

TREATY BODY MONITOR

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Key facts¹

Ratification	Reservations	Party to Optional Protocols	Other core treaties ratified	Date of previous examination, submission of present report
1992	Articles 12, paragraph 1, 20, 25 (b) and 26.	2 nd OP (death penalty)	ICCPR, ICESCR, CAT, CRC, CEDAW, CERD	15 Oct.-2 Nov. 2001, 17 Dec. 2001

Opening remarks by the delegation

The delegation of Switzerland was led by Mr Michael Leupold, Director of the Federal Department of Justice. He was supported by a large, high-level delegation consisting of representatives of the Federal Department of Home Affairs, the Federal Department of Justice, the Federal Department of Foreign Affairs, the Federal Office of Police, the Federal Office for Migration and the Conference of Cantonal Justice and Police Directors along with several representatives to the Permanent Mission in Geneva.²

¹ The information in this table is sourced from the Office of the High Commissioner for Human Rights (OHCHR), and is available at www.ohchr.org/EN/Countries/Pages/HumanRightsintheWorld.aspx.

² The list of members of Switzerland's delegation is available at <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>.

Mr Leupold gave a brief opening statement that was focused on updating the Committee on the progress Switzerland had made since handing in the periodic report two years prior. He stressed that since joining the UN in 2002 Switzerland had repeatedly demonstrated its dedication to human rights and to the Human Rights Committee in particular. He highlighted that Switzerland had ratified several instruments,³ as well as removing several of its reservations to the ICCPR and had been one of the first States to voluntarily come under review of the universal periodic review (UPR). He also stressed Switzerland's effort to reform the treaty body system by looking into the possibility of an expanded core document to be complimented by specific reports when presented to specific treaty bodies.

Mr Leupold continued by turning to domestic affairs, where he informed the Committee of several improvements to the legal system, including the adoption of a legal basis by the Parliament in 2005 to reorganise the lower judiciary levels. This reform is intended to lighten the work load of the federal tribunal and criminal procedures. He also explained the unification of the criminal code set to come into effect in 2011 and new civil procedures intended to simplify access to justice. He said laws regarding the legalisation of same sex unions, the elimination of inequality affecting disabled persons, and the usage of police constraints to guarantee principle of proportionality had also been adopted.

Overview of key issues

The following overview addresses two of the Committee's concluding observations following the examination on the basis of those themes that the Committee requested follow-up on implementation within one year.⁴ It also includes three areas of recommendation that were discussed at length. Each is assessed according to how they were addressed in the examination, including the initial views of the State, questions and comments by the Committee, and responses provided.

Switzerland entered into a reasonably constructive dialogue, although it was rather uncompromising in its responses to the Committees questions. At times during the dialogue it seemed that the Committee was not entirely satisfied with the answers given to their inquiries, although Mr Krister Thelin did warn that 'the Committee should not fall into the trap of holding Switzerland to a higher level than other countries because they [were] already in a high human rights position.'

The dialogue was heavily focused on the States' reservations to the Covenant and its failure to ratify the first optional protocol on individual complaints, which Switzerland repeatedly justified despite strong arguments from Committee members to do so. The delegation was careful to address every question raised by the Committee and the responses were often given by the appropriate member of the delegation. While the answers went into great detail, they did not generally offer information different from that contained in the periodic report or that had not been previously prepared. When the issue of assisted suicide was raised, Switzerland's reluctance to provide new information was obvious due to its unwillingness to respond on the basis of the issue not previously being submitted in writing. The Swiss delegation was also unwilling to respond to the issue of forced sterilisation, but pledged it would reply later in writing.

Withdrawing Reservations and Acceding the Optional Protocol to the Covenant

In its concluding observations, the Committee said:

*4. The State party should consider withdrawing its remaining reservations to the Covenant.*⁵

³ Rome Statute of the International Criminal Court, the Optional Protocol on the Convention against Torture and the Optional Protocol of the Convention on the Elimination of Discrimination Against Women.

⁴ CCPR/C/CHE/CO/3, at para. 23, available at <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>.

⁵ CCPR/C/CHE/CO/3, at para. 4.

*5. The State party should consider acceding to the Optional Protocol in order to enhance the protection of human rights for persons subject to its jurisdiction.*⁶

The Committee was particularly concerned with the reservations that Switzerland maintains to the Covenant and its refusal from acceding the first optional protocol. Committee members acknowledged that Switzerland had a good human rights record, however this seemed to make the reasoning to maintain a large number of reservations to the Covenant even less clear. Mr Abdelfattah Amor expressed his surprise at the reservations to Article 20, prohibiting propaganda for war and advocacy of hatred used to incite discrimination, hostility or violence.⁷ Mr Amor expressed doubts regarding the admissibility of this reservation.

Several Committee members expressed serious concern over the reservation to Article 26, which guarantees that all people are equal before the law, which according to Mr Amor is a fundamental aspect of the Covenant.⁸ Ms Ruth Wedgewood requested further explanations to the reservation of this article. She argued that the word ‘other’ included in the Covenant as a prohibited ground of discrimination extended beyond sex, religion and race to include for instance sexual orientation. Since a prohibition of discrimination on the basis of sexual orientation is not included in Swiss legislation, Ms Wedgewood said she did not understand why this reservation is necessary.

There was further concern over Switzerland’s refusal to accede to the first optional protocol, Mr Rafael Rivas Posada took a firm stance on this issue saying he was unsatisfied with Switzerland’s response to this issue. Switzerland argues that it was already a member to the European Convention on Human Rights, which allows individual cases, and therefore acceding to the optional protocol would be redundant. Ms Wedgewood also disagreed with this reasoning, stating that the European Convention did not necessarily protect the same rights as the Covenant, while Mr Amor said it was a ‘pity’ that acceding to the optional protocol was not on Switzerland’s agenda, particularly in light of the fact that it had acceded to the individual complaint mechanisms of other treaties.

The Swiss delegation was unwilling to change its position on this issue as was made clear by its response. Mr Frank Shürmann responded to the Committees inquiries, by reminding the Committee that when Switzerland ratified the Covenant it had expressed eight reservations. Since then, it had withdrawn four, so progress had been made. He however announced that as Switzerland would hold the presidency of the Council of Europe from November 2009, so Articles 20 and 26 could again be reviewed during this time. Regarding Article 20, Mr Schürmann referred to the written reply, which states that the Swiss Criminal Code and the Constitution are consistent with Article 20 in that they protect against behaviour that incites discrimination, hostility, or violence. He said that maintaining reservation did not mean that there was a ‘gap’ in protection and that there was no ‘urgent’ need to change the reservation. He invited the Committee to again refer to the periodic report and written replies for more information on the issue. The reason for retaining the reservation to Article 26 was that the European system was deemed adequate. Mr Schürmann explained that the reason for not ratifying the optional protocol was more political than legal. Switzerland views the European Court of Human Rights as being an adequate mechanism and is actively involved in discussions on its future, therefore making it unnecessary to withdraw this reservation.

Mr Amor thanked the delegation for its ‘clear and precise answers,’ but was clearly not satisfied by the answers given and asked for a more explicit statement. He reiterated the importance of removing all reservations and reminded Switzerland that as a leader in human rights it should take the action to withdraw its reservations. Mr Amor acknowledged progress had been made, but stressed that problems still persisted

⁶ CCPR/C/CHE/CO/3, at para. 5.

⁷ The reservation states that ‘Switzerland reserves the right not to adopt further measures to ban propaganda for war, which is prohibited by article 20, paragraph 1.’

⁸ The reservations states that ‘The equality of all persons before the law and their entitlement without any discrimination to the equal protection of the law shall be guaranteed only in connection with other rights contained in the present Covenant.’

and that the Covenant covered a broader scope of situations and issues than did any European or federal legislation.

The Swiss delegation retorted to Mr Amor's concerns by stressing that maintaining their reservations demonstrated the its commitment to the ICCPR because it would only enter into obligations under the Covenant if the Government was sure that the domestic legal system is entirely compatible and laws were consistent. Mr Schürmann tried to address the Committees scepticism by reiterating that Switzerland would commence its presidency of the Council of Europe in November for six months and then the reservations to Articles 20 and 26 would be 'subject to an in depth review.'

Freedom of Religion and non-Discrimination

In its concluding observations, the Committee said:

*8. The State party should strenuously ensure respect of freedom of religion and firmly combat incitement to discrimination, hostility and violence.*⁹

The Committee was very concerned about the 'referendum aiming at prohibiting the construction of minarets and about the discriminatory advertising campaign being used to promote it.'¹⁰ The posters used for this campaign can be found throughout Switzerland and several Committee members believed that this campaign raised issues with Article 19 of the Covenant on freedom of expression and wanted more information on this issue. According to Mr O'Flaherty the posters depict Muslim women in a very 'sinister' way, which breaches Article 19 (3a), in that it does not respect the their 'reputation'. Mr Amor stressed that the posters had been banned in several towns throughout Switzerland and were illegal under several articles. He believed that the decision on this matter should be a 'federal competence' and not a Cantonal one, however if the federal Government accepted responsibility for allowing these posters it would clearly violate its obligations under the Covenant. The Committee also questioned Switzerland's claim in its written response that banning the construction of minarets would not violate 'peremptory norms of international law' (*jus cogens*).

The Swiss delegation was firm in its response that the referendum did not fall within *jus cogens*. This justification therefore simply defended the Swiss citizens right to popular vote in general, and did not comment on the legality of the campaign used to gain the vote. It was clear that Switzerland did not see the initiative as an issue and informed the Committee that this was a 'moot point' because the initiative had not been passed, so the problem was only theoretical.¹¹ Switzerland was also quick to justify the continuation of the campaign for this initiative as not falling within the federal competence, but that local authorities were responsible for deciding if the poster campaign would be seen in each city in Switzerland. Further it highlighted that there is no federal campaign for the initiative. Accordingly, deciding whether or not the posters are discriminatory would be up to each Canton and for the courts to 'watch over respect for freedom of expression.'

Principle of Non-Discrimination and Equality between Men and Women.

In its concluding observations, the Committee said:

11. The State party should intensify its efforts to address the issue of violence against women, including by enacting comprehensive legislation against domestic violence and to sanction all forms of violence against women, as well as to ensure that victims have access to immediate means of redress and protection. It should

⁹ CCPR/C/CHE/CO/3, at para. 8.

¹⁰ <http://www2.ohchr.org/english/bodies/hrc/hrcs97.htm>.

¹¹ On 29 November 2009 the minaret ban was passed by popular vote, <http://www.hrw.org/en/news/2009/12/04/switzerland-minaret-ban-violates-rights>.

*prosecute and punish those responsible. It should also review its legislation on residence permits to avoid the application of the law having the effect, in practice, of forcing women to remain in abusive relationships.*¹²

The treatment of foreigners was a recurring point of criticism in the dialogue, with many instances and scenarios of how people are mistreated being addressed by the Committee members. However, the issue of primary concern in this regard was the perpetuating cycle of domestic violence that exists as a result of women's dependence on their husbands for residency. Mr Rajsoomer Lallah pointed out that victims of domestic violence risk losing their residency permit if they make a complaint against their husbands. If they file a complaint, they must first prove that domestic violence has occurred and also prove that they cannot be reintegrated back into society in their country of origin. Further there is a stipulation that a couple has to be married for three years and must have been integrated into Swiss society for an abused woman be able to keep her residency. For these reasons, Mr Lallah pointed out, many remain in abusive situations. Mr Lallah also highlighted that it seemed very difficult for the Swiss Government to monitor this situation and provide accurate information, and that the Committee therefore had to rely on NGO information to understand the situation fully. Mr Rivas Posada expressed his confusion over the contradiction between Switzerland's active contribution to a plan of action condemning domestic violence at the Vienna Conferences in 1993, but reluctance to address the issue within its borders or reply fully to the issue in its written response to the Committee. Mr Lallah and Mr Rivas Posada requested more information on what was being done to protect these women.

Ms Marlène Vez, from the Federal Immigration Office, responded to the Committees concerns by explaining that there is a mechanism in place to assist women in abusive situations, along with a new law for residency permits that can be 'enacted under a range of circumstances.' Ms Vez continued to explain that there are also staff members at the Federal Immigration Office trained to deal with these issues along with a 'range of legal means that allow for victims not to have to stay with their partner to maintain residency.'

Police abuse of foreigners

In its concluding observations, the Committee said:

*14. The State party should ensure that all cantons create an independent mechanism with authority to receive and effectively investigate all complaints of excessive use of force, ill-treatment or other abuses by the police. All perpetrators should be prosecuted and punished, and victims compensated. The State party should create a national statistical database on complaints lodged against the police. The State party should also increase efforts to ensure that minorities are adequately represented in the police forces.*¹³

Prior to the dialogue the Committee had required that Switzerland provide examples of official inquiries into allegations of torture or ill-treatment. Mr Thelin pointed out that the majority of the Cantons do not provide information regarding police complaints. He questioned if this indicated that there is simply no information provided or that there had been no complaints. He continued by questioning if a 'genuine will on the part of the federal Government to promote separating institutions and inquiry' existed in light of the fact that there was an observable 'reluctance' to hold Cantons to the Geneva model where there exists a specific mechanisms for complaints against the police. Mr Thelin stressed that there needed to be a separate mechanism to make inquiries into police violence.

The Swiss delegation informed Mr Thelin that there was information from eight Cantons regarding police complaints. More information is available at the Cantonal level, but there is no systematic manner to collect these complaints. Mr Leupold said that despite there being no systematic data collection, the police still took human rights very seriously and that human rights are included in their basic training. He noted that the

¹² CCPR/C/CHE/CO/3, at para. 11.

¹³ CCPR/C/CHE/CO/3, at para. 14.

justice system in each Canton was independent and therefore the Cantons saw no need to set up a specific mechanism for this. He admitted that Geneva has a specific mechanism for this, but that in other Cantons too there was a guarantee that inquiries would be dealt with in the best manner.

Right to free legal assistance

In its concluding observations, the Committee said:

18. 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.¹⁴

Mr Lallah began by pointing out that free legal assistance is guaranteed under the Article 29 of the Swiss Constitution and because of this, free legal representation should be available to asylum seekers. However, he made several inquiries into the reality of the situation. He wanted to know if it was true that in the case of asylum seekers, this provision is applied restrictively. He also enquired who decides on the likelihood of a receiving a permit in the cases of asylum seekers because this decision largely determines the degree of assistance provided. Further he wanted to know how the situation of asylum seekers when appealing a refusal affects the representation they receive. Finally, Mr Lallah asked about the role that NGOs play in this, since asylum seekers were generally represented by NGOs, and if there was a possibility for NGOs to give advice at the immigration centres where these cases are decided.

Mr Christian Zumwald informed that Committee that NGOs typically represent asylum seekers and that they have full access to the person in question and vice versa, although a professional defender could also represent them. He continued by stating that legal advice ‘needs to be guaranteed and facilitated’ and assured the Committee that the Federal Immigration Office did just this. He claimed that this office made sure that asylum seekers aware of their rights to seek assistance and were provided with the means to contact representation. He said that ‘minimum guarantees were applied in cases of the first instance of asylum,’ but did not directly guarantees of free legal assistance in situations of appeal. In response to who decides the likelihood of success, Mr Zumwald said that it depended on the request of the party concerned, but that the Federal Office of Immigration generally opens the process and determines the likelihood of receiving a permit. Administrative courts then take a final decision on the ‘likelihood of success’, based on which the level of assistance is determined.

Conclusions and next steps

Mr Leupold concluded the dialogue by thanking the Committee for a constructive dialogue and the very ‘interesting and in-depth’ questions that it had posed to his delegation. He assured the Committee that additional information would be provided, particularly on the issues of forced sterilisation and minorities in the police force.

The next periodic report of Switzerland to the Committee will be submitted in 2015. The Committee requested that in that report information be provided on the action taken to implement the remaining recommendations and its compliance with the Covenant as a whole.¹⁵

Last revised and updated: 18 December 2009.

¹⁴ CCPR/C/CHE/CO/3, at para. 18.

¹⁵ CCPR/C/CHE/CO/3, at para. 24.

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