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## **National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/2\***

### **Switzerland**

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## Contents

	<i>Paragraphs</i>	<i>Page</i>
I. Methodology and consultation.....	1–4	3
II. Normative and institutional framework .....	5–10	3
III. Promotion and protection of human rights.....	11–78	5
A. Equality, non-discrimination (Universal Declaration of Human Rights, arts. 1, 2 and 7) and subjects of specific rights .....	11–51	5
B. Right to life, prohibition of slavery and torture (Universal Declaration of Human Rights, arts. 3, 4 and 5).....	52–54	13
C. Administration of justice and fair trial (Universal Declaration of Human Rights, arts. 6–11) .....	55–57	13
D. Right to seek asylum (Universal Declaration of Human Rights, art. 14) .....	58–62	14
E. Freedom of thought, conscience and religion, expression, assembly and association (Universal Declaration of Human Rights, arts. 18, 19 and 20) .....	63–66	15
F. Participation in political life and right to vote (Universal Declaration of Human Rights, art. 21).....	67–69	16
G. Work (Universal Declaration of Human Rights, art. 23).....	70–73	17
H. Adequate standard of living (Universal Declaration of Human Rights, art. 25) .....	74–76	17
I. Education (Universal Declaration of Human Rights, art. 26).....	77–78	18
IV. Concluding remarks .....	79–81	18
V. Consultation with civil society.....	82–86	19

## I. Methodology and consultation

1. This report follows the general guidelines adopted by the Human Rights Council for the second cycle. Chapter I corresponds to paragraph A of the general guidelines (methodology); chapter II corresponds to paragraph B (developments, in particular normative and institutional developments); and chapter III corresponds to paragraphs C, D, E and F (situation on the ground; follow-up to the previous review; achievements and challenges; priorities). Switzerland has not requested technical assistance, so paragraph G does not apply. Chapter IV contains concluding remarks. The reference framework for this report is the Universal Declaration of Human Rights and it follows the order of rights and freedoms listed therein.

2. At the time of its first review in May 2008, Switzerland accepted 20 recommendations, 3 of which were converted into voluntary commitments (see annex II). These have been cited throughout the text as subheadings to associate the measures taken with the corresponding recommendations.

*Recommendation 56.4:* continue to consult stakeholders in the follow-up to the universal periodic review outcome.

3. The preparation and follow-up of the universal periodic review is the responsibility of the Federal Department of Foreign Affairs. The other Federal Departments, notably those of the Interior, Justice and Police and Economic Affairs are also involved through the interdepartmental international human rights policy group (KIM). This report has been drafted with their assistance.

4. The Federal Department of Foreign Affairs maintains regular contact with representatives of the cantons and the Swiss NGO Coalition for the UPR. The cantons, the extraparlimentary federal commissions and other stakeholders were consulted before the report was adopted by the Federal Council. Two discussion days were organized: the Confederation and the Swiss Resource Centre for Human Rights (le Centre suisse de compétence pour les droits humains – CSDH) held a meeting on 24 January 2012 with many representatives of the federal, cantonal and communal authorities, as well as representatives of Parliament, academia and civil society, to discuss a study that had been made of the implementation of the accepted recommendations; and workshops were held on 11 May 2012 with representatives of civil society organizations to discuss the report itself. Prior to then, an open meeting with the cantons and civil society had been held in Bern on 8 May 2009, a year after the first review.

## II. Normative and institutional framework

### Normative framework

5. Switzerland is a State with a monistic tradition; a ratified international treaty becomes part of the legal system from the date of its entry into force in Switzerland, without any need for it to be incorporated into domestic law by the enactment of a specific law. According to the Federal Constitution, all major legislative proposals must be submitted to the cantons, political parties and stakeholders for consultations and hearings. These procedures make it possible to verify whether a bill gives sufficient consideration to the different interests at stake. The Federal Council's note to Parliament, which accompanies each bill, must also be based on an examination of the bill's compatibility with international law and any changes it might impose. The Federal Council is of the view that the relationship between international law and domestic law is regulated in a

satisfactory manner in Switzerland. Nonetheless, in March 2011, the Federal Council suggested two measures that seek to ensure that popular initiatives to amend the Constitution are more compatible with international law. In February 2012, the Parliament requested a specific proposal for their implementation. One of these suggested measures is to offer proponents of a constitutional amendment a non-binding opinion on its contents before signatures are collected. The other is to expand the grounds for invalidating popular initiatives. The latter would allow initiatives to be declared null and void, not only when they contravene peremptory norms of international law, as is already provided for, but also when they are not in keeping with the essence of the fundamental rights set forth in the Constitution.

**Recommendations 56.2, 57.12, 57.13 and voluntary commitments 57.21 and 57.3:** (56.2) ratify the Optional Protocol to the Convention against Torture and create a national mechanism for the prevention of torture; (57.12) accede to the Convention on the Rights of Persons with Disabilities; (57.13) sign the International Convention for the Protection of All Persons from Enforced Disappearance; (57.21) ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; and (57.3) consider accession to the first Optional Protocol to the International Covenant on Civil and Political Rights.

6. Since 2008, the Optional Protocol to the Convention against Torture and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women have both come into force in Switzerland, on 24 October 2009 and 29 December 2008, respectively. The International Convention for the Protection of All Persons from Enforced Disappearance, which was signed on 19 January 2011, is currently undergoing the process of ratification. With regard to the Convention on the Rights of Persons with Disabilities, consultations were held in 2011, at which time a majority of participants supported accession to the Convention without reservation and a minority approved it in principle. The report on those consultations will take account of the comments made and inform the Federal Council's decision on how to proceed. With regard to the first Optional Protocol to the International Covenant on Civil and Political Rights, the Confederation has commissioned the Swiss Resource Centre for Human Rights to carry out a comparative study of the case law of the Human Rights Committee and the case law of the European Court of Human Rights, with a view to gauging the possible impact that ratification of the Protocol would have.

7. Switzerland recognizes the importance of providing individuals with the possibility of recourse to communication and complaints mechanisms when they consider that their fundamental rights have been violated. Between 2008 and 2011, the European Court of Human Rights ruled in 21 out of 32 judgements that Switzerland had violated the Convention. Specific and general measures have been taken to avoid repetitions of those violations. Switzerland also recognizes the individual complaints mechanisms of the Committee against Torture, the Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of Discrimination against Women. Between 2008 and 2011, the Committee against Torture found that in 4 cases (of a total of 67), the expulsion of the author of the complaint to his or her country of origin would constitute a violation of the Convention (principle of non-refoulement). The individuals in question were granted residence permits allowing them to remain in Switzerland.

### **Institutional framework**

8. Swiss federalism is characterized by the participation of the cantons in decision-making at the federal level and by the distribution of tasks among the Confederation, the cantons and the communes according to the principle of subsidiarity.

9. There are various independent official advisory bodies at the federal and cantonal levels whose responsibilities relate to the protection of human rights in specific areas, such as the extraparlimentary federal commissions on racism, on migration and on women. Several federal government services are also responsible for promoting equality and fighting racism. However, these agencies are not empowered to take matters directly to court or to take direct action against the perpetrators of human rights violations. Ombuds' offices have been established at the canton and commune levels in recent years.

*Voluntary commitment 57.1:* consider the possibility of establishing a national institution on human rights in accordance with the Paris Principles.

10. The Swiss Resource Centre for Human Rights, whose purpose is to reinforce national capacity to implement human rights in Switzerland, was inaugurated on 6 May 2011. The Centre's mandate comes from public authorities, civil society organizations and other stakeholders. Launched by the Federal Council, this five-year pilot project has been allocated 5 million Swiss francs in core funding.

### **III. Promotion and protection of human rights**

#### **A. Equality, non-discrimination (Universal Declaration of Human Rights, arts. 1, 2 and 7) and subjects of specific rights**

11. Dignity and equality are the first two rights listed in the series of enforceable rights set forth in the Federal Constitution (arts. 7–34). The constitutional principles of equality before the law and the prohibition of discrimination (article 8 of the Constitution) are reflected in several federal laws such as the Gender Equality Act, the Disabled Persons Equality Act, and the Act on Registered Partnerships between Persons of the Same Sex.

12. Between May 2008 and January 2012, Switzerland submitted several periodic reports on the fulfilment of its international obligations and was visited by persons of high rank such as the United Nations High Commissioner for Human Rights, in March 2009 and June 2012, several representatives of the Organization for Security and Cooperation in Europe on the question of tolerance, in November 2011, and the Commissioner for Human Rights of the Council of Europe, in February 2012.

##### **1. Gender**

13. In 2011, Switzerland celebrated 40 years of women's suffrage at the federal level, 30 years of the constitutional provision on equality and 15 years of equality between men and women (the Equality Act). Currently, women comprise between 20 and 30 per cent of the federal and cantonal legislatures and the cantonal governments. In 2010 and 2011, women held the majority of seats in the Federal Council. At the end of September 2011, the Parliament amended the provisions in the Civil Code on family names and cantonal citizenship to ensure equal treatment of both spouses in those matters.

14. As a result of the ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, individual complaints against Switzerland can now be filed under the Protocol. No complaints have been filed with the Committee on the Elimination of Discrimination against Women against Switzerland as yet. When Switzerland presented its third periodic report in July 2009, the Committee congratulated it on its withdrawal of a reservation to the Convention while noting with regret the persistence of gender pay gaps in the country. The interdepartmental working group established by the Federal Office for Equality between Women and Men drew up an

action plan in 2009 for implementing the Committee's recommendations in preparation for Switzerland's fourth and fifth reports.

15. The federal authorities regularly analyse the situation regarding women victims of domestic violence and implement new measures when necessary. In criminal and civil law, amendments have recently been made to the Victims of Crime (Assistance) Act and the new Aliens Act. The Federal Office for Equality between Women and Men organizes skills-building and awareness-raising days to train judicial personnel (judges and magistrates), first responders (police) and members of relevant associations to handle domestic violence cases. In order to standardize the procedures for granting residence permits when a marriage has been dissolved, the Federal Office for Migration issued a directive specifying the corresponding criteria. On 13 May 2009, the Federal Council endorsed a report on violence in relations between intimate partners, which sets out 20 measures for preventing and combating domestic violence.

16. A new article on female genital mutilation was introduced in the Criminal Code on 1 July 2012 to resolve any possible problems of definition and proof that had existed prior to then. Female genital mutilation was already punishable under the Criminal Code as grievous bodily harm, but is now penalized in a specific provision. This provision also applies to female genital mutilations performed in another country even when the practice is not a criminal offence in that country.

17. On 23 February 2011, the Federal Council submitted a federal bill, containing several measures to combat forced marriages, for parliamentary review. The bill stipulates that forced marriages may be annulled and that cantonal registries must establish that the contracting partners have reached the legal age of majority and freely consent to the marriage. The bill also outlines a number of preventive measures, as well as measures to protect victims. A new provision in the Criminal Code will punish forced marriage even if the marriage took place abroad.

**Recommendations 56.3, 56.5 and 57.5:** fully, systematically and continuously integrate a gender perspective into the follow-up process to the universal periodic review; (56.6) continue its efforts to promote the use of non-gender specific language; and (57.5) consider the establishment of a national commission for women to facilitate a holistic consideration at the national level of issues related to women.

18. Following the 2006 review of the Equality Act, the Confederation contributed to various publications and training activities to inform professionals and the general public about the content of this Act. In 2008, for example, the Federal Office for Equality between Women and Men published a guide for the courts on the expert legal opinions issued in relation to wage discrimination proceedings. The Office also set up two websites where summaries of the judgements handed down under this Act are posted.

19. The 2007 Federal Act on national languages and understanding among the linguistic communities requires federal authorities to endeavour to use appropriate, clear and understandable language and to take non-sexist wording into account (art. 7). In 2009, the Federal Chancellery updated the German version of its guide on non-sexist neutral language for the Confederation's administrative and legislative texts. Most of the cantons and several municipalities have already regulated the use of non-sexist language in official communications.

20. At the federal level, there are two institutions specifically established for ensuring equality between men and women. The Federal Office for Equality between Women and Men issues opinions on whether bills comply with the principle of equality, informs the public on such matters and works closely with the cantonal and municipal equality offices. The Office also helps businesses to determine whether they meet requirements regarding equal pay and, since 2009, can give businesses financial support for projects that promote

equality at work and equal opportunities. The extraparliamentary Federal Commission on Women's Issues, created in 1976 by the Federal Council, carries out awareness-raising and information activities to advance the effective implementation of the Convention on the Elimination of All Forms of Discrimination against Women. The issues addressed by the Commission include the division of assets between former spouses after a separation or a divorce, the reconciliation of family and work commitments, and the fights against gender-based stereotypes, violence against women, forced marriages and genital mutilation. At the national level, the Swiss Conference of Gender Equality Delegates brings together all the agencies responsible for promoting equality at the Confederation, canton and city levels. The Conference coordinates, plans and carries out activities at the national level to ensure that policy on equality is coherent over the long term.

## 2. Children

21. Two Federal Council reports — one issued in 2008 on a strategy for a Swiss policy on children and young people, and the other in 2009 on young people and violence — served as the basis for the development of a policy of protection, encouragement and participation, as well as for the design of various prevention programmes. In 2011, the Federal Social Insurance Office (FSIO) began implementing two national five-year programmes: the first on young people and violence, and the second on protecting young people from risks posed by the media.

22. The Ordinance on protection measures for children and young people and on strengthening children's rights, which entered into force on 1 August 2010, sets out the content, objectives, and means of implementation of the information and education measures adopted by the Confederation, which are aimed at avoiding violations and preventing delinquency. The remit of FSIO includes, at the federal level, information and prevention actions on issues relating to children and young people. FSIO provides support for the counselling services made available around the clock to children and young people by the Pro Juventute Foundation, and for the activities of the Swiss Foundation for Child Protection and various projects aimed at combating ill-treatment and sexual abuse that are carried out in partnership with other organizations. With a view to drawing up a plan of action targeting violent acts within the family, FSIO plans to study preventive measures that could be taken in order to better protect children against such acts. It will also study the question of how to improve national coordination in the area of child protection.

23. On 16 June 2010, Switzerland signed the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention). This Convention is the first international instrument to allow such broad scope in defining acts of sexual abuse committed against children as punishable offences. Switzerland is currently preparing the legislative amendments needed in order for it to ratify the Convention. In December 2011, Switzerland submitted its first report on its implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Over the past few years, several laws have been amended and numerous international police operations have been carried out in the above-mentioned areas. In addition, training and prevention programmes have been launched, including an information campaign on sexual exploitation in tourism that was introduced in November 2010. Anyone who suspects that an abuse has been committed can report their observations using an online form ([www.stop-childsex-tourism.ch](http://www.stop-childsex-tourism.ch)). Lastly, on 20 November 2008, the people and the cantons decided to include as article 123b in the Federal Constitution the non-applicability of statutory limitations to acts of child pornography.

24. The Council of Europe Convention on Cybercrime, which entered into force for Switzerland on 1 January 2012, aims to strengthen cross-border cooperation, harmonize

standards of States parties and formulate minimum requirements relating to the prevention and punishment of offences relating to child pornography. For several years, the Coordination Service to Combat Internet Crime (SCOCI) has been tasked with the early detection of offences committed on the Internet (monitoring), preventing duplications at the prosecutorial level (clearing) and analysing the phenomenon of Internet crime.

25. A new federal law on international child abduction and the two Hague Conventions on the protection of children and adults entered into force on 1 July 2009. Requests for the return of abducted children are now dealt with through an accelerated procedure. The authorities must seek to ensure that parents settle disputes amicably, by means of conciliation or mediation and taking the child's best interests into account. Legal proceedings should always be preceded by efforts to reach a compromise. When a court decides that a child is to be returned, it must at the same time establish the procedure for doing so. Since 2010, the Swiss police have had an alert system in place that can be activated any time there are valid reasons for suspecting that a minor has been abducted, provided that the minor is truly exposed to danger.

26. The Federal Act on the Criminal Procedure Applicable to Minors, which entered into force on 1 January 2011, deals with juvenile offenders. Its provisions derogate from the rules of the Code of Criminal Procedure so as to take into account the special circumstances of juvenile offenders, particularly as they relate to conciliation, mediation and the conduct of proceedings in closed court. The Act provides for obligatory defence in certain circumstances and regulates the conditions and execution of pretrial detention and the use of trials in absentia.

**Recommendations 57.10 and 57.23:** treat offenders under the age of 18 in police custody and detention differently from adults; and (57.23) consider the explicit prohibition of all practices of corporal punishment of children.

27. With regard to pretrial detention, the Federal Act on the Criminal Procedure Applicable to Minors provides for the appropriate detention of minors in a special institution or in a special section of a prison, separate from adult prisoners (article 28 of the Federal Act on the Criminal Procedure Applicable to Minors). Several institutions or divisions reserved for this purpose exist already. Under the terms of an arrangement between the "Latin" (for the most part, French- and Italian-speaking) cantons, the first prison in French-speaking Switzerland intended exclusively for minors is due to open in 2013.

28. Degrading treatment and corrective methods that harm children's and young people's physical, psychological or spiritual integrity are prohibited in Switzerland. Corporal punishment is explicitly prohibited by the rules and regulations of schools and institutions. Likewise, assault and, by extension, bodily harm, are punishable under criminal law. For this reason, in August 2008, Parliament decided not to follow up a proposal to enact specific legislation to this effect.

29. Efforts to resolve certain questions relating to parental responsibility in the event of divorce or to the child's right to be heard, which were included among the challenges listed during the previous review, are nearly completed. In its message of 16 November 2011, the Federal Council proposed to Parliament that amendments should be made to the Civil Code in order to guarantee equal treatment between mothers and fathers in the event of divorce or separation in respect of parental responsibility, guardianship and the maintenance of children. Provisions relating to the deposition of children in civil proceedings that concern them have been combined in the new Code of Civil Procedure, which entered into force on 1 January 2011. With regard to the application of these provisions, in November 2011 the Federal Commission on Children and Youth published a report on the right of children to express their views and to be heard.



30. The Federal Commission on Migration is of the opinion that weaknesses are still to be found in the area of children's and young people's affairs in connection with migration – especially the naturalization of foreigners born in Switzerland who do not benefit from a facilitated procedure and education for children and young people without residence permits.

### **3. Persons with disabilities**

31. It is estimated that there are approximately 1 million persons with disabilities in Switzerland (17 per cent of the population), of whom 300,000 have severe disabilities. Of the latter, 37,000 live in institutions and 130,000 — mostly elderly persons, given that aging is a major cause of disability — live in special homes.

32. Since it entered into force in 2004, the Act on Equality for Persons with Disabilities has been directly responsible for, or has helped to achieve, significant progress in eliminating inequalities affecting persons with disabilities. This progress is particularly visible in construction, public transport and services.

33. Social integration occurs mainly through participation in working life, and almost two thirds of people with a long-term disability are engaged in an occupation. The benefits provided by the social security system are designed for people whose capacity to work is not sufficient to earn them an adequate livelihood.

34. In its capacity as a centre of competence of the Confederation, the Federal Office of Equality for Persons with Disabilities focuses its activities on supporting the implementation of legislation on equality of persons with disabilities, advising the departments of the federal administration (disability mainstreaming) and conducting innovative projects aimed at raising public awareness of this issue.

35. Consideration is being given to accession to the Convention on the Rights of Persons with Disabilities (see chapter II).

### **4. Migrants**

36. The percentage of permanent foreign residents in Switzerland is one of the highest in Europe (22 per cent). More than four fifths of foreign nationals come from Europe; of these, 70 per cent come from the European Union (EU) and European Free Trade Association (EFTA) member States, and nearly 30 per cent come from other countries in Europe. The vast majority of foreign residents have lived in Switzerland for a long time and are well integrated (65 per cent possess a permanent residence permit). The foreign population is generally young (20 per cent are under the age of 20), of working age (73 per cent) and tends to leave Switzerland on reaching retirement age (foreign residents account for 11 per cent of those over 65).

37. Switzerland's entry into the Schengen area on 12 December 2008 has facilitated the free movement of foreign nationals from non-EU/EFTA countries residing in the EU/EFTA area, as well as those from outside the Schengen area (tourists, visitors, businesspeople from a third State, etc.). Like the European Union, Switzerland is seeking to conclude agreements with certain third States with the aim of facilitating the provision of visas.

38. Switzerland's integration policy is governed by the Federal Act on Foreign Nationals. Integration is primarily viewed as a two-way process for which responsibility must be shared at all stages. In November 2011, the Federal Council began consultation on a draft partial amendment of the Act that seeks to regulate more strictly the right to integration and to increase the active participation of those concerned. The revision of the Act, which would be renamed the "Federal Act on Foreign Nationals and Their Integration", would clearly define the powers of each level of government, as well as the

criteria on which cantonal authorities would base their assessment of a person's integration before granting them an annual or permanent residence permit. An information pack, to be distributed to foreigners on their arrival, is intended to help guide them in their new surroundings and, if necessary, identify the appropriate integration services. Integration agreements may also be drawn up. In order to exercise the right to family reunification, spouses and children who are third-State foreign nationals must prove that they have some knowledge of a national language or are enrolled in a language course. Integration is also viewed as something that is practised on a day-to-day basis: in schools and vocational training centres, in the workplace and in the community. For this reason, it is also important to incorporate the rules on integration into the laws governing the chief public institutions under the responsibility of the federal authorities. The Federal Council has stated explicitly that the promotion of integration must go hand in hand with measures to combat discrimination. As from 2014, the Confederation and the cantons will increase their budgets for these incentives to almost 110 million Swiss francs. Protection against discrimination, for example, in the workplace or to ensure migrant women's entry into the labour market, will henceforth be a standard feature of cantonal integration programmes.

39. As part of the consultation procedure, in 2012, the Federal Council will submit partial amendments to several ordinances on asylum, the integration of foreigners and the enforcement of removal and expulsion orders. These partial amendments would replace the current system of social welfare subsidies, while ensuring that costs remain unchanged, with a system that gives cantons financial incentives to helping social welfare beneficiaries find jobs; enhance existing instruments on repatriation assistance; abolish the practice of paying out part of the integration allowance based on the level of success achieved; and encourage persons in administrative detention to leave Switzerland. The Swiss policy of drawing up readmission agreements with a view to controlling irregular migration is the same as that followed by the European Union and its member States, which, respectively, include a readmission clause in association and cooperation agreements, and conclude readmission agreements with countries of origin and transit.

40. The Federal Commission on Migration was established by the Federal Council on 1 January 2008. It resulted from the merger of the former Federal Commission for Foreigners and the Federal Commission for Refugees. It deals with social, economic, cultural, political, demographic and legal issues relating to the presence in Switzerland of foreigners with the status of permanent foreign residents, asylum seekers, recognized refugees and provisionally admitted foreign nationals. As an extraparliamentary commission, it advises the Federal Council and publishes studies, analyses and recommendations relating to migration policy. The Commission is authorized to propose the grant of financial support for model projects of national importance and can act as a mediator between the Government and civil society.

**Recommendations 57.8, 57.16 and 57.17:** 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; (57.16) further address and enhance combating the root causes of discrimination, particularly of foreign migrant women, by removing legal and systemic obstacles to equal rights; and (57.17) take measures to ensure that migrant women victims of sexual and domestic violence and/or trafficking are not at risk of deportation, if such incidents are reported.

41. With regard to the dissolution of marriage, the Federal Act on Foreign Nationals provides that the right of spouses and children to a residence permit, previously granted for reasons of family reunification, may be extended following the break-up of the family, provided that continued residence in Switzerland is shown to be necessary for compelling personal reasons. Compelling personal reasons are considered to include the situation in which a spouse has been the victim of domestic violence and in which the prospects for

social reintegration in his/her country of origin appear to be seriously undermined. With regard to victims of human trafficking, the Federal Act on Foreign Nationals and its implementing regulations grant alleged victims a 30-day minimum period of reflection in order to rest and to decide whether they would like to continue participating in the proceedings. A residence permit may be granted for the duration of the criminal proceedings. Furthermore, a residence permit may be granted for individual cases of an extremely serious nature. In such cases, consideration is given to the particular situation of the human trafficking victims, whether such victims are men or women.

42. On 28 November 2010, a popular initiative for the expulsion of foreign criminals was approved. The measure aims to revoke the residence permits of foreign nationals who are convicted of murder, rape or serious sex offences, acts of violence, drug trafficking, burglary or social security or social assistance fraud. Work on the implementation of this initiative has begun, and several variants are under consideration.

**Recommendation 57.9:** maintain judicial recourse in the naturalization process.

43. A popular initiative for democratic naturalization, which originated from the above-mentioned recommendation, was rejected by referendum on 1 June 2008. Access to the courts is guaranteed by the Federal Constitution (art. 29a) and applies in the case of naturalization.

## 5. Racism

44. Combating racial discrimination is the responsibility of the whole Government. It is directly linked, although not limited to, the policies on integration of the foreign population. The Confederation is committed to ensuring that prevention and awareness-raising work to combat racism and xenophobia is carried out on a permanent basis and with a long-term perspective. Switzerland joined the consensus expressed in the outcome document of the Durban Review Conference held in Geneva in 2009. Article 261 bis of the Swiss Criminal Code punishes incitement to hatred or discrimination based on race, ethnicity or religion.

**Recommendations 56.1 and 57.6:** pursue its efforts in preventing and combating xenophobia; and (57.6) adopt measures to reinforce existing mechanisms on combating racial discrimination.

45. The Service for Combating Racism carries out and coordinates activities to prevent racism, anti-Semitism and xenophobia and gives financial assistance to numerous projects in these domains. It funds integration and migration projects and human rights education, as well as projects in schools and for combating discrimination. In 2009, the Service published a legal guide to racial discrimination outlining the legal remedies available in cases of racial discrimination in all circumstances. Between 2010 and 2012, the Service offered approximately 40 training courses based on this guide. In 2010, it also published a study on strategies for combating right-wing extremism in Switzerland, which provides an overview of the different forms this extremism takes and the measures put in place to counteract it. For its part, the Special Service against extremism in the army, established in 2002, raises awareness and gives advice, training and information to members of the army, their relatives and their families when they encounter extremism.

46. The Federal Commission against Racism has a mandate to analyse, study and monitor racism in Switzerland and to advise the authorities on how to combat it. A policy agenda listing the parliamentary work carried out in this domain is posted on the Commission's website. In its biannual bulletin *TANGRAM*, the Commission details the various contemporary forms of racism and discrimination, as well as those encountered in particular areas, such as institutional discrimination, multiple discrimination, hostility towards Muslims, and racism and discrimination in the workplace, the security forces and the public sector and even in political discourse. The Commission is in direct dialogue with

minority groups and organizes awareness-raising projects. It also advises individuals who consider that they have been the victims of racial discrimination.

47. With the support of the Service for Combating Racism, the Commission, together with approximately 10 public-sector advisory services and civil society organizations, has established a network to offer professional advice and gather data on racism and discrimination in Switzerland. One of the goals of this network is to compile a regular report on the issue to complement the statistics on crime in Switzerland and on the implementation of article 261 bis of the Criminal Code on incitement to hatred or discrimination based on race, ethnicity or religion.

**Recommendation 56.5:** take necessary steps to prevent the incidence of acts of violence with racist and xenophobic undertones by security agents against foreigners, immigrants and asylum seekers, and to bring to justice the perpetrators of such acts.

48. Police work has significantly changed in the last few years, particularly in the light of emerging trends such as transnational crime and terrorism and the rising number of attacks on law enforcement officers. Officers have to operate in an increasingly multicultural environment and develop the appropriate skills. In Switzerland, police cadets must pass an examination on human rights and ethics before obtaining the federal certificate which allows them to be employed as police officers. Many cantonal and municipal police forces have added a module on intercultural skills and diversity to the training already given by the Swiss Police Institute to senior officers and specialists.

## **6. National minorities**

49. In January 2012, Switzerland submitted its third report on the implementation of the Council of Europe's Framework Convention for the Protection of National Minorities. Significant improvements have been achieved in the last few years as far as the situation of people belonging to linguistic minorities is concerned. Notable efforts have also been made to encourage multilingualism, in particular in education. Of the minorities recognized by Switzerland under the Framework Convention, Swiss Travellers face the most difficulties. Their population is estimated to number approximately 30,000. Most Swiss Travellers are of Yeniche origin, and between 2,500 and 3,000 continue to lead semi-nomadic lives. Despite the measures already taken in certain cantons, the insufficient number of sites for short- and longer-term stays remains a cause for concern. The Confederation offers financial support to two organizations that defend the interests of Travellers: the foundation Assurer l'avenir des gens du voyage suisses and the umbrella organization for Travellers Radgenossenschaft der Landstrasse.

## **7. Sexual orientation and gender identity**

50. On 22 February 2012, the Federal Council endorsed an amendment to the Act on Registered Partnerships between Persons of the Same Sex allowing the adoption by one partner of the natural or adopted children of the other when such children are the issue of, or were adopted during, a prior relationship. The proposed revision of the Nationality Act, however, does not provide for same-sex partners in a registered partnership to benefit from an expedited naturalization procedure.

51. On 1 February 2011, the Zurich Supreme Cantonal Court ruled that an application for a change of sex that had been filed by a person who had undergone long-term hormone treatment but not gender reassignment was admissible. In February 2012, the Federal Government supported this ruling in a similar case. In accordance with the relevant recommendations of the Council of Europe, the Federal Government also ordered registry offices to register legal decisions attesting the sex change of married persons or persons in a

registered partnership, if those persons so wished, without requiring them to dissolve the marriage or partnership first.

## **B. Right to life, prohibition of slavery and torture (Universal Declaration of Human Rights, arts. 3, 4 and 5)**

### **Fight against trafficking in persons and sexual exploitation**

*Recommendation 57.22:* formulate a comprehensive strategy regarding the trafficking of women and girls and their sexual exploitation, which should include measures of prevention, prosecution and punishment of offenders and increased regional and international cooperation.

52. The Coordination Unit against the Trafficking of Persons and Smuggling of Migrants brings together all the actors working in this domain. The Unit is in charge of the national strategy for combating human trafficking and responsible for developing a national action plan. It offers specialized training to raise awareness in public services, in particular among border guards and cantonal migration officials, and as part of the training given to judicial officials. As far as preventive measures are concerned, in autumn 2008, the Confederation supported a national campaign linked to the European Football Championship, “Euro 08”, to inform spectators about trafficking in women. At the cantonal level, round tables and cooperation agreements between the authorities and relevant services have been established, which facilitate the identification and protection of victims and the prosecution of perpetrators. At the end of 2011, 13 cantons had already set up such a mechanism or were in the process of doing so. The revision of the Federal Law on Compensation for Victims of Offences means that cantons are now required to take into account the specific needs of different categories of victims, including victims of human trafficking.

### **Prevention of torture and other cruel, inhuman or degrading treatment or punishment**

53. The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in Switzerland on 24 October 2009. To ensure its implementation, the Federal Council established a National Commission for the Prevention of Torture on 1 January 2010. The Commission has visited several detention centres, and the reports on these visits have been published on its website. Since spring 2012, the Commission has also been responsible for overseeing the deportation of foreigners on special flights.

54. In October 2011, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment carried out its sixth visit to Switzerland. During this visit, the Committee inspected several detention facilities and had the opportunity to examine how the recommendations formulated during its previous visits had been implemented by the authorities.

## **C. Administration of justice and fair trial (Universal Declaration of Human Rights, arts. 6–11)**

55. Criminal procedure, which used to be regulated at the cantonal level, was standardized for the whole of Switzerland with the entry into force of the Code of Criminal Procedure and the Swiss Code of Juvenile Criminal Procedure on 1 January 2011. The right of all persons placed under arrest to have the immediate assistance of a lawyer, to inform one of their relatives and to be examined by an independent doctor is now guaranteed in all

the cantons. The Code of Civil Procedure, which replaced the 26 cantonal civil codes, stipulates different types of procedures according to the nature of the dispute and places special emphasis on out-of-court settlements. The unification of procedural law makes it possible to ensure that the principles of equality before the law and legal certainty are upheld.

56. The administration of justice continues to be a cantonal responsibility. The Criminal Authorities Organization Act, which also entered into force on 1 January 2011, aims to reorganize the federal criminal authorities in the light of the new Code of Criminal Procedure. Accordingly, the Office of Federal Examining Magistrates was closed down and its resources were reallocated to the Federal Public Prosecutor's Office. In addition, new arrangements were made for monitoring the activities of the Federal Public Prosecutor's Office, which is now the responsibility of a special body elected by Parliament.

57. On 23 December 2011, Parliament adopted the Federal Act on Witness Protection which provides for protection services to be arranged to ensure the collaboration of witnesses during criminal proceedings, as well as in other contexts, including after the proceedings have ended.

#### **D. Right to seek asylum (Universal Declaration of Human Rights, art. 14)**

58. Switzerland's participation in cooperation at the operational level under the Dublin II Regulation since 12 December 2008 allows it to transfer asylum seekers to another signatory State, when that State has the authority to examine their asylum requests. This also applies to asylum seekers who have illegally crossed the border of another State or formally applied for asylum in another State. In return, Switzerland must accept the asylum seekers sent on the same grounds from other States signatories of the Dublin Regulation. A bill to amend the Asylum Act, whereby all asylum seekers would only benefit from emergency assistance, is currently being debated by the Federal Parliament.

59. Since 1 January 2008, asylum seekers who have been served enforceable removal orders and whose departure deadlines have been set or have expired are not entitled to welfare benefits. They can, however, still obtain emergency assistance in the form of financial support or benefits in kind if they apply for it. In May 2010, an external agency was made responsible for exploring in greater depth the issue of asylum seekers whose applications for asylum have been denied and who are eligible only for emergency assistance, including over long periods of time.

60. Since 1 April 2011, a new Act allows denials of asylum to be appealed before both the Federal Supreme Court and the Federal Administrative Court, when the corresponding asylum procedures and extradition procedures are dealt with in parallel. The procedures can thus be linked at the level of the highest court, and the application of the principle of non-refoulement can be standardized. The Act also stipulates supportive measures to expedite and better coordinate the two procedures.

61. The amendments to the Aliens Act and the Asylum Act, which came into force on 1 January 2011, brought these instruments into line with the European Return Directive (Directive 2008/115/EC of 16 December 2008). The amendments were made in accordance with the obligations imposed under the Directive on the member States of the Schengen area. The goal of the Directive is to achieve a minimum level of harmonization among the procedures applicable to nationals of countries that are not Schengen member States (third countries) whose migratory status is irregular. The Directive establishes a number of rules governing expulsion orders, deadlines for voluntary departure, the conditions of custody prior to expulsion (particularly for minors and families) and legal protection. The Directive led to the maximum duration of administrative detention for foreign nationals under Swiss

law being reduced from 24 to 18 months. In addition, Switzerland has set a minimum age for minors to be held in detention (15) even though no age limit is stipulated in the Directive. The medical care given to deportees before and during their transportation by air has been expanded. These changes ensure that expulsions are transparent procedures. By law, each stage of the flight in expulsion procedures carried out using air transportation must be overseen by third parties. Since 1 April 2012, this oversight has been provided by the National Commission for the Prevention of Torture.

**Recommendation 57.2:** foster internal analysis of the recently adopted law on asylum and its compatibility with human rights.

62. All legislative amendments are preceded by an analysis of their compatibility with human rights. According to the courts, the recent amendments to the Asylum Act have not posed any compatibility problems with regard to human rights.

### **E. Freedom of thought, conscience and religion, expression, assembly and association (Universal Declaration of Human Rights, arts. 18, 19 and 20)**

63. Religious groups in Switzerland are many and diverse. Thanks to immigration, many communities holding non-traditional beliefs are now firmly established in the country. The authority to grant legal personality to religious communities resides with the cantons, which act in accordance with their own constitutions. Since 2006, the Confederation has held regular meetings with the Swiss Council of Religions, which brings together representatives of the main religions. Several cantons are also actively engaged in pursuing interfaith dialogue and greater mutual understanding between religious communities. Some have incorporated courses on religious cultures into the school curriculum. A non-denominational course on religion and culture, for example, has been introduced in primary schools in the canton of Zurich and, in the canton of Saint Gallen, the authorities hold a round-table meeting of representatives of different religious communities every two years. Muslim associations are playing an ever larger role in the interfaith dialogue. Islamic centres and umbrella associations regularly organize information sessions, meetings and projects that offer children and young people from different religious backgrounds the opportunity to meet and learn about each other.

64. On 29 November 2009, the initiative to include an article in the Federal Constitution banning the construction of new minarets was approved by the Swiss population with 57.5 per cent of the vote. The new article does not affect existing minarets or the construction of mosques. Nor does it prohibit the practice of Islam. Since then, the Federal Council has increased its efforts to ensure that nobody in Switzerland can be discriminated against or excluded on account of their religious beliefs, origins, race or culture, and to foster peace and understanding between religious communities. In September 2010, the canton of Bern authorized the construction of a minaret in Langenthal since building permission had been already applied for prior to the referendum. On 29 March 2012, the administrative tribunal of the canton, ruling on an appeal filed by opponents to the project, withdrew the authorization on the basis of the provisions set forth in communal building regulations, without, however, ruling on the applicability of the new article that had been incorporated into the Constitution after the referendum. The permission granted to build a dome was confirmed.

65. In 2009, the federal authorities launched a dialogue with the Muslim population with a view to combating fears and prejudices about Islam and discussing the challenges of integration. This dialogue was conducted with 18 influential persons from different backgrounds and with diverse religious affiliations, as well as persons from various ethnic

and cultural backgrounds who do not practice a religion. In its report of December 2011, the Federal Council and the participants in the dialogue recalled the importance of the directives set forth in the Constitution regarding the need to uphold the principles of equality before the law, democracy and the rule of law and outlined the steps taken to encourage integration and equal opportunities for Muslims and to guarantee the peaceful coexistence of all persons regardless of their religious affiliation. In order to assess its relations with religious groups, Switzerland has launched a national research project entitled “Religious groups, the State and society”, the goal of which is to obtain empirical data on the triangular relationship between religious affiliation, cultural identity and social integration.

66. In Switzerland, freedom to demonstrate is protected by the freedoms of expression and assembly, which are both guaranteed under the Federal Constitution (arts. 16 and 22) and all the cantonal constitutions. A restriction on the right to demonstrate is only admissible if it is legally founded, justified by an overriding public interest and proportionate to the aim pursued. The competent authorities must arbitrate among the divergent interests, giving due weight to the need to hold demonstrations that raise awareness and mobilize public opinion. If permission to hold a demonstration is denied, there are legal means available for appealing the decision.

#### **F. Participation in political life and right to vote (Universal Declaration of Human Rights, art. 21)**

67. Semi-direct democracy is one of the principles that characterizes the Swiss political system. It allows the people, together with the cantons, not only to function as the constituent authority, but to play a leading role in political decision-making as well. In general, the electorate is called to vote four times a year on federal policy issues following a mandatory referendum, a request for an optional referendum or a popular initiative. A referendum is mandatory for amending the Constitution, passing emergency laws that depart from the Constitution and joining collective security organizations or supranational communities. An optional referendum can be held on parliamentary decisions, federal laws, federal judgements and certain international treaties provided that 50,000 citizens ask for one. And a popular initiative to amend the Federal Constitution can be submitted to referendum provided that 100,000 citizens express their support for it within an 18-month period. Proposals submitted under mandatory and optional referendum procedures do not need to be declared admissible by parliament. The three mechanisms described above promote consensus-building by encouraging authorities to seek majority support for compromise solutions. The consultations and hearings held play a particularly important role in this process.

68. Switzerland invited the Organization for Security and Cooperation in Europe (OSCE) to send a mission to observe the parliamentary elections held in October 2011. The observers reported a high level of confidence in the electoral system and the way in which it is run. Nevertheless, suggestions were made for improving party financing regulations, as well as the standardization of electoral practice across the cantons, the security of postal voting and the development of the rules on Internet voting.

69. At the federal level, foreigners do not have the right to participate in the political process. However, in several cantons and communes, foreigners are granted the right to vote under certain conditions.



## G. Work (Universal Declaration of Human Rights, art. 23)

70. Switzerland has a high employment rate and a highly skilled workforce. The unemployment rate in March 2012 was 3.2 per cent.

71. Working conditions are closely monitored within the framework of the implementation of the Agreement on the Free Movement of Persons with the European Union. Specific measures have been put in place to combat wage dumping. Controls to enforce minimum labour conditions and minimum wages have been improved and optimized. The number of collective labour agreements has increased since the free movement of persons was introduced. The Act on Unlawful Employment is facilitating the fight against the informal economy. An ordinance on model employment contracts for domestic workers, which establishes minimum wages for domestic work, came into force in January 2011.

72. Switzerland intends to ratify International Labour Organization (ILO) Employment Policy Convention, 1964 (No. 122) as a show of international solidarity and with a view to sharing its positive experiences in employment.

**Recommendation 57.19:** strengthen efforts to guarantee equal opportunities in the labour market, in particular for women from minority groups.

73. With regard to the equality of men and women in the workplace, the Confederation has implemented a number of programmes to combat wage gaps and sexual harassment and to promote equality of opportunity. A dialogue on equal pay was set up in 2009 to find pragmatic solutions. The increasing flexibility of labour relations clearly affects women more than men. In recent years, the Confederation has provided more financial assistance for childcare outside the home, and a website on resolving the conflict between work and family commitments (work-family balance) has been created to collect information on the practices of the different cantons and communes in this regard.

## H. Adequate standard of living (Universal Declaration of Human Rights, art. 25)

74. Poverty affects 7.8 per cent of the Swiss population (2010). On 31 March 2010, the Federal Council adopted a global anti-poverty strategy aimed at reducing the scale of poverty in Switzerland and improving the situation of those affected. A national conference was organized by the Confederation in November 2010 to present this strategy to a large audience. The Confederation, cantons, towns and communes issued a declaration at the conference in which they undertook to implement the strategy and assess it biennially. To increase social cohesion, reforms have been and will be undertaken by the Government to ensure the financial viability of the different parts of the social security system.

75. According to the report of the Organization for Economic Cooperation and Development (OECD) and the World Health Organization (WHO) on the health system in Switzerland (2011), life expectancy is high thanks to the high level of economic development and a responsive health system. Health insurance is compulsory for all persons living in Switzerland. Those with modest resources may be granted a discount by the public authorities and hence allowed to pay lower premiums through a subsidy scheme.

**Recommendation 57.14:** increase its assistance to developing countries, contributing thereby to the realization of the right to development and the achievement of the Millennium Development Goals.

76. Increasing the country's official development assistance (ODA) is a moral and political commitment that Switzerland has assumed on numerous occasions within the

framework of the United Nations. In 2010, Switzerland allocated 0.4 per cent of its gross national income to ODA. On 28 February 2011, the Parliament agreed to increase the amount substantially, to 0.5 per cent of gross national income, by 2015.

## **I. Education (Universal Declaration of Human Rights, art. 26)**

77. The 2009 survey conducted by OECD under its Programme for International Student Assessment (PISA) showed that 15-year-old Swiss students continue to achieve good or very good results in all the subjects tested. Gender and social background are still influential variables, but the influence of migration status on performance has fallen significantly in the last few years.

78. In May 2011, the Confederation and the cantons put forward, for the first time, common objectives for education in Switzerland with a view to making better use of the opportunities and potential of the Swiss education system. This declaration of common objectives is based on the findings of the authorities' long-term monitoring of education. One of the early outputs of that monitoring process was the publication of the first report on education in Switzerland, in February 2010. The report addresses equal opportunity, effectiveness and efficiency issues at each level of the education system.

## **IV. Concluding remarks**

79. Switzerland recognizes the intrinsic importance of human rights and that the State is responsible for their promotion and protection. In the view of the Federal Council, the protection of human rights in Switzerland can be rated as good. The competent authorities are aware of the challenges that still remain and strive constantly to improve the human rights situation in the country, basing their action on the law and the implementation of the law, as well as on the reports and recommendations they receive. The various measures taken in the last few years in each of the areas covered by the report underscore the validity of the sectoral approach adopted in the protection of human rights. The universal periodic review, in this way, makes it possible to take stock of both the progress made in relation to the actions agreed to in the first cycle and the remaining challenges.

80. Switzerland is making a sustained effort to enhance the protection of human rights. There are challenges in a number of areas that still need to be overcome, however, including in regard to the country's internal implementation of its international recommendations. The preparation of the second report under the universal periodic review has inspired new reflection on the subject. The disparities between the practices of the different federal departments and the ways in which the cantons and communes undertake these processes, for example, represent an opportunity that should be seized. The cantons implement measures in diverse ways so that they are adapted to the local context and supported by the grass roots. This encourages reciprocal learning. Several meetings have been held with the cantons and communes (2011–2012) to address the opportunities and challenges that the federal bodies face in the implementation and follow-up of the country's international obligations. The universal periodic review helps facilitate the dialogue among all the parties.

81. To conclude, Switzerland is firmly committed to the promotion and protection of human rights. It views its election by the General Assembly to serve a second term (2010–2013) on the Human Rights Council as recognition of that commitment. Switzerland considers that, as a Member State and host State, it is in a position to contribute in an inclusive and open manner to the strengthening of the Council and undertakes to react swiftly and effectively to protect victims of human rights violations around the world.

## V. Consultation with civil society

82. The Swiss NGO Coalition for the UPR welcomed the exchange of views organized by the Human Security Division of the Federal Department of Foreign Affairs on 11 May 2012. The discussions at the event were open and productive and conducted in an atmosphere conducive to dialogue. In general, the Coalition of NGOs found it regrettable that the approach adopted in this report was to justify what has been done rather than looking at the unresolved issues regarding the recommendations that Switzerland accepted or rejected in 2008. The positions of the NGOs at the three workshops held on 11 May can be summarized as follows.

83. The workshop on discrimination recognized that the report outlined important aspects of discrimination and of the fight against discrimination, but still adopted a largely defensive attitude. Emphasis was placed mainly on the legal provisions on discrimination rather than on how victims of discrimination experienced it in their daily lives. The issue of multiple discrimination was difficult to examine in practice and was consequently hardly addressed. The report recognized that the efforts and actions of the Federal Council and the cantons to integrate foreigners had to be linked to an active commitment to combat discrimination. To effectively improve protection against discrimination, full and detailed data were essential. A proper assessment of the situation, for example, needed documentation of individual everyday experiences of discrimination in all sectors of society so that the effectiveness of the relevant legal instruments could be evaluated. This point was made by several participants.

84. The workshop on migration issues stressed that more work was still needed at two levels. First, at the level of the law itself, since, contrary to the conclusions of the report, the compatibility of Swiss legislation with international human rights law, especially on asylum, was worth looking into (cf. recommendation 57.2). Second, at the level of the implementation of the law, given that the implementation of federal laws was the responsibility of the cantons, and their practices sometimes differed. The report should highlight the real impacts of the measures taken on the persons concerned and not just list the legislation currently in force. The civil society representatives were critical of the new requirements established for the integration of migrants which restricted the fundamental right to family life. The practice of withdrawing residency permits, even from victims of domestic violence, if a marriage was dissolved, and the difficulties that victims of exploitation and trafficking had in regularizing their migration status in Switzerland were also mentioned. The fact that it was impossible for persons without identity papers to regularize their situation and that asylum seekers whose applications had been rejected were not eligible for social assistance was also worrying. Migrants needed to be better informed of their rights. The political debate on asylum was another source of concern: under the pretext of combating abuses, the human rights of asylum seekers, refugees and persons provisionally granted entry were being unduly and disproportionately curtailed. The lack of legal protection in current asylum procedures needed to be addressed. According to the NGOs, the report failed to provide a convincing response on these points.

85. The workshop on institutional issues focused on the follow-up of the recommendations made by international monitoring bodies and in the context of the universal periodic review. Participants regretted the absence of a systematic, inclusive and permanent follow-up process. They stressed the need for a new mechanism to coordinate follow-up not only at the federal level but also between the Confederation and the cantons and between the Government and civil society. The NGOs also criticized the fact that the ratification of treaties was an excessively slow process in Switzerland. The justiciability of economic, social and cultural rights was still a key demand of civil society, despite the political stalemate on this issue in Switzerland. It was commented that the Swiss position

was an increasingly isolated one in the international community. With regard to the national human rights institution, the participants insisted that Switzerland should make the Swiss Resource Centre for Human Rights an independent institution in accordance with the Paris Principles. It was also noted that Switzerland should increase its efforts to foster a culture of human rights in the country, particularly through training activities.

86. To conclude, the NGOs called for Switzerland's commitments to be monitored on a regular basis between two reports and to be implemented through close collaboration at all the levels of the State. Full use should be made of the major contribution of the communes, towns and cantons in order to mount a targeted response to the challenges facing the country today.

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