

POLISH GOVERNMENT'S PERFORMANCE IN TERMS OF WOMEN'S HUMAN RIGHTS

Information submitted for Universal Periodic Review of the Republic of Poland by the following civil society organizations:

- *KARAT Coalition* (NGO in Consultative Status with the Economic and Social Council of the United Nations)
- *Campaign Against Homophobia.*

This alternative information elaborated by civil society organizations aims at providing overview of the Polish Government's performance in terms of women's human rights. It identifies and elaborates on the most burning issues and formulates recommendations for the Government of Poland.

WOMEN'S HUMAN RIGHTS IN POLAND – GENERAL OVERVIEW

Civil society organizations express disappointment with the fact that the Government still does not show relevant and enough commitment to advance the situation of women, and especially the vulnerable groups of women. The lack of political commitment and lack of recognition of the State's obligations resulting from international agreements, such as the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) translates into lack of progress in terms of women's situation in various spheres of life in the recent years. The Government did not take any efforts to implement the last Concluding Observations of the CEDAW Committee dated February 2007. Furthermore, despite pressures exerted by women's groups and civil society organizations, it did not comply with the obligation to submit its next periodic report to the CEDAW Committee. The deadline for submitting the report was September 2010.

In the past four years, two important legislative processes took place. First of all, the Government adopted the so called "anti-discrimination" law that does not match the standards stipulated by the CEDAW Convention (e.g. the legal protection from discrimination does not cover all spheres of life for all groups, for instance women aren't protected from discrimination in the area of education). It is clear that the only driving force for adopting this erroneously formulated law was the obligation of Poland to implement certain Directives of the European Union concerning equal treatment and the three criminal proceedings against Poland for incomplete implementation of those Directives were instigated at the Court of Justice of the European Union. So it was only for the possible financial sanctions, not the political will to introduce the protection from discrimination, that the law was adopted.

Secondly, a quota system was introduced on the electoral tickets, stipulating that at least 35% of the list must be female candidates. Again, this legislative process wasn't initiated by the Government. It was launched by the civil society initiative (called "Congress of Women") which drafted the act on parity and collected over 100 000 signatures under it. In the legislative process the parity was

reduced to quota amounting 35%. Moreover, the new law does not require the alternate order of women and men, which enables it for the political parties to put women at the less prestigious positions on the electoral lists while men are assigned with leading positions. At this point it is clear that the new law will not effectively increase the meaningful participation of women in political life. After the elections that took place on 9th of October 2011, only 23% of MPs in the lower House of Parliament are women. The Congress of Women will continue its advocacy and lobbying for the adoption of parity and provision of alternate order that would advance the meaningful participation of women in political life.

MAIN CONCERNS RELATED TO THE GOVERNMENT'S PERFORMANCE IN TERMS OF WOMEN'S HUMAN RIGHTS:

- 1) Lack of legal protection from discrimination for women in all areas of life;
- 2) Lack of relevant national machinery for the advancement of women;
- 3) Lack of National Programme of Action for Women;
- 4) Lack of effective mechanism for advancing meaningful participation of women in political life;
- 5) Violations of reproductive and sexual rights, including:
 - Criminalization of abortion on social and economic grounds
 - Restrictive anti-abortion law that is stricter *de facto* than *de jure*
 - Limited access to family-planning
 - Lack of comprehensive and evidence-based sexuality education at schools
- 6) Violations of rights of lesbian and bisexual women, including:
 - Lack of recognition of hate speech against women and homosexuals in the Penal Code
 - Lack of regulations on same-sex relationships
 - Lack of inclusion of intersectional discrimination in Polish legislation
- 7) Economic position of women: Pay gap amounting over 30% for women and men with basic vocational education and growing phenomenon of "working poor" among these women

Lack of legal protection from discrimination for women in all areas of life

The newly adopted *Act on the Implementation of Some Regulations of the European Union concerning Equal Treatment* dated December 3 2010 does not safeguard from discrimination in all aspects of life. The Act does not include regulation aimed at eliminating discrimination against women in fields such as health care, private and family life and education. The new anti-discrimination law, and other so-called educational laws, do not contain clear regulations connected to equal status in education as related to gender. This means that the Polish legislator is not interested in situations such as sexual harassment in schools or sexist content of textbooks that strengthen and perpetuate gender stereotypes.

Moreover, excluding protection from discrimination in some spheres of life is in violation with the article 1 of the CEDAW Convention that defines discrimination and guarantees protection against it in all areas of life. Moreover, the Polish law does not include definition of intersectional discrimination which is not perceived as a separate form of unequal treatment. This means that instances of such discrimination are not treated by the legislator as more serious offences and, therefore, sanctions for such type of unequal treatment are not designed adequately. This contradicts the guidelines

specified in General Recommendation number 28, item 18, where the CEDAW Committee noted that intersectional discrimination pertains mostly to women and women's membership in various minority groups determines, to a high extent, the incidence of their unequal treatment.

Meanwhile, the Polish Constitution stipulates that *"an international agreement ratified upon prior consent granted by statute shall have precedence over statutes"* (art. 92 p. 2), which means that all domestic legislation should be in accordance with ratified international treaties, such as CEDAW.

Lack of relevant national machinery for the advancement of women

In 2008 the Government established the Office of the Plenipotentiary for Equal Treatment that is responsible for development, coordination and implementation of policies aimed at eliminating discrimination. The Office has a mandate to carry out general anti-discrimination policies. However women's rights have been marginalized in the last four years since the person appointed to hold the Office lacks competences in terms of women's rights and gender equality (e.g. opposing the adoption of quota system). The appeals of the civil society organizations to the Prime Minister to replace her with a professional having the competences in terms of women's rights and gender equality remained ignored. As a result since 2005 there has been no National Programme of Action for Women that would stipulate the actions that need to be carried out. The Plenipotentiary appointed 11 working groups, out of which only one has dealt with discrimination against women, while there were three working groups dealing with children's issues (which in fact lays in the scope of competences of the Ombudsman for Children). The cooperation of the Plenipotentiary with women's rights advocates also left much to be desired.

Due to the fact that women's rights kept to be marginalized by the Government, no significant progress in any area of women's rights has been made in the past four years.

Lack of National Programme of Action for Women

Since 2005 Poland hasn't implemented any National Programme of Action for Women. In the context of the lack of comprehensive and concise policy for the advancement of women the activities that are carried out ad hoc are random, and most importantly they do not address the most burning problems linked to women's human rights, such as reproductive health and family planning.

Lack of effective mechanism for advancing meaningful participation of women in political life

The participation of women in political life has remained on the same low level for the last decade, regardless of the political orientation of the Government (left-wing or right-wing); and it has amounted about 20% of women among MPs. The newly adopted quota system on electoral lists to the lower House of Parliament (Sejm) did not significantly improve the situation. It remains clear for civil society organizations that only parity with alternate order of women and men on electoral tickets can prove to be effective mechanism equalizing women's and men's participation in political life.

Violations of reproductive and sexual rights¹

¹ This part of alternative information is based on the contribution of the Federation for Women and Family Planning to the *Alternative Report on the Implementation of CEDAW in Poland in 2002-2011*, compilation of which has been coordinated by KARAT Coalition.

Although Poland has ratified human rights treaties incl. CEDAW Convention and voluntarily pledged to ensure “*respect for all human rights and fundamental freedoms without any exception*” it continues to fail to protect sexual and reproductive rights which remain seriously violated in Poland. A number of human rights institutions, including:

- Human Rights Committee (1999, 2004, 2010);
- Committee on the Elimination of Discrimination Against Women (2007);
- Committee on Economic, Social and Cultural Rights (1998, 2002, 2009);
- Committee on the Rights of the Child (2002);
- UN Special Rapporteur on the Right to Health (2010);
- the European Court of Human Rights in the case of Alicja Tysiac (2006);
- and Commissioner for Human Rights of the Council of Europe (2007)

expressed deep concerns about severe consequences of the anti-abortion law in force since 1993 on life and health of women.

The major violations of sexual and reproductive rights occur in the following areas:

- 1) Criminalization of abortion on social and economic grounds that force women to seek clandestine, therefore often unsafe, terminations of pregnancy;
- 2) The anti-abortion law *de facto* is more restrictive than *de iure* (e.g. three cases of R.R., S&T and Z v. Poland still pending in the European Court of Human Rights);
- 3) Limited access to modern contraceptives due to social and economic reasons as well as prohibition of voluntary contraceptive sterilization;
- 4) Lack of comprehensive and evidence-based sexuality education at schools

Criminalization of abortion on social and economic grounds

Women have illegal abortions in great numbers either in Poland or abroad. The Federation for Women and Family Planning estimates that the number of illegal abortions might reach circa 150.000 or more abortions per year. The access to illegal services depends very much on the economic situation of women. The price varies from 500 to over 1000 Euros which is very expensive by average income level in Poland. There is substantial anecdotal data indicating that quality and safety of services is often compromised due to high costs. Although statistically not seen, there have been deaths of women as a result of abortions performed in abortion underground. Additionally, it needs to be added that abortion underground and so called “abortion tourism” seem to increase although there is no statistics in this respect for obvious reasons. The 2010 Hearing on Abortion Tourism in the Polish Parliament revealed this phenomenon to the public as very common practice.

To great disappointment, the Polish Government consistently ignores the effects of the restrictive anti-abortion legislation on the health and life of women in Poland apparently believing that if the issue is not discussed it does not have to be recognized nor addressed.

The anti-abortion law *de facto* is more restrictive than *de iure*

Restrictive anti-abortion legislation² has a chilling effect on access to lawful abortions. Women experience difficulties in accessing legal abortion and the barriers encountered by women are certainly of systemic nature and are not just exceptions from the general rule. Almost twenty years of the anti-abortion law in force allows for a number of conclusions on the real effects of the law on women’s life and health.

² Allowing the termination of pregnancy only under three circumstances: 1) when pregnancy constitutes a threat to woman’s health or life; 2) when the fetus is damaged and finally 3) when the pregnancy is a result of criminal offence (e.g. incest, rape).

Access to therapeutic abortions

Physicians refuse to issue a certification required for therapeutic abortion, even when there are serious grounds for issuing such a referral. Furthermore, it happens that in case a woman gets a permit, the physician to whom she goes for a service questions its validity as well as the competences of a physician who issued the permit and eventually denies services.

There are no guidelines as to what constitutes a threat to a woman's health or life. It appears that some physicians do not take into account any threat to a woman's health as long as she is likely to survive the delivery of a child. Also, there is a problem with assessment whether pregnancy constitutes a threat to woman's health or life in case she is suffering multiple and complex health problems, as there is no physician who would be recognized as competent to decide about her overall health status, not just about the specific organ or disease. General practitioners' (or so-called "family physicians") opinions are not respected in health providers hierarchy.

Restrictive anti-abortion legislation has also a chilling effect on health care services provided to pregnant women who did not seek abortion in first place but due to health risks abortion should be advised by health providers as an option. This phenomenon can be best illustrated by a case of a 25-year-old pregnant woman from Pila who died of septic shock caused by sepsis before being fully examined and properly diagnosed by a doctor³. Her mother is currently an applicant before the European Court of Human Rights (ECHR).

One of the reasons of restricted access to therapeutic abortion is inappropriate performance of the procedural safeguards contained in the conscience objection. Under Article 39 of the Act of 5 December 1996 on the medical profession, *'the doctor may abstain from accomplishing medical services discordant with his/her conscience, (...) nevertheless s/he is obliged to indicate real possibilities of obtaining the service from another doctor, or in another medical institution and justify his/her decision and mention about the refusal in the medical documentation'*.

With respect to the therapeutic abortion, the 'conscience objection' is seriously abused. Generally physicians referring to the 'conscience clause' do not fulfill any procedural requirements stemming from it, which aim at safeguarding the patient's rights. It is important to underline that not only physicians abuse the conscience clause, but the clause is invoked by healthcare institutions as a

³ In May 2004, the woman was informed that she was between 4 and 5 weeks pregnant. Prior to or early during her pregnancy she developed ulcerative colitis (UC). She was repeatedly admitted to a number of hospitals (in Pila, Poznan and Lodz). Certain examinations such as a colonoscopy and full endoscopy, which would have made it possible to make proper diagnosis, were not performed because the doctors were afraid of damaging the fetus. In July she was diagnosed with an abscess. Three operations to remove it were performed. During several months of her suffering and exposure to inefficient health care treatment she was never properly informed about the threat of her illness to her life and health, as a result of which a young woman and her family were not aware either of possible worst implications of continuing pregnancy under her health status. The woman lost the fetus on 5 September 2004. On 29 September 2004 she died of septic shock caused by sepsis.

whole. The hierarchical relations in Polish hospitals lead very often to the situation where the decision concerning the possibility of abortion is made by the director on his own, without consulting other doctors, who sometimes do not even share his/her point of view. It is not only directors of hospitals and gynaecologists who refuse to perform therapeutic abortions; it is also anaesthesiologists and auxiliary medical personnel (midwives, nurses).

Serious malpractice related to conscience clause can be best illustrated by a case of anonymous 14-year old girl called Agata from Lublin – pregnant as a result of rape. Despite meeting all necessary legal requirements for legal abortion on criminal grounds, several hospitals denied performing abortion to her. Only due to intervention of Minister of Health abortion was finally provided secretly in a town several hundred kilometers from her home town, half legally – abortion was not registered in the hospital files. And it is obvious that this intervention was made due to the heavy media coverage of the case. Most women whose cases would not be public, would not experience same ministerial support. Agata's case is currently pending in the ECHR coded as S & T v. Poland.

Inaccessibility of abortion due to criminal grounds

Although abortion on any legal grounds is difficult to obtain, it is particularly evident by yearly number of legal abortions due to rape. Every year no more than 2-3 abortions are performed on this ground while highly unreported rape statistics indicate several thousands of rapes per year. The situation is worsened by the fact that sometimes non-medical professions deny woman's right to legal abortion like e.g. a persecutor who objected to issue a referral on religious grounds to a pregnant woman who reported rape. Moreover, long procedures make it difficult for women to receive legal abortion before the 12 weeks deadline.

Shortcomings of the complaint procedure for patient

In 2008 the Parliament passed the Law on the Rights of Patients which shall also apply to the conduct of lawful abortion. The law includes the provision which is the implementation of the judgment of the European Court of Human Rights in the case of Alicja Tysi c v. Poland. According to this law, within 30 days a patient may lodge an appeal against a physician's decision to the Commission of Physicians. The appeal shall be examined by the Commission without delay, no later than after 30 days since it was lodged. The Commission of Physicians delivers a reasoned decision on the basis of the medical documentation and, if needed, having heard the patient. It is composed of three physicians appointed by the Patient Rights' Ombudsman. The decisions of the Commission are final. The Commission has not yet examined any appeal concerning abortion.

There are serious concerns related to the effectiveness of these mechanisms in cases in which woman was denied access to legal abortion. First of all, it is the 30 days deadline for the response by the Medical Commission to the patient which in the case of the complaint on the question of abortion may have a serious impact on the final access to services. Secondly, there is no any appeal mechanism from the Commission's decision. Finally, the patient's complaint needs to be formulated in such way (patient will have to identify the article that has been violated by his/her opinion) that the ordinary patient will need to use a lawyer's services. That of course will constitute a significant barrier to disadvantaged patients.

Although this mechanism is being introduced many months ago, there has been no complaints yet. And this is no surprising as there is no knowledge about it neither in the society nor in the medical community. Finally, women considering using this procedure find it unreliable as they may likely be denied an abortion even if the Commission issues positive decision and the Act does not contain any specific provisions guaranteeing access to lawful abortion if her appeal is won

Limited access to affordable contraception and user friendly reproductive and sexual health services

Access to family planning continues to be limited. Social and economic barriers often prevent women and girls from obtaining contraception which can be bought only on the basis of medical prescription. Moreover, there is no state subsidies for contraception, therefore women have to pay full price. Contraceptive counseling is not integrated into primary health care system. In practice, private gynecological visits are necessary to receive doctor's prescription which dramatically increases the costs that creates a serious barrier to young women and girls as practically, only gynecologists provide contraceptive counseling, not e.g. family doctors or other medical specialists. More and more women report that doctors deny contraceptive counseling, especially on emergency contraception, due to conscience clause.

Due to the outdated law which has been in effect since 1932, voluntary contraceptive sterilization is being interpreted illegal for both women and men against the opinion of many lawyers.

Lack of comprehensive and evidence-based sexuality education at schools

The school curriculum provides for realization of the "Preparation for Family Life". Nevertheless, it is not obligatory but facultative. The content of the teaching is often very problematic and often does not conform to scientific standards. The vast majority of textbooks is not objective but present sexuality from the point of view of Catholic teaching. Among officially recommended textbooks by the Ministry of National Education, we find ones that state, for instance, that "masturbation causes infertility" or "contraception is a denial of a true love". Such misinformation has consequences for young people in terms of their vulnerability to STIs incl. HIV/AIDS as well as teenage pregnancy. Furthermore, these textbooks strongly stereotype women and promote traditional model of family with differentiated gender roles for men and women. They also present strong anti-choice discourse. Moreover, in some places abstinence-only programs are introduced to schools. In Lodz – big city in Poland such a program will start from September 2011.

There is no sexuality-related counseling services for young people available in Poland nor specialized medical services. Parental consent constitutes a serious barrier in accessing reproductive health services.

Violations of rights of lesbian and bisexual women

Lesbian and bisexual (LB) women are subjected to intersectional discrimination – based on their gender and sexual orientation and therefore experience most marginalization and silent prejudice. They are vulnerable to be exposed to specific forms of violence. Phenomena like hate speech and psychological violence cause them to suffer from a lot of psychological distress. Data considering lesbians is not available from any public source, and data collected by NGOs is scarce.

In 2007 Campaign Against Homophobia (KPH) conducted an analysis of social situation of bisexual and homosexual persons in Poland.⁴ The gathered data shows that fearing discrimination most

⁴ http://www.kph.org.pl/publikacje/sytuacja_bi_homo_2007_EN.pdf

homosexual and bisexual persons conceal their orientation. 44,8% of respondent's fathers did not know about their child's sexual orientation. 79% of LGB students to some extent conceal their orientation at universities. 85,6% of the respondents were not completely open about their orientation in the workplace.

The problem of violence and hate speech

The report shows that 13,9% of non-heterosexual women experienced some form of physical violence. Almost half of LB women (45,9%) experienced psychological violence. That included verbal aggression, insults, spreading of negative opinions, threats, hateful letters, blackmail, devastation of property and other forms of psychical harassment.

Hate crimes committed against homosexuals and women are not a specific crime, while Penal Code provisions include hate crimes committed against people of certain nationality, race, ethnicity and belief. Since hate towards homosexuals and women is not an aggravating circumstance in the light of the existing law, protection is weaker in these cases, compared to situations where the same unlawful act is committed for example for racial reasons. This is reflected in lower sanctions, different prosecution procedure, and more lenient punishments in some cases of agitation for certain crimes/offences to be committed.

Lack of regulations on same-sex relationships

Another blatant violation of LB women's rights is that the Polish law does not provide any regulations concerning same-sex partnerships. All the rights concerning couples are reserved for marriages. This is a big disadvantage for all same sex couples whose relationships are not legally recognized.

Lack of inclusion of intersectional discrimination in Polish legislation

The Constitution does not *expressis verbis* name sexual orientation as a possible discrimination ground, but at the same time it prohibits discrimination on any ground. However, Constitutional regulations cannot be a sole base for a legal complaint. The protection from intersectional discrimination is missing in the Polish legislation.

Economic position of women: Pay gap amounting over 30% for women and men with basic vocational education and growing phenomenon of "working poor" among these women

Although the main indicators of statistics (activity, employment and unemployment rates) shows that the situation of women in the labour market has been steadily improving for the last seven years, these indicators do not reflect an increasing polarization of the different groups of women in the labour market.

One of the main concerns is a growing phenomenon of 'working poor' women. The lowest earnings are in the feminized professions and thus the phenomenon of working poor affects women to larger extent than men. *The Salary Reports in Poland for 2009* by Sedlak & Sedlak Company shows that the lowest wages are earned by women in the garment industry. Their average gross salary was PLN 1 396⁵ (about USD 465) and it was only PLN 120 above the minimum gross wage. Cashiers (salespersons) – a strongly feminized occupation – with the average salary PLN 1 538 were at the third position from the end. These low pays do not allow to cover the cost of living and thus to live in dignity. This has been significantly contributing to creating a social underclass (of quite significant number of women) experiencing severe poverty who are deprived of opportunities to overcome it. What is extremely alarming is the fact that 1/8 of employed women are working poor.

⁵ 1 USD = app. 3 PLN

The basic vocational education addressed to women hardly responds to the current challenges in the labour market and/or hardly offers a pay which could contribute to reducing a huge gap in the salaries between women and men and guarantee living wage. The education opportunities at this level are much higher for men than for women. The percentage of women with vocational education in 2010 constituted 42% of all women with two lowest levels of education, and for men was 60%. This education opportunities offer also a much better job opportunity and remuneration for men. Among people with this level of education the gender pay gap amounts 33,3% (2008).

The relationship between the activity rate and education is very apparent. In 2010 activity rate of women with tertiary education was 79% and women with primary or incomplete primary was hardly 13,4%. The latter low rate is a very "significant" figure, particularly because this group constitutes 25% of women (by level of education). The data reveals an enormous polarization of women in their economic activity, and moreover a continuity of the trend of "pushing" women with the lowest education outside the labour market (in 2003 – the activity rate was 18,6%). One of the reasons is a lack of available work in the labour market with salaries which could cover costs of living, and, as a result a shift towards work in informal economy. Another reason was a phenomenon of an important women's emigration, often seasonal, after 2004 and thus the withdrawal of women from the Polish labour market, and finally, an inappropriate basic vocational education for women.

RECOMMENDATIONS FOR THE GOVERNMENT OF POLAND:

In light of the abovementioned problems, connected with realization and promotion of women's human rights in Poland, non-governmental organizations see the need for the government commencing the following actions:

- 1) Introducing anti-discrimination legislation which includes the definition of discrimination (including intersectional discrimination), as specified in Art. 1 CEDAW, and which protects women from discrimination in all spheres of life;
- 2) Establishing the national Office for the advancement of women and gender equality with adequate budget and mechanisms for the participation of women's organizations in creating, implementing and evaluating policies related to women and gender equality. The Office must be located at the highest possible level in the Government, falling under a responsibility of a Cabinet minister and have a mandate to influence development of all Government policies. A person appointed to hold the Office must be competent in terms of women's rights and gender equality;
- 3) Creating, in cooperation with women's organizations, a long-term Program of Action for Women;
- 4) Adopting law on parity on electoral lists to lower House of Parliament (Sejm) with the provision of alternate order of women and men;
- 5) Reviewing restrictive legislation on abortion;
- 6) Introducing effective measures aimed at eliminating misuses of conscience objections that hamper women's access to legal abortion;
- 7) Ensuring access to affordable contraception and user-friendly reproductive and sexual health services;
- 8) Conducting research on the status of LB women and lesbian families in society, including data on violence and discrimination against LB women;
- 9) Amending the Penal Code by penalizing crimes motivated by homophobic and gender biases;
- 10) Adopting regulations on same-sex partnerships or marriages;

- 11) Strengthen a Basic Vocational Education addressed to women by adjusting it to the current needs and requirements of the labour market, particularly in professions which secure an adequate remuneration equal to men.
- 12) Develop and implement policy to address the wage gap between women and men, particularly among low paid feminized employment sectors.

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