

**COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION**
Seventy-third session
28 July-15 August 2008

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION**

**Concluding observations of the Committee on the
Elimination of Racial Discrimination**

Advanced unedited version

SWITZERLAND

1 The Committee considered the combined fourth to sixth periodic reports of Switzerland (CERD/C/CHE/6) at its 1892nd and 1893rd meetings (CERD/C/SR.1892 and 1893), held on 8 and 11 August 2008. At its 1999th meeting (CERD/C/SR.1999), held on 14 August 2008, the Committee adopted the concluding observations as set out below.

A. Introduction

2 The Committee welcomes the report submitted by the State party, which is in conformity with the reporting guidelines, as well as its written replies. Furthermore, it appreciates the detailed and comprehensive oral answers provided by the delegation in response to the Committee's questions, as well as the open and constructive dialogue between the Committee and the delegation.

B. Positive aspects

3 The Committee welcomes the fact that in 2003 the State party made the optional declaration provided for in article 14 of the Convention.

4 The Committee welcomes the establishment of the Fund for Projects for Human Rights and against Racism as well as the Federal Service for Combating Racism.

5 The Committee notes with appreciation the introduction of a federal examination mandatory for candidates applying for posts in the police force, in 2007, which integrates modules on ethics and human rights.

6 The Committee notes the reinforcement of the jurisprudence of the Federal Supreme Court concerning article 261 *bis* of the Criminal Code, which thus make it possible to more effectively address racist speeches and behaviors through criminal sanctions.

C. Concerns and recommendations

7 The Committee notes with regret the lack of substantial progress made by the State party in combating racist and xenophobic attitudes towards some minorities, including Black persons, Muslims, Travellers, immigrants and asylum seekers. It is particularly concerned at the hostility resulting from the negative perception by part of the population of foreigners and certain minorities, which has resulted in popular initiatives questioning the principle of non-discrimination. The Committee regrets that in the period covered by the report, the prohibition against racial discrimination had to be defended against repeated attacks in the political arena, including demands for its abolition or restriction. (Art.7)

The Committee urges the State party to further intensify its efforts in education and awareness raising campaigns to combat prejudices against ethnic minorities and promote inter-ethnic dialogue and tolerance within society, in particular at the cantonal and communal level. The State party should consider implementing the recommendations made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance following his visit to Switzerland in 2006, as well as the relevant recommendations made by the Working Group on the Universal Periodic Review in 2008.

8 While noting that according to the State party, its federal system does not constitute an obstacle to the implementation of the Convention within its territory and that sufficient mechanisms exist within the Swiss system, the Committee remains concerned that inconsistencies in the implementation of the Convention exist and that cantons and communes' laws, policies and decisions could contradict the State's party's obligations under the Convention.

The Committee underscores once again the responsibility of the Federal Government of Switzerland for the implementation of the Convention. The State party is invited to play a proactive role, leading the authorities of the cantons and communes to fully implement the Convention in conformity with Article 54 (1) of the Federal Constitution. The Confederation should use and reinforce all existing mechanisms to monitor compliance with the provisions of the Convention, including by clearly formulating human rights requirements for the cantons and communes.

9 While noting that the Convention forms an integral part of the Swiss legal system and that some of its provisions may be directly invoked before the Swiss courts, the Committee remains concerned at the lack of comprehensive civil and administrative legislation and policies to prevent and combat racial discrimination in all areas, and at the fact that only ten cantons, out of 26, have enacted anti-discrimination laws. (Art. 2 (1) (d))

The Committee invites the State party to adopt a national plan and legislation at all levels of government against racial discrimination, xenophobia and other forms of intolerance. The State party should devote adequate financial resources for the implementation of the Convention, and ensure that the plan is integrated with other mechanisms for the implementation of human rights in Switzerland.

10 The Committee regrets that an independent national human rights institution, in accordance with the Paris principles (General Assembly Resolution 48/134 of 20 December 1993), has not so far been established in Switzerland. It welcomes the commitment of the State party before the Human Rights Council to continue to consider the establishment of such human rights institution. The Committee notes that the Federal Commission against Racism (FCR), which is responsible for preventing racial discrimination and promoting inter-ethnic dialogue, has not been provided with adequate funds.

The Committee invites the State party once again to establish a well-financed and adequately staffed independent human rights institution according to the Paris principles (General Assembly Resolution 48/134 of 20 December 1993). The Committee reiterates its recommendation that the means of the Federal Commission against Racism should be strengthened and recommends more regular dialogue with the FCR.

11 While taking note of Article 8 of the Federal Constitution, which incorporates an explicit prohibition of discrimination, as well as the different national law provisions that may be applied in cases of racial discrimination, the Committee notes with concern that the domestic legislation of the State party does not currently contain a definition of racial discrimination in conformity with the definition set out in article 1 of the Convention.

The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination, including direct as well as indirect discrimination, to cover all fields of law and public life, fully in accordance with article 1, paragraph 1, of the Convention.

12 While welcoming the information provided by the canton of Vaud on its efforts to implement the Convention, the Committee notes the lack of information regarding the activities of other Cantons to combat racism and racial discrimination. (Art.2)

The State party is invited to provide the Committee in its next report with detailed and updated information on its activities and measures undertaken by Cantons in the area of racial discrimination.

13 The Committee notes that the State party's intends to maintain its reservation to article 2 of the Convention. The Committee also notes with concern the inadequate

protection of the right to marry and found a family for aliens not stemming from EU States. (Art.2)

The Committee invites the State party to consider the possibility of withdrawing its reservation to article 2(1) (a) of the Convention and encourages it to ensure that immigration policies and laws do not intentionally or unintentionally discriminate.

14 While noting the explanation provided by the delegation with regard to the exigencies of national security, the Committee is concerned at the use of racial profiling, including in airports. The Committee is also concerned by the lack of statistics regarding racial profiling at cantonal level. (Art.2)

The Committee recommends that the State party review existing national security measures and ensure that individuals are not targeted on the grounds of race or ethnicity. In this regard, the Committee invites the State party to take account of its General Recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee also requests to the State party to compile information regarding racial profiling at the Cantonal level.

15 The Committee notes with concern the reasons expressed by the State party to maintain its reservation to article 4 of the Convention relating to the prohibition of hate speeches. While taking into account the importance conferred by the Swiss Federal Constitution to the freedoms of expression and assembly, the Committee recalls that freedom of expression and assembly is not absolute and that the establishment and activities of organizations promoting or inciting racism and racial discrimination shall be prohibited. In this regard, the Committee is particularly concerned at the role played by some political associations and parties in the rise of racism and xenophobia in the State party. (Art.4)

Taking into account the mandatory nature of article 4 of the Convention, the Committee invites the State party to consider withdrawing its reservation to article 4 and recommends that the State party enact legislation that declares illegal and prohibits any organization which promotes or incites racism and racial discrimination. In this context, the Committee draws the attention of the State party to its general recommendation 15 (1993) on organized violence based on ethnic origin.

16 The Committee notes with concern the increase of reports of alleged excessive use of force by the police within the territory of the State party, in particular against Black persons. (arts. 4 (a) and (c))

The Committee urges the State party to take firm measures to eradicate all forms of racially discriminatory practice and excessive use of force by the police and in particular: a) Establish an independent mechanism for the investigation of complaints concerning actions of law enforcement officials;

b) Initiate disciplinary and criminal proceedings against alleged perpetrators, ensuring that the sanctions imposed are proportionate to the gravity of the offence and grant appropriate remedy for victims; c) Continue its efforts to provide relevant training, including in cooperation with the Federal Commission against Racism, to the police; d) Consider recruiting members of minorities into the police force; e) Consider ratifying the Optional Protocol to the UN Convention against Torture.

17 The Committee notes with concern that the State party's legislation on aliens and asylum seekers may not guarantee them equal rights in accordance with the Convention. For instance, pursuant to the Alien law which entered into force on 1 January 2008, asylum seekers whose requests are rejected are excluded from the welfare system with resulting marginalization and vulnerability. (Art. 5 (b))

The Committee urges the State party to take effective and adequate measures to guarantee the rights under the Convention to aliens and asylum seekers. It invites the State party to harmonize its domestic legislation on aliens and asylum seekers with the Convention, and to take into account the recommendations made in this area by different bodies and organizations dealing with racial discrimination issues.

18 While welcoming the new legislation on naturalization which is expected to enter into force in 2009, the Committee remains concerned at the fact that the cantons and communes may introduce stricter conditions than the Confederation on naturalization matters, may infringe upon the right to private life, and that the lack of definition of integration criteria in the naturalization process could lead municipal assemblies to adopt inconsistent standards and decisions. (Art.5 (d) (iii))

The Committee encourages the State party to adopt standards on integration for the naturalization process, in conformity with the Convention, and to take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of the State party.

19 While noting with appreciation that Travellers/Yenish have been recognized by the State party as a national cultural minority under the Council of Europe's Framework Convention for the Protection of National Minorities, the Committee remains concerned that Travellers, including Yenish, Sinti and Roma, are still subjected to numerous disadvantages and forms of discrimination, particularly in the areas of housing and education. It notes with concern the lack of adequate measures to protect their language and culture as well as the persistence of racial stereotyping against them. (Art.2 and 5)

The Committee recommends once again that the State party strengthen its efforts to improve the situation of Travellers, in particular with regard to the means and enjoyment of their rights to housing, education and cultural

rights. The State party should adopt a national coordinating policy aimed at protecting Travellers' rights.

20 The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex, of 18 December 1990).

21 The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I) when implementing the Convention in its domestic legal order, particularly with regard to articles 2 to 7 of the Convention. The Committee also urges the State party to include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

22 The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites Assembly resolution 61/148 of 19 December 2006, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

23 The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to those reports be similarly publicized in the official and national languages.

24 The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of its next periodic report.

25 The Committee invites the State party to update its core document in accordance with the requirements of the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (see HRI/GEN/2/Rev.4).

26 In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 9, 10, 14 and 18 above.

27 The Committee recommends that the State party submit its seventh and eighth periodic report due on 14 November 2010, taking into account the specific guidelines for Committee documents, as adopted at its seventy-first session (CERD/C/2007/1), and that address all points raised in the present concluding observations.
