
ADVANCE UNEDITED VERSION

Human Rights Committee

Concluding observations on the seventh periodic report of Poland*

1. The Committee considered the seventh periodic report submitted by Poland (CCPR/C/POL/7) at its 3306th and 3308th meetings (see CCPR/C/SR.3306 and 3308), held on 17 and 18 October 2016. At its 3329th meeting, held on 31 October 2016, it adopted the present concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for the timely submission of its seventh periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/POL/QPR/7). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's large delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following policy, institutional and legislative measures taken by the State party:

(a) The "Strategy of Actions for the Prevention of Human Rights Violations by Police Officers" (March 2015); and

(b) The Amendment on 10 May 2013 of the Penal Code that extends the protection of the victims of sexual violence.

4. The Committee also welcomes the ratification of the following international instruments by the State party:

(a) The Second Optional Protocol to the International Covenant on Civil and Political Rights, on 25 April 2014; and

* The present document is being issued without formal editing.

(b) The Convention on the Rights of Persons with Disabilities, on 25 September 2012.

C. Principal matters of concern and recommendations

National human rights institution

5. The Committee is concerned about the budgetary cuts incurred by the Office of the Commissioner for Human Rights, which jeopardise its ability to exercise its mandate. (art. 2)

6. The State party should provide the necessary resources to the Office of the Commissioner to ensure that it can effectively and independently implement its mandate in full.

Constitutional and legal framework within which the Covenant is implemented

7. The Committee is concerned about the negative impact of legislative reforms, including the amendments to the Law on the Constitutional Tribunal of November and December 2015 and July 2016, and the disregard of the judgements of the Constitutional Tribunal; the functioning and independence of the Tribunal and the implementation of the Covenant. The Committee is also concerned about the refusal of the Prime Minister to publish in the Journal of Laws the judgements of March and August 2016 of the Tribunal and efforts of the government to change the Tribunal's composition in ways which the Tribunal has regarded as unconstitutional, and about the legal proceedings initiated against the President of the Tribunal for alleged abuse of power. (arts. 2 and 14)

8. The State party should ensure respect for and protection of the integrity and independence of the Constitutional Tribunal and its judges and ensure the implementation of all its judgements. The Committee urges the State party to immediately publish officially all the judgments of the Tribunal; refrain from introducing measures that obstruct its effective functioning and ensure a transparent and impartial process for the appointment of its members and security of tenure, which meets all requirements of legality under domestic and international law.

Counter-terrorism measures

9. The Committee is concerned that article 115 of the Penal Code continues to provide a definition of a terrorist crime that is overly broad and does not adequately define the nature and consequences of the acts. The Committee is also concerned that the Counterterrorism Law of June 2016 and its Regulation of July 2016 provide a definition of "terrorist incidents" that is broad and imprecise. (arts. 14, 17 and 21)

10. The State party should review its legislation on counter-terrorism in order to bring it into line with its obligations under the Covenant. It should, inter alia:

(a) Ensure that the Penal Code not only defines terrorist crimes in terms of purpose, but also narrowly defines the nature of those acts; and

(b) Provide a precise definition of "terrorist incidents" that does not give authorities excessive discretion or obstruct the exercise of the rights under the Covenant.

11. The Committee reiterates its concern about the lack of information on the investigations and the length of proceedings regarding the reported rendition and detention program and the acts of torture and ill treatment committed in and enabled by the State party between 2003 and 2005 in *Stare Kiejkuty*. (arts. 2, 6 and 7)

12. The State party should ensure that all investigations and proceedings on the involvement of Polish officials in secret detentions, torture and renditions are carried out thoroughly, independently and within a reasonable period of time; that those found responsible are held accountable and that the investigations and any subsequent proceedings are made public.

Non-discrimination

13. The Committee remains concerned that the Act on Equal Treatment does not afford protection against discrimination in all areas on all the grounds prohibited under the Covenant, including sexual orientation, disability, religion, age, and political opinion. The Committee is also concerned that claiming and obtaining compensation for acts of discrimination in court is difficult in practice. (arts. 2, 3 and 26)

14. The State party should further amend the Act on Equal Treatment to prohibit discrimination comprehensively on all grounds prohibited under article 2 and 26 of the Covenant, and in all spheres and sectors, including education, health care, social protection and housing. It should also improve accessibility of effective remedies against any such form of discrimination.

Hate crime, hate speech, incitement to national, racial or religious hatred

15. The Committee is concerned about the reported increase in the number of incidents of violence, hate speech and discrimination based on race, nationality, ethnicity, religion and sexual orientation and the insufficient response by the authorities to such incidents. The Committee is further concerned about the fact that the Penal Code does not refer to disability, age, sexual orientation and gender identity as grounds for hate crimes. (arts. 2, 3, 18, 20, 26 and 27)

16. The State party should continue strengthening its efforts to prevent and eradicate all acts of, among others, racism, xenophobia, Islamophobia, anti-Semitism and homophobia, by, inter alia:

(a) Amending the Penal Code so that crimes motivated by discrimination on any grounds under the Covenant are investigated and prosecuted as aggravated forms of criminal conduct;

(b) Taking measures to prevent and to swiftly and effectively respond to any incident of hate speech, discrimination, violence, or alleged hate crimes, including through the internet, through banning the operation of racist associations and facilitating civil lawsuits by victims pursuant to article 24(1) of the Civil Code;

(c) Thoroughly investigating alleged hate crimes, prosecuting perpetrators and, if convicted, punishing them, and providing victims with adequate remedies;

(d) Renewing the National Action Plan for Equal Treatment which is set to expire soon;

e) Reviewing the legal status of same sex couples and parents, with a view to ensuring their enjoyment of the right to non-discrimination in law and in fact; and

(f) Continue working on awareness-raising and educational campaigns aimed at promoting respect for human rights and tolerance for diversity.

17. The Committee is concerned about the dissolution of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance in April 2016 without making any arrangements for a substitute institution. (arts. 2, 18, 20, 26 and 27)

18. The State party should consider reinstating the Council or establishing an alternative multi stakeholder institution with the objective of preventing discrimination and intolerance.

Violence against women and equal rights of men and women

19. The Committee reiterates its concern about the high number of women victims of domestic violence and the lack of adequate protection mechanisms. The Committee is particularly concerned about: a) the lack of mechanisms providing immediate protection, b) the small number of restraining orders issued, c) the insufficient number of emergency shelters and specialised assistance centres and d) the low number of prosecutions and sentences. (arts. 2, 3, 6, 7 and 26)

20. The State party should adopt a comprehensive strategy to prevent and address domestic violence, in particular by:

(a) Ensuring that cases of domestic violence are thoroughly investigated, alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions; and that victims have access to effective remedies and means of protection, including restraining orders with immediate effect;

(b) Increase the number of emergency shelters and specialised centres in all parts of the country; and

(c) Continue carrying out awareness-raising campaigns to sensitize the population.

21. The Committee reiterates its concern about: a) the limited participation of women in public and political life and the private sector, b) the wage gap between women and men and c) the prevalence of gender biases and stereotypes. (arts. 2, 3 and 26)

22. The State party should further strengthen its efforts to:

(a) Increase the participation of women in public and political life, and if necessary, through temporary special measures, to give full effect to the provisions of the Covenant. The State party is encouraged to further support the participation of women in high-level and managerial positions and on boards of private enterprises, including through enhanced cooperation and dialogue with partners in the private sector;

(b) Continue adopting measures to eliminate the wage gap and to ensure equal remuneration for work of equal value; and

(c) Strengthen the measures to eliminate gender biases and stereotypes.

Voluntary termination of pregnancy

23. The Committee reiterates its concern about the high number of clandestine abortions that may put the lives and health of women at risk. The Committee is also concerned about significant procedural and practical obstacles faced by women to access safe legal abortion, which prompt women to travel long distances or abroad to access safe legal abortion. It also notes with concern that, the conscientious clause in article 39 of the Act on Medical Profession has often been inappropriately claimed in practice with the result that access to legal abortion is unavailable in entire institutions and a region of the country; that as a result of the judgement of the Constitutional Tribunal of October 2015, there is no reliable referral mechanism for access to abortion following the exercise of conscientious objection; and that in some areas of the State party few if any health providers are willing to offer legal abortion services. The Committee is further concerned by recent initiatives to further restrict voluntary termination of pregnancy. (arts. 3, 6, 7 and 17)

24. The State party should:

(a) Ensure that its legislation does not prompt women to resort to clandestine abortions that put their lives and health at risk. It should conduct research into and provide statistics on the use of illegal abortion. It should further ensure women's effective access to safe legal abortion throughout the entire country and that women are not obliged, as a consequence of conscientious objection or prolonged review of complaints against refusal to obtain an abortion, to resort to clandestine abortion that put their lives and health at risk, by inter alia, as a matter of priority establishing and regulating uniform standardised guidelines in public health for provision of legal abortion services throughout the country; enhancing the effectiveness of the referral mechanism to ensure access to legal abortion in cases of conscientious objection by medical practitioners; facilitating access to prenatal genetic testing in order to determine in accordance with the Act of 7 January 1993 whether a foetus suffers from a severe and irreversible foetal impairment or incurable illness that threatens the foetus' life; ensuring timely review of appeals against a refusal for an abortion, including further reducing substantially the Physician's Commission decision deadline; and ensuring that mechanisms for obtaining prosecutor certifications and regulations of individual hospitals do not obstruct access to legal abortion;

(b) Refrain from adopting any legislative reform that would amount to a retrogression of already restrictive legislation on women's access to safe and legal abortion; and

(c) Increase education and awareness raising programmes on sexual and reproductive health rights and facilitate effective access to contraceptives.

Prohibition of torture and cruel, inhuman or degrading treatment or punishment

25. The Committee is concerned that not all elements of the crime of torture are criminalized by the Penal Code and that the Penal Code does not fully reflect the gravity of the crime of torture. The Committee is also concerned about excessive use of force by law enforcement officers and prison service officers and that criminal proceedings against law enforcement officers and prison service personnel are seldom conducted. (art. 2, 7 and 10)

26. The State party should:

(a) Amend the Penal Code to ensure that all elements of the crime of torture are prohibited in accordance with Article 7 of the Covenant and to stipulate sanctions for acts of torture that are commensurate with the gravity of the crime; and

(b) Ensure that all reported allegations of and complaints about acts of torture and ill-treatment are promptly and properly investigated. Also ensure that alleged perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to redress, including adequate compensation.

Elimination of slavery and servitude

27. The Committee reiterates its concern that the Penal Code does not contain a provision protecting victims of trafficking from being prosecuted, detained or punished for the activities in which they were involved as a direct consequence of their situation as trafficked persons. The Committee is also concerned about the low number of identified potential victims and by the low conviction rate of perpetrators of trafficking. The Committee is further concerned about the lack of an adequate statutory definition of forced labour. (art. 8).

28. The State party should:

(a) Provide in the Penal Code that victims of trafficking are exempt from prosecution, detention or punishment for activities they were involved in as a direct consequence of their situation as trafficked persons,

(b) Establish a mechanism to identify vulnerable persons within the migration flow, as well as a common referral mechanism to ensure their protection and rehabilitation;

(c) Ensure that forced labour is prohibited in accordance with article 8 of the Covenant; and

(d) Ensure that allegations of trafficking are thoroughly investigated, alleged perpetrators prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to legal assistance and reparation.

Right to liberty and security of persons and humane treatment of persons deprived of their liberty

29. While welcoming the progress made by the State party in addressing the issue of pre-trial detention, the Committee is concerned about reports alleging: a) the non-existence of a defined temporal limitation for pre-trial detention, b) the use of pre-trial detention solely on the ground of the severity of the penalty, c) the possibility of prolonging a pre-trial detention period without specifying a time-limit or the reasons for the extension; and d) the application of the 14 days pre-trial detention without charges and the possibility of its extension under the new Counterterrorism Law of June 2016. (arts. 9 and 14)

30. The State party should:

(a) Continue reducing the length of pre-trial detention and resort to non-custodial alternatives, bearing in mind its obligations under article 9 of the Covenant as interpreted in the Committee's General Comment 35 (2014);

(b) Periodically review the length of pre-trial detention with a view to determining whether it is necessary and guarantee the right to a trial within a reasonable time; and

(c) Limit the application of pre-trial detention under the Code of Penal Procedure and the Counterterrorism Law.

Rights of aliens

31. The Committee is concerned about the high number of asylum-seekers and migrants, including children, detained in guarded centres. The Committee is concerned about statements by State authorities refusing the reception of refugees of Muslim faith. The Committee is also concerned about the difficulties faced by asylum-seekers to apply for asylum at the border with Belarus in Terespol, where there is no adequate system to identify people in need of international protection. (arts. 2, 6, 7, 9 and 26)

32. The State party should:

(a) Refrain from detaining asylum seekers and migrants and implement alternatives, including before deportation; and in those cases where the individual is detained ensure that the detention is reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time;

(b) Ensure that children are not deprived of liberty except as a measure of last resort and for the shortest appropriate period of time, taking into account their best interests; and

(c) Ensure that access to asylum is not obstructed on grounds of religious discrimination or other grounds prohibited by the Covenant and establish a system of

proper screening which ensures that asylum seekers are not returned to a country where there are substantial grounds for believing there is a real risk of irreparable harm, such as that set out in articles 6 and 7 of the Covenant.

Right to a fair trial and access to a lawyer

33. The Committee is concerned about reports which allege: a) undue delays in court proceedings, b) difficulties in accessing legal assistance during arrest, and c) instances of insufficient respect for the confidentiality of communication between counsel and clients. It is also concerned about the impact on the right to a fair trial and on the independence of the judges of recent legislative changes and proposals, in particular the Law on Prosecution of January 2016 and the Draft Act on the National Council of the Judiciary, which seek a stronger role of the government in judicial administration, particularly regarding the appointment of judges and disciplinary sanctions. (arts. 9 and 14)

34. The State party should:

(a) Ensure the right to a fair trial without undue delay, in accordance with article 14 of the Covenant and the Committee's general comment No. 32 (2007);

(b) Ensure that all detainees including juveniles have unhindered, prompt and adequate access to a lawyer of their choice or free legal aid from the outset of the detention; and guarantee the confidentiality of the communications between the counsel and the accused; and

(c) Take immediate steps to protect the full independence and impartiality of the judiciary; guarantee that it is free to operate without interference; and ensure transparent and impartial processes for appointments to the judiciary and security of tenure.

Juvenile Justice

35. The Committee is concerned about reports that allege: a) application of sanctions against juvenile offenders without allowing them to benefit from the presumption of innocence and without their guilt being proven beyond reasonable doubt; b) the placement of juveniles in temporary isolation rooms as a form of disciplinary sanction or for diagnostic purposes upon their arrival to correctional facilities; and c) pre-trial detention of juveniles which exceeds three months. (articles 9, 10, 14 and 24).

36. The State party should review its laws and practices relating to the juvenile justice system with a view to bringing them in conformity with its obligations under articles 9, 10, 14 and 24 of the Covenant.

Freedom of expression

37. The Committee is concerned by past and proposed legislative changes regarding the State party's public broadcasting services that appear retrogressive in the protection of the guarantees that ensure the independent broadcasting of the public TV and Radio services in the State party. The Committee reiterates its concern that the offence of defamation is still penalized with deprivation of liberty for one year, as specified in article 212(2) of the Penal Code. The Committee is also concerned about other laws imposing criminal responsibility for insulting state symbols, senior officials and religion. It is further concerned about a draft bill that envisages to impose up to three years of imprisonment for referring to the Nazi camps operated in occupied Poland during World War II as Polish. (art. 19)

38. The State party should:

(a) Ensure that public broadcasting services operate in an independent manner. In this regard, the State party should guarantee their independence and editorial freedom;

(b) Review its defamation laws and laws on insult of state symbols, senior officials and religion. The State party should consider decriminalizing defamation by amending its Penal Code, bearing in mind that imprisonment is never an appropriate penalty for defamation; and

(c) Review the draft bill of August 2016 to bring it into line with article 19 of the Covenant.

Right to privacy

39. The Committee is concerned about the surveillance and interception powers of the Polish intelligence and law enforcement authorities as reflected in the Law on Counterterrorism of June 2016 and the Act amending the Police Act and certain other acts of January 2016. The Committee is particularly concerned about: a) the unlimited and indiscriminate surveillance of communications and collection of metadata b) the targeting of foreign nationals and application of different legal criteria to them, c) the insufficient procedural safeguards, d) the lack of adequate judicial oversight e) the possibility of banning or terminating assemblies and mass events; and f) the lack of notification, complaints procedure or mechanism for remedies. (arts. 2, 17, 22 and 26)

40. The State party should review its counterterrorism legislation in order to bring it into line with its obligations under the Covenant, and ensure that any interference with the right to privacy complies with the principles of legality, necessity and proportionality.

Political participation

41. The Committee is concerned about the fact that according to Article 62 of the Polish Constitution, the persons who, by a final judgment of a court, have been subjected to legal incapacitation or deprived of public or electoral rights, have no right to participate in a referendum nor a right to vote. As a result, any person with mental and intellectual disabilities who is subject to incapacitation has no voting rights. (arts. 2, 25 and 26)

42. The State party should revise its legislation to ensure that it does not discriminate against persons with mental and intellectual disabilities by denying them the right to vote on bases that are disproportionate or that have no reasonable and objective relationship to their ability to vote, taking account of article 25 of the Covenant.

D. Dissemination and follow-up

43. The State party should widely disseminate the Covenant, its two Optional Protocols, its seventh periodic report, and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.

44. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 8 (constitutional and legal framework within which the Covenant is implemented), 24, (voluntary termination of pregnancy) and 32 (rights of aliens) above.

45. The Committee requests the State party to provide in its next periodic report, due for submission on 4 November 2021, specific, up-to-date information on the implementation of

all its recommendations and on the Covenant as a whole. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its eighth periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.
