



Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture
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Consideration of reports submitted by States parties under article 19 of the Convention

Concluding observations of the Committee against Torture

Switzerland

1. The Committee against Torture considered the sixth periodic report of Switzerland (CAT/C/CHE/6) at its 935th and 936th meetings, held on 30 April and 3 May 2010 (CAT/C/SR.935 and 936), and adopted the following concluding observations at its 948th meeting on 11 May 2010 (CAT/C/SR.948).

A. Introduction

2. The Committee welcomes the sixth periodic report of Switzerland, prepared in accordance with the Committee's guidelines, and the replies to the list of issues (CAT/C/CHE/Q/6 and Add.1). It appreciates open and constructive dialogue with the State party's high-level and multisectoral delegation, as well as the additional information and explanations provided by the delegation to the Committee.

B. Positive aspects

3. The Committee welcomes the ratification of the following international instruments:
- (a) Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (24 September 2009);
 - (b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (19 September 2006);
 - (c) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (26 June 2002);
 - (d) Protocols Nos. 1 and 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1 March 2002);

(e) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (27 October 2006);

(f) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (27 October 2006);

(g) Rome Statute of the International Criminal Court (12 October 2001);

(h) United Nations Convention against Transnational Organized Crime (27 October 2007).

4. The Committee notes with satisfaction the efforts being made by the State party to amend its legislation, policies and procedures in order to ensure greater protection of human rights, particularly the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment, as follows:

(a) The adoption of the Swiss Code of Criminal Procedure on 5 October 2007 (scheduled to enter into force on 1 January 2011), which strengthens the rights of defence and increases the rights of victims, as well as witness protection measures;

(b) The complete revision of the Federal Act on Assistance to Crime Victims of 4 October 1991, which entered into force on 1 January 2009;

(c) The entry into force on 1 January 2007 of the Federal Act on the Criminal Status of Minors of 20 June 2003;

(d) The extension under the new Criminal Code (art. 97), which entered into force on 1 January 2007, of the statute of limitations for serious offences against the sexual integrity of children to the time when the victim reaches 25 years of age;

(e) The standardized Code of Civil Procedure (due to enter into force on 1 January 2011);

(f) The establishment of a National Commission for the Prevention of Torture, which began working on 1 January 2010, following ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Principal subjects of concern and recommendations

1. Definition of torture

5. While noting that many acts that amount to torture are criminalized under Swiss criminal law (arts. 111–117, 122–128, 180–185 and 189–193), the Committee is concerned that, despite a previous recommendation (CAT/C/CR/34/CHE, paras. 4 (b) and 5 (a)), Swiss legislation still lacks a definition of torture that covers all the constituent elements set out under article 1 of the Convention (art. 1).

The Committee reiterates its recommendation that the State party include a definition of torture in its Criminal Code incorporating all elements contained in article 1 of the Convention.

Fundamental safeguards

6. While taking into account the State party's federal structure, the Committee is concerned by the fact that the cantons can differ in how they implement the State party's obligations under the Convention (art. 2).

The State party should take the necessary steps to ensure that the authorities of all the cantons are aware of the rights stipulated in the Convention, and that they implement them as soon as possible, regardless of the structure of the State party.

7. The Committee notes with concern that the State party has not yet established a national human rights institution, with broad competence in the area of human rights, in accordance with the Paris Principles. The Committee notes the State party's initiative to carry out a five-year pilot project aimed at creating a "human rights centre" through a call for tenders to universities, but considers that this is no substitute for establishing a national human rights institution (art. 2).

The State party should consider establishing a national human rights institution, with broad competence in the area of human rights and equipped to play a role in the coordination and implementation of human rights policies and the implementation of recommendations by treaty bodies, and providing it with the necessary financial and human resources to enable it to work in accordance with the Paris Principles (General Assembly resolution 48/134).

Police violence

8. The Committee is concerned by allegations of violence or the excessive use of force or other mistreatment by the police during the questioning of suspects in their homes or in police stations. The Committee is particularly concerned by the fact that some of these allegations mention an excessive use of force against foreigners, especially asylum-seekers and migrants, above all of African origin, and particularly in the cantons of Geneva and Vaud (arts. 2, 12, 13, 14 and 16).

The State party must ensure that prompt, thorough and impartial inquiries are held into all allegations of violence or mistreatment by police, that the perpetrators are prosecuted and, if proven guilty, punished in proportion to the seriousness of their acts, that victims receive compensation and, where appropriate, rehabilitation. The State party must also continue training police officials and raising their awareness of human rights and, in particular, of the provisions of the Convention. In its next report, it must inform the Committee of any ongoing investigations and their outcome.

Mechanisms of independent investigation into police violence

9. The Committee notes that, in the State party, complaints of police violence, torture and mistreatment may be brought before the ordinary courts. Nevertheless, it is concerned that the State party has not yet fully implemented the Committee's recommendation to establish, in each canton, independent mechanisms of investigation to deal with complaints of violence or mistreatment lodged against police officials. It reminds the State party that the possibility of seeking remedy in the ordinary courts should not prevent the establishment of such mechanisms (arts. 2, 12 and 16).

The State party must ensure the creation in each canton of an independent mechanism empowered to receive any complaints of violence or mistreatment on the part of the police and to investigate them promptly, thoroughly and impartially.

Non-refoulement

10. The Committee notes that, according to article 5, paragraph 2, of the Asylum Act of 1999, the ban on refoulement may not be invoked if there are substantial grounds for believing that the person invoking it represents a threat to the security of Switzerland or, having been convicted and sentenced for a particularly serious crime or offence, must be considered a public menace. The Committee also notes that article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005, provides for the immediately enforceable

expulsion of a foreigner from the State party's territory if the person concerned has seriously or repeatedly violated, or represents a threat to, public security and order or represents a threat to internal or external security. The Committee is concerned that the application of article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005 could lead to a violation of the principle of non-refoulement, without the possibility of appeal. It is equally concerned that article 5, paragraph 2, of the Asylum Act of 1999 is incompatible with the State party's obligations with respect to the principles of non-refoulement under article 3 of the Convention (art. 3).

The State party should consider modifying its legislation to allow an assessment of the risk involved and take measures to ensure for a person expelled under article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005 and article 5, paragraph 2, of the Federal Asylum Act of 1999, that the expulsion proceedings comply with article 3 of the Convention. It should also allow appeals against, and the suspension of, expulsion orders.

11. The Committee notes that the people's initiative on the expulsion of foreign criminals under discussion in Parliament calls for foreigners to be deprived of their residence permit and any further right to reside in Switzerland, regardless of their status, if they are convicted by final judgement of murder, rape or other serious sexual offences, or of other acts of violence such as armed robbery, trafficking in human beings, drug trafficking or breaking and entering, or if they have improperly claimed social security or welfare benefits. The Committee also notes that such persons would be expelled and banned from returning to Switzerland for a period of between 5 and 15 years, and that the authorities would lose all discretionary power in this respect. The Committee notes, finally, that the Federal Council has made a counter-proposal and recommended that the initiative be rejected, having found it incompatible with international law and the Swiss Constitution. However, the Committee remains concerned that the application of the initiative, if adopted by referendum, would seriously risk violating the principle of non-refoulement (art. 3).

The State party must continue its efforts to ensure that the initiative on the expulsion of foreign criminals does not violate the international obligations that Switzerland has undertaken, especially the Convention against Torture, or article 25 of the Swiss Constitution on the principle of non-refoulement.

12. The Committee notes that provisions of the Federal Act on Foreign Nationals governing procedures for refusal of entry into the country at airports (art. 65) stipulate that a decision must be made within 48 hours, subject to an appeal without suspensive effect being filed within 48 hours of notification and a decision on the appeal being handed down within 72 hours. The Committee is concerned that this rapid procedure, without suspensive effect, could impede the proper examination of the motives of appeal and constitute a violation of the principle of non-refoulement (art. 3).

The State party should consider modifying the procedure set out under article 65 of the Federal Act on Foreign Nationals with a view to providing more time for thorough consideration of appeals and an assessment of whether the principle of non-refoulement is being violated, and to lending such appeals suspensive effect.

13. The Committee considers the Federal Act on Foreign Nationals of 2005, which applies stricter coercive measures (arts. 73–78) to foreigners without residence permits and extends the maximum period of administrative detention from 12 to 24 months, or 12 months for minors aged from 15 to 18, excessive. The Committee notes that, as a result of Switzerland adopting the European Union directive on the return of illegal immigrants, the maximum period of administrative detention will be 18 months for adults and 9 months for minors (art. 3).

The State party should reconsider the maximum period of administrative detention, resort to it only in exceptional circumstances and limit its duration in light of the principle of proportionality.

14. While noting that asylum-seekers are entitled to free legal aid during the ordinary asylum procedure, the Committee remains concerned that free legal aid may be subject to restrictive conditions when asylum-seekers file an application under the extraordinary procedure (art. 3).

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.

Repatriation and mistreatment

15. While noting the steps taken by the State party to ensure the peaceful implementation of forcible repatriation by air, particularly the training of specialized officials, the Committee is concerned by persistent allegations of police violence and mistreatment when persons are forcibly returned by air. The Committee notes with concern that the Federal Act on the use of coercion and police measures in spheres within the jurisdiction of the Confederation, which entered into force on 1 January 2009, does not provide for the presence of human rights observers or independent physicians when forcible repatriation by air takes place, as the Committee had recommended (CAT/C/CR/34/CHE, para. 5 (b)) (arts. 2, 3 and 16).

The State party must:

(a) Ensure that human rights observers and independent physicians are present when persons are forcibly repatriated by air;

(b) Provide also for their participation in the drafting by the Federal Office for Migration of orders on the use of coercive measures by police escorts during forcible returns;

(c) Prevent police violence and mistreatment against persons being forcibly repatriated by air, open inquiries into any such allegations, prosecute and punish perpetrators, and compensate victims;

(d) Continue training in human rights and, especially, in Convention safeguards of police and other officials who carry out forcible repatriation.

16. The Committee is most concerned by the death of a Nigerian citizen, Joseph Ndukaku Chiakwa, on 10 March 2010, when he was being forcibly repatriated by air. While noting that the authorities of the State party have opened an inquiry, the Committee is concerned about whether the coercive measures applied by the State party are compatible with the provisions of the Convention. The Committee is also concerned by the failure of the State party to respond to claims for compensation from the families of the two latest victims in recent cases of forced repatriation (arts. 2, 3 and 14).

The State party must:

(a) Open an independent and impartial inquiry into the circumstances of the death of Joseph Ndukaku Chiakwa, establish who was responsible for the use of force that led to his death, prosecute and punish the perpetrators and offer compensation to the victim's family;

(b) Provide the Committee with details of the compensation made to the families of the two latest victims of forcible repatriation by air;

(c) Inform the Committee as to whether the order on the use of coercive measures by police escorts during forcible returns currently being drafted by the

Federal Office for Migration is in accordance with the State party's international obligations, particularly the Convention against Torture.

Conditions of detention

17. The Committee takes note of information provided by the State party regarding its efforts to create more dignified and more secure conditions for detainees, including the construction in 2008 of the detention centre of La Brenaz, and plans to expand capacity at the Champ Dollon and La Brenaz prisons. However, the Committee notes with concern the acute overcrowding of the Champ Dollon prison, that conditions in Swiss prisons, especially in the French-speaking cantons, are inadequate and that the separation of adults and minors is not always guaranteed. Moreover, the Committee is concerned by the state of health and access to decent health care of detainees, especially those with psychiatric disorders and, above all, those housed in the Frambois holding centre (arts. 11 and 16).

The State party must act immediately to deal with the problem of overcrowding in the Champ Dollon prison and to improve conditions in all Swiss prisons. The Committee urges the State party to make use of alternative and non-custodial sentences and to reduce pretrial detention periods. The State party must also take measures to ensure that minors and adults, as well as detainees serving under different prison regimes, are separated. Finally, it must take steps to ensure the application of legislation and procedures concerning health-care access for all prisoners, especially those with psychiatric problems.

18. The Committee takes note of information supplied by the State party on life imprisonment procedures. However, the Committee remains concerned that article 123a of the Constitution, specified in the Act of 1 August 2008, allows imprisonment for life of dangerous or sexual offenders considered to be non-reformable. The Committee is, in this respect, concerned by the detention conditions of such prisoners, especially by the death of Skander Vogt, held in a cell of the high security wing of Plaine de l'Orbe prison, after setting fire to his cell (arts. 10, 12 and 13).

The State party should review the manner in which article 123a of the Constitution, specified in the Act of 1 August 2008, is applied and the conditions in which such prisoners are held. The State party should open a prompt and independent inquiry into the death of Skander Vogt and inform the Committee of the inquiry's outcome in its next periodic report.

Complaints and prosecutions

19. The Committee reiterates its concern that only a minority of complaints of violence or mistreatment by the police result in prosecutions or charges being brought and that only a few lead to compensation being offered to victims or their families (arts. 2, 12 and 13).

The State party must systematically conduct impartial, thorough and effective inquiries into all allegations of violence committed by the police, and prosecute and punish the perpetrators in proportion to the seriousness of their acts. It should also ensure that victims or their families receive compensation. The State party should inform the Committee of the outcome of current proceedings.

Violence against women

20. The Committee notes that the Criminal Code addresses violence against women by prosecuting the offences of violation of physical integrity and violation of liberty (art. 122 ff. and art. 180) and that it provides for automatic prosecution in the event of an attack on a spouse or companion. It also notes that article 28b of the Civil Code contains further protective measures. Nevertheless, the Committee remains concerned by reports indicating

an unacceptable rate of violence against women, especially in the home. In this respect, it is concerned that statements made by the authorities criticizing police action in cases involving persons with international protection conveys the wrong message as far as combating impunity is concerned. It also notes with concern the continued lack of a specific provision in the Criminal Code targeting violence against women (arts. 2 and 16).

The State party must ensure that a provision is inserted in its Criminal Code specifically aimed at preventing and combating violence against women. The State party must also act to raise the public's awareness of all forms of violence against women. It must ensure that victims of violence can make complaints without fear of reprisals, and it must train and encourage police to protect the victims of domestic violence, even when it occurs in the home, in accordance with article 5 of the Federal Victims Assistance Act (II). The State party should firmly combat impunity in cases of domestic violence by opening inquiries, and prosecuting and punishing perpetrators in accordance with the seriousness of their acts.

21. The Committee is concerned that the requirements of article 50 of the Federal Act on Foreign Nationals of 2005, in particular the proof of problems in resettling in the country of origin, make it difficult for foreign women who have been married for less than three years to a Swiss national or a foreigner with a residence permit, and who are victims of domestic violence, to leave their spouse or seek protection, for fear of not having their residence permits renewed (arts. 13, 14 and 16).

The State party should consider amending article 50 of the Federal Act on Foreign Nationals in order to enable migrant women who are victims of violence to seek protection without necessarily forfeiting their residence permit, taking as a reference the Federal Tribunal's ruling of 4 November 2009 (ATF 136 II 1), which states that "either conjugal violence or serious difficulty in resettling in the country of origin may [...] be considered to constitute sufficient compelling personal reasons".

Trafficking in persons

22. While noting the measures taken by the State party to combat human trafficking, in particular trafficking in women and girls for purposes of sexual exploitation, the Committee is concerned that trafficking in persons still persists in the State party (arts. 12, 13 and 16).

The State party must continue its efforts to combat human trafficking, particularly in women and girls for purposes of sexual exploitation, by adopting a comprehensive strategy, improving prevention and ensuring that victims, including those who cooperate with the justice system, are protected. The State party must also prosecute and punish perpetrators, and inform the Committee of the results of cases currently being prosecuted.

Corporal punishment

23. While taking note of information supplied by the State party, according to which the jurisprudence of the Federal Tribunal confirms the ban on corporal punishment, including for educational purposes, and that corporal punishment is also covered by article 126 (2) of the Criminal Code, the Committee notes with concern that corporal punishment is not specifically prohibited under the legislation of the State party (art. 16).

The State party should specifically prohibit corporal punishment in its legislation. To that end, the Committee urges the State party to relaunch the 06.419 Vermont-Mangold parliamentary initiative, aimed at enacting legislation to protect children from corporal punishment and other affronts to their dignity, which was shelved by Parliament. The Committee also calls upon the State party to carry out public-

awareness campaigns on the negative effects of violence against children, especially corporal punishment.

Disappearance of unaccompanied minors

24. While taking note of information supplied by the State party regarding the procedure to protect unaccompanied minors, and of statistics on minors said to have disappeared from its territory, the Committee is concerned by the matter of the disappearance of unaccompanied minors and by the risk they run of becoming victims of human trafficking or other forms of exploitation (art. 16).

The State party must examine the plight of unaccompanied minors closely, seek means of preventing their disappearance, improve the level of protection afforded to them and report to the Committee as soon as possible.

25. The Committee invites the State party to ratify the core United Nations human rights treaties to which it is not yet party, namely, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights; the International Convention for the Protection of All Persons from Enforced Disappearance; the Convention on the Rights of Persons with Disabilities and the Optional Protocol to the International Covenant on Civil and Political Rights.

26. The Committee draws the attention of the State party to the fact that new harmonized guidelines on the submission of reports were approved in 2009 by the international human rights treaty bodies (HRI/GEN/2/Rev.6) and invites it to submit its core document in accordance with these new guidelines.

27. The State party is urged to ensure wide circulation, particularly in all its official languages and cantons, of the report submitted to the Committee and of the Committee's concluding observations through official websites, the media and non-governmental organizations (NGOs).

28. The Committee requests the State party to report, within one year, on its follow-up to the Committee's recommendations in paragraphs 8, 11, 16 and 23 of the present document.

29. The Committee invites the State party to submit its seventh periodic report not later than 14 May 2014.
