

International Disability Alliance (IDA)

Disabled Peoples' International, Down Syndrome International, Inclusion International,
International Federation of Hard of Hearing People,
Rehabilitation International, World Blind Union,
World Federation of the Deaf, World Federation of the DeafBlind,
World Network of Users and Survivors of Psychiatry,
Arab Organization of Disabled People, European Disability Forum,
Red Latinoamericana de Organizaciones no Gubernamentales de Personas con
Discapacidad y sus familias (RIADIS)

Suggestions for disability-relevant recommendations to be included in the Concluding Observations Committee on Economic, Social and Cultural Rights 45th Session (1- 19 November 2010)

The International Disability Alliance (IDA) has prepared the following suggestions for the concluding observations, based on references to persons with disabilities to be found in the Committee's 45th Session state report on Switzerland.

SWITZERLAND

Switzerland has neither signed nor ratified the CRPD.

References to persons with disabilities:

State Report

53. In Switzerland some 700,000 persons, or about 10 per cent of the population, have a **disability. As a result of their disability, they may suffer disadvantages in several areas of daily life. The right of disabled persons to equality covers various measures designed to eliminate those disadvantages. The right is based on the idea that a disability cannot be reduced to an individual health problem but is influenced by everyday situations. It seeks therefore to change those disabling circumstances.**

54. The prohibition of **disability-based discrimination** established in article 8, paragraph 2, of the Constitution, taken in conjunction with article 8, paragraph 4, gives the legislatures of the Confederation and the cantons a mandate to take steps to eliminate discriminatory situations affecting **persons with disabilities**. The Federal Act of 13 December 2002 on the elimination of discrimination affecting persons with disabilities (**Disabled Persons Equality Act** (LHand)) entered into force on 1 January 2004, having been adopted on the basis of article 8, paragraph 4. The purpose of the Act is to prevent, reduce and eliminate inequalities affecting **persons with disabilities and to create suitable conditions to facilitate their independent participation in the life of society**. It provides inter alia that **all buildings and facilities open to the public, if newly built or undergoing renovation, must be made easily accessible. Community services (at the federal, cantonal and communal levels) and public transport must also be adapted for persons with disabilities. The Act also prohibits private individuals who provide public services from treating such persons in a discriminatory manner by reason of their disability. The Act provides remedies and rights of legal action in order to make it easier for persons with disabilities to assert their rights. There are several pieces of federal and cantonal legislation regulating other questions of inequality, including questions of communication and primary education.**

57. Swiss legislation on equality for the **disabled** rests on the same bases and pursues the **same objectives as the United Nations Convention on the Rights of Persons with Disabilities, adopted in 2006. The Federal Council is in favour of signature and ratification by Switzerland. However, in accordance with current practice it will not sign until the possible legal implications for the Confederation and the cantons have been studied and it can be sure that the obligations assumed under the Convention will be fulfilled.**

Labour market situation of persons with disabilities

136. Great importance is attached to promoting jobs for **persons with disabilities**, in particular under the Disabled Persons Equality Act (LHand) and the Disability Insurance Act (LAI).

137. The Disabled Persons Equality Act does not contain any specific rules for eliminating inequalities and promoting equality in the labour market. However, it does provide that the **Confederation, in its capacity of employer, should play a pioneering role and encourage the recruitment of persons with disabilities** (LHand, art. 13, para. 1). The Act also provides for the possibility of supporting pilot projects designed to promote the employment of **persons with disabilities** in addition to the measures taken under the **disability insurance system**.

138. The principle aim of the fifth revision of the Disability Insurance Act, which entered into force on 1 January 2008, is to **maintain persons with or threatened with disabilities in their jobs or find them jobs, in order to avoid payment of a pension**. To this end the fifth revision provides inter alia for the establishment of an **early detection and intervention system, the introduction of preparatory reintegration measures for vocational rehabilitation, and the expansion of the existing vocational rehabilitation measures**.

139. Further information will be found in the report of 30 November 2004, submitted by Switzerland to the International Labour Organization (ILO), on the application of the Vocational Rehabilitation and Employment (**Disabled Persons**) Convention (No. 159).

296. The rehabilitation measures come in several forms:

(a) **Medical measures:** these measures are not designed to treat the disability as such; they are measures which are directly **necessary for occupational retraining or retraining with a view to performing normal work** and are likely to produce a lasting and major improvement in earning capacity or the capacity to perform normal work or to prevent a significant diminution of those capacities. In such circumstances, disability insurance pays for the cost of medical treatment (as an outpatient or in a public hospital ward), the services of paramedical personnel, and the medicines prescribed by a doctor. It should be noted that **insured persons aged under 20 years suffering from a congenital disorder are subject to special conditions: disability insurance pays for the necessary medical treatment of the disorder, regardless of the prospects of return to work or performance of usual work; the Federal Council maintains a list of congenital disorders recognized as such;**

(b) **Vocational measures:**

(i) Vocational guidance for insured persons whose **disability** makes it difficult for them to choose a new occupation or pursue their previous one;

(ii) Payment of the additional costs resulting from the **disability** for the purposes of initial vocational training, preparation for a secondary job or for work in a protected workshop, training in a new occupation, or a refresher course;

(iii) Placement in a new occupation, if this is necessary as a result of the **disability**, and retraining in that occupation;

(iv) Active support in the search for a suitable job and continuing guidance in retaining an existing job;

(v) Provision of financial aid under certain circumstances in order to enable the insured person to take up or develop an independent activity and to cover the cost of any changes to his or her business necessitated by the **disability**.

(c) **Special education measures:** these are **subsidies paid for the special education of insured persons aged under 20 who, as a result of a disability, are unable to attend a public school and cannot be expected to do so. Special education includes school education as such and, for children incapable or hardly capable of assimilating elementary subjects, measures designed to develop either their manual skills or their ability to perform the ordinary acts of everyday life or to interact with the members of their families;**

(d) **Physical aids:** disability insurance covers the **physical aids which persons with disabilities need** in order to take a paid job or perform their usual work, to maintain or enhance their earning capacity, to study, to learn an occupation or take a refresher course, or to perform everyday functions. Such aids **include prostheses, hearing aids, guide dogs for the blind, wheelchairs, motorized vehicles, and means of adapting the work station;**

398. **Persons with disabilities** are generally not disadvantaged by having to live in smaller quarters. There is certainly no appreciable difference between persons with disabilities and other persons in terms of the ratio of adults per household to number of rooms, but this consideration does not address the fact that **persons with disabilities** often need more space.

Mental health

Para. 35: The Committee also requests the State party to provide more detailed information in its next report on the situation of the mental health of the population and in particular mental patients in the country and on progress achieved in this field.

413. In 2000 the Federal Council declared the promotion, maintenance and restoration of **mental health** to be one of the priorities of its future health policy, and it placed these goals on its political agenda. Since then, work has been done in this field by several agencies of the Federal Administration:

The Swiss Health Observatory regularly publishes updated **data on the mental health of people living in Switzerland and on recourse to psychiatric care;**

For some years now the Secretariat of State for the Economy has been carrying out a series of measures to reduce the factors causing stress in the workplace;

At the request of WHO, the Federal Public Health Office (OFSP) has been commissioned to produce a **national report on the mental health** of the Swiss, including a summary of the existing strategies and policies.

414. In collaboration with the Swiss Conference of Cantonal Health Directors (CDS), the OFSP supports, in a coordination role, the establishment by the cantons of a programme of action based on reliable data for the early detection of depression and provision of the best treatment for it. Five cantons have already set up an Alliance against Depression.

415. Several cantons are working on appropriate means of improving **mental health**, both by incorporating **mental health** in the cantonal health-promotion and sickness-prevention strategies and, in the case of several cantons, by **re-examining their basic arrangements for providing psychiatric care.**

Persons with health problems or chronic disabilities

450. The Swiss Health Survey 2002 found that about 14 per cent of men and 18 per cent of women aged over 15 and living in Switzerland had a chronic illness or **disability**. Some 3 per cent of them had severe functional limitations and 1 per cent were **disabled** in activity-of-daily-living terms.

451. There is still little information on the specific situation of persons with **disabilities** in the health system (waiting times for medical treatment, satisfaction with the treatment

received). There is no doubt that **disabled persons** have more frequent recourse to health care in all areas. And they clearly take more advantage of what is available in terms of prevention.

452. The fourth revision of the Disability Insurance Act (LAI), in force since 2004, included the insertion of a provision designed to increase the independence of persons with disabilities: **a new disability benefit, replacing the old one, to offset the cost of special care for disabled children and the cost of home care. Any person who, owing to impaired health, is in permanent need of the assistance of another person or personal supervision in order to perform the basic functions of everyday life is deemed disabled. This new benefit is now paid also to persons living in their own homes who need support in coping with the necessities of life; it is also granted to disabled children (formerly only from age 18). Furthermore, the amount of the benefit paid to persons living at home was doubled.**

453. In addition, **the Government adopted in June 2005 an ordinance establishing the “Budget support” pilot project.** Participants in this project receive, instead of the disability insurance benefit, individual budget support to enable to make their own choice of the type and extent of the assistance which they need. **The Government hopes that this budget support will lead in the long term to a reduction of the demand for placement in an institution, as a result of more people living at home, even from persons needing extensive assistance and that it will produce savings on the supplementary benefits paid under old-age, survivors’ and sickness insurance schemes.** The pilot project was launched on 1 January 2006, for three years; it is being implemented in three cantons: Bâle-Ville, St. Gallen and Valais. All recipients of disability benefits may take part in it. A total of 400 participants is expected. **The budget support scheme meets an essential claim of persons with disabilities: the right to make their own decisions about their type of accommodation and their living conditions. The project will be evaluated in order to decide whether budget support should be incorporated in the basic legislation.**

Table 19

Medical-social institutions: number of beds per 100,000 inhabitants, by type of institution, 2005

<i>Type of institution</i>	<i>Beds</i>
Care homes	398,3
Medical-social institutions	732,8
Old people’s homes	36,1
Institutions for the disabled	279,0
Institutions for drug addicts	30,2
Institutions for psycho-social patients	47,7
Spa and convalescence centres and other institutions	22,6
Total	1546,7

Source: Federal Statistical Office.

Children with disabilities

561. The Disabled Persons Act (LHand), which entered into force in 2004, obliges the cantons to ensure that **“disabled children and adolescents receive basic education suited to their specific needs”**. The cantons are also required to **encourage the enrolment of such children in normal schools by suitable means “provided that this is possible and fosters the well-being of the disabled child or adolescent”**. The Act provides that subject to certain conditions it may be possible to request a court or the administrative authorities for the inequalities in the provision of education to be eliminated.

562. **More and more children with learning difficulties or disabilities are being educated in normal classes instead of in special classes or schools. For the moment, most of the cantons are reconsidering this approach on the basis of the experience gained so far and are amending their directives in order to apply the legislation on the right to equality of persons with disabilities.**

597. On 5 October 2007 the **Federal Chambers approved a partial amendment of the Federal Act on copyrights and associated rights (Copyright Act (LDA))**. This amendment is designed to ensure the balanced protection of creative works in keeping with the needs of the information society. It guarantees on the one hand the possibility of taking part in cultural life by including in the Act, for example, a **copyright waiver in the case of persons with disabilities**, while on the other hand ensuring the protection of artists by establishing the right of public performance and the protection of technical processes and by consolidating performers' rights. It thus plays a very large role in safeguarding the rights mentioned in article 15 of the Covenant.

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Question 33 : Indiquer également les mesures prises par l'État partie pour **harmoniser le traitement des enfants handicapés dans les établissements scolaires** entre les différents cantons, et faire en sorte que **les enfants handicapés, qui ont des besoins éducatifs spéciaux, puissent être intégrés à tous les niveaux scolaires, y compris dans les écoles privées, et ne subissent pas de discrimination en raison de leur handicap.**

1. Le système de pédagogie spécialisée que la Suisse connaît actuellement propose aux enfants et adolescents handicapés une vaste offre de scolarisation et de thérapie. Personne ne conteste cependant la nécessité d'intervenir dans ce domaine à plusieurs égards. Il s'agit principalement d'abandonner le modèle fondé sur les déficiences et de dépasser la conception ségrégative du système de pédagogie spécialisée. **En effet, malgré une tendance à l'intégration scolaire, la part des enfants dans les classes spécialisées et les écoles spécialisées a plutôt augmenté ces dernières années dans les cantons alémaniques notamment et, par là, le recours à des structures d'enseignement ségrégatives.**

2. L'ensemble du domaine de la **pédagogie spécialisée** est actuellement en plein bouleversement. Toutes les compétences pratiques, juridiques et financières ont été transmises aux cantons en date du 1^{er} janvier 2008. La Conférence suisse des directeurs cantonaux de l'instruction publique (CDIP) a adopté le 25 octobre 2007 **l'Accord intercantonal sur la collaboration dans le domaine de la pédagogie spécialisée, qui entrera en vigueur dès que dix cantons y auront adhéré, mais au plus tôt le 1^{er} janvier 2011**. Pour l'heure, six cantons ont décidé de faire partie de ce concordat. Cet accord sert d'une part à mettre en œuvre les mandats de l'art. 62, al. 3 de la Constitution fédérale et de l'art. 20 de la **loi sur l'égalité pour les handicapés** (LHand; RS 151.3). D'autre part, il concrétise les efforts d'harmonisation du principe constitutionnel introduit par l'art. 43a, al. 4 de la Constitution fédérale, qui veut que **les prestations de base soient accessibles à tous «dans une mesure comparable»**. Le concordat estime que la **pédagogie spécialisée fait partie du mandat public de formation**. Il affirme que la préférence doit aller aux solutions intégratives, et que l'enseignement ségrégatif doit être une exception. Il fixe en outre des programmes de base minimaux que les cantons sont tenus de proposer. Plusieurs cantons sont actuellement occupés à combiner de manière plus intense les programmes d'enseignement ségrégatifs avec l'enseignement intégratif, ou à remplacer les premiers par le second, pour autant que cela soit dans l'intérêt des enfants concernés. Il s'agit donc d'inverser la tendance qui, jusqu'à maintenant, allait vers une extension de l'enseignement spécialisé.

3. L'art. 19 de la Constitution fédérale représente déjà une norme minimale, en terme de droit individuel, pour la scolarisation des enfants et adolescents handicapés. Comme l'a dit le Tribunal fédéral dans une décision de principe, la formation doit être gratuite, conforme à leurs capacités individuelles et à leur développement personnel. Elle doit également être suffisante pour préparer les écoliers à une vie quotidienne autonome. Ce droit est enfreint lorsque la formation de l'enfant est limitée au point de ne pas lui accorder l'égalité des chances ou de ne pas lui transmettre ce que notre

société considère comme indispensable. Il implique une offre de formation appropriée et suffisante dans les écoles publiques. Dans un arrêt de 2007 sur le droit à l'enseignement primaire pour les enfants handicapés, le Tribunal fédéral a expressément retenu que l'art. 8, al. 2 de la Constitution fédérale interdit également la discrimination d'enfants handicapés dans le domaine scolaire et que la LHand charge les cantons de prévoir les mesures nécessaires pour les enfants et adolescents handicapés. Il confirme ce faisant une jurisprudence de longue date, qui a toujours compris le droit à l'enseignement primaire comme un droit individuel en ce sens qu'il faut prendre en compte les besoins concrets de l'enfant concerné.

4. Dans la formation professionnelle de base (degré secondaire II / ISCED 3), des projets sont destinés à **compenser les préjudices subis par les personnes souffrant d'un handicap. Un projet prévoit d'éliminer, par la transmission d'informations, les désagréments subis par les personnes handicapées lors de la formation professionnelle.** Ceci doit être réalisé au moyen d'une plateforme d'information proposant des aides à la mise en œuvre concrète de compensations du préjudice subi par les personnes handicapées dans leur formation professionnelle ou lors du processus de qualification. **Peuvent profiter de ces informations concrètes grâce aux dispositions légales et aux expériences les personnes atteintes d'un handicap, les centres de formation professionnelle, les offices chargés de la formation professionnelle, les organisations du monde du travail, les responsables d'examen et les (éventuelles) sociétés de formation.**

IDA recommendations:

- To take measures for the wide dissemination of information relating to the Disabled Persons Equality Act, including making it available in accessible formats, to ensure that children and adults with disabilities are informed of their rights.
- To amend Federal and cantonal laws on mental health to prohibit involuntary psychiatric care and to prohibit measures which permit for third party consent for psychiatric care.
- To incorporate individual budget support to ensure that persons with disabilities make their own choices about the type and extent of assistance they need to live in the community.
- To adopt measures in the law to ensure the implementation of inclusive education of children with disabilities, such as the obligatory training of all teachers (beyond special education teachers), to require individual education plans for all students, ensure the availability of assistive devices and support in classrooms, educational materials and curricula, ensure the accessibility of physical school environments, encourage the teaching of sign language and disability culture, allocate budget for all of the above.
- To eliminate discrimination and combat stigma attached to disability in all spheres, in particular in education, training, and employment.
- To continue with a timely review of Federal and cantonal law to the end of ratification of the CRPD and its Optional Protocol.