



**International Covenant on  
Civil and Political Rights**

Distr.: General  
26 August 2009  
English  
Original: French

---

**Human Rights Committee**

**Replies of the Government of Switzerland to the  
list of issues (CCPR/C/CHE/Q/3) to be taken up in  
connection with the consideration of the third  
periodic report of Switzerland (CCPR/C/CHE/3)\***

[10 August 2009]

---

\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

### **Reply to question 1 of the list of issues (CCPR/C/CHE/Q/3)**

1. When Switzerland concludes an international treaty it generally carries out the required changes to its legislation at the time of ratification. Similarly, in order for Switzerland to be able to withdraw the remaining reservations it must be in a position to make the necessary amendments to its legislation.
2. The reasons against withdrawing the reservations were set out in paragraphs 350 ff. of the report. We can, however, add the following:
3. In its message of 30 January 1991 concerning the ratification of the Covenants, the Federal Council noted, with regard to the reservation concerning article 20, paragraph 1, of the Covenant, that certain forms of propaganda for war were illegal under Swiss criminal law. It deemed that it would be difficult to circumscribe the concept of propaganda for war in legal terms and define what elements would constitute a criminal offence. Establishing such a provision could also impinge upon important rights, in particular freedom of expression. Furthermore, the federal and cantonal constitutions allow the Federal Council and cantonal governments to prohibit propaganda for war. As for the provisions of the Criminal Code punishing certain forms of propaganda for war, the Federal Council has pointed out that in addition to the provisions mentioned in the report, article 259 of the Criminal Code makes it an offence publicly to incite to crime or violence against other persons or their property, imposing the penalty of deprivation of liberty or a fine.

### **Reply to question 2 of the list of issues**

4. Effective supervisory mechanisms are an indispensable tool for fostering and implementing human rights.
5. The International Covenant on Civil and Political Rights recognizes, at the international level, rights similar or comparable to those set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms (the European Convention on Human Rights). The European Convention has a well-established and proven supervisory mechanism. Switzerland has been subject to this mechanism for 35 years, and during this period over 3,700 applications have been submitted. To ensure legal protection by an international body of the fundamental rights guaranteed under the Covenant, therefore, there is no urgent or indispensable need to accept a parallel supervisory mechanism. We should mention that, contrary to the European Court of Justice in Strasbourg, the Human Rights Committee does not hand down legally binding decisions.
6. With its ratification in 1986 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Switzerland also accepted that the Committee against Torture could consider individual communications relating to the provisions of the Convention. In 2003, Switzerland recognized the competence of the Committee on the Elimination of Racial Discrimination to consider individual communications in application of article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. It played an active part in the formulation and adoption of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which was adopted by the Swiss Parliament on 20 March 2009 and will be ratified by the Federal Council this year. In 2008 it adopted the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.
7. The Federal Council will carefully follow developments in the practices of these committees. While accession to the Optional Protocol to the International Covenant on

Civil and Political Rights is no longer on the agenda since the 2003–2007 legislature submitted its report, it is not out of the question for that matter to be taken up at a later date.

### **Reply to question 3 of the list of issues**

8. Following a partial revision of the Constitution (justice reform) that entered into force on 1 January 2007, the article 191 to which the question refers became article 190.

9. This provision stipulates that “The Federal Supreme Court and other judicial authorities shall apply federal acts and international law”. Article 190 of the Constitution, often called the immunity clause, prohibits the Federal Court (the text later addresses only this body) from refusing to apply federal laws or international law on the grounds that they are contrary to the Constitution. The purpose of this rule, which has long been entrenched in Swiss constitutional law, is to make acts adopted by the legislature immune to constitutional review by the courts.

#### **(a) Consequences for review of cantonal acts**

10. Oversight of cantonal acts is not covered by the immunity clause, article 190 of the Constitution. The Federal Court can without restriction review the compliance of such acts with the Constitution and with international law. If it is ascertained that a violation of the Constitution or international law has occurred, the cantonal act in question will not be applied, or will be invalidated.

#### **(b) Consequences for review of federal acts**

11. The effect of article 190 of the Constitution is to limit constitutional review of federal acts. The scope of this limitation has, however, been restricted by the Federal Court’s interpretation of article 190. The Court has interpreted this provision as one that does indeed require the application of federal acts, even when they are deemed to be unconstitutional, but not as a ban on considering whether federal acts are consistent with the Constitution. It always seeks in the first instance to construe federal law in a manner consistent with the Constitution. If no such construction is possible and it is ascertained that an act is unconstitutional, the consequence of article 190 is that the unconstitutionality of the act cannot prevent the act from being applied. That does not prevent the Federal Court, when it finds an act unconstitutional, from calling for the legislature to amend it; however, the legislature is under no obligation to comply with such a request.

12. Article 190 of the Constitution does not cover federal ordinances (legislative enactments of the Government). These can thus be reviewed and set aside if unconstitutional, unless the unconstitutionality results directly from a provision of a federal act.

13. The immunity clause, article 190, deals only with the relation between federal acts and the Constitution and between international law and the Constitution. It says nothing about the relation between federal acts and international law. Checks on compliance with international provisions for the protection of human rights are thus unaffected. The rules followed in this field stem from the practice of the Federal Court, which seeks first and foremost to interpret federal law in a manner consistent with international standards. If such an interpretation is not possible, the Court allows international human rights protection standards to take precedence over federal acts. Thus, a federal act that is in breach of an international provision for the protection of human rights will not be applied. So far, this jurisprudence has applied mainly in cases involving the rights guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and sometimes those guaranteed by the Agreement on the Free Movement of Persons concluded with the

European Union and its member States. There has not yet been a case where a federal act was not applied because it violated a right guaranteed by the Covenant. However, there is nothing to stop such a case from coming up in the future, inasmuch as the Federal Court considers that the guarantees under the Covenant are directly applicable.

### **Reply to question 4 of the list of issues**

#### **(a) National human rights plan**

14. Switzerland has no national human rights plan as such. However, the various government entities dealing with human rights questions meet regularly to exchange points of view and coordinate their work.

#### **(b) Coherence and unity of cantonal and communal policies**

15. Switzerland is a State with a monistic tradition, and the provisions of the Covenant are directly applicable throughout the country. The cantons and communes are thus obligated to implement its provisions without the Confederation having to make any special arrangements. The Government informs the cantons and communes and any interested person or organization about issues related to the Covenant and its implementation through its Internet site. The authorities at the Confederation level are available for consultation by the cantonal and communal authorities on any question relating to the implementation of the Covenant. Lastly, the application of the Covenant by the cantons and communes is safeguarded by the possibility of applying to the Federal Court as the court of final appeal against any breaches of the Covenant (see paragraphs 8 to 13 above).

16. Article 3 of the Constitution of 18 April 1999 stipulates that the cantons are sovereign to the extent that their sovereignty is not limited by the federal Constitution, and that they can exercise all rights not vested in the Confederation. It follows that, in matters under their sovereignty, the cantons themselves can choose the most appropriate means of giving effect to the Covenant. The cantons coordinate their policies in various fields (for example, they have issued guidelines for the use of stun guns), but are not obliged to do so under federal law insofar as a specific field falls under their sovereignty. The Confederation monitors these fields through the Federal Court.

#### **(c) National human rights institution**

17. The joint working group of the Confederation and the cantons set up in 2007 by the Federal Department of Foreign Affairs (DFAE) to consider the need for and timeliness of setting up a national human rights institution and, possibly, to consider various models handed in its report on 10 May 2008. It recognized that Switzerland faces certain human rights problems, but there were divergent views as to whether it was necessary to set up a new institution.

18. In 2008 and 2009 DFAE held consultations within the federal administration. Several bodies considered that it would be appropriate to set up a pilot structure to build the capacity to protect and promote human rights among the authorities and others concerned. The Department proposed a pilot solution under which one or more universities would be invited to tender for the establishment of a Government-support resource centre for human rights, from which the Confederation and other entities, including the cantons, would buy services. The proposal was adopted by the Federal Council on 1 July 2009. The pilot programme will last five years.

## Reply to question 5 of the list of issues

19. When an international treaty is ratified by Switzerland it is directly applicable under Swiss law, on an equal footing with domestic laws. International treaties thus are included in the compendiums of laws, which also publish federal acts and ordinances. All information concerning the Committee's consideration of the implementation of the Covenant is made available on the Internet site of the Federal Office of Justice ([http://www.bj.admin.ch/bj/fr/home/themen/staat\\_und\\_buerger/menschenrechte2/uno-sozialpakt\\_und.html](http://www.bj.admin.ch/bj/fr/home/themen/staat_und_buerger/menschenrechte2/uno-sozialpakt_und.html)). Switzerland's periodic reports are available in French, German and Italian. The Committee's recommendations are available on the site in French and English, and any authority or interested person can consult them.

## Reply to question 6 of the list of issues

### (a) Federal law prohibiting discrimination

20. So far, the Federal Council has always been of the opinion that the general rules of criminal law and private law, together with the enactments of public law, provide sufficient protection against discrimination.

21. At the constitutional level, Switzerland has included a general prohibition of discrimination in article 8, paragraph 2, of the Constitution of 18 April 1999. Article 35, paragraph 3, of the Constitution requires that the authorities ensure that fundamental rights, where appropriate, apply to relationships among private persons, which also means that discrimination must if possible be prohibited by the courts and the authorities. In particular, the protection of good faith (article 2 of the Civil Code), protection of the person under civil law (articles 28, 328 and 336 of the Civil Code) and the prohibition of illegal agreements and agreements contrary to public morals or public order (articles 19 and 20 of the Code of Obligations) are among these rules of law. There have already been cases in which employers have been convicted of violating a person's rights by discriminating on the basis of their skin colour or religion.

22. Apart from applying the rules of private law in a manner that respects fundamental rights, Swiss law also includes specific legal provisions to prevent discrimination, in particular the Equality Act for cases of discrimination based on gender, the Disabled Equality Act and the rule making racism illegal under article 261 bis of the Criminal Code. The Federal Council is therefore of the opinion that the law in force already allows individuals to defend themselves against discrimination by other individuals.

23. The Parliament apparently agrees. On 4 May 2009 the Legal Affairs Committee of the National Council decided not to follow up on a parliamentary initiative (the Rechtsteiner initiative of 23 March 2007) calling for a law on equality of treatment, and suggested that the National Council do likewise. The majority of the Committee considered that protection against discrimination was a major concern. However, as current provisions were sufficient and any possible lacunae could be removed case by case, there was no need to enact a general law on equality of treatment.

### (b) Measures

24. We may also mention that the Service against Racism, in cooperation with other federal bodies, recently launched various measures to prohibit discrimination.

25. During a seminar on 2 December 2008 entitled "Protection against discrimination: Learning from Europe?", renowned experts looked beyond our borders at new

developments in the European Union in respect of the right to equality and what lessons Switzerland could learn from them.

26. In 2009 the Service against Racism published a legal guidebook on racial discrimination (available in French here: <http://www.edi.admin.ch/frb/00645/index.html?lang=fr>). It gives an overview of the way in which current law can be used to protect against discrimination in the most common everyday fields, such as apartment-hunting, school, family, the job market, contacts with the authorities and the provision of services in the private economy. It is intended firstly for advisory centres and assistance bodies, but also for victims of discrimination and racist acts. To bring theory and practice together, the publication also comes with course offerings drawn up individually to meet the specific needs of the intended audience.

27. Also in 2009, the Swiss Forum for Migration and Population Studies, with the support of the Service against Racism, held a national day on Diversity and Justice in Switzerland, with members of the judicial branch. The aim of the project is to help spread good professional practices in the evaluation of individual cases relating to diversity and to enable participants to acquire the intercultural skills to differentiate between cultural approaches and the perceived stereotype of the “foreigner”.

## Reply to question 7 of the list of issues

### (a) Measures taken by the Confederation

28. As a supplement to the measures described in the report, we should also mention in particular the following measures, which involve the cantons and the communes in the prevention of racial discrimination.

29. **Initial and continuous training of police officers:** A growing number of cantonal and municipal police departments are holding information sessions, meetings and training courses with the aim of improving police conduct in particularly stressful situations that can give rise to discriminatory reactions and other forms of aggressive behaviour. The Service against Racism has helped to fund courses against racial discrimination proposed by non-police specialists in the following institutions: the police academies in Basel-Town, the City and Canton of Zurich, the Central and North-West Switzerland Police Academy, the Eastern Switzerland Police Academy and the Swiss Police Institute in Neuchâtel. In 2010 a review of these activities will be drawn up for the first time.

30. **Implementing the Federal Council’s integration measures:** In August 2007 the Federal Council adopted a detailed report on the policy of encouraging integration, together with a series of measures relating first and foremost to languages, training and the job market. The total amount allocated for these measures is 50 million francs. An evaluation at the end of 2008 showed that the measures are progressing as planned. An interim evaluation will be submitted to the Federal Council at the end of 2009.

31. **Promoting integration of foreigners, list of priorities for 2008–2011:** Since 2001 the Confederation, pursuant to article 25 (a) of the Act on the permanent and temporary residence of aliens (LSEE) and the Ordinance on the Integration of Foreigners (OIE) of 13 September 2000, has been subsidizing the social integration of foreigners. A list of priorities issued by the Federal Department of Justice and Police in 2007, as proposed by the Federal Commission on Migration, sets out for each legislature the themes for measures eligible for co-financing by the Confederation, which has a budget of around 14 million francs a year for this purpose. The content and implementation of the new list of priorities for 2008–2011 drawn up by the Department of Justice and Police are based on the new Aliens Act of 16 December 2006 (LEtr) and the amended OIE.

32. **Urban projects programme:** The aim of the Confederation's urban projects programme is to prevent difficulties in integration and the transformation of neighbourhoods into ghettos. Several medium-sized cities are taking part between 2008 and 2011. Other cities and communes joined the programme when a call for tenders was issued.

33. **Integration efforts by the Tripartite Conference on Urban Areas:** Founded in 2001, the Tripartite Conference on Urban Areas has from the very beginning included the integration of foreigners on its agenda as a cross-cutting field involving all levels of the State. A working group was assigned the task of drawing up a report on the legal obstacles to the integration of foreigners. Published in 2004, the study had a large impact on the population and politicians, and was followed in 2005 by a Conference on the integration of foreigners, thus launching a broad discussion of the opportunities and difficulties raised by the growing multiculturalism in our society.

34. In 2009 the Tripartite Conference has drawn up a report and recommendations on how the Swiss policy for the integration of foreigners should evolve. In order to allow broad participation on this subject, it has organized four regional forums. This major debate is aimed at establishing whether Switzerland's current integration policy is headed in the right direction and whether the underlying principles will allow the challenges of integration to be met.

35. **Cities against Racism:** Launching the International Coalition of Cities against Racism in 2004, the United Nations Educational, Scientific and Cultural Organization (UNESCO) established a ten-point plan of action with a framework for implementation at the local level. This allows cities which so desire to plan, coordinate and compare their efforts to combat racism, discrimination and xenophobia. The network in Switzerland includes Winterthur, Geneva, Lausanne, Zurich and Bern and other cities have expressed interest.

**(b) Measures taken by the cantons**

36. In general terms, several of Switzerland's cantons and cities have adopted laws and established structures to take full advantage of the potential that migration offers. In the past five years the cantons and a number of communes have designated officials to be in charge of integration questions.

37. The measures taken by the various cantons are set out below.

*Appenzell Outer-Rhoden*

38. The canton of Appenzell Outer-Rhoden has established a mediation body to work against racism and xenophobia, which also works on contacts with Travellers.

*Appenzell Inner-Rhoden*

39. On 26 April 2009 the canton of Appenzell Inner-Rhoden adopted a cantonal act on integration reflecting in practical terms the relevant provisions of federal law. The aim of this act is to promote beneficial coexistence between the Swiss and foreign populations. It stipulates that the canton, the communes and the schools must encourage the integration of migrants in accordance with federal law.

*Aargau*

40. In conjunction with other cantons, Aargau has set up a free counselling service for persons exposed to discrimination or racist acts. The cantonal integration and counselling office works closely with this service. The canton also takes part in the inter-cantonal campaign entitled *Aller Anfang ist Begegnung* (Everything Begins with an Acquaintance).

*Basel-Country*

41. The cantonal authorities of Basel-Country have always spoken out against racism and extremism. The canton has an integration service and a contact office that offers counselling against rightist extremism. The canton also financially supports a private organization combating racism, which inter alia provides advice to asylum-seekers. The integration service provides a great deal of support to intercultural dialogue.

*Basel-Town*

42. Basel-Town has a cantonal service for integration and against discrimination, the aim of which is to combat racist and discriminatory behaviour and the marginalization and unequal treatment of migrants. The service runs its own programmes, sets up prevention mechanisms and launches campaigns against racism and marginalization.

43. Working with other cantons and with federal support, Basel-Town mounted the campaign entitled *Aller Anfang ist Begegnung* (Everything Begins with an Acquaintance), the aim of which is to combat prejudice and stimulate reflection. Previously, between 2000 and 2005, the canton, with Basel-Country, had carried out the *Tatsachen gegen Vorurteile* (Facts vs. Prejudice) campaign to encourage an objective discussion looking into all aspects of migration issues.

44. Furthermore, the canton financially supports numerous private projects such as the Stop Racism regional counselling service or the *Gesellschaft für das Gute und Gemeinnützige Basel*, an association that on the one hand provides counselling to migrants on work-related and everyday issues, and on the other hand advises employers, the authorities and social institutions, for example when difficulties in communication arise because of language or culture.

45. In the event of discrimination, the persons concerned may make use of a mediation body. Complaints about staff in the Department of Justice and Security may also be sent to a service within the Department. Criminal complaints may be lodged at every police station, or directly with the public prosecutor's office. The police administration transmits every case of illicit behaviour by police employees to the prosecutor's office for investigation.

46. For some years now, as the police have had to deal with large numbers of Africans selling cocaine in the street, all members of the police have been told about and made aware of African ethnic characteristics by experts from the integration service. As a result, the number of complaints of racist behaviour has plummeted.

*Bern*

47. Since 2007 the canton of Bern has taken part, along with other cantons, in the *Aller Anfang ist Begegnung* (Everything Begins with an Acquaintance) campaign. Posters showing well-known persons speaking out on the subject have been put up in the streets and in public transport to raise public awareness of integration in everyday life.

48. A publication on integration comes out twice a year under the title MIX and provides insightful reports on the main related subjects. The second issue for 2009, for example, is devoted to racism. MIX is distributed in the communes, schools, counselling services and organizations dealing with migration-related issues, and to other interested parties.

49. A law is currently being drawn up to better define and combat ethnic and cultural discrimination. It makes combating ethnic and cultural discrimination a matter for the canton and communes, and provides for planning and pilot mechanisms for the purpose. Possible action may take the form of targeted information, offers of advice or exchanges



and cooperation with other organizations active in this field. Advice is provided to inhabitants of the canton regardless of their nationality and to persons likely to display discriminatory behaviour. The prohibition of discrimination also covers private individuals who publicly offer goods or services subject to authorization or who provide public services under a mandate from the canton or commune. The bill will be subject to extensive consultation in 2009. It is scheduled to enter into force in 2012. Planning for implementation and decisions on the means to be made available for the purpose have yet to begin.

50. Racism, discrimination and xenophobia are addressed as part of police training, specifically in instruction regarding the European Convention on Human Rights, psychological training and community policing. The subjects are dealt with in targeted continuous training events held within the police service by external experts and at outside institutions.

51. Complaints of racist or xenophobic behaviour by members of the police are examined first by the cantonal police's internal affairs service. If there is suspicion that the behaviour is actually criminal, the case is handed over to an investigating judge, who is completely independent from the police. Once informed of the outcome, the police check whether administrative measures have to be taken; these may range all the way up to dismissal.

#### *Fribourg*

52. In the canton of Fribourg, foreign residents holding residence permits are allowed to vote and may be elected at the communal level. This affects nearly half of all foreign adults. Foreigners account for nearly 10 per cent of eligible voters.

53. At the end of 2008 the cantonal Parliament adopted a plan of action for 2008–2011 for the integration of migrants, which provides the framework for the cantonal integration policy. This policy is aimed at fostering harmonious cohabitation between communities, at encouraging integration in a spirit of reciprocity, at promoting respect for fundamental rights and the State based on the rule of law, at applying the principle of non-discrimination and at coordinating as best possible related public and private initiatives.

54. Two independent bodies are active in the canton to support and defend migrants and to combat racism and discrimination. The Swiss Workers' Mutual Aid Organization advises victims and witnesses of discrimination in employment and in everyday life. A contact centre with legal and social staff permanently in attendance offers advice and services.

#### *Geneva*

55. By a popular vote held on 24 April 2005 the canton of Geneva extended the right to vote in communal elections to foreign nationals domiciled in a Geneva commune who have been legally resident in Switzerland for at least eight years.

56. The canton has an Act on the Integration of Foreigners, which was adopted on 28 June 2001 and entered into force on 15 September 2001. According to its preamble, the Act was adopted "acknowledging the multicultural nature of the canton of Geneva in order to foster the participation of foreigners in all fields of public life and to eliminate inequality and direct and indirect discrimination". The preamble also emphasizes "that it is the responsibility of the cantonal authorities to promote an integration policy that on the one hand fosters the broadest possible participation of foreigners in communal and cantonal life, and on the other hand makes all residents aware of the price and benefits of a multicultural society designed to ensure respect for every person's identity". Article 1 of the Act states that the Act is aimed at "fostering harmonious relations between all inhabitants of the

canton of Geneva. It shall encourage the seeking out and use of appropriate solutions to foster the integration of foreigners and equality of rights and duties”.

57. The Office for the Integration of Foreigners launched an Action Week against Racism in 2006, and repeated the experiment in March 2009, supporting and coordinating various activities related to culture, information, discussions, communication and awareness-raising on racism, and also on migration and the promotion of diversity. The latest Action Week was held in cooperation with several communes, including the City of Geneva, which made available advertising space for the event’s posters.

58. In the past few years the Office for the Integration of Foreigners has also subsidized a large number of projects to combat racism and has also taken part in research and training on the attitudes of teachers and social workers towards racism, rightist extremism and anti-Semitism.

59. Until 2007, responsibility for part of the campaign against racism was delegated to an association. In 2008 the Office for the Integration of Foreigners ended regular cooperation with that association and mandated an expert to identify and describe machinery that would be able to do what was necessary to combat racism and the various forms of related intolerance, either independently or in conjunction with other bodies. The report, which is due in August 2009, will enable the Council of State to define what measures to take and what means to make available in order to ensure that the fight against racism, discrimination and xenophobia will continue and will be effective.

#### *Graubünden*

60. A law and corresponding ordinance giving effect to the new federal Act on foreigners will enter into force on 1 August 2009. These instruments deal in particular with integration and will serve as the legal basis for the canton’s integration policy.

#### *Lucerne*

61. The canton has adopted various measures to promote the integration of arriving foreigners. Since 2008 any persons requesting residence permits in the canton are invited to an interview at the Migration Office, where they are presented with existing job offers and where persons with poor knowledge of the language or of Swiss customs can be referred for special measures. Between June 2008 and the end of April 2009, 1,927 interviews were held. The canton used to have a coordination centre for questions relating to the integration of foreigners; in July 2007 it was taken over by a service of the cantonal administration.

#### *Neuchâtel*

62. In the 1990s the canton of Neuchâtel hired a delegate for questions relating to foreigners, established an advisory committee of the Council of State for the integration of foreigners and adopted an Act on the integration of foreigners. The aim of the Act is “... to foster harmonious relations between Swiss people and foreigners. It shall encourage the seeking out and use of solutions for the integration of foreigners and, more generally, promote equality of rights and duties for all the inhabitants of the canton, within the limits of the Constitution and the law”. Foreigners domiciled in the canton have the right to vote in cantonal and communal elections and can stand for election in communal elections. Neuchâtel is thus the canton providing the greatest range of civil rights to its foreign population.

63. The efforts made by the canton to integrate foreigners has resulted in an increase in the number of foreigners using a national language as their main language; the proportion rose from 60.7 per cent in 1990 to 72.2 per cent in 2000 (51.4 per cent among non-Europeans, or 24.5 percentage points higher than in 1990). Among young foreigners, 27.8

per cent speak both a national language and their original language in the family home. Integration is thus taking place without forcing migrants to relinquish their roots or part of their identity or culture. Similarly, the principle of equality between men and women is making headway in the foreign population, as both spouses in most foreign couples, both European and non-European, have paid jobs. The quality of relations between the Swiss and foreign populations is considered quite good, as the canton has shown an open attitude during votes on the rights of foreigners. However, a popular initiative calling for foreigners to be eligible for all executive, legislative and judicial posts at the cantonal level was rejected in 2007.

64. The canton has also allowed foreigners with residence permits to become police officers. The current budget calls for more French lessons and integration courses to be offered. The cantonal administration intends to continue and to consolidate its policy of integrating foreigners and preventing racism, concentrating particularly on three areas: employment; housing and civic affairs.

65. The measures planned for integration in employment are: greater appreciation of labour skills; systematic certification of French language; skills; raising awareness among employers of how to deal with sociocultural diversity among their staff; promotion of recent migrants to high-visibility public posts dealing with the citizenry; support for refugees authorized to stay in Switzerland seeking employment; and a liberal approach towards residence permits for the foreign population within the bounds of current federal law.

66. In respect of housing, the Council of State will consider to what extent it can influence the choices of the communes and the real estate market so as to ensure an appropriately balanced social mix in residential districts. Its integration policy is also aimed at promoting coexistence between the various population groups where they live, apartment buildings and residential districts in particular. One original and concrete measure which has proven its worth consists in briefly training concierges in the roles they can play in managing diversity and reducing problems between neighbours. The cantonal authorities will support such measures in cooperation with other involved parties.

67. The canton would like to strengthen the civic integration of foreigners, as it considers this to be one of the most effective ways of introducing them to the essential principles and values of Swiss democratic institutions. It therefore plans to simplify the naturalization procedure, to promote, by means of targeted communication activities, political participation by those population groups that currently participate in civic affairs the least, and in the long term to raise once again the question of the eligibility of foreign voters to hold certain cantonal posts. Easily understandable documentation translated into several languages must also be handed out to new arrivals to inform them of the basic values of the Constitutions of Switzerland and of Neuchâtel, and they should be asked to sign a declaration stating that they are aware of them.

68. The canton has no desire to make integration agreements standard practice but it does plan to continue using them, as they are currently used, in specific cases. Currently, residence permits issued to foreigners arriving to take up religious functions are conditional upon applicants' written and signed declaration that they will abide by the standards of Swiss democracy and the law. The agreement may also be applied when the authority is able to make the maintenance of a residence permit conditional upon specific integration objectives or upon the individual behaviour of foreigners who have shown a clear reluctance to integrate. Several measures have been taken to prevent and deal more effectively with crime or anti-social behaviour among foreign minors, in particular preventive action to raise parents' awareness of their role in bringing up their children and a project in which young mentors from the migrant community serve as credible positive role models for young people at risk of going off the rails. Interestingly, the number of criminal

convictions of young foreigners is down sharply in Neuchâtel from 149 in 2002 to 89 in 2005.

#### *Schaffhausen*

69. In 1972, responding to a climate of xenophobia, the canton established an association to promote contact between the Swiss and foreign populations (*Verein Kontaktstelle Schweizer-Ausländer*). In 2004 the organization was extended to become a centre dealing with integration matters. The centre informs the persons concerned about the services available to them and provides advice about the administrative and practical steps they have to take.

70. In 2003 the canton and city of Schaffhausen published guidelines for an active integration policy, based on an analysis of the situation of migrants in the employment, social, cultural, linguistic and political fields and detailing improvements that can be made in these fields. The aims and substance of the canton's integration policy were set on the basis of these documents. The strategy behind this policy consists in facilitating and creating access to work and to society by encouraging skill acquisition and participation.

71. The cantonal office of the Swiss Workers' Mutual Aid Organization provides counselling and support for victims of racist acts. Migrants also have the opportunity to attend integration courses there.

#### *Schwyz*

72. To implement the federal legislation on foreigners, the canton of Schwyz in May 2008 enacted a federal migration act and in December 2008 an implementing ordinance for it. The canton has established an integration committee and has modified an existing service contract with an integration skills centre run by a private association.

#### *Solothurn*

73. In the canton of Solothurn, staff of the Migrations Office regularly take continuous training courses on subjects such as integration, racism, discrimination and child protection. The Office also employs staff who are themselves of immigrant stock.

#### *Ticino*

74. In 2005 the cantonal Parliament instituted a cantonal day of remembrance for victims and peoples who have suffered from oppression or discrimination or lost their lives because of their opinions, ethnic origins, race or for other discriminatory reasons inadmissible in a State based on the rule of law. The same year, the canton introduced Switzerland's first Internet-based intercultural magazine. The canton supports mutual knowledge and acquaintance projects run by the communes and privately.

#### *Thurgau*

75. The canton of Thurgau has concluded an agreement with the Federal Office for Migration to hold courses, in particular language courses, for foreigners. An integration officer has been appointed in the cantonal Migration Office.

76. Prosecution of racist acts is the responsibility of the criminal prosecution authorities, who are as independent as the courts.

#### *Valais*

77. In Valais, integration measures are taken at the cantonal and communal levels. Throughout the canton, language courses are offered to foreigners; these include a section

dealing with the fundamental values of a State based on the rule of law according to the Swiss model. Information campaigns have been staged to foster a better understanding on the part of the native population of migration issues and the canton has funded a series of televised broadcasts on the implementation of integration measures. Such projects are aimed at combating discrimination by means of positive information, with the long-term objective of ensuring equality of opportunity. The canton thus emphasizes positive action rather than stigmatizing undesirable behaviour.

78. There is no independent mechanism in the canton for carrying out inquiries into allegations of racism and xenophobia, as the current administrative, police and judicial systems are able to handle the needs in this area.

#### *Zurich*

79. Since 2004, basic police training has included examinations on human rights and professional ethics. Since 2008 the Swiss Police Institute has offered courses on intercultural skills for police supervisors. Participants learn a differentiated approach to issues of migration, integration and racism allowing them to better handle difficult situations and doubts in their field of work and to recognize and discuss problematic behaviour within the police.

80. [There is no paragraph 80 in the original submission.]

81. The police have launched a project known as *Brückenbauer* (bridge-building), under which policemen take part in public or private events to encourage better integration of foreigners. They thus make contact with the foreign population and can provide information on the workings of a State based on the rule of law, the content of the law, culture and customs of the country, and the duties of the police. They can also explain how the administration functions and how administrative and judicial procedures work.

#### **(c) Global strategy**

82. Under the Swiss federal system, the cantons are responsible for numerous key areas such as schools, the police and health care (see paragraphs 14–18 above). The advantage of this system is that the cantons and communes are more in touch with the population concerned. In these circumstances, the most appropriate approach is a wide-ranging, broad and pragmatic “bottom-up” one based on collaboration in all sectors between the Confederation, the cantons and the communes. For that reason, Switzerland does not have a national anti-racism plan of action but supports and coordinates activities undertaken at all levels. With regard to promoting integration, a genuine plan of action was nevertheless set up when the Federal Council settled on integration measures in 2007.

#### **(d) Independent investigation mechanism**

83. At the federal level, individuals who believe that they have suffered racial discrimination can complain to the Federal Commission against Racism. The President and the Secretariat of the Commission provide advice, make enquiries and mediate in cases of conflict.

84. Several cantons have also established anti-racism and xenophobia mediation bodies, or advice services for those concerned (see the outline of measures taken by the cantons in paragraphs 34–81 above). In addition to the Commission, Switzerland boasts some 10 advisory centres (often regional NGOs working in several cantons).

**(e) Strengthening the capacity and the budget of the Federal Commission against Racism**

85. In 2010, the Commission's budget will be 200,000 Swiss francs, which will cover the costs of all the Commission's projects and meetings and, in part, the secretariat. The Federal Department of the Interior also funds two full-time and one part-time posts at the Commission.

**Reply to question 8 of the list of issues**

86. Article 50 of the federal Foreign Nationals Act that entered into force on 1 January 2008 introduced new rights for foreign spouses when the family tie is dissolved. The right to have and extend a residence permit is retained if the relationship has lasted at least three years and integration has been successful; it is accorded irrespective of the chances of social reintegration into the country of origin. Moreover, regardless of the duration of the marriage bond and integration, the individual concerned retains the right to obtain and extend a residence permit where significant personal reasons require continued stay in Switzerland. The article specifies that significant reasons are acknowledged to obtain where, for example, the spouse has suffered domestic violence or where social reintegration into his or her country of origin appears highly unlikely. This list is not exhaustive and other circumstances may well constitute significant personal reasons. Where a given case does not meet the conditions, cantons may grant a residence permit under the waiver provided by article 30 of the Foreign Nationals Act for individual cases of an extremely serious nature.

87. These provisions allow the authorities to take proper account of the given circumstances of each case, including the fact that a person has been a victim of domestic violence.

**Reply to question 9 of the list of issues**

88. In recent years, Swiss legislation on weapons has undergone two revisions. The second came into force on 12 December 2008. In the earlier one, Swiss law on weapons was brought into line with Directive 91/477/EEC of the Council of the European Union of 18 June 1991 on control of the acquisition and possession of weapons, which is in force in the European Community. Weapons legislation therefore now corresponds to the law in force all over Europe. The rules on the acquisition and possession of firearms were reviewed at the same time. Swiss law divides weapons into three categories according to how dangerous they are (prohibited firearms, firearms subject to approval and notifiable firearms). There is a different procedure for acquiring weapons in each of these categories. These procedures apply to all forms of acquisition, whether by purchase, hire or inheritance. Before the law was revised, permission was not needed for the private purchase of firearms that are now subject to approval. Under article 12 of the Weapons Act, any person who has legally acquired a weapon is authorized to possess the item acquired. Under article 8, paragraph 2, of the Act, anyone may acquire a weapon if:

- They are over 18 years old
- They have not been barred from doing so
- There is no reason to believe that they will use the weapon in a manner dangerous to themselves or others
- They do not have a criminal record for an offence of a violent or dangerous nature, or for repeat offending

89. The Swiss Armed Forces are a militia army and, traditionally, each member of the Armed Forces kept his or her service weapon and ammunition at home. In recent years, several calls have been made in Parliament for weapons to be stored at the arsenal because of the danger they represent. Following a parliamentary motion, Parliament has instructed the Federal Council in 2007 to stop giving members of the Armed Forces ammunition to keep at home and to retrieve the ammunition already stored there. The ammunition will have been retrieved by late 2009. A request for a referendum including a call for military weapons to be kept on army premises was successful in spring 2009. The Federal Council's message on the request should be drafted by spring 2010.

### **Reply to question 10 of the list of issues**

90. The cantons are responsible for inquiries into allegations of torture or ill-treatment. They have provided the Government with the following examples.

#### *Basel-Town*

91. Since 2004, the Cantonal Public Prosecutor's Office has received 80 complaints about police officers abusing their authority. The majority of inquiries have been dropped and most of the cases brought before the courts have been dismissed. In 2006, one conviction was handed down.

#### *Bern*

92. In December 2008, an individual complained in writing to the cantonal police squad after being stopped at Biel railway station in the canton of Bern. The complaint alleged wounded dignity, the individual having been stopped, arrested, searched and fingerprinted for incomprehensible reasons; it was alleged, moreover, that the police had threatened violence if the complainant refused to undress for a body search. The cantonal police department's legal service reviewed the case and concluded that the officers had not acted disproportionately or unlawfully; thus, it did not transmit the case to an investigating judge. The Acting Chief Inspector of the cantonal police wrote to the individual concerned to explain the reasons for the action that had been taken. Following an exchange of letters, he informed the complainant that a formal complaint could be lodged with the prosecuting authorities or the supervisory authority, namely the relevant cantonal directorate. To date, the individual concerned has not had recourse to these remedies.

93. Several complaints against members of the cantonal police are currently under investigation. No information on these proceedings can be given at this stage.

94. In recent years, criminal investigations have been conducted into employees of the cantonal Office of Deprivation of Liberty and Supervision in the canton of Bern in the following cases:

- An inmate filed a complaint in 2008 against a prison officer for insult and assault. During the summer, the prison officer will be heard by the District Court, after which a trial might take place.
- Two investigations into complaints by detainees have been dropped for lack of any apparent offence. In a third case, a detainee claimed to have been tortured at a regional prison. The complaint has been passed on to the investigating judge.
- An investigation opened in 2006 into derogatory remarks has been closed.
- In 2008, a detainee suffering reduced mobility complained of being handcuffed too tightly during transportation. The case is pending.

- An investigation opened in late 2005 has been closed. The detainee had claimed to have been kicked during his arrest, despite already being handcuffed and lying on the ground.

*Fribourg*

95. In the canton of Fribourg, two cases of police brutality are currently being investigated. Between January 2006 and June 2009, 37 cases were ordered to be dropped or dismissed, while a final summary judgement was issued in three cases. None of the investigations conducted during this period uncovered torture and/or ill-treatment as defined by the Convention. The summary judgements were issued in relation to a single brawl involving three police officers, which occurred while they were on leave.

*Geneva*

96. After thorough investigation, a judicial police inspector and a policeman were removed from their functions in 2007 and 2008, respectively, for having used gratuitous violence against a person whom they had apprehended.

*Lucerne*

97. In June 2005, the Lucerne police wrongfully arrested two people in the canton of Schwyz. The individuals concerned filed a complaint against the police officers with the relevant authority in the canton of Lucerne, which forwarded the case to the prosecutor. The case is pending.

*Schaffhausen*

98. No claims have been made in recent years. Since January 2008, three criminal complaints have been filed against members of the police force. Two cases have been dropped and, in the third case, the court found the defendant not guilty.

*Ticino*

99. In Ticino, proceedings were initiated in 21 cases in 2007 following complaints made against police officers: 2 are still pending, while the others did not lead to any convictions. In 2008, 23 inquiries were opened: 11 are still pending, while the others have not led to a conviction.

*Thurgau*

100. A criminal complaint filed against two police officers in December 2006 was dismissed by the investigating authority following a review of the case. An appeal against this decision has been dismissed by the Indictments Chamber, while a claim concerning the same case has been rejected by the Department of Justice and Security.

**Reply to question 11 of the list of issues**

101. Currently, police crime statistics are of selected categories of reported offences only. In early 2006, the Conference of Cantonal Justice and Police Directors, together with the federal departments concerned, decided to carry out a comprehensive revision of police crime statistics as proposed by the Federal Statistical Office in collaboration with the cantons. The new statistics should first be published in 2010 and will provide more detailed and reliable data. They will record data by reference to the criminal law invoked, including abuse of authority (article 312 of the Criminal Code).



102. Statistics on complaints and claims against the police and other public officials are available or are being set up in several cantons.

### **Reply to question 12 of the list of issues**

103. For examples of prosecutions, see paragraphs 90–100 above.

104. To date, no officer of the Federal Criminal Investigation Police has been the subject of a complaint for abuse of authority. Should this occur, the complaint would be transmitted to the Federal Public Prosecutor's Office for further action.

105. The federal structure of the Swiss State means that the cantons are free to select the procedures they consider to be most appropriate for dealing with areas under their jurisdiction, provided they are compatible with federal and international law. As the cantons are responsible for handling complaints against the cantonal police, the State has not taken any particular action to encourage them to create mechanisms similar to the one in the canton of Geneva.

106. The judiciary is independent at all levels in Switzerland. Many cantons therefore believe that a special mechanism to investigate complaints against the police is unnecessary. In these cantons, depending on the system in place, either the office of the investigating judge or the prosecutor deals with offences committed by members of the police force, while the supervisory authority investigates complaints about police conduct in administrative proceedings. Some cantons also allow the possibility of applying to an ombudsman.

107. In addition to the arrangements described in paragraphs 391 ff. of the report, the following special mechanisms can be mentioned.

108. The canton of Fribourg has established a special complaints procedure, whose decisions may be appealed before the cantonal court and then the Federal Tribunal.

109. In the canton of Zurich, a specialized unit of the cantonal police can be assigned to head the investigation where civil servants are the subject of proceedings. Criminal proceedings against police officers generally also prompt an administrative inquiry which can result in disciplinary penalties against the individual concerned while simultaneously allowing institutional deficiencies to be rectified. These internal investigations are conducted in accordance with the law on employees of the canton of Zurich, under which offenders can be given verbal warnings, put on notice or dismissed.

### **Reply to question 13 of the list of issues**

#### **(a) Minorities in the police force**

110. The police are the responsibility of the cantons.

111. Several cantons currently allow foreign nationals to join the police force. The canton of Basel-Town ensures that minorities are represented within the police and has police officers of various nationalities. The issue is being discussed in other cantons, in particular in response to calls made in Parliament. Senior Swiss police officers meet their counterparts from different European countries to discuss the representation of minorities of a certain size in police forces (*diversity*; see paragraph 390 of the report).

112. In the canton of Geneva, holders of residence permits can attend the police academy but have to become naturalized Swiss before they can work as police officers. More open admissions are planned.

113. In the canton of Zurich, a proposal to abolish the Swiss nationality requirement for recruitment to the police force was rejected by the cantonal government: it considered that candidates satisfying the other criteria for admission to the police academy (including extensive knowledge of the country and its language) could for the most part acquire Swiss nationality, if they so wished, while retaining their original nationality. The Zurich police force therefore numbers many Swiss nationals who are second- or third-generation immigrants.

114. A number of other cantons that, like Zurich, make Swiss nationality a requirement for recruitment into the police force have officers who are descended from relatively recent immigrants.

**(b) Independent observers of the removal of foreigners**

115. The procedure for removal by air is detailed in the new federal act on the use of force and police measures in areas under the jurisdiction of the cantons, which came into force on 1 January 2009. While the law does not provide for the presence of independent observers, it does require people subject to forced repatriation by air to be escorted by persons with the appropriate training. During repatriation, deportees must be able to address someone of the same sex.

116. As they are responsible for executing repatriations, the cantons can arrange or agree to have independent observers present.

117. Thus, for example, a new directive is being prepared in the canton of Bern for the implementation of federal legislation on the use of coercion (see paragraph 21 of the report). The directive provides for observers to monitor removals using special flights. It has not yet been decided which organization will carry out this function; one of the options being considered is to entrust this task to the Red Cross or other similar organizations.

**Reply to question 14 of the list of issues**

**(a) Confederation**

118. The Act on the use of force and police measures in areas under the jurisdiction of the Confederation was adopted on 20 March 2008 and came into force on 1 January 2009. It regulates uniformly the use of force and police measures in the areas under the jurisdiction of the Federal Government, including the repatriation of foreign nationals, and it guarantees that authorities obliged to use force will not apply it disproportionately. It is very broad in scope, covering all federal authorities that might be required to use force (the Federal Criminal Investigation Police, the Federal Security Service and border guards) but also the cantonal authorities when acting at the request of a federal authority or when constrained to use force in circumstances covered by the law on asylum or on foreign nationals.

119. The Act defines acceptable means in broad terms, leaving it to the Federal Council to define which means are permissible for a given task. Among the weapons allowed, it refers to batons and truncheons, irritants, firearms and incapacitating devices (tasers). Among the auxiliary means mentioned, it refers to handcuffs and other restraints, and to police dogs.

120. In the implementing order for the Act, the Federal Council has defined which means are permitted for given tasks. For repatriation by air, only restraints (with the exception of metal ties), batons and truncheons are allowed. The use of incapacitating devices during repatriation by air is explicitly prohibited. Police dogs can be used in general police duties, including protection assignments; they are not regarded as acceptable backup during forced repatriations.

121. The use of incapacitating devices, like that of firearms, is subject to strict conditions. Incapacitating devices can be used only against people who have committed or are under serious suspicion of having committed serious offences, or to prevent such an offence. “Serious offence” here means serious threat to life, inviolability of the person, freedom, sexual inviolability or public safety.

122. The Federal Police Force does not use incapacitating devices. Police dogs are used solely by the Federal Security Service as part of its duties to protect Government buildings in the city of Bern. The Federal Security Service currently has 12 dogs. They are used in night patrols solely to protect night watchmen.

**(b) Cantons**

123. The cantons make limited use of incapacitating devices and police dogs.

124. In several cantons, only a specially trained special unit can be equipped with tasers. The canton of Appenzell Outer-Rhoden requires the unit to have a defibrillator on hand at all times. In the canton of Basel-Town, taser guns can be used only when, otherwise, a firearm would have to be employed.

125. No canton reports that it uses police dogs while deporting foreign nationals. According to what the Government has been told, police dogs are not ordinarily used against people but mainly, rather, for surveillance tasks.

**Reply to question 15 of the list of issues**

126. The cantons are generally responsible for enforcing deprivation of liberty in its various forms. Many cantons do not have prison-overcrowding problems.

127. [Prison] construction, redevelopment and reorganization to improve conditions for detainees has been or is being carried out in several cantons.

128. The cantons also ensure that staff dealing with detainees are appropriately trained.

129. Concerning the canton of Geneva, and Champ-Dollon Prison in particular, the Government has the following to state.

130. Numerous temporary and long-term steps are being taken to improve conditions in detention: a remand prison (Favre) has been reassigned to criminal detention; detention places have been made available in the canton of Vaud; holding cells at the courthouse are being kept available 24 hours a day; and the la Brénaz closed prison was built and brought into service in 2008.

131. Nevertheless, overcrowding has not been brought under control and it is clear that the situation is worsening. Steps have been taken or are under way in the following three areas.

**(a) Construction of new prison places**

132. The Concordat prison plan provides for some 250 additional prison places to be built in partner cantons by 2013. These places will allow convicts, who are obliged to wait several months for transfer to a penitentiary, to be placed more quickly and in greater number.

133. Of the planned places, some will be provided under the Curabilis project, to which the High Council granted a substantial loan in May 2009, to set up a penal institution for the treatment of mental disorders and for confinement. Forty-five prisoners sentenced to treatment could be transferred to this facility, releasing 45 places in prisons for those with

lengthy prison sentences awaiting transfer from Champ-Dollon to a penitentiary. Steps to ensure synergy between Champ-Dollon and the Curabilis complex will help improve the operation of both facilities.

134. Reckoning that the measures taken or under way will probably not completely do away with overcrowding at Champ-Dollon, the Geneva Council of State at its meeting of 4 February 2009 appointed a steering committee to consider building a new penitential institution for pretrial detention and, in particular, to consider the location and capacity of the future institution. At the end of May 2009, the committee issued a report to the Council of State and the Council will indicate in a report to the High Council which options it has selected and which it has rejected.

**(b) Management of additional staff and working conditions of guards and wardens of the Champ-Dollon Prison**

135. As part of the Curabilis project, dedicated wardens for the complex will be hired early because of the need to train them to deal with specific psychiatric problems. Two staff training academies may be opened some time in 2009, which will first train staff at Champ-Dollon Prison and then prepare the staff assigned to Curabilis for taking up their duties.

136. Aware of the deteriorating working conditions for guards and wardens caused by the overcrowding at Champ-Dollon, the Council of State is currently negotiating with the prison staff union to take better account of these difficulties and to help improve their working conditions.

**(c) Policy measures: the judiciary and readmission agreements**

137. Overcrowding in detention facilities also stems from the glut of judicial decisions that the Prison Board is required to execute (pretrial detention and prison sentences, but also non-custodial sentences, measures, parole orders, etc.).

138. With due regard for the separation of powers, the judiciary, especially particular prosecutors and investigating judges, are regularly made aware of the problem of overcrowding at Champ-Dollon and the departures from the European Prison Rules that it entails. In this connection, it must be recalled that the various authorities involved receive daily information on the occupancy rate of detention facilities in the canton of Geneva.

139. As regards people who regularly find themselves in prison and cannot be returned to their countries of origin, a meeting has taken place with the federal councillor in charge of the Federal Department of Justice and Police on the possibility of concluding readmission agreements and on steps that Switzerland could take against countries that refuse to take back their nationals.

140. Lastly, emphasis must be laid on the constant attention devoted by the departments of the Penitentiaries and Prisons Board, the guards and wardens and all stakeholders to maintaining, wherever possible, conditions in detention that are consistent with human rights.

**Reply to question 16 of the list of issues**

141. The right to free legal assistance is enshrined in article 29, paragraph 3, of the Federal Constitution of 18 April 1999 which states that “anyone who does not have sufficient means is entitled to free legal advice and assistance unless their case appears to have no prospect of success. If necessary in order to safeguard their rights, they are also entitled to free legal representation”. The minimum guarantees provided under the Constitution equally apply to asylum proceedings at first instance. Specific rules are

provided for unaccompanied, underage asylum-seekers, who receive immediate support from a trustworthy person responsible for representing their interests (article 17 of the Asylum Act).

### **Reply to question 17 of the list of issues**

142. The guarantees of article 17 of the Covenant are not absolute. Any interference with these rights, however, requires a legal basis (general comment No. 16, para. 3) and must not be arbitrary (general comment No. 16, para. 4). Under article 28 of the Asylum Act, the federal or cantonal authorities can assign asylum-seekers to a place of residence or a specific dwelling. The practice described therefore has sufficient legal basis. It is in the State's interest to house persons whose requests for asylum are still being considered separately from those whose applications have been rejected, and the practice is not therefore arbitrary. Furthermore, the Federal Council believes that assigning a new home is proportional and allows the State's interests to be upheld.

143. Similarly, the Federal Council considers that the practice described is not of itself inconsistent with articles 23 and 24 of the Covenant. Family unity is always maintained when a new home is assigned. Parents, as those primarily responsible for child protection (general comment No. 17, para. 6), are not hindered in carrying out their duty.

144. If necessary, the State will act to protect the interests of children whose asylum applications are rejected.

145. With regard to respect for family unity, it should also be mentioned that the Federal Office for Migration allocates asylum-seekers to a canton. In making this decision, the Office takes into consideration the legitimate interests of the canton and the applicant. The applicant may challenge the decision on the grounds that the principle of unity of the family, i.e., the spouse and underage children, has been violated. The Office allocates asylum-seekers as evenly across the cantons as possible, while taking into account the presence in Switzerland of family members, their nationality and, in particular, their need for support.

146. Except in cases involving the right to family unity or where the person concerned or others are under serious threat, a cantonal transfer cannot be granted without prior approval from the relevant cantonal authorities. This rule applies to asylum-seekers until the regular asylum process has been completed. Persons are no longer allowed to change canton once their removal has been ordered and the Federal Office of Migration has set a deadline for their departure after the regular asylum process has been completed.

147. In accordance with the provisions of the Convention on the Rights of the Child, unaccompanied asylum-seekers under the age of 18 are given support by a trustworthy person (see paragraph 141 above).

148. With regard to the cantons' implementation of asylum law, the Federal Council specifies that many cantons have not moved rejected asylum-seekers to specific accommodation. Other cantons have set up special holding centres, but allow families and unaccompanied minors to remain in the homes or institutions where they were living during the asylum process. When families stay in collective centres, whether during asylum proceedings or after they have been refused asylum, family unity is always respected.

149. Often, the cantons provide housing units for unaccompanied minors where children are welcomed, regardless of their status. In some cases, minors are placed with relatives or in foster families, under close supervision by the authorities. Children, whatever their status, are normally enrolled in cantonal public schools.

**Reply to question 18 of the list of issues**

150. The military service exemption tax is provided for in article 59, paragraph 3, of the Federal Constitution of 18 April 1999, under which “any Swiss man who does not do military or alternative service shall be liable to pay a tax”. Under the Federal Military Service (Exemption Tax) Act, the tax generally applies to men called up for service, whether living in Switzerland or abroad, who have taken no part in army training for more than six months in a calendar year and are not liable for civilian service, or who do not perform the military or civilian service that they are bound to complete. The law recognizes several grounds for exemption from the tax, in particular when a person cannot serve because of a serious disability.

151. The tax is an alternative way to fulfil military service. Determined by the length of military service and alternative civilian service, it is considered equivalent to service and is intended to ensure, as closely as possible, equal treatment of persons liable for service. When the provisions on civilian service were amended, abolishing the requirement to prove a conscientious objection in order to be accepted for civilian service, the tax was increased because it no longer corresponded to the burden of military or civilian service. The tax was designed to restore equal treatment with those performing military or civilian service.

152. Those who, for reasons of conscience or belief, do not wish to perform military service may opt for alternative civilian service without having to justify their choice. They are not then subject to the exemption tax. The Government is not aware that any of those who for reasons of conscience do not perform alternative civilian service either, including Jehovah’s Witnesses, have hitherto challenged the obligation to pay exemption tax.

153. In the Government’s opinion, the tax does not pose a problem with regard to article 18 of the Covenant, since it does not restrict the freedom of individuals who do not perform military or civilian service but rather ensures the maximum possible equality of treatment of the various individuals called up for service. Calculated to represent a burden equivalent to military or civilian service, the tax cannot be construed as disproportionate interference with the rights of persons who, for reasons of conscience or belief, do not consider themselves able to perform military service or alternative civilian service.

**Reply to question 19 of the list of issues**

154. On 8 July 2008, an initiative committee filed a request for a referendum seeking the inclusion in the Federal Constitution of a total ban on the construction of new minarets in Switzerland.

155. According to article 139 of the Federal Constitution, a request for a referendum is declared invalid, in particular, when it does not comply with the peremptory norms of international law (*jus cogens*). In its message of 27 August 2008, the Federal Council judged that the request to ban minarets was valid as regards compatibility with the peremptory norms of international law, but violated several human rights guaranteed under international law, including freedom of religion and prohibition of discrimination. The Federal Council has proposed that the Federal Assembly submit the request without a counter-proposal to the people and the cantons, recommending that it be rejected.

156. In the final vote on 12 June 2009, the State Council and the National Council took the same line as the Federal Council. They declared the request valid and decided to submit it without a counter-proposal to a vote of the people and the cantons, recommending that they reject it.

157. This is the only request for a referendum pending at the federal level that could limit freedom of religion. Contrary to what is implied in the question, there is to be no “referendum on the construction of mosques”.

158. In the canton of Bern, a parliamentary motion calling for a ban on the construction of minarets in the canton was overwhelmingly rejected on 5 September 2007 by the cantonal Parliament, following the cantonal government’s recommendation to that effect.

159. By way of example, it can also be mentioned that the construction of several buildings used for the practice of minority religions — an Orthodox church, a Sikh temple, an Islamic centre and a central meeting point for different religions — has been approved and completed in the canton in recent years.

160. The construction of a small minaret in Langenthal, Bern, is likely to be authorized shortly, now that the relevant cantonal office has referred the case on appeal back to the commune for a new decision.

### **Reply to question 20 of the list of issues**

161. Some action against sexual abuse of children has been described in paragraphs 164 ff. and 295 ff. of the report.

#### **(a) Confederation**

162. An initial report on child abuse was published by the Federal Social Security Office in 1992. The report contained an assessment of the extent of the phenomenon, an analysis of difficulties encountered by professionals dealing with the problem of abuse and a series of practical recommendations for cantonal and federal authorities and the various professionals concerned.

163. When the Federal Council adopted its position on the report, it proposed various legislative, social and family policy measures. In the light of this opinion, the Federal Social Security Office has taken on certain coordinating functions in the field of preventing child abuse. It has also been given a budget allocation for funding projects to prevent child abuse.

164. In 2005, the Federal Social Security Office published a study on “Violence against children: a plan for comprehensive prevention”. The study provides a starting point for stakeholders from both the public and private sectors to consider and discuss the issue, and highlights various ways to act in its recommendations (see paragraph 299 of the report).

165. The study also included information from various surveys on the extent of the phenomenon. The Federal Social Security Office emphasizes, however, that the crime statistics do not reflect actual figures for child abuse, since they relate only to cases covered by the Criminal Code in which a complaint was filed.

166. Swiss statistics on criminal convictions, disaggregated by article of the Criminal Code, provide some information by distinguishing between the age (minor or not) and sex of the victim, for example. Similar information can be gleaned from statistics on support for victims of crime.

167. Much more differentiated data will be available next year when the Federal Statistical Office introduces new police statistics on crime. In future, the cantonal and federal police authorities will forward to the Office extracts from their databases processed in a uniform statistical manner. This will allow information to be used flexibly in terms of, on the one hand, the volume, structure and progress of cases logged by police authorities and, on the other hand, suspects and victims, and will ensure an average degree of details

nationally. Data on domestic violence will be recorded in a special module providing additional details on those concerned, the relationships between them and so forth.

168. Until the unified police crime statistics project is in operation, data relating to complaints and police investigations will be listed under cantonal statistics. Currently, some work is already being done to collate these data, but it gives only an approximate overview, as the statistical databases are not harmonized.

169. In 2003, the Violent Crime Linkage Analysis System (ViCLAS), a database on violent crime and crimes of a sexual nature, was introduced in Switzerland, enabling the prosecuting authorities to identify links between different offences or between incidents and individuals. The system provides investigators with a basis for investigation, which has for example made it possible to track down the perpetrator of sexual abuse of a child.

170. The Victims of Crime (Assistance) Act (see paragraphs 19, 96 and 297 of the report) makes special provision to protect children in criminal proceedings. In offences against the sexual inviolability of a child, the authorities cannot bring the victim and the accused face to face. A face-to-face encounter may, however, be authorized when the defendant's right to a hearing cannot otherwise be guaranteed. The child should not normally be subjected to more than two hearings in the course of the proceedings. Hearings are conducted by interviewers trained for the purpose, in the presence of a specialist. The parties exercise their rights through the person conducting the interview. The hearing takes place in a suitable location and is videotaped. The interviewer and the specialist record their observations in a report. Criminal proceedings may exceptionally be shelved by the criminal authorities when the interest of the child absolutely requires it and clearly outweighs the State's interest in prosecution.

171. The Confederation has also taken a new approach towards the protection of children by stepping up its activities in a public-private partnership. The Federal Social Security Office has worked with private partners to establish the "PPP – national child protection programme" association. Beginning in 2010, this is expected to launch a national child protection programme involving public and private bodies. Its activities will include carrying out needs assessments, improving coordination between stakeholders, coordinating funding and evaluating projects. The association must also find additional funds to ensure the continuation of the programme.

172. The national child protection programme should eliminate existing gaps in coordination between stakeholders, result in a national strategy and avert the risk of duplicate funding. At present, child protection is undertaken by various stakeholders who often do not coordinate their activities sufficiently. There is no set framework for relations between partners, in particular between the cantons and NGOs, and this leads to duplication and inefficiencies. In these circumstances, it is difficult to assess needs, and this hampers rapid and effective action.

173. The association was founded by the Federal Social Security Office and two private partners, the UBS Optimus Foundation and the Oak Foundation. The Swiss Foundation for Child Protection has been given the task of defining the programme's content and structure. Preparatory work began in 2008 in collaboration with a group of over 80 child protection specialists.

174. The public-private partnership allows all stakeholders — public or private corporations — to participate in the programme as members of the association. Strategic management of the programme will be entrusted to an advisory group composed of representatives of cantons, cities and districts, federal commissions, offices and institutes and child protection specialists. After a tendering exercise, the operative management will be entrusted to an external organization.



**(b) Cantons**

175. The cantons have launched a great many programmes and measures to protect children against sexual abuse. Several cantons have outreach programmes for pupils of different age groups, using visits to schools or websites. Contact, advice and support services have been established in several cantons. Mechanisms have also been established to ensure that cases of abuse are recognized and reported by people in contact with children.

**Reply to question 21 of the list of issues****(a) Confederation**

176. At the federal level, the proposal to convert disused military sites into living and transit sites for Travellers (see paragraph 335 of the report) has received broad support during consultation. The Confederation certainly cannot commit additional resources, but is ready to cede land to the cantons for the purpose, which would result in a drop in the price. The Federal Department of Defence has been mandated by the Swiss Government to cooperate on these issues of redistribution of military land with the working group of the “Ensuring the Future of Swiss Travellers” Foundation.

**(b) Cantons**

177. Following a Federal Court decision (paragraph 340 of the report) and the Federal Council report on the situation of Travellers in Switzerland, cantonal master plans for land development are being changed in many cantons to provide parking spaces for Travellers, often in collaboration with representatives of Travellers’ organizations.

178. Some cantons have established contact points for Travellers, or projects that promote coexistence and dialogue between Travellers and the local population. Specific provisions have also been enacted to give travellers a legal domicile so that they can vote.

**Reply to question 22 of the list of issues**

179. Firstly, the Government refers back to paragraph 19 above. The cantons were consulted over the preparation and presentation of the report. Once the report has been presented, the Committee’s concluding observations will be sent to the cantons by post. As was the case with previous reports, the concluding observations will also be available on the website of the Federal Department of Foreign Affairs and the Federal Office for Justice.

180. The guarantees afforded by the Covenant are part of the legal curriculum in universities. Similarly, they are taught, where relevant, in courses leading to other professions, such as those of police officers and prison guards. Finally, they furnish themes for the in-service training courses offered to various professions, and for lectures and symposia organized by the Confederation with universities or private organizations.