



Poland

Amnesty International submission to the UN Universal Periodic Review 13th session of the UPR Working Group, May-June 2012

Follow up to the previous review

During its first UPR in 2008, Poland supported recommendations on adopting anti-discrimination legislation,¹ addressing overcrowding in prisons,² improving prison conditions,³ and publishing information on Poland's involvement in secret detention.⁴

Some positive steps have been taken by the government with respect to these recommendations, for example as regards combating discrimination. Legislation adopted in December 2010 provides definitions of direct and indirect discrimination and differential treatment.⁵ Under this legislation, the Ombudsperson is responsible for assisting alleged victims of discrimination in pursuing their complaints, and for conducting independent research and issuing recommendations to achieve equal treatment. However, the Ombudsperson's office has not been provided with the additional financial resources necessary to fulfil these new obligations, thereby limiting the effectiveness of the new legislation in practice.⁶ Poland has also failed to ratify Protocol 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on discrimination.

As concerns prison conditions, there has been little notable progress and overcrowding remains a serious problem. In its 2011 report on Poland, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (European Committee for the Prevention of Torture) noted a number of problems concerning prisons, including on overcrowding, healthcare for detainees, ill-treatment and the lack of an effective legal aid system.⁷ In 2009, Poland was found to be in violation of the prohibition of torture or degrading treatment by the European Court of Human Rights in a case where a prisoner spent most of his prison sentence in a cell with less than 3m², and at times less than 2m², of personal space.⁸ The European Committee for the Prevention of Torture called on the Polish authorities to review the regulation for living space per prisoner, and to ensure at least 4m² per inmate in multi-occupancy cells.⁹

With regard to secret detention, Amnesty International is concerned at evidence that emerged between 2008 and 2010 of Poland's involvement in the US Central Intelligence Agency (CIA) rendition and secret detention programmes. In 2008, the Polish authorities launched an investigation into the country's involvement in these programmes. However, three and a half years later the investigation is still being carried out in secret, and victims have so far not been permitted to engage effectively with the process.¹⁰ This issue is discussed further below.

Normative and institutional framework of the State

Legislation that impedes women's access to sexual and reproductive rights

While the Polish Constitution (Article 68) guarantees the right of all persons to health and to equal access to health without discrimination, restrictive laws and policies on abortion remain in force, denying women and girls their right to the highest attainable standard of health.

Of particular concern is the 1993 Family Planning (Protection of the Human Foetus and Conditions Permitting Pregnancy Termination) Act (1993 Family Planning Act), which permits termination of pregnancy only in the following circumstances:

- When the pregnancy constitutes a risk to the life or health of the pregnant woman;
- Prenatal tests or other medical evidence indicate a high probability of severe and irreversible disability to the foetus or an incurable illness threatening its life;
- The existence of a justified suspicion that the pregnancy arose as a result of a crime.

The Act makes access to abortion services dependent on authorisation granted by either a physician other than the one performing the abortion, or by a prosecutor.¹¹ While the law does not criminalize a woman who seeks or obtains an abortion, those who perform or assist in performing an abortion that does not meet these conditions are subject to punishment of up to three years' imprisonment under Article 152, paragraphs 1 and 2, of the Criminal Code.¹²

In 2007, Poland was found to be in violation of the right to private and family life by the European Court of Human Rights in *Tysic vs Poland*, a case concerning a woman denied access to legal abortion on health grounds.¹³ The Court held that the legal framework for the right to therapeutic abortion in the event of disagreement between the patient and the doctor was inadequate. In response to the judgment, Poland adopted the Law on the Rights of Patients in 2008 that introduced an Ombudsperson for Patients' Rights. However, the administrative mechanism established under the new law does not provide an effective remedy for women and girls wishing to challenge a doctor's decision on access to reproductive health services, including as regards a request for a legal termination of pregnancy. The mechanism does not provide for a timely review of medical decisions; it is not easily and equally accessible to all; and decisions made cannot be further appealed. In June 2011, the Committee of Ministers of the Council of Europe requested that Poland provide information on the concerns arising from the existing legal framework on the provisions of procedural safeguards in the event of disagreement between the patient and the doctor regarding a therapeutic abortion.¹⁴ The response of the Polish authorities to the request was not available at the time of writing.

Promotion and protection of human rights on the ground

Poland's role in the US-led rendition and secret detention programmes

After years of denying taking part in counter-terrorism operations conducted by the CIA, in March 2008 the Polish authorities launched a criminal investigation into Poland's involvement in the CIA's

rendition and secret detention programmes. This investigation, as conducted by the Appeal Prosecutor's Office in Warsaw, has never made public its terms of reference or timeline. Although it has formally recognized two men as "victims", the men and their representatives have reportedly not been able to engage effectively in the investigation.

New evidence came to light in 2009-2010 from the Polish Air Navigation Services Agency (PANSAs) and the Polish Border Guard Office, revealing not only that planes operating in the context of the US rendition and secret detention programmes had landed on Polish territory – but also that PANSAs had actively collaborated with the CIA to create "dummy" flight plans to cover-up the true destinations of some of the flights: some flight plans listed Warsaw as the destination when in fact the plane had landed at Szymany, near the alleged site of a CIA-operated secret detention facility at Stare Kiejkuty. According to the data, PANSAs had also assisted in navigating aircraft into Szymany on two occasions without having received any official flight plans.

Further confirmation of Polish involvement in these operations came in July 2010. The publication of the Polish Border Guard Office information indicated that between 5 December 2002 and 22 September 2003, seven aircraft operating in the context of the CIA's rendition programme landed at Szymany airport, and that passengers, in addition to crew, were on board the aircraft upon arrival in and/or upon departure from Poland.

In September 2010, the Prosecutor's Office publicly confirmed that it was investigating claims by Saudi national Adb al-Rahim al-Nashiri that he had been held in secret detention in Poland in 2002-2003. Analysis contained in the February 2010 UN Joint Study on Secret Detention, carried out by four Special Procedures of the UN Human Rights Council, supported by the statements of confidential sources, gave credence to the claim.¹⁵ Abd al-Rahim al-Nashiri was granted formal status as a "victim" by the Prosecutor's Office in October 2010. The "victim" status was also granted to Abu Zubaydah in January 2011.

The new evidence disclosed between 2008 and 2010 stands in stark contrast to the conclusions of a 2005 internal inquiry by the Parliamentary Special Services Committee (*Komisja do Spraw Służb Specjalnych*); the Committee never made its report public, but categorically denied Poland's involvement in the CIA's rendition and secret detention programmes.

Excessive use of force by law enforcement officials

In 2011, the European Committee for the Prevention of Torture reported a number of allegations of excessive use of force by police staff during apprehension of criminal suspects, and recommended that police officers be reminded that all forms of ill-treatment were unacceptable and would be the subject of severe sanctions.¹⁶ In July 2011, a draft law on coercive measures and the use of firearms was presented for consultation. In September 2011, the Legal Council of the Prime Minister's Office criticized the draft for not meeting the requirements outlined in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials. In particular, the Legal Council was critical of the removal of the obligation to issue a warning to precede the use of firearms.¹⁷

Racism

The Ombudsperson, media and NGOs have reported a growing number of cases of verbal and

physical attacks against Muslims, Roma and people of African origin in Warsaw, Białystok, Gdańsk and Wrocław over the past year. In October 2011, in a letter to the Prosecutor General, the Ombudsperson expressed concerns about the growing number of racially-motivated and xenophobic attacks and called on the Prosecutor to take the necessary measures to address these crimes.¹⁸

Reproductive rights and access to abortion

Amnesty International is concerned that many women are denied access to reproductive health services, including lawful termination of pregnancy.

Since the first UPR of Poland in 2008, several UN human rights monitoring bodies have made recommendations on women's right to reproductive health.¹⁹ In 2010 the Human Rights Committee called for an urgent review of "the effects of the restrictive anti-abortion law on women", and for research into and provision of statistics on the use of illegal abortion.²⁰ Two cases that illustrate Poland's failure in this regard are currently before the European Court of Human Rights. One concerns a pregnant woman who died of septic shock after being refused diagnostic care and treatment in several hospitals for fear that the foetus would come to harm; the other concerns an adolescent rape victim who was subjected to delays and harassment in accessing a legal abortion. In a recent European Court ruling, Poland was found to have violated the right not to be subjected to torture and inhuman treatment and the right to private and family life of a pregnant woman, RR, who was denied timely access to genetic tests and whose child was born with Turner syndrome.²¹ The Court held that her treatment amounted to humiliation, and that as the domestic law allowed for abortion in cases of foetal malformation, a pregnant woman should have access to full and reliable information on the health of the foetus.

Recommendations for action by the State under review

Amnesty International calls on the government of Poland to:

Follow up to the previous review:

- Ensure that the Ombudsperson's office is adequately financed to fulfil its role, including as regards assisting victims of discrimination in pursuing their complaints, and conducting independent research and issuing recommendations on the subject of equal treatment;
- Ratify and implement Protocol No. 12 to the European Convention on Human Rights;
- Implement the recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment regarding prison conditions, in particular the provision to ensure at least 4m² per inmate in multi-occupancy cells.

Poland's role in the US-led rendition and secret detention programmes:

- Ensure that the investigation into allegations of Polish complicity in renditions and secret detention continues with as much transparency as possible and in conformity with Poland's international legal obligations. Anyone found responsible for crimes under international law should be brought to justice in fair proceedings;

- Fully co-operate with the UN Special Procedures on the issue of secret detention in the context of counter-terrorism operations, including by providing them with relevant information on the subject.

Excessive use of force by law enforcement officials:

- Ensure that the draft law on coercive measures meets the requirements in the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, in particular, the obligation to issue a warning to precede the use of firearms.

Racism:

- Take measures to prevent racist incidents and hate crimes, and to ensure collection of data on these crimes;
- Ensure that racially-motivated crimes and other hate crimes are subjected to prompt, independent, impartial and adequate investigation; that those responsible for such crimes are brought to justice in fair proceedings; and that the victims are provided with an effective remedy, including reparation;
- Ensure that all police officers and prosecutors receive in-service training on the nature of hate crimes and the role of the police in combating them.

Reproductive rights and access to abortion:

- Ensure women can access lawful abortion by creating clear, legally binding regulations for the implementation of the 1993 Family Planning Act;
- Repeal the Criminal Code provisions related to doctors, in particular Article 152, paragraphs 1 and 2 on performing or assisting in the performance of an abortion that does not meet the conditions set out in the 1993 Family Planning Act;
- Ensure access to remedy and timely review of appeals against a refusal of a therapeutic abortion where provided for in law.

¹ Report of the Working Group on the UPR of the Poland, 23 May 2008, A/HRC/8/30, paragraph 54.6 (Slovenia, United Kingdom and Sweden).

² A/HRC/8/30, paragraph 54.7 (Republic of Korea), and paragraph 54.9 (Russian Federation).

³ A/HRC/8/30, paragraph 54.8 (Denmark).

⁴ A/HRC/8/30, paragraph 54.20 (Russian Federation).

⁵ Journal of Laws of 2010, No 245, item 1700 (*Ustawa z dnia 3 grudnia 2010 roku o wdrożeniu niektórych przepisów Unii Europejskiej w zakresie równego traktowania*).

⁶ L. Bojarski, "New Polish equality body – illusory or real?", European network of legal experts in the non-discrimination field, 2011, pp. 1-3, available at: <http://www.non-discrimination.net/content/media/PL-19-PL-19-problems%20with%20equality%20body.pdf> (accessed 25 November 2011).

⁷ Report to the Polish Government on the visit to Poland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment from 26 November to 8 December 2009, Section II (C) (4), 12 July 2011, CPT/Inf (2011) 20, available at <http://www.cpt.coe.int/documents/pol/2011-20-inf-eng.htm> (accessed 25 November 2011).

⁸ *Orchowski v Poland*, judgement 22 October 2009, Application no. 17885/04, European Court of Human Rights (*Orchowski v Poland*) available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?item=1&portal=hbkm&action=html&highlight=Orchowski&sessionId=82267793&skin=hudoc-en> (accessed 25 November 2011).

⁹ *Orchowski v Poland*.

¹⁰ A/HRC/8/30, paragraph 54.20 (Russian Federation).

¹¹ In cases falling under the first two categories, the health-related risks must be certified by a physician other than the one performing the abortion. In cases falling under category 3, certification of a prosecutor is required. However, as noted by the Council of Europe

Commissioner for Human Rights in 2007, “even when they do issue a certificate, the doctor who performs the termination can question the certificate’s validity and refuse the service”.

¹² Article 152 of the Criminal Code reads as follows: § 1. Whoever terminates a pregnancy in violation of the law with the consent of the woman is subject to a punishment of up to 3 years imprisonment. § 2. This same punishment applies to whoever assists a pregnant woman in terminating the pregnancy in violation with the regulations of the act or persuades her to do so. § 3. Whoever carries out an act defined in § 1 or 2 when the conceived child has achieved the ability of independent life outside the organism of the pregnant woman, is subject to a punishment of 6 months to 8 years imprisonment.

¹³ *Tysiąc v Poland*, judgment 24 September 2007, Application No. 5410/03, European Court of Human Rights.

¹⁴ See Council of Europe Committee of Ministers page, at:

[https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec\(2011\)1115/18&Language=lanEnglish&Ver=original&Site=DG4&BackColorInternet=BgBDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679](https://wcd.coe.int/ViewDoc.jsp?Ref=CM/Del/Dec(2011)1115/18&Language=lanEnglish&Ver=original&Site=DG4&BackColorInternet=BgBDEE&BackColorIntranet=FFCD4F&BackColorLogged=FFC679) (accessed 25 November 2011).

¹⁵ Office of the High Commissioner for Human Rights, “UN experts issue extensive global study on secret detention linked to counter-terrorism”, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9777&LangID=E> (accessed 25 November 2011).

¹⁶ European Committee for the Prevention of Torture, Section II (A) (3).

¹⁷ Legislative Council, “Opinion of 13 September 2011 on a draft bill on the assumptions of direct coercion measures and firearms” (*Opinia z 13 września 2011 r. w sprawie projektu założeń projektu ustawy o środkach przymusu bezpośredniego i broni palnej*) 13 September 2011, available at: <http://radalegislacyjna.gov.pl/dokumenty/opinia-z-13-wrzesnia-2011-r-w-sprawie-projektu-zalozen-projektu-ustawy-o-srodkach-przymusu> (accessed 25 November 2011).

¹⁸ The letter is available at: <http://www.rpo.gov.pl/pliki/13190293270.pdf> (accessed 25 November 2011).

¹⁹ UN Special Rapporteur on the highest attainable standard of physical and mental health, report on mission to Poland, A/HRC/14/20/Add.3, 20 May 2010, and Committee on Economic, Social and Cultural Rights, Concluding Observations on Poland, E/C.12/POL/CO/5; 2 December 2009.

²⁰ Human Rights Committee, Concluding Observations on Poland, CCPR/C/POL/CO/6, 15 November 2010, paragraph 12.

²¹ *R.R. v Poland*, judgment 26 May 2011, Application No. 27617/04, European Court of Human Rights. The Court held that as a result of the denial and procrastination of the medical professionals, RR had to endure weeks of painful uncertainty concerning the health of the foetus and her own and her family’s future. Such treatment amounted to humiliation. The child was born with Turner syndrome and RR’s husband left her. The European Court of Human Rights emphasized that as the domestic law allowed for abortion in cases of foetal malformation, a pregnant woman must have access to full and reliable information on the foetus’ health.