

Poland

Submission to the UN Universal Periodic Review

First session of the UPR Working Group, 7-18 April 2008

In this submission, Amnesty International provides information under sections B and C (as stipulated in the General Guidelines for the Preparation of Information under the Universal Periodic Review):

- Under section B, Amnesty International raises concern over shortcomings of the ratification of international human rights standards and the possible restoration of the death penalty.
- In section C, we describe concerns related to human rights violations in the context of counter-terrorism, identity-based violations, police ill-treatment and racism, violence against women, and refugees.
- In each section Amnesty International makes a number of recommendations in the areas of concerns listed.

B. Normative and institutional framework of State

Ratification of International Instruments

- AI urges the Polish government to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

Death penalty

In July 2006, President Lech Kaczyński called for the restoration of the death penalty in Poland and throughout Europe on the Polish Public Radio Programme 1, stating that: "countries that give up this penalty award an unimaginable advantage to the criminal over his victim, the advantage of life over death."¹

- AI is calling onto the Polish government to respect its international obligations and uphold its commitments to the abolition of the death penalty.

C. Promotion and protection of human rights on the ground

Secret detention centres and renditions

Amnesty International is concerned over the alleged involvement of Polish authorities in the United States' programme of secret detentions and renditions in the context of counter-terrorism measures. There is strong evidence to suggest that Poland may have operated secret detention facilities on its territory in support of the programme of illegal transfers carried out by the United States.

The European Parliament's Temporary Committee on allegations of illegal activity in Europe by the US Central Intelligence Agency, the UN Committee Against Torture (CAT) and the Rapporteur on secret detentions of the Parliamentary Assembly of the Council of Europe (PACE), Senator Dick Marty, have all concluded that the investigation carried out by the Polish Parliament into claims that the United States may have operated secret detention facilities on Polish territory was not conducted independently. On 21 December 2005, the Polish Special Services Committee held a private meeting with the Minister Coordinator of Special Services and the heads of the intelligence services. Amnesty International believes that this does not constitute the open and independent investigation warranted and regrets that the Committee never disclosed publicly any of its findings.

¹ *Poland goes backwards: No to the restoration of the death penalty*, AI Index: EUR 37/002/2006

In April 2007, when Poland was reviewed by the CAT, former Prime Minister Jarosław Kaczyński said that the government regarded the allegations as a "closed issue" when asked for more information.

Amnesty international is deeply concerned about Poland's consistent denial of involvement in the programme of secret detention and rendition despite investigations continuing to bring new evidence to light which indicates with a high degree of probability that secret detention centres were operated by the CIA in Poland for several years.

Amnesty International calls on the Polish government:

- to initiate an effective and independent investigation into the involvement of Polish authorities in the programme of renditions (in particular on the use of the Szymany airport) and secret detention centres in Poland and to make the findings of the investigation public; and
- to make public immediately the conclusions of the meeting, held on 21 December 2005, between the Special Services Committee, the Minister Coordinator of Special Services and the heads of the intelligence services.

Identity-based violations

Reports continue of attacks against demonstrators from the lesbian, gay, bisexual and transgender (LGBT) community and other activists by private individuals, including in the context of counter-demonstrators. There are further allegations that the police failed to ensure that the LGBT demonstrators were able to exercise their right to peaceful assembly. Members of sexual minorities continue to face discrimination and restrictions on their right to freedom of expression and assembly. Openly homophobic statements by prominent politicians and public officials, including encouraging violence against peaceful LGBT rights demonstrators, have worsened the climate of discrimination and intolerance. There has been no action against such public statements inciting intolerance against sexual minorities.²

In 2004, the UN Human Rights Committee expressed concern that the right of sexual minorities not to be discriminated against was not fully recognized in Poland and that discriminatory acts and attitudes against people on the ground of sexual orientation were not being adequately investigated and punished. It recommended appropriate training for law enforcement and judicial officials and for the explicit prohibition in Polish law of discrimination on the ground of sexual orientation.

Given the hostile climate against the LGBT community in Poland, Amnesty International is concerned about the abolition in 2005 of the Office of the Government Plenipotentiary for the Equality of Men and Women. This Office was responsible for the promotion of equal treatment of individuals belonging to the LGBT community, and its abolition makes Poland the only EU country without a statutory equality watchdog and puts into question Poland's compliance with EU legislation on prohibition of discrimination. In 2004, the Human Rights Committee had

² See *Amnesty International Report 2006*, AI Index: POL 10/001/2006; *Amnesty International Report 2007*, AI Index POL 10/001/2007; *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: July-December 2006*, AI Index: EUR 01/001/2007; *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January-June 2007*, AI Index: EUR 37/002/2005; *Poland: Protect the LGBT community's right of peaceful assembly*, AI Index: EUR 37/001/2006; *Poland and Latvia: Lesbian, gay, bisexual and transgender rights*, AI Index: EUR 01/019/2006; *EU: Ensure Poland and Latvia respect rights of minorities*, AI Index: EUR 01/020/2006; and *Poland: School bill would violate students' and teachers' rights and reinforce homophobia*, AI Index: EUR 37/001/2007.
Amnesty International *AI Index: EUR 37/005/2007*

welcomed the appointment of the Plenipotentiary and “the extension of the Plenipotentiary’s competence to issues relating not only to discrimination on the basis of sex but also on grounds of [...] sexual orientation.”³

On 26 April 2007, the European Parliament expressed outrage at growing intolerance towards lesbian and gay people across Europe, singling out Poland for special criticism. It passed a resolution calling for worldwide de-criminalisation of homosexuality and urging all EU governments to bring forward laws to tackle discrimination against same-sex couples. The Polish authorities were particularly urged “to publicly condemn and take measures against declarations by public leaders inciting discrimination and hatred based on sexual orientation”.

On 20 June 2007, the Council of Europe’s Human Rights Commissioner expressed strong concerns about the Polish government’s approach to LGBT people, including the withdrawal from circulation in early 2006 by the Ministry of Education of the Polish version of *Compass – Human Rights Education with Young People*, a Council of Europe anti-discrimination handbook and a manual on human rights for young people. When shown the alternative materials, the Commissioner found “the portrayal and depiction of homosexuality [...] offensive, out of tune with principles on equality, diversity and respect for the human rights of all”. The Commissioner also expressed concerns about proposed measures to penalize the alleged promotion of homosexuality in schools, deplored any instances of hate speech towards homosexuals and called on the Polish authorities not to tolerate such speech.

Amnesty International calls on the Polish government:

- to ensure thorough and impartial investigations into all allegations of attacks and threats against individuals targeted because of their sexual orientation or gender identity and to bring to justice those responsible in accordance with international standards of fair trial;
- to ensure that no authorities makes public statements which could be interpreted as encouraging discrimination against or targeting of individuals because of their sexual orientation or gender identity;
- to actively promote the rights to freedom of expression, association and assembly without discrimination at all levels of government;
- to ensure the explicit prohibition in Polish legislation explicitly of discrimination on the grounds of sexual orientation or gender identity or expression;
- to reinstitute the Office of the Government Plenipotentiary for the Equality of Men and Women.

Racism and discrimination

There are reports of racially motivated harassment and discrimination against Jews, Roma and people of African and Asian origin. In its third report on Poland, released in June 2005, the European Commission against Racism and Intolerance (ECRI) expressed concern that the authorities rarely investigated and prosecuted cases of racial hatred and allowed anti-Semitic material to circulate freely on the market. ECRI pointed out that the police often did not take into account the racist motivation of crimes, which resulted in a lighter sentence for the perpetrator,

³ Concluding observations of the UN Human Rights Committee, CCPR/CO/82/POL

if convicted. Moreover, there is still no comprehensive body of legislation prohibiting racial discrimination in all fields of life.

- Amnesty International calls the Polish government to adopt effective measures to combat racial discrimination and ensure perpetrators are brought to justice in accordance with international standards of fair trials.

Police ill-treatment and racism

There are continuing reports of ill-treatment by law enforcement officials, including from the Council of Europe's Commissioner for Human Rights, who in 2003 expressed concern that incidents of police violence that had gone unreported due to victims' fear of being prosecuted themselves. It appears that prostitutes, Roma and trafficked persons are most frequently the victims. There are also concerns that incidents of police violence are not always impartially investigated and rarely reach the courts. The authorities have been urged to intensify efforts to eradicate cases of police ill-treatment through training, effective investigation and prosecution of those responsible.

The European Committee for the Prevention of Torture (CPT), expressed concerns in 2006 that complaints of police ill-treatment of suspects had been ignored by prosecutors or judges before whom the suspects had been brought shortly after apprehension. The CPT also expressed concern at allegations made by juvenile detainees of physical ill-treatment and threats in order to obtain confessions. The CPT was further concerned about the number of juveniles being questioned and made to sign statements admitting to criminal offences without the benefit of the presence of a trusted person.

Amnesty International calls on the Polish government:

- to ensure that thorough and impartial investigations are carried out into reports of police ill-treatment and prosecution of those responsible in accordance with international standards of fair trial;
- to train police officers to respect the principles of necessity and proportionality at all times when using force, consistent with the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials;
- to train the police and the judiciary on how to address complaints of racially motivated crimes.

Violence against women

Complaints of violence against women are frequently not treated as sufficiently serious or credible. For example, the police do not effectively collect evidence and women are required to obtain and pay for forensic medical certificates for injuries suffered. Even if brought to justice, perpetrators usually face only light sentences. Moreover, there are not enough places where women can seek refuge or assistance. In a number of shelters managed by men, there have been reports of sexual harassment and assault on women by the staff.⁴

There is currently no national plan of action dedicated to addressing violence against women nor is there a gender equality programme. The majority of tasks outlined in the previous *National Action Plan for Women (1997–2005)* have not been implemented, including those

⁴ *Amnesty International Report 2004*, AI Index: POL 10/001/2004 and *Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January-June 2007, Poland's entry*.
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related to violence against women. The Act of 29 July 2005 on Counteracting Domestic Violence impose new obligations on the Council of Ministers, the Minister of Labour and Social Policy, and the local government administration, including to develop a *National Programme on Counteracting Domestic Violence* (NPCDV) and to report annually to Parliament on its implementation. However, the Programme has not yet been drafted and adopted.

Amnesty International calls on the Polish government:

- to urgently adopt a National Programme on Counteracting Domestic Violence;
- to conduct impartial and thorough investigations into all allegations of violence against women and prosecute those responsible in accordance with international standards for fair trial;
- to restore the Office of the Government Plenipotentiary for the Equality of Men and Women.

Refugees, asylum-seekers and migrants

In its March 2006 report, the CPT expressed concerns that the facilities for holding persons awaiting deportation seen during its 2004 visit did not meet the standards required for prolonged periods of detention. The provision of health care and psychological and psychiatric support to foreign nationals was not considered adequate. Furthermore, staff assigned to work with foreign nationals received little specialised training and there was little communication between staff and detainees, not least because of language barriers.

The CPT recommended that aliens detained for an extended period should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate for their legal situation, and staffed by suitably-qualified personnel.

Almost half of school-age children seeking asylum in Poland do not attend school. People with only "tolerated stay" permits are denied the social assistance given to asylum-seekers as well as the integration package provided for refugees.

The number of asylum-seekers sent back to Poland from other EU states has increased following application of the so-called Dublin II Regulation, which establishes criteria and mechanisms for determining which EU state will examine an asylum application.⁵

Amnesty International calls on the Polish government:

- to introduce legislative measures to facilitate a better integration of refugees and migrants into the Polish society;
- to introduce legislative measures to improve funding and living conditions of refugee reception centres.

⁵ Amnesty International Report 2007, AI Index POL 10/001/2007

Appendix: Amnesty International's documents for further reference

Secret detention centres and renditions

Tomorrow's CIA vote in European Parliament should mark beginning of accountability, AI Index: IOR 61/005/2007

Amnesty International's reaction to Council of Europe's report on renditions, AI Index: IOR 30/013/2007

Poland and Romania: Take responsibility for secret detention sites, AI Index: EUR 37/003/2007

Identity-based violations

Poland: LGBT rights under attack, AI Index: EUR 37/002/2005

Poland: Protect the LGBT community's right of peaceful assembly, AI Index: EUR 37/001/2006

Poland and Latvia: Lesbian, gay, bisexual and transgender rights, AI Index: EUR 01/019/2006

EU: Ensure Poland and Latvia respect rights of minorities, AI Index: EUR 01/020/2006

Poland: School bill would violate students' and teachers' rights and reinforce homophobia, AI Index: EUR 37/001/2007

Death penalty

Poland goes backwards: No to the restoration of the death penalty, AI Index: EUR 37/002/2006

General background

Amnesty International Report 2005, AI Index: POL 10/001/2005

Amnesty International Report 2006, AI Index: POL 10/001/2006

Amnesty International Report 2007, AI Index: POL 10/001/2007

Europe and Central Asia: Concerns in Europe & Central Asia bulletin: January - June 2006, AI Index: EUR 01/017/2006

Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: July - December 2006, AI Index: EUR 01/001/2007

Europe and Central Asia: Summary of Amnesty International's Concerns in the Region: January-June 2007, AI Index: EUR 01/010/2007