



**International Covenant on  
Civil and Political Rights**

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**Human Rights Committee**

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

**Fourth periodic reports of States parties due in 2015**

**Switzerland<sup>\*</sup>, <sup>\*\*</sup>**

[Date received: 7 July 2016]

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\* The present document is being issued without formal editing.  
\*\* Annexes may be consulted in the files of the secretariat.



## List of annexes

1. Statistics on administrative detention in application of the law on foreign nationals
2. Hospital data on deprivation of liberty for purposes of assistance and committal for purposes of assistance
3. Trafficking in human beings: complaints, investigations, prosecutions and convictions
4. Data on ideologies underlying incidents of racial discrimination

1. The Committee considered the third periodic report of Switzerland (CCPR/C/CHE/3) on 12 and 13 October 2009 and adopted its concluding observations on 27 October 2009. For the submission of its fourth periodic report, Switzerland agreed to follow the new optional reporting procedure proposed by the Committee. At its 112th session, held from 7 to 31 October 2014, the Committee adopted a list of issues to be addressed by Switzerland in its fourth report. The present report is therefore structured and drafted in the form of responses to the questions contained in the list of issues to be addressed (CCPR/C/CHE/QPR/4). To keep the annexes to a minimum, only those documents considered most relevant to the Committee's questions are attached to the report. However, the Government is willing to provide the Committee, on request, with any other document referred to in the report.

## **Replies to the questions raised in paragraph 1**

### **Universal periodic review of the Human Rights Council**

2. Switzerland underwent its first universal periodic review on 8 May 2008 and its second review on 29 October 2012. Following the second review, 140 recommendations were issued to the Government. On 31 October 2012, Switzerland immediately accepted 50 and rejected 4 of the recommendations. The remaining 86 recommendations were considered by the competent federal offices and cantons between November 2012 and February 2013. On 27 February 2013, the Federal Council adopted, for submission to the Human Rights Council, the position of Switzerland on the outstanding recommendations. Of the remaining 86 recommendations, 49 were accepted and 37 were rejected. A delegation presented the position of Switzerland to the Human Rights Council on 14 March 2013.

3. Since the submission of the third periodic report, Switzerland has ratified, or undertaken to ratify, the instruments listed below. The substantive amendments to domestic law listed below have also been adopted.

### **Ratification of international human rights instruments (as of end 2015)**

- Convention on the Rights of Persons with Disabilities (13 December 2006): Switzerland acceded to the Convention on 15 April 2014.
- International Convention on the Protection of All Persons from Enforced Disappearance (20 December 2006): Switzerland signed the Convention on 19 January 2010. On 29 November 2013, the Federal Council adopted a dispatch on the adoption and implementation of the Convention. The file is currently before parliament.
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure (19 December 2011): The Federal Council has adopted a dispatch on accession to the Protocol.
- Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005): Switzerland ratified the Convention on 17 December 2012.
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (25 October 2007): Switzerland ratified the Convention on 18 March 2014.
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (11 May 2010): Switzerland signed the Convention on 11 September 2013. The preparatory work for ratification is in progress.
- Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms: Switzerland signed the Protocol on 20 March 2015. The approval procedure is pending before parliament.

- International Labour Organization Domestic Workers Convention, 2011 (No. 189): Switzerland ratified the Convention on 12 November 2014.

### **Constitution**

- Introduction of article 72 (3) (prohibition on the construction of minarets)
- Introduction of article 118 (b) (research involving human beings)
- Amendment of article 121 (3-6) (expulsion of foreign criminals)

### **Legislation**

- Ordinance of 11 August 1999 on the Enforcement of the Refusal of Admission to and Deportation of Foreign Nationals
- Federal Act of 5 October 2007 on the National Languages and Understanding between the Linguistic Communities (Languages Act) and the Ordinance of 4 June 2010 on the National Languages and Understanding between the Linguistic Communities (Languages Ordinance)
- Federal Ordinance of 11 June 2010 on Protection Measures for Children and Young People and on Strengthening Child Rights
- Swiss Criminal Procedure Code of 5 October 2007
- Swiss Juvenile Criminal Procedure Code of 20 March 2009
- Federal Decree of 18 June 2010 on the Approval and Implementation of the Exchange of Notes between Switzerland and the European Union concerning the adoption of the Return Directive (Directive 2008/115/EC)
- Civil Procedure Code of 19 December 2008
- Amendment of articles 98 (4) and 99 (4) of the Civil Code (prevention of marriage of persons with irregular migration status)
- Revision of article 124 of the Criminal Code (explicit criminalization of female genital mutilation) (see para. 87)
- Amendment of the Civil Code (adult protection law, personal law and law of affiliation)
- Federal Act of 23 December 2011 on Extra-Procedural Witness Protection
- Federal Act of 30 September 2011 on the Promotion of Extracurricular Activities for Children and Adolescents
- Amendment to the Civil Code (family names and cantonal citizenship)
- Federal Act on the implementation of article 123 (b) of the Constitution establishing the non-applicability of statutory limitations to sexual or pornography offences involving prepubescent children (amendment of the Criminal Code, the Military Criminal Code and Juvenile Criminal Law Act)
- Federal Act of 15 June 2012 on Measures against Forced Marriages
- Federal Act of 30 September 2011 on Research involving Human Beings
- Ordinance of 23 October 2013 on Measures to Prevent Criminal Offences related to Human Trafficking

### **Prevention of torture**

4. Switzerland has established a national commission for the prevention of torture to implement the provisions of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which it ratified on 24 September 2009. The commission began its operations on 1 January 2010 and is independent from the Confederation and the cantons. It conducts regular visits to detention

centres and engages in ongoing dialogue with the authorities. Its visit and activity reports are published online.<sup>1</sup>

5. Since the submission of the previous report, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has visited Switzerland twice, from 10 to 20 October 2011 and from 13 to 24 April 2015.<sup>2</sup>

**Cases in which the provisions of the International Covenant on Civil and Political Rights (hereinafter the Covenant) have been invoked before the national courts**

6. During the period under review, the Federal Supreme Court handed down more than 200 decisions concerning rights and freedoms protected by the Covenant. All of these judgments can be consulted online and a number have been published in the Official Compilation of Swiss Federal Supreme Court Decisions.<sup>3</sup> In most of the cases, the Covenant was invoked by means of the corresponding provisions of the European Convention of Human Rights and/or national law (mainly the Constitution). Most cases (more than 100) related to the implementation of article 14 of the Covenant, but various other Covenant provisions have also been invoked.

7. Examples of relevant cases include:

- Article 10: Separation of minors and adults in pretrial detention (Federal Supreme Court Decision 131 I 286 of 7 August 2007, paragraph 3 (3))
- Article 14 (3) (d): The right to be present at trial (Decision 6B\_29/2008 of 10 September 2008, paragraph 1 (2))
- Article 14 (3) (g): The right not to incriminate oneself (Decision 2C\_70/2008 of 27 May 2008, paragraph 2 (2))
- Article 15 (1): Lex mitior principle, validity of the ban on retroactivity of detention (Decisions 6B\_172/2008 of 11 September 2008, paragraph 2 (3) (2) and Federal Supreme Court Decision 134 IV 121)
- Article 15 (1): Legality in criminal matters, lex mitior principle (Decision 6B\_597/2012 of 28 May 2013, paragraph 4 (3))
- Article 15 (1): Lex mitior principle (Decision 6B\_103/2008 of 9 October 2008, paragraph 2 (2) (1))
- Article 25: The right to be elected (Decision 1C\_11/2009 of 3 June 2009, paragraph 4 (2))
- Article 27: Protection of minorities (Federal Supreme Court Decision 138 I 205 of 15 March 2012, paragraph 5 (1))

8. As with all international treaties in force in Switzerland, the Covenant is published in the Classified Compilation, which can be consulted online. Additional information on the Covenant and its reporting procedures is available on the website of the Federal Office of Justice.<sup>4</sup> The Covenant is also an integral part of all legal training in Switzerland.

**Replies to the questions raised in paragraph 2**

9. Switzerland is a federal State made up of 26 cantons. While the recommendations of the Human Rights Council and treaty bodies apply to Switzerland at the State level, responsibility for their implementation falls to the competent public bodies at all levels, particularly the cantons and communes.

<sup>1</sup> www.cnpt.admin.ch > Publications & services (as at 24 July 2015).

<sup>2</sup> www.coe.int > Human Rights > Torture — European Committee for the Prevention of Torture (as at 24 July 2015).

<sup>3</sup> www.bger.ch > Jurisprudence (as at 10 August 2015).

<sup>4</sup> www.bj.admin.ch > State & Citizen > Human Rights (as at 28 July 2015).

10. The 14-person Swiss delegation that presented the previous report included representatives from the principal federal offices involved as well as from the cantons. As a result of their involvement in the preparation and presentation of reports, the offices and cantons have direct knowledge of the Committee's procedures and recommendations.

11. The concluding observations issued by the Committee following the presentation of the third periodic report of Switzerland were translated into German and Italian, thus making them available in three of the country's official languages. The recommendations, along with an explanatory note, were sent to all offices required to implement them as well as to the cantons. They were also published on the website of the Federal Office of Justice.

12. Discussions are currently under way in Switzerland as to how to improve the coordination of reporting procedures and the implementation of international recommendations on human rights in general. Mandated by the Confederation, the Swiss Centre of Expertise in Human Rights has conducted two surveys on this subject. In the first,<sup>5</sup> the Centre interviewed the various stakeholders and drew up a series of recommendations based on its findings. On 5 March 2013, representatives of the different stakeholders discussed the survey recommendations at a day-long event organized by the Centre. Following this event, the Centre fine-tuned its recommendations and incorporated them in a survey report for submission to the authorities.<sup>6</sup>

13. In early 2015, the Conference of the Cantonal Governments adopted a strategy for improved coordination of reporting procedures between cantons, and between the cantons and the Confederation.

14. The Centre's recommendations and the cantonal strategy were considered by an interdepartmental working group bringing together the various offices involved in the implementation of international human rights instruments. Some of the Centre's recommendations have already been incorporated into the workplans adopted in follow-up to the recommendations of United Nations treaty bodies, including, for example, in the follow-up given to the recommendations of the Committee on the Rights of the Child. Discussions are currently under way to find a solution that satisfies the expectations of the various stakeholders. The above-mentioned interdepartmental working group is responsible for coordinating oversight of the recommendations' implementation. The working group comprises representatives of various federal offices in a number of ministries, along with representatives from the cantons and specific federal commissions. It ensures a transparent and participatory approach and holds regular meetings to disseminate information on the recommendations' implementation. In areas addressed under more than one convention, the group can define priorities and ensure that any measures taken are properly coordinated. It also organizes conferences to facilitate the exchange of opinions with civil society, academic institutions and other stakeholders.

15. To avoid repetition, this chapter refers only to measures not covered in other sections of the report.

16. The Government of Switzerland is unclear as to what information has led the Committee to express concern about asylum seekers reportedly being deported even when their country of origin has stated that it is unable to guarantee adequate protection against non-State actors upon their return. The State Secretariat for Migration, as the first instance body, applies the jurisprudence of the Federal Administrative Court, which provides that asylum should be granted in cases of persecution by non-State actors when the relevant conditions are met. All decisions regarding asylum are considered on an individual basis,

<sup>5</sup> Swiss Centre of Expertise in Human Rights, *Mise en œuvre des recommandations internationales en matière de droits humains au sein d'un Etat fédéral* ["Implementation of international recommendations on human rights in a federal State"], 10 February 2012, available at [www.csdh.ch](http://www.csdh.ch) > Publications > Questions institutionnelles (as at 26 July 2015).

<sup>6</sup> Swiss Centre of Expertise in Human Rights, *Die Umsetzung menschenrechtlicher Verpflichtungen und Empfehlungen in der Schweiz-Handlungsvorschläge zur Verbesserung der Abläufe bei der Erstellung von Staatenberichten und beim Follow-up zu den Empfehlungen Internationaler Überwachungsorgane* ["Implementation of human rights obligations and recommendations in Switzerland — Proposals for improving processes in the drafting of State reports and follow-up to the recommendations of international monitoring bodies"], 7 October 2013.

taking into account not only the situation in the country of origin but also the credibility and relevance of the applicant's claims and the evidence gathered during the investigation. Appeals may be filed before the Federal Administrative Court. According to the theory of protection, as interpreted in accordance with the Convention relating to the Status of Refugees, the need for international protection and, by extension, the recognition of refugee status is dependent not upon whether or not the parties responsible for the persecution are known but upon whether or not the persons at risk can find adequate protection from persecution in their home country. On this basis, in judgment D-4935/2007 of 21 December 2011 the Federal Administrative Court concluded that, in application of the theory of protection, an internal flight alternative which excludes recognition of refugee status can be deemed to exist only if it can reasonably be expected, based on concrete evidence, that the person facing persecution will find effective protection in the internal safe haven. It is thus necessary to consider, in each individual case, both the general conditions prevailing in the internal safe haven and the specific circumstances of the person concerned in order to determine, on the basis, in particular, of day-to-day living conditions in the place of relocation, whether or not the person can reasonably be asked to settle there and build a new life. An internal flight alternative should be ruled out if the person at risk of persecution in their home country cannot be expected to settle in the internal safe haven because such relocation would genuinely expose them to danger. Where there is no internal flight alternative, the individual concerned should not be granted temporary leave to remain on the grounds that the removal order cannot be enforced; rather, he or she should be granted refugee status.

17. Pursuant to the Federal Act on Health Insurance, affiliation to the compulsory health insurance scheme must guarantee medical cover throughout the country. Such cover is compulsory for all persons living in Switzerland, including asylum seekers, persons granted temporary leave to remain and persons in need of protection who have no residence permit. Health insurance funds are not permitted to refuse basic insurance cover, nor do they have the right to withdraw such cover. Persons entitled to emergency assistance are guaranteed medical cover until their departure from Switzerland and have access to all compulsory benefits established in the Federal Act on Health Insurance. Insurance providers are also required to insure undocumented migrants. Some cantons offer special schemes to facilitate access to health-care services.

18. The new article 92 (d) of the Health Insurance Ordinance, which entered into force on 1 August 2011, regulates the payment of premiums for beneficiaries of emergency assistance (asylum seekers whose applications have been rejected or summarily dismissed) under a special scheme. Cantons may now suspend payment of the premiums of persons who appear to have left Switzerland. However, should the insurer receive a request for reimbursement of a medical service or treatment and the canton has not been paying, the premiums become due retroactively, along with a supplement, up to the time of suspension. Once the back premiums have been paid, the insurer must assume responsibility for all services or treatments received during the period of suspension. By allowing for the special situation of beneficiaries of emergency assistance to be taken into account, this regulation makes it possible to maintain their insurance cover and access to medical care in accordance with the Federal Act on Health Insurance of 18 March 1994 and article 82 (a) of the Asylum Act.

19. In Switzerland, the provision of social and emergency assistance for all persons in need is the responsibility of the cantons, which determine the extent and nature of the support to be given. The cantons are required to respect the fundamental rights defined in article 12 of the Constitution, which guarantees for all persons in need the right to the financial means necessary for a decent standard of living.<sup>7</sup> Most of the cantons and communes adhere to the guidelines established by the Swiss Association of Social Welfare Institutions.

20. Persons obliged to leave the country also have the right, by way of emergency assistance, to the food, clothing and shelter necessary for a decent standard of living. Provision of the benefits specified under article 12 of the Constitution should always be

<sup>7</sup> See Federal Supreme Court Decision of 21 August 2012, 8C\_65/2012.

guided by the principle of need; in other words, such provision can and should take account of the particular needs of vulnerable persons. In accordance with the principle of the separation of powers, responsibility for ensuring compliance with regulations governing the provision of social and emergency assistance lies exclusively with the judiciary. Thus, should the cantonal authorities refuse a request for social or emergency assistance, the decision can be challenged in the cantonal courts and, subsequently, before the Federal Supreme Court.

### **Involvement of civil society and dissemination of the Committee's previous recommendations**

21. Civil society has been involved in the implementation of the Committee's previous recommendations, as it is generally involved in the work of the competent federal offices and cantons. Cooperation between the authorities and civil society varies according to established practice and the area of activity in question. Civil society is invited to participate in consultations on draft legislation or accession to international conventions as a matter of course.

22. Civil society was not involved in the preparation of this report. The Government of Switzerland has thus far considered the preparation of replies to the Committee's questions to be the responsibility of the State and therefore deemed it preferable for civil society organizations to express their views independently rather than seeking to set out their position in State party reports.

23. In addition to the measures described above, the Committee's recommendations have been published on the website containing information about the Covenant.

### **Replies to the questions raised in paragraph 3**

24. See above 8.

25. Switzerland is a State with a monistic tradition and the provisions of the Covenant are directly applicable at all levels of the federal State. Under article 29 (a) of the Constitution, all persons have the right to have their case heard before a judicial authority. Uniform application of the provisions of the Covenant is ensured by the possibility of recourse to the Federal Supreme Court. The Covenant guarantees, like constitutional guarantees, can be invoked in private, criminal or public law remedies provided the required conditions are met. A subsidiary constitutional appeal may be lodged against decisions that cannot be challenged by any of these remedies (articles 113 et seq. of the Federal Supreme Court Act).

26. The Swiss Centre of Expertise in Human Rights (see below 27) is mandated to provide authorities at all levels of the federal State with practical expertise in the implementation of human rights and to encourage the systematic exchange of know-how in this area. In particular, its remit includes enhancing awareness of international obligations and recommendations — including the provisions of the Covenant and the Committee's concluding recommendations — and facilitating their implementation.

### **Replies to the questions raised in paragraph 4**

27. On 1 July 2009, the Federal Council adopted a report examining the possibility of creating a federal human rights commission (entitled *Création d'une commission fédérale des droits de l'homme: possibilité, opportunité et alternative*). Although the report recognized that there was a need for support and services in the area of human rights, owing to a lack of consensus, it proved too soon to establish a fully-fledged national human rights institution. The Federal Council therefore decided to conduct a five-year long pilot project during which the Confederation would contract the services of a university service centre under a funding agreement worth SwF 1 million per year.

28. In line with the Federal Council's decision, all universities in Switzerland were invited to tender for the project. A proposal submitted by the universities of Bern, Fribourg



and Neuchâtel, in conjunction with the University of Teacher Education Lucerne, University Institute Kurt Bösch and the organization Humanrights.ch, was selected. During the contractual negotiations, the University of Zurich joined the project. The resultant centre, which is known as the Swiss Centre of Expertise in Human Rights, is led by Professor Walter Kälin and started its work in early 2011.

29. The Centre's work encompasses six thematic areas — migration, police and justice, gender policy, child and youth policy, institutional issues, and human rights and the economy — and two cross-cutting issues — human rights education, and information and awareness-raising.

30. The Confederation's budget contribution is administered by a steering committee consisting of representatives of the federal departments involved in the Centre's funding — namely, the Federal Department of Foreign Affairs and the Federal Department of Justice and Police. An advisory board composed of up to 40 representatives of government authorities (at the federal, cantonal and municipal level), federal commissions, political, scientific and economic institutions, civil society and international human rights agencies, guides the Centre's strategic direction. The Centre's mandate is set out in a framework agreement concluded with the Confederation.

31. As envisaged in the Federal Council's decision of 1 July 2009, the Centre was the subject of an independent evaluation in early 2015. The final evaluation report was submitted on 23 April 2015.<sup>8</sup>

32. As detailed in the evaluation report, the Centre's main activities have been survey research (51 studies conducted in the review period) and the organization of themed day-long events (28 events organized in the review period). Other activities have included organizing workshops and training sessions, publishing brochures and handbooks, and providing translation and moderation services (23 projects in total). The quality of the services provided was rated good and in some cases very good. However, the Centre has been unable to provide all the services envisaged in the Federal Council's 2009 report because of the way in which it is structured and, more specifically, because it has only limited scope to act on its own initiative. While the Centre has helped to strengthen human rights policies, it has found raising awareness among the general public a more difficult task. Its lack of structural independence was found to be the main problem impeding the pilot project. The vast majority of those questioned were in favour of the establishment of a permanent institution.

33. The Federal Council was apprised of the report on 1 July 2015. The Council decided to extend the pilot project for a further period of five years and requested the Federal Department of Foreign Affairs and the Federal Department of Justice and Police to submit proposals for a permanent solution by the end of 2015.

### **Replies to the questions raised in paragraph 5**

34. A detailed analysis of gender equality measures can be found in the combined fourth and fifth periodic reports of Switzerland on the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW/C/CHE/4-5).<sup>9</sup> Additional information is provided below.

35. The Gender Equality Act prohibits direct and indirect discrimination in the workplace on the grounds of gender. Case law on the Act shows that the judicial process is used effectively. The databanks [www.gleichstellungsgesetz.ch](http://www.gleichstellungsgesetz.ch) and [www.leg.ch](http://www.leg.ch), which are funded by the Confederation and regularly updated by the cantonal equality offices, currently document around 660 cases in the German-speaking cantons and 90 in French-speaking Switzerland. The Gender Equality Act also establishes that the Confederation

<sup>8</sup> [www.skmr.ch](http://www.skmr.ch) > About SCHR > Secretariat > News > The Federal Council has decided on the future of the SCHR (as at 10 August 2015).

<sup>9</sup> [www.ebg.admin.ch](http://www.ebg.admin.ch) > Thèmes > Droit > Droit international > Quatrième et cinquième rapport CEDEF, version raccourcie du 25.02.2015 (as at 7 July 2015).

should provide financial resources to support the advancement of gender equality in the workplace. In 2015, SwF 4.4 million was set aside for this purpose.<sup>10</sup>

36. The Federal Office for Gender Equality organizes regular training days on the Gender Equality Act.

37. Information and awareness-raising materials on sexual harassment are available on the website of the Confederation ([www.harcelementsexuel.ch](http://www.harcelementsexuel.ch)).

38. As regards State measures to improve equality between men and women in the labour market, the Federal Council announced on 22 October 2014 that in late 2015 it would present a bill requiring employers to conduct regular pay reviews and to have such reviews overseen by a third party. On 6 December 2013, the Federal Council set a target of 30 per cent for women's representation on the boards of State-associated companies, to be achieved by 2020. In addition, as part of a review of shareholder law, on 28 November 2014 the Federal Council launched consultations on a proposed target of 30 per cent for women's representation in top management positions and on the boards of directors of major listed companies, to be achieved within five years of the new legislation's entry into force. The proposal is based on the principle of "comply or explain" and does not envisage the imposition of penalties for non-compliance.

39. Since 2010, the proportion of women in the federal administration has exceeded 40 per cent (except in the defence division of the Federal Department of Defence, Public Safety and Sports and in the Swiss Border Guard). In 2014, the percentage was 44.2 per cent. At senior management level, 17.7 per cent of staff are female, an increase of 32 per cent since 2010. At middle management level, 31.3 per cent of staff are female, representing an increase of 16.8 per cent compared to 2010. The federal administration offers its employees the possibility of teleworking, flexible working hours and job-sharing (including "top-sharing" — job-sharing in positions with a high level of responsibility) when conditions allow. A number of options are also available to enable employees to balance work and caring responsibilities. In 2015, the Confederation adopted a guide to quality and non-discrimination in the staff recruitment process entitled *Qualité du processus de recrutement du personnel — Recrutement non discriminatoire*.

40. The Federal Office for Gender Equality has developed a number of tools to help employers to respect the principle of equal pay. Businesses with more than 50 employees can use the Logib self-test tool.<sup>11</sup> A self-test tool for businesses employing fewer than 50 people, known as ARGIB, is currently being developed and should be available in the course of 2016.

41. The Federal Procurement Conference recommends that contracting entities should ask tendering companies to sign a "bidder's declaration" concerning respect for equality.<sup>12</sup> As of 1 January 2016, on their application forms bidders and subcontractors who employ more than 50 persons must not only declare that they respect the principle of equal pay but also indicate how their pay practices are monitored, whether by themselves or through a third party. If a company is unable to provide the requested supporting documentation, the contracting entity does not accept the bid.

42. The Confederation may also carry out checks to ensure that the equal pay principle is being respected in public procurement processes. Such checks may be delegated to the Federal Office for Gender Equality or to cantonal or municipal equality offices. Between 2006 and 2015, checks were initiated in 63 companies, some of which remain under way. Twenty checks were initiated in 2015 and a further 30 will be launched in 2016.

43. In 2013, the Swiss Centre of Expertise in Human Rights was mandated by a number of federal offices to conduct a wide-ranging study of the application of substantive law in the fight against discrimination and the procedural aspects (both judicial and practical) of access to justice in the event of discrimination. The study includes a section on the general

<sup>10</sup> For projects funded to date, see [www.topbox.ch](http://www.topbox.ch).

<sup>11</sup> [www.logib.ch](http://www.logib.ch).

<sup>12</sup> [www.bkb.admin.ch](http://www.bkb.admin.ch) > Moyens auxiliaires > Recommandation de la CA, Déclaration (as at 27 July 2015).

rules applicable in cases of discrimination and the standard practices of the authorities, as well as sections that look more specifically at particular grounds of discrimination such as sex, gender identity, sexual orientation, disability and race.

## Replies to the questions raised in paragraph 6

44. Implementation of the Federal Act on the Elimination of Discrimination against People with Disabilities (the Disability Discrimination Act) is guided primarily by the Convention on the Rights of Persons with Disabilities, which Switzerland ratified in 2014.

45. The Act envisages public transport solutions that enable passengers with disabilities to travel independently. Any modifications to structures, facilities and vehicles that cannot be made during routine maintenance operations must be carried out by the end of 2023 as part of the special programme forming part of the Disability Discrimination Act implementation strategy.<sup>13</sup> The adjustments to passenger information systems and ticket machines required to comply with the Act had to be completed by the end of 2013.

46. All State authorities are obliged to adapt the services they provide to the public to the specific needs of persons with disabilities.<sup>14</sup> The Federal Council has drawn up an action plan for Internet accessibility to enhance implementation of the Disability Discrimination Act.

47. Access to the built environment is an important theme of the Disability Discrimination Act, which is designed to ensure that persons with disabilities can access different types of buildings without having to face architectural barriers. The Act applies to buildings and facilities open to the public, residential buildings containing more than 8 housing units, and buildings with more than 50 workstations for which building or renovation permits were granted after the Act entered into force on 1 January 2004.

48. The Disability Discrimination Act also establishes specific measures relating to labour relations within the Confederation (Disability Discrimination Act, art. 3 and Ordinance on the Elimination of Discrimination against People with Disabilities, art. 12). On the basis of the Federal Personnel Ordinance, on 22 June 2011 the Federal Council also adopted guidelines for the employment and inclusion of persons with disabilities in the federal administration. The guidelines established that by 2015 the percentage of employees with disabilities should be between 1 and 2 per cent. In 2014, 1.5 per cent of Swiss federal employees had a disability, compared with 1 per cent in 2010.

49. The Disability Discrimination Act gives persons with disabilities certain individual rights in respect of buildings, equipment and vehicles (art. 7) and the provision of services (art. 8). Persons facing discrimination are not responsible for any charges associated with the procedures established in these two articles (art. 10). The Act gives locus standi and the right of appeal to national organizations providing support to persons with disabilities provided that they have been in existence for at least 10 years (art. 9 (1)).

50. The Federal Office of Equality for Persons with Disabilities has a mandate to raise awareness and provide information and advice on the right to equality of persons with disabilities. It fulfils this mandate mainly by posting information on its website, issuing publications on topics linked to equality for persons with disabilities and organizing events. The Office works closely with organizations providing support for persons with disabilities.

51. Articles 16 to 18 of the Disability Discrimination Act provide that the Confederation may conduct and, more importantly, provide funding for, projects aimed at finding new ways to include persons with disabilities and/or informing and educating the general public. Between 2004 and 2014, more than 320 such projects received support. An evaluation of the Act's impact is under way and will provide guidance as to the extent to which its provisions have contributed to raising awareness in general. Project managers must also

<sup>13</sup> [www.bav.admin.ch](http://www.bav.admin.ch) > Thèmes > Accessibilité des Transports Publics > Informations pour entreprises des TP et spécialistes > Concept de mise en œuvre LHand (as at 21 July 2015).

<sup>14</sup> Disability Discrimination Act, art. 3 (e), read in conjunction with arts. 2 (4), 10 and 14.

provide midpoint and final reports under a project self-evaluation system. These reports are an integral part of the project and a requirement for the receipt of funds.

52. The cantons play an important role in the implementation of the Federal Act on Institutions for the Rehabilitation of Persons on Invalidity Benefit. Since 1 January 2008, they have been responsible for funding institutions for adults with disabilities and have therefore developed strategic cantonal plans setting out the relevant policies. All such plans have since been approved by the Federal Council. Advocacy efforts are led by the numerous associations and organizations of persons with disabilities and, to a lesser extent, by the federal and cantonal authorities.

53. The Swiss Centre of Expertise in Human Rights' study on access to justice in cases of discrimination (mentioned above 43) includes a section dealing specifically with the situation of persons with disabilities.

### Replies to the questions raised in paragraph 7

54. The Federal Commission against Racism is an extra-parliamentary commission that provides advice and drafts legislation (see art. 8 (a) (2) of the Government and Administration Organization Ordinance concerning advisory commissions). It is also tasked with monitoring the implementation of anti-racism laws. However, as it does not take sovereign decisions and does not therefore constitute an authority within the meaning of article 104 (2) of the Criminal Procedure Code, it cannot be accorded *locus standi*.

55. The secretariat of the Commission provides advice to people who feel that they have been victims of racial discrimination and answers their questions, but the Commission's mandate does not extend to more comprehensive legal advisory services. Within the framework of its mandate, the Commission may liaise with the cantonal departments, the parties and other organizations. The administrative authorities provide whatever information the Commission needs to carry out its duties, but the Commission does not enjoy unlimited access to all federal departments.

56. The Federal Council is of the view that to date this approach has proved effective.

57. A report on racial discrimination in Switzerland published by the Service for Combatting Racism in 2014<sup>15</sup> reveals that the number and types of cases brought before the courts for violation of article 261 bis of the Criminal Code have changed little over time. On the other hand, racism on the Internet has increased and, more and more frequently, the parties responsible are minors.<sup>16</sup> According to a study commissioned by the Service, negative views of foreign nationals and minorities have not changed significantly despite the increased politicization of the issue of immigration.<sup>17</sup> Moreover, according to the European Commission against Racism and Intolerance's report on Switzerland (fifth monitoring cycle), issued in September 2014, levels of racist, homophobic and transphobic violence remain relatively low.<sup>18</sup>

58. To counter the rising incidence of racism on the Internet, in 2014 and 2015 Switzerland participated in the No Hate Speech Movement campaign run by the Council of Europe. As mandated by the Federal Social Insurance Office, the National Youth Council of Switzerland undertook a range of supporting activities. A website provides information on online hate speech and ideas for taking part in the movement.<sup>19</sup> In 2015, the Federal Commission against Racism launched the "*Une Suisse à nos couleurs*" campaign, which was targeted mainly at young people and designed to raise public awareness of racism and the need to protect against discrimination on the Internet. The Service for Combatting Racism also supports projects addressing racism in digital media.

<sup>15</sup> www.slr.admin.ch > Rapports et monitoring (as at 24 July 2015).

<sup>16</sup> See note 16, p. 12.

<sup>17</sup> Brief report on the study (*Vivre ensemble en Suisse 2010-2014*) ["Living together in Switzerland"], www.slr.admin.ch > Rapports et monitoring (as at 24 July 2015).

<sup>18</sup> European Commission against Racism and Intolerance report on Switzerland (fifth monitoring cycle), CRI (2014) 39, p. 7, www.slr.admin.ch > Affaires internationales > ECRI (as at 24 July 2015).

<sup>19</sup> www.nohatespeech.ch.

59. All cantons have had a cantonal integration programme defining mandatory measures for ensuring protection against discrimination since 1 January 2014 and the State Secretariat for Migration and the cantons have concluded programme agreements covering the period 2014-2017. The programmes involve providing advice to people affected by discrimination through community-level advice centres on the one hand and offering advice to and raising awareness among the public in general and the authorities on the other. The Tripartite Conference on Urban Areas — a political platform bringing together the Confederation, the cantons, the cities and the communes — promotes cooperation and dialogue, particularly on the subject of integration, and has spearheaded a number of initiatives designed to sensitize the general public to issues surrounding the integration of foreign nationals.<sup>20</sup> In partnership with the Confederation and civil society, the Conference finances *éducation21*, a foundation working to enhance the teaching of political and human rights in compulsory education and, thus, to increase awareness. In 2015, the Swiss Conference of Cantonal Ministers of Education held a symposium on education and migration focused on the theme of equity, discrimination and equal opportunities in the education system.

### **Legislative and regulatory reforms introduced to improve the legal framework to combat racism and racial discrimination**

60. For a description of the legal framework, please refer to the 2014 report on racial discrimination in Switzerland<sup>21</sup> issued by the Service for Combating Racism and the fifth report on Switzerland published by the European Commission against Racism and Intolerance.

61. Motions, initiatives and petitions are regularly presented to the Federal Assembly calling for repeal or limitation of the scope of article 261 bis of the Criminal Code or for abolition of the Federal Commission against Racism. In its opinions, the Federal Council has proposed that each of these parliamentary interventions should be rejected.<sup>22</sup>

62. In order to verify whether the current legal framework is sufficient to combat discrimination, and in particular racial discrimination, the Federal Council commissioned the Swiss Centre of Expertise in Human Rights to conduct a major study of the issue. The Council has also adopted a number of measures itself with a view to ensuring that the existing instruments are better known and utilized. Such measures include:

- Establishing counselling centres for victims of discrimination: one of the objectives of the cantonal integration programmes is to provide counselling to protect individuals against discrimination.
- Organizing training courses based on the legal guide: the Service for Combating Racism continues to organize training related to the legal guide.<sup>23</sup> Increasingly, these courses are included in plans for achieving the objectives of the cantonal integration programmes.

63. The study on access to justice in cases of discrimination carried out by the Swiss Centre of Expertise in Human Rights includes a section addressing the specific situation of persons who are victims of racial discrimination. This part of the study examines current case law related to article 261 bis of the Criminal Code and standard court practice in cases of discrimination affecting individuals, whether under labour law or tenancy law.

<sup>20</sup> Examples include *Dès la naissance — Entrer dans la vie en bonne santé* [“From birth: a healthy life from the outset”] and *Au travail — Donner sa chance, saisir sa chance* [“In the workplace: give a chance, take a chance”], [www.dialog-integration.ch](http://www.dialog-integration.ch) > Au travail ou Dès la naissance (as at 24 July 2015).

<sup>21</sup> Cf. footnote 48, p. 15.

<sup>22</sup> In this context, it should be noted that the Rutz motion no. 14.3059, concerning the repeal of the article against racism, was submitted in 2014. The Federal Council proposes that this motion should be rejected.

<sup>23</sup> Tarek Naguib, *Guide juridique Discrimination raciale* [“Legal guide to racial discrimination”] (Bern, Service for Combating Racism, 2009). [www.slr.admin.ch](http://www.slr.admin.ch) > Droit et conseil > Guide juridique (as at 24 July 2015).

64. The network of counselling centres for victims of racial discrimination recorded 13 racist incidents related to the police in 2012 (of a total of 227 cases), 17 incidents (of a total of 238 cases) in 2013 and 19 (of a total of 298) in 2014.<sup>24</sup> The register of cases maintained by the Federal Commission against Racism does not include any such case, however.<sup>25</sup>

65. Measures taken to ensure that police action is not discriminatory fall into three broad areas: inclusion of modules on human rights and racial discrimination in training programmes; routine monitoring of police practice in identity checks and arrests (to combat racial profiling); and the establishment of effective mechanisms for bringing complaints in cases of racist aggression by a police officer.<sup>26</sup> Opening up the police force to officers of foreign origin is another way of promoting public acceptance of the police and reducing the potential for conflict.

66. In the examinations at the end of their basic professional training, police cadets are questioned both on ethical issues and on the European Convention on Human Rights and the United Nations Code of Conduct for Law Enforcement Officials. In 2012, the Swiss Police Institute published a revised version of its course on human rights and professional ethics, which was drawn up with support from the Swiss Centre of Expertise in Human Rights. The State must also ensure that these questions are studied in greater depth following basic training. For several years, the Service for Combating Racism has been providing cantonal police academies and forces with help in designing and implementing in-service training activities.

67. There are two approaches to the recruitment of personnel of foreign origin to the police force. One possibility is to accept applications from foreign nationals. This practice has been adopted by several cantons, while a number of others have opted for a variant of this solution whereby the possibility of a career as a police officer is opened up to foreign nationals who have settled in Switzerland provided that they become naturalized before the end of their training. The other approach entails taking steps to make police service more attractive to Swiss citizens with an immigrant background. Building on its success in managing diversity in other areas, the Zurich police department, for instance, has been endeavouring to achieve this end when recruiting personnel since 2014.

### Replies to the questions raised in paragraph 8

68. On 22 April 2014, Switzerland signed the International Commission on Civil Status Convention No. 34 on the issue of multilingual and coded extracts from civil-status records and multilingual and coded civil-status certificates. This Convention, which replaces Convention No. 16, introduced new, gender-neutral wording for extracts of records of acknowledgement of children and registration of partnerships.

69. On 29 April 2015, the Federal Council approved the Valletta Declaration of Intent, a document drafted by a group of countries from the Council of Europe which reaffirms the commitment taken up in the framework of the Recommendation of the Committee of Ministers of the Council of Europe, issued on 31 March 2010, on measures to combat discrimination on grounds of sexual orientation or gender identity. In its press release, the Federal Council also recalled that Switzerland provides financial support for the work of various bodies within the Council of Europe active in the field of extending protection to lesbian, gay, bisexual, transgender and intersex (LGBTI) persons.

70. With regard to the right to adopt children, on 28 November 2014 the Federal Council submitted to parliament a draft amendment that would enable persons in a registered partnership and persons living together in a de facto union to adopt their

<sup>24</sup> Network of counselling centres for victims of racial discrimination, *Incidents racistes traités dans le cadre de consultations — Rapport de monitoring* ["Racist incidents dealt with in counselling contexts — monitoring report"] (January-December 2012, 2013, 2014). [www.network-racism.ch](http://www.network-racism.ch) > Rapports de monitoring (as at 24 July 2015).

<sup>25</sup> [www.ekr.admin.ch](http://www.ekr.admin.ch) > Services > Recueil des cas juridiques > Recherche (as at 28 July 2015).

<sup>26</sup> Complaint mechanisms are the subject of a study published by the Swiss Centre of Expertise in Human Rights in 2014 (see section 116 above).

partner's children, with that possibility no longer being reserved for married couples alone. Parliamentary proceedings are under way.

71. Following adoption of the Reynaud parliamentary initiative No. 13.407, on combating discrimination based on sexual orientation, a bill has been launched to extend article 261 bis of the Criminal Code to cover discrimination on the grounds of sexual orientation.

72. In its response of 2 July 2014 to the Reynaud interpellation No. 14.3378, concerning asylum and the criminalization of homosexuality, the Federal Council confirmed that the practice followed by the Swiss authorities in respect of asylum seekers at risk of criminal prosecution in their country of origin on grounds of their sexual orientation or gender identity had long been in line with that advocated by the Court of Justice of the European Union. The Federal Council also recalled its commitment to combating discrimination based on sexual orientation or gender identity.

73. In its report of 25 March 2015 on family law, following the Fehr postulate No. 12.3607, concerning the Civil Code and the need for modern and coherent family law, the Federal Council takes up the issue of the relationship between registered partnership and marriage. It expresses the view that the possibility of assimilating registered partnership to marriage, or of opening the possibility of marriage to homosexual couples, should be discussed.

74. Switzerland is also an active member of the informal European network of national focal points for human rights of LGBTI persons, which meets twice a year.

75. The study on access to justice in cases of discrimination carried out by the Swiss Centre of Expertise in Human Rights provides an overview of recent judgments in cases of discrimination on grounds of sexual orientation or identity. The Federal Supreme Court has, for instance, considered whether health insurance funds should pay for transsexual persons' sex change operations.<sup>27</sup> It has also ruled on several occasions on the question of adoption of the child of a registered partner<sup>28</sup> or equal treatment of married couples and registered partners on the one hand and unmarried cohabitants on the other.<sup>29</sup> There is also recent case law of the Swiss Federal Supreme Court concerning the application of general provisions of private law and criminal provisions in relation to sexual orientation.<sup>30</sup>

## Replies to the questions raised in paragraph 9

76. Switzerland has signed the Council of Europe Convention of 11 May 2011 on Preventing and Combating Violence against Women and Domestic Violence (the Istanbul Convention 3).

77. The Federal Act on Extra-Procedural Witness Protection, which entered into force on 1 January 2013, governs the implementation of witness protection programmes for persons threatened because of their cooperation in criminal proceedings, including victims of violence.

78. An assessment of the Federal Act on the Provision of Support to Victims of Crime (the Victim Support Act) is currently under way. The assessment should reveal, firstly, how the measures envisaged under the Act are being implemented and what effect the Act is having on different categories of victims (including women); and secondly, how the Act is being enforced and what effect the criminal procedure is having on victims. The aim is to identify any potential for improvement and optimization of the measures envisaged.

79. Under the Victim Support Act, all cantons are required to establish support centres for victims of domestic violence. Since the entry into force, on 1 July 2007, of the restraining measures provided for in article 28 (b) of the Civil Code, all cantons are also

<sup>27</sup> Federal Supreme Court Decision 137 I 86; see also judgment 9C\_550/2012 of 13 July 2013.

<sup>28</sup> Federal Supreme Court Decision 137 III 241; judgment 2C\_56/2012 of 24 September 2012.

<sup>29</sup> For instance, Federal Supreme Court Decisions 140 I 177, 137 V 105 and 137 V 133.

<sup>30</sup> For instance, judgment 5A\_376/2013 of 29 October 2013 and judgment 6B\_562/2011 of 5 December 2011.

required to make provision in their laws for measures against domestic violence. Accordingly, all cantons recognize the possibility of expelling perpetrators of domestic violence from the joint dwelling and prohibiting them from returning there or entering the surrounding area. Some cantons also offer follow-up support for victims provided by community-based units designated for that purpose. In addition to counselling victims, the support centres carry out awareness-raising activities and information campaigns and facilitate networking between stakeholders at the cantonal level.

80. On 13 May 2009, the Federal Council endorsed a report on intimate partner violence, based on a study published by the Federal Office for Gender Equality,<sup>31</sup> in which it indicated the steps the Confederation intended to take to continue the fight against this form of violence.<sup>32</sup> The furtherance of measures to prevent and combat domestic violence was a priority of the 2011-2015 legislative programme and a standing interdepartmental working group has been meeting each year since 2009 to coordinate implementation of the 20 measures decreed by the Federal Council.<sup>33</sup> As of October 2014, 4 of the 20 measures had been completed, 10 were ongoing tasks in the participating federal offices, 4 were due to be implemented by the end of 2015 and 2 had been reassessed and put on hold. The list of measures included conducting research into the economic consequences of domestic violence. The results of this research were published in November 2013.<sup>34</sup>

81. In a report issued on 27 February 2013,<sup>35</sup> the Federal Council stated that it intended, insofar as possible, to remove any barriers that might deter affected persons from contacting the authorities, thereby encouraging them to report any violations to which they were subject, and to improve the position of victims, particularly during criminal proceedings.

82. Pursuant to the Feri postulate,<sup>36</sup> the Federal Council, in cooperation with the cantons, is set to draw up a report on managing threats arising from domestic violence in Switzerland which will focus on the obstacles to data exchange imposed under federal law, taking account of initial experience gained in those cantons that have new threat management mechanisms in place.

83. The Federal Council has also been tasked<sup>37</sup> with conducting a review of cantonal policies and practices concerning medical care in cases of domestic violence and assessing the case for including an explicit mandate in the Victim Support Act.

84. Parliament is also currently discussing an initiative addressing the question of whether the Victim Support Act should be supplemented by a provision obliging the

<sup>31</sup> [www.bfeg.admin.ch](http://www.bfeg.admin.ch) > Documentation > Publications > Publications sur la violence > Coûts de la violence dans les relations de couple (as at 28 July 2015).

<sup>32</sup> [www.bfeg.admin.ch](http://www.bfeg.admin.ch) > Documentation > Publications > Publications sur la violence > Coûts de la violence dans les relations de couple > Federal Council Report — Costs of Intimate Partner Violence (as at 28 July 2015).

<sup>33</sup> See interim report on measures planned to combat intimate partner violence, submitted by the Federal Council to the Legal Affairs Committee of the National Council in February 2012; Federal Gazette 2012 2209. Report of 13 May 2009.

<sup>34</sup> Available at [www.bfeg.admin.ch](http://www.bfeg.admin.ch) > Documentation > Publications > Publications sur la violence > Coûts de la violence dans les relations de couple > Summary report — Costs of Intimate Partner Violence (as at 28 July 2015).

<sup>35</sup> Report of the Federal Council of 27 February 2013 drawn up pursuant to the Fehr postulate No. 09.3878 of 24 September 2009, *Dénonciation et effet dissuasif vont de pair* ["Reporting and deterrence go hand in hand"]. [www.ofj.admin.ch](http://www.ofj.admin.ch) > Société > Aide aux victimes d'infractions > Publications (as at 28 July 2015).

<sup>36</sup> Feri postulate No. 13.3441, *Gestion des menaces émanant de violences domestiques. Faire le point sur la situation juridique et créer une définition nationale* ["Management of threats arising from domestic violence. Reviewing the legal situation and creating a national definition"].

<sup>37</sup> By the Socialist Group postulate No. 14.4026, *Prise en charge médicale des cas de violence domestique. Politiques et pratiques cantonales et opportunité d'un mandat explicite dans la LAVI* ["Medical care in cases of domestic violence. Cantonal policies and practices, and the case for including an explicit mandate in the Victim Support Act"] submitted in November 2014.



cantons to establish shelter facilities for persons at risk of violence in their immediate social environment.<sup>38</sup>

85. The Federal Office for Gender Equality and the cantonal service departments are helping to raise public awareness of the need to combat the different types of violence against women. In addition, the Federal Office organizes a national conference on domestic violence each year.

86. Since 1 July 2012, article 124 of the Criminal Code has expressly defined female genital mutilation as a criminal offence. The offence is also punishable when it has been committed abroad, provided the perpetrator is in Switzerland and has not been extradited.

87. The Federal Act of 15 June 2012 on Measures against Forced Marriages entered into force on 1 July 2013.<sup>39</sup> The Act envisages amendments to a number of laws, including the Criminal Code, the Civil Code and the Federal Act on International Private Law, in order to intensify the campaign against forced marriage. Subject to these amendments, forced marriage is henceforth automatically prosecuted and marriage with a minor is no longer admissible. Furthermore, a specific and more stringent criminal provision has been introduced whereby a marriage contracted under constraint must be annulled even if the spouses wish it to continue. The offence is also punishable when it has been committed abroad, provided the perpetrator is in Switzerland and has not been extradited. In addition, there is a national five-year (2013-2017) programme to combat forced marriage<sup>40</sup> under which the Confederation supports regional measures. A dedicated budget of SwF 2 million has been allocated for this purpose.<sup>41</sup> The programme takes over from the pilot projects implemented in Switzerland between 2009 and 2013 to raise awareness of the problem of forced marriage among different population groups.<sup>42</sup>

88. Since 1 July 2013, article 50 (2) of the Foreign Nationals Act has read as follows: “There are important personal reasons within the meaning of paragraph (1) (b) if the spouse has been the victim of marital violence or did not marry of his or her own free will or if the possibility of social reintegration in his or her country of origin appears to be seriously compromised”. As a result, the conditions are now alternative, rather than cumulative. It is no longer absolutely necessary for a woman to show that her social reintegration in her country of origin would be seriously compromised in order to benefit from the protection described in article 50 of the Foreign Nationals Act.

89. In order to ensure that legal provisions are applied as uniformly as possible, the State Secretariat for Migration has issued the cantonal migration authorities and specialized service departments with a circular on domestic violence, dated 12 April 2013, which reflects recent case law and practical experience.<sup>43</sup> In addition, the Federal Office for Gender Equality and the State Secretariat for Migration have organized four regional workshops on implementation of article 50 (2) of the Foreign Nationals Act for the cantonal migration authorities and specialized service departments in order to optimize cooperation between them during consideration of domestic violence cases.

90. Under the Victim Support Act, assistance is provided to victims in the form of advice and, where appropriate, financial support from victim support centres and compensation and moral damages from the cantonal authorities in whose territory the offence was committed. The cantons ensure that publicly- or privately-run victim support centres, which operate independently, are available in their region. In so doing, they take into consideration the specific needs of different categories of victims, including women

<sup>38</sup> Fehr parliamentary initiative No. 13.454, *Protection des personnes menacées de violence dans leur environnement social proche* [“Protection for persons under threat of violence in their immediate social environment”] of 26 September 2013.

<sup>39</sup> Official Compilation of Federal Legislation 2013 1035; Federal Gazette 2011 2045.

<sup>40</sup> [www.sem.admin.ch](http://www.sem.admin.ch) > Entrée & Séjour > Intégration > Thèmes > Mariages forcés (as at 28 July 2014).

<sup>41</sup> [www.gegen-zwangsheirat.ch](http://www.gegen-zwangsheirat.ch) > Programme fédéral de lutte contre les mariages forcés > Activités de la Confédération > Programme fédéral > Fondements du programme (as at 13 July 2015).

<sup>42</sup> [www.gegen-zwangsheirat.ch](http://www.gegen-zwangsheirat.ch) > Programme fédéral de lutte contre les mariages forcés > Activités de la Confédération > Projet pilote 2009-2013 (as at 13 July 2015).

<sup>43</sup> [www.sem.admin.ch](http://www.sem.admin.ch) > Publications & service > Directives et circulaires > Domaine des étrangers > Regroupement familial (as at 28 July 2015).

victims of domestic or sexual violence (Victim Support Act, art. 9 (1)). There is at least one victim support centre in each canton, and there are a total of 51 throughout the country. These centres have a mandate to give advice to victims and their families and help them to assert their rights (Victim Support Act, art. 12 (1)). This advice is provided to victims free of charge, and they and their families can attend the centre of their choice (Victim Support Act, art. 15 (3)). With regard to violence and neglect of children and young people within the family, in 2012 the Government adopted a report in which it detailed the overall goals for protection and support and defined the core benefits that should be available in an adequate system.<sup>44</sup> The Government has declared its readiness to support the relevant actors at cantonal level in developing their support systems for children and young people.

91. Each canton also has a department dedicated to combating domestic violence. These departments coordinate and support the cantonal authorities and cantonal victim support centres that are active in the fight against domestic violence.

92. The Swiss Conference against Domestic Violence, which was established in 2013, brings together 17 cantons that have set up specific coordination and intervention departments to combat domestic violence.<sup>45</sup>

93. A report prepared in 2014 provides an overview of the situation with respect to women's shelters in Switzerland and an analysis of needs in this area.<sup>46</sup> The report highlights a constant need for places in shelters and reveals large regional disparities in terms of the number of places available. It sets out various options for improving the availability of places in shelters and financing increased capacity. Following the publication of the report in May 2015, the Swiss Conference against Domestic Violence sent a letter to its members recommending that they review the situation with respect to shelters and emergency accommodation available in their cantons and ascertain whether any additional places might be needed. The Conference Committee also decided to commission a third party to put together an overview of the range of services available in women's shelters on the basis of which appropriate financing models could be developed.

94. In police crime statistics, offences that occur between members of the same family or between partners or ex-partners are considered domestic violence.<sup>47</sup> For this type of violence in particular, police crime statistics provide disaggregated data based on a number of criteria, including:<sup>48</sup> domestic violence offences registered by the police by offence and by year; domestic violence cases as a proportion of cases of violence registered by the police; domestic violence offences registered by the police involving repeat offences; type of relationship between the victim and the perpetrator; time of the offence; place the offence was committed; domestic violence offences and victims; and domestic violence offences and alleged offenders.

95. With regard to the domestic violence offences registered by the police (without distinction as to the sex of the victim), after an increase in 2012 and 2013, a decrease was observed in 2014. In 2014, the police registered 15,650 domestic violence offences, which represents a reduction of 0.8 per cent compared to the average for the period 2009-2013.<sup>49</sup> Police crime statistics only take account of offences of which the police is aware.

<sup>44</sup> Report of the Federal Council of 27 June 2012, prepared in fulfilment of the Fehr postulate No. 07.3725 of 5 October 2007 entitled *Violence et négligence envers les enfants et les jeunes au sein de la famille* ["Violence and neglect of children and young people in the family"].

<sup>45</sup> In the nine other cantons, there are no specific units; responsibility lies with the cantonal justice and police authorities.

<sup>46</sup> [www.sodk.ch](http://www.sodk.ch) > français > Domaines > Familles et société > Aide aux victimes > Maisons d'accueil pour femmes > INFRAS *Maisons d'accueil pour femmes en Suisse : analyse de la situation et des besoins* ["Women's shelters in Switzerland: analysis of the situation and needs"], baseline report commissioned by the Conference of Cantonal Directors of Social Affairs and the Federal Office for Gender Equality, of 19 November 2014 (as at 28 July 2015).

<sup>47</sup> Accordingly, domestic violence can be defined only on the basis of a selection of specific offences under the Criminal Code.

<sup>48</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Thèmes transversaux > Violences domestiques (as at 28 July 2015).

<sup>49</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Thèmes transversaux > Violences domestiques > Violence domestique enregistrée par la police (as at 28 July 2015).

According to a follow-up study to the 2011 survey on victims in Switzerland, only 22 per cent of cases of domestic violence were reported to the police.<sup>50</sup>

96. Similarly, in terms of the number of women affected, there was an increase in 2013 and a decrease in 2014 (2009: 7,397; 2010: 6,973; 2011: 6,567; 2012: 6,701; 2013: 7,016; 2014: 6,708). Women are three times more likely to be victims of domestic violence than men.<sup>51</sup>

97. In 2014, the most common domestic violence offences were assault (4,632), threats (3,896) and insults (2,408).<sup>52</sup>

98. Victim support statistics also provide data on victim consultations disaggregated by offence, but they do not distinguish between domestic violence offences and other offences.<sup>53</sup>

99. Although specific information on victims is not held on record, statistics on criminal convictions and criminal convictions of minors provide general data on the number of convictions and the number of persons tried each year for various offences under the Criminal Code.<sup>54</sup>

100. According to the authors of the report on the costs of intimate partner violence, there were 5,531 domestic violence-related criminal proceedings in 2011, 3,882 of which were dropped at the investigation stage.<sup>55</sup> In the remaining 30 per cent of cases, the Public Prosecutor is likely either to have handed down a summary judgment in accordance with article 352 of the Criminal Procedure Code or to have presented an indictment by virtue of articles 324 et seq. According to the report, it is a fact that the number of proceedings related to domestic violence that are dropped is higher than the average (70-80 per cent of cases are dropped).

101. For domestic violence convictions, the sentences are generally monetary penalties, fines or community service. Convictions for such violence mainly involve offences such as bodily harm, assault, threats and coercion, and therefore lead to only a relatively small proportion of custodial sentences. According to the authors of the report on the costs of intimate partner violence, 318 persons were incarcerated for domestic violence in 2011.<sup>56</sup> The statistics on criminal convictions provide general data on penalties by type and duration of penalty, but without distinction between type of offence.<sup>57</sup> For certain offences, including violence, the length of the sentence is also published. However, it is not possible to separate domestic violence from other violent offence.<sup>58</sup>

102. Allowances and benefits granted as moral damages are generally paid by the cantonal compensation bodies or the victim support centres. Statistics on the assistance provided to victims of crime provide data on compensation and moral damages paid to victims disaggregated by the applicant's personal status, sex, age and nationality but

<sup>50</sup> *Häusliche Gewalt in der Schweiz-Analysen im Rahmen der schweizerischen Opferbefragung 2011* ["Domestic Violence in Switzerland — Analysis based on the 2011 Swiss victim survey"], Martin Killias, Silvia Stäubli, Lorenz Biberstein, Matthias Bänziger, University of Zurich, 2012.

<sup>51</sup> Detailed statistics on domestic violence offences committed against women can be found at [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Thèmes transversaux > Violences domestiques > Infractions de violence domestique et lésés (as at 28 July 2015).

<sup>52</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Thèmes transversaux > Violences domestiques > Violence domestique enregistrée par la police (as at 28 July 2015).

<sup>53</sup> See [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Criminalité et exécution des peines > Victimes > Données, indicateurs > Consultations > Infractions (as at 28 July 2015).

<sup>54</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Criminalité et exécution des peines > Victimes > Données, indicateurs > Consultations > Infractions (as at 28 July 2015).

<sup>55</sup> Report of the Federal Council and Federal Office for Gender Equality "Costs of intimate partner violence", p. 42.

<sup>56</sup> *Ibid.*, p. 48.

<sup>57</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Criminalité et exécution des peines > Condamnations: mineurs et adultes > Données, indicateurs > Aperçu > Sanctions et détention (as at 28 July 2015).

<sup>58</sup> *Ibid.*

without any distinction as to the different types of domestic violence-related offences.<sup>59</sup> According to the authors of the study on the costs of intimate partner violence, in 2010 the cantonal authorities granted a total of SwF 1.53 million in compensation and moral damages to victims of intimate partner violence in 108 cases, the equivalent of an average of SwF 14,000 per case. The median amount paid per offence was approximately SwF 7,000. In 2011, a total of SwF 1.55 million was paid out in 134 cases and compensation and moral damages paid amounted to an average of approximately SwF 12,000. The median amount paid per offence was approximately SwF 4,000.<sup>60</sup>

103. As required under the Victim Support Act, the support centres and shelters for women provide victims of violence with both immediate assistance and long-term support services. Statistics on assistance to victims provide data on consultations disaggregated by benefits granted but without distinction as to the type of domestic violence-related offences involved.<sup>61</sup>

104. Since 2003, the Federal Assembly has been working to combat female genital mutilation by implementing awareness-raising and preventive measures in the framework of the National Migration and Health Programme. Since 2010, the Federal Office of Public Health and the State Secretariat for Migration have funded a unit which works to prevent the cutting of girls and is managed by Caritas Switzerland. They also support various measures adopted in the fields of information, networking and knowledge transfer. In early 2012, a national-level working group against female genital mutilation was set up on the initiative of these two offices with the aim of grouping together the various measures introduced by the different actors (federal departments and non-governmental organizations), coordinating them, and thus developing knowledge on the issue.

105. Since Switzerland has a high level of immigration from countries in which the practice of female genital mutilation is widespread, it is increasingly faced with this problem. The Federal Council recognizes the need to pursue efforts in this area and the responsibilities incumbent upon it as a result of commitments entered into at the national and international levels; it is committed to continuing its endeavours to combat female genital mutilation in the long term.

106. In the context of the drafting of a report on measures taken in recent years, particularly in response to the Bernasconi motion No. 05.3235, concerning awareness-raising and prevention measures related to sexual mutilation performed on women, consideration is currently being given to the direction to take in terms of additional measures and responsibility for their implementation. These new measures are intended to support all professionals who come into contact with young girls and women affected by, or at risk of, this form of violence. In order to implement these measures, the Government will be able to draw on the specialized support of NGOs.

107. During the period under review, no offences under article 124 of the Criminal Code were registered in the police crime statistics<sup>62</sup> and there were no convictions for such offences.<sup>63</sup>

<sup>59</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Criminalité et exécution des peines > Victimes > Données, indicateurs > Indemnisation et réparation morale > Sexe, âge, nationalité (as at 28 July 2015).

<sup>60</sup> Study on the costs of intimate partner violence, p. 42.

<sup>61</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Criminalité et exécution des peines > Victimes > Données, indicateurs > Consultations > Prestations (as at 28 July 2015).

<sup>62</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > A consulter > Publications > Statistique policière de la criminalité (SPC) — Rapport annuel 2014 (as at 28 July 2015).

<sup>63</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Thèmes > 19 — Criminalité, droit pénal > Criminalité et exécution des peines > Condamnations : mineurs et adultes > Données, indicateurs > Aperçu > tableaux relatifs au code pénal > Adultes : Condamnations pour un délit ou un crime au sens des articles du code pénal, Suisse et cantons (as at 28 August 2015).

## Replies to the questions raised in paragraph 10

108. According to the information available, there has not been any increase in the number of cases of police brutality or excessive use of force against foreign nationals.

109. With respect to the cantons of Geneva and Vaud, which were mentioned specifically by the Committee, the Government of Switzerland refers the Committee to paragraph 110 of the seventh periodic report of Switzerland to the Committee against Torture dated 28 May 2014 (CAT/C/CHE/7).<sup>64</sup>

110. During the period under review, the European Court of Human Rights delivered two judgments against Switzerland in relation to the use of force by police officers during identity checks (the Dembele<sup>65</sup> and Perrillat-Bottonnet<sup>66</sup> cases).

111. With regard to the number of racist incidents involving the police and measures taken to ensure non-discriminatory police action, please see above 64-66.

112. Neither the Government nor the Conference of Directors of Cantonal Justice and Police Departments have any disaggregated data on the matter. However, information is available at the cantonal level (see, for example, information concerning the cantons of Zurich, Geneva and Vaud in paragraph 110 of the seventh periodic report of Switzerland to the Committee against Torture (CAT/C/CHE/7)).<sup>67</sup> There are no figures on investigative proceedings conducted by the military courts and military criminal proceedings brought against border guards. Between 2008 and 30 June 2015, 11 complaints were lodged with the military justice system by foreign nationals in relation to identity and vehicle checks conducted by members of the Swiss Border Guard upon their entry to Switzerland.

113. Under the Swiss federal system, it is the cantons that have primary responsibility for processing complaints against the police. They are free to define the procedures they deem appropriate within their remit (provided that such procedures are compatible with federal law and international law). However, the investigation of criminal complaints against the police is broadly regulated by the unified Criminal Procedure Code enacted at the federal level. There is a guarantee that such complaints will be dealt with by an independent criminal authority.

114. According to the jurisprudence of the Federal Supreme Court, any person who claims with justification to have been treated in a degrading manner by a police officer is entitled to an effective and detailed official inquiry (Federal Supreme Court Decision 131 I 455).

115. Article 301 of the Criminal Procedure Code provides that complaints may be submitted to a criminal prosecution authority such as a cantonal prosecutor's office; reports do not therefore have to be made through the police. The criminal authorities are required, under articles 5 and 6 of the Criminal Procedure Code, to initiate criminal proceedings immediately (principle of prompt justice) and to investigate carefully the circumstances in favour of and against the accused (principle of investigation). The investigation focuses on compliance with the principles of legality, proportionality, necessity and appropriateness of police action. In cases where police officers are suspected of having committed offences, public prosecutors' offices investigate exhaustively and rigorously to ensure that the perpetrators are brought to account. Decisions of the Federal Public Prosecutor's Office may be appealed in the courts.

116. The Swiss Centre of Expertise in Human Rights conducted a study of complaints mechanisms in 2014. The study provides a critical overview of existing complaints

<sup>64</sup> [www.bj.admin.ch](http://www.bj.admin.ch) > Etat & Citoyen > Convention contre la torture > Septième rapport 2014 (as at 28.7.2015).

<sup>65</sup> Judgment of 24 September 2013, application No. 74010/11 (violation).

<sup>66</sup> Judgment of 20 November 2014, application No. 66773/13 (non-violation).

<sup>67</sup> [www.bj.admin.ch](http://www.bj.admin.ch) > Etat & Citoyen > Convention contre la torture > Septième rapport 2014 (as at 28 July 2015).

procedures and the remedies available in cases of police violence.<sup>68</sup> Many cantons are of the view that it is not useful to establish specific mechanisms. The Public Prosecutor's Office is responsible for prosecuting offences committed by police officers, while disciplinary action related to police officer conduct is handled by the oversight authority as part of administrative procedure. The Federal Supreme Court has never handed down a judgment of principle on the need to establish specific remedies for police incidents.

### Replies to the questions raised in paragraph 11

117. The Federal Act on the Use of Police Control and Restraint Techniques and Police Measures under Federal Jurisdiction (Use of Force Act) and the related ordinance (Use of Force Ordinance), which entered into force on 1 January 2009, set out the procedures applicable during returns. Generally speaking, the repatriation procedure is organized so as to facilitate independent departure. Police coercion is used only as a last resort. The relevant enforcement authority follows a procedural framework involving progressively higher levels of enforcement of the removal order (Use of Force Ordinance, arts. 23 and 28).

118. The relevant enforcement authority first encourages the person to be repatriated to leave Switzerland of their own accord. If this approach fails, a return by scheduled flight with police escort is organized. If the person being repatriated puts up strong resistance, a charter flight is organized. Approximately 5 per cent of deportees are subject to forced repatriation by scheduled or charter flight. The majority (about 95 per cent of those being repatriated) leave Switzerland independently.

119. The procedures applicable during a charter flight are detailed in a set of measures adopted by the Conference of Directors of Cantonal Justice and Police Departments in 2011, which includes recommendations for the authority responsible for enforcing the return as to how the operation should be conducted. The recommendations cover the number of persons to be repatriated who should be permitted on board a charter flight; the organization of briefings and debriefings; the drafting of intervention reports detailing all stages of the flight; risk assessment; obstruction measures; and the training of escort officers, observers and team leaders.

120. In taking up the European Union Return Directive (2008/115/EC), Switzerland has committed to establishing an effective, independent system for overseeing returns and having independent observers present on all charter flights. The National Commission for the Prevention of Torture has been accompanying level-4 forced repatriations (persons likely to put up strong physical resistance who are repatriated on special flights) since July 2012.<sup>69</sup> As this is a resource-intensive task, the Commission calls on experts in the fields of medicine, law and migration to participate as observers. On each special flight there is a medical team and one or two observers, who write a report for the Commission at the end of the mission. The medical team is also tasked with assessing the individual's fitness to travel prior to the flight if the canton responsible for enforcing the return reports medical contraindications. Based on the feedback received by the Commission, there are regular exchanges with the competent authorities involved in enforcing deportations — namely the State Secretariat for Migration, the Conference of Cantonal Police Commanders of Switzerland and the Association of Cantonal Migration Departments — as part of a dedicated inter-institutional dialogue. Each year the Commission sends a general report containing recommendations to the Federal Department of Justice and Police and the Conference of Directors of Cantonal Justice and Police Departments.<sup>70</sup>

121. Mr. Joseph Ndukaku Chiakwa died on 17 March 2010, shortly before the departure of the special flight that was to return him to Nigeria. The Public Prosecutor's Office of Winterthur/Unterland dropped the proceedings through a decision of 12 January 2012. Two

<sup>68</sup> [www.skmr.ch](http://www.skmr.ch) > Publications > Police et justice > Quelles possibilités existent en Suisse d'élucider les plaintes de violence policière ? [“What options are available in Switzerland for the investigation of complaints of police violence?”] (as at 28 July 2015).

<sup>69</sup> [www.nkvf.admin.ch](http://www.nkvf.admin.ch) > Mesures de contrainte en vertu du droit des étrangers (as at 28 July 2015).

<sup>70</sup> [www.nkvf.admin.ch](http://www.nkvf.admin.ch) > Publication & services > Rapports > Observations des renvois en vertu du droit des étrangers (as at 28 July 2015).

medical examinations were requested as part of the investigation: one from the Zurich Institute of Forensic Medicine and the other from the Institute of Forensic Medicine of Giessen University, Germany. According to these reports, the death was the result of a physical defect. On the basis of these reports and other investigations, the Public Prosecutor's Office concluded that there was no evidence to suggest that criminally punishable behaviour on the part of third parties had caused the death of Mr. Ndukaku Chiakwa, hence its decision to drop the proceedings. The relatives of the deceased appealed to Zurich Cantonal Court. In December 2013, the Court decided to reopen the case; the Public Prosecutor's Office is again tasked with investigating the causes of death.

122. As a result of the death of Mr. Ndukaku Chiakwa, in May 2010 the State Secretariat for Migration decided to call on the services of a medical team (doctor and ambulance worker) to provide medical services and supervision to those being repatriated for each special flight.

123. An administrative inquiry into the events of 7 July 2011 concluded that, given the circumstances of the case in question, the use of force had been proportional to the outcome pursued; accordingly, no action was taken against the police officers involved. The Public Prosecutor's Office of Winterthur/Unterland also opened a criminal case against the police officers involved. This case was closed by decision of 26 March 2013. As the decision was not contested, it entered into force. In its report to the Federal Department of Justice and Police and the Conference of Directors of Cantonal Justice and Police Departments on forced repatriations by air during 2010 and 2011 in which the National Commission for the Prevention of Torture had participated as an observer, the Commission noted that additional training should be provided to police forces involved in forced repatriations to improve their knowledge of the intercultural approach, *inter alia* (report, paras. 33 et seq.).<sup>71</sup>

### **Replies to the questions raised in paragraph 12**

124. The Federal Decree of 18 June 2010 on the Approval and Implementation of the Exchange of Notes between Switzerland and the European Union concerning the adoption of the Return Directive (Directive 2008/115/EC), which entered into force on 1 January 2011, introduced several amendments to the Foreign Nationals Act, including in relation to restraint measures.

125. Article 79 of the Act now provides that detention during the preparatory stage, detention with a view to removal or expulsion, and detention for insubordination may not exceed 6 months in total. This period may, however, be extended by a maximum of 12 months with the agreement of the cantonal judicial authority.

126. For minors aged 15 to 18 years old, extensions are limited to 6 months and are permitted only in the two cases set out in that article. Neither the Return Directive nor the Foreign Nationals Act establish an obligation to separate minors from adults in detention. However, when the cantonal authority detains a minor, it must give due consideration to the best interests of the child and ensure that detention conditions are appropriate to the age of the minor. Furthermore, a number of cantons do not detain minors.

127. For statistics on administrative detention under the Foreign Nationals Act, see annex 2.

128. Under article 81, paragraph 1, of the Act, foreign nationals in detention have the right to meet and correspond with their legal representatives, family members and consular authorities. Paragraph 2 provides that they must be detained in appropriate premises, and paragraph 3 stipulates that the form of detention must take into account the needs of persons requiring protection, unaccompanied minors and families with children. Where possible, the cantonal authority will endeavour to place vulnerable people in homes rather than in administrative detention.

<sup>71</sup> [www.nkvf.admin.ch](http://www.nkvf.admin.ch) > Publication & services > Rapports > Observations des renvois en vertu du droit des étrangers > 2011 (Projet pilote) (as at 28 July 2015).

129. Two forms of incentive were introduced in 2013 to provide alternatives for persons placed in detention pending their return. As of 1 April 2013, the State Secretariat for Migration can pay a travel allowance of up to SwF 500 to any person falling under asylum legislation who is in administrative detention and is willing to leave Switzerland independently (Asylum Ordinance No. 2, art. 59 (a), para. 2 bis). This allowance is paid on condition that either the canton enforcing the return or a mandated third party has conducted a departure interview with the person concerned, in accordance with article 59 (a) ter of Asylum Ordinance No. 2. The State Secretariat for Migration may also pay a departure allowance of a maximum of SwF 2,000 (Asylum Ordinance No. 2, art. 59 (a) bis). This departure allowance is intended to unblock the situation in particularly difficult individual cases and is paid only to persons required to leave Switzerland who could not be repatriated if they did not cooperate in the process of obtaining travel documents. Persons to whom the cantons intend to pay a departure allowance must be willing to participate actively in obtaining travel documents and to board the plane voluntarily.

130. On 3 September 2014, the Federal Council also adopted a bill aimed at expediting asylum procedures while ensuring that they are conducted fairly. Under the proposed legislative amendments, the majority of asylum proceedings should result in an enforceable ruling and the enforcement of the deportation order, where issued, within 140 days. In order to ensure that the new procedures comply with the principles of the rule of law, asylum seekers should receive free counsel concerning the asylum procedure and free legal representation for the first-instance procedure and the appeals process. These measures will make it possible to reconcile the desire for promptness with the requirements of fairness. Asylum seekers should also receive detailed information on the assistance available for their return as soon as possible. They must have the option of receiving advice to facilitate their return and opting for voluntary departure at any stage of the process. Parliament adopted the law at the final vote on 25 September 2015. The referendum period expires on 14 January 2016. The test phase division at the Zurich processing centre is piloting the expedited processes to be introduced as part of a restructure of the asylum system. Extensive legal protection is an integral part of the new procedures: asylum seekers whose applications are processed during the pilot phase are thus entitled to free legal advice and representation. The pilot phase began on 6 January 2014. Asylum seekers accommodated in existing registration and processing centres are randomly assigned to the pilot centre, where the objective is to process approximately 1,500 asylum applications under the expedited procedure every year. The pilot phase is subject to an external evaluation focusing, inter alia, on the cost-effectiveness and efficiency of the new procedures as well as on the quality of the legal protection afforded to asylum seekers. The results will be published in a final report due to be published in early 2016. The interim results already show that the asylum procedures tested in the pilot centre result in cases being processed and completed more quickly than those processed under the standard system, as per the objectives. The expediting of procedures does not have a negative impact on the quality of decisions: enhanced legal protection helps to ensure that the procedures are conducted properly. It also results in better acceptance of decisions by asylum seekers, as evidenced by an appeal rate of only 15 per cent. The Federal Council has decided to extend the use of the pilot centre beyond the evaluation phase. Accordingly, the ordinance on the pilot phases has been extended until 28 September 2019 so that the expedited procedures can be fine-tuned in preparation for the system restructuring.

### **Replies to the questions raised in paragraph 13**

131. In Switzerland, asylum seekers cannot be banned from accessing public places solely on the basis of their status. The Swiss legal order is based on the principle that the status of foreign national or the status of citizen does not in itself constitute sufficient reason to justify different treatment of persons. Collectively, asylum seekers have not been banned from any areas and no municipalities have issued orders to that effect. Assignment to a specific place of residence or a ban on entering a specific region must be the subject of a formal decision made on a case-by-case basis (Foreign Nationals Act, art. 74). Such measures may be ordered against an asylum seeker, for example, if the person concerned causes a disturbance or constitutes a threat to public security and public order (Foreign



Nationals Act, art. 74 (1) (a)). Under article 74, paragraph 3, of the Act, such decisions can be appealed before a judicial authority.

132. The influx of asylum seekers seen in recent years has compelled the State Secretariat for Migration to establish temporary federal centres to accommodate asylum seekers in various municipalities. The Confederation manages these facilities in conjunction with the municipalities concerned. One such centre is located in Bremgarten in the canton of Aargau. The State Secretariat for Migration and the city of Bremgarten concluded, at the express request of the latter, an agreement regulating the use of certain educational and sporting facilities. The agreement stipulates that asylum seekers should not have access to certain school and sports facilities during the week without permission from the authorities. The purpose of this formulation was to regulate the use of school and sports facilities which are used by associations, other users and schools and are not freely accessible to the general public. Asylum seekers are not banned from these facilities but, for groups of a certain size, the authorization of the authorities is required. In Bremgarten, if an asylum seeker wishes to use school or sports facilities on an individual basis, he or she may do so without seeking prior permission from the authorities.<sup>72</sup>

133. An agreement with similar content and objectives was signed with the municipality of Alpnach, although this centre has since been closed.

134. The compatibility of Swiss law with article 12 (1) of the Covenant has been the subject of contentious debate. For this reason, the Government of Switzerland has decided not to withdraw the country's reservation to article 12 (1). (For the reasons for maintaining the reservations to art. 12 (1) and art. 26, see below 198 and 201.)

135. The State Secretariat for Migration assigns each asylum seeker to a canton. In doing so, it takes into account the legitimate interests of the applicant and the cantons. The asylum seeker may appeal this decision only on the grounds of violation of the principle of family unity (Federal Asylum Act, art. 27 (3)). Under article 85 (5) of the Foreign Nationals Act, temporarily admitted foreign nationals may freely choose their place of residence within the territory of the canton where they are staying or the canton to which they have been assigned. The cantonal authorities may, however, assign a place of residence or accommodation in the canton to temporarily admitted foreign nationals who have not been recognized as refugees and who are receiving social welfare benefits. If a temporarily admitted foreign national wishes to change canton, he or she may submit an application to the State Secretariat for Migration, which will take a decision after hearing the cantons concerned (Foreign Nationals Act, art. 85 (3)). Under article 22 (2) of the Asylum Ordinance of 11 August 1999, on procedures, the State Secretariat for Migration will decide to change an asylum seeker's canton only if the two cantons concerned agree, if the principle of family unity has been invoked, or in the case of a serious threat to the asylum seeker or other persons. The decision of the State Secretariat for Migration can be contested only if it violates the principle of family unity (Foreign Nationals Act, art. 85 (4)).

136. If, however, the temporarily admitted foreign national has been recognized as a refugee, he or she may invoke article 58 of the Asylum Act. Consequently, their status in Switzerland is governed by the law applicable to foreign nationals, unless specific provisions take precedence, including those of the Asylum Act itself or the Convention relating to the Status of Refugees. Under article 26 of the Convention, foreign nationals temporarily admitted into Switzerland with refugee status have the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to foreign nationals in the same circumstances generally. It follows that restrictions on appeals (Foreign Nationals Act, art. 85 (4)) are not applicable either.<sup>73</sup>

<sup>72</sup> See, in this regard, the Schenker interpellation No. 13.3798 entitled *Interdictions de périmètre frappant les requérants d'asile* ["Perimeter bans on asylum seekers"].

<sup>73</sup> See the *Asile et retour* ["Asylum and return"] handbook published by the State Secretariat for Migration, F7 — Demandes de changement de canton, ch. 2.3: [www.sem.admin.ch](http://www.sem.admin.ch) > Asile/Protection contre la persécution > La procédure d'asile > Manuel Asile et retour > F7 — Demandes de changement de canton (as at 28 July 2015).

## Replies to the questions raised in paragraph 14

137. The enforcement of penalties and measures is the responsibility of the cantons, which have grouped themselves into three regional compacts for this purpose. Owing to the federal model, all kinds of innovative specialties have developed over time, which are then likely to spread more widely through comparisons of good practices. However, the federal model has also led to marked, often incomprehensible differences in practice between cantons. The high degree of segmentation of the cantonal units can also cause the smaller cantons to experience difficulties in achieving the high level of professionalism required. The cantons have taken steps to resolve this issue, with the support of the Confederation. One of the solutions has been to establish a national staff training centre to offer uniform basic training and courses for managerial staff, advice on the prevention of infectious diseases and provision of medical care in prisons, and a training programme for inmates.

138. As at 2013, there were plans to create approximately 1,300 new places in detention facilities by 2020. About half of these places will be reserved for pretrial detention, short custodial sentences and semi-custodial arrangements, around a third for the enforcement of longer-term custodial sentences and the rest for the enforcement of special custodial measures. A further 530 new places will be created for the administrative detention of foreign nationals prior to their expulsion. It should be noted, however, that these are general forecasts and that the projects are in widely differing stages of completion.

139. In autumn 2013, the cantons also decided to establish a skills centre to provide training on sentence enforcement across the country with a view to increasing professionalization, formulating industry-wide standards, at the request of the cantons, and monitoring compliance with such standards. The working group tasked with developing the skills centre concept will present its work in autumn 2015. The centre is due to open in 2017 at the earliest.

140. Following a number of incidents, in autumn 2014 the cantons agreed on a set of common policies on sentence enforcement, which will be rolled out in all cantons over the coming years. The policies establish strategic goals and provide guidance on how to behave towards inmates. The purpose of harmonizing practices is to guarantee and enhance quality in this area.

141. Regarding the occupancy of detention centres, in 2013 there were 26 establishments above 100 per cent capacity (out of 110). By 2014, this number had been reduced to 20 (out of 114).

142. To facilitate the management of changes in this area, in November 2014 the Conference of Directors of Cantonal Departments of Justice and Police issued an instruction calling for capacity needs to be monitored annually. The monitoring programme should begin in 2016 and will serve as the basis for institutional planning at the compact level.

143. Independently of this measure, various cantons have initiated planning projects with a view to building additional capacity, including the canton of Geneva, where prison overcrowding is highest. Regarding the measures taken by that canton, please refer to paragraph 93 of the seventh periodic report of Switzerland to the Committee against Torture of 28 May 2014 (CAT/C/CHE/7).

144. Statistics on detention can be found in annex 2. However, there are no statistics on pretrial detainees disaggregated by nationality or ethnicity or on the occupancy rate in each detention centre.

145. In August 2011, the State Secretariat for Migration, in cooperation with the Conference of Directors of Cantonal Departments of Justice and Police, conducted an overview survey of the cantons regarding administrative detention. The findings were that current space is insufficient to meet new demand.

146. In an effort to offset this shortage and ensure that administrative detention is served out in optimal conditions, the cantons have committed to creating the administrative detention places necessary to implement the custodial measures provided for under

legislation on foreign nationals.<sup>74</sup> In December 2013, parliament adopted the legal basis<sup>75</sup> for the Confederation to fund (partially or fully) the construction or furnishing of new establishments reserved for administrative detention.

147. The medium-term goal is to add 750 detention places.

148. At the national conference on asylum held in March 2014, the Confederation and the cantons unanimously adopted, in a joint statement, guidelines for the general planning of the asylum sector restructuring. The location of new detention centres was discussed at the conference and the cantons agreed on their geographical distribution (six regions).<sup>76</sup>

### **Replies to the questions raised in paragraph 15**

149. In response to the criticism levelled by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the directors of the cantonal justice departments set up an interdisciplinary working group tasked with producing a report on the treatment and housing of inmates suffering from mental illness. The report will make recommendations on psychiatric assistance in prisons and sentence enforcement establishments which the cantons will be required to implement.

150. Regarding infrastructure, various projects for mentally ill inmates are in the planning or implementation phase.

151. The law requires cantons to provide social services to persons in conflict with the law, either directly or in conjunction with other specialists (Criminal Code, arts. 93 (1) and 376). For the provision of outpatient medical and psychological care (Criminal Code, arts. 63 and 94), the cantons work, depending on the case, with specific forensic services, public sector outpatient services, specialists and independent doctors. This cooperation is usually the subject of an agreement concluded between the person concerned, the therapist and the enforcement agency or social worker.

152. It should be noted that, as a general rule, the cantons are increasingly hiring care providers specialized in psychiatry to work in prisons, in addition to supervisory staff, despite cost concerns and limited human resources.

153. A headcount of persons with psychiatric disorders held in secure units was taken in July 2015 in response to a question from CPT and found that there were 16 such persons. The measures taken to ensure access to care are described in the seventh periodic report of Switzerland to the Committee against Torture of 28 May 2014 (CAT/C/CHE/7),<sup>77</sup> especially paragraphs 102 to 107.

154. Health statistics do not contain data on the health of inmates, nor do medical-social institutions compile such data. Medical statistics for 2015 provided by hospitals do, however, include data on deprivation of liberty for purposes of assistance and committal for purposes of assistance (see annex 3).

### **Replies to the questions raised in paragraph 16**

155. On 17 December 2012, Switzerland ratified the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention came into effect for Switzerland on 1 April 2013.

156. Ratification was made possible by the entry into force, on 1 January 2013, of the Federal Act on Extra-Procedural Witness Protection and the related ordinance. The new law

<sup>74</sup> Conference on asylum, joint statement of 21 January 2013.

<sup>75</sup> Art. 15, paras. (j) to (o), amended text, Ordinance on the return and expulsion of foreign nationals (Classified Compilation 142.281).

<sup>76</sup> [www.ejpd.admin.ch](http://www.ejpd.admin.ch) > Actualité > News > 2014 > Les conditions générales de la restructuration du domaine de l'asile sont fixées.

<sup>77</sup> [www.bj.admin.ch](http://www.bj.admin.ch) > Etat & Citoyen > Convention contre la torture > Septième rapport 2014 (as at 28 July 2015).

is designed to protect witnesses who cooperate with the justice system and are threatened as a result, especially in investigations involving organized crime and terrorism. Such protection is provided even once proceedings have been concluded. The establishment of the Federal Witness Protection Service has made it possible to meet the requirements of the Council of Europe Convention.

157. On 18 March 2014, Switzerland ratified the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). This Convention came into effect on 1 July 2014. Articles 195 and 196 of the Criminal Code were amended as a result and have been in effect since the same date. These provisions stipulate that clients who pay for sexual services from minors are liable to imprisonment for up to three years. Encouraging the prostitution of minors is also a punishable offence.

158. The ordinance on the prevention of offences related to human trafficking came into effect on 1 January 2014. It enables the Confederation to put in place preventive measures under articles 5 and 6 of the Council of Europe Convention on Action against Trafficking in Human Beings and to award financial assistance for the implementation of measures by third parties. Since 2015, SwF 400,000 have been set aside for this purpose each year. Of this amount, SwF 300,000 go to organizations or their regular activities and the remaining SwF 100,000 are earmarked for individual measures linked to a specific project.

159. Switzerland is considering the possibility of ratifying the protocol to International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29), which was adopted by the General Conference of ILO in June 2014. The aim of the protocol is to strengthen measures designed to ensure prevention, protection and compensation for victims with a view to eliminating all forms of forced labour.

160. Various laws regulate the legal status of trafficking victims. Their status also depends on factors such as the consequences of the offence and where it was committed (i.e. in Switzerland or abroad). Each authority (i.e. the criminal prosecution, victim assistance, residence and return authorities) applies the provisions concerning the legal status of victims that correspond to its area of competence and acts independently. This means that it is not necessary for a trafficker to be convicted in order for a victim to receive assistance. Any decision taken by a cantonal or federal entity may be challenged and appealed before the competent authorities.

161. Any person who, as a result of an offence (such as trafficking) committed in Switzerland, suffers direct physical, psychological or sexual harm is entitled to assistance under the Victim Support Act. If the offence was committed abroad but the victim was residing in Switzerland at the time of the events and the time of submitting his or her application, assistance is granted, but is limited; i.e. no compensation or non-monetary damages are possible (Victim Support Act, arts. 1, 3 and 17).

162. The action plan to combat trafficking in persons contains 23 measures for awareness-raising, criminal prosecution, victim protection and prevention. Since some measures have yet to be put in place, the action plan has been extended to 2015 and the lead agency of the Anti-Trafficking and Migrant Smuggling Coordination Unit has not yet conducted its overall evaluation. Moreover, Switzerland is currently being assessed by the Council of Europe on its implementation of the Convention on Action against Trafficking in Human Beings; therefore, the next national action plan will be formulated on the basis of the recommendations due to be addressed to Switzerland at the end of 2015.

163. A week of national awareness-raising on human trafficking was held from 18 to 25 October 2013.

164. For information on complaints, investigations, prosecutions and convictions (including the penalties imposed) in cases of trafficking, see annex 4.

### Reply to the questions raised in paragraph 17

165. Article 98 (4) of the Civil Code has been the subject of Federal Supreme Court case law,<sup>78</sup> which imposes an interpretation in accordance with the principle of proportionality, the guarantee of marriage and the individual freedom to enter into a registered partnership. In practice, this means that the Swiss authorities are required to authorize unions that are deemed sincere and that the migration authorities may be required to issue a residence permit for purposes of the conclusion of such unions. This case law is referred to in the instructions issued to civil registry offices.<sup>79</sup>

### Replies to the questions raised in paragraph 18

166. A study commissioned by the Federal Council found that, after the removal of possible duplicates, in 2009-2010 there were 348 cases of persons being pressurized into accepting a marriage they did not desire. Based on the replies of the professionals surveyed, an estimated 384 people were forced to end a romantic relationship that they had chosen of their own free will. The study also estimated that 659 persons were forced to refrain from pursuing a divorce; in other words, they were forced to remain married.<sup>80</sup>

167. On 1 July 2013, the Federal Act of 15 June 2012 on Measures against Forced Marriages entered into force (see above 87).<sup>81</sup> The Federal Council also decided to launch a five-year plan to combat forced marriage (see above 87).

### Replies to the questions raised in paragraph 19

168. The religious panorama of Switzerland is very diverse, such that, in effect, every faith is a minority. In matters of religion, the Government bases its action on the principle that it does not protect religions or religious communities per se, but protects individuals who, by reason of their (real or presumed) religious affiliation, are victims of discrimination or racism.

169. Freedom of conscience and freedom of belief are enshrined in the Constitution (art. 15). The Criminal Code penalizes the infringement of freedom of belief and freedom of worship (art. 261), as well as discrimination on grounds of religious affiliation (art. 162 bis).

170. The regulation of State-church relations falls under cantonal jurisdiction (Constitution, art. 72); accordingly, the cantons have a key role to play in safeguarding religious tolerance and raising public awareness of the issue. Since 2006, Confederation representatives have regularly exchanged views with the Swiss Council of Religions, in which the Christian, Jewish and Muslim religions are represented. The Council was set up as a platform for dialogue between the three religions and serves as an interlocutor with the Confederation.

171. In 2006, the Federal Council launched an interdisciplinary research programme entitled “Religious Communities, the State and Society” (National Research Programme 58), the objective of which is to conduct a scientific analysis of relations between the State, society and the country’s religious communities and to provide actionable data for the

<sup>78</sup> See, for example, Federal Supreme Court Decision No. 137 I 351.

<sup>79</sup> See directive on the lawfulness of residence of the Federal Civil Status Office, para. 1 (1), [www.bj.admin.ch](http://www.bj.admin.ch) > Société > Etat civil > Directives > Liste des directives en vigueur édictées depuis le 1er mai 2007 > Mariages et partenariats de ressortissants étrangers : preuve de la légalité du séjour et annonce aux autorités migratoires (as at 1 February 2014).

<sup>80</sup> [www.gegen-zwangsheirat.ch](http://www.gegen-zwangsheirat.ch) > Programme fédéral de lutte contre les mariages forcés > Questions et réponses > Combien y a-t-il de cas de mariages forcés en Suisse? (as at 13 July 2015); see the most recent study conducted at the request of the Confederation: *Mariages forcés en Suisse : causes, formes et ampleur* [“Forced marriages: causes, forms and scale”], Anna Neubauer and Janine Dahinden, SFM, Neuchâtel, 2012, p. 35.

<sup>81</sup> It should be noted that provisions criminalizing forced marriage already existed under earlier legislation (Civil Code, former art. 107 (4), and Criminal Code, art. 181).

authorities, politicians, schools and religious communities. Between 2007 and 2010, 28 projects were carried out under National Research Programme 58. The final summary findings reveal that, in Switzerland, there is a growing divide: while religion is a very important topic in politics and the media, at the same time it is being pushed out from State institutions and is increasingly less essential to most individuals. However, the diversity of the religious panorama is rising. The findings of National Research Programme 58 indicate that the authorities should intensify their efforts to achieve equality among religions.

172. Following the popular vote approving the ban on the construction of minarets, meetings chaired by the Federal Department of Justice and Police were organized at regular intervals in 2010 and 2011 between the federal administration and both Swiss and foreign representatives of various Islamic movements and practices. They drew up, by consensus, a report entitled *Dialogue 2010 — Exchange between the federal authorities and Muslims residing in Switzerland*, which was brought to the attention of the Federal Council on 16 December 2011. The report provides a summary of the main results of this dialogue, which included, in particular, recognition of the guiding principles laid down in the Constitution such as equality before the law, the rule of law and democracy. It also sets out the measures taken by the Confederation to encourage integration and equality of opportunity for Muslims and to ensure peaceful coexistence between all people living in Switzerland.<sup>82</sup> An exchange of views in which the cantons, cities and communes participated took place in 2012 to bring this process to a close.

173. In May 2013, the Federal Council considered a report on the situation of Muslims in Switzerland drafted by a number of federal entities in cooperation with the cantons. The report found that most Muslims are active members of Swiss society and that their religious affiliation does not expose them to any particular problems in their daily lives in Switzerland and only rarely leads to conflict. As a result, the Federal Council decided not to introduce specific measures to reduce divergences of a religious nature between persons of different faiths; it took the view that existing integration measures were sufficient to ensure an appropriate response to potential problems.

174. Most cantons and cities are actively engaged with the religious communities found in their territory. In the first week of November each year, the inter-religion working group IRAS COTIS organizes a national week of religions throughout Switzerland.

175. The House of Religions opened in Bern in December 2014. Eight faiths practise their religion and hold interfaith exchanges at this centre. The related association, House of Religions — a Dialogue of Cultures, promotes dialogue with cultural and training organizations and with the public in general.

176. The Constitution of the canton of Ticino prohibits persons from covering their face, for example with a burka, on public thoroughfares and in places open to the public. The people of Ticino adopted this provision on 22 September 2013. The Federal Council and the parliament ruled that this provision of the Ticino Constitution should be upheld, owing in part to a decision of the European Court of Human Rights of 1 July 2014,<sup>83</sup> in which a similar rule in French law was found to be in keeping with the European Convention on Human Rights.

177. On 29 November 2009, a majority of Swiss citizens and cantons approved the popular initiative to ban the construction of minarets, voting against the recommendations of the Federal Council. In launching the initiative, the campaigners were promoting the argument that minarets were a symbol of a politicized Islam that should not be tolerated. Following the initiative's approval, a new paragraph 3 was introduced into article 72 of the Constitution, prohibiting the construction of new minarets in Switzerland. Under article 139 (3) of the Constitution, the Federal Assembly must declare totally or partially void any popular initiative that does not respect peremptory norms of international law. A review of the initiative found that this was not the case. In its dispatch of 27 August 2008 regarding

<sup>82</sup> For example: review of the system of admission for persons exercising a role of religious supervision, compatibility between religion and the obligation to serve, development of training and advanced training programmes for imams and religious leaders, etc.

<sup>83</sup> Decision in case *S.A.S. v. France*, Grand Chamber, application No. 43835/1143835/11.

the initiative, the Federal Council nonetheless stated that the initiative unequivocally infringed several human rights guaranteed under international law, including the ban on discrimination, freedom of religion and opinion enshrined in articles 2 and 18 of the Covenant and, potentially, the protection guaranteed to minorities under article 27 of the Covenant. Given that the text of the initiative is phrased in such a way as to permit no exceptions, it could hardly be interpreted as being in keeping with international law. However, the Federal Council's dispatch made no mention of a violation of article 20 (2) of the Covenant. The ban on the construction of minarets does not restrict the freedom of Muslims to practise their religion in Switzerland nor can it be considered incitement to religious hatred. In any case, article 261 bis of the Criminal Code prohibits public incitement to hatred or to discrimination against a person or group of persons by reason of their religious affiliation.

### Replies to the questions raised in paragraph 20

178. As part of its monitoring efforts, the Federal Commission against Racism has been keeping a register of decisions and judgments related to article 261 bis of the Criminal Code since 1995.<sup>84</sup>

179. Regarding the ideologies underlying recorded acts of racial discrimination, the Federal Commission against Racism has logged 19 decisions involving anti-Semitic acts (13 convictions) and 7 decisions involving Islamophobic acts (6 convictions) since 2010 (see annex 5).

180. There was a marked reduction in the number of decisions involving anti-Semitic and Islamophobic acts in 2014 compared with 2010.

181. Furthermore, in most cases (19 out of 26), the complaints were considered from the perspective of substantive law and a judgment was rendered. In 19 cases (out of 26), the perpetrator of the acts was found guilty.

182. The Government also wishes to point out that the Grand Chamber of the European Court of Human Rights heard a case involving a Turkish national who was sentenced in 2007 to a monetary penalty and a fine under article 261 bis of the Criminal Code for having denied the Armenian genocide (*Perinçek v. Switzerland* case, application No. 27510/08). In its decision of 15 October 2015, the Grand Chamber found a violation of the applicant's right to freedom of expression.

### Replies to the questions raised in paragraph 21

183. An analysis of the steps taken to prohibit the corporal punishment of minors can be found in the seventh periodic report of Switzerland to the Committee against Torture (CAT/C/CHE/7, paras. 124-128).<sup>85</sup>

184. The Federal Council has on three occasions (in 2012, 2013 and 2015) considered whether specific measures should be adopted to prohibit the corporal punishment of children (see Fehr parliamentary motion No. 07.3725 on violence in the family and the protection of children and young people; Feri motion No. 13.3156 on the right to a non-violent upbringing; and Galladé motion No. 15.3639 on the abolition of corporal punishment). On each occasion it ruled that existing laws were sufficient.

185. Since 1 July 2014, the principle whereby parental authority should serve the welfare of the child above all else has been enshrined in the Civil Code (art. 296 (1)). When parents are directly or indirectly violent towards their children and other child protection measures have had no effect or appear inadequate, child protection services may revoke parental authority (Civil Code, art. 311 (1) (1)).

<sup>84</sup> [www.ekr.admin.ch](http://www.ekr.admin.ch) > services > recueil des cas juridiques > recherche > droit pénal (as at 28 July 2015).

<sup>85</sup> [www.bj.admin.ch](http://www.bj.admin.ch) > Etat & Citoyen > Convention contre la torture > Septième rapport 2014 (as at 13 July 2015).

186. The Federal Social Security Office provides information on child protection and is taking steps to enhance cooperation between the various actors. Pursuant to the Ordinance on Protection Measures for Children and Young People,<sup>86</sup> the Office subsidizes organizations working to prevent child abuse and neglect nationwide. It has an annual allocation for child protection of approximately SwF 900,000 and funds to promote children's rights of around SwF 200,000. Thanks to these funds, it can support, inter alia, the Conseils + aide 147 counselling service run by Pro Juventute<sup>87</sup> and awareness-raising measures designed to further the implementation of the United Nations Convention on the Rights of the Child.<sup>88</sup> In addition, thanks to the allocation for family-focused umbrella organizations (approximately SwF 1.2 million per year), the Office is able to support organizations that provide nationwide coordination services and/or that serve as a platform for the exchange of information on family matters.<sup>89</sup> Under the Federal Act on the Promotion of Extracurricular Activities for Children and Young People,<sup>90</sup> the Confederation can also grant financial aid. For eight years, beginning from the Act's entry into force on 1 January 2013, the Confederation can allocate financial aid to the cantons for the development of their child and youth policy.<sup>91</sup> The Confederation has also set up national prevention programmes such as the Youth and Media<sup>92</sup> and Youth and Violence programmes.

187. Notwithstanding the above, preventing violence against children and adolescents is primarily a cantonal responsibility. The cantons provide children, young people and parents with various forms of support and counselling to assist them in their day-to-day lives and in times of crisis. The umbrella organization for parent training, which is subsidized by the Confederation, has run various campaigns to help and encourage parents of young children to build strong bonds early on. Child protection associations are working with schools to tackle the issue of abuse and how to deal with it<sup>93</sup> and, at the request of the Conference of Directors of Cantonal Departments of Justice and Police, Swiss Crime Prevention is organizing various prevention campaigns.<sup>94</sup>

## Replies to the questions raised in paragraph 22

188. Surgical procedures have been denounced at the political level by both the parliament and the Federal Council, and also by the National Advisory Commission on Biomedical Ethics in opinion No. 20/2012 on the management of differences in sexual development and ethical issues relating to intersexuality.<sup>95</sup> The Federal Council is due to issue a response to the Commission's report. The current situation was also the topic of an official communication of the Federal Civil Status Office dated 1 February 2014.<sup>96</sup> In Switzerland, medical measures are approved for between one and three children per year of birth.<sup>97</sup>

<sup>86</sup> No. RS 311.039.1.

<sup>87</sup> <http://www.147.ch>.

<sup>88</sup> [www.bsv.admin.ch](http://www.bsv.admin.ch) > Thèmes > Questions de l'enfance et de la jeunesse > Protection de l'enfance (as at 21 July 2015).

<sup>89</sup> [www.bsv.admin.ch](http://www.bsv.admin.ch) > Thèmes > Famille/allocation familiales > Politique familiale : autres thèmes > "Crédit Organisations familiales faitières" (as at 21 July 2015).

<sup>90</sup> No. RS 446.1.

<sup>91</sup> Federal Act on the Promotion of Extracurricular Activities for Children and Young People, art. 26.

<sup>92</sup> <http://www.jeunesetmedias.ch>.

<sup>93</sup> See, for example: [www.protection-enfants.ch](http://www.protection-enfants.ch) > Activités & campagnes > Parcours-découverte "Mon corps est à moi !" (as at 14 July 2015); [www.fit4chat.ch](http://www.fit4chat.ch).

<sup>94</sup> <http://www.skppsc.ch>.

<sup>95</sup> [www.nek-cne.ch](http://www.nek-cne.ch) > Thèmes > Prise de position > No. 20/2012 (as at 13 July 2015).

<sup>96</sup> [www.bj.admin.ch](http://www.bj.admin.ch) > Société > Etat civil > Directives > Communications officielles OFEC > 140.15 du 1er février 2014 Intersexualité (as at 13 July 2015).

<sup>97</sup> See reply of the Federal Council of 6 June 2011 to parliamentary interpellation No. 11.3286 on genital surgery for children born with sexual differentiation anomalies (Glanzmann-Hunkeler).



### Replies to the questions raised in paragraph 23

189. Following several parliamentary motions and procedural requests,<sup>98</sup> at the end of 2014 the Federal Council set up a working group to develop measures to ensure more effective implementation of the recommendations of the Council of Europe Framework Convention for the Protection of National Minorities with regard to the Yenish, Sinti and Roma communities. The main matter to address is the lack of settlement and transit sites, but there is also a need to raise public awareness and tackle issues such as school enrolment, training and cultural promotion. The working group operates under the Federal Office for Cultural Affairs, which intends to formulate an action plan by the end of 2015. The working group is made up in equal measure of representatives of the authorities and of the various Yenish, Sinti and Roma organizations.

190. In order to ensure that Travellers have the opportunity to participate in consultations, it is crucial to strengthen their organizations, especially at the national level. Through the foundation working to safeguard the future of Swiss Travellers known as Assurer l'avenir des gens du voyage suisses, the national association of Travellers (Radgenossenschaft der Landstrasse) and other Yenish, Sinti and Roma organizations, Travellers are systematically engaged, as transparently as possible, in the formulation of measures that concern them. In 2015, the Confederation provided funding for Radgenossenschaft der Landstrasse and the Assurer l'avenir des gens du voyage suisses Foundation of SwF 235,000 and SwF 150,000 respectively. In a dispatch on fostering culture in the period 2016-2020, parliament stated that, starting in 2016, it would increase the Confederation's budget for supporting Travellers by SwF 300,000 per year. In addition, at the inter-cantonal, cantonal and communal levels, the Travellers concerned are directly involved in the search for solutions on an increasing basis.

191. Among the Travellers themselves, a growing political interest is apparent and various new organizations have been established. Their desire to participate and be recognized as an ethnic group in their own right (Yenish, Sinti, Roma) is increasingly evident. The Confederation's working group provides a forum for openly discussing these matters and finding solutions.

192. In 2015, the media dedicated many articles to the Yenish minority, leading to greater awareness of the group. The cantonal authorities in particular have recognized the need to take responsibility for the Traveller minority and a number of cantons have set up services or working groups. In several places, temporary transit areas have been made available. Definitive solutions are being developed.

### Replies to the questions raised in paragraph 24

193. The entry into force of the Languages Act and the Languages Ordinance in 2010 set in motion a large number of initiatives and measures. The post of federal delegate for multilingualism was established in the federal administration and the number of translators into Italian and German was increased, as were the linguistic requirements for federal civil servants and senior officials.

194. Some of the provisions of the Languages Ordinance having been found inadequate by the federal parliament, the Ordinance has been amended and the Federal Council's instructions regarding multilingualism have been overhauled. The new versions entered into force on 1 October 2014.<sup>99</sup>

195. The federal delegate for multilingualism prepares an assessment report for the Federal Council every four years. The report covering the period 2008-2014<sup>100</sup> was adopted

<sup>98</sup> See motion No. 14.3370 on the establishment of a working group on the protection of national minorities (Semadeni), parliamentary question No. 14.3248 on at-risk Swiss Yenish (Estermann) and parliamentary question No. 14.3313 on urgent action required regarding settlements and transit sites for Swiss Travellers (Leuenberger).

<sup>99</sup> [www.plurilingua.admin.ch](http://www.plurilingua.admin.ch)>Bases légales.

<sup>100</sup> [www.plurilingua.admin.ch](http://www.plurilingua.admin.ch)> Rapports.

by the Federal Council on 13 March 2015. Regarding the steps taken during the reporting period, please refer to the assessment report, section 2, page 5 et seq.

196. The dispatch of 28 November 2014 on fostering culture in the period 2016-2020<sup>101</sup> also sets out a number of measures. Three areas of focus have been retained: (1) encouraging national language exchanges; (2) promoting the Italian language outside of its traditional geographical area; (3) supporting cultural exchanges between language regions (for further information, see assessment report, part 2.5, para. 9 et seq.).

### **Replies to the questions raised in paragraph 25**

197. When Switzerland concludes an international treaty, it usually proceeds with the necessary legislative adjustments at the time of ratification. Thus, for Switzerland to be able to lift the remaining reservations, it must be in a position to make the necessary legislative amendments.

198. The reservation to article 12 (1) was not lifted during the reporting period because article 37 (1) of the Foreign Nationals Act, which entered into force on 1 January 2008, might raise a compatibility issue between Swiss law and the Covenant.

199. Regarding the reservation to article 20 (1), it should be noted that some forms of pro-war propaganda fall under the provisions of titles 13 and 16 of the Criminal Code and that, under articles 184 and 185 of the Constitution, the Federal Council can ban pro-war propaganda. However, there is no law explicitly prohibiting pro-war propaganda; therefore, the reservation cannot be withdrawn in the near future.

200. Concerning the reservation to article 25 (b), in two cantons the citizens' assemblies are the highest electoral body and/or the legislative authority. For this reason, withdrawing the reservation would go against the internal legal situation.

201. Switzerland decided not to lift its reservation to article 26 during the reporting period. However, it did ratify the Convention on the Rights of Persons with Disabilities, including article 5 (1). Inasmuch as the prohibition of discrimination contained in the Convention refers to the entire legal system and can be applied directly, its clear definition, focused on a specific group of people, strengthens the rights of persons with disabilities in Switzerland.

### **Replies to the questions raised in paragraph 26**

202. Effective supervisory mechanisms are an indispensable tool for fostering and implementing human rights. The Covenant recognizes, at the international level, rights similar or comparable to those set out in the European Convention on Human Rights. The European Convention has a well-established and proven supervisory mechanism. Switzerland has been subject to this mechanism for 41 years. To ensure legal protection by an international body of the fundamental rights guaranteed under the Covenant, therefore, there is no urgent or indispensable need to accept a parallel supervisory mechanism. Accession to the First Optional Protocol to the Covenant is, accordingly, not on the agenda. Nevertheless, Switzerland follows closely the practice of the various United Nations treaty bodies and has recognized the competence of the Committee against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women to consider individual communications. In addition, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure was the subject of consultations with a view to ratification involving cantonal authorities, political parties and interested organizations, which ended in July 2015.

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<sup>101</sup> Dispatch on fostering culture; Federal Gazette No. 461, 2015.