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Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

Poland

1. The Committee on Economic, Social and Cultural Rights considered the fifth periodic report of Poland on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/POL/5) at its 37th and 38th meetings, held on 6 November 2009 (E/C.12/2009/SR.37 and 38), and adopted, at its 56th and 57th meetings, held respectively on 19 and 20 November 2009, the concluding observations as set out below.

A. Introduction

2. The Committee welcomes the submission of the fifth periodic report of Poland and the written replies to its list of issues (E/C.12/POL/Q/5/Add.1), both of which contained comprehensive and detailed information on the situation in the State party.

3. The Committee welcomes the opportunity to engage in an open and constructive dialogue with the State party, and notes with appreciation the attendance by a large and multisectoral delegation, as well as the responses it provided to the Committee's oral questions.

B. Positive aspects

4. The Committee welcomes the progress achieved by the State party in advancing the enjoyment of economic, social and cultural rights in the State party since the consideration of its previous periodic report by the Committee, including the considerable improvement in the standard of living.

5. The Committee welcomes the adoption of measures, legislative and otherwise, by the State party that have contributed to the realization of the economic, social and cultural rights enshrined in the Covenant, including the following:

(a) The ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocols), in September 2003; the implementation of the National Programme for Fighting and Preventing Trafficking in Human Beings since 2003; and the establishment of a network of bodies at different levels, vested with various responsibilities to combat trafficking;

(b) In November 2003, the adoption of the Act on Family Allowances, which expanded the benefits available to families with dependent children; the improvement of the length of maternity leave since December 2006; and the launch of the “family package”;

(c) The implementation of various programmes to combat racial discrimination, xenophobia and related intolerance, and the implementation of the Programme for the Roma Community in Poland (2004–2013);

(d) The adoption of the Act on Promotion of Employment and Labour Market Institutions, in April 2004, and the various measures and programmes addressing unemployment;

(e) The substantial increase in the minimum wage;

(f) The adoption of various regulations for the protection of the environment and for the improvement of industrial hygiene in the country.

6. The Committee welcomes the submission, on 1 January 2009, by the State party of the updated common core document in accordance with the 2006 harmonized guidelines on reporting to the international human rights treaty monitoring bodies.

C. Factors and difficulties impeding the implementation of the Covenant

7. The Committee notes the absence of significant factors or difficulties impeding the effective implementation of the Covenant in the State party.

D. Principal subjects of concern and recommendations

8. The Committee is deeply concerned that the State party still views the Covenant as programmatic, aspirational and not justiciable. The Committee remains concerned that the State party has not yet taken the necessary measures to ensure that the Covenant is given full effect in its domestic legal order, especially in the light of the decision of the Supreme Court in 2000 to the effect that the Covenant provisions could not be invoked by individuals before national courts.

The Committee reiterates its position that all the Covenant rights are fully justiciable and urges the State party to take the necessary measures, in line with its general comment No. 9 on the domestic application of the Covenant, to ensure that the provisions of the Covenant are made justiciable and that effective remedies are available to victims of violations of economic, social and cultural rights.

9. The Committee is concerned that the training programmes for the judges, prosecutors and members of the Bar Council, teachers, social workers, as well as public

officials concerned with the implementation of the rights contained in the Covenant, do not cover the provisions of the Covenant and their application in a systematic manner.

The Committee calls on the State party to provide systematic training on the provisions of the Covenant and their application to members of all professions and sectors that play a direct role in the promotion and protection of the rights contained in the Covenant, including judges, lawyers, civil servants, teachers, law enforcement officers, health-care professionals, migration officers, the police and the military.

10. The Committee is concerned about the insufficient awareness of the provisions of the Covenant in the general public at large. The Committee is also concerned that national school curricula do not provide for adequate human rights education.

The Committee calls on the State party:

(a) **To take effective measures to increase awareness in the public at large of the economic, social and cultural rights contained in the Covenant, as well as of judicial or other remedies available to individuals in the event of violations of these rights, and encourages the State party to involve civil society and national human rights institutions in this regard;**

(b) **To ensure that human rights education is provided in schools at all levels, and that it covers the economic, social and cultural rights contained in the Covenant.**

11. The Committee is concerned that the office of the Commissioner for the Protection of the Civil Rights has not placed adequate emphasis on the monitoring of the enjoyment of economic, social and cultural rights.

The Committee urges the State party to ensure that the office of the Commissioner for the Protection of the Civil Rights functions in conformity with the Paris Principles and the Committee's general comment No. 10, and monitors the realization of all economic, social and cultural rights.

12. The Committee continues to be concerned at the de facto discrimination experienced by some disadvantaged and marginalized individuals and groups, such as ethnic minorities, persons with disabilities, and lesbian, gay, bisexual and transgender persons in the enjoyment of their economic, social and cultural rights, despite the appointment of the Plenipotentiary for Equal Treatment in April 2008. The Committee is further concerned that the draft act on implementation of some European Union directives in the field of equal treatment does not provide comprehensive protection against all forms of discrimination in all areas related to Covenant rights (art. 2.2).

The Committee strongly urges the State party to amend the provisions of the draft act on implementation of some European Union directives in the field of equal treatment, to bring it into conformity with the Committee's general comment No. 20 on non-discrimination in economic, social and cultural rights. The Committee also recommends that the State party ensure effective enforcement of existing anti-discrimination legislation, and strengthen measures to combat de facto discrimination, including through campaigns aimed at combating stereotypes, especially concerning disadvantaged and marginalized individuals and groups. The Committee invites the State party to include in its next periodic report information on the results of the work undertaken by the Plenipotentiary for Equal Treatment.

13. The Committee is concerned that the distinction between "national minorities" and "ethnic minorities" as provided for in the Act on National and Ethnic Minorities and Regional Language, adopted by the State party in 2005, is discriminatory towards some minorities, and that some minorities present in the territory of the State party are excluded

from the definition of these two groups and therefore do not benefit from the implementation of the Act. The Committee also regrets that it has not received information on the implementation of the provision of the Act allowing persons belonging to linguistic minorities to use their own languages as “auxiliary languages” in dealing with public authorities (art. 2.2, 15).

The Committee calls on the State party to review the criteria used to identify minorities so that all sizeable communities in the territory of the State party are officially recognized under the Act. The Committee requests the State party to include in its next periodic report information on measures taken to implement the recommendation of the Committee in this regard, as well as detailed information on the implementation of the Act itself.

14. The Committee remains concerned that the Roma communities in the State party continue to face widespread discrimination in areas such as employment, education, land tenure, access to welfare benefits, housing and health care, which impair the enjoyment of their economic, social and cultural rights (art. 2.2).

The Committee reiterates its recommendation that the State party combat discrimination against Roma communities in areas such as employment, education, land tenure, access to social welfare benefits, housing and health care. The Committee also urges the State party to take all effective measures for the advancement of Roma communities, including by allocating sufficient funds for the realization of programmes in their favour. The Committee calls on the State party to ensure that the implementation of the various national social inclusion programmes take into account the specific situation of Roma communities in the State party.

15. The Committee expresses its concern at the absence of a framework legislation embodying the principle of equal rights of men and women (art. 3).

The Committee urges the State party to promote and incorporate the principle of equal rights of men and women in its legislation and to take effective measures, including temporary special measures where necessary, to ensure equality between men and women as provided for in article 2, paragraph 2, and article 3 of the Covenant, in line with Committee’s general comment No. 16. The Committee requests the State party to provide information and disaggregated statistical data in this regard in its next periodic report.

16. The Committee notes that unemployment is high in the State party. The Committee is particularly concerned at the higher unemployment among certain disadvantaged and marginalized groups, including persons with disabilities, long-term unemployed persons, persons of Roma origin, young persons as well as older ones (art. 6).

The Committee encourages the State party to continue its efforts to reduce unemployment and to intensify measures targeted at reducing unemployment among disadvantaged and marginalized groups, including persons with disabilities, long-term unemployed persons, persons of Roma origin, young persons as well as older ones. It calls upon the State party to take effective measures ensuring that persons with disabilities have equal opportunities for productive and gainful employment, in line with the Committee’s general comment No. 5 (1994) on persons with disabilities.

17. The Committee is concerned that there continues to be inequality in the wages earned by men and women. The Committee is particularly concerned that the wage gap is significant in the public sector and among professionals with higher education (art. 7, 3).

The Committee reiterates the recommendation made at the consideration of the fourth report of the State party, calling on it to take measures to enforce existing legal provisions and administrative regulations guaranteeing equal remuneration for

women and men. The Committee calls on the State party to incorporate in its legislation a specific provision on equal pay for equal work of equal value. Furthermore, it urges the State party to review its remuneration policies and practice in order to address the wage gap between women and men working in public administration.

18. The Committee is concerned about reports of long working hours and unpaid overtime work in the private sector. The Committee is also concerned that proper investigations of such cases have not been carried out (art. 7).

The Committee recommends that the State party take adequate measures to ensure the effective application of labour legislation protecting the rights of employees to just and favourable conditions of work, particularly for those working in the private sector. The Committee calls on the State party to fully investigate allegations of violations of the labour law and to take action against those found to be in breach of the law. The Committee invites the State party to include in its next periodic report statistics on violations of rights in articles 7 and 8, as collected through labour inspections, as well as statistical data on registered complaints, related investigations, findings and sanctions imposed.

19. The Committee notes with concern that a number of collective agreements have been suspended and that the renegotiation of those agreements has been subsequently disadvantageous to employees (art. 7, 6).

The Committee urges the State party to combat the practice of suspending collective agreements.

20. The Committee is concerned that some companies have wrongfully dismissed or harassed trade union leaders and members (art. 8).

The Committee recommends that the State party take effective measures to ensure that trade union leaders and employees participating or persons seeking to join trade unions are protected from any retaliatory actions and that they are able to exercise freely their rights under article 8 of the Covenant.

21. The Committee is concerned that the reform of the pension scheme undertaken by the State party has not addressed the recommendation of the Committee to correct the difference in retirement age between women and men, which is not only discriminatory but also denies women senior positions and reduces the amount of their pension (art. 9, 3).

The Committee urges the State party to take the necessary measures to adopt the same age of retirement for men and women.

22. The Committee is concerned that the legislation of the State party does not provide for the criminalization of domestic violence and marital rape and does not prohibit corporal punishment in the home (art. 10).

The Committee calls on the State party to ensure that the amendments to the 2005 Act on Counteracting Domestic Violence criminalize domestic violence, including marital rape, and prohibit corporal punishment in the home.

23. The Committee is concerned that the State party is a country of origin and destination and a point of transit for trafficking in humans, especially children and women, and for purpose of sexual exploitation (art. 10).

The Committee urges the State party to implement the national programme for combating the trafficking of human beings and adopt effective strategies to combat the phenomenon. The Committee calls on the State party to provide statistical data on the extent of the problem of trafficking in its next periodic report.

24. The Committee is concerned at the increasing incidence of mental health illness, particularly among women, which is compounded by the limited availability and accessibility of mental health services, primarily provided through institutional facilities, especially by those living in rural areas (art. 12, 3).

The Committee urges the State party to take effective measures to address the causes of mental health problems, especially with regard to women. It also calls on the State party to take the measures necessary to expand the coverage of its ambulatory mental health services so as to fulfil the right to health of mental patients. The Committee calls on the State party to provide disaggregated statistical data on mental health in its next periodic report.

25. The Committee is concerned at the increasing consumption of alcohol and use of tobacco in the State party, particularly among women and children (art. 12).

The Committee calls on the State party to adopt the bill amending the law on tobacco, to combat tobacco use, especially among children, and to take effective measures, including public awareness campaigns, to reduce both tobacco use and alcohol consumption.

26. The Committee is concerned at reports that only a small number of drug users have access to substitute drug dependence treatment, and that such treatment is even more limited for those in detention (art. 12).

The Committee calls on the State party to take measures to ensure that effective treatment of drug dependence is made accessible to all, including to those in detention.

27. The Committee takes note with great concern that the State party does not guarantee basic services in the area of sexual and reproductive health and that it does not ensure the provision of contraception and family planning services in the public health system. The Committee also regrets the decision of the State party not to include family planning services in the State budget. The Committee notes with concern that the State party has not taken sufficient measures to implement its previous recommendation with regard to these issues (art. 12, 10).

The Committee recommends that the State party provide adequate access to basic services in the area of sexual and reproductive health. The Committee reiterates its recommendation, calling on the State party to provide family planning services through the public health-care system, including by making contraceptives available at affordable prices.

28. The Committee is concerned at the alarming number of clandestine abortions performed in the State party. The Committee is particularly concerned that women resort to clandestine, and often unsafe, abortion because of the refusal of physicians and clinics to perform legal operations on the basis of conscientious objection (art. 12, 10).

The Committee calls on the State party to take all effective measures to ensure that women enjoy their right to sexual and reproductive health, including by enforcing the legislation on abortion and implementing a mechanism of timely and systematic referral in the event of conscientious objection. The Committee also requests the State party to inform the medical profession of the provisions of Polish legislation on legal abortion. The Committee requests the State party to provide in its next periodic report detailed information, including comparative data, about abortion, as well as legislative and other measures taken by the State party to implement the recommendation of the Committee in this regard.

29. The Committee notes with concern the continuous decrease in public spending on health and the negative consequences thereof on the enjoyment of right to health. The

Committee is also concerned that the gradual privatization of health care risks making it less accessible and affordable (art. 12).

The Committee recommends that the State party increase its budget allocation for health in order to meet the growing number of emerging health-care issues in the country and ensure that privatization of the health system does not impede the enjoyment of the right to health, in particular for the disadvantaged and marginalized individuals and groups.

30. While noting the programme on antiretroviral therapy for persons living with HIV in Poland (2005–2006), the Committee expresses its concern at reports of limited access to treatment by HIV patients, particularly among drug users, and at the absence of information on provision of treatment following the closing of the above-mentioned programme (art. 12).

The Committee recommends that the State party take measures to ensure that treatment and care be available to and accessible by persons living with HIV/AIDS, and that it provide alternative treatment possibilities after the ending of the programme on antiretroviral therapy for persons with HIV in Poland (2005–2006).

31. The Committee is deeply concerned about the lack of sexual and reproductive health education programmes in national school curricula, which should provide objective information in accordance with medical and education standards (art. 13).

The Committee requests the State party to implement adequate programmes in sexual and reproductive education in national school curricula.

32. The Committee is deeply concerned at reports about homophobia, particularly bullying in schools (art. 13).

The Committee recommends that the State party take measures, in particular awareness-raising, to counter homophobic attitude in educational settings, ensuring that individuals are not discriminated against on the basis of their sexual orientation and identity. The Committee also recommends that the State party introduce in schools the Compass manual on human rights education with young people, published by the Council of Europe.

33. The Committee is concerned that higher education in State-run universities is not completely free, although it is guaranteed by the Constitution of the State party. Such a situation has a disproportionately negative effect on disadvantaged and marginalized groups, especially in rural areas. The Committee regrets that it has not received sufficient information on the enrolment of Roma students in higher education (art. 13.2).

The Committee recommends that the State party implement the constitutional provision of free higher education and ensure, by every appropriate means, that it be accessible to all, especially to disadvantaged and marginalized groups, on the basis of ability, as stipulated by article 13 of the Covenant. The Committee recommends that the State party take proactive measures to improve access to higher education by Roma students.

34. The Committee requests the State party to include in its next periodic report additional information on:

- (a) The results of measures taken to protect the environment and improve industrial hygiene;
- (b) The right to water and sanitation, including the results of regulatory measures on water sewage;
- (c) Sexual harassment in the workplace;

(d) The nature and extent of hate crime in its territory, and the outcome of the National Programme to Combat Racial Discrimination, Xenophobia and Related Intolerance;

(e) Information on disciplinary dismissals, and case law related thereto.

35. The Committee invites the State party to provide in its next periodic report detailed information, including statistical data disaggregated by sex and by rural and urban distribution, on the extent of the informal economy, as well as the State party's policies and protection measures, if any, taken to deal with it.

36. The Committee encourages the State party to consider signing and ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

37. The Committee encourages the State party to consider ratifying the Convention on the Rights of Persons with Disabilities, and signing and ratifying the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

38. The Committee also encourages the State party to consider ratifying International Labour Organization Conventions concerning Basic Aims and Standards of Social Policy (Convention No. 117), Equality of Treatment of Nationals and Non-Nationals in Social Security (Convention No. 118) and the Prevention of Major Industrial Accidents (Convention No. 174).

39. The Committee requests the State party to make the present concluding observations widely available and accessible, and to disseminate them among all levels of society, in particular among State officials, the judiciary and civil society organizations, and to inform the Committee on all steps taken to implement them in its next periodic report.

40. The Committee encourages the State party to continue to engage national human rights institutions, non-governmental organizations and other members of civil society in the implementation of the present concluding observations and in the process of discussion at the national level prior to the submission of its next periodic report.

41. The Committee requests the State party to submit its sixth periodic report, prepared in accordance with the revised reporting guidelines of the Committee (E/C.12/2008/2), by 30 June 2014.
