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Summary record of the 3306th meeting (Chamber B)

Held at the Palais Wilson, Geneva, on Monday, 17 October 2016, at 3 p.m.

Chair: Sir Nigel Rodley

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant

Seventh periodic report of Poland (CCPR/C/POL/7 and CCPR/C/POL/QPR/7)

1. *At the invitation of the Chair, the delegation of Poland took places at the Committee table.*
2. **Mr. Piebiak** (Poland), introducing the seventh periodic report of Poland, said that the Government was deeply committed to its international obligations and was continuing its efforts to ensure greater protection for human rights. For example, the parliament was currently considering a bill to amend the law with a view to tackling the problem of lengthy court proceedings following the judgment of the European Court of Human Rights in the case of *Rutkowski v. Poland* in 2015. The number of judgments against Poland for violations of the European Convention on Human Rights had fallen from 141 in 2008 to 29 in 2015.
3. In the area of law enforcement, the new law on the Office of the Prosecutor General, adopted in January 2016, was designed to make judicial proceedings more efficient and to eliminate instances of unlawful arrest. Specialized units were being set up to combat organized crime, corruption and cybercrime, and consultants had been called in for certain offences, including hate crimes.
4. The comprehensive National Plan of Action against Trafficking in Human Beings for the period 2016-2018 provided for prevention and protection measures and victim assistance. A network of task forces for the prevention of human trafficking, set up in 2015, coordinated the efforts of the various relevant government bodies and non-governmental organizations and ran awareness-raising campaigns throughout the country.
5. The Ministry of the Interior and Administration had developed a strategy for the prevention of human rights violations by police officers, whose main objective was to ensure that the police worked with the public in a professional manner and performed their duties with due respect for human rights standards. The Prison Service had implemented new initiatives to combat discrimination, including human rights education. In 2016, the Director General of the Prison Service had appointed a Government Plenipotentiary for Equal Treatment. Efforts to reduce overcrowding in prisons had brought the occupancy level down to just over 86 per cent by September 2016. Further action was planned in that regard, including increased use of the electronic monitoring of persons deprived of their liberty. The introduction of a programme to enable prisoners to undertake work in prison facilities was in the planning stages.
6. In 2016 the Government had rolled out a nationwide free legal aid programme for, inter alia, persons in receipt of social welfare payments, persons under the age of 26 and persons over the age of 65. The Office for Foreigners operated a similar programme for foreign nationals seeking protection in Poland. The Family 500 Plus programme, which was designed to alleviate the financial burden of bringing up children, provided parents or guardians with a monthly allowance of 500 zlotys for the second child and any subsequent children, while low-income families and families with a child with disabilities received enhanced provision. As a result of advice from social partners and the Ombudsman, the Government intended to amend existing legislation to enhance the right of patients to challenge a doctor's opinion or diagnosis and to reduce to 21 days the time limit for the relevant medical board to review such complaints by patients. Recent changes had been made to the workings of the Constitutional Court with the aim of making it more democratic and streamlining its operations. The Court's rulings were and would continue to be published.

7. **Ms. Seibert-Fohr** said that the Committee appreciated the State party's acceptance of the simplified reporting procedure and the timely submission of its report. Given that, under the Constitution, the Covenant was part of the domestic legal framework, she wished to know the extent to which the Covenant was relevant in practice and would appreciate information on specific cases in which the courts had made reference to it. In light of the many amendments which had been made to the law on the Constitutional Court during the previous year, how could the Court properly exercise its role in protecting human rights? The Committee had received information that the Prime Minister had refused to allow the publication in the official gazette of judgments handed down by the Court in March 2016 and August 2016 concerning the constitutionality of the law on the Constitutional Court and that the Court's judgment of 11 August 2016 had not been recognized by the Government. Could the delegation confirm whether those reports were true? She wondered how did the Government intend to ensure the effectiveness of the Court's jurisprudence if it was not made accessible.

8. In its previous concluding observations (CCPR/C/POL/CO/6), the Committee had recommended that the State Party should carry out a criminal investigation into reports that a rendition and secret detention programme had been run at the military base in the village of Stare Kiejkuty between 2003 and 2005. It was not clear why the Government had not made a commitment to conduct such an investigation or provided a time frame within which it intended to do so. She would like to know what were the Government's reasons for keeping information on torture classified.

9. The delegation should clarify whether it was true that the counter-terrorism law of 10 June 2016 had been approved by the parliament without debate. Given the broad definition of terrorism contained in the Criminal Code, she wondered what safeguards were in place to prevent persons from being falsely accused. The Committee would welcome details of the current anti-terrorism legislation and the so-called events of a terrorist nature that were listed under the new law. She would like to know, in particular, whether it was true that fundamentalist statements made by representatives of Muslim groups could be classed as events of a terrorist nature.

10. She wished to know what measures were in place to prevent risks to the life and health of women who underwent clandestine abortions. The Committee had received information that legislation had been proposed that would prohibit access to contraceptives and remove education on reproductive rights from the school curricula: was that information correct? The delegation should indicate what measures were in place to ensure access to legal abortion. It would be useful to know whether there was effective access to prenatal genetic testing. She would appreciate information on whether the conscience clause under the law hampered access to legal abortions, whether measures were in place to ensure women had access to other doctors and whether there was an effective mechanism for challenging the decision of a physician not to perform an abortion or prenatal test. The delegation should provide statistics on women's access to legal abortions. Did the Government still intend to further reduce access to legal abortions in cases of fatal fetal impairments?

11. **Mr. Ben Achour**, while commending the Government for its efforts to protect racial and religious minorities from verbal and physical abuse, said that there were reports from NGOs indicating that the authorities sometimes acted only after the event, whereas preventive action would have been more effective. Following the terrorist attacks in Nice, France, certain public officials had made statements that were likely to fuel racial and religious tensions and lead to the stigmatization of Muslims.

12. According to NGO reports, prosecutors often refused to prosecute hate speech or racially motivated acts, even when those acts were punishable under national or international law. The judicial authorities seemed reluctant to take action against

perpetrators of attacks against asylum seekers and refugees. He therefore asked whether the delegation agreed that the Government should take more effective measures to prevent xenophobia, racial discrimination and intolerance. He wished to know why the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance had been dismantled.

13. A number of NGO reports had also found that the Government's statistics on the number of anti-Semitic attacks were unreliable, as they did not take into account the fact that a large number of prosecutions were initiated but subsequently discontinued. He was very concerned to hear that anti-Semitic literature was sold on the University of Warsaw campus. Generally speaking, there seemed to be a lack of action on the part of the Government to address anti-Semitism in Poland.

14. **Mr. Iwasawa** said that, while the enactment of the Act of 3 December 2010 Implementing Certain European Union Provisions on Equal Treatment was a significant step forward, he found it regrettable that it covered discrimination on only a limited number of grounds and did not offer a holistic approach to equality. Given that the current wording of the Act did not provide for equal treatment for all vulnerable groups, and that it did not provide any possibility for compensation for non-pecuniary damage, he asked why the Government believed that it was unnecessary to amend the Act with a view to prohibiting discrimination in a comprehensive manner. He wished to hear the delegation's views on the effectiveness of the National Action Plan on Equal Treatment for the period 2013-2016, and he asked whether a new plan would be adopted once the current one expired at the end of 2016.

15. While he welcomed the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, assistance for victims of domestic violence was still inadequate, and, in fact, the number of specialist support centres for victims had decreased in recent years. He found it difficult to understand the Government's refusal to subsidize NGOs that assisted female victims of domestic violence on the grounds that doing so would constitute discrimination against male victims of domestic violence.

16. A number of organizations had expressed concern about the limited effectiveness of restraining orders against perpetrators of domestic violence. He asked whether the Government was considering isolating perpetrators before the start of criminal proceedings. Turning to the dropped cases of domestic violence referred to in the report (CCPR/C/POL/QPR/7, para. 59), he wished to know the reasons why, in three of those cases, the decision to discontinue proceedings had been found to be unjustified. He would appreciate it if the delegation could comment on reports that the additional work involved in cases of domestic violence meant that the police were more likely to treat them as a private or family matter rather than a criminal matter.

17. He welcomed the introduction of quotas for women in national and local elections but asked why the senatorial elections had been excluded from the quota system. While commending the fact that the gender pay gap in Poland was much lower than the European Union average, he pointed out that the gender pay gap was not the only indicator of overall inequality between men and women. In Poland, women bore the primary burden of childcare and performed unpaid work in the home. He asked how the Government planned to combat persistent stereotypes concerning women's role in society. Lastly, he wished to know what resources were available and what budget had been allocated to the Government Plenipotentiary for Equal Treatment.

18. **Mr. Shany** said he would be grateful if the delegation could explain why the budget for the Office of the Human Rights Defender had been cut. He wished to know which government body was responsible for monitoring the implementation of the Committee's

concluding observations and recommendations. He asked whether data were requested from government agencies in that regard and whether civil society played a role in the monitoring process.

19. While the number of complaints of hate crimes had increased in recent years, the percentage of complaints leading to formal charges being brought had decreased. The delegation should comment on that situation and should also state whether it believed that the existing framework to regulate hate speech in cyberspace was adequate.

20. He asked whether any policy changes had been introduced in response to the recommendations made by the Committee on the Elimination of Racial Discrimination in 2014 concerning racially motivated crimes. He was concerned that some prosecutors had decided not to initiate proceedings for anti-Semitic hate speech on the ground that the victims were not Jewish. The Government should provide guidance for prosecutors on how to deal effectively with anti-Semitism.

21. He noted with satisfaction the State party's willingness to amend the Penal Code to include sexual orientation, gender and disability as prohibited grounds for discrimination and wished to know about any progress made in that regard. He would appreciate clarification of the statement by the Government Plenipotentiary for Equal Treatment that he would focus on family mainstreaming rather than gender mainstreaming.

22. He was concerned about the failure to allow civil proceedings to be brought for hate speech on the ground that the hate speech in question had been directed at a community as a whole rather than an individual member of the community. Given that homophobic hate crimes continued to be carried out, he asked what the Government was doing to prevent such crimes and to raise awareness about the issue among law enforcement officials. According to information before the Committee, 90 per cent of victims of homophobic hate crime did not report the crime, because they were afraid of suffering discrimination at the hands of the police.

23. In the light of reports that same-sex couples experienced great difficulties in obtaining certification of their partnership or recognition of marriage ceremonies held abroad, he wished to know what was the legal status of same-sex couples under civil status law. The Committee had also heard reports that same-sex couples faced discrimination when attempting to obtain birth certifications for their children born outside Poland.

24. **Mr. Vardzelashvili** said that, despite the Government's explanations, he remained concerned that the Penal Code did not sufficiently capture all elements of a definition of torture and that punishments were not commensurate with the gravity of that crime. He asked whether the delegation could comment on that matter.

25. According to statistics provided by the State party, out of more than 500 complaints against police officers made in 2013, just five convictions had been secured and offenders had received only conditional or suspended sentences. The data of 2014 seemed to follow a similar pattern. He would like to know how many of the complaints referred to cases of alleged torture. He was also concerned that only two of more than 900 complaints of physical assault by prison personnel between 2012 and 2014 had been considered justified. It would be helpful if the delegation could comment on the effectiveness of investigations into such complaints, also in the light of the findings of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment during its visit to the country in 2013, which clearly indicated that persons taken into police custody in Poland had still run an appreciable risk of being ill-treated. He wished to know if investigations against the police were conducted by a special unit within the Office of the Prosecutor General and would like more detailed information about the Preliminary Proceedings Department of the Office. Did legislation make provision for compensation and other forms of redress for victims of torture or ill-treatment?

26. The fact that judges had the power to order the chemical castration of sex offenders through compulsory hormone therapy raised issues under article 7 of the Covenant. He wished to know in how many cases that punishment had been imposed, whether the law contained clear guidance about its use, whether decisions made in that regard could be reviewed and what happened if an offender refused the treatment.

27. **Ms. Cleveland** said that she was concerned about pending legislation that would criminalize any reference to Nazi concentration camps on Polish soil as “Polish death camps”. She asked whether the delegation could explain why the Government felt that such legislation was necessary and what was being done to ensure that debate about the activities of Polish nationals who collaborated with the Nazi regime was not stifled. It would also be useful to have an account of the recent comments made by a government minister who reportedly questioned the historical accuracy of the involvement of Poles in the 1941 Jedwabne massacre.

The meeting was suspended at 4.35 p.m. and resumed at 5 p.m.

28. **Mr. Domagała** (Poland) said that the judiciary was independent and the Ministry of Justice did not have the authority to review court rulings. However, those rulings were published on the Internet, and the Committee would be able to see at least 240 instances where courts had invoked the Covenant.

29. **Mr. Masło** (Poland) said that the Constitutional Court was fully functional. It was currently regulated by a new law passed in July 2016 under which the authorities had an obligation to publish any of the Court’s previously unpublished rulings. In fact, once Constitutional Court rulings appeared in the official gazette, they became part of national law. The July 2016 legislation also contained provisions regulating the term of office of the Court president and set the number of judges at 11. The parliament was currently examining the status of the judges of the Constitutional Court.

30. **Mr. Wierzbowski** (Poland) said that the designation of certain categories of documents as classified was a matter regulated by law. In the case of investigations into the so-called secret detention centres of the United States Central Intelligence Agency (CIA) in Poland, it had been the Prosecutor General who had decided that the documentation fell into the category of classified. In any case, the prolonged nature of court proceedings had not been due to the confidentiality of the documents but to circumstances surrounding applications for legal cooperation with institutions based in Switzerland and the United States of America. The investigations, part of which were already complete, were expected to continue until March 2017.

31. **Mr. Cichomski** (Poland) said that anti-terrorist legislation was technical in nature. Its aim was to gauge the possibility of an attack occurring and to improve coordination between State agencies in the event of such attacks. The legislation, which reflected the European Union Counter-Terrorism Strategy and incorporated elements of the guidelines provided by the North Atlantic Treaty Organization (NATO), made no reference to people’s nationality. The actual definition of terrorism in the Criminal Code was not discriminatory and remained unchanged.

32. **Ms. Korbasińska** (Poland) said that the legal grounds on which abortion was permitted in Poland had not changed. Pregnancies could be terminated under a number of circumstances: if the mother’s life or health was at risk; if the fetus was seriously and irreversibly damaged; or if there were grounds for believing that the pregnancy was the result of a criminal act. Women were not penalized for having illegal abortions. Despite efforts by citizens’ groups to make abortion laws more severe, neither the Government nor any political party had plans to alter the current legislation.

33. A number of rulings by the European Court of Human Rights had highlighted problems in accessing abortion services in Poland. As a result, an amendment had been introduced into national law to allow patients to challenge a doctor's decision on a particular medical issue. The change affected all aspects of health care, including access to abortion. In that context, the Ombudsman for Patients' Rights had received 36 applications but very few of them had involved cases of abortion. The Ministry of Health had recently taken steps to facilitate the process whereby patients could call a doctor's ruling into question. Any actions patients took in that regard would not be entered into their medical records. Furthermore, workshops had been devised to make doctors more familiar with the amendment to the law and the relevant rulings of the European Court of Human Rights.

34. Under the law, doctors could refuse to perform operations if they conflicted with their own beliefs. However, they could not refuse to intervene on the grounds of conscience if delayed action on their part might endanger the life or health of a patient. The conscience clause could only be invoked by individual medical practitioners. Hospitals and clinics had to provide all the services available under the national health service and, if a particular doctor would not perform an operation for reasons of conscience, the institution was obliged to refer patients to another doctor. A number of methods of contraception, covered by the National Health Fund, were available throughout Poland. Prenatal tests were also available under certain conditions.

35. **Mr. Piebiak** (Poland) said that it was difficult to predict what draft legislation would be submitted to the parliament on the issue of abortion because bills could also be proposed by members of the public. The Government wished to provide women with the necessary support and protection so that the number of times they had to face the dramatic decision of whether to have an abortion was as limited as possible. While the focus was on reducing the number of abortions, there was currently no specific draft legislation envisaged to achieve that goal.

36. **Mr. Cygan** (Poland) said that, in addition to the educational projects on hate crimes designed for the public and government officials, awareness of the issue was also being raised among police officers through workshops on the detection of hate crimes, appropriate police response to such crimes and prevention. Since its launch, 86,000 police officers, out of a total force of 100,000, had participated in the training programme. A public campaign on the prevention of racism and xenophobia, which had made use of social and mainstream media and had included the development of a website to reach out to victims and witnesses of hate crimes, had ended in 2015. Cooperation with NGOs had been enhanced through the campaign, and police monitoring of hate crimes had been streamlined and strengthened. There had been over 970 criminal proceedings for hate crimes in 2015 and figures for 2016 were comparable. Most cases involved offences against Jews, Muslims and persons of African origin. Because more than half of all hate crimes were committed online, cybercrime units had been set up in police stations throughout the country, and there were plans to establish a national cybercrime bureau.

37. **Mr. Łaskiewicz** (Poland) said that the Government had made the issue of hate crimes a priority area of concern for the period 2016-2018 and that the police responded to all crimes regardless of who the victim was. It should be noted that one of the reasons behind the apparently large number of hate crimes was that, thanks to prevention efforts and the high level of public trust in the police, citizens did not hesitate to report such crimes. In addition, the police had set up an online platform for discussing hate crime, where people could exchange their experiences and express their needs and concerns. Cases of anti-Semitism among police officers were marginal incidents; nevertheless, training, including workshops and visits to the Auschwitz-Birkenau memorial, had been held for higher-ranking officers.

38. **Mr. Wierzbowski** (Poland) said that describing the prosecutorial authorities as passive or ineffective when it came to racism, xenophobia and anti-Semitism was unjustified. Statistics showed that hate crimes were being detected at a higher rate and that criminal proceedings in such cases increasingly led to charges being laid and protective measures being ordered. To take some recent examples, a person who had beaten a university professor for speaking German had been imprisoned for three months, the suspects in a case of physical violence against Turkish students had been apprehended and those who had verbally assaulted Muslim tourists on the metro had been prosecuted. There were prosecutors specialized in hate crimes at all levels of the prosecution service and, under guidelines issued in 2014, all initial inquiries and investigations into hate crimes were to be treated with the utmost seriousness.

39. **Mr. Czerepínski** (Poland) said that the closure of the Council for the Prevention of Racial Discrimination, Xenophobia and Related Intolerance had been carefully considered and was due to the fact that the Council had not functioned properly, had not had sufficient resources and had failed to fulfil its role or even issue a single decision. The money saved on running the Council had been redirected towards the investigative authorities.

40. **Mr. Piebiak** (Poland) said that what the Minister of the Interior had in fact said following the Nice attack was that the policy of multiculturalism had done little to prevent such tragedies. While people might disagree with the statement, it had been made in the context of the migrant crisis. All those who committed hate crimes were prosecuted, but, as a post-communist State, Poland was very sensitive to censorship. Therefore, a balance needed to be struck between statements that should be severely punished and those that fell under freedom of expression.

41. **Mr. Czerepínski** (Poland) said that the list of prohibited grounds of discrimination contained in the law on the implementation of certain European Union regulations concerning equal treatment was based on relevant European directives and that the European Commission had not raised any concerns regarding the list in its current form. To expand the list would conflict with provisions of the Constitution; therefore, only a ruling of unconstitutionality by the Constitutional Court would be cause for initiating a discussion on the addition of prohibited grounds. The Labour Code provided for the possibility of redress in cases of unequal treatment and mental harm.

42. **Mr. Masło** (Poland) said that Poland was not currently a party to Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms, but that the Government was currently analysing what amendments might be necessary in order to allow for ratification. In light of the fact that Protocol No. 12 was not mandatory, Poland had a sovereign right to choose whether or not to become a party to a binding instrument. Moreover, discrimination was already banned under the Convention for the Protection of Human Rights and Fundamental Freedoms.

43. **Mr. Deptuła** (Poland) said that there was anti-discriminatory legislation other than the law on the implementation of certain European Union regulations concerning equal treatment, notably the Constitution, which prohibited discrimination.

The meeting rose at 6.05 p.m.