

GLOBAL **NEXTGEN** INDEX

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FINAL SCORE

47

The number of children detained in Poland in 2016 was 316. In the first 10 months of 2017, 236 children were detained. The average time of detention for children was 87 days.

Unaccompanied children under the age of 15 and unaccompanied children seeking asylum between the ages of 15 to 18 are not detained in Poland.

Children with their family or guardians are subject to detention, regardless of age. Unaccompanied children between the ages of 15 and 18 are subject to detention, unless they are seeking asylum.

Poland is well placed to undergo a change in processing policy that would ensure compliance with human rights normative standards as child detention numbers have declined in 2016 and 2017.

	Poland	Possible
Treaties	18	20
National laws	6	10
Processing	5	26
Placement	8	12
Rights	8	20
Oversight	8	12
Sub Total	53	100
Points off	-9	-15
Bonus points	+3	+15

Treaties 18/20

Poland has ratified five of the six Conventions and Protocols that assist in the protection of children in the context of migration.

Recommendation: The Government of Poland is commended for this achievement. Further, the government is encouraged to additionally ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

National laws 6/10

According to national law in Poland, children can be detained for administrative purposes with some exceptions. National law stipulates that neither unaccompanied children seeking asylum, no unaccompanied children who are

not seeking asylum but are under 15 years of age cannot be detained. Children with guardians can be detained no matter of their age and administrative status.

Recommendation: The Government of Poland is commended for enacting national law to protect unaccompanied children seeking asylum. Further, the government is strongly encouraged to extend this protection to all children up to the age of 18, including all child migrants, whether traveling with their families and guardians or unaccompanied. This would bring national law in Poland into alignment with the CRC, and international standards and obligations.

Processing 5/26

The Best Interest of a Child is set out in national law in Poland. However, it is rarely taken into consideration within migration procedures. Age assessments are conducted in an ad hoc manner, and are initiated by the Border Police and conducted by a doctor without specialised age assessment training. Further, the guardianship system does not provide necessary protection for unaccompanied or separated children. Legal representatives are only appointed to represent children in particular procedures, such as return, asylum, and residence permit procedures.

Recommendation: The Government of Poland is commended for its practice of assuming children are minor until proven otherwise. Further, the government is commended for providing documentation to survivors of trafficking, which prevents vulnerable children from being detained. However, the government is strongly encouraged to explicitly prevent the detention of children through all documentation processes. Additionally, the government is strongly encouraged to urgently provide legal advice to all migrating children to ensure the best interests of the child are considered.

Placement 8/12

Border Police in Poland have the ability to either detain, apply alternatives to detention (bail, designated residence, reporting, deposit of a travel document) or place a family in the community without restrictions. However, unrestricted community placement is only possible if migrants are seeking asylum and no return procedures have been initiated against them. Unaccompanied children are placed in foster houses without any conditions. A court decides whether children over 15 years of age who are not seeking asylum will be placed in detention centers or foster houses. There are no specialised facilities for migrant children. Additionally, there is no specialised training for government employees working with migrant children.

Recommendation: The Government of Poland is commended for providing placement options, particularly unconditional placement in the community for unaccompanied children, as well as children migrating with their families or guardians. Further, the government is strongly encouraged to strengthen its placement options in order to become a world leader on this issue. This can be accomplished by enacting policy and practice that immediately considers alternatives, broadens the populations entitled to community placements, improves foster care for unaccompanied minors, and provides statistics on the use of alternatives and community placements.

Rights 8/20

Poland provides basic rights for some populations, particularly asylum seekers. Overall however, there are significant challenges to accessing social assistance, healthcare and education, especially for those who are detained.

Recommendation: The Government of Poland is strongly encouraged to strengthen provisions that ensure the basic rights of migrants, especially undocumented migrants. Most urgently, the government is encouraged to strengthen education and social welfare provisions for all migrants. Additionally, the government is strongly

encouraged to enact firewall legislation to ensure social welfare services are not impeded by migration control activities.

Oversight 8/12

All detention decisions are made and reviewed by judicial authorities. However, access to legal aid in detention centers is limited, and detention decisions often remain unchallenged. There are maximum detention time limits in place, which are also subject to judicial review. Poland has established a National Preventive Mechanism under OPCAT with the mandate to monitor places of immigration detention. This role is fulfilled by the Office of the Ombudsman, and annual public reports are published. Statistics for immigration detention are disaggregated, but only available on request.

Recommendation: The Government of Poland is commended for its judicial oversight of immigration detention and its National Preventive Mechanism. The government is strongly encouraged to ensure that adequate resources are provided for the NPM to thoroughly fulfill its mandate. Further, the government is strongly encouraged to make disaggregated statistics on immigration detention publicly available. The government is encouraged to become a world leader on oversight by implementing these recommendations.

Points off -9/ -15

The number of children detained in Poland in 2016 was 316. In the first 10 months of 2017, 236 children were detained. The average time of detention for children was 87 days. The Government of Poland has defended the need for the detention of children, despite this practice being out of step with normative human rights standards.

Recommendation: The Government of Poland is strongly encouraged to abolish the detention of all children, in law and in practice, and uphold the rights of children in compliance with international standards and legal obligations. Further, the government is strongly encouraged to improve its score by publicising disaggregated statistics on a regular basis. Additionally, the government is encouraged to immediately apply normative standards to ensure that all children are removed from detention.

Bonus points +3/+15

Poland is acknowledged for ratifying international treaties and agreements, and then integrating them into national law.

Recommendation: The Government of Poland is strongly encouraged to develop pilot programs to expand alternatives to detention for all children, and to support currently detained children to transition into alternative placements.

This scorecard has been assessed by the Poland NextGen Index Committee:

- Association for Legal Intervention
- Helsinki Foundation for Human Rights
- The Centre of Migration Research

For further information regarding how this score was measured visit <http://next-gen-index.org/>

If you have any questions, please contact the Global Campaign:
media@endchilddetention.org

Additional Resources

Treaties & Laws

- UN: [Committee on the Elimination of Racial Discrimination, Government of Poland Draft Report](#)
 - Page 27, Paragraph 97 – Stable and Safe Environments for Migrant Children
- Poland: [Act on Foreigners, 2013](#)
 - Article 401(4) – Best Interest Determinations
 - Article 35 – International Protection for Foreigners

Directives & Services

- Office on Foreigners, Poland
 - [Report on Social Assistance to Asylum Seekers, 2017. pg 22-27 \(Polish\)](#)
- Ministry of Interior, Poland
 - [Małoletni bez opieki, 2015 \(Polish\)](#)

Community Integration & Support

- Dziecko krzywdzone
 - [Dzieci cudzoziemskie bez opieki w kontekście system ochrony dzieci w Polsce, 2014 \(Polish\)](#)
- Muzeum Historii Polski
 - [Dzieci cudzoziemskie bez opieki w Polsce: podstawowe problem i formy pomocy, 2015 \(Polish\)](#)
- Helsinki Foundation for Human Rights
 - [The Role of European Funds in Supporting the Integration of Migrants in Poland, 2017](#)

Infrastructure & Oversight

- Helsinki Foundation for Human Rights
 - [Still Behind Bars: Report on the Monitoring of Guarded Centres for Foreigners by the Helsinki Foundation for Human Rights and the Association for Legal Intervention, 2014](#)
- Poland: National Prevention Mechanism
 - [Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców oraz Aresztu dla Cudzoziemców w Przemyślu, 2018 \(Polish\)](#)
 - [Raport Krajowego Mechanizmu Prewencji Tortur z wizytacji Strzeżonego Ośrodka dla Cudzoziemców w Krośnie Odrzańskim, 2018 \(Polish\)](#)
- Analizy Raporty Ekspertyzy
 - [Mieszkamy tutaj bo nie mamy innego wyjścia: Raport z monitoring warunków mieszkaniowych uchodźców w Polsce, 2015 \(Polish\)](#)
- Poland: Child Ombudsman Request Letter
 - [W sprawie małoletnich cudzoziemców bez opieki, 2017 \(Polish\)](#)
- Poland: Ministry of Interior Response Letter
 - [Podsekretarz Stanu DL-I-053-15/17 \(Polish\)](#)
- AIDA Asylum Information Database
 - [Country Report: Poland](#)