



EXECUTIVE SUMMARY

Poland*



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Introduction

Poland is a parliamentary republic with a population of approximately 38.5 million.¹ In 2004, Poland joined the European Union and gained membership to the Schengen Area. Despite being the only country in the European Union (EU) to avoid a recession during the 2008–2009 economic downturn,² Poland's Gross Domestic Product (GDP) remains significantly lower than the EU average, while its unemployment rate is higher than the EU average. These factors affect the landscape in which the commercial sexual exploitation of children (CSEC) occurs in Poland. The children most at risk of commercial sexual exploitation in Poland are unaccompanied foreign children, street children, and children in residential care institutions.³

Poland is ranked as one of the top seven countries with the highest number of **human trafficking** cases.⁴ It is not only a source country for human trafficking, but has also recently become a notable transit and destination country.⁵ Another recent trafficking trend to emerge in Poland is recruitment of people on the Internet for human trafficking.⁶ Interestingly, within Poland, the majority of not only victims, but also traffickers, are Polish citizens.⁷ Despite the attention and wide-scale implementation of various anti-trafficking programmes and policies, Poland has yet to legislate specifically for the protection of child victims of trafficking for sexual purposes.

The most identified form of CSEC in Poland is **child prostitution**.⁸ Poland's legislative framework against child prostitution is

inadequate, preventative efforts are minimal, and there is little research on the extent of the issue in Poland. Although prostitution itself is legal in Poland, it is illegal if the person is under 15 years of age. However, a study revealed that 1/3 of the child victims of prostitution had been exploited when they were younger than 15 years of age.⁹ Furthermore, in another study, 34% of 15–18 year olds admitted knowing at least one person who had engaged in sexual relations for remuneration over the last year.¹⁰

In Poland there is very limited data on the issue of **child pornography/child sexual abuse materials**. In recent years there has been an increase in the attention given to the issue of child pornography, suggesting that it is a growing problem. The Polish hotline *dyzurnet.pl* also found a marked increase in the presence of child pornography through its reporting mechanisms.¹¹ However, the increase in reporting may be due to the rapid growth of the Internet in Poland in recent years as well as increased awareness of the hotline.¹²

Although there is no data available on **sexual exploitation of children in tourism** within Poland, it has been reported that a 'cross-border sex industry' has developed along Poland's border regions with Germany and its eastern neighbours.¹³ There is a rising trend of tourism in Poland with the Polish government forecasting tourism to increase to 14.3 million by 2015.¹⁴ This increase in tourism also increases the potential for children to be exploited.

National Plan of Action

Poland does not have a National Plan of Action (NPA) that covers all manifestations of CSEC. There are two NPAs that contribute to the protection of children from CSEC: the *National Action Plan for Children 2004 – 2012 “Poland for Children”* (“NPA for Children”) which was implemented in 2004 and the *National Plan against Trafficking in Human Beings* (“Trafficking NPA”) which was implemented in 2003 and is adopted every two or three years.

The *NPA for Children* helps combat CSEC as it addresses factors that contribute to the vulnerability of children to CSEC. However, neither of these policies provide comprehensive coverage on all of the manifestations of CSEC. Furthermore, although trafficking in children for sexual purposes is included in the *Trafficking NPA*, it lacks a comprehensive focus on child victims specifically.

Coordination and Cooperation

The Committee on the Rights of the Child (“Committee”) has highlighted the lack of cooperation between the government and civil society in areas of policy development relating to CSEC issues.¹⁵ Currently, there is no body in Poland comprised of relevant stakeholders (such as public authorities and NGOs) that coordinates all of the activities of these stakeholders for the protection of children from all forms of commercial sexual exploitation. This is a reflection of the fact that there is no public institution that covers child protection generally. The Child Ombudsman theoretically covers child protection issues generally; however, due to financial and other limitations, the Child Ombudsman has little capacity to deal with all of these issues. Further exacerbating the issue is the fact that there is no CSEC-specific NPA in Poland.

Coordination and cooperation in regard to human trafficking is well established in Poland. The Trafficking Committee, its Working Group, and sub-group for trafficking in children specifically, are responsible for the monitoring and implementation of the *Trafficking NPA* as well as cooperating with governmental and non-governmental agencies. The Trafficking Committee functions as a central coordinating mechanism for efforts to combat human trafficking and provides a platform for multi-stakeholder cooperation. There are also several

other coordinated anti-trafficking institutions such as the Central Anti-Trafficking Unit in the Central Bureau of Investigation, Voivodship (provincial) teams, the National Consulting and Intervention Centre for the Victims of Trafficking (“the KCIK initiative”), and the ODESSA project.

In regard to other manifestations of CSEC, there are some examples of coordination and cooperation such as the Central Unit for Combating Trafficking in Human Beings, Human Organs, Child Pornography and Paedophilia at the Criminal Bureau of the National Police Headquarters which was established in 2006. Its role is to coordinate and supervise the activities of various anti-trafficking units and initiatives, conduct prevention activities, and provide training on human trafficking, paedophilia, and child pornography. There is also the Safer Internet Centre which provides a platform for coordination between government departments, NGOs, and the private sector, on the fight against child pornography. Other examples of cooperation and coordination include the “Don’t Lose” campaign and the Polish Coalition against Commercial Exploitation of Children. In Poland there is no central mechanism for collecting data on all manifestations of CSEC, in breach of the Rio Declaration and Call for Action. A wide range of stakeholders

including government ministries, NGOs, law enforcement agencies, the prosecutor's office, and labour inspectors, all collect data on CSEC. However, although data is widely collected, there are discrepancies in the data between the different stakeholders.

At a regional and international level, Poland has a well established record of coordination and cooperation in relation to child trafficking and child pornography/child sexual abuse materials. However, this coordination and cooperation is lacking in relation to sexual exploitation of children in tourism and child prostitution. The

Polish police effectively use platforms such as Interpol and Europol to coordinate regional law enforcement operations and have contributed to a number of worthy operations. Poland has also pursued a number of bilateral and regional agreements to facilitate cross-border police cooperation and is a member of the Council of the Baltic Sea States (CBSS), the Expert Group for Cooperation on Children at Risk (EGCC), and the European Network of Ombudsman for Children (ENOC). There are also several Polish NGOs that are involved in coordinated regional forums and networks on the issue of CSEC.

Prevention

The international community has noted that Poland's CSEC prevention efforts have been insufficient, particularly with regard to child prostitution and child pornography.¹⁶ The Special Rapporteur on Human Trafficking found that awareness among the general public in Poland remains relatively low.¹⁷ Furthermore, the general public is unaware of CSEC-related laws.¹⁸ Another significant gap is the lack of efforts that specifically target the exploiters of child victims of commercial sexual exploitation.¹⁹

There have been some successful campaigns on trafficking in children and child pornography that have been primarily implemented by NGOs, with indications that the Polish government is also an active supporter of such initiatives. Polish NGOs such as Nobody's Children Foundation (NCF), La Strada Foundation, Foundation Kidprotect.pl, NASK (Research and Academic Computer Network), the Polish Safe Internet Centre (SIC), and the Halina Niec Legal Aid Centre, have all had successful awareness raising campaigns.

There are a number of initiatives aimed at enhancing training and education on human trafficking in particular. The Ministry of Labour and Social Policy has organised and delivered programmes for support service professionals, predominantly in relation to human trafficking issues. Internet safety topics have been included in school curriculum since

2009²⁰ and human trafficking is a mandated component of the school curriculum for all school levels. The Ministry of Interior, in partnership with NGOs, has provided workshops for teachers on delivering anti-trafficking lessons in the classroom and over 493 teachers from five different regions across the country have benefited from this training.²¹ However, it has been reported that these topics are not being consistently implemented or fully integrated into the training curriculum for teachers.²² Furthermore, child prostitution appears to have been left out of such programmes in recent years.²³

In Poland, involvement by the private sector in CSEC preventative activities is inadequate. While there have been some good examples of collaboration between NGOs and the private sector, this is limited and there is much room for improvement. The Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism ("the Code") is an increasingly important global tool for involving the tourism sector in the prevention and monitoring of the sexual exploitation of children in tourism. The first official private sector company is scheduled to sign up to the Code on 9 October 2012 and is an effect of NCF awareness raising activities and involvement as the Local Code Representative of the Code of Conduct. The Code will help advance the private sector's involvement in CSEC prevention. In relation

to combating child pornography specifically, the private sector's involvement appears relatively well established. Various campaigns and projects to combat child pornography have been

set up by NGOs in cooperation with the private sector. The private sector is also involved in prevention through its representation on the advisory committee to the SIC.

Protection

Child rights instruments related to CSEC

Poland has ratified all of the relevant international instruments related to CSEC; however, they have not yet been fully implemented. Furthermore, Poland has signed but not ratified two critical regional instruments related to CSEC: *the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse CETS No.: 201* ("Lanzarote Convention") and *the Council of Europe Convention on Cyber Crime CETS No.: 185* ("Budapest Convention"). Poland should prioritise ratification of these Conventions and take steps to harmonise national legislation with the standards encompassed in both Conventions. More priority is also needed in implementing two EU directives – on sexual exploitation (2011/92/UE) and on trafficking in human beings (2011/36/UE).

Legislation

Poland's *Penal Code* contains laws that address only certain aspects of trafficking in children for sexual purposes, child pornography/child sexual abuse materials, child prostitution and sexual exploitation of children in tourism. Neither the *Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography* (OPSC) nor the *Council of Europe Convention on Action against Trafficking in Human Beings* ("Trafficking Convention"), both of which Poland has ratified, have been fully implemented.²⁴ Poland's domestic legislation therefore requires amending to bring it in line with international standards. Five key critical gaps in Poland's CSEC legislation are: (1)

inconsistent protection afforded to children between the ages of 15-18 years against child pornography and child prostitution; (2) inadequate implementation and enforcement of all CSEC laws; (3) lack of comprehensive protection against all activities related to CSEC offences; (4) absence of provisions that specifically address sexual exploitation of children in tourism; and (5) failure to define child prostitution, child pornography and sexual exploitation of children in tourism. A criticism by the Committee on Poland's legislation is that it does not provide for the liability of corporations or 'legal persons' (such as ISPs and financial institutions) in relation to all CSEC offences, as required by Article 3(4) of the OPSC.²⁵ Notably, Poland's legislation does provide for the liability of parents and guardians involved in the commercial sexual exploitation of their children.²⁶

Since 2010, Poland's anti-trafficking legislation has largely been in line with international standards. The *Penal Code* now provides a definition of trafficking that complies with international standards and specifically criminalises **trafficking of children for sexual purposes**. However, enforcement of the trafficking provisions remains inadequate as it is reported that authorities are reluctant to apply trafficking provisions, instead usually prosecuting under other provisions such as prostitution.²⁷ Additionally, the *Penal Code* lacks provisions to explicitly protect all child victims of trafficking from being prosecuted.

Poland's *Penal Code* is extremely weakened by the fact that there is no definition provided for either prostitution or **child prostitution**. In fact, prostitution itself is not a criminal offence in Poland, only certain acts in relation

to prostitution (such as the exploitation of children in prostitution) are illegal. The *Penal Code* therefore lacks comprehensive protection against all acts related to child prostitution. Again, there is no provision prohibiting the prosecution of child victims of prostitution, and therefore no guarantee of protection for victims. Another concern in relation to child prostitution is the 'consent requirement' in the *Penal Code* which leaves children between 15 and 18 who 'offer' their sexual services without protection under the *Penal Code*.²⁸ Procurement of child prostitutes requires the expectation of a 'material benefit' under the *Penal Code*, severely restricting the ability to prosecute any act facilitating prostitution.²⁹ Even more concerning is the requirement that the acts be 'systematic and permanent'³⁰ multiple incidents and not single incidents.³¹ There has also been limited implementation of CSEC offences in Poland and it has been reported that Polish police turn a 'blind eye' to the extensive operation of illegal brothels in the country.³²

Poland's legislation on **child pornography/child sexual abuse materials** is not in compliance with international law. Firstly, there is no definition of child pornography or pornographic material provided in the *Penal Code*. Secondly, there is no protection for all children under the age of 18 under the existing *Penal Code*. Thirdly, the *Penal Code* lacks a specific provision that makes it an offence to offer, access, or intentionally view child pornography. Furthermore, there are no provisions requiring ISPs or financial institutions to report such incidences. In 2008 and 2009, Poland notably included some articles in the *Penal Code* that criminalise virtual child pornography as well as 'grooming', bringing its laws closer in line with international standards.³³

Sexual exploitation of children in tourism is also not defined in Poland's *Penal Code*, nor is it specifically criminalised. There are some provisions in the *Penal Code* that criminalise paedophilic behaviour but these

are not expansive enough to cover all acts in relation to the sexual exploitation of children in tourism. Importantly, the *Penal Code* establishes domestic jurisdiction to prosecute anyone who commits an offence in Poland, irrelevant of the nationality of the offender or the victim.

Poland has strong **extra-territorial legislation** by way of the passive personality principle (nationality of the victim) and the nationality principle (nationality of the perpetrator). However, these principles are restricted by the 'double criminality rule' which requires the act in question to constitute an offence in the jurisdiction in which it was committed, unless Poland has agreed to pursue the matter under an international agreement. In relation to Polish citizens committing offences outside of Poland, the Polish Constitution prohibits the extradition of Polish citizens unless otherwise agreed by bilateral international agreement and the act amounts to a criminal offence under Polish law.³⁴ This provision is concerning given the many gaps in Poland's CSEC legislation, particularly because many of the manifestations of CSEC are not even included.

Child protection units

There are a number of child protection units in Poland, however, these have generally been aimed at human trafficking victims and there are limited resources available for victims of other manifestations of CSEC. The Central Team for Combating Trafficking in Human Beings, Human Organs, Child Pornography and Paedophilia at the Criminal Bureau of the National Police Headquarters was established in 2006.³⁵ There are also a number of specialised agencies working on the trafficking in human beings. A central anti-trafficking unit was established within the Central Bureau of Investigation and there are 17 anti-trafficking units within the regional police.³⁶ There is also an anti-trafficking team within the Border Guard.³⁷ In some districts in Poland, prosecutors have been trained specifically to

handle cases that involve children.³⁸

Support services for children

Both the Polish government and the Committee have recognised that support services for victims of CSEC in Poland are currently inadequate.³⁹ While there are reasonable support services and facilities for victims of trafficking specifically, often children who are victims of other manifestations of CSEC are incorrectly granted support for so called 'behavioural problems' rather than access to appropriate CSEC victim support services. There is also a large gap between those who are identified as victims of CSEC in need of assistance and those who actually benefit from any government programmes.

Currently, the Polish police are the only body that is authorised to investigate and identify cases of human trafficking.⁴⁰ NGOs only have the authority to identify Polish victims of trafficking.⁴¹ Additionally, although relevant stakeholders are encouraged to contact the KCIK initiative with any information about suspected victims, there are no written instructions or a Memorandum of Understanding that explains how this referral process should occur.⁴²

If identified by the relevant authorities, foreign victims of trafficking may be granted a residency permit for Poland under the *Aliens Act*. However, this is conditional on agreement to cooperate with law enforcement after a three month reflection period.⁴³ Foreigner victims are also entitled to some limited support services including being voluntarily repatriated to their home country.

Poland does not have a separate compensation fund for victims of human trafficking. There are a few ways in which victims may be able to seek compensation, such as through

criminal proceedings,⁴⁴ under the *Act on State Compensation for Victims of Certain Intentional Offences*,⁴⁵ or under a special Act that grants compensation to victims who have suffered serious physical or psychological harm as a result of a crime. However, reports suggest that no victim has received compensation under this Act.⁴⁶

There are a number of hotlines and helplines in Poland for victims of CSEC themselves or those involved in the protection of CSEC victims. However, there is a need in Poland for sustained efforts to promote the existence of available hotlines and helplines so that they are widely used and accessible.

Under the Polish *Code of Criminal Conduct* there are some limited legal procedures that support and protect CSEC victims. However, these only apply to children under 15 years of age who are victims of sexual or domestic abuse. Furthermore, there is no requirement in Poland that CSEC related proceedings take place in child-friendly facilities with trained personnel using child-friendly techniques.⁴⁷ In fact, there are reports indicating that child friendly facilities are not consistently used⁴⁸ (even though there are 300 facilities countrywide),⁴⁹ hearings are repeated,⁵⁰ and a large number of children are interviewed more than once.⁵¹

Training of law enforcement

There are some examples of programmes to provide general training on working with child victims of crimes; however, training initiatives have largely focused on trafficking in human beings, while training on other manifestations of CSEC appear sparse. In fact, the training programmes on human trafficking can be largely inadequate as expansion and improved training around victim identification is needed.

Child and Youth Participation

Child and youth participation appears inadequate in Poland. The Committee has expressed concern that children and youth are not being granted meaningful opportunities to participate in matters that affect them, including the creation of programmes and policies.⁵² One example of child and youth participation relating to CSEC is SIC's

regular consultation with children and young people so that they can contribute to the design of effective educational tools and campaign materials.⁵³ Campaign materials and educational scenarios prepared by NCF for the purpose of the campaign "Don't Lose" were shared with youth (focus groups and interviews) and adapted accordingly to youth needs.⁵⁴

Priority Actions Required

National plan of action

A National Plan of Action should be developed to thoroughly address all manifestations of CSEC with measures for intervention in coordination and cooperation, prevention, protection, recovery and reintegration, and child participation. Children and youth should be afforded more meaningful participation in the development, monitoring, and evaluation of a new NPA.

Cooperation and coordination

Poland should establish a body that is responsible for coordinating all CSEC-related activities by state actors, NGOs and the private sector. All plans for data collection on CSEC should be made operational and backed up with the necessary financial and government support. These statistics should be analysed and used as a tool for developing effective CSEC policies and activities. Poland should maintain their cooperation with regional and international law enforcement agencies to combat CSEC offences and continue pursuing cooperation opportunities that strengthen a regional and international approach to all manifestations of CSEC, including the sexual exploitation of children in tourism and child prostitution.

Prevention

CSEC education should be a mandatory component of all school curriculum and teachers should receive adequate training to effectively deliver the relevant materials. The Polish government should incentivise increased private sector involvement in the fight against CSEC, including the promotion and implementation of the Code. Awareness raising campaigns for all manifestations of CSEC should be expanded and should focus on increasing awareness about CSEC laws and potential exploiters of child victims. Increased training and education programmes are required for child prostitution and the sexual exploitation of children in tourism.

Protection

Poland should ratify the *Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse CETS No.201* and the *Council of Europe Convention on Cybercrime CETS No.185* and ensure that all CSEC-related international and regional instruments are fully implemented. The Polish government should enhance enforcement for all CSEC-related offences and ensure that offenders are rigorously and consistently

prosecuted and that the sentencing adequately reflects the gravity of the crimes. Poland must amend CSEC legislation to provide effective, consistent and complete protection for all children under the age of 18 and specifically prohibit the prosecution of CSEC victims for acts committed as a result of their exploitation. The definitions of all manifestations of CSEC should be added to the *Penal Code*. Poland should impose reporting obligations on ISPs and financial companies that become aware of child pornography. Poland should abolish the double criminality requirement for exercising extra-territorial jurisdiction and should ensure that all CSEC offences are extraditable.

Recovery and integration

Poland should prioritise the implementation of the *Programme for Support and Protection of Minor Victims* and ensure it is supported by sufficient funding to operate effectively. Increased shelter services and other support service facilities are required, especially in rural areas. A comprehensive national

referral mechanism should be introduced that specifically accommodates child victims. Legislation should be amended to improve the protection of all children (including those aged 15-18 years) throughout legal proceedings. Child-friendly facilities should be mandatory and there must be properly trained professionals to conduct interviews. The interviewing of CSEC victims should be restricted to one time and enshrined in law, to prevent the repeat victimisation of child victims.

Child and youth participation

More meaningful and sustained participation of children and youth is required to comply with the Rio Declaration and Call for Action. Poland should place an emphasis on children and youth participation in the development of future NPAs and in the approval of new laws.

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