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COMMITTEE AGAINST TORTURE
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ADVANCED UNEDITED VERSION

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION

Conclusions and recommendations of the Committee against Torture

POLAND

1. The Committee considered the fourth periodic report of Poland, (CAT/C/67/Add.5) at its 769th and 772nd meetings, held on 10 and 11 May 2007 (CAT/C/SR.769 and CAT/C/SR.772), and adopted, at its 776th meeting on 15 May 2007 (CAT/C/SR.776), the following conclusions and recommendations.

A. Introduction

2. The Committee welcomes the submission of the State party's fourth periodic report and the information therein. The Committee expresses its appreciation for the dialogue with the State party's delegation and commends the State party for the detailed responses to the list of issues in written form (CAT/C/POL/Q/4/Rev.1.add.1), which facilitated the discussion between the delegation and the Committee members.

3. The Committee expresses its appreciation for the high-level delegation, comprising representatives from several departments of the State party, and the efforts made to provide additional information which facilitated a constructive oral exchange during the consideration of the report.

B. Positive aspects

4. The Committee notes with satisfaction that in the period since the consideration of the last periodic report, the State party has ratified or acceded to the following international human rights conventions and protocols:

- a) The Optional Protocol to the Convention of the Rights of the Child on the involvement of children in armed conflict on 7 May 2005 ;
- b) The Optional Protocol to the Convention of the Rights of the Child on the sale of children, child prostitution and child pornography on 4 March 2005;
- c) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women on 22 March 2004;
- d) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment on 22 June 2006;
- e) The Rome Statute of the International Criminal Court on 1 July 2002;
- f) The Convention against Transnational Organized Crime on 29 September 2003;
- g) The Protocol to the Convention against Transnational Organized Crime to prevent, suppress and punish trafficking in persons, especially women and children, on 25 December 2003; and
- h) The Protocol to the Convention against Transnational Organized Crime against the smuggling of migrants by land, sea and air on 28 January 2004.
- i) The Committee also notes with appreciation the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular:
 - j) Law of June 2003 Granting Protection to Aliens on the Territory of Poland;
 - k) Law of January 2005 on National and Ethnic Minorities and on Regional Languages;
 - l) The ongoing National Plan for Combating and Preventing Trafficking in People;
 - m) National Programme for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance established in 2003;
 - n) The setting up in 2006 of the institution of the Ombudsman for Mental Hospitals Patients; and
 - o) The National Programme for Crime Victims set up in February 2006.

C. Principal subjects of concern and recommendations

Definition of torture

5) The Committee regrets that the State party has not changed its position not to incorporate the Convention into Polish law and it reiterates the concern expressed in its previous conclusions and recommendations (A/55/44, paras. 85-95) with regard to the absence of a specific offence of torture, consistent with articles 1 and 4, paragraph 2, of the Convention. (arts. 1 and 4)

The Committee, recalling its previous recommendations (A/55/44, paras. 85-95), reiterates its view that the State party should enact a specific offence of torture, as defined in article 1 of the Convention, in its Criminal Code making it a punishable offence as set out in article 4, paragraph 2, of the Convention.

Pre-trial detention

6) The Committee expresses its concern at the length of the pre-trial detention, which under the Code of Criminal Procedure can last up to two years, and at the fact that Polish legislation does not establish a time limit for pre-trial detention upon the commencement of the court proceedings. (arts. 2 and 11)

The State party should adopt appropriate measures to ensure that its pre-trial detention policy meets international standards and it is only used as an exceptional measure for a limited period of time. The State Party should consider using measures alternative to pre-trial detention.

Fundamental safeguards

7) The Committee is concerned at restrictions that might be imposed on fundamental legal safeguards for persons detained by the police, particularly on the right of access to a lawyer from the outset of the detention, including during the stages of the preliminary investigation, as well as to consult a lawyer in private. (arts. 2 and 11)

The State party should take effective measures to ensure that all fundamental legal safeguards for persons detained by the police, particularly the right to access a lawyer and to consult with him/her in private, are respected from the very outset of the detention, including during the stages of the preliminary investigation.

8) The Committee notes the adoption of a “shortened trial procedure” as a component of the reform of the Code of Criminal Procedure (art. 387) and it would be concerned if it gave rise to undue pressure being brought to bear on suspects to avail themselves of the procedure. (art. 2)

The State party should take all necessary measures to guarantee the voluntary nature of any such agreements.

9) The Committee regrets the lack of an appropriate system of legal aid in Poland and, in particular, the delay in submitting the Draft Law on access to free legal aid to the Parliament (Sejm) considering the impact that the delay might have on the protection of persons without resources. (art. 2)

The State Party should take effective steps to expedite the adoption of the Law on access to free legal aid in order to ensure appropriate protection and access to the legal system of persons without resources.

10) The Committee expresses its concern at the persistent allegations of the involvement of Poland in extraordinary renditions in the context of the fight against international terrorism. On the other hand, the Committee takes note of the statement made by the Polish delegation that Poland has not participated and is not participating in any form whatsoever in extraordinary renditions of persons suspected of acts of terrorism. (arts. 2 and 3)

The State party should apply the non-refoulement guarantee to all detainees in its custody and take all the necessary measures to avoid and prevent the rendition of suspects to States where they might face a real risk of torture, in order to comply with its obligations under article 3 of the Convention. The State party should always ensure that suspects have the possibility to challenge decisions of refoulement.

Detention of asylum-seekers and other non-citizens

11) The Committee notes with concern the absence of specific laws concerning the detention of aliens after the deadline for their expulsion and the fact that some have been detained in transit zones beyond the deadline of their expulsion without a court order. (arts. 3 and 11)

The State Party should take the necessary measures to address this situation and ensure that the detention of aliens in transit zones is not excessively protracted and that, if the detention were to be extended beyond a few days, the decision is adopted by a court.

12) The Committee also notes with concern the regime and material conditions of detention in transit zones or deportation jails where foreign nationals awaiting deportation under the aliens' legislation are held. (arts. 3 and 11)

The State Party should review the regime and material conditions of deportation jails, including the sizes of cells and the regime of activities of the detainees, in order to ensure that they are in conformity with minimum international standards.

Ill-treatment and excessive use of force, including killings, by law enforcement officials

13) The Committee is concerned about reports on the excessive use of force by law enforcement officials, with particular reference to the incidents which occurred during the student holiday in Łódź in May 2004 and the use of penetrating ammunition¹ "by error". The Committee is particularly concerned by the fact that the investigation is still underway as well as by the lack of information on the disciplinary measures imposed on the police officers held responsible and who are currently under investigation. (arts. 10 and 12)

¹ Also known as body armour breaching ammunition.

The State Party should:

- a) **Ensure prompt, impartial and effective investigations into all complaints or allegations of misconduct, in particular when a person dies or is seriously injured following contact with law enforcement officials. In connection with prima facie cases of torture and ill-treatment, the suspect(s) as a rule should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;**
- b) **Try the alleged perpetrators of acts of abuse and, when convicted, impose appropriate sentences and adequately compensate the victims in order to eliminate the de facto impunity for law enforcement personnel who are responsible for violations prohibited by the Convention;**
- c) **Review and strengthen its education and training programmes relating to the use of force and weapons by law enforcement officials in order to ensure that the use of force is strictly limited to that required to perform their duties.**

Training

14) While the Committee acknowledges the wide range of educational programmes for law enforcement officials, prisons staff, border guards and medical personnel currently in place, the Committee notes with concern the lack of programmes in place to assess the impact of the trainings conducted and their effectiveness in reducing incidents of torture, violence and ill-treatment. (art. 10)

The State party should develop and implement a methodology to assess the effectiveness and impact of such training/educational programmes on the reduction of cases of torture, violence and ill-treatment.

Prompt and impartial investigations

15) The Committee is concerned at allegations regarding the existence in the territory of Poland of secret detention facilities for aliens suspected of terrorist activities. The Committee takes note of the statement of the Polish delegation emphatically refuting all allegations about the existence of secret detention facilities in its territory. (arts. 3, 12 and 16)

The Committee urges the State party to share information about the scope, methodology and conclusions of the enquiry into these allegations conducted by the Polish Parliament so that this matter can be put to rest.

Prison conditions

16) While acknowledging the efforts made by the State party to deal with the problem of overcrowding in prisons, the Committee is concerned about certain temporary measures taken by the State Party to address the problem, particularly the use of common areas, such as community centres, fitness rooms, briefing halls, etc, for residential purposes and the impact that such measures might have on the regime and material conditions of detention in the country. (art. 11)

The State Party should take the necessary measures to address the current situation of overcrowding in prisons without compromising the regime and material conditions of detention in them. The State party should make available the

necessary material, human and budgetary resources to ensure that the conditions of detention in the country are in conformity with minimum international standards.

Trafficking

17) While acknowledging the efforts made by the State Party in combating and preventing trafficking in human beings by adopting new legislation and measures, the Committee is concerned about the absence of a definition of trafficking in human beings in its Penal Code. The Committee also regrets the lack of information on the number of cases brought to court and on the penalties imposed to perpetrators. (art. 16)

The State Party should include in its Penal Code a definition of human trafficking in accordance with the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (CEDAW/C/POL/CO/6).

The State party should provide detailed information and statistics on the number of cases brought to court and penalties imposed to perpetrators where appropriate.

Hazing in the military

18) While the Committee acknowledges the progress made by the State party in decreasing the number of cases of abuse of conscripts in the army, it remains concerned at the high number of cases that continue to be reported. (art. 2 and 16)

The State party should eradicate hazing in the armed forces; continue implementing measures of prevention as well as ensure prompt, impartial and effective investigation and prosecution of such abuses; and report publicly on the results of any such prosecutions.

The State party should guarantee the rehabilitation of victims, including appropriate medical and psychological assistance.

Minorities and other vulnerable groups

19) The Committee notes with concern reports of intolerance and hatred towards minorities and other vulnerable groups in Poland, including alleged recent manifestations of hate speech and intolerance against homosexuals and lesbians. (art. 16)

The State party should incorporate in its Penal Code an offence to punish hate crimes as acts of intolerance and incitation to hatred and violence based on sexual orientation. Moreover, the State party should continue to be vigilant in ensuring that the relevant existing legal and administrative measures are strictly observed and that training curricula and administrative directives constantly communicate to staff the message that incitation to hatred and violence will not be tolerated and will be sanctioned accordingly.

The State party should provide detailed information and statistics on the number and type of hate crimes as well as on the administrative and judicial measures taken to investigate such crimes and the sentences imposed.

Data collection

20) The Committee regrets the fact that for certain areas covered by the Convention, the State party was unable to supply statistics, or appropriately disaggregate those supplied (e.g. by age, gender and/or ethnic group). During the current dialogue, this occurred with respect to data on violence against women, including rape and sexual harassment, and racially motivated crimes, particularly violence against the Roma.

The State party should take such measures as may be necessary to ensure that the competent authorities, as well as the Committee, are fully appraised of these details when assessing the State party's compliance with its obligations under the Convention.

21) The Committee commends the State party for its contributions between the years 1999 and 2005 to the United Nations Voluntary Fund for the Victims of Torture and it encourages the State Party to continue its contributions to the Fund.

22) The Committee requests the State party to provide in its next periodic report detailed statistical data, disaggregated by crime, ethnicity, age and sex, on complaints relating to torture and ill-treatment allegedly committed by law enforcement officials and on the related investigations, prosecutions, and penal or disciplinary sanctions.

23) The State party is encouraged to disseminate widely the reports and replies to the lists of issues submitted by Poland to the Committee and the conclusions and recommendations, in appropriate languages, through official websites, the media and non-governmental organizations.

24) The Committee invites the State party to submit its core document in accordance with the requirements of the Common Core Document in the Harmonized Guidelines on Reporting, recently recommended by the international human rights treaty-bodies (HRI/MC/2006/3 and Corr.1).

25) The Committee requests the State party to provide, within one year, information on its response to the Committee's recommendations contained in paragraphs 8, 9, 15, 18 and 19 above.

26) The State party is invited to submit its sixth periodic report by 30 June 2011
