



## Child Rights References in the Universal Periodic Review

### Summary:

A compilation of extracts featuring child-rights issues from the reports submitted to the first Universal Periodic Review. There are extracts from the 'National Report', the 'Compilation of UN Information' and the 'Summary of Stakeholder's Information'. Also included is the 'Final Report' and 'Conclusions and Recommendations' from the Review.

### Poland – 1st Session – 2008

**Date of consideration: Monday 14 April 2008 - 2.30 p.m. - 5.30 p.m.**

### National Report

Civil Rights Ombudsman

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The Civil Rights Ombudsman, among other things, may:

- Direct petitions to organs, organizations or institutions in whose activity he/she has ascertained violation of the freedoms and rights of persons and citizens, presenting his/her opinions on the way of dealing with the case, and may demand the application of disciplinary or professional penalties;
- Apply to the competent organs for legislative initiative or the issuance or amendment of legal acts concerning the freedoms and rights of persons and citizens;
- Submit motions to the Constitutional Tribunal for the assessment of the constitutionality of legal acts;
- Demand that prosecutors initiate preparatory proceeding in cases prosecuted ex officio, demand the initiation of proceedings in civil cases, and to participate in any ongoing proceedings;
- Lodge appeals in cassation to the Supreme Court against legally binding judgments;
- Take up cases conveyed to him/her by the Ombudsman for Children's Rights;
- Collaborate with associations, civic movements and other voluntary organizations and foundations for the protection of the freedoms and rights of persons and citizens.

Other institutions devoted to the protection of the rights and freedoms of various groups, including children and patients, have also been established in Poland. Furthermore, any persons whose constitutional rights and freedoms have been violated has the possibility of lodging a complaint with the Constitutional Tribunal concerning the constitutionality of a law or other normative act used by a court or public administration organ to pass final ruling on his/her freedoms, rights and duties defined in the Constitution. Polish citizens and other persons under the jurisdiction of the Republic of Poland may lodge individual complaints:

- In the framework of the UN system, to the following Treaty Bodies: the Human Rights Committee, the Committee Against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination Against Women,
- In the framework of the regional, European system of protection of human rights - to the European Court of Human Rights, in connection with the violation of their rights or freedoms guaranteed by the Convention for the protection of human rights and fundamental freedoms.

### I. Countering racism and xenophobia

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The Program is designed to launch actions against xenophobia and racism, including anti-Semitism, and to nurture in Polish society a broadly perceived culture of tolerance. The beneficiaries of the Program include Polish citizens belonging to national and ethnic

minorities, aliens – including migrants and refugees, as well as other persons vulnerable to discrimination for ethnic or racial reasons. The Program covers the following spheres: situation diagnosis and monitoring, activity of public administration, the labor market and socio-economic situation, health, education, culture and international cooperation.

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The Roma minority is especially at risk of discrimination for ethnic reasons. The long-term Government Program for the Roma Community in Poland, implemented since 2004 and coordinated by the Ministry of Interior and Administration, is designed to bring about full participation of Roma in the life of the civil society and to level the differences between that group and the rest of society. Educational tasks are highlighted in the Program, since they determine the possibilities of improving Roma's situation in other spheres. These undertakings are designed to equalize educational opportunities and also disseminate knowledge about the Roma community.

#### IV. System of assistance to victims

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The implementation of the "Program of support/protection for victims/witnesses of human trafficking" has led to the elaboration of guidelines titled "Algorithm of conduct by law enforcement officers in the event of disclosure of human trafficking". In February 2006 the document was conveyed to the Police and in March 2006 to the Border Guard. It is primarily meant to systematize the conduct of law enforcement organs in the event of disclosure of human trafficking and to enhance the awareness of international standards in the treatment of victims and their rights. Currently, the Working Group of the Inter-Ministry Team for the Combating and Prevention of Human Trafficking is preparing a corresponding system of support for children who become victims of human trafficking.

#### I. Poverty and exclusion of certain social groups

The structural factors leading to social exclusion include: a person's situation in the labor market (unemployment, low wages, protracted illness and disability), his/her family situation (many children, single parent), education level (low level of education, skills not corresponding to labor market demand), place of domicile (countryside, small town or underdeveloped region). The above may be compounded by institutional factors (unequal access to social services in the sphere of education, healthcare, housing and culture). The third group of factors includes unfavorable individual characteristics (homelessness, disability, orphanage, addictions).

In 2006, 19% of the population lived below the poverty threshold (income level entitling to social security benefits). According to the Central Statistical Office, 12-13% of the population had incomes below the level of extreme poverty (in 2006 that level was set at 398 PLN per month per person and 1296 PLN per month for a family of four). Families whose income consisted of social security benefits and certain rural families were in the most difficult situation.

For a number of years we have witnessed the phenomenon of working poor, that is workers whose wages do not ensure decent living conditions. This group includes unskilled workers and some farmers. We also note the phenomenon of juvenilization of poverty. The poverty rate among children is higher than among adults: 44% of the poor population is below 19, even though that age group constitutes only 24% of the total population.

#### II. Labor market

Between 1998 and 2002 the rate of unemployment rose from 10.6% to 19.9%. Since 2003 the situation in the labor market has been improving: in 2006 the rate of unemployment amounted to 13.8% and in the third quarter of 2007 – to 9% (Economically Active Population Data). The employment rate for persons aged 15-64 rose from 51.4% in 2003 to 54.5% in 2006, reaching 57.8% in the third quarter of 2007.

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The National Employment Action Plan for 2008 envisages:

- growth of employment and improvement of its quality – the employment rate for persons aged 15-64 (EAPD) is to reach 58% during the 4th quarter of 2008,
- containment of unemployment – the jobless rate (EAPD) is to amount to 9% in the 4th quarter of 2008.

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Since the threat of exclusion and the problem of poverty mainly affects large families and families with jobless members, one of the priorities is to help families and children to eliminate educational deficits and to improve access to services that make it possible to combine work with parenting. Work is progressing to upgrade income support through the creation of an integrated system of family benefits, scholarships and housing allowances.

#### III. Domestic violence

In 2007 the Ministry of Labor and Social Policy commissioned a public opinion poll on domestic violence, which revealed that

- the problem of domestic violence is recognized, violence is considered a frequent problem, but something that affects others; almost two-thirds of those polled said they knew of families affected by domestic violence; psychological and physical damage is noticed most frequently, while there is low awareness of economic violence,
- more than one-third of those polled have experienced some form of violence from a member their family; psychological violence is the most frequent, with a lower incidence of physical, economic and sexual violence; persons who experience violence frequently apply it in the future against their own family,
- violence against children is relatively frequent, children most often experience psychological and physical violence, economic violence is less frequent and sexual violence is very rare.

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Aid to victims of domestic violence is granted by specialist support centers, counselling points, crisis intervention centers, and homes for mothers with small children and women.

Numerous public campaigns against domestic violence have been initiated. The year 2007 saw the launching of a campaign against domestic violence (posters, leaflets with the telephone number and e-mail address of the national Blue Line emergency service for

victims of domestic violence displayed in public places). A national campaign under the theme of “Childhood Under Protection” was kicked off on February 7 2006. It has the aim of highlighting various aspects of violence against children and enhancing the effectiveness of state institutions tasked with the protection of children against domestic violence.

The Ministry of Interior and Administration is responsible for the national implementation of the EU’s DAPHNE III program to “Prevent and combat violence against children, young people and women and to protect victims and groups at risk”. The Ministry also conducts direct cooperation in this regard with NGOs, based on an exchange of experience and joint undertakings, including the assignment of public tasks.

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The Ministry of Justice participates in the works of the Coalition for Friendly Interrogation of Children, which led to the preparation of the concept of certification of interrogation rooms, to ensure stress-free interrogation of children. Moreover, last October, the Ministry of Justice joined the campaign “Child – a Witness of Special Concern”.

#### IV. HIV/AIDS

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The achievements scored in the campaign against HIV/AIDS can be attributed to the consistent state strategy and, in particular, the establishment of the National AIDS Center. It is tasked with ensuring proper implementation of the state policy against AIDS/HIV, including the establishment of a national network of specialist antiretroviral therapy centers as well as consultation-and-diagnostic centers, which offer anonymous, cost-free tests and counseling before and after testing. As a result of the above measures, it has been possible to achieve the following:

- stabilization of HIV/AIDS incidence despite the rapid spread of the epidemic in countries to the east of the Polish border;
- significant reduction of mother-to-child HIV infections in the group of children born to HIV-infected mothers, as a result of the availability of antiretroviral therapy for pregnant women;
- elimination of HIV infections due to professional exposure, thanks to broad prophylactic use of antiretroviral drugs;

#### V. Respecting patients’ rights

In 2001, the Minister of Health established the Bureau for Patients’ Rights. Its basic tasks include: monitoring of the observance of patients’ rights by healthcare institutions; provision of information and processing of requests and complaints submitted to the Bureau and to the Health Minister. The Bureau operates a toll-free phone line, manned by medical specialists and lawyers. It is used to disseminate information about patients’ rights in Poland and the possibilities of obtaining medical services in other member states of the European Union. The Bureau collaborates with the Civil Rights Ombudsman, the Children’s Rights Spokesman, National and Voivodship Consultants for the respective branches of medicine and the superior organs of the respective health care facilities.

Government Action Plan on the implementation of the judgments of the European Court of Human Rights concerning Poland

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The Program also contains proposals on amending the law, improving its practical application, training on human rights and dissemination of the Court’s case law. In particular, the Program addresses such issues as:

- principles of applying detention of remand and deprivation of liberty,
- court and administrative delays,
- broader access to courts,
- censorship of inmates’ correspondence to the Court,
- enhancement of the right of parents to contacts with their children,
- effective implementation of the right of Bug River resettlers to compensation,
- introduction of mechanisms ensuring a balance between the interests of landlords and the interests of the society at large in the sphere of regulated rents.

#### Promotion and protection of human rights

Much attention is devoted in Poland to the promotion of and teaching about human rights. Human rights have been included in the curricula of primary and secondary schools. Regular lectures on them are also given at academic schools. Detailed instruction on human rights is part of the training and educational programs for the Police, the Prison Service and Border Guard. There is systematic publication of monographs on human rights. The daily press and legal journals carry information on the recommendations of the Human Rights Committee and the judgments of the European Court of Human Rights.

#### Compilation of UN information

1. The Committee against Torture (CAT) welcomed the ratification or accession by Poland of the two OP-CRC-AC and OP-CRC-SC, OP-CEDAW and OP-CAT; the Rome Statute of the International Criminal Court; and the United Nations Convention against Transnational Organized Crime, the Palermo Protocol and the Protocol against the Smuggling of Migrants by Land, Sea and Air in 2004.<sup>8</sup> The Committee on the Rights of the Child (CRC) welcomed the ratification of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.<sup>9</sup> The Committee on the Elimination of Discrimination against Women (CEDAW) commended the accession to OP-CEDAW, and the Committee on the Elimination of Racial Discrimination (CERD) welcomed the acceptance by Poland of the individual complaints procedures under the Convention.<sup>10</sup> The Human Rights Committee (HR Committee) welcomed the commitment to ratify ICCPR-OP2.<sup>11</sup> In 2007, CEDAW recommended that Poland ratify ICRMW.<sup>12</sup> CERD welcomed the withdrawal of the reservation to article 22 of the Convention<sup>13</sup> and CRC welcomed the information that in 2001 Poland resumed the process of considering the withdrawal of reservations and declarations to the Convention.<sup>14</sup> Poland reiterated this in 2006, in its pledges and commitments to the Human Rights Council.<sup>15</sup>

2. In 2002, CRC encouraged Poland to take all necessary measures to ensure that its domestic legislation conforms fully with the principles and provisions of the Convention, in particular in the area of juvenile justice, unaccompanied asylum-seekers and sexual exploitation of children.<sup>16</sup> This was also highlighted by UNHCR.<sup>17</sup> In 2003, CERD welcomed the direct applicability of the Convention in domestic law<sup>18</sup> and, in 2007, CAT regretted that Poland had not changed its position not to incorporate the Convention into Polish law.<sup>19</sup> CAT noted with appreciation the adoption of new laws ensuring better protection of human rights,<sup>20</sup> and in 2002, the Committee on Economic, Social and Cultural Rights (CESCR) welcomed the adoption in 1997 of the Charter of Disabled Persons' Rights.<sup>21</sup>

4. In 2002 and 2003, CRC and CERD noted, and CESCR welcomed, the establishment in November 2001 of the Government Plenipotentiary for Equal Gender Status with responsibility for promoting the principle of equality between men and women and combating discrimination based on race, ethnic origin, religion or belief, age and sexual orientation in Government legislation and policies.<sup>27</sup> In 2007, however, CEDAW expressed concern at the abolition of the Plenipotentiary and that the new location of the national machinery in the Department for Women, Family and Counteracting Discrimination at the Ministry of Labour and Social Policy may result in low priority and insufficient focus being given to the specific nature of discrimination against women.<sup>28</sup>

CEDAW recommended that Poland ensure that the necessary visibility and attention is given to the promotion of gender equality.<sup>29</sup> In 2002, CRC welcomed the establishment in 2000 of the Office of the Ombudsman for Children.<sup>30</sup> The Office of the Commissioner for Civil Rights Protection, which is the national human rights institution, was established by act in 1987 and entrenched the same year in the Constitution. The Office was accredited in 1999 with "A" status, which was renewed in October 2007.<sup>31</sup>

5. In 2007, CAT noted with appreciation the establishment in 2003 of the National Programme for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance and the National Programme for Crime Victims in February 2006.<sup>32</sup> While CEDAW commended Poland on the National Programme to Combat and Prevent Trafficking in Human Beings for 2005-2006, and the forthcoming programme for 2007-2008,<sup>33</sup> it regretted that insufficient information had been provided on results achieved in the implementation of the National Action Plan for Women for 2003-2005.<sup>34</sup> In 2007, CEDAW invited Poland to adopt a comprehensive national action plan for gender equality with sufficient resources, in consultation with women's non-governmental organizations,<sup>35</sup> while in 2002, CESCR recommended that Poland formulate and implement a comprehensive national plan of action for the promotion and protection of human rights.<sup>36</sup> CEDAW commended Poland on the ongoing implementation of a number of policies and programmes aimed at overcoming de facto discrimination against women, notably through enhancement of women's equal opportunities in the labour market, the National Programme to Counteract Domestic Violence and the European Union Daphne III programme to combat violence against children, young people and women.<sup>37</sup> Furthermore, CAT, CERD, CESCR and CRC welcomed human rights education measures undertaken by Poland and recommended that further measures be taken to increase public awareness of the provisions of the international instruments and of the possibility of invoking them before the courts.<sup>38</sup>

9. In 2002, CRC noted with concern that the principle of non-discrimination was not adequately implemented with respect to certain vulnerable groups of children, including Roma and other ethnic minorities, children living in institutions, children with disabilities, children of poor families and children with HIV/AIDS. CRC was also concerned about their limited access to adequate health, education and other social services and about reports of racially motivated violence in which police failed to protect the victims. It recommended that Poland increase its efforts to ensure the implementation of existing laws guaranteeing the principle of non-discrimination.<sup>47</sup>

20. On the issue of domestic violence, CEDAW in 2007 expressed concerns about remaining gaps in the 2005 Law on Combating Domestic Violence and the perception of domestic violence as a gender-neutral phenomenon.<sup>73</sup> In 2002, CESCR expressed concerns about the high number of reported cases of domestic violence<sup>74</sup> and both CEDAW and the HR Committee were concerned about insufficient services for victims, including immediate eviction of the perpetrator, free legal aid, and the number of shelters available, as well as about inadequate training for law enforcement officers.<sup>75</sup> CEDAW, the HR Committee and CESCR recommended that law enforcement officers be properly trained and that appropriate measures be taken to address domestic violence cases.<sup>76</sup>

In 2007, CEDAW further recommended that Poland conduct awareness-raising campaigns to combat violence against women and undertake research into the root causes of such violence.<sup>77</sup> In 2002, CRC was concerned that child abuse and violence in the home and in schools remain a problem in Poland. CRC was further concerned that corporal punishment is widely practised in the home, in schools and other institutions, such as prisons, and in alternative care contexts.<sup>78</sup> CRC recommended that Poland expressly prohibit corporal punishment and carry out public education campaigns in that regard. Also, in 2007, CAT and CEDAW were concerned about the absence of a definition of trafficking in human beings in the Polish Criminal Code.<sup>79</sup> In 2002, CESCR was also concerned about the rising incidence of trafficking in women for the purpose of sexual exploitation and recommended that Poland take effective measures to combat such trafficking, inter alia, by ensuring that those responsible are prosecuted.<sup>80</sup> In 2002, CRC was also concerned that Poland continues to be a country of origin, destination and transit for children trafficked for sexual exploitation and recommended that it develop a national plan of action on commercial sexual exploitation of children and ensure protection, access to appropriate recovery, reintegration programmes and services for victims.<sup>81</sup>

22. In 2002, CRC was concerned that there is no clear minimum age of criminal responsibility and that, in some cases, children as young as 10 years of age can be sentenced to educational measures. It recommended that Poland establish 13 years as the minimum age for criminal responsibility in all cases, below which children cannot be sentenced to either correctional or educational measures.<sup>85</sup> CRC was also concerned at the large number of juveniles spending extensive periods of time in emergency blocks either as a pre-trial detention measure or as punishment for their actions in the juvenile reform centres. In addition, it was concerned that not all juvenile detention centres guarantee the child's right to maintain contact with his or her family or provide adequate living standards. It thus recommended that Poland ensure the full implementation of juvenile justice standards, enforce the regulations allowing a maximum stay of three months in emergency blocks and use deprivation of liberty only as a measure of last resort, and protect the rights of children deprived of their liberty, including those pertaining to conditions of detention.<sup>86</sup>

23. Concerns were raised in 2002 by CRC about the large number of children living in institutions, a significant proportion of whom are “social” rather than natural orphans. It recommended that Poland ensure the periodic review of placement of children in institutions.<sup>87</sup>

29. In 2002, CESCR expressed concern that the minimum wage in Poland is insufficient to provide a worker and his/her family with a decent standard of living and recommended that Poland regularly evaluate and adjust the minimum wage on the basis of the cost of living.<sup>103</sup> While noting measures taken to improve the conditions of the Roma community, CRC in 2002 and the HR Committee in 2004 expressed concerns that Roma continue to suffer prejudice and discrimination, in particular with regard to access to health services, social assistance, education and employment.<sup>104</sup> CESCR urged Poland to adopt a comprehensive programme to address the obstacles to the advancement of the Roma population, including measures to ensure effective remedy for cases of discrimination against Roma in employment, housing and health care.<sup>105</sup>

32. In 2002, CERD noted efforts to meet the specific educational needs of Roma children, but was concerned that in some cases these efforts have led to segregated classes having a lower standard of education than their Polish counterparts.<sup>116</sup> In 2002, CESCR expressed concern at the high dropout rates among Roma students<sup>117</sup> and CRC about Roma children’s right to education.<sup>118</sup> CERD, CESCR and CRC recommended that Poland design new programmes to integrate Roma children into schools; combat the low school attendance and high dropout rates among Roma students; recruit more teachers and teaching assistants from the Roma minority; include pre-school programmes for Roma children to learn the primary language of schooling in their communities; and that curriculum resources be developed for all schools to include Roma history and culture in order to promote understanding, tolerance and respect for Roma in Polish society.<sup>119</sup> CRC also remained concerned about the increasing disparities in access to education, the material condition of schools and the quality of education between rural and urban areas. It recommended that Poland ensure equal opportunities for all.<sup>120</sup> CRC was also concerned at the issue of children with disabilities and recommended that Poland develop a time-bound plan for reducing the number of children with disabilities living in institutions and integrating them into mainstream education.<sup>121</sup>

33. In 2007, CAT commended Poland for its contributions to the United Nations Voluntary Fund for Victims of Torture between 1999 and 2005 and encouraged its continued contribution.<sup>122</sup> It also noted with appreciation the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights.<sup>123</sup> In 2002, CESCR commended the ongoing process to harmonize legislation with the Covenant and the specific measures taken to ensure the enjoyment of economic, social and cultural rights.<sup>124</sup> It noted, however, the difficulties encountered by Poland in implementing the rights provided for in the Covenant which arise from the process of transition to a market-oriented economy,<sup>125</sup> which, as acknowledged by CRC, have led to regional disparities and increased poverty, thereby negatively affecting the welfare and living standards of vulnerable families with children.<sup>126</sup>

#### **Summary of stakeholders' information**

4. AI8 indicated that on 20 June 2007, the Council of Europe’s Human Rights Commissioner expressed strong concerns about the Polish government’s approach to LGBT people, including the withdrawal from circulation in early 2006 by the Ministry of Education of the Polish version of Compass – Human Rights Education with Young People, a Council of Europe anti-discrimination handbook and a manual on human rights for young people. AI9 reported that the Commissioner deplored any instances of hate speech towards homosexuals and called on the Polish authorities not to tolerate such speech.

7. AI12 also indicated that there are continuing reports of ill-treatment by law enforcement officials, including from the Council of Europe’s Commissioner for Human Rights, who expressed concern that incidents of police violence had gone unreported due to victims’ fear of being prosecuted themselves. AI13 also indicated that it appears that prostitutes, Roma and trafficked persons are most frequently the victims. It further noted that the European Committee for the Prevention of Torture (CPT) expressed concern at allegations made by juvenile detainees of physical ill-treatment and threats in order to obtain confessions and was concerned about the number of juveniles being questioned and made to sign statements admitting to criminal offences without the benefit of the presence of a trusted person. The CoE CHR14, following his visit in 2006 in Poland, recommended the authorities to establish an independent body to investigate police misbehaviour.

12. Concerns about violence against children were also raised by the Global Initiative to End All Corporal Punishment of Children (GIEACP)<sup>28</sup> which indicated that corporal punishment has not been explicitly and unequivocally prohibited in the home and that there is some controversy as to what exactly the law says. Furthermore, GIEACP<sup>29</sup> noted that research indicated that there is a high level of support for, and use of, corporal punishment of children in childrearing. Consequently, GIEACP<sup>30</sup> recommended that Poland introduce legislation as a matter of urgency to prohibit corporal punishment of children in all settings, including in the home.

23. According to the Federation of Women and Family Planning (FWFP)<sup>56</sup> a number of UN Treaty Monitoring Bodies, the Commissioner for Human Rights of the Council of Europe and recently the European Court of Human Rights expressed deep concerns about severe consequences of the anti-abortion law in force since 1993 on life and health of women. FWFP<sup>57</sup> indicated that numerous women have been denied access to reproductive health services such as contraception counselling, prenatal testing and lawful interruption of pregnancy; all these are legal under the Polish law, but hardly accessible. Furthermore, FWFP indicated that the major violations of sexual and reproductive rights occur in the following areas: 1) Criminalization of abortion on the social and economic grounds that force women to seek clandestine, therefore often unsafe, terminations of pregnancy; 2) The anti-abortion law in practice is more restrictive than de iure; 3) Limited access to modern contraceptives due to social and economic reasons as well as prohibition of voluntary sterilization; 4) Limited access to reliable and comprehensive sexuality education, information and services for adolescents.

26. FWFP<sup>64</sup> further indicated that social and economic barriers often prevent women and girls from obtaining contraception which can be bought on the basis of medical prescription. Contraceptive counselling is not integrated into the primary health care system. FWFP<sup>65</sup> recommends Poland to: implement a comprehensive sexuality education programme in school curriculum; introduce education and information as counselling programs improving access to all modern forms of family planning; review the effects of the restrictive

antiabortion law on women and undertake legal initiatives which will address systematic violations of sexual and reproductive rights; introduce regulations to avoid abuses of the Conscience Clause and to establish appeal mechanisms to improve access to reproductive health services legal under present law. The CoE CHR66 recommended in 2007 that Poland ensure that women falling within the categories foreseen by the Polish abortion law are allowed, in practice, to terminate their pregnancy without additional hindrance or reproach. He also recommended to create an appeal or review procedure whereby the decision of a doctor not to issue a certificate permitting an abortion be subject to review and that the State undertake further activities aimed at providing effective sexual education in schools. The Government of Poland provided comments to the CoE CHR67.

27. According to the FWFP68, the Polish State has failed to take into account and implement the Concluding Observations of UN Treaty Monitoring Bodies including the Human Rights Committee of 2004, on the issue of sexual education. The school curriculum provides for realization of the "Preparation for Family Life", which is offered to pupils in secondary school (aged 15-18). Nevertheless, it is not obligatory. The content of the programme leaves a lot to be desired and by no means conforms to scientific standards. The vast majority of textbooks are not objective but present sexuality from the point of view of Catholic teaching. Such misinformation could increase the vulnerability of young people to STIs, HIV/AIDS, and teenage pregnancy. Furthermore, FWFP69 indicated that these textbooks strongly stereotype women and promote traditional model of family. They also present strong anti-choice discourse. A recently carried out national poll (2007) shows that almost 80% of Poles are in favour of sexual education in schools<sup>70</sup>. The Government of Poland provided comments to the CoE CHR71.

28. According to AI72, in its March 2006 report, the CPT expressed concerns that the facilities for holding persons awaiting deportation seen during its 2004 visit did not meet the standards required for prolonged periods of detention. The provision of health care and psychological and psychiatric support to foreign nationals was not considered adequate. Furthermore, staff assigned to work with foreign nationals received little specialised training and there was little communication between staff and detainees, not least because of language barriers. Almost half of school-age children seeking asylum in Poland do not attend school. People with only "tolerated stay" permits are denied the social assistance given to asylum-seekers as well as the integration package provided for refugees. The number of asylum-seekers sent back to Poland from other EU states has increased following application of the so-called Dublin II Regulation, which establishes criteria and mechanisms for determining which EU state will examine an asylum application. HFHR notes that in 2005 "Halina Niec", a human rights association, monitored Polish centers for detainees awaiting deportation and found that their living conditions were generally adequate. Furthermore, the HFHR<sup>73</sup> expressed concerns about the failure to realize other rights of detainees, including the failure to ensure access to information (regarding detention facilities operated by the police), lack of access to legal assistance and translators, shortage of suitable clothing due to financial restraints, and the lack of leisure time activities (sports, literature, newspapers, etc.). In 2006, the CoE CHR74 recommended that Poland improve access to information, legal assistance and education for those asylum seekers residing in reception centres. The Government of Poland provided comments to the CoE CHR75.

29. The HFHR<sup>76</sup> noted that procedural ambiguities caused practical difficulties in establishing the legal status of unaccompanied minors crossing the border to Poland. It<sup>77</sup> also stated that each year, about 200 minors who have illegally entered Poland have been sent by the border police to the police-run centers for children. Subsequently, 80% of the children leave the centers without social workers involved in their cases. In 2005, 113 such minors sought asylum in Poland. In 2005, a total of twenty places were reserved in two Warsaw foster homes for minors seeking asylum. Yet, one of the main problems concerning unaccompanied aliens remained: if their legal status could not be settled, they could be deported to their country of origin.

## **Final Report**

On 28 February 2008, the Human Rights Council selected the following group of Rapporteurs (troika) to facilitate the review of Poland: Brazil, Japan and Angola. The delegation of Poland was headed by H.E. Mr Witold Waszczykowski, Under-Secretary of State at the Ministry of Foreign Affairs of Poland.

### **(i) Summary of the State under Review**

- With regard to the question of violence against children, Polish authorities undertake a number of long-term measures. In 2006, a nationwide social campaign under the name of "Childhood under Protection" was also launched to sensitise the public. As far as corporal punishment is concerned, the Polish legal system penalises every form of physical or psychological violence against children, including violence inflicted by parents and legal guardians. Acts of such nature are prosecuted ex officio, as the police gathers information, assuming that an offence has been committed. No complaint by the victim is needed. The Family Code article 95.2, provides for the institution of "reprimanding a minor" as a form of carrying out a parental authority. The provision however, cannot be considered as an endorsement of corporal punishment, since the provision has to be construed jointly with the definition of parental authority specified in the Code as actions exclusively for the good of the child. The acts of reprimanding a minor may only be inflicted in cases where the lack of such actions might endanger the health or security of a child and the situation requires an urgent response.

### **(ii) Interactive dialogue and responses by the State under Review**

- Angola asked what further measures Poland could take to reinforce its fight against discrimination. Referring to the protection of children, Angola requested further information on legislative and administrative measures taken to tackle violence against children. Angola expressed the opinion that Poland should endorse the recommendations made by the Committee on the Rights of the Child and the Human Rights Committee on the adoption of legislative measures to ensure compliance of national legislation with the principles and provisions of the Convention on the Rights of the Child.

- Japan raised concerns about persisting racial discrimination cases purported to target Asian and African children in educational institutions.

- Pakistan highlighted some of the important indicators expressing Polish commitments, which include the extensive human rights training and education plan, which not only involve Government officials but also address the issue at grass-roots level by including it in the curricula of primary and secondary schools.
- On the issue of violence against children, the delegation of Poland indicated that in 2005 a law was enacted to fight against violence within family, which also contains provisions addressed to the offenders in order to prevent similar acts of violence from occurring in the future. For the effective implementation and enforcement of the law, it was indicated that in 2006 the National Programme for Fighting against Domestic Violence was adopted, which is assessed annually. Institutional measures have been taken to provide assistance to victims of violence; in particular, 33 specialised centres were created to provide legal, medical, psychological and social assistance, with the aim to prepare victims to resume their normal life. In addition, Poland has also crisis centres, shelters and orientation services and homes for mothers and children at the local level. The delegation also indicated that a follow-up programme for children from birth to the age of 18 is being prepared, the aim of which will be to detect as early as possible any deficiencies in children's upbringing and education, including cases of violence, in order to prevent an exacerbation of the situation.
- On the issue of criminal responsibility of minors, the delegation indicated that this concept does not exist in the Polish legal system. It indicated that the Polish law only uses educational or reformatory measures with respect to juveniles who seem to be demoralised or to have committed punishable offences. Educational and correctional measures aim at helping parents and avoiding the minor to be demoralised.
- As regards the issue of corporal punishment of children, Sweden noted that there is no unequivocal legal prohibition of corporal punishment of children in Poland. While noting the measures taken by Poland to address the continuing occurrence of violence against children, Sweden asked what measures it is taking to ensure the sufficient legal protection of the freedom of children from physical or mental violence.
- Mexico encouraged Poland to continue its efforts to ensure compliance of its domestic legislation with the CRC, specifically with regard to juvenile justice.
- Norway noted that under Polish law access to therapeutic abortion is granted on certain conditions, including when a women's health or life is at risk. On this matter, Norway requested further elaboration on what is done to facilitate access to abortion for women who qualify for this under Polish law.
- On the question on abortion raised by Norway, Poland indicated that prenatal testing in Poland is increasing, providing recent data to illustrate genetic assertions. Poland indicated that the cost of the prenatal testing carried out in specialised medical centres is covered by the national health system. In the event of detection of a severe incurable defect or disease, the parents have the right under the law to decide to carry out an abortion. The detection of a foetal defect can also have a significant impact on the management of the pregnancy and birth, and in many cases creates a chance of saving the baby through the planning and performance of intrauterine treatment or surgery immediately after birth. It also indicated that a doctor in Poland may refuse to perform an abortion that meets the requirements of the 1993 law on family planning by invoking the conscientious clause. However, health-care facilities that do not perform abortions due to the above-mentioned reasons are obliged to have an agreement with a subcontractor who is willing to perform the abortion. Recently, and as a result of a case against Poland, new provisions have been introduced that permit an appeal when a doctor refuses to conduct an abortion in circumstances permitted by Polish law.

### **Conclusion and Recommendations**

In the course of the discussion, the following recommendations were made to Poland:

- Recommended to Poland to endorse the recommendations made by the Committee on the Rights of the Child and the Human Rights Committee on the adoption of legislative measures to ensure compliance of national legislation with the principles and provisions of the Convention on the Rights of the Child (Angola);
- While noting the measures taken by Poland to address the continuing occurrence of violence against children, recommended that measures be taken by the Government to ensure the sufficient legal protection of the freedom of children from physical or mental violence (Sweden);
- Encouraged Poland to continue its efforts to ensure compliance of its domestic legislation with the Convention on the Rights of the Child, specifically with regard to juvenile justice (Mexico);
- While enquiring about the status of the legislative proposal aimed at "punishing anyone who promotes homosexuality or any other deviance of a sexual nature in education establishment", recommended to withdraw it if it has not yet been done (Slovenia);