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FACTSHEET

CONSTITUTIONAL INITIATIVES OPPOSING HUMAN RIGHTS

BACKGROUND

In Switzerland, the popular initiative is a way to request an amendment to the Federal Constitution. In order to succeed, those launching the initiative need to collect 100,000 signatures from people entitled to vote within 18 months. Parliament is then responsible for examining whether the initiative respects the principles of consistency of form, unity of subject matter, and the mandatory rules of international law (prohibition of torture, slavery, genocide, etc.). If this is not the case, Parliament may declare the initiative totally or partially invalid, which barely happens. If Parliament decides that the initiative is valid, it is submitted to a popular vote.

THE PROBLEM

There is no control mechanism on the compatibility of an initiative with international law. This allowed in the past the introduction, at the highest level of the Swiss legislation, of dispositions which potentially violate international human rights standards such as a ban on the construction of minarets.

NATIONAL LAW VS INTERNATIONAL NORMS

It has been very difficult for the Parliament to draft laws to implement such constitutional norms in conformity with the aim of the initiative and to respect simultaneously the international human rights standards. As a consequence, a right-wing party could collect the necessary amount of signatures for an initiative, which declares the supremacy of the Swiss Constitution over international standards. Concretely, if this disposition is adopted by a popular vote, Switzerland could refuse, in the future, to submit to judgments of the European Court of Human Rights or reject any recommendations made by UN treaty bodies.

UPR CONCERN

It is too late to have the popular vote cancelled. One can only hope that common sense will prevail among the voters and that the initiative will be rejected.

By contrast, one must avoid that further initiatives opposing international human rights standards are proposed and a conformity control mechanism has to be created to avoid conflicts with the international law. Some recommendations in this sense have been made in the past, which the Swiss Government rejected, probably because it estimated it would not be able to implement them.

Even if Switzerland will once more reject similar recommendations, the Swiss NGO Platform for Human Rights estimates it is necessary to remind Switzerland it should not place itself above international law and that it stays under international scrutiny.

PROPOSED RECOMMENDATION

The Swiss government is invited to continue its efforts to reach a convincing solution aimed at ensuring the compatibility of popular initiatives with international human rights standards and the fundamental rights contained in the Constitution.