

SHADOW REPORT

Republic of Poland, 2006

*On the implementation of the Convention on the Elimination of all Forms of
Discrimination Against Women*

submitted to the UN CEDAW Committee

by the Federation for Women and Family Planning

NGO in SPECIAL Consultative Status

with the Economic and Social Council of the United Nations

endorsed by the following organizations:

Pro Femina Association

The PSF Women's Center Foundation

Women's Rights Center

La Strada Foundation

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This shadow report could not have been created without Polish women's NGOs' contribution. It is extensively based on the following reports:

Polish women in 2003, Women's Rights Center

Alternative report prepared by Polish women's NGOs for the Special Session of the Commission on the Status of Women BEIJING +10. The report was coordinated by the following persons/orgaznizations: Agnieszka Grzybek/OSKa, Małgorzata Tarasiewicz/NEWW, Sławomira Walczewska/eFKa

Gender Assessment of the Impact of EU Accession on the Status of Women in the Labor Market in Poland, Karat Coalition 2003, Lohman, K. & Seibert, A (ed.) (Chapter VII of this shadow report)

Sexual and reproductive health and rights. Independent report submitted to the United Nations Human Rights Committee, Federation for Women and Family Planning, 2004 (Chapter VIII)

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Appendix I: Analysis of the excerpts from the prime minister’s expose (19th July 2006) from human rights’ perspective done by women NGOs and attached to the letter to the prime minister requesting explanation about his approach to equality policy of government

Appendix II: Shadow Report on Trafficking in Women submitted by Stana Buchowska, national coordinator, La Strada Foundation against Trafficking in Women, Poland – Full text

EXECUTIVE SUMMARY

SHADOW REPORT

*On the implementation of the Convention on the Elimination
of all Forms of Discrimination Against Women*

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FOREWORD

In January 2007, the Republic of Poland will report on the implementation of the Convention on Elimination of All Forms of Discrimination Against Women for the first time since 1991.

There is a justified concern that the Polish government is not adequately devoted to gender equality issues and does not recognize the importance of eliminating discrimination. State authorities do not treat the obligations that stem from the ratification of the CEDAW with due seriousness. Furthermore, the Government has not implemented a number of concluding observations by UN Treaty Monitoring Bodies (two concluding observations by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights). Moreover, the National Action Plan for Women of 1997 – a response to the Beijing Platform for Action - was not implemented.

Although the eradication of discrimination based on sex, as well as improving the status of women lie within the scope of duties of state authorities, women's issues are not acknowledged on the national agenda.

Legal context

As far as national legal order is concerned, equality between men and women is guaranteed by the articles 32 and 33 of the Polish Constitution. However, they are only general provisions without specific laws to uphold them. There is an urgent need to develop special temporary measures aimed at accelerating *de facto* equality between men and women, like quota system.

Women can fully use gender equality legislation in Poland only if the appropriate measures combating discrimination and institutional mechanisms for executing those measures are introduced. Those measures and means of execution were included in the draft of Gender Equality Act that has been discussed but was eventually rejected by the former Parliament.

Political context

Gender equality has not constituted a priority for any Polish government administration for the last one and one half decades. The present government elected in 2005 presents an ultra-right wing, conservative orientation and focuses on promoting so-called **pro-family policies**, which are openly against equality policies because they view them as anti-family. The newly elected government marks a considerable change in perception of gender equality in Poland. There is a justified apprehension among women's NGOs that gender issues will be marginalized and women's advancement jeopardized.

One of the first actions of the new administration was the **dismissal of Government Plenipotentiary for Equal Status of Women and Men**. The new office of Plenipotentiary for Women, Family and Counteracting Discrimination has been established instead, but it doesn't continue the mission of the previous office. The extension of the mandate to issues of family and discrimination in general has led to the weakening of the efforts to eradicate specific discrimination that women experience.

Currently, the vice prime minister's (Roman Giertych, leader of the League of Polish Families -LPR) **proposal to totally ban abortion** is discussed in the Parliament. LPR's legislative draft relates to the article 38 of the constitution that ensures "*the legal protection of the life of every human being*". The idea is to incorporate the phrase "*from the moment of conception*" in that article. This would mean the total ban on abortion in Poland, even if the life of women is threatened or the pregnancy results from a crime.

Furthermore, the Minister of Health established the Ministerial Body to promote natural family planning since modern forms of contraception are seen as dangerous for women's health and against religious teachings. There is also a parliamentary project of **limiting access to hormonal**

contraceptives by law. For example, the parliamentarians now discuss the need to mark hormonal pills with the note “harms your health”, as it is with cigarettes.

These are only a few examples to illustrate the current political climate and threats to women’s rights in the near future. Present decision-makers will remain in office for nearly three years. They may introduce many changes which will negatively affect the situation of women in Poland.

RECOMMENDATIONS:

- **Adopt a Gender Equality Act that would empower women to exercise their rights**
- Reestablish office of Plenipotentiary for Equal Status of Women and Men
- Adopt temporary special measures to achieve gender equality such as parity democracy, a quota system for balanced participation of women and men in governmental bodies, official representation or decision making bodies in State enterprises, gender parity in politics, etc.
- Collaborate with and support women's NGOs, which have always played a very important role in advancing women's equality
- **Introduce gender sensitive text books into the educational system, raise awareness and promote educational campaigns to eliminate harmful gender stereotype**

GENDER STEREOTYPES: Article 5

PROBLEMATIC AREAS:

- Highly influential position of the Roman Catholic Church, which puts pressure on policy makers
- Presence of particularly stereotypical images of women in the public media

Church’s influence

The church’s teachings considerably affect state policies. The Roman Catholic Church in Poland strongly imposes its perspective on gender roles, and politicians remain under the church’s pressure. Recently, a very radical, fundamentalist community, *Family of Radio Mary*, has become especially active. Some prominent politicians, including the Prime Minister and his constituents, communicate with this group. *Family of Radio Mary* has been officially rebuked by the Vatican for its interference with politics.

Such a religious background hinders the promotion of the gender equality perspective. The goal to combat lingering sex stereotypes triggers strong opposition. There are a lot of prejudices not only against women but also the women’s movement itself. NGOs’ efforts to educate and inform the public are not supported by state authorities and sometimes the state even hinders the women’s movement. On the other hand, the opinion polls show that society, although traditional, is more open and progressive than politicians. For example, 70% of the population was against introducing the restrictive anti-abortion law in 1993. 89% of society supports sex education in schools. However, sex education has not been introduced. It seems that politicians aim to satisfy the Church rather than society.

Media

Public media is a powerful tool of social education and can be actively used to fight discrimination. Unfortunately, it seems that the content of programmes perpetuates stereotypes instead of eradicating them. **Women are underrepresented in mass media**, especially as excerpts and participants of social debate. They are more visible in talk shows, TV series and advertising.

The roles of women and men differ significantly and there is a strict division of topics each gender covers. An overwhelming majority of female newscasters and journalists report on fashion, health and social issues as well as art and culture. The unquestionable domain of men is economy, politics, finances, taxes, etc. Essentially, **women deal with less prestigious topics.**

Another striking problem is that **journalists are not educated in issues of equality**. They demonstrate blatant gender-insensitivity and while reporting on issues of gender equality, they use patronizing language and attitudes to reinforce the issue as unimportant.

TV Commercials

Among visions of women encountered in commercials the most common is a **traditional mother and wife**. Life of a woman in commercial is spent to please her husband, take care of the children and **doing household chores** like laundry, cleaning, cooking or removing stains. A woman lives at home and if she works it is only a whim.

Another type dominating commercials is a **”modern woman”**, **attractive and focused on her looks**. She knows brands and efficiently maneuvers in the world of outfits and cosmetics. She gets what she wants and the biggest award is a man. Commercials targeting men (cigarettes, cosmetics, cars) use sexual allusions.

Essentially, women are underrepresented in the role of an employee, expert, as well as on the top positions. They appear in these roles only in **less than 10% of all presentations**

RECOMMENDATIONS:

- Introduce a ban to prevent allocating public funds for discriminatory media programs
- Introduce a legal ban on media demeaning to women, including sexist commercials
- Strive to proportionally represent men and women in all institutions monitoring public media
- Create a monitoring body that would evaluate programmes with regards to sexual stereotypes and promote equality of the sexes
- Introduce workshops on gender equality for journalism students

VIOLENCE AGAINST WOMEN: General recommendation 19

PROBLEMATICAL AREAS:

- Perception of domestic violence as a gender neutral phenomenon strongly linked to alcoholism;
- Lack of coherency and continuity of the governmental policy to prevent and combat domestic violence;
- Long lasting criminal proceedings and too passive approach of law enforcement in dealing with domestic violence cases and collecting evidence;
- High percentage of dismissal of domestic violence cases at the prosecution level;
- Lack of legal measures allowing police to issue barring order (restraining order);
- Ineffective and long lasting procedure for issuing restraining order by criminal court and lack of legal possibility for applying for civil protection or inter injunction order;
- Ineffective sentencing (90% suspended sentences and lack of adequate reaction in cases of breaching the law by perpetrators).
- Strong impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
- Lack of consistent and comprehensive system to prevent and combat domestic violence based on multi agency cooperation and perception of domestic violence in broader context of unequal position of women in the family and in the society;
- Insufficient and imprecise system of collecting data for domestic violence interventions and lack of data of refusals to initiate criminal procedure as well as accurate gender specific data on killings based on domestic violence;
- Insufficient number of services, especially specialized refuges for women and children victims of domestic violence;
- Limited access to free forensic examinations;
- Abuse of mediation procedure for domestic violence cases

Although **domestic violence is among the most frequently committed crimes in Poland**, Polish government's policy on the domestic violence lacks continuity and coherency. Moreover, domestic violence is not still appropriately recognized as a **serious social problem that requires to be addressed from different perspectives including inequality between women and men**.

Services

Poland still have no sufficient number of specialized places where women can seek refuge or assistance. The number of shelters is far too low to meet the needs - **in some regions of Poland, there are no shelters at all**.

The new law requires local government to set up specialized centers providing assistance to victims of violence and **Crisis Intervention Centers**. It is not clear if those centers will specialize only in domestic violence cases or they will continue policy of those existing in some of the regions, which play more general role in assisting people in different kind of crisis situations.

The law and its application

Although police and the prosecutors are legally obligated to initiate criminal proceedings when domestic violence may have been committed, **in practice they are prosecuted only on victim's request and when official well documented complain is pressed**.

Despite legal possibility to keep perpetrator under arrest for 48 hours, if his presence endangers the victim's life or health; or petition a court to issue a pretrial detention order, police and prosecutors hardly ever use it. **The only measures used by the police to move the perpetrator from the house are so-called "sobering-up detention centers"** when he is drunk. This is not an effective measure because the next morning perpetrator is free and the bill for spending a night in this place has to be paid by the whole family.

Long lasting prosecution procedure prevent women from filing a case. There are cases when pre-trial proceedings and waiting for the trial last for two up to three years. In the meantime, victims and perpetrators often live together under the same roof, causing victims to be vulnerable to further violence and other forms of pressure from the perpetrator. **As concerns protection of the victim from further violence new law does not provides adequate measures**.

Problems with Act on Prevention of Domestic Violence enacted in 2005

The *Act on Prevention of Domestic Violence* enacted in 2005 **did not filled the biggest gap in the Polish law that is protection of victims**. The legal possibility to protect victim is still very weak and neither police nor court are equipped in adequate legal measures. Police does not have an authority to issue a barring or restraining order for immediate eviction of the perpetrator from the house. **Restraining order can be issued only by the court and under certain conditions**.

One of the basic problems is that the Act by no means refers to inequality between women and men and to the fact that domestic violence is not gender neutral phenomenon. Due to the generalization of the Act, **specific problems of female victims cannot be addressed adequately**. One of these problems is the victim's **economic dependence on the perpetrator**, that hinders the ability to leave abusive relationship. This problem must be recognized and addressed in cooperation with employment agencies and employers to effectively help women.

The other issue which is missing in the law is **housing which is crucial for women who leave in their partner or partner's parents house**. Unfortunately, no steps have been taken to address those issues. **Missing measures in the law are also civil remedies: protection or injunction order**.

The other problem with prosecution of domestic violence is that single acts of violence are not publicly prosecuted. Violence against women is publicly prosecuted only when it occurs repeatedly. Single acts of violence may be prosecuted under general provisions prohibiting the use of violence against any person.

Forensic examination

Very often women are required by police to deliver medical certificate preferably of forensic examination to initiate investigation. Although the Constitution guarantees free medical services, victims often have to pay medical experts for forensic examination. Other doctors often refuse to write medical statement claiming that they are not specialist and by these means forcing women to visit and pay for private forensic examination. The problem is that victims are unaware that the law guarantees them a free of charge medical diagnosis and forensic examination in case it is required by police or prosecutor. The every day practice should be that the first contact doctor is able to deliver medical diagnosis in case of domestic violence and forensic examination should be used only in more difficult and complicated cases.

RECOMMENDATIONS:

- Amend law on domestic violence to make it more comprehensive and effective by including regulations concerning:
 - police power to issue barring (restraining) order ;
 - civil protection order;
 - gender based analysis of domestic violence roots and as a result need to address the issue of domestic violence in broader context of inequality between women and men;
 - housing;
 - employment and financial assistance to women
- Introduce regular monitoring of the implementation of the existing law with the focus on the impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
- Incorporate domestic violence issues seen in the broader context of gender based discrimination and unequal position of women into routine training of the police and other criminal and family justice professionals.
- Secure easy access to assistance for victims of domestic violence, including legal counseling and medical help;
- Improve system of collecting statistic to make it more comprehensive and gender specific;
- Implement pro active approach in cases of domestic violence interventions;
- Prosecute perpetrators of domestic violence without a formal complaint from the victim;
- Enable the victims' participation in the parole procedure;
- Address impact on gender based stereotypes and prejudices on criminal proceedings and court judgments in domestic violence cases.
- Mediation procedure should not be applied for domestic violence cases.

RAPE

PROBLEMATICAL AREAS:

- order of initiating prosecution that requires the **victim to press charges**. Shame and fear of revenge often prevent women from pressing charges;
- Legal definition of rape which requires use or threat of violence in fact often reverse focus from perpetrator to the victim behavior;
- rape might be questioned when there is no sign of victim resistance or victim behave improperly
- Long lasting and unfriendly legal procedure;
- victim have to testify many times;
- Low punishment for rapists;
- Strong impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
- Insufficient and imprecise system of collecting statistics for rape cases including data of refusals to initiate criminal procedure;
- Lack of specialized psychological and counseling services for victims

RECOMMENDATIONS:

- Amend the law on rape:
 - rape should be the crime publicly prosecuted (ex officio);
 - definition of rape should be changed (lack of consent should constitute a crime);
 - object of legal protection should be changed (rape crime against freedom not against sexual freedom and morality)
- Examine implementation of the law as concerns sentencing;
- Secure easy access to assistance for victims including psychological, legal counseling and medical help;
- Improve system of collecting statistic to make it more comprehensive and reflect not only gender but also relationship between victim and perpetrator.
- Address impact on gender based stereotypes and prejudices on criminal proceedings and court judgments.

TRAFFICKING IN WOMEN: Article 6

PROBLEMATIC AREAS:

- Inferior economical position of women as a factor conducive to trafficking
- Insufficient cooperation between different stakeholders: government, NGOs and other institutions
- Lack of comprehensive research and lack of reliable data
- Lack of qualified staff, especially law enforcements
- Low awareness of the issue of trafficking among average people, police officers, border guard officers, prosecutors and judges
- Lack of definition of the trafficking in the Penal Code
- Lack of effective measures for victim protection

RECOMMENDATIONS:

- to establish an independent office of National Rapporteur on trafficking in persons

Awareness raising:

- a big need to raise awareness on the trafficking for forced labour and other form of exploitation of migrant labour work whether it is a case of Polish migrant works abroad or migrants coming to Poland as a country of destination.

Legal framework:

- incorporation of the definition from the Palermo Protocol to be incorporated into a special vocabulary that is a supplement to the Polish Penal Code.
- to ensure that legal provisions for migrant victims of trafficking in Alien law are implemented in practice
- to ensure that anti trafficking procedures are shared and spread out among professionals who deal with the trafficking cases in practice
- to ensure that identification procedures are implemented in practice of the law enforcement work
- to activate representative of judiciary to became more aware on current situation of trafficking and late anti trafficking developments in the country and CEE region

Victim/witness protection

- to enhance program of victim/witness support also to domestic (Polish) victims who are returning back to Poland as a home country and to all trafficked persons

WOMEN IN POLITICAL AND PUBLIC LIFE: Article 7

PROBLEMATIC AREAS:

- Women are underrepresented in political elections. On average they amount to 15 % of the electoral lists and usually hold lower positions
- Women and women's agenda are invisible in electoral campaigns
- Few women hold top governmental and other leadership positions

After the election in 2005 **women account for 14% of all members** of the higher House of Parliament (*Senat*). This number indicates the decrease of 9 points in comparison with previous cadency (23%). **Presently, the positions of president and vice-presidents of the Polish Senat are hold exclusively by men.** The proportion of women in the lower House of Parliament (*Seym*) is far from satisfactory as well. There are 94 women, that is 20% of all MPs, in Seym.

Most of the difficulties to increase the representation of women in Parliament are in the political parties' policies, their **lack of concern for women's issues** and electoral law itself. Political fractions are responsible for selecting candidates and decide their place on the list of prospective candidates. The candidate's **position on the electoral list strongly influences her/his chances in the election.** There is no unambiguous selection criteria for placing candidates on the lists that political parties use. Rather, there are **numerous behind the scenes mechanisms** that are unavailable to voters which influence the final order of the candidates.

The common practice of Polish political parties is to **give precedence to male candidates.** Women constitute a vast minority, only **several percent, on the electoral lists in the reported period 1990-2002.**

Furthermore, women are **strikingly underrepresented in electoral campaigns.** Political parties do not allot to women much of the available airtime. The study indicates that there are significant differences in topics female and male candidates address. Subjects "appropriate" for women appeared to be health care and education, while most men addressed the economy, finances, taxes, etc.

There are some top positions in the governmental offices that have never been held by women. Some of these include: Minister of Agriculture and Rural Development, Minister of Transport and Construction, Minister of Interior and Administration and Minister of Culture. Furthermore, there **was not any woman at the position of the President of Polish Seym.** Lack of women at the top positions of the Parliament's structures reflects direct discrimination. In fact, **women in the Parliament are better educated than men who are MPs.**

The problem of low representation of women in political life resembles a vicious circle: lack of proper legislation results in the low representation of women in politics and by these means diminish the chance to adopt special measures to boost women's participation.

RECOMMENDATIONS:

- Adopt a temporary quota system for balanced participation of women and men in politics and other positions of power
- Adopt pro-active policies promoting political participation of women

EDUCATION: Article 10

PROBLEMATIC AREAS:

- Very limited access for women to police and military academies
- Gender prejudices in school textbooks
- Lack of education about women's contributions to human civilization in school curriculum
- Gender Studies not commonly available at universities
- Lack of gender issues in academic research
- 'Glass ceiling effect' in academic careers

Women have shorter academic careers due to the discriminatory retirement system

In contemporary Poland, access to police and military schools for women is still limited, and **sometimes those institutions do not accept female candidates at all.**

Important area which generates inequality is school **textbooks**, especially those for "Preparation for Family life". They present Catholic point of view on sexuality and **encourage traditional model of the family. The role of mother is being a housewife and father is the breadwinner.** Girls have no ambitious goals, they only wish for giving others love and care and their dreams are all about love and family. Boys aim at professional careers, family and love are next. For girls getting married and motherhood are priorities. **Women are not presented as having other objectives than family.** Men are more stable emotionally, they have to take care of women and supervise them as **women are not capable of making their own decisions.**

Only a few Polish universities have established **Gender/Women's Studies** departments but their **not subsidized from the state budget.** Most often, they function on the basis on donations and foundations. Moreover, many teachers devote their time on a voluntary basis.

Another problem is the **lack of public system of supporting research on women and gender issues.**

The employment of women in education reflects a prototypical glass ceiling effect. Essentially, the rule of the academic staff pyramid is the higher the position, the fewer women there are to be found there. Women account for a majority of teachers in primary schools, but primary level teachers are among the worst paid groups on the Polish labor market. This is consistent with the general pattern of **pauperization of women.**

Another problematic issue is the right of women employed in research institutes in positions below the rank of professor (i.e. lecturers, assistants etc.) to retire at sixty, five years before men in similar positions. Initially, this regulation was thought to be a privilege of choice, but in practice it does not work this way. No matter what a woman's preference is, she **will most likely be forced by her employer to retire, disturbing her scientific career.**

RECOMMENDATIONS:

- Evaluate school textbooks from gender sensitive perspective
- Abolish limitations on women in military and police academies
- Establish gender studies departments in every university
- Equalize the retirement age of women and men

DISCRIMINATION AGAINST WOMEN IN THE LABOR MARKET: Article 11

PROBLEMATIC AREAS:

- Women with lower education are pushed outside the labor force and work in the black market economy
- Lack of social support for single mothers and their poor situation
- Glass ceiling effect; many educated women work in positions below their qualifications
- Only 2% of the most prestigious managerial positions are held by women
- Average wage gap is as high as 22%
- Women more vulnerable to unemployment than men
- Men have, on average, 30 – 40% higher retirement pensions than women
- Limited access to childcare system

Although the recently revised Labor Code introduced some positive anti-discriminatory provisions, it **was not followed by regulatory provisions.**

In the period from 1992 until 2002, the **percentage of economically active women with lower levels of education decreased** from 32,9 to 19,2. Essentially, those women were pushed outside the labor market and work in the black market economy, where the Labor Code cannot protect them. This has contributed to the feminization of poverty. **71% of women, in comparison with 56% of men, earn below the national average of 580 EUR.**

Feminized professions such as nurses, primary-level teachers, administrators and janitors are among the worst paid jobs. Moreover, **women tend to be jobless for longer than men**, even forever in case of those who are in their fifties or even forties. **Unemployment** mainly affects women, especially **those between the ages of 20 and 24** as well as **those between the ages of 50 and 54**. In 2002, the unemployment rate among women between the ages of 20 and 24 was **41,9%**. Unemployment among women between the ages of 50 and 54 is lower than 41,9% but especially problematic. Not only are women in this age group discriminated against based on their gender but also because of their age. Finding a job is nearly impossible.

Moreover, they encounter barriers during recruitment that men do not have to face and that are related to their marital status and family planning. Secondly, women more often than men are single parents, so the **limited access to crèches, kindergartens and school full-time faculties is mainly women's problem.** *The State Alimony Fund* that was the only support for those women who had problems with receiving alimony from fathers was closed down in 2004. Nowadays, **single parents families are totally out of focus of social policy**, and they appear in the public discourse in the context of pathology.

Statistical data regarding glass-ceiling effect presented in the governmental report are inaccurate. The government report states that 38% of people in managerial positions are women. However, NGOs found this statistic to be untrue since it includes women in non-managerial professions as well. **NGO reports indicate that only 2% of women hold high-ranking professional positions.**

The biggest observed **wage gap** concerns women with jobs in higher education and at the top positions. **The wage gap amounts to 31,6 %.**

Another area of discrimination against women is **retirement payments**. In Poland, women can retire at 60 while men retire at 65. Therefore, **men's pensions are 30-40% higher than women's pensions** because men's contribution period is five years longer.

No policies specifically targeting the most disadvantaged women in the labor market have been developed. What also seems alarming is that the **government does not analyze the budget from a gendered perspective.**

RECOMMENDATIONS:

- Organize trainings for women who discontinued their education to help them reenter the labor market. Trainings should be affordable, accessible and include high tech skills
- Introduce gender budgeting citywide and nationwide. This will help establish the facts and enable the investigation of how public funds are spent according to the needs of men and women. Gender budgeting should apply to European funds as well
- Develop policies specifically targeting the most disadvantaged women in the labor market and create centers which respond to the realities and needs of poor women, women with low levels of education and skills, women from ethnic minorities, and women otherwise marginalized in order to facilitate their reintegration into the formal labor market.
- Introduce monitoring mechanisms and other measures ensuring implementation of legislative changes in the area of gender justice. This can be achieved through co-operation with women's NGOs and adoption of the Equal Status of Women and Men Act, which will guarantee the permanency of the National Women's Machinery
- Establish gender units in the Ministry of Economy, Labor and Social Policy and the Ministry of Finances
- Introduce special measures to tackle the gender pay gap, including improving wages in feminized professions.
- Develop high quality, geographically and financially accessible childcare services, including nurseries, kindergartens and before and after-school care

WOMEN'S HEALTH PROBLEMS: Article 12

PROBLEMATIC AREAS:

- Lack of compulsory and comprehensive sexuality education in school curriculum
- Lack of family planning counseling services
- Limited access to modern contraceptives due to social and economic barriers
- Ban on sterilization
- Restrictive anti-abortion law

Sexual and reproductive health and rights in Poland are blatantly violated. The anti-abortion law contributes to the development of the abortion underground. Already limited access to modern contraception due to social and economic barriers is planned to be even more restricted by law. Limited access to safe and legal termination of pregnancy has been indicated in the concluding observations of the UN Treaty Monitoring Bodies numerous times.

Teenage women are especially affected by the lack of adequate sexuality education due to the threat of premature pregnancy, which constitutes up to 7% of all births in Poland, and a higher risk of contracting sexually transmitted infections (STIs), including HIV/AIDS.

Contraception

The usage of modern contraception is relatively low. Over 45% of Polish women, who declare to protect themselves against pregnancy, **depend on natural methods** of family planning that are not really acknowledged as reliable contraception. 36,9% of women depend on condoms, making them the most commonly used form of modern contraception. Condoms are widely available but fairly expensive. There are no special programs to promote condom usage among youth or to make them more financially accessible.

One quarter of Polish women use hormonal contraception that **require a prescription**. However, the **primary health care system does not reimburse** all doctors for providing contraceptive counseling. Therefore, some regional branches of the National Health Fund simply do not provide those services.

Moreover, many doctors refer to the **Conscience Clause** to avoid prescribing hormonal contraception. This provision is overused by doctors and cited as the reason doctors refuse to prescribe contraceptives or “morning-after” pills. In order to avoid these difficulties, women must visit gynecologists in private clinics. Going to private clinics is significantly more expensive and especially prohibitive for rural women and adolescent girls.

Another barrier in access to modern contraception is of economic nature. Hormonal pills and condoms are not subsidized from the state budget. In 2006, the Minister of Health established a **Ministerial Task Force to promote natural family planning**, which clearly shows where the priorities of the present government are.

Access to safe abortion services

Unsafe abortion poses a major threat to women’s health in Poland. NGOs are monitoring how the anti-abortion law affects women. They report that Polish restrictive law did not eliminate and probably did not diminish the phenomenon of abortion. **Illegal terminations are still common**. The scale of the phenomenon can be estimated at between **80,000 and 200,000 abortions per year**.

The anti-abortion law is much stricter *de facto* than it is *de jure*. Women who are entitled to legal abortion under the Act are frequently denied the termination.

In most cases, **doctors refuse to provide the certificate required for a legal abortion**, even when there are genuine grounds for issuing the certificate. There are **no guidelines as to what constitutes a threat to a woman’s health** or safety and it appears that some doctors discount any threat to a woman’s health as long as she is likely to survive delivery. Currently, the European Court of Human Rights in Strasbourg is examining the case of Alicja Tysiac, a woman who was denied her right to legal termination of pregnancy, which resulted in the severe damage of her eyesight. Tysiac’s case is not an exception.

The **major obstacle in obtaining an abortion is the aforementioned Conscience Clause**, which can be interpreted in any way. There is no formal interpretation of this regulation, but there is pressure from the church and indolence of the authorities.

In conclusion, restrictive anti-abortion law remains one of the strongest spheres of discrimination against women. There is a clear link between the reproductive rights of women and their situation in the labor market. Women who cannot decide freely on if they will have children, when they will have them and how many children they will have are severely disadvantaged. Their economic choices and employment opportunities are especially restricted. Employers tend to treat women as “risky” workers due to their uncontrollable fertility. As a result, they offer women less secure employment contracts than they offer male workers, or they simply give the job to a man.

RECOMMENDATIONS:

- Implement comprehensive sexuality education programme in school curriculum
- Implement national policy on sexual rights and sexual health in cooperation with NGOs. Educate and inform the public on contraceptives
- Introduce state programs promoting and making accessible all modern forms of family planning
- Liberalize the restrictive anti-abortion law to make it consistent with society’s expectations as polls indicate
- Monitor how the Conscience Clause is used by medical staff and penalize ungrounded delays in performing legal abortions
- Establish legal mechanisms and procedures thanks to which women who are denied reproductive health services can file complaints

RURAL WOMEN: Article 14

PROBLEMATIC AREAS:

- Lack of policies addressing rural women
- Low representation of women in local government authorities
- Rural women face new challenges resulting from the need to lessen the extent they depend on agriculture and to search for other options of economic activity that will provide decent income for the whole family
- The work on farm and household hinder rural women's professional careers
- Limited access to education
- Limited access to information and facilities in general
- Traditional model of family that prevails in rural areas makes women more vulnerable for stereotyping high unemployment rate (32%) among those rural women who do not own farm.

RECOMMENDATIONS:

There is a need of the State support to improve the situation of rural women. The Government should invest not only in technical infrastructure (sewerage, gas and water supplies, dumping grounds etc.) which is still important, but also in human resources, namely:

- to organize trainings, courses etc. to create a possibility for development for rural women
- to undertake actions to boost self-esteem of rural women and change their passive behavior in order to encourage them to initiate economical and enterprising actions
- to promote the participation of rural women in social life (for instance increase their participation in non-governmental sector, volunteer work etc.)
- to facilitate the access to the system of education (educational establishments should be geographically accessible, to guarantee trained personnel in educational establishments, to increase the access to internet). These actions will make it possible to implement new forms of working for rural women.
- to improve the access to health care services in order to advance pro-health actions on countryside to create modern network of shopping malls and services in order to improve life conditions

D) INTRODUCTION

In January 2007, the Republic of Poland will report on the implementation of the Convention on Elimination of All Forms of Discrimination Against Women at the 37th Session of the CEDAW Committee. The Polish government's official report, comprising fourth, fifth and sixth periodical reports, covers the period from 1990 until 2002. This shadow report has been submitted simultaneously with the official one for several reasons.

Firstly, there is a justified concern that the Polish government is not adequately devoted to gender equality issues and does not recognize the importance of eliminating discrimination. This is reflected, *inter alia*, in the fact that the government did not report to the CEDAW Committee for 16 years. The periodic report from 1990 until 2002 was submitted in 2004, during which time Poland had the office of Plenipotentiary for Equal Status of Women and Men. This office has since been removed due to 2005 parliamentary election results, and substituted with a new office which formally continues the mission of the former equality office, but in practice focuses only on family issues. The change of the office's focus and its move from the Prime Minister's Office into the Ministry of Labor reflects significant changes in the country's institutional framework related to gender equality.

Secondly, as experts in the field of women's issues, NGOs are determined to present a realistic picture of discrimination against women in Poland by supplementing official documents.

Finally, this shadow report aims at identifying the most vital issues regarding the status of women in Poland. This report pinpoints women's problems and areas of discrimination that aren't properly recognized and managed by State authorities. However, this NGO report does not attempt to cover all the problems of discrimination against women in Poland.

The most crucial areas of discrimination against women in the Republic of Poland:

- Gender stereotypes which are promoted by the official pro-family policy
- Lack of a special office to monitor the government's actions from the gender equality perspective. This is due to the dismissal of Plenipotentiary for Equal Status of Women and Men
- Lack of gender mainstreaming/women's advancement policies
- Lack of temporary special measures aimed at accelerating *de facto* equality between men and women
- Domestic violence, which is one of the most often committed crime in Poland but still is not handled by the government with due seriousness
- Low representation of women in public life
- Discrimination of women in the labor market
- Denial of sexual and reproductive health and rights of women and girls, including restrictive anti-abortion law, limited access to family planning and lack of sexuality education
- Ineffective policy aimed to end trafficking in women
- Lack of policies addressing rural women's discrimination

More elaborated coverage of the above-mentioned issues is to be found in each chapter of this shadow report.

Legal Context

Although equality between men and women before the law is guaranteed by the articles 32 and 33 of the Polish Constitution, they are only general provisions without specific laws to uphold them. There is a need for more concrete regulations to implement laws that uphold the Constitution as the Constitution has no significant impact on social attitudes and practice.

The most important issue is the lack of appropriate tools for women to execute their rights. The unsatisfactory quality of participatory democracy combined with neither strong nor well developed civil society results in a legal system which does not address sufficiently discrimination based on sex.

Although the Polish Labor Code was improved in January 2002 to conform to EU standards, it remains ineffective in eliminating discrimination. This issue is elaborated in part VI of this shadow report.

In summation, women can fully use gender equality legislation in Poland only if the appropriate measures combating discrimination and institutional mechanisms for executing those measures are introduced. Those measures and means of execution were included in the draft of Gender Equality Act that has been discussed but was eventually rejected by the former Parliament.

RECOMMENDATIONS:

- Adopt a Gender Equality Act that would empower women to exercise their rights
- Reestablish office of Plenipotentiary for Equal Status of Women and Men
- Adopt temporary special measures to achieve gender equality such as parity democracy, a quota system for balanced participation of women and men in governmental bodies, official representation or decision making bodies in State enterprises, gender parity in politics, etc.
- Collaborate with and support women's NGOs, which have always played a very important role in advancing women's equality
- Introduce gender sensitive text books into the educational system, raise awareness and promote educational campaigns to eliminate harmful gender stereotypes

It has to be emphasized that the Polish government does not treat international obligations with due seriousness. This can be illustrated by the fact that the Government has not implemented a number of concluding observations by UN Treaty Monitoring Bodies (two concluding observations by the Human Rights Committee and the Committee on Economic, Social and Cultural Rights). Moreover, the National Action Plan for Women of 1997 – a response to the Beijing Platform for Action - was not implemented.

QUESTIONS to the Polish Delegation:

- 1) Why was the office of the Plenipotentiary for Equal Status of Women and Men dismissed?
- 2) Does the Government plan to propose any acts promoting gender equality?

Political Context

Gender equality has not constituted a priority for any Polish government administration for the last one and one half decades. The government shifts to the opposite of the current

government's political ideology at each election. For example, if the current government is more liberal, the next government will be more conservative, and the following government will be more liberal. This integral lack of continuity does not help to promote and sustain equality policies. Generally, leftist governments, even if they declare their support for equality policies, have never shown sufficient political will to implement them or combat gender discrimination. Right wing governments focus on promoting so-called pro-family policies, which are openly against equality policies because they view them as anti-family.

Since November 2005, Poland has been ruled by twin brothers – Lech Kaczynski, the president, and Jaroslaw Kaczynski, the prime minister. Both have identical political backgrounds and are affiliated with the Law and Justice (PiS) political party. They present ultra right-wing, conservative orientation. Both admit they are against liberalization of the restrictive anti-abortion law and legalization of same-sex marriages. They officially declare pro-family policy, which promotes traditional gender roles. The newly elected government marks a considerable change in perception of gender equality in Poland. There is a justified apprehension among women's NGOs that gender issues will be marginalized and women's advancement jeopardized. One of the first actions of the new administration was the dismissal of Government Plenipotentiary for Equal Status of Women and Men.

In Poland, gender – sensitive and disaggregated by sex data are not gathered on the systematic basis. For instance, the Ministry of Labour and Social Policy presents only total statistics of employment and unemployment that hinders making comparisons between sexes. Furthermore, no actions are undertaken by the policy – makers to obtain a realistic and reliable picture of women's status in Poland. For instance, researches on women do not receive financial support. Actually, women NGOs play a key role in investigating the situation of women in Poland. Nongovernmental organizations and individuals prepare appropriate reports, issue relevant publications and made their own researches.

In the progressive circle's opinion, the current political coalition in Poland is quite alarming. PiS established the current coalition with the populist Self-Defense (Samoobrona), and League of Polish Families (LPR). LPR is a fundamentalist, nationalistic and xenophobic political party. Society understands how radical the newly elected government is. Current vice Prime Minister, Roman Giertych, the famous pro-lifer who lead the fundamentalist LPR and established All-Polish Youth, a homophobic, nationalistic organization, which violently opposes women's and LGBT demonstrations, was elected to be Minister of National Education. His election raised a wave of protests. Moreover, All-Polish Youth leaders are now in the Parliament and in the Government. These new decision-makers do not promote gender equality. Many of them have made their political careers publicly opposing women's and feminist agendas. The new proposal of the vice prime minister, Roman Giertych, is to introduce constitutional protection of the unborn life. LPR's project relates to the article 38 that ensures "*the legal protection of the life of every human being*". The idea is to add "*from the moment of conception*" at the end of the sentence. This would mean the total ban on abortion in Poland, even if the life of a women is threatened or the pregnancy results from a crime.

Recently, the Minister of Health established the Ministerial Body to promote natural family planning since modern forms of contraception are seen as dangerous for women's health and against religious teachings.

The Government and Parliament is focused on promoting protective measures for maternity, which may negatively affect women's possibilities of entering into and remaining in the labor market. This especially affects young women. For example, there is a law being debated in Parliament which will increase maternity leave from 4 months to 6 months and will introduce one year of protection against being fired by an employer after maternity leave has ended. This provision may sound interesting and beneficial; however, in a country where unemployment is at 16%, women, especially young women, won't be able to find a job. Even if they do find a job, they will not be able to get these work benefits due to informal forms of employment. Many women – those who are unemployed, farmers or working on short contracts – will not qualify for these benefits.

These are only a few examples to illustrate the current political climate and threats to women's rights in the near future. Present decision-makers will remain in office for more than three years. They may introduce many changes which will negatively affect the situation of women in Poland.

QUESTIONS to Polish Delegation:

- 1) Why has the National Monitoring System of Equal Status of Women and Men been shut down?
- 2) How is the government going to monitor the implementation of gender equality policies?

II) GENDER STEREOTYPES: Article 5

PROBLEMATIC AREAS:

- Highly influential position of the Roman Catholic Church, which puts pressure on policy makers
- Presence of particularly stereotypical images of women in the public media

Cultural Context

The highly influential position of the Roman Catholic Church in Poland is absolutely unquestionable, and seems to be exceptional in Europe, apart from other countries such as Ireland or Malta. The church's teachings affect not only social attitudes and standpoints (about 90% of Poles declare they are Catholics) but also state policies. The unique position of the Catholic doctrine in Poland is related to its communist past. The role the Pope played in the collapse of communism is especially glorified. The Catholic Church in Poland strongly imposes its perspective on gender roles, and politicians remain under the church's pressure. Recently, a very radical, fundamentalist community, *Family of Radio Mary*, has become especially active. Some prominent politicians, including the Prime Minister and his constituents, communicate with this group. *Family of Radio Mary* has been officially rebuked by Vatican for its interference with politics.

Such a religious background hinders the promotion of the gender equality perspective. The goal to combat lingering sex stereotypes triggers strong opposition. There are a lot of prejudices not only against women but also the women's movement itself. NGOs' efforts to educate and inform the public are not supported by State authorities and sometimes the state even hinders the women's movement. On the other hand, the opinion polls show that society,

although traditional, is more open and progressive than politicians. For example, 70% of the population was against introducing the restrictive anti-abortion law in 1993. 89% of society supports sex education in schools. However, sex education has not been introduced. It seems that politicians aim to satisfy the Church rather than society.

Media

Public media is supervised by people closely linked to the current conservative political administration, which promotes the traditional family model. This raises doubts about the *de facto* independence of Polish public media.

Public media is a powerful tool of social education and can be actively used to fight discrimination. Unfortunately, it seems that the content of programmes perpetuates stereotypes instead of eradicating them. Women are underrepresented in mass media, especially as excerpts and participants of social debate. They are more visible in chat shows, TV series and advertising.

Statistically, slightly more women than men are employed in public television. However, their roles differ significantly and there is a strict division of topics each gender covers. An overwhelming majority of female newscasters and journalists report on fashion, health and social issues as well as art and culture. The unquestionable domain of men is economy, politics, finances, taxes, etc. Essentially, women deal with less prestigious topics. Furthermore, men are more likely than women to host popular quizzes. Women appear as their assistants, predominantly as objects of desire.

Another striking problem is that journalists are not educated in issues of equality. They demonstrate blatant gender-insensitivity and while reporting on issues of gender equality, they use patronizing language and attitudes to reinforce the issue as unimportant.

Media images of women politicians

“When dealing with women active in politics media often focus on their physicality, sexuality, often use some puns of words alluring to sexual issues. There is a way of filming women in a particular way, starting from below through their legs, breasts and finally the face for a fraction of a second. Men are never shown in this way. Women politicians are often asked about their private life and how they can reconcile work and family. Hosts, both men and women prefer to invite men and they put the blame on women as inflexible and not readily available. Women are rarely asked to comment current issues; they seldom make comments on the overall situation of the state. Paradoxically even in programs dealing with women’s issues there are more men talking.”¹

TV series

Polish TV series are very popular. They are probably most powerful form of exposure and promotion of gender role stereotypes in the media. Female characters are two-dimensional, and their main concern is housekeeping and family. Television portrays women that fit into this stereotype in a positive light; they are happy. Women who enjoy professional careers are portrayed as unhappy, or they have to legitimize their careers with an acceptable, happy

¹Alternative report prepared by Polish women NGOs for the Special Session of the Commission on the Status of Women BEIJING +10

traditional family life. But most preferably they are depicted as villains. Homosexuality and abortion are absolute taboos and therefore never addressed in Polish TV series.

Commercials

“Among visions of women encountered in commercials the most common is a traditional mother and wife. Life of a woman in commercial is spent to please her husband, take care of the children and doing household chores like laundry, cleaning, cooking or removing stains. A woman lives at home and if she works it is only a whim.

Another type dominating commercials is a “modern woman”, attractive and focused on her looks. She knows brands and efficiently maneuvers in the world of outfits and cosmetics. She gets what she wants and the biggest award is a man. Commercials targeting men (cigarettes, cosmetics, cars) use sexual allusions. A manager or director is usually a man. Women play the role of assistants or carrying out orders from men.”

In TV commercials, women are underrepresented in the role of an employee, expert, as well as on the top positions. They appear in these roles only in less than 10% of all presentations. In those very rare cases when woman is presented in the context of work, career or success, certain specific rules of presentation appear to be crucial. First of all, working women are presented only in so – called ‘feminine’ jobs of low status and pay, like nurses and teachers, or in fashion and beauty business. Furthermore, if presented as experts, women are only experts in “feminine” sphere and products, especially when expertise requires skills in caring and helping. Commonly, female doctor advertises women pads, a nurse – baby diapers or a businesswomen – a washing powder, for instance. Another popular practice is to present woman in the context of this double – work day phenomenon. Usually, women are depicted as both: employees and mothers, or employees and housewives.

“Even in her own domain, that is home, a woman is often presented as confused and helpless who needs help and advice from an expert, that is a man. It is usually a male voice that sums up the whole story and encourages to shop. Only a man can finally confirm and prove the usefulness of the advertised product.”²

RECOMMENDATIONS:

- Introduce a ban to prevent allocating public funds for discriminatory media programs
- Introduce a legal ban on media demeaning to women, including sexist commercials
- Strive to proportionally represent men and women in all institutions monitoring public media
- Create a monitoring body that would evaluate programmes with regards to sexual stereotypes and promote equality of the sexes
- Introduce workshops on gender equality for journalism students

² Alternative report prepared by Polish women NGOs for the Special Session of the Commission on the Status of Women BEIJING +10

II) VIOLENCE AGAINST WOMEN: General recommendation 19

PROBLEMATIC AREAS:

Domestic violence:

- Perception of domestic violence as a gender neutral phenomenon strongly linked to alcoholism;
- Lack of coherency and continuity of the governmental policy to prevent and combat domestic violence;
- Long lasting criminal proceedings and too passive approach of law enforcement in dealing with domestic violence cases and collecting evidence;
- High percentage of dismissal of domestic violence cases at the prosecution level;
- Lack of legal measures allowing police to issue barring order (restraining order);
- Ineffective and long lasting procedure for issuing restraining order by criminal court and lack of legal possibility for applying for civil protection or inter injunction order;
- Ineffective sentencing (90% suspended sentences and lack of adequate reaction in cases of breaching the law by perpetrators).
- Strong impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
- Lack of consistent and comprehensive system to prevent and combat domestic violence based on multi agency cooperation and perception of domestic violence in broader context of unequal position of women in the family and in the society;
- Insufficient and imprecise system of collecting data for domestic violence interventions and lack of data of refusals to initiate criminal procedure as well as accurate gender specific data on killings based on domestic violence;
- Insufficient number of services, especially specialized refuges for women and children victims of domestic violence;
- Limited access to free forensic examinations;
- Abuse of mediation procedure for domestic violence cases

Rape:

- Disadvantageous for women order of initiating prosecution that requires the victim to press charges. Shame and fear of revenge often prevent women from pressing charges;
- Legal definition of rape which requires use or threat of violence in fact often reverse focus from perpetrator to the victim behavior; rape might be questioned when there is no sign of victim resistance or victim behave improperly ;
- Long lasting and unfriendly legal procedure;
- Requirements from the victim to testify many times;
- Low punishment for rapists;
- Strong impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
- Insufficient and imprecise system of collecting statistics for rape cases including data of refusals to initiate criminal procedure;
- Lack of specialized psychological and counseling services for victims

Although some improvements have been made as concerns legal measures, visibility of the issue of domestic violence and the number of services available to victims, situation is far from satisfactory. Polish government's policy on the domestic violence lacks continuity and coherency and is very dependant on the political option which is in power. However, it has to be emphasized that regardless of the political forces in power, the issue of domestic violence is not still appropriately recognized as a serious social problem that requires to be addressed

from different perspectives including inequality between women and men. Predominant perception of domestic violence is gender neutral. Moreover, gender based stereotypes and prejudices have a strong impact on the way victims and perpetrators are perceived by society as well as by the criminal justice system.

Domestic violence continues to be treated with leniency and is perceived as a family matter, even though the scope of the problem is alarming – **domestic violence is among the most frequently committed crimes in Poland**. Police is still reluctant to intervene and instead of being proactive in collecting evidence and pressing charges, expects that the victim will initiate the case. If the victim is not very cooperative or do not provide prosecution with strong evidence, the case is abandoned or dismissed.

The number of police interventions as well as the number of cases reported by women are not adequately revealed in official statistics. Introduction of the **Blue Card system** by the order of the National Police Headquarter (NPH) 1998 seems to have negative impact on the statistics concerning domestic violence. As far as statistics on police interventions are concerned, data which is published by the NPH is predominantly based on the number of blue cards filed by the police, although these cards are not commonly used by policemen. Implementation of the Blue cards was thought to be a coherent element of the domestic violence intervention system, but unfortunately it did not appear successful. The system of cooperation between different departments of the police stations, not even mentioning other institutions hardly exists and monitoring of families where domestic violence occurs, is not effective. Police might have several blue cards in the file and instead of pressing charges against perpetrator is waiting for victims to press charges. There are no statistics available concerning refusals to start criminal proceeding against the perpetrator which would be useful to review performance of the police and to estimate the number of the incidents where victims are searching for help.

Social Context

Presence of traditional gender stereotypes and prejudices reinforced by the strong position of the Catholic Church as well as ineffectiveness of the criminal justice system and insufficient number of services available to women victims of violence make it difficult for female victims of domestic violence to leave the abusive relationship. Polish women are still reluctant to report domestic violence, especially in the rural area due to the strong tradition of shame and guilt embedded in the gender role they were socialized to. Man's violence is still excused and women's behavior examined. If she does not properly fulfilled her traditional role or provoked a man by doing something wrong, he might be excused. These kinds of examinations and judgments of women's behaviors are still common not only among average people but also among law enforcements and criminal justice professionals. There are court judgments stating that although act of violence fulfilled all the legal criteria is not consider a crime because man's intentions were good. He wanted to keep family together or violence was a reaction to the improper behavior of women. This kind of judgment incorporates powerful stereotypes about men's and women's roles in public and family lives, providing husband with a habitual right to punish his wife for her "inappropriate" or socially unacceptable behavior.

Services

Poland still have no sufficient number of specialized places where women can seek refuge or assistance. The situation is especially bad concerning shelters for battered women. Their number is far too low to meet the needs - in some regions of Poland, there are no shelters at all, and in some other regions the shelters are not able to provide comprehensive, professional

assistance because they are not specifically designated for victims of violence. A large percentage of existing shelters are for homeless or of the mothers with small children and do not offer specialize assistance to women victims of violence. There is a lack of knowledge and understanding of the nature and consequences of domestic violence among the staff of such facilities. There are shelters for homeless and some specialized for battered women managed by men. There were reported cases of abuses of women in that kind of facilities. Shelters specialized for victims of domestic violence are run mainly by NGOs and Catholic Church. In those run by church there are often requirements for women to take part in organized prayer and other quite restrictive rules. The new law requires local government to set up specialized centers providing assistance to victims of violence and **Crisis Intervention Centers**. It is not clear if those centers will specialize only in domestic violence cases or they will continue policy of those existing in some of the regions, which play more general role in assisting people in different kind of crisis situations. Some of them provide sleeping places for people in crisis, which might include victims of domestic violence. It has to be stressed out that they are also no gender specific and accommodate men and women at the same time as some of the houses for homeless people. There is a danger that because of the lack of gender perspective, those refugee houses and other services for victims of domestic violence would be gender neutral. This kind of approach might be very dangerous because they would lost their character as safe places for women and children. There may be men seeking assistance who claim to be victim only to neutralize charges against them by accusing women as being violent as well.

The Law and its Application

According to the law, domestic violence is offence prosecuted *ex officio* (publicly prosecuted) in Poland. Although police and the prosecutors are legally obligated to initiate criminal proceedings when domestic violence may have been committed, **in practice they are prosecuted only on victim's request and when official well documented complain is pressed.**

Despite legal possibility to keep perpetrator under arrest for 48 hours, if his presence endangers the victim's life or health; or petition a court to issue a pretrial detention order, police and prosecutors hardly ever use it. In fact, cases of domestic violence are rarely treated seriously by both law enforcement officers and prosecutors. **The only measures used by the police to move the perpetrator from the house are so-called "sobering-up detention centers"** when he is drunk. This is not an effective measure because the next morning perpetrator is free and the bill for spending a night in this place has to be paid by the whole family.

The serious problem with prosecution of domestic violence cases is **long lasting procedure**. There are cases when pre-trial proceedings and waiting for the trial last for two up to three years. In the meantime, victims and perpetrators often live together under the same roof, causing victims to be vulnerable to further violence and other forms of pressure from the perpetrator. As concerns protection of the victim from further violence new law does not provides adequate measures. As a result, the frightened victims often do not want to testify, refuse to cooperate with the police, and withdraw their complaints.

Furthermore, police very often perceives domestic violence as a family matter which results in their negligence. The police demonstrates reluctance in collecting evidence which forces women to produce the evidence themselves, laying an unfair and unjust burden on the victim of the crime.

Problems with the *Act on Prevention of Domestic Violence* was enacted in 2005

The above mentioned deficiencies in the domestic violence intervention system were supposed to be addressed by comprehensive legislation. Thanks to the collaboration between Plenipotentiary for Equal Status of Women and Men and Polish NGOs, the *Act on Prevention of Domestic Violence* was enacted in 2005. However, the new law on domestic violence did not filled the biggest gap in the Polish law that is protection of victims. The legal possibility to protect victim is still very weak and neither police nor court are equipped in adequate legal measures. Although it is too soon to evaluate its *de facto* effectiveness comprehensively it has to be said that this law did not meet expectations and has significant limitations. The positive side, however, is that the new regulation imposes concrete tasks on national and local governmental agencies and requires preparation of **National and Local Plans of Action to Prevent and Combat Domestic violence**.

One of the basic problems is that **the Act by no means refers to inequality between women and men** and to the fact that domestic violence is not gender neutral phenomenon. Women make up an overwhelming majority of victims of domestic violence. The new law is not as comprehensive as it was meant to be. Due to the generalization of the Act, **specific problems of female victims cannot be addressed adequately**. One of these problems is the victim's **economic dependence on the perpetrator**. Many women, who are victims of domestic violence do not work because their partners forbid them to, and many others loose their jobs as a consequence of domestic violence. The victim's lack of financial independence hinders her ability to leave the abusive relationship. This problem must be recognized and addressed in cooperation with employment agencies and employers to effectively help women. The other issue which is missing in the law is housing which is crucial for women who leave in their partner or partner's parents house. Unfortunately, no steps have been taken to address those issues. Missing measures in the law are also civil remedies: protection or injunction order.

Police does not have an authority to issue a barring or restraining order for immediate eviction of the perpetrator from the house. **Restraining order can be issued only by the court and under certain conditions**. There has to be formal charges pressed against perpetrator and legal basis for his detention (temporary arrest). Prosecutor has to petition the court for substituting detention (temporary arrest) with the restraining order. The condition, however is that perpetrator voluntarily would leave the house. Restraining order can be also issued in case of conditional dismissal of the case and as a condition to be fulfilled for suspended sentence.

Because police did not adopted pro active approach to combat domestic violence women are required to deliver well-documented complains if they want the police to continue investigating a case. However, Police often requires that women provide a medical certificate preferably of forensic examination to initiate investigation. Although the Constitution guarantees free medical services, victims often have to pay medical experts for forensic examination. Other doctors often refuse to write medical statement claiming that they are not specialist and by these means forcing women to visit and pay for private forensic examination. **Victims are unaware that the law guarantees them a free of charge medical diagnosis and forensic examination in case it is required by police or prosecutor. The every day practice should be that the first contact doctor is able to deliver medical diagnosis in case of domestic violence and forensic examination should be used only in more difficult and complicated cases.** It happens that investigation is not initiated because

the evidence seems to be not credible according to the police and/or prosecution standards and in the meanwhile, the prosecution do not fulfill their duty to look actively for evidence.

The other problem with prosecution of domestic violence is that single acts of violence are not publicly prosecuted. Violence against women is publicly prosecuted only when it occurs repeatedly. Single acts of violence may be prosecuted under general provisions prohibiting the use of violence against any person. If violence causes severe injury lasting for more than 7 days, if the aggrieved person is closely related to the perpetrator, and the crime is considered unintentional, it is prosecuted upon the request of the victim. In the case of violence causing lighter injuries (lasting no longer than 7 days) prosecution may be brought only by the victim. These provisions are often used against women. **If a medical certificate indicates that the bodily harm does not result in severe injury lasting for more than seven days and she has no witnesses, the police may refuse to prosecute the case and inform her that she may file a private charge against her husband.** However, bringing private charges is expensive and far more difficult for many women who cannot afford legal aid.

Another problem in dealing with domestic violence cases is also abuse of mediation procedure which often leads towards double victimization.

In the criminal proceeding victim goes through long lasting, intimidating, and unfriendly procedure. Women can not obtain adequate legal protection and thus, they are exposed to the perpetrator's revenge. The same often happens to witnesses who are also exposed to the perpetrator's threats of revenge. As a result, the witness may pretend not to have heard anything or openly refuse to testify. **If the victim refuses to cooperate, the police are very eager to dismiss the case, despite other existing evidences. This practice is, in fact, illegal, as the victim's refusal to cooperate cannot be considered an excuse to end the investigation. Dismissal on these grounds is, however, a very common practice. The other common reason for dismissal is that incidents of domestic violence, although they are proved they do not constitute danger for the society and as a result can not be prosecuted.**

RECOMMENDATIONS:

1. Amend law on domestic violence to make it more comprehensive and effective by including regulations concerning:
 - police power to issue barring (restraining) order ;
 - civil protection order;
 - gender based analysis of domestic violence roots and as a result need to address the issue of domestic violence in broader context of inequality between women and men;
 - housing;
 - employment and financial assistance to women
2. Introduce regular monitoring of the implementation of the existing law with the focus on the impact of gender based stereotypes and prejudices on criminal proceedings and court judgments;
3. Incorporate domestic violence issues seen in the broader context of gender based discrimination and unequal position of women into routine training of the police and other criminal and family justice professionals.
4. Secure easy access to assistance for victims of domestic violence, including legal counseling and medical help;

5. Improve system of collecting statistic to make it more comprehensive and gender specific;
6. Implement pro active approach in cases of domestic violence interventions;
7. Prosecute perpetrators of domestic violence without a formal complaint from the victim;
8. Enable the victims' participation in the parole procedure;
9. Address impact on gender based stereotypes and prejudices on criminal proceedings and court judgments in domestic violence cases.
10. Mediation procedure should not be applied for domestic violence cases.

Rape

Legal framework

According to Polish law, rape is a crime against personal sexual freedom and morality. It is **publicly prosecuted but prosecution has to be initiated by the victim**. The perpetrator cannot be charged and tried unless the victim presses charges, even if eyewitness testimony is available. This particular law **makes women vulnerable to intimidation and revenge at the hands of the perpetrator**. Thus, victims often do not report the crime. Many women do not press charges either due to fear of the perpetrator's revenge, or because of the humiliating investigative procedure, and finally because they simply do not believe in the effectiveness of the criminal justice system.

European comparative studies indicate that **Poland has the lowest rate of reporting rape cases**. Taking into consideration the criminal justice system's unfriendly attitude to victims of rape and the fear, guilt, and shame, imprinted into women's minds by tradition and culture, it is easy to understand why cases of rape are so under-reported.

Definition of rape, as well as distinction between personal and sexual freedom and placement of morality in the name of the chapter in criminal code where it is situated reflects approach of legislators to sexual violence against women. Comparing legal definition of rape and crime against personal freedom we see that requirements constituting rape are much more severe. To commit crime against personal freedom it is enough to deprive someone's freedom. In case of rape it has to be proved that force, unlawful threat or deceit was used by the perpetrator. **The existing legal definition, results in putting too much attention to victim's behavior and reinforces existing stereotypes**. To provide evidence that perpetrator used force, victim's behavior is examined and she has to prove resistance. **If there are no visible signs of resistance, rape itself may be questioned**. Without evidence of resistance of the victim there is no violence and little chance that rape can be proven. According to the jurisprudence, resistance has to be clear and visible for the perpetrator. It is especially important, according to the Highest Court, in the situation when perpetrator may assume that resistance is not real and in fact may be seen as lower's play. In the situation when perpetrator may have difficulties to distinguish between real and apparent resistance, his behavior may be considered as acting at fault. There is no doubt that this kind of jurisprudence questioning woman's NO and examining if it was real in fact justifies perpetrators behavior and put responsibility on what happens on woman.

It is significant that legal definition of robbery does not required use of violence or even threat; to classify particular behavior as crime it is enough when somebody has taken away the property. Use of violence or threat has influence only on the punishment. It is a crime to take someone's property away but it is not a crime when someone did not consent for having

sex. Victim has to show evidence of violence or threat being used against her; otherwise sexual intercourse against her will, can not be recognized as a crime.

The law says that the aim of the criminal procedure is not only to find out if the crime was committed and to prosecute perpetrator but also to **examine all circumstances which may contribute to the commitment of the crime**. This kind of wording reinforces gender based stereotypes and prejudices and encourages criminal justice professionals to examine woman's behavior, the way she was dressed, and question the place she walked, she stayed in etc. The police and courts still often treat rape as an incident that results from the provocative behavior of women. One of the policeman interviewed by the WRC said that in his opinion: "90% of reported cases of rape are false accusations because woman go for the party, drinks alcohol and therefore their credibility can be questioned".

Furthermore, the **law differentiates forced sexual intercourse and other sexual actions** when sentencing a convicted rapist. A convicted rapist can be sentenced up to 10 years in prison, while someone convicted of sexual abuse without penetration can be imprisoned for up to 5 years.

Judges often admit evidences that should not be admitted and focus their attention on the woman, who must prove that nothing in her behavior might have provoked rape. The behavior and life style of the victim are put under scrutiny and play a significant role in criminal proceeding and sentencing. As a result, instead of the accused, it is the victim and her innocence that is examined by the court which often takes the victim's sexual life prior to the rape into account. Court evaluates the circumstances surrounding the rape with a more skeptical view of the victim, and is more likely to impose a lighter sentence on the attacker. Woman's virginity and her relationship with attacker in the past also has influence on judgments. **In the response to the letter requesting permission to disseminate leaflets on rape in prosecutor's offices, Ministry of Justice blame the Women's Rights Center that the leaflets "falsely indicates that woman's wearing and place of staying should not be taken into consideration by criminal justice professionals"**.

Every day practice

Despite some progress, preparatory and judicial proceedings are still gender biased and female victims are often treated as if they were the accused. Victims when they report the crime may be interviewed for hours, without any break at the police station. **It happens that police treat victims of rape in a humiliating way, as if they deserved to be raped**. Women often are checked on the level of alcohol in the blood, and experts psychologist may be appointed to assess their credibility. **The police does not often assist victim in providing her medical examination**. The most common is that victim is advice to go to the gynecologist or other doctor herself and bring medical certificate. The worse situation is during weekends where it is not easy to find specialist.

Although, according to the Constitution, public health services are free in Poland, women who seek forensic medical examination and apply for a certificate issued by a certified forensic doctor must pay for it. Moreover, as access to forensic examinations in public clinics is highly limited, most women use the services of private clinics, where the fee for such examination exceeds 60 to 160 zlotys (15 to 40 USD) per certificate. **Doctors in public clinics who are not certified as forensic medical practitioners often refuse to carry out examinations and issue certificates that declare abuse-related injuries, although such refusals are in contradiction with the existing law**. There were cases reported by the media such as a case of the doctor who refuse to examine 14 years old girl who was raped. Although

it is possible to receive a free medical examination by forensic doctor if the police or prosecutor refers woman, women are not informed of the existing possibilities.

Sometimes woman are also confronted with the attacker or asked to recognized rapist without any protection from being recognized. Many women complain that they address is available to perpetrator despite the legal possibility to be hidden. Victim may go through an intimidating, unfamiliar, and unfriendly procedure which last for many months. As a result, it happened that frightened victims do not want to testify and refuse to cooperate with the police. As a result, also the witness may pretend not to have heard anything or openly refuse to testify. If the victim refuses to cooperate, the police are very eager to dismiss the case, despite other existing evidence. Dismissal on these grounds is a very common practice. Although, legally victim can not withdraw her complain, as one policemen told me they have their own tricks to dismiss the case.

Statistics

The ineffectiveness of the Polish criminal justice system's approach to sexual violence is best reflected in the statistics. The data are, however, limited in scope and do not reflect real number of rape cases in Poland. The police and the court statistics does not provide many information, such as the number of cases reported if woman did not decided to file official charges, the number of cases dismissed, the age or relationship between perpetrator and victim. It is important to notice that in these limited number of cases where charges has been pressed (about 2000 a year for 380000 inhabitants country) the number of those which get sentenced is nearly three time lower. Moreover, convicted rapists often receive minimal sentencing. This does not adequately deter the crime of rape nor protect future potential victims. NGOs strongly disagree with the common practice of sentencing a convicted rapist with the minimum penalty.

RECOMMENDATIONS:

1. Amend the law on rape:

- rape should be the crime publicly prosecuted (ex officio);
- definition of rape should be changed (lack of consent should constitute a crime);
- object of legal protection should be changed (rape crime against freedom not against sexual freedom and morality)

2. Examine implementation of the law as concerns sentencing;

3. Secure easy access to assistance for victims including psychological, legal counseling and medical help;

4. Improve system of collecting statistic to make it more comprehensive and reflect not only gender but also relationship between victim and perpetrator.

5. Address impact on gender based stereotypes and prejudices on criminal proceedings and court judgments.

IV) TRAFFICKING AND EXPLOITATION OF WOMEN: Article 6

PROBLEMATIC AREAS:

- Inferior economical position of women as a factor conducive to trafficking
- Insufficient cooperation between different stakeholders: government, NGOs and other institutions
- Lack of comprehensive research and lack of reliable data
- Lack of qualified staff, especially law enforcements
- Low awareness of the issue of trafficking among average people, police officers, border guard officers, prosecutors and judges
- Lack of definition of the trafficking in the Penal Code
- Lack of effective measures for victim protection

As far as trafficking in persons as defined by the Palermo Protocol is concerned, Poland still keeps the **triple function** of being the country of origin, transit and destination.

Countries of origin for Poland

Ukraine, Moldova, Belarus, Bulgaria, Romania, Lithuania, Russia

Countries of destination

Germany, Italy, Spain, Greece, the Netherlands, Belgium, Austria, Sweden, Denmark

The enlargement of the EU resulted in increased numbers of people migrating to member states for work. This fact has its influence on prevention work since more persons ask for information on employment conditions and employers. Mostly women are calling on the hotline and a growing number of leaves for legal jobs is observed. In general, more information on working conditions and safe job migration appear in the Polish media. Hopefully, this will contribute to a reduction of trafficking cases in Poland.

La Strada foundation (LS) receives much information on migrant's trafficked persons for sex work, but also for other purposes – mostly forced labor. Moreover, Polish police reported cases of trafficking for slavery like practices. Recently, cases of **'forced labor camps'** in southern Italy (Bari and Foggia region) were registered, where more than 1000 victims, mainly Polish nationals, have been identified. Other instances of Polish nationals being forced to labor were reported in Spain and Great Britain. In April 2006 a case of trafficking for the purpose of stealing (pick pocketing) in supermarkets in Sweden (Malmo) was revealed. Most recently, in June 2006 La Strada Poland was cooperating with Dutch NGO in the return process of six Poles trafficked for forced labor in the Netherlands. Aforementioned cases drew relevant media attention.

Increased number of cases brought to the light can be partly attributed to the establishment of the **special anti-trafficking units in headquarters of the Polish police** in March 2006. These units consist of four police officers, who undertook a number of operations in cooperation with other European police units (the Carabinieri in Italy, Europol and Interpol). As a result several organized crime groups have been identified and more than 20 perpetrators arrested. Nevertheless, still more research is needed in this area, including research on trafficking for other purposes than sex work.

The situation concerning **highway prostitution** is gradually changing. Instead of women trafficked from Bulgaria, more Polish women appeared on the highways, while Ukrainian women remain the largest group of migrants trafficked into sex work. More and more signals on trafficking in children are referred to the specialized NGO (Nobody's Children). The Police informed LS about cases of trafficking in children and the fact that organized crime groups use these children for drugs smuggling.³

As far as public awareness is concerned, there is a significant confusion. Trafficking is permanently mixed with sex work or limited to the issue of sex business. There is a need to raise awareness on the trafficking for forced labor and other forms of exploitation of trafficked persons.

Factors conducive to trafficking

The issue of gender equality and a corresponding effective gender policy are determining factors that influence the level of trafficking in Poland. As a matter of fact, **women are at the highest risk for trafficking**. This is due to the feminization of poverty, gender discrimination, feminization of unemployment and migration, that play a crucial role in the process of recruiting and exploitation of trafficked women. A lot of steps have to be taken at national and international level to overcome the discouraging position of women.

Restrictive immigration policies of the European Union affect the situation of trafficked persons in countries of destination. As a result of restrictive immigration policy, governments tend to treat trafficked persons primarily as unwanted economic migrants who are to be deported right away.

Another factor conducive to trafficking is the increasing call for **repressive measures against prostitution**, such as criminalizing clients. This contributes to the marginalization and stigmatization of sex workers and increases their dependency on the services of third parties, thus making them more vulnerable to abuse.

As far as sex industry is concerned, La Strada observes that trafficked victims tend to be increasingly exploited in more private environments, such as private houses or flats in suburban areas aside of brothels and nightclubs. Moreover, the number of minors exploited in the sex industry increases.

Changing patterns of trafficking after the accession to the EU

It is anticipated that the accession to the European Union changes migratory and trafficking patterns considerably. Basically, it is expected that Poland would rather become more a country of transit and destination than a country of origin. Access to reliable information about job vacancies within the EU, along with the gradual opening of the EU labor market will create **legal migration channels** and thus decrease the risk of trafficking and related abuses. However, a factor that may actually facilitate trafficking is an ease of crossing the border and traveling within the EU.

In order to conform to the EU standards, new member states are obliged to adopt more restrictive immigration policies; and to develop a stronger focus on **combating illegal migration**. As a result, migrants are more vulnerable to violations of their human rights. In this circumstances, the main objective of the independent NGOs (like LS) seems to be

³ La Strada Interim report 2006

advocacy for human rights of migrants and lobbying for adequate protection and assistance for trafficked persons.

Anti-trafficking policy

The governmental anti-trafficking policy is influenced by the two main instruments of pressure, namely: international – EU anti-trafficking framework; and national as well as international NGOs. The competition between those two stakeholders appears to be problematical in some cases. The flow of information between those two anti-trafficking actors is far from satisfactory. There is a number of factors undermining the elimination of trafficking in persons in Poland, as follows: lack of reliable data, fragmentary data, as well as lack of comprehensive research and trained staff, especially law enforcements.

Legal framework

Article 253 in Polish Criminal Code punishes “*whoever traffics in persons, even with their consent*”, by at least three years of imprisonment up to 15 years. The minimum sentence increases up to 5 years if an “*adoption of children contrary to the provisions of the Act*”. Article 253 does not clearly indicate the specific behaviors that fall within the offence of trafficking. This too general wording is being criticized by NGOs, which lobby for the implementation of the definition of trafficking into the Penal Code. Poland ratified the Palermo Protocol in February 2003, but did not incorporate the definition of trafficking that it implies into its legal system.

NGOs efforts to include the definition of trafficking into Penal Code have not been welcomed by some governmental bodies, let us name the Ministry of justice, among others. **The lack of a clear definition of trafficking** is very problematic because the key-state actors appointed to prevent and fight trafficking and protect the victims are not sufficiently well-informed and trained to identify the offence and act accordingly. As a consequence, for instance, potential victims of trafficking are deported because their status is not correctly identified.

Furthermore, many Polish public prosecutors are not familiar with the special instruction submitted by the National Prosecutor Office on how to use and implement “**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime**” in practice, in prosecution of trafficking cases.

The similar situation is with the police and the border guards representatives on the lower level. There are a special guidelines on how to identify the cases of trafficking and trafficked persons themselves – developed by the Headquarters of the Police and the Headquarters of the Border Guards in cooperation with the group of experts. Officers in the fields who are usually the first contact with trafficked persons are not aware of these guidelines. **There were no special trainings or education provided for them by their superiors.** Lack of identification procedures implemented in practice of the law enforcement work are one among the biggest obstacles of effective combating and prosecution of the criminals and the crime of trafficking as well as of better victim/witness protection measures.

Besides Article 253, the trafficking in persons in Poland is criminalized also under Article 204, that punishes the enticement or the abduction of a person into prostitution abroad by a maximum of ten years of imprisonment. Moreover, several other articles are used to prosecute traffickers and exploiters, as follows: the deprivation of liberty (Article 189), coercion through violence or threat of force (Article 191), aggravated rape (Article

197), sexual harassment or rape in conditions of dependency in power relationships (Article 199), involvement in organized crime activities (Article 258).

Trafficked person's rights

Migrant trafficked person have a right to **special residence permit** guaranteed by the Article 14 of the Alien Law (amendments to a bill from September 2005). Special residence permit gives the trafficked person a possibility to legally stay in Poland to act as a victim witness in criminal proceedings.

Furthermore, under the Act of Protection of Aliens (2003) victims can apply for asylum for humanitarian reasons for up to two years.

Trafficked persons have also a possibility of two months of reflection period.

However, there are certain rights guaranteed for the victim of trafficking as mentioned afore, **those provisions are rarely used in practice**. NGOs claim that it can be attributed to the lack of information that are not sufficiently shared and spread out on the lower level of the law enforcement institution.

Another problem is the lack of comprehensive scheme of social and labor inclusion of trafficked persons that does not favour the coming forward of victims of trafficking who could greatly contribute to the fight of the crime and the arrest of criminals that exploit vulnerable persons by profiting from a low-risk and high profit business. The victims who are granted support measures and a stay permit are more keen to co-operate with the police and the judiciary and, eventually, to press charges against their perpetrators. **At least, the Polish authorities should ensure the implementation of the Article 14 of the Immigration Law that provides the right to stay for those victims who act as witnesses in a criminal proceeding and, furthermore, to allocate proper funding to support them.** Currently, the projects of the social inclusion of trafficked persons are run by NGOs – La Strada, among others.

National Program of prevention and Combating of Trafficking in Persons

National Action Program for 2005-2006 is the continuation of activities undertaken within the framework of the National Program of Fighting and Prevention of Trafficking in People assumed by the Council of Ministers on 16 September 2003. The program was worked out by the Team for Fighting and Prevention of Trafficking in People established by the Order No. 23 of the Prime Minister, dated 5 March 2004.

The need for such a program arises from the fact that some of the tasks listed in the previous Program require continuation while some of them were not implemented within the scheduled time framework. Besides, trafficking in people is a dynamic process undergoing constant changes. New tasks listed in the Program reflect the reaction to the changes. It is necessary to continue working on solutions that are necessary due to Poland's membership in the European Union and international obligations of Poland, particularly signing and ratification of *Protocol* (appendix to the UN Convention against international organized crime) *of preventing, fighting and penalizing trafficking in people, especially women and children.*

The Implementation of the Program shall require participation and cooperation of numerous subjects of governmental administration and non-governmental organizations. Designated subjects bear responsibility for the implementation of tasks assigned in the Program. The Team for Fighting and Prevention of Trafficking in People is responsible for monitoring its implementation. The deadline for implementing the tasks assigned in the Program has been set for the end of 2006. Basing on the report prepared by the Team, the Council of Ministers

shall evaluate the results thereof and make a decision on the way of organizing activities aimed at fighting and prevention of trafficking in people.

Tasks assigned to individual subjects shall be financed within the budgets at their disposal. It is necessary to single out the amounts required for implementing the goals and tasks assigned in their 2006 budgets. Certain elements of the program, particularly those related to investigating the problem, data exchange, best practice and training might be financed by the EU programs, such as AGIS, Daphne II or EQUAL.

The main areas of the program include changes in legislation aimed at effective fighting trafficking in people, as well as preparing regulations aimed at specifying the conditions for granting stay visas and short-term stay permits to victims. Furthermore, there is an objective of preparation and implementation of a program of special training of police officers, border guard officers, prosecutors and judges. A more detailed elaboration of the program is to be found in the Appendix II of this Shadow Report.

The National Action Program means a significant step forward in creating effective anti trafficking strategies and multidisciplinary approach toward the problem of trafficking. Even though, there are still areas of activities to be improved. Not all of governmental institutions who are obliged to take part in the program are fully involved in the process of implementation of the program, Some of them remain rather passive and act in a bureaucratic way. This is a case of Ministry of Justice in the process of incorporating the Palermo Protocol's trafficking definition into the Penal Code. Representative of judiciary system (judges) in Poland are very reluctant to take part in the series of specialized training for professionals organizing by Ministry of Interior, Ministry of Labor and Social Policy, Headquarters of the police, the Headquarters of the Border guards and NGOs . Despite of invitation for judges in all regions of Poland – only few of them actually participated in the training that was held already in 14 administrative districts (voivodships) in Poland. As a consequence of this, judges are not updated about the current development of the phenomenon of trafficking in Poland, its new trends and forms. This directly influence the situation of victims/witnesses of the crime of trafficking because judges are often not able identify the crime of trafficking and victims of this crime, do not accept the explanation of the situation of victims from the perspective of NGOs, in some cases victims of the crime of trafficking are treated as illegal migrants and cannot benefit from the victim/witness protection provisions.

The part of National Action Program is a Program of support and protection for victims of trafficking in persons. This program is designed for the period of 1 year from January 1st to December 31st 2006. This program is implemented by La Strada Foundation based upon the agreement with the Ministry of Interior.

Witness/Victim Protection and its Limits

Although the Program of victims protection and support is a step forward in the process of better victim protection, it has its serious major limits not treating all victims of trafficking equally. This program does not fully cover all trafficked persons identified by NGOs. All services described above are available only for the limited number of migrant victims trafficked into Poland and also only for those, who are willing to cooperate with the law enforcement. These limitation decrease the number of beneficiaries in the program in a significant way and create the situation where trafficked persons are divided into two categories: those who receive assistance from the state institutions (under the condition of

cooperation with them) and those who are identified and assisted by NGOs and receive support from other sources than governmental. NGOs see this situation as a serious obstacle in the process of developing the effective victim protection measures in Poland.

No comprehensive protection scheme is currently available for **all** victims of trafficking, who can however be entitled as witnesses to anonymity and be supported in court, if agreed by the judge, by a lawyer or a social representative (i.e. NGO), who can make oral or written statements. Social welfare, support measures and voluntary return to the home country are provided by NGOs since only refugees and foreigners with permanent residence status can access social welfare supplied by the State. NGOs are then crucial for the trafficked persons' assistance since they offer a range of social, legal, medical and psychological services to help them to overcome the trauma suffered and to support their social inclusion.

In many cases, trafficked persons cannot fall back on the support of the State because they have no legal residence status or cannot prove their identity. Moreover, they risk being detained, deported, prosecuted or punished for the illegality of their entry or stay, for having been involved in prostitution or other illegal activities, such as begging, or for other offences that are a direct consequence of their situation as trafficked persons, for example the use of false papers. In particular, women who are trafficked into the sex industry are faced with triple marginalization: as women, as migrants and as prostitutes. Even if trafficked persons do not face (all of) the problems above, many are still confronted with a lack of support services. Although trafficking is widely recognized as a serious human rights violation, most States do not provide adequate remedies to victims, such as assistance, protection and compensation. Even if short term assistance and protection are offered, long term solutions, such as access to the labor market or long term residence permits if a trafficked person cannot or does not want to return to her or his home country, are lacking. In general, State policies tend to concentrate on measures in the area of crime control and migration policies and much less on the assistance and protection of the human rights of trafficked persons.

Along with fear of reprisals, the stigma of prostitution and feelings of shame or guilt, the absence of adequate assistance and protection prevent many trafficked persons from reporting to the authorities, pressing charges and/or acting as witnesses. It is estimated that only a small fraction of trafficked persons are actually identified. Additionally, only a small percentage of the identified trafficked persons decide to press charges or to act as a witness.⁴

Statistics

In Poland one of the most important source of data on trafficking in persons is the National Prosecutor's Office in Warsaw. Statistics on trafficking provided by such office, deal with both data on the offences against victims of trafficking and the number of persons arrested, as one can see in table 7 below.

NUMBER OF OFFENCES AND OFFENDERS FOR TRAFIFCKING IN POLAND. 1996-2003.

Year	Offences	Offenders
1996	26	59
1997	31	58
1998	25	64
1999	14	24
2000	38	119
2001	35	71

⁴ M.Wijers, La Strada European Network against Trafficking In Women. Facts & Practices. 2005

2002	11	40
2003	30	134

Source: National Prosecutor's Office – Warsaw.

The National Prosecutor's Office in Warsaw also provides information regarding the number of victims of trafficking in Poland. The official figures are shown below. The general trend indicates a decrease in the number of the victims of trafficking during the period 1997-1999, while since 2000 there has been an increase with a drop in 2001.

NUMBER OF VICTIMS OF TRAFIFCKING IN POLAND. 1996-2003.

Year	No. of victims
1996	232
1997	163
1998	109
1999	109
2000	172
2001	93
2002	167
2003	261

Source: National Prosecutor's Office – Warsaw.

Statistics from the La Strada Foundation for 2005:

Within the reported period of time **224 clients were under** the care of La Strada. Within this number **137 were new clients** (18 from Ukraine, 9 from Moldova, 6 from Bulgaria, 3 from Russia, 2 from Romania and 1 the Czech Republic, 1 from Slovakia, 1 from Nigeria, 1 from Belarus), **147** of them were Polish clients.

From January to December 2005 the shelter hosted– 36 women stayed in the shelter of which 9 migrants 1 Bulgarian, 1 Ukrainian, 1 Nigerian, 1 Slovakian, 2 Russian and 27 Polish

Year 2006

From January to June 2006 the LS Poland shelter hosted 20 women – 6 migrant trafficked persons (3 Bulgarian, 1 Ukrainian, 1 Russian, 1 Romanian) and 14 Polish trafficked persons:

- 12 women lived in the shelter from 1 to 1,5 month (crises intervention)
- 8 women lived from 1,5 month to 10 months (*program of reintegration*)

In January – June 2006 in total: 36 women stayed in the shelter of which 9 migrants and 27 Polish women.

Within the reported period of time **118 clients were under** the care of La Strada.

Within this number **61 were new clients** (6 from Ukraine, 4 from Bulgaria, 1 from Russia, 1 from Romania, 2 from Chechnya, 2 from Vietnam, 1 from Moldova), **3** of them had children (in total 5 children). **44** persons of the new client's group were Polish.⁵

⁵ La Strada Year report 2005, interim report 2006.

RECOMMENDATIONS:

Advocacy & Lobbying:

- to establish an independent office of National Rapporteur on trafficking in persons

Awareness raising:

- a big need to raise awareness on the trafficking for forced labor and other form of exploitation of migrant labor work whether it is a case of Polish migrant works abroad or migrants coming to Poland as a country of destination.

Legal framework:

- incorporation of the definition from the Palermo Protocol to be incorporated into a special vocabulary that is a supplement to the Polish Penal Code.
- to ensure that legal provisions for migrant victims of trafficking in Alien law are implemented in practice
- to ensure that anti trafficking procedures are shared and spread out among professionals who deal with the trafficking cases in practice
- to ensure that identification procedures are implemented in practice of the law enforcement work
- to activate representative of judiciary to become more aware on current situation of trafficking and late anti trafficking developments in the country and CEE region

Victim/witness protection

- to enhance program of victim/witness support also to domestic (Polish) victims who are returning back to Poland as a home country and to all trafficked persons

V) WOMEN IN POLITICAL AND PUBLIC LIFE: Article 7

PROBLEMATIC AREAS:

- Women are underrepresented in political elections. On average they amount to 15 % of the electoral lists and usually hold lower positions
- Women and women's agenda are invisible in electoral campaigns
- Few women hold top governmental and other leadership positions

In the last one and one half decades, during Poland's transitional period, the representation of women in public life notably declined. This trend provides a stark contrast to observations in western European countries, where the representation of women on all levels of government, as well as their participation in the decision-making process and in public life are constantly increasing. Only in the 2001 elections did Poland notice improvement. This improvement can be attributed to the effective campaigning of the **Pre-Election Coalition of Women**, which consisted of 50 NGOs. Although this coalition was successful, it had only transitory effects. After the election in 2005 women account for 14% of all members of the higher House of Parliament (*Senat*). This number indicates the decrease of 9 points in comparison with previous cadency (23%). Presently, the positions of president and vice-presidents of the Polish Senat are hold exclusively by men. The proportion of women in the lower House of Parliament (*Seym*) is far from satisfactory as well. There are 94 women, that is 20% of all MPs, in Seym⁶.

Still, there are certain difficulties in increasing the representation of women in Parliament. Most of the difficulties are in the political parties' policies, their lack of concern for women's issues and electoral law itself. Political fractions are responsible for selecting candidates and decide their place on the list of prospective candidates. The candidate's **position on the electoral list** strongly influences her/his chances in the election. There is no unambiguous selection criteria for placing candidates on the lists that political parties use. Rather, there are numerous behind the scenes mechanisms that are unavailable to voters which influence the final order of the candidates.

This procedure does not conform to European Union standards that officially promote women in political life. The common practice of Polish political parties is to give precedence to male candidates. Women constitute a vast minority, only several percent, on the electoral lists in the reported period 1990-2002. This directly jeopardize the equal representation of men and women. Even if women are placed on the lists of candidates, the order is arranged so that they are placed on lower positions. It is commonly understood that candidates who occupy top places on national lists have significantly greater chances of becoming parliamentary deputies. The best illustration of this discriminative procedure is the fact that the winning party in the 1997 elections, *Electoral Action 'Solidarity'* (AWS), did not place any women among their top thirty candidates.

Leaders of specific parties also decide which candidates will receive the most political and financial support during the campaigns. Beyond any shadow of a doubt, TV spots are one of the most important parts of the political campaigns. The analysis of the **TV electoral campaigns** in the reported period serves as an illustration of discrimination against women⁷. The study evaluated how often members of each gender were presented. Results show that three out of ten political parties allotted less than 10% of available airtime to women.

⁶ Fuszara, M. (2006) *Women in Politics*; Trio

⁷ Fuszara, M. (2003) *Women's Share of Power* ; Polish Women in 2003, Women's Rights Center (CPK)

Contrary to right-wing fractions, left-wing groups devoted approximately 35% of their airtime. Women are strikingly underrepresented in electoral campaigns.

In the same study, a qualitative analysis was made. Researchers examined the content of the candidates' speeches to determine if there were any gender differences. The study indicates that there are significant differences in topics female and male candidates address. Subjects "appropriate" for women appeared to be health care and education, while most men addressed the economy, finances, taxes, etc.

Finally, if we consider women's participation in powerful executive positions, we observe that there are some top positions in the governmental offices that have never been held by women. Some of these include: Minister of Agriculture and Rural Development, Minister of Transport and Construction, Minister of Interior and Administration and Minister of Culture. Furthermore, there was not any woman at the position of the President of Polish Sejm. Lack of women at the top positions of the Parliament's structures reflects direct discrimination. In fact, women in the Parliament are better educated than men who are MPs. The most recent data comprise the period 2001 – 2005 that is previous cadency. 96% of women in Senat had higher education, in comparison with 90% of men. Moreover, 43% of women were PhDs or Professors while only 32% of men in Senat were⁸.

In conclusion, women hold very few top governmental positions and they are underrepresented in Parliament. Thus they have limited influence not only on policy but legislation as well. This problem resembles a vicious circle: lack of proper legislation results in the low representation of women in politics and by these means diminish the chance to adopt special measures to boost women's participation.

RECOMMENDATIONS:

- Adopt a temporary quota system for balanced participation of women and men in politics and other positions of power
- Adopt pro-active policies promoting political participation of women

⁸ Fuszara, M. (2006) *Women in Politics*; Trio

VI) EDUCATION: Article 10

PROBLEMATIC AREAS:

- Very limited access for women to police and military academies
- Gender prejudices in school textbooks
- Lack of education about women's contributions to human civilization in school curriculum
- Gender Studies not commonly available at universities
- Lack of gender issues in academic research
- 'Glass ceiling effect' in academic careers
- Women have shorter academic careers due to the discriminatory retirement system

In contemporary Poland, more women than men receive secondary and higher education degrees. The labor market does not reflect this pattern. Women's aspirations in Poland meet many obstacles, including the Roman Catholic Church's traditional pro-family propaganda, which became especially evident after the collapse of Communism.

Article 70 in the Polish Constitution that guarantees equal access to education for women and men does not entirely shape reality. Access to police and military schools for women is still limited, and sometimes those institutions do not accept female candidates at all.

Nowadays, we observe that a growing number of universities introduce **tuition fees**. This has a considerable impact on women's educational opportunities. If parents face the choice of educating their son or daughter, they often choose to pay for their son's education. This is consistent with the stereotypical belief that women are more family oriented.

*“Important area which generates inequality is school **textbooks**. They present some activities as delegated to men or women exclusively. Masculinization of the language is very obvious. Male characters are presented more often than women; men are also more often depicted in illustrations. Textbooks universalize men as a prototypical human being.*

Compulsory reading is mostly XIX century literature, which is steeped in traditional vision of womanhood and reiterates stereotypes. Female characters are one dimensional and often presented in contrasting ways – good vs. evil, beautiful vs. ugly. It is not uncommon to find presenting women as intellectually inferior. Women are missing in history books, their contribution to the world's history is neglected, there is no mentioning of women's movement and its achievements, e.g. struggle for voting rights, for which some women paid with their lives.

***Sexuality education** is another issue. Participation in “Preparation for Family Life” is not compulsory and parents need to sign up children for this class if they want. Textbooks present Catholic point of view on sexuality and encourage traditional model of the family. Girls have no ambitious goals, they only wish for giving others love and care and their dreams are all about love and family. Boys aim at professional careers, family and love are next. For girls getting married and motherhood are priorities.*

Women are not presented as having other objectives than family. Men are more stable emotionally, they have to take care of women and supervise them as women are not capable of making their own decisions. The model of domestic partnership with both parents doing

households chores is absent. Mother takes care of the house, father is the breadwinner. Good marriage is a woman's best option and success.

Women who tend to have their own careers are presented as "masculine". Textbooks recommend for women to give up professional goals and concentrate on the family. Sexual drive is demonized and sexual activity should only take place within marriage. Sexual satisfaction is presented as degenerate. The only good sex is meant to aim at reproduction. Abortion is condemned; there is no information on contraceptives. Hormonal contraceptives are viewed as harmful. Authors of the textbook prefer the natural method, and faithfulness or celibacy is recommended as best protection against AIDS.

*Homosexuality is viewed negatively, same sex marriages are considered degenerate too. Of all books recommended by the Ministry of Education only one shows homosexuality in a neutral, non-ideological way."*⁹

A few Polish universities have established **Gender/Women's Studies** departments. Interest in this field is growing, especially among young people. However, the future of this relatively new discipline in Poland, the first department was established in 1992, is at risk. These studies are not subsidized by state budget, but instead function on the basis on donations and foundations. Moreover, many teachers devote their time on a voluntary basis. Thus, there is a need to change the funding of gender/women's studies since short-term grants, student fees and voluntary work are not sufficient to ensure further development.

Another problem is the lack of public system of supporting research on women and gender issues. The publications in this area are scarce, and wider, general reports are published mainly by nongovernmental organizations. The results of academic research in this subject find no interest in governing bodies.

The employment of women in education reflects a prototypical glass ceiling effect. Essentially, the rule of the academic staff pyramid is the higher the position, the fewer women there are to be found there. Women account for a majority of teachers in primary schools, but primary level teachers are among the worst paid groups on the Polish labor market. This is consistent with the general pattern of pauperization of women.

Another problematic issue is the right of women employed in research institutes in positions below the rank of professor (i.e. lecturers, assistants etc.) to retire at sixty, five years before men in similar positions. Initially, this regulation was thought to be a privilege of choice, but in practice it does not work this way. No matter what a woman's preference is, she will most likely be forced by her employer to retire, disturbing her scientific career.

RECOMMENDATIONS:

- Evaluate school textbooks from gender sensitive perspective
- Abolish limitations on women in military and police academies
- Establish gender studies departments in every university
- Equalize the retirement age of women and men

⁹ Alternative report prepared by Polish women NGOs for the Special Session of the Commission on the Status of Women BEIJING +10

VII) DISCRIMINATION AGAINST WOMEN IN THE LABOR MARKET: Article 11

PROBLEMATIC AREAS:

- Women with lower education are pushed outside the labor force and work in the black market economy
- Lack of social support for single mothers and their poor situation
- Glass ceiling effect; many educated women work in positions below their qualifications
- Only 2% of the most prestigious managerial positions are held by women
- Average wage gap is as high as 22%
- Women more vulnerable to unemployment than men
- Men have, on average, 30 – 40% higher retirement pensions than women
- Limited access to childcare system

Although the recently revised Labor Code introduced some positive anti-discriminatory provisions, it was not followed by regulatory provisions. In practice, this makes the anti-discriminatory provisions difficult for women to use when they experience discrimination. It is not surprising that discrimination against women in the field of employment is still present. The position of women in the labor market has deteriorated considerably during the transitional process. The negative aftermath of the introduction of the free market economy affected mostly women with primary or vocational education.

Statistics speak for themselves. In the period from 1992 until 2002, the percentage of economically active women with lower levels of education decreased from 32,9 to 19,2¹⁰. Essentially, those women were pushed outside the labor market and work in the black market economy, where the Labor Code cannot protect them. This has contributed to the feminization of poverty. 71% of women, in comparison with 56% of men, earn below the national average of 580 EUR. Moreover, **feminized professions** such as nurses, primary-level teachers, administrators and janitors are among the worst paid jobs. The term “feminization of poverty” has been introduced recently in Poland (by Irena Reszke and other sociologists) to describe a specific, discouraging status of women. This include the following problems, that are interrelated. First of all, women have lower salaries and are more vulnerable to unemployment according to quality indexes. Women tend to be jobless for longer than men, even forever in case of those who are in their fifties or even forties. Moreover, they encounter barriers during recruitment that men do not have to face and that are related to their marital status and family planning. Secondly, women more often than men are single parents, so the limited access to crèches, kindergartens and school full-time faculties is mainly women’s problem.

Social policy concerning families discriminates families of single parents [mothers mainly]. *The State Alimony Fund* that was the only support for those women who had problems with receiving alimony from fathers was closed down in 2004. Only the poorest families were replaced with very low social welfare benefit. At the same time, even when there is enough evidence on non-efficiency of legal system [Report *Alimentare znaczy jeść*, Krakow Centre for Women Rights]; there are no efforts to improve it. The single parent families [about 20% according to the National Census 2002] are out of the focus of social policy, and the only context of such discourse is of pathology and welfare clients. This seems to reflect the hegemony of concept of traditional family and marriage according to the teaching of catholic church.

¹⁰ Lohman, K. & Seibert, A (ed.) *Gender Assessment of the Impact of EU Accession on the Status of Women in the Labor Market in Poland*, Karat Coalition 2003

The **glass ceiling effect** still proves to be an indicator of indirect discrimination. Statistical data presented in the governmental report are inaccurate. The government report states that 38% of people in managerial positions are women. However, NGOs found this statistic to be untrue since it includes women in non-managerial professions as well. NGO reports indicate that only 2 % of women hold high-ranking professional positions¹¹.

Another major problem is the disparity between the incomes of men and women. Data indicate that women in the same position as men with the same qualifications as men earn less money. The biggest observed **wage gap** concerns women with jobs in higher education and at the top positions. The wage gap amounts to 31,6 %. Moreover, if we take into account that there are more women than men with higher education degrees in the labor market, we must conclude that many women work in positions below their qualifications. They are also less likely to hold managerial positions. The general trend reflects the following pattern: the more a person is educated, experienced and promoted, the faster pay gap increases, up to 50% on top positions (according to on – line research conducted by portal www.wynagrodzenia.pl).

Unemployment mainly affects women, especially those between the ages of 20 and 24 as well as those between the ages of 50 and 54. In 2002, the unemployment rate among women between the ages of 20 and 24 was 41,9%¹². Unemployment among women between the ages of 50 and 54 is lower than 41,9% but especially problematic. Not only are women in this age group discriminated against based on their gender but also because of their age. Finding a job is nearly impossible.

Another area of discrimination against women is **retirement payments**. In Poland, women can retire at 60 while men retire at 65. Therefore, men's pensions are 30-40% higher than women's pensions because men's contribution period is five years longer.

On the surface, legal regulations set up a basis for non-discriminatory practice in the labor market. However, the law is ineffective and does not protect women from prejudices. The government did not undertake any steps to improve the situation. No reforms or campaigns have been conducted improve women's position in the labor market or eradicate discrimination. No policies specifically targeting the most disadvantaged women in the labor market have been developed. What also seems alarming is that the government does not analyze the budget from a gendered perspective.

Another challenging issue that decreases women's ability to compete with men in the labor market is limited access to **social services**. Combined with lingering gender role stereotypes, limited access to social services creates significant obstacles. As data indicate, Polish women are responsible for almost all housekeeping and caregiving. Women claim they prefer an egalitarian model of marriage, but most of them live in a traditional one¹³. This results in the phenomenon of the "double work day" and makes it difficult to reconcile work and family life. Men's preference for the traditional family model is illustrated, *inter alia*, by the fact that the Labor Code entitles them to take three-month paid paternity leave, but only 25% of them ever consider taking it. Throughout the previous decades, childcare services such as kindergartens, which are a precondition for women's advancement in the labor market became less accessible. In 2002, only 31% of children attended kindergartens and 2%

¹¹ Alternative report prepared by Polish women NGOs for the Special Session of the Commission on the Status of Women BEIJING +10

¹² *Ibidem*

¹³ Research on *My Family* conducted in 2000 by CBOS

attended nurseries. These figures are alarming and raise questions regarding the quality of Polish social services.

Sexual Harassment in the Workplace

Only recently has sexual harassment been recognized as a grave social problem. Several years ago, women were not aware of the issue; they even did not know the proper term itself. Although women commonly experienced harassment, they did not perceive it as a violation of their human rights. Employers in Poland, mostly men, as well as coworkers extensively abused their power. Unfortunately, no statistical data has been gathered so it is difficult to estimate the scope of the problem. Some NGOs' experiences indicate that the issue is widespread. Women tend to treat sexual harassment leniently due to the lack of court precedents that would encourage women to exercise their rights. Victims would rather change their workplace than report sexual harassment.

The amendment to the Labor Code that defines sexual harassment provided women with a framework with which to exercise their rights. Unfortunately the amendment did not effectively encourage women to report sexual harassment. Although NGOs and the media sparked public debate on the issue, very few women elected to sue abusive bosses or coworkers. This is because law enforcement does not fully understand sexual harassment and it is therefore not treated with enough seriousness. Moreover, suspicious prosecutors openly display their bias against women.

Nevertheless, with the support of the **Women's Rights Center (CPK)**, some women who experienced sexual harassment decided to sue abusive bosses and coworkers. Some of the cases ended successfully, but a vast majority of accusations were rejected and the abusers escaped punishment.

RECOMMENDATIONS:

- Organize trainings for women who discontinued their education to help them reenter the labor market. Trainings should be affordable, accessible and include high tech skills
- Introduce gender budgeting citywide and nationwide. This will help establish the facts and enable the investigation of how public funds are spent according to the needs of men and women. Gender budgeting should apply to European funds as well
- Develop policies specifically targeting the most disadvantaged women in the labor market and create centers which respond to the realities and needs of poor women, women with low levels of education and skills, women from ethnic minorities, and women otherwise marginalized in order to facilitate their reintegration into the formal labor market.
- Introduce monitoring mechanisms and other measures ensuring implementation of legislative changes in the area of gender justice. This can be achieved through co-operation with women's NGOs and adoption of the Equal Status of Women and Men Act, which will guarantee the permanency of the National Women's Machinery
- Establish gender units in the Ministry of Economy, Labor and Social Policy and the Ministry of Finances
- Introduce special measures to tackle the gender pay gap, including improving wages in feminized professions.
- Develop high quality, geographically and financially accessible childcare services, including nurseries, kindergartens and before and after-school care

VIII) WOMEN'S HEALTH PROBLEMS: Article 12

PROBLEMATIC AREAS:

- Lack of compulsory and comprehensive sexuality education in school curriculum
- Lack of family planning counseling services
- Limited access to modern contraceptives due to social and economic barriers
- Ban on sterilization
- Restrictive anti-abortion law

In spite of women's organizations' efforts to improve **sexual and reproductive health and rights** in Poland, these efforts continue to be neglected. There are also instances of blatant violations of these rights. No steps have been taken by the government to improve the situation. The current ultra-right wing political coalition promotes only natural methods of family planning and plans to totally ban abortion as well as to limit the access to contraception. The abortion law is already very restrictive. Limited access to safe and legal termination of pregnancy has been indicated in the concluding observations of the UN Treaty Monitoring Bodies numerous times.

Sexuality Education

The Polish school curriculum lacks compulsory and comprehensive sexuality education, which is a precondition to adolescent women realizing their right to health. Teenage women are especially affected by the lack of adequate sexuality education due to the threat of premature pregnancy, which constitutes up to 7% of all births in Poland, and a higher risk of contracting sexually transmitted infections (STIs), including HIV/AIDS.

"Preparation for Family Life", which is offered to pupils in secondary school, is not obligatory but facultative. Schools require parental consent. Not only do the textbooks for this subject not conform to current knowledge on sexuality, contraception, etc., but they also promote traditional Catholic values. The content of textbooks is elaborated in Chapter VI of this shadow report.

Access to Contraception

There are no state policies and programs which would make contraception easily accessible and affordable. Therefore, it is not surprising that the usage of modern contraception is relatively low. Over 45% of Polish women, who declare to protect themselves against pregnancy, depend on natural methods of family planning that are not really acknowledged as reliable contraception¹⁴. 36,9% of women depend on condoms, making them the most commonly used form of modern contraception¹⁵. Condoms are widely available but fairly expensive. There are no special programs to promote condom usage among youth or to make them more financially accessible.

One quarter of Polish women use hormonal contraception. Hormonal pills require a prescription and can be problematic for women to obtain. Firstly, some doctors in public health centers are reluctant to prescribe hormonal contraceptives because they will not be paid. The primary health care system does not reimburse all doctors for providing

¹⁴ According to research on *Health condition of Polish Population in 2004*, Central Statistical Office, Warsaw 2006

¹⁵ *Ibidem*

contraceptive counseling. Therefore, some regional branches of the National Health Fund simply do not provide those services.

Moreover, many doctors refer to the **Conscience Clause** to avoid prescribing hormonal contraception. The Conscience Clause is a medical professional's right to refuse to perform abortion if she/he finds that it conflicts with her/his worldviews or values, namely those imposed by the Catholic doctrine. This provision is overused by doctors and cited as the reason doctors refuse to prescribe contraceptives or "morning-after" pills. In order to avoid these difficulties, women must visit gynecologists in private clinics. Going to private clinics is significantly more expensive and especially prohibitive for rural women and adolescent girls.

Another obstacle in accessing hormonal contraception is the cost. Hormonal contraception is expensive due to the law. Hormonal pills are not considered to be essential medication listed in the medical register. Thus there is no legal basis to make them refundable. In the debate on subsidizing contraception, the Minister of Health recently stated that since contraception does not cure any illness, it is not a real medicine and therefore cannot be subsidized by the state. By promoting this perception of contraception, health authorities ignore the WHO's list of essential medicines. Only three types of hormonal pills are subsidized by the state budget. These pills have medical uses besides contraception, but they do not conform to modern medical standards.

Between 1998 and 2002, the public health care system focused on "natural" family planning methods; modern contraceptive methods were completely neglected. The National Team for Family Planning Promotion that was established in 2002 was unable to effectively address the lack of family planning services and therefore no longer exists. In 2006, the Minister of Health established a Ministerial Task Force to promote natural family planning, which clearly shows where the priorities of the present government are.

Due to the outdated law which has been in effect since 1932, voluntary contraceptive sterilization remains illegal for both women and men. In spite of NGOs' efforts, this method of preventing pregnancy still has not been recognized by legislators as a means of family planning.

Access to safe abortion services

Unsafe abortion poses a major threat to women's health in Poland. Because women have very limited access to legal abortion services under current legislation, they often risk undergoing illegal and unsafe abortions. The *Law on Family Planning, Protection of the Human Fetus and Conditions of Permissible Abortion*, the Anti-Abortion Act, restricts the right to abortion to cases where a pregnancy endangers the life or health of the woman; the embryo is irreparably damaged, or has an incurable, life-threatening illness, or the pregnancy is a result of a criminal act. The government report states that society does not support the restrictive abortion law, which means that the government has enacted a law against society's will.

The Federation for Women and Family Planning, a Polish NGO, has been monitoring the implementation of the law since its inception. Studies conducted by the Federation in 1999 and 2000 confirm the results of research conducted by the organization in 1993 and 1996. The main findings are as follows:

- The anti-abortion law did not eliminate and probably did not diminish the phenomenon of abortion. Illegal terminations are still common. The scale of the phenomenon can be estimated at between 80,000 and 200,000 abortions per year.
- Most illegal abortions are conducted by doctors but their quality depends on how much money a women paid for it. Media inform about growing number of deaths attributed to terminations of pregnancy carried out in so called ‘abortion underground’. Due to economic constraints many women simply can not afford high quality services.
- Some women travel abroad to have an abortion. This phenomenon is known as ‘abortion tourism’. The number of women traveling abroad is unknown, although many foreign clinics report having Polish women as their patients.
- Restrictive regulations have not eliminated abortions on social grounds. Instead, they have resulted in serious limitations on access to legal abortion. Public hospitals terminate very few pregnancies. Many women who have a right to abortion according to the law, but for various reasons cannot exercise this right, are increasingly turning to the abortion underground for solutions or are forced to continue their pregnancy in spite medical and social advice against doing so
- Knowledge about conditions for lawful termination of pregnancy is highly unsatisfactory, both in the society in general, as well as among medical staff. This ignorance makes women even more vulnerable and dependant on negative attitudes of medical personnel.
- The anti-abortion law results in personal trauma and causes substantial health problems for hundreds of thousands of women in Poland every year.

The anti-abortion law is much stricter *de facto* that it is *de jure*. Women who are entitled to legal abortion under the Act are frequently denied the termination. Since 1993 the accessibility of legal abortions in public hospitals has deteriorated, with some hospitals publicly admitting that they do not perform abortions. The numbers of legal abortions are:

YEAR	Number of legal abortions
1998	310
1999	151
2000	138
2001	124
2002	159

Table 1: Number of legal abortions (1998 – 2002)

The official numbers by no means represent the actual number of women who have had abortions, especially when we consider that Poland has 10 million women of reproductive age.

Practical interpretation of the provisions that create exceptions to the ban on abortion is very restrictive. In most cases, doctors refuse to provide the certificate required for a legal abortion, even when there are genuine grounds for issuing the certificate. There are no guidelines as to what constitutes a threat to a woman’s health or safety and it appears that some doctors discount any threat to a woman’s health as long as she is likely to survive delivery. Currently, the European Court of Human Rights in Strasbourg is examining the case of Alicja Tysiac, a woman who was denied her right to legal termination of pregnancy, which resulted in the

severe damage of her eyesight. This case illustrates the major problem of executing the right to abortion in Poland. Moreover, most doctors ignore health risks related to teenage pregnancy. They do not see teenage pregnancy as a sufficient indication for abortion. There is another case of a Polish woman pending in Strasburg as well. Other women who filed complaints to the Polish courts are still waiting for final decisions, such as Barbara Wojnarowska. She sued the hospital that denied her right to prenatal tests, and as a result she was forced to give birth to badly deformed child.

The major obstacle in obtaining an abortion is the aforementioned Conscience Clause, which can be interpreted in any way. There is no formal interpretation of this regulation, but there is pressure from the church and indolence of the authorities. In the letter of the law, whoever claims this clause is obliged to inform the patient about another place where abortion is available, but in practice doctors do fail to fulfill this obligation. Abuses such as these are more of a rule than an exception.

In order to solve many urgent problems related to sexual and reproductive health, Polish NGOs together with the Women's Parliamentary Group prepared a draft of an "Act of Conscious Parenthood". This act provides solutions to the most crucial problems, such as: implementation of sexuality education in school curriculum, liberalization of the law on abortion, limitation of the conscience clause, substitution of the term "child" with the term "embryo". The former Parliament decided to reject the draft without even reviewing it.

In conclusion, restrictive anti-abortion law remains one of the strongest spheres of discrimination against women. There is a clear link between the reproductive rights of women and their situation in the labor market. Women who cannot decide freely on if they will have children, when they will have them and how many children they will have are severely disadvantaged. Their economic choices and employment opportunities are especially restricted. Employers tend to treat women as "risky" workers due to their uncontrollable fertility. As a result, they offer women less secure employment contracts than they offer male workers, or they simply give the job to a man.

RECOMMENDATIONS:

- Implement comprehensive sexuality education programme in school curriculum
- Implement national policy on sexual rights and sexual health in cooperation with NGOs. Educate and inform the public on contraceptives
- Introduce state programs promoting and making accessible all modern forms of family planning
- Liberalize the restrictive anti-abortion law to make it consistent with society's expectations as polls indicate
- Monitor how the Conscience Clause is used by medical staff and penalize ungrounded delays in performing legal abortions
- Establish a formal procedure in the healthcare system where women who are denied reproductive health services can file complaints

IX) RURAL WOMEN: Article 14

PROBLEMATIC AREAS:

- Lack of policies addressing rural women
- Low representation of women in local government authorities
- Rural women face new challenges resulting from the need to lessen the extent they depend on agriculture and to search for other options of economic activity that will provide decent income for the whole family
- The work on farm and household hinder rural women's professional careers
- Limited access to education
- Limited access to information and facilities in general
- Traditional model of family that prevails in rural areas makes women more vulnerable for stereotyping
- high unemployment rate (32%) among those rural women who do not own farm.

During the last decade, economic growth in Poland has affected the situation of the Polish countryside as well. Countryside is no more a living example of poverty and the traditional imperative to maintain family farm is not strictly imposed. Quite the contrary, the countryside grew to be an important part of the national economy that is entirely integrated with the rest of the society. In this newly established socio-economical context of Poland, the specificity of the countryside and its particular implications on the status of rural women have to be seen from fresh perspective. Rural family remains to be consumptive, as well as productive community, in which family roles intertwine with the productive roles. Realization of both of these roles burdens especially women, whose work on the homestead includes a wide range of duties. Rural women do not only have to deal with feeding and caring for the family, cleaning and doing other households, but also take responsibility of the organization of the farming and important decisions that it implies. Women from the countryside also have to face entirely new duties. Their skills of planning and managing the family budget, as well as practical know of reasonable and economic feeding of the family grew in importance. The way the woman manages the family finances, time and energy has a crucial impact on the condition of the homestead.

In addition, the economical transformation affected the socio-economic situation of rural women, who have to adapt to new living and working conditions. Those adjustments include a variety of areas. As far as family life is concerned, rural women had to verify their attitudes towards family members' aspirations and their education. Moreover, they had to rethink the organization of farming. In general, rural women have more children than women from the city, which means that they have more caring duties as well. However, contemporary rural families are not that numerous as they used to be some time ago, women are burdened with new duties implied by the new concept of maternity. Children's contributions to working on rural farm has significantly declined. Parents rather care for their children's education, development and vacation. Mothers are especially concerned about children's intellectual as well as physical development and they ensure that these ideals are realized, even if subjected to skeptical public opinion.

The new rules of market economy demand changes in professional life of rural women working on the family farm, as well as those who run their own enterprises. Many rural women have to reconcile the farming with another job that improves their finances, but also reflects a need for self-fulfillment and a search for own identity. From women's perspective, the advantage of employment is not only income but rural women also benefit from financial

independence. Moreover, work guarantees future retirement payment and boost self-esteem that is additionally reinforced by occupational as well as sociable contacts. Woman's regular salary makes it possible for the family to buy equipment that facilitates the work on the farm. This empowers the homestead significantly. Moreover, occupational diversity within the marriage leads to further integration of rural family into global society. By these means, rural families adapt urban lifestyle that is characterized by the common occupational mobility and multiplicity of the sources of income.

Further development requires women's participation in changing their environment. Rural women should be present in local and regional authorities, as well as NGOs. The active participation not only contributes to rural women's personal development but also promotes the development of civil society.

RECOMMENDATIONS:

There is a need of the State support to improve the situation of rural women. The Government should invest not only in technical infrastructure (sewerage, gas and water supplies, dumping grounds etc.) which is still important, but also in human resources, namely:

- to organize trainings, courses etc. to create a possibility for development for rural women
- to undertake actions to boost self-esteem of rural women and change their passive behavior in order to encourage them to initiate economical and enterprising actions
- to promote the participation of rural women in social life (for instance increase their participation in non-governmental sector, volunteer work etc.)
- to facilitate the access to the system of education (educational establishments should be geographically accessible, to guarantee trained personnel in educational establishments, to increase the access to internet). These actions will make it possible to implement new forms of working for rural women.
- to improve the access to health care services in order to advance pro-health actions on countryside
- to create modern network of shopping malls and services in order to improve life conditions

APPENDIX I: Analysis of the excerpts from the prime minister's expose (19th July 2006) from human rights' perspective done by women NGOs and attached to the letter to the prime minister requesting explanation about his approach to equality policy of government

The Prime Minister on women's human rights: *"As I have already mentioned, we are going to strive for complete cultural and moral sovereignty of Poland. The European Union's legislation and legal regulations do not cover these issues, nor should they. Poland – I repeat – wants to maintain its distinctiveness in this field. Since we differ in our morals from many other countries, there is no sense to conceal it. But still, there are some things worth changing. I would like to emphasize that as far as, for instance, equal rights for women are concerned – de facto equality of rights, position in family, and all these things that lead to the defense of women and avoidance of oppression that often occurs – we are strongly for. But as far as other issues that we are talking about are concerned, we are definitely against. And I sustain this standpoint."*

Article 3 of the International Covenant on Civil and Political Rights:

The States Parties to the present Covenant undertaken to ensure the equal rights of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

ICCPR was ratified by Poland in 1977

General Comments adopted by the **Human Rights Committee** on the Article 3 of International Covenant on Civil and Political Rights:

Inequality in the enjoyment of rights by women throughout the world is deeply embedded in tradition, history and culture, including religious attitudes. (...) States parties should ensure that traditional, historical, religious or cultural attitudes are not used to justify violations of women's right to equality before the law and to equal enjoyment of all Covenant rights. States parties should furnish appropriate information on those aspects of tradition, history, cultural practices and religious attitudes which jeopardize, or may jeopardize, compliance with article 3, and indicate what measures they have taken or intend to take to overcome such factors.

Article 3 of the Convention on the Elimination of all Forms of Discrimination Against Women:

States Parties shall take in all fields, in particular in the political, social, economic and cultural fields, all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.

CEDAW was ratified by Poland in 1980

Article 9 of the **Platform for Action** adopted by the **Fourth World Conference on Women: Action for Equality, Development and Peace, Beijing, 15 September 1995:**

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*¹⁶. (...) *full respect for various religious and ethical values, cultural backgrounds and philosophical convictions of individuals and their communities should contribute to the full enjoyment by women of their human rights in order to achieve equality, development and peace.*

Platform for Action was accepted by Poland without reservation

The **UN Human Rights Committee** and the **Committee on Economic, Social and Cultural Rights** have expressed their concerns about discrimination against women in various areas of social life in Poland numerous times. The Treaty Monitoring Bodies that reviewed the government's reports on the implementation of the human rights conventions elaborated on concluding observations related, *inter alia*, to the protection of women's rights in 1998, 1999, 2002 and 2004. The Committees especially noted concern with the strict abortion law, limited access to contraceptives and lack of sex education in schools. Thus, the following conclusions from 2004 are quoted hereafter:

Concluding observations of the **Human Rights Committee** (2004):

8. The Committee reiterates its deep concern about restrictive abortion laws in Poland, which may incite women to seek unsafe, illegal abortions, with attendant risks to their life and health. It is also concerned at the unavailability of abortion in practice even when the law permits it, for example in cases of pregnancy resulting from rape, and by the lack of information on the use of the conscientious objection clause by medical practitioners who refuse to carry out legal abortions. The Committee further regrets the lack of information on the extent of illegal abortions and their consequences for the women concerned (art. 6).

The State Party should liberalize its legislation and practice on abortion. It should provide further information on the use of the conscientious objection clause by doctors, and, so far as possible, on the number of illegal abortions that take place in Poland. These recommendations should be taken into account when the draft Law on Parental Awareness is discussed in Parliament.

9. The Committee also reiterates its concern about family planning regulations adopted by the State Party. The high cost of contraception, the reduction in the number of refundable oral contraceptives, the lack of free family planning services and the nature of sexual education are also of concern to the Committee (art. 6).

The State party should assure the availability of contraceptives and free access to family planning services and methods. The Ministry of Education should ensure that schools include accurate and objective sexual education in their curricula.

The Prime Minister on family: *“Our objective is the duration of Polish family, procreation of children and socialization of born children into family life. By dint of this we will last. And this traditional but verified way of succession of generations will be maintained. But especially, we will do everything to protect Polish family against external and particularly internal attacks since those external are rather weak. “*

People have a right to decide freely which model of family they desire and how many children, if any, they have. In traditional family models, women are responsible for

¹⁶ Vienna Declaration and Programme of Action, Report of the World Conference on Human Rights ..., chap. III, para. 5

childrearing and housekeeping. Their eventual professional careers are perceived as an economic must when the man, who is the breadwinner, does not earn enough. A growing number of young people prefer relationships based on partnership, in which women and men share household duties. Cohabitations, single parent, as well as same-sex families do exist. If the government wants to support family, it should recognize all of its possible models. Moreover, if the government wants children to be born, it should develop measures to facilitate the reconciliation of professional and family life for both parents, as well as equalize the chances of women and men in the labor market. It is not clear, what the prime minister means by “internal attacks” on family. However, it is hoped that by focusing on protecting families from “internal attacks”, the government will not prevent those families from exercising their right to live as they choose.

The Prime Minister on same-sex relationships: *“I remind you of the previous cadency, Sejm’s¹⁷ declaration of the Poland’s sovereignty in the field of culture and morals. I remind you of the Polish Constitution which identifies marriage as a relationship between one man and one woman. We are going to protect all of it. We will not be persuaded that black is white. We are going to protect everything that is a foundation of social life.”*

People of homosexual orientation in Poland do not arrogate for the right to marriage but for the legalization of the partnership, which would warrant them basic powers that intimates should have. The Polish Constitution does not ban same-sex partnerships, and beyond any shadow of a doubt, their existence would not disturb the foundations of social life. In contrast, intrusions in private choices are a violation of human rights, especially the right to privacy. This has to be identified as discrimination on the basis of sexual orientation, which is prohibited according to the article 3 of the Amsterdam Treaty.

¹⁷ Lower house of the Parliament

APPENDIX II

**Shadow report CEDAW
submitted by Stana Buchowska,
national coordinator,
La Strada Foundation against Trafficking in Women, Poland**

Trafficking in persons in Poland

This shadow report will bring a brief overview of the situation of trafficking in persons in Poland and will particularly focus on following areas:

- Description of current situation in Poland (new trends, new developments, situation after EU accession))
- Legal framework/problem of definition in Penal Code
- National Action Plan 2005-2006
- Program of support and protection for victims of trafficking
- Situation of victims
- Statistics
- Recommendation
- Each area is provided with the critical comments and recommendation from the perspective of NGOs. At the end of the report summary of recommendations and conclusions are provided.

In this shadow report a focus will be put on the phenomenon of trafficking in persons understanding according to the Palermo Protocol definition, where trafficking in persons is defined in the broader context , not only focusing on the prostitution and sex business, this also includes other forms of trafficking like forced labor, slavery like practices, begging, servitude, etc.

(a) "Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs;

(b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;

(c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered "trafficking in persons" even if this does not involve any of the means set forth in subparagraph (a) of this article;

(d) "Child" shall mean any person under eighteen years of age.

General information

Situation in Poland

Poland still keeps the triple function of being a country of origin, transit and destination. Major countries of origin for Poland are: Ukraine, Moldova, Belarus, Bulgaria, Romania, Lithuania, Russia. The main countries of destination are: Germany, Italy, Spain, Greece, the Netherlands, Belgium, Austria, Sweden, Denmark.

The enlargement of the EU caused that more persons migrate to EU countries for a job¹⁸ This fact has its influence on prevention work; more persons ask for information on employment conditions and employers. Mostly women are calling on the hot line and a growing number of leaves for legal jobs is been observed. In general, more information on working conditions and about safe job migration appeared in the Polish media. Hopefully this will contribute to a reduction of trafficking cases from Poland.

Polish victim of trafficking were referred to La Strada also from Sweden. It is too early to say how it is connected to Swedish ban on prostitution services. NGOs received more information on migrant's trafficked persons for other purposes that prostitutions – mostly forced labor and begging. Situation on the highway prostitution is gradually changing. Instead of women trafficked form Bulgaria, more Polish women appeared on the highways, while Ukrainian women remain the largest group of migrants trafficked into prostitution. More and more signals on trafficking in children are referred to specialized NGO (Nobody's Children). Police informed us about cases of trafficking in children and than organized crime groups use these children for drugs smuggling.

Polish victim of trafficking were referred to La Strada Foundation – for the first time – from Australia. LS received more information on migrant's trafficked persons for other purposes that prostitutions – mostly forced labour. In Poland the Polish police reported cases of trafficking into forced labour and slavery like practices. Reported cases of “forced labour camps” in southern Italy (the Bari and Foggia regions) were reported, where more than 1000 victims, mainly Polish nationals, have been identified. Other cases of Polish nationals being forced to labour were reported from Spain and Great Britain. In April 2006 a case of trafficking for the purpose of stealing (pick pocketing) in supermarkets in Sweden – Malmo, was reported. All mentioned cases received big media attention. A new case of 6 Polish being trafficked for forced labor in the Netherlands was revealed in June 2006. La Strada Poland cooperated in the return process of these persons with the STV (an NGO) in the Netherlands. The new cases of investigation and prosecution of trafficking cases are results of the fact that in the headquarters of the Polish Police a special anti trafficking unit has been created since March 2006. The new unit consists of 4 police officers who are aware also of other forms of trafficking (forced labour, slavery like practices) and they have provided a number of operations in cooperation with other European police units (the *Carabinieri* in Italy, Europol and Interpol). As a result several organized crime groups have been identified and more than 20 perpetrators have been arrested.

The situation concerning highway prostitution is gradually changing. Instead of women trafficked form Bulgaria, more Polish women appeared on the highways, while Ukrainian

¹⁸ *There are several statistics provided about Polish job migration – mostly in different newspapers and specialized press. It is estimated that about 80.000 Polish persons found a job in Great Britain and about 40.000 in Ireland (both of these countries opened their job markets to the new member states). Another region for job migration from Poland is the Scandinavian region. Sweden opened their job market to nurses and medical personnel in general, as well for physicians. There are some new statistics provided about working migrants to the Great Britain and Ireland in the newspapers – estimated about 400.000 – 500.000. However, Ministry of Social Policy and Labour conducted a research – their results are much lower (about half).*

women remain the largest group of migrants trafficked into prostitution. More and more signals on trafficking in children are referred to the specialized NGO (Nobody's Children). The Police informed La Strada Poland about cases of trafficking in children and the fact that organized crime groups use these children for drugs smuggling.¹⁹

Factors conducive to trafficking

The issue of gender equality and a corresponding effective gender policy are determining factors that influence the level of trafficking in Poland. As a matter of fact, women are at the highest risk for trafficking. This is due to the feminization of poverty, gender discrimination, feminization of unemployment and migration, that play a crucial role in the process of recruiting and exploitation of trafficked women. A lot of steps have to be taken at national and international level to overcome the unjust conditions of women.

Situation in countries of destination

In countries of destinations the restrictive immigration policies of the EU affect the situation of trafficked persons - one effect is that governments tend to treat trafficked persons primarily as unwanted economic migrants who are to be deported right away.

Another factor is the increasing call for repressive measures against prostitution, such as criminalizing clients. This adds to the marginalization and stigmatization of sex workers and increases their dependency on the services of third parties, thus making them more vulnerable to abuse.

With regard to trafficking and forced labor in the sex industry, it is noted by La Strada that trafficking victims tend to be increasingly exploited in more private environments, such as private houses or flats in suburban areas aside of brothels and nightclubs.

Moreover, the number of minors exploited in the sex industry seems to be increasing.

In May 2004, Poland acceded to the EU. This might influence migratory and trafficking patterns considerably. It is expected that Poland will become more and more countries of transit and destination rather than origin. Access to reliable information about job opportunities within the EU, along with the gradual opening of the EU labor market will create more legal migration channels and thus decrease the risk of trafficking and related abuses. Furthermore, the need to find work abroad will not disappear since accession to the EU will not mean an immediate solution to problems such as poverty, unemployment, gender inequality and discrimination.

A factor that may actually facilitate trafficking is the fact that it is easy to cross borders and travel within the EU.

This development makes it imperative to also focus on the situation of migrants trafficked into their countries and to develop support systems for these groups, along with providing assistance to domestic trafficking victims returning home from other countries and victims of internal trafficking. It is also expected that the number of migrants trafficked into other labor sectors, such as agricultural or factory work, will increase.

Moreover, accession to the EU leads the newly acceded States to adopt more restrictive immigration policies and a stronger focus on combating illegal migration. As a result, the human rights of migrants become increasingly under pressure. This development makes it even more important for independent NGOs like La Strada to advocate the human rights of migrants and to lobby for adequate protection and assistance of trafficked persons.

Most of the developments described above are tentative, given the short period

¹⁹ La Strada Interim report 2006

since the accession. It is clear that more research is needed in this area, including research on trafficking for other purposes than the sex industry.²⁰

Current situation in anti-trafficking field in Poland: the anti trafficking policy of government is influenced by the two main instruments of pressure: international – EU anti trafficking framework and local and international NGOs. This leads also to the problem of competition among anti-trafficking actors, specialized projects implementing general policy framework, lack of sufficient information exchange among and between organisations and institutions. Another obstacles we can identify are: lack of reliable and comparable data, fragmentary data, lack of efficient research studies and fully qualified staff, especially in the law enforcement, lack of political will on some governmental institutions, even though there are anti trafficking provisions existing. On the level of public awareness – this was increased during the last two-three years but still trafficking is often mixed with prostitution or limited only to the area of sex business, there is a big need to raise awareness on the trafficking for forced labor and other form of exploitation of migrant labour work whether it is a case of Polish migrant works abroad or migrants coming to Poland as a country of destination.

Legal framework/problem of definition in Penal Code

In Poland trafficking in persons is criminalised under two articles of the Criminal Code. Article 204 punishes the enticement or the abduction of a person into prostitution abroad by a maximum of ten years of imprisonment; while Article 253 §1 punishes “*whoever traffics in persons, even with their consent,*” by at least three years of imprisonment,(up to 15 years) that increases up to five years if an “*adoption of children contrary to the provisions of the Act*” is organised. Furthermore, Article 204 § 4 punishes whoever forces another person to practice prostitution by means of deception, threats, violence or abuse of authority by one to ten years imprisonment. Other provisions, connected with the deprivation of liberty (Article 189), coercion through violence or threat of force (Article 191), aggravated rape (Article 197), sexual harassment or rape in conditions of dependency in power relationships (Article 199). Involvement in organized crime activities (Article 258) are also used to prosecute traffickers and exploiters.²¹

Article 253 has also been criticized because of its too general wording that does not clearly indicate the specific behaviors that fall within the offence of trafficking. The main obstacle and the most criticized aspect is that there is not a definition of trafficking included into the Penal Code.

NGOs and some institutions gathered in the working group implementing the National Action Program to Prevent and Combat Trafficking in Persons in Poland lobby for incorporation of the definition from the Palermo Protocol to be incorporated into special vocabulary that is a supplement to the Polish Penal Code. Poland ratified Palermo Protocol in February 2003 and it is possible to incorporate Palermo Protocol definition.

This lobbying initiative hasn't been welcomed by some governmental institutions concerned, let us name Ministry of Justice, among others.

The lack of a clear definition of trafficking is very problematic because the key-state actors appointed to prevent and fight trafficking and protect the victims are not sufficiently well-informed and trained to identify the offence and act accordingly. As a consequence, for instance, potential victims of trafficking are deported because their status is not correctly identified.

²⁰ M. Wijers, La Strada European Network against Trafficking In Women. Facts & Practices. 2005

²¹ E. Pearson, *Human Traffic, Human Rights: Redefining Victim Protection*, Anti-Slavery International, London, 2002, p. 211.

Migrant trafficked persons may be granted by special residence permit, under Article 14 of the Alien Law (Amendments to a bill from September 2005) they may be given the possibility to stay legally in Poland to act as migrant victim witnesses in criminal proceedings. Under the Act on Protection of Aliens (2003) victims may apply for asylum for humanitarian reasons for up to two years. Trafficked persons have also a possibility of two months of reflection period. Even though, these provision exist in theory, NGOs are not aware of the fact that there were used in practice. The same caused the possibility of reflection period. One among the main reasons for this situation is lack of information that are not sufficiently shared and spread out on the lower level of the law enforcement institution.

Another example of divergences of theory and practice:

Many of Polish public prosecutors in are not familiar with the special instruction submitted by the National Prosecutor Office on how to use and implement “**Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Transnational Organized Crime**” in practice, in prosecution of trafficking cases.

The similar situation is with the police and the border guards representatives on the lower level. There are a special guidelines on how to identify the cases of trafficking and trafficked persons themselves – developed by the Headquarters of the Police and the Headquarters of the Border Guards in cooperation with the group of experts. Officers in the fields who are usually the first contact with trafficked persons are not aware of these guidelines. There were no special trainings or education provided for them by their superiors.

Lack of identification procedures implemented in practice of the law enforcement work are one among the biggest obstacles of effective combating and prosecution of the criminals and the crime of trafficking as well as of better victim/witness protection measures.

The lack of a comprehensive scheme of social and labor inclusion of trafficked persons does not favour the coming forward of victims of trafficking who could greatly contribute to the fight of the crime and the arrest of criminals that exploit vulnerable persons by profiting from a low-risk and high profit business. the victims who are granted support measures and a stay permit are more keen to co-operate with the police and the judiciary and, eventually, to press charges against their perpetrators. At least, the Polish authorities should ensure the implementation of the Article 14 of the Immigration Law that provides the right to stay for those victims who act as witnesses in a criminal proceeding and, furthermore, to allocate proper funding to support them. There is a model program of vocational and social inclusion of the trafficked persons into the labor market currently implemented by La Strada and 5 partners, both NGOs, local government and governmental institutions).Project IRIS – Intervention, Reintegration, Initiative, Sustainability - is still in the stage of testing of some innovative solutions (system of motivation training, coaching in the process of vocational training and the internships, entering the job market without stigma of trafficked person). There is a mainstreaming of the results of this initiative planned for 2007-2008.

Polish policy on prostitution

The Polish policy on prostitution falls under the *abolitionism* model because *outdoor* and *indoor* prostitution are neither prohibited nor regulated by the State. Therefore the sex market lies in a “grey area” as it is not explicitly forbidden but, on the other hand, it is not regulated and considered as a work. In fact, according to Article 203 of the Criminal Code it is a crime to force a person to prostitute herself or himself and under Article 204 it is illegal for a third party to make profit from prostitution (pimping, procuring, etc.).

This offence is punished with imprisonment up to three years, that can be extended up to ten years in case the exploited person is a minor.

In Poland, the discussion on prostitution policy is mainly focused on moving or not towards a regulation of the sex market. The debate is spurred by the current situation: in practice hundreds of *de iure* massage parlours, clubs for men, “agencies for men”, etc. are *de facto* brothels where prostitution takes place and several tracts of national highways are populated by prostitutes.

National Action Program 2005-2006

National Program of Prevention and Combating of Trafficking in Persons for 2005-2006 is the continuation of activities undertaken within the framework of the National Program of Fighting and Prevention of Trafficking in People assumed by the Council of Ministers on 16 September 2003. The program was worked out by the Team for Fighting and Prevention of Trafficking in People established by the Order No. 23 of the Prime Minister, dated 5 March 2004.

The need for such a program arises from the fact that some of the tasks listed in the previous Program require continuation while some of them were not implemented within the scheduled time framework. Besides, trafficking in people is a dynamic process undergoing constant changes. New tasks listed in the Program reflect the reaction to the changes. It is necessary to continue working on solutions that are necessary due to Poland’s membership in the European Union and international obligations of Poland, particularly signing and ratification of *Protocol* (appendix to the UN Convention against international organized crime) *of preventing, fighting and penalizing trafficking in people, especially women and children..*

The task of the Program is to create conditions necessary for efficient counteracting and fighting the trafficking in people.

The Implementation of the Program shall require participation and cooperation of numerous subjects of governmental administration and non-governmental organizations.

Designated subjects bear responsibility for the implementation of tasks assigned in the Program. The Team for Fighting and Prevention of Trafficking in People is responsible for monitoring its implementation.

The deadline for implementing the tasks assigned in the Program has been set for the end of 2006. Basing on the report prepared by the Team, the Council of Ministers shall evaluate the results thereof and make a decision on the way of organizing activities aimed at fighting and prevention of trafficking in people.

Financing of the Program

Tasks assigned to individual subjects shall be financed within the budgets at their disposal. It is necessary to single out the amounts required for implementing the goals and tasks assigned in their 2006 budgets.

Certain elements of the program, particularly those related to investigating the problem, data exchange, best practice and training might be financed by the EU programs, such as AGIS, Daphne II or EQUAL.

Financial means amounting to PLN 500,000 shall be planned in the national budget for 2006, within section 42. Internal Affairs, for implementing the tasks assigned in the Program for introducing procedures of support and protection for a victim/witness to trafficking in people.

The main areas of the program are as followed:

- strengthening of the system of cooperation, education and prevention
- Preparation of report on trafficking in people in Poland.
- Support of research into trafficking in people in Poland, with regard to its victims and methods of perpetrators in particular.
- Introduction of the problem of trafficking in people to programs of public media.
- Changes in legislation aimed at effective fighting trafficking in people
- Preparing regulations aimed at specifying the conditions for granting stay visas and short-term stay permits to victims of trafficking in people, who cooperate with appropriate bodies and methods for implementing state obligations towards the victims, citizens of third country.
- Improvement of effectiveness of actions.
- Preparation and implementation of a program of special training of police officers, Border Guard officers, prosecutors and judges on the procedures in cases of fighting trafficking in people.
- Preparation of teaching materials on procedures in cases of trafficking in people, for police officers and Border Guard officers.
- Training the teaching staff of police forces (police officer colleges, training centres) in the problems of fighting trafficking in people.
- Continuation of bilateral international cooperation with countries of origin and countries of destination of trafficking in people.
- Preparation of manuals on trafficking in people for the representatives of institutions engaged in fighting and prevention of trafficking in people
- Intensification of victim and witness protection
- Victim and witness protection against repeated victimization during the investigation, through application of appropriate procedures and technical means.
- Protection of a children – victims of trafficking in people against repeated victimization during the investigation, through application of appropriate procedures and technical means.
- Preparation of the model of support/protection of a child – victim of trafficking in people
- Ensuring (through budgetary means for financial support of non-governmental organizations and self-government institutions) the possibility of aiding the victim during the crisis situation and after cessation thereof.
- Establishing standards to be met by non-governmental organizations and other institutions capable of and having the rights to provide aid to victims / witnesses to trafficking in people. Creation of a list of centres meeting the standards.
- Introduction of the problem of trafficking in people to the curriculum of social workers' education.
- Preparation and implementation of programs of reintegration of a victim of trafficking in people.
- Preparation and implementation of the programs of voluntary return of a victim of trafficking in people

The National Action Program means a significant step forward in creating effective anti trafficking strategies and multidisciplinary approach toward the problem of trafficking.

The second edition of the program for years 2005-2006 has its own budget that allows to carry out planned activities. Representatives of some NGOs in Poland (Foundation "Nobody's Children, La Strada Foundation) are invited to be a part of the working group implementing the activities. They also monitor how governmental institutions fulfil their obligations.

Even though the program means a progress, there are still areas of activities to be improved. Not all of governmental institutions who are obliged to take part in the program are fully involved in the process of implementation of the program, some of them remain rather passive and act in a bureaucratic way. This is a case of Ministry of Justice in the process of incorporating the Palermo Protocol's trafficking definition into the Penal Code. Representative of judiciary system (judges) in Poland are very reluctant to take part in the series of specialized training for professionals organizing by Ministry of Interior, Ministry of Labor and Social Policy, Headquarters of the police, the Headquarters of the Border guards and NGOs. Despite of invitation for judges in all regions of Poland – only few of them actually participated in the training that was held already in 14 administrative districts (voivodships) in Poland. As a consequence of this, judges are not updated about the current development of the phenomenon of trafficking in Poland, its new trends and forms. This directly influence the situation of victims/witnesses of the crime of trafficking because judges are often not able identify the crime of trafficking and victims of this crime, do not accept the explanation of the situation of victims from the perspective of NGOs, in some cases victims of the crime of trafficking are treated as illegal migrants and cannot benefit from the victim/witness protection provisions.

The part of National Action Program is a Program of support and protection for victims of trafficking in persons. This program is designed for the period of 1 year from January 1st to December 31st, 2006. this program is implemented by La Strada Foundation based upon the agreement with the Ministry of Interior. This program covers the following activities:

1. Crises intervention

- a) Leads assessment of the victim by La Strada representative
- b) Case-management (counseling, consultation, support, securing of safety of the victim)
- c) Professional interpreter
- d) Safe travel/transportation
- e) Safe accommodation, food, basic needs
- f) Medical and psychological services, medicines

2. Assistance during the contacts with the law enforcement

- a) Legal counseling

3. Assistance on the process of legalization of stay

4. Organization of the safe trip back to the country of origin. Contact with the NGO/service provider in country of origin – based on agreement of the victim and upon his/her request.

Program victim/witness protections and its limits:

Although the Program of victims protection and support is a step forward in the process of better victim protection, it has its serious major limits not treating all victims of trafficking equally. This program does not fully cover all trafficked persons identified by NGOs. All services described above are available only for the limited number of migrant victims trafficked into Poland and also only for those, who are willing to cooperate with the law enforcement. These limitation decrease the number of beneficiaries in the program in a significant way and create the situation where trafficked persons are divided into two categories: those who receive assistance from the state institutions (under the condition of cooperation with them) and those who are identified and assisted by NGOs and receive support from other sources than governmental.

NGOs see this situation as a serious obstacle in the process of developing the effective victim protection measures in Poland.

Situation of victims

No comprehensive protection scheme is currently available for **all** victims of trafficking, who can however be entitled as witnesses to anonymity and be supported in court, if agreed by the judge, by a lawyer or a social representative (i.e. NGO), who can make oral or written statements. Social welfare, support measures and voluntary return to the home country are provided by NGOs since only refugees and foreigners with permanent residence status can access social welfare supplied by the State. NGOs are then crucial for the trafficked persons' assistance since they offer a range of social, legal, medical and psychological services to help them to overcome the trauma suffered and to support their social inclusion.

In many cases, trafficked persons cannot fall back on the support of the State because they have no legal residence status or cannot prove their identity. Moreover, they risk being detained, deported, prosecuted or punished for the illegality of their entry or stay, for having been involved in prostitution or other illegal activities, such as begging, or for other offences that are a direct consequence of their situation as trafficked persons, for example the use of false papers. In particular, women who are trafficked into the sex industry are faced with triple marginalization: as women, as migrants and as prostitutes. Even if trafficked persons do not face (all of) the problems above, many are still confronted with a lack of support services. Although trafficking is widely recognized as a serious human rights violation, most States do not provide adequate remedies to victims, such as assistance, protection and compensation. Even if short term assistance and protection are offered, long term solutions, such as access to the labor market or long term residence permits if a trafficked person cannot or does not want to return to her or his home country, are lacking. In general, State policies tend to concentrate on measures in the area of crime control and migration policies and much less on the assistance and protection of the human rights of trafficked persons.

Along with fear of reprisals, the stigma of prostitution and feelings of shame or guilt, the absence of adequate assistance and protection prevent many trafficked persons from reporting to the authorities, pressing charges and/or acting as witnesses. It is estimated that only a small fraction of trafficked persons are actually identified. Additionally, only a small percentage of the identified trafficked persons decide to press charges or to act as a witness.²²

Statistics

²² M. Wijers, La Strada European Network against Trafficking In Women. Facts & Practices. 2005

In Poland one of the most important source of data on trafficking in persons is the National Prosecutor's Office in Warsaw. Statistics on trafficking provided by such office, deal with both data on the offences against victims of trafficking and the number of persons arrested, as one can see in table 7 below.

NUMBER OF OFFENCES AND OFFENDERS FOR TRAFIFCKING IN POLAND. 1996-2003.

Year	Offences	Offenders
1996	26	59
1997	31	58
1998	25	64
1999	14	24
2000	38	119
2001	35	71
2002	11	40
2003	30	134

Source: National Prosecutor's Office – Warsaw.

The National Prosecutor's Office in Warsaw also provides information regarding the number of victims of trafficking in Poland. The official figures are shown below. The general trend indicates a decrease in the number of the victims of trafficking during the period 1997-1999, while since 2000 there has been an increase with a drop in 2001.

NUMBER OF VICTIMS OF TRAFIFCKING IN POLAND. 1996-2003.

Year	No. of victims
1996	232
1997	163
1998	109
1999	109
2000	172
2001	93
2002	167
2003	261

Source: National Prosecutor's Office – Warsaw.

Statistics from the La Strada Foundation for 2005:

Within the reported period of time **224 clients were under** the care of La Strada. Within this number **137 were new clients** (**18** from Ukraine, **9** from Moldova, **6** from Bulgaria, **3** from Russia, **2** from Romania and **1** the Czech Republic, 1 from Slovakia, 1 from Nigeria, 1 from Belarus), **147** of them were Polish clients.

From January to December 2005 the shelter hosted– 36 women stayed in the shelter of which 9 migrants 1 Bulgarian, 1 Ukrainian, 1 Nigerian, 1 Slovakian, 2 Russian and 27 Polish

Year 2006

From January to June 2006 the LS Poland shelter hosted 20 women – 6 migrant trafficked persons (3 Bulgarian, 1 Ukrainian, 1 Russian, 1 Romanian) and 14 Polish trafficked persons:

- 12 women lived in the shelter from 1 to 1,5 month (crises intervention)
- 8 women lived from 1,5 month to 10 months (*program of reintegration*)

In January – June 2006 in total: 36 women stayed in the shelter of which 9 migrants and 27 Polish women.

Within the reported period of time **118 clients were under** the care of La Strada.

Within this number **61 were new clients** (6 from Ukraine, 4 from Bulgaria, 1 from Russia, 1 from Romania, 2 from Chechnya, 2 from Vietnam, 1 from Moldova), 3 of them had children (in total 5 children). 44 persons of the new client's group were Polish.²³

Recommendation

Summary of main recommendation in following areas:

Advocacy & Lobbying:

- to establish an independent office of National Rapporteur on trafficking in persons

Awareness raising:

- a big need to raise awareness on the trafficking for forced labor and other form of exploitation of migrant labor work whether it is a case of Polish migrant works abroad or migrants coming to Poland as a country of destination.

Legal framework:

- to lobby for incorporation of the definition from the Palermo Protocol to be incorporated into a special vocabulary that is a supplement to the Polish Penal Code.
- to ensure that legal provisions for migrant victims of trafficking in Alien law are implemented in practice
- to ensure that anti trafficking procedures are shared and spread out among professionals who deal with the trafficking cases in practice
- to ensure that identification procedures are implemented in practice of the law enforcement work
- to activate representative of judiciary to become more aware on current situation of trafficking and late anti trafficking developments in the country and CEE region

Victim/witness protection

- to enhance program of victim/witness support also to domestic (Polish) victims who are returning back to Poland as a home country and to all trafficked persons

²³ La Strada Year report 2005, interim report 2006.

