



Economic and Social Council

Distr.: General
26 November 2010

Original: English

Committee on Economic, Social and Cultural Rights

Forty-fifth session

Geneva, 1-19 November 2010

Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant

Concluding observations of the Committee on Economic, Social and Cultural Rights

Switzerland

1. The Committee on Economic, Social and Cultural Rights considered the second and third periodic reports of Switzerland on the implementation of the International Covenant on Economic, Social and Cultural Rights (E/C.12/CHE/2-3) at its 37th, 38th and 39th meetings, held on 5 and 8 November 2010 (see E/C.12/2010/SR.37, 38 and 39), and adopted, at its 55th meeting held on 19 November 2010, the following concluding observations.

A. Introduction

2. The Committee welcomes the submission of the second and third periodic reports of Switzerland as well as the written replies to its list of issues (E/C.12/CHE/Q/2-3/Add.1), both of which contained comprehensive and detailed information on the situation in the State party. The Committee also welcomes the opportunity it had to engage in an open and constructive dialogue with the delegation of the State party, which included a number of representatives from different State departments and institutions.

B. Positive aspects

3. The Committee welcomes the ratification by the State party of the following:

(a) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 26 June 2002;

(b) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 19 September 2006;

(c) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 29 September 2008;

(d) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, on 27 October 2006;

(e) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, on 27 October 2006;

(f) International Labour Organization (ILO) Convention No. 98 (1949) concerning the Application of the Principles of the Right to Organise and to Bargain Collectively, on 17 August 1999;

(g) ILO Convention No. 144 (1976) concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, on 28 June 2000;

(h) ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, on 28 June 2000.

4. The Committee welcomes the adoption by the State party of measures, legislative and otherwise, that contributed to the realization of the economic, social and cultural rights enshrined in the Covenant, including the following:

(a) Federal Act on vocational training (LFPr), which entered into force in 2004;

(b) Federal Act on the general aspects of social security law, which entered into force on 1 January 2003;

(c) Federal Act of family allowances, which harmonizes a number of provisions for the whole country.

C. Principal subjects of concern and recommendations

5. The Committee regrets the State party's persistent position that most of the provisions of the Covenant merely constitute programmatic objectives and social goals rather than legal obligations. According to that position, some of those provisions cannot be given effect in the domestic legal order of the State party and cannot be directly invoked before domestic tribunals and courts of the State party.

The Committee reiterates that, bearing in mind the provisions of article 28 of the International Covenant on Economic, Social and Cultural Rights, the principal responsibility for Covenant implementation lies with the federal Government of the State party. The Committee recommends that the State party: take steps to agree upon a comprehensive legislation giving effect to all economic, social and cultural rights uniformly between the federal Government and the cantons; establish an effective mechanism to ensure the compatibility of domestic law with the Covenant; and guarantee effective judicial remedies for the violations of the rights enshrined in the Covenant. The Committee encourages the State party to pursue its efforts of harmonizing cantonal laws and practices to ensure equal enjoyment of Covenant rights throughout the confederation. The Committee draws the attention of the State party to the Committee's general comments No. 3 (1990) on the nature of States parties' obligations, and No. 9 (1998) on the domestic application of the Covenant.

6. The Committee is concerned that the State party has not yet established a national human rights institution that is in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

The Committee recommends that the State party consider establishing a national human rights institution with a broad human rights mandate that includes economic, social and cultural rights, and to provide it with adequate financial and human resources, in conformity with the Paris Principles. While the Committee recognizes that the decision by the State party to conduct a pilot project creating “a specialized centre on human rights” within universities for a five-year period could be a significant first step, it reminds the State party that this is not an acceptable substitute for an independent national human rights institution fully compliant with the Paris Principles.

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.

8. The Committee notes with concern that women continue to be disadvantaged despite the efforts undertaken by the State party, such as the express prohibition of wage discrimination under the Constitution and the Gender Equality Act. Wage gaps between men and women have recently begun to widen again, part-time work is more widespread among women than men, and women are disproportionately represented (68.8 per cent) in the low-wage sector. Furthermore, women in higher professional positions earn 30 per cent less than their male counterparts. The Committee also notes with concern that according to information contained in the website of the Federal Office for Gender Equality, there are few women in executive positions: only 3 per cent of company management positions and 4 per cent of administrative positions in Swiss enterprises are held by women (art. 3).

The Committee recommends that the State party intensify voluntary measures towards reducing the inequality between men and women in both the public and private sectors, and to strictly enforce equal pay for work of equal value. The Committee also recommends that the State party continue to promote the Gender Equality Act through more diverse and creative initiatives as well as implement proactive strategies including the introduction of quotas, an extensive media campaign, using paid advertisements if necessary, and the establishment of achievement awards that highlight women’s contributions to society and to the economy.

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.

10. The Committee notes with concern that, if the right to strike is provided by legislation, it is being compromised in the State party by the interpretation of the principle of “reasonableness”. As a result, trade unionists have been given criminal sentences because of their involvement in a strike or a trade union campaign, due to the interpretation of the principle of “reasonableness” by the court (art. 8).

The Committee requests that the State party undertake a comprehensive review of the right to strike in practice. It also requests that the State party ascertain that its interpretation of “reasonableness” is in conformity with international standards. The Committee requests the State party, in its next periodic report, to provide detailed information regarding this concern.

11. The Committee is concerned that, according to the Civil Code, trade unionists dismissed because of trade-union activities cannot be reinstated, and are compensated for only up to six months salary (art. 8).

The Committee recommends therefore that the State party consider amending its legislation to allow the reinstatement of trade unionists arbitrarily dismissed for trade-union activities. The Committee has taken note of the statement by the State party’s delegation that a proposal to amend the Civil Code in order to provide compensation of up to 12 months salary is currently in public consultation.

12. The Committee is concerned about reports according to which “illegalized” persons are excluded from social aid in some cantons and instead have to rely on emergency aid (art. 9).

The Committee recommends that the State party provide social aid, instead of emergency aid, as the last social safety net for everyone living in the State party’s territory. The Committee also recommends that the State party set common standards for access and entitlement to social aid.

13. The Committee notes with concern the persistence of violence against women, including domestic violence, as well as the absence of specific legislation addressing this phenomenon (art. 10).

The Committee recommends that the State party intensify its efforts to address the issue of violence against women, including by criminalizing domestic violence, by enacting specific legislation against domestic violence and all forms of violence against women and by ensuring that victims have access to immediate means of protection and redress. The Committee also recommends that the State party prosecute and punish those who are responsible.

14. The Committee notes with concern the lack of information about the extent of sexual abuse and exploitation of children, particularly of vulnerable groups, in the State party (art. 10).

The Committee recommends that the State party conduct a comprehensive assessment of the extent of sexual abuse of children, with a view to reviewing the need for additional legislative or administrative measures to address the problem.

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.

16. The Committee is concerned that forced marriages still exist in the State party, despite some measures taken to prevent and combat this phenomenon. The Committee is also concerned about the lack of official and comprehensive statistical data on this phenomenon (art. 10).

The Committee recommends that the State party reinforce its measures, including by adopting legislation to prevent and prohibit forced marriages. The Committee also recommends that the State party carry out targeted awareness-raising campaigns to prevent occurrences of forced marriages. The Committee requests the State party to provide in its next report comprehensive statistical data on forced marriages, disaggregated by origin, sex and age.

17. The Committee reiterates the concern expressed in its previous concluding observations regarding the persistence of poverty in the State party (E/C.12/1/Add.30, para. 12). The Committee is particularly concerned about the persistent phenomenon of the “working poor” who are working in precarious conditions with low incomes that do not enable them to enjoy an adequate standard of living (art. 11).

The Committee recommends that the State party reinforce measures specifically targeting the disadvantaged and marginalized individuals and groups who continue to live in poverty, including the working poor, in its new National Strategy to Combat Poverty. In this regard, the Committee draws the attention of the State party to its statement on poverty and human rights adopted in 2001 (E/C.12/2001/10) and encourages the State party to fully integrate economic, social and cultural rights in the mentioned National Strategy. The Committee requests the State party to provide in its next periodic report comparative statistical data, compiled on an annual basis over the five years leading up to the report, on disadvantaged and marginalized individuals and groups living in poverty, including the working poor, disaggregated by origin, sex and age.

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.

19. The Committee is concerned about the high rate of suicides in the State party, which is reported to be three to four daily, in particular among young people. The Committee is also concerned about reports that a large number of suicides are committed with easily accessible firearms (art. 12).

The Committee recommends that the State party take effective measures to combat suicide, including through the adoption and implementation of a national action plan for the prevention of suicide. The Committee also recommends that the State party conduct systematic surveys and undertake scientific studies on the root causes of suicide. The Committee further recommends that the State undertake measures restricting access to firearms kept at home in connection with service in the army.

20. The Committee notes with concern the inadequacy of sex education and of measures to promote sexual and reproductive health in the State party (art. 12).

The Committee recommends that the State party adopt concrete programmes on sex education as well as on sexual and reproductive health including in school curricula. The Committee requests the State party to provide information in its next periodic report on its progress in this regard.

21. The Committee regrets that human rights education is not given sufficient attention in the State party (art. 13).

The Committee reminds the State party that human rights education and training is an obligation of State under article 13 of the Covenant. The Committee urges the State party to promote human rights through human rights education in schools, in awareness-raising and information campaigns for the public at large, and in training programmes for judges, public authorities and all agents of the State.

22. The Committee is concerned about the insufficiency of preschool education facilities for children from 3 to 7 years old, as well as the insufficient number of places in childcare centres for children from 0 to 3 years old, in some cantons (art. 13).

The Committee encourages the State party to promote the harmonization of standards for access to preschool education facilities and childcare centres, so as to ensure that all children living in the territory of the State party have the same opportunities to benefit from childcare and preschool education.

23. The Committee notes with concern the lack of a coherent and comprehensive policy in the State party regarding the promotion and protection of the culture and way of life of the Roma, Sinti and Yeniche. The Committee is also concerned that the provision of long-term and short-term caravan sites for travellers continues to be an unresolved problem (art. 15).

The Committee recommends that the State party take concrete measures to promote the culture and way of life of the Roma, Sinti and Yeniche and to encourage the cantons to establish an adequate number of long-term and short-term caravan sites. The Committee draws the attention of the State party to its general comments No. 20 (2009) on non-discrimination and No. 21 (2009) on the right of everyone to take part in cultural life.

24. The Committee recommends that the State party comply with its Covenant obligations and take into account its partner countries' obligations when negotiating and concluding trade and investment agreements. In this regard, the Committee draws the attention of the State party to its statement to the Third Ministerial Conference of the World Trade Organization, adopted in 1999 (E/C.12/1999/9). The

Committee also recommends that the State party undertake an impact assessment to determine the possible consequences of its foreign trade policies and agreements on the enjoyment by the population of the State party's partner countries of their economic, social and cultural rights. For example, the imposition by the State party of strict intellectual property protection that goes beyond the standards agreed upon in the World Trade Organization can adversely affect access to medicines, thereby compromising the right to health. In addition, the Committee is of the view that the so-called "TRIPS-plus" provisions concerning accession to the International Convention for the Protection of New Varieties of Plants increase food production costs, seriously undermining the realization of the right to food.

25. The Committee encourages the State party to increase the level of its contribution of official development assistance, which presently stands at 0.47 per cent of gross domestic product, and to achieve the international standard of 0.7 per cent as expeditiously as possible.

26. The Committee recommends that the State party adopt safeguards to ensure that the application of the fourth revised Law on Unemployment Insurance does not have a negative effect on the standard of living of beneficiaries. The Committee requests the State party to provide in its next periodic report detailed statistical data on the impact of this law, disaggregated by origin, sex and age.

27. The Committee requests the State party to provide in its next periodic report detailed information regarding the working conditions of prisoners and their compensation.

28. The Committee recommends that the State party take all appropriate measures to guarantee in its legislation the right to marriage by everyone in the territory of the State party.

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.

30. The Committee requests the State party to provide in its next periodic report detailed information on the extent to which the Concordat on Special Education complies with international human rights standards concerning persons with disabilities, and on its uniform application in all cantons throughout the Confederation.

31. The Committee requests the State party to adopt strategies to protect cultural diversity, including through the recognition of the contributions of the various groups in the State's territories to the contemporary culture of the State. The Committee also requests the State party to undertake targeted measures to promote a culture of tolerance throughout its territory by, inter alia, encouraging media to produce materials and programmes to combat the growing problem of intolerance and xenophobia. The Committee would appreciate receiving, in the next periodic report of the State party, detailed information about the progress achieved in this regard.

32. The Committee encourages the State party to consider ratifying the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

33. The Committee requests the State party to disseminate the present concluding observations widely among all levels of society, particularly among State officials, the

judiciary and civil society organizations, to translate and publicize them as far as possible and to inform the Committee on the steps taken to implement them in its next periodic report. It also encourages the State party to engage with non-governmental organizations and other members of civil society in the process of discussion at the national level prior to the submission of its next periodic report.

34. The Committee invites the State party to update its core document in accordance with the requirements of the common core document in the harmonized guidelines on reporting (HRI/GEN/2/Rev.6).

35. The Committee requests the State party to submit its fourth periodic report, prepared in accordance with the revised reporting guidelines of the Committee adopted in 2008 (E/C.12/2008/2), by 30 June 2015.
