

Warsaw, 5 October 2016

**Submission to the UN Universal Periodic Review 3rd cycle
by Association for Legal Intervention (SIP)
POLAND**

About Association for Legal Intervention (SIP)

The Association for Legal Intervention (Stowarzyszenie Interwencji Prawnej – SIP) is a Polish nongovernmental organization established in 2005 whose mission is to ensure social cohesion by promoting equality of all people before the law. We strive to support migrants, asylum seekers, refugees, prisoners, foster families and elderly people. Our main area of activity is provision of legal and social counselling in individual cases and representing clients in courts and in front of administrative bodies (thus initiating strategic litigation). SIP implements educational programs for professionals and groups of diverse cultural and professional backgrounds concerning their rights and duties. We conduct research, monitor the application of the law and participate in civil society consultations to influence the state policies. SIP has participated in the previous Universal Periodic Review cycle concerning Poland in 2012 through the submission of the joint report with other Polish NGOs (ATD- Third World, Karat Coalition, SOS Children`s Villages Association).

Scope of the report

The submission to the Universal Periodic Review covers issues in the areas of gender-based violence, rights of migrants, asylum seekers and refugees. The report aims to identify the most significant problems occurring in the abovementioned areas in the period 2012-2016 and present recommendations for Poland to implement changes in law and policy.

General overview

Polish authorities are not fulfilling their international obligations in relation to people of foreign origin living in Poland. Our main issues of concern remain: detention of minors, lack of protection against gender-based violence, lack of access of undocumented immigrants to the public healthcare system, violation of immigrants' labour rights and ineffective integration policies addressed at refugees. A new concerns occurred with the increased reports from the asylum seekers seeking to cross the eastern border crossing points and being repeatedly refused to do so – an issue which has been subject of our thorough research.

Issues under review

Area 29.2 : Gender-based violence

Protecting migrant women against gender-based violence

Gender – based violence against migrant women is a phenomenon as much present in Poland as it seems to be unnoticed by the authorities. Our hitherto experience in counseling migrant women as well as our recent research¹ show that there are significant gaps in protection system as regards victims of gender-based violence of foreign origin.

Following the previous review and recommendations by the participating States (A/HRC/21/14, 90.27-28) Poland has signed and ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence by July 2015. Despite initial activity of the government intended to harmonize Polish law with the provisions of the Convention, no steps have been taken to strengthen the protection of migrant women from gender-based violence despite explicit guidelines enshrined in the Convention, particularly article 4(3) obliging Poland to introduce all services and measures supporting victims of violence without any discrimination as regards race, nationality or migration status. Currently migrant women in Poland cannot access the majority of shelters for women (intervention crisis centres - *ośrodki interwencji kryzysowej*) since they operate in the framework of social welfare system, which supports Polish and EU citizens, refugees and long term residents and excludes temporary residents and holders of visas². Poland has not introduced the definition of female genital mutilation or forced marriage into the legislation, consequently they are not considered individual criminal acts. Poland also does not allow for granting separate temporary residence permits to migrant women fleeing gender-based violence who have previously derived their migration status from their personal relation with the perpetrator (article 59 of the Convention), nor does it consider gender-based violence in the country of origin as a standalone ground for granting refugee status to asylum seekers (article 60 of the Convention).

Recommendation:

Harmonize Polish legislation with the provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence adjusting the system of protection of victims of gender-based violence to the needs of migrant women.

¹ W. Klaus, *Bezpieczny dom? Przemoc fizyczna i symboliczna wobec uchodźczyń i uchodźców*. Association for Legal Intervention (2014). Report available: <http://interwencjaprawna.pl/wp-content/uploads/bezpieczny-dom.pdf>

² Law on social welfare of 4 March 2004, available online: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20150000163>

Area 34: Migrants

Risk of labour exploitation

Due to the restrictions in the access to the labour market and lack of proper protection mechanisms, migrant workers are facing the highest risk of labour exploitation. The phenomenon of forced labour remains unreported and unresearched due to the unclear criminal provisions and lack of measures encouraging the victims to come forward and report crimes to authorities³. 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 contract⁴. The regulations protecting Polish employees against labour exploitation cannot be applied to migrants in practice because of their status – the short duration of their stay in Poland and their strong ties with the employer (the provisions for remaining legally in Poland and obtaining a work permit are closely related). According to the law on foreigners of 2013, migrant workers are obliged to return to their country of origin should they even slightly infringe the conditions of their previously declared employment. Furthermore, the Labour Inspection cooperates closely with the Border Police in detecting any violations of rules governing employment of foreigners as well as detecting undocumented migrant workers, therefore migrants have no incentive to report labour exploitation to the relevant bodies and endure exploitative working conditions⁵. The implementation of the EU Sanctions Directive in 2012⁶ has to be considered ineffective and the new provisions have no application in practice⁷. In addition, migrants are not aware of their rights and there is a lack of organizations or institutions to which they could turn for assistance⁸.

Recommendations:

1. Ratification of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
2. Introducing of clear separation (“firewall”) between Labour Inspection and Border Police thus enabling migrant workers for safe reporting of labour exploitation
3. Strengthening the legal framework to protect all workers against severe labour exploitation.

³ Statistics on the human trafficking in 2014 available at: <http://www.handelludzmi.eu/hl/baza-wiedzy/raporty-analizy-strateg/raporty-i-analizy-dotyc/6764,Handel-ludzmi-2014.html>

⁴ K. Słubik et. al. *Unprotected. Migrant workers in an irregular situation in Central Europe.* (2014). Available at: <http://interwencjaprawna.pl/en/files/unprotected.pdf>

⁵ K. Słubik et al. *Unprotected.*

⁶ Law on the effects of employing foreigners staying contrary to the bidding provisions in Poland of 15 June 2012 available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20120000769>

⁷ Ibidem.

⁸ Klaus W. (ed.) *Ziemia obiecana? Warunki pracy cudzoziemców w Polsce*, Association for Legal Intervention, Warsaw, 2011 (in print).

Access to health care for undocumented migrants

Even though numerous recommendations were issued during the previous UPR cycle urging Poland to improve access of the undocumented migrants to healthcare⁹, Polish authorities have not improved the situation of irregular migrants as regards healthcare. The most urgent issue is the lack of availability of healthcare for undocumented minors and pregnant women, which is a clear violation of the UN Convention on the Rights of the Child, which Poland has ratified, as well as the Polish Constitution (Article 32)¹⁰.

Recommendation:

Ensure that undocumented migrants, particularly minors and pregnant women can access public healthcare free of charge and without fear of being denounced and returned to the country of origin.

Area 35: Refugees & internally displaced persons (IDPs)

Detention of minors and vulnerable persons

One of the substantial problems, despite recommendation issued and noted by Poland during the previous UPR cycle¹¹, remains the detention of minors in closed facilities in relation to their migration status. According to European¹² and international¹³ standards, authorities should avoid arresting children along with their parents, even if they are in their parents' custody. Polish practice is not in keeping with this recommendation even though minor improvements in the laws governing detention have occurred in the reporting period. With the new law on foreigners¹⁴ courts have been obliged to consider the interest of a child whenever placing minors in detention. It is also no longer permitted to detain an unaccompanied minor under 15. Nevertheless, Polish law still allows for the detention of families with minors for the purposes of both return and asylum proceedings. Unaccompanied minors can be also detained for the purposes of expulsion when older than 15 years. The law does not provide for any restrictions and limitations in detention of this group of migrants (e.g. as to the period of detention). Even though improvements in selected detention facilities have been made to adjust them

⁹ A/HRC/21/14: 90.39 (Holy See), 90.51 and 90.119 (Uruguay).

¹⁰ *Access to healthcare and living conditions of asylum seekers and undocumented migrants in Cyprus, Malta, Poland and Romania* HUMA Network, 2011. Available at: <https://ec.europa.eu/migrant-integration/librarydoc/access-to-healthcare-and-living-conditions-of-asylum-seekers-and-undocumented-migrants-in-cyprus-poland-malta-and-romania>

¹¹ A/HRC/21/14: 90.121 (Belarus).

¹² *Muskhadiyeva and others v. Belgium*, ECHR, No 41442/07; CPT: 20 years of combating torture, 19th General Report, 2008, par.97.

¹³ Committee on the Rights of the Child. *The rights of all children in the context of migration*. (2012) Available at: <http://www2.ohchr.org/english/bodies/crc/docs/discussion2012/ReportDGDChildrenAndMigration2012.pdf>

¹⁴ Law on foreigners of 12 December 2013 available at: <http://isap.sejm.gov.pl/DetailsServlet?id=WDU20130001650>

to accommodate families with minors, the monitoring of the detention centers performed in 2014 by Association for Legal Intervention and Helsinki Foundation for Human Rights showed that they do not ensure proper well-being of detained children¹⁵.

Also recent monitoring of the Polish border crossings showed that there is no uniform approach across the Border Police units as to the “detention as a last resort” requirement when initiating detention of minors with families and vulnerable persons nor is there a mechanism in place allowing for the identification of the vulnerable persons, eg. victims of torture at the border crossing points¹⁶. Also despite the absolute ban on detention of victims of torture, the lack of proper identification mechanism enshrined in the law leads to survivors of torture still being detained in detention centers without proper psychological or psychiatric assistance or access to the free-of-charge legal assistance.

Recommendations:

1. Introduce a ban on detention of minors with families and unaccompanied children, disregard of their migration status.
2. Establish an effective system for identification of vulnerable persons to prevent their detention in line with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Refusing asylum seekers access to the territory of Poland

Since 2014 SIP has observed that asylum seekers seeking to cross the Polish land borders with Belarus (border-crossing point Terespol-Brest) are being refused entry to the Polish territory despite their clear invocations of past persecutions or experiences of inhuman treatment. SIP has carried out a research in spring 2016 examining three Polish border crossings. The research has proven that despite repeated requests for asylum, the majority of asylum seekers at the Poland-Belarus border have been refused the right to lodge asylum claim and enter Poland¹⁷. The violations have been later confirmed by Polish Ombudsman after the monitoring visit of the latter at the border crossing in Terespol¹⁸. This practice has since increased in recent months, and has also been reportedly observed at the Polish-Ukrainian border.

¹⁵ *Still behind bars. Report on the monitoring of the guarded centers for foreigners by the Helsinki Foundation for Human Rights and Association for Legal Intervention.* Warsaw 2014. Available at: <http://interwencjaprawna.pl/wp-content/uploads/still-behind-bars.pdf>

¹⁶ A. Chrzanowska et al. *At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka and Warszawa - Okęcie Airport.* Association for Legal Intervention, Warsaw 2016. Available at: <http://interwencjaprawna.pl/en/files/at-the-border.pdf>

¹⁷ A. Chrzanowska et al. *At the border. Report on monitoring of access to the procedure for granting international protection at border crossings in Terespol, Medyka and Warszawa - Okęcie Airport.* Association for Legal Intervention, Warsaw 2016. Available at: <http://interwencjaprawna.pl/en/files/at-the-border.pdf>

¹⁸ <https://www.rpo.gov.pl/pl/content/komunikat-o-wizytacji-kolejowego-przejscia-granicznego-w-terespolu>

Recommendation:

Ensure that every asylum seeker at the Polish border is permitted to enter the territory of Poland and lodge an asylum claim in line with the 1951 Refugee Convention.

Homelessness of refugees

Finally, one of the biggest challenges faced by refugees in Poland remains the lack of social housing. As a consequence, many refugees and their families become homeless. According to 2013 research ca. 40% of persons who were granted international protection in Poland are facing homelessness¹⁹. Low-paid jobs or being trapped in a vicious circle of continued unemployment hinders refugees' attempts to achieve a basic standard of decent housing²⁰. Prejudices against foreigners and negative attitudes of landlords towards foreign tenants add to the problem of homelessness.

Recommendation:

Increased attention to the integration process for refugees in the aim of more effective results particularly in the area of social housing, vocational training and job placement.

On behalf of SIP,

Witold Klaus PhD
President of the Board
Association for Legal Intervention

¹⁹ *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.

²⁰ Report on housing conditions of refugees in Poland: A. Chrzanowska, I Czerniejewska *Mieszkamy tutaj, bo nie mamy innego wyjścia*.. Association for Legal Intervention (2015) Available at: <http://interwencjaprawna.pl/docs/ARE-215-monitoring-warunkow-mieszkania-wych-uchodzcow.pdf>