



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS

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Excellency,

I have been following the third cycle of the Universal Periodic Review (UPR) of Poland and welcome your constructive engagement and that of your Government during the 27th session of the UPR Working Group in early May 2017.

As the final outcome report on the review of Poland was recently adopted by the Human Rights Council at its 36th session, I am writing to follow up on a number of areas raised in two reports that my Office prepared for the review – the compilation and the summary of stakeholders' submissions – which I consider in need of particular attention over the next four and a half years until the next cycle of the UPR. In identifying these areas, I have also considered the recommendations made by 72 countries, Poland's presentation and responses, and the action taken by the Government to implement the 105 recommendations it accepted during the second cycle of the UPR. The areas cover a range of issues and are set out in the annex to this letter.

I would like to welcome Poland's acceptance of the recommendations related to upholding the independence of the judiciary and urge the Government to ensure that all legislative processes are carried out in line with Poland's obligations under international human rights law. Poland's challenges with regard to the independence of the judiciary were also reflected in my recent opening statement to the Human Rights Council.

I encourage Poland to develop a national human rights action plan in order to achieve concrete results in the areas contained in the annex and to facilitate Poland's preparations for the fourth cycle of the UPR. The development of the national human rights action plan should include consultations with all stakeholders, in particular, the national human rights institution (the Office of the Commissioner for Human Rights), civil society organisations, and, where necessary, the support of international organisations, including the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other United Nations entities.

I also encourage Poland to strengthen its national mechanism for comprehensive reporting and follow up in relation to international and regional human rights mechanisms and treaty obligations. I strongly recommend to Poland the use of the practical guide that my Office released in 2016 on this topic and which is available at: http://www.ohchr.org/Documents/Publications/HR_PUB_16_1_NMRF_PracticalGuide.pdf.

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H E. Mr. Witold Waszczykowski
Minister of Foreign Affairs
Poland



Please be advised that I will be sharing my advice with all Member States as they go through the third cycle with a view to assisting them to begin implementing the UPR recommendations early on, following the review. An important measure that can contribute positively to follow up action is voluntary mid-term reporting. In this regard, I welcome Poland's submission of its mid-term reports during the first and the second cycles and encourage Poland to submit a mid-term report for the third cycle, by September 2019.

As the Secretary-General states in his 2017 report on the work of the Organization (A/72/1, paragraph 98): *"The Human Rights Council's universal periodic review process is now entering a new cycle, with every Member State scheduled for a third round of scrutiny. We will work to strengthen the relevance, precision and impact of the Council's recommendations, including by providing better support to Member States in implementation, stronger collaboration with United Nations country teams and the establishment of national mechanisms for human rights reporting and follow-up to link the universal periodic review to the implementation of the Sustainable Development Goals."*

I look forward to discussing with you ways in which my Office may assist Poland to take action in the areas I have identified.

Please accept, Excellency, the assurances of my highest consideration.

Zeid Ra'ad Al Hussein
High Commissioner for Human Rights

cc: Ms. Renata Szczech, Under Secretary of State, Ministry of Foreign Affairs



Annex

Scope of international obligations and cooperation with international human rights mechanisms and bodies

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.

National Human Rights Framework

- Provide the Office of the Commissioner for Human Rights, A-status NHRI, with the necessary resources to enable it to carry out its mandate fully, effectively and independently in accordance with the Paris Principles.

Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

Equality and non-discrimination

- Strengthen efforts to prevent and combat all forms of discrimination by: amending the Act on Equal Treatment to prohibit discrimination on all grounds prohibited under ICCPR and ICESCR, including sexual orientation or gender identity, disability, religion, age and political opinions, in all spheres and sectors, including education, health care, social protection and housing; and amending the Criminal Code to criminalise hate crimes comprehensively on the aforementioned grounds so that crimes motivated by discrimination on any of these grounds are investigated and prosecuted as aggravated forms of criminal conduct;
- Strengthen the national measures to fight racism and xenophobia;
- Review the legal status of same-sex couples and recognizing civil partnerships or marriage between same-sex persons in the domestic legal order.

Human rights and counter terrorism

- Review legislation on counter-terrorism, including the counter-terrorism law of June 2016 and the Criminal Code, to bring it in line with Poland's human rights obligations; ensure that definitions of "terrorist crime" or "terrorist incidents" are not overly broad; and comply with the principles of legality, necessity and proportionality in cases of any interference with the right to privacy;
- Cooperate with the European Court of Human Rights on rendition and secret detention cases against Poland and ensure that investigations are carried out thoroughly and within a reasonable period of time.



B. Civil and political rights

Right to life, liberty and security of person

- Incorporate, in the domestic legal order, the definition of torture according to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and improve prison conditions, including overcrowding.

Administration of justice, including impunity and the rule of law

- Uphold the independence of the judiciary by: preserving the integrity and independence of the Constitutional Court and implementing the recommendations of the Human Rights Committee in this regard; respecting the opinion of the Venice Commission and the OSCE Office for Democratic Institutions and Human Rights and cooperating under the EU Commission rule of law framework; ensuring that any reform of the justice system takes place only after careful consultation with the representatives of the legal professions and that it is in line with international standards of judicial independence; and restructuring the Office of the Attorney General in order to separate its functions from those of the Ministry of Justice.

Fundamental freedoms

- Respect the freedom and independence of the media, including through amending laws that limit its independence, and decriminalise defamation by amending the Criminal Code;
- Prevent from shrinking operational space for the civil society organisations operating in Poland;

Ensure freedom of expression as well as transparent distribution of funding to the civil society organisations.

Prohibition of all forms of slavery

- Combat human trafficking by establishing a mechanism to identify persons vulnerable to trafficking, including children; strengthening prosecution of perpetrators; and providing victims with rehabilitation. In this regard, I would like to stress that victims of trafficking should not be prosecuted for activities they were involved in as a direct consequence of their situation as trafficked persons.

C. Economic, social and cultural rights

- Ensure that provisions of the International Covenant on Economic, Social and Cultural Rights are given full effect in the domestic legal order and that these rights are justiciable.

Right to an adequate standard of living

- Collect disaggregated data on poverty to monitor the situation of all marginalized groups and those in vulnerable situations, including women and children, so that

targeted support could be provided to all those in need to ensure their enjoyment of the right to an adequate standard of living.

Right to health

- Ensure the right of women to access sexual and reproductive health, in particular safe and legal abortion, by establishing clear guidelines for the provision of legal abortion and an effective referral mechanism to ensure access to legal abortion in cases of conscientious objection by doctors.

D. Rights of specific persons or groups

Women

- Adopt a comprehensive strategy aimed at preventing and eliminating all forms of discrimination and violence against women, including through adopting temporary special measures to promote access for women to employment and achieve their equal and full participation in political and public life; and criminalising domestic violence and marital rape by amending the Criminal Code.

Children

- Review legislation, policies and programmes on housing to prevent and eliminate homelessness and poverty, in particular, among children.

Minorities

- Ensure the rights to employment, housing, health and education to Roma by: reviewing legislation and programmes to improve their access to employment and social housing; preventing forced evictions for those living in informal settlements; making free basic health-care services available and accessible for them; and facilitating the participation and inclusion of Roma children in education at all levels.

Migrants, refugees and asylum seekers

- Strengthen protection of migrants, refugees and asylum seekers, including through refraining from detaining them and implementing alternatives; amending the Foreigners Act which provided for the possibility of placing asylum-seeking children in detention; and fully respecting the principle of non-refoulement so that a refugee or an asylum seeker is not returned to a country where his or her life would be threatened.