



Economic and Social Council

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 (E/C.12/POL/6) at its 55th and 56th meetings (E/C.12/2016/SR.55 and 56), held on 21 and 22 September 2016, and adopted the present concluding observations at its 78th meeting, held on 7 October 2016.

A. Introduction

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

B. Positive aspects

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

4. The Committee also 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:

- (a) The Act of 14 March 2014 to amend the Act on employment promotion and on labour market institutions and other Acts;
- (b) The Act amending the Act on publicly funded health care (2016);
- (c) The amended provisions of the Act of 27 July 2005 (Law on higher education);
- (d) The national programme, to 2020, for combating poverty and social exclusion;
- (e) The programme for the integration of the Roma community in Poland for the period 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 can be directly applied (art. 2).

6. The Committee recommends that the State party:

- (a) Ensure that all 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 Covenant rights, in particular among the judiciary, parliamentarians, lawyers and law enforcement officials, as well as among rights holders.

7. The Committee draws the State party's attention to the Committee's general comments No. 3 (1990) on the nature of States parties' obligations and No. 9 (1998) on the domestic application of the Covenant.

National human rights institution

8. The Committee is concerned that the resources allocated to the Office of the Commissioner for Human Rights in Poland are insufficient to permit it to fulfil its obligations effectively (art. 2).

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

Non-discrimination

10. The Committee expresses concern that the Act on equal treatment of 2010 does not ensure comprehensive protection against discrimination on all grounds prohibited under the Covenant (art. 2).

11. The Committee recommends that the State party revise the Act on equal treatment, so as to bring it into line with article 2 of the Covenant, by including all 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.

12. While taking note of the measures adopted by the State party to combat discrimination, the Committee is concerned about persistent societal discrimination against 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).

13. The Committee recommends that the State party step up its efforts to promote the full enjoyment of 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

14. 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. It is also concerned about the concentration of women in lower-paying sectors and the underrepresentation of women in decision-making positions in the public and private sectors (art. 3).

15. The Committee recommends that the State party continue its efforts to achieve substantive equality between men and women. It also 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 sharing of family responsibilities between men and women;

(b) Combat effectively gender segregation in the employment market, including through the use of special temporary measures;

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

Unemployment

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

17. The Committee recommends that the State party review 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 for the period 2014–2020, in order to determine how access to employment could be improved for target groups. 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

18. The Committee is concerned about the high rate of temporary contracts, in particular civil law contracts, and the high proportion of low-paid jobs. It is also concerned that civil law contracts may negatively affect the right to just and favourable conditions of work for the workers subject to such contracts. The Committee is further concerned that such workers are not covered by health insurance or social security (arts. 7 and 9).

19. 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 to increase the minimum wage to ensure that it provides a decent living for workers and their families;

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

20. 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

21. 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 also concerned about the lack of

access to basic services and labour and social protection for those working in the informal economy. It is further concerned about the working conditions of migrant workers (art. 7).

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

- (a) Ensure access to basic services and labour and social protection for those working in the informal economy;**
- (b) Empower 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

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

24. The Committee recommends that the State party take further measures to address the differences in 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

25. The Committee welcomes the judgment 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. However, it notes with concern that the judgment has not yet been implemented (art. 8).

26. The Committee encourages the State party to implement the legislative changes required by the judgment of 2 June 2015 as soon as possible and ensure that they are in line with article 8 of the Covenant.

Social security

27. 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 for granting 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 European Union countries, and by homeless persons in gaining access to assistance due to the fact that they do not have the required documents (art. 9).

28. The Committee recommends that the State party:

- (a) Adopt measures towards the unification of the pension system, and standardized 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 on the basis of an accurate poverty assessment;**
- (d) Address the practical difficulties faced by disadvantaged and marginalized individuals and groups in seeking and receiving assistance.**

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

Domestic violence

30. While noting that the crime of rape is penalized in the Criminal Code of the State party, the Committee is concerned about the absence of an explicit criminalization of marital rape. It is also concerned about the insufficiency of the implementation of protection measures for victims of domestic violence (art. 10).

31. 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 by accelerating the set-up of the telephone hotline, to be accessible around the clock, seven days per week, with interpretation services;

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

Childcare

32. 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 3, remains inadequate (art. 10).

33. 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 3.

Poverty

34. While taking note of the measures deployed 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).

35. 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, Roma, including those from European Union countries, and other individuals and groups who are discriminated against and marginalized, 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

36. The Committee is concerned about the significant housing shortage, including the lack of social housing, affordable housing and emergency shelters in the country. 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).

37. 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 measures necessary 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 affected communities and individuals throughout eviction procedures, afford due process guarantees and provide those affected with alternative accommodation or compensation enabling them to acquire adequate accommodation.

38. 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 the right to adequate food

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

40. 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 the Committee’s 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.

Child nutrition and obesity

41. The Committee is concerned about the increase in child obesity rates and the low rates of breastfeeding, particularly among infants between 2 and 6 months of age (art. 11).

42. The Committee recommends that the State party:

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

(b) Enhance 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

43. 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 the basic medical services of the public health-care insurance system and the long waiting periods; (b) the low quality of certain medical services; (c) the lack of adequate geriatric health care; and (d) the uneven access to cardiology and diabetology services among regions.

44. The Committee recommends that the State party:

(a) Intensify its efforts to ensure that adequate health-care services are available and accessible for 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 health-care services.

45. 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

46. The Committee is concerned about the high number of unsafe abortions performed in the State party and about the many obstacles to gaining access to safe and legal abortions. It is also concerned about the extremely restrictive legislation in the State party, as well as the "stop abortion" bill, under discussion in Parliament at the time of the dialogue, which contains a proposal to even further restrict conditions for obtaining an abortion. The Committee is further concerned that, as a result of the judgment delivered by the Constitutional Court on 7 October 2015 (case No. K 12/14), neither medical practitioners invoking conscientious objection grounds to refuse to perform an abortion, nor the institution concerned, are under a duty to refer the woman seeking an abortion to another service, thus further limiting access to safe and legal abortions (art. 12).

47. The Committee recommends that the State party:

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

(b) Immediately establish and regulate an effective referral mechanism in cases where conscientious objection by medical practitioners is exercised;

(c) Reconsider the "stop abortion" bill, since 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.

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

49. 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 sexual and reproductive 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 following his mission to Poland (see A/HRC/14/20/Add.3, para. 85).

50. 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

51. 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 inadequacy of judicial supervision over admittance and stay in psychiatric institutions, and individuals with psychosocial disabilities who serve their sentences in prisons (art. 12).

52. 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 treatment and through 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 the right to health

53. The Committee is concerned about the insufficiency of opioid substitution therapies for treatment of heroin users, especially in prisons, the high prevalence of AIDS and hepatitis C in drug injection users and the decrease in clean-syringe exchange programmes, and that the criminalization of possession of very small amounts of drugs makes it difficult for people to receive necessary substitution treatment or gain access to harm reduction programmes for fear of criminalization (art. 12).

54. The Committee recommends that the State party expand opioid substitution therapies for the population concerned, reinforce harm reduction programmes, especially the clean-syringe exchange programmes, and reconsider the criminalization of possession of small amounts of drugs.

Education

55. 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. With respect to Roma children, the Committee is concerned about their low attendance rates in primary school, their rates of high school dropout, their overrepresentation in special schools and their underrepresentation in secondary and post-secondary education (art. 13).

56. 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 enrolment in and completion of secondary and tertiary education among disadvantaged and marginalized children, including Roma children;

(c) Intensify its efforts to improve school enrolment, retention rates and academic performance among Roma children, including through the provision of mentoring and tutoring services and Polish-language instruction programmes, the adoption of special assistance measures, the implementation of 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 education programmes;

(d) Continue to address the overrepresentation of Roma children in special schools, including through a review of the classification criteria and the adoption of inclusive and integrated education programmes;

(e) Encourage education in rural and remote areas, including by making the Internet available and accessible.

57. 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

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

59. 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 provision of resources to assist organizations and institutions working in the area of cultural identities of minorities, and by protecting and promoting the use of national and ethnic minority languages, including in school and in public life.

D. Other recommendations

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

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

62. The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level, with international assistance and cooperation when needed. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind.

63. The Committee recommends that the State party take steps to progressively 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 that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).

64. The Committee requests the State party to disseminate the present concluding observations widely at all levels of society, including at the national, municipal and territorial levels, in particular 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 encourages the State party to engage with 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.

65. 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. In addition, the Committee 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).