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in accordance with articles 16 and 17 of the Covenant

List of issues in relation to the fourth periodic report of Switzerland

Addendum

Replies of Switzerland to the list of issues^{*}, ^{**}

[Date received: 29 May 2019]

* The present document is being issued without formal editing.

** The annexes to the present document are available on the Committee's website.



I. General information

Reply to question 1 of the list of issues

1. Economic, social and cultural rights are taken into account in the interpretation of constitutional and legislative provisions. Without recognizing any justiciable rights, the Federal Supreme Court has raised the possibility that some of these rights could be invoked before the courts;¹ thus, the Covenant is regularly invoked before the Swiss courts.²
2. Legal professionals are made aware of the Covenant, which has been published in the Classified Compilation of Federal Legislation. Law faculties at universities offer courses in international human rights protection, in which the Covenant is covered. The Federal Council publishes reports and concluding observations on the Internet.
3. More information can be found in the fourth periodic report of Switzerland on the implementation of the Covenant, of 14 February 2018 (paras. 13 ff.).

Reply to question 2 of the list of issues

4. A pilot project has been carried out since 2011 with the Swiss Centre of Expertise in Human Rights. In 2016, the Federal Council examined various options for its successor institution and decided in favour of continuing the solution implemented under the pilot project (“status quo +” option). This option was referred for consultation in 2017, whereby it was recognized that the country needed to establish a national human rights institution. The model will be adapted to address requests raised during the consultation. The Paris Principles serve as the basis for the new model.

Reply to question 3 of the list of issues

5. Under article 54 (2) of the Federal Constitution of the Swiss Confederation, the Confederation must promote respect for human rights. Article 35 of the Constitution provides that fundamental rights must be upheld throughout the legal system, which includes private law, criminal law and economic law. Federal bodies must ensure that fundamental rights, to the extent applicable, are also effective between private individuals and, consequently, in the private sector. Article 35 (3) of the Constitution therefore applies to internationally active companies with a link to the Swiss legal system. Swiss law does not provide for an obligation of due diligence with respect to human rights. The Federal Council is committed to a voluntary due diligence procedure.³
6. The Federal Council acknowledges its responsibility to ensure access to complaints mechanisms when companies domiciled in Switzerland are involved in human rights abuses abroad. A report on the matter, adopted by the Federal Council in September 2018, notes that Swiss mechanisms are sufficiently developed by international standards.⁴ The Federal Council decided to increase the visibility of judicial and non-judicial mechanisms for access to redress (including the National Contact Point for the OECD Guidelines for Multinational Enterprises, mediation offices and public funding instruments), reduce the costs associated with access to courts and create new opportunities for class action litigation.

¹ See dispatch on the approval of the Optional Protocol of 19 December 2011 to the Convention on the Rights of the Child of 20 November 1989 on a communications procedure of 11 December 2015, FF 2016 179 and references.

² See judgments cited in annex 2 to the fourth periodic report of Switzerland on the implementation of the Covenant, of 14 February 2018, as well as judgments 8C_80/2018 of 9 October 2018, 2C_206/2016 of 7 December 2017, 4A_72/2018 of 6 August 2018 and 2C_1092/2017 of 20 August 2018, in which the Federal Supreme Court recalled that the purpose of article 13 (2) (c) of the Covenant is to make higher education accessible to all on the basis of capability, regardless of financial resources, and that the choice of “appropriate means” is left to the legislature.

³ <https://www.news.admin.ch/newsd/message/attachments/46598.pdf>, p. 7.

⁴ Cf. <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-72206.html>. The report is based on the “Access to remedy” study: https://www.isdc.ch/media/1637/access-to-remedy_english.pdf.

7. The Federal Council intends to submit the initiative on responsible multinationals to the people, without a counterproposal, and will recommend that the proposal be rejected. It is committed to a coordinated approach at the international level and to its action plans on business and human rights, on corporate social responsibility and on the green economy.⁵

8. On 20 April 2018, the National Council decided to oppose an indirect counterproposal to the initiative as part of the revision of legislation on limited liability companies. The Council of States ultimately rejected the initiative and the indirect counterproposal. The deadline for processing the initiative has been extended to 10 April 2020.⁶ The indirect counterproposal is to be referred back to the National Council, which will examine whether or not to discuss it during its summer 2019 session.⁷

Reply to question 4 of the list of issues

9. Although the proportion of gross national income attributed to official development assistance between 2014 and 2016 met the target of 0.5 per cent set by the Swiss parliament in 2011, the rate could not be maintained in 2017 (0.46 per cent). The Federal Council uses the official development assistance rate of 0.5 per cent as a guideline; it confirmed this in a position paper on a parliamentary motion.⁸ Since the official development assistance ratio measures the country's contribution to international burden-sharing to meet global challenges, the Federal Council intends to maintain it at a stable level, in accordance with current financial planning.

Reply to question 5 of the list of issues

10. Switzerland has set an emission reduction target of 50 per cent by 2030 compared to 1990, as part of the Paris Agreement. This target will be partly achieved through international credits (offsetting against other countries). National measures will be defined in the legislation currently being debated in the parliament. With regard to the Green Climate Fund, Switzerland will spend \$450–600 million per year on public and private resources for measures to combat climate change in developing countries. It contributed \$100 million to the Green Climate Fund for the period 2015–2017.

II. Issues relating to the general provisions of the Covenant (arts. 1–5)

Obligation of the State party to take steps to the maximum of its available resources (art. 2 (1))

Reply to question 6 (a) of the list of issues

11. Based on the absolute poverty line, which is set according to social assistance standards, the poverty rate in Switzerland was between 7.0 and 8.4 per cent for 2012 and between 6.9 and 8.1 per cent for 2016 (95 per cent confidence intervals).⁹ The ratio of the total income of the richest 10 per cent of the population to the total income of the poorest 40 per cent decreased slightly between 2011 and 2015, from 3.459 to 3.450. The proportion of people living below the poverty line in Switzerland rose to 7.5 per cent in 2016.¹⁰ Over a five-year period, this rate remained relatively stable (7.4 per cent in 2011).¹¹

⁵ <https://www.admin.ch/gov/fr/accueil/documentation/communiqués.msg-id-68134.html>.

⁶ <https://www.parlament.ch/press-releases/Pages/mm-rk-s-2019-02-20.aspx?lang=1036>.

⁷ <https://www.parlament.ch/press-releases/Pages/mm-rk-n-2019-04-05.aspx>.

⁸ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20183755>.

⁹ <https://www.bfs.admin.ch/bfs/fr/home/statistiques/situation-economique-sociale-population/bien-etre-pauvrete/pauvrete-et-privations-materielles.html>.

¹⁰ <https://www.bfs.admin.ch/bfs/fr/home/statistiques/situation-economique-sociale-population/bien-etre-pauvrete/pauvrete-et-privations-materielles/pauvrete.html>.

¹¹ Following a change in the methodology of the Statistics on Income and Living Conditions survey, the figures from 2014 onwards are no longer comparable with those of previous years. The slight increase

Reply to questions 6 (b) and (d) of the list of issues

12. See annexes 1–12.

Reply to question 6 (c) of the list of issues*Trends in rates of tax on company profits*

13. Between 2004 and 2016, the tax burden on legal entities decreased (with some regional variations).¹² For example, over that period, the average ordinary tax rate for companies with capital of 2 million Swiss francs and a return on equity of 8 per cent fell in 24 cantons (by between 0.06 and 12.4 percentage points).

Trends in personal income tax rates

14. Between 2004 and 2016, the tax burden on natural persons decreased (with some regional variations):

- https://www.estv.admin.ch/dam/estv/fr/dokumente/allgemein/Dokumentation/Zahlen_fakten/berichte/2018/Steuerbelastung-JP_2004-2016.xlsx.download.xlsx/Steuerbelastung-JP_2004-2016.xlsx (in German only);
- <https://www.estv.admin.ch/estv/fr/home/allgemein/steuerstatistiken/fachinformation/en/steuerbelastungen/steuerbelastung/karten-entwicklung-2011-2015.html>;
- <https://www.estv.admin.ch/estv/fr/home/allgemein/steuerstatistiken/fachinformation/en/steuerbelastungen/steuerbelastung/karten-unterschiede-2011-2015.html>.

Trends in value added tax rates

15. Value added tax rates have recently fallen. From 1 January 2018, the standard rate was cut from 8.0 to 7.7 per cent and the special rate for the accommodation sector from 3.8 to 3.7 per cent, while the reduced rate remained unchanged (2.5 per cent).

Trends in the percentage of total revenue generated by the personal income tax levied on the richest decile of the population

16. Switzerland does not have the data required to calculate all income taxes. Based on direct federal tax only, the percentage of revenue generated from the 10 per cent of taxpayers with the highest taxable income decreased slightly between 2011 and 2015, from 80.2 to 79.0 per cent (their contribution to the total amount of taxable income decreased from 36.8 to 36.2 per cent during the same period).¹³

Reply to question 7 of the list of issues

17. Since 2009, Switzerland has not distinguished between tax evasion and fraud in dealing with international (administrative and judicial) mutual assistance. Switzerland has acceded to multilateral conventions in the field of administrative assistance in tax matters and has instruments to increase tax transparency and combat tax evasion and fraud at the international level. In addition to the exchange of information on request, Switzerland has introduced the automatic exchange of information on financial accounts and the spontaneous exchange of information. By expanding its network of partner States for the automatic exchange of information on financial accounts, Switzerland has enabled data exchange with 89 States and territories, and there are plans to extend this network in 2020. Thus, bank and tax secrecy now exists only at the domestic level and is not an obstacle to the effective exchange of information with other States. Furthermore, Switzerland has

in the poverty rate compared to 2014 (6.7 per cent) and 2015 (7.0 per cent) is within the range of statistical fluctuation.

¹² https://www.estv.admin.ch/dam/estv/fr/dokumente/allgemein/Dokumentation/Zahlen_fakten/berichte/2018/Steuerbelastung-JP_2004-2016.xlsx.download.xlsx/Steuerbelastung-JP_2004-2016.xlsx (in German only).

¹³ https://www.estv.admin.ch/estv/de/home/allgemein/steuerstatistiken/fachinformationen/steuerstatistiken/direkte-bundessteuer.html#accordion_19854255001549528551630.

implemented, or is in the process of implementing, international standards and recommendations to combat base erosion and profit shifting, money-laundering, financing of terrorism and corruption.

Non-discrimination (art. 2 (2))

Reply to question 8 of the list of issues

18. The prohibition of racial discrimination is enshrined in the Constitution. Laws such as the Federal Act on Gender Equality and the Federal Act on the Elimination of Discrimination against People with Disabilities directly address specific types of discrimination. Further provisions are laid down in criminal law (art. 261 bis of the Swiss Criminal Code) and private law (art. 27 of the Swiss Civil Code). The Federal Council decided not to create a general anti-discrimination law because problems relating to discrimination are varied and a specific law could not cover them all. A general law could adversely affect monitoring and the provision of advice and support in these areas. However, there are gaps in judicial procedures. The Federal Council intends to consider the reduction of legal costs in cases of discrimination. The Confederation and the cantons have an obligation to provide information on the protection and advice available to victims.

19. The Federal Act on Gender Equality provides for the prohibition of gender-based discrimination in the workplace. Analysis has shown that the Act is effective, particularly in the reduction of the burden of proof (art. 6) and the right of organizations to bring cases (art. 7).

Reply to question 9 of the list of issues

20. Significant shortcomings have been identified in the prevention of discrimination against homosexual, transgender and intersex persons. In December 2018, the parliament adopted an article to extend article 261 bis of the Criminal Code on racial discrimination to discrimination based on sexual orientation. In addition, the parliament will examine the possibility of opening marriage to all couples (including same-sex couples). The Federal Council is considering a law providing for the establishment of a simplified procedure for registering sex reassignments with the civil registry.

21. On 1 January 2018, an amendment of the law governing adoptions came into force allowing registered same-sex partners and opposite-sex or same-sex cohabitants to adopt the child of the person with whom they are in a relationship. This means that the child can be fully integrated into the family and the couple can make arrangements in the event of the death of the biological parent. The joint adoption of children unrelated to either member of a couple is still only possible for married couples.¹⁴

22. On 6 July 2018, the National Council paved the way for the implementation of parliamentary initiative No. 13.468 on civil marriage for all, which should open marriage to same-sex couples. The administration drafted a bill on opening marriage to same-sex couples, governing essential elements of civil law (including the right of citizenship and access to adoption).¹⁵ The bill was discussed on 14 February 2019 by the Legal Affairs Committee of the National Council and submitted for public consultation until 21 June 2019.¹⁶ The parliament has yet to issue its opinion.

23. On 23 May 2018, the Federal Council submitted for consultation a preliminary draft amendment to the Civil Code that would allow transgender persons or persons with variations in sexual development to quickly change information in the civil registry relating to their gender and first name. The submission of a declaration to the registry office will be sufficient. There will be no need to undergo a medical examination or meet any other conditions.¹⁷

¹⁴ <https://www.bj.admin.ch/bj/fr/home/gesellschaft/gesetzgebung/archiv/adoptionsrecht.html>.

¹⁵ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20130468>.

¹⁶ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20130468>.

¹⁷ <https://www.bj.admin.ch/bj/fr/home/gesellschaft/gesetzgebung/geschlechteranderung.html>.

24. In 2017, two parliamentary postulates were tabled mandating the Federal Council to produce a report on the potential consequences of adding a third gender to the civil registry records for persons who did not identify as either male or female, or removing any reference whatsoever to gender from such records,¹⁸ and to determine what changes would need to be made to legislation (the Constitution, laws and ordinances) and the computerized civil registry (Infostar) if a third gender were added to civil registry records, or if gender was no longer recorded, or if gender registration at birth was temporarily suspended for intersex persons.¹⁹ Both postulates were approved by the National Council on 17 September 2018. A third postulate (15 June 2018) instructs the Federal Council to study the amendments to be made to Swiss legislation to eliminate provisions referring solely to gender and to submit a report indicating where new provisions might be required to continue to take into account relevant differences (for example, for pregnancy), and what form such provisions might take.²⁰ The National Council has yet to discuss this postulate.

Reply to question 10 of the list of issues

25. The Roma community has its own representative on the Federal Commission against Racism, in addition to the Yenish representative. The Yenish, Sinti and Roma communities were also involved in the drafting of the Yenish, Manouche and Roma Plan of Action, the aim of which is to improve their living conditions and to combat discrimination. The Service for Combating Racism will in the near future issue a legal guide with information for persons with itinerant lifestyles.

26. The Sinti and Yenish umbrella association, supported by Switzerland, offers advice and the Swiss federal foundation “Assurer l’avenir des gens du voyage suisses” (Ensuring the Future of Swiss Travellers) is considering the establishment of a legal advisory service for people with itinerant lifestyles. The nomadic traditions of the Yenish and Manouche communities are included in the inventory of intangible cultural heritage of Switzerland.

27. Such groups have the same access to health services as other citizens. Education is primarily the responsibility of the cantons, and it is the local municipalities that oversee the schooling of children from itinerant families. For example, a pilot project has been launched in a school attended by Yenish and Sinti children in Bern (with support provided by specialist teachers and electronic software for period when they travel).

28. With regard to appropriate places of residence and passage (see also question 34), federal land has been considered for use as reception areas, and the cantons receive financial support to set up such areas. The development of a sufficient number of reception areas equipped to meet the needs of itinerant families is at the heart of the Yenish, Manouche and Roma Plan of Action. The cantons take into account the needs of minorities when revising their master plans. A national concept for transit areas will be drawn up.

29. The Service for Combating Racism has supported a number of projects to raise awareness of the lifestyle and culture of Travellers (including exhibitions, round tables, activities for teachers and publications) and also supports mediation services.

Reply to question 11 of the list of issues

30. The Swiss integration agenda enables temporarily admitted persons and refugees to become an integral part of Swiss society and to find work. It sets binding targets to be achieved through an integration process common to all cantons. The process is based on incentives (for example, relating to language learning, preparation for post-compulsory education or integration in society and the world of work). Refugees and temporarily admitted persons are provided with advice throughout the process. A follow-up mechanism will be established to monitor the achievement of the agenda’s objectives.

¹⁸ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20174121>.

¹⁹ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20174185>.

²⁰ <https://www.parlament.ch/fr/ratsbetrieb/suche-curia-vista/geschaefft?AffairId=20183690>.

Equal rights of men and women (art. 3)

Reply to question 12 of the list of issues

31. For the federal administration, the Federal Council has set targets and indicators for the 2016–2019 legislative term.²¹ These are defined according to the proportion of women and men in the Swiss labour force. For gender distribution among middle and senior managers, only target values for the proportion of women have been set.²²

32. For the private sector, the Federal Council has sent a communication to the parliament to improve the representation of women in the management of large companies. It is proposed that at least 30 per cent of board members and 20 per cent of management should be women. Companies failing to meet these quotas will be required to explain the reasons and the remedial measures taken. The obligation to provide an explanation is expected to encourage women's access to leadership positions. Companies will be given time to recruit appropriate candidates (five years for boards of directors and 10 years for management). Initial discussions were held on 11 December 2018; however, the Council of States is due to rework some of the proposals.

33. In science, Switzerland promotes equity in higher education through PRIMA grants, a programme recently launched by the Swiss National Science Foundation. The grants are intended for female researchers with the potential to obtain a professorship. They cover the grantee's salary and project costs for five years.

Reply to question 13 of the list of issues

34. The Confederation has launched several measures to reconcile family and working life. Between 2010 and 2018, the labour force participation rate for women aged 25 to 54 increased from 82 to 86.1 per cent. In May 2018, the Federal Council sent a proposal to the parliament concerning tax relief for childcare expenses. The parliament has yet to vote on the proposal. See also the reply to question 20.

35. In the area of direct federal tax, there are plans to eliminate the marriage penalty. Under the proposed model, the tax authority will calculate a couple's tax according to joint taxation rules, and it will then make a calculation based on individual taxation; the couple will then pay the lower of the two amounts. This rates correction will eliminate any possibility of penalizing married couples. The proposal takes account of the initiative to address the shortage of qualified personnel, an initiative which aims to reduce employment disincentives in tax law. Employment incentives will increase as secondary incomes are less affected by progressive tax rates. This is expected to expand the labour supply of spouses earning secondary incomes. The Federal Council estimates the medium-term impact on employment to be in the order of 15,000 full-time jobs.

36. Improving the balance between work and family life is one of the aims of the initiative to address the shortage of qualified personnel. In May 2016, the Confederation, the cantons and the social partners launched the website www.personnelqualifie-suisse.ch, which details their joint efforts to improve the work-family balance. Creating a family-friendly working environment is important, and companies should offer flexible working conditions. The Federal Act on Gender Equality provides for financial assistance for programmes to reconcile work and family life.²³

²¹ <https://intranet.infopers.admin.ch/infopers/fr/home/confederation-en-tant-qu-employeur/strategie-concernant-le-personnel-20162019/valeurs-cibles-et-indicateurs-strategiques-pour-la-gestion-du-pe.html>.

²² Status: <https://www.epa.admin.ch/epa/fr/home/themes/politique-du-personnel/rapport-sur-la-gestion-du-personnel.html>.

²³ www.topbox.ch.

III. Issues relating to the specific provisions of the Covenant (arts. 6–15)

Right to work (art. 6)

Reply to question 14 of the list of issues

37. Youth unemployment in Switzerland is low by international standards and the measures put in place are sufficient.²⁴ Refugees and temporarily admitted persons have more difficulty finding a place in the labour market. Those who are qualified for placement in jobs are announced to public employment offices.

38. A particular effort is made to address unemployment among older workers. An annual conference is held on the subject and monitoring activities are conducted.²⁵ These persons receive additional unemployment benefits. Several measures proposed by the social partners in 2018 (bridging pensions, social benefits, specific allowances for starting a new occupation, etc.) are to be discussed.²⁶

Right to just and favourable conditions of work (art. 7)

Reply to question 15 of the list of issues

39. Cantonal tripartite commissions observe sectors without binding collective labour agreements and carry out labour market monitoring. Joint committees monitor compliance with the provisions of binding collective labour agreements, including those setting minimum wages. Where cantonal tripartite commissions identify abuse, they can conduct conciliation procedures to rectify any issues related to wages. They can also impose penalties, such as fines, or ask the authorities to introduce collective measures, such as standard employment contracts with mandatory minimum wages or the extension of collective labour agreements to entire sectors. There is no national minimum wage in Switzerland. Cantonal minimum wages have been established only in the cantons of Jura (2018) and Neuchâtel (2017).

Reply to question 16 of the list of issues

40. On 14 December 2018, the parliament amended the Federal Act on Gender Equality to oblige public and private sector employers to analyse equal pay beginning in 2020. While the Act does not provide for penalties for inequality, an evaluation will be carried out nine years after its entry into force. For information on the Logib software tool, see the fourth periodic report submitted by Switzerland.

41. The Charter for Equal Pay in the Public Sector has been signed by 16 cantons and 69 municipalities.²⁷ The public sector supports the implementation of equal pay, both as an employer – in public tenders – and as a subsidizing body. Equal pay verifications are also carried out in the context of public procurement.

42. With regard to vertical and horizontal segregation, the Federal Office for Gender Equality provides financial support for projects on gender equality in the workplace.

43. In Switzerland, women and men working part-time are also affected by underemployment.²⁸ In 2017, 20 per cent of women and 22.6 per cent of men working part-time wanted to increase their working hours. Thus, underemployment is higher among women not as a result of their gender, but because a higher proportion of women work part-

²⁴ 2018: 1.5 per cent for 15–19-year-olds and 2.8 per cent for 20–24-year-olds.

²⁵ https://www.seco.admin.ch/seco/fr/home/Arbeit/Arbeitslosenversicherung/arbeitslosigkeit/aeltere_arbeitnehmende.html.

²⁶ <http://www.50etplus.ch/telechargements>.

²⁷ Status as at 23 April 2019.

²⁸ The underemployment rate is the proportion of all employees (part-time and full-time workers) wishing to increase their workload.

time. Switzerland is implementing various measures to increase the workload of part-time women (see question 13).

Reply to question 17 of the list of issues

44. Migrant workers are subject to the provisions of Swiss labour law. The admission of workers from non-European Union countries is subject to the usual remuneration and working conditions for the location, job and sector. This also applies to migrant workers from the European Union; however, in accordance with the free movement of persons between Switzerland and the European Union, controls in relation to such workers are conducted through accompanying measures.

45. Domestic workers employed by private individuals are not covered by the Labour Act. The cantons have to adopt model employment contracts directly applicable to the employment relationship, unless the parties make contractual arrangements that derogate from them. Since 2010, at the federal level, there has been a model contract for domestic workers, which sets minimum wages.

46. Furthermore, information sheets for older persons and their families, for service companies and employment agencies and for female workers have been published and translated into over 10 languages.²⁹ The cantonal authorities may carry out checks on working conditions and wages. The number of checks performed is detailed in annex 15.

47. Police statistics on crime and adult criminal convictions provide figures on crimes reported and judgments handed down in respect of trafficking in human beings. However, they do not distinguish between different forms of exploitation (this issue will be addressed under the National Action Plan to Combat Trafficking in Persons 2017–2020).

Trade union rights (art. 8)

Reply to question 18 of the list of issues

48. We refer the Committee to the study cited in annex 2 to the fourth periodic report submitted by Switzerland (para. 141). The study, on protection in the event of lawful strikes, analyses in detail the compliance of Swiss law with international law.³⁰ The situation has remained unchanged since the submission of the fourth periodic report. The Federal Council proposes to increase the penalty for wrongful or unjustified dismissal, in particular for reasons related to trade union activities, from 6 to 12 months' salary. It has excluded the possibility of reinstatement. The right to strike is provided for in article 28 of the Constitution.

Right to social security (art. 9)

Reply to question 19 of the list of issues

49. For information on public social security schemes, see the fourth periodic report submitted by Switzerland.

50. Social benefits must enable the beneficiary to maintain his or her previous standard of living in an appropriate manner. This objective is considered to be achieved when support covers 60 per cent of the most recently earned income (capped). Other cash benefits (unemployment insurance, accident insurance, maternity allowance) in principle equate to 80 per cent of previous earnings. Family allowances are flat-rate, although a minimum is set by law.³¹ Switzerland meets the requirements of the International Labour Organization social security conventions that it has ratified, namely the Social Security (Minimum

²⁹ <https://www.seco.admin.ch/seco/fr/home/Arbeit/Arbeitsbedingungen/Arbeitnehmerschutz/24-stunden-betagtenbetreuung.html>.

³⁰ <https://www.bj.admin.ch/bj/fr/home/wirtschaft/gesetzgebung/whistleblowing.html>.

³¹ Complete table of social security benefits: <https://www.bsv.admin.ch/bsv/fr/home/assurances-sociales/int.html>.

Standards) Convention, 1952 (No. 102); the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128); the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168); and the Maternity Protection Convention, 2000 (No. 183).

51. Penalties are governed by article 21 of the Federal Act on General Aspects of Social Security Law. Benefits may be reduced or refused when insured parties worsen a risk, or cause that risk to materialize deliberately or by intentionally committing a crime. Benefits may also be reduced or refused when insured parties avoid or fail to participate in a course of treatment or to resume employment, within the limits of what may be expected of them. However, a written formal notice must be sent to them, providing them with information on the legal consequences of their actions and a warning period. The specific conditions for disability insurance are laid down in articles 7 ff. of the Federal Act on Invalidity Insurance.

52. The cantons are afforded considerable leeway in their approach to social assistance but are guided by the standards drawn up by the Swiss Association of Welfare Organizations, the application of which is recommended by the Conference of Cantonal Directors of Social Services. The Federal Council examined possible ways of harmonizing social assistance in 2015 and concluded that the current system should be maintained and the above standards strengthened.³²

53. The amount and scope of assistance benefits are defined on the basis of statistics from the Federal Statistics Office. The expenditure of the lowest-earning 10 per cent of households is used as a basis. Only essential goods and services are taken into account. Thus, persons in Switzerland have the means to live a life of dignity.³³ For adolescents and young adults, the main focus should be on appropriate training. The right to social assistance is guaranteed regardless of the cause of hardship, provided beneficiaries cannot improve their situation using their own resources or with the help of third parties.

54. Young persons who have not made any contributions to unemployment insurance because they are still in education receive unemployment benefits after a period of 120 days. The amount is calculated on a flat-rate basis according to level of education and age. Young persons who have contributed are entitled to unemployment benefits according to the usual rules.

Protection of the family and children (art. 10)

Reply to question 20 of the list of issues

55. Although family policy is the responsibility of the cantons, the Confederation provides funding for it. In the wake of the report Family Policy: Background and Scope for Action for the Confederation (2015), two new types of financial assistance were introduced in 2018. The Confederation has now begun supporting cantons and municipalities that increase their subsidies for out-of-home childcare to reduce the costs borne by parents; financial assistance is also being provided for projects aimed at better adapting out-of-home childcare services to parents' needs. In September 2018, the parliament decided to extend by four years a programme aimed at creating more capacity at childcare facilities. The programme was rolled out on 1 February 2003 and initially due to end on 31 January 2011. It was subsequently extended to 31 January 2019 and will now run until 31 January 2023. A budget of 130 million francs was earmarked to cover the extension period.

56. The cantonal directors of social services and education adopted a declaration on out-of-home care on 21 June 2018. It includes intercantonal political objectives. In the future, the directors aim to support the provision of out-of-home childcare that is accessible and meets requirements and to ensure the quality of the services provided.

³² <https://www.bsv.admin.ch/bsv/fr/home/politique-sociale/soziale-absicherung/amenagement-aide-sociale.html>.

³³ https://skos.ch/fileadmin/user_upload/skos_main/public/pdf/medien/medienkonferenzen/2019_medienkonferenz/190108_Report_final_Buero_BASS.pdf.

57. The problem of the cost of childcare apparently primarily affects persons with low incomes. For them, the cost can exceed their income, thus creating a disincentive to work.

Reply to question 21 of the list of issues

58. Under article 51 (1) of the Federal Asylum Act, spouses and minor children of refugees are recognized as refugees and granted asylum, provided there are no special circumstances to preclude this. Children born in Switzerland to refugee parents are recognized as refugees, provided there are no special circumstances that preclude this (Act, art. 51 (3)). Under article 51 (4) of the Act, if the persons entitled under paragraph 1 are separated during flight and are abroad, their entry must be authorized on request. To meet all the preconditions for the application of article 51 (1) of the Act, applicants must prove their identity, their family tie (marriage, partnership, filiation) with a refugee already recognized in Switzerland and the existence of a genuine relationship worthy of protection – in the most likely way possible, or at least credibly – based on substantial, reasoned, coherent and well-founded evidence (Act, art. 7, proof of refugee status). After a conclusive examination, even where objection and doubt are plausible, they must nevertheless objectively appear less significant than the elements that underpin the allegations as probable. In considering the reasonableness of the facts alleged by an asylum seeker, the authority must weigh any signs of implausibility against the overall impression and determine which of the elements relating to essential points and advocating for or against this reasonableness should prevail.³⁴

59. In the case of temporarily admitted refugees, under Article 85 (7) of the Federal Act on Foreign Nationals and Integration, the spouses and unmarried children under 18 years old of temporarily admitted persons and temporarily admitted refugees may be reunited with the temporarily admitted persons or refugees at the earliest three years after the order for temporary admission, provided: (a) they live with the temporarily admitted persons or refugees; (b) they have suitable housing; (c) the family is not dependent on social assistance; (d) they can communicate in the national language spoken at the place of residence; and (e) the family member they are joining is not claiming annual supplementary benefits under the Federal Supplementary Benefits Act or would not be entitled to receive such benefits as a result of the family reunification. The request for family reunification must be addressed to the cantonal authorities, who then forward it to the State Secretariat for Migration. Decisions on family reunification take into account the special situation of temporarily admitted refugees.

Reply to question 22 of the list of issues

60. The benefits provided for under the Federal Act on the Provision of Support to Victims of Crime include appropriate medical, psychological, social, material and legal assistance for victims or their families following a crime. Where necessary, counselling centres provide emergency accommodation for victims or their relatives (Act, arts. 14 and 15). In the event of violence, threats or harassment, under article 28 (b) of the Civil Code, victims of domestic violence may request the court to order the offending party to refrain from approaching them or entering a defined area around their dwelling; frequenting specified locations, notably particular streets, squares or districts; or making contact with them, especially by telephone, in writing or electronically, or harassing them in any other way. An applicant living in the same dwelling as the offending party may ask the court to order the latter to leave the dwelling for a specified period, extendable once. Under article 28 (c) of the Federal Act on Improving Protection for Victims of Violence of 14 December 2018 (Civil Code, new art. 28 (c), not yet in force), the court can order offending parties to wear non-removable electronic devices to make it possible to determine and track their location. For victims, there are no legal costs in proceedings for disputes relating to violence, threats or harassment within the meaning of article 28 (b) of the Civil Code, or for electronic surveillance within the meaning of article 28 (c). Similarly, electronic monitoring does not entail any costs for applicants.

³⁴ Federal Administrative Court decision 2010/57, recital 2.2 ff.

61. In collaboration with the cantons, an inventory of places where victims can find care will be published in the first half of 2019.³⁵

Reply to question 23 of the list of issues

62. The Federal Act of 30 September 2016 on Compulsory Social Measures and Placements prior to 1981 is implemented through a review of applications for solidarity contributions. The persons in question were able to submit applications until 31 March 2018. The Confederation received 9,018 applications. More than 3,500 have been reviewed and most have been paid. The Confederation should complete its review by the end of 2019. The persons in question have received support from cantonal contact points and have been given access to the archives in order to submit their applications for solidarity contributions and/or retrace their history; they receive support from the cantonal contact points. Victims can also submit applications for personal and professional development plans. Recommendations arising from the academic inquiry will be forwarded to the authorities concerned (Act, art. 15).

Reply to question 24 of the list of issues

63. The amendment relating to adoption secrecy, the communication of information on biological parents and their descendants and the possibility of arranging contact between biological parents and children entered into force on 1 January 2018. It also applies to adoptions carried out before the entry into force of the amendment and to proceedings pending at the time of its entry into force (Civil Code, art. 12 (c), Final Title). Adopted persons will be able to access information held by Swiss authorities by submitting an application to the competent cantonal service. Access to data held by foreign authorities and personal contacts will continue to be governed by the law of the country in question.

Right to an adequate standard of living (art. 11)

Reply to question 25 of the list of issues

64. The results of the National Programme to Prevent and Fight Poverty 2014–2018 were presented in April 2018. With a budget of 9 million Swiss francs, the programme helped to strengthen the prevention of poverty, to identify good practices and to bring together stakeholders. It produced 16 studies and eight practical tools and supported 20 pilot projects and seven research projects. In 2018, the Confederation, the cantons, cities and civil society gave a positive assessment of the programme and affirmed their willingness to continue their efforts. The National Platform against Poverty 2019–2024 will support the implementation of the recommendations formulated within the framework of the programme. The budget of the platform is 250,000 Swiss francs per year.³⁶

65. For persons with disabilities, invalidity insurance benefits compensate for loss of earnings resulting from a reduction or cessation of work. Where such benefits do not cover basic needs, supplementary benefits bridge the gap.

Reply to question 26 of the list of issues

66. In 2016, 1.4 per cent of the population lived in households without the financial means for a full meal every other day.³⁷ The individual social assistance budget recommended by the Swiss Association of Social Welfare Organizations covers basic needs, including food and drink.

67. The fight against obesity is part of the National Strategy for the Prevention of Noncommunicable Diseases (2017–2024). Promotion Santé Suisse (Health Promotion Switzerland), a national foundation, in collaboration with the cantons, is responsible for

³⁵ http://www.sodk.ch/fileadmin/user_upload/Aktuell/Medienmitteilungen/190513_Bericht_SODK_Situationsanalyse_Schutzunterkuenfte_sd_e.pdf.

³⁶ <http://www.contre-la-pauvrete.ch/home>.

³⁷ Statistics on Income and Living Conditions survey 2016: Material deprivation.

preventing weight problems. It provides financial support for the cantons in the implementation of their action plans.³⁸ Together with professional associations, the Confederation is working to optimize the treatment of obesity. A practical guide on combating obesity is available for health professionals. The cantons have also committed to implementing an action programme on nutrition and physical activity for the public.

Right to physical and mental health (art. 12)

Reply to question 27 of the list of issues

68. The Confederation takes action at the national level to ensure that disadvantaged groups have optimal access to care and the same quality of care as others. Its objectives are threefold: to document fair access to and quality of care; to establish a knowledge base on the mental health of forced migrants, social assistance and health and to devise measurements for the fair provision of care; and to provide for appropriate community interpretation services.

69. With the financial support of the Confederation, the cantons provide migrants with initial information³⁹ about the Swiss health system on their arrival. Between 2016 and 2018, the Confederation implemented a project to facilitate refugees' access to psychotherapy and psychiatric services.

70. At federal asylum centres, health professionals are on hand to deal with health problems and provide medical information on arrival. Once apprised of the facts, all persons are offered an initial medical consultation (to establish their health and vaccination status). Questions cover communicable diseases, acute or pre-existing conditions, psychiatric problems, and diseases specific to women and pregnancy. Persons identified as having particular needs are referred to partner doctors or other medical services.

Reply to question 28 of the list of issues

71. In accordance with article 20 (1) of the Federal Act on Health Insurance, each insured person pays an annual contribution for disease prevention. In 2015, the contribution stood at 2.40 Swiss francs (approximately 18 million Swiss francs in total). The Promotion Santé Suisse foundation uses these funds to develop measures to promote mental health.

72. The Confederation is improving scientific knowledge and the quality of basic data while developing networks to address mental health issues as it implements the report entitled "Mental Health in Switzerland: Background and Scope of Action"

73. In 2018, the Confederation conducted a research project entitled "Mental Health of Traumatized Asylum Seekers: Background and Recommendations". It provides an overview of the provision of mental health care and makes recommendations for traumatized asylum seekers.

74. Suicide prevention is the responsibility of the Confederation, cantons, municipalities, health service providers and non-governmental organizations. The objectives of the Action Plan on Suicide Prevention are to:

- strengthen personal and social resources;
- raise awareness of suicide;
- provide urgent assistance (e.g. an emergency number);
- facilitate preventive intervention (e.g. by training professionals to deal with risk of suicide);
- aid the recovery of persons at risk of suicide;
- reduce instances of suicide by preventing access to lethal means;

³⁸ <https://promotionsante.ch/programmes-daction-cantonaux/alimentation-et-activite-physique/enfants-et-adolescents/projets.html>.

³⁹ <http://www.kip-pic.ch/fr/pratique/primo-information>.

- support relatives, friends and professionals who have been affected by suicide;
- advocate media coverage and Internet usage in a way that aids prevention;
- promote monitoring and research;
- share best practices.

75. The Confederation has not provided any specific (additional) funds for the action plan. It has focused on bringing together stakeholders and promoting joint action.

Reply to question 29 of the list of issues

76. Swiss statistics are based on the assumption that infants are aged 0–2 years and children 2–16 years. Search criteria cover endocrine disorders (pseudohermaphroditism) and genetic disorders (hermaphroditism). Statistics focus on possible and specific operations and are provided in annex 13.

77. The National Advisory Commission on Biomedical Ethics has made a number of recommendations. With regard to medical and surgical treatment, the Federal Council considers that current practice respects the rights of intersex persons. Premature or unnecessary interventions are contrary to law governing physical integrity. To the extent possible, a child must be old enough to be able to make a decision when proposed treatments have irreversible consequences. Patients have the right to receive medical treatment and care based on current medical science and practice, the right to information and consent, and the right to the protection of their personal data.

Right to education (arts. 13 and 14)

Reply to question 30 of the list of issues

78. Under article 62 of the Constitution, public education is the responsibility of the cantons. Under article 80 of the Federal Asylum Act, the cantons provide basic education for asylum seekers of compulsory school age staying at federal asylum centres.

79. The Confederation may contribute to covering the cost of education and may provide premises. For example, the federal asylum centre in Neuchâtel has two teachers per class, who offer courses to continue the schooling of such children until they return to the normal school environment after their stay at the centre. The programme is based on the cantonal school curriculum (with educational, creative and sports activities).

Reply to question 31 of the list of issues

80. Under article 19 of the Constitution, all children, including children with disabilities, have the right to appropriate basic education. In Switzerland, children and young people with special educational needs are taught in an integrative way, in regular classes with the support of qualified assistants, in small classes or in special schools. In accordance with article 62 (3) of the Constitution, the cantons ensure the special needs education of all children and young people with disabilities, up to the age of 20. The formal, legal and financial responsibility for special needs education lies with the cantons. The agreement on special needs education of the Swiss Conference of Cantonal Directors of Education prioritizes integrative education and sets out a procedure for determining individual needs and ensuring equal treatment. In addition, the Federal Act on the Elimination of Discrimination against People with Disabilities requires the cantons to promote the integration of children and young people with disabilities into mainstream schools, provided that this serves their interests. According to the case law of the Federal Supreme Court, inclusive schooling corresponds, in practice, to integrative schooling.

Reply to question 32 of the list of issues

81. The proportion of individuals aged 25 to 35 in tertiary education has more than doubled in the past 20 years. Almost a third of persons in this age group have a university degree and just over 15 per cent have a higher vocational certificate.

82. The public authorities may provide full or partial allowances or loans to make higher education more accessible. The cantons, which are responsible for granting educational allowances, paid out 158,590,429 Swiss francs in 2017 for participation in tertiary education.

Cultural rights (art. 15)

Reply to question 33 of the list of issues

83. The dispatch on culture 2016–2020 prioritizes the promotion of Italian and Romansh, and measures have been taken in the field of education to that end.

84. The Confederation has supported bilingual high school diploma programmes with Italian in the cantons of Vaud and Bern, as well as awareness-raising projects in schools. These are offered for all students. While no follow-up data is available, the visibility of Italian in education has improved.

85. Measures for Romansh may be adopted from 2020. With the support of the Confederation, the canton of Graubünden is adopting measures to safeguard the Romansh language and Romansh (and Italian) culture, particularly in the areas of media, education and culture and as a language used by the cantonal authorities. Although no figures are available on the impact of these measures, they help to embed Romansh in all areas of private and public life.

Reply to question 34 of the list of issues

86. Progress has been made in teaching pupils about the culture and history of the Yenish, Manouche and Roma communities. This is also one of the objectives of the Yenish, Manouche and Roma Plan of Action (see reply to question 10). Various projects have been supported with respect to the Yenish language, including the production of a documentary, a dictionary and a children's book.

87. In its fourth report on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities, the Confederation recalled that the Yenish and Sinti/Manouche communities are recognized as Swiss national minorities, whether they are settled or itinerant. The term “Travellers” has been superseded by the names that minorities use for themselves. Awareness-raising and cultural mediation of the Yenish, Manouche and Roma communities has been promoted, and a cultural fund of more than 50,000 Swiss francs per year has been established, in conjunction with the “Assurer l’avenir des gens du voyage suisses” (Ensuring the Future of Swiss Travellers) foundation.