



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés

**Excerpts of Concluding Observations and Recommendations from
UN Treaty Monitoring Bodies and from reports by UN Special Procedures
Mandate holders**

Universal Periodic Review:

SWITZERLAND

We would like to bring your attention to the following excerpts from UN Treaty Monitoring Bodies' Concluding Observations and Recommendations and the Human Rights Council's Special Procedures' Reports, relating to issues of interest and persons of concern to UNHCR in Switzerland.

1. Treaty Body Reports

E/C.12/CHE/CO/2-3

**COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS, 45th
Session**

26 November 2010

7. The Committee is concerned that despite article 8 of the Constitution, which prohibits discrimination, and the provisions against discrimination in the legislation of the State party, individuals and groups such as migrants, undocumented persons and persons with disabilities continue to experience discrimination in the enjoyment of Covenant rights. The Committee notes that only some cantons have enacted anti-discrimination laws, and is concerned about the lack of a comprehensive anti-discrimination law to prevent and combat discrimination on all the prohibited grounds (art. 2).

The Committee recommends that the State party enforce effectively its laws prohibiting discrimination. It also recommends that the State party consider adopting a comprehensive anti-discrimination law enforced uniformly throughout the confederation. In this regard, 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.

9. The Committee is concerned about the high unemployment rates among particular groups such as migrants, women, and young people, especially those of foreign origin, in comparison to the mainstream groups in the State party, and that measures to address unemployment among these groups have apparently been inadequate (art. 6).

The Committee recommends that the State party take concrete measures to address the unemployment situation of vulnerable groups among the population, to promote their integration into the labour market and to pursue the

development of vocational training and apprenticeship for young people of foreign origin.

15. The Committee notes with concern that the requirements of article 50 of the Federal Law on Foreign Nationals have the effect of preventing migrant women who are victims of domestic violence from leaving abusive marriages and from seeking assistance, for fear of losing their residency permit. In particular the requirement of providing proof of the difficulty of reintegrating in the country of origin, coupled with the stringent requirement of being married for at least three years to either a Swiss national or a foreigner, creates problems for migrant women who are victims of domestic violence and who have been married for less than three years to a Swiss national or a foreigner (art. 10).

The Committee urges the State party to consider modifying article 50 of the Federal Law on Foreign Nationals with a view to removing its effect in practice of leaving no other option for migrant women who are victims of domestic violence but to remain in abusive marriages for the sake of retaining their residency permit.

18. The Committee notes with concern the neglect suffered by some asylum-seekers in the State party, who are reportedly forced to stay in underground nuclear bunkers for an indefinite duration while their claims are being considered. The Committee is concerned about the lack of appropriate facilities for families and/or unaccompanied/separated children, resulting in the possible separation of families and in these children having to stay in the same dormitory room as adult asylum-seekers (art. 11).

The Committee requests the State party to provide in its next periodic report detailed information, including data disaggregated according to origin, sex and age, about the living conditions of asylum-seekers, in particular of children who are unaccompanied or separated from their families. The Committee also requests the State party to report on the measures taken to protect these asylum-seekers and the provision of adequate living standards as required by the Covenant.

29. The Committee requests the State party to provide, in its next periodic report, detailed information regarding the situation of undocumented persons, including “illegalized” persons who do not have any regular residence status in the State party and who live in precarious conditions without access to the most basic human rights, especially economic, social and cultural rights. The Committee also requests the State party to include in its report the measures undertaken to protect such persons from exploitation and abuse, and from becoming victims of human trafficking.

**CAT/C/CHE/CO/6
COMMITTEE AGAINST TORTURE, 44th Session
25 May 2010**

Police violence

8. The Committee is concerned by allegations of violence or the excessive use of force or other mistreatment by the police during the questioning of suspects in their

homes or in police stations. The Committee is particularly concerned by the fact that some of these allegations mention an excessive use of force against foreigners, especially asylum-seekers and migrants, above all of African origin, and particularly in the cantons of Geneva and Vaud (arts. 2, 12, 13, 14 and 16).

The State party must ensure that prompt, thorough and impartial inquiries are held into all allegations of violence or mistreatment by police, that the perpetrators are prosecuted and, if proven guilty, punished in proportion to the seriousness of their acts, that victims receive compensation and, where appropriate, rehabilitation. The State party must also continue training police officials and raising their awareness of human rights and, in particular, of the provisions of the Convention. In its next report, it must inform the Committee of any ongoing investigations and their outcome.

Non-refoulement

10. The Committee notes that, according to article 5, paragraph 2, of the Asylum Act of 1999, the ban on refoulement may not be invoked if there are substantial grounds for believing that the person invoking it represents a threat to the security of Switzerland or, having been convicted and sentenced for a particularly serious crime or offence, must be considered a public menace. The Committee also notes that article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005, provides for the immediately enforceable expulsion of a foreigner from the State party's territory if the person concerned has seriously or repeatedly violated, or represents a threat to, public security and order or represents a threat to internal or external security. The Committee is concerned that the application of article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005 could lead to a violation of the principle of non-refoulement, without the possibility of appeal. It is equally concerned that article 5, paragraph 2, of the Asylum Act of 1999 is incompatible with the State party's obligations with respect to the principles of nonrefoulement under article 3 of the Convention (art. 3).

The State party should consider modifying its legislation to allow an assessment of the risk involved and take measures to ensure for a person expelled under article 68, paragraph 4, of the Federal Act on Foreign Nationals of 2005 and article 5, paragraph 2, of the Federal Asylum Act of 1999, that the expulsion proceedings comply with article 3 of the Convention. It should also allow appeals against, and the suspension of, expulsion orders.

11. The Committee notes that the people's initiative on the expulsion of foreign criminals under discussion in Parliament calls for foreigners to be deprived of their residence permit and any further right to reside in Switzerland, regardless of their status, if they are convicted by final judgement of murder, rape or other serious sexual offences, or of other acts of violence such as armed robbery, trafficking in human beings, drug trafficking or breaking and entering, or if they have improperly claimed social security or welfare benefits. The Committee also notes that such persons would be expelled and banned from returning to Switzerland for a period of between 5 and 15 years, and that the authorities would lose all discretionary power in this respect. The Committee notes, finally, that the Federal Council has made a counter-proposal and recommended that the initiative be rejected, having found it incompatible with international law and the Swiss Constitution. However, the Committee remains concerned that the application of the initiative, if adopted by referendum, would seriously risk violating the principle of non-refoulement (art. 3).

The State party must continue its efforts to ensure that the initiative on the expulsion of foreign criminals does not violate the international obligations that Switzerland has undertaken, especially the Convention against Torture, or article 25 of the Swiss Constitution on the principle of non-refoulement.

12. The Committee notes that provisions of the Federal Act on Foreign Nationals governing procedures for refusal of entry into the country at airports (art. 65) stipulate that a decision must be made within 48 hours, subject to an appeal without suspensive effect being filed within 48 hours of notification and a decision on the appeal being handed down within 72 hours. The Committee is concerned that this rapid procedure, without suspensive effect, could impede the proper examination of the motives of appeal and constitute a violation of the principle of non-refoulement (art. 3).

The State party should consider modifying the procedure set out under article 65 of the Federal Act on Foreign Nationals with a view to providing more time for thorough consideration of appeals and an assessment of whether the principle of non-refoulement is being violated, and to lending such appeals suspensive effect.

13. The Committee considers the Federal Act on Foreign Nationals of 2005, which applies stricter coercive measures (arts. 73–78) to foreigners without residence permits and extends the maximum period of administrative detention from 12 to 24 months, or 12 months for minors aged from 15 to 18, excessive. The Committee notes that, as a result of Switzerland adopting the European Union directive on the return of illegal immigrants, the maximum period of administrative detention will be 18 months for adults and 9 months for minors (art. 3).

The State party should reconsider the maximum period of administrative detention, resort to it only in exceptional circumstances and limit its duration in light of the principle of proportionality.

14. While noting that asylum-seekers are entitled to free legal aid during the ordinary asylum procedure, the Committee remains concerned that free legal aid may be subject to restrictive conditions when asylum-seekers file an application under the extraordinary procedure (art. 3).

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.

21. The Committee is concerned that the requirements of article 50 of the Federal Act on Foreign Nationals of 2005, in particular the proof of problems in resettling in the country of origin, make it difficult for foreign women who have been married for less than three years to a Swiss national or a foreigner with a residence permit, and who are victims of domestic violence, to leave their spouse or seek protection, for fear of not having their residence permits renewed (arts. 13, 14 and 16).

The State party should consider amending article 50 of the Federal Act on Foreign Nationals in order to enable migrant women who are victims of violence to seek protection without necessarily forfeiting their residence permit, taking as a reference the Federal Tribunal's ruling of 4 November 2009 (ATF 136 II 1), which states that "either conjugal violence or serious difficulty in resettling in the country of origin may [...] be considered to constitute sufficient compelling personal reasons".

Trafficking in persons

22. While noting the measures taken by the State party to combat human trafficking, in particular trafficking in women and girls for purposes of sexual exploitation, the Committee is concerned that trafficking in persons still persists in the State party (arts. 12, 13 and 16).

The State party must continue its efforts to combat human trafficking, particularly in women and girls for purposes of sexual exploitation, by adopting a comprehensive strategy, improving prevention and ensuring that victims, including those who cooperate with the justice system, are protected. The State party must also prosecute and punish perpetrators, and inform the Committee of the results of cases currently being prosecuted.

Disappearance of unaccompanied minors

24. While taking note of information supplied by the State party regarding the procedure to protect unaccompanied minors, and of statistics on minors said to have disappeared from its territory, the Committee is concerned by the matter of the disappearance of unaccompanied minors and by the risk they run of becoming victims of human trafficking or other forms of exploitation (art. 16).

The State party must examine the plight of unaccompanied minors closely, seek means of preventing their disappearance, improve the level of protection afforded to them and report to the Committee as soon as possible.

CCPR/C/CHE/CO/3

HUMAN RIGHTS COMMITTEE, 97th Session

3 November 2009

14. The Committee is concerned about reports of police brutality against persons during arrest or detention, in particular against asylum-seekers and migrants. It remains concerned about the lack in most cantons of independent mechanisms to investigate complaints lodged against the police. In this regard, the Committee reiterates that the possibility of filing a complaint before a court should not preclude the creation of such mechanisms. The Committee is also concerned with the generally low rate of minorities in the police force, despite the high percentage of minorities in the population at large. (art. 7)

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.

16. The Committee notes that the Administrative Federal Tribunal has revised its jurisprudence to recognize that persecution by non-State actors may constitute a ground for granting asylum. The Committee is concerned, however, about reports of expulsions regardless of the stated inability of the expelled persons' countries of origin to grant them protection against non-State actors. (arts. 7, 13)

The State party should fully comply with the principle of non-refoulement for persons subjected to persecution by non-State actors and ensure the application of the jurisprudence of the Administrative Federal Tribunal in this regard.

18. The Committee takes note of the information that asylum-seekers are duly informed of their right to legal assistance and that free legal assistance is provided during the ordinary asylum procedure. It is concerned, however, that free legal assistance may be subject to restrictive conditions when asylum-seekers file an application in the framework of the extraordinary procedure. (art. 13)

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.

CEDAW/C/CHE/CO/3

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN, 44th Session

7 August 2009

Stereotypes

25. The Committee welcomes the steps taken by the State party to eliminate stereotypical attitudes and portrayals of women and of women's roles in the family and in society, including the "Fairplay-at-home" and "Fairplay-at-work" campaigns, the adoption of equality acts in various cantons, as well as the revision of educational curricula in a number of cantons. The Committee is concerned, however, about the persistence of entrenched traditional attitudes and stereotypes, including as portrayed in the media and in advertising, which undermine women's social status and are linked to the disadvantaged position of women in a number of areas, including in education, the labour market, access to decision-making positions and participation in political and public life. The Committee is also concerned about the persistence of stereotyped media portrayals and negative images of ethnic and minority women and migrant women.

26. The Committee calls upon the State party to strengthen its efforts to eliminate stereotypical images and attitudes regarding the roles of women and men in the family and in society, in accordance with articles 2 (f) and 5 (a) of the Convention. This should include legal, policy and awareness-raising measures, taken in a coordinated fashion and directed at women and men generally, as well as different forms of media and targeted programmes in the educational system, to encourage further diversification of the educational choices of boys and girls and enhanced sharing of family responsibilities. The Committee also recommends targeted measures for the media and the educational system to promote positive images of ethnic and minority women and migrant women. It calls upon the State party to review periodically the measures taken in order to assess their impact, to take appropriate action and to report thereon to the Committee in its next periodic report.

Vulnerable groups of women

43. The Committee is concerned about the situation of vulnerable groups of women, including women of ethnic and minority communities and migrant women, who may be more vulnerable to poverty and violence and are at risk of multiple forms of

discrimination with respect to education, health, social and political participation and employment, including as a result of the non-recognition of foreign university degrees and diplomas. The Committee is also concerned about the difference in treatment of migrant women from countries in the European Union or from the United States of America and Canada as compared with women from other parts of the world. Additionally, the Committee is concerned that requirements under the new Foreign National Act, such as proof of integration after at least three years of marriage or of difficulties in social integration in the country of origin, may pose difficulties for victims of violence to acquire or renew residency permits and may continue to prevent victims from leaving abusive relationships and from seeking assistance.

44. The Committee calls upon the State party to take effective measures to eliminate discrimination against women of ethnic and minority communities and migrant women, irrespective of country of origin, both in society at large and within their communities. It also calls upon the State party to be proactive in its measures, including through the development of targeted programmes and strategies, to increase women's awareness of and access to education, health and social services, training and employment, as well as to familiarize them with their rights to gender equality and non-discrimination. The Committee further calls upon the State party to collect data and conduct regular and comprehensive studies on the situation of such women and to provide such information in its next report. Additionally, the Committee urges the State party to keep under review and carefully monitor the impact of its laws and policies on women of ethnic and minority communities and on migrant women, with a view to taking remedial measures that effectively respond to the needs of those women.

Trafficking and prostitution

29. The Committee welcomes the State party's stated intention to ratify the Council of Europe Convention on Action against Trafficking in Human Beings. It also acknowledges other measures taken by the State party to combat trafficking in women and children. Specific reference is made to the adoption of new article 182 of the Penal Code, which criminalizes trafficking for the purposes of sexual or labour exploitation or for organ harvesting, the revision of the Victim Assistance Act, which imposes a requirement on cantons to take into account the specific needs of different categories of victims, in particular victims of human trafficking, as well as the adoption of the new Foreign National Act, which contains provisions allowing victims of trafficking and witnesses to remain in the State party for a period of reflection and for legal proceedings. The Committee, however, is concerned by the continuing prevalence of trafficking in women and girls and by the lack of comprehensive data and research on all aspects of this phenomenon. The Committee is also concerned that specialized counselling and support services for victims of trafficking, as well as cooperation mechanisms, have only been established in a number of cantons with limited or no funding from the Federal Government. Further, the Committee is concerned that legislation granting protection and temporary residency permits to victims is not uniformly or consistently applied by the cantons, and that the granting of such residency permits is normally based on cooperation with the authorities in legal proceedings.

30. The Committee encourages the State party to ensure the quick ratification of the Council of Europe Convention on Action against Trafficking in Human Beings. It urges the State party to strengthen its measures to combat all forms of trafficking in women and children, including through increased international,

regional and bilateral cooperation with countries of origin and transit, in line with article 6 of the Convention. In this respect, the Committee urges the State party not only to ensure the prosecution and punishment of trafficking, but also the protection and recovery of victims of trafficking, including through the allocation of adequate resources to existing specialized services and the establishment of additional services in all cantons. The Committee also urges the State party to consider the extension of temporary residency permits and other measures to be in compliance with the Recommended Principles and Guidelines on Human Rights and Human Trafficking developed by the Office of the United Nations High Commissioner for Human Rights in 2002. The Committee calls upon the State party to collect and analyse data on all aspects of trafficking, disaggregated by age and country of origin, in order to identify trends and root causes, as well as priority areas for action, and to formulate relevant policies. It requests that such information, as well as information on the impact of the measures taken to combat trafficking, be included in the State party's next periodic report.

CERD/C/CHE/CO/6
COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION,
73rd Session
21 August 2008

Concerns and recommendations

7. The Committee notes with regret the lack of substantial progress made by the State party in combating racist and xenophobic attitudes towards some minorities, including black persons, Muslims, Travellers, immigrants and asylum-seekers. It is particularly concerned at the hostility resulting from the negative perception of foreigners and certain minorities by part of the population, which has resulted in popular initiatives questioning the principle of non-discrimination. The Committee regrets that in the period covered by the report, the prohibition against racial discrimination had to be defended against repeated attacks in the political arena, including demands for its abolition or restriction. (art.7)

The Committee urges the State party to further intensify its efforts in education and awareness-raising campaigns to combat prejudices against ethnic minorities and promote inter-ethnic dialogue and tolerance within society, in particular at the cantonal and communal level. The State party should consider implementing the recommendations made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance following his visit to Switzerland in 2006, as well as the relevant recommendations made by the working group on the universal periodic review in 2008.

17. The Committee notes with concern that the State party's legislation on aliens and asylum-seekers may not guarantee them equal rights in accordance with the Convention. For instance, pursuant to the Aliens Act which entered into force on 1 January 2008, asylum-seekers whose requests are rejected are excluded from the welfare system with resulting marginalization and vulnerability. (art. 5 (b))

The Committee urges the State party to take effective and adequate measures to guarantee the rights under the Convention to aliens and asylum-seekers. It invites the State party to harmonize its domestic legislation on aliens and asylum-

seekers with the Convention, and to take into account the recommendations made in this area by different bodies and organizations dealing with racial discrimination issues.

2. Reports of Special Procedures mandate holders

A/HRC/4/19/Add.2

HUMAN RIGHTS COUNCIL, 4th Session

30 January 2007

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Doudou Diène

95. The Special Rapporteur is aware that the legal strategy alone cannot combat prejudices which, in Switzerland as elsewhere, are deeply rooted in history and culture. He therefore recommends that the political and legal strategy be supplemented by a cultural and ethical strategy with the aim - in order to overcome the deadlocks and tensions of an ideological and partisan management of de facto uncontrolled multiculturalization - of the voluntary, gradual and long-term construction of a democratic, egalitarian, non-discriminatory and interactive multiculturalism centred around two related areas: the promotion of reciprocal knowledge among communities reflecting the diversity of Swiss society and the promotion of interaction and cross-fertilization among these communities. Action must be taken, here and now, to promote fruitful and non-antagonistic coexistence, the dialectic of unity and diversity, the founding principle of Swiss federalism, bearing in mind the current twofold challenge of the growing complexity of diversity as a result of non-European and non-Christian immigration, and of the dynamic of attempts to defend identity, which is exploited for political ends.

96. The Special Rapporteur considers that certain awareness-raising and training initiatives undertaken within State bodies, such as the training of the Basel City police force, are very positive, and recommends that they be undertaken in all cantons. He also recommends that the Government increase, to the extent possible, the recruitment, at all State levels, of staff from among the immigrant population and the various foreign communities, and promote comprehensive intercultural training in all State services and institutions that deal with immigration and the situation of foreigners, in particular the police and border authorities, airports, stations, etc.

97. The Special Rapporteur strongly recommends that civil society organizations make use of the United Nations mechanisms available to them, both treaty body mechanisms, such as the Committee on the Elimination of Racial Discrimination, and the special procedures, and transmit to these bodies relevant information concerning possible human rights violations as a result of the application of laws such as the Act on Foreign Nationals or the Asylum Act. In this regard, he encourages civil society to record and document acts of racism, racial discrimination and xenophobia. He wishes to commend the non-governmental organizations that have already taken steps in this regard.

**Human Rights Liaison Unit
Division of International Protection
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