



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE
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**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT**

Concluding observations of the Human Rights Committee

SWITZERLAND

1. The Committee considered the third periodic report submitted by Switzerland (CCPR/C/CHE/3) at its 2657th and 2658th meetings, held on 12 and 13 October 2009 (CCPR/C/SR.2657 and CCPR/C/SR.2658), and adopted the following concluding observations at its 2679th meeting (CCPR/C/SR.2679), held on 27 October 2009.

A. Introduction

2. The Committee welcomes the timely submission of the third report of Switzerland which gives detailed information on measures adopted by the State party and on its forthcoming plans to further implement the Covenant. The Committee is also grateful to the State party for the written replies submitted in advance in response to the Committee's written questions (CCPR/C/CHE/Q/3/Add.1), as well as additional detailed information provided orally by the delegation during the consideration of the report, and the supplementary written information.

B. Positive aspects

3. The Committee, which notes the sustained attention paid by the State party to the protection of human rights, generally welcomes the following legislative and other measures:

- (a) The adoption in 2007 of the Federal Criminal Code of Procedure and the Swiss Code of Juvenile Criminal Procedure, both due to enter into force in 2011;
- (b) The revision of the Federal Law on Compensation for Victims of Offences (LAVI) which entered into force in 2009;
- (c) The revision of the Constitution in order to reinforce guarantees regarding access to justice and the independence of the judiciary;
- (d) The adoption in 2002 of the Federal Law on the Elimination of Discrimination against Persons with Disabilities, which entered into force in January 2004;
- (e) The Act on the Use of Force and Police Measures of 20 March 2008;
- (f) The withdrawal of reservations to articles 10, paragraph 2 (b), 14, paragraphs 1, 3 (d) and (f) and 5 of the Covenant.

C. Principal matters of concern and recommendations

4. The Committee is concerned that the State party maintains reservations to articles 12, paragraph 1, 20, paragraph 1, 25 (b) and 26. With regard to the reservation to article 26 of the Covenant, the Committee takes note of the State party's comment that it may review its position and consider withdrawing this reservation following ratification of Protocol 14 to the European Convention of Human Rights.

The State party should consider withdrawing its remaining reservations to the Covenant.-

5. The Committee is concerned about the information provided in the replies to the list of issues, and confirmed by the delegation, that because individuals under the jurisdiction of the State party may have recourse to the European Court of Human Rights, the State party does not need to accede to the Optional Protocol to the Covenant. The Committee notes, however, the comment by the delegation that there is no legal obstacle to the accession of the State party to the Optional Protocol. (art. 2)

The State party should consider acceding to the Optional Protocol to the Covenant in order to enhance the protection of human rights for persons subject to its jurisdiction.

6. The Committee reiterates its concern that the application of the State party's obligations under the Covenant in all parts of its territory may be hampered by the particular federal structure of the State party. It reminds the State party that under article 50 of the Covenant the provisions of the Covenant "shall extend to all parts of federal States without any limitations or exceptions." (art. 2)

The State party should take measures to ensure that the authorities in all cantons and municipalities are aware of the rights set out in the Covenant and of their duty to effectively ensure their implementation, including in cantonal courts.

7. The Committee is concerned that the State party has not yet established a national institution, with broad competence in the area of human rights, in accordance with the Paris Principles (General Assembly resolution 48/134). The Committee notes the information provided by the State party on the decision, after broad consultation, to conduct a pilot project creating “a specialized centre on human rights” within universities for a five-year period, but reminds the State party that universities can only carry out a small part of the mandate of a national human rights institution. (art. 2)

The State party should establish a national human rights institution with a broad human rights mandate, and provide it with adequate financial and human resources, in conformity with the Paris Principles.

8. The Committee is concerned about the referendum initiative aimed at prohibiting the construction of minarets and about the discriminatory advertising campaign which accompanies it. It notes that the State party does not support this referendum initiative which, if adopted, would bring the State party into non-compliance with its obligations under the Covenant. (arts. 2, 18, 20)

The State party should strenuously ensure respect of freedom of religion and firmly combat incitement to discrimination, hostility and violence.

9. The Committee is concerned about the sharp rise in apparent anti-Semitic incidents occurring in the State party, including stone throwing and verbal threats that disrupted a meeting at the Kempinski Hotel in Geneva on March 2, 2009 and the arson fire that destroyed the largest synagogue in Geneva in 2007. The Committee is also concerned at reports that the police in Geneva have not fully investigated the pattern of these incidents. (arts 2, 18, 20, 26)

The State party should effectively investigate any and all threats of violence against minority religious communities, including the Jewish community.

10. The Committee regrets that the Federal Commission against Racism does not have a mandate to initiate legal action on complaints of racial discrimination and incitement to racial hatred. (art. 2, 20, 26)

The State party should consider, as previously recommended by the Committee, reinforcing the mandate of the Federal Commission against Racism to investigate all cases of racial discrimination and incitement to national, racial or religious hatred, or create an independent mechanism with competence to initiate legal action in such cases. Furthermore, the State party should strengthen its efforts to promote tolerance and cultural dialogue among the population.

11. The Committee is concerned about the continuing incidence of violence against women, including domestic violence, as well as about the absence of comprehensive legislation on this

matter. The Committee is particularly concerned that the requirements of article 50 of the new Federal Law on Foreign Nationals, in particular the proof of difficulty in reintegrating in the country of origin, create problems for foreign women who have been married for less than three years to a Swiss national or a foreigner with a residency permit and who are victims of domestic violence, in acquiring or renewing their residency permit. These requirements may also prevent victims from leaving abusive relationships and from seeking assistance. (art. 2, 3, 23, 26)

The State party should intensify its efforts to address the issue of violence against women, including by enacting comprehensive legislation against domestic violence and sanctioning all forms of violence against women, as well as to ensure that victims have access to immediate means of redress and protection. It should prosecute and punish those responsible. It should also review its legislation on residence permits to avoid the application of the law having the effect, in practice, of forcing women to remain in abusive relationships.

12. The Committee is concerned at the high incidence of firearms-related suicides in the State party. In this regard, it is concerned that those serving in the army normally store their service weapons at home. It welcomes the recent decision to store all service ammunition at military sites. (art. 6)

The State party should review its legislation and practices in order to restrict the conditions of access to, and legitimate use of, firearms and should cease the storage of service firearms in the homes of those who serve in the armed forces. In addition, the State party should create a national registry of privately owned firearms.

13. While noting that under article 115 of the Penal Code, “a person who, acting from a selfish motive, incites persons to commit suicide or provides such persons with assistance with a view to suicide shall be sentenced”, the Committee is concerned about the lack of independent or judicial oversight to determine that a person seeking assistance to commit suicide is operating with full free and informed consent (art. 6)

The State party should consider amending its legislation in order to ensure independent or judicial oversight to determine that a person who is seeking assistance for suicide is acting with full free and informed consent.

14. The Committee is concerned about reports of police brutality against persons during arrest or detention, in particular against asylum-seekers and migrants. It remains concerned about the lack in most cantons of independent mechanisms to investigate complaints lodged against the police. In this regard, the Committee reiterates that the possibility of filing a complaint before a court should not preclude the creation of such mechanisms. The Committee is also concerned with the generally low rate of minorities in the police force, despite the high percentage of minorities in the population at large. (art. 7)

The State party should ensure that all cantons create an independent mechanism with authority to receive and effectively investigate all complaints of excessive use of force, ill-treatment or other abuses by the police. All perpetrators should be prosecuted and punished, and victims compensated. The State party should create a

national statistical database on complaints lodged against the police. The State party should also increase efforts to ensure that minorities are adequately represented in the police forces.

15. The Committee notes with concern that the forcible removal of foreigners, which lies within the competence of cantons, does not take place in the presence of independent observers. (arts. 7, 13)

The State party should allow the presence of independent observers during the forcible removal of foreigners.

16. The Committee notes that the Administrative Federal Tribunal has revised its jurisprudence to recognize that persecution by non-State actors may constitute a ground for granting asylum. The Committee is concerned, however, about reports of expulsions regardless of the stated inability of the expelled persons' countries of origin to grant them protection against non-State actors. (arts. 7, 13)

The State party should fully comply with the principle of non-refoulement for persons subjected to persecution by non-State actors and ensure the application of the jurisprudence of the Administrative Federal Tribunal in this regard.

17. The Committee notes the efforts made by the State party to improve living conditions and overcome overcrowding in prisons, such as the planned construction of new prisons. The Committee is concerned about the persistent inadequate living conditions in some facilities and in particular the overcrowding in Champ-Dollon Prison. (art. 10)

The State should reinforce its efforts to improve the living conditions in prisons in all cantons and to urgently resolve the issue of overcrowding, in particular in the Champ-Dollon Prison.

18. The Committee takes note of the information that asylum-seekers are duly informed of their right to legal assistance and that free legal assistance is provided during the ordinary asylum procedure. It is concerned, however, that free legal assistance may be subject to restrictive conditions when asylum-seekers file an application in the framework of the extraordinary procedure. (art. 13)

The State party should review its legislation in order to grant free legal assistance to asylum-seekers during all asylum procedures, whether ordinary or extraordinary.

19. While noting that urgent assistance is granted to persons whose asylum application has been rejected, the Committee is concerned about reports according to which their living conditions are inadequate and they no longer benefit from health insurance (LAMAL Law), thereby restricting their access to health care. (arts. 13, 17)

The State party should protect the fundamental rights of persons whose asylum application has been rejected and provide them with an adequate standard of living and health care.

20. The Committee is concerned at the reluctance of the State party to compensate or otherwise make reparation for forcible castrations and sterilizations conducted between 1960 and 1987. (arts. 2, 7)

The State party should repair this past injustice through forms of reparation, including non-financial means, such as public apology.

21. The Committee notes with concern the modification of the Civil Code of 12 June 2009, which prohibits marriage or partnership with a person with no regular residence status in Switzerland. This new provision goes beyond mere regulation of the right to marry and found a family consecrated in 23 of the Covenant (arts. 2, 17, 23, 26)

The State party should urgently review its applicable legislation so as to make it consistent with the Covenant.

22. The State party should widely disseminate in its official languages the text of its third report, the written answers it has provided to the list of issues drawn up by the Committee and these concluding observations.

23. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, information on the current situation and on its implementation of the recommendations given in paragraphs 10, 14 and 18 above.

24. The Committee requests the State party, in its next periodic report, due to be submitted 2015, to provide information on action taken to implement the remaining recommendations and on its compliance with the Covenant as a whole.
