would result in legal uncertainty regarding vague and novel terminology, which would result in Member States' failure to identify and fulfill the obligations required of them. ADF INTERNATIONAL, ISTANBUL CONVENTION AND EU ACCESSION TO IT – PROBLEM ANALYSIS, https://adflegal.blob.core.windows.net/international-content/docs/default-source/default-document-library/resources/media-resources/europe/eu-accession-to-the-istanbul-convention_2-page-summary.pdf?sfvrsn=2.

166. *Id.*

167. EUR. PARLIAMENT, *supra* note 162.

168. Radu Sucescu, *EU and the Accession to the Istanbul Convention*, NEWSL. FOR THE EUR. UNION (June 27, 2016), <http://www.newslettereuropean.eu/eu-and-the-accession-to-the-istanbul-convention/>.

169. Dimitry Kochenov et al., *Violence Against Women: What Will Be the Impact of the EU Signing the Istanbul Convention?*, EUR. AREA OF FREEDOM SEC. & JUST. (Dec. 24, 2017), <https://free-group.eu/category/2-values-principles-of-the-european-union/>.

170. EU MONITOR, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, COM (2020) 690 (Oct. 19, 2020), <https://www.eumonitor.eu/9353000/1/j9vvik7m1c3gyxp/vld2efi0fqzy>.

171. *Id.*

B. ESCALATION TO THE EUROPEAN COURT OF HUMAN RIGHTS: INDIVIDUAL JUSTICE

Amidst the uncertainty of EU accession to the Istanbul Convention, GBV survivors can pursue an alternative avenue to combat domestic violence within Poland's borders.¹⁷² The ECtHR has jurisdiction to hear complaints from both individuals and States concerning violations of the rights and freedoms protected by the ECHR.¹⁷³ Under the ECHR, Articles 2–8 entitle citizens of Member States the right to life, prohibition of torture, prohibition of slavery and forced labor, and the right to respect for private and family life.¹⁷⁴ In Poland, the Ministry of Foreign Affairs¹⁷⁵ is responsible for conducting an analysis of the individual's case, delivering final observations to the ECtHR, and determining how the Polish government will respond before the Court.¹⁷⁶ If the Polish government and the individual who brought the case cannot reach a settlement, the ECtHR makes the final judgment on whether or not a Member State's obligations to the ECHR were violated.¹⁷⁷ Under Article 46 of the ECHR, "[t]he High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties."¹⁷⁸ Thus, if a judgment is rendered in favor of the individual, Poland must adopt protective measures to prevent future violations and may be subject to a fine.¹⁷⁹ Although judicial congestion¹⁸⁰ may present a temporal roadblock to

172. See *Freedom From Violence Against Women: The Impact of the European Convention on Human Rights*, COUNCIL OF EUR. (Nov. 26, 2021), <https://www.coe.int/en/web/portal/-/freedom-from-violence-against-women-the-impact-of-the-european-convention-on-human-rights>.

173. Danisi, *supra* note 160, at 793–94. Complaints committed to the ECtHR must have been committed by a State party to the ECHR, which includes Member States of the CoE and EU. See *European Court of Human Rights*, INT'L JUST. RES. CTR., <https://ijrcenter.org/european-court-of-human-rights/> (last visited Apr. 20, 2022).

174. EUR. CT. OF HUM. RTS.: RSCH. DIV., COUNCIL OF EUROPE, REPORT ON ARTICLES 2, 3 AND 14 EQUAL ACCESS TO JUSTICE IN THE CASE-LAW OF THE EUROPEAN COURT OF HUMAN RIGHTS ON VIOLENCE AGAINST WOMEN 5 (2015).

175. The Ministry of Foreign Affairs is a Polish governmental department responsible for representation of Poland's government in international affairs. Delaine R. Swenson et al., *Poland and the European Court of Human Rights: Selected Issues and Recommendations*, CHAIR OF INTERNATIONAL AND AMERICAN LAW 5 (2011).

176. *Id.* at 7–9.

177. *Id.*

178. *Id.* at 8.

179. In Poland, the governmental body responsible for executing a judgment is the Inter-ministerial Working Group for the European Court of Human Rights, which must take actions to prevent future violations. See *id.* at 9. Protective measures include prompt and appropriate responses by specially trained law enforcement officers to victim requests, confidentiality in addressing complaints, and various mechanisms to achieve effective measures of protection. See Lee Hasselbacher, *State Obligations Regarding Domestic Violence: The European Court of Human Rights, Due Diligence, And International Legal Minimums of Protection*, 8 NW. J. INT'L HUM. RTS. 190, 202 (2010).

180. The process concerning individual claims made by victims of ECHR violations involves multiple steps prior to the receipt of a judgment from the ECtHR. Swenson et al., *supra* note 175, at 7–9. As described above, an individual claimant must first communicate the case to the respondent government and attempt to achieve a friendly settlement before appearing before the Court. *Id.* Thus, this process may take a considerable amount of time before an individual presenting a case receives sufficient protection. *Id.*

achieving justice, appealing to the ECtHR could provide Polish citizens a temporary solution to human rights violations until Parliament consents to EU accession to the Istanbul Convention.¹⁸¹

CONCLUSION

GBV is deeply rooted in patriarchal traditions that take the form of leadership, legislation, attitudes, and perceptions.¹⁸² Poland's intent to withdraw from the Istanbul Convention highlights the failure of the Polish legal system to protect and prioritize victims of domestic violence and recognize violence against women as a fundamental violation of women's human rights.¹⁸³ On a larger scale, the existence of the Istanbul Convention as the sole legally binding instrument combatting violence against women illustrates a cultural reluctance to recognize GBV as a global phenomenon that requires immediate attention.¹⁸⁴

In reviewing whether Poland's decision to withdraw from the Istanbul Convention, including noncompliance with its provisions, violates international human rights law, this Note finds that this retrogressive measure breaches Poland's obligations under the remaining international and regional human rights treaties to which it is a party.¹⁸⁵ Under the ruling PiS party, victims of domestic violence suffer silently in the face of discrimination and deprivation of their basic human rights.¹⁸⁶ The Polish government has continuously sacrificed these fundamental human rights in order to achieve political gain.¹⁸⁷ In order to ensure women are empowered and supported, international intervention is absolutely imperative.¹⁸⁸

181. *Id.* at 7–9.

182. CAROL HAGEMANN-WHITE & SABINE BOHN, DIRECTORATE GEN. OF HUM. RTS. AND LEGAL AFF., PROTECTING WOMEN AGAINST VIOLENCE ANALYTICAL STUDY ON THE EFFECTIVE IMPLEMENTATION OF RECOMMENDATION REC(2002)5 ON THE PROTECTION OF WOMEN AGAINST VIOLENCE IN COUNCIL OF EUROPE MEMBER STATES (2007), <https://rm.coe.int/16805915e3>.

183. WORLD HEALTH ORG., GLOBAL AND REGIONAL ESTIMATES OF VIOLENCE AGAINST WOMEN: PREVALENCE AND HEALTH EFFECTS OF INTIMATE PARTNER VIOLENCE AND NON-PARTNER SEXUAL VIOLENCE (2013), https://apps.who.int/iris/bitstream/handle/10665/85239/9789241564625_eng.pdf;jsessionid=CDD759333EB0164074C044D770776CEC?sequence=1; see Sullivan, *supra* note 4.

184. COUNCIL OF EUR., *supra* note 8.

185. *Women's Human Rights*, INT'L JUST. RES. CTR., <https://ijrcenter.org/thematic-research-guides/womens-human-rights/> (last visited Apr. 20, 2022).

186. COUNCIL OF EUR., *supra* note 8.

187. *Id.*

188. Suicsescu, *supra* note 168.