

Committee against Torture

Concluding observations on the seventh periodic report of Poland*

1. The Committee against Torture considered the seventh periodic report of Poland (CAT/C/POL/7) at its 1759th and 1762nd meetings, held on 23 and 24 July 2019 (CAT/C/SR.1761 and CAT/C/SR.1764), and adopted the following concluding observations at its 1776th meeting (CAT/C/SR.1776) held on 5 August 2019.

A. Introduction

2. The Committee welcomes the dialogue with the State party's delegation and the oral and written replies provided to the concerns raised by the Committee.

B. Positive aspects

3. The Committee welcomes the State party's ratification of:

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

(b) The Council of Europe Convention on preventing and combating violence against women and domestic violence in 2015;

(c) The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, in 2015.

4. The Committee welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including the adoption of:

(a) Amendments to the Code of Criminal Procedure that eliminated the possibility to refuse to make available files in connection with remand or extension thereof, which entered into force on 1 July 2015; amendments establishing a time limit for examining complaints against pretrial detention to no later than 7 days from the date of the transmission of the complaint to the court; extending the delay for the submission of the bail bond whose application may result in converting pretrial detention into another coercive measure; and amendments pursuant to which pretrial detention is not extended for more than 12 months if the custodial sentence does not exceed 3 years, and to not more than 2 years when the custodial sentence does not exceed 5 years; amendments that introduced the possibility to use the assistance of an interpreter for communication between the suspect or the accused and the attorney, which entered into force on 1 July 2015;

(b) Amendment of criminal law provisions introducing ex-officio prosecution of sexual crimes specified in article 197-199 of the Penal Code, in 2014; and repealing article

* Adopted by the Committee at its sixty-seventh session (22 July-9 August 2019).

205 that abolished the previous mode of prosecution of rapes committed after 27 January 2014.

5. The Committee also welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including the:

(a) Adoption by the Council of Ministers of the National Programme for Counteracting Domestic Violence for 2014-2020, in 2014; and of the National Action Plan for Equal Treatment;

(b) Issuance by the Prosecutor General of Guidelines on prosecutors' conduct of proceedings for crimes related to deprivation of life and inhuman or degrading treatment or punishment, perpetrated by the Police officers or other public officials, in 2014;

(c) Adoption by Parliament of "The programme of the Modernisation of the Prison Service in 2017-2020", in 2016;

(d) Issuance by the Chief of Police of regulation No. 14 on counter-human trafficking activities, in 2016;

(e) Introduction of the electronic surveillance system as a form of custodial sentence for people sentenced to less than a year of imprisonment and the release of 2,735 such persons, in 2016;

(f) Entry into force of a document regulating the use of electroshock weapons by the police, in August 2018.

C. Principal subjects of concern and recommendations

Pending follow-up issues from the previous reporting cycle

6. In its previous concluding observations (CAT/C/POL/CO/5-6, para.29), the Committee requested the State party to provide further information regarding areas of particular concern, including on the strengthening of legal safeguards for persons deprived of their liberty (para. 8); on protection for asylum seekers (para. 13); on conducting prompt, impartial and effective investigations into all reports of torture or ill-treatment (para. 18); and follow-up information on remedies and redress provided to victims of torture and ill-treatment (para. 21). The Committee expresses its appreciation for the State party's follow-up response provided on 19 November 2014 (CAT/C/POL/CO/5-6/Add.1). It notes with regret, however, the absence of a reply to its request for additional information contained in the letter sent by the rapporteur for follow-up to concluding observations on 29 August 2016. In view of that information and the concerns described below (see paras. 12, 15, 16, 18, 25, 26, 31, 32, 34, 36 and 38 of the present concluding observations), the Committee considers that the recommendations in paragraphs 8, 13, 18 and 21 of its previous concluding observations have been partly implemented.

Definition of torture as a separate crime in the Criminal Code

7. The Committee is concerned:

(a) That its recommendations contained in three sets of previous concluding observations (A/55/44, paras. 85-95, CAT/C/POL/CO/4, para. 6 and CAT/C/POL/CO/5-6, para. 7) regarding the absence of a specific offence of torture in accordance with article 4, paragraph 2, of the Convention in the State party's Penal Code have not been implemented to date;

(b) At the continued absence of a definition of torture that includes all the elements contained in article 1 of the Convention and provides for punishment commensurate to the gravity of this crime;

(c) That various provisions of the Penal Code that continue to be "applied in cases of torture" cover a broader range of offences such as violation of bodily integrity, punishable threats, dependent person abuse, causing bodily injury or forcing another person by violence or unlawful threat into a specific behaviour, the extortion of confessions by a public officer

with the use of violence, unlawful threats or physical or psychological abuse cited by the delegation of the State party do not reflect the gravity of the crime adequately and render impossible fast and impartial investigations and the imposition of appropriate penalties on the perpetrators;

(d) That an attempt by the Ministry of Justice in 2017 to introduce a definition of torture in the Penal Code was defeated in the first reading in the Sejm, the lower house of the Polish Parliament;

(e) That the statute of limitations regarding acts of torture has not been unequivocally repealed (arts. 1, 2 and 4).

8. **The Committee:**

(a) **Reiterates its previous recommendations to the State party and urges it to take effective legislative measures to include torture as a separate and specific crime in its Penal Code; to adopt a definition of torture that covers all the elements contained in article 1 of the Convention;**

(b) **Urges the State party to ensure that penalties for torture are commensurate with the gravity of this crime, as set out in article 4, paragraph 2, of the Convention, which would also help to differentiate acts of torture from ill-treatment. In addition, the State party should ensure that perpetrators of torture are punished in accordance with the seriousness of the offence in keeping with article 4 (2) of the Convention;**

(c) **Once again draws attention to its general comment No. 2 (2007) on the implementation of article 2 of the Convention by States parties, which states that serious discrepancies between the Convention's definition of torture and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9);**

(d) **Urges the State party to ensure that the absolute prohibition of torture is non-derogable and that acts of torture are not subject to any statute of limitations, that they are not limited only to those arising from crimes against humanity and extreme suffering caused by an official;**

(e) **Requests the State party to provide it with information regarding the status and outcome of the analysis of whether torture should be included in the Polish Penal Code undertaken by the Ministry of Justice.**

Status of the Convention in the domestic legal order

9. While taking note of the assertion that the Convention is directly applicable in the State party, the Committee is concerned:

(a) That, according to available information, it was cited as a source of law for the first and only time in a ruling by a judge of the Regional Court in Lublin in 2018;

(b) That the implementation of the Convention in the State party cannot but be affected by reforms of its judicial system, including the Constitutional Tribunal, which hamper the constitutionally protected principle of judicial independence and enable the legislative and executive branches to interfere with the administration of justice (Report of the Special Rapporteur on the independence of judges and lawyers on his mission to Poland-A/HRC/38/38/Add.1, 5 April 2018) (arts. 1, 2 and 4).

10. **The State party should:**

(a) **Clarify the nature of the Convention's status in its domestic legal system and ensure that provisions of the Convention are fully applicable in the national legal order as a source of law;**

(b) **Ensure that judges, magistrates, prosecutors, lawyers and other public officials receive specific training on applying the Convention so that they are in a position to invoke the rights established in its provisions, assert them and apply them directly in court;**

(c) Provide the Committee with specific information on cases in which the Convention has been invoked and directly applied in domestic courts;

(d) Review the ongoing judicial reform to ensure that it complies with international standards of independence of the judiciary, principles of Rule of Law and separation of powers, as well as with the State party's own Constitution.

Use of evidence obtained by illegal means

11. The Committee is seriously concerned that article 168a of the Code of Criminal Procedure does not consider inadmissible in criminal proceedings evidence gathered illegally, including by way of a criminal offence, unless it has been obtained as a result of murder, deliberate damage to health or deprivation of liberty. It is concerned further that statistical data concerning cases in which charges have been dismissed on account of admission of evidence or testimonies obtained under torture or improper treatment are not collected and that forced confessions may therefore still be used as evidence in courts (arts. 2, 15 and 16).

12. **The Committee recommends that the State party:**

(a) Take effective steps to enact legislation that explicitly prohibits the admissibility of evidence obtained as a result of torture and ill-treatment in all judicial proceedings, in conformity with article 15 of the Convention, and repeal article 168a of the Code of Criminal Procedure;

(b) Ensure that courts examine the circumstances under which statements, and confessions, including self-incriminating statements of persons interrogated as witnesses, have been made and suspend proceedings until a claim of coerced confession has been thoroughly investigated;

(c) Take immediate steps to ensure that in practice statements made as a result of torture may not be invoked as evidence in any proceedings, except against the person accused of torture as evidence that the statement was obtained under torture;

(d) Ensure the review of convictions based solely on confessions, especially if they have been made under torture, conduct prompt and impartial investigations into such cases and ensure their so that persons convicted on the basis of coerced evidence are afforded a new trial and adequate redress and the perpetrators prosecuted and punished, including under the principle of command responsibility;

(e) Provide training to judges and prosecutors in order to ensure their ability to effectively identify torture and ill-treatment and investigate all allegations of confessions obtained under torture;

(f) Collect statistical information on testimonies that were dismissed on the basis because they were obtained under torture or improper treatment and provide it to the Committee in the next periodic report.

Recent amendments to the Penal Code

13. The Committee is gravely concerned about the amendments to the Penal Code adopted in May 2019 by the Sejm after only two days of deliberations that, according to the European Commissioner for Human Rights, would affect negatively certain categories of prisoners and would, inter alia, introduce harsher penalties for numerous crimes; raise the upper limit for prison sentences to 30 years as well as the lower limit; restrict possibility of handing down non-custodial sentences; extend the period of eligibility for conditional release; and raise from 25 to 35 years the period of imprisonment after which life-sentenced prisoners or those sentenced to at least 20 years of imprisonment may apply for conditional release; and introduce the penalty of life imprisonment without parole (arts. 2, 4, 11, 12, 13 and 16).

14. **The Committee calls the Polish Senate to give careful and thorough consideration to the substance of the amendments of the Penal Code adopted in May 2019 by the Sejm and their potential implications, including in light of the State party's international obligations. If adopted, these amendments could inter alia give rise to a significant**

increase in the country's prison population and would affect negatively the respect for the principle of human dignity and of the humanitarian approach to prisoners' treatment and rehabilitation enshrined in the Constitution of Poland and the international human rights instruments to which it is a party.

Fundamental legal safeguards

15. The Committee is concerned:

(a) That persons deprived of their liberty continue to not enjoy in practice all the fundamental legal safeguards from the very outset of their deprivation of liberty, such as prompt access to a lawyer or legal advisor before the first interrogation;

(b) That officers in police stations are not aware of their responsibility to provide persons entitled to state-funded legal aid with a list of on-duty attorneys and legal advisors, which can reportedly take days or even weeks, so that public defenders are generally not able to participate in the first questioning of an arrested person;

(c) That deficiencies in the system of police registers result in lawyers having difficulties in locating their clients before the first interrogation; that some police stations lack rooms that would guarantee their privacy, which obliges them to meet in corridors and in the presence of police officers;

(d) That the Code of Criminal Procedure continues to limit the confidentiality of lawyer-client communication, that restrictions relating to private communication may last up to 14 days and are not subject to judicial control;

(e) That prosecutors may decide that a suspect can be interrogated without the participation of their lawyer;

(f) That proposed draft amendments to the Executive Penal Code would limit the access of persons deprived to liberty to lawyers and would introduce body searches that may be considered degrading, including by persons who are not of the same sex; and that persons deprived of their liberty may not have prompt access to a medical examination (art. 2).

16. The State party should take effective measure to guarantee that all detained persons are afforded, in law and in practice, all fundamental legal safeguards from the very outset of their deprivation of liberty, in accordance with international standards, including the safeguards mentioned in paragraphs 13 and 14 of the Committee's general comment No. 2 (2008) on the implementation of article 2 of the Convention. In particular, it should:

(a) Take effective steps to ensure that all detained persons have prompt access to a legal assistance, including on-duty attorneys and legal advisors provided by state-funded legal aid, before the first interrogation;

(b) Ensure that officers in police stations are aware of their responsibility to provide persons entitled to state-funded legal aid with a list of on-duty attorneys and legal advisors;

(c) Ensure that the deprivation of liberty be recorded in a national register at all stages, including transfers to different facilities, that lawyers and legal advisors have access to them, and that lawyers and legal advisors are able to promptly access their clients and communicate with them in private in adequate premises;

(d) Review the provision of the Code of Criminal Procedure that allows for limiting the confidentiality of lawyer-client communication, subject it to judicial control and the possibility of appeal; and ensure that prosecutors do not interrogate suspects without the participation of their lawyers;

(e) Ensure that persons detained persons receive a medical examination in confidentiality by an independent doctor within 24 hours of their arrival in a place of detention; that they have the right to request and receive at any time an independent medical examination, out of sight and hearing of law enforcement staff, unless the doctor requests it; and that they are not subjected to searches amounting to degrading treatment by persons of the opposite sex;

(f) Take effective steps to bring its legislation and practice in line with international instruments to which it is a party, including the Convention, as well as, inter alia, Directive 2013/48 of the European Parliament and of the Council of European Parliament.

Pre-trial detention

17. The Committee is concerned:

(a) At the extent of application and the duration of pre-trial detention, that the Polish Code of Criminal Procedure does not provide for a maximum time of pre-trial detention;

(b) That pre-trial detention can be extended without justification; that courts have difficulties justifying extensions and that the Code of Criminal Procedure allows for six-month extensions of pre-trial detention after the first verdict of the court of first instance;

(c) That the Code of Criminal Procedure stipulates that pre-trial detention is not applied in cases when a crime carries a custodial sentence of one year and less; and that appeals against decisions on pre-trial detention have a low percentage of success (arts. 2, 14 and 16).

18. **The State party should:**

(a) Ensure that pre-trial detention is used as an exception, a measure of last resort and applied for a limited period of time; establish a maximum period prescribed by law and that it can be monitored by a court of law;

(b) Take measures to put a stop to the practice of extending pre-trial detention; and in particular the six-month extensions of pre-trial detention after the first verdict of the court of first instance allowed by the Code of Criminal Procedure, ensure that it is not prolonged arbitrarily and that pre-trial detainees are held separately from convicted prisoners;

(c) Consider replacing pre-trial detention with non-custodial measures, especially for sentences not exceeding two years and consider alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);

(d) Ensure that redress and compensation are provided to persons who are victims of unjustified prolonged pre-trial detention.

Police brutality

19. The Committee is seriously concerned about:

(a) Reports of excessive use of force by police, including with electric discharge weapons (tasers), against apprehended persons who were handcuffed or otherwise immobilized, despite the fact that the law stipulates the use of force only to ensure compliance with police orders;

(b) That officers who were charged with offences were not sentenced; that in one case it was “impossible to determine the identities of the police officers who were responsible for using violence”; and that persons who have suffered injuries by the police are mostly able to obtain justice only when applying to and receiving a judgement from the European Court of Human Rights;

(c) A credible report that a person who was beaten and had visible bruises and swelling and had signalled to the police that he had health problems was denied access to a medical doctor and that his injuries were not recorded in his apprehension record;

(d) The death in a police station in Wroclaw in May 2016 of Igor Stachowiak after four policemen used a stun gun against him while he was handcuffed; that despite being accused of committing a crime under article 247 of the Penal Code they returned to service after a short suspension; and that they have not been suspended from their duties while their case is still pending (arts. 2, 12, 13, 14 and 16).

20. **The State party should:**

(a) **Ensure that all allegations of torture and ill-treatment by law enforcement officials, as well as all deaths in custody, are investigated promptly, effectively and impartially by mechanisms that are structurally and operationally independent and with no institutional or hierarchical connection between the investigators and the alleged perpetrators; and ensure that perpetrators, if found guilty, are punished in a manner that is commensurate with the gravity of their acts;**

(b) **Ensure that all persons under investigation for having committed acts of torture or ill-treatment are suspended immediately from their duties and remain so throughout the investigation, while ensuring that the principle of presumption of innocence is observed;**

(c) **Implement the judgments of the European Court of Human Rights; expedite the criminal proceedings against the four police officers responsible for the death of Igor Stachowiak and inform the Committee about their outcome;**

(d) **Ensure the keeping of registers of injuries where cases of torture and ill-treatment can be recorded and ensure that all interrogation rooms in all parts of the country have closed-circuit television and the equipment to ensure the video and audio recording of interrogations;**

(e) **Ensure that the use of electrical discharge weapons (tasers) is strictly compliant with the principles of necessity, subsidiarity, proportionality, advance warning (where feasible) and precaution; and that they are not included as part of regular equipment of custodial staff in prisons and other places of deprivation of liberty, including police stations; Provide information on the 23 “eligible entities” which in accordance with national regulations are authorized to use electrical discharge weapons, and on the characteristics of “non-penetrating missiles”, the modalities of their use and effects on the human body;**

(f) **Systematically provide training to all law enforcement officials on the use of force, including in the context of crowd control, on the provisions of the United Nations Basic Principles on the Use of Firearms by Law Enforcement Officials, as well as on the Ordinance on the Use of Coercive Measures by the Police of 17 September 1990 and the Act on Coercive Measures and Arms of 24 May 2013.**

Rendition programme and other international practices

21. The Committee is concerned that more than a decade since the conclusion of the Central Intelligence Agency rendition and secret detention programmes (2001-2008), allegedly including torture and ill-treatment of persons suspected of terrorism-related crimes, the State party has failed to elucidate the alleged complicity and abuse of power by public servants in different towns in the period 2001-2005 who enabled the establishment of places of detention in Poland, and that the Regional Prosecutor’s Office in Krakow has not been able to produce a ruling in case ref. no. PR II Ds. 16.2016. The Committee also regrets the absence of requested information on diplomatic assurances or the equivalent thereof in relation to cases of refoulement, extradition or expulsion that may have taken place during the period under review (arts. 2, 3, 12 and 13).

22. **The Committee reiterates its recommendation to the State party to complete the investigation into allegations of its involvement in the Central Intelligence Agency High Value Detainees Programme of rendition and secret detention between 2001 and 2008 and to ensure that persons involved in the alleged crimes of torture and ill-treatment are held accountable. It urges the State party to expedite, to the extent possible, the investigation by the Regional Prosecutor’s Office in Krakow of case ref. no. PR II Ds. 16.2016. In addition, the State party should provide updated information on action by the State party pursuant to the issuance of the judgements by the European Court of Human Rights regarding the Al Nashiri and Husayn cases (also known as Abu Zubaydah), which had become final by 16 February 2016, including in the context of its ratification of the Rome Statute. Finally, the State party should provide information on**

any diplomatic assurances sought or given by the State party during the period under review.

Commissioner for Human Rights of Poland and the National Preventive Mechanism

23. The Committee is concerned:

(a) At reports that the Office of the Commissioner for Human Rights (Ombudsperson), which also incorporates the National Preventive Mechanism, has not received financial resources that would be sufficient to allow it to discharge its mandate fully and effectively and visit all places of deprivation of liberty;

(b) At reports of insufficient human and institutional and financial resources as well as very low visibility and knowledge among the general public and law enforcement agencies about the National Preventive Mechanism, which has impeded follow-up action after its visits to places of detention and hiring additional specialized staff;

(c) Personal attacks voiced against and criticism of the current Commissioner for Human Rights, Mr. Adam Bodnar, in particular after statements he made in relation to events that took place in June and July 2019;

(d) Credible information that the Commissioner for Human Rights, who is appointed by the Parliament, was called upon to resign by one of the Deputy Ministers of Justice one day after the consideration of the seventh periodic report of Poland to the Committee for which the Office of the Commissioner for Human Rights provided an alternative report that was posted on the Committee's web page, which may amount to reprisals against him for submitting a report to the Committee, that would constitute interference by the Executive in the functions of an institution established by the Legislature (art. 2).

24. **The State party should:**

(a) **Allocate the amount of financial resources requested by the Office of the Commissioner for Human Rights to enable it to discharge its mandate, and increase significantly the resources provided to the National Preventive Mechanism in order to enable it to function effectively, hire the necessary specialized staff and to fully implement its mandate in accordance with the Optional Protocol to the Convention, including to ensure follow-up to its visits to places of deprivation of liberty. In this connection, the Committee draws the State party's attention to the guidelines on national preventive mechanisms developed by the Subcommittee on Prevention of Torture (CAT/OP/12/5), according to which States parties should, inter alia, provide their national preventive mechanism with the necessary resources to operate effectively, ensure that it enjoys complete financial and operational autonomy when carrying out its functions and ensure the impartiality and independence of its members;**

(b) **Conduct an awareness-raising campaign in order to heighten knowledge among the general public, law enforcement agencies and medical institutions about the mandate and work of the National Preventive Mechanism;**

(c) **Ensure the independence, security and ability to function of the Commissioner for Human Rights so that he can fully discharge his constitutional mandate, in keeping with international standards.**

Non-refoulement and amendments to the Law on Protection

25. The Committee is concerned:

(a) That persons in need of international protection are not always given access to the territory of Poland, in particular at the Terespol border crossing with Belarus and the Medyka border crossing with Ukraine, even in the case of vulnerable persons;

(b) That the draft amendments to the Law on Protection adopted in February 2019 may limit further access to the State party's territory with the introduction of border proceedings under an accelerated procedure where a decision is given in 20 days that would

result in the refusal of asylum claims and that appeals to the court within border proceedings would not have a suspensive effect;

(c) That families with children and unaccompanied minors over 15 years of age are placed in guarded centres for foreigners where conditions require improvements.;

(d) At the insufficient capacity to identify asylum seekers, refugees and other persons in need of international protection who are survivors of torture and lack of adequate protection and care for survivors of sexual and gender-based violence (arts. 2, 3, 11, 12, 13 and 16).

26. The State party should:

(a) Enshrine in its legislation the principle that detention of asylum-seekers, and in particular children and vulnerable persons, should be used as a measure of last resort, for as short a period as possible and in facilities appropriate for their status;

(b) Ensure that that it complies fully with its obligations under article 3 of the Convention and that individuals under the State party's jurisdiction receive appropriate consideration by the competent authorities and are guaranteed fair and impartial review by an independent decision-making mechanism on expulsion, return or extradition, with suspensive effect, and that they have access to legal assistance;

(c) Refrain from placing persons in need of international protection, and in particular children, in guarded centres for foreigners;

(d) Ensure the rapid and appropriate identification of persons in a vulnerable situation, including survivors of torture and ill-treatment, as well as sexual and gender-based violence, and provide them with adequate access to health care and psychological services;

(e) Refrain from engaging in pushbacks and refolement, and set up accessible and protection-sensitive entry systems at border crossing points;

(f) Consider ratifying the 1954 Convention Relating to the Status of Stateless Persons and the 1961 Convention on the Prevention of Statelessness.

Training

27. The Committee is concerned that specific training on the provisions of the Convention, and in particular the absolute prohibition of torture, is not part of the training of law enforcement and military officers, prison staff, border guards, judges, prosecutors, forensic doctors and medical personnel. It is also concerned that the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is not part of the mandatory training provided to medical personnel and other public officials engaged in the custody, interrogation and treatment of persons subjected to any form of arrest, detention or imprisonment (art. 10).

28. The State party should:

(a) Ensure that law enforcement and military officers, prison staff, border guards, judges, prosecutors, forensic doctors and medical personnel receive training on the provisions of the Convention, and in particular on the absolute prohibition of torture;

(b) Ensure that medical personnel and other public officials engaged in the custody, interrogation and treatment of persons subjected to any form of arrest, detention or imprisonment receive mandatory training on the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol);

(c) Develop and implement a methodology to assess the effectiveness and impact of educational and training programmes relating to the Convention and the Istanbul Protocol;

(d) Ensure that all law enforcement officers, civilian judges, military judges and public prosecutors receive mandatory training emphasizing the link between non-

coercive interrogation techniques, the prohibition of torture and ill-treatment, and the obligation of the judiciary to invalidate confessions made under torture.

Conditions of detention in police detention units and prison facilities

29. The Committee is concerned:

(a) At reports of inadequate material conditions in police detention units, including sanitary facilities, exercise yards and the quality of food; and in particular at reports that the officers employed at the municipal police station in Białystok had complained that the living conditions there, including an informal ban on washing the bedding, blankets, pillow and mattresses used by detainees endangered the lives and health of both the detainees and police officers;

(b) That all cells in police detention units are located in the basements of the buildings housing them, which results in inadequate ventilation and access to light;

(c) At the increase in the prison population during the period under review to an occupancy rate of around 92 per cent; and that some prisoners are housed in facilities that fall below the national legal standard of 3 square meters per person in cells that are too narrow;

(d) That there is mould on the walls and ceilings of cells of prisoners incarcerated in historic buildings and older penitentiary units, which exposes them to mould spores; that sanitary annexes have not been removed from all cells; that not all sanitary units have shower stalls and toilets allowing for adequate privacy of inmates; and that pretrial detainees and prisoners in closed penitentiary facilities remain in their cells 23 hours a day;

(e) That health care in prisons is provided by medical staff employed by the Prison Service, which may hinder their clinical independence and affect the trust-based doctor-patient relations, especially since the law requires medical practitioners to certify whether a prisoner is fit for punishment in a disciplinary cell, which is contrary to the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules); that there is a considerable shortage of medical staff, including psychiatrists and slowness in referrals to outside specialists; and that diagnoses by prison medical staff are often incorrect and superficial and have resulted in deaths in custody;

(f) That prisoners are classified not in terms of the level of danger that they pose to other prisoners but according to the length of their prison sentence, which may lead to inter-prisoner violence.

30. **The State party should:**

(a) **Ensure adequate material conditions in all police detention units, including sufficient ventilation and lighting, clean bedding and appropriate sanitary conditions; where possible ensure that police detention facilities are above the ground;**

(b) **Implement rigorously “The programme of the Modernisation of the Prison Service in 2017-2020”; provide updated information to the Committee on the outcome of the work of the Task Force for Developing Solutions to Reform Penitentiary Services; and consider increasing the use of non-custodial measures and alternatives to detention, in keeping with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules);**

(c) **Prevent overcrowding with a view to bringing conditions of detention in line with international standards enshrined in the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules) and ensure that prisoners have living space in accordance with the national standard;**

(d) **Build new and refurbish and modernize historic and older penitentiary units, including with regard to sanitation and toilet facilities, lighting, ventilation and heating; remove all inmates from cells with mould; provide for meaningful activity and sufficient exercise of all persons deprived of their liberty;**

(e) Ensure the clinical independence of medical staff in prisons and transfer responsibility for them to the Ministry of Health; hire additional qualified medical and psychiatric personnel as well as psychologists; enable the referral of inmates requiring specialized medical care to outside medical facilities without delays for administrative reasons or lack of escorts from among prison staff;

(f) Introduce a risk assessment tool across the prison system; provide training to penitentiary staff in the management of prisoners, prevention of violence, self-mutilation and suicides; and promptly, thoroughly and impartially investigate all incidents of violence and deaths in custody, ensuring independent forensic examination.

Investigation of acts of torture and an independent complaints mechanism

31. The Committee is concerned:

(a) About the low number of conclusive prosecutions of alleged acts of torture of persons deprived of their liberty, in particular by law enforcement officials, other than those pursuant to cases brought before the European Court of Human Rights; and the discrepancy between the number of complaints submitted by victims of torture and ill-treatment and the number of sentences handed down, despite the issuance by the General Public Prosecutor of guidelines regarding crimes related to the deprivation of life or inhuman or degrading treatment and punishment where the perpetrator is a police officer or other public official;

(b) That the merging of the functions of Minister of Justice and Prosecutor-General may have a negative effect regarding investigations into violations of the Convention;

(c) That out of 39,000 complaints submitted by inmates concerning mainly their treatment by Prison Service officers, living conditions and health care in 2016, only 377 were found justified;

(d) That budgetary and staffing constraints curtail the possibility of the National Preventive Mechanism to monitor all places of deprivation of liberty and to receive and process complaints.

32. **The State party should:**

(a) Ensure that all reports of torture or ill-treatment are investigated and establish an investigative mechanism that is capable of carrying out independent and effective criminal investigations and prosecutions of allegations of torture and ill-treatment committed by public officials and which operates independently;

(b) Ensure that complainants are protected against any ill-treatment, intimidation or reprisals as a consequence of their complaint; that they are duly informed of the actions taken on their complaint; and that victims are provided with redress and compensation;

(c) Establish the reasons for the discrepancy between the number of complaints submitted with regard to living conditions and health care in prisons and those found as justified;

(d) Keep a centralized register of complaints of torture and ill-treatment that includes information on the corresponding investigations, trials and criminal or disciplinary penalties imposed;

(e) Provide additional financial resources to the National Preventive Mechanism in order to enable it to better fulfil its functions and carry out more visits to all places of deprivation of liberty, including psychiatric institutions and social care homes, without prior notice; that is able to meet in private with detainees; raise with the authorities detention conditions or conduct in places of detention amounting to torture and ill-treatment; ensure that its recommendations and reports to the authorities are made public;

(f) Grant access to independent organizations for monitoring purposes, including national and international civil society organizations to all facilities where

persons are deprived of their liberty, including psychiatric institutions and migrant detention centers;

(g) Compile statistical data on the number of complaints, investigations, prosecutions, convictions and penalties in cases of torture and ill-treatment.

Gender-based, domestic and other forms of violence and access to legal abortions

33. The Committee is concerned:

(a) That domestic violence, including marital rape, are not separate offences in the Penal Code;

(b) That there is a relatively small number of cases of domestic violence that results in the conviction of perpetrators; that prosecution should be envisaged only for recurring acts and that the conduct of the proceedings is dependent on the victim's consent;

(c) At the absence of sufficient support for victims of domestic abuse, as well as actions or omissions by State agents and others that engage State responsibility in accordance with the Convention, including the inadequate number of specialized support shelters in the country, and the absence of assistance in finding housing away from the perpetrator of violence;

(d) That while there exist three sets of circumstances in which abortions are legal in Poland within a 12-week period, there is no effective regulation of conscience-based refusals by doctors to perform abortions, no guidelines on how to access legal abortion services, including no information on the lack of obligation to seek additional medical opinions of a specialist, joint consultation or confirmation by a ward administrator, in cases when denial of procedure will result in physical and mental suffering so severe in pain and intensity as to amount to torture; and that there is an excessive delay of 30 days is given to the Medical Board to issue a decision, which may also be attributed to actions or omissions by State agents and others that engage State responsibility in accordance with the Convention.

34. **The State party should:**

(a) Amend its legislation to include domestic violence, including marital rape, as specific crimes in the Penal Code that entails ex officio prosecutions; and ensure that all cases of gender-based violence against women and girls, especially those involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are thoroughly investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately and that the victims receive redress, including adequate compensation;

(b) Ensure the full implementation of the National Programme for Counteracting Domestic Violence, including by gathering data on the extent of such violence, and of the National Action Plan for Equal Treatment; and refrain from threats to withdraw from the Council of Europe Convention on preventing and combating violence against women and domestic violence;

(c) Encourage victims to report cases of violence to the authorities; ensure that all allegations of violence against women, including domestic and sexual violence, are registered by the police and are promptly, impartially and effectively investigated;

(d) Ensure that all victims of gender-based and domestic violence benefit from protection, including restraining orders, and have access to medical, social and legal services, including counselling, redress and rehabilitation, as well as safe and adequately funded government-run shelters throughout the country and assistance in finding other accommodation;

(e) Consider de-criminalizing abortion and issue guidelines on how to proceed with legal abortions being mindful possible severe physical and mental consequences of denial, including after conscience-based refusals by doctors to perform abortions; and without requirements not specified in law; ensure that the Medical Board issues a decision within 10 days; and ensure the provision of post-abortion health care for women irrespective of whether they have undergone an illegal or legal abortion

and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.

Situation of vulnerable persons and hate crimes

35. The Committee is concerned:

(a) That persons with intellectual and psychosocial disabilities have been placed in psychiatric hospitals and other public care institutions and have been detained there for prolonged periods, including up to 42 and 49 years, or for a dozen years for relatively small misdemeanours, which would have been much less than a prison sentence for the same offence; are often arbitrarily deprived of legal capacity; and have often been placed and received treatment in such institutions without their consent, in the absence of appropriate safeguards;

(b) That women and girls with intellectual disabilities have been subjected to forced and coerced sterilizations, performed without their free and informed consent, both by institutions and at the request of their relatives;

(c) That persons with psychosocial disabilities who have completed their prison sentences may be placed in the National Centre for the Prevention of Antisocial Behaviour on application from the director of the penitentiary facility where their detention could constitute double punishment for the same act and could be continued indefinitely;

(d) While acknowledging the State party's statement that all hate crimes are of "particular interest" to the Public Prosecutor's Office and Police, the Committee remains concerned at the incidents of physical assaults and hate speech against migrants from Africa, Asia, Arab migrants, as well as Roma and Ukrainians; and that cases of hate crimes are substantially underreported due to lack of confidence in the police, according to a recent Survey report on the nature and scale of unreported hate crimes developed by ODIHR and the NHRC of Poland; and that the violent incidents against LGBTI persons continue to be reported and that these acts of violence are not adequately investigated and prosecuted;

(e) About the existing flaws in rules concerning mechanical restraints and seclusion that do not apply to chemical restraints; and that the rules also do not provide for a continuous, direct and personal supervision of an immobilized patient by a nearby member of health care staff.

36. **The State party should:**

(a) Ensure that persons with intellectual and psychosocial disabilities are not deprived of their legal capacity without a legal basis, including a careful independent mental evaluation procedure, access to assisted decision-making and subject to judicial review; and that they are not placed in and receive treatment in psychiatric hospitals with their consent unless on a legal basis, as a matter of last resort, including a careful forensic psychiatric evaluation, access to assisted decision-making and subject to judicial review;

(b) Promptly, impartially and effectively investigate all allegations of involuntary sterilization and prosecute and, if found responsible, punish perpetrators. Medical personnel who have conducted sterilizations without free, full and informed consent should be held criminally liable, prosecuted and punished. They should also be trained on appropriate means of obtaining free and informed consent from women undergoing sterilization. The State party should establish an effective compensation mechanism through which victims of involuntary sterilization have access to fair and adequate redress, and consider extending the time limit for filing compensation claims;

(c) Every case of placement of persons in the National Centre for the Prevention of Antisocial Behaviour should be subject to strict judicial review and scrutiny by a medical board; persons placed in the Centre should have access to legal assistance and the right of appeal;

(d) Ensure that all residential centres are regularly monitored and that the recommendations made by the monitoring bodies, including the NPM, are fully implemented;

(e) **Ensure that all cases of hate crimes are reported and that reasons for the gross underreporting are addressed as a matter of urgency through appropriate measures, including training of and trust-building activities within the national police. The Committee reiterates its previous recommendation to take all necessary measures to combat discrimination and violence against persons of Arab, Asian and African origin, lesbian, gay, bisexual and transgender people as well as persons belonging to the Roma community; and to take effective measures to prevent all manifestations of hate crimes and ensure prompt and effective investigation and appropriate prosecutions of all such incidents;**

(f) **Amend the rules concerning mechanical restraints and seclusion, as well as the supervision of the use of chemical restraints and ensure the continuous and direct monitoring of immobilized patients; and provide appropriate training for health care staff in the use of means of restraint in psychiatric institutions.**

Trafficking in persons

37. While welcoming the adoption of the police regulation on counter-human trafficking activities on 22 September 2016, the Committee is concerned that the State party lacks a central mechanism to identify victims of trafficking, especially forced labour victims in the shipbuilding, agriculture and construction sectors. While investigations are sometimes opened, as in the recent case of 107 North-Koreans, the investigations appeared to be ineffective and lack impartiality, particularly with regard to interpretation and formal proceedings for those investigated. In addition, the Committee regrets that there is no clear definition of forced labour in the Criminal Code and there is inadequate training for law enforcement personnel on identifying victims of forced labour (arts. 2, 10, 12, 13, 14 and 16).

38. **The State party should:**

(a) **Enforce domestic anti-trafficking laws and policies, take effective measures to prevent human trafficking and increase protection for victims of trafficking, including victims of forced labour in agriculture, shipbuilding and construction;**

(b) **Promptly, effectively and impartially investigate, prosecute and punish the crime of trafficking in persons and related practices and ensure the necessary procedural guarantees during the investigations such as independent interpreters;**

(c) **Provide redress to victims of trafficking, including legal, medical and psychological aid and rehabilitation, as well as adequate shelters and assistance in reporting incidents of trafficking to the police;**

(d) **Provide mandatory and continuous training on trafficking to all justice and law enforcement personnel;**

(e) **Systematically monitor and evaluate the impact of measures against trafficking and compile data on investigations, prosecutions and punishments against traffickers.**

Follow-up procedure

39. **The Committee requests the State party to provide, by 9 August 2020, information on follow-up to the Committee's recommendations on ensuring the independence, security and ability to function of the Commissioner for Human Rights; the prevention and prosecution of police brutality; and clinical independence of medical personnel and improving the medical care provided to prisoners (see paragraphs 24 (a) and (c), 20 (a) and 30 (e)). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.**

Other issues

40. **The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party.**

41. **The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its dissemination activities.**

42. **The Committee encourages the State party to submit its next periodic report, which will be its eighth, by 9 August 2023. As the State party stated during the review that gave rise to these recommendations that it had accepted the simplified reporting procedure, the Committee will in due course transmit to the State party a list of issues prior to reporting, in accordance with that procedure.**
