



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.: General
23 December 2013

Original: English

Committee against Torture

Concluding observations on the combined fifth and sixth periodic reports of Poland*

1. The Committee against Torture considered the combined fifth and sixth periodic reports of Poland (CAT/C/POL/5-6) at its 1174th and 1177th meetings, held on 30 and 31 October 2013 (CAT/C/SR.1174 and CAT/C/SR.1177), and adopted the following concluding observations at its 1202nd meeting (CAT/C/SR.1202) held on 19 November 2013.

A. Introduction

2. The Committee expresses its appreciation to the State party for accepting the optional reporting procedure and for submitting its combined fifth and sixth periodic reports in a timely manner by providing replies to the list of issues (CAT/C/POL/Q/5-6), which focuses the examination of the report as well as the dialogue with the delegation.
3. The Committee appreciates the open and constructive dialogue with the high-level delegation of the State party and the detailed supplementary information provided.

B. Positive aspects

4. The Committee welcomes the State party's ratification or accession, since the consideration of the fourth periodic report, to the following international instruments:
 - (a) The Convention on the Rights of Persons with Disabilities, on 25 September 2012; and
 - (b) The Council of Europe Convention on Action against Trafficking in Human Beings, on 1 March 2009.
5. The Committee welcomes the State party's efforts to revise its legislation in areas of relevance to the Convention, including:
 - (a) Amendments to the Penal Code in September 2013 extending from one to three years the maximum period within which compensation claims can be brought for moral and financial losses suffered during pretrial detention;

* Adopted by the Committee at its fifty-first session (28 October–22 November 2013).



(b) Amendments to the Penal Code, the Code of Criminal Procedure, the Executive Penal Code and the Domestic Violence Act in August 2010 extending protection to victims of domestic violence, in particular women and children;

(c) Amendment to the Executive Penal Code in June 2010 enabling convicted persons sentenced to deprivation of liberty to apply for parole once they have served at least half their sentence;

(d) Amendments to the Penal Code in May 2010 introducing a definition of trafficking in human beings;

(e) Amendment to the Prosecution Authority Act in March 2010 separating the offices of the Minister of Justice and the Public Prosecutor General, providing the prosecution authority with greater independence from political influence; and

(f) Introduction of the Prison Service Act in 2010 incorporating the obligation to respect the rights of persons deprived of their liberty.

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

(a) The adoption in 2013 of the National Action Plan against Trafficking in Human Beings for 2013–2015;

(b) The establishment in 2013 of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance at the Council of Ministers;

(c) The adoption in 2008 of the Plan of Action of the Police for the period 2008–2009, which provides specialist training for police officers on combating trafficking in human beings;

(d) The establishment in 2008 of the Office of the Government Plenipotentiary for Equal Treatment; and

(e) The adoption of the National Programme for the Prevention of Domestic Violence 2006–2016.

C. Principal subjects of concern and recommendations

Definition of torture

7. The Committee regrets that, despite its previous recommendations in this regard (A/55/44, paras. 85–95 and CAT/C/POL/CO/4, para. 6), the State party still maintains its position on not incorporating the provisions of the Convention — the definition of torture including all the elements of article 1 and the provision of a specific offence of torture in accordance with article 4, paragraph 2, of the Convention — into domestic law. The Committee is seriously concerned that the other provisions of the Penal Code that are “applied in cases of torture” do not reflect the gravity of the crime of torture and therefore do not provide for commensurate punishment for the perpetrators (arts. 1 and 4).

The Committee recommends that the State party take effective legislative measures to include torture as a separate and specific crime in its legislation and to adopt a definition of torture that covers all the elements contained in article 1 of the Convention. The State party should ensure that penalties for torture are commensurate with the gravity of the crime in accordance with article 4, paragraph 2, of the Convention. In this regard, the Committee draws attention to its general comment no. 2 (2007) on the implementation of article 2 by States parties, which states that serious discrepancies between the Convention’s definition and that incorporated into domestic law create actual or potential loopholes for impunity (para. 9).

Fundamental legal safeguards

8. The Committee welcomes the Act of 27 September 2013 amending the Code of Criminal Procedure to provide the accused and the defence lawyer with access to case files in pretrial proceedings. However, the Committee is concerned that certain restrictions still remain on fundamental legal safeguards for persons detained by the police, particularly regarding access to a lawyer from the outset of detention. It is also concerned that, under article 1 of the Executive Penal Code, the prison authorities reserve the right to be present at all meetings between the detainee and his or her defence counsel, and to monitor their telephone communications and correspondence. Furthermore, the Committee remains concerned at the lack of an appropriate system of legal aid in Poland (arts. 2 and 16).

The Committee recommends that the State party take effective measures to guarantee that all persons deprived of their liberty are afforded, in law and in practice, all the fundamental legal safeguards from the outset of deprivation of liberty, including the right to have prompt access to an independent lawyer and, if necessary, to legal aid in accordance with international standards. It further recommends that the State party take the necessary measures to ensure the confidentiality of lawyer-client meetings and communications via telephone and correspondence.

Pretrial detention

9. The Committee welcomes the amendment of 24 October 2008 to the Code of Criminal Procedure, which narrows down the justification for extending the period of pretrial detention. However, the Committee is concerned at reports indicating that, in practice, the courts do not strictly follow the legislation and often grant extensions with meagre justification, even beyond the established two years (arts. 2, 14 and 16).

The Committee recommends that the State party ensure that pretrial detention is used as an exception and applied for a limited period of time. In particular, it recommends that the State party take measures to put a stop to the practice of extending pretrial detention beyond the maximum period prescribed by law. It should also consider replacing pretrial detention with non-custodial penalties and alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules). The Committee further recommends that the State party ensure that redress and compensation are provided to anyone who becomes a victim of unjustified prolonged pretrial detention.

Rendition and secret detention programme

10. The Committee is concerned about the lengthy delays in the investigation process into the alleged complicity of the State party in the Central Intelligence Agency rendition and secret detention programmes between 2001 and 2008, which allegedly involved torture and ill-treatment of persons suspected of involvement in terrorism-related crimes. It is also concerned about the secrecy surrounding the investigation and the failure to ensure accountability in these cases (arts. 2, 3, 12 and 13).

The Committee urges the State party to complete the investigation into allegations of its involvement in the Central Intelligence Agency rendition and secret detention programmes between 2001 and 2008 within a reasonable time and to ensure that persons involved in the alleged crimes of torture and ill-treatment are held accountable. It also recommends that the State party inform the public, ensure its investigation process is transparent, and cooperate fully with the European Court of Human Rights on the Central Intelligence Agency rendition and secret detention cases against Poland.

Complaints procedure

11. The Committee is concerned that the amendments of 7 January 2012 to the Criminal Enforcement Code establish strict criteria for the substantiation of complaints from persons deprived of their liberty. As a result, most of the complaints are considered unfounded and unjustified and, in practice, the right to complain is not therefore guaranteed.

The Committee recommends that the State party take all necessary measures to ensure that the right of detainees to complain can be fully exercised, including by:

- (a) Doing away with criteria for the substantiation of complaints of torture and ill-treatment;**
- (b) Providing persons deprived of their liberty with legal representation to file complaints; and**
- (c) Ensuring that all complaints are promptly, effectively and impartially investigated.**

Furthermore, the Committee recommends that the State party collect statistical data, disaggregated by crime, ethnicity, age and sex, on complaints concerning torture and ill-treatment allegedly committed by prisons authorities and law enforcement officials, and on the related investigations, prosecutions, and penal or disciplinary sanctions.

Non-refoulement and extradition

12. The Committee is concerned that foreigners can be expelled from the State party without having their expulsion decision reviewed by an independent and impartial mechanism. In addition, the Committee is concerned that the State party has not been respecting the principle of non-refoulement as it has sometimes refused to recognize a foreigner's refugee status as the sole reason to refuse extradition to a country where his or her life or personal integrity would be threatened (arts. 3 and 16).

The Committee recommends that the State party ensure 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 treatment at all stages of proceedings, including an opportunity for effective and impartial review by an independent decision mechanism on expulsion, return or extradition, with suspensive effect. It also recommends that the State party fulfil its non-refoulement obligations and guarantee the right to appeal the issuance of an extradition warrant where there are substantial grounds for believing that a person would be at risk of being subjected to torture.

Protection of asylum seekers

13. The Committee welcomes the proposed amendments to the Aliens Act of 2003, which introduce alternatives to detention and give more categories of persons the right to family reunification. However, it remains concerned that under the current legislation asylum seekers, including children, are detained in guarded centres in prison-like conditions prior to expulsion. It is also concerned that insufficient legal assistance is provided to asylum seekers, especially those in detention centres (arts. 3, 10 and 11).

The Committee recommends that the State Party refrain from detaining asylum-seekers, including children, and guarantee them — including those who may face detention — access to independent, qualified and free legal advice and representation, in order to ensure that the protection needs of asylum seekers, refugees and other persons in need of international protection are effectively recognized.

14. The Committee is concerned about the lack of a mechanism in the State party to identify vulnerable asylum seekers who are victims of torture and the insufficient provision

for their specific needs during the refugee status determination process (arts. 3, 10, 11 and 16).

The Committee recommends that the State Party take all necessary measures to ensure the identification of vulnerable asylum seekers who are victims of torture and provide them with the support they require, including treatment and counselling. Furthermore, all relevant personnel, including medical personnel, should receive specific training on how to identify signs of torture and ill-treatment. To this end, the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) should be further disseminated.

Electrical discharge weapons

15. The Committee notes that the legislation of 9 April 2010 on the Border Guard provides for border guards to use electrical stunning devices, and that the State party considers the use of these devices (such as tasers) to be less lethal than that of firearms. However, the Committee remains concerned that the use of electrical stunning devices may contravene the Convention and, in some cases, even cause death (arts. 2 and 16).

The State party should ensure that the use of electrical discharge weapons is exclusively limited to extreme situations — where there is a real and immediate threat to life or risk of serious injury — and that these weapons are used only by trained law enforcement personnel as a substitute for lethal weapons. The State party should revise the regulations governing the use of such weapons with a view to establishing a high threshold for their use and expressly prohibiting their use on children and pregnant women. The Committee is of the view that the use of electrical discharge weapons should be subject to the principles of necessity and proportionality and that they should not be included in the regular equipment of custodial staff in prisons or any other place of deprivation of liberty. The Committee urges the State party to provide detailed instructions and training to law enforcement personnel who are entitled to use electric discharge weapons, and to strictly monitor and supervise their use.

The Optional Protocol and a national preventive mechanism

16. The Committee notes that in 2008, the State party entrusted the Office of the Ombudsman with carrying out the functions of a national preventive mechanism. The Committee regrets that the resources allocated to that Office prevent it from carrying out that mandate effectively (art. 2).

In the light of the Optional Protocol to the Convention and in keeping with the guidelines on national preventive mechanisms (CAT/OP/12/5, paras. 7, 8 and 16), the Committee recommends that the State party ensure that the national preventive mechanism is endowed with sufficient resources to discharge its mandate effectively and on a fully independent basis.

Training

17. The Committee welcomes the wide range of educational programmes currently in place for law enforcement officials, prisons staff, border guards and medical personnel, including training on the Istanbul Protocol. However, the Committee is concerned that it is the training institutions themselves that assess the courses and that there is no evaluation of their practical impact on the incidence of torture and ill-treatment (art. 10).

The Committee recommends that the State party develop specific methodologies to guarantee more objective and comprehensive evaluation of the training and education courses on the absolute prohibition of torture and ill-treatment that are provided to

law enforcement and medical personnel, judges, prosecutors and persons working with refugees, migrants and asylum seekers.

Investigations and legal proceedings

18. The Committee is concerned at reports that the police use illegal methods and abuse their power during interrogations, and that few criminal proceedings are conducted into such allegations, the majority of cases being discontinued by the prosecution authorities. It is also concerned that lengthy court proceedings have created a backlog of cases in the court system. Furthermore, while noting the statistics provided on convictions under articles 231 (abuse of power), 246 (obtaining testimony using force) and 247 (tormenting a person deprived of liberty) of the Penal Code, the Committee regrets the lack of information provided on the number of complaints filed, criminal proceedings brought, persons acquitted and the length of sentences handed down in relation to these crimes (arts. 2, 12, 13 and 16).

The Committee recommends that the State party:

(a) Ensure that all reports of torture or ill-treatment are investigated promptly, effectively and impartially;

(b) Promptly undertake an effective and impartial investigation on its own initiative whenever there are reasonable grounds to believe that an act of torture or ill-treatment has been committed;

(c) Prosecute persons suspected of having committed torture or ill-treatment and, if they are found guilty, ensure that they receive sentences that are commensurate with the gravity of their acts and that the victims are afforded appropriate redress;

(d) Improve the functioning of the judicial system and take measures to reduce the backlog of cases in its courts; and

(e) Provide full statistics on crimes related to torture and ill-treatment, including on the number of complaints filed, criminal proceedings brought, persons acquitted and sentences handed down.

Conditions of detention in prisons

19. The Committee welcomes the introduction in 2009 of the system of electronic monitoring and takes note that the State party has indicated that its prisons are occupied at 96.4 per cent of their total capacity. However, the Committee shares the concern of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment that this assessment is based on the legal standard of 3 square meters per person, which in some cases can be reduced to 2 square meters per person. This is not compatible with the European standard of at least 4 square meters per person. The Committee against Torture is particularly concerned at reports that approximately 40,000 convicts are awaiting enforcement of their punishment and some 12,000 Polish prisoners are expected to be returned from other European Union countries. The Committee therefore considers that prison overcrowding in the State party has not yet been resolved (arts. 2, 11 and 16).

The Committee urges the State party to take the necessary steps to ensure that prison conditions are at least in keeping with the Standard Minimum Rules for the Treatment of Prisoners and, in particular, to:

(a) Relieve overcrowding in the prison system by using non-custodial measures in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules) and the United Nations Rules for the Treatment

of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules); and

(b) Take measures, including increasing prison capacity, to comply with the European standard of a minimum of four square meters of living space for each detainee.

20. The Committee is concerned at the prevalence of violence among prison inmates, which has not decreased in the last three years, and at the lack of protection afforded to certain types of prisoners. The Committee is also concerned that N status inmates (dangerous inmates) are often kept in worse conditions than others for long periods of time and that their status is not regularly reviewed (arts. 2, 11 and 16).

The Committee recommends that the State party take all necessary measures to ensure the safety and security of prison inmates by enforcing the classification of inmates under article 82 (1) of the Criminal Enforcement Code. It also recommends that the conditions of detention of N status inmates (dangerous inmates) are improved and their status reviewed regularly in order to facilitate their rehabilitation.

Redress and compensation

21. The Committee is concerned at the information provided by the State party indicating that, between 2005 and 2010, there were no final rulings by the State Treasury to remedy damages arising from the offence of abuse. It is also concerned that no data has been provided about any compensation granted in 2011 and 2012 (art. 14).

The Committee urges the State party to take immediate legal and other measures to ensure that victims of torture and ill-treatment obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. The Committee requests the State party to provide information on the redress and compensation provided to victims of torture and ill-treatment, especially since 2011.

Domestic violence

22. The Committee welcomes the establishment in 2011 of the National Emergency Service for Victims of Domestic Violence “Blue Line”, but regrets that it is not operational 24 hours a day. While noting the 2005 law on the prevention of domestic violence and article 207 of the Penal Code concerning the offence of abuse of close family members, the Committee is concerned that domestic violence is not a separate crime in the Penal Code (arts. 2, 12, 13, 14 and 16).

The Committee recommends that the State party:

(a) Define and introduce domestic violence and marital rape as specific criminal offences in its Penal Code, with appropriate sanctions;

(b) Ensure the effective implementation of the National Programme for the Prevention of Domestic Violence 2006–2016 and regularly assess its results;

(c) Establish an effective and independent complaints mechanism for victims of domestic violence;

(d) Ensure that all allegations of domestic violence, including sexual violence and violence against children, are registered by the police and that all allegations of domestic violence are promptly, impartially and effectively investigated and the perpetrators prosecuted and punished; and

(e) Ensure that victims of domestic violence benefit from protection, including restraining orders, and have access to medical and legal services, including counselling, safe and adequately funded shelters, and redress, including rehabilitation.

Abortion

23. The Committee is concerned about restrictions on access to abortion, especially for victims of rape, due to the refusal of some physicians and clinics to perform legal operations on the basis of conscientious objection. This leads women to resort to clandestine, often unsafe abortions with all the health risks they entail (arts. 2 and 16).

The Committee recommends that the State party ensure that women, especially victims of rape, who voluntarily decide to terminate their pregnancy have access to safe, legal abortions. In accordance with the 2012 World Health Organization technical and policy guidance on safe abortion, the State party should ensure that the exercise of conscientious objection does not prevent individuals from accessing services to which they are legally entitled. The State party should also implement a legal and/or policy framework that enables women to access abortion where the medical procedure is permitted under the law.

Trafficking in human beings

24. While welcoming the amendments to the Penal Code introducing a definition of trafficking in human beings and several policy measures in the area, the Committee is concerned at reports that the State party remains a source, transit and destination country for human trafficking, especially for the purpose of forced labour (arts. 2, 10, 12, 13, 14 and 16).

The Committee recommends that the State party fully implement the United Nations Convention against Transnational Organized Crime and take measures to:

(a) Enforce domestic anti-trafficking laws and policies, take effective measures to prevent human trafficking and increase protection for victims of trafficking;

(b) Promptly, effectively and impartially investigate, prosecute and punish the crime of trafficking in persons and related practices;

(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) Prevent the return of trafficked persons to their countries of origin where there are substantial grounds to believe that they would be in danger of torture; and

(e) Enhance international cooperation with regard to preventing and punishing trafficking.

Vulnerable groups

25. The Committee notes the adoption of the Equal Treatment Act in 2010 and the provisions of the Penal Code prohibiting hate crimes (arts. 119, 256 and 257), but considers that neither the Act nor the Penal Code provide adequate and specific protection against discrimination based on sexual orientation, disability or age. It is concerned at the prevalence of racial violence and other acts of racial abuse targeting persons of Arab, Asian and African origin, and manifestations of anti-Semitism. It is also concerned at the significant rise in manifestations of hate speech and intolerance directed at lesbian, gay, bisexual and transgender people and the persistent discrimination against members of the Roma community (arts. 2, 11 and 16).

The Committee recommends that the State party incorporate offences in its Penal Code to ensure that hate crimes and acts of discrimination and violence that target persons on the basis of their sexual orientation, disability or age are punished

accordingly. It also urges the State party to take all necessary measures to combat discrimination and violence against persons of Arab, Asian and African origin, lesbian, gay, bisexual and transgender people and persons belonging to the Roma community and to take effective measures to prevent all manifestations of anti-Semitism. 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 remind staff that such acts will not be tolerated and will be sanctioned accordingly. The Committee refers the State party to its general comment no. 2 (2007) on the implementation of article 2 by States parties, section V: “Protection for individuals and groups made vulnerable by discrimination or marginalization”.

Data collection

26. While welcoming the data provided in a number of areas relevant to the Convention, the Committee regrets the absence of comprehensive and disaggregated data on complaints, investigations, prosecutions, convictions and sentences in cases of torture and ill-treatment perpetrated by law enforcement and prison personnel (arts. 2, 4, 12, 13, 14 and 16).

The State party should compile statistical data relevant to the implementation of the Convention at the national level, including data on complaints, investigations, prosecutions, convictions and sentences in cases of torture and ill-treatment and on means of redress, including compensation and rehabilitation, provided to the victims.

Other issues

27. The Committee invites the State party to consider ratifying the other United Nations human rights treaties to which it is not yet party, namely the International Convention for the Protection of All Persons from Enforced Disappearance; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty; and the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. It also invites the State party to consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

28. The State party is requested to disseminate widely the report it submitted to the Committee and the Committee’s concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations.

29. The Committee requests the State party to provide, by 22 November 2014, follow-up information in response to the Committee’s recommendations related to (a) strengthening legal safeguards for persons who are deprived of their liberty, (b) conducting prompt, impartial and effective investigations into all reports of torture or ill-treatment, and (c) prosecuting suspects and sanctioning perpetrators of torture or ill-treatment, as contained in paragraphs 8 and 18 of the present concluding observations. In addition, the Committee requests follow-up information on remedies and redress provided to victims of torture and ill-treatment, as contained in paragraph 21, and on protection for asylum seekers, as contained in paragraph 13 of the present concluding observations.

30. The State party is invited to submit its next report, which will be the seventh periodic report, by 22 November 2017. For that purpose, the Committee will, in due course, submit to the State party a list of issues prior to reporting, given that the State party has agreed to report to the Committee under the optional reporting procedure.