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International Covenant on Civil and Political Rights

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Human Rights Committee

Concluding observations on the fourth periodic report of Estonia*

1. The Committee considered the fourth periodic report of Estonia (CCPR/C/EST/4) at its 3570th and 3571st meetings (see CCPR/C/SR.3570 and 3571), held on 4 and 5 March 2019. At its 3596th meeting, held on 21 March 2019, it adopted the present concluding observations.

A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for submitting its fourth periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/EST/QPR/4). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

B. Positive aspects

3. The Committee welcomes the following legislative, institutional and policy measures taken by the State party:

(a) The amendments to the Victim Support Act, on 1 January 2017;

(b) The adoption of the national action plan for implementation of European Union emergency relocation and resettlement schemes;

(c) The adoption of the Welfare Development Plan for 2016–2023.

4. The Committee welcomes the ratification of, or accession to, the following international instruments by the State party:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 12 February 2014;

(b) The Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, on 30 May 2012.

* Adopted by the Committee at its 125th session (4–29 March 2019).

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C. Principal matters of concern and recommendations

Implementation of the Covenant and its Optional Protocol

5. The Committee is concerned about the lack of information on a national mechanism to monitor the implementation of its recommendations and the absence of effective mechanisms and legal procedures for authors of individual communications to seek, in law and in practice, the full implementation of Views adopted under the Optional Protocol. The Committee also notes that the Covenant is rarely invoked by domestic courts (art. 2).

6. **The State party should ensure the full implementation of the concluding observations and Views adopted by the Committee and guarantee the right of victims to an effective remedy when there has been a violation of the Covenant, in accordance with article 2 (2) and (3) of the Covenant. It should intensify its efforts to raise awareness about the Covenant and its Optional Protocol, including by widely disseminating the Committee's recommendations and by providing specific training on the Covenant to government officials, judges, prosecutors and lawyers.**

National human rights institution

7. The Committee welcomes the expansion of the mandate of the Chancellor of Justice to enable that institution to act as the national human rights institution under the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) as of 1 January 2019 and the pending application for accreditation before the Subcommittee on Accreditation of the Global Alliance of National Human Rights Institutions. The Committee is concerned that the material resources allocated to the Chancellor of Justice may not be adequate for the institution's effective functioning (art. 2).

8. **The State party should step up its efforts to ensure that its national human rights institution is fully compatible with the Paris Principles, including by strengthening further the independence of the Chancellor of Justice and by providing the institution with adequate financial and human resources for it to effectively fulfil its mandate.**

Anti-discrimination framework and the Gender Equality and Equal Treatment Commissioner

9. The Committee notes the general prohibition of discrimination and the open-ended list of prohibited grounds in article 12 of the Constitution. However, it is concerned that the Equal Treatment Act does not afford equal protection against discrimination on all the grounds prohibited under the Covenant in all spheres of life. While amendments to the Equal Treatment Act were initiated in 2014 to expand its scope of protection against discrimination, the Committee notes that the proposed amendments still restrict such protection to social welfare, health care and social insurance services and allowances, education and access to and supply of public goods and services, rather than to all spheres of life (arts. 2 and 26).

10. While welcoming the increase in the budget of the Office of the Gender Equality and Equal Treatment Commissioner, the Committee regrets that the Commissioner does not have standing in domestic court proceedings, neither as a legal representative of victims of discrimination nor as an expert party, and that no tangible progress has been achieved in that regard despite the Government's consideration of the matter. The Committee is also concerned that awareness among the population at large about equal treatment legislation and the available remedies remains insufficient (arts. 2 and 26).

11. **The State party should step up its efforts to amend the Equal Treatment Act with a view to ensuring an adequate, effective and equal scope of substantive and procedural protection against discrimination on all the prohibited grounds under the Covenant, in all spheres and sectors. It should also (a) increase efforts aimed at raising awareness about equal treatment legislation and the remedies available among the population at large; (b) improve access to effective remedies against any form of**

discrimination; and (c) consider granting standing to the Gender Equality and Equal Treatment Commissioner in domestic court proceedings relating to discrimination.

Hate speech and hate crimes

12. The Committee is concerned that the current legal framework does not provide comprehensive protection against hate speech and hate crimes due to, inter alia, the light penalties and the high threshold for the offence of incitement to hatred, violence or discrimination under article 151 of the Criminal Code, which requires "danger to the life, health or property" of the victim; the absence of gender identity among the prohibited grounds for offences against equality in articles 151 and 152 of the Code; and the recognition of hate motives, including on the basis of sexual orientation and gender identity, as aggravating circumstances for all offences. The Committee notes the plans to amend article 151 of the Criminal Code and to recognize hate motives as aggravating circumstances. The Committee is concerned that other acts, such as the public denial, justification or condoning of crimes of genocide, crimes against humanity or war crimes, or hate propaganda that is racist or otherwise inciting to discrimination, are not prohibited by law (arts. 2, 19, 20 and 26).

13. While welcoming the measures taken to combat hate speech and hate crimes, including the creation of web constables to identify and react to online hate speech, the Committee remains concerned about reports of hate speech, including by opinion makers and politicians, and hate crimes. While noting that data on hate crimes have been collected since autumn 2016 and that information technology support has been introduced to better categorize incidents motivated by hatred while registering criminal complaints, the Committee regrets the lack of specific data on the number of complaints regarding hate speech and hate crimes, including on the basis of sexual orientation and gender identity, and on their effective investigation and prosecution (arts. 2, 19, 20 and 26).

14. **The State party should ensure effective protection against hate speech and hate crimes, both in law and in practice, in accordance with articles 19 and 20 of the Covenant and the Committee's general comment No. 34 (2011) on freedoms of opinion and expression, including by:**

(a) **Revising the penalties and the threshold for the offence of incitement to hatred, violence or discrimination under article 151 of the Criminal Code;**

(b) **Including gender identity among the prohibited grounds for hatred-motivated offences provided for in articles 151 and 152 of the Criminal Code;**

(c) **Recognizing hate motives, including on the basis of sexual orientation and gender identity, as aggravating circumstances for all offences;**

(d) **Prohibiting by law the public denial, justification or condoning of crimes of genocide, crimes against humanity, war crimes or hate propaganda that is racist or otherwise incites discrimination;**

(e) **Conducting regular awareness-raising activities among the public at large aimed at promoting mutual tolerance, respect for diversity and countering hatred; ensuring continuous training on hate crimes for law enforcement officials, border guards, prosecutors and judges; and expanding the number of web constables, as planned;**

(f) **Investigating hate crimes effectively, prosecuting suspected perpetrators where appropriate and, if they are convicted, punishing them with appropriate sanctions; and providing victims with adequate remedies.**

Gender equality

15. While appreciating the efforts made to promote gender equality by, inter alia, conducting regular gender equality monitoring surveys and wide-scale awareness-raising campaigns and education activities, the Committee remains concerned that, despite a positive trend, also seen in the recent elections, women continue to be underrepresented in decision-making positions in the public and private sectors (arts. 2, 3, 25 and 26).

16. **The State party should continue its efforts to achieve gender equality, including by:**

(a) **Developing and implementing efficient public awareness, education and training programmes;**

(b) **Achieving the equitable representation of women in decision-making in the public and private sectors, including through the adoption of appropriate temporary special measures, to give effect to the provisions of the Covenant.**

Violence against women, including domestic violence

17. While welcoming the measures taken to address violence against women, including domestic and sexual violence, such as the 2015 amendments to the Criminal Code, information campaigns organized under the National Strategy for Preventing Violence for 2015–2020, the national victim support system and the thematic training for the police, those working in the judicial system and medical staff, the Committee is concerned that the prosecution rate remains low and underreporting is allegedly high, partly due to safety concerns associated with the lengthy process for obtaining restraining orders against perpetrators and the lack of availability of emergency restraining orders. In that regard, the Committee notes that a draft amendment providing for the issuance of a restraining order to be confirmed by a judge within 24 hours was introduced by the Ministry of Justice in 2018 (arts. 2, 3, 7 and 26).

18. **The State party should strengthen its efforts to prevent and combat all forms of violence against women, including by:**

(a) **Taking effective measures to encourage reporting of such violence to law enforcement authorities and to ensure the safety of women who come forward, including through the timely issuance of restraining orders against perpetrators and the introduction of emergency restraining orders;**

(b) **Ensuring that the existing relevant provisions, including article 121 (2) (2) of the Criminal Code, are effectively implemented in practice, that cases of violence against women are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims have access to effective remedies;**

(c) **Pursuing regular campaigns about the unacceptability and adverse impact of violence against women, and systematically informing women of their rights.**

Torture and ill-treatment

19. While acknowledging the efforts to bring the definition of torture into line with the Covenant, the Committee is concerned that the definition in new article 290 of the Criminal Code, as amended in 2015, which encompasses the definition of "official" in article 288 of the Code, remains narrower than the standards required under the Covenant. Despite the increase in the maximum penalty for torture from 5 to 10 years of imprisonment, the Committee remains concerned about the discrepancies of penalties when compared to the maximum sanction for other crimes, such as human trafficking. The Committee is also concerned about the significantly low number of convictions for torture and ill-treatment, and regrets the paucity of information on the procedure for investigating such allegations and on the independence of existing investigative bodies (arts. 2 and 7).

20. **The State party should amend its criminal legislation in a manner that fully complies with article 7 of the Covenant and other internationally established norms. It should ensure that all allegations of torture and ill-treatment are promptly and thoroughly investigated by an effective and fully independent and impartial body, that perpetrators are prosecuted and, if convicted, punished with sanctions commensurate with the nature and gravity of the crime, and that victims and, where appropriate, their families are provided with full reparation, including rehabilitation and adequate compensation.**

Means of restraint and solitary confinement

21. The Committee is concerned about allegations of abusive use of means of restraint in prisons and in mental health facilities, including for long periods of time, and notes that work is under way to update the regulations on the procedure for the use of means of restraint. It is also concerned at reports of excessive use of solitary confinement at Viru prison (arts. 7, 9 and 10).

22. **The State party should ensure that means of restraint are used for strictly limited periods and only when justifiable and proportionate, and should strengthen the safeguards against abusive use of means of restraint, including by continuing the regular training of prison staff, extending such training to the staff of mental health institutions and adopting and effectively implementing regulations governing the procedures for using and monitoring the use of means of restraint that are compliant with the Covenant. It should investigate any cases of misuse of restraints and take appropriate remedial action. It should also reduce the maximum permissible length of solitary confinement in prisons and ensure that, if imposed, solitary confinement is a measure of last resort, proportionate to the violation committed and applied for as short a time as possible.**

Non-consensual psychiatric treatment

23. The Committee is concerned that no comprehensive regulations appear to be in place for seeking prior consent to psychiatric treatment and that legal and procedural safeguards for involuntary treatment of persons with psychosocial or intellectual disabilities may not be sufficient to guarantee their rights and interests (arts. 7, 9 and 17).

24. **The State party should put in place comprehensive procedures for seeking consent for the administration of psychiatric treatment and ensure that non-consensual psychiatric treatment may only be applied, if at all, in exceptional cases as a measure of last resort and when absolutely necessary to protect the health or the life of the person concerned or to prevent injury to others, provided that the person concerned is unable to give consent, for the shortest possible time and under regular independent review. It should guarantee effective access to judicial review of decisions relating to non-consensual treatment, consistent with articles 9 and 14 of the Covenant, including by ensuring that relatives and any other legal representatives of patients are sufficiently informed about the procedure for requesting the termination of coercive treatment, pursuant to article 403 of the Code of Criminal Procedure.**

Right to liberty and security of person

25. While noting that notification of custody may be denied with the permission of the relevant prosecutor's office if such notification would prejudice a criminal proceeding, and that the duration of the delay of notification is based on the principle of proportionality, the Committee is nonetheless concerned that that exception and the safeguards against its misuse are not clearly defined, and notes the absence of a statutory limit for the deferral of notification. The Committee is also concerned about reports that persons deprived of their liberty meet their State-appointed lawyer for the first time at the court hearing, even in cases where counsel was requested shortly after their detention (art. 9).

26. **The State party should ensure that any exceptions to the right of notification of custody are clearly defined and time-barred, and that sufficient safeguards are in place against the misuse of such exceptions. It should also ensure that detainees in criminal cases have prompt access to counsel from the outset of detention.**

Refugees and asylum seekers

27. While appreciating the specific training on international protection that has been organized to improve the knowledge and skills of border guard officials, the Committee is concerned that many officers still lack sufficient knowledge and skills to comprehensively assess international protection needs. It is also concerned about allegations of denial of the right to apply for asylum at border-crossing points (in particular at the Narva border-crossing point) or in transit zones, and about the limited access to effective remedies against

asylum decisions taken at the border due to the lack of access to free legal counselling or assistance in suitable cases. The Committee is further concerned at reports that asylum seekers have been accused of irregular entry or stay under the second item of article 258 (1) of the Criminal Code, and that application for international protection does not preclude the initiation of criminal proceedings under the said provision. In addition, the Committee is concerned about the compatibility with the Covenant, and particularly with the principle of non-refoulement, of draft law 472 SE, amending the Act on Granting International Protection to Aliens, the first reading of which was concluded in October 2017, which provides for the revocation of refugee status for reasons not clearly defined, in particular for posing a "danger to the community of Estonia"; furthermore, not all offences listed in the draft law reach the threshold of a "particularly serious crime" (arts. 2, 6, 7 and 13).

28. **The State party should:**

(a) **Fully respect the principle of non-refoulement by ensuring that the right of asylum seekers to lodge asylum applications at border-crossing points or in transit zones is effectively guaranteed in practice and consider, in that regard, establishing an independent monitoring system at border crossings in cooperation with the Office of the United Nations High Commissioner for Refugees, as appropriate;**

(b) **Provide for free legal aid, in suitable cases, to applicants for asylum at the border to ensure the exercise of their right to appeal in practice;**

(c) **Consider including adequate safeguards in the Criminal Code to ensure that individuals exercising their right to seek asylum are released from any criminal liability for illegal entry or stay;**

(d) **Ensure that any legislation adopted following the further consideration of draft law 472 SE or similar legislation clarifies the term "danger to the community of Estonia" in accordance with the principle of legal certainty and complies fully with the Covenant, particularly with the principle of non-refoulement;**

(e) **Enhance the training of border guard officials and immigration personnel to ensure full respect of the rights of asylum seekers and refugees under the Covenant and other applicable international standards.**

Right to privacy, and surveillance

29. While noting that both the Chancellor of Justice and the Supreme Court analysed data retention legislation and found it compatible with article 17 of the Covenant, the Committee is concerned that such regulations, including article 111 of the Electronic Communications Act, provide for blanket retention of communications data (metadata), and that access to such data is reportedly not limited to the investigation and prosecution of serious crimes, but is also used for investigating and prosecuting minor crimes and misdemeanours. The Committee notes that possible amendments to the relevant regulations on data retention are currently being analysed and discussed with a view to further clarifying the relevant domestic norms. The Committee is also concerned about the lack of sufficient safeguards against arbitrary interference with the right to privacy with regard to surveillance and interception activities by State security and intelligence agencies and with regard to intelligence sharing with foreign entities (art. 17).

30. **The State party should bring its regulations governing data retention and access thereto, surveillance and interception activities, and those relating to the intelligence-sharing of personal communications, into full conformity with the Covenant, in particular article 17, including with the principles of legality, proportionality and necessity. It should ensure that (a) any such interference with privacy requires prior authorization from a court or other suitable independent body and is subject to effective and independent oversight mechanisms; (b) access to communications data is limited to the extent strictly necessary for investigations into and prosecution of serious crimes; and (c) persons affected are notified of surveillance and interception activities, where possible, and have access to effective remedies in cases of abuse.**

Freedom of association

31. While welcoming the significantly lower number of civil servants affected by a prohibition of strike action following the amendments to the Civil Service Act in 2013, the Committee echoes the concern of the Committee on Economic, Social and Cultural Rights regarding the strike ban on civil servants under the Act (E/C.12/EST/CO/3, para. 26). The Committee is also concerned about the requirements set forth in the Collective Labour Dispute Resolution Act that may adversely affect the meaningful exercise of the right to strike in practice, inter alia by limiting the duration of a warning strike to one hour as opposed to three days for sympathy strikes (art. 22).

32. **The Committee reiterates the recommendation made by the Committee on Economic, Social and Cultural Rights (E/C.12/EST/CO/3, para. 27) that the Civil Service Act be reviewed with a view to allowing civil servants who do not provide essential services to exercise their right to strike. The State party should refrain from imposing any undue limitations on the right to strike and should ensure that the Collective Labour Dispute Resolution Act is in full conformity with article 22 of the Covenant.**

Prisoners' right to vote

33. The Committee is concerned about the general denial of the right to vote to all prisoners convicted of any criminal offence, and recalls that a blanket denial does not meet the requirements of article 10 (3), read in conjunction with article 25, of the Covenant. While noting that the issue has been addressed by the authorities, including by the Supreme Court in the context of several court cases, and that steps towards amending relevant legislation have been taken, the Committee regrets that progress in that regard remains slow (arts. 10, 25 and 26).

34. **The State party should review its legislation that denies convicted prisoners the right to vote in the light of the Committee's general comment No. 25 (1996) on participation in public affairs and the right to vote (para. 14).**

Nationality

35. While welcoming the measures taken to resolve the situation of persons "with undetermined citizenship", including the 2015 amendments to the Citizenship Act granting children with undetermined citizenship born in Estonia the right to automatically acquire Estonian citizenship, the Committee remains concerned at (a) the limited scope of the amendments insofar as they exclude certain categories of stateless children; (b) the stringent language requirements that form part of the naturalization tests; and (c) the adverse impact of the "undetermined citizenship" status on the right of long-term residents to political participation (arts. 24, 25 and 26).

36. **The State party should strengthen its efforts to reduce and prevent statelessness by addressing the remaining gaps, including by:**

(a) **Establishing a statelessness determination procedure that ensures that stateless individuals are systematically identified and afforded protection;**

(b) **Facilitating the naturalization of persons with "undetermined citizenship" and removing excessive barriers that hinder the process;**

(c) **Ensuring that every child has a nationality, in accordance with article 24 (3) of the Covenant, including by granting citizenship to stateless children aged between 15 and 18 as at 1 January 2016 and to children born to stateless parents, irrespective of their legal status.**

Rights of minorities

37. While welcoming the measures taken and the progress made with regard to the integration of the Russian-speaking minority, including the improved proficiency in Estonian language, the Committee remains concerned at the remaining gaps (CCPR/C/EST/CO/3, para. 16), particularly those relating to the impact of the language

policies and practices that have been implemented, which continue to frustrate the full enjoyment of rights by the Russian-speaking minority on an equal basis with the rest of the population and may result in indirect discrimination. The Committee refers to the concerns of the Committee on Economic, Social and Cultural Rights with regard to high unemployment rates (E/C.12/EST/CO/3, para. 12), the lack of flexibility in the implementation of the 60 per cent quota for teaching in Estonian in the Russian-speaking secondary schools (see E/C.12/EST/CO/3, para. 48 (g)) and the punitive approach to enforcing the Language Act (see E/C.12/EST/CO/3, para. 50 (a)) (arts. 26 and 27).

38. **The State party should strengthen legislative and policy measures aimed at addressing effectively the impact of the language policies and practices that may contribute indirectly to unequal treatment of the Russian-speaking minority. It should also continue to pursue policies to foster greater trust in the State institutions, and should reinforce and promote social inclusion. The Committee reiterates the recommendations made in March 2019 by the Committee on Economic, Social and Cultural Rights (E/C.12/EST/CO/3, paras. 13, 49 (g) and 51 (a)).**

D. Dissemination and follow-up

39. **The State party should widely disseminate the Covenant, its first Optional Protocol, its fourth periodic report and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the periodic report and the present concluding observations are translated into the official language of the State party.**

40. **In accordance with rule 75, paragraph 1, of the Committee's rules of procedure, the State party is requested to provide, by 29 March 2021, information on the implementation of the recommendations made by the Committee in paragraphs 14 (hate speech and hate crimes), 24 (non-consensual psychiatric treatment) and 28 (refugees and asylum seekers) above.**

41. **The Committee requests the State party to submit its next periodic report by 29 March 2025. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its fifth periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.**