



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

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Committee against Torture

List of issues prepared by the Committee prior to the submission of the seventh periodic report of Switzerland as adopted by the Committee at its forty-ninth session (29 October–23 November 2012)*

Specific information on the implementation of articles 1 to 16 of the Convention, including information regarding the Committee's previous recommendations

Articles 1 and 4

1. Please provide information on any steps taken to incorporate a specific definition of torture into the Swiss Criminal Code that covers all the constituent elements of the definition set out in article 1 of the Convention, as has repeatedly been recommended by the Committee in previous concluding observations (CAT/C/CHE/CO/6, para. 5).¹

Article 2²

2. Bearing in mind the Committee's previous concluding observations (para. 6), please provide information on any and all steps that have been taken to ensure that the authorities of all the cantons are aware of the rights set forth in the Convention and that they are able to

* The present list of issues was adopted by the Committee at its forty-ninth session in accordance with the new optional procedure established by the Committee at its thirty-eighth session, which consists in the preparation and adoption of lists of issues to be transmitted to States parties prior to the submission of their periodic reports. The replies of the State party to this list of issues will constitute its report under article 19 of the Convention.

¹ Paragraph numbers in brackets refer to the previous concluding observations adopted by the Committee (CAT/C/CHE/CO/6).

² The issues raised in relation to article 2 could also be raised under different articles, including but not limited to, article 16. As indicated in general comment No. 2, paragraph 3, "The obligation to prevent torture in article 2 is wide-ranging. The obligations to prevent torture and other cruel, inhuman or degrading treatment or punishment (hereinafter 'ill-treatment') under article 16, paragraph 1, are indivisible, interdependent and interrelated. The obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture ... In practice, the definitional threshold between ill-treatment and torture is often not clear." See also part V of the same general comment.

give effect to those rights as soon as possible, notwithstanding the federal structure of the State party.

3. Bearing in mind the Committee's previous concluding observations (para. 7), as well as those made by a number of other treaty bodies,³ please provide up-to-date information on the State party's ongoing efforts to establish an independent national institution for the protection of fundamental rights in accordance with the Paris Principles relating to the status of national institutions.

4. With reference to the Committee's previous concluding observations (para. 20) and those made by the Committee on Economic, Social and Cultural Rights,⁴ please describe what action has been taken to ensure the adoption of all appropriate measures for preventing and combating violence against women and for punishing the perpetrators of such violence, including, in particular:

(a) Campaigns designed to raise public awareness of all forms of violence against women;

(b) Guarantees enabling women victims of violence to lodge complaints without fear of reprisal;

(c) Steps taken to train and encourage members of the police force to protect victims of domestic violence, even when it occurs in the home, in accordance with article 5 of the Federal Victims Assistance Act (II);

(d) Steps taken to ensure that perpetrators of domestic violence are prosecuted and punished in a manner that is commensurate with the seriousness of their acts;

(e) Information on criminal cases under examination and their outcomes.

Article 3

5. Please provide data, disaggregated by age, sex and ethnic origin, on the number of asylum applications received, the number approved, the number of applicants who have been granted asylum either because they have been victims of torture or could be subjected to torture if they were to be sent back to their country of origin, and the number of entry refusals or expulsions carried out since the Committee considered the sixth periodic report of Switzerland in May 2010.

6. Bearing in mind the Committee's previous concluding observations (paras. 10–14) and the responses to those observations provided by the State party as part of the follow-up procedure,⁵ please furnish information on new measures and initiatives undertaken by the State party to bring the procedures and practices employed when persons are being expelled, returned or extradited into full conformity with article 3 of the Convention. Kindly supply, in particular, information on:

(a) Steps taken to assess the risk of a violation of the principle of non-refoulement;

(b) Steps taken to ensure the availability of an effective procedure for lodging an appeal, with suspensive effect, against expulsion orders. Please also indicate what steps have been taken to make provision in the procedure for refusal of entry at airports (article 65 of the Foreign Nationals Act) for a thorough consideration of appeals against such decisions;

³ A/HRC/8/41, para. 57; E/C.12/CHE/CO/2-3, para. 6; CCPR/C/CHE/CO/3, para. 7.

⁴ E/C.12/CHE/CO/2-3, para. 13.

⁵ CAT/C/CHE/CO/6/Add.1.

(c) Steps taken to review and limit the maximum duration of administrative detention and to ensure that it is ordered only in exceptional cases;⁶

(d) Steps taken to review existing legislation with a view to ensuring that the services of a lawyer are made available free of charge to asylum seekers at all stages of the corresponding procedures, regardless of whether those procedures are routine or special in nature;

(e) Examples of decisions taken in cases relating to article 3 of the Convention.

7. Since its consideration of the State party's preceding report, the Committee has found that Switzerland failed to fulfil the obligations it has assumed under article 3 of the Convention in four separate cases (communications Nos. 336/2008, 357/2008, 381/2009 and 396/2009).⁷ Please provide information on all the steps taken by the State party in response to the Committee's decisions. Please also describe the mechanisms used by the State party to make certain that persons who are returned to their country of origin do not run a risk of being subjected to torture.

8. In the light of the Committee's preceding concluding observations regarding repatriation (para. 15), please provide information on:

(a) Steps taken to ensure that human rights observers and independent physicians are present when persons are forcibly repatriated by air and to amend the federal law on the use of coercion and police measures in spheres within the jurisdiction of the Confederation;

(b) Steps taken to ensure that the orders that were being drafted in May 2010 by the Federal Office for Migration concerning the use of coercive measures by police escorts during forcible returns include provisions that will ensure the presence of human rights observers and independent physicians;

(c) Steps taken to prevent police violence and mistreatment of persons being forcibly repatriated by air, to open inquiries into any such allegations, and to prosecute and punish perpetrators of such acts.

9. Please provide detailed information on the repatriation procedures carried out since the submission of the State party's preceding report to the Committee, on any inquiries undertaken into allegations of police violence and on the outcome of the inquiry into the death of Joseph Ndukaku Chiakwa (para. 16).

10. Bearing in mind the Committee's preceding observations (para. 11), the report of the Special Rapporteur on the human rights of migrants⁸ and the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,⁹ please describe the proposed legislation that would introduce a new provision on deportation into the Criminal Code following the approval of the people's initiative regarding the expulsion of foreign criminals (the deportation initiative). Indicate what steps have been taken to ensure that these bills do not contravene the international obligations assumed by Switzerland, particularly those set forth in the Convention against Torture, and article 25 of the Swiss Constitution relating to the principle of non-refoulement.

⁶ See also the opinions adopted by the Working Group on Arbitrary Detention at its sixtieth session, held from 2 to 6 May 2011 (A/HRC/WGAD/2011/4, paras. 17, 18, 19, 31 and 32).

⁷ CAT/C/46/D/336/2008; CAT/C/46/D/357/2008; CAT/C/47/D/381/2009; CAT/C/48/D/396/2009.

⁸ A/HRC/17/33/Add.1, paras. 323–346.

⁹ A/HRC/17/40/Add.1, paras. 116–135.

Articles 5 and 7

11. Please indicate whether, since the Committee's consideration of the preceding report, the State party has rejected, for whatever reason, an extradition request concerning a person suspected of having committed acts of torture and whether, as a result, it decided to initiate prosecution proceedings itself. If applicable, please give details on the status and outcome of such proceedings.

Article 10

12. In the light of the Committee's preceding concluding observations (paras. 8 and 15), please provide up-to-date information on the training programmes that the State party has developed and put in place to ensure that all relevant personnel, including law enforcement officers and prison staff, as well as police officers and other persons involved in repatriation operations, are fully cognizant of the State party's obligations under the Convention and are aware that any failure to fulfil those obligations will not be tolerated, that any violation will be investigated and that offenders will be prosecuted. Indicate whether these training programmes cover the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Istanbul Protocol).

13. Please indicate whether the State party has developed a methodology for assessing the effectiveness and impact of these training programmes in order to determine whether they have led to a reduction in the number of cases of torture, violence and ill-treatment. If this is the case, describe that methodology, the way in which it is applied and its results.

Article 11

14. Please provide information on any and all new rules, instructions, methods or practices used during interrogations, as well as any other provisions relating to police custody that have been introduced since the Committee's consideration of the preceding periodic report. Also indicate how often such provisions are reviewed and applied.

15. Bearing in mind the Committee's preceding concluding observations (para. 17), the concerns expressed by the National Commission for the Prevention of Torture following its visits to places of deprivation of liberty and the concerns voiced by Swiss non-governmental organizations, indicate what action has been taken in response to the Committee's concern about prison overcrowding, especially at the Champ Dollon Prison, and what steps have been taken to make greater use of alternative and non-custodial sentences, as well as the outcome of those efforts.

16. With reference to the report of the National Commission for the Prevention of Torture regarding Bochuz Prison, please provide information on the steps taken to limit the use of solitary confinement and to ensure that it is employed only as a last resort, that it lasts for the shortest amount of time possible and that it is closely supervised.

17. Bearing in mind the Committee's preceding concluding observations (para. 17), please indicate what steps have been taken to ensure the application of legislation and procedures concerning health-care access for all prisoners, especially those suffering from psychiatric disorders.

Articles 12, 13 and 14

18. Please furnish detailed statistics, disaggregated by ethnic group, age and sex, on complaints concerning acts of torture or ill-treatment committed by law enforcement officers, together with statistics on the related investigations, prosecutions and the criminal or disciplinary penalties imposed. Specific examples of offences committed and the corresponding penalties should also be provided.

19. Bearing in mind the Committee's previous concluding observations (paras. 8, 9 and 19) and the responses to those concluding observations provided by the State party as part of the follow-up procedure,¹⁰ please furnish detailed information on any and all measures adopted in order to set up an independent mechanism to receive all complaints regarding acts of violence or ill-treatment by the police and to conduct impartial, thorough and effective inquiries into such allegations.

20. Bearing in mind the Committee's previous concluding observations (para. 22), please supply information on the steps taken to prevent and combat human trafficking, especially of women and girls for purposes of sexual exploitation, and to prosecute and punish the perpetrators. Indicate whether such steps have included the adoption of a comprehensive strategy to combat human trafficking. Please apprise the Committee of any ongoing investigations and their outcomes.

21. In its preceding concluding observations (para. 21), the Committee emphasized its concern about the requirements set forth in article 50 of the Foreign Nationals Act of 2005 and, in particular, about the requirement that the persons concerned provide proof that they would have difficulty in resettling in their country of origin. The Committee has noted that these provisions make it difficult for foreign women who have been married for less than three years to a Swiss national or a foreigner holding a residence permit and who are victims of domestic violence to leave their spouse or to seek protection because they fear that their residence permits may not be renewed. In view of the Committee's concerns on this point and those voiced by the Committee on Economic, Social and Cultural Rights,¹¹ please describe the steps that have been taken to amend article 50 of the Federal Foreign Nationals Act of 2005 in order to enable migrant women who are victims of violence to seek protection without forfeiting their residence permits.

22. Please furnish information on the steps taken since the preceding periodic report was considered in 2010 to provide court-ordered redress and compensation, including rehabilitative measures, to victims of acts of torture or ill-treatment at the hands of law enforcement officers. Please indicate how many claims have been filed, how many have been successful and, in each of those cases, the amount of compensation that was granted and the amount that was actually paid out.

Article 16

23. Bearing in mind the Committee's preceding concluding observations (para. 23) and the responses to those concluding observations provided by the State party as part of the follow-up procedure,¹² please describe the steps that have been taken to pass a specific prohibition on the corporal punishment of minors into law. Please also detail the steps taken to raise public awareness of the negative effects of violence against children, especially corporal punishment.

24. With reference to the Committee's preceding concluding observations (para. 17), the concerns expressed by the National Commission for the Prevention of Torture following its visits to places of deprivation of liberty and the concerns voiced by Swiss non-governmental organizations, please supply detailed information on:

(a) The steps taken to improve conditions in all places of detention in Switzerland and particularly in reception centres for asylum seekers;

¹⁰ CAT/C/CHE/CO/6/Add.1.

¹¹ E/C.12/CHE/CO/2-3, para. 15.

¹² CAT/C/CHE/CO/6/Add.1.

(b) The steps taken to ensure that the following categories of persons are held in separate detention facilities or areas: (i) minors and adults, (ii) women and men, and (iii) convicted prisoners and persons being held in pretrial detention.

25. In its preceding concluding observations (para. 18), the Committee noted with concern that article 123a of the Constitution, which is referred to in the Act of 1 August 2008, permits the imposition of a sentence of life imprisonment for dangerous or sexual offenders deemed to be incorrigible. Please provide information on the steps taken to review the manner in which this article is applied and to examine the conditions in which such prisoners are held. In this connection, also please inform the Committee of the outcome of the inquiry conducted into the death of Skander Vogt.

26. In the light of its preceding concluding observations (para. 24) and those of the Committee on Economic, Social and Cultural Rights,¹³ please furnish a thorough assessment of the situation of unaccompanied minors seeking asylum in Switzerland. Please also describe any and all measures adopted to prevent the disappearance of unaccompanied minors and to improve the level of protection afforded to them.

Other issues

27. Please provide up-to-date information on the measures adopted by the State party to guard against terrorist threats and indicate whether or not such measures have undermined the effectiveness of human rights safeguards, in law or in practice, and, if so, how. Also indicate how the State party ensures that antiterrorism measures do not conflict with the fulfilment of its obligations under international law and particularly under the Convention, in accordance with relevant Security Council resolutions, including, in particular, resolution 1624 (2005). Please describe the training given to law enforcement officers, the number of convictions handed down under antiterrorism laws, and the nationality of the persons convicted under those laws and the offences concerned. Describe the legal safeguards and remedies available to persons subject to antiterrorism measures, in law and in practice. Also indicate whether or not there have been complaints of non-observance of international standards and, if so, what their outcome has been.

General information on the human rights situation in the country, including new measures and developments relating to the implementation of the Convention

28. Please provide detailed information on any new developments since the consideration of the last periodic report and the submission of responses to the corresponding concluding observations in relation to the legal and institutional framework for the promotion and protection of human rights at the national level, including any relevant court decisions.

29. Please provide detailed information on any new political, administrative and other measures taken since the consideration of the last periodic report and the submission of responses to the corresponding concluding observations for the purpose of promoting and protecting human rights at the national level, including any national human rights plans or programmes, the resources allocated for them, and their objectives and results.

30. Please provide any additional information, including relevant statistics, on any new measures and initiatives undertaken in order to implement the Convention and give effect to the recommendations made by the Committee following its consideration of the preceding

¹³ E/C.12/CHE/CO/2-3, para. 18.

periodic report and its receipt of the State party's responses to its concluding observations, as well as on any other events that have occurred in the State party that are relevant to the Convention.
