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

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## I. Introduction

1. This core document presents Switzerland in its cultural, historical, political and legal diversity. It contains general information and statistical data designed to facilitate understanding of the political, legal, social and economic context in which human rights are implemented in Switzerland.<sup>1</sup>
2. This document is based on the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document and treaty-specific documents of 10 May 2006 (HRI/MC/2006/3), prepared by the secretariat of the Office of the United Nations High Commissioner for Human Rights for drafting the first part of State reports. Following the plan suggested in the guidelines, the report has three parts: General information about Switzerland (II); General framework for the protection and promotion of human rights (III); and Information on non-discrimination, equality and effective remedies (IV).
3. Unless a different date is indicated, the information provided is current as at June 2018.

## II. General information about Switzerland

### A. Geographical, historical, demographic, social, cultural, economic and legal characteristics

#### 1. Geography

4. Switzerland is a small country of great diversity in the heart of Europe. Its geography is characterized by contrasts and the distinctive features of the landscape. This natural variety is reflected in the rich and productive cultural diversity of Switzerland. The resulting marked differences are an essential element of the Swiss identity.
5. The Swiss Confederation consists of 26 cantons and 2,223 communes,<sup>2</sup> with Bern as the federal capital. It is bordered by France to the west, Germany to the north, Austria and the Principality of Liechtenstein to the east and Italy to the south. It has 1,882 km of borders with these five countries.
6. Switzerland has an area of 41,285 km<sup>2</sup>. The three major geographic regions of the country are the Alps, the Plateau and the Jura. The Alps cover 60 per cent of the territory and have always shaped the country's identity, although the main economic activities are concentrated on the Plateau. Only 11 per cent of the population lives in the Alpine regions. The many passes in the Swiss Alps are important crossing points. Forty-eight peaks rise to over 4,000 m in the Swiss Alps. The highest is in the Monte Rosa massif at Dufourspitze, which is 4,634 m high.
7. Settlement areas and infrastructure occupy 7.5 per cent of Swiss territory, agriculture 35.9 per cent and wooded areas 31.3 per cent. More than 97 per cent of the forests that appeared between 1985 and 2009 are in the Alpine regions. A large part of the new wooded areas was developed on abandoned Alpine agricultural land. Swiss glaciers receded by a little over 390 km<sup>2</sup> between 1985 and 2009. They still cover an area of 1,140 km<sup>2</sup>.

#### 2. History

8. The institutions and political organization of Switzerland reflect seven centuries of history. Government systems have evolved much more by a process of accretion and superimposition as the territory has expanded than through upheavals, revolutions and armed conflict. Switzerland has developed as a nation based on political will. Swiss identity is not, as in neighbouring countries, based on a national language or a common cultural or ethnic

<sup>1</sup> Several passages in this report have been taken from publications of the Federal Statistics Office, the Federal Chancellery, the Federal Supreme Court and the Federal Department of Foreign Affairs.

<sup>2</sup> See Federal Statistical Office, [www.bfs.admin.ch](http://www.bfs.admin.ch) > [Bases statistiques et enquêtes](#) > Répertoire officiel des communes de Suisse.

tradition, but rather on political convictions that people share despite their different linguistic and cultural traditions. The common denominators are adherence to the values of the federal State, direct democracy and cultural and linguistic diversity. Regional autonomy is a common thread running through the history of the Confederation, while its neutrality since the sixteenth century is largely responsible for its multicultural internal cohesion and has protected it from attack from abroad.

9. Until the French Revolution, Switzerland was an association of states (the cantons), the original purpose of which was common defence of their independence against the territorial claims of the Habsburgs and, later, the conquest and submission of certain territories (subject countries). At that time, relations between the cantons were not governed by a constitution, but by treaties of alliance. A common policy of confederated states developed only gradually because the political and religious differences were at first insurmountable.

10. After the occupation of Switzerland by the troops of the Directory in 1798, a unitary Helvetic Republic was established following the French model. The privileges of suzerain States over subject countries were abolished and freedom of religion and of the press were established. In 1803, Napoleon ended the struggle between federalists and centralists by decreeing a new Constitution, the Act of Mediation, whereby Switzerland again became a confederation of states. The powers of the central State were restricted to foreign policy and maintaining public order, while the cantons remained sovereign in every other respect.

11. In 1815, the Congress of Vienna recognized the independence and neutrality of Switzerland as important elements of the European balance of power. Switzerland thus regained the form of an association of 22 broadly independent cantons united by a treaty of alliance. It was then that the current external borders were set.

12. The French Revolution of July 1830 also triggered a liberal movement in Switzerland. In 12 cantons, people's movements imposed liberal constitutions based on the principles of the sovereignty of the people and representative democracy. These new constitutions violated the Federal Treaty of 1815 and made it inevitable that it would be amended and the central authorities consolidated. The decisive step from a confederation of states to a federal State was the first Federal Constitution of 1848, when, after a short civil war (the Sonderbund War), the liberal cantons emerged as victors over the conservative Catholic cantons. Thus, in the midst of the restored European monarchies, a State emerged embodying progressive republican ideas. The Constitution vested new powers in the Confederation, including over foreign policy, customs, the post, the currency and, to some extent, the army. It was then that the current organization of the State was established based on the principle of the separation of powers. Its bicameral parliamentary system, inspired by the United States model, seeks to strike a balance between centralist and federalist tendencies.

13. The Swiss Constitution later underwent two complete revisions: the first, in 1874, strengthened the central government and the rights of citizens at the expense of the cantons, while the complete revision of 2000 amended the outdated constitution to reflect substantive constitutional law: existing gaps were filled, the structure improved, the level of detail of the provisions reduced and the language modernized (in a process known as "updating"). As part of this process, a catalogue of fundamental rights was established in the Constitution for the first time (see sect. B 1 below). In addition, innovations were needed regarding the judicial authorities and personal rights in order to guarantee and strengthen the State's capacity for decision-making and action in view of the challenges ahead. In 2000, the Swiss people also voted in favour of bilateral agreements with the European Union and two years later agreed to membership of the United Nations.

14. The semi-direct democracy (popular initiatives, referendums, Parliament) established by the Constitution makes a major contribution to the peaceful coexistence of different cultures, as it strengthens the role of linguistic and political minorities in decision-making processes.

15. Swiss federalism should also be seen in the light of the increased delegation of powers over the centuries. The Confederation has only those powers expressly entrusted to it by the Constitution; other powers lie with the cantons. The communes have powers in the fields expressly delegated to them by the canton or the Confederation.

### 3. Demography<sup>3</sup>

16. Switzerland has a population of 8.5 million (as at 31 December 2017), 25.1 per cent of whom are foreigners (for key population figures, see annex 1). It is a multilingual State with four official languages: German, French, Italian and, to some extent, Romansh (see Federal Constitution of the Swiss Confederation of 18 April 1999 (hereinafter “the Constitution”), art. 70 (1)).<sup>4</sup>

17. As at 2016, 66.9 per cent of people living in Switzerland are Christians. In 14 cantons, Catholics are in the majority, in 3 cantons Protestants and in 3 cantons people without any religious affiliation, while in the other cantons the situation is more or less balanced. Religion does not play a major role in the daily life of most people, whether they are Christian, Muslim or Jewish. As at 2016, 24.9 per cent of people do not belong to any religious community, a proportion that has been rising steadily for years. In this respect, Switzerland can be seen as a “country of minorities” as far as language, culture and religion are concerned.

### 4. Social and cultural characteristics

#### *Culture*

18. Great diversity in a limited space: the cultural landscape of Switzerland, characterized by the coexistence of several linguistic and cultural communities and the country’s small size, is one of remarkable diversity. Architecture, design, art, literature, cinema, music, theatre and customs are highly developed.

19. The Swiss Confederation was established by the coming together of 26 cantons, each with its own legal system, political, linguistic and religious culture and a distinct historical identity. For this reason, respect for cultural diversity as a founding principle of the identity of the Swiss State is guaranteed several times in the Constitution. It defines the political and administrative shape of the federal State and its cultural and linguistic policy. Consequently, cultural policy is organized at the federal and decentralized levels. It aims not to ensure uniformity, but to promote diversity. It protects minorities and guarantees social cohesion among the four linguistic regions.

20. In the federal structure of the State, the encouragement of culture is based on the principle of dual subsidiarity. First, the private sector is mainly responsible for establishing the material conditions for the development of culture; the public authorities provide support only if private sector resources are inadequate. Second, the encouragement of culture takes place from the bottom up: the public authorities responsible are primarily those closest to the people, i.e. the communes and the cities; then, and only if necessary, the higher body, i.e. the cantons or the Confederation. Expenditure on culture by public authorities, which is borne mainly by cities and cantons, confirms this principle.

21. For example, in 2015, the Confederation, cantons, cities and communes allocated almost 2,883 million Swiss francs (SwF) to culture, which was around 1.7 per cent of total public expenditure and 0.44 per cent of gross domestic product (GDP). Under the principle of subsidiarity, the cities and communes contributed about 47.9 per cent, the cantons about 41.6 per cent and the Confederation about 10.5 per cent. The total amount corresponded to SwF 348 per capita, as compared to SwF 4,376 for education, SwF 2,087 for transport and SwF 1,700 for health.

22. Strengthening cultural cohesion and diversity in Switzerland at the same time as facilitating access to culture is one of the fundamental objectives of the cultural policy of the Confederation. The Federal Council also seeks to encourage cultural exchanges, create conditions favourable to the work of cultural players, cultural institutions and organizations and to promote Swiss cultural creativity abroad. At the same time, it conducts a national cultural dialogue with the cantons, cities and communes to improve information exchange,

<sup>3</sup> See [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Population.

<sup>4</sup> Classified Compilation of Federal Legislation (RS) 101 ([www.admin.ch](http://www.admin.ch) > Federal law > Classified Compilation > Search).

strengthen cooperation, identify subjects in which partners have parallel or complementary interests and foster mutual understanding and trust.

23. Foreign institutional cultural cooperation takes place at both the bilateral and multilateral levels. At the bilateral level, Switzerland cooperates with partner countries in fields such as cinema and the transfer of cultural goods; at the multilateral level, it is a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Council of Europe. The network of Swiss schools abroad also plays a significant part in international cultural exchange.

24. Multilingualism is an essential characteristic of Switzerland. The Constitution makes that clear by giving extensive authority over linguistic policy to the Confederation and the cantons (Constitution, art. 70).<sup>5</sup> The federal law on national languages and understanding between the linguistic communities (the Languages Act)<sup>6</sup> is the practical expression of this mission to safeguard and promote the linguistic wealth of Switzerland and strengthen social cohesion.

25. Under the Constitution, German, French, Italian and Romansh are national languages: each of these linguistic groups has the right to communicate in its own language. German, French and Italian also have the status of official languages, which means that the legislation and official documents of the Confederation must be available in them. Romansh is the official language for the relations of the Confederation with the Romansh-speaking population. Some 64 per cent of the resident population aged 15 years or older regularly use more than one language.<sup>7</sup> In addition to the national languages, English, Portuguese, Spanish, Serbian, Croatian and Albanian are widely used. Four of the 26 cantons are officially multilingual: Bern (German and French), Fribourg (French and German), Valais (French and German) and Graubünden (German, Romansh and Italian).

#### *Education*

26. From entry into compulsory education up to the tertiary level (institutions of higher education and professional training), education is the responsibility of the State. The Confederation and the cantons share powers in this field. Since 2006, within the scope of their respective powers and in accordance with the new constitutional basis, the two partners have been working together to ensure the high quality and accessibility of the Swiss Education Area (Constitution, art. 61 (a)).<sup>8</sup> Post-compulsory education (general education, professional education, institutions of higher education) is the shared responsibility of the Confederation and the cantons, each of which has its own powers. In most cantons, it is also compulsory to attend preschool for one or two years. Compulsory education in State schools is free. The cantons and their communes finance 90 per cent of public spending on education.<sup>9</sup>

27. Most pupils attend the State school of the commune in which they live for their compulsory education. About 5 per cent attend a private school (as at March 2017). State schools play an essential part in integration since the children who attend them come from different social, linguistic and cultural backgrounds.

28. After compulsory schooling, some two thirds of young people opt for vocational training that combines school and practice (dual-track initial training) and leads to a federal diploma of vocational education and training or a federal certificate of vocational education and training. Initial vocational training may also culminate in a vocational baccalaureate. About one third of young people opt for academic training (an upper secondary specialized school or baccalaureate school) that prepares pupils for study in a higher educational institution (universities of applied sciences, teacher-training institutions of higher education, universities and federal institutes of technology).

29. About 91 per cent of young people obtain an upper-secondary level certificate, which enables them to start work immediately, enter a higher vocational training school or, if they

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<sup>5</sup> RS 101.

<sup>6</sup> RS 441.1.

<sup>7</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Population > Langues et religions > Langues.

<sup>8</sup> RS 101.

<sup>9</sup> [www.edk.ch](http://www.edk.ch) > Education system (as at 10 August 2015).

have an academic, specialized or vocational baccalaureate, to continue their education in a higher education institution. As at 2015, the overall baccalaureate pass rate was over 38 per cent. The academic baccalaureate is generally required for admission to Swiss universities.

30. Tertiary education includes the higher educational institution (universities of applied sciences, teacher-training institutions of higher education, universities and federal institutes of technology) and professional education and training. Professional education and training is for experienced professionals and enables them to specialize or gain further qualifications. It includes training in specialized higher education institutions or taking an examination that is regulated at the federal level (a professional examination or an advanced professional examination). Forty-two per cent of the population (aged 25–64 years) have a tertiary qualification (as at 2017).

31. In addition, continuing training for professional purposes (informal training such as courses, seminars, etc.) is conducted at every level and is part of lifelong learning.

#### *Poverty*<sup>10</sup>

32. A poverty threshold based on a minimum social subsistence level is used to measure poverty in Switzerland. People who do not have the financial resources to acquire the goods and services necessary for a normal life in society are considered poor.

33. In 2016, the poverty threshold was an average of SwF 2,247 per month for a single person and SwF 3,981 per month for a household of two adults and two children.

34. In 2016, 7.5 per cent of the Swiss population, or some 615,000 people, were affected by monetary poverty. The financial difficulties of about 5.3 per cent of the population led to material deprivation: they were unable to have access to certain consumer durables or ensure minimum living conditions. The groups most at risk are single-parent households, adults living alone, people without post-compulsory education, the unemployed and people living in a household with low labour market participation.

#### *Social security and health services*

35. The Swiss social security system covers five areas: (1) retirement, survivor's and invalidity provision (the "three-pillar system"); (2) health and accident insurance; (3) benefits for loss of income for maternity or civil or military service; (4) unemployment insurance; and (5) family allowances.

(a) The retirement, survivor's and invalidity provision system is divided into three "pillars": the first covers retirement and survivor's insurance and invalidity insurance. It is compulsory and universal, and essentially funded by the contributions of the insured and a contribution by the authorities. The second pillar is professional provision, which is compulsory for employed persons whose salary is above a certain level set by law. The third pillar, individual provision, is entirely optional.

(b) Everyone domiciled in Switzerland is required to have health insurance. People are free to choose their insurer. For basic health insurance, adults may choose an annual deductible of between SwF 300 and SwF 2,500. The lower the deductible, the higher the monthly premiums will be, and vice versa. In addition to compulsory basic insurance, there are many forms of private supplementary health insurance. Social health insurance (basic insurance) guarantees everyone access to high quality medical treatment in the event of illness or accident, if accident insurance does not cover the cost. Accident insurance is compulsory for employed persons and provides cover for the economic consequences of industrial accidents, non-industrial accidents and occupational diseases. It covers treatment costs, sick pay and invalidity and survivor's pensions. These benefits help to compensate for the damage to health and earning capacity resulting from an accident or occupational disease.

(c) Loss-of-income benefit compensates for loss of income by people doing military, civil or civil protection service. Since 1 July 2005, loss of earnings compensation is

<sup>10</sup> See [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Situation économique et sociale de la population > Situation sociale, bien-être et pauvreté > Pauvreté et privations matérielles .

also used for maternity allowances for employed women. The benefit covers 80 per cent of their income and is paid for the 14 weeks following the birth.

(d) Unemployment insurance that covers employees gives the right to a benefit corresponding to 70 to 80 per cent of the previous salary. Depending on age, maintenance obligations and length of contributions, a person may receive between 90 and 520 days of benefit. In principle, this is dependent upon having contributed for at least 12 of the preceding 24 months.

(e) Family allowances include a minimum of SwF 200 per child per month for children up to 16 years of age and a vocational training allowance of at least SwF 250 per month for children aged 16 to 25 who are in education. The cantons may provide higher amounts. Family allowances are paid to employees, the self-employed and persons not in gainful employment whose resources do not exceed a certain level.

## 5. Economic characteristics

### *Labour*

36. The Swiss labour market is known for its great stability. The collective agreements between workers' organizations and employers set the working conditions in many sectors. Strikes are rare and the labour market is comparatively flexible by international standards. According to the International Labour Office, the unemployment rate was 4.6 per cent in the second quarter of 2018. It was 6.4 per cent for young people (aged 15–24), 4.9 per cent for persons aged 25–49 and 3.9 per cent for those aged 50–64. In the second quarter of 2018, the unemployment rate for women, 5.2 per cent, was higher than that for men, 4.1 per cent. There was a marked difference between the unemployment rates for Swiss and foreign nationals, which were 3.1 per cent and 8.8 per cent, respectively.<sup>11</sup>

37. The median gross monthly salary in the economy as a whole is SwF 6,502 as at 2016.<sup>12</sup> Pay levels nonetheless vary widely between sectors. Despite legislative efforts, salary differences between men and women remain significant (see sect. IV A below).

### *Economic data*

38. The Swiss economy depends heavily on foreign trade. According to the national accounts, there is a trade surplus: in 2017, total exports of goods and services amounted to SwF 433.963 billion, while total imports stood at SwF 362.356 billion.<sup>13</sup> The service sector, comprising banks, insurance and tourism, accounts for a significant proportion of foreign trade.

39. The per capita GDP of Switzerland is the ninth highest in the world. It was SwF 79,104 in 2017 according to preliminary estimates.<sup>14</sup> The annual growth rate of GDP volume in Switzerland averaged 1.8 per cent between 2000 and 2017.

## 6. Crime statistics and the criminal justice system

### *Crime*

40. Police crime statistics<sup>15</sup> were revised in 2009, and all cantonal police departments have been contributing to them since by entering, in accordance with uniform counting, coding, data entry and operational principles, detailed data on offences reported to the police. The police crime statistics for 2017 showed a total of 439,001 offences under the Swiss

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<sup>11</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Travail et rémunération > Statistique du chômage au sens du BIT (CHOM-BIT).

<sup>12</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Travail et rémunération > Salaires, revenu professionnel et coût du travail.

<sup>13</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Economie nationale > Comptes nationaux > Produit intérieur bru.

<sup>14</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Thèmes transversaux > Mesure du bien-être > Tous les indicateurs > Economie > PIB réel par habitant.

<sup>15</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) >> Trouver des statistiques > Criminalité et droit pénal > Police.



Criminal Code of 21 December 1937,<sup>16</sup> 80,074 under the Federal Act of 3 October 1951 on Narcotics and Psychotropic Substances (Narcotics Act)<sup>17</sup> and 38,054 under the Federal Act of 16 December 2005 on Foreign Nationals and Integration (Foreign Nationals and Integration Act).<sup>18</sup> The number of reported offences under the Criminal Code has decreased since 2016, reaching once again the lowest level since 2009, when police crime statistics were revised. The numbers reported under the Narcotics Act and the Foreign Nationals and Integration Act have also decreased.

41. In order to provide an assessment of various violent acts, a simplified classification of serious and less serious violence has been applied. In 2017, 1,454 incidents, accounting for 3.5 per cent of violent acts, were classified as serious. They included 45 murders and 191 attempted murders, 586 incidents of grievous bodily harm, 619 rapes and 10 robberies under article 140 (4) of the Criminal Code. The combined murder and attempted murder rate was 2.78 per 100,000 inhabitants. In 18.8 per cent of cases, murders and attempted murders are committed with a firearm, and in 44.5 per cent of cases, with a sharp-edged weapon. The number of murders and attempted murders involving a firearm, at 43, is in line with the average of recent years. A large majority of cases of grievous bodily harm – 54.6 per cent – result from physical violence.

42. In 2017, 6,957 offences against sexual integrity were recorded. There were 372, or 5.1 per cent, fewer reports of such offences than there had been the previous year owing to a decrease in offences recorded for the unauthorized practice of prostitution, by 298, or 22.2 per cent, for sexual acts with children, by 176, or 14.3 per cent, and for exhibitionism, by 87, or 15.9 per cent. The number of rapes had increased by 31, or 5.3 per cent, and pornography offences by 218, or 17.0 per cent.

43. In 2017, the clear-up rate for murders and attempted murders was 95.3 per cent. The rates for other offences under the Criminal Code vary widely. These differences are a function of the priorities set for police work and the circumstances in which offences were committed. The clear-up rate is 87.1 per cent for offences against life and physical integrity and 84.7 per cent for sexual offences, which are high because the victim often knows the perpetrator. The many cases of theft and damage led to a decrease in the clear-up rate for offences against property, which stood at 22.1 per cent in 2017. The general clear-up rate for offences against property, excluding those two offences, is 53.1 per cent.

#### *Criminal justice system*

44. In Switzerland, the cantons are sovereign with regard to policing. They are responsible for security and public order and criminal investigations. Some cantons have delegated certain police powers to cities and communes. In 2018, there were 221 police officers per 100,000 inhabitants.<sup>19</sup>

45. In the performance of their duties, the police must respect the legal order and, in particular, the principle of proportionality. In addition to ethical topics such as the human dignity of every individual, equality and neutrality, the examination that has to be passed at the end of basic police training also covers the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights)<sup>20</sup> and the Code of Conduct for Law Enforcement Officials. Trained police officers are therefore required to be capable of respecting human dignity in their actions and of respecting the human rights enshrined in the Constitution, the European Convention on Human Rights and the law. Since 2012, the Swiss Police Institute has published a revised version of the textbook on human rights and professional ethics. During the revision process, the authors received support from, among others, the Swiss Centre of Expertise in Human Rights. Furthermore, preventing racial profiling is a recurrent theme for police chiefs and is also covered in training.

<sup>16</sup> RS 311.0.

<sup>17</sup> RS 812.121.

<sup>18</sup> RS 142.20.

<sup>19</sup> [www.kkpks.ch](http://www.kkpks.ch) > actuel > facts & figures.

<sup>20</sup> RS 0.101.

46. While criminal legislation is within the jurisdiction of the Confederation, the cantons are responsible for the execution of sentences and measures. The cantons have grouped themselves under three inter-cantonal agreements, each of which aims, in a certain region, to promote a degree of harmonization, supervisory coordination and joint use of available resources.

47. There are three types of sentences under the Swiss Criminal Code, involving, respectively, custodial penalties, monetary penalties and community service. Each of these may be fully or partially suspended for a fixed period. In such cases, if the convicted person successfully completes the probation, he or she will not have to serve the sentence or the conditional portion of the sentence imposed. The Swiss Criminal Code also provides for the following measures: therapeutic measures, indefinite incarceration and others.

48. A custodial sentence is generally a minimum of 6 months and a maximum of 20 years. Where the law expressly so provides, a life sentence may be imposed. Judges may impose unsuspended custodial sentences of less than six months only if the conditions for suspension are not met and neither a sentence involving a monetary penalty nor one involving community service can be enforced. It is also possible to suspend custodial sentences that do not exceed 24 months and to partially suspend custodial sentences of between one and three years.

49. Switzerland abolished the death penalty in peacetime in 1942, and in wartime in 1992.

50. In September 2017, 6,863 convicted adults were being held in prisons. Of that number, 54 per cent were in prison for the execution of a sentence or measure, 24 per cent were in pretrial detention and 15 per cent were serving a sentence in advance. Four per cent, or 257 persons, were being detained under a coercive measure under the Foreign Nationals Act, the lowest number since 1999.<sup>21</sup>

51. In November 2017, there were 111 prisons, 7,528 detention places and 6,863 detainees, or 81 detainees per 100,000 members of the permanent resident population. These data are available and updated in the Directory of Penal Institutions, which provides an overview of all prisons in Switzerland.<sup>22</sup>

52. In 2016, on the reference date, there were 3,737 convicted persons, of whom 7 per cent were incarcerated for murder, 4 per cent for rape and 8 per cent for robbery. The greatest proportion of them – at 21 per cent and 23 per cent, respectively – were incarcerated for drug-related offences or theft. In 2016, 17 people died in prison, 5 of them by suicide.<sup>23</sup>

## **B. Constitutional, political and legal structure of the State**

### **1. Federalism: Confederation and cantons**

53. The history and cultural diversity of Switzerland have made federalism an essential, integral part of the State. Experience has shown that the unity of the State can be ensured only by safeguarding the diversity of its component parts.

54. The sovereignty of each canton is a feature of Swiss federalism. The distribution of powers between the central State and the cantons thus reflects the principle of subsidiarity: the Confederation has the powers vested in it by the Constitution. The cantons are sovereign insofar as their sovereignty is not limited by the Federal Constitution and exercise all the powers that are not vested in the Confederation (Constitution, art. 3).<sup>24</sup> Swiss federalism thus remains a dynamic process of delegation that is constantly being renegotiated.

55. With the transition to a federal State, the central authority, as a permanent institution, acquired more tasks, making the division of federal and cantonal powers more complex.

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<sup>21</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Criminalité et droit pénal > Exécution pénale.

<sup>22</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Criminalité et droit pénal > Exécution pénale > Établissements pénitentiaires.

<sup>23</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Criminalité et droit pénal > Exécution pénale > Placement, séjour carcéral

<sup>24</sup> RS 101.

Nowadays, some fields fall within the general or even exclusive competence of the Confederation, including: foreign affairs; customs duties; monetary policy; postal and telecommunications services; the armed forces; legislation on nuclear energy; animal protection; transport (railways, cableways, shipping, aviation and space flight); and metrology. Other sectors, such as religious worship, the police and social welfare, are within the competence of the cantons.

56. In other areas, federal and cantonal legislation coexist and the division of powers is less clear-cut. In many cases, the Confederation legislates and the cantons implement legislation. This is true of civil law, criminal law, social insurance and road traffic. In yet other areas, such as taxation, health and education, legislative power is shared.

57. As a result of this federal distribution of powers, the Confederation has the authority to legislate on vocational training, while state education falls within the exclusive competence of the cantons. This gives rise to major differences between the cantons in terms of education (for example, with respect to curricula, number of pupils per class, regulation of holidays and timetables). On 21 May 2006, the Swiss people accepted new constitutional articles on education, so that the Constitution now requires education authorities to harmonize certain basic aspects of the education system throughout the country.

58. In view of the particular nature of its legal structure, Switzerland relies upon a long-term strategy conducted by the Confederation, the cantons and the communes when implementing directives on human rights. Specific procedures for each field of activity are developed step by step with the collaboration of the various levels of the State and the many competent institutions and stakeholders and are then endorsed at the political level. This is a complicated process but one which can be implemented in a sustainable manner that is adapted to the different levels of the State.

## 2. Cantons and communes

59. The communes are the smallest political entity of the federal State. Switzerland has 2,223 (as at 1 January 2018), and they vary greatly in size. Their autonomy is guaranteed within the limits set by cantonal law (Constitution, art. 50).<sup>25</sup> The clearest sign of communal autonomy is their sovereignty in matters of taxation.

60. The organization of communes is not uniform: while, in many, power is still exercised by a communal assembly in which all inhabitants with the right to vote can participate, the largest communes have a parliament. The executive authority is the communal council, a collegial body in most cases elected by direct popular vote.

61. The people play an active part in the life of the commune. A feature of Swiss democracy is thus a remarkably lively political, social and cultural life at the local level. The landscape of local democracy is made up of political parties and associations, cultural events, festivals, exhibitions, concerts and the many libraries and museums.

62. As communes can merge, their number has been falling steadily for some time. Mergers are often a response to the imperatives of rationalization and economy.

63. In the State hierarchy, which goes from the commune (the lowest level) to the Confederation (the highest level), the cantons are the intermediate level and are thus the linchpin of the political structure of the country.

64. Switzerland has 26 cantons. The newest was created in 1978 by a constitutional amendment in which the people and the cantons accepted the establishment of the canton of Jura, whose territory had until then been subject to the sovereignty of the canton of Bern.

65. Each canton has its own constitution and its own legislation. Legislative power is vested in a unicameral parliament, in most cases elected by a system of proportional representation. Executive and administrative power is vested in a Cantonal Council elected by the people for a specific term and organized according to the same principles as the Federal Council: the President generally changes every year and collegiality is the rule. It should be noted, however, that, in Appenzell Innerrhoden and Glarus, voting in elections for cantonal

<sup>25</sup> Ibid.

judges and the government, and for the President of the government (Glarus), is by show of hands, as is the case for any vote on a cantonal proposal submitted to the people in people's assemblies known as "*Landsgemeinde*".

66. Women obtained the right to vote at the cantonal level between 1959 and 1990 (and at the federal level in 1971). In 2018, women held 27.2 per cent of the posts in cantonal legislatures and 24 per cent in cantonal executive bodies.<sup>26</sup> A woman was first elected to a cantonal government in 1983 (and to the federal Government in 1984).

67. The cantons are sovereign when it comes to the organization of the judiciary. In most cases their system is headed by the Cantonal Supreme Court, which is the court of appeal in civil and criminal cases. Each canton also has an administrative court. Several cantons have merged their administrative courts with the second instance courts.

68. Citizens' political rights are broader at the cantonal than at the federal level. Cantonal governments are directly elected by the people and, in several cantons, as well as the constitutional initiative, which is only possible under federal law, citizens have the right of legislative initiative whereby they may, if sufficiently numerous, put forward proposals for new legislation or amendments to existing laws to the people. There are also optional and mandatory referendums (for example, on taxation and administrative matters) at the cantonal level.

69. Unlike at the federal level, at the cantonal level, foreigners can take part in cantonal and/or communal ballots and stand for office if this is provided for in cantonal law. In the cantons of Jura and Neuchâtel, foreign nationals have the right to vote at the cantonal level but may not stand for election. Four cantons – Fribourg, Jura, Neuchâtel and Vaud – allow foreign nationals to vote and stand for election at the communal level under certain conditions. In the canton of Geneva, foreign nationals may vote at the communal level but may not stand for election. Communes in three cantons in German-speaking Switzerland – Basel Stadt, Graubünden and Appenzell Ausserrhoden – can choose to allow foreign nationals to vote.

### 3. Organization of federal powers

#### *The executive: the Federal Council*

70. The Federal Council is a governmental college composed of seven members who have equal powers. Each member is elected by the Swiss Parliament for four years; he or she may be re-elected indefinitely. In practice, re-election is the rule, thus ensuring the continuity and stability of Swiss policy. Neither the Federal Council nor any of its members may be dismissed by the Swiss Parliament. This principle is reflected in the maxim "The Federal Council yields but does not resign."

71. Each year, the Federal Assembly (meeting in joint session) chooses one of the seven Federal Councillors as President. As a mere *primus inter pares*, he or she does not have any special powers. The President's main role is to chair meetings of the Government and to discharge representation duties.

72. Each Federal Councillor is the head of a department (ministry), whose interests he or she represents in the governmental college. As a collegial body, the Federal Council takes its decisions only by consensus or by a simple majority, and each member assumes responsibility for joint decisions.

73. The composition of the Federal Council is a subtle linguistic, regional and political balance. Traditionally, the Latin (French and Italian) minority always has at least two representatives on the Council and the large cantons (Zurich, Bern and Vaud) are in principle represented on it. Between 1959 and 2003, a political compromise known as the "magic formula" ensured the country's four largest political parties – i.e. the Liberals, Christian Democrats and Socialists, which had two representatives each, and the Swiss People's Party, which had one representative – a permanent place in the Federal Council. After the federal elections of 19 October 2003, the Federal Assembly changed the distribution of seats between the parties, giving two seats to the Swiss People's Party, which had become the main political

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<sup>26</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Politique > Élections > Femmes et élections.

force in the country after the 1999 legislative elections. Discussions on the composition of the federal government, or rather on the parties that should be represented in it, have continued since the end of the magic formula.

74. The Federal Council exercises traditional executive functions (Constitution, art. 174 and arts. 180 et seq.).<sup>27</sup> It is responsible for the country's development and political management, ensures the maintenance of law and order and is the guardian of external and internal security. It monitors respect for and implementation of the Constitution, legislation and the judgments of the Federal Supreme Court and, as appropriate, takes the necessary measures for their enforcement. In the few areas in which the Federal Supreme Court or the Federal Administrative Court do not have jurisdiction under the law, the Federal Council is the supreme appeal authority. Its role as Head of State, which it assumes collegially, makes it the representative of Switzerland abroad and the guardian of the Confederation's interests; it also ratifies the international treaties adopted by the Federal Assembly. Under article 166 (2) of the Constitution,<sup>28</sup> the Federal Assembly is competent to approve international treaties except for those that are the exclusive responsibility of the Federal Council by virtue of a law or an international treaty. Treaties that are of limited scope under article 7a (2) of the Federal Act of 21 March 1997 on the Organization of the Government and the Administration<sup>29</sup> are in this category.

#### 4. Legislative power: the Federal Assembly and the people

75. The bicameral parliamentary system of Switzerland is the direct result of federalism. The Council of States is composed of 46 deputies, or two per canton (Appenzell Innerrhoden, Appenzell Auser rhoden, Obwalden, Nidwalden, Basel Landschaft and Basel Stadt have only one seat each), regardless of the canton's size and population. The National Council is composed of 200 people's deputies divided among the cantons in proportion to the sizes of their populations. Although the way the councillors are elected to the Council of States is decided by each canton (most have opted for a majority vote), the members of the National Council are uniformly elected by proportional representation.

76. The proportion of women in the Federal Assembly has increased steadily since 1971, when they first enjoyed both the right to vote and to stand for election. It is now 32 per cent in the National Council and around 15 per cent in the Council of States (October 2015).<sup>30</sup>

77. In the 2015–2019 legislature period, 12 parties make up the National Council. Six of them are also represented in the Council of States, and four on the Federal Council.

78. A legislature period lasts four years. The chambers hold four regular sessions each year. Both chambers have the same rights and no draft statute or order can be considered adopted unless approved in identically worded form by each of them. If a draft gives rise to differences of opinion between the chambers, the text is shuttled back and forth between them until the differences have been resolved; if differences persist after three such exchanges, the relevant committee members from each chamber meet in a conciliation conference. If they cannot reach consensus, the draft is defeated.

79. The Federal Assembly, meeting in joint session, elects the Federal Councillors, the President and the Federal Chancellor, the federal judges, the Attorney General of Switzerland and his or her deputies, and, in time of war, the commander-in-chief of the armed forces. The National Council and the Council of States also deliberate in joint session to rule on jurisdictional disputes between the highest federal authorities and on petitions for pardon (Constitution, art. 157).<sup>31</sup>

80. The date of entry into force of any legal instrument is usually set during the final vote by the chambers. The chambers can also leave that decision to the Federal Council. However, referendums must be held within 100 days of being announced in the Federal Gazette. Since 1874, the Constitution has provided for the right of optional referendum. Thus, if, within

<sup>27</sup> RS 101.

<sup>28</sup> Ibid.

<sup>29</sup> RS 172.010.

<sup>30</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Politique > Élections > Femmes et élections.

<sup>31</sup> RS 101.

100 days of the adoption of an Act by the Federal Assembly, 50,000 valid signatures are collected from enfranchised citizens who would like it to be submitted to popular approval, the Act has to be voted upon by the people and cannot enter into force unless a majority of those voting so decides. Such a vote must also be held if requested by at least eight cantons (Constitution, art. 141).<sup>32</sup> Consequently, legislation can only enter into force after the 100-day referendum period. The optional referendum procedure is applicable to international treaties which are not subject to denunciation and are concluded for an indefinite period, which provide for membership in an international organization or contain important legislative provisions or whose implementation requires the enactment of federal legislation (Constitution, art. 141, (1) (d)).<sup>33</sup> Constitutional amendments and membership in collective security organizations or supranational communities are in all cases subject to the dual consent of the people and the cantons, as is emergency federal legislation, which has no constitutional basis and whose validity exceeds one year (mandatory referendum under art. 140 (1) of the Constitution).<sup>34</sup> Such legislation must be put to the vote within one year of its adoption by the Federal Assembly (Constitution, art. 140 (1) (c), in fine).<sup>35</sup>

81. Since 1891, the Constitution has also recognized the right of proposal by popular initiative of partial amendment of the Constitution (Constitution, art. 194).<sup>36</sup> For this purpose, 100,000 citizens' signatures must be collected within a period of 18 months (Constitution, arts. 139 et seq.).<sup>37</sup> The parliament cannot prevent the submission of a popular initiative to the vote, but may declare an initiative inadmissible or null and void if it does not meet the requirements of unity of form and subject matter or breaches peremptory norms of international law. Since such an initiative can only relate to constitutional amendments, it must be approved both by the people and by the cantons to be adopted. The authorities may put forward a counterproposal in response to an initiative.

#### *Resident population, voters*

82. Swiss nationals aged 18 and over have the right to vote at the national level. They number 5.3 million, including the 150,000 Swiss living abroad. People with the right to vote account for about 63.5 per cent of the resident population. Since 1991, when the voting age was lowered to 18, this proportion has varied between 64 and 68 per cent.

## **5. Turnout in elections and votes**

83. Turnout in elections to the National Council fell steadily in the twentieth century. After reaching its lowest point in the mid-1990s, turnout has recently increased slightly. Since 2000, it has fluctuated between 45 and 49 per cent. The turnout in federal elections is on average higher than in elections to cantonal parliaments, but in the latter varies greatly between cantons. While in some, barely one third of registered voters vote in elections, in others turnout may be more than 60 per cent.<sup>38</sup> It is usually higher when what is at stake is more controversial. Turnout in national elections in Switzerland is lower than in any other democratic country. There are several possible explanations, including the frequency of votes on specific subjects and that federal elections are considered less important than they are in other countries. The Swiss political system is not based on a cleavage between parties in government and in opposition, as the main parties are all represented in the Government (concordance of parties in the Federal Council).

84. The turnout in referendums is generally lower than in elections to the National Council, but there are exceptions to this where the subject is of greater interest to voters. Thus, since 1990, turnout has varied between 28 and 79 per cent. Since 2000, turnout in referendums has

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<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

<sup>36</sup> Ibid.

<sup>37</sup> Ibid.

<sup>38</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Politique > Élections.

stabilized and even increased slightly (45.6 per cent in 2017; see annex 2, turnout in federal votes since 1998).<sup>39</sup>

#### *Parties in Parliament (2015)*

85. The largest party in the National Council, or People's Chamber, is the Swiss People's Party, with 65 seats. It is followed by the Social Democratic Party with 43 seats, the Liberals with 33 seats and the Christian Democratic People's Party with 27 seats. These four parties are also represented in the Swiss government, i.e. in the Federal Council. The main parties not in the government are the Greens, which have 11 seats, and the two new centrist parties, the Green Liberal Party and the Conservative Democratic Party, which have seven seats each. Five smaller parties have one or two seats each.

86. Each canton has two seats in the Council of States, except the half-cantons of Appenzell Ausserrhoden, Appenzell Innerrhoden, Basel Landschaft, Basel Stadt, Nidwalden and Obwalden, which have only one. The Liberals and the Christian Democratic People's Party have the most seats, with 13 each; the Social Democratic Party has 12, while the Swiss People's Party, which dominates the National Council, has only five seats in the Council of States. The Greens and the Conservative Democratic Party have one seat each, and there is one independent member.

Party	Elections to the National Council 2015		Elections to the Council of States 2015	
	Number of seats	Percentage	Number of seats	Percentage
Liberals	33	16.4	13	28.3
Christian Democratic People's Party	27	11.6	13	28.3
Social Democratic Party	43	18.8	12	26.1
Swiss People's Party	65	29.4	5	10.9
Green Liberal Party	7	4.6	0	0.0
Conservative Democratic Party	7	4.1	1	2.2
Greens	11	7.1	1	2.2
Others	7	8	1	2.2
<b>Total</b>	<b>200</b>	<b>100.0</b>	<b>46</b>	<b>100.0</b> <sup>40</sup>

#### *The judiciary: the Federal Supreme Court*

87. The Federal Supreme Court is the court of last instance for disputes between citizens, between cantons, between citizens and the State and between the Confederation and the cantons. In theory, its jurisdiction covers all areas of law: civil and criminal law, debt enforcement and bankruptcy law and public and administrative law, including social insurance law. The Court also protects citizens' constitutional rights.

88. By ruling at last instance on the decisions of the cantonal courts that are referred to it, the Federal Supreme Court helps to ensure that cantonal laws are in keeping with federal law and that federal law is uniformly applied. The Federal Supreme Court has to apply federal and international law (Constitution, art. 190).<sup>41</sup>

89. The Federal Supreme Court is currently (March 2018) composed of 38 judges, 14 women and 24 men. Three judges are Italian-speaking, 12 French-speaking and 23 German-speaking. A further 19 substitute judges are also elected by the Federal Assembly. Currently, three are Italian-speaking, eight French-speaking and eight German-speaking; nine are women. The substitute judges are part-time members of the Court and their main employment

<sup>39</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Politique > Votations.

<sup>40</sup> [www.bfs.admin.ch](http://www.bfs.admin.ch) > Trouver des statistiques > Politique > Élections.

<sup>41</sup> RS 101.

is as teachers, lawyers or judges in the cantons. They are generally called upon to replace a judge who has withdrawn from a case or who is sick or when the Court is overloaded. They have the same rights and duties as the ordinary judges in the proceedings in which they act.

#### 6. Non-governmental and international organizations

90. Switzerland has a great many non-governmental organizations (NGOs), mainly working in the fields of education, social work, migration, environmental protection and human rights. NGOs do not need official authorization but they are regulated by the legislation on associations, which leaves much room for freedom of opinion and association. Swiss law thus provides for no preliminary checks on organizations that are being set up. The civil law does, however, make provision for the dissolution of an association that pursues an unlawful or immoral purpose. Many NGOs receive financial assistance from the State under special laws. The framework conditions for such assistance are set out in the Subsidies Act.

91. Switzerland has hosted international organizations for over a century. It has so far concluded headquarters agreements with 27 such organizations, institutions and secretariats: 24 are in Geneva, 2 in Bern and 1 in Basel. In addition, 250 NGOs that have consultative status with the United Nations have their headquarters in Switzerland.

### III. General framework for the protection and promotion of human rights

#### A. Ratification of international human rights norms

##### 1. Universal international conventions (chronological)

<i>Universal conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>
1907 Convention relative to the Opening of Hostilities	1910 Ratified 12 May 1910. In force since 11 July 1910 (RS 0.515)	Convention respecting the Laws and Customs of War on Land, 18 October 1907 (RS 0.515.112)
1921 International Convention for the Suppression of the Traffic in Women and Children, 30 September 1921	1926 Ratified 20 January 1926. In force since 1 February 1926 (RS 0.311.33)	
1926 Slavery Convention, 25 September 1926	1930 Ratified 1 November 1930. In force since 1 November 1930 (RS 0.311.37)	
1930 International Labour Organization (ILO) Forced Labour Convention, 1930 (No. 29)	1940 Ratified 23 May 1940. In force since 23 May 1941 (RS 0.822.713.9)	
1948 Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948	2000 Ratified 6 September 2000. In force since 6 December 2000 (RS 0.311.11)	
1948 ILO Freedom of Association and Protection of the Right to Organise Convention, 9 July 1948 (No. 87)	1975 Ratified 25 March 1975. In force since 25 March 1976 (RS 0.822.719.7)	



<i>Universal conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>
1949 The four Geneva Conventions of 12 August 1949	1950 Ratified 31 March 1950. In force since 21 October 1950 (RS 0.518.12, 0.518.23, 0.518.42, 0.518.51)	1949
1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 2 December 1949	Not ratified	
1949 ILO Right to Organise and Collective Bargaining Convention, 1 July 1949 (No. 98)	1999 Ratified 17 August 1999. In force since 17 August 2000 (RS 0.822.719.9)	
1951 Convention Relating to the Status of Refugees, 28 July 1951	1955 Ratified 21 January 1955. In force since 21 April 1955 (RS 0.142.30)	Withdrawal in 1963 of reservation concerning article 24 (1) (a) and (b) and (3) (labour legislation and social security).  Withdrawal in 1972 of reservation concerning article 17 (wage-earning employment).  Withdrawal in 1980 of the subsisting reservation concerning article 24 (1) (a) and (b), in its entirety.
1951 1951 ILO Equal Remuneration Convention, 29 June 1951 (No. 100)	1972 Ratified 25 October 1972. In force since 25 October 1973 (RS 0.822.720.0)	
1954 Convention relating to the Status of Stateless Persons, 28 September 1954	1972 Ratified 3 July 1972. In force since 1 October 1972 (RS 0.142.40)	
1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 7 September 1956	1964 Ratified 28 July 1964. In force since 28 July 1964 (RS 0.311.371)	
1957 ILO Abolition of Forced Labour Convention, 25 June 1957 (No. 105)	1958 Ratified 18 July 1958. In force since 18 July 1959 (RS 0.822.720.5)	
1958 ILO Discrimination (Employment and Occupation) Convention, 25 June 1958 (No. 111) (and the related recommendation)	1961 Ratified 13 July 1961. In force since 13 July 1962 (RS 0.822.721.1)	
1960 UNESCO Convention against Discrimination in	Not ratified	

<i>Universal conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>
Education, 14 December 1960		
1961 Convention on the Reduction of Statelessness, 30 August 1961	Not ratified	
1965 International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965	1994 Ratified 29 November 1994. In force since 29 December 1994 (RS 0.104)	<p>The purpose of the reservation concerning article 4 (prohibiting all propaganda and all organizations that promote racial hatred and discrimination in any form) is to protect freedom of association. The result is that participation in a racist association is not punishable.</p> <p>Switzerland wishes to maintain its freedom of action concerning the admission of foreigners through its reservation to article 2 (1) (a).</p> <p>In June 2003, through its declaration of acceptance of article 14 (in force since 19 June 2003), Switzerland recognized the competence of the Committee to receive and consider communications from individuals or groups of individuals.</p>
1966 International Covenant on Economic, Social and Cultural Rights, 16 December 1966	1992 Ratified 18 June 1992. In force since 18 September 1992 (RS 0.103.1)	
1966 International Covenant on Civil and Political Rights, 16 December 1966	1992 Ratified 18 June 1992. In force since 18 September 1992 (RS 0.103.2)	<p>The reservation concerning article 10 (2) (b) on the separation of juveniles and adults in pretrial detention has been withdrawn.</p> <p>Reservation concerning article 12 (1) on freedom of movement and freedom to choose one's place of residence (not guaranteed for foreign nationals).</p> <p>The reservation concerning article 14 (5) on the right to have one's conviction and sentence reviewed by a higher tribunal was withdrawn in 2007.</p> <p>Reservation concerning article 20 on prohibiting propaganda for war.</p> <p>Reservation concerning article 25 (b) on the right to a secret ballot (not guaranteed for Landsgemeinde-type elections or</p>

<i>Universal conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>		
		elections in communal assemblies).		
		Reservation concerning article 26 on equality of all persons before the law and non-discrimination: Because of the unequal legal treatment of women and foreign nationals, Switzerland has restricted the scope of the general principle of non-discrimination established in this article to the human rights enshrined in the Covenant.		
1966	Optional Protocol to the International Covenant on Civil and Political Rights, 16 December 1966 (individual communications procedure)	Not ratified	The right of submission of individual communications is regulated by the Optional Protocol to the International Covenant on Civil and Political Rights. Switzerland has not ratified this first Optional Protocol.	
1967	Protocol relating to the Status of Refugees, 31 January 1967	1968	Ratified 20 May 1968. In force since 20 May 1968 (RS 0.142.301)	
1969	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 15 December 1989	1994	Ratified 16 June 1994. In force since 16 September 1994 (RS 0.103.22)	
1973	International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973		Not ratified	
1977	Additional Protocols to the Geneva Conventions of 1949, 8 June 1977	1982	Ratified 17 February 1982. In force since 17 August 1982 (RS 0.518.521 and 0.518.522)	
1979	Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979	1997	Ratified 23 March 1997. In force since 26 April 1997 (RS 0.108)	Reservation concerning article 7 (b) (right to perform all public functions on equal terms with men) withdrawn in 2004 (Swiss military legislation prohibited women from performing functions involving armed conflict, except in self-defence).  Reservation concerning article 16 (1) (g) on the equal rights of spouses to choose their family name withdrawn in 2013 (Civil Code, art. 160).  Reservation concerning article 15 (2) (identical legal capacity) and

<i>Universal conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>
		article 16 (1) (h) (the same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property), for, owing to various transitional provisions on the matrimonial property regime, spouses who had married under the old marriage law were able, at the time of the revision of the law in 1984, to retain their regime.
1984 Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984	1986 Ratified 2 December 1986. In force since 26 June 1987 (RS 0.105)	Switzerland has recognized the competence of the Committee against Torture pursuant to articles 21 and 22 of the Convention.
1989 Convention on the Rights of the Child, 20 November 1989	1997 Ratified 24 February 1997. In force since 26 March 1997 (RS 0.107)	The reservation concerning article 5 on parental authority was withdrawn in 2004.  Since the entry into force of amendments to the law on nationality, stateless children who have lived in Switzerland for five years may apply for simplified naturalization regardless of their place of birth; the reservation concerning article 7 was therefore withdrawn in 2007.  Reservation concerning article 10 (1) on family reunification (Swiss legislation on foreign nationals does not permit family reunification for certain groups and categories of foreigners).  Reservation concerning article 37 (c) on conditions of deprivation of liberty (separation from adults is not guaranteed in all circumstances).  The withdrawal of the reservation concerning article 40 (2) (b) (vi) on the guarantee of free assistance by an interpreter took effect in 2004.  The reservation concerning article 40 (2) (b) (v) on the right to have one's conviction reviewed by a higher judicial body was withdrawn in 2007.  Reservation concerning article 40 (2) (b) (ii) and (iii) (no unconditional right to assistance and no separation between the investigating authority and the sentencing authority). Such a

<i>Universal conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>
		separation would be contrary to the Swiss legal tradition, since most cantons consider it to be in the child's interest for the same person to investigate and try the case. The withdrawal of this reservation is unlikely to be possible.
1989 Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, 15 December 1989	1992 Ratified 18 June 1992. In force since 18 September 1992 (RS 0.103.22)	
1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 18 December 1990	Not ratified	
1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, 18 September 1997	1998 Ratified 24 March 1998. In force since 1 March 1999 (RS 0.515.092)	
1998 Rome Statute of the International Criminal Court, 17 July 1998	2001 Ratified 12 October 2001. In force since 1 July 2002 (RS 0.312.1)	In accordance with article 103 (1) of the Statute, Switzerland declares its willingness to execute sentences of imprisonment imposed by the Court on Swiss nationals or persons usually resident in Switzerland.
1999 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, 6 October 1999 (individual communications procedure)	2008 Ratified 29 September 2008. In force since 29 December 2008 (RS 0.108.1)	
1999 ILO Worst Forms of Child Labour Convention, 17 June 1999 (No. 182)	2000 Ratified 9 May 2000. In force since 28 June 2001 (RS 0.822.728.2)	
2000 United Nations Convention against Transnational Organized Crime of 15 November 2000 and the Protocols thereto	2006 Ratified 27 October 2006. In force since 26 November 2006 (RS 0.311.54)	

<i>Universal conventions</i>		<i>Ratification status</i>		<i>Reservations, declarations, reports, optional procedures</i>
2000	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, 25 May 2000	2002	Ratified 26 June 2002. In force since 26 July 2002 (RS 0.107.1)	
2000	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, 25 May 2000	2006	Ratified 19 September 2006. In force since 19 October 2006 (RS 0.107.2)	
2002	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002	2009	Ratified 24 September 2009. In force since 24 October 2009 (RS 0.105.1)	
2006	Convention on the Rights of Persons with Disabilities, 13 December 2006	2014	Ratified 15 April 2014. In force since 15 May 2014 (RS 0.109)	
2006	Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006		Not ratified	
2006	International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006	2016	Ratified 2 December 2016. In force since 1 January 2017 (RS 0.103.3)	
2008	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, 10 December 2008		Not ratified	The main point of contention is the fundamental question of the justiciability of economic, social and cultural rights.
2011	Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 19 December 2011	2017	Accession 24 April 2017. In force since 24 July 2017 (RS 0.107.3)	

## 2. Regional human rights conventions (chronological)

<i>European conventions</i>		<i>Ratification status</i>		<i>Reservations, declarations, reports, optional procedures</i>
1950	Convention for the Protection of Human Rights and Fundamental Freedoms, 4 November 1950	1974	Ratified 28 November 1974. In force since 28 November 1974 (RS 0.101)	In 2000, Switzerland withdrew its reservations and interpretative declarations with regard to article 6 (Federal Decree of 8 March 2000, RO 2002 1142).

<i>European conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>
(European Convention on Human Rights)		
1952 Protocol to the European Convention on Human Rights, 20 March 1952 (protection of property; right to education; commitment of Contracting Parties to hold free elections by secret ballot)	Signed 19 May 1976	
1961 European Social Charter, 18 October 1961	Signed 6 May 1976	
1963 Protocol No. 4 to the European Convention on Human Rights, 16 September 1963 (prohibiting imprisonment for debt; freedom to choose residence and to leave any country, including one's own; prohibiting collective expulsion of foreign nationals)	Not ratified	
1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 28 January 1981	1997 Ratified 2 October 1997. In force since 1 February 1998 (RS 0.235.1)	
1983 Protocol No. 6 to the European Convention on Human Rights concerning the abolition of the death penalty, 28 April 1983	1987 Ratified 13 October 1987. In force since 1 November 1987 (RS 0.101.06)	
1984 Protocol No. 7 to the European Convention on Human Rights, 22 November 1984 (procedural guarantees in the event of expulsion of foreign nationals; right not to be convicted twice for the same offence; equal rights of spouses)	1988 Ratified 24 February 1988. In force since 1 November 1988 (RS 0.101.07)	Reservation to article 1 concerning the primacy of Federal Council decisions in the event of threats to internal or external security.  Reservation to article 5 concerning article 160 of the Civil Code and article 8 (a) of the final title of the Civil Code (family name), articles 161, 134 (1) and 149 (1) of the Civil Code and article 8 (b) of final title of the Civil Code (acquisition of the right of citizenship) and articles 9, 9 (a), (c), (d) and (e), 10 and 10 (a) of the final title of the Civil Code (transitional legal provisions on the matrimonial property regime).

<i>European conventions</i>		<i>Ratification status</i>		<i>Reservations, declarations, reports, optional procedures</i>
1987	European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 26 November 1987	1988	Ratified 7 October 1988. In force since 1 February 1989 (RS 0.106)	
1988	Additional Protocol to the European Social Charter, 5 May 1988 (equality between women and men in working life; workers' right to information; right of older persons to social protection)		Not ratified	
1992	European Charter for Regional or Minority Languages, 5 November 1992	1997	Ratified on 23 December 1997. In force since 1 April 1998 (RS 0.441.2)	
1993	Protocols No. 1 and No. 2 to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 4 November 1993	1994	Ratified 9 March 1994. In force since 1 March 2002 (RS 0.106)	
1995	Framework Convention for the Protection of National Minorities, 1 February 1995	1998	Ratified 21 October 1998. In force since 1 February 1999 (RS 0.441.1)	<p>Switzerland declares that in Switzerland national minorities in the sense of the Framework Convention are groups of individuals numerically inferior to the rest of the population of the country or of a canton, whose members are Swiss nationals, have long-standing, firm and lasting ties with Switzerland and are guided by the will to safeguard together what constitutes their common identity, in particular their culture, their traditions, their religion or their language.</p> <p>Switzerland declares that the provisions of the Framework Convention governing the use of the language in relations between individuals and administrative authorities are applicable without prejudice to the principles observed by the Confederation and the cantons in the determination of official languages.</p>
1996	European Convention on the Exercise of		Not ratified	



<i>European conventions</i>	<i>Ratification status</i>		<i>Reservations, declarations, reports, optional procedures</i>
Children's Rights, 25 January 1996			
1996 European Agreement relating to Persons Participating in Proceedings of the European Court of Human Rights, 5 March 1996	1998	Ratified 27 August 1998. In force since 1 January 1999 (RS 0.101.3)	The provisions of article 4 (2) (a) of the Agreement shall not apply to Swiss citizens prosecuted or convicted in Switzerland for a grave crime against the State, national defence or the defence capability of the country.
1996 European Social Charter (Revised), 3 May 1996		Not ratified	
1997 European Convention on Nationality, 6 November 1997		Not ratified	
1997 European Convention on Human Rights and Biomedicine, 4 April 1997	2008	Ratified 24 July 2008. In force since 1 November 2008 (RS 0.810.2)	
1998 Additional Protocol to the European Convention on Human Rights and Biomedicine, 12 January 1998	2008	Ratified 24 July 2008. In force since 1 November 2008 (RS 0.810.21)	
2000 Protocol No. 12 to the European Convention on Human Rights, 4 November 2000 (prohibition of discrimination)		Not ratified	
2001 Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 8 November 2001	2007	Ratified 20 December 2007. In force since 1 April 2008 (RS 0.235.11)	
2002 Protocol No. 13 to the European Convention on Human Rights, 3 May 2002 (abolition of the death penalty)	2002	Ratified 3 May 2002. In force since 1 July 2003 (RS 0.101.093)	
2004 Protocol No. 14 to the European Convention on Human Rights, 13 May 2004 (amendment of the control system of the Convention)	2006	Ratified 25 April 2006. In force since 1 June 2010 (RS 0.101.094)	
2005 Council of Europe Convention on Action against Trafficking in	2012	Ratified 17 December 2012. In force since 1 April 2013 (RS 0.311.543)	Pursuant to article 45 of the Convention, Switzerland reserves the right not to apply article 31 (1) (d) to stateless persons.

<i>European conventions</i>	<i>Ratification status</i>	<i>Reservations, declarations, reports, optional procedures</i>
Human Beings, 16 May 2005		
2007 Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007	2014	Ratified 18 March 2014. In force since 1 July 2014 (RS 0.311.40)
		In accordance with article 20 (3), second indent, of the Convention, Switzerland reserves the right not to apply article 20 (1) (a) and (e) of the Convention to the production and possession of pornographic material involving children who have reached the age of majority in the country concerned, where these images are produced and possessed by them with their consent and solely for their own private use.  In accordance with article 24 (3) of the Convention, Switzerland reserves the right not to apply article 24 (2) to the act of solicitation within the meaning of article 23.  In accordance with article 25 (3), Switzerland reserves the right not to apply article 25 (1) (e).
2011 Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence	2017	Ratified 14 December 2017. In force since 1 April 2018 (RS 0.311.35)
2013 Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms	2016	Ratified 15 July 2016
2013 Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms		Not ratified

## **B. Legal framework for the protection of human rights at the national level**

### **1. Legislation**

#### *Constitutional protection of human rights*

92. The Constitution contains a catalogue of fundamental rights. These rights are all enforceable. The Constitution expressly provides for:

- Human dignity (art. 7)
- Equality before the law and non-discrimination (art. 8)

- Protection from arbitrary conduct and observance of the principle of good faith (art. 9)
- Right to life and personal freedom (art. 10)
- Protection of children and young people (art. 11)
- Right to assistance when in need (art. 12)
- Right to privacy (art. 13)
- Right to marriage and a family (art. 14)
- Freedom of religion and conscience (art. 15)
- Freedom of opinion and information (art. 16)
- Freedom of the media (art. 17)
- Freedom to use any language (art. 18)
- Right to basic education (art. 19)
- Academic freedom (art. 20)
- Freedom of artistic expression (art. 21)
- Freedom of assembly (art. 22)
- Freedom of association (art. 23)
- Freedom of domicile (art. 24)
- Protection from expulsion, extradition and deportation (art. 25)
- Right to property (art. 26)
- Economic freedom (art. 27)
- Trade union freedom and the right to strike (art. 28)
- General procedural safeguards (art. 29)
- Right to access to a judge (art. 29 (a))
- Guarantees of due process (art. 30)
- Protection from deprivation of liberty (art. 31)
- Right to a fair trial (art. 32)
- Right of petition (art. 33)
- Political rights (art. 34)

93. Fundamental rights must be upheld throughout the legal system (Constitution, art. 35 (1)).<sup>42</sup> Restrictions on fundamental rights must have a legal basis. The requirement for a legal basis is not limited to the formal existence of applicable legal rules; there is also a need, according to case law, for substantive clarity of such rules. Significant restrictions must have their basis in a law. The foregoing does not apply in cases of serious and immediate danger. In addition, any restriction of a fundamental right must be justified by public interest or serve to protect the fundamental rights of others and must be proportionate to the goal pursued. The essence of fundamental rights is sacrosanct (Constitution, art. 36).<sup>43</sup> The Federal Supreme Court has set out in detail the conditions for such restrictions in its abundant case law on the matter.

94. The principle of general police power, provided for under article 36 (1) of the Constitution,<sup>44</sup> is an exception to the rule that any restriction of an individual freedom must have an explicit legal basis. The Federal Supreme Court recognizes that the executive is

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<sup>42</sup> RS 101.

<sup>43</sup> RS 101.

<sup>44</sup> RS 101.

authorized, on the basis of general police power, to take the measures necessary for the re-establishment of public order in the event of a serious disturbance or for protection from a clear and present danger, even in the absence of any explicit legal basis. Article 185 of the Constitution gives the Federal Council the power to promulgate emergency ordinances and police decrees.<sup>45</sup> To prevent abuses and any violation of the principle of legality, the Federal Supreme Court carefully monitors the use of this power. Moreover, the period of validity of emergency ordinances and police decrees is strictly limited (Constitution, art. 185 (3)).<sup>46</sup>

95. Since each canton has its own constitution, lists of fundamental freedoms also exist at the cantonal level. The Federal Supreme Court accords them autonomous scope only in the very rare case where the protection they offer goes beyond that afforded by federal constitutional law.

96. The substantive provisions of the European Convention on Human Rights,<sup>47</sup> ratified by Switzerland in 1974, supplement constitutional rights. These guarantees, like the rights enshrined in the Constitution, are self-executing. They are binding on legislators, the courts and the administrations of the Confederation and the cantons, and citizens may invoke them directly.

97. In its report “40 ans d’adhésion de la Suisse à la CEDH: Bilan et perspectives” (40 years on from Swiss accession to the European Convention of Human Rights: Results and prospects), published in 2014, the Swiss Government noted the many positive effects of the Convention on Swiss law in recent decades. The report describes the circumstances of Swiss accession to the European Convention of Human Rights and the influence that the Convention and the case law of the European Court of Human Rights have had on Switzerland (see “40 ans d’adhésion de la Suisse à la CEDH : Bilan et perspectives” (Forty years of accession to the European Convention on Human Rights: Assessment and prospects), Federal Council report of 12 December 2013, issued under Stöckli postulate No. 13.4187).

98. Switzerland has also ratified other human rights treaties. The extent to which violations of those treaties can be invoked before the national courts depends on whether the rule in question is self-executing. For example, articles 6 to 27 of the International Covenant on Civil and Political Rights of 16 December 1966<sup>48</sup> establish standard human rights. These rights are self-executing, and the Federal Supreme Court treats them in the same way as it treats the rights enshrined in the European Convention on Human Rights. Conversely, in many cases the Federal Supreme Court takes the position that provisions of other international treaties are by nature rather soft law, that they need to be elaborated and enacted by legislators and that they do not in principle establish rights that can be invoked before the courts (see chap. 2 below).

99. Under article 165 of the Constitution,<sup>49</sup> federal laws with no constitutional basis can, if necessary, be declared urgent and brought into force immediately. They must, however, be approved by the people and the cantons within one year of their adoption by Parliament. This provision seeks to ensure a balance between the need to bring a law into force without delay and the desire to limit the degree to which doing so restricts or infringes democratic rights, especially fundamental freedoms.

100. Between 2000 and 2018, a total of 29 laws were declared urgent under article 165 of the Constitution, including the Federal Act of 12 December 2014 on the Prohibition of Al-Qaeda, Islamic State and Similar Organizations<sup>50</sup> and the Federal Act of 28 September 2012 on Controlling Communicable Human Diseases (Epidemics Act).<sup>51,52</sup>

<sup>45</sup> RS 101.

<sup>46</sup> RS 101.

<sup>47</sup> RS 0.101.

<sup>48</sup> RS 0.103.2.

<sup>49</sup> RS 101.

<sup>50</sup> RS 122.

<sup>51</sup> RS 818.101.

<sup>52</sup> Federal Chancellery, [www.bk.admin.ch](http://www.bk.admin.ch) > Droits politiques > Utilisation des droits populaires > Résumé des arrêtés fédéraux urgents.

101. Any derogation from fundamental freedoms must be in keeping, since 1974, with the requirements of article 15 of the European Convention of Human Rights<sup>53</sup> and, since 1992, with the requirements of article 4 of the International Covenant on Civil and Political Rights.<sup>54</sup> Switzerland has not yet had recourse to the possibilities of derogation provided for in these provisions.

## 2. Incorporation of international human rights instruments

102. Switzerland has a monistic legal tradition. This means that any international treaty ratified by the Federal Council forms part of Swiss law from the date of its entry into force for Switzerland, without there being any need to transpose it into national law through the adoption of a special law. This principle flows from article 190 of the Constitution,<sup>55</sup> which provides that the Federal Supreme Court must apply both federal laws and international law in all cases, and from article 189 (1) (b) of the Constitution,<sup>56</sup> which provides that the Federal Supreme Court is competent to rule on cases concerning violations of international law.

103. The Federal Supreme Court recognizes the primacy of international law, while also acknowledging certain exceptions. In principle, international law takes precedence over national legislation, unless the Federal Assembly has knowingly adopted a law that is contrary to international law, in which case it is the federal law that applies (the so-called Schubert judicial precedent). Nonetheless, the human rights enshrined in international law systematically take precedence over federal laws (the so-called PKK [Kurdistan Workers' Party] judicial precedent; see "*Clarifier la relation entre le droit international et le droit interne*" (Clarifying the relationship between international and domestic law), Federal Council report of 12 June 2015, issued under postulate No. 13.3805).

## 3. Competence of judicial, administrative and other authorities in the field of human rights

### *Direct applicability of the provisions of human rights instruments in national courts*

104. As indicated above, international treaties adopted by Parliament take effect as soon as they enter into force, not only internationally but also internally, in that they immediately become part of Swiss law. In addition, insofar as they are self-executing, the provisions of an international treaty may be invoked by citizens in the courts and constitute the basis for decisions taken by the authorities. This presupposes that the content of the provision of international public law invoked is sufficiently clear and precise to form the basis of a decision. Provisions that are not self-executing must be made explicit and given appropriate form by the national legislature.

105. In the final analysis, it is for the courts to determine in each case whether or not a provision of an international treaty is self-executing.

### *Popular initiatives*

106. In recent years, the people and the cantons have accepted several popular initiatives that raised questions of compatibility with certain provisions of international law: the initiative on life imprisonment for persons convicted of sex offences and violent crimes who are considered very dangerous and not responsive to rehabilitation (accepted on 8 February 2004); the popular initiative on prohibiting the building of minarets (accepted 29 November 2009); and the popular initiative on returning foreign criminals to their country of origin (accepted 28 November 2010). The popular initiative "Swiss law, not foreign judges" (self-determination initiative), filed on 12 August 2016, seeks to ensure the primacy of Swiss constitutional law over international law. The Federal Council and the Federal Assembly have recommended that the initiative be rejected. The people and the cantons will vote on the initiative on 25 November 2018.

<sup>53</sup> RS 0.101.

<sup>54</sup> RS 0.103.2.

<sup>55</sup> RS 101.

<sup>56</sup> RS 101.

107. These popular initiatives revealed the tension between the right to submit initiatives and international law. This has made the relationship between international law and national law an important issue in political debate. These controversies are often accompanied by criticism of the powers exercised by the European Court of Human Rights and some of the Court's judgments. In response to two motions, the Federal Council proposed measures to ensure greater compatibility of popular initiatives with fundamental rights; however, because of the critical reception they received during the consultation phase, it was considered preferable not to proceed with them. A parliamentary commission has also examined the question of whether the conditions for the validity of popular initiatives should be supplemented.<sup>57</sup>

#### 4. Remedies

108. The federal structure of Switzerland results in a complex entanglement of the powers of the Confederation and the cantons. While legislation in civil and criminal matters has long been the responsibility of the Confederation, procedural law in these areas was in the past essentially regulated by the cantons. Until 31 December 2010, there was a civil procedure and a criminal procedure in each of the 26 cantons and at the federal level. The reform of the judicial system adopted by the people and the cantons in 2000 gave the Confederation competence for all civil and criminal procedural law. Since 1 January 2011, the Code of Civil Procedure of 19 December 2008,<sup>58</sup> the Swiss Code of Criminal Procedure of 5 October 2007<sup>59</sup> and the Federal Act of 20 March 2009 on Juvenile Criminal Procedure<sup>60</sup> have been in force and apply to the whole country. The cantons still have competence for the organization of the courts, however, so there is still some diversity in this respect. Each canton and the Confederation has its own procedure for administrative matters.

##### *Criminal matters*

109. Substantive criminal law is essentially unified in the Criminal Code,<sup>61</sup> which has been revised several times.

110. According to the Swiss Code of Criminal Procedure,<sup>62</sup> the main stages of criminal procedure at first and second instance are:

- Preliminary procedure: The preliminary procedure is initiated by a police investigation or by the opening of a judicial investigation by the prosecuting authorities. The purpose is to establish whether or not there is sufficient evidence that an offence has been committed.
- Indictment, issuance of a summary penalty order or closure of the case: If the conditions for the issuance of a summary penalty order or indictment are not met, the investigation is in principle definitively closed. If the prosecuting authorities consider that the evidence gathered in the investigation is sufficient and that a summary penalty order cannot be issued, charges are brought against the suspect or suspects before the competent court. Under certain conditions, the prosecuting authorities may, for minor offences, close the proceedings by issuing a summary penalty order.
- Main procedure: The main procedure takes place in the first-instance court and ends with a judgment.
- Appeal procedure: An appeal (by the convicted person, the party claiming damages or the prosecuting authorities) may be lodged against the judgment.

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<sup>57</sup> See Rapport du 20 août 2015 de la Commission des institutions politiques du Conseil des États Conditions de validité des initiatives populaires. Examen du besoin de légiférer, Federal Gazette, No. 2015 6485.

<sup>58</sup> RS 272.

<sup>59</sup> RS 312.0.

<sup>60</sup> RS 312.1.

<sup>61</sup> RS 311.0.

<sup>62</sup> RS 312.0.

111. Pursuant to the Act of 17 June 2005 on the Federal Supreme Court,<sup>63</sup> the Court rules on appeals in criminal matters against last-instance cantonal judgments and judgments of the Federal Criminal Court. This remedy is only available if the previous authority has violated federal law. As in civil cases, in principle, the facts cannot be reviewed by the Court. Civil claims that must be dealt with in a criminal case can be set out in the same statement of grounds of appeal.

112. The Criminal Division of the Federal Criminal Court in Bellinzona hears, at first instance, cases involving offences that fall under federal jurisdiction (for example, terrorism, bombings, spying, high treason, money laundering, organized crime and economic crime). Appeals against its judgements may be brought before the Federal Supreme Court. The first appeals chamber of the Federal Criminal Court is also competent to hear appeals against acts or omissions of federal prosecutors and compulsory measures and to settle disputes about jurisdiction. Appeals against judgments concerning compulsory measures may be brought before the Federal Supreme Court. The second appeals chamber rules on requests for international mutual assistance in criminal matters. Its decisions may be appealed before the Federal Supreme Court only in limited circumstances. From 1 January 2019, the Federal Criminal Court will have a higher appeals chamber. Two bodies (the Criminal Division and the higher appeals chamber of the Federal Criminal Court) will henceforth be competent to examine facts established in federal criminal proceedings. The judgments of this higher appeals chamber will in turn be appealable before the Federal Supreme Court.

113. Serving members of the military and officials and employees of the Confederation and the cantons, insofar as they are involved in activities serving national defence purposes, as well as civilians guilty of violations of international public law during an armed conflict, are subject to military law and the jurisdiction of the military courts, provided the acts in question are punishable under the Military Criminal Code of 13 June 1927.<sup>64</sup> It is not a question, however, of special law or courts of special jurisdiction (they have a formal basis in the Code of Military Criminal Procedure of 23 March 1979),<sup>65</sup> and the procedure followed is very similar to that of the ordinary courts. The ordinary Criminal Code and the Military Criminal Code contain many identical provisions, including the rule against racial discrimination adopted in 1994 (Criminal Code,<sup>66</sup> art. 261 bis, and Military Criminal Code,<sup>67</sup> art. 171 (c)). Persons subject to military criminal law may, however, be tried by civil courts for offences not covered by the Military Criminal Code.

114. Since 2007, juvenile criminal law has been separate from the criminal law applicable to adults. The age of criminal majority or responsibility is set at 10 years (Federal Act of 20 June 2003, the Juvenile Crime Act,<sup>68</sup> art. 3). Children under 10 years of age who commit an offence are not therefore punishable under criminal law. The primary purpose of juvenile criminal law is to protect and educate young people. For this reason, in juvenile cases the courts often do not impose a sentence in the strict sense of the word but rather order therapeutic or educational measures. Appeals against the judgments of last-instance cantonal courts may be brought before the Federal Supreme Court.

#### *Civil matters*

115. Substantive civil law is essentially codified in the Swiss Civil Code of 10 December 1907<sup>69</sup> and the Swiss Code of Obligations of 30 March 1911,<sup>70</sup> which have been amended and revised several times and are supplemented by a number of special laws.

116. Under the ordinary procedure, plaintiffs who wish to bring a civil case in Switzerland must lodge an application with the competent first-instance court. These proceedings on the merits are usually preceded by an attempt at conciliation before a conciliation authority, in

<sup>63</sup> RS 173.110.

<sup>64</sup> RS 321.0.

<sup>65</sup> RS 322.1.

<sup>66</sup> RS 311.0.

<sup>67</sup> RS 321.0.

<sup>68</sup> RS 311.1.

<sup>69</sup> RS 210.

<sup>70</sup> RS 220.

order to settle the dispute out of court. The opposing party then files a reply. Where warranted, the court may order a second exchange of pleadings or investigative hearings. Each party must adduce evidence of the facts they allege. In the main proceedings, the parties present and justify their conclusions and the court takes evidence. The parties may then give their opinion on the taking of evidence and on the case. After assessing the evidence or when the case is ready for judgment, the court ends the proceedings with a decision on the merits or a decision of inadmissibility.

117. Under certain conditions, an appeal may be lodged against the decision of the court of first instance before the cantonal court of appeal, in which case the higher court is competent to review the whole case (application of the law and ascertainment of the facts). Where such an appeal is not possible, the decision may also be challenged before the court of second instance through proceedings restricted to an examination of the application of the law. The facts may nonetheless be reviewed if the findings are manifestly ill-founded.

118. The Federal Supreme Court rules on appeals brought against judgments issued by cantonal courts at last instance, in accordance with articles 72 et seq. of the Federal Supreme Court Act.<sup>71</sup> In pecuniary matters, in the context of a civil appeal, the Federal Supreme Court may review the application of federal law in cases where the sum at issue is at least SwF 30,000, except in cases involving employment law or tenancy law, where the minimum sum is SwF 15,000. Regardless of the sum at issue, access to the Federal Supreme Court is always guaranteed when a legal principle is at issue. In the context of civil appeals, the Court may also examine judgments in bankruptcy cases and public law judgments directly related to the civil law.

#### *Administrative matters*

119. At the cantonal level, appeals against decisions taken by the government authorities may usually be brought before an executive body, an independent appeals commission or an administrative tribunal. Several cantons have merged their administrative courts with the second instance courts.

120. The former federal appeals commissions and departmental appeals services have been replaced by the Federal Administrative Court, which has had its headquarters in St. Gallen since 2012. The Federal Administrative Court hears, at first instance, appeals against decisions of the Federal Administration, for example those concerning the recruitment of federal employees, federal taxes, customs, government procurement and agriculture. It also rules on appeals against certain decisions of the cantonal governments, particularly in the field of health insurance. In addition, it hears, at first instance, claims brought in three specific areas, including in relation to public law contracts. As a general rule, the decisions of the Federal Administrative Court may be appealed before the Federal Supreme Court. In certain legal areas, such as asylum law or international administrative assistance, the decisions of the Federal Administrative Court are final. This means that such decisions may not be appealed before the Federal Supreme Court.

121. At the cantonal level, any party who wishes to challenge an administrative decision or the decision of an authority responsible for reviewing such decisions may lodge an appeal with the Administrative Court, which issues a ruling after it has heard the point of view of the government authority concerned. If the dispute concerns the application of federal law, the case can in principle be brought before the Federal Supreme Court through an appeal on a point of public law (Federal Supreme Court Act,<sup>72</sup> arts. 82 et seq.).

#### *Subsidiary constitutional appeal*

122. In the context of the appeals submitted to it, the Federal Supreme Court also deals with complaints of the violation of citizens' constitutional rights. When it is not possible to lodge an appeal through any of the ordinary channels (for example, because the sum at issue is insufficient), the violation of constitutional rights in a cantonal judgment may be

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<sup>71</sup> RS 173.110.

<sup>72</sup> RS 173.110.



challenged through a subsidiary constitutional appeal (Federal Supreme Court Act,<sup>73</sup> arts. 113 et seq.).

## 5. International mechanisms that examine the complaints of private citizens

123. Switzerland has accepted several mechanisms that examine complaints and plays an active role in strengthening their development. Private individuals who assert that Switzerland has violated their rights may, after exhausting domestic remedies, take their case to the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee against Torture or the Committee on the Rights of the Child (see sect. IV below).

124. At the regional level, Switzerland has recognized the competence of the European Court of Human Rights, which plays a crucial role in the Swiss judicial system. The practice developed in the Court in Strasbourg has been essential to the development of the case law of the Federal Supreme Court in the area of fundamental rights – some of which were uncodified for many years – and has influenced the catalogue of fundamental rights established in the current Constitution (see sect. III D 1 above and sect. IV below).

## C. Framework within which human rights are promoted at the national level

### 1. National institutions for the defence and promotion of human rights

125. All authorities at the federal and cantonal levels, the police force and the judicial bodies are responsible for the respect and protection of human rights (see Constitution, art. 35).<sup>74</sup>

126. Various competent governmental departments have been set up at the federal and cantonal levels for the protection of human rights in specific areas. At the federal level, these include:

- Federal Office for Gender Equality
- Federal Office for the Equality of Persons with Disabilities
- Service for Combating Racism
- Other similar units in the federal administration (in particular in the Federal Department of Foreign Affairs and the Federal Department of Justice and Police) and in many cantons

127. There are also corresponding extra-parliamentary commissions, including the Federal Commission on Migration, the Federal Commission for Women's Issues, the Federal Commission for Child and Youth Affairs, the Federal Coordination Commission for Family Affairs and the Federal Commission against Racism. These were set up by the Federal Council, but they perform a critical role towards the government through the inclusion of actors from civil society and various political actors.

128. The various bodies mentioned have several tasks: they may support and advise the people concerned, perhaps take the role of mediator or send a person to another body, depending on his or her problems.

#### *Swiss Centre of Expertise in Human Rights*

129. In 2011, Switzerland launched a pilot project for the establishment of a national human rights institution. This time-limited project consists of an academic network – the Swiss Centre of Expertise in Human Rights – from which the Confederation procures services amounting to a million Swiss francs per year. When the pilot project was evaluated in 2015, the majority of those surveyed were in favour of establishing a permanent institution.

<sup>73</sup> RS 173.110.

<sup>74</sup> RS 101.

130. A preliminary bill was submitted to the Federal Council in June 2017, with broad-based consultations then being held from July to October 2017.

#### *Mediator*

131. Several cantons and cities have appointed a mediator,<sup>75</sup> elected by a parliamentary vote, who is independent of the authorities and acts as a neutral intermediary between citizens and the administration.

132. Since the 1970s, there have been several plans to establish a mediation body at the federal level. In the summer of 2002, having re-examined the question, the Federal Council considered that each administrative unit had a duty to adopt an attitude respectful of citizens and that this duty could not be delegated to a federal mediation body. In 2003, the National Council Political Institutions Committee nonetheless adopted a draft federal bill on the establishment of a federal mediation office that sought principally to strengthen the public's trust in the federal authorities. Under the bill, this office was to conduct interviews and make recommendations and proposals for out-of-court settlements, but would have no decision-making power. The Commission withdrew the bill in 2004.

## **2. Dissemination of human rights instruments**

133. The United Nations conventions on human rights ratified by Switzerland are published in Italian, French and German on the Confederation website ([www.admin.ch](http://www.admin.ch)).

134. Some conventions, such as the Convention on the Rights of the Child, have also been translated into Romansh, the fourth national language.<sup>76</sup>

135. In addition, the Federal Department of Foreign Affairs has published the pamphlet "The ABC of Human Rights", which contains a brief history and sets out the main legal bases of international law on the protection of human rights, current issues and the commitment of Switzerland. It can be downloaded free of charge and is intended to improve the general public's understanding of human rights.<sup>77</sup>

136. Moreover, selected judgments of the European Court of Human Rights concerning Switzerland and other countries are published on the website of the Federal Office of Justice.<sup>78</sup>

137. When the Federal Council wishes to ratify a convention, it invites stakeholders (cantons, political parties, higher education institutions, NGOs, etc.) to take a position. Following this consultation, it decides whether to submit the convention to Parliament for approval. If it decides to do so, it issues a dispatch to the Federal Assembly explaining the scope and consequences of ratification. The Federal Council dispatch is published in the Federal Gazette, the official publication of the Confederation, and is thus accessible to all interested parties. Relevant parliamentary debates are also published and publicized by the media. The ratification of a convention often gives rise to discussions at conferences, workshops and seminars organized within higher education or by other institutions.

## **3. Raising human rights awareness through educational programmes and the dissemination of information with the support of the authorities**

138. The Swiss Centre of Expertise in Human Rights is also active in providing continuing education and awareness-raising on human rights, for example through seminars and publications intended mainly for authorities and organizations, but also for the general public.

139. In the field of human rights and combating racism, the Confederation supports the Education 21 foundation in the production and distribution of teaching aids and school materials for different age groups. It also offers relevant continuing training for teachers.

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<sup>75</sup> Currently in seven cantons (Fribourg, Geneva, Basel-Landschaft, Basel-Stadt, Zurich, Vaud and Zug) and six cities (Bern, Lucerne, Winterthur, Zurich, St. Gallen and Rapperswil-Jona).

<sup>76</sup> RS 0.107.

<sup>77</sup> [www.eda.admin.ch](http://www.eda.admin.ch) > Documents > Services and Publications > Publications.

<sup>78</sup> Federal Office of Justice, [www.bj.admin.ch](http://www.bj.admin.ch) > État & Citoyen > Droits de l'homme > Jurisprudence de la CEDH.

Also active in this field are institutions such as the Centre of Human Rights Education at the University of Teacher Education Lucerne, which is responsible for providing schools and teachers with both the fundamental principles and practical experiences of human rights education, and the University of Geneva, which has a centre for children's rights studies.

140. The dissemination of information and training on the Convention on the Rights of the Child<sup>79</sup> take place within the framework of annual assemblies of the Conference of Cantonal Officials Responsible for Child Protection and Youth Aid and the Conference of Cantonal Delegates for the Promotion of Childhood and Youth. The committees of the two conferences, whose members represent the four linguistic regions of Switzerland, meet four times a year. Coordination efforts, information exchange and the development of the expertise of Confederation and cantons in relation to childhood and youth policy are regulated by the Federal Act of 30 September 2011 on the Promotion of Extra-Curricular Activities for Children and Adolescents (Extra-Curricular Activities Act,<sup>80</sup> arts. 11, 18, 20 and 21).

141. Public information and awareness-raising to combat discrimination are an important objective of cantonal integration programmes. In order to combat discrimination, the Confederation and the cantons have set the following objectives in particular:

- The population are to be informed about the particular situation of foreigners, the objectives and basic principles of integration policy and the promotion of integration.
- Institutions of ordinary bodies and relevant actors are to be well informed and provide advice on the fight against discrimination.
- People who suffer discrimination as a result of their origin or ethnicity are to receive advice and support.

#### **4. Role of civil society, including non-governmental organizations**

142. Civil society and NGOs, many of which receive assistance or support for projects from the Confederation, play a decisive role in strengthening human rights.

143. NGOs monitor the initiatives of the authorities and subject them to critical scrutiny. They draft alternative reports for committees ensure that State reports and concluding observations are disseminated, comment on them and contact the authorities concerned in order to guarantee improved implementation of recommendations. In addition, they play an important role in raising public awareness through publications, seminars and events and ensure that conventions are disseminated both in Switzerland and abroad.

144. In cooperation with NGOs, civil society, represented by numerous organizations, is strongly committed to strengthening human rights. For example, it played a very significant role in mobilizing voters to reject the proposal to return foreign criminals to their countries (referendum in February 2016).

#### **5. Budget allocations and trends**

145. In Switzerland, human rights are systematically taken into consideration in all areas of public administration. They are not the subject of a specific budget line but are financed under many headings of the national budget, including education, health and health care, social protection and the administration of the courts.

#### **6. Development cooperation and assistance**

146. According to the Constitution, the promotion of peace and respect for human rights is a goal of Swiss foreign policy and is therefore of major importance.

147. As part of its humanitarian mandate, Swiss development cooperation aims to promote respect for and protection of human rights and international humanitarian law. In addition, in priority countries or areas, development cooperation contributes to strengthening human rights. The consideration of human rights in fragile situations is, in particular, an explicit

<sup>79</sup> RS 0.107.

<sup>80</sup> RS 446.1.

objective of Switzerland, in order to help prevent violence. The relevant framework credits is renewed and approved by Parliament every four years.

148. In February 2016, the Federal Department of Foreign Affairs adopted the Human Rights Strategy 2016–2019, which has for the first time provided a specific frame of reference for the international commitment to human rights of Switzerland. It sets out the principles and objectives of Switzerland in this area and is based on the country's values and expertise, such as dialogue, consensus-building, protection of minorities, solidarity, humanitarian tradition and the tradition of good offices and mediation. On this basis, the strategy outlines the specific contribution Switzerland can make to promoting respect for human rights in the world.

149. In 2004, for the first time, Parliament enacted a federal law aimed at establishing practical measures to promote peace and human rights. In particular, it agreed to establish an initial framework credit to be renewed every four years. Most recently, funding of SwF 310 million was approved for the period 2012–2016. The Federal Council dispatch of 17 February 2016 on international cooperation 2017–2020 will make it possible to refine still further the human rights dimension of development cooperation, humanitarian aid and Swiss foreign policy in general.

150. Switzerland played an active part in drafting the 2030 Agenda for Sustainable Development and the Sustainable Development Goals, taking as a basis the principles of respect for human rights, respect for the planet's limits, inclusion and social equality, universality and political coherence. Goal 16, which aims to promote peaceful and inclusive societies, places access to justice, responsible governance and sensitivity to context and conflict at the centre of development cooperation, thus enshrining the Swiss objectives of peacebuilding and State-building, as described in the New Deal for Engagement in Fragile States (Development Assistance Committee and International Network on Conflict and Fragility of the Organisation for Economic Cooperation and Development). It is particularly committed to water security, decent work and gender equality.

#### **D. Reporting process at the national level**

151. The Federal Administration, in collaboration with relevant federal and cantonal authorities, drafts periodic reports for the human rights treaty bodies. Several federal offices are responsible for the preparation of these reports: the Directorate of International Law of the Federal Department of Foreign Affairs (Committee on the Elimination of Racial Discrimination), the Federal Office of Justice of the Federal Department of Justice and Police (Committee Against Torture and Human Rights Committee), the Federal Office for Gender Equality (Committee on the Elimination of Discrimination against Women), the Federal Office for the Equality of People with Disabilities (Committee on the Rights of Persons with Disabilities), the Federal Social Insurance Office of the Federal Department of Home Affairs (Committee on the Rights of the Child) and the State Secretariat for Economic Affairs of the Federal Department of Economic Affairs, Education and Research (Committee on Economic, Social and Cultural Rights). The responsibility for drafting reports is not definitively fixed and may be amended with the agreement of the federal units concerned; it was adjusted during the most recent drafting cycle.

152. Before a periodic report is drafted, the federal units concerned are consulted. The Federal Council also invites the cantons and communes to give their opinion on the subjects within their jurisdiction by giving them an opportunity to comment on the draft report, respond to a questionnaire or submit additional information on the situation of the areas in question. Before the report is submitted to the Federal Council for approval, a formal consultation is organized at the federal level.

153. The official English and French versions of the concluding observations of international bodies on Swiss State party reports are translated into German and Italian, submitted to the Federal Council and published. Publication allows the public to understand the situation, development and difficulties of human rights protection.

154. The concluding observations of each committee are sent to the federal units that have taken part in the consultation, the cantons and the services concerned so that the recommendations can be implemented. The cantons transmit these recommendations to the relevant cantonal authorities, the communes and sometimes also to the cantonal courts. The federal unit or office that is competent for a particular recommendation determines which additional measures need to be taken to implement the recommendations at the federal level.

155. Since December 2016, Swiss State party reporting procedures have been coordinated by the International Human Rights Policy Core Group (KIM), which has representatives from units of the Federal Administration that deal with the international protection of human rights, the cantons and relevant extra-parliamentary committees. The topic is expected to be on the agenda of all meetings of the group. The Federal Department of Foreign Affairs serves as the focal point for the coordination efforts.

## **IV. Information on non-discrimination and equality and effective remedies**

### **A. Organization of government efforts to promote equal rights and prevent discrimination**

156. Dignity and equality are the first rights listed in the catalogue of fundamental rights contained in the Constitution (arts. 7–34).<sup>81</sup> The constitutional principles of equality before the law and non-discrimination (art. 8)<sup>82</sup> are given concrete expression in several federal laws, including the Gender Equality Act, the Disability Discrimination Act, and the Act on the Registered Partnership between Persons of the Same Sex. While it is true that Switzerland has no comprehensive legislation at the federal level to combat all forms of discrimination, this is not an expression of a substantive omission, but rather of the specific nature of the Swiss legal system, in which an international treaty ratified by the Federal Council automatically has the force of law, and the federalism that lays down the distribution of tasks between Confederation and cantons. In practical terms, this means that the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965<sup>83</sup> are of general application and have an impact throughout the legal system. As soon as it was ratified and had entered into force in Switzerland, the Federal Supreme Court began to refer to it in its case law.

157. In recent years, the defence of human rights generally and the prohibition of racial discrimination in particular have received heightened attention. This is very clearly reflected in the new Constitution, which was accepted by the people and cantons on 18 April 1999 and entered into force on 1 January 2000.<sup>84</sup> The set of fundamental rights includes not only the most essential ones, such as the rights to life and personal freedom, but also, in articles 7 (respect for human dignity) and 8 (general prohibition of any form of discrimination), important constitutional bases for combating racism. Under article 35 (3) of the Constitution,<sup>85</sup> the authorities ensure that, where appropriate, fundamental rights are also upheld in relations between private persons.

158. In order to ensure that treaties are applied at the federal level, the Swiss Government is currently following a strategy that involves codifying in a coherent fashion all the prohibitions on discrimination applicable in specific fields. The federal authorities believe that a sectoral approach guarantees greater protection from the various forms of discrimination against different categories of people. For example, the Federal Act of 24 March 1995 on Gender Equality (Gender Equality Act),<sup>86</sup> the Federal Act of 13 December 2002 on the Elimination of Discrimination against People with Disabilities (Disability

<sup>81</sup> RS 101.

<sup>82</sup> Ibid.

<sup>83</sup> RS 0.104.

<sup>84</sup> RS 101.

<sup>85</sup> Ibid.

<sup>86</sup> RS 151.1.

Discrimination Act)<sup>87</sup> and article 261 bis of the Criminal Code,<sup>88</sup> on racial discrimination, which has proved effective in practice, each cover particular forms of discrimination, making it possible to give the most appropriate institutional response to particular cases. The Federal Council pays close attention to any changes and will, if necessary, propose improvements. It gives priority to instruments developed and agreed upon by the social partners based on their freely agreed collaboration. It is nonetheless prepared to adopt other binding legal provisions, where necessary.

159. Regarding gender-based discrimination, in 2011 Switzerland celebrated the fortieth anniversary of women's suffrage at the federal level, the thirtieth anniversary of the constitutional article on equality, and the fifteenth anniversary of the Gender Equality Act.<sup>89</sup> The aim of the latter is to promote de facto equality between women and men in employment, and it applies to such relationships that are regulated by the Swiss Code of Obligations and by federal, cantonal or communal public law (Gender Equality Act, arts. 1 and 2). Under article 3 (1) of the Gender Equality Act, it is forbidden to discriminate against workers on the grounds of sex, either directly or indirectly. This puts into practice the right to equal pay for work of equal value, which is enforceable in court and guaranteed by article 8 (3) of the Constitution.<sup>90</sup> The Federal Council has introduced measures and developed instruments to promote equal pay for equal work. One example of this is Logib, a tool that enables companies to monitor their pay practices (self-monitoring). For services supplied in Switzerland, the Confederation awards contracts only to bidders that guarantee equal pay (Federal Act of 16 December 1994 on Public Procurement, art 8 (1) (c)).<sup>91</sup> To this end, it can carry out or have carried out checks on equal pay under article 6 (4) of the Ordinance of 11 December 1995 on Public Procurement.<sup>92</sup> These checks are generally carried out by the Federal Office for Gender Equality. Overall, the trend is positive: the average gap between the pay of men and women in the private sector is slowly but surely narrowing. In May 2018, the Council of States approved a bill that would amend the Gender Equality Act and would require that employers providing jobs for more than 100 people carry out an equal pay analysis every four years. The bill is currently under consideration by Parliament.

160. The federal authorities regularly assess the impact of domestic violence on women and introduce new measures if necessary. Since 1 April 2004, the following offences committed against a spouse or partner have been automatically prosecuted: common assault (Criminal Code, arts. 123 (2) (3)–(5));<sup>93</sup> repeated acts of aggression (art. 126 (2) (b), (b bis) and (c)); threatening behaviour (art. 180 (2)); indecent assault (art. 189); and rape (art. 190). On 13 May 2009, the Federal Council transmitted a report to the National Council on intimate partner violence, its causes and the measures taken in Switzerland to address it, including federal measures to combat and prevent such violence. The Federal Office for Gender Equality is empowered to implement these measures at the federal level. Forced marriage has also been addressed. Since the Federal Act on Measures against Forced Marriages came into force on 1 July 2013, such unions have been included as an offence in the Criminal Code (art. 181 (a)).<sup>94</sup> In addition, on 14 September 2012, the Federal Council launched a national programme to combat forced marriage (2013–2017). The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention)<sup>95</sup> came into force in Switzerland on 1 April 2018. The Domestic Violence Division of the Federal Office for Gender Equality has been designated as the official national body responsible for coordinating, implementing, monitoring and evaluating policies and other measures to prevent and combat all forms of violence covered by the Istanbul Convention.

<sup>87</sup> RS 151.3.

<sup>88</sup> RS 311.0.

<sup>89</sup> RS 151.1.

<sup>90</sup> RS 101.

<sup>91</sup> RS 172.056.1.

<sup>92</sup> RS 172.056.11.

<sup>93</sup> RS 311.0.

<sup>94</sup> Ibid.

<sup>95</sup> RS 0.311.35.

161. In order to combat female genital mutilation, a new article (Criminal Code, art. 124) was added to the Criminal Code on 1 July 2012 in order to resolve any problems of definition or proof that might have existed previously. While female genital mutilation was already punishable under the Code as serious assault, it is now covered by a specific provision that also applies when the offence has been committed abroad, even if it is not a criminal offence in the country concerned. The Confederation has encouraged the creation of a network against female genital mutilation and supports its information, awareness-raising, prevention and counselling activities.

162. The ratification in September 2008 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women of 6 October 1999<sup>96</sup> made individual communications against Switzerland possible. As of the end of March 2018, four communications had been submitted to the Committee on the Elimination of Discrimination against Women. The Committee has discontinued its consideration of one of them; the others are pending.

163. In Switzerland, persons with disabilities can go to court to contest inequality and discrimination. Since coming into force in 2004, the Disability Discrimination Act<sup>97</sup> has contributed to significant progress towards the elimination of inequalities affecting persons with disabilities. This is particularly noticeable in construction, public transport and services. As the centre of expertise in the Confederation, the Federal Office for the Equality of People with Disabilities concentrates on supporting the implementation of legislation on equality for persons with disabilities, advises the services of the Federal Administration on disability mainstreaming and runs innovative projects seeking to integrate the relevant issues in society. On 15 April 2014, Switzerland acceded to the Convention on the Rights of Persons with Disabilities of 13 December 2006.<sup>98</sup> By acceding to the Convention, Switzerland is reaffirming its determination to do everything in its power to promote the equality of persons with disabilities, an undertaking to which it committed 10 years ago with the entry into force of the Disability Discrimination Act.<sup>99</sup>

164. Combating racial discrimination is a cross-cutting concern of the whole Government. The Confederation is committed to conducting ongoing and long-term prevention and awareness-raising work to fight against racism and xenophobia. Switzerland supported the consensus expressed in the outcome document of the Durban Review Conference held in Geneva in 2009. Article 261 bis of the Criminal Code<sup>100</sup> punishes incitement to hatred or discrimination on grounds of race, ethnicity or religion.

165. Further information on efforts made by Switzerland to combat different forms of discrimination is contained in the most recent national reports prepared for the Committee on the Elimination of Discrimination against Women (CEDAW/C/CHE/4-5, submitted on 25 February 2015 and dated 2 June 2015), the Committee on the Elimination of Racial Discrimination (CERD/C/CHE/7-9, submitted on 3 December 2012 and dated 14 May 2013), and the Committee on the Rights of Persons with Disabilities (adopted by the Federal Council in June 2016). In addition, every two years, the Service for Combating Racism publishes a report on racial discrimination that gives an overview of data collected and measures taken in this regard.

166. In a detailed report published recently following a parliamentary postulate in 2012, the Federal Council took a position on the “right to protection from discrimination”. The Swiss Centre of Expertise in Human Rights has been commissioned to conduct a study on access to justice in cases of discrimination in Switzerland. The study concluded that the country’s anti-discrimination legislation has both many strengths and various weaknesses and shortcomings. The strengths of Swiss legislation lie in the fact that the prohibition of discrimination is enshrined in the Constitution and in the adoption of special laws, such as the Gender Equality Act and the Disability Discrimination Act, which can take into account the specificities of each type of discrimination. The analysis also found that organizations

<sup>96</sup> RS 0.108.1.

<sup>97</sup> RS 151.3.

<sup>98</sup> RS 0.109.

<sup>99</sup> RS 151.3.

<sup>100</sup> RS 311.0.

and counselling centres strongly identify with these special laws and develop expertise in these areas. The shortcomings identified in Swiss anti-discrimination legislation vary from area to area and are both substantive and procedural in nature.

167. The Swiss Centre of Expertise in Human Rights explicitly states in its study that it does not recommend the adoption of a framework act against discrimination that would govern all of the areas in question and replace the existing special laws. The study shows that these areas present very different issues and that it could prove difficult to design cross-cutting standards that adequately address each of them. Such a framework act would risk undermining what has been achieved and weakening established monitoring, advisory and support institutions. The Centre has also examined several specific topics and issued recommendations on gender equality, lesbian, gay, bisexual, transgender and intersex persons, racism and equality for persons with disabilities.

168. The survey by the Swiss Centre of Expertise in Human Rights of members of the Bar and the courts confirmed the opinion of the Federal Council that the existing substantive legal framework is generally suitable and sufficient to provide protection against discrimination, particularly in public law. However, shortcomings appear to remain in private law. A government working group was tasked with analysing in detail the findings of this wide survey. In addition to the Federal Office of Justice (the competent office), the Federal Bureau for the Equality of People with Disabilities, the Federal Office for Gender Equality and the Service for Combating Racism were represented in the group. The working group examined in detail the recommendations of the Swiss Centre of Expertise in Human Rights in order to determine which proposals might be implemented or examined in depth.

169. In particular, the Government has expressed its readiness to further explore the recommendations of the Swiss Centre of Expertise in Human Rights on strengthening protection against discrimination in certain areas, extending the scope of the right to bring a group action, reducing the costs of civil proceedings, raising awareness, collecting data on discrimination and ensuring the equality of persons with disabilities and lesbian, gay, bisexual, transgender and intersex persons (see “*Le droit à la protection contre la discrimination*” (The right to protection against discrimination), report of the Federal Council of 25 May 2016 issued under postulate 12.3543 of 14 June 2012, submitted by Martin Naef).

## **B. Effective remedies**

170. The Constitution sets out the procedural guarantees in force (arts. 29–32).<sup>101</sup> General procedural guarantees include the right to be tried within a reasonable time, the right to be heard, the right to free legal aid for those without sufficient means, the right to an independent and impartial court, and the right to a public hearing. Article 29 (a) of the Constitution provides that every person has the right to have their case decided by a judicial authority.

171. Regarding the guarantees specific to criminal proceedings, the Constitution establishes the rights accused persons enjoy when deprived of liberty and in preventive detention, as well as the principle of presumption of innocence and the right of every person to be notified in detail of the charges against them.

172. The remedies in domestic law are described in detail in section III B above. Any person who believes that his or her rights have been violated may lodge an appeal, provided that his or her application satisfies the conditions for admissibility.

173. In the event of violation of fundamental rights, Switzerland also acknowledges the importance of giving individuals the possibility of seeking redress at the international level through communications and complaints procedures.

174. The European Convention on Human Rights<sup>102</sup> has an implementation procedure that enables an individual to file an application with the European Court of Human Rights in Strasbourg for a violation of the Convention or its protocols by a contracting State. The principle of subsidiarity is applicable in that contracting States are primarily responsible for

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<sup>101</sup> RS 101.

<sup>102</sup> RS 0.101.



upholding and implementing the Convention, but are granted a margin of discretion. The principle of subsidiarity is also reflected in article 13 of the Convention, which requires contracting States to provide an effective remedy before a national authority so that citizens may claim violation of the guarantees of the Convention.

175. Approximately 7,000 applications were filed against Switzerland between 1974 (the year it ratified the Convention) and the end of 2017. More than half of these were filed between 2002 and 2017. As of the end of 2017, the Court and the Committee of Ministers have handed down a total of 199 final judgments or decisions in Swiss cases, finding a violation of the Convention in 113 of them. A comparison of the number of applications filed between 1974 and 2017 and the number of applications that resulted in a judgment against Switzerland in the same period shows that approximately 1.6 per cent of applications have led to a ruling against it.

176. Although a very small proportion of applications resulted in a ruling against Switzerland, some of them required amendments to federal or cantonal legislation or changes in the practice of the authorities responsible for implementing them. It took time to make these changes in some cases, but the authorities concerned implemented the decisions in such a way that the Committee of Ministers (the body responsible for supervising the enforcement of judgments) was able to close the proceedings.

177. The Federal Supreme Court played a decisive role in incorporating the European Convention on Human Rights into Swiss law. Shortly after it entered into force, it acknowledged in a judgment that the guarantees of the Convention were constitutional in nature and therefore placed them, from a procedural point of view, on a par with constitutional rights. For the cantonal authorities, this means that, when a violation of a constitutional right by a legislative act or a decision is alleged, a violation of the European Convention on Human Rights can always be invoked, either additionally or exclusively. The aforementioned Stöckli report (see “*40 ans d’adhésion de la Suisse à la CEDH: Bilan et perspectives*”, Federal Council report of 12 December 2013, issued under Stöckli postulate No. 13.4187) points to the increase in the number of Federal Court rulings that refer to the Convention. Nowadays, an allegation of a violation of human rights is often based on both the Constitution and the Convention. This is also true of the corresponding rights enshrined in the international human rights instruments of the United Nations. For example, the rights and freedoms protected by the International Covenant on Civil and Political Rights have been the subject of over 200 judicial decisions in the Federal Supreme Court during the period covered by the fourth periodic report to the Human Rights Committee. This confirms that members of the Bar and a majority of the public are aware of the Covenant and that the Federal Supreme Court attaches major importance to it in its case law.

178. In addition to the European Court of Human Rights, Switzerland recognizes other international remedies: the individual complaints procedure of the Committee against Torture, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination against Women, the Committee on the Rights of the Child and the Committee on Enforced Disappearances. As of the end of June 2018, 216 communications have been submitted to the Committee against Torture, 21 of which have resulted in a finding of a violation of the Convention against Torture while 45 are still pending. The Committee on the Elimination of Racial Discrimination has received two communications against Switzerland, neither of which has resulted in a finding of a violation. Four communications have been submitted to the Committee on the Elimination of Discrimination against Women. In addition, two communications have been submitted to the Committee on the Rights of the Child.