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Committee on Economic, Social and Cultural Rights

Forty-fifth session

Summary record (partial)* of the 39th meeting

Held at the Palais Wilson, Geneva, on Monday, 8 November 2010, at 10 a.m.

Chairperson: Mr. Marchán Romero

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The meeting was called to order at 10 a.m.

Consideration of reports

(a) Reports submitted by States parties in accordance with articles 16 and 17 of the Covenant *(continued)*

Combined second and third periodic reports of Switzerland (continued) (E/C.12/CHE/2-3; E/C.12/CHE/Q/2-3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Switzerland took places at the Committee table.*

Articles 10 to 12 (continued)

2. **Ms. Mascetta** (Switzerland) said that, under provisions of the national disability insurance system aimed at bringing disabled persons back into the labour market, employers were encouraged to hire staff who were disabled or had health problems. A legislative commission was currently studying a proposal to introduce a minimum quota of 1 per cent disabled staff in businesses employing more than 250 people. Employers unwilling to meet that quota would pay a tax instead.

3. **Ms. Steiger Leuba** (Switzerland) said that parents or guardians could not lose custody of their children purely on the grounds of straitened economic circumstances. Under article 310 of the Civil Code, custody was withdrawn only when the child's welfare or development would otherwise be compromised. The incapacity or negligence of parents in bringing up their children could be grounds for withdrawal of custody, and the factors taken into consideration in such cases included illness, disability, the social environment and the family's economic circumstances. Custody was only withdrawn, however, as a last resort, and the ultimate objective was, wherever possible, to return the child to its family. Decisions on the placement of children in the care of foster families or institutions were governed by regulations that were currently under review. The preparation of the revised regulations, which would also make provision for monitoring the situation of such children, was scheduled for completion by 2013.

4. Turning to forced and arranged marriages, she said that, under federal legislation due to be voted upon in December 2010, the Civil Register Office would be required to ascertain whether there was evidence that either party was entering the marriage without his or her consent. Marriages that took place against the free will of either spouse, or in which one of the spouses was underage at the time of the marriage, would be automatically annulled under the new legislation. The Federal Act on Foreign Nationals and the Asylum Act would be amended to ensure that only foreign spouses who had come of age could benefit from family reunification regulations. A study on forced marriages in Switzerland and the measures required to combat it was planned, and the Federal Migration Office had referred to the subject in a brochure for immigrants, which was available in 13 languages. The Office had also held a workshop on the issue in 2008 and had launched an awareness-raising campaign.

5. With regard to the right to marriage of undocumented persons, she said that civil registry officers were required to refuse to marry persons in cases where one of the parties was clearly contracting marriage in order to circumvent the provisions on the entry and residence of aliens. From January 2011, couples engaged to be married would be required to prove that they were present in Switzerland legally in order to be married. Civil registry offices would also be required to inform the relevant authorities of the names of persons engaged to be married who had not proven their legal status. The new measures were designed to harmonize the currently widely divergent practices in different civil registry

offices and cantons and were in conformity with the Swiss Constitution and the Council of Europe's Convention for the Protection of Human Rights and Fundamental Freedoms. Government was aware, however, that the application of the new measures, which restricted a fundamental right, must not be allowed to lead to infringements on the right to marry or respect for private and family life.

6. **Mr. Ledergerber** (Switzerland) said that the Council of Europe Convention on Action against Trafficking in Human Beings, which Switzerland had signed in 2008, would probably be submitted to the legislature for ratification before the end of 2010. Furthermore, the Federal Council would propose new witness protection legislation. The number of victims of trafficking in human beings in the State party was unknown, but a new series of countrywide police statistics indicated that there had been 50 cases of trafficking, as defined under article 182 of the Criminal Code, in 2009. The new statistics, which were being aligned with European standards on the collection of data on trafficking in human beings, would facilitate statistical comparisons on an international level.

7. **Ms. Durrer** said that the number of pregnancies terminated in the State party had fallen slightly since 2004, with a rate of 6.4 terminations per thousand women aged between 15 and 44 years, or 129 abortions per thousand live births. The number of abortions among adolescents had also fallen slightly, while use of the morning-after pill had increased. Although there was a federal constitutional framework for sexual and reproductive health education, policy implementation was the responsibility of the cantons and was quite fragmented. Information and counselling were also made available through public-private partnerships.

8. **Mr. Flükiger** (Switzerland), replying to questions on the issuance of residence permits to foreign women who were victims of domestic violence, said that the State party saw no reason to change the current regulations. There was a problem with the dissemination of information about those regulations at the cantonal and local government level, but not with the law itself. The Federal Migration Office was in the process of clarifying its guidelines on the subject.

9. With regard to the rights of the child and coercive measures, he said that, on average, minors were not held in detention longer than adults and that they received adequate legal assistance and protection. Between January 2008 and June 2009, the average duration of detention for minors (excepting the cases of two persons who had come of age during their detention) had been nine days. Unaccompanied minors were assigned an adviser to guide them and to arrange for legal aid and representation. The Federal Council considered that the coercive measures applied to minors under the Federal Act on Foreign Nationals did not violate the provisions of the Convention on the Rights of the Child.

10. Turning to accommodations for asylum-seekers, he said that the cantons were responsible for providing destitute asylum-seekers with suitable lodging but that they received funds for that purpose from the Federal Migration Office. The cantons decided what kind of accommodations to provide, whether in shelters, community housing or apartments. In some cantons, asylum-seekers were initially housed in large reception centres where specialized staff helped them in their dealings with the authorities. The cantons also had special reception centres to house families and unaccompanied minors during the examination of their applications for asylum. Families were kept together during that process, as well as in those cases where their applications were dismissed. The cantons often provided collective housing for unaccompanied minors, regardless of their status, and some were lodged with families. All minors received schooling, generally in public schools.

11. **Ms. Ricka** (Switzerland) said that, largely thanks to the use of antiretroviral treatments since 1995, the number of new cases of HIV/AIDS and deaths caused by AIDS had fallen year by year, with the number of reported cases of AIDS in 2009 standing at 180.

The 2011–2017 federal HIV/AIDS prevention programme would include a focus on sexually transmitted diseases, vaccination against the human papilloma virus, and early diagnosis and treatment.

12. Smoking was responsible for the death of more than 9,000 people per year, but the number of smokers, including adolescents, was declining. The 2008–2012 national anti-tobacco programme placed emphasis on awareness-raising, health care, market regulation and prevention. Switzerland had ratified the World Health Organization (WHO) Framework Convention on Tobacco Control. The legislature had used receipts from a tax on the sale of cigarettes to set up a fund to finance preventive measures to discourage people from starting to smoke in the first place, helping them to stop if they did start and alerting the public to the dangers of passive smoking.

13. The suicide rate was below the European average and, since 2000, had fallen somewhat. The majority of the approximately 1,300 persons who committed suicide each year were male. The Federal Office of Statistics had conducted detailed studies on the phenomenon of suicide. A national fund was preparing a research programme on the question which would gather information on the social, economic, institutional, legal and cultural circumstances surrounding suicides and suicide attempts in Switzerland. In addition, Swiss legislation on the possession of firearms in private households had been strengthened and a referendum would be held in 2011 on measures to introduce further restrictions.

14. The Federal Public Health Office was supporting efforts at cantonal level to launch an early detection programme to help address the problem of depression. Ten cantons had set up such a programme since 2005. At the same time, the frequency with which people were seeking psychiatric treatment had risen, suggesting that the stigma attached to mental illness was waning. More effective out-patient service was envisaged, as was greater reliance on alternatives to the use of measures of restraint in psychiatric institutions. Currently, each institution applied such measures differently, but uniform national guidelines would be introduced with the assistance of WHO.

15. On 30 September 2009, the Federal Council had adopted a bill to address gaps in federal legislation concerning prevention and early detection of widespread or particularly dangerous diseases and mental illnesses. Given the shortage of human and financial resources for therapeutic medical treatment, measures needed to be taken to promote disease prevention. New legislation would help to improve the state of health of the Swiss population and to curb rising health costs.

16. **Ms. Bonoan-Dandan** noted that foreign women who had been married to foreign men for less than three years were at risk of losing their residence permit if they did not live with their husbands. Foreign women who were victims of marital violence thus had to stay with their violent spouses. That was harmful to their emotional well-being and sometimes endangered their lives, so they had no choice but to return to their country of origin. She asked whether any studies had been conducted on the problem and whether the Federal Migration Office was in a position to take action to address it.

17. **Ms. Barahona Riera** said that the response to domestic violence varied from one canton to another. That being the case, how was it possible to introduce national legislation on domestic violence? She would be grateful if the delegation would indicate the legal criteria for authorizing abortions and explain whether they were the same throughout Switzerland. She also asked what federal services addressed the question of sexual and reproductive health rights. Did schools have classes on the subject, and were the classes the same in all the cantons?

18. **Mr. Sadi**, referring to the problem of forced marriages, asked whether Switzerland made use of its consular services or embassies to make sure that immigrant women residing in Switzerland who had married in another country had not done so under duress. Noting

that the right to marry was restricted for persons illegally present in Switzerland, he asked whether that restriction also applied to asylum-seekers until they acquired legal residence.

19. He wondered whether the high rate of suicides in Switzerland was not due in part to the easy accessibility of firearms, and he sought the delegation's view on why Switzerland had not done more to introduce stricter gun controls.

20. **Mr. Riedel**, noting that the delegation had provided information on measures taken at cantonal level to curb suicides, asked about action at federal level. As he saw it, a national approach was needed. He would like to know what steps were being taken to ensure early detection of potential suicide victims and what programmes were being conducted to combat the problem. It would also be interesting to learn about any initiatives being taken in prisons to combat depression among inmates.

21. **Mr. Texier** asked the delegation for an estimate of the number of homeless persons in Switzerland. The Swiss NGO Coalition contended that emergency lodging for the homeless was inadequate, in particular in Lausanne, where only 15 beds were said to be available, and that undocumented immigrants did not have access to such facilities, in violation of their basic rights. The Swiss NGO Coalition had also reported that in 2009 the police in Geneva had forcibly evicted Roma living in makeshift settlements. He recalled that the Roma, as European citizens, were entitled to the protection provided for under a number of European instruments, and he asked the delegation to comment on the intervention by the police, who clearly were acting on orders. He wondered whether it was not possible to increase the number of emergency dwellings. More generally, he urged the State party to address the problem in a more humane fashion.

22. **Mr. Atangana** enquired whether the State party envisaged amending its legislation on conditions for the return of foreigners to their country of origin.

23. **Mr. Flükiger** (Switzerland) said that the Federal Migration Office had published guidelines concerning the Aliens Act of 1 January 2008 so as to ensure its uniform implementation at cantonal level. The Federal Court had subsequently issued 12 rulings on the subject, and the Federal Migration Office was currently analysing them with a view to modifying its guidelines by March 2011. A new bill on forced marriage which would broaden the definition of domestic violence was also under consideration.

24. **Ms. Steiger Leuba** (Switzerland), replying to questions concerning abortion, said that its legal basis was set out in articles 118 to 120 of the Criminal Code, which distinguished between punishable and non-punishable abortions. Anyone who terminated the pregnancy of a woman with her consent, or who encouraged or helped her to do so when she did not meet the conditions set out in article 119 or who terminated the pregnancy of a woman without her consent was liable to punishment. Any woman who terminated her pregnancy more than 12 weeks after the end of the last menstruation and did not meet the conditions set out in article 119 was also liable to punishment. Termination of pregnancy was not punishable if a medical opinion showed that it was necessary in order to eliminate the risk of serious impairment of the woman's health or of serious emotional distress or if a woman, in a written request, stated that she was under serious emotional distress and termination was performed within 12 weeks by a certified physician.

25. Asylum-seekers enjoyed the same rights to marry as other people in Switzerland did, with the exception of those whose applications had been unsuccessful and who had been ordered to leave the country. There were no restrictions on marriage that were based solely on a person's status as an asylum-seeker. In order to prevent forced marriage, registrars were responsible for ensuring that both parties to a marriage had consented of their own free will. Within Switzerland, marriage to a minor was not permitted, even if one or both parties were foreign citizens; marriages to minors contracted outside Switzerland were not recognized.

26. **Ms. Ricka** (Switzerland), underlining the complexity of the problem of suicide, said that the country's high population density might be a factor. Efforts were being made to address the problem, but it would take some time for their effects to be felt. Statistics had revealed a number of "hot spots", and consideration was being given to how best to reduce the suicide rate in those areas. In the hope of detecting early warning signs, a website had been created where young people could ask questions about all aspects of their lives, including mental health. The Government was trying to improve the quality of life and access to health care, while the European Alliance against Depression was working with family doctors to facilitate early diagnosis of depression.

27. **Ms. Durrer** (Switzerland) said that the Swiss Foundation for Sexual and Reproductive Health (PLANeS) provided training and information. Experts visited all compulsory educational establishments approximately once every two years. In addition, teachers provided age-appropriate information and opportunities for discussion on relationships, contraception, pregnancy, sexually transmitted diseases and the avoidance of abuse. The aim was to foster not only self-esteem, respect for others and an understanding of the biological processes involved, but also a critical attitude towards the increasing sexualization of the media.

28. **Mr. Elmiger** (Switzerland) said that information on the situation of homeless people in Switzerland and of Roma displaced from their homes in Geneva would be transmitted to the Committee within 48 hours.

Articles 13 and 14

29. **Mr. Kerdoun** asked how the State party planned to obtain statistics on the proportion of children from immigrant or low-income families who were entering vocational training courses. He also asked why the Gender Equality Programme seemed to apply only to universities and specialized colleges and to exclude students of foreign origin. He sought an explanation for the fact that students from such families seemed to be directed towards vocational training rather than university studies. Was a form of hidden discrimination at work? With regard to apprenticeships, did any private vocational training establishments exist? If so, what was the relationship between private and federal vocational qualifications? He asked whether preschool education for children aged between 3 and 7 was still optional and free.

30. Further to previous recommendations of the Committee and other treaty bodies, he asked whether Switzerland had intensified its efforts to ensure equal access to education for women, immigrants and people from ethnic minorities and to encourage young people to fulfil their potential. Had it increased its investment in education, given that it had the means and capacity to do so? Lastly, he enquired about the status of university teachers, particularly in terms of promotion and salaries.

31. **Mr. Kedzia**, welcoming the fact that public education was compulsory for all children in the State party, without discrimination, asked why, under the Aliens Act, young foreigners could enter vocational training courses only with special permission. Was permission granted automatically or was it difficult to obtain? The practice had potential implications, not only for individuals, but also in respect of article 13 of the Covenant. He sought information on progress in the adoption of legislative measures to address the situation. Expressing appreciation for the State party's recognition of Travellers as a minority, he asked what special measures had been taken to assist them in maintaining their cultural identity and way of life and to protect their rights to housing and education. He also sought information on how the situation differed across cantons.

32. The State party had introduced very detailed, specific constitutional regulations on scientific research in controversial areas, such as reproductive medicine and gene

technology involving human beings, which were intended to safeguard human dignity and life. Were the relevant provisions of the Constitution still contested, particularly by the scientific community, or were they viewed as an acceptable compromise? Did they apply to research conducted abroad by entities falling under Swiss jurisdiction?

33. **Mr. Abdel-Moneim**, referring to table 26 of the report, asked why the University of Italian-Speaking Switzerland appeared to charge foreign students such high fees. In view of the fierce debate sparked by proposals to increase university fees, he also wanted to know whether the Confederation planned to increase its contribution to public spending on education, most of which currently came from the cantons and communes.

34. **Ms. Bras Gomes** said that the introduction of compulsory preschool education for three hours, five mornings per week, was only a first step towards establishing a comprehensive preschool system. Statistics showed that considerably fewer children attended preschool than compulsory primary education. She wondered whether that was due to a lack of places in preschool facilities. She asked whether disaggregated statistics were available to show which socio-economic sectors of society the children attending preschool were from. Turning to the question of migrants, she asked what policy the Federal Government had for providing financial support to migrants' cultural associations.

35. **Ms. Barahona Riera** said that the State party must take urgent measures to bridge the gap in preschool education, since the lack of sufficient places in preschool facilities would deprive some children of their right to education and would have implications for their parents with regard to working hours and childcare. She asked whether there were any policies in place on the provision of day care for children aged below 4 years.

36. **The Chairperson** said that the State party had provided statistics on spending on cultural activities in Swiss francs. He wished to know what those figures represented in terms of gross domestic product (GDP) and as a percentage of the general budget. The most recent statistics were from 2001, and he wondered if more up-to-date information was available.

37. **Mr. Maradan** (Switzerland), speaking on preschool education, said that the cantons had total authority over basic education and full responsibility for funding it. In 2007 a common framework for the harmonization of compulsory schooling in Switzerland had been agreed upon. Each canton must inform the cantonal legislature of its decision to apply that framework. The cantonal legislature would then put that decision to an optional public referendum. A total of 15 out of the 26 cantons had ratified the agreement, while 7 of the more remote cantons had rejected it, and 4 had yet to decide. The cantons that had rejected the agreement actually applied the majority of its provisions, however, including those concerning the decision as to the age at which compulsory schooling should begin. The cantons had decided that primary school, which began at the age of five years, would be the beginning of compulsory education. More than 90 per cent of children in Switzerland, including those in the cantons that had rejected the agreement, already attended school before that age. The issue of a shortage of places did not arise in primary schools but rather in respect of preschool childcare facilities, which were administered at the commune level, not at the cantonal level. An increasing number of cantons were adopting legislation on the funding of preschool facilities.

38. Turning to the right to access to education, he said that each child in Switzerland, even those in irregular situations, had an absolute right to access to education. There were no statistics on that question owing to confidentiality issues. After completing their compulsory schooling, two thirds of students in Switzerland attended vocational education establishments, which were equal in status to higher academic institutions. Encouraging students to enrol in vocational training courses did not work to their detriment, but rather ensured that they were professionally qualified, while their access to higher academic

education also remained open. While a large percentage of disadvantaged and migrant students did enrol in vocational training courses, that simply meant that they would be professionally qualified and would have full access to employment. A bill was currently before the legislature regarding access to vocational training for migrants in an irregular situation. There had been considerable progress in ensuring access to education for irregular migrants over recent years owing, in particular, to collaboration between the authorities and NGOs.

39. Newly arrived migrants attended introductory classes, including language classes, before joining mainstream schools. Those classes enabled them to become familiar with the language of instruction. The duration of attendance at those classes varied from child to child, depending on their level of education on arrival and their original language, since the aim was to integrate them into mainstream schooling as quickly as possible. Programmes had also been put in place, with assistance from embassies, for the preservation of migrants' original languages and cultures. Those programmes had been particularly successful in regions with large migrant communities, such as the Portuguese community in French-speaking Switzerland. They were supported, but not financed, by the Government, and were offered to migrant children during their compulsory schooling. The programmes were not available for all nationalities, however, since, in the Canton of Geneva alone, for example, there were 160 nationalities. Original language and culture classes were provided for 47 language communities. A joint body had been established, comprising representatives of a number of cantons, which met regularly to discuss education for migrants and received input from consulates and migrant communities.

40. The country's universities — other than the two federal polytechnics and the teacher training institute for vocational instructors — were cantonal institutions and were managed entirely by the cantons in respect of funding and tuition fees. In response to an earlier question about a newly established university on the border with Italy that had particularly high tuition fees and that doubled them for foreign students, he explained that those fees were set by the university. The question of tuition fees was the subject of considerable discussion in the press, particularly owing to the large number of foreign students in Switzerland. Studies had been conducted on university finances in order to determine how an increase in tuition fees would affect bursaries and grants, which could be used to assist students from some sectors of society who would be unable to afford the fees. The studies had also looked at the question of whether an increase would hamper freedom of movement between cantons, as Switzerland had a system which enabled students from one canton to attend university in another, since not all cantons had universities. On the basis of the studies, which would be published in early 2011, the conclusion had been reached that tuition fees should be increased as little as possible.

41. **Mr. Elmiger** (Switzerland) said that the answer to the Chairperson's questions on spending on cultural items as a proportion of GDP would be provided to the Committee in writing within 48 hours. On access to education for the children of Travellers, he said that the associations of Traveller communities did not consider that there were any obstacles to their children's education. They were able to attend school in the winter, and they attended distance education programmes from March until October. Travellers often took their children out of the education system at the age of 15 years and encouraged them to follow their traditions and lead a semi-nomadic life. Vocational training institutions for sedentary populations were often viewed by Travellers as an instrument for settling them.

42. **Mr. Ledergerber** said that in 2005 there had been 12 permanent and 44 temporary camps for Travellers. The Confederation had agreed to allow cantons to convert disused land into permanent and temporary camp sites for Travellers. The Canton of Saint-Gall had taken up that offer to create two sites for temporary camps. The Cantons of Berne and

Zürich were considering following suit, and a new camp site had been opened in the Canton of Zug in July 2010.

43. **Mr. Elmiger** (Switzerland), thanked the Committee and said that, although the dialogue had shed light on some divergences between the approach of the Committee and the approach of the Swiss Government to economic, social and cultural rights, the delegation had taken account of the Committee's concerns and hoped that its replies had been to the Committee's satisfaction. Further written information complementing the delegation's replies would be submitted to the Committee in writing within 48 hours.

44. *The delegation of Switzerland withdrew.*

The discussion covered in the summary record ended at 12.15 p.m.