



# International Covenant on Civil and Political Rights

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## Human Rights Committee

### Concluding observations on the fourth periodic report of Switzerland\*

1. The Human Rights Committee considered the fourth periodic report of Switzerland (CCPR/C/CHE/4) at its 3374th and 3375th meetings (see CCPR/C/SR.3374 and 3375), held on 3 and 4 July 2017. At its 3403rd meeting, held on 24 July 2017, it adopted the following concluding observations.

#### A. Introduction

2. The Committee is grateful to the State party for having accepted the simplified reporting procedure and for submitting its fourth periodic report in response to the list of issues prior to reporting prepared under that procedure (CCPR/C/CHE/QPR/4). It expresses appreciation for the opportunity to renew its constructive dialogue with the State party's delegation on the measures taken during the reporting period to implement the provisions of the Covenant. The Committee thanks the State party for the oral responses provided by the delegation and for the supplementary information provided to it in writing.

#### B. Positive aspects

3. The Committee welcomes the legislative and institutional measures taken by the State party, notably:

(a) The adoption of the Ordinance of 4 June 2010 on the National Languages and Understanding between the Linguistic Communities;

(b) The adoption of the Federal Act of 15 June 2012 on Measures against Forced Marriages;

(c) The 1 July 2012 revision of article 124 of the Criminal Code, whereby female genital mutilation was expressly criminalized;

(d) The adoption of the Ordinance of 23 October 2013 on Measures to Prevent Criminal Offences related to Human Trafficking;

(e) The establishment of the National Commission for the Prevention of Torture on 1 January 2010;

(f) The revision of the law on adoption passed by Parliament in 2016, which will allow persons in a registered partnership and persons living in a de facto union to adopt their partner's children.

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\* Adopted by the Committee at its 120th session (3-28 July 2017).



4. The Committee notes with satisfaction that the State party has ratified or acceded to the following international instruments:

- (a) The International Convention for the Protection of All Persons from Enforced Disappearance, in 2016;
- (b) The Convention on the Rights of Persons with Disabilities, in 2014;
- (c) The International Labour Organization Domestic Workers Convention, 2011 (No. 189), in 2014.

5. The Committee welcomes the measures taken by the State party with a view to the ratification of other international human rights instruments and encourages the State party to finalize those procedures at the earliest opportunity.

## C. Principal matters of concern and recommendations

### Constitutional and legal framework within which the Covenant is implemented

6. The Committee welcomes the information that the provisions of the Covenant have been invoked in more than 300 decisions of the Federal Supreme Court. However, while taking into account the specificities of the Swiss system of democracy, it is nevertheless concerned about citizens' initiatives that could prove to be manifestly incompatible with the provisions of the Covenant. In this regard, it is deeply concerned about an initiative on which the Swiss people are to vote, entitled "Swiss law instead of foreign judges (self-determination initiative)", according to which, when obligations under international law contradict the Constitution, they should be modified or even denounced. It is also concerned about claims that a certain number of the country's constitutional provisions and federal or cantonal laws remain incompatible with the provisions of the Covenant (art. 2).

**7. The State party should: (a) strengthen, as a matter of priority, its mechanisms for ensuring that the compatibility of citizens' initiatives with the obligations arising from the Covenant is subject to some form of check before such initiatives are put to the vote; and (b) undertake a thorough review of national laws that are at variance with the Covenant with a view to their revision.**

### Implementation of the Committee's concluding observations

8. The Committee takes note of the federal structure of the Swiss State and the division of powers between the authorities at the federal, cantonal and municipal levels. It remains concerned, however, about information suggesting that the commitment on the part of the cantonal and municipal authorities to the implementation of its recommendations is limited. In addition, it finds it regrettable that civil society was not involved in the preparation of the periodic report (art. 2).

**9. The State party should: (a) ensure that the authorities in all cantons and municipalities are aware of the Committee's recommendations and guarantee their proper implementation; and (b) guarantee greater involvement of civil society in the preparation and dissemination of its periodic reports and in the implementation of the Committee's recommendations.**

### Reservations to the Covenant

10. The Committee reiterates its concern in relation to the maintenance by the State party of its reservations to articles 12 (1), 20 (1), 25 (b) and 26 owing to the supposed incompatibility of national law with the Covenant (art. 2).

**11. The State party should, in accordance with general comment No. 24 (1994) on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant: (a) consider withdrawing its remaining reservations to the Covenant; (b) revise its national law if necessary; and (c) refrain from introducing into national law provisions that impede the withdrawal of the reservations.**

### Accession to the Optional Protocol

12. The Committee takes note of the State party's explanation that it has decided not to prioritize ratification of the Optional Protocol because the Covenant and the Protocol recognize guarantees comparable to those set out in the European Convention on Human Rights. It wishes to emphasize, however: (a) the complementarity of regional and international mechanisms; (b) their joint contribution to enhancing the effective protection of the inherent rights of each person; and (c) the important role played by the Optional Protocol in ensuring the full implementation of the Covenant, some norms of which have no equivalent in the European Convention (art. 2).

**13. The Committee reiterates its recommendation that 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.**

### National human rights institution

14. The Committee welcomes the bill to establish a national human rights institution in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It remains concerned, however, that, according to the information provided by the delegation: (a) the institution's budget will be kept at the same level as that of the current Swiss Centre of Expertise in Human Rights; (b) while the institution will be tasked with promoting human rights, it will not have an explicit human rights protection mandate; and (c) the institution will be university-based, the appropriateness of which arrangement remains to be determined (art. 2).

**15. The Committee reiterates its recommendation that the State party should establish as soon as possible an independent national human rights institution with a broad human rights protection mandate and adequate human and financial resources, in conformity with the Paris Principles.**

### Anti-discrimination framework

16. The Committee takes note of the Federal Act on Gender Equality and the Federal Act on the Elimination of Discrimination against People with Disabilities. It nevertheless remains concerned about the lack of a comprehensive anti-discrimination law that clearly defines and prohibits discrimination, lists prohibited grounds of discrimination and provides victims with effective civil and administrative remedies. It also takes note of article 261 bis of the Criminal Code but finds it regrettable that, to date, only discrimination on grounds of race, ethnicity or religious affiliation is expressly criminalized. In addition, it is concerned about reports indicating that persons with disabilities are not sufficiently aware of their rights under the Federal Act on the Elimination of Discrimination against People with Disabilities (arts. 2, 3 and 26).

**17. The State party should: (a) adopt comprehensive civil and administrative legislation against discrimination that includes a definition of discrimination, both direct and indirect, and an expanded list of prohibited grounds of discrimination, including sexual orientation and gender identity; (b) amend its criminal law to expand the prohibited grounds of discrimination; and (c) ensure that persons with disabilities are informed of their rights under the Federal Act on the Elimination of Discrimination against People with Disabilities.**

### Equality and representation of women in public and political life

18. The Committee takes note of the measures taken by the State party, notably through the Federal Office for Gender Equality, to ensure equal pay for men and women, but it remains concerned about the persistent disparities in that regard, particularly in the private sector. It also remains concerned about women's underrepresentation in political life. It takes note of the measures intended to increase women's representation on the boards of companies linked to the Confederation and firms listed on the stock market but finds it regrettable that parity has yet to be achieved notwithstanding the target set (arts. 2, 3 and 26).

19. **The State party should: (a) pursue its efforts aimed to correct the differences observed between men's and women's pay, particularly in the private sector; (b) continue to work to promote equal representation of women in political life at all levels; and (c) guarantee women's equal representation on the boards of companies linked to the Confederation and firms listed on the stock market.**

#### **Hate speech**

20. The Committee welcomes the State party's campaigns to prevent hate speech. It remains concerned, however, about reports of racist and xenophobic discourse in politics and in the media. It is also concerned about the increasing prevalence of hate speech and acts of hatred against the Muslim, Jewish and Roma communities (arts. 2, 18, 20, 26 and 27).

21. **The State party should redouble its efforts to combat the commission of or incitement to commit acts of racial or religious hatred, notably by strengthening the mandate of the Federal Commission against Racism and by envisaging the adoption of a national plan of action against racism.**

#### **Discriminatory behaviour by the police**

22. The Committee takes note of the explanations provided by the delegation regarding the criteria applied to target suspects for searches, but it remains concerned about reports indicating that the police continue to apply non-objective criteria in exercising their functions, based in particular on the physical appearance of persons, their skin colour and their ethnic or national origin (arts. 2, 7 and 26).

23. **The State party should: (a) see to it that awareness-raising and training activities on the issue of racism continue to be organized and are conducted for all law enforcement personnel with a view to putting an end to discriminatory behaviour towards ethnic minorities; and (b) ensure that law enforcement personnel responsible for discriminatory behaviour towards ethnic minorities are held to account in all instances.**

#### **Intersex persons**

24. The Committee takes note of the work of the National Advisory Commission on Biomedical Ethics regarding intersexuality and of the 6 July 2016 press statement by the Federal Council. It remains concerned, however, that the performance of surgical procedures on intersex children, causing physical and mental suffering, is still not strictly regulated. It also wishes to express concern that the conduct of surgery without consent has not yet given rise to any inquiry, sanction or reparation (arts. 3, 7, 24 and 26).

25. **The State party should: (a) take all necessary measures to ensure that no child undergoes unnecessary surgery intended to assign sex; (b) see to it that medical records are accessible and that inquiries are launched in cases where intersex persons are subjected to treatment or surgical procedures without their effective consent; and (c) ensure that psychological assistance and reparation, including compensation, are provided for victims of needless surgical procedures.**

#### **Violence against women**

26. The Committee notes with satisfaction the State party's efforts to combat violence against women. It remains concerned, however, about the continuing incidence of domestic violence and, in particular, about the low rate of reporting and the extremely high proportion of proceedings that are discontinued in such cases. It also wishes to express concern about the situation of migrant women, who, in order to retain their residence permits if they report domestic violence, must prove to the courts that the violence to which they were subjected was intense and systematic. While welcoming the introduction of article 124 of the Criminal Code, which prohibits female genital mutilation, and the Federal Act of 15 June 2012 on Measures against Forced Marriages, the Committee remains concerned about the persistence of the two phenomena in the territory of the State party (arts. 3, 6, 7, 23 and 24).

27. **The State party should: (a) pursue its efforts to combat violence against women, ensuring that acts of domestic violence are actually reported and investigated, prosecuted and punished; (b) see to it that all professionals from the justice system receive adequate training to handle domestic violence cases and that specialized teams are set up; (c) ensure that the provisions of the Federal Act on Foreign Nationals concerning the retention of residence permits are uniformly interpreted and applied, in such a way as to ease the burden of proof for victims of domestic violence; and (d) pursue its efforts against female genital mutilation and forced marriage, notably by ensuring that the professionals concerned are adequately trained and that the perpetrators of such acts are brought to justice.**

#### **Conduct of police officers**

28. The Committee remains concerned about reports of the prevalence of police brutality, especially against asylum seekers, migrants and foreigners and about the underreporting of such incidents. It is seriously concerned about the lack of centralized data at the federal level on the number of complaints, prosecutions and sanctions relating to alleged ill-treatment. It takes note of the explanations provided by the delegation regarding criminal procedure and the responsibility of cantonal public prosecutor's offices for receiving complaints against the police, but it remains concerned about the lack of an independent and universally accessible mechanism with which complaints against the police can be lodged to complement the public prosecutor's offices, which may be seen as biased since they cooperate with the police in investigating such complaints (arts. 2, 6 and 7).

29. **The State party should establish expeditiously an independent mechanism with powers to: (a) receive all complaints concerning violence or ill-treatment by police officers; (b) conduct effective and impartial investigations and prosecutions in respect of such complaints; and (c) maintain up-to-date, centralized and disaggregated statistics on all complaints, prosecutions and convictions linked to police brutality.**

#### **Prohibition of torture**

30. The Committee takes notes of the State party's view that all acts of torture, including psychological torture, are already offences under Swiss criminal law. It finds it regrettable, however, that the State party's Criminal Code does not define torture or make it a separate offence to which particular stigma attaches (art. 7).

31. **The State party should consider revising its position and making torture a separate offence in its Criminal Code, so as to enhance torture prevention, guarantee better protection against that practice and ensure that perpetrators of acts of torture are prosecuted more effectively.**

#### **Return of asylum seekers**

32. The Committee welcomes the efforts made by the State party to put an end to the use of sedatives during forced repatriations by air, as well as the presence of the National Commission for the Prevention of Torture during such operations. It finds it regrettable, however, that that presence is not more extensive and that the investigation into the case of Joseph Ndukaku Chiakwa, who died in March 2010 while being removed from Switzerland, has still not been completed. It is also concerned about information that medical reports and opinions prepared by doctors treating expelled persons are ignored by the doctors working for OSEARA SA, the company appointed by the State Secretariat for Migration to provide medical care to rejected asylum seekers during their removal. It is also concerned that expert evaluations drawn up pursuant to the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) are not fully recognized and taken into account by the Swiss authorities in implementing the principle of non-refoulement (arts. 6 and 7).

33. **The State party should: (a) guarantee that observers from the National Commission for the Prevention of Torture are present at all forced repatriations of rejected asylum seekers; (b) expedite the investigation into the death of Mr. Chiakwa;**

**(c) ensure that OSEARA SA takes account of medical opinions prepared by other doctors as to the fitness to travel of persons who are being returned; and (d) see to it that all personnel concerned receive systematic and practical training on the Istanbul Protocol and apply it.**

#### **Treatment of asylum seekers and refugees**

34. The Committee takes note of the progress made in the granting of legal aid to asylum seekers. It remains concerned, however, about reports that migrants are being placed in administrative detention virtually as a matter of course and that adults are not separated from unaccompanied minors (arts. 7, 9 and 13).

**35. The State party should: (a) pursue its efforts with respect to the granting of legal aid to asylum seekers and ensure that they have access to remedies; (b) see to it that adults and unaccompanied minors are strictly separated; and (c) establish and apply alternative measures to administrative detention.**

#### **Conditions of detention**

36. The Committee notes the efforts made to improve conditions of detention. It wishes to express concern, however, about information that, in certain regional institutions, juveniles are held with adults and are not adequately supervised (arts. 7, 9, 10 and 24).

**37. The State party should: (a) pursue its efforts to reduce prison overcrowding, in particular by applying non-custodial measures, including in respect of foreign detainees; and (b) ensure strict separation of adults and juveniles and adequate supervision of the latter.**

#### **Treatment of detained persons with psychosocial disabilities**

38. The Committee takes note of the setting up of an interdisciplinary working group on the treatment and housing of inmates suffering from mental illness. It remains concerned, however, about the application of article 59 of the Criminal Code, under which offenders who are mentally ill may: (a) be placed in regular prisons; and (b) be confined in psychiatric institutions for a period of up to 5 years, which may be renewed, irrespective of the sentence initially handed down by the judge for the offence committed (arts. 2, 7, 9, 10 and 26).

**39. The State party should ensure: (a) that detained persons with psychosocial disabilities are placed in specialized establishments or receive therapeutic treatment tailored to their condition if they are placed in regular prisons; and (b) that confinement in a psychiatric institution is considered only as a last resort and is aimed at the individual's rehabilitation and reintegration into society, and that alternatives to such confinement are explored in all instances. In addition, it should amend article 59 of its Criminal Code to bring it into line with the Covenant, having in mind, in particular, paragraph 21 of general comment No. 35 (2014) on liberty and security of person.**

#### **Human trafficking**

40. The Committee notes with satisfaction the entry into force on 1 January 2014 of the ordinance on the prevention of offences related to human trafficking, the establishment of the Anti-Trafficking and Migrant Smuggling Coordination Unit and the adoption — albeit belated, after a three-year period in which there was no plan — of the second National Action Plan to Combat Trafficking in Persons, covering the period 2017-2020. It remains concerned, however, about reports indicating that insufficient human and financial resources have been allocated for the Plan's implementation. It is also concerned about the difficulties encountered in identifying victims owing to the fact that the cantons lack a common procedure and to the police and judicial authorities' lack of training in this area (art. 8).

**41. The State party should: (a) ensure that the next national action plan is prepared in due time and that sufficient human and financial resources are allocated**

**for its proper implementation; (b) see to it that the cantons establish a uniform and coordinated procedure for identifying trafficking victims; and (c) continue the awareness-raising and training programmes in this area for the police and judicial authorities.**

#### **Ban on the construction of minarets**

42. The Committee notes that the Federal Council itself considers that the referendum initiative to prohibit the construction of new minarets in the territory of the State party breached human rights. It nevertheless finds it regrettable that the State party, citing the specificities of its internal constitutional system, has introduced in article 72 of its Constitution a new paragraph 3 banning the construction of new minarets in Switzerland, notwithstanding the Committee's previous concluding observations (CCPR/C/CHE/CO/3) (arts. 2, 18 and 27).

**43. The State party should take steps to remedy the prohibition on constructing new minarets; in particular, it should revise article 72 (3) of its Constitution.**

#### **Freedom of conscience and religion**

44. The Committee welcomes the measures taken by the State party to promote interreligious dialogue. It wishes to express concern, however, about the proliferation of regulations, relating to the school environment or to attire worn in public and imposing significant fines, that appear to affect Muslims in particular (arts. 18, 26 and 27).

**45. The State party should reconsider its legislation and all regulations that affect Muslims in particular, in the light of its obligations under the Covenant.**

#### **Surveillance measures and the right to privacy**

46. While taking note of the human rights guarantees introduced in the Federal Act of 25 September 2016 on the Intelligence Service, the Committee is concerned that this law grants very intrusive surveillance powers to the Confederation's intelligence services on the basis of insufficiently defined objectives such as the national interest, referred to in article 3. It is also concerned that the time period for which data may be retained is not specified (art. 17).

**47. The State party should take all necessary measures to guarantee that its surveillance activities are in conformity with the obligations arising from the Covenant, notably article 17. In particular, measures should be taken to ensure that the time limits for data retention are strictly regulated.**

#### **Right of peaceful assembly**

48. The Committee wishes to express concern about: (a) the law of 1 November 2008 on public demonstrations; and (b) the law of 14 October 2016 on the charging of security costs incurred during demonstrations in the Canton of Geneva. It is particularly concerned about: (a) the excessive nature of the conditions that must be satisfied in order to organize a mass event requiring the deployment of specific and extraordinary police resources, including an event of a political nature, whereby the request for authorization must be submitted three months in advance and must indicate the business name of the company contracted to provide security at the event; and (b) the excessive amount of the fines that may be imposed — up to 100,000 Swiss francs — notably for organizing an unauthorized demonstration (art. 21).

**49. The State party should re-examine its legislation with a view to ensuring that all individuals fully enjoy their right to freedom of assembly, including the right of spontaneous assembly, and that any restrictions imposed are in compliance with the strict requirements of article 21 of the Covenant.**

#### **Treatment of Travellers**

50. The Committee welcomes the establishment in 2014 of a working group tasked with improving conditions for persons leading a nomadic way of life and fostering the Yenish,

Sinti and Roma cultures in Switzerland, and the measures taken in the Canton of Bern to promote the enrolment in school of children from travelling communities. It remains concerned, however, about the insufficient number of stopping areas provided (arts. 26 and 27).

51. **The State party should establish with the cantons a coordinated action plan to ensure that sufficient stopping areas are made available to Travellers.**

#### **D. Dissemination and follow-up**

52. The State party should widely disseminate the Covenant, its fourth periodic report, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities at the federal and cantonal levels, civil society and non-governmental organizations operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official languages of the State party.

53. In accordance with rule 71 (5), of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on its implementation of the recommendations made by the Committee in paragraph 7 (Constitutional and legal framework within which the Covenant is implemented), 15 (National human rights institution) and 29 (Conduct of police officers).

54. The Committee requests the State party to submit its next periodic report by 28 July 2023 at the latest and to include in that report information on the implementation of the present concluding observations. Given that the State party has accepted the simplified reporting procedure, the Committee will transmit to it a list of issues prior to the submission of the report in due course. The State party's replies to that list will constitute its fifth periodic report. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words.

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