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Committee on Economic, Social and Cultural Rights**Concluding observations on the sixth periodic report of Poland***

1. The Committee on Economic, Social and Cultural Rights considered the sixth periodic report of Poland on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/POL/6) at its 55th and 56th meetings (E/C.12/2016/SR.55 -56) held on 21 and 22 September 2016, and adopted the following concluding observations at its 79th meeting, held on 7 October 2016.

A. Introduction

2. The Committee welcomes the submission by Poland of its sixth periodic report and the State party's written replies to its list of issues (E/C.12/POL/Q/6/Add.1). The Committee welcomes the constructive dialogue with the high level and multi-sectorial delegation.

B. Positive aspects

3. The Committee notes with appreciation the ratification by the State party of the United Nations Convention on the Rights of Persons with Disabilities in 2012, and of the International Labour Organisation Maritime Labour Convention of 2006, in 2012.

4. The Committee further notes with appreciation the legislative, administrative and institutional measures adopted by the State party to promote the enjoyment of economic, social and cultural rights, including the:

- (a) Act of 14th March 2014 to amend the Act on promotion of employment and on labour market institutions and some other Acts;
- (b) Act amending the Publicly Funded Health Care Act (2016);
- (c) Amended provisions of the Act of 27 July 2005 – Law on Higher Education;
- (d) National Program to Combat Poverty and Social Exclusion by 2020;

* Adopted by the Committee at its fifty-ninth session (19 September – 7 October 2016).



- (e) Program for the integration of the Roma community in Poland (2014-2020).

C. Principal subjects of concern and recommendations

Applicability of the Covenant

5. While noting that the Constitution establishes the primacy of international agreements over national law and that the Covenant has been mentioned by State party judicial bodies, the Committee is concerned that the provisions of the Covenant are still considered as setting programmatic objectives, rather than as justiciable provisions that they can directly apply (art. 2).

6. **The Committee recommends that the State party:**

(a) **Ensure that all the provisions of the Covenant are given full effect in its domestic legal order and can be invoked before courts;**

(b) **Undertake to raise awareness about the duty to give effect to the Covenant rights, in particular among the judiciary, parliament, lawyers and law enforcement officials, as well as among right holders;**

(c) **The Committee draws the State party's attention to its general comment No. 3 (1990) and general comment No. 9 (1998) respectively on the nature of the obligations imposed under the Covenant and on the domestic application of the Covenant.**

National human rights institution

7. The Committee is concerned about the insufficient resources allocated to the Office of the Commissioner for Human Rights in Poland to effectively fulfil its obligations (art. 2).

8. **The Committee recommends that the Office of the Commissioner for Human Rights be provided with the necessary human and technical resources to fully and effectively fulfil its mandate, especially with respect to economic, social and cultural rights. The Committee further recommends that the independence of this Office in ensured.**

Non-discrimination

9. The Committee expresses concern that the Equal Treatment Act does not ensure comprehensive protection against discrimination on all the grounds prohibited under the Covenant (art 2).

10. **The Committee recommends that the State party revise the Equal Treatment Act of 2010, so as to bring it into line with article 2, of the Covenant by including all the prohibited grounds for discrimination and taking also into account the Committee's general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

11. While taking note of the measures adopted by the State party to combat discrimination, the Committee is concerned about persistent societal discrimination against the Roma, and about the obstacles faced by disadvantaged and marginalized individuals and groups in accessing basic social services and social assistance benefits in the State party (art 2).

12. **The Committee recommends that the State party step up its efforts to promote the full enjoyment of the Covenant rights, including to housing, health, social security**

and education by Roma and other disadvantaged and marginalized individuals and groups.

Equality between men and women

13. The Committee is concerned about the persistence of stereotypes regarding the roles of women and men in family and society, which have an adverse impact on the enjoyment by women of their Covenant rights. The Committee is also concerned about the concentration of women in lower-paying sectors and the under-representation of women in decision-making positions in the public and private sectors (art 3).

14. **The Committee recommends that the State party continues with its efforts to achieve substantive equality between men and women. It recommends that the State party:**

(a) **Take measures to change society's perception of stereotyped gender roles, including through awareness raising campaigns on equal career opportunities and equal share of family responsibilities between men and women;**

(b) **Effectively combat gender segregation in the employment market, including by the use of special temporary measures;**

(c) **Intensify the efforts to increase the level of representation of women in decision-making positions, in the public and private sectors.**

Unemployment

15. The Committee is concerned that, despite the decrease of the unemployment rate in the State party, some disadvantaged and marginalized individuals and groups continue to be disproportionately affected by unemployment, including young persons, the long-term unemployed and the Roma (art 6).

16. **The Committee recommends that the State party reviews its legislation and the various programmes in place for unemployed persons, such as the Act on Promoting Employment and Labour Market Institutions, the Activation and Integration programme and the Programme for the integration of the Roma community in Poland (2014-2020), in order to determine how access to employment of target groups could be improved. The Committee draws the State party's attention in this respect to its general comment No. 18 (2005) on the right to work.**

Just and favourable conditions of work

17. The Committee is concerned by the high rate of temporary contracts, particularly civic contracts, and the high proportion of low paid jobs. The Committee is further concerned that civic contracts may negatively affect the right to just and favourable conditions of work for these workers. The Committee is also concerned that these workers do not have health insurance or social security (arts. 7 and 9).

18. **The Committee recommends that the State party:**

(a) **Take all appropriate measures to progressively reduce the use of temporary employment, including by generating work opportunities that offer job security and fair wages;**

(b) **Continue increasing the minimum wage to ensure it provides a decent living for workers and their families;**

(c) **Ensure that the labour and social security rights of persons with civic contracts are fully guaranteed in law and practice.**

19. **The Committee draws the attention of the State party in this regard, to its general comment No. 23 (2016) on the right to just and favourable conditions of work.**

Informal economy

20. While noting the measures taken to address the informal economy, the Committee is concerned that it is still a phenomenon of significant scale, particularly in farming, construction and installation services. The Committee is concerned about the lack of access to basic services, and labour and social protection for those working in the informal economy. The Committee is also concerned about the working conditions of migrant workers (art. 7).

21. **The Committee urges the State party to take additional measures to:**

- (a) **Ensure access to basic services, labour and social protection for those working in the informal economy;**
- (b) **Entitle the National Labour Inspectorate to conduct inspections in all sectors of the economy; and increase its resources and capacity;**
- (c) **Protect migrant workers from all forms of exploitation and abuse.**

Equal remuneration for work of equal value

22. While welcoming the efforts made by the State party to ensure equal remuneration for work of equal value, the Committee is concerned that these efforts have not been fully successful (art. 7).

23. **The Committee recommends that the State party take further measures to address the difference of remuneration for work of equal value, including by:**

- (a) **Enforcing legislation and strengthening the capacity of labour inspectorates with regard to monitoring wage differentials;**
- (b) **Developing assessment tools to oversee compliance with the principle of equal remuneration for work of equal value;**
- (c) **Enhancing transparency on wages, particularly in the public sector;**
- (d) **Promoting policies favouring gender equality in the workplace.**

Trade union rights

24. The Committee welcomes the judgement of 2 June 2015 of the Constitutional Tribunal (case No. K1/13) recognizing the right of persons employed under civil law contracts to join or establish trade unions, noting with concern however, that this judgement has not been implemented yet (art 8).

25. **The Committee encourages the State party to implement the legislative changes required by this judgement as soon as possible and ensure they are in line with article 8 of the Covenant.**

Social security

26. While welcoming the proposal to increase the amounts of disability and retirement pensions in 2017, the Committee is concerned about: (a) the lack of progress towards a unified pension system; (b) the fact that the income criterion to grant social assistance is lower than the minimum subsistence level for most types of families; (c) the number of persons living in extreme poverty who do not receive assistance; and (d) the practical difficulties faced by Roma migrants (including those from EU countries) and homeless

persons to access assistance, due to the fact that they do not have the required documents (art 9).

27. **The Committee recommends that the State party:**

(a) **Adopt measures towards the unification of the pension system and standardised rules and regulations;**

(b) **Guarantee coverage and appropriate benefits for all workers and non-contributory benefits for all disadvantaged and marginalized individuals and families so that they may enjoy an adequate standard of living;**

(c) **Calculate social assistance benefits based on an accurate poverty assessment;**

(d) **Address the practical difficulties faced by disadvantaged and marginalized individuals and groups in seeking and receiving assistance;**

(e) **The Committee draws the attention of the State party to its general comment No. 19 (2007) on the right to social security.**

Domestic violence

28. While noting that the crime of rape is penalised in the Criminal Code of the State party, the Committee is concerned by the absence of an explicit criminalization of marital rape. The Committee is also concerned by the insufficient implementation of protection measures for victims of domestic violence (art 10).

29. **The Committee recommends that the State party**

(a) **Amend the Criminal Code with a view to explicitly criminalizing marital rape;**

(b) **Ensure that victims of domestic violence have immediate protection, and effectively enforce compliance with protection orders issued against perpetrators of domestic violence;**

(c) **Increase the number of centres and other services that offer protection and assistance to victims of violence, including accelerating the set-up of the 24/7 telephone hotline with interpretation services;**

(d) **Carry-out awareness-raising campaigns to make violence against women socially unacceptable, and disseminate information on available measures to prevent acts of violence against them.**

Childcare

30. While welcoming the implementation of the “Family 500 Plus” programme and the efforts to increase the number of childcare facilities, the Committee notes with concern that the number of such facilities, particularly for children under the age of three, remains inadequate (art 10).

31. **The Committee recommends that the State party intensify its efforts to ensure the availability, accessibility and affordability of childcare services, in particular for children up to the age of three.**

Poverty

32. While taking note of the measures taken by the State party to address poverty, the Committee remains concerned about the high incidence of poverty and extreme poverty, in

particular among children, families with three or more children and disadvantaged and marginalized individuals and groups (art 11).

33. The Committee recommends that the State party step up its efforts to guarantee targeted support to all persons living in poverty, or at risk of poverty, in particular children, families with three or more children, the unemployed, pensioners, farmers, migrants, the Roma, including those from the European Union, and other discriminated and marginalized individuals and groups, including the homeless, who are not in receipt of social benefits. The Committee draws the State party's attention in this regard to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2001/10).

Housing

34. The Committee is concerned about the significant housing shortage, including the lack of social housing, affordable housing and emergency shelters in the State party. The Committee is also concerned about a) the shortage of vacant municipal premises and lack of funding for the construction of new houses; b) the significant proportion of the population living in overcrowded apartments; c) the waiting list for social housing which can extend to seven years; and d) evicted persons who are not offered alternative accommodation but are relocated to shelters for the homeless (art 11).

35. The Committee recommends that the State party step up its efforts to:

(a) Prioritize housing policy, address the housing shortage, improve the quality of housing and take all necessary measures to provide affordable housing units and social housing units, especially for disadvantaged and marginalized individuals and groups;

(b) Facilitate access to social housing for Roma; encourage legal security of tenure for those living in informal settlements, and improve living conditions therein by ensuring access to basic services, in genuine consultation with the affected communities and individuals concerned;

(c) Take effective measures to end segregation of Roma communities and prevent acts of discrimination against those who wish to buy or rent housing outside their segregated settlements;

(d) Consult with the affected communities and individuals throughout eviction procedures, afford due process guarantees and provide them with alternative accommodation or compensation enabling them to acquire adequate accommodation.

36. The Committee draws the attention of the State party to its general comments No. 4 (1991) on the right to adequate housing and No. 7 (1997) on forced evictions.

Malnutrition and right to adequate food

37. While noting the programmes to reduce malnutrition in the State Party, the Committee is concerned about food insecurity and worrying malnutrition rates, particularly among disadvantaged or low-income families with children and in rural areas.

38. The Committee recommends that the State party:

(a) Step up its efforts to address food insecurity and malnutrition among disadvantaged and marginalized individuals and groups, particularly among persons living in poverty, or at risk of poverty and promote healthier diets;

(b) Refer to general comment No. 12 (1999) on the right to adequate food and the Voluntary Guidelines to support the progressive realization of the right to

adequate food in the context of national food security adopted by the Food and Agriculture Organization of the United Nations.

39. Child nutrition and obesity The Committee is concerned about the increase in child obesity rates and the low rates of breastfeeding, particularly among two to six month old children (art 11).

40. **The Committee recommends that the State party:**

(a) **Introduce higher taxes on junk foods and sugary drinks and consider adopting strict legislations on the marketing of such products, especially in school and recreational areas, while ensuring improved access to healthy diets;**

(b) **Enhance the measures to support breastfeeding, including breastfeeding breaks or breastfeeding facilities in workplaces and public places;**

(c) **Regularly collect disaggregated data on infant and young child feeding methods, including breastfeeding; and implement fully the International Code of Marketing of Breast-milk Substitutes.**

Access to health services

41. While taking note of the efforts made by the State party to improve public health services, the Committee is concerned about: (a) the inadequate access to medical services, including lack of access to basic medical services of the public healthcare insurance system and the long waiting periods; (b) the low quality of certain medical services; (c) the lack of adequate geriatric healthcare; and (d) the uneven access to cardiology and diabetology services between regions.

42. **The Committee recommends that the State party:**

(a) **Intensify its efforts to ensure that adequate healthcare services are available and accessible to everyone, including by: conducting a comprehensive public health needs assessment, allocating adequate funding, securing a sufficient number of qualified medical professionals and expanding the coverage of its services;**

(b) **Ensure that disadvantaged and marginalized individuals and groups have access to all basic healthcare services;**

(c) **The Committee draws the State party's attention in this regard, to its general comment no. 14 (2000) on the right to the highest attainable standard of health.**

Sexual and reproductive health

43. The Committee is concerned about the high number of unsafe abortions in the State party, as well as the many obstacles to access safe and legal abortion. The Committee is also concerned about the restrictive legislation in the State party, and the "Stop Abortion" bill, under discussion in Parliament at the time of the dialogue, that proposes to further restrict conditions for obtaining abortion, although the State party already has an extremely restrictive legislation. The Committee is further concerned that, as a result of the judgment delivered by the Constitutional Court on 7 October 2015 (case K 12/14), neither medical practitioners invoking conscientious objection grounds to refuse to practice an abortion, nor the institution concerned, are under a duty to refer the woman seeking abortion to another service, thus further limiting the access to safe and legal abortions (art 12).

44. **The Committee recommends that the State party:**

(a) **Ensure that safe and legal abortion can be accessed in practice, take effective measures to prevent unsafe abortions, and provide post-abortion care and counselling for those needing it;**

(b) **Urgently establish and regulate an effective referral mechanism in cases of exercise of the conscientious objection by medical practitioners;**

(c) **Reconsider the “Stop Abortion” bill as it is not compatible with other fundamental rights, such as the woman’s right to health and life, and it is not consistent with the dignity of women.**

45. The Committee is concerned about the difficulties faced by women and adolescents in accessing sexual and reproductive health services and contraceptives, including the need of parental consent for adolescents under 18 years old to access gynaecological services.

46. **The Committee calls upon the State party to:**

(a) **Ensure access to sexual and reproductive health services and information, and to affordable, safe and effective contraceptives, for everyone;**

(b) **Promote comprehensive and age-appropriate sexuality education for both sexes in schools and informal settings;**

(c) **Take into account the recommendations made by Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health contained in the Mission report to Poland (A/HRC/14/20/Add.3, para. 85);**

47. **The Committee draws the State party’s attention in this regard to its general comment no. 22 (2016) on the right to sexual and reproductive health.**

Mental health

48. While taking note of the measures adopted by the State party, the Committee is concerned about the lack of adequate funding for mental health institutions and services, the inadequate judicial supervision over admittance and stay in psychiatric institutions, and individuals with psychosocial disabilities who serve their sentences in prisons (art 12).

49. **The Committee calls on the State party to:**

(a) **Increase the provision of financial and human resources for mental health services, in order to ensure their adequate functioning;**

(b) **Guarantee full respect for the human rights of patients in psychiatric institutions, including through independent and effective monitoring of treatments and through the effective judicial review of orders for confinement to psychiatric institutions;**

(c) **Ensure that treatment is provided on the basis of free and informed consent;**

(d) **Promote alternative forms of mental health treatment, including outpatient treatment.**

Drug policy and right to health

50. The Committee is concerned about the insufficient opioid substitution therapies for treatment of heroin users, especially in prisons, the high prevalence of AIDS and hepatitis C in drug injection user, the decrease of clean syringe exchange programs and that the criminalization of possession of very small amounts of drugs makes it difficult for people to

receive necessary substitution treatment or access to harm reduction programs for fear of criminalization (art. 12).

51. **The Committee recommends that the State party expands opioid substitution therapies for the population concerned, to reinforce harm reduction programs, especially the clean syringe exchange programs and to reconsider the criminalization of possession of small amounts of drugs.**

Education

52. While taking note of the efforts made by the State party in education, the Committee is concerned about the difficulties in accessing quality education encountered by children in rural areas and small towns and children who are asylum-seekers or undocumented migrants. The Committee is also concerned about the low attendance rates of Roma children in primary school, their high school dropout, their over-representation in special schools and their under-representation in secondary and post-secondary education (art. 13).

53. **The Committee encourages the State party to:**

(a) **Ensure that children in rural areas and small towns and children who are asylum-seekers or undocumented migrants have free access to quality compulsory primary education;**

(b) **Continue to support the enrolment and completion rate in secondary and tertiary education of disadvantaged and marginalized children, including Roma children;**

(c) **Intensify its efforts to improve school enrolment, retention rates and academic performance of Roma children, including through: providing mentoring and tutoring services, Polish language instruction programmes, adopting special assistance measures; awareness-raising campaigns among the Roma community concerning the importance of education for the future well-being of children; and the involvement of the Roma community in the implementation of the education programmes;**

(d) **Continue addressing the over-representation of Roma children in special schools, including a review of the classification criteria and the adoption of inclusive and integrated education programmes.**

(e) **Encourage education in rural and remote areas including through making internet available and accessible;**

54. **The Committee draws the attention of the State party in this regard to its general comment No. 13 (1999) on the right to education.**

Cultural rights

55. While taking note of the measures adopted by the State party in this area, the Committee is concerned that these remain insufficient to protect and preserve the cultural heritage of national and ethnic minorities (art. 15).

56. **The Committee encourages the State party to intensify its efforts in furthering the protection and promotion of the cultural identity of minorities by, among other measures, increasing the resources needed to assist organizations and institutions working on the cultural identity of minorities; and protecting and promoting the use of national and ethnic minority languages, including in school and public life.**

D. Other recommendations

57. The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

58. The Committee encourages the State party to consider ratifying the International Convention for the Protection of All Persons from Enforced Disappearance and also the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

59. The Committee recommends that the State party take fully into account its obligations under the International Covenant on Economic, Social and Cultural Rights and ensure the full enjoyment of these rights in the implementation of the 2030 Sustainable Development Agenda at national level, with the support of international assistance and cooperation when needed. Achieving the Sustainable Development Goals shall be significantly facilitated by the State party establishing independent mechanisms to monitor progress, and by treating beneficiaries of public programs as rights-holders who can claim entitlements. Building the implementation of the SDGs on participation, accountability and non-discrimination shall ensure that no one is left behind in the process.

60. The Committee recommends that the State party develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In this context, the Committee refers the State party to the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner on Human Rights (HRI/MC/2008/3).

61. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society at national, municipal and territorial levels, particularly among parliamentarians, public officials and judicial authorities, and to inform the Committee, in its next periodic report, about the steps taken to implement them. The Committee also encourages the State party to engage non-governmental organizations and other members of civil society in the follow-up to the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.

62. The Committee requests the State party to submit its seventh periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (E/C.12/2008/2), by 31 October 2021. The Committee also invites the State party to update its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN/2/Rev.6, chap. I).