



# International Covenant on Civil and Political Rights

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## Human Rights Committee

100th session

Geneva, 11–29 October 2010

### Consideration of reports submitted by States parties under article 40 of the Covenant

#### Concluding observations of the Human Rights Committee

##### Poland

1. The Committee considered the sixth periodic report of Poland (CCPR/C/POL/6) at its 2746th and 2747th meetings (CCPR/C/SR.2746 and 2747), held on 12 and 13 October 2010, and adopted the following concluding observations at its 2766th meeting (CCPR/C/SR.2766) on 26 October 2010.

#### A. Introduction

2. The Committee welcomes the submission of the sixth periodic report of Poland, submitted in accordance with the guidelines and the inclusion in the report of information on a number of measures taken to address the concerns expressed in the Committee's previous concluding observations (CCPR/CO/82/POL). It welcomes the dialogue that the Committee held with the high-level delegation, the detailed written replies (CCPR/C/POL/Q/6/Add.1) submitted in response to the Committee's list of issues and the additional information and clarifications provided during the consideration of the report.

#### B. Positive aspects

3. The Committee welcomes the following positive developments during the reporting period under consideration:

- (a) The adoption in 2005 of the Law on Domestic Violence and the approval in 2006 of the National Programme on Preventing Domestic Violence 2006–2016;
- (b) The continuation until 2013 of the National Programme against Racial Discrimination, Xenophobia and Related Intolerance;
- (c) The reduction in the number of persons held in pretrial detention;

- (d) The amendment to the Penal Code in September 2010 to include a definition of trafficking in human beings; and
- (e) The adoption in 2005 of the Law on National and Ethnic Minorities and on the Regional Language.

### C. Principal subjects of concern and recommendations

4. The Committee is concerned that the definition of a terrorist crime, as laid down in article 115 of the Penal Code, is broad and does not adequately define the nature and consequences of the acts (art. 2).

**The State party should ensure that the Penal Code not only defines terrorist crimes in terms of their purpose, but also narrowly defines the nature of those acts.**

5. The Committee is concerned that the Law on Equal Treatment is not exhaustive and does not cover discrimination based on sexual orientation, disability, religion or age in the fields of education, health care, social protection and housing (art. 2).

**The State party should further amend the Law on Equal Treatment so that the issue of discrimination based on all grounds and in all areas is adequately covered.**

6. The Committee is concerned about a significant rise in cases of racial hatred filed with law enforcement agencies, but notes with regret the reportedly low investigation and prosecution rate. The Committee also remains concerned about persistent manifestations of anti-Semitism, including physical attacks, desecration of Jewish cemeteries and the dissemination of anti-Semitic propaganda through the Internet and print media, despite numerous measures taken by the State party (art. 2).

**The State party should step up efforts to promote tolerance and combat prejudice, particularly within the National Programme against Racial Discrimination, Xenophobia and Related Intolerance, which was extended until 2013. It should pay particular attention to the monitoring of the impact of the previous and current national programmes. The State party is furthermore requested to include in its next periodic report detailed information on the number of investigations carried out into incidences and manifestations of anti-Semitism, as well as prosecutions instigated and sentences passed in each case.**

7. The Committee remains concerned about the continued social marginalization and discrimination faced by members of the Roma minority, especially in the fields of education, employment and housing (arts. 2, 26 and 27).

**The State party should continue to take all necessary measures to ensure the practical enjoyment by the Roma of their rights under the Covenant by implementing and reinforcing effective measures to prevent and address discrimination and the serious social and economic situation of the Roma.**

8. The Committee notes with concern a significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people and, since 2005, in the number of cases based on sexual orientation filed with the Ombudsman. The Committee also regrets the absence of the provision in the Penal Code of hate speech and hate crimes based on sexual orientation or gender identity as punishable offences (art. 2).

**The State party should ensure that all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity are thoroughly investigated. It should also: legally prohibit discrimination on the**

**grounds of sexual orientation or gender identity; amend the Penal Code to define hate speech and hate crimes based on sexual orientation or gender identity among the categories of punishable offences; and intensify awareness-raising activities aimed at the police force and wider public.**

9. While the Committee welcomes efforts to increase the proportion of women in the public and private sector, it remains concerned about the continued underrepresentation of women in senior positions in the public and political sphere, in particular in Parliament, Government administration, the judiciary, civil service, academia, police and prison service. The Committee remains concerned about the unequal remuneration between men and women in senior-level management positions. Finally, it regrets the abolition in 2005 of the Office of the Government Plenipotentiary for the Equality of Men and Women (art. 3).

**The State party should intensify its efforts to achieve equitable representation of women in Parliament and at the highest levels of the Government, judiciary, public service, academia, police force and prison service, within specific and urgent time frames. It should also ensure that women enjoy equal pay for work of equal value, especially in senior management positions. Finally, the State party should reinstitute the Office of the Government Plenipotentiary for Equality of Men and Women as an independent national equality body.**

10. The Committee expresses its concern about: (a) the continued problem of domestic violence; (b) the high percentage of dismissals of domestic violence cases at the prosecution level; (c) lengthy prosecution procedures, preventing victims from filing a case and increasing the vulnerability of victims; and (d) an insufficient number of specialist support centres for victims of domestic violence. It also notes that, although the law provides for restraining orders against perpetrators, police do not have the authority to issue immediate restraining orders at the scene of an alleged crime (art. 3).

**The State party should amend the Law on Domestic Violence to empower police officers to issue immediate restraining orders at the scene. It should incorporate domestic violence issues into the standard training offered to law enforcement and judicial officials. It should ensure that victims of domestic violence have access to assistance, including legal and psychological counselling, medical help and shelter.**

11. The Committee notes that, on 21 March 2000, the State party signed the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, but that it has not yet ratified it (art. 6).

**The State party is invited to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.**

12. The Committee is concerned that, in practice, many women are denied access to reproductive health services, including contraception counselling, prenatal testing and lawful interruption of pregnancy. It notes with concern that procedural safeguards contained in article 39 of the Act of 5 December 1996 on the Medical Profession (“conscience clause”) are often inappropriately applied. It also notes with concern that illegal abortions are reportedly very common (with estimates of 150,000 illegal abortions per year), that unsafe abortions have, in some cases, caused women’s deaths and that those aiding or abetting abortions (such as husbands or parents) have been convicted. It finally notes with concern that a medical commission’s decision on a complaint relating to a dissenting medical opinion about an abortion can be unduly delayed because of the 30-day response deadline (art. 6).

**The State party should urgently review the effects of the restrictive anti-abortion law on women. It should conduct research into and provide statistics on the use of illegal abortion. It should introduce regulations to prohibit the improper use and performance of the “conscience clause” by the medical profession. The State party should also drastically reduce medical commissions’ response deadline in cases related to abortions. Finally, the State party should strengthen measures aimed at the prevention of unwanted pregnancies by inter alia making a comprehensive range of contraceptives widely available at an affordable price and including them on the list of subsidized medicines.**

13. The Committee is concerned about reports of excessive use of force by law enforcement officials and a rise in the number of investigations of misconduct. The Committee notes, however, that incidents of police violence are not always reported owing to victims’ fear of being prosecuted themselves. It also notes with concern that complaints of persons placed in correctional facilities and detention centres are handled by units of the prison service, who examine the formal criteria relating to the justifiability of the complaints and the overall circumstances connected with the event described in the complaint (art. 7).

**The State party should intensify its efforts to eradicate cases of police misconduct, through, inter alia, training and the thorough and impartial investigation and prosecution of those responsible. It should also establish a competent, independent and impartial body to investigate police misbehaviour, providing for the possibility of complainants (or their agents) to submit a complaint directly and confidentially to this body.**

14. The Committee is concerned that the Criminal Code does not contain a legislative provision protecting victims of trafficking from being prosecuted, detained or punished for the illegality of their entry or residence or for the activities in which they are involved as a direct consequence of their situation as trafficked persons (art. 8).

**The State party should include in its Criminal Code a provision protecting victims of trafficking from prosecution, detention or punishment for activities they were involved in as a direct consequence of their situation as trafficked persons. The State party should furthermore take measures, including legislative, to ensure that a trafficked victim’s protection is not made conditional upon the person’s cooperation in legal proceedings.**

15. The Committee is concerned that a secret detention centre reportedly existed at Stare Kiejkuty, a military base located near Szymany airport, and that renditions of suspects allegedly took place to and from that airport between 2003 and 2005. It notes with concern that the investigation conducted by the Fifth Department for Organized Crime and Corruption of the Appellate Prosecution Authority in Warsaw has not yet been concluded (arts. 2, 7 and 9).

**The State party should initiate a prompt, thorough, independent and effective inquiry, with full investigative powers to require the attendance of persons and the production of documents, to investigate allegations of the involvement of Polish officials in renditions and secret detentions and to hold those found guilty accountable, including through the criminal justice system. It should make the findings of the investigation public.**

16. Despite the decrease in the number of persons in pretrial detention, the Committee is concerned that the length of pretrial detention can last up to two years, as specified in the Code of Criminal Procedure, contributing to the problem of overcrowding. It also notes with concern that, in practice, the two-year limit continues to be exceeded and that the

number of complaints of violations of the right to a fair trial within a reasonable time has significantly increased in 2009 compared to 2008 (art. 9).

**The State party should take additional effective legal and other measures to reduce the period of pretrial detention, in full compliance with article 9, paragraphs 3 and 5, of the Covenant, and ensure that it is only used as an exceptional measure for a limited period of time. The State party should consider a maximum, non-extendible term of pre-trial detention, and intensify the use of alternative measures to pretrial detention.**

17. The Committee is concerned that overcrowding in detention centres and prisons continues to be a problem (art. 10).

**The State party should take urgent measures to address overcrowding in detention centres and prisons, including through increased resort to alternative forms of punishment, such as electronic monitoring and parole, and reduce the use of pretrial detention.**

18. The Committee is concerned about the absence of specific laws concerning the detention of foreigners after the deadline for their expulsion and that some have been detained in transit zones beyond the deadline of their expulsion without a court order. It also notes with concern reports of inadequate medical assistance in some detention centres for asylum-seekers, as well as of poor conditions in transit zones and deportation detention centres where foreign nationals awaiting deportation are held. Finally, the Committee is concerned about reports that detained foreigners are often unable to learn about their rights, as boards containing such information are often displayed only in offices and interrogation rooms and only in Polish, and some interpreters are not sufficiently qualified to translate (art. 12 and 14).

**The State party should take measures to ensure that the detention of foreigners in transit zones is not excessively protracted and that, if the detention is to be extended, the decision is adopted by a court. The State party should ensure that the regime, services and material conditions in all deportation detention centres are in conformity with minimum international standards. Finally, the State party should ensure that detained foreigners have easy access to information on their rights, in a language they can understand, even if this requires the provision of a qualified interpreter.**

19. The Committee is concerned about reports of poor administration and inadequate staffing of the court system and a continuing backlog of cases, the high cost of legal action and the level of compensation in cases of undue delay. It is also concerned that court orders are frequently not, or belatedly, implemented and are poorly enforced (art. 14).

**The State party should urgently improve the functioning of the judicial system, including through increasing the number of qualified and professionally trained judicial personnel, and training judges and court staff in efficient case-management techniques. It should also ensure that adequate compensation is awarded in cases related to lengthy proceedings.**

20. The Committee reiterates its concern that persons detained cannot enjoy their right to legal aid from the beginning of their detention. It notes with concern that prosecutors, or a person authorized by the prosecutor, are allowed to be present at meetings between a suspect and his/her counsel, and that prosecutors can order that a suspect's correspondence with counsel be inspected. The Committee notes with concern that correspondence between a detained suspect and his/her counsel is routed through the administration of the pretrial detention centre, resulting in some cases in a delivery time of between four and six weeks (art. 14).

**The State party should ensure that persons deprived of their liberty: (a) have immediate access to legal counsel from the beginning of their detention; (b) are able to meet with their lawyers in private, including prior to a court hearing; and (c) can correspond with their lawyer confidentially in all instances, without external monitoring, and in an expeditious manner.**

21. The Committee notes with concern that the Lustration Law Act of 2006 and the Criminal Procedure Code restrict access by a person against whom lustration proceedings have been initiated to classified archive documentation and case files, in the period leading up to the court proceedings (arts. 14 and 17).

**The State party should amend the Lustration Law Act of 2006 to ensure that persons against whom lustration proceedings have been initiated have full and unhindered access to all case files and classified archive documentation.**

22. The Committee is concerned that, despite the amendment to the Penal Code of 8 June 2010, the offence of slander is still penalized with deprivation of liberty for one year, as specified in article 212(2) of the Penal Code (art. 19).

**The State party should expedite the process of amending the Penal Code to abolish imprisonment for press offences.**

23. The Committee is concerned that, under the Assemblies Act of 5 July 1990, the length of the appeals procedure against a prohibition to hold an assembly may jeopardize the enjoyment of the right of peaceful assembly (art. 21).

**The State party should introduce legislative amendments to the Assemblies Act in order to ensure that appeals against a ban to hold a peaceful assembly are not unnecessarily protracted and are dealt with before the planned date.**

24. The Committee is concerned that children who have run away from foster care centres can allegedly be placed in police custody centres for children (art. 24).

**The State party should introduce new legislation governing in detail the living conditions to be secured in police custody centres for children and the rules governing children's entry and stay in such facilities. It should also ensure that children who have not committed a punishable act are not placed in such custody centres.**

25. The State party should widely disseminate the text of its sixth periodic report and the present concluding observations.

26. In accordance with article 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, additional information on the assessment of the situation and the implementation of the Committee's recommendations in paragraphs 10, 12 and 18.

27. The Committee requests the State party to provide in its next report, which it is scheduled to submit by 26 October 2015, information on its other recommendations and on the Covenant as a whole.