



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

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Committee against Torture

**Consideration of reports submitted by States
parties under article 19 of the Convention**

**Responses by Switzerland to the concluding observations of
the Committee against Torture (CAT/C/CHE/CO/6)**

Switzerland

[7 June 2011]

Consideration of the sixth periodic report of Switzerland by the Committee against Torture

Position adopted by Switzerland following the adoption of the concluding observations by the Committee against Torture on 11 May 2010

The Committee against Torture requested Switzerland to report, by May 2011, on its follow-up to the Committee's recommendations in paragraphs 8, 11, 16 and 23 of its concluding observations (CAT/C/CHE/CO/6).

Paragraph 8

1. Switzerland takes any allegations of violence or the excessive use of force by the police very seriously. It agrees with the Committee that any such behaviour must give rise to a prompt, thorough and impartial inquiry and be prosecuted and punished through the justice system. The legal provisions governing the activities of penal authorities provide all the necessary guarantees to that effect.

2. In that regard, we draw attention to the fact that the new Code of Criminal Procedure, which brings together all the legal provisions governing criminal procedures in Switzerland, came into force on 1 January 2011. Article 7 of the Code states that penal authorities are bound, within the limits of their competence, to open and conduct proceedings as soon as they are informed, or have grounds to presume, that an offence has occurred. Moreover, they must automatically investigate all the facts that have a bearing on the legal classification of the act and the judgement of the accused (art. 6 of the Code of Criminal Procedure). Pursuant to article 5 of the Code, the penal authorities must instigate proceedings immediately and conclude them without unjustified delay. Article 4 establishes the independence of the penal authorities, who are subject only to the rule of law.

3. In addition to the independence of the penal authorities, the aforementioned articles establish the compulsory nature of criminal prosecution. They also uphold the standard principles of establishing facts (*proprio motu*) and expediting proceedings, and they oblige the authorities involved in criminal prosecutions (the police and the prosecution service), as well as the courts, to conduct prompt, thorough and impartial inquiries with a view to prosecuting perpetrators and punishing those found guilty.

4. It should be noted that in Switzerland questions related to allegations of police violence are first and foremost the responsibility of the individual cantons. Since the consideration of the sixth periodic report of Switzerland by the Committee against Torture, the main cantons have published the figures in the table below for 2010.

	<i>Complaints</i>	<i>Criminal prosecutions</i>	<i>Convictions</i>	<i>Compensation awarded</i>
Geneva	35	2	2	-
Vaud	10	12	2	1
Basel-City	34	-	-	-
Zurich	7	5	-	-
Bern	-	9	-	-

5. With regard to victim support, the Federal Act on Assistance to Crime Victims, of 23 March 2007, establishes provisions covering all the benefits available to persons who have experienced a direct violation of their physical, mental or sexual integrity in Switzerland (or abroad under certain circumstances), as a result of an offence under the Swiss Criminal Code. Victims are entitled to such medical, psychological, social, material and legal assistance as is appropriate in each situation. In some cases, the victim's income is taken into account in determining certain types of assistance.

6. Before being admitted onto a police training programme, applicants must pass a strict selection process, which determines whether they have the necessary social skills to apply ethical and human rights principles. During their training, they then follow a 30-lesson course on professional ethics and human rights, ending in two written examinations that must be passed in order to graduate.

7. Police officers then follow further training in the form of case studies on ethical and human rights issues (two to five days).

Paragraph 11

8. On 28 November 2010, the Swiss voters approved the people's initiative on the expulsion of foreign criminals. The initiative can be interpreted in such a way that it gives effect to the principle of non-refoulement. That is why the Federal Assembly did not declare the initiative invalid and submitted it to the vote of the people and the cantons.

9. In December 2010, the Swiss Minister of Justice, Simonetta Sommaruga, set up a working group to study the different juridical and legislative aspects of the implementation of the new constitutional provision. The mandate of the group, whose work is still under way, includes clarifying aspects involving international public law.

10. As in all ordinary legislative processes, the Federal Council will next draw up a legislative proposal, which will be opened to public consultation, and will then prepare a message and a bill for submission to the Parliament. The Government will do its utmost to ensure that the Parliament adopts a law that takes into account both the wishes of the voters, as expressed at the ballot box, and the country's international obligations. Pursuant to the Federal Constitution, all State bodies must uphold international law when making, enacting or implementing laws (art. 5, para. 4, of the Constitution).

11. The Swiss authorities are therefore especially aware of Switzerland's international obligations, including those derived from the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the peremptory norms of international law within the meaning of article 53 of the Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations. The Government will ensure that Switzerland upholds its international commitments.

Paragraph 16

12. An inquiry, in the form of a criminal investigation, is currently being conducted by the public prosecutor's office of the Canton of Zurich into the death of Joseph Ndukaku Chiakwa. The public prosecutor's office of the Canton of Zurich is a wholly independent body, in accordance with the provisions of the European Convention on Human Rights. Any liability in the case will thus be established upon the conclusion of the aforementioned investigation.

13. Following the death of Joseph Ndukaku Chiakwa, his family received the sum of 50,000 Swiss francs from the Federal Office for Migration. This amount was a humanitarian gesture made by Switzerland regardless of any compensation that a criminal or civil court might subsequently award to the deceased man's family.

14. With regard to the accidental death of Samson Chukwu, the case was dismissed by both a court of first instance and an appeals court, as well as by the Federal Court. Nevertheless, the Canton of Vaud covered the cost of repatriating his body to Nigeria for an amount of 13,000 Swiss francs.

15. The order currently being drafted by the Federal Office for Migration on the use of coercive measures by police escorts during forcible returns is not a regulatory instrument. The order to which the Committee appears to refer is a manual entitled *Guide relatif à l'usage de la contrainte et de mesures policières dans le domaine des rapatriements relevant du droit des étrangers* (Guidelines for the use of coercive measures and police measures during forcible repatriations under the laws on foreign nationals). The manual is currently being assessed through a consultation process. Once assessed, it will be submitted to the Expert Committee on Return and Enforcement of Removals for adoption. All the manual's provisions will have the status of recommendations since they will not be adopted by a regulatory body. All the provisions are compatible with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1987 and with the European Convention on Human Rights, to which Switzerland is party.

Paragraph 23

16. The Parliament reiterated its opposition to all corporal punishment in its discussion of the 06.419 Vermot-Mangold initiative. At the same time it stated that the body of civil and criminal legislation already in existence offered sufficient possibilities for protecting children against violence. The Parliament maintained that the creation of an additional law, such as that proposed by the initiative, would not affect the problem, which lies rather in the enforcement of existing laws. In practice, another law would not translate into tangible improvements in the situation of the children concerned.

17. On the other hand, the Parliament agreed, on 19 December 2008, to amend the Swiss Civil Code (on the protection of adults, personal law and the law of filiation). The amendments are due to come into force on 1 January 2013. The aim is to restructure the current law on guardianship in accordance with a more professional approach. The resulting quality improvement should also lead to better protection of children.
