

Mandates of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to privacy; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on the situation of human rights defenders

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Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment; the Special Rapporteur on the right to privacy; Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; Special Rapporteur on the rights to freedom of peaceful assembly and of association and Special Rapporteur on the situation of human rights defenders, pursuant to Human Rights Council resolutions 37/8, 28/16, 34/18, 32/32 and 34/5.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **the law 'On specific solutions related to the organization of sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change in the Republic of Poland'**, which appear to significantly restrict the exercise of human rights by environmental human rights defenders and members of the public. In particular, it will prohibit spontaneous demonstrations during the 24th Conference of the Parties to the UN Framework Convention on Climate Change (COP24) that will be held in Katowice in November-December 2018. It will also enhance the surveillance powers of the police and secret services, allowing them to collect, obtain, process and use personal electronic and digital data without the necessary safeguards, and consequently unduly restrict the right to privacy.

According to the information received:

On 10 January 2018, the lower house of the Parliament passed the 'bill on specific solutions related to the organization of sessions of the Conference of the Parties to the United Nations Framework Convention on Climate Change in the Republic of Poland'; which was later approved by the Senate on 19 January. President Andrzej Duda signed this bill into law on 29 January.

The new law will ban all spontaneous gatherings in Katowice, where the COP24 talks will be held, between 26 November and 16 December 2018, spanning the entire period of the annual UN climate talks.

Under article 22 of the law only demonstrations previously registered with the local authorities of Katowice will be authorised, thereby effectively preventing environmental human rights defenders and members of the public from staging

spontaneous peaceful assemblies in the city, as the events at the UN climate talks unfold. The law will not affect demonstrations held inside the conference centre where the talks will be held, but large-scale protests are usually not allowed on conference premises.

Additionally, article 17.1 of the law allows the police to collect, obtain, process and use information, including personal data about registered participants of the COP24 or individuals cooperating with conference organizers, without the knowledge and consent of the individuals concerned. The United Nations Framework Convention on Climate Change (UNFCCC) normally shares personal information of registered participants with the host authorities in order to ensure the timely processing of visa applications, but the current law would broaden the previous understanding of the use of personal data obtained by Polish authorities. There are also concerns that the collection, processing and storage of personal data will be carried out without adequate judicial oversight or consent by the participants of the climate talks.

While we recognize the need to ensure security and safety at international events, we are concerned that the provisions of the new law appear to go beyond the restrictions on the rights to freedom of expression and of association and peaceful assembly, which may be placed in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others, and would significantly curtail the possibility of spontaneously expressing views about the unfolding of the climate talks and organizing peaceful assemblies to this effect.

Further, serious concerns are expressed about the expansion of the surveillance powers of the police and secret services, allowing them to collect, obtain, process and use personal electronic and digital data without the necessary safeguards, and consequently unduly restrict the right to privacy. Concerns are expressed that the COP24, organized by the United Nations, should provide defenders working on environmental rights with an opportunity to raise awareness of their views and protection needs, instead of further limiting their right to peaceful assembly, public participation and freedom of expression. We are further concerned that the implementation of the law may lead to human rights violations that may be considered as acts of reprisals against individuals for their cooperation with the United Nations.

In this connection, we wish to reiterate Your Excellency's Governments obligations under international human rights law, including under article 17, 19, 21 and 25 of the International Covenant on Civil and Political Rights, ratified by Poland on 18 March 1977. In particular, article 19 establishes the right to freedom of expression, and article 21 the right of peaceful assembly, while allowing certain limitations on the exercise of these rights under specific circumstances. Any restriction on the right to freedom of peaceful assembly, for example, must be 'necessary' for a legitimate purpose. It must not be overly broad; it must be the least intrusive instrument possible for its protective function and it must be proportionate to the interest to be protected. We are concerned that the provisions of the law do not appear to meet the requirement of

necessity in a democratic society; and that a blanket prohibition on all spontaneous assemblies during a given time period does not appear to be the least intrusive instrument available to the government to achieve the desired results, i.e. the maintenance of public order, national security and public safety. The restrictions contained in article 22 of the law are not proportionate to the goal to be achieved, as they are not appropriately tailored to achieve their protective function in the least intrusive manner.

In connection with article 22 of the law, we also wish to recall that it is not necessary under international human rights law for domestic legislation to require advance notification of an assembly. While a requirement to give prior notice of an assembly is a de facto restriction on the freedom of assembly, the UN Human Rights Committee held that it is compatible with the permissible limitations laid down in Article 21 of the ICCPR (see *Kivenmaa v. Finland* (1994), and also CCPR/79/Add.113, para 24). At the same time, the Committee expressed its concern ‘at the breadth of the requirement of notification for assemblies and that the requirement of a receipt of notification of an assembly is often abused, resulting in de facto limits of the right of assembly, ensured in Article 21 of the Covenant. The requirement of notification should be restricted to outdoor assemblies and procedures adopted to ensure the issue of receipt in all cases’ (UN Doc CCPR/79/Add.113, paragraph 24). Spontaneous assemblies are generally regarded as an exception from the notification process regime, as they are assemblies organized in response to an occurrence, incident, etc, where the organizer would be unable to meet the legal deadline for prior notification, or where there is no organizer at all. Given that spontaneous assemblies occur around the time of a triggering event, the ability to hold them is important, because delay would weaken the message to be expressed.

We also wish to recall that article 17 of the Convention protects the right to privacy and provides that no one shall be subjected to arbitrary or unlawful interference with his privacy. The General Assembly also emphasized that ‘unlawful or arbitrary surveillance and/or interception of communications, as well as unlawful or arbitrary collection of personal data, as highly intrusive acts, violate the rights to privacy and to freedom of expression and may contradict the tenets of a democratic society’ (A/RES/68/167).

Additionally, we wish to recall that Article 25 of the Covenant recognizes the right to participate in political and public affairs, and encompasses the right to be consulted at each phase of legislative drafting and policy making; to voice opinions and criticism; and to submit proposals for improvement. Participation requires a genuine and long-term commitment to engage in processes of intensive dialogue regarding the development of policies, programmes and measures in all relevant contexts (A/HRC/30/26, paragraph 11).

We also recall that the Human Rights Council called upon States ‘to promote a safe and enabling environment for individuals and groups to exercise their rights to freedom of peaceful assembly, of expression (...) including by ensuring that their domestic legislation and procedures (...) are in conformity with their international human rights obligations and commitments, clearly and explicitly establish a presumption in

favour of the exercise of these rights ,and that they are effectively implemented’ (A/69/53).

We also wish to refer to the provisions of the Aarhus Convention (UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters) which Poland ratified on 15 February 2002, and in particular to article 3.8, concerning public participation. Article 3.8 states that State parties shall ‘ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement’.

We recall Human Rights Council resolution 31/32, which in its paragraph 1 reaffirms the urgent need to respect, protect, promote and facilitate the work of those defending economic, social and cultural rights as a vital factor contributing towards the realization of those rights, including as they relate to environmental and land issues as well as development.

We would like to recall the report of the Special Rapporteur on the situation of human rights defenders, which stresses that ‘environmental human rights defenders cannot properly defend environment-related rights without exercising their own rights to access to information, freedom of expression, peaceful assembly and association, guarantees of non-discrimination and participation in decision-making. States have the duty to protect those rights as well as the rights to defend human rights and to life, liberty and security’. (A/71/281, paragraph 93).

Finally, we would also like to refer to Human Rights Council Resolution 22/6, which provides for the right to “unhindered access to and communication with international bodies, in particular the United Nations, its representatives and mechanisms in the field of human rights, including the Human Rights Council, its special procedures, the universal periodic review mechanism and the treaty bodies, as well as regional human rights mechanisms”. (OP 13)

While awaiting a reply, we urge that all necessary measures be taken to bring this law and its application into compliance with Poland’s international human rights obligations.

We would appreciate receiving a response within 60 days. Your Excellency’s Government’s response will be made available on the same website as well as in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

Finally, I would like to inform your Excellency’s Government that this communication, as with other comments on pending or recently adopted legislation,

regulations or policies, will be made available to the public and posted on the website page of the mandate of the Special Rapporteur on the right to freedom of expression: <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/LegislationAndPolicy.aspx>

We intend to publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

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

John H. Knox

Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment

Joseph Cannataci

Special Rapporteur on the right to privacy

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