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增进和保护所有人权——公民权利、政治权利、
经济、社会和文化权利，包括发展权

贩运人口问题，特别是贩运妇女和儿童问题特别 报告员，乔伊·恩格齐·艾塞罗提交的报告*

增编

对波兰的访问**

* 迟交。

** 本报告的内容提要以所有正式语言分发。报告本身载于内容提要的附件，仅以提交语言分发。

内容提要

本报告根据世界人权标准探讨了在波兰发生的人口贩运的人权方面问题。特别报告员根据在访问之前和访问期间所收集的资料强调了为解决人口贩运问题，特别在与各种利益相关的进行合作解决人口贩运问题时所采取的若干有力的措施。最后，特别报告员提出了若干建议以期有助于加强现在进行的打击人口贩运和保护人口贩运受害者权利的各种努力。

Annex

Report of the Special Rapporteur on trafficking in persons, especially women and children, on her mission to Poland

(24 to 29 May 2009)

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I. Introduction

1. The Special Rapporteur on trafficking in persons, especially women and children, undertook a visit to Poland from 24 to 29 May 2009 at the invitation of the Government. She conducted meetings and consultations with and visits to various stakeholders in Terespol and Warsaw.
2. The Special Rapporteur thanks the Government of Poland for its hospitality and collaboration in facilitating meetings with officials from its various branches as well as for its cooperation prior to, during and following the visit.
3. In Warsaw, the Special Rapporteur met with representatives of the National Prosecutor's Office (Bureau of Organized Crime, Bureau of International Legal Cooperation; and the Coordinator on Trafficking in Human Beings); the Ministry of Foreign Affairs (Department of United Nations and Human Rights); the Parliamentary Committee on Human Rights and Justice; the Commissioner for Civil Rights Protection (i.e., the civil rights ombudsman); the Secretary of State, Plenipotentiary for Equal Treatment; the Undersecretary of State at the Ministry of the Interior and Administration¹, as well as with representatives from the Migration Policy Department and the Border Guard (including the following units: Office for Foreigners, the Strategic Analysis Office and the Operation-Prosecution Office); the General Headquarters of Police (Criminal Bureau, including its Director, who supervises the Central Unit for Combating and Preventing Trafficking in Human Beings); the National Labour Inspectorate, including the Legality of Employment Department; and the Border Guard at Warsaw-Okecie. She also conducted a meeting at the deportation centre of the Nadwislanski Division of the Border Guard.
4. The Special Rapporteur also met with various civil society organizations as well as with regional and international organizations.
5. The objective of the visit was to explore the human rights aspects of trafficking in persons in Poland. More specifically, the Special Rapporteur sought information on a variety of measures taken to address trafficking in human beings, including legislation, statistical information, root causes, cooperation among the various actors, as well as prevention efforts. She also explored victims' rights and protection issues, including steps taken by the Government and partners towards rehabilitation (recovery), reintegration and redress of violations suffered by victims. This visit followed an official visit to Belarus, as the Special Rapporteur was interested in exploring the cross-border elements of trafficking in persons, including measures of international cooperation to combat trafficking in persons. At the close of the visit, the Special Rapporteur shared her preliminary thoughts with the Government.

II. Background and situation

6. In 1989, Poland embarked on a large-scale transition, by instituting a parliamentary democracy and a social market economy. The entire legal system was reviewed and revised, including the adoption of a new Constitution in 1997.
7. Poland joined the North Atlantic Treaty Organization (NATO) in 1999 and the European Union in 2004. In July 2008, its population was estimated at 38,500,696. A total

¹ This representative also serves as President of the Inter-Ministerial Committee for Combating and Preventing Trafficking in Human Beings.

of 96.7 per cent of the population is Polish, while the rest is a mix of German, Belarusian, Ukrainian and other². The country is divided into 16 administrative provinces, called voivodships. Voivodships are further divided into *powiats* (counties) and *gminas* (communes or municipalities).

8. According to the National Prosecutor's Office, trafficking has affected Poland as a source country since the beginning of the 1990s, mostly targeting women trafficked into the sex industry in Western Europe. Since the latter part of the 1990s, Poland has also been a transit and a destination country for women and girls coming from countries of the former Soviet Union as well as from South and East European countries. Furthermore, the authorities noted that accession to the European Union and the Schengen area had an influence on the dynamics of the trafficking phenomenon in and out of Poland.

9. The Special Rapporteur observed a clear political will on the part of the Government and civil society to combat trafficking in persons, illustrated by the numerous institutional mechanisms established across various Governmental agencies as well as by the policies and programmes adopted. In 2008, the Ministry of the Interior and Administration published its annual report, further to the National Programme for Combating and Preventing Trafficking in Human Beings 2007-2008. This report was a comprehensive compilation of existing legal and policy measures to prevent and combat trafficking in persons, and measures taken to assist and protect victims of trafficking and prevent their revictimization³.

10. The Government recognizes the difficulties inherent in combating and preventing trafficking in persons, noting that the fight against trafficking in Poland is linked to other social factors, such as combating unemployment in the country.

11. The most common forms suffered are trafficking for sexual and labour exploitation, and for other forms of exploitation, such as forced begging, the latter also involving children. Victims are often and increasingly recruited through the Internet. Stakeholders also noted that awareness of the issue of domestic/internal trafficking of human beings is low, and highlighted the need to identify and understand the mechanisms of internal recruitment. Trafficking within the European Union was also listed as a current trend⁴. The Special Rapporteur also learned about a significant increase in the employment of foreign nationals, particularly those from outside the European Union, due to the relatively easy access to the Polish labour market.

12. The Special Rapporteur learned that while there had been cases of illegal adoptions transferred through Poland, there have been no proven cases of illegal adoptions within Poland.

13. The Special Rapporteur warns that owing to the insidious nature of the phenomenon, the actual scale of trafficking around the world, and in this context, in Poland (as either a source, transit or destination country), is difficult to measure. Many victims may be improperly identified. Others do not come forward at all due to social taboos linked to having been trafficked or due to fear of retaliation. Others still have simply fallen through the cracks of the system. According to official statistics supplied by the National Prosecutor's Office, the police and the Border Guard, the number of cases of trafficking in

² See United States of America, *The World Factbook 2009* (Washington, D.C., Central Intelligence Agency, 2009). Available from <https://www.cia.gov/library/publications/the-world-factbook/geos/pl.html>.

³ Poland, *Trafficking in Human Beings in Poland* (Warsaw, Ministry of the Interior and Administration, Department of Migration Policy, 2008). Available from www.mswia.gov.pl.

⁴ National Plan of Action against Trafficking in Human Beings for 2009-2010.

persons has increased. Furthermore, the number of victims receiving assistance from non-governmental organizations (NGOs), in particular from the La Strada Foundation against Trafficking in Persons and Slavery (La Strada), has also increased. While the Special Rapporteur is encouraged by expanded efforts to combat this phenomenon and provide stronger assistance to victims, she warns that more needs to be done, particularly with respect to preventing the phenomenon and addressing its root causes, as well as regarding adequate identification of victims, in particular children. Techniques used by recruiters are increasingly sophisticated and, in some cases, the individuals also have difficulty viewing themselves as victims of trafficking and thus do not cooperate with police, nor do they seek assistance. This is particularly acute in cases of trafficking for labour exploitation where a significant number of victims are males.

III. Main findings

A. Legislative and institutional framework

1. Laws

14. Poland is a party to the International Covenant on Civil and Political Rights and its Optional Protocol, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and its Optional Protocol, the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol, the Convention on the Rights of the Child and its two Optional Protocols, the International Convention on the Elimination of All Forms of Racial Discrimination and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (the "Palermo Protocol"). Poland has not ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

15. Poland is also a party to the Convention concerning Forced or Compulsory Labour, 1930 (No. 29) of the International Labour Organization (ILO), as well as the ILO Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, 1999 (No. 182).

16. At the regional level, Poland has ratified the Council of Europe Convention on Action against Trafficking in Human Beings (in 2008) as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (in 1993) and the European Social Charter (in 1997). Anyone under the jurisdiction of Poland may lodge individual complaints with the European Court of Human Rights, in connection with the violation of their rights or freedoms as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. As a member of the European Union, Poland is also bound by the Directives of the Council of the European Union, including the following trafficking-related directives: Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities, and Council Framework Decision 2004/68/JHA of 22 December 2003 on combating the sexual exploitation of children and child pornography.

17. A variety of domestic laws address trafficking-related crimes. Article 203 of the Criminal Code provides that "whoever, by force, illegal threat or deceit, or by abusing a relationship of dependence or by taking advantage of a critical situation, subjects another person to practice prostitution shall be subject to the penalty of the deprivation of liberty for

a term of between 1 and 10 years". Inducing a minor (under 18 years of age) into prostitution for material benefit is punishable by deprivation of liberty for a term between 1 and 10 years (art. 204, para. 3, of the Criminal Code). Anyone who entices or abducts another person with the aim of having him/her engage in prostitution abroad shall be subject to a penalty of 1 to 10 years imprisonment (art. 204, para. 4, of the Criminal Code).

Definition of trafficking

18. Article 253 of the Criminal Code provides that "whoever performs trafficking in persons even with their consent, shall be subject to the penalty of the deprivation of liberty for a minimum of three years". However, Polish criminal law does not define "trafficking in persons". The National Prosecutor's Office stated that work on developing such a definition is advancing. The definition, the Special Rapporteur was told, brings together elements from the definitions contained in the related Council of Europe convention and in the Palermo Protocol. The Special Rapporteur recalls that once it is established that deception, coercion, force or other prohibited means were used, consent is irrelevant and cannot be used as a defence. In other words, consent is vitiated when such means are used. No improper means need to be established when persons under 18 years of age are involved. Thus, in a prosecution in which the victim of trafficking is less than 18 years old, the prosecution must prove only action such as recruitment or transportation of the minor for the purpose of exploitation⁵.

19. The Special Rapporteur insists on the adoption of a definition of human trafficking in the Criminal Code which also captures cases of trafficking for purposes of labour exploitation. While there are specific provisions in Polish law regarding the violation of workers' rights, the National Prosecutor's Office mentioned that a specific definition of human trafficking (including for labour exploitation) would be necessary to cover certain behaviour. According to the Secretary of State, Plenipotentiary for Equal Treatment and other interlocutors, the absence of a definition of trafficking in the Criminal Code makes it difficult for criminal and judicial services to properly identify and consider individuals as victims of trafficking.

20. The Special Rapporteur also notes the absence of a specific provision in the Criminal Code for child victims of trafficking. The only existing provision regarding children and trafficking is in the context of adoption. Article 253, paragraph 2, of the Criminal Code provides that anyone "who, with the purpose of obtaining a material benefit, organizes adoption of children contrary to the provisions of the Act is subject to a sentence of imprisonment for a period of time from three months to five years".

21. The Special Rapporteur was pleased to learn about the Trafficking in Human Organs and Tissue Act, which she believes to be comprehensive and forward-looking.

22. The Special Rapporteur was also encouraged to learn about the Combating Domestic Violence Act of 2005, which is currently being amended, partly to address preventive measures. It also contains a chapter on crimes committed against family members or those with a relationship of dependence. The Special Rapporteur encourages the Government to keep her informed of developments related to amendments brought to this law.

23. The Special Rapporteur takes note of the Act amending the Social Assistance Act, which entered into force on 1 April 2007. According to its article 7, paragraph 7, support for victims of trafficking is provided by social security contributions. "Victims of

⁵ *Legislative Guides for the Implementation of the United Nations Convention against Transnational Organized Crime and the Protocol Thereto* (United Nations publication, Sales No. 05.V.2), part 2, chap. 2, para. 38.

trafficking" identified as such by law enforcement agencies, be they Polish citizens or foreigners, are eligible for support, including in crisis intervention centres across the territory. The form and scope of this support, which can be of a financial or non-financial (shelter, food, necessary clothing) nature, is established case by case by social workers, on the basis of guidelines for providing support.

2. Institutional framework

24. The National Action Plan against Trafficking in Human Beings spans the years 2009-2010 and is a continuance of the previous National Programmes for Combating and Preventing Trafficking in Human Beings, which have been implemented since 2003. The objectives of the National Action Plan are: (a) preventing trafficking in human beings in Poland, including disseminating knowledge about this phenomenon to individuals who may be vulnerable to the practice, to professionals working with victims and to those responsible for prosecuting the crime; (b) improving the effectiveness of actions taken in prosecuting human trafficking by enhancing legislation and implementing best practices; and (c) enhancing the quality of assistance and support provided to victims.

25. The Special Rapporteur observed that a variety of institutional structures have been established with a view to combating and preventing trafficking in persons. In 2006 a Trafficking in Human Beings Unit was established within the Migration Policy Department of the Ministry of the Interior and Administration. Implementation of the National Action Plan is monitored and evaluated by the Inter-Ministerial Committee for Combating and Preventing Trafficking in Human Beings (established 5 March 2004, by Order No. 23 of the Prime Minister). It is presided by the Undersecretary of State in the Ministry of the Interior and Administration, and functions as a consultative and advisory body to the Prime Minister. The Committee is comprised of the Ministers of National Education, Labour and Social Policy, Justice, Foreign Affairs, Health, and the Interior; the National Public Prosecutor; a representative from the Committee for European Integration; the Head of the Office for Repatriation and Aliens; the Commander-in-Chief of the police; the Commander-in-Chief of the Border Guard; invited institutions (such as the National Labour Inspectorate) and NGOs dealing with the issue of trafficking in human beings. The day-to-day monitoring of the implementation of the National Action Plan is undertaken by a working group of this Committee, comprised of experts from the above-mentioned institutions. Annual reports are submitted to the Prime Minister regarding implementation of the National Action Plan and the work of the Inter-Ministerial Committee.

26. The Special Rapporteur was informed that competencies are not clearly divided between ministries when it comes to anti-trafficking actions, and that tasks are often overlapping, pointing to the need for a lead agency. The Ministry of the Interior coordinates anti-trafficking initiatives at the Governmental level, but it does not have decision-making powers regarding the method of carrying out certain activities by other actors.

27. The Central Unit for Combating Trafficking in Human Beings, Human Organs, Child Pornography and Paedophilia was established in 2007 in the Criminal Bureau of the National Police Headquarters. This Central Unit coordinates the actions of Central Teams for Combating Trafficking within the Criminal Divisions of voivodship police headquarters and the Warsaw police headquarters. Thus, each regional office operates through coordinators who have specific knowledge of the situation in the office's respective province. The Central Team coordinates all activities, inter alia, providing assistance with regard to exchange of information and ordering follow-up with respect to criminal networks. Cooperation with NGOs exists at the city, county and/or municipality levels. If a police officer identifies a victim of trafficking, he or she can submit an application for the individual pursuant to the Programme for Support and Protection of Victims/Witnesses of Trafficking in Human Beings. The form is then sent to the coordinator at the Ministry of the

Interior and Administration, who notifies the appropriate coordinators at the police, the Border Guard and the National Prosecutor's Office. The coordinator at the Ministry of the Interior and Administration will accept or reject the application.

28. The Deputy Chief Commander of the Border Guard informed the Special Rapporteur about the activities of the Border Guard and its cooperation with the police regarding trafficking in persons. The Border Guard has representatives on the Inter-Ministerial Committee for Combating and Preventing Trafficking in Human Beings. In 2008, the Chief Commander of the Border Guard established a standing monitoring and coordination team on human trafficking within the Border Guard. The activities of this team include coordinating all actions undertaken by the Border Guard relating to the National Action Plan; monitoring cases of human trafficking; participating in sessions of the working group of the Inter-Ministerial Committee; initiating activities, trainings and awareness-raising activities; and cooperating with the Ministry of the Interior and Administration, the police and other agencies. The Border Guard cooperates with NGOs, customs services and the National Labour Inspectorate. Furthermore, the Border Guard undertakes joint patrols with police at borders. Part-time coordinators and assistant coordinators for combating trafficking in persons were appointed at the headquarters of the Border Guard and its branches. They coordinate actions involving cooperation among organizational units and sections of the Border Guard and between the Border Guard and the police, and cooperate with NGOs with respect to victim protection activities.

29. Further to the amended Foreigners Act, the Border Guard is currently empowered to verify the legality of employment of foreign nationals, in cooperation with the National Labour Inspectorate.

30. However, the Border Guard is not empowered to carry out independent investigations of cases of human trafficking, including under article 204, paragraph 4, and article 253 of the Criminal Code, as the police are currently the only body empowered to investigate cases of trafficking. If a violation of articles 204 or 253 of the Criminal Code is suspected, then the case is transferred to the police via the National Prosecutor's Office. The Special Rapporteur learned that legislative amendments to the Border Guard Act have been initiated to enable the Border Guard to carry out independent investigations into cases of human trafficking. At the time of writing, these amendments had been prepared by the Government but had not yet been passed to Parliament.

31. According to the National Prosecutor's Office, between 2005 and 2006, trainings on trafficking in persons were provided to the following actors: 230 police officers, 69 border guards, 44 social workers, 26 prosecutors, 10 judges and 21 regional office workers. In addition, the Ministry of Justice provided trainings to 26 judges and 36 prosecutors. Warsaw University also provided trainings to 110 people, including police officers, border guards and staff at the National Prosecutor's Office, with the support of bilateral cooperation. In 2007, special coordinators were appointed within the National Prosecutor's Office to counsel colleagues involved in human trafficking cases. That Office coordinates cases of human trafficking, including those with international links. The Special Rapporteur was informed that human trafficking is a standing topic in prosecutorial trainings.

32. The National Labour Inspectorate reported that, since 1 July 2007, pursuant to the National Labour Inspection Act, it has the competence to monitor employers and control legality of employment. This competence covers entrepreneurs who are not employers (such as individuals working on their own) but not private agricultural farms, for instance. The Inspectorate reports that the most common types of cases received relate to unreported work or work undertaken without a contract. Furthermore, the Inspectorate stated that employment of foreign nationals has increased.

B. Prevention

33. During the visit, the Special Rapporteur was informed of awareness-raising initiatives undertaken by the Government and civil society. For instance, the Government organizes an annual national conference on trafficking in human beings, as part of the celebration of the European Anti-Trafficking Day (18 October), which gathers experts from public administration, NGOs and scientific circles. The Government also takes advantage of this celebration to raise awareness of police officers and border guards by distributing information materials and screening films on human trafficking.

34. The authorities indicated their resolve to organize information campaigns on trafficking in human beings for forced labour, directed at Polish citizens migrating to the European Union Member States and at people coming to Poland to undertake employment. The Special Rapporteur learned that the Ministry of Labour and Social Policy drafted a manual aimed at individuals seeking job opportunities abroad, including information on things to look out for and the possible risks of trafficking.

35. The National Labour Inspectorate is also devising public awareness campaigns on problems associated with illegal employment, with the hope that such campaigns will be financed by the European Union. The Inspectorate hopes to cooperate with experts from various associations in the preparation of this campaign.

36. While acknowledging the significant efforts to raise awareness among professionals working in the field of combating human trafficking, especially law enforcement officials, the Special Rapporteur notes the need for increased and strengthened awareness-raising among the general public. There also seems to be a need for increased capacity-building to be able to explain to particularly vulnerable individuals the mechanisms of recruitment, in particular internal recruitment and how recruiters and/or traffickers operate.

37. Efforts to prevent trafficking in persons necessarily involve tackling its root causes, and alleviating the factors that make persons vulnerable to trafficking, such as poverty, underdevelopment and lack of equal opportunity. The root causes of trafficking in persons are multiple and interlinked, and include issues such as gender inequalities; poverty and/or low economic conditions and employment opportunities; and demand for exploitative services. Therefore, a multisectoral approach is fundamental.

38. The Secretary of State, Plenipotentiary for Equal Treatment stated that the unemployment rate has decreased to approximately 10 per cent, but that women continue to have difficulties gaining access to job opportunities. The main challenge is to develop strategies which encourage women to be active in various sectors of society, such as in local government. She also noted that there still exist stereotypes perpetuating the notion that in some positions men would do a better job than women.

39. Tackling demand for trafficked persons is another necessary element in preventing the phenomenon⁶. The demand for trafficked men, women and children exists at three levels: employer demand; consumer demand (clients of the sex industry, corporate buyers or household members for domestic work); and demand by third parties involved in the process, such as recruiters, agents, transporters and others who participate knowingly in the movement of persons for the purposes of exploitation⁷. The fact that there is still demand

⁶ Art. 9, para. 5, of the Palermo Protocol provides that States Parties shall adopt or strengthen legislative or other measures, such as educational, social or cultural measures, including through bilateral and multilateral cooperation, to discourage the demand that fosters all forms of exploitation of persons, especially women and children, that leads to trafficking.

⁷ Toolkit to Combat Trafficking in Persons (United Nations publication, Sales No. E.08.V.14), p. 457.

for labour or services that are exploitative and breach the human rights of the person delivering those services must be addressed urgently by both the Government and civil society.

40. The Special Rapporteur recalls article 6 of the Council of Europe Convention on Action against Trafficking in Human Beings, which suggests the following measures to discourage the demand that fosters all forms of exploitation that leads to trafficking: (a) research on best practices, methods and strategies; (b) raising awareness of the responsibility and important role of media and civil society in identifying the demand as one of the root causes of trafficking in human beings; (c) target information campaigns involving, as appropriate, inter alia, public authorities and policymakers; and (d) preventive measures, including educational programmes for boys and girls during their schooling, which stress the unacceptable nature of discrimination based on sex and its disastrous consequences, the importance of gender equality and the dignity and integrity of every human being.

41. The Special Rapporteur was pleased to learn that the International Organization for Migration (IOM) works with migrants associations to increase their capacity, activity and participation in civil society. IOM takes such opportunities to spread awareness about trafficking in persons, its risks and consequences.

C. Identification, protection and assistance to victims of trafficking

1. Identification

42. Proper identification of victims is a complex process. The border guards at the Nadbużański control post informed the Special Rapporteur that their main challenge remains dealing with irregular migrants and individuals trying to enter irregularly into Poland. This observation highlights the importance of properly identifying victims of trafficking, as opposed to irregular migrants, as each find themselves in distinct situations and must thus be treated distinctly. The Special Rapporteur was informed by the border guards at Nadbużański that they are specially trained to deal with victims of trafficking, and follow a specific instruction, or "algorithm", to identify and assist victims of trafficking. This algorithm, elaborated further to the Programme for Support and Protection of Victims/Witnesses of Human Trafficking, is contained in a special instruction for police and border guards and sets out a procedure to be followed by law enforcement officials regarding the identification and treatment of victims of trafficking. Border guards and police receive trainings on this algorithm. If the border guards identify potential victims and wish to suggest that they be included in the Programme, they inform the coordinator at the Ministry of the Interior and Administration responsible for the implementation of the Programme and notify the appropriate coordinators at the police, Border Guard and the National Prosecutor's Office. The border guards also contact La Strada if they identify potential victims, and the organization and a psychologist then meet with the individual. She or he is informed of the help that is available, including social services and shelter.

43. The Special Rapporteur also learned of the need for increased cooperation and information sharing regarding ongoing investigations between the police and the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex). Such information sharing, noted Frontex, is another means of allowing its officials to detect possible victims entangled in trafficking networks who may not even know they are going to be victims until they enter the country.

44. In 2009, the Ministry of Labour and Social Affairs earmarked 120,000 zlotys to train social workers on identifying victims of trafficking. The National Action Plan also provides

for training for employees of the Office for Foreigners and those working in refugee centres on issues related to the identification of victims of trafficking.

45. Regarding trafficking for labour exploitation, the Special Rapporteur learned about an agreement signed between the Border Guard and the National Labour Inspectorate in April 2008. The agreement provides for cooperation between the agencies on a variety of issues, such as information exchange on violations of the Foreigners Act, including cases of irregular employment of foreigners. It allows for joint controls of employment environments by both Border Guard officials and labour inspectors; they exchange experiences on methods of control, organize trainings, meetings and conferences, and ensure continuous evaluation of the cooperation between them. In this regard, the authorities report that cases of human trafficking identified by labour inspectors will be referred to the National Prosecutor's Office for investigation. The authorities nevertheless admit that the main problem is the capacity of labour inspectors to identify victims of trafficking in the face of an increasing number of cases of human trafficking for forced labour. The Special Rapporteur was pleased to learn that trainings are foreseen with a view to addressing this challenge.

46. The numbers of child victims identified, according to the National Prosecutor's Office, are shown in table 1.

Table 1

Number of child victims identified

<i>Year</i>	<i>Number</i>
2005	10 (aged 16 and 17 years old)
2006	9 (under the age of 15)
2007	4 (aged 15) 2 (aged 16)
2008	5 (aged 17) 2 (aged 16)

47. The Special Rapporteur was informed that the proper identification of child victims of trafficking remains problematic, given the potentially large size of this risk group. For instance, children often arrive to border posts unaccompanied, without papers and perhaps with signs of being intimidated. An NGO provides training to border guards on how to deal with children who may be victims of trafficking. If an unaccompanied minor arrives at the border, he or she can be interviewed by a psychologist at the offices of an NGO in Warsaw that is specialized in these matters. If it turns out the minor is not a victim or potential victim of trafficking, then the child is referred to the authorities of his or her country of origin. Throughout the process, precautions are taken to ensure the safety of the child, in cooperation with the authorities from the country of origin. The Special Rapporteur was pleased to learn that guidelines for identifying child victims of trafficking were being developed at the time of the visit and encourages the Government to keep her informed of developments in this regard.

2. Protection

48. Article 7 of the Palermo Protocol provides that each State Party shall consider adopting legislative or other appropriate measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.

49. In January 2009, Poland extended the reflection period for victims of trafficking from two months to three months. Article 53a, section 2, paragraph 4, of the Aliens Act provides that a residence permit for a specific period shall be granted to an alien who stays on the territory of Poland irregularly, if a competent authority states that the alien is probably a victim of trafficking in human beings within the meaning of Council Framework Decision of 19 July 2002 on combating trafficking in human beings. This residence permit shall be granted to such an individual for a period necessary to accomplish the objective for which it was issued or for the alien to make the decision whether to cooperate with anti-trafficking authorities, and this, for a period not exceeding three months (art. 56, sect. 2, para. 7 of the Aliens Act).

50. Furthermore, a residence permit will be granted if the alien is a victim of trafficking and meets the following conditions: resides on the territory of Poland; cooperates with a competent authority regarding conduct procedures for combating trafficking; has terminated contact with persons suspected of committing trafficking activities related to the alien's case; and, if circumstances justify, that he or she resides within Poland for a period not exceeding three months (art. 53, sect. 1, para. 15 of the Aliens Act). "Competent authority" refers to the Border Guard, the police and the National Prosecutor's Office.

51. The Special Rapporteur recalls and insists that a trafficked victim's entitlement to protection from further exploitation and to physical and psychological care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings. This is reaffirmed in the Recommended Principles and Guidelines on Human Rights and Human Trafficking (E/2002/68/Add.1, para. 8).

52. In the event a victim chooses to return to his or her country of origin, La Strada attempts to contact a partner organization there to ensure adequate protection and follow-up of the victim upon return. The Special Rapporteur was informed about the IOM Assisted Voluntary Return programme, which covered irregular migrants but did not explicitly mention victims of trafficking as possible beneficiaries under the programme. The return of some victims of trafficking has been financed by IOM, but the Special Rapporteur learned that the programme has ceased. Currently, if a victim would like to return to his or her country of origin, the Government will pay for the travel and La Strada will provide the other necessary financing. In this regard, some interlocutors pointed to the need for additional or complementary options to assist victims with return. The National Intervention and Consultation Centre for Victims of Trafficking (KCIK)⁸ foresees the financing of the return of victims to their country of origin.

53. In addition, the National Prosecutor's Office provided statistics on the number of victims of trafficking who have received witness protection (either as Crown or incognito witnesses)⁹ in the course of trials related to trafficking in human beings: none in 2005, 2006 or 2007, and four in 2008.

54. The Special Rapporteur learned that consultants for issues related to trafficking in persons were appointed in units of voivodship offices responsible for social assistance¹⁰.

⁸ See para. 62, below.

⁹ A witness may be called as a Crown witness in the event a crime was committed by an organized group. This grants immunity to witnesses, and is most often used to protect former members of organized crime groups and their families. A witness may be an incognito witness if there is a justified threat to life, health, freedom or property of the witness or his or her family (art. 184 of the Code of Penal Proceedings).

¹⁰ National Action Plan against Trafficking in Human Beings 2009-2010.

3. Assistance

55. The Programme for Support and Protection of Victims/Witnesses of Trafficking in Human Beings was established in 2006 on the basis of an agreement between the Ministry of the Interior and Administration and La Strada. This Programme provides foreign nationals who are victims of trafficking with crisis intervention, legal assistance, help with documentation and residency issues, and safe return to the country of origin. A total of 10 victims were included in the Programme in 2006, 20 in 2007 and 10 between January and June 2008. La Strada also assists victims of trafficking outside of the framework of the Programme.

56. The organization provided the number of victims it had assisted between 2005 and 2008. As shown in table 2, the numbers have steadily increased.

Table 2

Number of trafficking victims assisted by the La Strada Foundation against Trafficking in Persons and Slavery in Poland

<i>Year</i>	<i>Number</i>
2005	224 (147 Polish women)
2006	230 (198 Polish women)
2007	276 (200 Polish women)
2008	306 (253 Polish women)

57. The Special Rapporteur visited a shelter for victims of trafficking run by La Strada and partly funded by the Government. The Special Rapporteur was impressed by the quality of care provided by the employees of the shelter, and the victim rights-based approach to their work.

58. Representatives at the shelter stated that since accession to the European Union and to the Schengen area, they have noted an increase in migrants and victims of trafficking. Women stay in the shelter from anywhere from two days up to several months, the average being three months. The shelter can accommodate up to 12 persons at one time.

59. Victims are referred to the shelter through a variety of sources, such as families, police, prosecutors, border guards and priests, or find out about the shelter themselves. The shelter also runs a hotline, which operates in Polish, Vietnamese and Russian.

60. The principle of confidentiality governs at the shelter, and staying there is voluntary. The assistance provided consists of crisis intervention, which includes medical and psychological assistance, as well as help with obtaining proper documentation, social and labour inclusion and reintegration. Shelter representatives also assist victims in providing testimony in legal proceedings if the judge allows it. For instance, a social worker can be present during such testimonies, and sometimes shelter representatives can testify themselves. In addition to providing direct assistance, representatives at the shelter also lobby and advocate, provide information and raise awareness.

61. There is currently no separate accommodation space for male victims of trafficking. Representatives at the shelter reported that men are sometimes referred to them by the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe. Males represent 10-15 per cent of victims referred to the shelter. However, the shelter representatives admit that they are not yet sufficiently specialized to provide adequate and appropriate assistance to male victims of trafficking and thus currently only receive women as residents.

62. Following the visit, the Special Rapporteur learned about the new National Intervention and Consultation Centre for Victims of Trafficking (KCIK), which is financed by the Government. It is run by La Strada further to an open tender advertised by the Ministry of the Interior and Administration. The basic services provided by the Centre include a 24-hour hotline for victims and witnesses of trafficking in human beings; crisis intervention; consultations for State and local government institutions concerning help for victims of trafficking; prevention counselling; shelter facilities which are reportedly able to accommodate 13 individuals, and assistance with the return of victims to their country of origin. During the period April–December 2009, the Centre provided assistance to 191 persons (including 77 foreigners). Nevertheless, interlocutors pointed to the need for stronger assistance networks in rural or more remote parts of the country, particularly when it comes to adequate shelter facilities, identification of victims and education on how recruitment takes place.

63. Other NGOs operating in Poland provide victims of trafficking with a range of assistance and protection activities. For instance, one NGO provides child victims of trafficking with assistance, and also conducts training for professionals who intervene with child victims, such as police, prosecutors, border guards and workers in institutional care facilities. This NGO cooperates with the Office for Foreigners. The latter directs children to the NGO, which in turn provides direct assistance in the form of psychological and other forms of therapy to child victims of trafficking or to foreign children in general. If an unaccompanied minor is found, the family court issues a decision to place the child in foster family or institutional care.

64. Another NGO provides assistance by running a shelter for, inter alia, victims of domestic trafficking, such as those living in rural areas who are victims of trafficking for labour exploitation.

65. The police are obliged by law to inform victims of their rights and they also provide witness protection services if they have information of possible danger to victims. The Special Rapporteur insists on the importance of bilateral cooperation with NGOs in this regard.

D. Prosecution of cases of trafficking

1. Prosecution and punishment of traffickers

66. The "Methodological guidelines for prosecutors carrying out or supervising criminal procedures dealing with trafficking in human beings", created by the Office on Organized Crime of the National Prosecutor's Office, were updated in 2005. These guidelines encourage, inter alia, prosecutors not to prosecute acts committed by victims of trafficking as a result of their having been trafficked (for example the irregular crossing of a border or use of fake documentation). While the Special Rapporteur welcomes these guidelines, she expresses concern at the absence of a legislative provision protecting victims of trafficking from being prosecuted, detained or punished for activities resulting from their situation as trafficking persons. In this regard, she recalls guideline 4, paragraph 5, of the Recommended Principles and Guidelines on Human Rights and Human Trafficking, which provides that States should ensure that legislation prevents trafficked persons from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities they are involved in as a direct consequence of their situation as trafficked persons.

67. The statistics provided by the Ministry of Justice reflect the number of convictions pursuant to article 204, paragraph 4, and article 253, paragraph 1, of the Criminal Code between 2005 and 2007 (see tables 3 and 4).

Table 3

Number of convictions pursuant to article 204, paragraph 4, of the Criminal Code ("Abduction for the purpose of prostitution abroad")

	<i>Number of convictions</i>	<i>Penalty of imprisonment</i>	<i>Penalty of imprisonment without suspension of the sentence</i>	<i>Penalty of imprisonment with suspension</i>
2005	7	7	1	6
2006	1	1	-	1
2007	1	1	-	1

Table 4

Number of convictions pursuant to article 253, paragraph 1, of the Criminal Code ("Human trafficking")

	<i>Number of convictions</i>	<i>Penalty of imprisonment</i>	<i>Penalty of imprisonment without suspended sentence</i>	<i>Penalty of imprisonment with suspended sentence</i>
2005	9	9	4	5
2006	13	13	11	2
2007	3	3	2	1

68. The National Prosecutor's Office informed the Special Rapporteur that in 2008, 28 out of 53 investigated cases resulted in an indictment. A total of 78 individuals were charged and 315 victims were identified from those cases. The majority of these were cases of trafficking for sexual exploitation, while only a small proportion concerned trafficking for forced labour or forced begging. With regard to forced labour, the Special Rapporteur was informed of one major case, known as the "Terra Promessa" case, where about 880 Polish citizens were identified as victims trafficked to a tomato farm in Italy. A total of 27 people were convicted and sentenced in Italy, while proceedings in Polish courts are still ongoing. The National Prosecutor's Office reported that there were 100 new proceedings in 2008, so the number of cases being prosecuted has been growing. Statistics disaggregated by article of the Criminal Code were not made available for the years 2008 and 2009.

69. According to the National Prosecutor's Office, the perpetrators involved in trafficking cases in Poland are mainly from countries in Eastern Europe. From information derived from preliminary proceedings, the victims tend to range from 18 to 25 years of age, have basic elementary education, and come from families that suffer from poverty and/or high unemployment.

70. The National Prosecutor's Office also reported that courts are often sceptical when it comes to the definition of "human trafficking". Thus, they often "fit" a case of trafficking in human beings under article 204, paragraph 4, of the Criminal Code (enticement or abduction for purposes of sexual exploitation abroad). In such cases, the penalty is 1-10 years imprisonment, rather than 3-15 years (the penalty under art. 253 of the Criminal Code).

71. The Special Rapporteur was informed that the length of proceedings varies, often depending on the level of transnational cooperation. On average, preliminary proceedings

(for example investigations) last nine months and judicial proceedings are shorter. The time between the referral of a case to the court and the start of the trial is often long - between five and eight months.

2. Compensation or remedies for victims

72. The National Prosecutor's Office reported that there have been no cases in which a victim of trafficking has asked for compensation. There is currently no special compensation fund for victims of trafficking. Nevertheless, the Special Rapporteur learned that a victim has the option of claiming compensation in one of two ways. First, a victim can make a civil claim in conjunction with the criminal proceeding, pursuant to article 455, paragraphs 1 and 2, of the Civil Code. Claims are for compensation for non-pecuniary damages, i.e. physical or psychological harm. The claim may be filed either by the victim or the prosecutor. The Special Rapporteur was informed that such a claim has never been initiated, as it is allegedly more difficult to assess non-property related damages. Second, a victim can make a claim for compensation on the basis of the Act on State Compensation for Victims of Certain Intentional Offences of 2005, which amounts to a claim for pecuniary damages, with the prerequisite of proving grievous bodily harm. "Grievous bodily harm" is defined in the Criminal Code as that which (a) deprives a human being of sight, hearing, speech or the ability to procreate or (b) inflicts another serious crippling injury, an incurable or prolonged illness, an illness actually dangerous to life, a permanent mental illness, a permanent total or substantial incapacity to work in an occupation, or a permanent serious disfigurement or deformation (art. 156, para. 1). However, in cases of labour exploitation specifically, the court sometimes calculates wage losses based on criteria of age and duration of suffering.

73. The Special Rapporteur highlights the need for increased training for relevant officials with regard to compensation for victims of trafficking for labour exploitation. By way of illustration, the Special Rapporteur learned of attempts by victims of trafficking for labour exploitation to claim compensation. Once in Poland, the foreign workers were requested to perform a different type of work from what was agreed, they were not paid as promised and were provided with substandard accommodation without heating or running water. When the workers demanded payment and the work they had been promised, they were intimidated and one worker was allegedly beaten by company staff. Some of the workers got seriously ill and needed medical treatment. A total of 13 workers filed claims for unpaid wages and damages in the civil court. Criminal charges were also brought in relation to breach of contract and health and safety violations by the employer. The employer brought counterclaims against the workers. The labour inspection did not produce any findings of serious breaches of the law, however, such inspections reportedly do not include interviews with workers. At the time of writing, the civil cases were still pending with the employers. Interim payments were already ordered by the court and paid to some of the workers; the claims of other workers were still in the first stages of the proceedings. The criminal case is suspended until after the civil court decisions are reached.

E. Cooperation with civil society

74. The Special Rapporteur observed strong cooperation between the Government and civil society in the area of preventing and combating human trafficking. For instance, certain NGOs serve on the Inter-Ministerial Committee for Combating and Preventing Trafficking in Persons, and other NGOs are clear reference points for law enforcement authorities when they come into contact with victims of trafficking, including children.

75. Nevertheless, most civil society representatives insisted on the need for increased funding from the State to run assistance programs in order for victims of trafficking to feel

safe and secure. The Secretary of State, Plenipotentiary for Equal Treatment informed the Special Rapporteur that her office receives complaints from individuals, but a very low number (about five) were victims of trafficking. She noted therefore the importance of civil society in providing direct assistance and a safe, reliable environment for such victims.

F. International, regional and bilateral cooperation

76. The National Prosecutor's Office reported that Poland has bilateral agreements with Ukraine allowing for mutual and direct contact between police officers, without the need for involvement of the Ministry of Justice. There have been 3 cases of extradition for trafficking-related cases and 12 trafficking-related cases using the European arrest warrant procedure.

77. The National Prosecutor's Office also mentioned that there is very good cooperation between Poland and Germany regarding legal assistance.

78. The Special Rapporteur learned about various investigations and prosecutions that are illustrations of strong international cooperation where Poland was a country of origin, transit or destination of victims of trafficking for labour or sexual exploitation. For instance, in the Terra Promessa case joint law-enforcement efforts were made to investigate and prosecute the large-scale trafficking of Polish men for labour exploitation to a tomato farm in Italy in 2006. Polish workers, recruited under false pretences for agricultural labour in Apulia province, were housed in appalling conditions, and forced to work for almost nothing under the eyes of armed guards. The main recruitment tools were the Internet and newspapers. A Joint Investigation Team was set up between the Italian and Polish police (further to a Polish law implementing a framework decision of the European Union). The aim of the team was to collect evidence for both the Polish and the Italian proceedings without duplication. A total of 880 Polish citizens were exploited and 27 persons had been convicted at the time of the visit of the Special Rapporteur, including members of an organized crime ring, such as the owners of the tomato plantation and drivers.

79. Since 2006, Poland has been a member of the Group of Six, along with France, Germany, Italy, Spain and the United Kingdom of Great Britain and Northern Ireland, cooperating in areas concerning security, including terrorism, organized crime, exchange of operational data, border control and illegal immigration. Poland and the United Kingdom were granted the leading role in establishing common investigation teams for trafficking in human beings.

80. There is frequent cooperation between the police and the International Criminal Police Organization (INTERPOL), the European Police Office (EUROPOL) and a network of liaison officers as well as police partners in other countries, such as Ukraine.

IV. Conclusions and recommendations

A. Conclusions

81. **The scale of trafficking in persons is serious and has been influenced in the past five years by virtue of Poland joining the European Union and also acceding to the Schengen area. These developments unarguably helped to transform Poland, once primarily a source country and now clearly a transit and a destination country as well. The endemic forms of trafficking include, but are not limited to, trafficking for labour exploitation, for prostitution and for other forms of sexual exploitation. Data supplied by the National Prosecutor's Office, the police and the Border Guard show that the**

number of cases of human trafficking is growing by the day. This is further reinforced by the number of cases of victims receiving assistance from NGOs, especially from the La Strada Foundation against Trafficking in Persons and Slavery.

82. The Special Rapporteur welcomes the political commitment she observed to address trafficking in persons, especially women and children. A number of institutions have been established to combat the phenomenon. She also witnessed strong cooperation with civil society regarding identification, protection and assistance to victims, and the numbers of investigations and prosecutions have gradually increased. International cooperation on law enforcement operations to combat trafficking is also notable.

83. Nevertheless, the Special Rapporteur recommends that a definition of trafficking in relevant legislation be adopted as soon as possible. Prevention efforts, including awareness-raising for the general public, should be increased and trainings of law enforcement authorities and NGOs on identification of victims of trafficking must also be strengthened. Although victims of trafficking are being assisted by the Government there is still a huge shortfall between those needing assistance and the actual number benefiting from such Government-assisted programmes. The root causes of trafficking, such as gender inequalities and stereotypes as well as domestic violence must be tackled more vigorously. Finally, due to the insidious nature of the phenomenon, more efforts should also be placed on a comprehensive data collection system.

B. Recommendations

84. In the light of the above, the Special Rapporteur makes the following detailed recommendations to the Government.

Legislation

85. The Special Rapporteur recommends:

a) The adoption, as soon as possible, of a definition of trafficking in accordance with article 3 of the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol) and article 4 of the Council of Europe Convention on Action against Trafficking in Human Beings. Such a definition would therefore also capture trafficking for labour exploitation;

b) The inclusion in the Criminal Code of a specific provision for children victims of trafficking, in accordance with article 3(c) of the Palermo Protocol;

c) Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

86. Legislation must be amended to include a provision prohibiting the criminal prosecution, detention and punishment of trafficked persons for activities they were involved in as a direct consequence of their situation as trafficked persons.

Prevention

87. While acknowledging significant efforts to raise awareness among professionals working in the field of combating human trafficking, especially law enforcement officials, the Special Rapporteur notes the need for increased and strengthened awareness-raising among the general public.

88. The Special Rapporteur strongly encourages the Government to promote trainings for particularly vulnerable groups and for professionals working in the field of anti-trafficking on the mechanisms of internal/domestic recruitment for trafficking.

Identification

89. The Special Rapporteur encourages the Government to improve the identification of victims of trafficking and to ensure compliance with the reflection period provided for under the Council of Europe Convention on Action against Trafficking in Human Beings so that pressure is not mounted on a victim to cooperate with authorities as the only option or as a necessary condition for the exercise of the right to remain in country.

90. The Special Rapporteur was pleased to learn that guidelines for identifying child victims of trafficking are currently being developed and encourages the Government to keep her informed of developments in this regard.

91. The Special Rapporteur recommends that the Government establish adequate and coordinated protection mechanisms for child victims of trafficking. It is also very important that law enforcement officers at the point of initial contact with victims are in a position to identify the victim and provide them with the necessary information and assistance, including referrals to NGOs offering specialized services.

92. Given the limited capacity of labour inspectors to identify victims of trafficking in the face of an increasing number of cases of human trafficking for forced labour, the Special Rapporteur encourages the Government to strengthen trainings with a view to addressing this challenge.

Protection

93. The Government should undertake measures, including in legislation, to ensure that a trafficked victim's entitlement to protection from further exploitation and to physical and psychological care shall not be made conditional upon the capacity or willingness of the trafficked person to cooperate in legal proceedings.

Assistance

94. The National Intervention and Consultation Centre for Victims of Trafficking should have regional and subregional resources to ensure the protection of victims across the country.

95. The Government should expand its funding assistance to organizations working on trafficking in persons, both in cities and rural areas, to provide comprehensive assistance such as social, psychological, medical, legal translation and interpretative services to victims of trafficking.

96. Assistance to victims, including the grant of a temporary or permanent residency permit, should not be made conditional upon a victim's preparedness to cooperate with the authorities or to act as a witness.

Prosecution

97. Delays in judicial proceedings related to trafficking in persons should be shortened.

98. While noting the existing legal provisions providing for compensation for victims of crimes, the Special Rapporteur recommends that a compensation fund for victims of trafficking be established.

99. rainings should be increased to further enhance the capacity of law enforcement agencies, in particular the police, Border Guard, National Prosecutor's Office, the judiciary, labour inspectors and social workers, among others.

100. The Government is urged to improve the sharing of information on trafficking in persons amongst its relevant officials – the police, border guards and staff at the National Prosecutor's Office. Strengthening capacities in this sphere will facilitate speedy investigation and prosecution of trafficking-related cases and enhance prevention.

Data collection and coordination

101. The Government should develop and implement a consistent methodology and a comprehensive and systematic mechanism of data collection, analysis, monitoring and impact assessment of trafficking in persons. This would include data on both perpetrators and victims of trafficking and should be disaggregated by, inter alia, the nature of the offence, sex, age and urban/rural areas. In particular, data on children should be disaggregated by vulnerability criteria.

102. Enhanced coordination and efforts at combating trafficking will be better achieved if an office of an independent national rapporteur is created by law and charged with the responsibility to implement, monitor and evaluate activities aimed at combating human trafficking.
