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Report of the Working Group on the Universal Periodic Review*

Switzerland

Addendum

**Views on conclusions and/or recommendations, voluntary commitments
and replies presented by the State under review**

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

1. Switzerland is a strong supporter of the UPR process and is pleased to undertake its second UPR. The UPR is an important factor of transparency, both among states and vis-à-vis citizens and an important instrument to foster a permanent national debate on human rights. Switzerland sees its semi-direct democracy and its federalist system as effective and efficient vehicles to respect, protect and promote human rights as well as to foster human rights culture in the country.
2. In October 2012, the UN member states made 140 recommendations of which Switzerland accepted 50 and rejected 4 immediately. With this document Switzerland presents its position regarding the remaining 86 recommendations of which it now accepts 49 and rejects 37. In conformity with its practice concerning other international obligations, Switzerland accepted only the recommendations which Switzerland is able to implement and recommendations that have already been implemented.
3. True to the inclusive and participative process it adopted in preparing its national report, Switzerland undertook wide consultations with all the concerned parties. The response presented below rests upon the opinion of the cantonal governments, of the Conference of cantonal governments and of the different departments (ministries) of the federal government.
4. The UPR recommendations are aimed at Switzerland as a State party, nonetheless responsibility for implementing them and fulfilling the country's international obligations lies with the competent state bodies at all levels. According to their respective constitutional powers, federal, cantonal and municipal authorities are responsible to implement these recommendations.

List of recommendations examined by Switzerland along with the position taken

<i>Recommendations</i>	<i>Swiss Positions</i>	<i>Explanatory Notes</i>
123.1.	Rejected	Switzerland is currently preparing the ratification of the Convention on the Rights of Persons with Disabilities. Ratification of the Optional Protocol is however not envisaged for the time being.
123.2.	Rejected	Ratification of the Optional Protocol is currently being discussed in Switzerland. For this purpose, the Swiss Centre of Expertise in Human Rights (SCHR) has been mandated to prepare a study on the differences between the jurisprudence of the Human Rights Committee and that of the European Court of Human Rights. The discussions will be pursued on the basis of the results of this study. No political decision has been made at this point in time.
123.3.	Rejected	The Federal Council, as well as the Federal Supreme Court considers the Covenant on Economic, Social and Cultural Rights, with some exceptions, to be programmatic in character. The recommendation to ratify the Option Protocol to the Covenant can therefore not be accepted for the time being.
123.4.	Accepted	With the adoption of the recommendation, Switzerland agrees to examine the possibility of ratifying this Convention.
123.5.	Rejected	Ratification of the Convention on the reduction of statelessness is

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		not foreseen at the moment. Nevertheless, Switzerland will continue to fight resolutely and effectively, within the realms of possibility, to reduce the phenomenon of statelessness and defend the legal rights of stateless persons. On the occasion of the review of the Swiss Citizenship Act, Switzerland intends to accede to the European Convention on Nationality of 1997 and to the Convention of 2006 of the Council of Europe Convention on the Avoidance of Statelessness in relation to State Succession.
123.6.	Accepted	
123.7.	Rejected	See 123.8./9./10.
123.8.	Rejected	Family reunification for all foreign citizens will continue not to be guaranteed also after the amendments to the legislation in question. While family reunification for provisionally accepted persons is subject to a waiting period of three years, it is not foreseen for asylum seekers. For this reason, the reservation to Art. 10 CRC cannot be withdrawn at this point in time.
123.9.	Rejected	Swiss law guarantees the separation of minors and adults in preventive detention. With regard to the execution of sentences, this guarantee will become effective after the period of ten years (2007–2017). This period has been provided to enable the establishment of the necessary institutions by the cantons.
123.10.	Rejected	Due to the chosen model of the Swiss juvenile criminal procedure the separation between the investigating and judicial authorities is not guaranteed in every case. However, Switzerland is bound by the jurisprudence of the European Court of Human Rights.
123.11.	Rejected	The reservations to Art. 15 para. 2 and Art. 16 para. 1(h) CEDAW cannot be withdrawn. Although the current law conforms to these provisions, the final provisions of the Swiss Civil Code provide that marriage contracts concluded under the old law remain valid.
123.12.	Accepted	The emphasis of this recommendation being placed on the reservation concerning Art. 16 para. 1(g) CEDAW, Switzerland accepts the recommendation. However, it is not able to withdraw the reservations to Art. 15 para. 2 and Art. 16 para. 1(h) CEDAW (cf. 123.11).
123.13.	Rejected	Art. 261 ^{bis} of the Swiss Penal Code already suppresses acts of racial discrimination, in particular the incitement to racial hatred. The scope of the reservation primarily concerns the simple participation of an individual in an organisation with racist intentions. However, associations and legal entities can be dissolved by the Court due to its pursuit of immoral or unlawful objects e.g. in violation of the prohibition of discrimination. This reservation remains justified with regard to freedom of expression and of association.
123.14.	Rejected	See 123.13.

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123.15.	Rejected	All acts of torture are incriminated in Swiss penal law, even though there is not a specific provision on torture.
123.16.	Rejected	See 123.15.
123.17.	Accepted	By accepting the recommendations 123.17 to 123.22, Switzerland intends to confirm its voluntary commitment made at its first review in 2008, namely to consider the possibility of establishing a national human rights institution and to monitor progress made since the launching of a pilot project, the SCHR, of limited duration (2011–2015). Switzerland insists on the fact that this acceptance does not prejudice in any way the results of the evaluation of the pilot project, due in 2014 and to be carried out by an independent evaluator, nor the decision that the Federal Council is going to take after the evaluation. With the creation of the SCHR, Switzerland has chosen the form of a specialised institute and not the form of an ombudsperson for the pilot project of its human rights institution.
123.18.	Accepted	
123.19.	Accepted	
123.20.	Accepted	
123.21.	Accepted	
123.22.	Accepted	
123.23.	Rejected	
123.24.	Rejected	The ban on discrimination is enshrined in the constitution so that legal recourse is already available to those affected. In addition, all cantons operate, or are in the process of establishing, contact points to which affected persons in need can turn.
123.25.	Rejected	An extension of the mandate of the Federal Commission against Racism would contradict the mandate of an extraparliamentary commission and the separation of powers (see Art. 57 Government and Administration Organisation Act).
123.26.	Rejected	See 123.25.
123.27.	Rejected	Switzerland will reinforce its efforts to combat racism, but an additional anti-discrimination law is not foreseen. Switzerland punishes discrimination under the Federal Constitution, the Penal Code and the Civil Code. Switzerland prefers to proceed in a targeted manner, sector by sector, for instance in the Gender Equality Act, in the Disability Discrimination Act or the anti-racism criminal provision. Switzerland undertakes numerous measures to counter discrimination. In 2012, the SCHR was mandated to prepare a study on access to justice in cases of discrimination. This study is currently in preparation. Furthermore, following the recommendation of the Federal Council, Parliament invited the latter, in December 2012, to submit a report to it on the current law and preventive measures against discrimination.
123.28.	Rejected	See 123.27.

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123.29.	Rejected	See 123.27.
123.30.	Accepted	Switzerland will continue to combat racial discrimination with the necessary measures. Reforms of the Penal Code in this regard are not foreseen.
123.31.	Accepted	
123.32.	Accepted	Planning and implementing measures against racial discrimination and racism have to be carried out in close cooperation between the Confederation, cantons, cities, municipalities and civil society actors. Based on a joint decision of the Confederation and the cantons, this coordinated procedure against discrimination at federal, cantonal and municipal levels in the framework of the Cantonal Integration Plans (CIP) constitutes a national action plan. In this CIP, the cantons set out, among other things, how they are expanding their consultation service and what measures they are taking to counter structural discrimination. In this context, the Federal office for the combat against racism has been mandated by the Federal Council to monitor, promote and assess the activities in the area of combating discrimination.
123.33.	Accepted	See 123.32.
123.34.	Accepted	See 123.32.
123.35.	Rejected	Switzerland will continue to strengthen protection of the rights of all citizens with measures that effectively protect different social groups, particularly the most vulnerable. Therefore Switzerland aligns itself with the first part of the recommendation. However, Switzerland sees no need to adopt an additional anti-discrimination law and therefore rejects the recommendation (see 123.27.).
123.36.	Rejected	Switzerland will continue to combat racist, islamophobic and xenophobic attitudes. Switzerland sees no need to adopt an additional anti-discrimination law (see also 123.27.).
123.37.	Accepted	Art. 20 para. 2, has already been entirely implemented via Art. 261 ^{bis} of the Swiss Penal Code.
123.38.	Accepted	
123.39.	Rejected	See 123.27.
123.40.	Accepted	
123.41.	Rejected	Due to the experience from the tripartite dialogue between representatives of the Confederation, cantons and municipalities with Muslim discussion partners, broad public education and awareness campaigns to overcoming the negative preconceptions against immigrants had turned out to be less effective than talks conducted at the cantonal and municipal levels to finding pragmatic and well-adapted solutions. Therefore it is more worthwhile to strengthen the information and awareness-raising

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		elements within the framework of the CIP.
123.42.	Accepted	
123.43.	Accepted	
123.44.	Accepted	
123.45.	Rejected	Under Swiss legislation, incidents of excessive use of force, cruelty and other forms of abuse of authority by the police will be investigated and judged by independent judicial authorities. The separation of powers is guaranteed. The creation of an independent contact point in every canton is therefore not necessary.
123.46.	Accepted	
123.47.	Accepted	The National Commission for the Prevention of Torture has been mandated to monitor deportation flights.
123.48.	Accepted	
123.49.	Rejected	Switzerland complies with its international obligations, as well as the guarantee of freedom of expression and the ban on racial, ethnic and religious discrimination.
123.50.	Accepted	See 123.32.
123.51.	Accepted	See 123.50.
123.52.	Accepted	Switzerland will continue to encourage and facilitate dialogue with different religions and ethnic groups. The outcome of experiences made in this area in the past years showed that talks conducted locally are best suited for finding pragmatic and well-adapted solutions. The cantonal governments will continue and strengthen the existing information and awareness-raising measures as well as the many existing activities between cultural and religious communities and local authorities within the framework of the Cantonal Integration Programmes.
123.53.	Accepted	Art. 261 ^{bis} of the Swiss Penal Code already suppresses acts of racial discrimination, in particular the incitement to racial hatred.
123.54.	Rejected	The responsible authorities do their best to provide suitable accommodation for all asylum seekers. However, in view of the large number of asylum seekers the decisions of authorities where to situate accommodations are subject to certain constraints.
123.55.	Accepted	Active measures to decrease the level of unemployment of migrants, particularly among women and young people have been taken for example within the framework of the CIP, the strategy against poverty and new focus by the public employment service.
123.56.	Accepted	

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123.57.	Rejected	The teaching of native languages and cultures is practised in Switzerland, extending to more than 40 languages. In most cases the various language communities organise the courses themselves, and in some cases the home country provides funding and/or staff. Organisational support is made available by local school communities. The level of cooperation between Swiss local authorities and the language groups in question is high. Further measures are not foreseen for the time being.
123.58.	Accepted	Art. 261 ^{bis} of the Swiss Penal Code already suppresses acts of racial discrimination, in particular the incitement to racial hatred.
123.59.	Rejected	The fact that Swiss citizens have the possibility to suggest changes to the constitution by the means of a popular initiative is a fundamental element of Swiss democracy. Legislative measures to improve the compatibility of popular initiatives with international law are currently under discussion. The decision of the parliament in this matter cannot be anticipated at this point in time.
123.60.	Rejected	See 123.59.
123.61.	Accepted	Switzerland has a standing invitation for all Special Rapporteurs.
123.62.	Accepted	
123.63.	Accepted	
123.64.	Accepted	Swiss law respects the freedom of expression, guaranteed by Art. 19 of the Covenant. In particular, Art. 261 ^{bis} of the Swiss Penal Code, which outlaws racial discrimination, conforms with the conditions enabling limitations on the freedom of expression and to the recommendation n 34 of the Human Rights Committee which clarifies these conditions.
123.65.	Accepted	
123.66.	Accepted	
123.67.	Accepted	
123.68.	Accepted	
123.69.	Accepted	
123.70.	Accepted	
123.71.	Accepted	An amendment of Art. 50 para. 2 of the Foreign Nationals Act is currently in progress, which takes into account the jurisprudence of the Federal Supreme Court. According to this project, a foreign national whose residence permit was linked to his or her family status has a right to a prolongation of the permit after the dissolution of the family if he or she was victim of domestic violence. Under the current legislation, the prolongation is only granted if, as an additional condition, the social reintegration in the country of origin is seriously compromised. Other amendments

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		are currently not envisaged.
123.72.	Accepted	Switzerland has taken and will take in the future effective measures to increase the participation of women in all fields.
123.73.	Accepted	
123.74.	Accepted	Most cantons already conform to this recommendation, albeit with varying organisational forms. A recent ruling of the Federal Supreme Court obligates all of the cantons to take appropriate measures.
123.75.	Rejected	A new article in the constitution which would have called for new measures to reconcile work and family life was rejected in a popular vote on 03.03.2013. Nevertheless Switzerland will continue with existing measures to reduce gender inequality in the labour market.
123.76.	Rejected	Switzerland sees no need to adopt an additional anti-discrimination law (see also 123.27.). Concerning the discrimination on the ground of sexual orientation, the Federal Act on Gender Equality prohibits discrimination in the professional sphere on the basis of sexual identity. The same law prohibits sexual harassment between persons of the same sex at the place of work. Furthermore, the provisions of Swiss labour laws with regard to the protection of the personality and unfair dismissal apply equally in cases of discrimination based on sexual orientation. Protection also exists in the case of a rental contract. A contract cannot be lawfully rescinded on the basis of the sexual orientation or gender identity of one of the parties. Moreover the family domicile is protected both for married couples and for registered partners.
123.77.	Rejected	See 123.76.
123.78.	Accepted	
123.79.	Rejected	Under current legislation administrative detention of minors is only foreseen for very exceptional cases, always respecting the best interests of the child. The establishment of a specific infrastructure is therefore not necessary.
123.80.	Rejected	See 123.9.
123.81.	Rejected	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 2008, Parliament decided not to follow up a proposal to enact specific legislation to this effect. This matter has been re-examined in the Report of the Federal Council last year, which did not lead to a different conclusion.
123.82.	Accepted	
123.83.	Accepted	

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123.84.	Accepted	Switzerland confirms its political commitments made in its last UPR and inter alia in the Monterrey Consensus (paragraph 42), at the 2005 World Summit (paragraph 23 (b)), in the Doha Declaration (paragraph 43) and the Rio+20 outcome document “The Future We Want” (paragraph 23 (b)). In February 2011, Parliament decided to increase official development assistance to 0.5% of Gross National Income by 2015. This was reconfirmed in September 2012 by the Parliament’s Decision on International Cooperation 2013–2016 and has to be seen as a concrete step towards this international policy target. It has not been decided yet when Switzerland renews its ODA target within its budgetary and planning process.
123.85.	Rejected	Switzerland has repeatedly considered the possibility of conducting such assessments. However, it came to the conclusion that, inter alia due to methodological difficulties, such assessments do not allow conclusive responses to be made to the questions raised. But Switzerland will continue its efforts to ensure that its external economic policy is coherent with its development cooperation and human rights policy and to promote human rights in its partner countries.
123.86.	Accepted	
