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PROGRAMA DEVENIDARIO DE  
ESTUDIOS DE GÉNERO - U.N.A.M.

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INDEPENDENT REPORT SUBMITTED  
TO THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

## Gender Discrimination in Poland

the Polish Federation for Women and Family Planning

NGO in SPECIAL Consultative Status  
with the Economic and Social Council of the United Nations

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Federation for Women and Family Planning  
Ul. Rabsztyńska 8, 01-140 Warsaw, Poland  
Ph./fax 48.22.632 0882, 631 0817  
e-mail: [polfedwb@waw.pdi.net](mailto:polfedwb@waw.pdi.net)

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Ms. Catherine Lifeso  
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The report has been prepared by Wanda Nowicka

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## GENERAL COMMENTS

Gender discrimination is inherent in current Polish law and policies and seems to be growing. In 1998, the Federation for Women and Family Planning submitted a shadow report to the UN Committee for Economic, Social and Cultural Rights (CESCR), in which we expressed our concerns related to growing gender inequalities, particularly in the areas of employment as well as reproductive and sexual health and rights. The Committee for Economic, Social and Cultural Rights in their concluding observations recommended several actions to be undertaken by the Polish government to prevent and stop the discrimination<sup>1</sup>. To our knowledge the Government has not taken any actions to implement these recommendations. On the contrary, the laws and policies adversely affecting women became even more restrictive.

### **Recommendations:**

- ◆ Implement the concluding observations of the Committee for Economic, Social and Cultural Rights;

### ***Lack of national machinery for gender equality***

In 1997 the Government of Poland transformed the Government Plenipotentiary for the Family and Women's Affairs (the machinery responsible for equality policies) into the Government Plenipotentiary for Family Affairs. According to the relevant legal act adopted by the Government on November 7 1997, the new office's mandate no longer includes women's issues and gender equality. The head of this new office is well-known for his extremely negative approach to gender equality policies. At the moment there is no governmental institution that addresses any gender discrimination or violence issues.

### **Recommendations:**

- ◆ Introduce national machinery on gender equality as committed by the Polish Government in various international documents, including CEDAW and the Platform for Action of the IV World Conference on Women, Beijing 1995;

## Articles 2, 3, 6, 7, 9, 17, 18, 24, 26

The right to equality is an essential indicator for assessment of any particular country's realization of the Covenant rights. The centrality of gender equality as a principle for assessment which relates to all enumerated rights is indicated by the Covenant itself in Articles 2,3 and 26, and by the fact that the concept of the equal enjoyment of rights is intrinsic to the whole system of the international human rights law.

*The full and equal participation of women in political, civil, economic, social and cultural life at the national, regional and international levels, and the eradication of all forms of*

*discrimination on the grounds of sex are priority objectives for the international community.* (Platform for Action, FWCW, 2.10)

*The ability of women to control their own fertility forms an important basis for the enjoyment of other rights.* (Platform for Action, FWCW, 97)

*Reproductive rights embrace certain human rights that are already recognized in national laws, international human rights documents and other consensus documents. These rights rest on the recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health.* (Programme of Action, ICPD 7.3; Platform for Action, FWCW, 95)

The present anti-abortion law violates women's right to liberty and security in the area of reproductive rights and health. Women's inability to exercise their reproductive rights in many ways threatens women's life and health.

### ***Legal restrictions to abortion***

In 1993 significant changes concerning women's reproductive rights were introduced in Poland. The Polish Parliament passed an anti-abortion law called *the Act on family planning, human embryo protection and conditions of permissibility of abortion*. Under the Act, abortions on social grounds were delegalized. As a practical result, it meant that women in difficult life conditions, including financial situations, could not legally have abortions. The anti-abortion law was liberalized shortly in 1996 (enforced in 1997) to allow abortion until the 12<sup>th</sup> week of pregnancy if "a woman is in hard life conditions or in difficult personal situation". The law was restricted again in 1997 (enforced in 1998) by the 1997 Parliament in response to the Constitutional Tribunal's decision holding that abortion on social grounds is unconstitutional. The Tribunal justified its decision on the ground that Poland is a democratic state of law, which it interpreted as implying the protection of life at every stage. Article 38 of the Polish Constitution includes the provision of legal protection of life to every human being. The Tribunal's decision, its justification and its consequences was a real shock for women's rights and health advocates as well as for many prominent lawyers.

### ***Discriminatory aspects of the restrictive abortion law***

The Polish abortion law, enacted in 1993, is discriminatory in its design and in its impact and effect. The law discriminates against women because it criminalizes medical procedures that only women need. Moreover, it does not require the government to provide contraceptives and sterilization services necessary for women and men to prevent unwanted pregnancy. The law also discriminates against women because it punishes women but not men for acts that result in unwanted pregnancy.

This restrictive abortion law is discriminatory in its effect and impact on certain subgroups of women. It has the effect on discriminating against those women who lack access to reproductive health services and information and sex education, such as those women who are poor and uneducated, essentially those women who do not have means necessary to access services required for them to protect and promote the reproductive health.

This restrictive law was introduced without any transitional period, without any mechanisms that would allow women to more easily adjust to these changes and avoid dangers associated

with these restrictions. Abortion on social grounds was legal in Poland since 1956 and it was broadly utilized by women as a method of birth control because of the Polish state's inadequate family planning policies. In imposing restrictions on abortion, the state did not simultaneously introduce any policies that would promote and subsidize family planning programmes.

This dramatic change seriously affected many women and families, particularly those who are poor and uneducated. The law did not stop abortions. Instead, it forced women to use back-street abortions or travel abroad to obtain abortions. These effects of anti-abortion regulations on women's life and health were described in the Federation for Women and Family Planning 1996 and 1994 reports. At present, the Federation is working on a new report. From the data already gathered, it appears that the situation has actually worsened; many women in dramatic life situations now have no other choice but to have extremely expensive illegal abortions.

### ***Discrimination against pregnant women with health problems***

According to the anti-abortion law, abortion on medical grounds is legal. However, in practice, women whose pregnancy constitutes a health risk face difficulties in receiving the necessary termination procedures. It is quite common that, due to the medical community's general ignorance on the conditions of the anti-abortion act and its anti-abortion attitudes, women with serious medical problems have been forced to give birth. Some women have even died as a result. Several cases were described in the Federation for Women and Family Planning reports. For example, a woman with an artificial heart valve was forced to give birth to a baby against her and her husband's will. She died a few days after the delivery.

Laws that have the effect or impact of denying safe abortion services constitute sex discrimination. Men in conditions of therapeutic need are not exposed to the denial of lawful, safe medical services that women face in Poland in seeking therapeutic abortion services. Moreover, *de facto* restrictions on medically necessary abortions denies women equality under law because it does not apply the same standard of medical necessity to both men and women.

### ***Discrimination against women in access to health services necessary to preserve their health and well-being***

In general, it can be assumed that a pregnant woman does not experience satisfactory protection of her right to health if her life or health is in conflict with the life of the fetus. This understanding was legally confirmed in 1996 by the decision of the Polish Constitutional Tribunal<sup>2</sup>.

We are aware that some women have already experienced unfavorable medical treatment due to the fact that they were pregnant. For example, in one of the Warsaw hospitals, a pregnant woman threatened by the loss of sight was denied the right to cesarean section. The denial was justified on the grounds that deliveries in this particular hospital were possible only by *means of nature* (this information comes directly from the ophthalmologist who recommended the cesarean section).

### **Recommendations:**

- ◆ Address adequately the discriminatory consequences of restrictions to abortion as a public

health issue and their adverse consequences to health, social status and human rights for women and change the law and policies subsequently;

### ***Limited access to family planning counseling and services***

While abortion remains illegal, family planning services do not receive an adequate proportion of government health spending. Family planning counseling and services generally are not provided in the public healthcare system. The existing non governmental family planning associations are unable to meet all needs of society in this respect. Women do not have adequate access to contraception due to the lack of state subsidies that would lower prices, the medical community's lack of knowledge and unwillingness to prescribe contraceptives, and the lack of any state programs to promote family planning. Sterilization as a method of family planning is illegal.

The medical community, in general, does not take any pro-active measures to promote family planning among women. The Medical Code of Ethics adopted by the physicians in 1993 states that doctors should counsel family planning, but only to the patients who are interested in it. In other words, doctors are not obliged to propose contraception if women do not ask for it. For example, in a recently published article in the opinionated *Medical Newspaper* (April 1999), the head of the National Medical Court justifies doctors' right to refuse to prescribe the Pill over women's right to get it.

In a Catholic society where the vast majority of the population still knows little if anything about family planning methods, such attitudes are a significant barrier.

Contraceptive subsidies introduced in 1997 by the former Government were withdrawn by the current Government in March 1998. These financial reductions for reproductive health have serious impact on women's family planning choices. The importance of these subsidies in increasing access to family planning can be seen by the fact that the purchase of contraceptives in 1997 increased almost 28 per cent<sup>3</sup>.

The Government's decision to eliminate contraceptive subsidies pushed the Federation to issue a claim to the Polish Ombudsman for Human Rights. The Ombudsman agreed to specifically address the issue of governmental discrimination against women and called on the Government to reinstate the subsidies. However, the Government ignored this recommendation.

The lack of such policies significantly increases the risk that women will be forced to have unwanted pregnancies and all the consequences resulting from the criminal anti-abortion law. Women's right to freedom from unwanted pregnancy is not being observed.

### **Recommendations:**

- ◆ Introduce state policies and programs promoting full access to all methods of family planning, including sterilization;
- ◆ Introduce the recommendations of the Ombudsman for Human Rights to the Government to reintroduce subsidies for contraceptives;

***Discrimination against women in access to health services necessary to protect the liberty and security of their person and their private and family life***

Denial of health services necessary for women to protect their liberty and security of their person, such as contraceptive and sterilization services, discriminates against women. Men can obtain condoms without prescription while women face legal and medical barriers, such as doctors' prescriptions. Moreover, the National Medical Court has justified doctors to invoke their personal conscience over discharge of their professional medical duties to serve the health of their patients, thus denying women their right to private life and denying men their right to family life in violation of articles 17 and 23.

Further, by not providing state subsidies for family planning services, the state discriminates against poor women because women bear disproportionate burden of denial of family planning services because it is women, not men, who face the physical burden of unwanted pregnancies.

The 1993 Medical Code of Ethics discriminates against women by not providing the same standard to the delivery of medical care to women than to men. In permitting the medical profession to counsel women about family planning only when they are interested denies women but not men the necessary information that they need to protect and promote their reproductive health. When men seek information and services necessary for their health, doctors will not limit their counseling to those treatments "in which men are only interested in" but rather they will provide information and counseling about those treatments and methods that are necessary to protect their health. Once the information and counseling is provided about all methods, then and only then can patients make an informed choice about which methods they want to use. To deny women, but not men the basic information for them to make informed decisions about their health denies women but not men their liberty and security of their person.

### ***Sex education withdrawn***

Sex education as a separate subject was withdrawn from school curricula by Parliament in 1999. It will be replaced by so-called Pro Family education. This new program is based on the Roman Catholic church's teachings on human sexuality, family planning and the family, as well as existing and accepted school textbooks by the Ministry of Education. This raises serious fears that the right of young people to modern sex education will not be adequately fulfilled by the State. Taking into account the restrictive anti-abortion law, young people, in particular girls, are exceptionally vulnerable to the lack of adequate education, counseling and services.

### **Recommendations:**

- ◆ Provide children and adolescents with full access to education, including sex education, and introduce modern, non ideologically-biased sex education to public schools;

### ***Direct discrimination of pregnant women in labour market***

A woman seeking a job is often required to have a medical check-up, which routinely includes a pregnancy test. This procedure enables employers to exclude pregnant women as potential employees. This practice has been documented by many female job-seekers.

### **Recommendations:**

- ◆ Eliminate discriminatory practices towards women at labor market;

## *Violence against women*

Violence against women is one of the most painful problems in Poland, but still inadequately recognized and addressed. There is no systematic data on violence. There are neither preventive measures nor sufficient support mechanisms for victims of violence. Legal regulations such as *orders of protection* do not exist and the number of shelters and other supportive institutions is drastically inadequate.

The Government Program against Domestic Violence was launched in 1997 by the office formerly responsible for preventing gender-based discrimination - Government Plenipotentiary for the Family and Women's Affairs. The Program has been suspended for more than one year by the subsequent Government Plenipotentiary for the Family Affairs. The new programme launched recently by the Government focuses on children, youth, women and men. Twelve anti-violence centers initiated under this programme are aimed at supporting victims, observers and violators all together (information comes from the programme coordinator). This approach to violence against women dilutes the problem of gender-based violence and does not give much hope that the situation concerning violence against women will soon improve.

Laws specifically addressing sexual harassment do not exist in Poland although the problem has been recognized by women's groups.

## *Rape as a crime*

Women's groups are concerned with low sentences for the crime of rape which seem to demonstrate that rapes are treated by Polish law enforcement institutions as less serious crimes. The 1998 Criminal Code lowered the sentence for rape with particular cruelty from 3-15 years in prison to 2-12.

Many groups, including women's NGOs, the Women's Parliamentary Group, and individual lawyers issued at least two statements to the Minister of Justice concerning

- 1) group rape by 4 men of a 14 year old girl -- on 17 June 1998, the court in Opole found the accused guilty and issued a 1-2 year sentence with suspension for 5 years.
- 2) The rape of a 5 year old girl with particular cruelty -- on 22 March 1999 the court in Kalisz issued a 3 year sentence.

The Minister of Justice essentially responded that it cannot intervene with the courts' independence.

## **Recommendations:**

- ◆ Introduce special laws and subsequent policies addressing adequately violence against women and sexual harassment;
- ◆ Sensitize judges and other law enforcement institutions to treat rape as a serious crime and punish adequately.
- ◆



## Perspectives for the Future

### *Gender equality act rejected*

Our concern for the future is quite serious due to several new laws and draft legislation. The Government very critically assessed the draft law on the equal status of men and women proposed by the Women's Parliamentary Group. The Government's critique goes far beyond this draft. In its review, the Government stated that there was no need for special equality mechanisms since the principle of gender equality is satisfactorily protected by Polish law i.e. the Constitution. Subsequently, the draft has been rejected by Parliament.

### *Law introducing separation*

In 1999, Parliament legalized separation although divorce is legal in Poland. This is an example of directly basing statutory on the law of the Roman-Catholic religion. The rationale behind this law is a religious one – to enable Catholics not to breach the religious law which does not tolerate divorce. Although the society is catholic, divorces have been a reality in Poland for 50 years since they were legalized. Women's groups are concerned that separation might be used in practice as a middle stage before divorce and will prolong divorce procedures, make them more expensive and ultimately hindering the ability to obtain divorces. Since in 2/3 of the divorces in Poland a woman requests a divorce<sup>4</sup>, women will be affected more than men by the new law on separation.

### *Pensions reform*

The Polish pension system was reformed in 1999. However, it retained the traditional system of different retirement ages for women (60) and men (65). The new system directly links the amount of the pension to the number of years of savings. In result of new pension system women will have pensions usually 30-40 per cent less than men. Moreover, due to the fact that women are discriminated against directly and indirectly in the labor market<sup>5</sup> – they usually earn 30% less than men<sup>6</sup> - the final pension might be much less than 40 per cent. The Government states that trade unions did not want to introduce equal retirement age for both sexes. However, there has been no public debate during which the government would inform women about the real consequences of this new system.

### Recommendations:

- ◆ Eliminate discrimination of women in pension reform;

### *Prenatal tests*

The Polish Parliament recently introduced a law severely limiting the availability of prenatal tests. The law was introduced on ideological grounds in spite of the opposition of many doctors and women's groups. This discriminatory law has not yet been finally adopted but if it is, pregnant women over 35 would not have access to prenatal examinations and so their access to the benefits of scientific progress will be seriously restricted. The law is meant to further restrict access to legal abortion on eugenic grounds.