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Switzerland: Banning the construction of minarets would violate international human rights law.

On 29 November 2009, Switzerland will hold a referendum on a proposed Constitutional amendment banning the construction of minarets in the country. Amnesty International believes that such a prohibition would breach Switzerland's obligations under international human rights law.

The proposal, which was initiated by members of the Swiss People's Party¹, will ask Swiss voters if they wish to add the sentence "*The construction of minarets is forbidden*" to Article 72 of the Constitution².

The initiators of the referendum claim that the construction of minarets is not protected by the freedom of religion as they have "*no religious significance*". They assert that minarets are "*symbols of a religious-political claim to power and dominance which threatens - in the name of alleged freedom of religion - the constitutional rights of others.*" They argue that their prohibition is required "*to guarantee ... the social and legal order defined by Constitution.*"

Amnesty International believes that any general ban on the construction of minarets would violate both the freedom of religion and the prohibition of discrimination on the grounds of religion as set out in the International Covenant on Civil and Political Rights (ICCPR) and the European Convention on Human Rights (ECHR). Switzerland has ratified both of these treaties.

The freedom of religion.

As set out in Article 18 ICCPR and Article 9 ECHR, the right to the freedom of religion comprises both a private aspect – that is, the freedom to have or adopt a religion or belief of one's own choice – and an external aspect – that is, the freedom, either individually or in community with others, to publicly manifest one's religion or belief in worship, observance, practice and teaching.³

¹ The Swiss People's Party has more seats in the Swiss Federal Assembly than any other party, having secured 29% of the vote in the 2007 Federal elections.

² Article 72 of the Swiss Constitution currently states that "The Federation and the Cantons may take measures to maintain public peace between members of the various religious communities."

³ Article 18 ICCPR and Article 9 ECHR.

Contrary to the claims of the initiators of the referendum, a general prohibition of the construction of minarets would violate the right of Muslims in Switzerland to manifest their religion. Moreover, in so far as it appears to be based on an assessment by others as to whether it is valid to treat certain symbols and practices as being of religious significance, it could also amount to an attempt to interfere with the private aspect of the right to religion, that is the right to hold religious beliefs of one's choice, which includes determining the content of one's religious beliefs.

A prohibition on the construction of minarets would constitute a restriction on the right to manifest one's religion. Under both the ICCPR and the ECHR, such restrictions are only allowed if they are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.

While there may be legitimate reasons for measures which might in individual cases interfere with the construction of minarets, there is no legitimate public policy justification for a general prohibition on their construction. The proposed prohibition does not meet the test of being necessary for any of the permissible reasons stipulated in international human rights law. It is based on the view that the fundamental tenets of Islam are inherently incompatible with Swiss Constitutional values and the assumption that Muslim believers are less able to square to their supposed religious beliefs with the requirements of living in a secular democracy than the faithful of other religions. If it is claimed that the activities of some Muslims living in Switzerland may pose a threat to Swiss constitutional values, the appropriate response is to pursue their authors through the criminal and administrative law provisions applicable to such activities. It is not to target and stigmatise an entire religious community through a restriction on their human right to manifest their religious beliefs.

The prohibition of discrimination on the grounds of religion.

Article 2 ICCPR and Article 14 ECHR prohibit discrimination on the grounds of religion. A provision is discriminatory where it results in a difference of treatment on the basis of a prohibited ground that cannot be objectively justified. A measure prohibiting the construction of minarets that did not also prohibit the construction of other religious edifices, such as church spires, would clearly constitute such a difference of treatment. As the difference in treatment is not proportionate to a legitimate aim, the proposed prohibition would violate Switzerland's obligation not to discriminate on the grounds of religion.