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Promoción y protección de todos los derechos humanos, civiles, políticos, económicos, sociales y culturales, incluido el derecho al desarrollo

Visita a Polonia

Informe de la Relatora Especial sobre los derechos culturales* **

Resumen

La Relatora Especial sobre los derechos culturales visitó Polonia, por invitación del Gobierno, del 24 de septiembre al 5 de octubre de 2018.

El propósito de la visita era comprender, desde un enfoque de cooperación y diálogo constructivo, la forma en que el Gobierno trata de hacer efectivos los derechos culturales, así como evaluar las leyes y políticas pertinentes para el disfrute de esos derechos y distinguir buenas prácticas que contribuyen a promover y proteger los derechos culturales en el país y los posibles obstáculos al respecto. La Relatora Especial formula recomendaciones con vistas a ayudar al Gobierno y otros agentes pertinentes en sus esfuerzos por superar las dificultades que plantea el hacer efectivos los derechos culturales para todos en Polonia.

* El resumen del informe se distribuye en todos los idiomas oficiales. El informe completo, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó.

** Este informe se ha presentado con retraso para poder incluir en él la información más reciente.



Annex

I. Introduction

1. The Special Rapporteur in the field of cultural rights visited Poland from 24 September to 5 October 2018. The Special Rapporteur thanks the Government of Poland for the invitation to visit the country and for allowing her to travel unhindered to many places and sites with no obstacle save limitations of time.

2. During her visit, the Special Rapporteur met with numerous officials from the Ministry of Culture and National Heritage, the Ministry of Foreign Affairs, the Ministry of the Interior and Administration, the Ministry of Family, Labour and Social Policy, the Ministry of National Education, the Ministry of Science and Higher Education and the Ministry of Digital Affairs, as well as the Chancellery of the Prime Minister, in particular the Plenipotentiary for Civil Society and Equal Treatment. At the Ministry of Culture and National Heritage, she had the opportunity to meet with officials from several departments, including the departments for international relations, State patronage, national cultural institutions, cultural heritage, monuments preservation, art and culture education, and intellectual property and the media, as well as the National Heritage Board. At the Ministry of the Interior and Administration, she met with representatives of the department for religion and national and ethnic minorities. She also met with representatives of a variety of government bodies, including the Institute of National Remembrance, the National Freedom Institute, the National Broadcasting Council and the Office of the Commissioner for Human Rights, as well as with representatives of mixed bodies like the National Commission for the United Nations Educational, Scientific and Cultural Organization (UNESCO). At the municipal level, the Special Rapporteur held discussions with the deputy mayors of Gdańsk and Kraków, as well as relevant municipal bodies and cultural departments. In addition, she met with representatives of regional bodies.

3. The Special Rapporteur was pleased to listen to a wide range of Polish voices, including those of academics, actors, artists, civil society organizations and activists from different sectors, cultural professionals, representatives of cultural centres, current and former directors of national cultural institutions, feminists and women human rights defenders, festival directors, journalists, lawyers, musicologists, psychologists, teachers and trade unionists, as well as representatives of Kashubian, Jewish, Muslim and Ukrainian groups and activists promoting and defending the rights of lesbian, gay, bisexual and transgender persons, of persons with disabilities and of refugees and migrants. She tried to meet representatives of the Polish Catholic Church, specifically the Council of Bishops, and of the German and Roma minorities, but this was not possible for logistical reasons.

4. The Special Rapporteur visited numerous cultural institutions, including cinemas, museums, theatres and the Polish National Opera. She attended cultural performances, viewed exhibitions and visited churches and synagogues. She also went to cultural heritage sites and important memorial sites such as the birthplace of Fryderyk Chopin and the adjacent Żelazowa Wola memorial park and the UNESCO World Heritage site at the Auschwitz-Birkenau former German Nazi concentration and extermination camp.

5. The present report is based on information gathered during and after the visit. Considering the long period of time that has passed since the end of the visit, the Special Rapporteur looks forward to learning from the Government about further developments. However, she has received reports that the situation is not improving and that a number of her preliminary observations have not yet been heeded. She is concerned to hear that culture remains a key area in which the ruling party attempts to impose its vision of Poland rather than being a sector in which a variety of voices are equally represented. Some aspects of cultural life seem to be increasingly ideologically circumscribed. Urgent action is needed to reverse course in this regard.

II. General context

A. National and international human rights framework

1. International obligations

6. Poland has ratified most core human rights instruments, many of which include provisions to respect, protect and fulfil cultural rights. Of particular relevance is article 15 of the International Covenant on Economic, Social and Cultural Rights, which protects the right of everyone, without discrimination, to take part in cultural life – including to access and enjoy cultural heritage – and to enjoy the freedom indispensable for scientific research and creative activity. Poland has also ratified the International Covenant on Civil and Political Rights, which protects rights with an important cultural dimension, in particular the rights to freedom of thought, conscience and religion (art. 18) and to freedom of opinion and expression (art. 19), as well as the rights of persons belonging to ethnic, religious or linguistic minorities to enjoy their own culture, profess and practise their own religion, and use their own language (art. 27). Other relevant provisions protecting cultural rights are found in the Convention on the Rights of Persons with Disabilities (art. 30), the Convention on the Rights of the Child (arts. 29–31), the International Convention on the Elimination of All Forms of Racial Discrimination (art. 5 (e)) and the Convention on the Elimination of All Forms of Discrimination against Women (art. 13), all of which Poland has ratified.

7. Poland is also party to various UNESCO instruments relevant for the implementation of cultural rights, including the Convention for the Protection of the World Cultural and Natural Heritage, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the Convention for the Safeguarding of the Intangible Cultural Heritage, the Convention against Discrimination in Education and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions. The Government's commitment to protecting heritage is visible in the 14 cultural sites and one natural site inscribed in the World Heritage List.

8. The Special Rapporteur notes that article 9 of the Constitution requires Poland to respect international law binding upon it. In practice, more needs to be done to systematically and effectively implement such international standards. One particular area of difficulty is regular and transparent consultation with experts and civil society organizations on policy ideas, and the tendency to introduce and pass legislation rapidly, with little opportunity for debate or amendment.

9. She also notes the stated commitment of the Ministry of Foreign Affairs to supporting greater focus by the European Union on economic, social and cultural rights, and looks forward to cooperating with the Government of Poland in the implementation of relevant resolutions adopted by the Human Rights Council on cultural rights and cultural heritage.¹ She was pleased to learn of the intention of the Government to interact more consistently with civil society for the fourth cycle of the universal periodic review process, both before and after the presentation of its report, and encourages the authorities to continue developing meaningful consultations with all relevant actors in the context of monitoring its human rights obligations and in all decision-making processes that have an impact on human rights.

10. As enshrined in the Vienna Declaration and Programme of Action, while the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.² Cultural rights are an integral part of the universal human rights framework. They are not tantamount to cultural relativism and cannot be used to justify or excuse violations of other human rights, discrimination or violence.

¹ See www.ohchr.org/EN/Issues/ESCR/Pages/CulturalRightsProtectionCulturalHeritage.aspx.

² A/CONF.157/24 (Part I) and Corr.1, chap. III, para. 5.

11. The purpose of the cultural rights mandate is not to protect culture or cultural heritage per se but, rather, to ensure the conditions allowing all people, without discrimination, to access, participate in and contribute to cultural life in a continuously developing manner. This requires States to take the steps necessary for the protection and development of enabling conditions in which cultural freedoms can be exercised by all.

2. Constitutional and legislative framework

12. Cultural rights are protected by important provisions of Polish law. These include numerous articles of the Constitution, such as article 5, which requires the Government to “ensure the freedoms and rights of persons and citizens” and “safeguard the national heritage”; article 6 (1), which ensures the provision of “conditions for the people’s equal access to the products of culture which are the source of the Nation’s identity, continuity and development”; article 35 (1), which guarantees that Polish citizens belonging to national or ethnic minorities have the freedom to maintain and develop their own language, to maintain customs and traditions and to develop their own culture; and article 35 (2), which establishes that national and ethnic minorities have the right to establish educational and cultural institutions designed to protect religious identity, as well as to “participate in the resolution of matters connected with their cultural identity”.

13. In addition, article 53 guarantees freedom of religion and the right not to be compelled to participate or not participate in religious practices and article 73 ensures for everyone “the freedom of artistic creation and scientific research” and “the freedom to teach and to enjoy the products of culture”. Innovatively, article 6 (2) requires that assistance be extended to Poles living abroad so that they may “maintain their links with the national cultural heritage”, a positive approach that should be emulated in other countries.

3. Office of the Commissioner for Human Rights

14. The Office of the Commissioner for Human Rights was created in July 1987 and has been accredited with A status since 2016. Its mandate, tasks and organization are defined in the Statute of the Office of the Commissioner for Human Rights.³ According to article 80 of the Constitution of Poland, everyone has the right to apply to the Commissioner for Human Rights (the Ombudsman), under the rules set out in the relevant Act of Parliament, for assistance in protecting freedoms or rights violated by public authorities. Filing an application with the Commissioner is free of charge and no particular form is required. The broad basis for action and the absence of formal requirements and fees contribute to the large number of applications submitted. The Office has, through its activities and independence, earned respect and is an important mechanism for assisting in securing remedies for violations of human rights, including cultural rights.

15. However, since 2015, the Commissioner for Human Rights and his Office have been facing increasing pressure from the Government, including in the form of attempts to strip his immunity and impose budget cuts. The Special Rapporteur is concerned that this may be because of the work done in fulfilment of the constitutional mandate, which has included raising issues considered sensitive, such as the rights of lesbian, gay, bisexual and transgender persons, the independence of the judiciary, respect for international treaties and the right to a fair trial. Such pressure is unacceptable and is not compatible with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) of the United Nations or with the principles on the protection and promotion of the ombudsman institution (the Venice Principles) adopted in March 2019 by the European Commission for Democracy through Law. The Special Rapporteur calls upon the Polish authorities to respect the independence of the Office of the Commissioner for Human Rights and to guarantee all the conditions necessary for that institution to effectively fulfil its mandate, including through the provision of more funding. The Special Rapporteur salutes the vital work of the Commissioner and his staff.

³ See www.rpo.gov.pl/en/content/office.

4. Legal and judicial reforms

16. Since its electoral victory in October 2015, the ruling Law and Justice party has engaged in widespread legal change and debate about possible change, including in the areas of the judiciary, the Constitution, women's sexual and reproductive rights, education and the media. Many of the proposed reforms have provoked great public controversy in Poland and the risk of sanctions from the European Commission.

17. Changing the rules governing the appointment and dismissal of judges has eroded the rule of law and the system of checks and balances in Poland. Respect for the Constitution and safeguarding of the independence of the judiciary, which ensures its implementation, are among the most important steps that must be taken to secure human rights generally and cultural rights, in particular, in the country. Many individuals facing violations of their cultural rights have indicated that the independence of the judiciary and the strength of the court system represented their best hope for justice and protection against abuse. The Special Rapporteur refers the Government to the relevant recommendations in the report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland⁴ and stresses the importance of their full and timely implementation.

B. System of cultural governance

18. The Special Rapporteur was glad to observe the great importance given in Poland to the cultural sector, as shown by the number of cultural institutions and programmes dedicated to supporting and promoting culture, both inside the country and abroad. However, there is a need for a formalized, detailed and overarching cultural policy that is grounded in international law and produced through a consultative process so as to avoid inconsistencies among departments in the pursuit of the protection and promotion of cultural rights for all and to assist citizens in claiming their cultural rights.⁵

19. Through the numerous grant programmes of the various departments, the Ministry of Culture and National Heritage provides an important part of the funding made available to local and regional organizations for their activities. The Ministry thus acts in complementarity with regional and local governments, which also have their own budget and programmes to support cultural activities and initiatives and may provide joint support. The Special Rapporteur supports the continuation of this approach based on complementarity between the various levels of government and plurality of forms of support. Efforts aimed at overly centralizing cultural governance should be avoided. However, the Special Rapporteur would also encourage the authorities in the Ministry to engage in regular consultations with all stakeholders about the aims and objectives of the Ministry and its programming and any decisions that have an impact on the exercise of cultural rights, as these were reported to often be insufficient or inexistent.

20. The rules and processes for submitting requests for government grants are for the most part available on the Internet and easily accessible and, except for a small number of targeted programmes, the vast majority of grants seem to be open to all types of applicants and organizations. However, concerns have been expressed by various sources about the lack of transparency regarding the attribution of points in the evaluation of projects, especially those attributed for consistency with the strategic goals. There is a need to both clarify the general and strategic goals of grants and provide more detailed explanations for the scores attributed by the experts involved.

21. The Special Rapporteur regrets that she was not able to meet the Minister of Culture and National Heritage and that the Ministry did not take part in her official debriefing

⁴ A/HRC/38/38/Add.1.

⁵ The Special Rapporteur takes note of the document entitled "Information of the Minister of Culture and National Heritage on the strategy and changes planned in the area of culture and national heritage, information for the meeting of the Council of Ministers on 11 October 2016", which was provided to her and which refers to the State's cultural policy and objectives. The Special Rapporteur has not, however, received a copy of an actual cultural policy document.

meeting with the Government. She nonetheless hopes that all departments of the Ministry will fully engage in the implementation of her recommendations.

III. Implementation of cultural rights in Poland: specific issues

A. Independence of cultural institutions and media

22. The Special Rapporteur was told repeatedly that the key objectives of the Ministry of Culture and National Heritage are to ensure diversity of cultural offerings, the independence of cultural institutions and the exercise of scientific and artistic freedoms, and that it does not have a say in the content of cultural projects and productions. These are laudable objectives. The legal framework in this regard is indeed very clear.

23. However, the Ministry is involved in selecting both the experts who assess projects submitted to the funding programmes and the directors of national cultural institutions, and the programmes of these institutions are subject to the approval of the Minister. This implies a rather large influence on the orientation of cultural and artistic programming. For the directors and staff of cultural institutions, the fact that some members of the ruling party have not agreed with their artistic and cultural choices has translated into repeated criticism in public media and, sometimes, into prosecutions and investigations. In some particular cases, this has even led to dismissals.

24. The Special Rapporteur was concerned to hear that some in the cultural field were beginning to engage in self-censorship to protect themselves and their institutions, and that a few highly skilled cultural professionals were making plans to leave the country, which is an important loss for the quality of cultural life.

25. The dissolution of Paweł Machcewicz's contract as director of the Second World War museum in Gdańsk and the ongoing efforts to modify or displace the museum's original permanent exhibition because it was deemed too universalist is emblematic and well documented.⁶ The Special Rapporteur is concerned that Mr. Machcewicz continues to face investigation and interrogation ostensibly targeting corruption but actually motivated by the fact that his depiction of the history of the Second World War diverges from the ruling party's official version. He may require costly legal representation as a result. Moreover, the Special Rapporteur also met with other directors and former directors of cultural institutions who have experienced similar pressure to conform. Such coercion is unacceptable in the field of culture.

26. For the organizers of the Malta theatre festival in Poznań, pressure from authorities who disapproved of one of the programmed guests translated into denying previously agreed funding for that year. In the case of the POLIN Museum of the History of Polish Jews, although its sophisticated and educational content has been attacked repeatedly in the media by representatives of the ruling party in an attempt to discredit or influence it, experts in the country note that it has been able to maintain its independence because only one third of its budget comes from the Government. However, as of November 2019, its director was awaiting confirmation that his contract has been renewed, despite having been chosen in a selection process. Ultimately, the now former director's contract was not renewed and he stepped aside to enable the museum to continue its work.

27. The role of the Ministry must remain one of ensuring diversity of offerings and programming and the conditions for the exercise of the right to scientific and artistic freedom, as these aspects guarantee a rich and dynamic cultural life and enhance creativity. Authorities must avoid using their influence on cultural institutions to impose a political orientation on cultural programming or to insist on a static and homogenous vision of Polish culture.

28. The same safeguards for diversity and pluralism apply to the media landscape. Article 21 of the Broadcasting Act stipulates that public radio and television should be

⁶ Paweł Machcewicz, *The War that Never Ends; The Museum of the Second World War in Gdańsk*, (Munich, De Gruyter Oldenbourg, 2019).

pluralistic, impartial, well balanced and independent. Article 2 of the Press Act clearly states that State bodies have an obligation to create the necessary conditions for a diversity of press outlets, programming, subjects and attitudes to be present and accessible in the public realm. This is coherent with the obligation in international law to ensure the right to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether orally, in writing or in print, in the form of art, or through any other media of one's choice, as a necessary condition for effectively taking part in cultural life and in debates shaping society.

29. However, in 2015, the laws amending the Broadcasting Act temporarily placed the power to appoint and dismiss the management and supervisory boards of the public service broadcasters in the hands of the Minister of State Treasury,⁷ which substantially eroded the independence of public broadcasters⁸ and led to a large wave of dismissals of public media staff, especially those working in management, editorial functions and foreign news.⁹ This trend of greater government control of the public media, which is contrary to constitutional and legislative dispositions, has been widely reported as problematic.

30. The argument of the public media authorities that private media mainly presents other views than those of the Government does not justify predominant coverage of the views of the ruling party in public media. It is the responsibility of public media to ensure impartiality, to guard against political pressure and to provide space for a healthy, democratic debate accessible to all. In addition, proposed measures to limit the shares of foreign capital in the media landscape would disproportionately affect media outlets that are critical of the current government.

31. According to commitments made by the Government during the third cycle of the universal periodic review, work to enhance the diversity of mass media and broaden access to different media by the end of 2017 was being conducted jointly by the Ministry of Culture and National Heritage and the National Broadcasting Council. Relevant measures included reviewing the process for appointing and dismissing public radio and television governing bodies to ensure conformity of the Broadcasting Act with the Constitution.¹⁰ At the time of her visit, the Special Rapporteur was not presented with an update on these measures or on the review of the Act.

B. Cultural heritage

32. During her mission, the Special Rapporteur had the opportunity to visit three of the country's 15 World Heritage sites: the historic city centres of Warsaw and Kraków and the former concentration camp of Auschwitz-Birkenau. She was impressed by the level of care dedicated to reconstructing and maintaining these sites, which bears testimony to the importance Poland gives to cultural heritage.

33. Poland has established an impressive number of museums, public and private, and takes seriously its obligation to protect cultural heritage, both in museums and in public spaces, through numerous plaques and monuments. The Special Rapporteur was pleased to learn about the many efforts made to protect and conserve heritage and to transmit, through educational projects, the meaning of these resources to future generations. For example, she was pleased to learn of efforts made to care for some Jewish cemeteries, including the Jewish cemetery in Warsaw.

34. Cultural heritage is important for the enjoyment of many human rights, including cultural rights, and should be accessible to all. The record of Poland in this regard is impressive: historical exhibitions are displayed in the streets, the monument to Chopin in Łazienki Park is used as a venue for weekly free concerts by young musicians, Chopin's birthplace hosts school groups and offers free admission for people from the region, and

⁷ Now known as the Minister of Finance.

⁸ See the ranking of Poland in the World Press Freedom Index between 2014 and 2018.

⁹ See <https://mappingmediafreedom.org/index.php/2016/05/09/polands-political-cleansing-of-journalists/>.

¹⁰ A/HRC/36/14, para. 120.106.

girl scouts are involved in commemorating the route of underground canals used during the Warsaw uprising.

35. Heritage resources and commemorative monuments invite continuous reinterpretations and discussions about identity and social challenges. In Poland, for example, statues have been used to raise awareness about attacks on the Constitution. The Special Rapporteur is therefore concerned about reports of attempts to control, homogenize and limit the space for interpreting the meaning of heritage.

36. At the time of the Special Rapporteur's visit, the impact of logging in the Białowieża forest, the only natural site in Poland on the World Heritage List, was raising concern. The Ministry of the Environment informed the Special Rapporteur of a joint World Heritage Centre-International Union for Conservation of Nature mission to the site undertaken from 24 September to 2 October 2018 to allow experts to review the situation and meet with all stakeholders. The Special Rapporteur urges the Government to suspend all logging activities, to ensure that all operations in the forest comply with the management prescriptions stated in the 2014 nomination documents and to fully implement the recommendations of the 2018 mission.¹¹ The complete restoration of the site and the development of a management plan, in consultation with and including the participation of all relevant stakeholders, are essential.

Politics of history

37. The ruling party has sought to discredit academics who question it¹² and those who challenge its preferred historical narrative, particularly in regard to the events of the Second World War. Since the beginning of 2018, the Act on the Institute of National Remembrance has been amended twice to place limitations on the language that can be used to describe certain historical events. The first amendment, made in February 2018, added sanctions of up to three years of imprisonment for anyone who assigned "responsibility or co-responsibility to the Polish nation or state for crimes committed by the German Third Reich". Many criticized the unclear formulation and lack of definition of certain terms that left room for arbitrary interpretations, including regarding the parameters of the exception for "artistic or scientific activity". Moreover, the Act also disregarded recent historical findings that did not fit the official narrative, thus calling into question the validity of this research and the standing of those who carried it out.¹³ Following a national and international outcry, a second amendment was rapidly adopted in June 2018 to remove the fines and criminal penalties but maintaining civil liability.

38. The Special Rapporteur expresses two main concerns about this issue from the perspective of cultural rights. The first relates to important flaws in the process: neither amendment was discussed prior to adoption with the competent departments of the Ministry of Culture and National Heritage or the experts of the Institute of National Remembrance, with academic experts and historians or with others whose cultural rights would be affected by the additional provisions. The second concerns the scope of the text. Although it is positive that criminal penalties have been removed and that in a case reported to the Special Rapporteur a related investigation was discontinued, the civil liability that remains in the law still interferes with the ability to consider historical facts related to past events from a variety of perspectives and express complex narratives about those events. The mere presence of these provisions, even if they were not to be used, signals that only one narrative about the past is acceptable, constitutes an intrusion into historical debates and has a chilling effect on the ability to talk openly about history. This can have especially dire consequences for cultural institutions such as museums, whose mission is precisely to address such questions.

39. Although it includes a clause exempting academic work, the Act was widely regarded within the academic community as an attempt to discourage research into and

¹¹ World Heritage Committee decision 43 COM 7B.14.

¹² As shown by recent cases for criminal defamation brought by members of the ruling party, such as the lawsuit against the academic Wojciech Sadurski.

¹³ One example is the lawsuit brought against historian Barbara Engelking, who was accused of defamation for writing about collaboration of individuals with the Nazis.

discussion of Second World War–era Polish crimes against Jews and restrict academic and scientific freedom related to research, teaching and publishing. Shortly before the Special Rapporteur’s visit, a complaint was filed by Lublin regional officials about the findings of an historian regarding crimes against the Ukrainian population in March 1944, findings that were characterized as constituting defamation of the Polish nation; the Governor launched a public campaign questioning the credibility of the historian concerned. Others have reported being called “traitors” or “enemies of the nation” simply for questioning the role of some Poles in past events.

40. Beyond the direct impact on the work of historians and curators, the amendments may also have a considerable impact on the teaching of history and on the work of persons and organizations promoting reconciliation with Jews. Moreover, at the time of the Special Rapporteur’s visit, debates over the amendments had already contributed, as indicated by survey data, to an increase in hate speech, in particular hate speech of an antisemitic nature, of an increasingly open and public nature. The Special Rapporteur deplors this development and stresses the need for effective official responses.

41. More must be done to increase the international recognition for and understanding of the severe suffering of Poles of all religious backgrounds during the Second World War, a reality importantly demonstrated in the Warsaw Rising Museum. There is an array of institutions and monuments in Poland seeking to display a complex vision of history and past human rights abuses and atrocities, such as the European Solidarity Centre in Gdańsk, the POLIN Museum in Warsaw and the Auschwitz-Birkenau former German Nazi concentration and extermination camp, which must be able to continue their work unimpeded. Constructively addressing these difficult chapters of history and integrating them in school history curricula, in open debates and in museums, is essential for developing critical thinking and understanding, shaping a tolerant and inclusive society and guaranteeing cultural rights and many other human rights, such as academic freedom, the right to education and the right to freedom of conscience.

C. Identity and nationalism

42. Like many countries today, Poland is currently experiencing political and cultural polarization. Efforts must be made to transcend such divides, and cultural and artistic initiatives can play a positive role in this regard. Polish identity does not belong to any one group or any one opinion bloc alone.

43. The Special Rapporteur was disturbed to hear that the term “anti-Polish” was being applied to Poles expressing views that differed from those of the Government or ruling party, including through art and culture, and by the suggestion that there is only one way of being Polish, one monolithic Polish identity based on one interpretation of one religion and one way of thinking. This does not reflect lived cultural realities. The diversity of perspectives, approaches and views – from avant-garde theatre directors to traditional clergy – and the vibrant debates the Special Rapporteur found in Poland are sources of cultural richness.

44. One exemplary aspect of the Polish Constitution is its explicit recognition that “both those who believe in God as the source of truth, justice, good and beauty, as well as those not sharing such faith but respecting those universal values as arising from other sources” are “equal in rights and obligations towards the common good” (preamble). It stresses that Polish culture is “rooted in the Christian heritage of the Nation and in universal human values”. Turning away from such a pluralist commitment now means rejecting the values that have motivated and underpinned the great Polish human rights movements of the past, which have inspired the world.

45. The Special Rapporteur recognizes that many different governments may try to promote cultural expressions that reflect their particular worldviews, and that the current government claims to be aiming to include “conservative” voices that it alleges were not heard in the past. However, present efforts in Poland to defund, sideline and silence cultural dissidence and views at odds with the historical and cultural vision of the current government, represent a kind of cultural engineering that seeks to alter the public face of

Poland and reshape and simplify the complex contours of its difficult history. The Special Rapporteur fears this may give rise to further violations of cultural rights. Additionally, official discourse is often at odds with the lived experience, beliefs and values of wide sectors of the population.

46. The impact of language in debates about identity must also be carefully considered. Inclusive language should be used to refer to all inhabitants of Poland so as not to reinforce dynamics of othering and ideas that within the population of Poland some are “us” and some are “them”, or that minorities are not Polish.

47. The Special Rapporteur was sorry to hear reports that past commemorative events celebrating Polish independence had evidenced expressions of hate speech and extremism, and that a group of women calling themselves “women against fascism”, who opposed such expressions, had been assaulted by participants during a march in November 2017. The fact that charges against those who had harmed the women had been dropped and that the women faced fines creates the impression that certain narrow definitions of identity are politically accepted and tolerated even when their expressions break the law and violate the rights of others. Ultranationalist symbols and aggression by extremist groups against antifascist demonstrators holding a “Constitution” banner were similarly on display during the 100th anniversary of independence march held in November 2018. Patriotism and national pride should never be equated with discrimination and exclusion. It is the responsibility of the Polish authorities to clearly counter such views.

D. Fundamentalism and extremism

48. The increasing prominence and aggressiveness in Poland of some far-right-wing nationalist groups, Christian fundamentalist groups and media outlets propagating discriminatory and exclusionary views is a matter of grave concern, and has a deleterious effect on the enjoyment of cultural rights without discrimination. Neo-Nazi and neo-fascist groups are emerging and seeking to influence youth, including reportedly through cultural events such as music festivals. The apparent normalization and increasing mainstreaming of some of these views, including their expression by some government officials without consequences, is particularly worrying and must be addressed with urgency.

1. Separation of religion and state

49. Article 25 (2) of the Polish Constitution stipulates that “public authorities ... shall be impartial in matters of personal conviction, whether religious or philosophical, or in relation to outlooks on life, and shall ensure their freedom of expression within public life”. Article 25.3 stipulates that “The relationship between the State and churches and other religious organizations shall be based on the principle of respect for their autonomy and the mutual independence of each in its own sphere as well as on the principle of cooperation for the individual and the common good.”

50. Separation of religion and State is everywhere critical to the protection of cultural rights and the freedom of religion or belief, including the right to believe in a diversity of ways and not to believe. It creates and preserves space for women, minorities and others to enjoy their cultural rights without discrimination. It does “not mean the absence of religion but rather a state structure that defends both freedom of expression and freedom of religion or belief, where there is no state religion, where law is not derived from God and where religious actors cannot impose their will on public policy”.¹⁴

51. Many of the Special Rapporteur’s interlocutors indicated however that the influence of the Catholic Church in regard to matters of education, politics and public policy, including those with importance for the enjoyment of cultural rights without discrimination, is a matter of serious concern. She is particularly concerned about the role that the Catholic Church reportedly plays in public education, including by organizing and choosing the teachers of most religion courses.

¹⁴ A/72/155, para.11, and A/HRC/34/56.

2. Impact on cultural diversity and artistic freedom

52. The Special Rapporteur recognizes the historically important role played by the Catholic Church in many aspects of Polish cultural life, and that Catholic practice has merged with many treasured traditions. In addition, the Catholic Church represented a critically important partner in human rights movements challenging communism and repression in the 1970s and 1980s.

53. However, she also takes note of statistics indicating that while 90 per cent of Poles may have been baptized Catholic only some 40 per cent of them are practising Catholics. Hence, religious outlooks are indeed diverse, including among Catholics, and this should be more widely acknowledged as a reality in Polish society.

54. Some voices associated with the Catholic Church reflect discriminatory views, for example about lesbian, gay, bisexual and transgender persons, which is of grave concern. On the other hand, among the range of Catholic viewpoints in Poland, some use their interpretation of Catholicism as the basis for their activism for human rights and inclusion, and may themselves be criticized by clerical bodies.

55. The Special Rapporteur was pleased to see first hand that Polish artists are able to engage in the debate about the role of the Catholic Church and its impact on human rights, including artists active in the fields of film and theatre, and that audiences are keenly interested in their work. However, she also notes that artists who do so risk facing threats, bans at the local level (as experienced in the case of the film *Kler*) and jeopardizing future funding for themselves and the institutions or productions with which they are associated. In one case, violence at a performance of the play *Kłątwa* resulted in the hospitalization of theatre workers.

E. Discrimination, equality and inclusion

1. Education for tolerance and diversity

56. The official commitment that arts education aims to emphasize cultural participation and that language support is available both to foreign children and to Poles returning to the country are very positive. Education for refugee children is also satisfactory, including summer language courses in refugee centres. Additionally, the Special Rapporteur salutes the extensive efforts made by the Government to foster language and cultural education for children in the Polish diaspora.

57. However, she is concerned that insufficient anti-discrimination education, including with regard to minorities, women, lesbian, gay, bisexual and transgender persons and persons with disabilities, is currently being offered in schools. She has the same concern with regard to sex education, which she understands is offered for only a few hours each year, and in particular regrets that deference is given in this regard to religious perspectives rather than scientific or human rights perspectives. At least one school offering gender equality education faced both backlash from the Church and demands to fire those involved, and subsequently had to withdraw the programme.

58. Not enough is being done to ensure that ethics classes are available as an alternative to religion classes in all schools, as even some officials acknowledge, and to counter the stigma felt by children whose parents choose the alternative over religion class, as is their right under Polish law. More must be done to counter cultural stereotypes that may inhibit choices made by girls and young women with regard to their subjects of study.

2. Situation of minorities

59. The Government has obligations to respect the cultural rights of religious minorities and non-religious persons and to ensure conditions for the expression of this diversity. Responsibilities in this field are shared among a number of departments across several ministries. Steps should be taken to ensure that this mainstreaming increases the efficiency of measures to guarantee non-discrimination and equality of treatment. Poland has the legal framework and mechanisms in place to efficiently address reported cases of discrimination,

to provide education for children belonging to minority groups in their mother tongue and about their own culture, to ensure equitable representation of minority groups in the media and, therefore, to foster an inclusive society where all citizens have equal opportunities to take part in cultural life. What seems to be missing is the willingness to implement those existing legal and institutional frameworks that would ensure adequate participation of minorities in political and public life at all levels and protection of their cultural resources and heritage.

60. It is the responsibility of the State to bring national and local laws and regulations in line with the international obligations of equal treatment and non-discrimination. This may sometimes require temporary special measures. For example, when the programme in Kashubian language and ethnology at the University of Gdańsk did not reach the required threshold of 25 enrolled students, an exception could have been considered allowing it to proceed with 21 students, rather than being cancelled.

61. Multiple sources indicated that expressions of hostility towards Muslims and migrants has proliferated in media discourse in recent years, reaching a particular high in 2015. During 2017 and 2018 alone, civil society organizations recorded more than 35 incidents of anti-Muslim hate speech and violence,¹⁵ leading to an environment in which some Muslims are nervous about displaying their identity publicly.

3. Cultural rights of women

62. In Poland, women's rights are at the heart of the quest for a culture of equality in accordance with international law. Women are very active in the cultural and educational sectors, including as directors of national cultural institutions. Polish women's employment rate is higher than the average across the European Union. The Special Rapporteur greatly appreciated the women's history tour of the Gdańsk shipyards, which discussed the role of women in movements for human rights during the communist regime. The role of women human rights defenders has been a critical component of this history, which needs to be more fully reflected, and their work needs to be strongly supported today as well, since they are key actors in the process of ensuring cultural rights.

63. The Special Rapporteur is concerned, however, about what are said to be religious and cultural narratives used to justify discrimination against women, such as a focus on women as primarily self-sacrificing mothers. In higher education, for example, she has heard the concern of some women academics that different retirement ages for women and men may harm the career prospects of women. Some within the Catholic Church hierarchy are propounding the view that advocating for gender equality, as required by international human rights standards, threatens Polish religious and cultural values and national identity.

64. Fundamentalist and anti-choice discourse during the debate related to changes in the abortion law reaffirmed stereotypical cultural attitudes towards women. It is essential for women's enjoyment of cultural rights without discrimination that these views and stereotypes be publicly challenged. The Special Rapporteur was pleased to hear of women's public activism, including in the "black protests", and by both religious women, including Catholics for Choice, and non-religious women, in this context. It is a matter of concern that women teachers in Katowice who posted pictures on their personal Facebook accounts wearing black shirts to express support for these demonstrations have faced disciplinary proceedings and pressure.

65. As United Nations experts have made clear in the past, sexual and reproductive rights are critical human rights and health-care issues, and essential for enabling women to access their economic, social and cultural rights on a basis of equality. The Special Rapporteur welcomes the Government's decision in 2016 to respect women's opposition and general public opinion and shelve the attempt to change the abortion law, as she believes that this remains essential for guaranteeing women's equal participation in cultural life.¹⁶ Similarly, comprehensive sexuality education, together with human rights education,

¹⁵ See www.nigdywiecej.org/en/our-news/177-articles-from-2019/4112-a-new-report-on-violence-against-muslims.

¹⁶ A/HRC/41/33/Add.2.

is indispensable for addressing the problem of gender-based violence. It is unacceptable that sexuality education be criminalized or equated with paedophilia.

66. The Special Rapporteur stresses the importance for the Government to ensure a comprehensive approach to combating gender-based violence against women in line with its regional and international law obligations¹⁷ and to support efforts to build a culture of equality, free from violence against women.

4. Cultural rights of lesbian, gay, bisexual and transgender persons

67. There is growing acceptance in Polish society of lesbian, gay, bisexual and transgender persons, for whom it is increasingly possible to hold open cultural expressions of their identity, including through growing numbers of pride and equality marches, which are important exercises of internationally guaranteed cultural rights and the right to freedom of assembly. All of this is very positive. The Special Rapporteur welcomes legal recognition of the need for protection from discrimination through, for example, case No. II KK333/17 concerning a printing company refusing to prepare materials for an organization advocating for the rights of lesbian, gay, bisexual and transgender persons.

68. The Special Rapporteur recognizes the use by some lesbian, gay, bisexual and transgender persons of a flag that combines the rainbow flag and the Polish eagle symbol as an exercise of cultural rights to express identity and inclusion. Hence, she regrets that this practice has sometimes been harshly criticized and that people carrying such a flag have reportedly faced questioning by law enforcement officers.

69. The Special Rapporteur remains concerned about the lack of specific legal protection for lesbian, gay, bisexual and transgender persons under Polish law, a gap that must be filled promptly. There are no specific policies and standards ensuring equal treatment and safety of lesbian, gay, bisexual and transgender persons in schools, both teachers and students. Many schools have denied the existence of lesbian, gay, bisexual and transgender students, who report experiencing homophobic behaviour not only from other students but also from teachers and educators, and in particular in the context of religion classes. This is unacceptable.

70. There are also no laws specifically prohibiting homophobic hate speech or hate crimes. Acts of hate and hate speech against lesbian, gay, bisexual and transgender persons and their cultural events continue. Sometimes the hate speech emanates from those in official positions, which is especially worrying. The Special Rapporteur was concerned that a high-level government official with responsibility in the equality area told her that his daughter would be “disturbed” if she were to see an equality march in the streets and suggested that its participants might be naked.

71. The Special Rapporteur was glad to learn that Lublin could hold its first equality march shortly after her visit, despite efforts from campaigners against the rights of lesbian, gay, bisexual and transgender persons to have the parade banned and to obstruct it. She commends the decision of the Court of Appeal to overrule the ban on the basis of freedom of assembly laws, and the measures taken by the city and the police forces to ensure the safety of those taking part in the march. Moreover, she is glad to see that a second march took place in 2019. However, she condemns the violence and aggressive behaviours of the group opposing the march and the fact that a regional and a local official have both used derogatory language to describe it and called for it to be banned.

5. Rights of persons with disabilities

72. The Special Rapporteur was pleased to see that creative measures were being taken to ensure accessibility of cultural sites for persons with disabilities, such as models of cultural heritage buildings that could be touched and that had been annotated in Braille for visually impaired persons in the cultural heritage site of the old city of Kraków.

73. A movement for the rights of persons with disabilities, led by them, is emerging in Poland as evidenced by the protest of persons with disabilities and their families held in the

¹⁷ Ibid., para. 87 (a).

Parliament in April and May 2018 asking for more State support to alleviate poverty among persons with disabilities. This is a very positive development and one that would merit more attention from the relevant authorities. The Special Rapporteur stresses the importance of persons with disabilities being fully recognized as equal participants in cultural, social and political life, and not as mere beneficiaries. In the framework of programmes such as “Accessible culture” and “Accessibility plus”, particular attention, including adequate funding, should be given to the rights of persons with disabilities to fully participate in cultural life and cultural spaces and to meaningfully contribute to shaping the cultural sphere.

74. At the time of the Special Rapporteur’s visit, a strategy for inclusion of persons with disabilities was being drafted. The Special Rapporteur encourages the Government to ensure wide participation of organizations of persons with disabilities in the decision-making, implementation and evaluation processes related to the strategy, and to consider inviting the Special Rapporteur on the rights of persons with disabilities for a country visit in that regard.

6. Hate speech and hate crimes

75. The Special Rapporteur was dismayed to learn of the spate of purported hate incidents and the reported rise in hate speech, including on the Internet, of increasing intensity, targeting, inter alia, members of minorities and their cultural sites. In some instances, persons in official positions have engaged in hate speech with impunity, creating an atmosphere of fear and exclusion for those not deemed to be “truly” Polish. Some of the impacts reported to the Special Rapporteur included persons belonging to minorities leaving their homes less frequently to avoid being targeted and feeling less comfortable displaying their identities publicly.

76. Events under investigation at the time of the visit include an October 2017 incident when a rock was thrown at the Muslim cultural centre in Warsaw, incidents at a Gdańsk synagogue and a break-in and related vandalism at a burial house located in the Jewish cemetery in Kalisz. In another incident, in which an anonymous antisemitic letter directed at the Polish Centre for Holocaust Research was left at the Centre’s door, calling its staff members “stupid dirty Jews” and “liars” and referring to historians Barbara Engelking and Jan Grabowski as “lying” and “crazed with hatred of Poland and Poles”, the Prosecutor declined to investigate. All such acts raise human rights concerns. The impact of antisemitic acts is magnified by the history of the Holocaust.

77. The Special Rapporteur was alarmed by the fact that, when she herself raised reports of such a “series of events” in a meeting with a highly placed official with responsibility for equality, she was told that she was “insulting the nation”. In every society, it is essential to have an open debate about reports of hate speech and hate incidents, including violence, and their impact on human rights, so as to appropriately document these incidents, prevent them in the future and punish perpetrators where appropriate and in accordance with international standards. Denial and defensiveness will not solve the problem.

78. Moreover, the Special Rapporteur calls on the authorities to investigate why their official statistics at the time of her visit appeared to show that such incidents were diminishing when civil society and representatives of targeted groups reported experiencing precisely the opposite trajectory in the same time frame. The Government must give serious consideration to the question of how to facilitate reporting. The Special Rapporteur notes that the Commissioner for Human Rights has indicated that only approximately 5 per cent of hate crimes are reported. Whatever the precise number of incidents, failure to acknowledge the concerns of citizens and take appropriate action to respond can only lead to a lack of social trust in the relevant authorities and institutions and to less reporting.

79. The Special Rapporteur visited the New Synagogue in Gdańsk, which had a large paving stone thrown through its window on Yom Kippur, 19 September 2018, narrowly missing women and children. She salutes the rapid and sensitive response by the late Mayor of Gdańsk and some local religious leaders to this incident, which is a model of local action, and the response of the central Government two days later. She looks forward to receiving an update on the results of the investigation into this incident.

80. The Special Rapporteur strongly condemns the assassination of the Mayor of Gdansk, Paweł Adamowicz, during a cultural event shortly after her visit, in January 2019, and calls for the alleged perpetrator to be brought to justice and for a full investigation of the reported role of hate speech in motivating this tragic killing, which shocked the nation and also represented an attack on its cultural life. She is concerned about reports of threats against the current Mayor. The Government of Poland must act now and with urgency to ensure that acts of political violence, including those motivated by extremist rhetoric, do not multiply.

81. For all the cases mentioned above, and as a matter of principle for all hate crimes, the Special Rapporteur urges that the findings and information be made available to the persons and organizations concerned as soon as possible, that the perpetrators be brought to justice in accordance with the law to deter any repetition and send a clear message about the unacceptability and gravity of such acts. The Criminal Code specifically provides for the investigation of hate crimes motivated by race, ethnicity, nationality, religion and political affiliation and the prosecution of those allegedly responsible. However, the Government does not seem to have developed an effective overall response to hate incidents. Whereas the engagement of civil society in countering hate speech and hate incidents is laudable and necessary, it is not an alternative to resolute government policy, as required by international human rights law, implemented in accordance with the framework developed by the Special Rapporteur on the promotion and protection of the right to freedom of expression.¹⁸

F. Participation in civic space and cultural life

82. The Special Rapporteur was pleased to note the widespread civic engagement with debates regarding law reform and the culture of the rule of law across Polish society, and salutes those taking part in it. She noted in particular the creative use of cultural resources, such as statues and monuments, and of T-shirts to raise awareness about constitutional rights protection and human rights education. She was, however, sorry to learn that at least one person faced dismissal from a State-owned company for wearing a T-shirt bearing the word “constitution” while not at work. While she shares the concern about the need to protect monuments, the Special Rapporteur also regrets that charges of “defiling the monuments” were brought against some of the persons responsible for these actions. She has received no information suggesting that monuments were damaged.

83. The Special Rapporteur received mixed reports regarding the space available for Polish civil society action, which is important for securing cultural rights. On the one hand, demonstrations are regularly organized by a variety of actors and the Special Rapporteur was told that protection granted to participants by police forces was sometimes good, including in the case of equality marches where participants sometimes felt safe. On the other hand, there were shocking reports about the failure of police forces to protect peaceful demonstrators against violent physical attacks and about abuses by the police forces themselves, as well as lack of legal remedies from the prosecutor’s office in cases of abuse. One worrying example concerns the reported intrusive body searches of female demonstrators arrested for trying to stop the logging of the forest of Białowieża, a World Heritage site.

84. The right to freedom of assembly is generally respected in law and in practice but, in recent years, protesters have increasingly risked surveillance, intimidation, physical attacks by counter protesters and sometimes even use of force by the authorities, arrest and prosecution for their activities.

85. In 2017, a law created the National Institute of Freedom, which was tasked with distributing public funding for non-governmental organizations, including money from the European Union. Many of those on the Institute’s council are appointed by the Council for Public Benefit Activity Work, which is chaired by a member of the Cabinet. Domestic and international critics of the law creating the Institute warned it could be used to muzzle

¹⁸ A/67/357.

criticism of the ruling party and to deny funding to projects that did not match the ruling party's perspective and priorities.

86. In terms of participation in cultural life and artistic freedoms, the Special Rapporteur commends the engagement of local governments in supporting cultural events in public spaces and artistic productions. She appreciates the work of civil society initiatives and public-private partnerships, such as the Villa Decius Association, to create spaces for artistic exchange. She was, however, concerned about reports of censorship of movies and plays, and recalls that censorship of cultural activities and artistic expression violate not only the right to freedom of artistic expression of those involved in the production, but also the rights of all to access and enjoy the creativity of others, to access a diversity of ideas and opinions and to take part in public debates about social controversies. Censorship hampers freedom of opinion and full democratic participation. If limits are deemed necessary to protect legitimate goals, in accordance with article 20 of the International Covenant on Civil and Political Rights, the authorities should rely on rating and classification procedures. These should be user-friendly and transparent.¹⁹

87. It is the responsibility of the State to ensure respect for a diversity of points of view and that real opportunities exist for those who embrace different views to freely exercise their human rights and fully take part in cultural life.

IV. Conclusions and recommendations

A. Conclusions

88. **The world can and should learn much from the rich and diverse culture of Poland and from its sophisticated cultural institutions and vibrant cultural life, with which the Special Rapporteur was deeply impressed. The cultural strength of Poland rests on the achievements of its diverse artists and cultural workers, the contributions of its cities and local areas, the participation of many different sectors of society and the creation of spaces for debates about social and historical questions.**

89. **However, all these achievements are currently being challenged by attempts at official cultural engineering aimed at narrowing the scope of cultural expression to reflect a monolithic vision of contemporary society and a simplistic and exclusionary version of Polish history. These trends undermine the enjoyment of human rights, including cultural rights, for all.**

90. **The Polish authorities must recommit to a vibrant and plural cultural life and take greater steps to ensure that all sectors of Polish society are included, including women, minorities, persons with disabilities and lesbian, gay, bisexual and transgender persons, without discrimination. Hate speech, intolerance and discriminatory attitudes must be combated with urgency to protect human rights and prevent future acts of violence. Safeguarding the separation of religion and State is vital for upholding cultural rights in Poland today.**

91. **The Special Rapporteur pays tribute to all those who engage vigorously in the defence of cultural rights today in Poland and hopes that they will receive full national and international support in their important work.**

B. Recommendations

92. **To improve the legislative and judicial framework for the protection of human rights, including cultural rights, the Government should:**

(a) **Adhere without delay to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights;**

¹⁹ A/HRC/23/34, paras. 25–39, on international standards on acceptable limitations of freedom of artistic expression, and paras. 57–64, on censorship and classification systems.

(b) Ratify and implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;

(c) Respect the independence of the Office of the Commissioner for Human Rights, recognize the importance of this mechanism for the promotion of cultural rights for all and provide it with adequate resources to effectively fulfil its mandate, in compliance with the Paris Principles;

(d) Institutionalize the process for implementing the recommendations of United Nations experts and mechanisms.

93. To fight against discrimination and develop a more inclusive society, the Government should:

(a) Clearly express condemnation of discriminatory ideas and acts and implement the related recommendations arising from the universal periodic review;²⁰

(b) Conduct awareness-raising and educational campaigns to promote respect for universal human rights and cultural diversity;

(c) Promote equality between men and women in private and public life; publicly challenge stereotypical ideas about women and efforts to degrade women and the pursuit of gender equality; and engage in regulatory monitoring and evaluation of media representations to ensure they do not spread sexist ideas;

(d) Respect and ensure the right to education for all without discrimination, in accordance with international standards; this implies a secular public school system with a non-sexist curriculum that promotes a culture of equality;

(e) Respect and ensure women's equal right to participate in cultural life without discrimination;

(f) Review the legal framework so as to enable same-sex couples to enter into civil unions and enjoy equality;

(g) Ensure the wide participation of organizations of persons with disabilities in the decision-making, implementation and evaluation processes related to the strategy for persons with disabilities and consider inviting the Special Rapporteur on the rights of persons with disabilities for a country visit.

94. To improve enjoyment of human rights related to the knowledge of history and ensure the right to access and enjoy cultural heritage, the Government should:

(a) Review the relevant legislative frameworks to ensure they fully respect academic freedoms, including the freedom to seek and impart information;

(b) Respect the artistic and scientific freedom of the directors and staff of cultural institutions and museum curators as well as the autonomy of universities and refrain from politicizing or exercising undue pressure on the content of their work;

(c) Support the work of those seeking to display a complex vision of history and of past human rights abuses and atrocities, foster open debates about historical events and respect the integration of this complexity in school history curricula and in museums, as important means of developing critical thinking and understanding and of shaping a tolerant and inclusive society;

(d) Encourage history teaching, at all levels, to foster critical thought and analytic learning and debate, stressing the complexity of history;

(e) Develop, as a matter of priority, an overall management plan for the Białowieża forest World Heritage site that places the protection of its cultural and environmental value and of the human rights related to heritage as its central objectives and implement the recommendations arising from the 2018 joint World Heritage Centre-International Union for Conservation of Nature mission.

²⁰ A/HRC/36/14, paras. 120.40, 120.45–120.49, 120.54–120.57, 120.60, 120.62 and 120.65.

95. To increase the realization of artistic freedom and the right to access and enjoy the arts and the creativity of others, as well as the right of everyone to take part in cultural life without discrimination, the Government should:

(a) Refrain from any efforts to mould the cultural sphere into a vehicle solely for promoting the ruling party's views and agenda, and afford equal space for diverse cultural voices;

(b) Abide by the obligation to protect artists and all persons participating in artistic production, creation and dissemination from violence by third parties, take measures to de-escalate tensions when they arise, ensure the rule of law and protect artistic freedom;

(c) Encourage and support various forms of financial support for artistic production to ensure diversity in cultural programming and independence in the creative process;

(d) Ensure the participation of representatives of independent associations of artists in decision-making related to art; the nomination or appointment of cultural administrators or directors of cultural institutions should be made on the basis of recognized expertise rather than political or other views;

(e) Fully support arts education, artistic creativity and the establishment of cultural institutions accessible to and inclusive of all;

(f) Ensure that directors of cultural institutions and other cultural workers do not face investigations, prosecutions or interrogations, or any other violations of their human rights, based on their legitimate work defending cultural rights, review any such ongoing cases and bring to a halt any such actions;

(g) Investigate all allegations of violations of the rights of cultural rights defenders and, where appropriate, hold perpetrators accountable.

96. To combat the rise of fundamentalism and extremism, the authorities should:

(a) In accordance with relevant international law, recognize and combat extremist and fundamentalist ideologies that promote violations of cultural rights;

(b) Condemn all acts of extremist or fundamentalist violence or hate speech and express solidarity with victims;

(c) Provide for and protect the separation of religion and State and guarantee freedom of religion or belief in accordance with international standards;

(d) Examine how and why fundamentalism and extremism take root and combat the root causes through, inter alia, the implementation of economic, social and cultural rights;

(e) Take effective steps to ensure that all national celebrations are marked in ways that include, rather than exclude, and that discrimination is not equated with patriotism;

(f) Carefully review the language of official publications and messaging addressed to all inhabitants of Poland with a view to using inclusive language and avoiding statements or formulations stressing homogeneity of Poles or undue distinctions between groups;

(g) Strengthen efforts to prevent and eradicate all acts of racist, xenophobic and homophobic violence and hate speeches, and effectively and urgently combat hate speech;

(h) Develop an effective overall response to hate crimes and adopt measures to make clear that hate speech and incitement to discrimination are not tolerated, including by facilitating civil suits by victims, thoroughly investigating all allegations that hate speech is inciting or has incited acts of violence and holding perpetrators accountable;

- (i) **Revise the Criminal Code to add disability, gender, gender identity and expression, sexual orientation and social or economic status on the list of prohibited grounds for hate crimes requiring investigation and prosecution;**
 - (j) **Take measures to protect historians, researchers, cultural professionals and museum staff from defamation and threats, including on the Internet.**
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