



# Economic and Social Council

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## Committee on Economic, Social and Cultural Rights

### Forty-fifth session

#### Summary record of the 38th meeting

Held at the Palais Wilson, Geneva, on Friday, 5 November 2010, at 3 p.m.

*Chairperson:* Mr. Marchán Romero

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### 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)*

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*The meeting was called to order at 3.05 p.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; HRI/CORE/1/Add.29 and Rev.1)

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

*Articles 6 to 9*

2. **Mr. Texier**, noting that the statistics on unemployment provided by the State party dated from 2006, requested more recent data disaggregated by age, sex and duration of unemployment. He wished to know whether the successive revisions of the Unemployment Insurance Act stemmed from the economic crisis or from a desire to decrease unemployment benefits. He also wished to know whether specific measures had been taken to reduce the wage gap between men and women. Noting that the minimum wage varied in different regions of the country according to collective agreements, he would like to know whether it was sufficient in all regions to ensure a decent standard of living for workers and their families. He would appreciate information on the current status of Swiss legislation on reinstatement of an employee wrongfully dismissed for trade union activities.

3. **Mr. Martynov** said that, in the light of the information provided in paragraph 110 of the State party's report (that the right to work was recognized in only 4 of the 26 cantons of the Confederation, and only as a social policy objective), Switzerland might wish to consider the Committee's recommendation in its 1998 concluding observations on the State party's initial report (E/C.12/1998/26, para. 364) and to ensure that all workers enjoyed the same rights, given that different legal provisions were in force in each canton. He would like to know why senior civil managerial personnel of the departments and personnel of the Federal Department of Foreign Affairs working abroad (para. 229 (a) and (c) of the State party's report) did not have the right to strike. He would like the delegation to provide post-2004 data on social security expenditures and, with reference to paragraph 271 of the State party's report, to say whether the Disability Insurance Act applied to migrants without official residence or gainful employment in the State party.

4. **Mr. Kedzia** asked whether the measures described in paragraphs 121 and 122 of the State party's report also applied to young foreigners — a group that was particularly vulnerable to unemployment — and would like to know about any policies or programmes in place to address the problem. He requested clarification about the "persons granted provisional entry" mentioned in paragraph 129 of the report, and wished to know, in particular, whether they included asylum-seekers awaiting a decision on their asylum application. He would like to know whether they were accorded the same priority as Swiss nationals when seeking their first job. He regretted the lack of statistics on sexual harassment in the workplace (paras. 189 and 190 of the State party's report) and wondered whether there were any plans to devise programmes or policies specifically aimed at the public sector and at the private sector, designed and implemented on the basis of Government-commissioned analyses and studies. Lastly, he wished to know whether, if information to the effect that union representatives had been dismissed and that their employer had refused to reinstate them was confirmed, the Government would then amend the relevant legislation in force.

5. **Ms. Bonoan-Dandan**, speaking on behalf of Ms. Bras Gomes, noted that persons against whom return orders issued appeared to be excluded from social assistance and aid — the last social safety net — and, reminding the State party of its responsibility to ensure the right to social security, wished to know how it planned to do so without discrimination and whether it planned to establish minimum standards, as had been done for maternity benefits. Referring to the Committee's 1998 recommendation (E/C.12/1998/26, para. 374), she would appreciate learning to what extent the new law on health insurance addressed that concern especially since all individuals were required to pay a contribution regardless of their income.
6. Referring to paragraph 12 of the Government's written replies to the list of issues, she sought information on the results of the monitoring of the universal unemployment insurance system and any weaknesses revealed, particularly with regard to long-term unemployment. She would also like the delegation to confirm that the reform mentioned in paragraph 160 of the written replies, which would enter into force in 2012, would preclude suspension of any payment of health insurance benefits. She would like to know why women farmers did not receive maternity benefits (para. 161 of the written replies) and whether the State party planned to ratify the International Labour Organization (ILO) Convention concerning Minimum Standards of Social Security (No. 102).
7. **Mr. Elmiger** (Switzerland) said that the fourth amendment to the Unemployment Insurance Act had been introduced in order to ensure the long-term payment of benefits and correct the annual underlying deficit of 1 billion francs resulting from overly optimistic 2003 predictions of a 2.5 per cent unemployment rate, while it was currently 3.3 per cent. However, the basic benefits remained unchanged. The Government's approach to the right to work was that everyone should have the opportunity to make a decent living, one of the social objectives recognized in the federal Constitution. The minimum wage was not provided for by law; it was set by binding collective agreements established by management and labour representatives themselves, depending on their field's particular needs, without State intervention. Hence, a series of accompanying measures to the Agreement on the Free Movement of Persons between Switzerland and the European Union was aimed at combating excessively low wages for foreign workers, and the federal authorities could establish standard service contracts for the entire country in a number of sectors (recently domestic workers).
8. Switzerland had indeed ratified the ILO Right to Organise and Collective Bargaining Convention (No. 98). Although the political climate was not yet favourable to a decision on reinstating wrongfully dismissed workers, the draft partial amendment to the Code of Obligations on wrongful or unjustified dismissal taken up on 1 October 2010 provided for, inter alia, an effective measure (increasing the compensation period for wrongful or unjustified dismissal from 6 to 12 months) that should strengthen protection for union representatives and prevent their dismissal on the pretext of company restructuring, for example.
9. Strikes were legal under the Swiss Constitution, and the Federal Court's case law had reinforced the enforcement of that provision. It was forbidden, however, for certain professional categories in order to guarantee the provision of essential goods and services. In any event, there were no major labour relations conflicts or serious disagreements in the country.
10. **Mr. Ledergerber** (Switzerland) said that, according to September 2010 figures, the unemployment rate was 3.5 per cent (3.8 per cent among women and 3.3 per cent among men). With a rate of 6.6 per cent, foreigners were more deeply affected than Swiss nationals, for whom the rate was 2.6 per cent. Disaggregated by age group, the unemployment rate was 4.3 per cent for those aged 15–24, 3.5 per cent for those aged 25–49, and 3.2 per cent for those aged 50 or more.

11. Regardless of the economic situation, unemployment was always higher among young foreigners, who had more difficulty finding apprenticeships than their Swiss counterparts (8.1 per cent in 2009 for young foreigners, compared to 4.8 per cent for Swiss nationals in the same age group).

12. **Ms. Lempen** (Switzerland) said that, as stated in article 4 of the Federal Act on Equality between Men and Women, sexual harassment was a form of discrimination on the ground of gender. Next to pay discrimination, it was the second most common form of discrimination invoked before the courts. Article 10 of the Act made it possible for persons who brought a case before the courts to be reinstated in their company but, since they rarely wished to do so, prevention was a preferable option. A website had been created following the study on sexual harassment conducted in 2008 by the Federal Office for Gender Equality and the State Secretariat for Economic Affairs. It provided documentation and materials on prevention and offered practical advice for public and private employers on how to intervene in specific cases, along with training for the various stakeholders. The Federal Office for Gender Equality had also funded the creation of a website to answer questions from persons directly affected by sexual harassment.

13. On the basis of a survey on wage structure conducted in 2008, the Federal Statistical Office had recently published figures on the wage gap between men and women, which showed a slight increase since 2006 in the difference between average salaries for men and women in the private sector, although that gap had been decreasing for some years. Once published, the results of the 2010 survey would show whether or not that trend was confirmed and whether measures were needed. The Federal Office for Gender Equality had several courses of action at its disposal. It had the authority to, inter alia, monitor respect for equal pay in the Confederation's public markets. It could also give companies access to its free, voluntary self-monitoring software called Logib. In March 2009, a dialogue on equal pay had been initiated among employers' organizations and trade unions, the Federal Office of Justice, the State Secretariat for Economic Affairs and the Federal Office for Gender Equality in order to encourage as many companies as possible to voluntarily evaluate their wage policies and put an end to any gaps in remuneration. The Federal Administration had already used Logib to evaluate some of its departments and was currently studying the possibility of joining the aforementioned dialogue.

14. **Ms. Durrer** (Switzerland) said that the cantons of Vaud, Geneva and Bern were working on adopting a procedure to monitor equal pay in public markets that would go beyond the simple honour system currently in use.

15. **Ms. Mascetta** (Switzerland) said that the basic disability insurance and old-age and survivors' insurance (AVS) schemes were universal in that they applied to all persons residing or gainfully employed in Switzerland. Strictly speaking, social security was the responsibility of the federal Government. Since the recent adoption of the Federal Act on Family Allowances harmonizing a number of minimum standards, including the amount of allowances, the family allowance scheme, which fell within the competence of the cantons, was now largely regulated at the federal level. Management of insurance schemes was often decentralized, but monitoring was the responsibility of the federal offices. Social assistance, on the other hand, which was the second level of social protection, fell within the competence of the cantons, which sometimes delegated management of that assistance to municipal governments. Another important body in Swiss social policy was the Swiss Conference of Social Action Institutions, a professional association comprising representatives of municipalities, cantons, the Confederation and even private social assistance bodies, which published standards ensuring a certain level of harmonization of social assistance in Switzerland. In an effort to strengthen collaboration and coordination among the various levels of government, in June 2008, thanks to an agreement signed between the Confederation and the Conference of Cantonal Directors of Social Affairs, a

national dialogue on Swiss social policy had been opened and would serve as a permanent forum for discussion among the authorities responsible for social policy at the federal, cantonal and municipal levels.

16. To say that migrants in an irregular situation did not benefit from any social protection was erroneous; illegibility for social insurance did not in fact depend on legal status. All individuals who met the conditions set by the relevant social insurance were insured. Health insurance, for example, was compulsory for all individuals living in Switzerland, including migrants in an irregular situation, who also received maternity benefits and the basic old-age and survivors' insurance. The only exception was unemployment insurance, for which a residence permit was required. Any individual not covered by social security could invoke article 12 of the Constitution, which enshrined the fundamental and enforceable right to receive assistance in situations of distress.

17. The Conference of Cantonal Directors of Social Affairs, which had always campaigned for federal outline legislation setting a minimum standard of living, had established a working group to draft very specific proposals to be submitted to the Federal Council. For reasons of jurisdiction, the Council was not much in favour of such legislation.

18. In Switzerland, a woman who worked on her family's farm without earning a salary was not considered to be gainfully employed and therefore was not entitled to maternity benefits. However, if she had invested in the farm, she could be considered self-employed and would then be entitled to such benefits, which were paid to all salaried or self-employed women.

19. Switzerland had ratified the ILO Social Security (Minimum Standards) Convention (No. 102) and the ILO Invalidity, Old-Age and Survivors' Benefits Convention (No. 128), which set higher standards. It had also ratified the European Code of Social Security.

20. **Ms. Ricka** (Switzerland) said that, pursuant to the federal Constitution, the Confederation and the cantons ensured that every person in the country received the care necessary for their health. Their approach was twofold and included the Federal Health Insurance Act, which required every person residing in Switzerland, legally or illegally, to take out health insurance, and the obligation of the cantons to fund public hospitals according to a scale whereby half the amount was paid by the cantons and half by the insurers. The federal Government subsidized 7.5 per cent of the total amount of insurance premiums for the least affluent members of the population. Those funds were shared out to the cantons according to the number of persons insured; the cantons regulated entitlement to those subsidies and also generally granted subsidies of their own on a par with the federal subsidy. The health system was therefore funded by the payment of health insurance premiums and by the Federal Government and the cantonal governments.

21. **Mr. Sadi** asked how the retirement age was determined.

22. **Mr. Texier** asked whether collective agreements set a minimum wage for each sector of economic activity without exception, and if not, what happened in cases where none had been set.

23. **Mr. Martynov** asked whether the unemployment rate varied greatly from region to region. He also requested the State party to update the figures in Table 15 on social security expenditures (para. 234 of the State party's report).

24. **The Chairperson**, speaking as a member of the Committee, asked for clarification on the health insurance situation of undocumented migrants or migrants in an irregular situation. Regarding the statement that all persons residing in Switzerland must be covered by health insurance, he had understood that undocumented persons were excluded. What were the conditions for admission and exclusion? Were there really three categories of

residents – residents in a regular situation, residents in an irregular situation and undocumented residents?

25. **Mr. Ledergerber** (Switzerland) said that the unemployment rate by region in September 2010 was 3 per cent in German-speaking Switzerland and 5.1 per cent in French-speaking Switzerland and Ticino.

26. **Ms. Mascetta** (Switzerland) said that when the Federal Act on Old-Age and Survivors' Insurance had come into force after the war, the retirement age had been 65 years for both men and women. It had then been lowered to 62 years for women, on the assumption that their situation in the labour market was less favourable than that of men owing to, inter alia, their responsibilities as mothers and, if applicable, as employees. When in 1997 the Act had undergone its tenth revision, the retirement age had been progressively raised and was currently set at 64 years. After six years of debate, the eleventh revision of the Act, which was intended to make the retirement age equal for men and women, had just been rejected owing to disagreement on that very question.

27. **Mr. Elmiger** (Switzerland) said that while there was no national minimum wage, many professions were regulated by collective agreements that were binding nationwide. The same salary scale thus applied to all employees in a given sector, such as the hotel business, catering or domestic work, thereby preventing excessively low wages.

28. Maternity protection was the subject of a private member's bill submitted in 2007 by Ms. Maury Pasquier, National Councillor for the canton of Geneva, requesting that Switzerland should ratify the ILO Maternity Protection Convention (No. 183). The two parliamentary committees had agreed and were currently in the process of drafting the relevant legislation.

#### *Articles 10 to 12*

29. **Ms. Barahona Riera** asked whether the Swiss Government planned to amend criminal legislation to classify domestic violence as an offence, including acts of conjugal sexual violence against women. She also requested statistics on cases of domestic violence brought before the courts, and the sentences handed down. The delegation might indicate whether the State party planned to ban corporal punishment and punish sexual violence against children, and describe the federal campaigns against such acts.

30. It would also be interesting to know how widespread forced marriage was in the country, and which population group and cantons were most deeply affected by that harmful practice.

31. The Committee would also appreciate further information on the methods used for placing minors taken away from their parents for economic reasons in foster care and on what was done to minimize the duration of foster care in such cases.

32. Further information would be useful on the relevant legislation on voluntary termination of pregnancy, along with statistical data on the number of such operations performed each year, disaggregated by age group and including adolescents. The delegation might also provide information on the reproductive health services available to the population and describe the awareness-raising or information programmes conducted in schools.

33. Lastly, she would like information about foreign women victims of conjugal violence, whose Swiss residency depended on their husband's residence permit. According to many NGOs in the country, such women were reluctant to file a complaint for fear of losing their residency status if they divorced.

34. **Mr. Atangana** asked whether the Government planned to amend the requirements for Swiss residency for spouses of foreigners with residence permits who divorced, and, in particular, to rescind the requirement of proof that social reintegration in the country of origin appeared highly unlikely.

35. He would appreciate statistics on the sentences handed down in cases of domestic violence and acts of violence against children.

36. **Mr. Sadi** expressed surprise at the number of forced marriages in the State party (17,000 per year) and wished to know what measures the Government had taken to address the issue. He wished to know the meaning of the sentence in paragraph 350 of the State party's report that read: "The extent to which forced marriages between two foreigners concluded outside Switzerland falls under the jurisdiction of Swiss criminal law remains to be established."

37. He would like the delegation to provide the current poverty rate in the country and explain whether the State party planned any anti-smoking campaigns targeting young people; why the suicide rate was so high among 15 to 24-year-olds, and why, proportionally, many more men than women suffered from HIV/AIDS, cancer and cardiovascular disease.

38. **Mr. Martynov** asked whether the Government planned to bring its legislation into line with current international standards regarding the detention of minors 15 to 18 years old. Minors in that age group could currently be held in detention for up to 12 months in the State party; yet international standards provided for detention only as a last resort and for the shortest possible duration. In that regard, he wished to know the nature of the reservations the State party had made upon ratification of the Convention on the Rights of the Child.

39. The delegation might indicate how soon the Government planned to ratify the Convention on the Rights of Persons with Disabilities and whether cantonal and federal private enterprises were legally required to hire a certain quota of persons with disabilities. He would like to know how many children could be accommodated in day-care centres in the State party, knowing how essential those facilities were for single-parent or low-income families to be able to rejoin the workforce. He would also like to know whether federal and cantonal laws permitted involuntary placement in a psychiatric institution.

40. **Mr. Kedzia**, welcoming the fact that, according to the Federal Statistical Office, the number of working poor had decreased by one percentage point between 2007 and 2008, expressed concern that the situation had not improved for those who, inter alia, were raising a child on their own, had three or more children, or had a fixed-term contract or a low level of education. He would like detailed information on the measures taken to help those particularly vulnerable groups, and wished to know to what extent their poverty impeded their access to social services, particularly health insurance. The delegation might also clarify whether rejected asylum-seekers had access to social services.

41. **Ms. Bonoan-Dandan** asked the delegation to comment on the information from various NGOs indicating that there were on average three to five suicides per day in the country. She also wished to know if there were any official statistics on suicides and if a study of the issue was planned.

42. She would like to know whether the State party had ratified the Council of Europe Convention on Action against Trafficking in Human Beings, whether it had available data on trafficking and whether it took measures to combat the practice. Finally, was it true that asylum-seekers were placed in atomic bomb shelters while waiting for their applications to be considered?

43. **Ms. Lempen** (Switzerland) said that there was no federal law on domestic violence but that several cantons, such as Neuchâtel and Geneva, did have a specific law on the issue. The canton of Vaud had also considered adopting such a law, but legislators had deemed that provisions included in various codes would be better understood and more frequently applied.

44. **Ms. Durrer** (Switzerland) said that since 2004 the Criminal Code had provided for domestic violence cases to be prosecuted *ex officio* (including in the absence of a complaint), although a case could be dismissed at the victim's request. Harassment and threats were also punished under the Civil Code. There were also plans to set up a national hotline service for both victims and perpetrators of domestic violence.

45. **Ms. Lempen** (Switzerland) said that a study was also planned on the economic costs of domestic violence. An interdepartmental working group on domestic violence set up under the Federal Administration would submit a report at the end of 2011 on the implementation of measures in that regard. It would soon be possible to track investigations and legal proceedings, thanks to the figures the Federal Statistical Office had kept since 2009 on cases on the police files.

46. **Ms. Durrer** (Switzerland), replying to Mr. Martynov's question about day care for children in the canton of Vaud, said that a law had been adopted to remedy the shortcomings. The law was being used as a model by other cantons and might eventually lead to a similar federal law. Currently, the number of places available was inadequate (24 for every 100 children under 5 years of age in preschool and 15 for every 100 children under 13 years of age in out-of-school care). However, in mind it was difficult to precisely evaluate day-care needs, which were different in rural and urban areas.

47. **Mr. Ledergerber** (Switzerland) said that the statistics on poverty contained in the Government's written replies to the list of issues were the most recent available. In order to make it possible to compare statistics with those of neighbouring countries and States members of the Organization for Economic Cooperation and Development, in December 2010 Switzerland would for the first time publish statistics based on the method used in the European Union Statistics on Income and Living Conditions (EU-SILC). While the overall percentage of working poor had decreased from 4.8 per cent in 2007 to 3.8 per cent in 2008, it remained high among single-parent families and families with three or more children (about 10 per cent) and varied according to level of education and employment status (whether employee or not).

48. **Ms. Mascetta** (Switzerland) said that the national strategy to combat poverty was a practical tool that, despite its possible shortcomings and lack of measurable goals, aimed to make recommendations at the federal and cantonal levels, without changing the competences set forth in the Constitution. The strategy had been designed in consultation with all relevant stakeholders, and the expectations of its intended beneficiaries had been taken into consideration; namely, it involved not only adopting financial measures in their favour, but also recognizing them as full members of society.

49. The strategy included six thematic sections: children, particularly childcare outside the home; the transition from school to training and then to work; the family; long-term unemployment; the elderly; and the threshold effects of means-tested benefits. The situation of foreigners was considered in the light of those different contexts. The strategy's three objectives were to prevent poverty, provide access to financial independence and optimize the social benefits and protection system. A conference on poverty was scheduled for 9 November to present the strategy to the public, discuss it and encourage its implementation. The conference would also provide an opportunity to hear the viewpoints of the cantons and of persons affected by poverty, and to address issues such as collaboration between the various social institutions and supplementary benefits paid to families.

50. With regard to the bill on means-tested supplementary family benefits, first proposed 10 years previously, the relevant parliamentary committee had asked the Federal Administration to draft a more limited bill targeting poor working families. The cantons would be asked to give their viewpoints in January 2011. In June 2010, the Conference of Cantonal Directors of Social Affairs had adopted recommendations on minimum standards for supplementary benefits, based on the model used in the canton of Ticino. It was also being discussed in the national dialogue on Swiss social policy.

51. A new federal Act on family benefits, adopted in 2008 and entered into force in 2009, set the minimum level for those benefits, which must be paid to all persons whose income fell under a certain threshold, including full or part-time employees and persons not gainfully employed. A private member's bill to broaden the scope of that law to include self-employed workers was currently under review.

52. Cantons had severely criticized the national child protection programme designed in 2009 by the Swiss Foundation for Child Protection as part of Association PPP (Association for Public-Private Partnerships), not for its content, but because of the responsibilities assigned to private organizations. Thus, it had not been possible to implement the programme in July 2010 as planned. Work on the issue would continue through a private member's bill on protection for children against domestic violence. A report was expected in autumn 2011, and Association PPP was currently conducting international studies on best practices in that field.

53. **Ms. Steiger Leuba** (Switzerland), drawing attention to the legal framework in place to protect children against violence, as described in paragraphs 181 to 183 of the Government's written replies to the list of issues, said that a private member's bill entitled "Better Protection for Children against Ill-Treatment" had been rejected in 2008 because the Legal Affairs Committee of the Federal Council had considered the existing legislation to be adequate. The problem was thought to lie mainly in the implementation of the current laws.

54. Regarding sexual abuse against children, Switzerland had signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse on 16 June 2010. As the Swiss Criminal Code was not in full conformity with the Convention, particularly regarding the protection of minors 16 to 18 years old, a number of legislative amendments would be required before Switzerland could ratify the Convention. The pre-ratification consultation process should be completed by mid-2012.

55. **Mr. Spenlé** (Switzerland) said that, in principle, Switzerland planned to withdraw its last remaining reservations to the Convention on the Rights of the Child, pertaining to articles 10.1, 37 (c) and 40. The entry into force of the new Code of Criminal Procedure in 2011 would present an opportunity to take another look at the two latter reservations.

56. The Federal Department of Foreign Affairs was making preparations for the official consultation process with the cantons and civil society regarding the ratification of the Convention on the Rights of Persons with Disabilities. The ratification of an international instrument was meaningless unless Switzerland was in a position to respect its provisions, which might require entering reservations. According to a thorough analysis of the Convention conducted by the University of Bern, Swiss legislation was not yet fully compatible with the instrument in the areas of education and employment. Nevertheless, given the declaratory nature of the Convention and of its expected progressive implementation, there seemed to be no major obstacle to its ratification by Switzerland at least by 2012.

*The meeting rose at 6 p.m.*