 Geneva, 10 May 2021

With reference to the Letter from the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material of the 11th of March 2021, the Republic of Poland hereby provides information on the questions contained therein.

**Question. 1: on forms of existing societal norms, practices/behaviours (cultural, social, traditional or other) that may explicitly or implicitly involve and/or manifest sale and sexual exploitation of children:**

In Poland, there are no standards, practices or behaviours that could expressly or implicitly express or encourage the sale or sexual exploitation of children. There is a growing awareness in society about the exploitation of children in human trafficking and there is no consent to it.

Roma are the only ethnic minority group in Poland in which sexual abuse of children - in form of early/forced/arranged marriages - can be observed. Those marriages are culturally motivated by tradition and accepted in some Roma communities.  The scale of this phenomenon is unknown and hard to estimate due to *hermetic* character of some Roma communities.  Nonetheless the 2011 FRA (EU Fundamental Rights Agency) research showed that 18 % of Roma interviewed in Poland indicated marriage/pregnancy as the main reason of dropout of  the education system before the age of 16.  It seems that the average age of those marriages now is  higher than in previous generations - beyond 15+ . Single case of 13 years old Roma girl giving birth was condemned by Roma community.

**Question. 2: on how is gender and gender identity incorporated in existing legislative and policy frameworks on the eradication and prevention of the sale and sexual exploitation of children,**

**and with regard to question no. 4: on institutional, regional and national legal frameworks to integrate gender dimension in the prevention, prohibition and protection of children from all forms of sale, sexual abuse and exploitation**

Within the framework of policies and legislation that aim to combat and prevent the sale and sexual exploitation of children both online and offline, sex and sexual identity are not included. The issues of combating trafficking in human beings and the protection of victims of this crime are regulated in Polish law in four legal acts: the Penal Code, the Act on Foreigners, the Act on the entry into the territory of the Republic of Poland, the stay and departure from this territory of citizens of the European Union Member States and their family members, and the Act on Social Assistance.

The rules are universal for everyone, regardless of sex or age. The Ministry of the Interior and Administration takes measures to combat and prevent this practice in the periodically adopted National Action Plan against Trafficking in Human Beings (NAP). It is a government document adopted by the Council of Ministers, obliging its addressees to perform specific tasks in the field of trafficking in human beings. The NAP is the basic document concerning the functioning of the system of combating and preventing trafficking in human beings. The tasks provided for in the NAP have a nationwide scope, i.e. they relate to the activities of central institutions in the scope of creating commonly implemented legal regulations or model practices, or activities undertaken in all regions through units appropriate for this purpose, in particular Voivodeship Teams for Counteracting Trafficking in Human Beings.

When referring to the problem of sexual exploitation of children as victims of human trafficking, it should be pointed out that the very concept of prostitution is not defined in the Penal Code. However, its significance is beyond doubt. Forcing children to prostitution and using pornography is punishable under Polish law. Currently, the provisions of the Penal Code take into account changes taking place in the way of accessing pornographic content, i.e. via the Internet. As a result, the scope of penalisation was extended to include the production, distribution, presentation, storage or possession of pornographic content presenting a created or processed image of a minor participating in sexual activity and seeking sexual satisfaction by participating (passively and actively) in the presentation of pornographic content with the participation of a minor.

The Criminal Code penalizes acts consisting of submitting to a minor under the age of 15, via an ICT system or telecommunications network, an offer of sexual intercourse, submission to or performance of other sexual activity or participation in the production or recording of pornographic content and aimed at its implementation.

Due to the fact that the Polish legal system does not include the term "child trafficking", all provisions relating to trafficking in human beings and its victims should also be interpreted in relation to the trafficking of children. The provisions are universal for all victims/presumed victims of trafficking in human beings, regardless of whether we are dealing with a minor or an adult.

Please find below the relevant provisions of the Act of 6 June 1997 – The Criminal Code (Journal of Laws of 2020, item 1444, as amended).

Article 115 § 22: Trafficking in people is recruiting, transporting, delivering, transferring, harbouring or receipt of a person by using: 1) violence or unlawful threat, 2) kidnapping, 3) deception, 4) misrepresentation or exploitation of an error or incapacity to comprehend an intended action,5) abuse of a relationship of dependence, exploitation of a critical position or a state of helplessness, 6) giving or accepting a financial or personal benefit or the promise thereof to a person exercising custody or supervision over another person - for the purpose of exploitation, even with his consent, in particular in prostitution, pornography or other forms of sexual exploitation, forced labour or services, begging, slavery or other forms of exploitation degrading human dignity or for the purpose of obtaining cells, tissues or organs in violation of the law. If the perpetrator’s conduct involves a minor, it constitutes trafficking in human beings even if the methods or means listed in points 1-6 are not used.

Article 189a § 1: Anyone who commits trafficking in human beings, shall be subject to the penalty of deprivation of liberty for a term not shorter than 3 years. § 2. Anyone who makes preparations for the commission of the offence specified in § 1, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years.

Article 197 § 1: Anyone who by means of violence, unlawful threat, or deception leads another person to have sexual intercourse, shall be subject to the penalty of deprivation of liberty for a term of between 2 and 12 years. § 2. If the perpetrator, in the manner specified in § 1, induces another person to submit to another sexual act or to perform such an act, he shall be subject to the penalty of the deprivation of liberty for a term of between 6 months and 8 years. § 3. If the perpetrator commits rape: 1) jointly with another person, 2) to a minor below the age of 15, 3) to an ascendant, descendant, adoptee, adoptive parent, brother or sister, shall be subject to the penalty of deprivation of liberty for a term not shorter than 3 years. § 4. if the perpetrator of the act specified in § 1-3 acts with particular cruelty, he shall be subject to the penalty of deprivation of liberty for a term not shorter than 5 years.

Article 198: Anyone who, by taking advantage of another person's helplessness or lack of ability to recognize the meaning of the act or to control his conduct due to mental disability or mental illness, leads such a person to sexual intercourse or to submission to another sexual act or to performing such an act, is subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.

Article 199 § 1: Anyone who, by abuse of a relationship of dependence or abuse of a critical position, induces another person to have sexual intercourse or to submit to another sexual act or to perform such an act, shall be subject to the penalty of deprivation of liberty for up to 3 years. § 2. If the act specified in § 1 was committed to the detriment of a minor, the perpetrator shall be subject to the penalty of the deprivation of liberty for a term of between 3 months and 5 years. § 3. The penalty specified in § 2 shall be imposed on anyone who has sexual intercourse with a minor or performs another sexual act upon such a person, or who induces such a person to submit to such an act or perform such an act, abusing his/her trust, or granting a material or personal benefit or a promise thereof in exchange.

Article 200a § 1: Anyone who, in order to commit the offence specified in Article 197 § 3 section 2 or Article 200, as well as for the purpose of producing or preserving pornographic materials, through an information and communication system or telecommunication network establishes contact with a minor under 15 years of age, aiming at a meeting with him by means of deception, exploitation of an error or incapability of grasping the situation properly, or by unlawful threat, shall be subject to the penalty of deprivation of liberty for up to 3 years. § 2. Anyone who, through an information system or telecommunications network, makes an offer to a minor under the age of 15 of sexual intercourse, submission or performance to another sexual act, or participation in the production or preservation of pornographic material and intends to carry through thisoffer, shall be subject to a fine, penalty of restriction of liberty or deprivation of liberty for up to 2 years.

Article 203: Anyone who, by using violence, an unlawful threat, deceit or by exploiting a relationship of dependence or a critical position, induces another person to practice prostitution, shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years. Article 204 § 1. Whoever, in order to achieve financial gain, induces another person to practice prostitution or facilitates it, shall be subject to the penalty of deprivation of liberty for a term of between 3 months and 5 years. § 2. Whoever derives a material benefit from prostitution practiced by another person shall be subject to the penalty specified in § 1.§ 3. If the person specified in § 1 or 2 is a minor, the perpetrator shall be subject to the penalty of deprivation of liberty for a term of between 1 and 10 years. § 4.

As to the subparagraph b.: on the existing gaps and challenges in incorporating the gender dimension in legislations, policies and practices, there are no current or planned legislative works providing changes in the area of regulations on combating and preventing the sale and sexual exploitation of children in the context of their gender and gender identity. There is however a draft law amending the Criminal Code in regard to penalties for: rape on pregnant woman; rape when offender uses dangerous objects (a knife, a handgun etc.), recording of rape; production, possession and dissemination of CSAM containing artificial images of children (so called phantoms). Those changes are not related to gender issues, but they aim on supplementing the protection of children against sexual exploitation.

**Question 3: on contextual information on any existing good practices, policies or legislation tackling sale and sexual exploitation of children that include a gender dimension that takes into account different gender identities:**

Referring to the issues related to combating the trafficking of children, Poland has implemented a number of comprehensive measures, the aim of which is, i. a., efficient diagnosis of cases of trafficking in human beings, constant monitoring, providing support and protection to victims, conducting trainings or proposing legislative changes. Poland is a party to numerous international conventions and documents obliging the state to ensure the implementation of all rights of the child, regardless of child’s race, nationality, religion, sex, social or legal status.

In Poland, there is a coordinated system of support and care for victims of trafficking in human beings, ensuring specialized assistance and a uniform procedure in such cases. It should be emphasized that Poland, as a party to many international agreements in the field of counteracting trafficking in human beings, is guided in its undertakings by the main principles, such as, non-discrimination or respect for human rights, which indicate the directions of action. Above all, the enjoyment of protection measures and the promotion of the rights of victims is ensured without discrimination on any grounds such as: sex, race, language, religion, political opinion, membership of a national minority or any other grounds. With regard to victims of child trafficking and vulnerable children, action is taken in accordance with the standards and principles of human rights protection enshrined in the Convention on the Rights of the Child.

As mentioned above, the NAP is the basic document regarding the functioning of the system of combating and preventing trafficking in human beings. The purpose of the document is, i. a., ensuring an appropriate standard of support provided to victims of trafficking in human beings (including minor victims). The plan includes, among others:

• development and distribution of information materials on children trafficking,

• disseminating knowledge about the phenomenon of trafficking in human beings among school youth and students,

• organizing information meetings for school children,

• developing the Program of support and protection of minor victims of trafficking in human beings,

• updating algorithms, procedures and guidelines,

• promoting and implementing the Code of Conduct to protect children from commercial sexual abuse in tourism.

Creation of a regional network of entities, i.e. Provincial Teams for Counteracting Trafficking in Human Beings, is an effective solution in the field of combating trafficking in human beings. The provincial teams are composed of representatives of various public institutions, law enforcement agencies and non-governmental organizations at the regional level. It is they who professionally and competently identify and support victims of trafficking in human beings. Within the National Reference Mechanism, there is a system of support and protection of victims of trafficking in human beings. Its most important element is the public task entitled Running the National Intervention and Consultation Centre for victims of trafficking in human beings (hereinafter referred to as: "KCIK") entrusted in the form of an open tender competition referred to in Art. 13 of the Act of April 24, 2003 on public benefit activities and volunteering. This action has been implemented since 2009 by entrusting non-governmental organizations with the implementation of a public task by the minister responsible for internal affairs. Currently, KCIK has been entrusted with the implementation of La Strada - the Foundation Against Trafficking in Human Beings and Slavery and the Association "Po MOC" for Women and Children of Mary Immaculate.

The aim of the task is to meet the needs of victims of trafficking - regardless of citizenship, age and sex, or belonging to a specific national or ethnic minority (with particular emphasis on foreigners who have received the certificate referred to in 170 of the Act on foreigners and foreigners who stay in Poland on the basis of the permit referred to in Article 176 of the Act on foreigners or apply for the issuance of such a permit) and assistance to people at risk. The task includes:

-      running a 24-hour helpline for victims and witnesses of trafficking in human beings and conducting preventive counselling by phone for individual cases;

-      providing basic living needs, crisis intervention and assistance in reintegration;

-      running a shelter or shelters and arranging safe accommodation / shelter;

-      consultations for state and local government institutions in the field of work with victims of trafficking in human beings, including institutions / entities providing assistance to victims

Law enforcement agencies have been equipped with tools to facilitate and improve the identification of minor victims/presumed victims of trafficking in human beings. Support for the Police and Border Guard in the process of identifying minor victims is the "*Algorithm for the identification and treatment of a minor victim of trafficking in human beings*", which was updated in 2020 as part of the work of the Group for Supporting Victims of Trafficking in Human Beings operating under the Team for Preventing Trafficking in Human Beings. The algorithm indicates risk groups from which potential victims may come. It emphasizes the need to verify the information provided by the child in the light of all the disclosed circumstances. Systematizes the information to be determined during the interview. Moreover, it defines the rules of the intervention procedure. The document lists the circumstances and situations that require special attention of a Police or Border Guard officer and should result in taking further actions to verify whether trafficking in children may take place. The algorithm stipulates that the identification cannot be based solely on the information provided by the minor. Such information should always be supplemented with an in-depth analysis of the minor's situation and other accompanying circumstances. It is a tool that discusses legal issues related to minor victims of trafficking in human beings and presents a catalogue of those groups of minors that are particularly vulnerable to exploitation. This document also presents practical knowledge about the specifics of working with an abused child, and describes indicators that may show that the child is controlled by the perpetrators. In addition, the Algorithm contains information about the rules on which the questioning should take place, i.e. in conditions friendly to a minor, separation from third parties, including their current guardians, after prior checking of their well-being and, in the case of a foreign child, in the presence of an interpreter.

It should be indicated that the Algorithm is supplemented with two appendices. The first of them concerns the establishment of a minor's representation, the second, procedural activities involving a minor aggrieved by human trafficking. The algorithm is known to law enforcement officers thanks to regular, specialized trainings organized mainly by the Police and Border Guard with the participation of representatives of the Ministry of Interior and Administration, the Public Prosecutor's Office, Courts and non-governmental organizations.

The principle of a single interview is applied to all children - obligatorily up to the age of 15. However, in relation to children between 15 and 18 years of age - if there is a fear of a negative impact on the child's mental health. In the event that minors are interviewed, the law enforcement authorities submit a request for such a person to be heard by the court at a session with the participation of an expert psychologist. If an interview of a minor is necessary, it takes place in conditions friendly to him. This is to eliminate the feeling of being suspected of committing a crime.

In the case of minor victims of trafficking in human beings, special care is provided by referring them to appropriate institutions and providing a probation officer or, in exceptional cases, a legal guardian. Children, like adults, have access to all measures to protect and support them.

Please find below the provisions of the Act of 6 June 1997 – The Code of Criminal Proceedings (Journal of Laws of 2021, item 534, as amended) which provide certain guarantees to the victims with regard to the sex of the person interacting with them:

Article 185c § 1: In cases of offences specified in Articles 197-199 of the Criminal Code, the notice of offence, if submitted by the victim, shall be limited to the indication of the most important facts and evidence. § 1a. In cases of the crimes specified in § 1, the victim, who is 15 years of age or older at the time of examination, shall be examined as a witness only if his testimony may be material to the outcome of the case, and only once, unless material circumstances come to light the clarification of which requires a second examination. § 2. The hearing of the victim referred to in § 1a as a witness shall be conducted by the court at a session with the participation of an expert psychologist immediately, no later than within 14 days from the date of receipt of the request. The public prosecutor, defence counsel and the victim's attorney have the right to participate in the hearing. The person mentioned in Article 51 § 2 or an adult person indicated by the victim shall also have the right to be present during the interrogation if this does not restrict the freedom of speech of the interrogated person. At the main hearing, the prepared video and audio recording of the interrogation shall be played and the record of the interrogation shall be read out. § 3. If it is necessary to re-examine the victim as a witness due to the circumstances referred to in § 1a coming to light, at the request of the victim, the interrogation shall be conducted in the manner indicated in Article 177 § 1a when there is a justified fear that the direct presence of the accused during the interrogation could have an embarrassing effect on the victim's testimony or have a negative impact on his mental state. § 4. At the request of the victim, it shall be ensured that the psychological expert participating in the interrogation is of the same sex as the victim, unless this will impede the proceedings.

Article 208: The visual inspection or examination of the body that may cause embarrassment should be performed by a person of the same sex, unless there are special difficulties involved; other persons of the opposite sex may be present only if necessary.

**Question 5: on what forms and manifestations do gender dimensions take in the context of the eradication and prevention of the sale and sexual exploitation of children, boys in particular, including online, and which ones are the most prevalent. Please provide information about the causes and manifestations of gender dimension, and how it affects the eradication and prevention of sale and sexual exploitation of children.**

Dimension of one’s sex is not included within the framework of policies and legislation that aim to combat and prevent the sale and sexual exploitation of children both online and offline.

**Question 6: to indicate any specific measures aimed at reducing vulnerability of children to sale and sexual exploitation in a gender-and disability-responsive, as well as ageand child-sensitive manner:**

Voivodship Teams for Counteracting Trafficking in Human Beings undertake activities aimed at raising awareness of the issue of trafficking in human beings among youth from primary and secondary schools. In schools, as part of educational activities, among educators and teachers as well as representatives of the Police pointed to the dangers related to the use of people for trafficking in human beings, thus increasing social awareness. The classes took the form of talks during which information materials were distributed to young people. Educational lessons were conducted on the basis of ready-made scenarios (including the lesson scenario entitled "Trafficking in children" prepared by the Foundation "We give children strength") as well as other available materials.

The education system ensures the dissemination of knowledge among children on how to safely use digital information resources, search and analyse information, and establish and maintain respectful relationships with other network users. Schools and institutions that provide students with access to the Internet are required to take measures to protect them against access to content that may pose a threat to their proper development, including the use of security software. The Ministry of Education cooperates with the Ministry of Digitization in providing schools with free access to secure Internet. The document "*Safe School. Threats and recommended preventive actions in the field of physical and digital safety of students* ”, addressed to school principals, teachers and parents, contains recommendations on actions in the event of, inter alia, threats to the cybersecurity of students. As part of the projects implemented under the Digital Poland operational program, *Standards for digital competences for teachers* were developed.

**Question 7: on what measures and safeguards can be put in place to identify the protection needs of vulnerable children in order to prevent, prohibit and protect them from all forms of sale and sexual exploitation, including examples of child-friendly, independent, timely and effective reporting and complaints mechanisms made available without discrimination in child-friendly spaces at community, national, and regional level:**

The National Intervention and Consultation Centre, which runs a 24-hour helpline, plays a huge role in this respect. Victims of human trafficking are identified via telephone. If necessary, the helpline operators will notify the relevant services. A crisis intervention can be planned also at a distance - in another country, through contact, for example, with the Polish consulates or local non-governmental organizations. Work at KCIK involves taking care of the beneficiaries through the so-called case-management. This means that each person in the care has an assigned tutor whose role is to coordinate the person's case by preparing an individual plan/program of assistance.

The Act of 28 November 2014 on protection and assistance to the victim and witness (Journal of Laws of 2015, item 21) contains protective measures: protection for the duration of the procedural activity, personal protection, assistance in relocation and related financial assistance for basic living needs, housing needs or for obtaining healthcare services.

The application of particular protection and assistance measures is possible according to the degree of threat to life or health of the victim or witness, upon their consent. In addition, the Act provides for supplementary measures, i.e. appointment of coordinators of the Police activities in the field of protection of victims and witnesses, as well as facilitation of access to psychological assistance for victims, provided from the Fund for Victims' and Post Penitentiary Assistance. As part of the amendments to the Code of Criminal Procedure, the Act has introduced additional procedural measures for the protection of victims and witnesses, e.g. anonymization of address data of these persons and the possibility of videoconferencing interrogation not only in the case of geographical obstacles, but also when there is a risk of embarrassing impact of the presence of the accused on a witness.

**Question 8: to indicate any other areas of concern and provide any additional information which is relevant in the context of gender dimension and eradication of sale and sexual exploitation of children:**

In seeking solutions to the problem of child trafficking, it is necessary to consider various risk factors. Children deprived of appropriate care by adults are particularly at risk of trafficking - orphans, those staying in care at educational institutions, but also children of parents who do not pay enough attention to them, unaccompanied migrant children, children who have previously experienced various forms of violence (physical, sexual, psychological), without positive relationships with their caregivers are also at risk. Consequently, they are more likely to be seduced by an adult who gives the child a sense of uniqueness or promises to improve living conditions. The feeling of exclusion, objective or subjective poverty combined with a lack of perspectives (e.g. lack of access to education) may contribute to minors looking for alternative ways to improve their life situation.

It is noticeable, according to various international reports, that the trend of using the Internet to commit crimes of trafficking in human beings, the victims of which are also minors, is growing. More and more common access to the Internet and technological and IT novelties, both for children and adults, plays a significant role in the large increase of the phenomenon of distribution, posting and importing child pornography in the form of photos and videos in Poland. What's more, the Internet is directly used to conduct paedophile activity by Internet users with such inclinations: apart from posting child pornography, the network is used to search for more minor victims, promote and praise paedophile behaviour or the so-called live-streaming (i.e. making sexual abuse of children online during sexual performances in exchange for a monetary gratification sent to the perpetrator / perpetrators in real time via platforms offering payment services such as Paypal or Western Union).

In addition, the aforementioned constant increase in the availability of the Internet also resulted in the development of a new phenomenon, previously unheard of in Poland, i.e. child-grooming, i.e. seducing and soliciting children for sexual purposes and making sexual extortions on them with the use of ICT systems/information technologies. The perpetrators using the Internet encourage the child to participate in sexual activities, e.g. by promising a reward, discuss intimate behaviour, present pornographic content in order to overcome resistance or inhibitions in the sexual sphere. These contacts often have one purpose - to bring about a physical encounter and sexual abuse of the child.

That is why it is so important to improve the early identification of victims, as well as refer them to appropriate help of support and protection centres, taking into account their specific needs and forms of exploitation to which they have been subjected.

Particular attention should be paid to child victims and children at risk of trafficking in human beings. Actions should be taken to systematically report missing children and alert them to their disappearance for early identification. It is also important that there are adequate procedures adapted to child victims, the swift appointment of guardians / legal representatives representing minors and the effective provision of assistance, support and protection.

Training for professionals likely to come into contact with victims (e.g. law enforcement, judiciary, labour inspectors, immigration and asylum officials, border guards, social workers or medical staff), the development of guidelines, toolkits and the exchange of best practices should also be emphasized.

**Question  9: on the context in which the external environment factors exacerbate the prevalence and/or magnitude of sale and sexual exploitation of children and do the vulnerabilities of the surrounding environment play a significant role in terms of rural/urban; war/conflict zones, different forms of migration, emergency contexts (e.g. natural & manmade disaster, climate change, COVID-19) and religious context:**

External factors certainly have an impact on increasing children's susceptibility to trafficking in human beings, but it is difficult to clearly assess how significant they are. Each case should be considered individually.