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# International Covenant on Civil and Political Rights

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**Human Rights Committee**
**Ninety-seventh session**

**Summary record of the 2658th meeting**
Held at the Palais Wilson, Geneva, on Tuesday, 13 October 2009, at 10 a.m.

*Chairperson*: Mr. Iwasawa

## Contents

*The meeting was called to order at 10.05 a.m.*

**Consideration of reports submitted by States parties under article 40 of the Covenant** (*continued*)

*Third periodic report of Switzerland* (continued) (CCPR/C/CHE/3; CCPR/C/CHE/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Switzerland took places at the Committee table.*

2. **The Chairperson** invited the delegation of Switzerland to continue its replies to questions raised by Committee members at the previous meeting.

3. **Ms. Vez** (Switzerland), on the subject of the consequences of divorce on residence permits for foreigners, said that with the entry into force on 1 January 2008 of the Federal Aliens Act, new rights had been introduced for foreign spouses in the event of the dissolution of marriage. When a marriage had lasted at least three years and there was successful integration, the foreign spouse retained their right to a residence permit, regardless of their possibilities of social reintegration in their country of origin. That right could also be retained irrespective of the length of the marriage and integration, if continued residence in Switzerland was required for compelling personal reasons, for example, in the case of persons who were victims of domestic violence and whose prospects of reintegrating in their country of origin seemed seriously jeopardized. Other circumstances could also constitute compelling personal reasons. Refusals were subject to appeal, first at the cantonal level and subsequently before the Federal Court. Residence permits could also be granted in hardship cases, according to criteria that were sufficiently broad to allow a personalized assessment on a case-by-case basis. Furthermore, Switzerland's legal arsenal and facilities on the ground were comprehensive enough to prevent women who were victims of domestic violence from remaining with their spouse solely for fear of losing their permit. Such women had access not only to complaint mechanisms, but also to a care system, in accordance with the Federal Act on assistance to victims of crime. All the cantons had shelters for women and children who were victims of domestic violence, and the cantonal police had staff specially trained to deal with such situations. For further information on those matters, the Committee was invited to refer to Switzerland's report to the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHE/3).

4. **Mr. Gerber** (Switzerland), referring to the marriage of foreigners, said that since the amendment made to the Civil Code in June 2009, all persons wishing to contract marriage who did not have Swiss nationality must prove that they were legally resident. Admittedly that amendment restricted the right to marry and to protection of the family, but the Federal Council and the Federal Court had considered that it was acceptable so long as it was applied in keeping with the principle of proportionality. In other words, the authorities must ensure that it did not in fact constitute an obstacle to the right to contract marriage, as recognized under article 23 of the Covenant. For example, they could establish a time frame within which the foreigner concerned could marry before leaving the country.

5. **Mr. Schmocker** (Switzerland), turning to the question of assisted suicide, said that the debate on the issue was far from over in Switzerland. In a report dating from 2006, the Federal Council had concluded that there was no need to amend article 115 of the Criminal Code or the provisions governing passive euthanasia and indirect active euthanasia, or to pass a federal act on the organization and monitoring of assisted suicide associations. There were therefore currently no plans to establish a mechanism for monitoring the lawfulness of assisted suicide, as in the Benelux countries. In a report dating from 2007, the Federal Council had concluded that there was no need to amend the legislation on narcotics with a view to restricting the conditions for prescribing natrium pentobarbital, but that it was

necessary, on the other hand, to develop palliative care to combat assisted suicide. In July 2008, the Federal Council had undertaken to examine the more specific issue of *organized* assisted suicide, without prejudice to its previous conclusions. In June 2009, it had announced that two options were under consideration: to introduce legislative restrictions so as to impose due diligence on assisted suicide organizations; or to ban assisted suicide. As for the term of imprisonment of not more than five years laid down in article 115 of the Criminal Code as the penalty for incitement to suicide, it should be compared with the penalties for other threats to a person's life. For example, the penalty for murder was a term of imprisonment of at least five years; the penalty for murder at the request of the victim was not more than three years; and the penalty for a crime of passion was a term of imprisonment ranging from one to ten years.

6. **Mr. Zumwald** (Switzerland) said that it was not true that access to justice for asylum-seekers was restricted by the fact that they were asked for an advance on the legal fees. Everything depended on whether it was an ordinary or extraordinary proceeding. For example, the initial asylum application at first instance to the Federal Office for Migration or a subsequent application made after a return to the country of origin following rejection of the initial application was always free of charge, and an ordinary appeal with suspensive effect was guaranteed, even for decisions of non-consideration. On the other hand, in the case of extraordinary proceedings, which could be brought only upon completion of the ordinary asylum proceeding, an advance on the legal fees could be requested: up to 600 Swiss francs for an application for review by the Federal Office for Migration, and up to 1,200 Swiss francs for an application for review by the Federal Administrative Court. However, payment of the advance was not compulsory, and in fact was not applied if the asylum-seeker had insufficient means or if the application had prospects of success. It was therefore reserved for applications that were clearly unfounded or irregular. According to statistics, between 2008 and 2009, approximately 50 per cent of applications for review had been rejected, following consideration of the merits of fresh evidence, and one third had resulted in temporary admission to Switzerland for the asylum-seeker.

7. **Mr. Schmocker** (Switzerland), providing clarifications on article 123 (a) of the Federal Constitution which authorized life imprisonment of "extremely dangerous" offenders, said that the Criminal Code had been amended by a federal act in order to implement the provision in question. In new article 64, paragraph 1 bis, of the Criminal Code, reference was made to offenders who "were highly likely to commit" another very serious offence listed in the article. Under the new provisions, the dangerousness of offenders was to be periodically assessed, as a matter of course or at the request of the person concerned, in accordance with the European Convention on Human Rights and the Covenant.

8. **Mr. Olschewski** (Switzerland), providing information on the proportion of foreigners in Switzerland, said that they had represented 19.3 per cent of the population in 2000, 20.3 per cent in 2005 and 21.4 per cent in 2008. They had reached 1.5 million in 2007.

9. **Mr. Gerber** (Switzerland), on the subject of forced sterilizations that had taken place in the past, said that the Federal Parliament had abandoned the idea of paying compensation to victims, for various reasons, in particular feasibility. No request for payment of compensation had ever been submitted, either to the federal or to the cantonal authorities; moreover, it would be very difficult, so long after the event, to verify whether the persons concerned had given their informed consent. The Swiss authorities had nonetheless recognized the existence of the practice and had passed laws to prevent it recurring in the future, through regulations establishing the conditions under which a person who was incapable of discernment could be sterilized.

10. **The Chairperson** thanked the delegation for its replies and invited members of the Committee to raise further questions, if they so wished.

11. **Mr. Amor** said he welcomed the news that Switzerland was planning to examine more carefully its reservations to article 12, paragraph 1, and article 25 (b) of the Covenant on the occasion of its Presidency of the Council of Europe. The news obviously gave rise to other hopes. As far as the reservation to article 20 was concerned, Switzerland claimed that its criminal legislation was comprehensive enough to stamp out propaganda for war and incitement to hatred, but the logical consequence of that argument was that the reservation had no purpose and could therefore be withdrawn. The same applied to the Optional Protocol: if there was no legal obstacle to its ratification, as the delegation itself had said, it would make sense for Switzerland to ratify it. As for the reservation to article 26, it must be remembered that the scope of the article was far broader than that of article 14 of the European Convention on Human Rights, because it covered virtually all situations of discrimination. Despite a very comprehensive legal armoury for combating discrimination, Switzerland had not escaped certain problems. It never ceased to surprise him, for example, that children who were not severely disabled, but merely diabetic, had to leave school. At any rate, as a country which was at the forefront of human rights protection, Switzerland must also set an example in the area of reservations. Since a federal act could not be applied once it had been declared incompatible with an international human rights instrument, it would be interesting to know whether an act dismissed in that way would become obsolete. Lastly, he would also like to know whether there was a mechanism for monitoring the implementation of the Committee's concluding observations by the cantonal authorities, once the observations had been forwarded by the federal authorities, and for obtaining feedback.

12. **Mr. Lallah** asked under what circumstances legislation governing the marriage of foreigners could be derogated from, because he could not see how the principle of proportionality could be applied in matters relating to marriage. Article 23 of the Covenant did not allow for any derogations or exceptions, and to prohibit marriage in the case of a person who did not have Swiss nationality or residency was a total violation not only of that article, but also of article 16, since it meant that under legislation governing marriage a foreigner in an irregular situation was not considered as a person.

13. **Ms. Wedgwood** asked if there was a distinction between the concept of euthanasia and that of assisted suicide, and what legal guarantees were provided concerning consent. For example, how was consent manifested and recorded? Did it have to be openly declared or merely inferred? It would also be interesting to know whether there were plans to ensure that the validity of such consent was subject to verification from outside the immediate family or attending medical staff of the person concerned, for instance by a judicial authority. Lastly, she would welcome clarifications on assisted suicide in the case of minors. For example, under Netherlands legislation, from the age of 16, it was no longer necessary to obtain the consent of parents – they merely had to be consulted.

14. **Mr. O'Flaherty** said that he would like to know why the establishment of a national human rights institution was not considered appropriate at present. The pilot project should be launched early in 2010, but it seemed that the participating organizations had not yet been identified. One might therefore wonder whether there was some obstacle that the delegation had omitted to mention. As for forced sterilizations, it was commendable that Switzerland had acknowledged and deplored the practice, but it did not seem to have made much effort to help the victims. That did not necessarily entail awarding them compensation, but, at the very least, they should be given support. For example, issuing a public apology did not cost anything, but it could bring great comfort to the victims, and did not require them to be identified individually. Psychological support might also be useful. The delegation claimed that it was not possible to identify the persons who had

volunteered for the sterilization programme, but in the case of minors it could be assumed that they had not given their consent. Lastly, he asked why there was no federal register of firearms, which were registered only at the cantonal level.

15. **Sir Nigel Rodley**, reverting to the question of assisted suicide, said that keeping alive someone whose life was unbearable was an affront to human dignity. However, at the same time, the State had a positive obligation to protect life. According to the albeit scant information available, there was no means of verifying whether suicide candidates had given their consent and, even more importantly, whether they had expressed their wish to die. It was particularly important in the case of persons who were vulnerable and easily influenced, such as minors, but also for the elderly. Often, unfortunately, they had the impression that they were a burden and their family reinforced that idea. It was therefore important to make sure that the decision had been taken freely and that it was really what they wanted. A support mechanism could also be established to encourage the persons concerned to reconsider their decision and to help find other solutions. It must be remembered that people who sought assisted suicide were unable to take their own life; it was therefore likely that they suffered because of that, as well as from being unable to bear living.

16. **The Chairperson** invited the delegation to respond to the questions raised by the Committee members.

17. **Mr. Leupold** (Switzerland) said that, in general, the fact that reservations were still in force showed that Switzerland took its obligation to implement the Covenant seriously, since it would not wish to withdraw its reservations until it was certain that its legislation was fully in line with the guarantees enshrined in the Covenant.

18. **Mr. Schürmann** (Switzerland) said that, since his country would be assuming the Presidency of the Council of Europe from November 2009, it was the Council's instruments that were currently the focus of interest in Switzerland; nevertheless, there were parallels between those instruments and the Covenant. Specifically, as far as the reservations to articles 12 and 26 of the Covenant were concerned, Switzerland had not ratified Additional Protocols No. 4 (Freedom of movement) and No. 12 (General prohibition of discrimination) to the European Convention on Human Rights. While it held the Presidency of the Council of Europe, Switzerland would examine those instruments carefully, and that would certainly have an effect on the question of the reservations to articles 12 and 26 of the Covenant, which dealt with the same issues. Switzerland maintained its reservation to article 20, since the Covenant required States to promulgate a specific provision, which it had not yet done. Nonetheless, the criminal provisions in force and the competence conferred on the Government by the Federal Constitution were sufficient to meet the purposes of article 20.

19. **Mr. Gerber** (Switzerland), replying to the question of what happened to a federal law which was in conflict with a provision of an international human rights instrument, said that if the provision was not applied, it was necessary to analyse its scope. If its scope was broader and it did not run counter to international law in other respects, it was still applicable. If it referred to one specific aspect only and was incompatible with international law, de facto it was no longer applied, and one could therefore speak of obsolescence.

20. As for Swiss provisions prohibiting the marriage of persons who were illegally resident in Switzerland, they did not constitute a negation of personality, since the persons in question could marry abroad and have their marriage recognized in Switzerland.

21. **Mr. Leupold** (Switzerland) said that the matter of assisted suicide was currently under consideration by the Government. For the time being, it was therefore difficult to take a clear stance on the matter.

22. **Mr. Schmocker** (Switzerland) said that with suicide it was the person concerned who would take the lethal substance whereas, with euthanasia, a third party caused death, and it was therefore no longer a question of assisted suicide. If persons who allowed themselves to die were not capable of discernment and had not given their informed consent and in so doing became instruments, it was tantamount to homicide. There were two aspects of assisted suicide; the health aspect and the criminal one. On the one hand, doctors who prescribed the lethal substance must comply with ethical standards, particularly the guidelines of the Swiss Academy of Medical Sciences concerning informed consent. Any violations were punished by the cantonal health authorities. On the other hand, as suicide was a violent form of death, a criminal investigation was systematically opened to verify that conditions relating to informed consent had been complied with.

23. **Mr. Leupold** (Switzerland) said that further information on the question of forced sterilizations would be provided in due course.

24. **Ms. Weber** (Switzerland), explaining the situation concerning firearms registers, said that since in Switzerland the registration of firearms was the responsibility of the cantons, firearms records were kept at the cantonal level, in accordance with the Schengen Agreements. According to article 9 of the Firearms Act, Swiss nationals could request a firearms licence in their canton of residence only, whereas foreigners submitted their application in the canton in which the weapon was purchased. In addition, the Central Firearms Office, which was attached to the Federal Police Office, kept a file on refusals to grant licences, withdrawals of licences and confiscations of weapons.

25. **Mr. Spenlé** (Switzerland) said that wide-ranging consultations had been conducted by the Federal Council in 2007 on the issue of the establishment of a national institution for the protection of human rights, and that the risk of overlapping mandates had been mentioned many times. It was a vast and complex issue and opinion on it was very much divided. After the consultations, an interim solution had been adopted. A report on the issue was currently before Parliament and a call for tenders would be launched to Swiss universities in the second half of 2009. That was the first step.

26. **The Chairperson** invited the Committee to move on to the second part of the list of issues (questions 10 to 22).

27. **Mr. Leupold** (Switzerland) said that specific examples of inquiries conducted into allegations of torture or ill-treatment, as requested in question 10, were provided in the written replies (CCPR/C/CHE/Q/3/Add.1). Concerning the establishment of a statistical database on complaints against the police for abuse of power (question 11), the police kept statistics on criminal activity throughout Switzerland, in which complaints regarding certain offences had been registered. In order to improve the data available, the Federal Statistics Office had decided to compile, in cooperation with the cantons, fuller and more detailed statistics which, inter alia, would facilitate access to all complaints concerning abuse of power. Several cantons had also prepared or had started to compile statistics on complaints lodged against the police or other public officials.

28. Concerning measures undertaken by Switzerland to encourage all cantons and communes to create independent investigation mechanisms like the one already existing in Geneva (question 12), Swiss federalism was in fact characterized by the independence it conferred on the cantons and local communities within their respective spheres of competence, in accordance with applicable legislation, whether national or international. The legislation stipulated that any person who suffered abuse of power by the police or another authority could refer the matter to an independent authority. In keeping with its federal tradition, Switzerland believed that there was more than one valid way of implementing the principle and that, so long as it was upheld, the communities concerned must be free to find the solutions best suited to their particular needs and organization.

There were no directives on the subject for the cantons. The judiciary was independent at all levels. For that reason, many cantons did not consider it necessary to establish a special mechanism to investigate complaints against the police, which at the cantonal level were dealt with by an investigating judge or prosecutor. The persons concerned could also report the matter to the supervisory authority. Some cantons also provided for the possibility of referral to a mediator.

29. Regarding the matter of minorities in the police force (question 13), it should be noted that the possibility of recruiting persons who were not Swiss nationals into the police force was already provided for in several cantons and that, in others, discussions were under way on the subject. It was altogether legitimate to require Swiss nationality as a condition for police work, since the exercise of the monopoly over law enforcement was closely bound up with a special loyalty to the State. Moreover, recruiting non-nationals was not the only way of ensuring that minorities were represented in the police force. Indeed, many people of foreign origin or second-generation immigrants formed part of a minority although they had Swiss passports. Many cantonal police forces had representatives of various minorities without having had to recruit non-nationals. Police officers must know the country and its language well. Often, foreigners who had such knowledge were eligible to apply for Swiss nationality, and could do so without losing their original nationality. Thus, even in the cantons which required Swiss nationality for recruitment into the police force, those duties were open to a large proportion of members of minority groups who wished to join the force.

30. Regarding the circumstances in which stun guns or “tasers” were used, above all during the forcible removal of foreigners (question 14), the Confederation had regulated the use of force in its areas of jurisdiction through an Act which had entered into force in 2009. The Act also applied to the forcible removal of foreigners. However, the provisions of the Act had been fleshed out through an Order of the Federal Council, specifying which devices could be used for which tasks. The use of stun guns was not allowed during the forcible removal of foreigners. In general, as with firearms, there were strict conditions governing the use of stun guns; in particular, such devices could be used only to prevent serious offences that threatened the life or inviolability of the person, or public safety.

31. As far as improving the conditions of persons deprived of their liberty and especially the problem of prison overcrowding were concerned (question 15), many cantons had taken steps to provide sufficient capacity and to improve conditions in detention facilities or were in the process of doing so. Most cantons did not have or no longer had an overcrowding problem. The Canton of Geneva was currently implementing extensive measures to remedy the situation.

32. As for free legal assistance granted to asylum-seekers, especially to those who appealed against a refusal of asylum (question 16), in principle such assistance was provided to asylum-seekers according to the same principles as those applicable to any other case. The persons concerned must have insufficient means and have prospects of winning their case. There were specific rules governing unaccompanied minor asylum-seekers, who were immediately provided with assistance by a trustworthy person, who was responsible for defending their interests.

33. Turning to the matter of housing for asylum-seekers, including families whose application for asylum was under reconsideration (question 17), he said that in some cantons asylum-seekers were not moved when their application was refused and could stay where they were while their application was being reviewed. Other cantons provided special facilities for certain categories of asylum-seekers, but allowed families and unaccompanied minors to stay in the same accommodation or facility they had been in during the asylum proceedings. In all cases, even when families were moved to special facilities, the principle of family unity was upheld. As for the importance of taking into

account the best interests of the child in legal proceedings involving foreigners, often the cantons provided housing units for unaccompanied minors where children were given shelter, regardless of their legal status. In some cases, minors were placed with relatives living in Switzerland or in foster families, while remaining under the close supervision of the authorities. Children were always enrolled in school, in general, in cantonal public schools.

34. Regarding the military service exemption tax provided for under Swiss law and its compatibility with article 18 of the Covenant (question 18), men who were liable for military service and performed neither military nor civilian service had to pay a tax. There were several grounds for exemption from the obligation, for example, a fairly serious disability. The amount of the tax was determined according to the length of military and alternative civilian service. It was considered as equivalent to performing service and was intended to ensure equal treatment of persons liable for service.

35. As far as restrictions on freedom of religion were concerned (question 19), and in particular the possibility of a "referendum on the construction of mosques", the popular initiative in question did not concern mosques but minarets; it would be put to the vote on 29 November 2009. It was the only popular initiative pending at federal level which involved restricting freedom of religion. Under Swiss law, an initiative was declared null and void when it was not in keeping with the peremptory norms of international law – *jus cogens* norms. That was not the case for the initiative on minarets, which had been declared valid. The Federal Council had nonetheless considered in its message that the initiative violated several human rights, such as freedom of religion and the prohibition of discrimination. It had therefore recommended to Parliament that the initiative should be rejected. Both chambers of Parliament had subscribed to that recommendation.

36. As for preventing the sexual abuse of children, punishing those responsible and providing assistance to victims (question 20), various preventive measures had been adopted by the Confederation and the cantons. In 2005, the Federal Social Security Office had published a report on the prevention of violence against children. The study gave food for thought and highlighted various approaches. It also provided information on the scale of the problem, gleaned from statistics on criminal acts. Together with private partners, the Federal Statistics Office had also established an association which, as from 2010, would run a national child protection programme, with the participation of the public and private actors concerned. Its activities would comprise needs assessment, coordinating the different actors, coordinating funding and project evaluation. The cantons had introduced many programmes and measures to protect children against sexual abuse. In several cantons, programmes had been devised for all students in certain age groups. The cantons had also introduced contact, advisory and care services. Mechanisms had been created to ensure that cases of ill-treatment were recognized and reported by people who worked with children. Lastly, in November 2008, the Swiss people had accepted an initiative declaring that sexual offences against children were not subject to the statute of limitations. Implementing legislation for the new regulations was under preparation.

37. Concerning the situation of Travellers in Switzerland and measures adopted with regard to them (question 21), in a decision of 2003, the Federal Court had ruled that development plans must provide suitable zones and sites where Travellers could live according to their traditions. In the light of that decision, many cantons had undertaken to review their master plans to include parking areas for Travellers. Often, representatives of the Travellers were involved in such work. At the federal level, a proposal to convert disused military sites into living and transit sites for Travellers had received broad support during consultations. The Federal Department of Defence had been instructed by the Federal Council to cooperate on those issues with the "Assurer l'avenir des gens du voyage suisses" Foundation. Some cantons had established contact points for Travellers, or projects

to promote coexistence between Travellers and the local population. Specific provisions had also been enacted to give Travellers a legal domicile so that they could vote.

38. On the subject of the dissemination of information concerning the Covenant and the consideration of periodic reports (question 22), the cantons had been consulted on the preparation of the third periodic report. They had also been involved in the preparation and presentation of the report and were represented on the delegation. The Committee's concluding observations would be translated into all the official languages and sent to the cantons. They would also be made available to the public on the websites of the Federal Department of Foreign Affairs and the Federal Office for Justice. The guarantees afforded by the Covenant formed part of the law curriculum in universities and in training courses for members of various professions, such as police officers and prison guards.

39. **The Chairperson** thanked the Swiss delegation for its replies and invited the members of the Committee to raise questions on items 10 to 22 of the list of issues.

40. **Mr. Thelin** said that Switzerland was to be commended for the very high level of respect for human rights in the country and that, while improvements in that area were still possible, one should be careful not to demand more of Switzerland than other countries because the same standards must be applied to all States parties.

41. The information provided by the Swiss Government in its written replies concerning complaints against the police covered eight cantons only. Was that because there was no information concerning other cantons or because no complaints had been filed at all? The Canton of Geneva had developed an effective independent mechanism for investigating complaints against the police, but it seemed that other cantons were not willing to follow that model. Of course the Federal Government could not interfere in matters which came under the competence of the cantonal authorities, but it would be interesting to know if there was the political will to promote the Geneva model in other cantons.

42. Regarding the issue of recruitment into the police of persons belonging to minorities, it went without saying that the police must have a good knowledge of the culture, language and law of the place where they worked, and that the criterion of nationality in itself was not open to criticism. It was also important that the composition of the police force should reflect society. Further information on the situation at the cantonal and federal levels would be welcome and would also help the Committee to follow developments regarding the integration of members of the immigrant population, whether they were Swiss or not, in the police force.

43. He noted with satisfaction the adoption of the new Act on the use of force and police measures and the issuing of the relevant federal implementing order. According to the written replies, the Act expressly prohibited the use of stun guns (tasers) and other incapacitating devices during repatriation "by air". He wondered if repatriations were systematically carried out by air, which meant that the weapons could never be used during repatriation. One canton required the unit authorized to use tasers to have a defibrillator on hand at all times, which was commendable; nonetheless, it was necessary to find out whether any studies had been conducted into the risks and dangers posed by the use of such weapons before the promulgation of the Act.

44. **Mr. Lallah**, noting that free legal assistance was guaranteed by article 29 of the Constitution, asked whether it was true that the provision was interpreted in a more restrictive manner for asylum-seekers and which authority determined whether or not an asylum-seeker's case had a prospect of success, since that was one of the criteria for obtaining legal assistance. He understood that, for the most part, asylum-seekers were represented by NGOs, whose premises were sometimes difficult to reach, and he asked whether it was possible for NGOs to provide their advisory services in registration centres. It also seemed that asylum-seekers who were minors could be detained for up to 12 months

and that, in practice, some of them were held for 3 to 9 months. He requested confirmation of that fact, and of whether detention for minor asylum-seekers was generally longer than for adults.

45. Regarding the prevention of sexual abuse against children, he asked whether the establishment of a national database might not promote the implementation of relevant policies adopted. Lastly, he would like to know whether there were plans to translate the list of issues into the national languages, which would be useful.

46. **Mr. O'Flaherty** said that, in the question relating to military service (question 18), no mention had been made of conscientious objectors. Yet it seemed that civilian service was very different from military service, since it was one and a half times longer. Perhaps the delegation could indicate whether that was indeed the case and, if so, whether it did not consider that to constitute a form of discrimination under article 18 of the Covenant, particularly in cases where conscientious objection was on religious grounds. In the *Glor v. Switzerland* case, the European Court of Human Rights had declared discriminatory the practice of imposing a military service exemption tax on persons exempt from military or civilian service on medical grounds, who, without those health problems, would have been willing to perform their service. Perhaps the delegation might wish to comment on the decision and indicate whether it considered that the decision was also applicable in the light of the Covenant. Furthermore, he understood that one of the amendments to the Asylum Act currently under consideration expressly prohibited granting asylum to persons seeking it because they were trying to avoid military service in a country that did not recognize conscientious objection. If adopted, such a provision would be a cause for concern and it would be good to hear the views of the delegation on the matter.

47. Concerning the popular initiative on the construction of minarets — and not of mosques, as stated in question 19 of the list of issues — the delegation itself had recognized that the provisions of the initiative were contrary to Switzerland's obligations under international law, including the Covenant. It would be useful to know what the Government did when an initiative was incompatible with international human rights law, particularly when it was accepted by the nation.

48. The controversy sparked recently by the publication by one political party of posters in favour of the ban on minarets, which were very disturbing because of how they portrayed Muslim women, had not been taken into account in the list of issues or in the delegation's written replies. The decision to allow the poster to be printed raised issues under article 19 of the Covenant; perhaps the delegation could explain whether measures had been taken to ensure that the use of the poster in the run-up to the vote in November was not incompatible with the article.

49. Regarding child protection, National Research Programme 52, concerning "Children, youth and relations between generations in a changing society", had revealed disturbing inequalities between the cantons in that area. It would be interesting to know what steps were taken to ensure the uniform application of best practices in child protection in all cantons.

50. **Ms. Wedgwood** said that she shared the concerns expressed about the commission of Islamophobic acts; she was also concerned about anti-Semitic acts and asked whether the Swiss Government was tracking those incidents and what was being done to inculcate values of tolerance in schools. There had been several cases involving such acts in recent years and, judging by its statements, the police appeared to have underestimated the seriousness of the events. It was important to give the police training emphasizing the need to investigate acts of racial or religious violence.

51. **Mr. Amor** said that, according to the Swiss delegation, the initiative on minarets had not been declared invalid because it did not violate the peremptory norms of

international law. Besides the fact that the assertion was questionable, the initiative could also have been declared invalid under article 8, paragraph 2, and other articles of the Constitution. He would like to hear the delegation's views on the matter. The controversial poster published as part of the campaign leading up to the vote on the initiative had been banned in many communes. However, the matter should come under the jurisdiction not of the communes and cantons, but of the federal authorities. Posters of that kind should be banned, and article 19 of the Covenant, which stipulated, inter alia, that the exercise of freedom of expression carried with it special duties and responsibilities, provided ample grounds for doing so. It would be interesting to know what action the federal authorities could take against what appeared to be a clear violation of the articles of the Covenant.

52. **Mr. Bouzid** said that it would be helpful if the delegation could provide more information on the category of "people who regularly find themselves in prison and cannot be returned to their countries of origin" mentioned in paragraph 139 of the written replies, as well as on the measures that Switzerland could take against countries that refused to readmit their nationals.

53. **The Chairperson** suggested that the meeting should be suspended for a few minutes to allow the delegation to prepare its answers to the questions that had just been raised.

*The meeting was suspended at noon and resumed at 12.10 p.m.*

54. **Mr. Leutert** (Switzerland), referring to the fact that the information on complaints filed against the police covered eight cantons only, said that statistics were collected in other cantons too, for example in the canton of Basel-Land, but that was not done systematically. The fact remained that the police took human rights issues very seriously, as proved by the fact that initial and continuing training for members of the police force included a course on human rights, leading to an examination.

55. The Canton of Geneva had indeed established an independent investigation mechanism, which was very effective. However, the independence of investigations into the police was also guaranteed in the other cantons, since the investigating judge or prosecutor was responsible for handling the complaints. The authorities of the other cantons therefore considered that there was no need to establish a special mechanism to investigate complaints filed against the police.

56. His delegation did not have precise information on the proportion of foreigners recruited into the police forces. It was, however, likely that it was lower than the proportion of foreigners in the total population. Not all cantons agreed to employ foreigners in the police because their authorities considered that since the police force was a body empowered to exercise authority on behalf of the State, its members must be of Swiss nationality.

57. **Ms. Weber** (Switzerland) said that, although she did not know the exact figures, there were some persons belonging to national minorities or of foreign origin working in the Federal Police Office, including in the Federal Judicial Police Division. The knowledge such persons had of a language or a particular culture was often considered an asset.

58. **Mr. Leupold** (Switzerland) said that the delegation would provide the Committee with accurate data on the subject in the written information it would submit in due course.

59. **Mr. Olschewski** (Switzerland) said that a bill on the establishment of a system allowing observers to be present during the removal of foreigners was being drafted and should be submitted to Parliament by the end of the year at the latest.

60. **Mr. Leutert** (Switzerland) said that the cantons made limited use of incapacitating devices and that in some cantons only a special unit that had received special training was equipped with tasers. On 2 April 2008, the Conference of Cantonal Justice and Police

Directors (written replies, para. 101) had issued guidelines on the use of stun guns, designed to ensure that the cantons which allowed the use of tasers met the minimum standards applicable nationwide. Those guidelines did not replace more restrictive police regulations that might be in force in a particular canton. They simply set minimum standards, in particular that incapacitating devices could be used to stop and prevent the escape of persons where less forceful means would prove ineffective and if the individuals to be stopped or trying to escape had committed or were strongly suspected of having committed a serious offence; that the incapacitating device must be used according to the principle of proportionality; and that the use of an incapacitating device against a person who had surrendered or who was in police custody and did not represent an imminent danger was prohibited. As indicated in the written replies, the use of stun guns was prohibited for repatriation by air. All repatriations were carried out by air and therefore the ban applied in all cases.

61. **Ms. Weber** (Switzerland), replying to the question as to whether studies on the risks and dangers associated with the use of tasers had been conducted prior to the entry into force on 1 January 2009 of the Act on the use of force and police measures in areas under the jurisdiction of the Confederation (written replies, para. 118), said that no such study had been conducted in Switzerland, and that Parliament had found that those carried out in other countries were inconclusive. The Federal Council had nevertheless been requested to submit a report on the application of the Act to Parliament within two years after its entry into force.

62. **Mr. Zumwald** (Switzerland) said that the right to free legal assistance was one of the minimum guarantees of the Constitution which also applied to asylum proceedings at first instance, on condition that the persons wishing to receive assistance submitted the relevant application, that they did not have sufficient means and that their case had some prospect of success (written replies, para. 141). At first instance, it was the Federal Office for Migration which decided whether to grant legal assistance and, at second instance, the decision rested with the Federal Administrative Court. In order to determine whether asylum-seekers were entitled to free legal assistance the necessity test was applied, in other words, the de facto or de jure situation must be so complex that it was considered that applicants could not defend themselves alone. In most cases, at least at first instance, asylum-seekers were perfectly able to explain the reasons for their asylum application themselves.

63. The Federal Office for Migration was required to inform applicants of their right to contact a legal adviser or representative. An aide-memoire drafted for that purpose was available to asylum-seekers at registration centres. In cases where the persons concerned did not speak the language sufficiently well to fully understand, they were informed of their rights by other means. The Federal Office for Migration must also make freely available to asylum-seekers the necessary means to exercise their right to contact a legal adviser – telephones, faxes, lists of legal advisers with contact details, the assistance of an interpreter, if necessary. An order relating to registration centres guaranteed the right of asylum-seekers to confer with their legal adviser and establish arrangements for their visits. The right of asylum-seekers to be heard was guaranteed by means of a mandatory hearing, during which the persons concerned, assisted if necessary by a court-appointed interpreter or representative of their choice, explained the reasons for their application. Swiss law allowed representatives of accredited aid agencies to participate as observers in such hearings. The representatives could ask questions to clarify the facts and raise objections. Aid agencies working under the Swiss Organization for Aid to Refugees were subsidized by the Confederation to the tune of more than 3 million Swiss francs per year.

64. **Mr. Olschewski** (Switzerland) said that detention of asylum-seekers was a measure of last resort, used for persons awaiting expulsion. For asylum-seekers aged between 15 and 18, the law established a maximum period of detention of 12 months.

65. **Ms. Weber** (Switzerland) said that statistics on sexual violence against children would be available in early 2010 with the entry into force of the new police statistics on crime. The Violent Crime Linkage Analysis System (ViCLAS), a database for violent crimes of a sexual nature which helped prosecuting authorities to identify links between different crimes or between acts and their perpetrators, had been operational in Switzerland since 2003. At the international level, it was expected that as from 2010 the pornography and paedophilia unit attached to the Federal Police Office would have online access to the Interpol database on the international sexual exploitation of children.

66. **Mr. Spenlé** (Switzerland) said that the lists of issues, periodic reports and concluding observations of the Committee were published on the websites of the Federal Office of Justice and the Directorate for International Public Law, within the Federal Department of Foreign Affairs. Information about the Covenant and the Committee's activities also appeared on the sites of various Swiss non-governmental human rights organizations. The guarantees of the Covenant, as well as the Committee's general comments, were part of the law curriculum in universities.

67. **Mr. Schürmann** (Switzerland) said that a collection of legal sources relating to the protection of human rights, which dealt with the Covenant but also other instruments that had not yet entered into force in Switzerland, had recently been published at a very affordable price with the financial support of several federal authorities.

68. **Mr. Gerber** (Switzerland) said that he would address the issue of civilian service. The length of civilian service was indeed one and a half times that of military service. Defined by the Constitution as alternative service, civilian service could not be chosen freely in preference to military service and required special justification. Until March 2009, admission to civilian service had been conditional on the existence of a conflict of conscience, of which the applicant must provide evidence before a review commission. The revised Civilian Service Act, which had come into force in April 2009, required proof by act, in other words, agreeing to perform alternative service which lasted longer than military service was proof of the existence of a conflict of conscience. The requirement of equivalence between alternative civilian service and military service justified the longer duration of the former, given the inherent physical and psychological difficulties of the latter. Switzerland therefore considered that there was no discrimination since alternative civilian service was designed to be equivalent to military service.

69. **Mr. Schürmann** (Switzerland) said that, in the case of *Glor v. Switzerland*, the Swiss Government had filed an appeal, currently pending before the Grand Chamber of the European Court of Human Rights. It disputed in particular the finding of a violation of article 14 (Prohibition of discrimination) in conjunction with article 8 (Right to privacy) of the European Convention on Human Rights. As far as the Covenant was concerned, the Government would maintain its position, a fortiori in view of the reservation to article 26.

70. **Mr. Zumwald** (Switzerland) said that, thus far, the draft amendment to the Asylum Act mentioned by Mr. O'Flaherty had only been the subject of consultations, whose results were being studied by the Federal Department of Justice and Police. There was nothing to say that it would be submitted to the Federal Council and Parliament for adoption. In substance, the proposed amendment merely endorsed doctrine and practice under the 1951 Convention relating to the Status of Refugees by recognizing the legitimate right of a State to prosecute an ordinary crime such as desertion or refusal to perform service. However, such prosecutions would lose their legitimacy if the prosecuting State required its soldiers to commit human rights violations, imposed disproportionate penalties for conscientious

objection or did not prosecute the offence of desertion or refusal to perform service as such, but as an act of political opposition. In such cases, refugee status would continue to be granted, in accordance with the provisions of the 1951 Convention.

71. **Mr. Gerber** (Switzerland) said that, according to article 139 of the Constitution, a popular initiative could be declared invalid when it was not in keeping with the peremptory norms of international law. The Swiss authorities had considered that the federal popular initiative opposing the construction of minarets was not contrary to *jus cogens* norms in so far as article 18, paragraph 3, of the Covenant allowed for restrictions on freedom of religion. The Federal Council believed that the initiative would be rejected and that the question of what follow-up would be given to it if it was accepted was therefore academic. It was, however, a delicate issue because, to date, the principle of the primacy of international law over the Constitution had never been applied in the case of new constitutional provisions. Consequently, if the initiative was approved, it would be up to the courts to decide whether to allow or prohibit its implementation for reasons relating to guarantees of fundamental rights. The display of the posters in the public domain came under the jurisdiction of the cantons and communes rather than that of the Confederation. The Confederation was therefore not entitled to ban posters, even discriminatory ones. With regard to the posters for the popular initiative against the construction of minarets, the opinion of the authorities was divided as to their discriminatory nature, which was why some municipalities had banned them and others had not. It would be for the courts to rule on whether allowing or banning the posters was compatible with respect for fundamental freedoms, including the freedom of expression.

72. **Mr. Leupold** (Switzerland) said that the Government had studied with great interest the results of the study conducted under National Research Programme 52 and the disparities it had revealed among the different cantons in the area of child protection. The fact that the cantonal authorities were responsible for enforcing federal civil law partly explained those disparities. Legislation relating to guardianship had been fully revised and a new act would come into force on 1 January 2012, which required the cantons to upgrade the professional skills of the guardianship authorities to ensure the uniform application of relevant legislation.

73. **Mr. Galizia** (Switzerland) said that the Swiss authorities treated all forms of discrimination, especially religious discrimination, with the utmost seriousness. In Switzerland as in other European countries, there was a noticeable rise in Islamophobia. For several years the Federal Commission against Racism and the Federal Commission for Migration Affairs had been conducting studies on the subject. Part of the national research programme on religions was devoted specifically to Muslims and new religious minorities in Switzerland. The Service against Racism of the Federal Department of the Interior was very active in the field of awareness and prevention. The controversy surrounding the popular initiative against the construction of minarets had, for instance, provided an opportunity to conduct, in partnership with the Muslim community in Switzerland, an unprecedented information campaign on Islam. Under Swiss law, anti-Semitism was defined as a specific form of racism. Revisionism and Holocaust denial were criminal offences under article 261 bis of the Criminal Code. Statistics showed that nearly 25 per cent of racist offences resulting in prosecutions were directed at Jews, which proved that the provisions in question were applied. In the area of prevention, the Service against Racism worked in close cooperation with several Jewish organizations and supported projects to raise awareness of anti-Semitism in schools and in the police and armed forces.

74. **The Chairperson** thanked the delegation for its detailed replies. All additional information to be taken into account in the Committee's concluding observations should be submitted in writing before 1. p.m. on 15 October.

75. *The delegation of Switzerland withdrew*.

*The meeting rose at 1.05 p.m.*