

**UNIVERSAL PERIODIC REVIEW OF POLAND**  
**JOINT SUBMISSION BY A COALITION OF HUMAN RIGHTS NGOS**  
**28 November 2011**

1. This alternative report was developed by four Polish civil society organizations, cooperating in the aim of providing an overview of the Polish Government's performance in four areas of human rights. It identifies and elaborates on the most burning issues and formulates recommendations. Created in 2011, the members of this coalition are:

- **ATD Fourth World** (with Consultative Status with ECOSOC), an international human-rights-based, anti-poverty organisation active in Poland since 2005, engaging with individuals and institutions to find solutions to eradicate extreme poverty;

- **KARAT Coalition** (with Consultative Status with ECOSOC), which since 1997 has been working to ensure the observance of women's human rights and gendered economic and social justice in Central Eastern Europe and Central Asia;

- **SIP** (Stowarzyszenie Interwencji Prawnej), the **Association for Legal Intervention**, a human rights organization established in 2005, which provides legal assistance to migrants, refugees, prisoners and their families, adopted children and foster families, and works to raise the level of legal and civil awareness, and promote the idea of restorative justice;

- **SOS Children's Villages Association Poland** (with Consultative Status with ECOSOC), a member association of Children's Villages International, which has been working since 1984 with children who have left parental care or are endangered of losing parental care, as well as advocating for the respect, promotion and defense of children's rights.

## **SECTION 1: CHILDREN'S RIGHTS**

### **A. CHILD POVERTY**

#### **General overview**

2. Child poverty is one of the most alarming problems in contemporary Polish society. According to official statistics, in 2010 around 12% of children under 18 lived in households that were below the national poverty line,<sup>1</sup> and 8%<sup>2</sup> lived in households in which spending was below the minimum required for subsistence.<sup>3</sup> However, the real numbers are actually much higher, because 800,000 children have lost their right to financial support because the thresholds for eligibility have not been readjusted since 2004, to keep up with inflation. The worst material conditions were noted for couples with three and more dependent children.<sup>4</sup> According to a 2010 UNICEF report,<sup>5</sup> Poland ranked 21st in terms of the level of inequality out of the 24 countries taken into account. As noted by the OECD already in 2007,<sup>6</sup> Poland has one of the lowest levels of public expenditures on childcare and early education services

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<sup>1</sup> This is established at the level of the income threshold which, according to the Polish social security law, entitles one to apply for monetary benefits from social assistance, as expressed in the Act on Social Security, article 8, 2004.

<sup>2</sup> *Ubóstwo w Polsce 2010* [translation: Poverty in Poland, 2010], GUS (Central Statistical Office) report, available at: [http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL\\_wz\\_ubostwo\\_w\\_polsce\\_2010.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_wz_ubostwo_w_polsce_2010.pdf)

<sup>3</sup> 'Subsistence minimum' is the extreme poverty threshold established by the Polish Institute of Work and Social Affairs, based on a basket of goods and services which takes into account only the needs which cannot be postponed, because a lower level of consumption would be damaging to health.

<sup>4</sup> *Budżety gospodarstw domowych w 2010* [translation: The Households' Budgets] GUS report, available at: [http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL\\_wz\\_budzety\\_gospodarstw\\_domowych\\_w\\_2010.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_wz_budzety_gospodarstw_domowych_w_2010.pdf)

<sup>5</sup> *The children left behind: a league table of inequality in child well-being in the world's rich countries*, *Innocenti Report Card 9*, UNICEF Innocenti Research Centre, Florence, 2010. <http://www.unicef.pl/images/stories/publikacje/publikacje/pdfs/rc9-final.pdf>

<sup>6</sup> PF3.1: Public spending on childcare and early education. OECD Family database for 2007; last updated on 21 October 2011; <http://www.oecd.org/dataoecd/45/27/37864512.pdf>

among the OECD countries. And in spite of an annual inflation rate of over 3% over the last four years,<sup>7</sup> this level has remained the same since 2004.

3. As a result, the number of children claiming family benefits has significantly decreased, not due to an improvement in their situation, but rather to the Government's failure to readjust the income thresholds and family income support thresholds in relation to inflation. The Polish Government has thus failed to meet its commitments under national law, and has contributed to the escalation of poverty and the inequality gap in violation of the UN Convention on the Rights of the Child, ratified by Poland in 1991.

### **Main concerns**

#### ***The failure to readjust income thresholds as a violation of Article 26 of the CRC***

4. According to Article 9 of the National Act on the Social Services from 12 March 2004 (Dz.U. Nr 64, poz. 593), and Article 18 of the National Act on the Family Benefits from 28 November 2003 (Dz.U. 2003 Nr 228, poz. 2255), the family income support thresholds<sup>8</sup> which entitle people to family benefits shall be adjusted every three years. However, the Cabinet has not readjusted the income thresholds since 2006 and the family support income thresholds since 2004, nor has it increased the value of the benefits.<sup>9</sup> In so doing, it has ignored the decision of the Trilateral Commission for Social and Economic Affairs of 24 June 2010.<sup>10</sup> As a consequence, the poverty thresholds fell below the subsistence level for most households.<sup>11</sup> Since social benefits are calculated on the basis of the thresholds, if they are not readjusted, those who are entitled to benefits receive less.

5. As a consequence, the number of children receiving support from the State has decreased over the last six years. According to the recent study by the Centre for Economic Analysis, over the years the number of children claiming benefits has decreased from over 4.5 million in 2005 to over 3.3 million in 2011; since 2004, over 800,000 have lost their right to family benefits due to the failure to readjust the income thresholds,<sup>12</sup> in violation of Article 27, point 3, of the CRC.

#### ***Discrimination against large families as a violation of Articles 26 and 27 of the CRC***

6. The group that is the most at risk of poverty are large families with a single parent. Among single-parent families with more than two children, the percentage of poor families is higher than the average rate: in families with four or more children, around 34% of the population lived in 2010 below the official poverty line, and around 24% in extreme poverty.<sup>13</sup> The support for single-parent large families from the State is insignificant, because of the discriminatory practices expressed in the Polish Act on Family Benefits, specifically in article

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<sup>7</sup> Historic inflation Poland – CPI Inflation, available at: <http://www.inflation.eu/inflation-rates/poland/historic-inflation/cpi-inflation-poland.aspx>

<sup>8</sup> According to the National Act on the Family Benefits, article 5: the family benefit is granted to households with an income below 504 polish zloty per person or 583 polish zloty per person if there is a disabled member in the family.

<sup>9</sup> Jak weryfikować kryteria dochodowe? [transl.: How to verify the income thresholds], NGO.pl, 2.06.2011, available at: <http://pozytek.ngo.pl/wiadomosc/dzialaj/661903.html>

<sup>10</sup> Act no. 37 of the Trilateral Commission for Social and Economic Affairs from 24 June 2010 on the issue of valorisation of income threshold quotas as of 1 October 2010, available at: [http://www.dialog.gov.pl/komisja\\_trojstronna/uchwaly](http://www.dialog.gov.pl/komisja_trojstronna/uchwaly)

<sup>11</sup> R. Szarfenberg, Ubóstwo Zielonej Wyspy [translation: The poverty of Green Island], 13 November 2011, table no.11 - which juxtaposes the level of poverty thresholds and the value of the subsistence minimum for different types of households in 2010. Only for single persons of working age and retired single persons the subsistence minimum level was not higher than the poverty threshold; available at: [http://rszarf.ips.uw.edu.pl/pdf/zielona\\_wyspa.pdf](http://rszarf.ips.uw.edu.pl/pdf/zielona_wyspa.pdf)

<sup>12</sup> M. Myck i in., Raport Przedwyborczy CenEA 2011. Part I: 2006-2011: kto zyskał, a kto stracił? [translation: Who gained, who lost?] CenEA 2011, s. 32.

<sup>13</sup> Ubóstwo w Polsce w 2010, GUS report, available at: [http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL\\_wz\\_ubostwo\\_w\\_polsce\\_2010.pdf](http://www.stat.gov.pl/cps/rde/xbcr/gus/PUBL_wz_ubostwo_w_polsce_2010.pdf)

11a, point 3,<sup>14</sup> which limits the number of children in the family that are entitled to the benefit. The amount of the benefit per child is 170 polish zł (approximately 38 euros) per month, but it can not exceed more than 340 polish zł (approximately 76 euros) for all the children in a same family.

7. If the child is disabled, the support is increased by 80 polish zł (approximately 18 euros) per child, but with a ceiling of 160 polish zł (approximately 36 euros) for all the children. In practice, this means that no more than two children per family can benefit from financial support. The Polish Ombudsman questioned the constitutionality of the regulation<sup>15</sup> in the context of Articles 32<sup>16</sup> and 71<sup>17</sup> of the Polish Constitution, and requested the issue to be reviewed by the Constitutional Tribunal.

8. The lack of proportionality of help is also a violation of the CRC, and specifically of Article 26 which obligates the State to recognize the right of every child to benefit from social security, including social insurance, and to take the necessary measures to achieve the full realization of this right in accordance with their national law. It is also a violation of Article 7 of the Universal Declaration of Human Rights.

### **Recommendations**

9. In order for the Polish Government to fulfill its commitment under Articles 26 and 27, point 3, of the CRC, and to eradicate extreme poverty among children in Poland, the following actions are recommended:

- 1) Income thresholds for receiving financial support from the State should be automatically adjusted in keeping with the level of inflation.
- 2) The unequal treatment of children should be corrected, so that all children become beneficiaries of the National Act on Family Benefits of 28 November 2003 (Dz.U. 2003 nr 228, poz. 22/55) and the support for single-parent large families should be substantially increased.

## ***B. CHILDREN LEAVING ALTERNATIVE CARE***

### **General overview**

10. Young people leaving alternative care in Poland do not enjoy their rights to social security and to an adequate standard of living. The Social Assistance Act of 2004 defines two types of alternative care: foster family (including kinship care), and residential care. In 2010, almost 95,000 children were living in both types of alternative care. Every year, approximately 2400 young people age out of these alternative care options.<sup>18</sup> The Social Assistance Act (articles 88-90), along with the Regulation of the Ministry of Labour and Social Policy of 23 December, 2004 (Polish Journal of Law No. 6/2005) define the legal framework for support to persons who are becoming self-reliant, or continuing their education, in order for them to find

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<sup>14</sup> Dz.U. z 2006 r. nr 139, poz. 992 z późn. Zm.

<sup>15</sup> The motion of the Polish Ombudsman to the Constitutional Tribunal on 28 July 2011:

<http://www.sprawy-generalne.brpo.gov.pl/pdf/2011/01/665402/1582894.pdf>

<sup>16</sup> The Constitution of the Republic of Poland, 2 April 1997, *Article 32*: 1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities. 2. No one shall be discriminated against in political, social or economic life for any reason whatsoever.

<sup>17</sup> The Constitution of the Republic of Poland, 2 April 1997, *Article 71*: 1. The State, in its social and economic policy, shall take into account the good of the family. Families, finding themselves in difficult material and social circumstances - particularly those with many children or a single parent - shall have the right to special assistance from public authorities.

<sup>18</sup> 'Poland,' in *Ageing out of care. From care to adulthood in the European and Central Asian societies*, SOS Children's Villages International, Innsbruck, 2010,

work, secure housing, and purchase essential household supplies. The mechanisms and budgets for implementing these provisions remain insufficient.

### **Main concerns**

11. Of the 95,000 children in alternative care in 2010, some 66,000 were in foster families (almost 48,000 in kinship foster families) and over 28,000 were living in child care institutions.<sup>19</sup> According to the National Strategy for Social Policy, 2007-2013, young people leaving institutional types of care are particularly in danger of social exclusion.

12. The right to adequate housing is guaranteed by the Social Assistance Act. It includes:

- enabling care leavers to live in ‘supervised housing’ for a limited time with an obligation to pay part of the rent;
- financing the full or partial costs of renting a room;
- helping the beneficiary to obtain social housing from a commune;
- enabling the beneficiary who is pursuing an education to live in a boarding school or secure full or partial payment of housing.

13. In practice, there is not enough housing available for young people leaving care, including supervised housing. Communes do not develop housing in proportion to the needs. Many young people from institutional care who do not continue their education therefore return to their families of origin or have to rent a flat on their own. They then wait for housing to be provided by the municipality, which on average may take from three to ten years. Housing provided by municipalities is usually situated in districts where disadvantaged families are concentrated, and in addition, the quality of the housing is very poor.<sup>20</sup>

14. According to information provided by the Polish Central Statistical Office, 56% of young care leavers from institutions return to their families of origin. While a child is in alternative care, the social worker should cooperate with its family in order to reinvest parents with their authority over the child and to protect the child’s right to the family. In practice, no social support is provided to a child’s family. As a result, when a young care leaver returns back to the family of origin, the problems that led to the child being placed in alternative care have not been resolved. The family instead usually finds itself facing even more severe problems than before.

15. Contrary to Article 19 of the Convention on the Rights of Persons with Disabilities, which Poland ratified in 2007, there is no policy on housing and supervision for disabled care leavers. The only possibility is an institution for disabled adults, where disabled care leavers may be placed after spending their entire life in a foster family. There is also insufficient supervised housing available for young people leaving care, especially in small communes.<sup>21</sup>

16. In keeping with Concluding Observation No. 5 of 2002 of the Committee on the Rights of the Child on ‘Family environment and alternative care’, in 2011 the Parliament adopted a bill on family support and alternative care systems, which will also cover issues related to the right to housing for care leavers. However, according to information provided by the Ministry of Labour and Social Policy, whereas the total cost of implementating the bill is estimated at 700 million PLN, only 70 million PLN<sup>22</sup> have been allocated. The rest of the budget will need

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<sup>19</sup> Data provided by the Ministry of Labour and Social Policy, [www.mpips.gov.pl](http://www.mpips.gov.pl), report of Jan.-Dec. 2010 [Sprawozdanie MPiPS-03-R za I-XII 2010 r.]

<sup>20</sup> “Poland” in „Ageing out of care. From care to adulthood in the European and Central Asian societies”, SOS Children’s Villages International, Innsbruck, 2010; “Leaving care situation analysis in Poland,” SOS Children’s Villages Poland, Warsaw, 2009.

<sup>21</sup> There were only 534 care leavers who might be able to live in supervised housing in 2010 (Ministry of Labour and Social Policy).

<sup>22</sup> 70 million PLN in the budget and an additional 65 million PLN may be provided from a special fund of the State.

to be secured by local authorities (at the district and commune levels). There are no funds available to implement the new law.

### **Recommendations**

17. Based on the above, the following actions are recommended:

- 1) The development of a national programme for disabled young people leaving care, which would provide for small supervised housing instead of placement in large institutions for disabled adults;
- 2) The provision of supervised housing in proportion to the needs;
- 3) The development and implementation of a national programme of social housing, which would take into consideration the needs of care leavers.

## **SECTION 2: WOMEN'S RIGHTS**

### **General overview**

18. In the first review of Poland by the Human Rights Council in 2008, a number of women's rights violations were highlighted, and corrective actions were included in the recommendations.<sup>23</sup> Civil society organizations that focus their action on eliminating discrimination and promoting women's human rights in Poland express disappointment with the lack of progress in terms of women's situation in key areas. Furthermore, despite pressure exerted by women's groups and civil society organizations, the Government did not comply with the obligation to submit the periodic report to the CEDAW Committee that was due in September 2010.

19. The main concerns of women's rights organizations are as follows:

- 1) Lack of effective national machinery for the advancement of women and a National Programme of Action for Women;
- 2) Lack of provisions ensuring protection from discrimination for women in all areas of life;
- 3) Violations in the area of reproductive and sexual rights;
- 4) A pay gap of over 30% between women and men, with a growing phenomenon of "working poor" among women with only a basic vocational education.

### **Main concerns**

#### ***1) Lack of effective national machinery for the advancement of women and National Programme of Action for Women***

20. The Government has not implemented the Concluding Observations of the CEDAW Committee that relate to implementing comprehensive gender equality policies. In 2008, the Government established the Office of the Plenipotentiary for Equal Treatment that is responsible for the development, coordination and implementation of policies aimed at eliminating discrimination. As it has the mandate to carry out general anti-discrimination policies, women's rights have been marginalized in the last four years. As a result, since 2005 no National Programme of Action for Women has been developed, with the result that no significant progress in any area of women's rights has been made in the past four years.

#### ***2) Lack of legal protection from discrimination for women in all areas of life***

21. The newly adopted *Act on the Implementation of Some Regulations of the European Union concerning Equal Treatment* dated December 3, 2010 does not safeguard women from

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<sup>23</sup> Universal Periodic Review, Report of the Working Group on the Universal Periodic Review: Poland, A/HRC/8/30, 23 May 2008.

discrimination in all aspects of life. The Act provides protection only in the area of employment and access to goods and services. It does not include regulations to eliminate discrimination against women in fields such as health care, private and family life, education, nor clear regulations connected to areas such as sexual harassment in schools or gender-stereotyped contents in textbooks. Moreover, the law does not include a definition of intersectional discrimination, which is not perceived as a separate form of unequal treatment.

### **3) Violations of reproductive and sexual rights**

22. Women's sexual and reproductive rights continue to be systematically violated in Poland. The restrictive anti-abortion law<sup>24</sup> is even more restrictive *de facto* than *de jure*. When entitled to legal abortion, women face the following barriers in accessing the service:

- 3) Doctors refuse to issue relevant medical certificates, indicating that a women's health can deteriorate due to the continuation of pregnancy;
- 4) Doctors misuse the so-called 'conscience clause' and refuse to provide abortion services to women who are eligible for them;
- 5) Access to prenatal tests that could indicate impairments in the fetus is seriously limited.

23. Access to modern contraception continues to be limited for women, mainly for economic reasons. Hormonal contraception is only available by prescription and it is not subsidized. The costs for an appointment with a private gynecologist (doctors in public healthcare facilities often prove to be biased against modern contraception) and the purchase of the pill seriously limit its availability, especially for economically disadvantaged groups of women.<sup>25</sup>

### **4) A pay gap of over 30% between women and men, with a growing phenomenon of "working poor" among women with only a basic vocational education**

24. Although statistics on gainful activity, employment and unemployment rates show that the situation of women in the labour market has been steadily improving over the last seven years, these indicators do not reflect the increasing polarization between the different groups of women in the labour market.

25. One of the main concerns is the growing phenomenon of 'working poor' women. The lowest earnings are in the feminized professions and thus the phenomenon of working poor affects women to a larger extent than men. *The Salary Reports in Poland for 2009* by Sedlak & Sedlak Company<sup>26</sup> shows that the lowest wages are earned by women in the garment industry. Their average monthly gross salary in 2009<sup>27</sup> was PLN 1 396 - only PLN 120 above the minimum gross wage. Cashiers (salespersons) – a strongly feminized occupation – with an average salary of PLN 1 538 were in the third position from the end. One in eight employed women<sup>28</sup> now fall into the category of 'working poor', with salaries that do not cover the cost of living, and thus that do not allow the women to live in dignity. This has significantly contributed to creating a social underclass (with a significant number of women) living in poverty.

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<sup>24</sup> It allows for the termination of pregnancy only under certain circumstances, when: 1) the pregnancy threatens women's health and/or life; 2) the fetus is seriously impaired; and 3) the pregnancy results from a criminal offence (such as rape or incest).

<sup>25</sup> Federation for Women and Family Planning (2008), 'Reproductive rights in Poland - the effects of anti-abortion law in Poland'. Available at: [http://federa.org.pl/dokumenty\\_pdf/english/report%20Federa\\_eng\\_NET.PDF](http://federa.org.pl/dokumenty_pdf/english/report%20Federa_eng_NET.PDF); results confirmed as still valid by KARAT Coalition (2012), 'Women's Access to Legal Abortion', to be released in January 2012.

<sup>26</sup> Sedlak & Sedlak (2009), Salary Reports at: [http://sedlak.pl/en/Salary\\_reports.html](http://sedlak.pl/en/Salary_reports.html)

<sup>27</sup> Sedlak & Sedlak (2009), Salary Reports at: [http://sedlak.pl/en/Salary\\_reports.html](http://sedlak.pl/en/Salary_reports.html)

<sup>28</sup> Own calculation on the basis of CSO (2011), Central Statistic Office, Labour Force Survey in Poland, IV quarter 2010, Warsaw 2011.

26. The biggest gaps between men's and women's salary is among people with basic vocational and primary education (and also among people with a tertiary education) - over 30%.<sup>29</sup> This is particularly alarming for women with the lowest education, which means the lowest earnings. For over 1.8 million women (¼ of all employed women) with primary and basic vocational education, the average gross salary is below PLN 1 800.

27. The basic vocational education addressed to women neither corresponds to the current challenges in the labour market, nor does it lead to a salary which could contribute to reducing the huge gap in the income between women and men and guarantee a living wage. Among people with this level of education, the gender pay gap thus amounted to 33.3% in 2008.<sup>30</sup>

28. The relationship between the activity rate and education is very apparent. In 2010, the activity rate of women with tertiary education was 79%, and that of women with primary or incomplete primary was only 13.4%.<sup>31</sup> The data reveals an enormous polarization of women in their economic activity, as well as a continuing trend of 'pushing' women with the lowest education outside the labour market (in 2003, the activity rate was 18.6%) and into the informal economy or emigration (often seasonal).

### **Recommendations:**

29. The following actions are recommended:

- 1) Introducing anti-discrimination legislation which includes the definition of discrimination (including intersectional discrimination) as specified in Article 1 of the CEDAW, and which protects women from discrimination in all spheres of life;
- 2) Establishing a national office for the advancement of women and gender equality with an 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 should be located at the highest possible level in the Government, under the responsibility of a Cabinet Minister, and have a mandate to influence the development of all relevant Government policies. The 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 Programme of Action for Women;
- 4) Reviewing restrictive legislation on abortion; introducing effective measures aimed at eliminating the misuse of conscience objections that hamper women's access to legal abortion;
- 5) Ensuring access to affordable contraception and user-friendly reproductive and sexual health services;
- 6) Strengthening a Basic Vocational Education programme addressed to women by adjusting it to the current needs and requirements of the labour market, particularly in professions which ensure an adequate remuneration equal to men.
- 7) Developing and implementing a policy to address the wage gap between women and men, particularly in low-paid feminized employment sectors, including by encouraging women to enter into traditionally 'male' sectors, with a vocational training programme in support of such a strategy.

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<sup>29</sup> Own calculation on the basis of CSO (2009), Central Statistical Office, Structure of wages and salaries by occupations in October 2008, Warsaw 2009.

<sup>30</sup> Own calculation on the basis of CSO (2009), Central Statistical Office, Structure of wages and salaries by occupations in October 2008, Warsaw 2009

<sup>31</sup> Own calculation on the basis of CSO (2011), Labour Force Survey in Poland, IV quarter 2010, Warsaw 2011.

## SECTION 3: RIGHTS OF INDIVIDUALS OF DIFFERENT NATIONAL ORIGIN

### General overview

30. Polish authorities are not fulfilling their international obligations in relation to people of a different national origin - a vulnerable group that is often invisible to Polish legislators. The most serious problems are: detention of minor migrants, lack of access of undocumented immigrants to the public healthcare system, violation of immigrants' rights as workers, and ineffective immigration programmes for refugees. In addition, there are no efficient legal instruments to prevent the discriminatory practices faced by migrants.

31. Existing mechanisms for the prevention of torture and other form of inhuman practices are very weak, and do not fulfill the UN Convention against Torture nor the Optional Protocol to the Convention against Torture, both of which Poland has ratified.

### Main concerns

#### *1) Issues related to the rights of migrants*

32. In Poland, there is a considerable problem in connection with the availability of health care for undocumented immigrants. There are no clear provisions in the case irregular foreigners are not able to cover the cost of medical treatment. The most urgent issue is the lack of availability of health care for undocumented minors and pregnant women, in violation of the UN Convention on the Rights of the Child, which Poland has ratified, as well as the Polish Constitution (Article 32).<sup>32</sup>

33. One of the biggest problem for migrants in Poland is the violation their rights as workers by employers. The most common violations are: non-payment of salaries, failure to observe health and safety provisions, reduction of salaries, and failure to offer a written contract. Polish regulations protecting employees in practice cannot be applied to migrants because of their status – the short duration of their stay in Poland and their strong connections to the employer (the provisions for remaining legally in Poland and obtaining a work permit are closely related). In addition, very often migrants are not aware of their rights and there is a lack of organizations or institutions to which they could turn for assistance.<sup>33</sup>

#### *2) Detention of immigrant minors*

34. One of the substantial problems in relation to migrant rights is the detention of foreign minors in closed facilities simply because they are undocumented or asylum seekers. According to European standards,<sup>34</sup> authorities should avoid arresting children along with their parents, even if they are in their parents' custody. Detention should be treated as a measure of last resort, and if minors must be detained, it must not be in prison-like conditions. Polish practice is not in keeping with this recommendation. There are insufficient legal guarantees during the detention period – including lack of access to free legal assistance, even for minors. Facilities in detention centres are very similar to prisons (sometimes even worse), and most of them do not provide educational programmes for minors, nor is the possibility of enrolling minors in local public schools being considered. The right to education that is guaranteed both by the Convention on the Rights of the Child and the Polish Constitution is

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<sup>32</sup> *Access to healthcare and living conditions of asylum seekers and undocumented migrants in Cyprus, Malta, Poland and Romania* HUMA Network, 2011.

<sup>33</sup> Klaus W. (ed.) *Ziemia obiecana? Warunki pracy cudzoziemców w Polsce*, Association for Legal Intervention, Warsaw, 2011 (in print).

<sup>34</sup> *Muskhadiyeva and others v. Belgium*, ECHR, No 41442/07; CPT: 20 years of combating torture, 19<sup>th</sup> General Report, 2008, paragraph 97.

violated.<sup>35</sup> These violations have already been highlighted in the latest report on Poland by the European Committee for the Prevention of Torture (CPT).<sup>36</sup>

35. The provision of healthcare and psychological and psychiatric support to aliens placed in guarded centres cannot be considered adequate. The centres do not provide access to the services of a professional interpreter when the person visits a doctor or psychologist. Access to a psychologist or psychiatrist is furthermore rare and unsatisfactory: the psychologists have no knowledge of foreign languages, nor are they trained to work with people of a different cultural background, victims of military conflicts, or persons suffering from PTSD.<sup>37</sup>

### **3) Issues related to refugees and asylum seekers**

36. Some refugees are denied access to integration assistance, such as in cases when an applicant has committed an intentional crime, even when they are not serious offences. The most common offences are unlawful border crossing in cooperation with other persons (e.g. family members), substance abuse, driving under the influence of alcohol – i.e. very often not known to be unlawful by aliens. The consequences of being convicted are often inappropriate in relation to the crime committed. In addition, integration assistance is also automatically denied to all members of the applicant's family.<sup>38</sup>

37. One of the biggest problems faced by refugees in Poland is the lack of social housing. As a consequence, many refugees and their families become homeless. For some, suitable accommodation is too expensive to afford. Low-paid jobs or being trapped in a vicious circle of continued unemployment hinders refugees' attempts to achieve a basic standard of decent housing. Prejudices against foreigners and negative attitudes of landlords towards foreign tenants add to the problem of homelessness.<sup>39</sup>

### **4) Nationality and racial discrimination**

38. Racism still remains a serious problem within Polish society. People of foreign nationality suffer from racism and discrimination on the grounds of their ethnicity in various aspects of their daily life - eg. in access to health care, social benefits, the labour market, housing. The Government has not undertaken official campaigns to promote a better understanding of people from other countries. Moreover, the police often neglect offences reported by foreigners as well as offences committed against them (racially motivated crimes). There are also incidences when policemen themselves commit acts of discrimination.<sup>40</sup>

39. The difficulties in collecting data on racially based crimes remain unsolved. The data presented in official statistics are not credible, since many hate crimes are not included in the statistics due to the way in which the data collection system is construed.<sup>41</sup>

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<sup>35</sup> *The Observance of Foreigners' Rights in Guarded Centres. Monitoring Report.* "Analyses, Reports, Expertises: Association for Legal Intervention," 4/2011; *Detention of migrant children in Poland* (2011), The Halina Nieć Legal Aid Centre.

<sup>36</sup> <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.pdf>

<sup>37</sup> *The Observance of Foreigners' Rights in Guarded Centres. Monitoring Report.* "Analyses, Reports, Expertises: Association for Legal Intervention," 4/2011.

<sup>38</sup> *Refusal to grant integration assistance – law and practice*, The Institute of Public Affairs, Association for Legal Intervention, Warsaw 2011.

<sup>39</sup> *Refugee Homelessness in Poland. Pilot Study* (2011), The Institute of Public Affairs. Warsaw; *Access to healthcare and living conditions of asylum seekers and undocumented migrants in Cyprus, Malta, Poland and Romania*, HUMA Network, 2011.

<sup>40</sup> *Racism in Poland*, Helsinki Foundation for Human Rights, Warsaw; W. Klaus (ed.), *Sąsiedzi czy intruzy? O Dyskryminacji cudzoziemców w Polsce*, Warsaw, 2010.

<sup>41</sup> *Metodologia przygotowania bazy danych do identyfikacji zdarzeń o charakterze dyskryminacyjnym, ksenofobicznym czy rasistowskim*, The Institute of Public Affairs, Association for Legal Intervention: Warsaw, 2009.

40. Unfortunately, the Polish Government has not yet put in place a comprehensive equal opportunities policy. Certain provisions of the new anti-discrimination law are not consistent with the Polish Constitution. The Act introduces a closed list of possible grounds for discrimination, whereas the Constitution prohibits discrimination for any reason. The Act sets up a minimum standard for protection against unjustified unequal treatment, which is not the same for all minority groups (i.e., the level of protection for disabled people is much lower than for national minorities). Moreover, the Act establishes the Polish Ombudsman as an equality body, who, however, has not been allocated any financial support in order to perform new tasks. There is thus a risk that the Ombudsman's Office's performance in this respect will remain illusive.

### **5) Prevention of torture**

41. Polish authorities in Responses to HRC Recommendations from the 2008 UPR stated that all the elements specified in the definition of torture in the CAT are penalized in Poland.<sup>42</sup> The fact is that criminalization of "elements" of the definition of torture in a variety of crimes - not all of which indicate a deliberate action - hampers investigations and prevents the punishment of perpetrators of torture.

42. The reports of the European Committee for the Prevention of Torture (CPT) concerning the treatment of detainees by police in Poland repeat the same allegations. One detainee was beaten and kicked by police officers, who wanted to force him to admit guilt. One of the officers applied to his genitals for half a minute an electric inhibitor. A second detainee was handcuffed very firmly before being beaten and kicked by policemen. In both cases, the prosecutors dropped the investigation, and there has been no disciplinary proceedings against the policemen.<sup>43</sup> It is to be noted that the Polish authorities have failed to establish an independent body to investigate police misbehaviour.

43. The Polish authorities have ignored from the beginning that the National Prevention Mechanism (NPM) established in 2004 does not meet the OPCAT provisions. They have failed to ensure its independence, both organizationally and financially. In consequence, there are no positions allotted to experts from different fields, and there is no comprehensive approach to the prevention of torture. Out of some 1800 detention places in 2010, the NPM has visited only 40, and in 2011 only 32.<sup>44</sup>

### **Recommendations**

44. The following actions are recommended, to remedy the above conditions:

- 1) Ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- 2) Introduction of legislation prohibiting the detention of minor migrant children;
- 3) Increased attention to the integration process for foreigners, especially for refugees, in the aim of more effective results; the process should include the creation of efficient legal provisions to protect their rights and prevent discriminatory practices;
- 4) Strengthening of the position of the NMP, with an increase in its budget, and a modification of its structure in keeping with international standards, in order for it to have an effective influence on authorities.

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<sup>42</sup> *Responses of Poland to recommendations*, UPR, A/HRC/8/30/Add.1, 25 August 2008, paragraph 20; *Universal periodic review mid-term progress report by Poland*, HRC, 16<sup>th</sup> Session, par. 25.

<sup>43</sup> For example the case of *Mrozowski v. Poland* (Application no. 9258/04), Judgment from 12 August 2009, case of *Karbowniczek v. Poland* (Application no. 22339/08) 27 September 2011.

<sup>44</sup> See reports on the NPM's activities: <http://rpo.gov.pl/index.php?md=7380&s=1>