



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés



**Submission by the United Nations High Commissioner for Refugees
for the Office of the High Commissioner for Human Rights' Compilation Report
- Universal Periodic Review:**

POLAND

I. Background and current conditions

Poland is party to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*. However, Poland has neither acceded to the *1954 Convention Relating to the Status of Stateless Persons*, nor to the *1961 Convention on the Reduction of Statelessness*.

There are consistent efforts to develop effective procedures and mechanisms for the protection of persons of concern. Legislative provisions and practices on the ground have reached the level where applicable international standards are in place. Poland has transposed the relevant EU directives on asylum into national legislation.

Access to territory is secured and the principle of *non-refoulement* is observed. There are no legal or technical obstacles concerning access to the refugee status determination procedures (RSDP) at the border or within the Polish territory. The RSDP are generally fair and efficient; however, there remain some gaps, such as deficient access to free legal assistance for persons of concern, especially in detention facilities. In general, Poland provides persons of concern with a safe environment. The reception conditions and RSDP standards have continuously improved throughout the years.

As of 3 November 2011, a total of 5,522 persons had applied for asylum, including 3,453 citizens from the Russian Federation and 1,362 Georgians. In the same period, 125 persons were recognized as refugees and 122 were granted subsidiary protection in the first instance. Government figures indicate that 763 persons registered as stateless resided legally in Poland in 2010.

II. Achievements and good practices

Issue 1: National Migration Strategy Document

The Polish authorities continue to work on the *Polish Migration Strategy Document*, which shapes the course of the country's migration policies. The document has been accepted by the Inter-Ministerial Committee on Migration in July 2011 and is awaiting the signature of the Prime Minister. The document also covers matters related to asylum concerning, among others, international protection, reception conditions for asylum-seekers, including pre-integration, integration and resettlement.

Issue 2: Revised Law on granting protection to aliens on the territory of the Republic of Poland of 13 June 2003

On 26 August 2011, President Bronislaw Komorowski signed the *Law on Legalization of Stay of Some Foreigners on the Territory of the Republic of Poland and on the Amendment to the Act on Granting Protection to Foreigners within the Territory of the Republic of Poland and Act on Foreigners*. The law introduces, *inter alia*, regularization of stay of undocumented migrants and rejected asylum-seekers in Poland, as well as the concepts of resettlement and relocation. This law will enter into force on **1 January 2012**.

According to this law, asylum-seekers whose asylum applications were rejected by a final decision before 1 January 2010 and who since that date have, without interruption, stayed in Poland would be eligible to apply for legalization of their stay. This includes rejected asylum-seekers who have lodged repeated asylum applications, even if those asylum procedures are still pending.

The revised law introduces a new legal institution permitting resettlement, which allows for transfer of refugees from the country of first asylum to Poland. The role of UNHCR in resettlement is recognized and refugees recognized under UNHCR's mandate may benefit from the transfer.

III. Challenges

Issue 1: Lack of alternatives to detention for asylum-seekers

In accordance with UNHCR Executive Committee Conclusion 44 of 13 October 1986, detention of asylum-seekers and refugees residing legally on the territory of the State should normally be avoided. If necessary, detention may be resorted to only on grounds prescribed by law in order to verify identity; to determine the elements on which the claim to refugee status or asylum is based; to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents; when fraudulent documents have been used in order to mislead the authorities of the State in which they intend to claim asylum; or to protect national security or public order. It has to be underlined, that in the opinion of UNHCR, the detention of asylum-seekers is inherently undesirable.¹ This is even more so the case for vulnerable groups, such as single women, children, unaccompanied minors and those with special medical or psychological needs. Freedom from arbitrary detention is a fundamental human right and the use of detention is, in many instances, contrary to the norms and principles of international law.

In its concluding observations and recommendations on Poland², the Human Rights Committee stated that:

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

¹ UNHCR's Guidelines on Applicable Criteria and Standards relating to the Detention of Asylum-Seekers February 1999

² CCPR/C/POL/CO/6, 100th session, 15 November 2010

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.

Taking into account the above, UNHCR notes that the current grounds for detention provided by the national law are too broad according to applicable international human rights instruments, since the possibility to limit freedom of movement of persons legally staying on the Polish territory is linked neither to the necessity to protect national security, public order, public health or morals, nor to the rights and freedoms of others (Article 12 of the 1966 International Covenant on Civil and Political Rights). Irrespective of international standards on detention, UNHCR is also concerned with the fact that the current practice of the Polish authorities does not provide for the use of alternatives to detention.

The Agenda for Protection of UNHCR recommends States to more concertedly “explore alternative approaches to the detention of asylum-seekers and refugees and to abstain, in principle, from detaining children.”³ In its concluding observations and recommendations on Poland⁴, the Committee on the Rights of the Child also highlights this issue:

8. While noting that the general principles of the Convention on the Rights of the Child have been taken into account to some extent in the design and application of measures of implementation adopted by the State party under the Optional Protocol, the Committee is concerned that this has not been done fully. The Committee is particularly concerned that children’s views are not given due consideration in all matters affecting them, including the creation of policies and programmes, and that this may be a consequence of the inadequate application of the principle of the right of the child to express his/her views and to have those views given due weight. The Committee is also concerned at discriminatory attitudes faced by some vulnerable children, including Roma children and asylum-seekers, which may affect their protection and prevent the full enjoyment of their rights as enshrined in the Optional Protocol.

9. The Committee recommends that the general principles of the Convention on the Rights of the Child, in particular the principles of non-discrimination and respect of the views of the child, be included in all measures taken by the State party to implement the provisions of the Optional Protocol, including judicial or administrative proceedings.

Issue 2: Access to legal assistance of asylum seekers:

Access to legal assistance for asylum-seekers, especially those in detention, remains of concern to UNHCR. There is no state organized system for free legal aid in such cases; therefore the majority of the burden lies on NGOs providing legal assistance. These are, however, dependant on financial grants typically provided on a yearly

³ UN High Commissioner for Refugees, *Agenda for Protection*, October 2003, Third edition, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4714a1bf2&page=search>

⁴ CRC/C/OPSC/POL/CO/1, 52nd session, 22 October 2009

basis, *inter alia*, by the European Refugee Fund, which limits the scope of assistance provided. Only a few NGOs travel to the detention facilities and only one does on a regular basis.

Issue 3: Access to housing for beneficiaries of international protection in Poland

UNHCR notes that according to Polish law persons granted refugee status or subsidiary protection have the same rights and obligations as Polish nationals. However, despite these equal rights, UNHCR observes that many beneficiaries of international protection in Poland have no effective opportunity to exercise their rights to adequate housing, as required under the 1951 Convention and other international and regional human rights treaties. Safe, secure and affordable housing plays a critical role in determining overall health and well-being of beneficiaries of international protection, as well as providing a base from which they can start their new lives. In practice, they face *de facto* discrimination in access to housing.

According to the key findings of a research on homelessness among refugees in Poland conducted in 2010, the number of homeless refugees varies between 20% and 30% of the total refugee population. In the view of experts, all refugees are at risk of housing exclusion and homelessness in Poland, as integration support does not sufficiently help them to become independent economically, and their participation in the integration programme does not reduce the risk of homelessness. Large families and single mothers are particularly at risk of homelessness, as they face the prejudice of landlords reluctant to rent flats to them. As a result, some refugees opt to move to other EU Member States, despite the risk of being returned to Poland.

Issue 4: Xenophobic and discriminatory attitudes

In general, the society is receptive towards asylum-seekers and persons granted international protection. However, it may be observed that the local communities do show xenophobic and discriminatory attitudes towards persons of concern, especially in terms of accepting the reception centres in their neighbourhoods. In January 2009, the Office for Foreigners had to close the reception centre in Katowice (300 km. south- west to Warsaw) due to the pressure by the city authorities. Despite interventions from the general public, the media and UNHCR, the authorities were not interested in changing their position. In 2010, similar pressure from the side of local society to close down a reception centre was observed in Lomza (120 km north – east to Warsaw). The incident was fuelled by the statement of a Member of Parliament about the necessity of closing the reception centre in the city. The Parliamentarian argued that the city lacked sufficient funds and capacity to host persons of concern.

During the period of 2009 - 2011, several incidents were reported in different locations, such as Lomza, Radom and Bialystok, showing existing tensions between populations of concern and the local society. The growing number of written and oral statements of xenophobic and discriminatory character was observed.

UNHCR is undertaking efforts, together with the Government, to minimize xenophobic attitudes in locations hosting reception centres for asylum-seekers. UNHCR cooperates with the Office of Ombudsman to counteract xenophobic and discriminatory attitudes towards persons of concern. The Office of Ombudsman is

compiling a detailed report on combating violence motivated by race, ethnicity or nationality, which will include recommendations and an in-depth analysis of the current situation in Poland. In this context we wish to refer to the concluding observations and recommendations following the CEDAW session on Poland:⁵

28. The Committee regrets the lack of data and information on the situation of certain groups of women and girls in Poland, including Roma, refugees, asylum seekers and migrants, who are particularly disadvantaged.

29. The Committee requests the State party to collect quantitative and qualitative information on the situation of disadvantaged groups of women and girls in Poland. It calls upon the State party to ensure that their special needs in areas such as education, health care and protection from violence are met, and to support their integration into Polish society.

Issue 5: Accession to UN Statelessness Conventions

Poland is not a State party to the *1954 Convention on the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness*. Nevertheless, the legal order already in force clearly reflects the perception of statelessness as an undesirable situation. Moreover, the Polish legal regulations to a large extent meet the standards set out in the two international statelessness instruments. Nevertheless, the Polish Government has expressed reluctance to acceding to the 1954 Convention, while accession to the 1961 Convention depends on the future of the 2009 draft Law on Polish Citizenship.

Accession to the *1954 Convention relating to the Status of Stateless Persons* would establish a framework to protect such individuals and would work to avoid the detrimental effects of statelessness on individuals and society by ensuring minimum standards of treatment of stateless persons, providing such persons with stability and security, and ensuring that certain basic rights and needs are met.

Furthermore, the *1961 Convention on the Reduction of Statelessness* establishes an international framework to ensure the right of every person to a nationality by establishing safeguards to prevent statelessness at birth and later in life. This treaty is therefore complementary to standards contained in other human rights treaties. An increase in the number of States parties is essential to strengthening international efforts to prevent and reduce statelessness.

IV. Recommendations

In view of the above, we would like to suggest to the Office of the High Commissioner for Human Rights to consider referring in its compilation report the following recommendations aimed at enhancing the protection of persons of concern to UNHCR in Poland:

Issue 1: Introduce alternative measures to detention for asylum-seekers and refugees.

Issue 2: Adopt legislation on legal assistance to address the specific needs of persons of concern to UNHCR.

⁵ CEDAW/C/POL/CO/6, 37th session, 2 February 2007

Issue 3: Ensure effective access to housing for refugees and persons granted subsidiary protection and develop a targeted integration programme for beneficiaries of international protection, which should also address their specific needs.

Issue 4: Develop anti-discrimination policies and undertake further efforts to respond to discrimination and xenophobia in locations hosting reception centres for asylum-seekers in order to enhance the reception and integration of persons of concern to UNHCR in the country.

Issue 5: Accede to the *1954 Convention on the Status of Stateless Persons* and to the *1961 Convention on the Reduction of Statelessness*.

**Human Rights Liaison Unit
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