



**General Assembly**

Distr.  
GENERAL

A/HRC/WG.6/2/CHE/2  
[date]

Original: ENGLISH

HUMAN RIGHTS COUNCIL  
Working Group on the Universal Periodic Review  
Second session  
Geneva, 5 – 16 May 2008

**Advance unedited version**  
**25 March 2008**

COMPILATION PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR  
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15(B) OF THE ANNEX TO  
HUMAN RIGHTS COUNCIL RESOLUTION 5/1

**Switzerland**

The present report is a compilation of the information contained in the reports of treaty bodies, special procedures, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. Information included herein has been systematically referenced in endnotes. The periodicity of the review for the first cycle being four years, most documents are dated after 1 January 2004. In the absence of recent information, the latest available reports and documents have been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty, and/or to a low level of interaction or cooperation with international human rights mechanisms.

## I. BACKGROUND AND FRAMEWORK

### A. Scope of international obligations<sup>1</sup>

| <i>Core universal human rights treaties<sup>2</sup></i> | <i>Date of ratification, accession or succession</i> | <i>Declarations /reservations</i>                         | <i>Recognition of specific competences of treaty bodies</i>   |
|---|--|---|---|
| ICERD   | 29 November 1994                                     | Yes (art. 4, art. 2 para. 1(a))                           | Individual complaints (art. 14): Yes  |
| ICESCR  | 18 June 1992   | No  | -   |
| ICCPR   | 18 June 1992   | Yes (art. 12 para 1, art. 20, art. 25 subpara. b, art 26) | Inter-State complaints (art. 41): Yes   |
| ICCPR-OP 2  | 16 June 1994   | No  | -   |
| CEDAW   | 27 March 1997  | Yes (art. 15 para. 2, art. 16 para. 1 (g) and 1 (h))      | -   |
| CAT   | 02 December 1986                                     | No  | Inter-State complaints (art. 21): Yes<br>Individual complaints (art. 22): Yes<br>Inquiry procedure (art. 20): Yes |
| CRC   | 24 February 1997                                     | Yes (art. 7, art. 10 para 1, art. 37(c), art. 40)         | -   |
| OP-CRC-AC   | 26 June 2002   | Yes (Decl.) <sup>3</sup>                                  | -   |
| OP-CRC-SC   | 19 September 2006                                    | No  | -   |

*Core treaties to which Switzerland is not a party: ICCPR-OP 1, OP-CEDAW (signature only, 2007), OP-CAT (signature only, 2004), ICRMW, CPD, CPD-OP and CED.*

| <i>Other main relevant international instruments</i>                               | <i>Ratification, accession or succession</i> |
|--|--|
| Convention on the Prevention and Punishment of the Crime of Genocide               | Yes  |
| Rome Statute of the International Criminal Court                                   | Yes  |
| Palermo Protocol <sup>4</sup>  | Yes  |
| Refugees and stateless persons <sup>5</sup>  | Yes, except 1961 Convention                  |
| Geneva Conventions of 12 August 1949 and Additional Protocols thereto <sup>6</sup> | Yes  |
| ILO fundamental conventions <sup>7</sup>   | Yes  |
| UNESCO Convention against Discrimination in Education                              | No   |

1. In 2005, the Committee against Torture (CAT) noted the signature of OP-CAT and the measures to seek its ratification.<sup>8</sup> The Human Rights Committee (HR Committee) reiterated in 2001 its recommendation that the State accede to ICCPR-OP1.<sup>9</sup> The Committee on the Elimination of Discrimination against Women (CEDAW) urged in 2003 the State to ratify OP-CEDAW.<sup>10</sup>

2. The HR Committee remained in 2001 concerned that the State has not seen fit to withdraw its reservations to ICCPR.<sup>11</sup> In 2002, the Committee on the Elimination of Racial Discrimination (CERD) invited the State to consider if the reservation to article 2 (1 a) of ICERD<sup>12</sup> is still necessary or may be withdrawn.<sup>13</sup>

### B. Constitutional and legislative framework

3. In 2001, the HR Committee noted the adoption of the revised federal Constitution in 2000, which contains a bill of rights.<sup>14</sup> CERD welcomed in 2002 the fact that the new

Constitution incorporates the principle that all human beings are equal before the law.<sup>15</sup> In order to meet the requirements of the ICERD, article 261 bis which criminalizes discrimination and public incitement to racial hatred, was introduced in the Swiss Criminal Code; this article is the subject of one main criticism regarding its lack of scope and the difficulty of its application.<sup>16</sup>

4. In 2001, the HR Committee was concerned that the application of the State's obligations under ICCPR in all parts of its territory may be hampered by the federal structure of the State.<sup>17</sup> CERD expressed in 2002 similar concerns regarding ICERD,<sup>18</sup> the Committee on the Rights of the Child (CRC) in 2002 regarding the CRC convention<sup>19</sup> and CEDAW in 2003 regarding the CEDAW convention.<sup>20</sup> The HR Committee reminded the State that the Federal Government should take measures to ensure that the authorities in all cantons and communities are aware of the rights set out in ICCPR and of their duty to ensure respect for them.<sup>21</sup> CERD<sup>22</sup> and CRC<sup>23</sup> made similar recommendations regarding the implementation of ICERD and CRC convention. CEDAW recommended the State to ensure uniformity of results in the implementation of the Convention within the Confederation, through effective coordination and the establishment of a mechanism to monitor compliance with the provisions of the Convention at all levels and in all areas.<sup>24</sup>

### **C. Institutional and human rights infrastructure**

5. While commending the important work undertaken by the Federal Commission against Racism and its efforts to combat anti-Semitism, racism and xenophobia, the HR Committee in 2001 and CERD in 2002 noted that the Commission has limited powers of action and invited the State to strengthen the powers and means of the Commission.<sup>25</sup> The HR Committee also recommended the State to consider broadening the mandate of the Commission, or creating an independent human rights mechanism with the power to initiate legal action.<sup>26</sup> CRC recommended in 2002 that the State establish a federal independent human rights institution in accordance with the Paris Principles.<sup>27</sup>

6. While appreciating the work undertaken by the machinery for gender equality at the national, cantonal and communal levels, namely the Federal Commission of Women's Issues, the Federal Office for Equality between Women and Men and the Gender Equality delegates and services, CEDAW in 2003 was concerned that such institutions may lack sufficient power, visibility and resources to carry out their specific tasks. It recommended the State to strengthen the existing machinery for gender equality by providing it with adequate human and financial resources and to enhance coordination among the existing institutions and the promotion of gender equality.<sup>28</sup>

### **D. Policy measures**

7. In 2007, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended that Switzerland increase, to the extent possible, the recruitment, at all State levels, of staff from among the immigrant population and the various foreign communities, and promote comprehensive intercultural training in all State services and institutions that deal with immigration and the situation of foreigners, in particular the police and border authorities, airports, stations, etc.<sup>29</sup>

## II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

### A. Cooperation with human rights mechanisms

#### 1. Cooperation with treaty bodies

| <i>Treaty body<sup>30</sup></i> | <i>Latest report submitted and considered</i> | <i>Latest concluding observations</i> | <i>Follow-up response</i> | <i>Reporting status</i>  |
|---------------------------------|---|---------------------------------------|---------------------------|--|
| CERD                            | 2000  | March 2002                            | -                         | Consolidated fourth to sixth reports submitted in 2006, to be reviewed in 2008 |
| CESCR                           | 1996  | March 1998                            | -                         | Second and third reports overdue since 1999 and 2004 respectively              |
| HR Committee                    | 1998  | October 2001                          | Received in November 2002 | Third report submitted in 2007   |
| CEDAW                           | 2002  | January 2003                          | -                         | Third report overdue since 2006  |
| CAT                             | 2002  | May 2005                              | Received in May 2007      | Fifth and sixth reports due in 2008  |
| CRC                             | 2001  | May 2002                              | -                         | Second and third reports due in 2007   |
| OP-CRC- AC                      | 2004  | January 2006                          | -                         | Second report due in 2007, together with second and third reports to CRC       |
| OP-CRC- SC                      | -   | -                                     | -                         | Initial report due in 2008   |

#### 2. Cooperation with special procedures

|  |  |
|--|--|
| <i>Standing invitation issued</i>                                  | Yes  |
| <i>Latest visits or mission reports</i>                            | The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance – Visit from 9 to 13 January 2006 <sup>31</sup>  |
| <i>Visits agreed upon in principle</i>                             | None   |
| <i>Visits requested and not yet agreed upon</i>                    | None   |
| <i>Facilitation/cooperation during missions</i>                    | The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance thanked the Government of Switzerland for its availability and openness.   |
| <i>Follow-up to visits</i>   | None   |
| <i>Responses to letters of allegations and urgent appeals</i>      | Between 01.01.2004 and 31.12.2007, a total of 10 communications were sent to the Government of Switzerland. Apart from communications sent for particular groups (e.g. minority (religious, ethnic, etc.)) 4 individuals were covered by these communications, including 1 woman. Between 01.01.2004 and 31.12.2007, the Government of Switzerland replied to 1 communications, which represents replies to 10 % of the communications sent. |
| <i>Responses to questionnaires on thematic issues<sup>32</sup></i> | Switzerland responded to 4 questionnaires of the 12 questionnaires sent by special procedures mandate holders <sup>33</sup> between 1 January 2004 and 31 December 2007, within the deadlines. <sup>34</sup>   |

#### 3. Cooperation with the Office of the High Commissioner for Human Rights

8. Switzerland is host to OHCHR's headquarters in Geneva. Following the decision taken during the 2005 World Summit to increase significantly the budget and staffing of OHCHR, Switzerland facilitated and contributed financially to cover the costs for moving to and

transforming an additional building for OHCHR. OHCHR has been regularly invited to contribute to events organized by the Swiss authorities, and recently OHCHR and Switzerland collaborated during the seminar on the Universal Periodic Review (UPR) conducted in February 2008. Switzerland regularly makes voluntary contributions to support the work of the Office.

## **B. Implementation of international human rights obligations**

### **1. Equality and non discrimination**

9. In 2003, CEDAW was concerned that there is no definition in domestic law of "discrimination against women". CEDAW recommended to the State to take steps to include in its legislation a provision for non-discrimination on the ground of sex, as defined in article 1 of the Convention,<sup>35</sup> to ensure effective enforcement of the rights enshrined in the Convention and to provide women with appropriate remedies in the courts for violations of their rights.<sup>36</sup>

10. In 2003, CEDAW also expressed concern at the situation of migrant women in Switzerland, particularly the discrimination they experience and the risk of exploitation and violence that they face. It was concerned that foreign women sometimes encounter additional difficulties in obtaining access to health care. CEDAW encouraged the State to be proactive in its measures to prevent discrimination against them, both within their communities and in society at large, to combat violence against them and to increase their awareness of the availability of social services and legal remedies.<sup>37</sup>

11. The HR Committee recognized in 2001 the progress made since the initial report in promoting equality between men and women. Nevertheless, the Committee, as well as CEDAW in 2003,<sup>38</sup> remained concerned that women are still disadvantaged in many areas, especially in the labour market, in the achievement of equal remuneration for work of equal value and in the appointment to senior positions, in both the public and private sectors. The State should: implement its Plan of Action and adopt binding policies to ensure compliance with article 3 of ICCPR in all parts of its territory;<sup>39</sup> eliminate occupational segregation through *inter alia* effective enforcement mechanisms; develop job evaluations systems based on gender-sensitive criteria; adopt and implement measures allowing for the reconciliation of family and professional responsibilities; design and implement comprehensive programmes in the educational system, including human rights education and gender training; disseminate information on CEDAW.<sup>40</sup>

12. In 2007, the Special Rapporteur on racism noted that the lack of comprehensive national legislation against racism, racial discrimination and xenophobia poses a major obstacle to the effectiveness of the fight against racism in Switzerland.<sup>41</sup> The HR Committee was in 2001 concerned that incidents of racial intolerance have increased.<sup>42</sup> The persistence of hostile attitudes towards black people, Muslims and asylum-seekers in Switzerland was of utmost concern to CERD. CERD in 2002 recommended the State to continue its efforts to prevent and combat such attitudes, including through information campaigns and education of the general public.<sup>43</sup> The HR Committee, as well as CERD, also requested information about the legislation in force prohibiting racial discrimination within the private sector in fields such as employment, housing, education, health and access to public places.<sup>44</sup>

13. Most of the members of foreign communities and national minorities with whom the Special Rapporteur on racism met stated that they experienced racism and discrimination on a

daily basis and that there was an overall atmosphere of xenophobia; they expressed a feeling of loneliness within the population and their fear of certain institutions, particularly the police. The most affected communities and groups seem, at present, to be blacks, Jews, asylum-seekers and Muslims or persons of Muslim culture.<sup>45</sup> Moreover, during his discussion with the Federal Commission for Foreigners, the Special Rapporteur's attention was drawn to the very restrictive nature of naturalization in Switzerland.<sup>46</sup>

14. The Special Rapporteur noted that the new legislation on foreigners and on asylum, owing to its restrictive and repressive nature, reveals a tendency to approach immigration and asylum issues solely from a security point of view and to criminalize foreigners, immigrants and asylum-seekers. The considerable number of acts of police violence with racist and xenophobic overtones against these target groups and the judicial and administrative impunity enjoyed, according to the victims, by the perpetrators, as well as the absence of clear policy guidelines for the police force in order to prevent all discriminatory practices, are alarming signs of the failure to attach priority to combating racism and xenophobia.<sup>47</sup> With regard to the revision of the law on foreigners, the Special Rapporteur took note of the position of opponents to the amendment who criticized the discriminatory treatment of foreigners who do not belong to a European country, the toughening of the rules on family reunification with regard to foreigners of non-European origin or the proliferation of measures making it possible to place foreigners who refuse to leave Switzerland in detention for up to two years.<sup>48</sup>

15. The Special Rapporteur also noted that the positive aspects of some of the integration measures and programs are mitigated by two political and cultural factors in Switzerland: (a) at the political level, by ideological hostility to integration, reflected in the political platforms of parties which are members of the Government; and (b) at the cultural level, by the rejection of cultural diversity, which takes the form of refusing to acknowledge the cultural specificity of immigrant minorities, particularly non-European minorities, which are suspected of threatening "national identity" and are enjoined to "adapt to national values", thereby depriving such minorities of any opportunity to make cultural contributions to and enrich Swiss society.<sup>49</sup>

## **2. Right to life, liberty and security of the person**

16. In 2005, CAT expressed concern that although torture is prohibited by the Federal Constitution, no specific definition of torture exists in criminal law covering all the constituent elements of article 1 of the Convention. CAT recommended therefore that the State include an explicit definition of torture in the Criminal Code, incorporating all elements contained in article 1 of the Convention.<sup>50</sup>

17. Also in 2005, CAT noted the ban, proposed by the draft federal law regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority, on all restraint methods which restrict breathing as well as on the use of irritant or incapacitating sprays.<sup>51</sup> However, CAT expressed concern that the draft federal law of 18 January 2006 regulating the use of force by police during deportations and during the transport of detainees ordered by a federal authority: (i) authorizes the use of electro-shock instruments, including tasers, which can sometimes be used as instruments of torture; and (ii) does not make any provision for independent monitors to be present during the deportation.<sup>52</sup> In its follow-up response to CAT, the State provided detailed information on the draft law of 18 January 2006 and informed that according to this law, use of electro-shock instruments, including tasers is prohibited.<sup>53</sup> CAT expressed concern that the "guidelines relating to forcible deportations by air" do not contain an explicit ban on the wearing of masks or hoods

by officers involved in deportations. It recommended that the State inform CAT whether there have been complaints against the use of “diplomatic assurances” as a way to circumvent the absolute prohibition of non-refoulement established in article 3 of the convention.<sup>54</sup>

18. From 2004 to 2007, in three individual communications,<sup>55</sup> CAT concluded that there had been a violation of article 3 of the CAT convention.<sup>56</sup> In regard to two of the communications (Communications No. 280/2005<sup>57</sup> and No. 262/2005<sup>58</sup>) the State has complied with the Committee’s decision and both of the complainants have received permission to stay in Switzerland and no longer risk removal to their respective countries of origin.

19. While welcoming the numerous initiatives to tackle violence against children, CRC in 2002 remained concerned at the lack of comprehensive data and information on child abuse and/or neglect;<sup>59</sup> the lack of knowledge about the extent of sexual exploitation of children, in particular vulnerable groups;<sup>60</sup> the fact that corporal punishment is not considered as physical violence if it does not exceed the level generally accepted by society.<sup>61</sup> CRC *inter alia* recommended the State to explicitly prohibit all practices of corporal punishment.<sup>62</sup>

20. The Special Rapporteur on violence against women, its causes and consequences, and the Special Rapporteur on the sale of children, child prostitution and child pornography raised their concern about children who were repatriated from Switzerland and assigned to the custody of their parents despite the accusations of abuse by their father. Switzerland replied that the repatriation had taken place in compliance with the law. It also stated that it was not competent to investigate the penal aspects of the case when the alleged criminal facts were perpetrated abroad.<sup>63</sup>

21. While recognizing current legal and other efforts to address violence against women, including the creation of a gender health service and a centre to fight violence against women and the training of staff called upon to deal with cases of violence, CEDAW was in 2003 concerned about the prevalence of violence against women and girls, including domestic violence.<sup>64</sup> CEDAW was also concerned by the significant number of cases of female genital mutilation (FGM) among migrant women of African descent,<sup>65</sup> as well as about the particular situation of foreign women who experience domestic violence and whose residence permits depend on their living together with their spouse, women whose fear of expulsion is a deterrent to seek assistance or take steps to seek separation or divorce.<sup>66</sup> Concerning FGM, CRC recommended in 2002 the State to develop awareness campaigns to put an end to this practice.<sup>67</sup>

22. While recognizing the efforts made to address the issue of trafficking in women and girls, CEDAW remained in 2003 concerned about the prevalence of this problem and about the exploitation of prostitutes. The Committee urged the State to continue its efforts to combat trafficking in women and girls. It recommended the formulation of a comprehensive strategy, which should include measures of prevention, the prosecution and punishment of offenders and increased international, regional and bilateral cooperation. It also recommended the development of programmes of action for women forced into prostitution.<sup>68</sup>

### **3. Administration of justice and the rule of law**

23. In 2005, CAT expressed concern that all but one canton have failed to establish machinery to receive complaints against members of the police regarding allegations of torture or ill-treatment during arrest, questioning and police custody, in spite of a previous

recommendation of CAT in this regard. In 2001, the HR Committee had expressed similar concern.<sup>69</sup> CAT in 2005 as the HR Committee in 2001 recommended to the State to encourage all cantons to establish independent mechanisms entrusted to receive complaints against members of the police regarding cases of torture or ill-treatment.<sup>70</sup>

24. CRC welcomed in 2002 the discussion on the federal bill on the criminal status of minors, the federal bill on criminal procedures applicable to minors and on the amendment to the Federal Act concerning Judicial Organization, but remains concerned at the very low age of criminal responsibility (7 years) and considers that the new proposed age of criminal responsibility, namely 10 years, is still too low. In addition, CRC was concerned at the lack of provisions regarding legal assistance during pre-trial detention in some cantons and at the failure to separate children from adults in pre-trial detention and imprisonment. CRC recommended the State take additional steps to reform legislation and the system of juvenile justice in line with the Convention, and other United Nations standards in the field of juvenile justice.<sup>71</sup>

#### **4. Right to privacy, marriage and family life**

25. In 2003, CEDAW expressed concern over the delay in introducing paid maternity leave in the State and noted that several proposals to introduce paid maternity leave have been rejected by popular vote. It called upon the State to ensure the speedy enactment of the draft legislation on maternity leave with pay that was adopted by the Federal Council and the National Council in 2002. It also recommended *inter alia* the undertaking of awareness-raising campaigns for developing a proper understanding of maternity as a social function.<sup>72</sup>

#### **5. Freedom of expression and right to participate in public and political life**

26. Also in 2003, CEDAW was concerned that, while women make up 54 % of the electorate, they are significantly underrepresented in elected and appointed posts in political decision-making bodies. CEDAW was also concerned at women's low rate of participation in the administration, the judiciary and the diplomatic service as well as their low representation at the international level. CEDAW was further concerned that the adoption of quotas in political life that would aim at gender balance has been systematically rejected in the State.<sup>73</sup>

#### **7. Right to social security and to an adequate standard of living**

27. In 1998, CESCR noted that despite the high level of development reached by Switzerland and the strength of its economy, there exist unacceptable levels of poverty among certain segments of the population, in particular among women.<sup>74</sup> CRC raised in 2002 the same concern that, according to information provided by the State, young families, single-parent families and families with many children are the most affected by poverty. In addition, CRC was concerned that the family allowances or benefits vary according to canton and depend on the recipients being gainfully employed. CRC recommended to the State to take all appropriate measures to prevent poverty, and that it review its system of family allowances and benefits, especially for families without gainful employment and self-employed families.<sup>75</sup>

28. In 2002, CRC noted the ongoing reform of the social security system but remained concerned that the cost of social insurance and health is very high, which may affect low-income families. CRC recommended to the State to review its health insurance systems in order to lower the cost of health services.<sup>76</sup>



29. While taking into account the advanced health care system, CRC was nevertheless concerned about the high number of suicides among adolescents and the limited measures to prevent this phenomenon as well as the insufficient access by adolescents to counselling services. CRC recommended to the State, *inter alia*, to pursue its efforts to decrease the prevalence of HIV/AIDS; take all necessary measures to prevent suicides among adolescents; increase its efforts to promote adolescent health policies.<sup>77</sup> CRC was also concerned at the increasing use and sale of illegal drugs among adolescents, and at the high and increasing prevalence - notably among girls - of alcohol and tobacco use.<sup>78</sup> CRC recommended the State to pursue its preventive measures, including awareness raising of the danger of drugs in schools.<sup>79</sup>

30. The Special Rapporteur on the right to food wrote to Switzerland concerning allegations that several Swiss companies submitted an application for an export credit guarantee for the construction of a dam in a foreign country. It appears that the dam could displace between 50,000 and 80,000 people, affecting their human rights, including the right to food, and the environment. According to this information, the region has a large number of IDPs and has been affected by widespread marginalization. Many families are already reported to lack access to food, clean and accessible water, sanitation and housing. The Special Rapporteur believed that the alleged facts could lead to a violation of the obligation to cooperate in respecting the right to food and water of the people who could be displaced by the dam. In its reply, Switzerland asserted that the participatory approach and the broad and deep mitigation measures planned for this project meet the international obligations.<sup>80</sup>

31. The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health sent a letter to Switzerland in relation to European Free Trade Association trade negotiations. The Special Rapporteur raised concern that several bilateral free trade agreements had omitted important public health safeguards and that this could threaten the enjoyment of the right to health. The Special Rapporteur emphasized the importance of ensuring that any future trade agreement would safeguard respect for the right to health and access to essential medicines, in particular. Switzerland did not transmit any reply to this communication.<sup>81</sup>

32. The Special Rapporteur on adequate housing raised a number of concerns regarding the housing situation in Geneva, in particular with regard to access to affordable housing. The Special Rapporteur requested explanations with regard to the evictions of squatters between July and August 2007. Switzerland replied to these communications. The Special Rapporteur reiterated his wish to continue his exchange with the State on the subject.<sup>82</sup>

## **8. Right to education and to participate in the cultural life of the community**

33. CESCR recommended in 1998, as highlighted also by UNHCR,<sup>83</sup> that Switzerland play a more active role in promoting equal access to higher education for women, immigrants and ethnic minorities.<sup>84</sup> On the same issue, CEDAW recommended in 2003 that the State intensify its efforts to encourage diversification of the educational choices of boys and girls to help them to fully develop their personal potential.<sup>85</sup>

## **9. Migrants, refugees and asylum-seekers**

34. In 2002, CRC noted with concern, as highlighted also by UNHCR,<sup>86</sup> that authorities who interview children applying for asylum receive no special training for dealing

appropriately with children affected by military activities and armed conflicts. CRC recommended the State to pay particular attention to asylum-seeking, refugee and migrant children entering Switzerland who may have been involved in armed conflicts and provide them with assistance for their physical and psychological recovery and social reintegration.<sup>87</sup>

35. Also in 2002, CERD expressed concern at expressions of xenophobic and racist attitudes in naturalization procedures, particularly those subject to popular vote.<sup>88</sup>

36. A 2004 UNHCR report informed that as of 2003, several States, including Switzerland, have pursued changes in asylum and migration policy and legislation, often reflecting a more restrictive approach towards asylum-seekers.<sup>89</sup> A 2006 UNHCR Report informed that despite a sharp fall in numbers of new asylum-seekers in 2004, the political climate will remain difficult and refugee protection in Switzerland is likely to deteriorate even further. The general political debate will continue to focus on abuses and the problems around return of rejected asylum seekers. Due to their responsibilities in the Swiss federation (social assistance, coercive measures, execution of deportation) the Cantons often do support the more restrictive line taken by the new minister.<sup>90</sup>

37. In 2005, CAT expressed concern, as highlighted also by UNHCR,<sup>91</sup> regarding the following: (a) Changes introduced by the revised law on asylum which restrict or aggravate asylum-seekers' access to legal counsel and the length and conditions of detention in "preparatory" or pre-deportation detention; the Committee was also concerned that in cases of non-entry decisions (*décision de non-entrée en matière*), the social benefits of asylum-seekers are being curtailed significantly; (b) Asylum-seekers retained at airports are not consistently being informed of assistance; (c) The "guidelines relating to forcible deportations by air" do not contain an explicit ban on the wearing of masks or hoods by officers involved in the deportations. CAT recommended the State to ensure that during all procedures established by the revised law on asylum, asylum-seekers are granted full respect of their rights including the rights to an effective remedy and to social and economic rights.<sup>92</sup>

38. In 2007, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance noted that UNHCR expressed serious concern at certain aspects of the Swiss law on asylum, particularly the provisions restricting access to asylum for persons without valid travel or identity documents: this Swiss legal provision seems to ignore the case of persons fleeing for their lives who have not been able to obtain such documents.<sup>93</sup>

### **III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS**

39. In 2002, CERD welcomed the creation of a Service to Combat Racism aimed, *inter alia*, at coordinating measures to combat racism, anti-Semitism, xenophobia and extremism within the federal administration and the cantons.<sup>94</sup>

40. In 2003, CEDAW commended the State for the publicity given to the report in Switzerland<sup>95</sup> and for systematically integrating a gender dimension into the various aspects of its development cooperation programmes.<sup>96</sup>

41. A 2006 UNFPA report informed that trade unions offer membership cards that provide basic protections for undocumented migrant workers, most of whom are domestic workers.<sup>97</sup>

#### **IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS**

##### **A. Pledges by the State**

42. In its Voluntary Pledge submitted in 2006 in support of its candidacy to the membership of the Human Rights Council, Switzerland *inter alia* committed to develop and support the updating of a country-by-country “Human Rights Index” based on United Nations documents and accessible to the public as a useful reference and information tool.<sup>98</sup> Switzerland also committed to making offices available for States which are not represented in Geneva, but wish to participate in the Council’s work.<sup>99</sup>

##### **B. Specific recommendations for follow-up**

43. In 2001, the HR Committee requested the State to provide within one year information on its response to the Committee’s recommendations related to the rights of detainees and the distinction made between citizens and non-citizens and their right to residence permit.<sup>100</sup> The follow-up report was received on 4 November 2002 and examined in March 2003. At its seventy-seventh session, the Committee decided to take no further action.<sup>101</sup>

44. In 2005, CAT requested the State to provide within one year information on its response to the Committee’s recommendations related to: (i) “guidelines relating to forcible deportations by air”; (ii) complaints filed against the police, often of persons of foreign origin, for ill-treatment (iii) establishment of independent mechanisms entrusted to receive complaints against members of the police regarding cases of torture or ill-treatment and (iv) asylum-seekers that are retained at airports and that are not consistently being informed of their right to walk and exercise regularly in the fresh air as well as to request medical assistance.<sup>102</sup> The follow up report was received on 16 June 2005.<sup>103</sup> An additional follow-up report was provided on 15 May 2007 with information on a draft law of 18 January 2006 regulating the use of force by the police during deportation. This follow-up response is under review.<sup>104</sup>

45. In 2007, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance recommended<sup>105</sup> to place emphasis on the following main actions: (i) recognition of the dynamic of racism and xenophobia and the expression of the political will to combat those phenomena; (ii) need for a national program of action against those phenomena; (iii) and promotion of interaction and reciprocal knowledge among the various communities that make up Swiss society.

#### **V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE**

46. Referring to the acknowledgement of the State’s financial support to the United Nations specialized agencies and numerous international organizations and non-governmental organizations working to address the issue of children in armed conflicts, CRC recommended in 2002 the State to continue its bilateral and multilateral activities and expand such support to cover more preventive programmes.<sup>106</sup>

## Notes

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<sup>1</sup> Unless indicated otherwise, the status of ratifications of instruments listed in the table may be found in *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006* (ST/LEG/SER.E.25), supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs of the United Nations Secretariat, <http://untreaty.un.org/>.

<sup>2</sup> The following abbreviations have been used for this document:

|            |   |
|------------|---|
| ICERD      | International Convention on the Elimination of All Forms of Racial Discrimination                             |
| ICESCR     | International Covenant on Economic, Social and Cultural Rights  |
| ICCPR      | International Covenant on Civil and Political Rights  |
| ICCPR-OP 1 | Optional Protocol to ICCPR  |
| ICCPR-OP 2 | Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty                               |
| CEDAW      | Convention on the Elimination of All Forms of Discrimination against Women                                    |
| OP-CEDAW   | Optional Protocol to CEDAW  |
| CAT        | Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment                      |
| OP-CAT     | Optional Protocol to CAT  |
| CRC        | Convention on the Rights of the Child   |
| OP-CRC-AC  | Optional Protocol to CRC on the involvement of children in armed conflict                                     |
| OP-CRC-SC  | Optional Protocol to CRC on the sale of children, child prostitution and child pornography                    |
| ICRMW      | International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families |
| CPD        | Convention on the Rights of Persons with Disabilities   |
| OP-CPD     | Optional Protocol to Convention on the Rights of Persons with Disabilities                                    |
| CED        | International Convention for the Protection of All Persons from Enforced Disappearance                        |

<sup>3</sup> Declaration: “The Swiss Government declares, in accordance with article 3, paragraph 2, of the Optional Protocol, that the minimum age for the recruitment of volunteers into its national armed forces is 18 years. That age is specified by the Swiss legal system.”

<sup>4</sup> Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

<sup>5</sup> 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

<sup>6</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (First Convention); Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea (Second Convention); Convention relative to the Treatment of Prisoners of War (Third Convention); Convention relative to the Protection of Civilian Persons in Time of War (Fourth Convention); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). For the official status of ratifications, see Federal Department of Foreign Affairs of Switzerland, at [www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html](http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html).

<sup>7</sup> International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour, Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

<sup>8</sup> CAT, Conclusions and Recommendations, CAT/C/CR/34/CHE, adopted in May 2005, para. 3(f) and (g).

- <sup>9</sup> HR Committee, Concluding Observations, CCPR/CO/73/CH, adopted in October 2001, para. 5.
- <sup>10</sup> CEDAW, Concluding Observations, A/58/38(Part I), paras. 97-141, adopted in March 2003, para. 138.
- <sup>11</sup> HR Committee, Concluding Observations, op. cit., para. 5.
- <sup>12</sup> Reservation concerning article 2 (1 a): “Switzerland reserves the right to apply its legal provisions concerning the admission of foreigners to the Swiss market.”
- <sup>13</sup> CERD, Concluding Observations, CERD/C/60/CO/14, adopted on 21 March 2002, para. 14.
- <sup>14</sup> HR Committee, Concluding Observations, op. cit., para. 3.
- <sup>15</sup> CERD, Concluding Observations, op. cit., para. 3.
- <sup>16</sup> A/HRC/4/19/Add.2, paras 16-19 (Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mission to Switzerland).
- <sup>17</sup> HR Committee, Concluding Observations, op. cit., para. 3.
- <sup>18</sup> CERD, Concluding Observations, op. cit., para. 8.
- <sup>19</sup> CRC, Concluding observations, CRC/C/15/Add. 182, adopted in May 2002, paras. 9-10.
- <sup>20</sup> CEDAW, Concluding Observations, op. cit., paras. 110-111.
- <sup>21</sup> HR Committee, Concluding Observations, op. cit., para. 6.
- <sup>22</sup> CERD, Concluding Observations, op. cit., para. 8.
- <sup>23</sup> CRC, Concluding observations, op. cit., paras. 9-10.
- <sup>24</sup> CEDAW, Concluding Observations, op. cit., paras. 110-111.
- <sup>25</sup> HR Committee, Concluding Observations, op. cit., para. 8; CERD, Concluding Observations, op. cit., para. 13.
- <sup>26</sup> HR Committee, Concluding Observations, op. cit., para. 8.
- <sup>27</sup> CRC, Concluding observations, op. cit., paras. 15-16.
- <sup>28</sup> CEDAW, Concluding Observations, op. cit., paras. 112-113.
- <sup>29</sup> A/HRC/4/19/Add. 2, para. 96 (Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mission to Switzerland).
- <sup>30</sup> The following abbreviations have been used for this document:

|              |   |
|--------------|---|
| CERD         | Committee on the Elimination of Racial Discrimination                               |
| CESCR        | Committee on Economic, Social and Cultural Rights                                   |
| HR Committee | Human Rights Committee  |
| CEDAW        | Committee on the Elimination of Discrimination against Women                        |
| CAT          | Committee against Torture   |
| CRC          | Committee on the Rights of the Child  |
| CMW          | Committee on the Protection of the Rights of All Migrant Workers and Their Families |

<sup>31</sup> A/HRC/4/19/Add.2.

<sup>32</sup> The questionnaires included in this section are those which have been reflected in an official report by a special procedure mandate holder.

<sup>33</sup> See (i) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006; (ii) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in 2006; (iii) report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons sent in 2006; (iv) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005; (v) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous people sent in August 2007; (vi) report of the Special Rapporteur on trafficking in persons, especially in women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the sent in July 2005; (vii) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005; (viii) report of the Working Group on mercenaries (A/61/341), questionnaire concerning its mandate and activities sent in November 2005; (ix) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent on July 2006; (x) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004; (xi) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2004/9), questionnaire on the prevention of child sexual

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exploitation sent in July 2003; (xii) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.

<sup>34</sup> The questionnaire on demand for commercial sexual exploitation and trafficking, E/CN. 4/2006/62, para. 24 and the demand for sexual services deriving from exploitation, E/CN. 4/2006/67, para. 22; the questionnaire on the Sale of Child pornography on the Internet, E/CN. 4/2005/78, para. 4; the questionnaire on the Prevention of child sexual abuse exploitation, E/CN. 4/2004/9, para. 4; the questionnaire to identify policies and practices by which States regulate, adjudicate and otherwise influence corporate actions, A/HRC/4/35/Add. 3, para. 7.

<sup>35</sup> CEDAW, Concluding Observations, op. cit., paras. 108-109.

<sup>36</sup> CEDAW, Concluding Observations, op. cit., paras. 106-107.

<sup>37</sup> CEDAW, Concluding Observations, op. cit., paras. 122-123.

<sup>38</sup> HR Committee, Concluding Observations, op. cit., para. 9; CEDAW, Concluding Observations, op. cit., paras. 114-115 and 130-131.

<sup>39</sup> HR Committee, Concluding Observations, op. cit., para. 9.

<sup>40</sup> CEDAW, Concluding Observations, op. cit., paras. 114-115 and 130-131.

<sup>41</sup> A/HRC/4/19/Add. 2, para. 64.

<sup>42</sup> HR Committee, Concluding Observations, op. cit. para. 10; CERD, Concluding Observations, op. cit., para. 16.

<sup>43</sup> CERD, Concluding Observations, op. cit., para. 9.

<sup>44</sup> HR Committee, Concluding Observations, op. cit. para. 10; CERD, Concluding Observations, op. cit., para. 16.

<sup>45</sup> A/HRC/4/19 / Add.2, para. 67.

<sup>46</sup> A/HRC/4/19 / Add.2, para. 43.

<sup>47</sup> A/HRC/4/19 / Add.2, para. 75.

<sup>48</sup> A/HRC/4/19/Add. 2, para. 29.

<sup>49</sup> A/HRC/4/19 / Add.2, para. 80.

<sup>50</sup> CAT, Conclusions and Recommendations, op. cit., paras. 4(a) and 5(a).

<sup>51</sup> CAT, Conclusions and Recommendations, op. cit., para. 3(a).

<sup>52</sup> CAT, Conclusions and Recommendations, op. cit., paras. 4(b) and 5(b).

<sup>53</sup> Commentaires de la Suisse relatifs aux recommandations du CAT suite à la présentation du 4eme rapport de la Suisse, le 10 mai 2007.

<sup>54</sup> CAT, Conclusions and Recommendations, op. cit., paras. 4 (j) and 5 (j).

<sup>55</sup> (1) Communication No. 299/2006, views adopted on 16 November 2007, CAT/C/39/D/299/2006, 26 November 2007, (2) Communication No. 280/2005, views adopted on 15 November 2006, CAT/C/37/D/280/2005, 22 November 2006 and (3) Communication No. 262/2005, views adopted on 20 November 2006, CAT/C/37/D/262/2005, 22 January 2007.

<sup>56</sup> Communication No. 299/2006, views adopted on 16 November 2007, CAT/C/39/D/299/2006, 26 November 2007.

<sup>57</sup> Communication No. 280/2005, views adopted on 15 November 2006, CAT/C/37/D/280/2005, 22 November 2006.

<sup>58</sup> Communication No. 262/2005, views adopted on 20 November 2006, CAT/C/37/D/262/2005 22 January 2007.

<sup>59</sup> CRC, Concluding observations, op. cit., paras. 38-39.

<sup>60</sup> CRC, Concluding observations, op. cit., paras. 52-53.

<sup>61</sup> CRC, Concluding observations, op. cit., paras. 32-33.

<sup>62</sup> CRC, Concluding observations, op. cit., paras. 32-33.

<sup>63</sup> E/CN. 4/2005/19/Add. 1, paras. 152-153.

<sup>64</sup> CEDAW, Concluding Observations, op. cit., paras. 116-117.

<sup>65</sup> CEDAW, Concluding Observations, op. cit., paras. 118-119.

<sup>66</sup> CEDAW, Concluding Observations, op. cit., paras. 120-121.

<sup>67</sup> CRC, Concluding observations, op. cit., paras. 40-41.

<sup>68</sup> CEDAW, Concluding Observations, op. cit., paras. 124-125.

<sup>69</sup> HR Committee, Concluding Observations, op. cit., para. 11.

<sup>70</sup> CAT, Conclusions and Recommendations, op. cit., paras. 4(g) and 5(g); HR Committee, Concluding Observations, op. cit., para. 11.

<sup>71</sup> CRC, Concluding observation, op. cit., paras. 56-57.

<sup>72</sup> CEDAW, Concluding Observations, paras. 132-133.

<sup>73</sup> CEDAW, Concluding Observations, op. cit., paras. 126-127.

<sup>74</sup> CESCR, Concluding Observations, E/C.12/1/Add.30, adopted in November 1998, para. 12.

<sup>75</sup> CRC, Concluding observations, op. cit., paras. 46-47.

<sup>76</sup> CRC, Concluding observations, op. cit., paras. 44-45.

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- <sup>77</sup> CRC, Concluding observations, op. cit., paras. 40-41.
- <sup>78</sup> CRC, Concluding observations, op. cit., paras. 40-41.
- <sup>79</sup> CRC, Concluding observations, op. cit., paras. 54-55.
- <sup>80</sup> A/HRC/4/30 / Add.1, paras. 64-65
- <sup>81</sup> E/CN.4/2006/48/Add.1, paras 24-25
- <sup>82</sup> A/HRC/7/16/Add.1, paras 120 -122
- <sup>83</sup> See UNHCR submissions to the UPR on Switzerland, p. 3, citing E/C.12/1/Add.30, para. 33.
- <sup>84</sup> CESCR, Concluding Observations, op. cit., para. 33.
- <sup>85</sup> CEDAW, Concluding Observations, op. cit., paras. 128-129.
- <sup>86</sup> UNHCR submission to the UPR on Switzerland, p. 1, citing, CRC/C/OPAC/CHE/CO/1, para. 9.
- <sup>87</sup> CRC, Concluding Observations, op. cit., paras. 9-10.
- <sup>88</sup> CERD, Concluding Observations, op. cit., para. 10.
- <sup>89</sup> UNHCR, 2005 UNHCR Global Appeal Report, Strategies and Programmes, Geneva, 2004, p. 297.
- <sup>90</sup> UNHCR, 2007 UNHCR Country Operation Plan, Geneva, 2006, p. 2.
- <sup>91</sup> UNHCR submission to the UPR on Switzerland, p. 1-2, citing, CAT/C/CR/34/CHE, para. 4.
- <sup>92</sup> CAT, Concluding Observations, op. cit., paras. 4 and 5.
- <sup>93</sup> A/HRC/4/19/Add. 2, para. 28 (Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mission to Switzerland).
- <sup>94</sup> CERD, Concluding Observations, op. cit., para. 7.
- <sup>95</sup> CEDAW, Concluding Observations, op. cit., para. 103.
- <sup>96</sup> CEDAW, Concluding Observations, op. cit., para. 104.
- <sup>97</sup> UNFPA, State of the World Population 2006, New York, 2006, p. 72.
- <sup>98</sup> Switzerland's Voluntary Pledge submitted in support of its candidacy to the membership of the HRC, New York, March 28<sup>th</sup> 2006, p.4. accessible at: <http://www.un.org/ga/60/elect/hrc/switzerland.pdf>. The Universal Human Rights Index is available at [www.universalhumanrightsindex.org](http://www.universalhumanrightsindex.org)
- <sup>99</sup> Letter from the Government of Switzerland to the High Commissioner for Human Rights dated on 13 April 2007. available at <http://www2.ohchr.org/english/issues/water/contributions/Switzerland.pdf>.
- <sup>100</sup> HR Committee, Concluding Observations, op. cit., para. 17.
- <sup>101</sup> Report of the HR Committee to the General Assembly, Vol. I (2003), A/58/40, Chapter VII, Follow-up on Concluding observations.
- <sup>102</sup> CAT, Conclusions and Recommendations, op. cit., para. 7.
- <sup>103</sup> Commentaires de la Suisse relatifs aux recommandations du CAT suite à la présentation du 4eme rapport de la Suisse, le 6 juin 2005 (CAT/C/55/Add.9).
- <sup>104</sup> Commentaires de la Suisse relatifs aux recommandations du CAT suite à la présentation du 4eme rapport de la Suisse, le 10 mai 2007.
- <sup>105</sup> A/HRC/4/19 / Add.2, p. 2
- <sup>106</sup> CRC, Concluding Observations, op. cit., para. 11.