



Economic and Social Council

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Committee on Economic, Social and Cultural Rights

Concluding observations on the fourth periodic report of Switzerland*

1. The Committee considered the fourth periodic report of Switzerland (E/C.12/CHE/4) at its 34th and 35th meetings (see E/C.12/2019/SR.34 and 35), held on 1 and 2 October 2019, and adopted the present concluding observations at its 60th meeting, held on 18 October 2019.

A. Introduction

2. The Committee welcomes the submission of the fourth periodic report of Switzerland and the written replies to the list of issues (E/C.12/CHE/Q/4/Add.1). The Committee is appreciative of the constructive dialogue held with the delegation of the State party and the information provided during the discussion. It also thanks the State party for the additional information submitted after the dialogue.

B. Positive aspects

3. The Committee welcomes the State party's commitment to continue ensuring the full enjoyment of economic, social and cultural rights, and the efforts it has made in this respect, including the steps taken to reduce gender inequality and promote the reconciliation of family and working life. The Committee notes with appreciation the adoption of the Swiss integration agenda intended to promote the integration of refugees and of persons admitted on a temporary basis. The Committee welcomes the ratification of the International Labour Organization (ILO) Maternity Protection Convention, 2000 (No. 183) and the ILO Domestic Workers Convention, 2011 (No. 189).

C. Principal subjects of concern and recommendations

Justiciability of economic, social and cultural rights

4. The Committee notes with concern the explanations provided concerning the justiciability of the rights contained in the International Covenant on Economic, Social and Cultural Rights, according to which they can only be invoked before the courts under certain conditions. The Committee regrets that the Federal Supreme Court has confirmed its interpretation on the programmatic nature of economic, social and cultural rights and that only some of these rights are enshrined in the Constitution, which limits their justiciability.

5. **The Committee recalls the recommendations made in its previous concluding observations (E/C.12/CHE/CO/2-3, para. 5) and encourages the State party to fully**

* Adopted by the Committee at its sixty-sixth session (30 September–18 October 2019).



implement the Covenant rights within its domestic legal order and ensure that victims of violations of economic, social and cultural rights have full access to effective legal remedies. The Committee draws the attention of the State party to its general comment No. 9 (1998) on the domestic application of the Covenant.

Implementation of Covenant rights in the confederal context

6. The Committee recognizes the complexity of the federal system of the State party, under which responsibility for the implementation of Covenant rights lies mainly with the municipalities, the cantons and ultimately the Confederation. The Committee is, however, concerned that certain disparities in the enjoyment of some of these rights may be inconsistent with the State party's obligations under the Covenant.

7. The Committee reminds the State party that the Confederation is ultimately responsible for ensuring the implementation of the Covenant within its jurisdiction. It encourages the State party to strengthen the coordination mechanisms among the Confederation, the cantons and the municipalities so as to ensure the full implementation of the rights recognized in the Covenant.

National human rights institution

8. The Committee welcomes the State party's ongoing efforts to establish a national human rights institution. It regrets, however, that some aspects of the 2017 bill do not comply with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), in particular with regard to the institution's independence and protection mandate.

9. The Committee recommends that the State party step up its efforts to establish a national human rights institution that fully complies with the Paris Principles. The Committee requests the State party to ensure that the institution is provided with effective mechanisms to guarantee its independence, adequate resources for its proper functioning and a broad mandate for the protection and promotion of human rights, including appropriate monitoring powers enabling it to carry out independent investigations into situations of violations of human rights, including economic, social and cultural rights, in all cantons. The Committee encourages the State party to consider the possibility of providing the institution with the capacity to receive and consider complaints and petitions concerning individual situations.

Business and human rights

10. The Committee takes note of the information provided by the State party regarding the discussions on the initiative on responsible multinationals. However, the Committee is concerned that the Federal Council has supported the introduction of due diligence on a voluntary basis only.

11. The Committee recommends that the State party establish effective legal mechanisms to ensure that businesses exercise human rights due diligence in order to: (a) identify, prevent and mitigate the risks of violations of Covenant rights; and (b) prevent abuses of Covenant rights in a business entity's supply chain and by subcontractors, suppliers, franchisees, or other business partners. The Committee recommends that the State party continue its efforts to ensure access to grievance mechanisms when corporations domiciled in the State party are involved in human rights violations abroad. The Committee refers the State party to its general comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities.

International cooperation for maximum available resources

12. The Committee takes note of the State party's efforts to combat cross-border tax evasion and its achievements in this regard. It notes with concern, however, that illicit financial flows from third countries continue to be placed in financial institutions in the State party, thereby curtailing the availability of financial resources vital for the realization of economic, social and cultural rights in those countries (art. 2).

13. **The Committee recommends that the State party take strict measures to combat tax evasion, in particular by corporations and high-net-worth individuals, and intensify its efforts to address global tax abuse, including by ensuring that public and private financial institutions are subject to appropriate regulation as part of efforts to combat fraud and tax evasion schemes. The Committee encourages the State party to implement the recommendations of the report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, on his visit to Switzerland in 2017 (A/HRC/37/54/Add.3).**

Free trade agreements

14. The Committee is concerned that the State party does not undertake impact assessments on the effects that free trade agreements might have on human rights in the State party, as well as in partner countries (art. 2).

15. **The Committee recalls the recommendations made in its previous concluding observations (para. 24) and encourages the State party to systematically undertake impact assessments to determine the possible consequences of free trade agreements on human rights, including economic, social and cultural rights, in the State party, as well as in partner countries.**

Official development assistance

16. The Committee notes with concern that in 2017 the State party's contribution to official development assistance stood at only 0.46 per cent of gross national income (art. 2).

17. **The Committee reminds the State party of the recommendations made in its previous concluding observations (para. 25) and encourages it to step up its efforts to meet the international target of allocating 0.7 per cent of gross national income for official development assistance.**

Climate change

18. The Committee notes with concern that the State party is not undertaking the efforts needed to meet the greenhouse gas emissions reduction target for 2020 and that the emission reduction target of 50 per cent by 2030 compared to 1990 is not compatible with the climate change mitigation objectives set by the international community. The Committee also notes with concern reports that public and private financial institutions, including pension funds, maintain significant investments in the fossil fuels industry, despite the harmful impact of such fuels on the climate.

19. **The Committee recommends that the State party intensify its efforts to meet its greenhouse gas emission reduction targets for 2020 and raise the target for 2030 so that it is consistent with the commitment to limit temperature rise to 1.5°C. The Committee also recommends that the State party take the measures necessary to reduce public and private investment in the fossil fuel industry and to ensure that such investment is consistent with the need to reduce greenhouse gas emissions. In this regard, the Committee refers the State party to its statement on climate change and the International Covenant on Economic, Social and Cultural Rights (E/C.12/2018/1), adopted on 8 October 2018, and the joint statement on human rights and climate change, issued on 16 September 2019 by the Committee on the Elimination of Discrimination against Women, the Committee on Economic, Social and Cultural Rights, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of the Child and the Committee on the Rights of Persons with Disabilities.**

Non-discrimination

20. The Committee takes note of the explanations provided by the State party concerning progress made in respect of policies and strategies to combat discrimination. Nevertheless, it regrets that the lack of a general anti-discrimination law continues to make it difficult for victims to access effective remedies and adequate protection against all

prohibited grounds for, and multiple forms of, discrimination. The Committee also remains concerned about the discrimination that, in practice, some individuals and groups continue to experience, such as lesbian, gay, bisexual, transgender and intersex persons, persons with disabilities, migrants, and persons living in poverty (art. 2).

21. **The Committee reminds the State party of the recommendations in its previous concluding observations (para. 7) and recommends that it pass a general anti-discrimination law, enforceable uniformly throughout the Confederation, that: (a) covers all prohibited grounds of discrimination, including discrimination based on economic and social status and sexual identity; (b) defines multiple discrimination; (c) prohibits direct and indirect discrimination; and (d) provides judicial or administrative remedies for victims, so that they are able to enjoy effective protection. Furthermore, the Committee recommends that the State party continue its efforts to prevent and combat persistent discrimination against certain individuals and groups, including through awareness-raising campaigns, in order to ensure their full enjoyment of the rights recognized under the Covenant. In this connection, the Committee draws the attention of the State party to its general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights.**

Equality between men and women

22. Despite the considerable efforts made by the State party to promote equality between women and men, traditional gender roles in the family and society continue to impede the full enjoyment by women of their economic, social and cultural rights. The Committee notes with concern that a majority of women work part-time, a situation that contributes to the gender wage gap. The Committee is also concerned about the continuing barriers faced by women in gaining access to senior and decision-making positions (art. 3).

23. **The Committee recommends that the State party intensify its efforts to achieve substantive equality between men and women and, in particular, that it:**

(a) **Take concrete measures to combat the perception of traditional gender roles in the family and in society with a view to promoting equality of opportunity in employment;**

(b) **Continue to promote increased women's representation at all levels of public administration, particularly in decision-making positions, and promote their participation in management roles in the private sector;**

(c) **Take effective measures to close the persistent gender pay gap, including by addressing the structural causes that result in women occupying lower paid jobs and facing obstacles to their enjoyment of career opportunities on an equal footing with men;**

(d) **Take into consideration its general comment No. 16 (2005) on the equal right of men and women to the enjoyment of all economic, social and cultural rights.**

Right to work

24. The Committee is concerned about the significant challenge faced by the State party in seeking to fully ensure the inclusion of persons with disabilities; it is also concerned that such persons often continue to suffer discrimination in gaining access to the labour market. Furthermore, persons with disabilities often work in sheltered workshops and receive wages that are insufficient to provide them with a decent standard of living. The Committee also notes with concern that the long-term unemployment rate is higher for older persons and that they have greater difficulty in returning to the labour market (arts. 6 and 7).

25. **The Committee recommends that the State party intensify its efforts to address the challenges faced by certain groups of the population, including persons with disabilities and older persons, in gaining access to employment. The Committee encourages the State party to put in place strategies to ensure that these groups are fully integrated into the labour market. In addition, the Committee recommends that the State party ensure that persons with disabilities working in sheltered workshops are covered fully by labour and social protection measures, including adequate**

remuneration, and that it take effective measures to facilitate their transition to the open labour market. The Committee urges the State party to intensify its efforts to adopt, with the participation of the social partners, effective measures to address unemployment among older workers. The Committee draws the attention of the State party to its general comment No. 18 (2005) on the right to work.

26. While welcoming the amendment to Federal Act No. 142.20 of 16 December 2005 on foreign nationals and integration, article 21 of which, as amended in 2016, classes foreign nationals admitted on a temporary basis as “workers in Switzerland”, the Committee remains concerned about the difficulties faced by foreign nationals, in particular those admitted on a temporary basis, in gaining access to the labour market (art. 6).

27. The Committee recommends that the State party take the measures necessary to facilitate access to employment for persons of foreign nationality, including those admitted on a temporary basis.

Minimum wage

28. In the light of reports that the wages indicated in collective labour agreements do not always provide an adequate standard of living, the Committee is concerned that the State party does not have a system of minimum wages at the federal level and that only two cantons have introduced a local minimum wage (art. 7).

29. The Committee recommends that the State party establish, in consultation with the social partners, a minimum wage that is set at an adequate level and regularly indexed, so as to allow a decent standard of living for all workers and their families. The Committee draws the attention of the State party to its general comment No. 23 (2016) on the right to just and favourable conditions of work.

Equal pay for work of equal value

30. The Committee remains concerned about the difficulties faced by the State party in implementing the principle of equal pay for work of equal value, in particular owing to the lack of a comprehensive strategy for the implementation of this principle and of binding measures in the event of non-compliance (art. 7).

31. The Committee recommends that the State party increase its efforts to ensure implementation of the principle of equal pay for work of equal value, including through the development of a system to undertake comparative studies among the different categories of work in order to develop a comprehensive strategy to eliminate wage gaps and establish binding measures, including sanctions for non-compliance with the principle.

Domestic work

32. Noting that approximately 49,000 persons, primarily women migrant workers, are employed in households in the State party, the Committee is concerned that the Federal Labour Act does not extend protection to such work. The Committee is concerned at the lack of effective mechanisms for protecting such workers from exploitation, abuse and harassment (art. 7).

33. The Committee recommends that the State party take further steps to ensure that domestic workers enjoy the same conditions as other workers as regards remuneration, rest and leisure, limitation of working hours and protection against unfair dismissal. It also recommends that the State party provide them with protection from exploitation and abuse. It further recommends that the State party improve complaint mechanisms so as to make them easily accessible to these workers and that the State party ensure effective inspection mechanisms for monitoring their conditions of work. The Committee draws the attention of the State party to its general comment No. 23.

Discrimination and harassment in the workplace

34. The Committee notes with concern reports that cases of wrongful dismissal during pregnancy and cases of sexual harassment and discrimination linked to sexual orientation and gender identity continue to occur and that existing mechanisms do not guarantee effective protection from such acts (arts. 7 and 10).

35. The Committee recommends that the State party take all necessary legislative and administrative measures, including labour inspections, to prohibit employers from dismissing, not recruiting or not renewing fixed-term labour contracts for women on the basis of pregnancy, childbirth or maternity leave. The Committee recommends that the State party implement effective measures to protect victims of wrongful dismissal, sexual harassment and discrimination linked to sexual orientation and gender identity, including through the reversal of the burden of proof in legal proceedings.

Trade union rights

36. The Committee notes with concern that workers dismissed because of their participation in trade union activities, including strikes, are not entitled to reinstatement. It is also concerned that the compensation provided for in the event of anti-union dismissal does not exert a sufficiently dissuasive effect (art. 8).

37. The Committee recommends that the State party pursue the dialogue with the social partners in order to ensure adequate protection against anti-union dismissals, in accordance with article 8 of the Covenant and the ILO Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the ILO Right to Organise and Collective Bargaining Convention, 1949 (No. 98). In this regard, the Committee encourages the State party to establish sufficiently dissuasive compensation that takes account of the size of the enterprise concerned and to consider introducing in its legislation the right to reinstatement in the event of such dismissals.

Right to social security

38. The Committee notes with concern that, according to information received, stigmatization, sanctions and the complicated procedures that exist in the various cantons are obstacles to gaining access to social benefits in the State party. It is concerned that foreign nationals and persons with temporary residence permits are not covered by social assistance but only emergency assistance, which does not ensure an adequate standard of living (art. 9).

39. The Committee recalls the recommendations made in its previous concluding observations (para. 12) and recommends that the State party take the steps necessary to harmonize the social assistance systems that exist across the cantons and to set common minimum criteria for levels of welfare benefits with a view to ensuring an adequate standard of living for persons living in its territory and their families. The Committee urges the State party to provide social assistance, instead of emergency assistance, for persons with a temporary residence permit.

Childcare

40. The Committee notes with concern the insufficient provision and high costs of childcare services in the State party. The Committee takes note of the information that paternity leave of two weeks has been adopted and that discussions about extending it are under way. However, it is concerned about the lack of parental leave (art. 10).

41. The Committee recommends that the State party increase its efforts to ensure the availability, accessibility and affordability of childcare services throughout the State party, including through increased public funding for day-care nurseries and the introduction of a childcare allowance. The Committee further recommends that the State party review the paternity leave system with a view to extending it and

introducing shared parental leave in order to improve the equal sharing of responsibilities within the family and in society.

Family reunification

42. The Committee is concerned about the many legal and practical barriers that restrict access to family reunification for persons with refugee status or temporary refugee status and foreign nationals admitted on a temporary basis. It is also concerned that article 85 (7) of the Federal Act on Foreign Nationals and Integration might deter foreign nationals admitted on a temporary basis from applying for social assistance and that a victim of spousal abuse might be reluctant to leave the family home for fear of losing his or her right of residence (art. 10).

43. The Committee recommends that the State party review its legislation and its practice relating to the requirements for family reunification applicable to persons with refugee status or temporary refugee status and persons admitted on a temporary basis, with a view to prioritizing family reunification and facilitating the integration of such persons into the State party.

Adopted persons

44. While the Committee welcomes the changes introduced concerning the secrecy of adoption, it notes that adopted children from third countries are unable to research their origins without the consent of the authorities of those countries and are not given adequate support during this process (art. 10).

45. The Committee recommends that the State party step up its efforts to ensure adequate support, including psychological and financial support and, where necessary, translation services, for persons from third countries who have been adopted by Swiss parents and are researching their origins and strengthen the legal and administrative means available to assist them in this process.

Poverty

46. The Committee is concerned that the proportion of the population affected by income poverty is in excess of 8 per cent and that certain segments of the population are at an increased risk of poverty, in particular persons with disabilities and older persons (art. 11).

47. The Committee recommends that the State party adopt a national strategy to prevent and combat poverty, ensuring that it focuses on the individuals and groups most affected and is implemented in accordance with a human rights-based approach and with the participation of the persons concerned. It also recommends that the State party allocate sufficient resources to its implementation and put in place effective coordination mechanisms at the federal level in order to prevent disparities across cantons. In this connection, the Committee draws the attention of the State party to its statement on poverty and the International Covenant on Economic, Social and Cultural Rights, adopted on 4 May 2001 (E/C.12/2001/10).

Mental health

48. The Committee remains concerned that, despite the measures taken, the suicide rate continues to be high in the State party, in particular among lesbian, gay, bisexual, transgender and intersex youth (art. 12).

49. The Committee recommends that the State party implement the recommendations set out in the Swiss Health Observatory report entitled “Mental Health in Switzerland” and take the necessary measures to ensure the availability and accessibility of appropriate mental health services throughout the State party. The Committee further recommends that the State party continue its efforts to prevent suicide, including through the mobilization of the necessary resources.

Persons who use drugs

50. While the Committee recognizes the efforts made by the State party to reduce risks for persons who use drugs or other substances, it is concerned at the regional disparities in the availability and accessibility of these services (art. 12).

51. The Committee recommends that the State party ensure that risk reduction services for persons who use drugs or other substances are available and accessible throughout the territory of the State party and that it remove obstacles that may limit access to those services for such persons, including drug users among the most disadvantaged and marginalized groups.

Access to education

52. Despite the efforts made by the State party to ensure quality education, the Committee is concerned that:

(a) Refugee children and child asylum seekers in federal residential centres continue to face many barriers in gaining access to education, while migrant children face similar barriers in gaining access to higher education and vocational training;

(b) Young rejected asylum seekers and young persons admitted on a temporary basis are not always able to continue their education;

(c) The gap in the rates of achievement between children with an immigrant background, children from low-income families and children from a privileged background has the effect of limiting social mobility;

(d) Despite the introduction of inclusive education, some children with disabilities remain in special schools.

53. The Committee recommends that the State party take the necessary measures to:

(a) **Ensure that refugee children and child asylum seekers in federal residential centres are integrated into mainstream education in all cantons and are able to have access to quality education that is culturally appropriate and adapted to their linguistic needs, and continue its efforts to ensure that migrant children have access to higher education and vocational training;**

(b) **Eliminate the barriers that prevent young rejected asylum seekers and young persons admitted on a temporary basis from continuing their education, and facilitate their access to higher education;**

(c) **Continue its efforts to improve the school achievement rate among children from disadvantaged backgrounds, including migrant children and those from low-income families;**

(d) **Continue to ensure access for children with disabilities to inclusive quality education, including through improved teacher training.**

Official languages

54. The Committee notes the measures taken by the State party to promote the Italian language and the measures for the Romansch language that may be adopted from 2020. However, it regrets the lack of a monitoring mechanism to assess the outcomes of such measures (art. 15).

55. The Committee recommends that the State party intensify its efforts to take effective measures to promote the Italian language and Romansch and provide the necessary resources for their implementation. It also recommends that the State party consider establishing monitoring mechanisms in order to assess the outcomes of such measures.

Cultural rights

56. The Committee notes with concern that, despite the efforts made by the State party to recognize the right to self-identification, the Yenish, Sinti/Manouche and Roma continue to be discriminated against and that the measures that have been taken are not sufficient to promote their traditions, culture and languages. The Committee remains concerned about the insufficient number of reception areas made available to them and the lack of adequate measures to facilitate access to education for children belonging to these minorities (arts. 2, 13 and 15).

57. **The Committee recommends that the State party continue its efforts to strengthen the fight against discrimination of the Yenish, Sinti/Manouche and Roma and to ensure the protection of their cultural rights and respect for diversity, including through the effective implementation of the Yenish, Manouche and Roma Plan of Action. The Committee requests the State party to foster an enabling environment for the preservation, development and sharing of the identity, history, culture, traditions and customs of these minority groups. It reminds the State party of the recommendation it made in its previous concluding observations (para. 23) and encourages the State party to establish an adequate number of long-term and short-term reception areas throughout the country and to continue its efforts to facilitate access to education for children belonging to these minorities.**

D. Other recommendations

58. **The Committee encourages the State party to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.**

59. **The Committee encourages the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the International Covenant on Civil and Political Rights and the Optional Protocol to the Convention on the Rights of Persons with Disabilities.**

60. **The Committee recommends that the State party take fully into account its obligations under the Covenant and ensure the full enjoyment of the rights enshrined therein in the implementation of the 2030 Agenda for Sustainable Development at the national level. Achievement of the Sustainable Development Goals would be significantly facilitated by the State party establishing independent mechanisms to monitor progress and treating beneficiaries of public programmes as rights holders who can claim entitlements. Implementing the Goals on the basis of the principles of participation, accountability and non-discrimination would ensure that no one is left behind. In this regard, the Committee draws the attention of the State party to its statement on the pledge to leave no one behind (E/C.12/2019/1).**

61. **The Committee recommends that the State party take steps to progressively develop and apply appropriate indicators on the implementation of economic, social and cultural rights in order to facilitate the assessment of progress achieved by the State party in complying with its obligations under the Covenant for various segments of the population. In that context, the Committee refers the State party to, inter alia, the conceptual and methodological framework on human rights indicators developed by the Office of the United Nations High Commissioner for Human Rights (see HRI/MC/2008/3).**

62. **The Committee requests that the State party disseminate the present concluding observations widely at all levels of society, including at the levels of the Confederation, the cantons and the municipalities, in particular among members of the Federal Council, the National Council and the Council of States, government bodies and judicial authorities, and that it inform the Committee in its next periodic report about the steps taken to implement them. The Committee encourages the State party to engage with non-governmental organizations and other members of civil society, including the Swiss Centre for Expertise in Human Rights, in the follow-up to**

the present concluding observations and in the process of consultation at the national level prior to the submission of its next periodic report.

63. In accordance with the procedure on follow-up to concluding observations adopted by the Committee, the State party is requested to provide within 24 months from the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 9 (national human rights institution), 11 (business and human rights) and 41 (childcare) above.

64. The Committee requests the State party to submit its fifth periodic report, to be prepared in accordance with the reporting guidelines adopted by the Committee in 2008 (see E/C.12/2008/2), by 31 October 2024. In addition, it invites the State party to update its common core document, as necessary, in accordance with the harmonized guidelines on reporting under the international human rights treaties (see HRI/GEN/2/Rev.6, chap. I).
