



**Convention against Torture
and Other Cruel, Inhuman
or Degrading Treatment
or Punishment**

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**Committee against Torture
Forty-fourth session**

Summary record (partial)* of the 936th meeting

Held at the Palais Wilson, Geneva, on Monday, 3 May 2010, at 10 a.m.

Chairperson: Mr. Grossman

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The meeting was called to order at 10 a.m

Consideration of reports submitted by States parties under article 19 of the Convention *(continued)*

Sixth periodic report of Switzerland (continued) (CAT/C/CHE/6; CAT/C/CHE/Q/6 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Switzerland resumed their places at the Committee table.*
2. **Mr. Gonin** (Switzerland), referring to the question raised by the Committee about the absence of a specific definition of torture as a criminal offence in Swiss law, said that his country ensured, in accordance with article 4 of the Convention, that all acts of torture (as defined in article 1 of the Convention) were offences in its domestic law, including attempted torture and complicity or participation in torture. Those acts were punishable by appropriate penalties which took into account their serious nature.
3. There was nothing in doctrine or case law to suggest that that pragmatic approach resulted in lacunae in the criminalization of torture in Swiss legislation. The same went for other provisions of the Convention, such as those relating to expulsion or extradition (art. 3). By way of illustration, he pointed out that, between 2007 and 2009, the Federal Administrative Tribunal had ruled in over 3,000 cases on the question whether there were substantial grounds for believing that a person subject to removal orders would be in danger of being subjected to torture within the meaning of article 3 of the Convention. That question was examined ex officio by the Tribunal and by any authority empowered to decide on cases relating to return, expulsion or extradition. Those authorities thereby ensured that Switzerland complied with article 3 and that the effectiveness of the Convention was not undermined even in the absence of specific provisions criminalizing torture.
4. Furthermore, he pointed out that article 10, paragraph 3, of the Swiss Federal Constitution stated: "Torture and any other form of cruel, inhuman or degrading treatment or punishment are prohibited." In accordance with article 2 of the Convention, no restriction of any kind could be placed on that basic right of every individual.
5. With respect to article 14 of the Criminal Code, which had been mentioned by the Committee at the previous meeting, he said that it could not be interpreted in a sense that ran counter to the prohibition in the Constitution.
6. An order to commit an act of torture was unlawful and must not be obeyed. Such an order would be invoked as grounds for establishing the criminal responsibility of not only the superior officer but also the subordinate if he were to carry out the order knowing that he was thereby participating in the commission of an offence.
7. Turning to the requirement of dual criminal liability, he said that it was a general principle of Swiss criminal law. In pursuance of the principle of legality, an act committed abroad must also be punishable in the place where it had been committed for the perpetrator to be punished in Switzerland. Nevertheless, dual criminality did not require that Swiss law and foreign law should be identical, but merely that the act in question should be punishable in both States. With regard to the question of *res judicata*, the Swiss judge counted time served abroad when sentencing to ensure that the perpetrator was not punished twice.
8. The Committee had asked about the protection of victims who reported a case of trafficking in persons. Domestic Swiss law, in particular the new law on foreign nationals in force since 1 January 2008, provided for specific measures to protect victims, including with regard to residence permits. Once victims had been identified by the authorities or had

themselves reported a case of trafficking, Swiss law provided for a minimum period of 30 days to allow victims to stabilize their situation and to enable the authorities to provide medical, psychological or legal support. During that period, victims could under no circumstances be returned and could decide whether they wished to lend their support to the criminal investigation. Regardless of their choice in that regard, victims could be granted a residence permit — not limited to the duration of criminal proceedings — if their personal situation so required.

9. With regard to protection measures, victims had the right to anonymity or to be moved to a secure place. Currently such measures were the responsibility of the cantonal police but a bill was being drafted to strengthen the protection mechanism by means of a federal agency with a view to protecting all witnesses in serious criminal cases.

10. All those measures were based on international standards, and Switzerland had also initiated the process of ratification of the Council of Europe Convention on Action against Trafficking in Human Beings.

11. Practical measures included the organization of round tables involving all stakeholders with a view to strengthening cooperation in combating trafficking. In addition, specialized training and awareness-raising activities were carried out on a regular basis.

12. As to the number of reported cases of trafficking in persons, 26 criminal proceedings had been brought in 2008. In recent years, the average annual number of cases had been between 20 and 30 and the clear-up rate had been 74 per cent.

13. **Mr. Zumwald** (Switzerland) said that his country regretted the tragic death of the Nigerian national Mr. Joseph Ndukaku Chiakwa, which had occurred at Zurich airport on 17 March 2010. It was in Switzerland's interest that the case should be investigated as soon as possible. The deceased person had been due to be repatriated on a special flight and the Federal Office for Migration had immediately suspended all such flights until an investigation of the circumstances of the case had been completed. All the other deportees due to take the same flight had been returned to their respective cantons and therefore potential witnesses were still in Switzerland. The Zurich public prosecutor's office was responsible for investigating the case and hearings had already been held in order to establish criminal responsibility. Independently of the criminal investigation, the Federal Office for Migration had carried out a review of forced repatriation procedures with a view to learning lessons from that incident. It was awaiting the results of the criminal investigation before resuming special flights.

14. Within the framework of the European directive on the return of illegal immigrants, Switzerland was currently considering adopting legislation providing for the presence of independent observers to monitor forcible deportations.

15. With regard to the question of medical examinations, he said that in the case of forcible deportations the relevant authority must ensure, by means of a medical examination if necessary, that the deportee was in good health and fit to travel. A medical examination must be carried out if the person concerned requested it or there was reason to suspect a health problem.

16. The Use of Force Act guaranteed uniform application of the use of force and police measures by the competent cantonal authorities. The Federal Department of Justice and the Police was currently preparing a handbook on deportations for the authorities responsible for enforcing the Act. The handbook would include 28 measures to improve procedures relating to special flights and would incorporate the findings of the investigation into the tragic incident of 17 March 2010.

17. The Committee had asked about the use of administrative detention in cases of refoulement. The decision to impose administrative detention was taken by the canton

responsible for carrying out a forcible repatriation only when the grounds stipulated in the law were met and when the measure was considered proportionate. Each case of detention must be submitted to an independent judge within 96 hours and the judge's decision could be challenged up to the Federal Court. Furthermore, the competent canton was required to take without delay the steps necessary for removal, failure to do so leading to the lifting of detention by the judge. Prolonged periods of detention concerned only those persons who did not cooperate with the authorities, for example by refusing to declare their nationality. Following incorporation into domestic legislation of the European directive on the return of illegal immigrants, the maximum period of detention should be reduced from 24 months to 18 months.

18. Concerning the detention of foreign minors, he said that the Federal Council had noted that data relating to those cases used by the Management Committee of the National Council had been based on a survey carried out between 2002 and 2004, while data relating to detentions as a whole had been based on a survey carried out between 2001 and 2003 in only five cantons. Those data should therefore be interpreted with care. Since 1 January 2008, however, the Government had had standardized data. Between 1 January 2008 and 30 June 2009, 4,564 persons had been placed in administrative detention, 71 of whom had said they were aged between 15 and 17. However, the real number of minors was generally lower, given that the persons concerned were often older than their stated age. The average period of detention of minors was 19 days when all cases were taken into account, and 9 days when the two longest periods of detention (376 days and 297 days) were excluded from the calculation. The overall average length of administrative detention was 16 days.

19. As to repatriation decisions taken at the airport, a distinction had to be made between legislation on asylum and legislation regarding non-nationals. Within the framework of asylum legislation, any formal decision taken was subject to appeal with suspensive effect. Within the context of legislation on non-nationals, there were procedures for removing a non-national without a formal decision, in which appeal did not have suspensive effect. Nevertheless, in general terms, the principle of non-refoulement was enshrined not only in special laws but also in article 25, paragraph 3, of the Federal Constitution which provided that "No one may be deported to a State in which they face the threat of torture or any other form of cruel or inhuman treatment or punishment."

20. Foreigners refused entry into Switzerland during a border check at an airport were obliged to leave the country immediately. However, if a person requested asylum, special procedures were replaced by the asylum procedure, with all the guarantees provided by the Asylum Act.

21. On the question of granting a residence permit to a woman victim of domestic violence and her consequent avoidance of expulsion, he said that regulations concerning residence remained unchanged following the dissolution of marriage and the law allowed foreigners to be granted a permit in extremely serious individual cases. Those cases could include spousal violence and a situation where the individual's reintegration into the country of origin was severely compromised. Depending on circumstances, those situations could be grounds for extending the period of residence.

22. Turning to the question of asylum and the law on refoulement, he said that article 5 (2) of the Asylum Act was in conformity with the 1951 Convention relating to the Status of Refugees. It prohibited refoulement except where the individual concerned posed a threat to the country's security or had been convicted of a serious offence. However, article 3 of the European Convention on Human Rights protected everyone, including non-nationals, from the risk of torture; accordingly, a decision to deport a non-national, even one without refugee status, would be suspended where such a risk was shown to exist.

23. A question had been asked about payment of the costs involved in lodging an application for asylum. The Federal Office for Migration could defer payment if an applicant lacked the means to pay or could remit payment altogether in the light of previous decisions of the Federal Administrative Tribunal. Of some 10,000 applications made each year, about one third were approved. Of those which were rejected, only 12 per cent had been found inadmissible in 2009, the remainder being dismissed on their merits.
24. Under article 34 of the Asylum Act, a list of “safe” countries to which asylum-seekers could be returned was drawn up by the Federal Council, in accordance with certain criteria: the political and human rights situation in the country concerned, its record of applying international human rights standards and its willingness to admit monitors from independent entities, especially monitors from Western States and from UNHCR.
25. As to the rights of asylum-seekers at points of entry in airports, they were notified by the Federal Office for Migration in writing, in a language they could understand, of their legal rights and the possibility of appealing an unfavourable decision. A list of available lawyers was provided, together with the means of contacting them by telephone or fax, and the means of photocopying documents. Letters could also be sent. At both Geneva and Zurich airports, asylum-seekers held in the transit zone could move freely within the zone. Those detained for a period of time were lodged in good conditions with natural light, women travelling alone and minors being provided with separate rooms. Their conditions were monitored by welfare organizations, including the Red Cross.
26. A question had been asked about the level of proof required in order to appeal a deportation decision. The jurisprudence of the European Court of Human Rights called for a high level of probability that a person deported to a given country would be at risk of torture or ill-treatment; accordingly, the mere possibility of such treatment would not be sufficient for a decision to be revoked.
27. With regard to medical evidence of torture, asylum-seekers were not routinely given a medical examination, but evidence of either physical or mental effects of ill-treatment could be obtained from experts and would be added to the asylum-seeker’s file. The asylum-seekers themselves could also be heard in the proceedings.
28. If an unaccompanied minor asylum-seeker did not have a guardian, the canton responsible would appoint a person of trust, whose role, like that of guardians under the Civil Code, was to represent the interests of the minor throughout the asylum procedure. Such persons must have a basic knowledge of the law and be familiar with the various stages of that procedure.
29. It had been asked whether the legal status of refugees admitted of distinctions for certain social groups, such as those at risk of female genital mutilation (FGM) or sexual minorities. Where a particular group was clearly characterized as having a justified fear of persecution, its characteristics were recognized by the Federal Office for Migration. They included the risk of FGM and fears based on domestic violence, sexual orientation, sexist legislation, and forced abortion or sterilization. The cantons provided assistance for failed asylum-seekers in the light of their constitutional rights, as determined by the cantonal and federal courts. Harmonization of those decisions was not possible, as it would conflict with the principle of confederation. As to withdrawal of Swiss nationality, no withdrawal could take place where the result would be to render the person concerned stateless.
30. **Mr. Vavricka** (Switzerland) replied to the question concerning the possible unlawful use of Swiss airports and Swiss airspace by foreign aircraft transporting prisoners held without trial (extraordinary rendition). The case of Abou Omar had resulted in an investigation by the Swiss public prosecutor’s office, which had instituted criminal proceedings for acts unlawfully performed on Swiss territory by the United States of America. The investigation had been suspended in late 2007. However, in Swiss law

suspension did not mean that a case was closed; it could be reopened if the persons presumed guilty of the acts could be identified. Switzerland was firmly opposed to the extrajudicial transfer of prisoners, which would be contrary to Swiss and international law, and the Convention against Torture in particular. Such actions would always be investigated.

31. **Mr. Sanchez** (Switzerland), replying to the question about tasers, said they were available for use by special police forces in 11 cantons. The electrical impulses emitted by tasers had been determined not to pose a risk to health, even for persons wearing pacemakers. Forensic inquiries into the handful of fatalities which had followed the use of tasers worldwide since the introduction of newer models in 1999 had found that in every case death had been due to drug and/or alcohol use beforehand. Tasers were authorized in over 41 countries and were also used by a number of airlines. A survey conducted in six United States police forces had found that in the 962 instances in the period 2005–2007 in which tasers had been used, no or only slight injuries had resulted in over 99 per cent of cases. In Switzerland in 2003, of 640 cases of taser use only 6 had resulted in a slight injury. Amnesty International did not object to the use of tasers in specific controlled situations. Each use was monitored through a tiny camera embedded in the taser, and a federal technical committee analysed the recordings on a regular basis. Since 2009, tasers had twice been used in Geneva, in one case to prevent a suicide attempt; in neither case had they been used in relation to refoulement. Mr. Gaye had referred to an incident on 4 February 2009, but he (Mr. Sanchez) had been unable to trace it. All complaints in that connection were investigated by the public prosecutor.

32. Since 2005, police training had included a module on deontology and human rights. Force could be used only as a last resort. It was always monitored, and instances of the use of force were examined by an independent commission on deontology.

33. The use of private security companies was permitted, subject to federal regulations, for the prevention of crime and the guarding of persons and property. Their personnel must have training in human rights. Weapons could only be used in self-defence.

34. With regard to domestic violence, acts resulting in injury or the kidnapping of children were prosecutable offences. A violent spouse could be ordered to stay away from the family home. Since 2005 all cantons had had offices and facilities for assisting victims of domestic violence.

35. A question had been asked about the treatment of Roma people. The police would not tolerate unauthorized camps (*camps sauvages*) or begging. However, in winter shelters were available for homeless people, and priority was given to the safety and health of minors. In Geneva, it was quite common for the police to receive complaints about begging by Roma. However, individuals were only arrested if suspected of committing a crime. The Geneva police were now training police officers in Romania, and the course included a human rights model.

36. **Mr. Troxler** (Switzerland), responding to the questions on enforcement of penalties, custodial measures and pretrial detention as they applied to young offenders, said that custodial measures for those offenders were carried out in appropriate institutions which provided them with education, training and therapy. The Confederation recognized and subsidized 170 such institutions. All of them had to meet certain conditions, in particular that of guaranteeing the provision of education. They were inspected regularly. There was an appropriate teaching schedule and at least three quarters of the institutions' teaching staff must have received recognized training. As a general rule, the young offenders were formed into groups within which they received both social and educational instruction. A wide range of educational and vocational options was made available to them, whether they were resident or non-resident.

37. As to the enforcement of penalties, young offenders could serve a sentence of imprisonment of up to four weeks or a “semi-detention” sentence of up to a year. Relatively few young offenders were sentenced to longer deprivations of liberty. Under the new criminal law relating to minors, young offenders must be separated from other young offenders who were serving a different kind of measure. New facilities were currently being created for young people serving a penalty; they were required to provide education, training and therapy matching in every respect that provided for young people serving another kind of measure.

38. Under the new criminal law relating to minors, young people in pretrial detention must be placed in a specific establishment or in a special unit, separate from adults; they must be cared for appropriately. The law also provided that educators or psychologists must regularly interview them. In addition, they must spend the least time possible in a cell or an individual room.

39. With reference to medical care, he stressed that all detainees in Switzerland had the right to receive medical attention. Given the country’s federalist structure as it pertained to the enforcement of penalties and related measures, there were differences in organization and resources in the various cantons. The large prisons had fully equipped medical centres; in smaller prisons, medical care might be provided by a general practitioner with a surgery nearby. Most prison medical service personnel had received recognized training.

40. Turning to the issue of overcrowding and the current situation in Champ-Dollon prison in Geneva, he said that under the Constitution the enforcement of penalties was the responsibility of the cantons, which built and operated the prisons. They were making major efforts to respond to constantly changing needs. Currently, there was in general no overcrowding problem. While the prisons in German-speaking Switzerland were quite full, they were not overcrowded. On the other hand, the situation in French-speaking Switzerland was more fraught, especially in Vaud. It was primarily pretrial detention that was causing high occupancy rates, but the rates were constantly changing, upwards as well as downwards.

41. However, Champ-Dollon prison did have an exceptional overcrowding situation and had done for years. Given the occupancy rate, which had steadily increased in recent months, the Canton of Geneva had taken a number of measures. Already in progress was the CURABILIS project, comprising the construction of a mental health establishment (92 places), due to go into service during 2013. The following projects would start shortly: the construction of a pretrial detention centre (100 additional places) in the form of a prefabricated module attached to Champ-Dollon, to go into service at the beginning of 2011; the relocation of the medical unit, which would result in a wider range of medical services for detainees and about 80 additional detention places in the converted medical facility; and creation of 45 short-term detention places at the Palais of Justice through renovation and upgrading of existing premises. Longer-term projects included enlargement of La Brenaz detention centre by 150 places, due to become available in the first half of 2012, and the construction of Champ-Dollon II, duplicating the present prison and primarily intended for pretrial detention.

42. As mentioned in the written replies, his Government had appointed, immediately after its ratification of the Optional Protocol, a new National Commission for the Prevention of Torture, which had taken up its duties on 1 January 2010. The Commission had unrestricted access to all custodial establishments. It drafted recommendations to the competent authorities, and made observations and proposals concerning legislation in force or relevant draft legislation. It was independent and operated on the basis of a specific law. Confidential information communicated to it was given priority treatment. It also had direct contacts and exchanges of information with the United Nations Subcommittee on the Prevention of Torture and the European Committee for the Prevention of Torture. It could

thus represent interests that were not necessarily identical with those of the Swiss authorities. It was able to report independently: it was not obliged to report regularly to the Federal Council, but did publish an annual report available to the general public.

43. The Commission had a permanent secretariat, and its members received daily stipends in accordance with federal legislation. The annual operating budget allocated by the Confederation to the Commission amounted to 360,000 Swiss francs. Following initial training, the Commission would start its visits to places of detention in the current year.

44. **Ms. Ehrich**, referring to the national human rights institution, said that the Federal Council had decided in 2009 to support the creation of a “Centre of Expertise in the field of Human Rights”, from which the Confederation and other stakeholders, notably the cantons, would purchase human rights services. The Centre would be set up within one or more universities and would receive financing from the Confederation. Its activities would be evaluated after a five-year pilot phase, after which the Federal Council would decide whether or not to continue financing the Centre. It might also decide to change the structure of the project. The selection of premises was expected to be made in May, and the Centre would then commence its activities.

45. Turning to the issue of independent bodies to investigate complaints of ill-treatment by the police, she said that appointment of those bodies fell under the jurisdiction of the cantons. In all cantons and at all levels, the justice system was independent. For that reason, several cantons had not set up a specific body to examine complaints against the police. Depending on the system in place, complaints were dealt with by an examining judge or by the prosecutor. In several cantons, rather than being first examined by the police, the complaint was forwarded directly to the examining judge. In other cantons, people could take their complaint to an ombudsman. Independent bodies were in place in the cantons of Geneva, Zurich and Fribourg.

46. Compensation of the victims of ill-treatment was governed by the Federal Act on Assistance to Crime Victims. Victims could receive compensation for medical expenses, legal fees and certain material damage, notably loss of income and burial costs. Property damage was not compensated. Redress for moral damage was granted when the victim or family members had suffered serious harm as a result of the crime. She was able to give examples of actual compensation paid (ranging from 8,000 to 70,000 francs), but had not found any case relating to abuse committed by law enforcement officials.

47. In response to the question how a victim was informed of his or her right to compensation, she said the Federal Act on Assistance to Crime Victims stipulated that the police must inform the victims, at the first hearing, of the assistance available. The police must also give them the addresses of the centres where they could seek help. If victims were in agreement, the police would communicate their names and addresses to a centre for consultation.

48. The intention of the initiative on the expulsion of foreigners guilty of a serious offence was that foreigners who had committed certain offences or had drawn social benefits to which they were not entitled should be deprived of their right of residence and expelled from the country. The discretion left to the authorities to order such a measure should be withdrawn.

49. The criteria for assessing the validity of a popular initiative were laid down in the Constitution. One of the criteria was that the initiative must observe the binding rules of international law, in other words *jus cogens*, one component of which was the principle of non-refoulement. Before giving an opinion on the validity of the above-mentioned initiative, the Federal Council had examined whether it was compatible with the principle of non-refoulement. It took the view that the initiative could be interpreted in a way that did respect the principle of non-refoulement. Firstly, that principle did not create a right of

residence; it only protected against expulsion to specific countries. Secondly, the principle could be taken into account at the time of execution of the expulsion. A decision contravening that principle should not be executed.

50. In its finding, the Federal Council also observed that the initiative ran counter to several provisions of the Constitution and international law, which, however, were not binding in the sense of *jus cogens*. Consequently, it had recommended that the initiative be rejected. In order to take account of the intention of the promoters of the initiative, the Federal Council had proposed that voters should be able to choose between the initiative as worded and a modification of the Foreign Nationals Act. The proposed modification sought to achieve the same goal as the initiative by stipulating that the right of residence would be revoked if a foreigner had committed an offence of a certain degree of seriousness. The draft explicitly retained the principle of proportionality and the norms of international law. The initiative and the alternative draft were currently being debated by Parliament, which would decide if the initiative could be considered as valid and put to a vote.

51. **Mr. Schmocker**, referring to the questions about life imprisonment, said that article 123 (a) of the Constitution had been approved on 8 February 2004. As the Federal Council had considered that the article was imprecise, it had decided to clarify its meaning by means of an implementing law. That law had entered into force on 1 August 2008, providing in particular for the following elements: the judge pronouncing a life sentence must base his decision on the opinions of at least two independent experts; the guilty person must have committed one of the most serious offences under the Criminal Code, such as murder, rape, hostage-taking or genocide; he must have committed or attempted to commit a particularly serious violation of the physical, mental or sexual integrity of another person; it must be highly probable that he would commit such an offence again; and he must be considered to be permanently “non-reformable” in the sense that any therapy would seem, in the long term, to have no chance of success.

52. The competent authority would examine, either *ex officio* or on request, whether new scientific knowledge might make it possible to treat the offender in such a way that he would no longer represent a danger to the community. Such new knowledge must not only be objectively present but also seem applicable to the personality of the offender.

53. A judge could conditionally release the prisoner when, owing to age, serious illness or some other reason, he or she no longer presented a danger to the community. The question of liability was governed by article 380 (a) of the Criminal Code, which stipulated that it was the public community to which the authority belonged that was liable for any damage caused. Action for indemnity against the members of the authority was governed by cantonal law or by the Federal Act on Liability of 14 March 1958.

54. In response to the question whether life imprisonment could be applied to minors, he explained that that was absolutely out of the question; that sentence fell under the Criminal Code, which applied only to adults. As to the question whether existing cases of life imprisonment had been reviewed, he explained that any such cases under the old law had been re-examined, not under article 123 (a) of the Constitution but under the new general part of the Criminal Code. In consequence, some life sentences had been changed to detention in a therapeutic facility, while others had continued as normal imprisonment in accordance with the new law. There were, at present, no cases of life imprisonment under article 123 (a).

55. Turning to the questions relating to criminal procedure and the various forms of detention depending on the progress of an investigation, he explained that the first stage was a brief interrogation of a person not suspected of having committed an offence in order to clarify the circumstances of the offence. The second stage was arrest of a person strongly suspected of having committed an offence, before a detention order was issued by the

public prosecutor. The police would then undertake preliminary investigations in order to determine whether or not the suspicions were confirmed. If they were confirmed, the police must then immediately bring the suspect before the public prosecutor. If not, he must be released. In any event, if not brought before the public prosecutor, the suspect must necessarily be released after 24 hours. That period could not be extended under any circumstances.

56. With regard to the issue of a language understood by the person arrested, article 219 (1) of the Code of Criminal Procedure expressly stated that the police must inform arrested persons, in a language they understood, of the reasons for their arrest and must also inform them of their rights as defined in article 158 of that Code. If that information was not given, any testimony obtained by the police could not be presented in court.

57. A major innovation in the Code of Criminal Procedure was that arrested persons had the right of access to a lawyer immediately from the time of their arrest.

58. The next stage was pretrial detention, which started as soon as it was ordered by the court and continued until the notification of the indictment to the court, followed by detention for reasons of public safety, which started from the notification of the indictment to the court and continued until sentencing. The final stage was detention following sentencing.

59. **Mr. Gaye**, First Country Rapporteur, commended the delegation on its detailed answers to the questions raised by the Committee.

60. With regard to the definition of torture, he emphasized that specific aspects of the offence should be incorporated in a State party's domestic law in order to ensure the effective implementation of the Convention. Article 10 (3) of the Swiss Constitution prohibited "torture and any other form of cruel, inhuman or degrading treatment or punishment", and article 25 (3) enshrined the principle of non-refoulement to a State where a person might be at risk of torture or ill-treatment. However, the practical implications of those principles needed to be spelled out in domestic legislation so that there was no scope for uncertainty. For instance, article 1 of the Convention referred to severe pain or suffering, whether physical or mental, but there was no reference in Swiss law to psychological torture. There should also be a provision in domestic law that could be invoked by a law enforcement official who was ordered by his or her superior to perform an act contrary to the Convention.

61. He had been informed that an action of unconstitutionality could not be filed against a law enacted on the basis of a Swiss popular initiative. If the report was accurate, some form of action should be taken to protect constitutional principles.

62. With regard to the criteria applied by the Federal Court when compiling a list of "safe States" for extradition and refoulement, he asked whether its decisions were open to appeal.

63. He noted with satisfaction that the conditions governing the implementation of article 123 (a) of the Constitution had been clarified. However, the Committee had recently been informed of the death of Mr. Skander Vogt in his prison cell in the Canton of Vaud on 11 March 2010. Mr. Vogt, who had been in detention for over 10 years without having been convicted of any serious criminal offence, had died of suffocation from smoke inhalation. He had been imprisoned indefinitely under article 123 (a) because he had been deemed to be a danger to society. According to his lawyer, the procedure that had led to his imprisonment was not based on objective criteria.

64. **Mr. Mariño Menéndez**, Second Country Rapporteur, also commended the scrupulous and highly professional nature of the delegation's replies to the Committee's questions.

65. He asked whether Switzerland would be willing to recognize the refugee status granted by another State party to the Convention relating to the Status of Refugees if it received a request for the extradition of a foreigner who was present in the country. In other words, could extradition be denied on the ground that the foreigner enjoyed refugee status in a third country?

66. He understood that the Swiss Parliament was currently discussing the question whether a popular initiative should be permitted on the expulsion of foreigners who were deemed to be dangerous, who had committed serious offences or who had abused State services. As non-refoulement was a principle recognized in the Constitution, he asked whether a foreigner who was expelled pursuant to an administrative decision could lodge an appeal based on that principle.

67. As the individual cantons were responsible for the enforcement of criminal sentences, he wished to know whether a canton could decide to keep prisoners who had served their sentence in custody for security reasons. For example, had Mr. Skander Vogt, the prisoner who had died in the prison fire, been imprisoned on the basis of a cantonal or federal decision?

68. He enquired about the evidentiary standards that were applied when the principle of non-refoulement was invoked. As it was a matter of jurisprudence in Switzerland and no specific legal provisions were applicable in such circumstances, he wondered whether the existing jurisprudence covered certain relatively common cases. For instance, if an armed conflict was taking place in part of the territory of the country to which a person was to be returned or expelled, could he or she be returned to an area that was not involved in the conflict? Was the risk of female genital mutilation or forced marriage taken into account in the case of women? If the person to be returned or expelled was in poor health, would the lack of medical facilities in the country of destination be taken into consideration? He also asked whether a foreign woman married to a Swiss citizen who was a victim of domestic violence could be allowed to remain in Switzerland after the dissolution of her marriage if she could prove that it would be difficult for her to reintegrate into the society of her country of origin.

69. Complaints against the police were apparently investigated by different bodies in the various cantons, for instance by an investigating judge, a public prosecutor or an ombudsman. He asked whether the regimes in some cantons were more protective than others. Were there any legal provisions applicable to such cases?

70. **Ms. Kleopas** said that the delegation had not answered her question concerning disappearances of unaccompanied minor asylum-seekers. The Committee had been informed that the majority disappeared after arriving in Switzerland and that no official investigations were undertaken to establish their whereabouts. NGOs were concerned that the minors were exposed to major risks such as exploitative labour, sexual exploitation or human trafficking and could become involved in drug trafficking or enforced delinquency. She urged the State party to take effective action to ensure that the children were properly protected.

71. **Ms. Gaer** enquired about the legal provisions requiring the police to arrest individuals suspected of perpetrating acts of domestic violence. Under what circumstances could police action be held to be abusive?

72. **Mr. Bruni** said he was concerned that the payment of fees might preclude the submission of well-founded applications for review. Although he understood that the measure had been taken to eliminate abuses of the existing procedure, he queried the legitimacy of making ability to pay a precondition for the exercise of rights.

73. With regard to the possibility of a popular initiative concerning the expulsion of foreign criminals, he found it difficult to reconcile automatic expulsion with jus cogens. Could a referendum be held on a proposal that was clearly incompatible with the Constitution?

74. **Ms. Belmir** noted that the State party had said in its comments on the Committee's conclusions and recommendations on its previous report (CAT/C/CHE/CO/4/Add.1) that an independent mechanism existed in at least nine cantons to receive and address complaints against the police. It now appeared that such mechanisms existed in only three cantons.

75. She found the duration of administrative detention to be excessive, especially for minors.

76. **Mr. Wang Xuexian** requested more information about the accelerated procedure. He asked whether the Committee's conclusions and recommendations were published in all Switzerland's official languages.

77. The Committee was opposed to the use of tasers, which could be lethal and were sometimes used recklessly. He mentioned the case of a young man who had been shot twice at a Canadian airport and had died instantly. States parties that authorized tasers should issue strict guidelines regarding their use.

78. **The Chairperson** asked how many trafficked women had been allowed to stay in Switzerland on the basis of criteria pertaining to their personal situation and how many had been returned. Could the courts issue rulings on the criteria in question?

79. According to the delegation, training facilities were provided for members of minorities. He enquired about the duration of the training courses and asked whether representatives of NGOs and academics were involved. Were there special courses for Roma groups? The Committee would be interested in seeing the teaching materials.

80. He asked for confirmation that refoulement was rejected not only when there was a risk of torture but also when there was a substantial risk of cruel, inhuman or degrading treatment or punishment.

81. **Mr. Stadelmann** (Switzerland) reaffirmed his country's commitment to a policy of zero tolerance of any kind of torture or ill-treatment. The Committee's conclusions and recommendations would be circulated to all parties concerned.

The discussion covered in the summary record ended at 12.05 p.m.