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6 June 2011

Mr. Ambassador,

In my capacity as Rapporteur for follow-up on Concluding Observations of the United Nations Committee against Torture, I refer to the examination of the sixth periodic report of Switzerland (CAT/C/CHE/6) by this Committee, at its 44th session, held from 26 April to 14 May 2010. At the end of that session, the Committee's Concluding Observations (CAT/C/CHE/CO/6) were transmitted to your Permanent Mission. In paragraph 28 of those Concluding Observations, the Committee requested, pursuant to its rules of procedure, that the State party provide, within one year (by May 2011) further information regarding areas of particular concern identified by the Committee in paragraphs 8, 11, 16 and 23 (see extracts annexed).

The Committee has adopted a follow-up procedure to pursue issues that are serious, that can be accomplished by the State party in a one year period, and that are protective.

The information sought by the Committee has not been provided yet, although more than one year has elapsed from the transmittal of the Committee's Concluding Observations. Accordingly, I would be grateful for clarification as to the current status of your Government's responses on the matters, and as to when the information requested will be forthcoming. Upon receipt of this information, the Committee will be able to assess whether further action is needed.

The Committee looks forward to pursuing the constructive dialogue it has started with the authorities of Switzerland on the implementation of the Convention. In this context, the Committee seeks to receive your response to this enquiry.

Accept, Mr. Ambassador, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Felice D. Gaer'.

Felice D. Gaer

Rapporteur for Follow-up on Concluding Observations
Committee against Torture

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COMMITTEE AGAINST TORTURE
 Forty-fourth session
 26 April – 14 May 2010

**CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
 UNDER ARTICLE 19 OF THE CONVENTION**

Concluding observations of the Committee against Torture
(Extracts for follow-up of CAT/CHE/CO/6)

SWITZERLAND

(...)

C. Main subjects of concern and recommendations

(...)

Police violence

8. The Committee is concerned by allegations of violence or the excessive use of force or other mistreatment by the police during the questioning of suspects in their homes or in police stations. The Committee is particularly concerned by the fact that some of these allegations mention an excessive use of force against foreigners, especially asylum-seekers and migrants, above all of African origin, and particularly in the cantons of Geneva and Vaud (arts. 2, 12, 13, 14 and 16).

The State party must ensure that prompt, thorough and impartial inquiries are held into all allegations of violence or mistreatment by police, that the perpetrators are prosecuted and, if proven guilty, punished in proportion to the seriousness of their acts, that victims receive compensation and, where appropriate, rehabilitation. The State party must also continue training police officials and raising their awareness of human rights and, in particular, of the provisions of the Convention. In its next report, it must inform the Committee of any ongoing investigations and their outcome.

(...)

11. The Committee notes that the people's initiative on the expulsion of foreign criminals under discussion in Parliament calls for foreigners to be deprived of their residence permit and any further right to reside in Switzerland, regardless of their status, if they are convicted by final judgement of murder, rape or other serious sexual offences, or of other acts of violence such as armed robbery, trafficking in human beings, drug trafficking or breaking and entering, or if they have improperly claimed social security or welfare benefits. The Committee also notes that such persons would be expelled and banned from returning to Switzerland for a period of between 5 and 15 years, and that the authorities would lose all discretionary power in this respect. The Committee notes, finally, that the Federal Council has made a counter-proposal and recommended that the initiative be rejected, having found it incompatible with international law and the Swiss Constitution. However, the Committee remains concerned that the application of the initiative, if adopted by referendum, would seriously risk violating the principle of non-refoulement (art. 3).

The State party must continue its efforts to ensure that the initiative on the expulsion of foreign criminals does not violate the international obligations that Switzerland has undertaken, especially the Convention against Torture, or article 25 of the Swiss Constitution on the principle of non-refoulement.

(...)

16. The Committee is most concerned by the death of a Nigerian citizen, Joseph Ndukaku Chiakwa, on 10 March 2010, when he was being forcibly repatriated by air. While noting that the authorities of the State party have opened an inquiry, the Committee is concerned about whether the coercive measures applied by the State party are compatible with the provisions of the Convention. The Committee is also concerned by the failure of the State party to respond to claims for compensation from the families of the two latest victims in recent cases of forced repatriation (arts. 2, 3 and 14).

The State party must:

(a) **Open an independent and impartial inquiry into the circumstances of the death of Joseph Ndukaku Chiakwa, establish who was responsible for the use of force that led to his death, prosecute and punish the perpetrators and offer compensation to the victim's family;**

(b) **Provide the Committee with details of the compensation made to the families of the two latest victims of forcible repatriation by air;**

(c) **Inform the Committee as to whether the order on the use of coercive measures by police escorts during forcible returns currently being drafted by the Federal Office for Migration is in accordance with the State party's international obligations, particularly the Convention against Torture.**

Corporal punishment

(...)

23. While taking note of information supplied by the State party, according to which the jurisprudence of the Federal Tribunal confirms the ban on corporal punishment, including for educational purposes, and that corporal punishment is also covered by article 126 (2) of the Criminal Code, the Committee notes with concern that corporal punishment is not specifically prohibited under the legislation of the State party (art. 16).

The State party should specifically prohibit corporal punishment in its legislation. To that end, the Committee urges the State party to relaunch the 06.419 Vermont-Mangold parliamentary initiative, aimed at enacting legislation to protect children from corporal punishment and other affronts to their dignity, which was shelved by Parliament. The Committee also calls upon the State party to carry out public-awareness campaigns on the negative effects of violence against children, especially corporal punishment.

(...)

28. The Committee requests the State party to report, within one year, on its follow-up to the Committee's recommendations in paragraphs 8, 11, 16 and 23 of the present document.
