



**International Convention on the  
Elimination of All Forms of Racial  
Discrimination**

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Seventy-third session

SUMMARY RECORD OF THE 1893rd MEETING

Held at the Palais Wilson, Geneva,  
on Monday, 11 August 2008, at 10 a.m.

Chairperson: Ms. DAH

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*The meeting was called to order at 10.10 a.m.*

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION  
SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE  
CONVENTION (*continued*)

Fourth, fifth and sixth periodic reports of Switzerland (continued) (CERD/C/CHE/6; HRI/CORE/1/Add.29/Rev.1; list of issues and written replies by the State party, documents without reference distributed in the meeting in English only)

1. *At the invitation of the Chairperson, the members of the delegation of Switzerland resumed their places at the Committee table.*

2. Ms. SCHRANER BURGNER (Switzerland) said that her delegation would respond by themes to the questions raised by members of the Committee. With regard to the Swiss federal system and the implementation of international instruments at the cantonal level, her delegation had been surprised to realize that the Committee viewed federalism as a barrier to the implementation of the Convention in the country. It should be remembered that, in as much as Switzerland was a federal State, the cantons took upon themselves all tasks and rights that were not reserved exclusively for the Confederation. The cantons were responsible for the implementation of many of the international conventions to which Switzerland was a party and were obliged to know their contents and the obligations imposed by those instruments. The federal Government was responsible for the implementation of those instruments across the entire territory of the country, and to that end it gave guidance to the cantons, where their interests or powers were concerned, and included them in decision-making. As far the cantons were concerned, they were supposed to apply the new norms directly or implement as soon as possible those norms that could not be directly applied. If the canton didn't comply, citizens who felt that they had been wronged could bring actions in court to have their rights recognized. The Federal Court did not have the authority to fill in possible gaps in legislation, but it could order the cantons to do so. The Confederation had limited room to manoeuvre: it could only remind the cantons of their duty and issue directives for their action. Usually the federal Government sought to persuade recalcitrant cantons by non-coercive means.

3. Federalism offered undeniable advantages: it made it possible to bring about change while respecting linguistic and cultural minorities, which was an essential element for cohesion in a multilingual and multicultural country such as Switzerland. It also made it possible to take into account the specific urban and rural features of a population group and its economic needs and to adapt to a rhythm set by evolving public attitudes. Furthermore, any amendment to the Constitution required approval by double majorities, i.e. majorities of both the population and the cantons, which was not the case in all countries. Far from holding back the evolution of the country, federalism promoted experimentation and innovation, as the cantons were often the leaders in new ideas, which they implemented pragmatically and effectively.

4. Switzerland was a country with a monistic legal tradition, which meant that domestic and international law formed a single legal order. As soon as they entered into force, international instruments to which Switzerland was a party, including the International Convention on the Elimination of All Forms of Racial Discrimination,

were part of the domestic legal order and under article 5, paragraph 4, of the federal Constitution, the Confederation and the cantons were obliged to respect them.

5. Unlike other European countries, Switzerland did not have a constitutional court. Under article 191 of the Constitution, the Federal Court and other authorities were required to execute federal laws, even if study showed that they were unconstitutional. In such cases, the principle of the separation of powers and the respect for the will of the people prevailed. During the general review of the Constitution in the 1990s, various proposals to extend constitutional jurisdiction over federal laws had been submitted but had failed to obtain approval in Parliament. However, when the guarantees enshrined in the European Convention on Human Rights were at issue, the Federal Court could rule on the constitutionality of federal laws. Monitoring all other legislative acts was the responsibility of the regular courts and implementing bodies at the federal and cantonal levels. Jurisdiction with regard to constitutional matters was achieved through a wide range of bodies and authorities at various levels that intervened in a great variety of procedures. During the preparatory stages of drafting a new law, the consistency of the draft law with the Constitution was studied in detail by the Federal Council. Individuals whose constitutional rights had been violated by the State could bring actions under public or administrative law before the Federal Court.

6. All authorities, whether federal, cantonal or local, were obliged to respect the Convention and implement it in the same manner as they did article 8 of the Constitution. While draft laws were being prepared, their consistency with the principle of non-discrimination was studied. Victims of discrimination resulting from an administrative or court decision could invoke the Convention in domestic courts.

7. Mr. SCHÜRMAN (Switzerland) wished to dispel the impression expressed by some members of the Committee that the cantons could implement the Convention as they saw fit. He explained that various constitutional norms restricted the sovereignty of the cantons guaranteed under article 3 of the Constitution. Those norms included article 5, paragraph 4, of the Constitution, which stipulated that the Confederation and the cantons must respect international law, a provision that applied to the communes as well; article 49 of the Constitution, which stated that federal law, including international treaties, prevailed over cantonal law in a conflict of laws. The Confederation monitored to ensure that the cantons respected federal law. He also cited article 188 and following articles of the Constitution, which gave the Federal Court jurisdiction to receive claims based on violations of constitutional rights and the provisions of international treaties.

8. Domestic courts, in particular the Federal Court, played a crucial role in the implementation of fundamental rights. A complaint based on a violation of federal law or of a treaty ratified by Switzerland could be the subject of an appeal using all the regular remedies provided under federal law in civil and criminal matters or in public law. Where none of those remedies were available for opposing a cantonal decision, an alternative constitutional remedy to deal with violations of constitutional rights could be invoked under article 113 of the law on the Federal Court.

9. With regard to sanctions that the Confederation could apply if the cantons failed to respect an international obligation agreed to by Switzerland, he said that, if the Confederation found that a law adopted by a canton was contrary to federal or

international law, it sought first to resolve the problem by amicable means, i.e. through invitation, information or informal notification. Where that failed, it could resort to more serious supervisory means, such as general instructions issued in internal circular letters, requests for periodic reports on activities in a specific area or recourse to direct action through the Federal Court. A canton that refused to comply risked an extremely rare sanction, namely, federal implementation measures, which included financial pressure. Another method was substitutive execution, which allowed the federal Government to implement the action that the canton refused to carry out. Such measures were rarely required, as, under article 44, paragraph 3, of the Constitution, disputes between the cantons and the Confederation were settled as much as possible through negotiation or mediation. A final means would be military execution, which had never been used.

10. Under article 36 of the Constitution and in accordance with the jurisprudence of the Federal Court, any restriction of a fundamental right must be based on law, and serious restrictions must be based on a specific law, except in cases involving a threat that was serious, direct, imminent and unexpected, where the authorities could resort to the general police powers clause.

11. On the subject of the small number of cantonal constitutions that contained prohibitions against discrimination, he noted that, although the cantons each had a constitution, they were required to respect the fundamental rights enshrined in the federal Constitution.

12. He also indicated that the law on the use of force and police measures in areas covered by the authority of the federal Government, which had been adopted in March 2008 and would enter into force on 1 January 2009, applied to any cantonal government body that found itself in a position of having to use force or police measures in the areas of the right to asylum and the law governing foreigners.

13. Ms. HANSELMANN (Switzerland) wished to illustrate Swiss federalism and the relationship between the Confederation, the cantons and the communes by describing the example of the Canton of Vaud, one of the biggest cantons in size and population. The canton contained a large urban agglomeration, whose centre was the cantonal capital, Lausanne, and semi-rural regions and contained more than 370 municipalities. With the exception of the city-cantons of Geneva and Basel, the Canton of Vaud was the canton with the highest percentage of foreigners, namely 29.5 per cent of its permanent residents, about 200 000 people. More than 160 nationalities coexisted there peacefully. The town of Renens in the canton had the highest percentage of resident foreigners in Switzerland, amounting to more than 54 per cent of the population. He added that the canton was very rich in associations and cultural life; there were nearly 200 organizations of foreigners, 60 of which had been formed by Africans.

14. Since 2002, at the urging of the federal authorities a national network of professionals had been formed to integrate foreigners and prevent racism. The city of Lausanne had, in 1971, been the first to establish a city official for integration matters, followed in the 1980s and 1990s by Zurich, the Canton of Basel-City and the Canton of Neuchâtel. In 2001, the first national programme to integrate foreigners had been established by the federal Department of Justice and Police, following successful innovative initiatives launched by the towns and cantons, which had broken new ground in integration, with the goal of promoting the participation of foreigners in social and political life and of strengthening

professional cantonal bodies working to achieve integration. From 2003 to 2007, a second programme to integrate foreigners had made it possible to continue to support those bodies. During that period various posts and offices focused on integration had gradually been established. At the present time, all of the cantons and most of the towns had an official responsible for integration, who was assisted in his work by a team of professionals. Strong action by the Confederation had had the direct effect of developing a genuine integration policy at the cantonal level. Thus, in January 2007, the Canton of Vaud had adopted a cantonal law on the integration of foreigners and the prevention of racism, whose goals were to promote the integration of foreigners, prevent racism in all its forms and encourage harmony and mutual understanding between the Swiss and foreigners. Furthermore, one of the two bodies responsible for implementing that law was Cantonal Consultative Chamber of Immigrants, which included representatives of immigrants and an expert on combating racism in schools. Furthermore, professionals in the field had formed the Swiss Conference of Communal, Cantonal and Regional Integration Officials, of which she was the vice-president. The integration officials were responsible for ensuring implementation, at the cantonal level, of the policy on combating racism developed by the Anti-racism Service.

15. Mr. GALIZIA (Switzerland) recognized that Switzerland had not been spared incidents of xenophobia but stressed that Swiss society and authorities were tireless in their efforts to combat the phenomenon, which persisted, however, in new forms. The fact that Switzerland was a host country for immigrants had become widely known only in the past few years. From the end of the nineteenth century to the 1970s, it had been the Italians who had been the main target of xenophobic groups inspired by nationalism and leftist syndicalism. Today, however, the Italians were among the most appreciated foreigners in Switzerland. Xenophobic attention had turned to the Tamils in the 1980s, immigrants from the former Yugoslavia in the 1990s, and finally to people from Africa and Muslims in recent years. In that respect, the situation in Switzerland was, in the view of the delegation, relatively good, compared to other European countries. It was, nevertheless, true that the last three of those categories of people had been directly or indirectly victimized by unacceptable acts of discrimination. The Swiss authorities regularly and clearly condemned such acts and took many measures aimed at integration and against discrimination. Reports and studies on the situation of persons of African origin and Muslims living in Switzerland had been prepared as research projects and by independent commissions, such as the Federal Commission against Racism and the Federal Commission for Migrants, which were responsible for monitoring the situation constantly.

16. Up until the 1980s, people of African origin in Switzerland had mainly been diplomats, students or members of Christian churches. It was only in the past 15 years that people from sub-Saharan Africa of all social classes had started immigrating into Switzerland, where some were legal residents and some not. The fact that some of those people engaged in criminal activities probably explained, although it could not excuse, the negative attitudes found in the Swiss population concerning those new immigrants. Africans tended to be only poorly integrated economically and socially, which was due, not only to the discrimination against them but also to the fact that they had been present in the country in large numbers only for a few years.

17. Not wishing to have a society in which communities lived side by side without mixing, Switzerland stressed integration, so as to avoid the geographic and social ghettoization of the various groups.

18. It would seem that only 15 to 20 per cent of the 350 000 to 400 000 people in Switzerland claiming to be Muslims were practicing Muslims and considered themselves strict and orthodox believers. Activities aimed at integrating that community needed therefore to stress social and cultural aspects rather than religious ones. On the other hand, since religion could become a factor leading to racism and discrimination, Muslims were represented on the Federal Commission against Racism, and the authorities at all levels constantly warned the population against religious intolerance.

18. He said that the Jewish, Buddhist, Hindu and Islamic communities participated actively in the inter-religious dialogue. Because racism and xenophobia could never be eliminated for good, constant efforts to raise awareness and educate the public were required. In that connection, the cantons were often more active and innovative than the federal Government when it came to actions to promote integration and defeat racism. In fact, it was often they who demanded reforms. The cantons were a fertile field for experimentation, in that measures tested in one canton could be adapted for use in another before being adopted at the federal level.

19. He said that the problem of right-wing extremism in Switzerland was taken very seriously by the authorities and that in 2003 the Federal Council had launched a national research programme entitled "Right-wing extremism – causes and counter-measures", which had provided financing for 13 projects between 2003 and 2007 costing a total of 4 million Swiss francs. For further information, he invited members of the Committee to visit the website of the Swiss National Science Foundation and that of the Service for Combating Racism.

20. Mr. VOLKEN (Switzerland) said that there were now about 30 active skinhead groups, of which the biggest were Blood & Honour Switzerland, the Swiss Hammerskins and Morgenstern. It was estimated that Blood & Honour had between 150 and 200 members in the country, while the smallest groups might have several dozen members. The size of the membership of those groups seemed to be fairly stable, as did the number and type of incidents they were involved in.

21. The Blood & Honour Switzerland group sought mainly to organize events, especially concerts. Its members had attracted attention during the final months of 2007 for brawls that had led to injuries and for the violence that they showed themselves capable of, attacking left-wing groups, other right-wing groups and the State and its institutions. The violence that they engaged in was extremely fierce and came mostly from the youngest members.

22. The Swiss National Party, whose programme and publications were full of right-wing rhetoric, had about 100 members. It maintained contacts with far right-wing groups in Switzerland and abroad, some of which were violent. Some members of the party had already had brushes with the law for having, among other things, violated laws against racism.

23. The ideology of far right-wing groups consisted of an exacerbated nationalism mixed with xenophobic, racist and anti-Semitic ideas and showed a deep suspicion of democratic principles. Some right-wing extremists were involved in politics, whereas others regularly drew attention to themselves through violent outbursts,

usually well covered by the media. As a political force, they were visible only in certain cantons and, in a limited way, at the level of the communes.

24. A characteristic activity of those groups was to organize events secretly, especially concerts. It had been possible to block some of the gatherings organized by right-wing groups by using targeted preventive measures, such as alerting the owners of premises that might serve as a venue for such gatherings. Another step had been to deny entry into the country of certain militant right-wing foreigners, in particular members of skinhead musical groups. Such measures had made it possible to prevent the holding of concerts and the distribution of racist texts, and had thereby contributed to reducing the appeal of Switzerland as a host country for such events.

25. The development of an extremist right wing in Switzerland had been essentially similar to that found in other Northern and Western European countries, which made it possible to draw comparisons and observe trends abroad that could appear in Switzerland. The number of incidents linked to the far right, about 109, had remained stable in 2007, but such incidents posed serious problems for law enforcement officers, towards whom right-wingers had been particularly aggressive during the year in question.

26. Mr. COTTER (Switzerland) said that the new instrument that had been set up in the framework of reviewing police statistics would make it possible to obtain detailed information on complaints involving racial discrimination and to get an inventory of crimes motivated by racial hatred. Detailed information on victims would also be recorded.

27. Starting in April 2006, the Federal Statistical Office had begun harmonizing the gathering of statistical data in collaboration with the police authorities of the 26 cantons. That work would be completed by the end of 2008, essentially within three years' time. From 2009 on, data for all of Switzerland would be gathered in a standardized way for analysis and distribution in 2010. That schedule had been adopted with the agreement of the police authorities of the cantons and the Confederation. The implementation of the new statistical system could not have been any faster, given the complexity and scope of the task.

28. Mr. SCHÜRMANN (Switzerland) noted that Switzerland had, in the framework of the ratification of the Convention, adopted article 261 *bis* of the Criminal Code, which punished racial discrimination. The country had thus fulfilled its obligations under article 4 of the Convention. He added that that legal norm had from the beginning been the subject of intense discussions in political circles, which questioned the need for such a provision from the outset, and by jurists, who pointed out the difficulties in its interpretation and the problem of reconciling it with the principle of *nullum crimen sine lege*.

29. With regard to the jurisprudence adopted over the years, which had made it possible to interpret that legal text, he invited Committee members to refer to paragraph 101 of the report under consideration and pointed out that that jurisprudence testified to the desire to find in a systematic manner some balance between respect for legal norms and respect for the freedom of expression.

30. He pointed out that, according to the data issued by the Federal Commission, one half of the criminal complaints lodged between 1995 and 2006 had been decided on the merits and that 80 per cent of them had led to convictions, a

disturbing number in that they reflected a rise in the number of racist acts in Switzerland, but also reassuring in that they showed that article 261 *bis* had been effective.

31. He said that there had been no follow-up on an idea to broaden the scope of article 261 *bis* to include repression of racist organizations, as the Federal Counsel had decided that criminal responsibility was, in principle, that of individuals. Another initiative was, however, back on the agenda, namely, to introduce into the Criminal Code a provision banning racist symbols. Another idea had been to restrict article 261 *bis*, in particular its paragraph 4, which punished the denial of genocide, but that idea had been abandoned.

32. In civil law, Switzerland had no specific and comprehensive legislation on discrimination, but there were various provisions used to prevent discrimination, which were described in paragraphs 318 to 349 of the periodic report, to which members of the Committee were invited to refer. Under article 35, paragraph 3, of the Constitution, the authorities were careful to ensure that fundamental rights were also respected in interactions between individuals, which meant that the Federal Court, when a civil appeal was brought before it, also had to interpret private law in the light of treaty obligations.

33. He said that no individual communications had, it seemed, been brought against Switzerland under article 14 of the Convention, although many non-governmental organizations and the Federal Commission made mention of that possibility on their websites. It would probably be only a matter of time before the Committee received the first communication regarding Switzerland, after domestic remedies had been exhausted.

34. Ms. SCHRANER BURGNER (Switzerland), turning to the problem of the posters with black sheep that had been posted by the Union démocratique du centre party in all regions of the country to draw attention to the popular initiative entitled "For democratic naturalizations", said that Switzerland's direct democracy made it possible, through referendums and popular initiatives aimed at amending the Constitution, to debate controversial subjects in the forum of public opinion. However, in Switzerland as elsewhere in Europe, globalization and its consequences could give rise to a climate of tension over identities, which could, in turn, be exploited politically. The resulting confrontations bore witness to the existence of a vibrant democracy in which all groups of the population participated.

35. She said that racist acts committed in public were always prosecuted, but it was up to the courts to decide whether the posters in question constituted a punishable offence. The courts clearly preferred open political confrontation to strict prohibition, considering, as did the Federal Council, that such confrontation had more impact in the long term than judicial sanctions. That approach was also consistent with repeated decisions by the European Court of Human Rights, which had stressed the special importance of the freedom of expression in a democratic society and rejected any restriction of that freedom in political debate.

36. Ms. HANSELMANN (Switzerland) outlined the positive steps taken by the Canton of Vaud to combat racial discrimination in all its forms, using mainly information and training.

37. She said that the Teacher Training College of Vaud had contributed significantly to the development of the guidelines on an intercultural approach



adopted by the Conference of Swiss Directors of Teacher Training Colleges. The guidelines, which could be applied to the entire country, required that students be made aware of the cultural differences in society and schools and gain a better understanding of global migration and its consequences, and sought to provide teachers with teaching methods that would ensure that students from very different backgrounds succeeded in school and would promote intercultural communication. The College also distributed specific teaching modules, such as one entitled "Difference and integration" and another entitled "Citizenship and an intercultural approach". It also organized an intercultural trip each year aimed at helping future teachers to better understand the society and school system from which their students came. In order to ensure real equality of opportunity for all students, the teaching programme sought to establish some relationship between the culture taught in the school programme and that of the students.

38. Furthermore, vocational schools had agreed to improve their programmes by including teaching on combating racism and xenophobia. The course entitled "Switzerland and the world", which was given to students about to enter the labour market, dealt with various subjects such as migration and the integration of foreign people, human rights, human dignity and mutual respect.

39. A course entitled "Understand immigrants and be able to communicate with them better" had been organized jointly by the city of Lausanne and the Canton of Vaud and was available to all State and communal employees; it was taught with the help of the Swiss Refugee Assistance Organization.

40. She said the cantonal Population Service organized events in schools aimed at discussing with students the subjects of racism and xenophobia and contributed to the inclusion of teaching modules on migration and combating racism, in the training of social workers at the School of Social and Pedagogical Studies.

41. Responding to the concerns raised by Mr. Doudou Diène, the Special Rapporteur on contemporary forms of racism, regarding certain population groups, namely, Blacks, Jews, Travellers, asylum seekers and people of Islamic religion or culture, the Canton of Vaud had established an interreligious working group in 2007 consisting of representatives of the Christian, Jewish and Islamic faiths. Furthermore, an association had been formed consisting of Muslim Swiss and native Swiss living in the canton, with meetings on various subjects including discrimination, equality between men and women, and the interaction between practicing Muslim parents and schools. The cantonal Office for the Integration of Foreigners and the Prevention of Racism had also been careful to develop a special relationship with Islamic centres in the canton, so as to promote joint reflection on the best solutions to the problems encountered in living together.

42. The Canton of Vaud had also worked with the communes to establish consultative intercultural bodies that would make it possible for local authorities and representatives of associations to maintain a dialogue aimed at improving cohabitation and facilitating integration.

43. Mr. GALIZIA (Switzerland) said that most of the Travellers in Switzerland who maintained an itinerant life-style were Yeniche, an indigenous people known under that name since the eighteenth century, whose ancestors had lived in the Alpine regions of modern Austria, southern Germany, Italy and Switzerland. Only in Switzerland was their status as a minority now recognized. Like all wandering

peoples, the Yeniche had been put under pressure by States to settle down. Increasing urbanization and industrialization had pushed those people to the margins of society, where they had become dependent on social assistance and were forced, in their sedentary situation, to accept work and to send their children to school. Their families had often been deprived of some of their members, in particular through the sinister "Children of the highway" programme, under which some 600 children had been taken from their parents and placed in institutions or sent to peasant families as cheap labour between 1926 and 1972. In 1986 the Federal Council had officially apologized for those crimes and had allocated 11 million Swiss francs to that community as symbolic compensation for the victims.

44. Between 30 000 and 35 000 people considered themselves to be of Yeniche origin. During the summer at least, about 2 500 to 3 000 people, some Yeniche and others Manouche, resumed a partially nomadic life. In ratifying the Framework Convention of the Council of Europe for the Protection of National Minorities, Switzerland had recognized the Travellers, both Yeniche and Manouche, as a national minority, thereby recognizing their specific demands for transit areas, work permits and schools. In signing the European Charter for Regional or Minority Languages, Switzerland also recognized that the Yeniche language, which was a Germanic language, was a minority language. Until recently, the Yeniche had been very little interested in efforts to study and codify their language, but in 2007 the *Radgenossenschaft*, the Yeniche umbrella organisation, had launched a project, working closely with the Federal Culture Office, aimed at preparing a French-German-Yeniche dictionary as well as teaching materials. The Yeniche had the status of an indigenous minority and could be considered as an indigenous people under International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. However, Switzerland would have to establish the necessary legal foundation before being able to ratify that Convention.

45. According to Roma organizations, some 30 000 to 50 000 sedentary Roma lived in Switzerland. The first to come were seasonal workers from the former Yugoslavia and later there came people from Kosovo fleeing the conflicts in the Balkans. Most had lived a sedentary life-style for generations and had not revealed their Roma identity out of fear, rightly or wrongly, of possible negative consequences. Finally, some Roma and Sinti, coming at first from France and now from Eastern Europe, crossed Switzerland every summer, usually in large groups with many trailers. As they did not always follow minimum local norms for behaviour, they often came into conflict with local authorities or Swiss Travellers, who themselves also used the transit areas. A solution to the problem would require establishing clearer rules on the use of transit areas, improving existing areas and establishing new ones.

46. Ms. SCHRANER BURGNER (Switzerland) said that the freedom of language, guaranteed under article 18 of the Constitution, gave individuals the right to use the language of their choice, whether it was their mother tongue, including a dialect, or another language. In the trilingual canton of the Grisons, under article 3 of the new cantonal constitution, "the national and official languages of the canton, all of equal validity, are German, Romansh and Italian" and "the communes and townships ... shall monitor the traditional distribution of languages and shall take into account the indigenous linguistic minorities". The new law on languages, adopted in that canton in 2006, sought to strengthen the position of Romansh.

47. In January 2007, the Federal Council had formed a working group of the Confederation and the cantons to study the possibility of establishing a national institution for human rights. Switzerland was also not a party to the 1973 International Convention on the Elimination and Repression of the Crime of Apartheid, because that convention, which had not been ratified by any Western State, had defects and significant gaps, in particular from a legal point of view. Nevertheless, the Federal Council had on several occasions condemned the policy of apartheid without reservation.

48. Mr. GUGGER (Switzerland) said that the training of policemen had been considerably improved since the introduction of a federal certificate for policemen in 2006. Besides the traditional programme of instruction, training now included a module on human rights and ethics. In Geneva, for example, thirty-six hours of training were devoted to that particular module. Groups that needed special protection and treatment were the subject of specific attention and specialized training.

49. Mr. GUT (Switzerland) said that in Geneva, after some episodes involving questioning by the police that had led to allegations of police violence by the persons concerned and had received much attention in the press, the Geneva government had made a proposal to the cantonal parliament to establish a monitoring body, the Ethics Commissariat, whose powers were to be assigned to a lawyer who was to be independent of the police and the administration. The Commissariat had been established to study allegations of mistreatment and other complaints, reports and claims relating to the use of coercive measures by the police and prison employees. It presented its opinion on the matter, if it deemed that useful, to the head of the department to which the cantonal police reported. It could open investigations, and official secrecy could not be invoked to block its investigations.

50. Two women with differing political views had been appointed to the Commissariat, which now consisted of three people. The procedure for requesting action by the Commissariat had been changed in 2007 and its powers broadened. Whereas before only cases involving allegations of mistreatment had been submitted to the Commissariat for review of the legality and proportionality of the treatment concerned, now all situations where coercive measures had been used were automatically forwarded to the Commissariat by the police. In 2007, the Commissariat had examined 1 051 police reports that mentioned the use of coercive measures. In addition, 104 intervention reports issued by the Cantonal Penitentiaries Office had been sent to the Commissariat. On the basis of the Commissariat's recommendations, the department head and the chief of police could order an internal investigation, which could lead to sanctions running from a warning to the removal of one or more of the policemen involved. Recently, the cantonal police had also appointed a mediator within its ranks to deal with complaints and other claims made by individuals following an intervention by the police, with full independence from any procedure. The mediator had the authority to receive and interview the persons concerned.

51. Ms. ZBINDEN (Switzerland) said that the revision of the law on asylum and the adoption of a new law on foreigners were often seen as a hardening of the Swiss approach, whereas in fact the changes offered improvements and advantages to the people concerned. With regard to asylum, for instance, the situation of people who

had been admitted provisionally owing to the bad situation in their country of origin had been significantly improved, thanks to easier access to work in Switzerland and the possibility of family reunification after three years. After five years stay in Switzerland, asylum seekers could now obtain residence permits to settle urgent matters, even if their asylum request had been rejected and a decision refusing their entry had been taken. People who had been admitted provisionally had become a target group of the integration policy, and the Confederation paid out an integration allowance of 6 000 francs per person. The high number of asylum requests in Switzerland compared to other European countries testified to the confidence people had in the Swiss asylum system. The new law on foreigners introduced essential improvements to the legal status of nationals of third States, improving in particular their integration prospects. Under the new law, people with a residence permit could also change jobs and their place of residence. Furthermore, a permanent residence permit could be obtained after five years of stay, instead of the earlier ten years, provided the applicant showed himself or herself to be well integrated. In addition, the right to family reunification applied also to people with a permit for a short-term stay of up to two years and to people registered in a training course. In order to combat trafficking in human beings, exceptions could be made to the general rules governing entry for victims of or witnesses to that practice.

52. Implementation of the law on asylum and the law on foreigners was always subject to the reservations of international law, which was particularly relevant with regard to the principle of non-refoulement of persecuted people. That principle was also guaranteed under article 25 of the Constitution. Respect for the principle of non-refoulement needed to be monitored in all cases by the authorities, and it was always possible to lodge a complaint against decisions taken.

53. Mr. SCHWENDIMANN (Switzerland) said that Switzerland had not lifted its reservation to article 2 of the Convention for two main reasons. First, with regard to the current and any future extension of the Agreement on the Free Movement of Persons, concluded between Switzerland and the European Community, referendums were possible. If the extension were to be rejected by the people, Switzerland would find itself in a completely new situation. Switzerland needed, therefore, to preserve various options regarding its future migration policy. Secondly, the impact of the Agreement on the Free Movement of Persons on the Swiss labour market would be known with certainty only after the transitional stages provided for by the current and future extensions of the Agreement.

54. The Swiss delegation would, at a later stage, provide written information on the cases involving two people who had died of asphyxiation during their compulsory repatriation in 1999 and 2001. It would seem, however, that the policemen involved had been convicted.

55. With regard to the article that appeared on 29 July 2008 in the *Le Matin* daily newspaper on asylum seekers who risked genital mutilation in their country, he said that the Federal Office for Migration was unable to provide details on those cases for reasons of data privacy. Decisions to deny entry were taken by the Office and confirmed by the Federal Administrative Court. The press article in question might have given the impression that the Office did not allow genital mutilation as grounds for asylum, which was not the case. Under the practice it had followed since the late 1990s, the Office examined each case individually based on the situation of the particular person and the specific situation in his or her country of

origin. Circumstances differed greatly from country to country and it was not possible to generalize. Under the law on asylum, one needed to take into account reasons for fleeing the country that might be specific to women. Genetic mutilation was a very serious assault on a woman's sexual and psychological integrity, which was universally unacceptable and should be prohibited. Under Swiss practice with regard to asylum, women and young girls who had well-founded reasons to fear becoming victims to genital mutilation could be recognized as refugees.

56. Ms. MINIKUS (Switzerland) said that the law on nationality specified, in its article 14, the conditions that a candidate must meet to qualify for naturalization. Attention was focused on whether the applicant had become well integrated into the Swiss community and respected the Swiss legal order, and whether he posed no threat to the internal and external security of the country. Furthermore, only individuals who had lived in Switzerland for 12 years could submit an application for ordinary naturalization. Those criteria were the minimum conditions specified by the Confederation. Given the fact that the naturalization process involved three levels, namely the communal, the cantonal and the federal, the cantons and communes could set their own conditions for naturalization based on the minimum conditions set in federal law. In considering an application for ordinary naturalization, the competent authorities in the communes and cantons evaluated the candidate's suitability for naturalization, using the above mentioned criteria, which alone provided the grounds for refusal, for instance inadequate integration. Consideration of the integration criterion provided the cantonal and communal authorities with a certain margin of discretion. Practice varied somewhat between the cantons and communes in evaluating the criteria for naturalization, which was a natural result of the Swiss federal system. The cantons needed to consider not only the federal conditions for naturalization but also their own criteria. In order to ensure equality of treatment in the evaluation of the criteria for naturalization and to prevent arbitrary or discriminatory decisions at the cantonal and communal levels, the Confederation was considering establishing standards for integration in the naturalization process that would apply in all cantons and communes.

57. On 1 June 2008, the Swiss people had rejected, by a large majority, the popular initiative entitled "For democratic nationalization", which had sought to overturn the Federal Court's decision of 2003 prohibiting decisions on naturalization from being taken by popular vote, affirming the obligation to provide grounds for denying applications for naturalization and establishing the right to an appeal against the rejection of an application for naturalization. The failure of the initiative meant that the revised law on nationality, which had been accepted by both houses of the federal Parliament in 2007, could enter into force in 2009, unless a referendum were launched to block it. The proposed amendments covered the following: cantonal law governed the procedure at the cantonal and communal levels; the grounds for the rejection of a naturalization application must be given; the private life of a candidate for naturalization must be respected and only indispensable personal data needed to be revealed; the cantons should establish judicial authorities for appeal.

58. She also explained that the naturalization procedure was subject to decisions at three levels. The Confederation granted federal authorization for naturalization whereas the communes and the cantons took their decisions on naturalization with a view to granting citizenship in the canton and commune. She said that article 29, paragraph 1, of the Constitution stipulated that everyone had the right to have his case considered by a court, which meant that at least one court must be able to

consider the facts fully and apply the law *ex officio*. The decisions of the Federal Office for Migration on granting authorization for naturalization could be appealed by the person concerned in the Federal Administrative Court, which had broad powers to monitor the respect of federal law, including the abuse of discretionary power, failure to take fully or properly into account the relevant facts, as well as timeliness. The decision of the Federal Administrative Court was final.

59. In the current state of the law, several cantons did not provide for appeals against communal or cantonal decisions with regard to ordinary naturalization. In order to improve that situation the new provision of the law on nationality, which would enter into force in 2009, would oblige the cantons to establish a judicial authority with the status of cantonal court of last instance. The denial of an application for ordinary naturalization could be appealed before the Federal Court, which was the court of last instance, in the framework of a subsidiary constitutional appeal, which considered whether constitutional rights had been violated, such as the prohibition against discrimination, federal procedural guarantees and the right to a hearing and to hear the grounds on which the application had been rejected.

60. The law on nationality made no provision regarding the powers of review and decision of the judicial authority of last instance and the standing required to appear before that authority. It was up to the cantonal law to regulate such matters in accordance with the Constitution and the law on the Federal Court. If the Cantonal Superior Court was the first court of appeal, it had to be able to consider the facts fully and apply the appropriate law *ex officio*, including cantonal law. If the Cantonal Superior Court was the appeals court of second instance, it should have the same powers of review as the Federal Court. One had to grant that the vote on 1 June 2008 had made it possible for Switzerland to make a big step forward towards closing a significant gap in its legislation on nationality. The legal provisions would ensure the fair naturalization procedures one would expect under the rule of law.

61. Ms. HANSELMAN (Switzerland) drew attention to the fact that on 14 April 2003 the population of the Canton of Vaud had adopted a new constitution that sought to promote the integration of foreigners and make it easier to acquire Swiss nationality. Under the principles set forth in article 69 of the new constitution, a new cantonal law on Vaudois citizenship had been adopted on 28 September 2004 by the cantonal parliament. The new cantonal law had introduced several significant improvements benefiting applicants for naturalization: the simplification of the ordinary procedure, the facilitation of the cantonal naturalization procedures, the limitation of costs, and the establishment of a right of appeal against communal and cantonal decisions.

62. Furthermore, many communes, encouraged by the example of the Canton of Vaud, had taken dynamic measures to facilitate the naturalization of foreigners and offer them courses aimed at naturalization. The towns of the canton, working with the NGOs, had organized workshops on citizenship in order to make naturalization applicants aware of the values of the rule of law and to improve their chances in those procedures. The Canton of Vaud had also developed a programme of linguistic and training measures for people for whom integration was particularly difficult, in particular foreign women with young children. The ability to take courses in French language near their homes and in their neighbourhoods and during school hours improved their chances of meeting the criteria for competence in French set for

naturalization applications. Currently, the Canton of Vaud was running more than 40 projects aimed at improving training and mastery of French among the applicants for naturalization.

63. She indicated that the various measures adopted had had a direct effect on the number of people who had been able to obtain Swiss citizenship in recent years in the Canton of Vaud, where the annual number of naturalizations had tripled since 1997. In 2007, nearly 6 000 people had become Swiss, amounting to 3.1 per cent of the foreign population, an absolute record for the canton.

64. The new constitution of the Canton of Vaud had also introduced significant improvements in terms of the exercise of civil and political rights by foreigners through the legalization of the right to vote and the eligibility of foreigners at the communal level. During the 2006 communal elections, 700 foreigners had run for office on various lists. Half of them had been elected and now formed part of the communal authorities. Thirty foreigners also served in the executive authority of their communes.

65. Mr. SPENLÉ (Switzerland) pointed out that the prohibition against all forms of discrimination had been explicit in the Constitution only since 1999. Previously, the jurisprudence and doctrine had been that the prohibition against discrimination was covered by the general principle of equality.

66. He added that the Federal Court had ruled, in a 2003 decision on the equality of treatment between Swiss citizens and foreign nationals, that the prohibition against discrimination enshrined in Swiss constitutional law did not absolutely exclude differentiation based on a criterion covered under the anti-discrimination provisions, i.e. origin, race, sex or language, and that it, at first, only raised the possibility that there might have been illegal discrimination, which could only be dispelled by adequate justification of the differentiation made. The result was that the prohibition against discrimination had the legal effect of subjecting inequalities in treatment to strong scrutiny for justification.

67. He said, for example, that with regard to the prohibition of discrimination against people with disabilities, the Federal Court had recently ruled that protection against all forms of discrimination under article 8, paragraph 2, of the Constitution sought essentially to protect disadvantaged groups and all their members. The Court had stated that potentially discriminatory inequalities in treatment should be based on objective criteria and could not be based simply on the characteristic that had led to the differentiation. Thus, the Federal Court had held that, while discrimination against disabled children was in principle contrary to article 8, paragraph 4, of the Constitution, the simple fact of treating them differently was not, especially in schooling, given that handicapped children must be provided with schooling that was appropriate to their intellectual abilities.

68. Mr. GALIZIA (Switzerland) said that German-speaking social scientists had always sought to define racism, but definitions were, in the end, less important in effectively combating racism than taking into account the points of view of possible victims of discrimination. For that reason the federal Government had decided to strengthen its collaboration with institutions that were active in related fields, such as the Federal Office for Gender Equality and the Federal Bureau for the Equality of People with Disabilities.

69. Responding to the comment that Switzerland lacked a colonial past, he said that colonialism was pathology that affected all colonial societies, be they European, Asian or African. Colonialism was based on an attitude of natural superiority and divine right that legitimized the social, economic and cultural exploitation of peoples. That disease affected all societies, and Switzerland, like other countries, had benefited greatly from the colonial economic system. Furthermore, as recent studies of the subject had shown, Swiss companies had also profited from the slavery of the nineteenth century.

70. Mr. DIACONU was not of the view that federalism was in and of itself a barrier to the implementation of the Convention but felt that that system needed to be designed and applied so as to allow implementation of that instrument. It was up to the federal Government to monitor the situation, whatever the division of powers between the federal, cantonal and communal levels might be, and to set and codify limits on the freedom of expression.

71. Given that Switzerland was a multicultural and multilingual society, he wished to know what steps had been taken at the federal level to preserve multiculturalism and multilingualism. He wished, in particular, to know whether the Serbian, Portuguese and Turkish minorities could receive schooling in their mother tongue in schools and whether special measures had been adopted at the federal level to benefit disadvantaged groups, in conformity with article 1, paragraph 4, and article 2, paragraph 2, of the Convention.

72. Mr. EWOMSAN welcomed the many measures adopted by the Canton of Vaud to facilitate the naturalization of foreigners and their social integration and wished to know whether more specific measures to protect Blacks had been adopted by the municipalities, where that group encountered significant problems, in particular in the city of Lausanne. Noting the high rate of suicide among asylum seekers, he asked the delegation to explain the reasons for that problem.

73. Mr. de GOUTTES welcomed the very detailed replies provided by the delegation and regretted that time did not permit the Committee to study in greater depth certain very important matters, such as the defence of identities, integration and the rise of populism in Switzerland.

74. He particularly regretted that the delegation had not devoted more time to the specific problem of the reversal of the burden of proof in civil cases. Furthermore, it would have been useful to know whether Swiss legislation authorized the practice known as "testing", which sought to demonstrate the existence of racial or ethnic discrimination against those seeking to enter public establishments such as discotheques and restaurants.

75. Turning to forced marriages, he noted that, under the Swiss Civil Code, a marriage contracted under serious and imminent threat to the life, health or honour of one of the parties or to that of his or her family could be annulled, and the person responsible for the threat could be charged and sentenced to three years in prison or a fine. He had heard that Switzerland was now considering the need to explicitly prohibit forced marriages by law and that the Council of States had approved a draft amendment to the Criminal Code that would make coercion in the contraction of marriage a criminal offence. He would appreciate having more information on the status of that draft.



76. Ms. SCHRANER BURGNER (Switzerland) pointed out that Switzerland, like other countries, had committed itself to a long-lasting campaign to eliminate racial discrimination, because, as a plurilingual and multicultural country, it knew that respect for minorities was an essential condition for social cohesion. She noted, however, that in order to move forward and to introduce legislative and constitutional amendments, the authorities needed to obtain the approval of the people, at the federal, cantonal and communal levels, which meant that significant and in-depth changes would only be possible if they were decided on by the population and the cantons and then sent up to the Confederation.

77. She stressed that the questions raised and comments made by the members of the Committee had helped her delegation to understand what Switzerland could and, more importantly, must do to eliminate racial discrimination. She pointed out that the preparation of the periodic report had given all of the actors an opportunity to reflect on the subject and engage in a broad debate, which the Swiss authorities intended to continue.

78. Mr. PROSPER, Country Rapporteur, welcomed the detailed and full replies provided by the delegation, which bore witness to the importance that the federal authorities attached to the subject and to the Committee's concerns. The dialogue with the Swiss delegation had shown that the State party still faced difficulties, especially in the immigration area, which certainly required adjustments in the future.

79. He noted several improvements made by the State party since the presentation of its previous periodic report in 2002, especially with regard to the reservations placed on article 14 of the Convention, improvements in the Criminal Code, the adoption of measures promoting the integration of foreigners into Swiss society and the machinery established to correct dysfunctionality in the police services. He also welcomed the many measures taken by the Canton of Vaud dealing with the naturalization and integration of foreigners, and he hoped that the next periodic report would include other similar initiatives adopted in the other cantons of the country.

80. He said that the information provided by the delegation clearly showed that the State party had various tools, measures and countermeasures available to make good progress towards effectively eliminating racial discrimination. He understood fully that the way in which the Swiss federal system operated required that initiatives be taken first at the lowest level before adoption at the highest level, but stressed the fact that the federal Government had a fundamental role to play as a precursor and engine for attitude change. In that connection, he was of the view that the federal Government should demonstrate its dynamism. It was the Government's role, as the highest political authority, to assume its responsibilities and work, at the federal, cantonal and communal levels, to achieve the elimination of racist prejudice and behaviour in society.

81. The CHAIRPERSON welcomed the high quality of the information provided by the Swiss delegation and hoped that the dialogue established with the Committee would continue, in particular between sessions, in the framework of the follow-up procedure regarding the Committee's conclusions and recommendations. She said that the Committee had completed the first part of its consideration of the fourth, fifth and sixth periodic reports of Switzerland.

82. *The delegation of Switzerland withdrew.*

*The meeting rose at 1 p.m.*