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**UNIVERSAL PERIODIC REVIEW**

**Report of the Working Group on the Universal Periodic Review**

**SWITZERLAND**

**Addendum**

**Responses to the recommendations within the framework  
of the universal periodic review\***

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\* The present document was not edited before being sent to the United Nations translation services.

## **RESPONSES TO THE RECOMMENDATIONS WITHIN THE FRAMEWORK OF THE UNIVERSAL PERIODIC REVIEW**

1. A total of 31 recommendations were presented to Switzerland within the framework of the universal periodic review, of which it had responded to eight - six accepted and two rejected - by the time the Working Group adopted its report on 13 May 2008. The federal authorities have given due attention to the remaining 23 recommendations, as listed in section II, paragraph 57, of the report of the Working Group on the Universal Periodic Review (A/HRC/8/41), adopted on 13 May 2008, and have taken the following positions:

**1. To establish a national institution on human rights in accordance with the Paris Principles**

2. Switzerland converts this recommendation into a voluntary commitment, as follows: “Switzerland is considering the possibility of establishing a national human rights institution in accordance with the Paris Principles”. This language more precisely reflects the current status of discussions in Switzerland. In January 2007, the Federal Council appointed a Confederation-canton working group to explore the subject, including models for a prospective body and its appropriateness, necessity and funding. The working group will shortly be submitting its report to the Government. The federal authorities therefore do not wish to prejudice the final decision by accepting or rejecting this recommendation.

**2. To foster internal analysis on the recently adopted law on asylum and its compatibility with international human rights law**

3. Switzerland accepts this recommendation. Compatibility of Swiss legislation with international human rights law is ensured by the Government and Parliament when popular and cantonal initiatives are submitted. In addition, implementation of legislation is constantly examined by the appropriate judicial authorities.

**3. To accede to the first Optional Protocol to the International Covenant on Civil and Political Rights**

4. Switzerland converts this recommendation into a voluntary commitment, as follows: “Switzerland is prepared to consider acceding to the first Optional Protocol to the International Covenant on Civil and Political Rights”. As party to other mechanisms for the protection of human rights, such as the European Court of Human Rights, Switzerland recognizes the importance of providing individuals with the opportunity to have recourse to communication and complaints mechanisms in case of violation of fundamental rights. However, Switzerland does not believe at present that it is urgent or essential to accept a monitoring mechanism parallel to that of the European Court of Human Rights, whose judgements, unlike the recommendations of the Human Rights Committee, are legally binding. Nevertheless, Switzerland remains prepared to consider acceding to this instrument.

**4. To adopt legislative or other measures so that human rights are taken into account upstream by the judiciary, in particular during the elaboration of popular initiatives to ensure their compliance with international obligations**

5. Switzerland rejects this recommendation since there is no need for additional measures to achieve the objective stated. The Swiss Government and Parliament verify in advance that

popular initiatives comply with international law binding on our country. Popular initiatives that contravene peremptory international law are declared totally or partially void by the Swiss Parliament. When an initiative has been accepted, the authorities ensure that it is implemented in accordance with Switzerland's international commitments.

**5. To consider the establishment of a national commission for women to facilitate a holistic consideration at the national level of issues related to women**

6. Switzerland accepts this recommendation and considers it to be already fulfilled. The Federal Commission for Women's Issues is an extra-parliamentary commission that was established by the Federal Council in 1976. Its work is directed to making equality between women and men a reality. The Commission comprises male and female representatives of women's associations and social partners, experts and persons from the scientific world.

**6. To adopt measures to reinforce existing mechanisms on combating racial discrimination**

7. Switzerland accepts this recommendation. Combating racism is an ongoing task for the Government. The possibility of launching campaigns for prevention and awareness-raising, for example, is constantly being examined by the competent authorities at both the federal and cantonal levels.

**7. To adopt a specific law prohibiting incitement to racial and religious hatred, in accordance with article 20, paragraph 2, of the International Covenant on Civil and Political Rights**

8. Switzerland rejects this recommendation. Article 261 bis of the Criminal Code (article 171 (c) respectively of the Military Criminal Code) on racial discrimination came into force on 1 January 1995. It stipulates that anyone who publicly incites hatred of or discrimination against persons on the grounds of their racial, ethnic or religious background, undermines human dignity, refuses to provide a service intended for public use or propagates a racist ideology shall be sentenced to a maximum of three years' imprisonment or a pecuniary penalty. This article of the Criminal Code fulfils the recommendation and Switzerland therefore believes that there is no need to adopt a specific supplementary law.

**8. To ensure that the revocation of the residence permits of married women who are victims of domestic violence is subject to a review and done only after a full evaluation of the impact on those women and their children**

9. Switzerland accepts this recommendation. The new Aliens Act, which entered into force at the beginning of 2008, provides that victims of domestic violence whose residence permit depends on that of their spouse will, in the case of family breakdown, be returned only after examination of their possibilities for social reintegration in their country of origin.

**9. To maintain judiciary recourse in the naturalization process**

10. Switzerland accepts this recommendation, which has been fulfilled. The Federal Constitution guarantees judiciary recourse for all persons in case of violation of their rights and protects them against discrimination on such grounds as their origin. This guarantee,

known as the guarantee of access to a judge, is enshrined in article 29*a* of the Constitution. It should be noted that a popular initiative requesting that communes be able to exclude judiciary recourse by enabling citizens to vote on whether to grant nationality was rejected by referendum on 1 June 2008.

**10. To treat offenders under the age of 18 in police custody and detention differently from adults**

11. Switzerland accepts this recommendation. Federal legislation already calls for such treatment. The Federal Act on the Criminal Status of Minors entered into force on 1 January 2007 and provides that, in the case of pretrial detention, minors should be held in a special institution or in a specific section of a prison in which they are separated from adult detainees. It should be noted that cantons have 10 years from the date of entry into force of the Act to establish the institutions necessary for placement and detention.

**11. To recruit minorities in the police and establish a body to carry out inquiries into cases of police brutality**

12. Switzerland rejects this recommendation. The police forces are the responsibility of the cantons or in some cases the communes. All Swiss citizens who meet the other eligibility criteria may apply for the admission examination, regardless of their place of origin or residence. In addition, some cantons allow foreign nationals holding a residence permit to join their police force. Legal remedy is available to victims of police brutality.

**12. To accede to the Convention on the Rights of Persons with Disabilities**

13. Switzerland accepts this recommendation. The federal authorities are considering the possibility of signing the Convention on the Rights of Persons with Disabilities. Switzerland's practice is not to sign international treaties until it is sure that it can ratify them. To this end, the Federal Council is in the process of seeking the necessary clarifications in order to determine the scope of this Convention and the legal effects of implementing it on the Swiss legal system. As soon as it has sufficient information on the consequences in terms of federal and cantonal law, the Federal Council will decide whether to sign the Convention.

**13. To sign the International Convention for the Protection of All Persons from Enforced Disappearance**

14. Switzerland accepts this recommendation. Switzerland was actively involved in the negotiations for the preparation of this Convention and is considering the possibility of signing it. In accordance with our practice, the federal offices concerned are in the process of examining the compatibility of the Convention with domestic legislation in force and the possible adjustments that would be needed in case of ratification.

**14. To consider increasing its assistance to developing countries, contributing thereby to the realization of the right to development and the achievement of the Millennium Development Goals**

15. Switzerland accepts this recommendation. Development cooperation is a priority in Swiss foreign policy.

**15. To withdraw its reservation to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination**

16. Switzerland rejects this recommendation. Although Switzerland has retained this reservation, it has adopted article 261 bis of the Criminal Code (article 171 (c) respectively of the Military Criminal Code) on racial discrimination. Switzerland reserves the right to adopt the necessary legislative measures to implement article 4 of the Convention, taking due account of the rights to freedom of opinion and of association, which are enshrined in such instruments as the Universal Declaration of Human Rights.

**16. To further address and enhance combating the root causes of discrimination, particularly of foreign migrant women, by removing legal and systemic obstacles to equal rights**

17. Switzerland accepts this recommendation, which is consistent with the policy followed for combating all forms of discrimination.

**17. To take measures to prevent migrant women who are victims of sexual and domestic violence or trafficking from being at risk of deportation if such incidents are reported**

18. Switzerland accepts this recommendation. Legislation on aliens<sup>1</sup> provides for the granting of a residence permit in case of extremely serious personal circumstances or for general policy reasons. If necessary, this opportunity would be offered to victims of trafficking during a period for reflection, then where appropriate for the duration of the criminal proceedings. However, there is no entitlement to those provisions (see also the response to recommendation No. 8).

**18. To strive for federal legislation to provide protection against all forms of discrimination, including on grounds of sexual orientation and gender identity**

19. Switzerland rejects this recommendation. The general thrust of the recommendation poses no major problems, since combating all forms of discrimination is a priority for Switzerland. However, the fact that discrimination on grounds of sexual orientation is the only form of discrimination to be expressly mentioned in the recommendation makes it unacceptable. Switzerland therefore rejects this recommendation in the interests of consistency with the response to recommendation No. 20.

**19. To strengthen efforts to guarantee equal opportunities in the labour market, in particular for women from minority groups**

20. Switzerland accepts this recommendation (see response to recommendation No. 16).

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<sup>1</sup> Articles 13 (f) and 36 of the Ordinance Limiting the Number of Aliens (OLE), RS 823.21.

**20. To take additional steps to ensure that same-sex couples are not discriminated against**

21. Switzerland rejects this recommendation. The Partnership Act, which entered into force on 1 January 2007, introduced registration of partnerships, allowing same-sex couples to obtain legal recognition of their relationship and giving registered partners the same status as married couples. However, those in registered partnerships are not eligible to adopt children or to have recourse to medically assisted procreation.

**21. To withdraw the reservations to the Convention on the Elimination of All Forms of Discrimination against Women and to ratify the Optional Protocol thereto**

22. Switzerland wishes to divide this recommendation into two parts. Switzerland is not currently in a position to withdraw its reservations to this Convention and therefore rejects the first part of the recommendation. The regulations on family names, currently being discussed in the federal Parliament, will probably not be amended before the next cycle of the universal periodic review in 2012. This is also the case for the reservations to articles 15, paragraph 2, and 16, paragraph 1 (h). These provisions are applied subject to several interim provisions of the matrimonial regime, which in some cases are valid until after the next cycle of the universal periodic review.

23. However, Switzerland makes a voluntary commitment to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

**22. Regarding trafficking of women and girls and their sexual exploitation, to formulate a comprehensive strategy, which should include measures of prevention, prosecution and punishment of offenders and increased regional and international cooperation**

24. Switzerland accepts this recommendation. For example, Switzerland has already introduced very practical preventive measures aimed at combating sexual exploitation. The protection of children from trafficking has been reinforced in various ways in the Criminal Code. The Code now recognizes the competence of the authorities to prosecute and try, for sexual offences committed against minors abroad, anyone who is in Switzerland and who has not been extradited, thereby abandoning the “double incrimination” requirement. A coordination service has been established, which involves all the authorities working in this area and whose tasks include monitoring implementation of the relevant international provisions.

**23. To consider the explicit prohibition of all practices of corporal punishment of children**

25. Switzerland accepts this recommendation. The Federal Constitution specifically protects the corporal integrity of children and young people. In Switzerland, degrading treatment of children and any corrective methods that harm the child’s physical, psychological or spiritual integrity are prohibited by judgement of the Federal Tribunal. The Criminal Code punishes assault in general and also stipulates that repeated assault against children by their guardians or supervisors is automatically prosecuted.