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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Nineteenth session

SUMMARY RECORD OF THE 37th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 20 November 1998, at 10 a.m.

Chairperson: Mr. CEAUSU

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(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16
AND 17 OF THE COVENANT (continued)

Initial report of Switzerland

This record is subject to correction.

The meeting was called to order at 10.05 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16
AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of Switzerland (E/1990/5/Add.33; HRI/CORE/1/Add.29; E/C.12/Q/SWI/1; document with no symbol containing written replies by Switzerland to questions raised in the list of issues and Corrigendum)

1. At the invitation of the Chairperson, the members of the delegation of Switzerland took places at the Committee table.
2. The CHAIRPERSON welcomed the delegation of Switzerland and expressed the hope that its dialogue with the Committee would be a constructive one. In accordance with the Committee's usual practice, the delegation was invited to make an introductory statement, after which the Committee would ask questions about the report on the basis of the list of issues.
3. Mr. ELMIGER (Switzerland) said that the Swiss Government attached great importance to the promotion and protection of human rights, democracy and the rule of law - one of the five priorities of its foreign policy. An effort had been made in the initial report (E/1990/5/Add.33) to describe both Switzerland's achievements in the sphere of economic, social and cultural rights and its shortcomings in that regard. The report had been drafted with a mind to transparency and had been the subject of broad consultations among all interested parties in civil society. Every effort had been made to distribute it as widely as possible, and the assistance of the Office of the High Commissioner for Human Rights, which had made it available on Internet, was much appreciated. In an effort to involve civil society as closely as possible in the implementation of the rights enshrined in the Covenant, Switzerland had provided financial support for a report to the Committee by a number of non-governmental organizations (NGOs).
4. In his introductory statement he would focus on significant developments in the field of economic, social and cultural rights since the preparation and submission of the initial report. An important development in the country's political life was the instruction recently given by Parliament to the Federal Council to prepare draft legislation with a view to Switzerland's joining the United Nations.
5. In Switzerland, human rights were guaranteed in three ways: at the domestic level, by the federal and cantonal constitutions and jurisprudence; at the European level, through the European Convention on Human Rights and its additional protocols; and at the universal level through its obligations under United Nations human rights treaties. Those three kinds of guarantees complemented and reinforced each other.
6. Since 1995, Switzerland had undertaken new obligations under other human rights instruments which had a bearing on economic, social and cultural rights, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the European Charter on Regional or Minority Languages and the framework Convention of the Council of Europe for the protection of national minorities. Moreover, the Federal Council had recently proposed that Parliament should ratify the International Labour Organization (ILO) Right to Organize and Collective Bargaining Convention (No. 98) and Minimum Age Convention (No. 138).
7. The new Labour law, which would probably be adopted by a referendum on 29 November 1998, was designed to ensure equality between the sexes with regard to working hours and rest time. It would afford greater protection to people on night and weekend duty, with special provisions for women who were on maternity leave or breastfeeding, and would allow for flexible working hours. The new law had the support of major employers' and workers' associations as well as the main political parties in Switzerland.
8. Under bilateral negotiations with the European Union, the Federal Council was preparing measures with a view to preventing social dumping due to the arrival in Switzerland of foreign workers ready to accept employment conditions less favourable than those currently prevailing.

9. As part of the current reform of the Federal Constitution, Parliament had decided to recognize expressly in the new draft the lawfulness of strikes and lockouts under certain conditions in particular provided that the industrial peace was kept and recourse had to arbitration. The reform of the Federal Constitution would be decided by referendum in 1999.
10. With regard to social security, a new law on health insurance had been enacted in January 1996 to replace the previous one, which dated from 1911. The new law made it compulsory for the entire population to have insurance for medical care and drugs. Insurance was on an individual basis and there was no limit as to the duration of either in-patient or ambulatory care.
11. A further important change was the entry into force on 1 January 1997 of the tenth revision of Switzerland's old-age pension system, the AVS (Assurance-Vieillesse et Survivants). Under the new law, payments to couples were replaced by payments to individual pensioners. Furthermore, the basis for calculating pensions had been changed by dividing the total income between partners and giving bonuses for periods of time when the beneficiaries, usually women, stayed at home to bring up or care for members of the family. That marked the end of the distinction drawn between remunerated and non-remunerated work and thus favoured women and those on low incomes. Men were now eligible for a pension upon the death of their spouse and foreigners had the same pension rights as nationals. The retirement age for women would be raised from 62 to 64 in two stages by the year 2005.
12. In 1997 a bill had been submitted to Parliament to harmonize maternity benefits throughout the country. The bill provided for a maternity allowance of 80 per cent of lost earnings for working mothers for a leave period of 14 weeks and an income-based allowance for all mothers in gainful employment or otherwise. Although the principle of a maternity allowance had been accepted by the two chambers of Parliament, some differences of opinion remained as to how it should be financed.
13. The 1995 revision of the Unemployment Insurance law had been implemented by stages, its main objective being the re-entry of people into the employment market through work provision, training and placement schemes. Thousands of training courses and temporary employment schemes had been launched. Meanwhile, the establishment of regional placement offices where job-seekers were provided with personalized career guidance had, according to a recently published survey, given overall satisfaction.
14. In October 1995 the Federal Tribunal had acknowledged the existence of an unwritten constitutional and legal right to basic means of subsistence, as an essential component of democracy and the rule of law. That right was applicable alike to Swiss nationals and to foreigners, irrespective of their status with the aliens' police. That new jurisprudence was reflected in article 10 of the draft Federal Constitution, which provided for the "right to assistance in situations of distress".
15. The health status of Switzerland's population could be called good. Life expectancy at birth was 82 years for women and 75 for men, and a further slight improvement was likely in the coming decades. That trend was due to the reduction of neonatal and infant mortality and maternal deaths, the almost complete control - until the advent of AIDS - of infectious diseases, the recent fall in mortality from cardiovascular diseases and injuries, and measures to prevent premature deaths due largely to lifestyles. Major preventive campaigns had been launched to combat AIDS and since 1996 the numbers of new infections and of AIDS sufferers had been on the wane, owing respectively to preventive measures and to new therapies that retarded the onset of the disease.
16. For heavily dependent drug users, Switzerland was continuing with its programme of supplying heroin and methadone on prescription, with encouraging results for health, social stability and crime rates in the country. An emergency Federal order had recently entered into force lifting restrictions on the number of participants in programmes for the controlled distribution of heroin.

17. Legislation governing alcohol was being reviewed, with the aim of deregulating the sale of spirits. That would reduce their price, so to step up the combat against alcoholism an information campaign on how to drink without damaging one's health was also being prepared. In July 1998 a new committee set up by the Federal Council had held its first meeting with the aim of drawing up a new strategy to combat tobacco dependency.

18. As for the environment, pursuant to the decisions taken at the Earth Summit (Rio de Janeiro, 1992), a plan of action on the environment and health had been prepared.

19. A large number of reforms were currently under way in the field of education throughout the Swiss Cantons. Their general thrust was, he thought, altogether in keeping with the requirements and spirit of the Covenant, aiming as they did at improving the overall quality of education, strengthening democratic participation and control, respecting local and regional needs, and improving student success rates. In higher education, facilities had been expanded by the creation of seven specialist schools which, alongside the universities, would provide training in some 20 disciplines. The diploma received upon completion of three or four years' study would be recognized throughout Switzerland and in countries of the European Union. The year 1996 had seen the inauguration of an Italian-language university which should help to reinforce the cultural identity of that minority group in Switzerland.

20. In May 1997 a foundation had been set up to deal with the problems faced by Swiss travelling people. It would serve first and foremost as a forum in which representatives of the travelling people, the communes, the Cantons and the Confederation could jointly seek solutions to current difficulties, such as the provision of schooling for the children.

Articles 1 to 5

21. Mr. RIEDEL said it was essential for the dialogue with the Committee to be conducted in a spirit of cooperation. The delegation should not be taken aback by the directness of some members' questions, since their views on certain issues might differ considerably from those of the Swiss Government. Did Switzerland intend to ratify the Council of Europe's framework Convention for the protection of national minorities, and why had the matter been pending before Parliament for more than a year? Likewise, would Switzerland ratify ILO Convention No. 169 on Indigenous and Tribal Peoples? Swiss support for the Convention at European level would be most welcome.

22. Many western European countries failed to recognize the indivisibility of human rights. What were Switzerland's views on the matter? Given the forthcoming fiftieth anniversary of the Universal Declaration of Human Rights, would Switzerland consider following the recommendations of the Committee set out in its general comment No. 3 concerning the direct applicability of the core contents of the Covenant in courts of law and administrative tribunals?

What was Switzerland's position vis-à-vis an Optional Protocol to the Covenant? Was it in favour of the establishment of a working group?

23. He was concerned at a manifest downgrading of the social rights to which Switzerland had undertaken international commitments into mere goals and statements of intent. He was also concerned about the implications of Federalism for those rights. Perhaps a solution might be found in subsidiarity.

24. Had the Covenant ever been invoked in Swiss courts as was allowed under the Federal Constitution? Perhaps greater efforts were required to publicize it among competent public officials. Lastly, were development projects sponsored by Switzerland regularly monitored from the viewpoint of their effects on the social rights of beneficiaries?

25. Mr. SADI observed that the size and composition of the Swiss delegation testified to the seriousness with which it approached the dialogue. However, he was somewhat puzzled as to why it had taken Switzerland until 1992 to ratify the Covenant. Regrettably, Switzerland had a tradition of placing civil and political rights on a higher plane than economic, social and cultural rights. He welcomed the declaration of the Federal Tribunal concerning the constitutional right to means of subsistence; was there any prospect that the Tribunal might take a more activist stance in other areas too?

26. He also noted that, in contrast to the situation under other federal systems, the Government of the Confederation appeared to pass on responsibilities to the cantons and communes, with the consequence that if they failed to act nothing was done and no one could be held accountable.

27. Mr. TEXIER said it was a pleasure to welcome the delegation of a country that had itself played host to the Committee twice a year for the past twelve years. He asked what economic, social and cultural rights were enjoyed by asylum seekers who had not yet been accorded refugee status, and also by those to whom that status had been accorded. On international cooperation, referred to in articles 2 (1) and 23 of the Covenant, he asked what proportion of the Confederation's budget was allocated to such cooperation, and for what forms of assistance it was earmarked.

28. Mr. AHMED commended the Swiss delegation on the thoroughness of the report and written replies submitted. Paragraph 28 of the report acknowledged that aliens were one group that experienced discrimination. However, the consolidated report submitted by a number of Swiss NGOs named four other groups disadvantaged in that regard, namely: persons with disabilities; the elderly; travelling people, and especially the Jewish people; and women. He asked for further information on the situation of those groups.

29. Mr. KOUZNETSOV, after commending the Swiss delegation on the impressive range of technical expertise its members commanded, noted that Switzerland appeared to have signed, but not to have ratified, the European Social Charter. He asked what obstacles stood in the way of ratification of that instrument.

30. Mr. THAPALIA noted that, according to the written replies to the list of issues, foreigners residing legally in Switzerland enjoyed the same rights as did Swiss workers. Asian and African migrants took a different view of the situation, alleging that they were regularly harassed by the police. No directly applicable legislation had been enacted by the Confederation in that regard. Could the delegation cite any case in which a court had upheld the economic, social and cultural rights of a foreign worker?

31. Mr. MARCHÁN ROMERO said that article 2 of the Covenant called on every State party to promote the rights protected therein "to the maximum of its available resources". As one of the world's most highly developed economies, did Switzerland earmark a proportion of its general State budget specifically for the promotion of economic, social and cultural rights, or were funds allocated to various sectoral programmes under a number of budget headings?

32. Mr. ADEKUOYE congratulated the Swiss authorities on fielding what was probably the largest State party delegation ever to have come before the Committee. He noted from the written replies to the list of issues that assistance accorded to aliens in connection with home ownership and pensions was based on the criterion of reciprocity. With how many countries did such reciprocal arrangements exist, and how many of those countries were located outside Europe?

33. Ms. BONOAN-DANDAN noted that paragraph 114 of the initial report (E/1990/5/Add.33) identified no fewer than five different categories of residence permit. How did the various types of permit affect aliens and their families? How was the criterion of a "sufficiently secure" sojourn and gainful activity, on the basis of which the spouse and children could join the holder of a one-year

permit, defined? Were exceptions permitted on a case-by-case basis?

34. Ms. JIMÉNEZ BUTRAGUEÑO said that, according to information provided by NGOs, some of the "offices of equality between men and women" referred to in paragraph 55 of the report were understaffed. She asked for fuller information about the activities of those offices, and in particular what they did to ensure that women's careers were not damaged by the traditional assumption that they would take full responsibility for the running of the home.

35. Mr. ELMIGER (Switzerland) said that the size of the Swiss delegation and the level of its expertise were a reflection of the importance his country attached to the Covenant. On the question of the direct applicability or self-executing nature of the provisions of the Covenant in Switzerland's legal system, he said that, when proposing to Parliament the ratification of an international instrument, the Federal Council generally adopted a position as to the general applicability of its provisions. In each specific case, direct applicability was evaluated in the first instance by the bodies applying the law and, in the event of a dispute between them and the applicant (requérant), by the courts - in the last resort the Federal Court. In several cases the Federal Court had ruled on the direct applicability of provisions of the Covenant, including articles 13 (2) (c), 9 and 11. To date it had not recognized the direct applicability of any provision of the Covenant; however, it had several times noted that it did not rule out the possibility that some of its provisions, such as article 8 (1) (a), on the right to form and join trade unions, were directly applicable.

36. On the draft optional protocol, the Swiss authorities attached great importance to mechanisms for monitoring and promoting international human rights instruments. An individual right to submit communications was one such mechanism. Switzerland had been at the origin of the mechanisms for visiting prisons provided for in the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and had recognized the possibility of submitting individual communications under the latter instrument. It had also expressed readiness to accede to the Optional Protocol to the International Covenant on Civil and Political Rights. It had followed with interest the work on the preparation of the draft protocol to the Covenant of direct concern to the present Committee. That protocol had never to his knowledge been the subject of negotiations between States; however, when, a working group was set up for that purpose, Switzerland would play an active part in its proceedings. The draft text prepared by the Committee was currently being studied by the Swiss administration, and the Government would pronounce on it in due course.

37. As to why Switzerland had taken so long to ratify the European Social Charter and the two international covenants of 1966, the 1980s had been characterized by a desire on the part of the Government and Parliament to ratify the major United Nations conventions. Government policy since 1969 had been to ratify international social instruments once the Swiss legal system had been brought as closely as possible into line with their requirements. Switzerland's concern to analyse and scrutinize its domestic legislation in minute detail meant that it sometimes took longer than other countries to ratify an international instrument.

38. The European Social Charter had been signed in 1976, and the Federal Council had presented it to Parliament for ratification in 1983. Parliament had taken the matter up in 1984 and 1987, but had declined to endorse the Federal Council's view of the question and ratify the instrument. Since then a number of interventions, including an initiative emanating from a parliamentary group, had been tabled in Parliament, calling for the question to be reopened. That initiative was still pending in the National Council, and had fallen foul of a number of legal obstacles as well as profound differences of political opinion. Only the previous day a parliamentary committee had decided to extend the parliamentary initiative for a further two years. It was therefore to be hoped that a final decision on the matter would be forthcoming within that period.

39. Ms. KORNICKER UHLMANN (Switzerland) said that the Council of Europe's framework Convention for the protection of national minorities had been approved by the Swiss Parliament in September 1998 and ratified in October 1998 and would enter into force on 1 February 1999. ILO Convention No. 169, referred to by Mr. Riedel, specifically concerned States parties such as Ecuador, Mexico and Guatemala that had substantial populations of indigenous and tribal peoples on their territories. Switzerland's policy was to give priority to the ratification of international instruments of broader rather than of narrower scope. Nonetheless, a 1991 report to Parliament had supported the general objectives of ILO Convention No. 169. For that reason, and also as a demonstration of international solidarity, the Swiss administration was considering ratification of the instrument. Switzerland was also convinced of the need for adoption of the draft declaration on the rights of indigenous peoples, which it saw as an important political signal with respect to the rights of that vulnerable section of the world's population.

40. Finally, to date the federal courts had given six published and three unpublished decisions which invoked the provisions of the Covenant.

41. Ms. SCHULZ (Switzerland) said that the Federal Office for Equality Between Men and Women comprised a federal-level central office and 15 branch offices. The former could be abolished, or its functions restricted, only by a change in the law, but the latter were subject to operational or budgetary limitations at any time.

42. The activities of the Office were wide-ranging. It assisted in the drafting of laws, advised individuals and organizations, published research findings and information, and contributed to in-service training initiatives. With regard to in-service training, the scant resources of the Office were concentrated in the Swiss Conference of Delegates on Equality, which had undertaken a series of projects, including Switzerland's first campaign against domestic violence and a violence awareness campaign aimed at young women and girls under the auspices of the national campaign for vocational education. The main objective of the Office was to develop instruments for achieving equality in practice in the workplace. It had published a number of studies to that end, and was currently concerned with preventing the introduction of new discriminatory wage structures in certain areas. Its research effort was complemented by in-service training in personnel departments, the judiciary, trade unions and women's groups. Since 1996, federal funding had been available for setting up advisory services and promotional activities with regard to equal opportunity in the workplace. Although the scheme was greatly overextended, there was now a motion before parliament aimed at removing a large part of its funding. Finally, collaboration with NGOs was one of the most important areas of the Office's activities; unfortunately, the NGOs also suffered from a serious lack of resources.

43. Ms. IMESCH (Switzerland), replying to the question on social security, said that in general foreigners and Swiss nationals enjoyed the same welfare benefits. For technical reasons, Switzerland had signed some 30 bilateral agreements with workers' countries of origin in order to provide a reciprocal basis for the payment of their pensions and benefits. Those agreements covered approximately 90 per cent of persons who had been or were currently working in Switzerland. Historically, most of those came from Europe, but Switzerland was now also negotiating with Tunisia and a number of central and eastern European countries. Any request for a bilateral agreement made by a country was always scrupulously examined by the competent authorities.

44. Mr. ADEKUOYE, on the question of the acquisition and loss of Swiss nationality, said that new legislation in force since 1992 had effectively deprived women who married Swiss nationals of automatic citizenship, a right they had enjoyed since 1952. An NGO report made available to the Committee stated that the new legislation had even led to cases of exploitation and violence against women. He asked the delegation to comment on the implementation of the new legislation since 1992.

45. Mrs. BONOAN-DANDAN noted that in the report women's employment was described as "frequently marked by atypical or precarious working conditions". She asked the delegation to provide more details, and to describe the protective measures in force, particularly for the many women who worked part time.

46. Mr. RIEDEL asked whether the Government used its Official Gazette as a means of disseminating Switzerland's report to the Committee and the Committee's final observations.

47. Mr. ELMIGER (Switzerland) said that the Government would do its best to distribute the Committee's conclusions to all interested organizations. The Committee was already aware of a case in which the Government had immediately circulated all governmental bodies in the Confederation when a problem had arisen in connection with implementation of the right to education under the Covenant. Every effort was made to ensure that the Committee's conclusions and comments were made available at all levels of government and to the social partners and NGOs.

48. Mr. GRISSA said the report stated that 54 per cent of women aged over 15 engaged in gainful activity for at least one hour per week. Did that really constitute gainful employment? The report also said that 60 per cent of men and women between the ages of 14 and 24 were involved in gainful activity. What was the minimum wage in Switzerland, and at what age did compulsory education cease?

49. The CHAIRPERSON said that the delegation would answer questions on employment at a later stage.

Articles 6 and 7

50. Mr. CEVILLE said it was clear from the report that the Constitution did not establish a right to work. However, the written answers stated that the Constitution "confirmed the freedom of trade and industry". In practice, what measures, provisions and standards promoted the provision of employment in trade and industry? Also, what were the current regulations in Switzerland with regard to domestic work and work done by older persons joining or rejoining the labour market?

51. Mr. WIMER asked what specific measures were being taken to protect foreigners wishing to enter the labour market, in view of the ongoing revision of the order restricting the number of aliens, which now based decisions on individual criteria rather than the geographical criterion previously used. Were guidelines in place to prevent misuse of discretionary powers and the taking of arbitrary decisions?

52. Secondly, with regard to the "dumping" of foreigners on the labour market - a problem that existed worldwide - he asked for information on the provisions of the new legislation being introduced.

53. Mr. TEXIER asked what legislative measures and forms of training had been introduced in order to minimize the gender inequality in the workplace described in the report. Secondly, as minimum wage levels were determined through collective bargaining and not guaranteed by the Constitution, he would like to know whether the minimum wage varied greatly across regions and economic sectors. Thirdly, as collective bargaining seemed to function so well in Switzerland, he wondered why the Government had not signed the 1949 Convention on the Right to Organize and Collective Bargaining. Were there any internal legal obstacles?

54. Finally, the report indicated that Swiss legislation, unusually, treated health and safety at work as separate matters, a situation which had caused members of Parliament on several occasions to request the Federal Council to unify the two areas. Although the existing system provided for powerful sanctions to deal with neglect of safety in the workplace, he noted that Switzerland had not

ratified the ILO Prevention of Major Industrial Accidents Convention (No. 174). Why? Had any campaigns been undertaken with the aim of preventing industrial accidents and diseases?

55. Mr. GRISSA asked why unemployment was higher in French-speaking than in German-speaking cantons. According to the report, although the Constitution guaranteed equality before the law for men and women in the labour market, in practice segregation between men's and women's work was such that there existed a masculine structure of employment characterized by homogeneity and a feminine structure characterized by heterogeneity. What was meant in that context by the words "homogeneity" and "heterogeneity"?

56. Mr. SADI asked whether the Government had any intention of asking the population to vote on including the right to work in the Constitution. While in effect that right was underpinned by such indirect measures as article 31 of the Constitution requiring the Confederation to safeguard the general welfare and procure economic security for the citizens, it was surprising that the most recent attempt to secure public approval for formal inclusion of the right to work in the Constitution had been in 1947.

57. Mr. RIEDEL said that Switzerland's written replies to items 14 and 15 of the list of issues (E/C.12/Q/SWI/1), while providing much interesting information, failed to indicate the Swiss Government's views on those issues or what action it was undertaking, apart from commenting that the situation had improved - as indeed it had done throughout Europe generally. He suggested that Switzerland, although not a member of the European Court at Luxembourg, might find some useful pointers on ways to promote equal pay and equality in employment in the considerable body of case law that had been built up on the subject by the Court.

58. He had been asked by a Swiss non-governmental organization, Syndicats sans frontières, to inquire about the situation of the domestic staff of diplomats stationed in Switzerland or the service staff of diplomatic missions in the country. Such staff held Swiss residence permits directly tied to their jobs. They were frequently asked to work long hours for very little pay and risked dismissal with consequent expulsion from Switzerland should they presume to make any complaint to a Swiss court. Despite that, some 150 such cases had gone through the Swiss courts, with 78 resulting in a ruling in favour of the plaintiff. However, Switzerland had apparently made no effort to compel the diplomats or diplomatic missions concerned to compensate such employees, on the grounds that diplomatic immunity precluded such action.

59. Mr. AHMED said that the consolidated document prepared by a group of Swiss non-governmental organizations indicated an increasing erosion of job security. Practices such as requiring employees to remain on call for work if needed, to engage in part-time or temporary work against their wishes, or to work on loan to another company brought the protection afforded to such workers well below the standards normally enjoyed by permanent staff. What action was Switzerland taking with respect to the trend towards types of employment offering inadequate job or social security?

60. Ms. JIMÉNEZ BUTRAGUEÑO said that reform of the public service currently appeared to be a topic of general concern in Switzerland. What measures to that end were envisaged by the federal, cantonal or communal authorities and what effect were they likely to have on security of employment in the public service.

61. Mr. ELMIGER (Switzerland) said that there was at present a strong current of opinion in favour of reform of the status of public officials at all constituent levels of the Confederation - federal, cantonal and communal. However, since the various cantons and communes had a considerable degree of autonomy in determining the status of the officials in their employ, conditions in the public service were not everywhere the same. The trend was towards greater privatization and greater flexibility in work practices. Nevertheless, although some cantons had even gone so far as to abolish

the status of public official, that did not necessarily mean that all security of employment had been lost. In addition, a transitional period was being provided for the changeover to new systems. At federal level, a bill for reform of the status of federal officials had recently been submitted to Parliament for consideration but it was as yet too early to tell what the final content of that legislation would be.

62. In reply to Mr. Texier, the ILO Right to Organize and Collective Bargaining Convention (No. 98) was currently before the Federal Parliament for ratification. Preliminary procedures had been completed and ratification would be debated in the Council of States in early December, following which it would pass to the second chamber, the National Council. The Convention had first been considered for ratification during the 1950s but, owing to a lack of clarity regarding some aspects of its relation to the ILO Freedom of Association and Protection of the Right to Organize Convention (No. 87), the procedure had not been completed and ratification had since remained in abeyance. In response to the ILO's recent campaign to promote its fundamental standards, consideration had again been given to ratification of Convention No. 98. The Federal Council considered that feasible, since the provisions of the article requiring protection from discrimination in recruitment for employment on grounds of union membership, which had been a major obstacle in the past, were now adequately covered by the Federal Data Protection Act.

63. The situation was more complicated in the case of the ILO Prevention of Major Industrial Accidents Convention (No. 174). Its provisions related to a field that in Switzerland was covered by a number of different bodies of legislation. The major separation was between legislation on occupational hygiene and that on health and safety at work. In addition, parts of the Convention had implications for federal law on the environment, on toxic substances and even on explosives. The problem was that the definitions of employer and employee were not identical in all the legislative texts involved. The enormous task of realignment had led to deferral of ratification and return of the file to the federal administration for further review, a procedure which was still under way.

64. Ms. JIMÉNEZ BUTRAGUEÑO said she understood that although great concern was shown for the elderly in Switzerland, some difficulties were still being experienced over housing and access to buildings and transport. Buses, for example, were not equipped for easy access by the elderly or disabled.

Article 8: Trade union rights

65. Mr. TEXIER said that although trade union rights generally appeared to be well protected in Switzerland, he was concerned about the denial of the right to strike in the public service. There was indeed much current debate in Switzerland on the subject. He therefore asked what the position was with regard to reform of the 1927 Federal Act concerning the status of public officials. The ILO Committee of Experts had submitted to Switzerland that the provision denying the right to strike was obsolete in its blanket application to all officials, while conceding that in the case of certain public servants, such as senior officials and members of the armed forces, the police and the prison service, that right had necessarily to be curtailed in the public interest. The Swiss Government appeared to fear that recognizing the right to strike would lead to a wave of strike action. That seemed unlikely in view of the healthy situation in the private sector, where, despite wide freedom of association, extensive union membership and broad acceptance of the right to strike, very few strikes actually took place, negotiation being the preferred procedure for prevention or resolution of disputes and strike action being considered only as a last resort.

66. Mr. GRISSA, noting the reference that had been made to privatizing the public service, asked whether that would automatically entail recognition of the right of the officials concerned to strike. Was the right to strike denied only to federal officials or did it also affect the public service at cantonal and communal level?

67. Mr. ELMIGER (Switzerland) said that the general situation in relation to the right to strike in the public service was currently as follows. Practices differed between communes, between cantons, and between cantons and the federal administration. Some cantons had even abolished the specific status of public official and so lifted the restriction on the right to strike except in certain areas such as the army or police. Reform of the status of federal public officials was still awaited. Nevertheless, within the framework of reform of the Federal Constitution, a parliamentary consensus was emerging in favour of making strikes and lockouts lawful in the federal public service, which represented a substantial step towards meeting the requirements of the ILO supervisory bodies in relation to the ILO Right to Organize and Collective Bargaining Convention (No. 87), which, in addition to the Covenant, had to be considered in any attempt to give more flexibility to the status of federal public officials. The Federal Council had already submitted a draft text on the subject which had received several hearings.

Article 9: Right to social security

68. Ms. JIMÉNEZ BUTRAGUEÑO, referring to the tenth revision of the old age and survivors' insurance (AVS) which provided for separate pensions for members of a married couple, asked whether, in the case of a married couple in which both spouses had been in gainful employment, the two pensions were added together or whether there was a ceiling which the two pensions taken together were not allowed to exceed despite individual entitlements to a greater amount. Furthermore, if one formerly working spouse died, was the remaining spouse entitled to a survivors' pension in addition to his or her own pension, and if so was that entitlement irrespective of sex?

69. She wondered why the retirement age continued to be different for men and women. A lower retirement age for women seemed illogical since women in general lived longer than men. Was it possible for people who wished to do so to continue working beyond the statutory retirement age, particularly in the public sector?

70. Mr. GRISSA, noting that life expectancy in Switzerland was currently over 80 for women and slightly lower for men, and that some 15 per cent of the population were at present over 65, said it might be logical to consider raising the retirement age instead of following the current trend to lower it in order to create employment opportunities for younger people. He asked what the arrangements were for financing old age pensions. If the money was to come from the working population, it would represent an unduly heavy tax burden on that sector. How was Switzerland planning to tackle the conflict of interest between the respective needs of retired and working people?

71. Ms. JIMÉNEZ BUTRAGUEÑO said that life beyond retirement was not just about money but also about quality of life. Many people found their lives very empty once they had stopped working and found it hard to fill their days. The ageing of the population made it very necessary to consider such problems.

The meeting rose at 12.55 p.m.



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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Nineteenth session

SUMMARY RECORD OF THE 38th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 20 November 1998, at 3 p.m.

Chairperson: Mr. CEAUSU

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CONSIDERATION OF REPORTS

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16
AND 17 OF THE COVENANT (continued)

Initial report of Switzerland (continued)

This record is subject to correction.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16
AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of Switzerland (continued) (E/1990/5/Add.33); List of issues
(E/C.12/Q/SWI/1); Written replies of the Swiss Government (informal
document in French distributed in the meeting room)

1. At the invitation of the Chairperson, the members of the Swiss delegation resumed their places at the Committee table.

2. Mr. WYSS (Switzerland) said that the people would vote on the whole of the draft constitutional reform in May or June 1999 and that only a few small differences of opinion remained between the two chambers. The main purpose of the exercise was to codify the principles and rules formulated by the Federal Tribunal concerning, for example, the right to minimum and fair standards of living. The process should reinforce the position of human rights. The Parliament and the Federal Council had limited room for manoeuvre which did not allow them to expand the catalogue of human rights. The Federal Council had therefore been reluctant to propose including an explicitly guaranteed right. The Federal Tribunal and the Federal Council tended to make a distinction between economic, social and cultural rights, on the one hand, and civil and political rights, on the other. But in general terms and in the practice of the Federal Tribunal, that distinction did not exist since all rights were part of one and the same catalogue of fundamental rights. Some rights contained cultural aspects (for example, freedom of language and freedom of occupation). The realization of social rights took a long time owing to the length of the political and legal procedures. The draft reform had a special provision setting social targets, which were not rights as such but rather guidelines, and it contained provisions in line with Switzerland's monistic tradition. Article 4, paragraph 4, obliged the Confederation and the cantons to comply with international law. In addition, the Federal Tribunal had always respected the trends of opinion emerging in the human rights treaty bodies. Generally speaking, it applied the most favourable protection regime after having examined the guarantees in question (at the constitutional, European or universal level).

3. Turning to the relations between the Confederation, the cantons and the communes, he said that when the Federal Tribunal declared a provision of cantonal law inadmissible, its decision had immediate effect and was directly applicable. Furthermore, the Swiss Government had several means of reminding the cantons of their obligations towards the Confederation arising from the treaties ratified by Switzerland. However, the Confederation had never yet intervened in cantonal affairs on a human rights matter, and no concrete text had yet been adopted in connection with the right to work.

4. Ms. IMESCH (Switzerland), referring to the status of asylum-seekers in relation to the rights contained in the Covenant, said that during the first three months following the initiation of the asylum application procedure, applicants were not allowed to engage in any gainful activity in Switzerland. If an applicant was unable to provide for his own needs, the canton in whose territory he had been allocated a place to stay must provide him with the necessary assistance, in kind if possible. The Confederation reimbursed to the cantons the costs of aiding such applicants, who were themselves required to reimburse the costs of the assistance and to provide guarantees in respect of future assistance and processing costs. If an application for asylum was denied but it was impossible for the applicant to return to his country, the application was granted on a provisional basis. Once an applicant had been allocated a place to stay, he was automatically covered by health insurance. The premiums were paid by the Confederation on the same basis as the costs of medical care not covered by other institutions.

5. Ms. KOCHERHANS (Switzerland) said that the ban on working could be extended up to six months by decision of the canton in respect of the first negative decision or depending on the labour market. Applicants could then work with a valid permit for a maximum of six months, and the issue of permits was subject to the priority accorded to Swiss workers. Applicants usually worked in hotels, the construction industry, or agriculture. If an applicant was granted refugee status, he had access to the labour market on an equal footing with Swiss nationals. During the first five years he was granted an annually renewable permit of sojourn, then he received an establishment permit which made his status more secure.

6. Mr. TEXIER asked how long it generally took to obtain refugee status and who granted it.

7. Mr. SADI said he would like to know how judges were appointed and whether the foreigners currently living in Switzerland had entered the country under the normal immigration procedure or under the asylum procedure.
8. Mr. ELMIGER (Switzerland), replying to Mr. Sadi, said that the members of the Swiss Federal Tribunal, currently 30 in number, were elected by the Parliament on the basis of a careful political balance and linguistic distribution.
9. Ms. SCHULZ (Switzerland), referring to international cooperation, said that a little over 0.3 per cent of the gross national product was allocated to technical cooperation, but the Government wished to achieve 0.4 per cent eventually. The cooperation was based on five priorities: promotion of the economic and social independence of the developing countries and revitalization of their economies; assistance for the poorest population groups; combating the causes of migration; controlling environmental problems; and health and training.
10. Ms. KOCHERHANS (Switzerland), referring to the situation of foreigners with insufficient resources, said that a foreigner holding an establishment permit was entitled to family reunification even in times of financial difficulties. With respect to foreigners holding a B residence permit and receiving social benefits, the cantons took a decision on a case-by-case basis.
11. Ms. SCHULZ (Switzerland) said that the Swiss Nationality Act had achieved equality between men and women by eliminating the automatic acquisition of Swiss nationality by a female foreigner marrying a Swiss. The equality in question was formal. To date there had been no move to revoke that amendment to the Act.
12. Ms. KOCHERHANS (Switzerland) said with respect to the participation of women in economic life that women did not enjoy any protection in "unstable" labour relations. In the case of labour contracts enjoying the protection accorded by the Swiss Code of Obligations, women had the same status as men. Switzerland had not introduced a minimum wage, but the collective agreements concluded by the social partners fixed wage floors.
13. Mr. ELMIGER (Switzerland) said that a survey carried out in all the cantons during the process of ratifying ILO Convention No. 138 concerning the minimum age for admission to employment had shown that education was guaranteed in Switzerland up to the age of 15.
14. Mr. GRISSA asked what was the minimum age of employment in Switzerland.
15. Mr. AHMED said that, according to information communicated by Swiss NGOs, short-term and part-time labour contracts, in particular for the on-call work performed overwhelmingly by women, denied workers the protection of the provisions against improper dismissal which was available to workers holding a contract of unspecified duration. It would be interesting to hear about the measures taken by the Government to combat the trend towards unstable employment visible in the proliferation of those types of contract.
16. Mr. ELMIGER (Switzerland) said that the Labour Act set the minimum age for the employment of young people at 15. Switzerland had ratified ILO Convention No. 138 concerning the minimum age for admission to employment and, in so doing, had had to amend the above-mentioned Act, extending it to all the sectors covered by the Convention, in particular agriculture.
17. Ms. KOCHERHANS (Switzerland) said that the Swiss authorities were concerned about the increase in on-call work, short-term labour contracts and temporary work. That was why, on the proposal of a deputy, the Parliament had requested the Federal Council to produce a report on the adverse economic, social, physical and psychological consequences of those forms of work, and to make proposals to prevent and combat such consequences. The Federal Tribunal had also handed

down a decision, in August 1998, declaring that in the case of on-call employment the time spent by the worker waiting for the employer to contact him must be regarded as part of his period of work and therefore be remunerated. However, the Federal Tribunal had not specified the method of calculating such remuneration. In any event, the decision was a first step which ought to make on-call recruitment less attractive.

18. Ms. JIMENEZ BUTRAGUEÑO asked whether the State made grants to enterprises for them to transform unstable jobs into stable ones and whether it envisaged cutting working hours in order to produce a better distribution of working time among all workers.

19. Ms. KOCHERHANS (Switzerland) said that the Parliament would no doubt shortly take up a popular initiative from the Swiss Trade Union Association, which was designed to reduce maximum weekly working hours from 45-50 to 36 and to calculate working time on an annual basis. That initiative would not have any effect on persons earning less than 1.5 times the minimum wage but it also provided for the adoption of measures to prevent part-time workers from being subjected to discrimination in recruitment.

20. Ms. SCHULZ (Switzerland) said that Switzerland did not have a single social security scheme and that the personal scope of application differed for almost every branch of insurance. For example, sickness insurance was individual and independent of gainful activity; occupational accident and sickness insurance was compulsory, but only for wage-earners, whatever their working hours; and old-age, survivors' and invalidity insurance covered all persons domiciled in Switzerland, including persons not engaging in a gainful activity. In four cantons persons not engaging in a gainful activity also received family allowances. Therefore, the lack of such an activity did not necessarily mean a lack of social security.

21. Mr. ELMIGER (Switzerland) said that the main purpose of Switzerland's economic policy was to maintain framework conditions favourable to enterprises and conducive to job creation and exports, while ensuring respect for freedom of trade and industry. For example, support measures were introduced for small and medium-sized enterprises, with a view *inter alia* to facilitating their access to credit and protecting them against export risks. In addition, regions which had to cope with difficult situations, in particular the mountain regions, received specific aid. The State also promoted full employment by adapting training schemes to foreseeable business needs, in collaboration with enterprises. Lastly, the unemployment insurance measures which had been introduced were designed to facilitate the reintegration of unemployed persons in the labour market. Women wishing to return to work had access to retraining and ongoing training arrangements.

22. Ms. KOCHERHANS (Switzerland), referring to the criteria governing the admission of foreign workers to Switzerland, said that the Federal Council planned to replace the geographic criterion by personal criteria, including qualifications, capacity for long-term integration, age and language.

23. If Switzerland signed an agreement on the free movement of persons with the European Union, it would attach to it a number of measures to prevent any possible social and wage dumping. For example, the law would be amended to ensure that the collective agreements concluded in a branch of activity were applicable to all workers in that branch. There were already some provisions limiting the scope of application of such agreements. It was also intended that minimum wages would be determined for individual cantons, in order to avoid any wage dumping.

24. There were also plans to adopt an out-workers act, which would oblige employers to apply to all their workers the main provisions of the labour legislation, in particular with regard to wages, paid leave, working hours, and occupational hygiene and safety, and to adapt Swiss legislation to a new European directive on that subject.

25. Ms. SCHULZ (Switzerland) said that the Federal Equality Act, which had entered into force on 1

July 1996, did not provide for the creation of a public mechanism for ensuring respect for the principle of equality between women and men. It was therefore up to male and female workers and the organizations defending their interests to assert in the courts the rights embodied in the Act, which expressly prohibited any sex discrimination with respect to remuneration or any other aspect of labour relations. It was still too early to assess the effectiveness of the Act. The Confederation also allocated financial aid for promoting programmes to facilitate equality between men and women in professional life, with particular reference to the harmonization of work and family obligations, the improvement of the status of women in the craft, technical and academic sectors, reintegration and further training, the independence and reorganization of enterprises, and working conditions. In addition, training was provided for careers-guidance officers and teachers to enable them to help pupils and students to choose an occupation or profession on the basis of criteria free of sexual stereotypes. Programmes were being carried out to increase the number of women pursuing occupations regarded as "male" or taking university courses. On 18 December 1991, the Federal Council had issued directives on the encouragement of the representation of women in the federal administration. Some cantons had issued similar directives. Lastly, the Central Union of Swiss Employers' Associations had published for its members a booklet on combating wage discrimination between men and women.

26. Ms. KOCHERHANS (Switzerland) said that the national collective agreements fixed minimum wages for each branch of activity, which were based on the qualifications of the workers and did not vary much from one branch to another. There were also several cantonal collective agreements which specified minimum wages calculated on the basis of the cost of living in the canton. There were no great disparities between the cantons.

27. Turning to the prevention of work accidents and occupational diseases, she said that the Confederation allocated SwF 100 million a year for information campaigns on occupational hygiene and safety aimed at employers and workers. Switzerland had also ratified ILO Convention No. 162 concerning asbestos and applied various provisions of the European Union directives on prevention of work accidents.

28. Ms. SCHULZ said that the provisions of the Federal Accident Insurance Act of 20 March 1998 concerning the prevention of work accidents and occupational diseases were applicable to all Swiss enterprises. However, the Act's scope of application did not extend to private households or army establishments. The failure of an employer to comply with the provisions of the Work Accident Prevention Act could entail sanctions ranging from closure of the enterprise to criminal penalties, including an increase in the premiums paid by the enterprises; those additional premiums were administered by the Swiss National Accident Insurance Fund (CNA), which used them to finance activities connected with the prevention of work accidents and occupational diseases. The CNA and other insurers also encouraged the prevention of non-occupational accidents and jointly managed an institution which contributed to the prevention of that type of accident by means of information and general safety measures.

29. French-speaking Switzerland was more seriously affected by unemployment than German-speaking Switzerland for two main reasons. Firstly, the tertiary sector - relatively bigger in French-speaking than in German-speaking Switzerland - had been more seriously affected by economic restructuring; secondly, the construction sector had borne the full brunt of the economic crisis in French-speaking Switzerland.

30. Mr. ELMIGER (Switzerland) said that the Swiss authorities were worried about the problems which had arisen in some diplomatic missions in Geneva. The Federal Tribunal had recently handed down an important decision stating that the Federal Labour Act applied to persons employed in diplomatic missions and that diplomatic immunity covered acts carried out in the performance of official functions but not acts of everyday life. In addition, the Federal Department of Foreign Affairs had issued new directives containing measures for stricter monitoring of the behaviour of

members of diplomatic missions, including the possibility of declaring a diplomat persona non grata.

31. Mr. RIEDEL said that he welcomed the position of the Swiss authorities, but at the international level it was necessary to refer to the 1961 Vienna Convention on Diplomatic Relations: article 31 applied to cases of abuse committed in the home of a diplomat and article 32 could be invoked to request the waiver of immunity. Also relevant was the first sentence of article 41 (1) of the Convention, which read: "Without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving State". The decision of the Federal Tribunal and the new directives issued by the Department for Foreign Affairs were entirely in conformity with that article. It was clear that diplomatic immunities were only functional immunities. Accordingly, the receiving State had a duty to try to secure the waiver of the diplomatic immunity of the person in question so that the necessary proceedings could be brought. If the sending State refused to waive diplomatic immunity, the receiving State still had the possibility of declaring the culpable diplomat persona non grata. However, that measure would not be of any use to the victim of the abuse. For the purposes of the application of the Covenant, abuses committed in a diplomatic mission created an unusual situation, in which the receiving State must act as a kind of driving belt in order to induce the sending State to respect the rights set out in the Covenant. Lastly, the receiving State had the discretionary power of expelling the victim of an abuse. It would be interesting to know in that connection whether the Swiss authorities envisaged changing their policy towards the victim, i.e. waiving his expulsion.

32. The CHAIRPERSON said that in the situation in question the main responsibility rested with the Governments of the sending countries. He suggested that specific cases should be raised with delegations during the consideration of the reports of States parties.

33. Ms. JIMENEZ BUTRAGUEÑO said that it was necessary to talk about abuses so that diplomats would know that they could not act with impunity.

34. Ms. IMESCH (Switzerland) said, in connection with assistance for the elderly, that the Old-Age and Survivors Insurance Act provided for a system of federal subsidies for private institutions recognized as being of public benefit for the provision of certain kinds of help for the elderly. The qualifying institutions were ones which devoted themselves entirely or to a large extent to providing assistance to the elderly and took responsibility for the training and further training of specialists and auxiliary staff in that sphere. The subsidies amounted to a maximum of four fifths of the qualifying costs. "Pro Senectute", an institution founded in 1917 and recognized as being in the public interest, was represented in all the cantons and had an annual budget of about SwF 110 million, provided in equal parts by public and private bodies. It had a very broad sphere of action, covering care, assistance to enable the elderly to remain in their own homes, and organization of activities and training. The authorities were particularly worried about poverty among the elderly. Where research was concerned, the Confederation had launched an "Old age" programme for the period 1992-1998; the main topics of study were the economic and social effects of demographic ageing and social integration and personal development in old age, as well as health care and supervision of the elderly. Where lodging was concerned, the policy was to help persons who so wished to remain in their own homes as far as possible. There were also care centres for the elderly and intermediate housing arrangements between staying at home and placement in a residential home, such as sheltered apartments. The old-age assistance policy was subsidized by the Confederation and implemented at the canton and commune levels.

35. Ms. KOCHERHANS (Switzerland) said that the cantons established their own rules on the status of civil servants. The status of civil servants employed by the Confederation was currently being reviewed; the new draft text provided for the lifting of the ban on the right to strike, it being understood that the Federal Council would always be able to limit that right for reasons of national security or to guarantee the provision of essential services and goods.

36. Ms. IMESCH (Switzerland) said that according to article 34 quater, paragraph 1, of the Federal Constitution, benefits in respect of old age, death and invalidity were administered in the form of the so-called "three pillars". The first pillar was the basic federal AVS-AI scheme (old-age and survivors' insurance/disability insurance), which was governed by a Federal Act which had undergone several revisions. The second pillar was the minimum legal occupational insurance, which was normally compulsory for employees; the third pillar was personal insurance, which the Confederation was required to encourage in collaboration with the cantons, in particular by fiscal means. All economically active persons and all other persons domiciled in the country were subject to the AVS-AI scheme, the tenth revision of which had entered into force on 1 January 1997 after having been accepted by referendum. The main changes made on that occasion were: replacement of the system of joint family incomes by individual incomes; raising of the retirement age for women, in two stages, from 62 to 64 years, the retirement age for men being 65. The AVS-AI scheme was based on the principle of insurance: normally all persons were required to contribute. The system had an important solidarity component, as contributions were based on total income, whereas benefits ranged between a floor and a ceiling having a ratio of 1:2. The minimum amount of the benefit was currently SwF 995 per month and the maximum SwF 1,990. The benefit calculated on the basis of income was supplemented by

additional payments for education and care responsibilities, an arrangement which compensated to some extent for the fact that women often gave up a gainful activity to bring up their children or care for a dependant.

37. Ms. JIMENEZ BUTRAGUEÑO said that she would like to know whether the basic and the occupational insurance schemes were cumulative.

38. Mr. GRISSA asked what Switzerland was doing to cope with the effects of increased life expectancy on the cost of social security and whether the authorities envisaged raising the age of retirement.

39. Mr. CEVILLE asked whether orphans whose parents had died before legalizing their situation in Switzerland received the orphan's allowance.

40. Ms. IMESCH (Switzerland) said that occupational insurance - the second pillar - was additional to the basic scheme for all persons doing paid work but it was optional for self-employed persons. With regard to the financial consequences of increased life expectancy, in 1994 the Federal Council had commissioned an interdepartmental group to study the future funding of social security. On the basis of the first part of its report, published in June 1996, the authorities had concluded that a comprehensive social security reform was not necessary for the time being; they were trying instead to identify new forms of funding. In addition to the contributions paid by employers and employees and the public subsidies, there were plans to use the value added tax and perhaps an energy tax to provide part of AVS funding. There was no question of raising the age of retirement for the moment. The eleventh revision of the AVS was about to get under way and it would provide an opportunity for studying the possibility of optional retirement before age 65 for men and women.

41. Lastly, children whose father or mother had died were entitled to a single allowance, and children both of whose parents had died were entitled to a double allowance. For an orphan to receive an allowance, the deceased parent must have paid at least one year's contributions to the system. It followed that the orphan's allowance could not be paid to a child whose parents were already dead when he or she arrived in Switzerland.

42. Mr. SADI said that he would welcome an explanation of the sharp increase in the number of divorces in Switzerland in recent years. He noted the use in the report of the terms "legitimate filiation" and "illegitimate filiation", and stressed that, in connection with the Convention on the Rights of the Child in particular, those terms should no longer be used. He would like to have an

explanation of the surprising information contained in paragraph 392 of the report that marriages between foreigners and Swiss citizens accounted for almost one quarter of all marriages. Lastly, was the law fixing the age of consent to marriage at 18 applied without exception or did a girl of 17 who was pregnant have the right to marry?

43. Mr. TEXIER said that he would like to know whether children born out of wedlock had the same rights as other children. He asked whether the current amendments to the divorce legislation envisaged that parents might exercise joint guardianship of their children after divorce. Had any thought been

given to introducing a "town-hall" divorce procedure in the most straightforward situations? Lastly, what were the current and planned arrangements for maternity insurance?

44. Ms. BONOAN-DANDAN asked whether, in view of the many cases of sexual abuse of children recorded in Switzerland, the Government had ordered any studies on that problem and, if so, whether the studies had established a characteristic profile of the perpetrators of that kind of offence, identified the factors to which such abuse could be attributed, and established the percentages of native Swiss children and children of foreign origin among the victims. With regard to the children of divorced parents, what were the responsibilities of the parent to whom parental authority had not been assigned?

45. Switzerland's initial report contained no information about the problem of battered wives, but according to one source some 110,000 women fell victim to conjugal violence every year in Switzerland; it would therefore be useful for the Swiss delegation to give further information on that very alarming situation.

46. Mr. THAPALIA asked whether a court, an ombudsman or some other body was specifically responsible for dealing with cases of conjugal violence and whether, apart from the legal aspect, the Swiss Government was planning to take any measures to eliminate that social scourge.

47. Mr. ADEKUOYE noted that a fairly large number of single-parent families seemed to be living in poverty because a single parent was often compelled to work part-time and therefore received only a low wage and reduced social benefits. He would like to know what the Swiss Government intended to do to combat poverty in general and to ameliorate the situation of single-parent families in particular. It would also be interesting to know, in view of the considerable magnitude of the problem of battered wives in Switzerland, how effective the various existing counselling arrangements were, especially the advisory centres for mothers.

48. Mr. GRISSA asked for information about the provisions of Swiss law concerning international adoption and whether there was a body responsible for determining whether persons wishing to adopt a child abroad met the required conditions, particularly in the light of the increasing number of persons from developed countries travelling to developing countries to adopt children.

49. The CHAIRPERSON invited the members of the Committee to ask questions relating to article 11.

50. Mr. RIEDEL said that he would welcome information about the exercise of the right to housing in Switzerland and would like to know in particular whether evictions were a problem and, if so, what measures were being taken to protect persons threatened with eviction and to ensure compliance with the provisions of the Covenant.

51. Mr. ADEKUOYE said that during a recent discussion of the effects of globalization the Committee had concluded that that process tended to have a harmful impact on workers and a favourable impact on holders of capital, with the consequence of a widening gap between rich and

poor at the world and country levels. That also seemed to be the case in Switzerland, where despite an increasing per capita income the poor still seemed to be getting poorer. He would therefore like to know what Switzerland was doing to cushion the effects of that trend and, in particular, whether the federal poverty survey which was to have been undertaken by the Swiss National Scientific Research Fund had been published. Poverty also tended to carry with it a degree of social stigma in developed societies, with the result that the poor were sometimes ashamed to disclose their poverty and claim the benefits due to them; it would be interesting to know whether the Federal Government and the cantons had introduced arrangements for informing the victims of poverty about all the allowances to which they were entitled and thus eliminating that social stigma.

52. Mr. TEXIER said that he would like to know whether Switzerland had a problem of the homeless and what rules applied to evictions. In the case of private evictions - for non-payment of rent or for disorderliness, for example, were there automatic legal procedures for obtaining an eviction order or did other modalities exist? In the case of expropriation for public purposes, he would like to know the details of the legislation and how the expropriation was effected in practice.

53. Mr. GRISSA noted that according to the initial report Switzerland had 500,000 to 700,000 poor people; he would like to know how the poverty threshold was determined and what arrangements had been made to assist persons living below that threshold.

54. Mr. AHMED said that he associated himself with Mr. Grissa's question. According to one study Switzerland had about 500,000 poor, accounting for 5.6 per cent of the population; according to another study, 45 per cent of the population lived close to the poverty threshold, on the criterion of regarding a monthly income of SwF 4,000 for a couple having only one wage and two children as close to that threshold. He would like the Swiss delegation to clarify the official definition of poverty in terms of disposable monthly income.

55. The CHAIRPERSON invited members of the Committee to ask questions about article 12.

56. Ms. BONOAN-DANDAN said that the initial report contained no information about matters connected with mental health. According to one NGO, Switzerland certainly had sufficient institutions to care for the mentally ill but the treatment provided was not adequate and the interests and rights of the patients, in particular old people suffering from dementia, were not respected; in some cases substances had been injected without the agreement of the patients or their families. It would thus be useful for the Swiss delegation to give some explanations on that subject. Furthermore, table 30, on the different types of drug consumption, by sex, age and level of education, which appeared on page 135 of the report, showed that women consumed many more tranquillizers than men, a fact which certainly said something about the mental health of women. It would therefore be useful for the Swiss delegation to describe the factors underlying that phenomenon.

57. Mr. ADEKUOYE asked whether, as stated in paragraph 613 of the report, the Lausanne University Institute of Social and Preventive Medicine was making regular evaluations of the package of measures designed to reduce drug-related problems and, if so, when the series of evaluations had begun and what its findings were. He would also like to know, even on a provisional basis, what success had been achieved by the programmes to increase the availability of residential treatment for drug addicts and by the prevention programmes mentioned in Switzerland's written reply to question 34 on the list of issues.

58. Ms. JIMENEZ BUTRAGUEÑO said that she would like to know whether, in the event of sickness, insured persons had to settle their medical and pharmacy bills themselves and then have the cost reimbursed and whether they were reimbursed 100 per cent of the cost or had to pay a proportion themselves. If the latter was the case, did the arrangement also apply to retired persons.

59. Mr. WIMER said that Switzerland's recourse to the controlled distribution of heroine and methadone seemed to indicate a shift in its anti-drugs policy towards increased permissiveness in the manner of the Netherlands. It was very important to have the fullest possible information about the reasons for that fundamental change of direction and the new trends in the anti-drugs policy.

60. The recent discovery of international paedophile networks using modern information technology had highlighted the need for international action to combat that type of offence, which had been dealt with up to the present by national legislation. Among other things, national legislations would have to be unified, especially with regard to the procedures for investigating that type of offence, and a special jurisdiction might have to be established. He would like to know Switzerland's opinion on those points and what it was doing to combat paedophilia.

61. Mr. GRISSA observed that the report contained no information about the specific diseases of women or about abortion; he would like to know whether abortion was legal in Switzerland and what particular health problems were encountered by women.

62. Mr. TEXIER said he understood that sickness insurance, in particular the basic scheme, was relatively expensive in Switzerland and that the possibility of receiving financial support to pay for such insurance was a matter for the cantons but not all of them provided that kind of benefit. According to information transmitted by NGOs, a "two-tier" health system appeared to be emerging as a result of the fact that, in order to reduce their contributions, some people were accepting an excess clause without being in a position to meet the costs of their initial non-reimbursable treatment. He would therefore like to know what the Swiss Government was doing at the federal level to ensure the greatest possible access to health care for everybody, in particular access to public hospitals.

The meeting rose at 6 p.m.



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COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Nineteenth session

SUMMARY RECORD OF THE 39th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 23 November 1998, at 10 a.m.

Chairperson: Mr. ALSTON

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CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16
AND 17 OF THE COVENANT (continued)

Initial report of Switzerland (continued)

This record is subject to correction.

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS:

(a) REPORTS SUBMITTED BY STATES PARTIES IN ACCORDANCE WITH ARTICLES 16 AND 17 OF THE COVENANT (agenda item 6) (continued)

Initial report of Switzerland (continued) (E/1990/5/Add.33; HRI/CORE/1/Add.29; E/C.12/Q/SWI/1; in-session document with no symbol containing written replies by Switzerland to questions raised in the list of issues and Corrigendum)

1. At the invitation of the Chairperson, the members of the delegation of Switzerland resumed places at the Committee table.

2. Ms. KOCHERHANS (Switzerland), replying to questions put by Mr. Ahmed, said that the average time taken for issuance of a decision concerning asylum and refugee status was 119 days. In 80 per cent of cases a first decision was announced within 89 days. The competent authority at first instance was the Federal Office for Refugees; decisions on appeal were made by an independent commission for appeal in asylum matters. Both those organs were federal bodies. Flows of immigrants from Italy, Spain and Portugal in the 1960s and 1970s had recently given way to flows from eastern European countries such as the former Yugoslavia and Albania. The short-term residence permits granted to the first wave of immigrants on their arrival had been replaced almost automatically by long-term permits, so that those immigrants were now fully integrated into Swiss society.

3. Mr. WYSS (Switzerland), replying to questions put by Mr. Sadi and Mr. Texier on marriage and divorce, said that between 1967 and 1994 the average rate of divorce had risen from 12 per cent to 37.8 per cent of marriages contracted during the reference period. About one third of all divorce proceedings were instituted during the first five years of marriage, chiefly by the wife. Changes in religious attitudes, material wealth and the emergence of new family structures were among the factors contributing to that development. The comparatively high number of marriages between Swiss nationals and foreigners might be attributable to the fact that second-generation immigrants had now reached the age of marriage. Following the failure of an attempt by its opponents to initiate a referendum procedure, a partial revision of the Civil Code would enter into force in 1999, meeting the need for a modernized divorce law. The revised Code provided for divorce on the basis of mutual consent. While the feasibility of a simple administrative procedure had been considered, it had been decided to retain a mechanism involving a court decision, in order to avoid over-hasty recourse to divorce. A divorced couple could now request the competent court to grant joint exercise of parental authority. A similar provision existed for unmarried couples in guardianship matters. In both cases the criterion applied was the best interests of the child. The age of consent for matrimony had been harmonized at 18 years for men and women.

4. Ms. KOCHERHANS (Switzerland) said that there was currently no system of maternity insurance in Switzerland, but that very strong safeguards existed for employed pregnant women and nursing mothers. In addition to the protection measures detailed in paragraphs 426 to 430 of the initial report (E/1990/5/Add.33), the revised Labour Law which, it was to be hoped, would be approved the following week provided that a pregnant woman employed on night work could request to be employed in the same work on the day shift. If it was not possible to grant her request, she would be entitled to be exempted from work throughout her pregnancy and to receive 80 per cent of her salary.

5. Ms. IMESCH (Switzerland) said the impression that maternity was treated as a category of sickness for insurance purposes was an erroneous one, arising from the fact that a 1996 revision of the 1911 Sickness Insurance Law had extended cover to persons not otherwise insured in the three entirely separate contingencies of sickness, maternity leave and accidents at work. As daily insurance would remain optional under the proposed new Sickness Insurance Law, so that there would be no automatic right to cash maternity benefits, the Government had once again attempted to implement its constitutional mandate by tabling a draft law on maternity insurance, while confining itself to the question of cash benefits, since maternity care was already satisfactorily regulated by the Sickness Insurance Law. Despite some opposition encountered in the two Chambers, it was to be expected that that draft law would shortly be adopted. It was worth noting, however, that the issue might yet be forced to a referendum.

6. The first Swiss report on the question of ill-treatment of children within the family, published in 1992, had revealed that the phenomenon was widespread, and that corporal punishment was commonly inflicted on infants. Following a 1995 opinion of the Federal Council on the report, the Centre for Family Questions, a division of the Federal Office of Social Insurance, would assume coordinating functions in the area of child protection, responsibility for which was currently shared among various departments of the administration. Projects launched since 1996 included training programmes and the establishment of a computerized archive on child abuse. Theoretical research on a global concept of prevention and on exploitation of minors in Switzerland was also being financed. That study would have important practical as well as theoretical applications.

7. Mr. RIEDEL asked what the authorities of the Confederation could do to ensure that equal standards were applied in all cantons in matters of protection of children against abuse.

8. Mr. WYSS (Switzerland) said that the federal administration had various mechanisms at its disposal for such purposes, but availed itself of them only with reluctance. As no specific measures existed to combat ill-treatment of children, the authorities had to rely on general measures and instruments, ranging from simple reminders to legal remedies. The core idea underlying a new set of legislative proposals aimed at combating sexual abuse of children was to extend the statutory limitation for such offences by computing it from the date on which the victim attained 18 years of age. The proposals also provided for specific measures to be taken if the judicial organs of the cantons and communes failed to take appropriate action. Information on the outcome of and follow-up to those proposals would be included in Switzerland's second periodic report to the Committee.

9. Mr. KOUZNETSOV asked whether it was possible for the Federal Government to intervene in cantonal affairs if it considered that the obligations binding on the Confederation in human rights matters were being violated at cantonal level. If so, what form would such intervention take?

10. Mr. WYSS (Switzerland) confirmed that the Federal Constitution provided for such intervention. The form it took would depend on what action the canton had taken or neglected to take, and might entail judicial procedures at various levels. However, given that the cantons were legally bound to comply with judgements of the Federal Court and the European Court of Human Rights, the question of forcible intervention by the Federal Government in Human Rights matters had never arisen.

11. Ms. SCHULZ (Switzerland), replying to questions concerning the structures available and

measures proposed to assist women victims of sexual violence and verbal abuse, said that data on violence against women were gathered by the Federal Office of Statistics in the context of health surveys, and also by national research programmes. A study was being conducted on the question, from which it could be seen that the incidence of domestic violence were the same among Swiss citizens as among foreigners. Many of the perpetrators had themselves been victims of violence in childhood. Violence was more likely to occur in families where the spouses enjoyed unequal financial, social or cultural resources: for example, a foreign woman married to a Swiss national, isolated from her own family and ignorant of Swiss society, was more vulnerable to domestic violence. Cases of domestic violence were dealt with in the criminal and civil courts, and there was no ombudsman to deal with such problems. The cantonal police had units specially trained to deal with the problem, and victims were legally entitled to be heard exclusively by women police officers and women judges.

12. Ms. IMESCH (Switzerland) said that a 1992 study had shown that single-parent families constituted a disproportionately high percentage of the poor population, and were poorer than poor two-parent families. However, as single-parent families constituted a relatively small proportion (3.6 per cent) of the total population, they accounted for only about 7 per cent of the poor population. Another study, conducted in 1996, had shown that the problems encountered by such families were chiefly of a personal and relational rather than an economic nature. Economic difficulties were real enough, but tended to disappear once the mother had re-entered the labour market.

13. No special assistance was accorded to single-parent families as such, but single parents benefited from the assistance accorded to parents and young people in general, such as the services provided by the cantons and State-financed programmes. In addition, aid was provided to single-parent families in application of the legislation covering the population as a whole by field of insurance rather than by category of person insured. Although cantonal child allowances were tied to the exercise of a gainful activity, so that single parents working part-time were entitled only to partial allowances, some cantons paid full allowances to single parents who worked part-time in order to raise a family. The cantons were also obliged to reduce sickness insurance premiums for insured persons on low incomes, including single-parent families. Eleven cantons had introduced income-related benefits. Single-parent families also benefited from general poverty alleviation measures. The demand for child-minding services exceeded the supply, except in the Ticino canton so priority was given to working parents.

14. Ms. KORNIKER UHLMANN (Switzerland), replying to the questions on international adoptions, said that in recent years their number had varied from 500 to 750 per year. Swiss law was applied, and the approval of such an adoption was the responsibility of the authorities in the foster parents' place of domicile. The Civil Code laid down three main conditions. Firstly, the prospective foster parents had to provide satisfactory care and education for a probationary period of two years. Secondly, the consent of the child was required. Thirdly, the relevant Federal Council Circular of 1988 stated that an international adoption could proceed only if attempts to raise the child in his country of origin, either in his own family or through fostering or adoption, had failed.

15. Where there were obstacles to the recognition in Switzerland of the adoption of a foreign child, or the adoption had not been approved in the country of origin, placement was subject to Swiss federal laws. According to the regulations, the child remained under the supervision of the appropriate cantonal authority, which was empowered to approve the adoption once it had determined that there were no legal barriers and that the general circumstances were propitious. The consent of the authorities in the State of origin was also required. The prospective foster parents had to present a medical report on the child, a report on his previous life in his country of origin, and a document attesting to the consent of his natural parents or a statement by the authorities in the country of origin explaining why such consent could not be obtained.

16. The child remained a foreigner until he was adopted, and thus had to be issued with a residence permit in accordance with the Order restricting the number of aliens and the Civil Code. Although the former provided that a residence permit could not be renewed after two attempts at placement had failed, in practice authorization to stay was renewed annually. Such a situation could last for up to five years, after which the child was freed from federal control. To date, no child in such circumstances had been forced to return to his own country.

17. Finally, Switzerland was preparing to ratify the 1993 Hague Convention relating to the protection of children involved in international adoptions. Consultations had already been held at cantonal level with a view to incorporating the provisions of the convention into Swiss law and practice. In addition, the Government intended to amend the Civil Code in order to establish a central federal authority concerned with international adoptions, and to reduce the probation period from two years to one.

Article 11

18. Mr. WYSS (Switzerland), replying to the questions which had been put concerning forced evictions, said that although there were no specific legal provisions relating to the conditions under which a tenant might rightfully claim to remain in his accommodation once notice to quit had been served, the Federal Tribunal had clearly stated that such evictions were subject to a "proportionality test", which required the evicting authority to take account of humanitarian considerations and to grant a temporary reprieve if a tenant had nowhere else to go. Such an extension was not deemed to be a renewal of the lease. In addition, the Code of Obligations contained several provisions designed

to prevent landlords abusing their power to terminate contracts. Eviction procedures were regulated by cantonal law, and a court order was normally required.

19. Ms. IMESCH (Switzerland), replying to questions on the poverty threshold and measures taken to combat poverty, said that no official threshold had been set at either federal or cantonal level. In practice, however, the income limits set by institutions were used as the indicators of minimum levels.

20. The first main indicator was supplementary benefits, which were paid to individuals receiving a disability benefit, pension or survivor's benefit if their income was deemed insufficient according to a standard means test. Although the 26 cantons were not required to pay supplementary benefit under federal law, they had all introduced legislation to that effect. Supplementary benefit was paid on a non-contributory basis in accordance with personal and economic circumstances. It could sometimes be paid to those not in receipt of the normal social welfare benefits. The amount received was based on the difference between an individual's expenses and his income, an exhaustive list of factors being taken into account.

21. Supplementary benefit was also available to elderly persons already receiving State benefits, in order to cover the cost of health care, health insurance, transport, wheelchairs, etc.

22. Other organizations, notably the Swiss Conference of Institutes for Social Action and the cantons themselves, applied criteria for determining the level of poverty of persons not in receipt of welfare benefits.

23. Outside the benefit's system, the principal means of tackling poverty in Switzerland was the system of public assistance, which applied only to those not covered by social security or whose income was deemed insufficient. All the cantons had legislation providing for social assistance more generous in some cases than in others. Implementation was the concern of the communes, which also had the right to pass regulations. The Swiss Conference of Institutes for Social Action had formulated recommendations on social assistance which, although not binding, were universally respected at both cantonal and communal level.

24. Ms. KOCHERHANS (Switzerland) said that unfortunately the Government did not compile data on homeless persons. Only a small number of private charities were involved in activities that addressed the problem.

25. Mr. TEXIER asked what happened in Switzerland with squatters.

26. Ms. KOCHERHANS (Switzerland) replied that the measures applied to squatters varied considerably depending on such factors as whether they left the building in a "clean" or unusable state, whether the building was publicly or privately owned, and the relationship between squatter and owner. In some cases, a "contract of trust" was drawn up whereby the squatters undertook to pay the costs of utilities used over a fixed period, such as the time taken to refurbish the building. Negotiation was the preferred means of resolving problems, although in some cases the police had to be called in.

Article 12

27. Mr. BUECHI (Switzerland) said that the Government had very little information available about the mentally ill in the community. It readily admitted that problems had occurred in respect of forced treatment and medical malpractice. Formal responsibility lay with the cantonal governments, but the real problem was that society as a whole sought refuge in the "out of sight, out of mind" attitude. The federal Government lacked the means to take appropriate action, and he warmly commended those NGOs which were involved with the mentally ill.

28. Mr. RIEDEL said he welcomed the delegation's admission that a great deal more might be done to address the problems of the mentally ill. The Committee would, however, like to know what the Government's intentions were in terms of its promotional obligations, action plans, and proposed legislation.

29. Mr. BUECHI (Switzerland) said that the only initiative the federal Government had taken to date was a new research programme aimed at obtaining information on young people with mental health problems.

30. Mr. WYSS (Switzerland) said that forced medical treatment was subject to restrictive legislation, based mainly on the case law of the European Court of Human Rights at Strasbourg. A convincing case had to be made that it was essential for the patient's physical and mental health, and all orders authorizing such treatment were subject to judicial review. After reaffirming the paramount importance of ensuring that human dignity was maintained in all cases of forced treatment, the Federal Tribunal had recently declared unconstitutional a cantonal order requiring an elderly woman to present herself at a hospital for medical examination.

31. Switzerland was considering ratifying the Council of Europe's framework convention on biomedicine, which contained a number of provisions aimed at protecting the fundamental rights and freedoms of persons undergoing medical treatment in a wide range of circumstances.

32. Mr. BUECHI (Switzerland), replying to questions about measures to deal with drug addiction in Switzerland, said that in 1991 the Lausanne University Institute of Social and Preventive Medicine had been given the task of evaluating federal policy on a regular basis. In response to its recommendations, the Government had introduced new measures to deal with an increase in the number of outpatients presenting with drug-related symptoms, with the problems of young women involved in the drug scene, and with a whole range of issues relating to the quality of the overall treatment programme for drug addicts. Recently, the Lausanne Institute had recommended that the Government should not try to diversify its facilities and treatment programme any further without undertaking significant additional research.

33. The Government had also set up projects in every major city to tackle the problems of drug-using prostitutes. Likewise, the problems of drug users in prison, including those with AIDS, were being addressed in response to the Institute's recommendations.

34. Mr. RIEDEL asked whether it was the practice in Swiss prisons for prisoners with HIV to be openly identified.

35. Mr. BUECHI (Switzerland) said that to his knowledge that was not the case.

36. In reply to Mr. Wimer's question on the extent of the liberalization of drug policy in Switzerland, he said that a fundamental shift had occurred over an extended period. The process had started in 1991, when a conference convened by the federal Government and attended by representatives of all interested groups and levels of government had concluded that the existing treatment regime needed to be changed. To its three existing pillars - namely prevention, treatment and repression - there had accordingly been added a fourth which had come to be known as "harm reduction". At first, that had meant the provision of clean needles and "low-threshold" treatment rooms. By 1996, it had come to mean the prescribing of heroin for some of Switzerland's 15,000 drug users for whom methadone treatment had proved unsuitable. Seen from within, the new policy represented the use of science to deal with a public health problem; however, that was not how some outsiders perceived it.

37. Mr. SADI asked whether there was any evidence to suggest that Switzerland's enlightened drug policy had undermined the activities of drug dealers and traffickers.

38. Mr. BUECHI (Switzerland) said that that question related to the "repression" pillar of the overall policy. Over the past year, 50 additional police staff had been taken on in connection with drug dealing. Overall, 10 times more funding was devoted to policing than to treatment. Furthermore, Switzerland had recently introduced new laws to tackle money laundering, which was an important aspect of the drug problem.

39. Ms. IMESCH (Switzerland), in further reply to questions, said that the new Sickness Insurance Act, which had come into force on 1 January 1996, provided health, accident and maternity cover for all, under mandatory insurance guaranteeing a basic level of medical and pharmaceutical care. The insurance operated on the basis of individual premiums that were not linked to income. The insured person was entitled to the benefits provided by the scheme from the moment of joining an insurance fund. No time limit was placed on entitlements to in-patient and out-patient care. Hospital costs for a stay in a public ward were fully covered, as were certain forms of care provided in the home under the SPITEX programme. The insurance scheme gave everyone living in Switzerland access to quality medical and pharmaceutical care. The cost of health care had represented approximately 9.6 per cent of GDP in 1994.

40. There were two parts to the insurance scheme, the first providing health cover, which was mandatory, and the second loss-of-earnings cover, which was optional. The health cover component was based on the principle of distributing the burden on a mutualistic basis, the costs being met from premiums paid by insured persons, charges paid by those receiving care, and subsidies provided by the public authorities. Each insurance fund determined the premium it charged, which was the same for each member of the fund, on the basis of the costs it expected to cover. The price of premiums was regulated by competition among the insurance funds. Persons receiving health care contributed by paying the first Sw F 250 of their health-care costs in any one year, together with 10 per cent of any costs above that threshold level up to an annual ceiling, set at Sw F 600 for 1998. The total amount payable in 1998 was thus Sw F 850. For children there was no threshold cost and the annual ceiling was half the adult level. In the case of a number of children from a single family insured with the same insurance fund, the threshold and ceiling were the same as for an adult.

41. In 1996, 11.5 per cent of total health-care costs had been paid by insured persons receiving care, while 76 per cent had been met from the premiums paid to the insurance funds. The balance came from public subsidies. In the past those subsidies had been determined on the basis of the number of persons insured with a given fund, but the system was now radically different, with the Confederation or canton setting aside a given sum to be made available to the sickness insurance funds for the purpose of reducing the premiums payable by persons in straitened circumstances in order to bring health insurance within their reach. The sum earmarked for that purpose in 1998 was Sw F 2,050 million, each canton being expected to add a minimum contribution. The share of the subsidy received by each canton was determined on the basis of its financial capacities, population and premium index.

42. The federal subsidy system had not worked as well as could have been expected, since some cantons had not used all the funds made available to them. The first review of the Sickness Insurance Act, which was already under way, should provide corrective action to ensure that people were better informed of their rights with regard to reduced premiums, that premium reductions were based on the latest tax data, and that reductions were determined before the premium was due for payment.

43. Mr. SADI observed that since the insurance funds were private companies they would expect to make a profit in order to stay in business. How was that taken into account in the calculation of public subsidies? Did those subsidies come from general tax revenue?

44. Ms. IMESCH (Switzerland) said that the health insurance funds were not expected to operate on a profit-making basis but on a cost-efficient basis and on the principle of mutualism. They were

expected to calculate their premiums according to the size of the reserve fund needed to cover their risks. The subsidies were made available to the cantons from the federal budget, but the cantons also had to provide a supplement from their own funds. If the tax return completed by any individual showed that payment of the insurance premium would be a burden, that person was issued with a paper giving entitlement to a subsidy.

45. Ms. JIMÉNEZ BUTRAGUEÑO asked whether a retired person was expected to pay the same premium as a person in gainful employment, who was likely to have a much higher income. What level of care was available for older persons, for example did they have access to regular medical examination?

46. Ms. IMESCH said the amount of the premium set by an insurance fund was the same for all its contributors, regardless of whether they were at work or retired. It was open to any insured person to shop around for the insurance fund that charged the lowest premiums. There was no restriction on a person's changing insurance funds at will, in order to encourage free competition between insurers. However, if payment of a premium or health-care charges represented too great a financial burden for an individual, help would be available in the form of subsidies, supplementary benefits or social assistance.

47. The level of health care afforded to older persons in Switzerland was generally high. In addition to a large number of hospitals and well-trained medical and paramedical staff, a system of care for older persons, much of which was reimbursed by health insurance, was in place to help them remain in their own homes if they so wished. Old people's homes were also available to those who needed them.

48. Mr. WYSS (Switzerland) said that under the current Penal Code abortion was prohibited unless two medical experts had agreed that continuation of the pregnancy entailed serious medical risk. However, there had been no convictions for breach of that provision since 1988. The number of abortions carried out in public health institutions had declined from 17,000 in 1966 to some 12,000 in 1994. The number of illegal abortions had decreased from about 45,000 to none.

49. In view of recent changes in public attitudes to abortion, a reform of the law was in prospect. A parliamentary commission had put forward a majority proposal to legalize abortions carried out within 14 weeks of conception. The requirement for a second medical opinion would not be

continued, nor would medical consultation be mandatory. A minority in the commission had been in favour of complete decriminalization of abortion. The proposals had been considered by the public at large and were currently before the Federal Parliament, the 14-week procedure having already been approved by one chamber, the National Council. The final outcome could be dealt with in Switzerland's next report to the Committee.

50. Mr. BUECHI (Switzerland) said that abortion was no longer a public health problem in Switzerland. Furthermore, as a result of the provision of sex education in schools and the efforts of the Stop AIDS campaign, women and girls were well informed on ways to prevent unwanted pregnancies. However, it was hoped to continue to reduce the current abortion figures by paying greater attention to women's health in general.

51. Mr. WIMER ZAMBRANO, noting the evidence for the existence of paedophile rings in Europe and the impact of that phenomenon in developing countries, asked what measures were being taken in Switzerland to prevent child sex abuse and prosecute those who engaged in it.

52. Mr. ADEKUOYE asked what was meant by the term "special waste" used in paragraph 569 of the report. Where such waste was exported, what was its destination? Was any sent to developing countries, in particular in Africa?

53. Mr. ELMIGER (Switzerland) said that an inquiry would be made into the matter and a reply sent later to the Committee in writing.

54. Mr. BUECHI (Switzerland) said a member of staff of the Federal Police Office was engaged full-time in looking into the problem of child sex abuse, including identification of paedophile Internet sites in Switzerland. In addition, it was now possible to bring to justice in Switzerland persons accused of child sex abuse elsewhere.

Articles 13 and 14: The right to education

55. Mr. RIEDEL said that a bill advocating an increase in university fees had apparently been before the Federal Parliament in 1997 but had later been withdrawn in the face of adverse comment, including representations from non-governmental organizations and a letter from the Chairperson of the Committee on Economic, Social and Cultural Rights. Were there any other plans for legislation on those lines? Further, although subparagraphs (a), (b) and (c) of article 13.2 of the Covenant each carried different wording, the reference to "every appropriate means" should not be regarded as an open invitation to charge school fees. The overall intent of the article, which the Committee had consistently endorsed, was to promote the progressive introduction of free education at all three levels of education. Was that also the aim of Swiss educational policy? Could he take it that no retrogressive measures were in view? Were the federal authorities cognizant of the binding nature of their undertaking in that connection under international law, particularly in view of the indication in the third paragraph of written reply 38.2 to the list of issues that little financial assistance, for example in the way of grants and loans, was available to students in higher education?

56. Written reply 36.3 to the list of issues admitted to some penalization of girls in the education system, particularly with respect to textbooks. What measures had the federal authorities in mind to remedy that situation - which it clearly did not welcome - and make cantonal and local authorities aware of their international obligations in that respect?

57. Mr. CEVILLE, referring to the statement in paragraph 617 of the report that the Federal Constitution embodied no general right to education, noted that a proposal to rectify that omission had failed to come into effect in the past because of its rejection by the cantons in a 1973 referendum despite acceptance by 52.8 per cent of the total population voting. He wondered whether the Federal Government was currently considering any further steps to ensure recognition of the right to education in the Federal Constitution.

58. Mr. GRISSA asked whether students attending a university in another canton because their own canton did not have one enjoyed the same financial treatment as students from cantons with a university. Did they have to pay higher fees or did their own canton make a financial contribution to the university budget of the other canton?

59. Mr. CEAUSU said that at the time of the referendum mentioned by Mr. Ceville Switzerland had not yet acceded to the Covenant. If the Federal Government were to relaunch that initiative now, would it still have to refer the matter to the cantons and the general population, or could it have

recourse to ordinary legislative procedures instead, since a majority of the people had in 1973 voted for a constitutional amendment in favour of what had since become an obligation assumed under an international treaty?

60. Mr. ADEKUOYE asked what were the real costs to a family of having a child in the different levels of education and what form those costs took. Which were the cantons where school supplies and equipment were not made available to primary schoolchildren free of charge? He understood that one of the reasons for seeking to limit the number of students entering medical school had been the substantial increase in the health budget resulting from the rise in the numbers of doctors graduating from universities. He asked for an explanation, since it was more generally the case that an increase in the numbers entering the medical profession would tend to depress earnings in the profession and lower health costs.

61. Mr. THAPALIA said it had been recognized by the Federal Statistical Office that children who were recent immigrants had difficulty in adjusting to school in Switzerland. Teenagers were particularly disadvantaged. What was being done to remedy the situation? He was aware of only two pilot projects currently under way to try to provide appropriate education for such children. Secondly, he asked what measures were envisaged by the Swiss Government in the context of the United Nations Decade for Human Rights Education.

62. Mr. SADI said that, although there had been hopes that the Federal Tribunal could by its case law remedy any gaps in the legislation with respect to economic, social and cultural rights, it had recently given a ruling that appeared to send a negative signal, namely that article 13.2 of the Covenant was insufficiently precise to be directly applicable but could only be construed as an instruction to the legislature. The Committee was, however, of the opposite view and considered the provision to be directly applicable. Another ruling had indicated that the progressive introduction of free education was not a necessary condition for making higher education more accessible. What other routes to that end were being envisaged by the Swiss Government? Had the number of persons applying for higher education increased or decreased as a result of that ruling?

63. Mr. LUISONI (Switzerland) said he would endeavour to answer the questions on the right to education to the best of his ability, particularly since many of the issues raised were also of concern to the Government and population of Switzerland. More detailed written replies could be provided to the Committee in due course, if necessary.

64. He stressed that the bill to reintroduce fees for secondary II education, alluded to by Mr. Riedel, had been proposed at cantonal level (in the Canton of Zurich) and not at Federal level. In any case, the Canton of Zurich had not approved the bill. Moreover, in other cantons draft legislation along similar lines had been rejected by a popular vote. It was possible, of course, that yet other cantons might propose such legislation and that the considerable publicity which had been created about the issue through the ruling of the Federal Tribunal on article 13 of the Covenant, the letter by the Chairperson of the Committee, and official information provided by the Federal Government to the cantons on the subject might well serve as additional fodder for proponents of the idea.

65. Although the Federal Tribunal had ruled that there was no case for the direct applicability of article 13.2 of the Covenant, since it was construed as an instruction to the legislature, it did not follow that the Swiss Government or the Federal Tribunal underestimated the importance of the instrument. Nor did he view the ruling as a negative signal; and the debate was still open. It was a question of interpretation: the Federal Tribunal had not ruled that the provision was imprecise, but rather that it was not sufficiently precise to conclude that charging no fees was the only means of ensuring universal access to secondary education. Current research in the field showed that other means, such as reimbursable student loans, could be just as effective. To his knowledge the number of students applying for higher education had not been affected by the ruling of the Federal Tribunal.

66. There were different schools of thought on what was meant by the term "social". A referendum had been held recently in the Canton of Geneva concerning a government proposal to reintroduce fees for educational services other than teaching, namely leisure and cultural activities and canteen facilities. In the end the majority had ruled that it was "social", in other words fairer, for those able to pay for such services to do so and for the underprivileged to be given additional support rather than for everyone to be entitled to such services free of charge, irrespective of their financial circumstances.

67. Admittedly Federal Government funds available for student grants and loans were relatively low. At present such matters were governed by an arrangement between the Federal Government and the cantons, whereby the former allocated funds to the latter. There was also an inter-cantonal agreement to ensure harmonization. Much work needed to be done in the area and the federal system certainly did little to help the situation. However, some steps had been taken and progress was being made.

68. Virtually nothing could be done at Federal level to combat discrimination against girls, especially in school textbooks, apart from alerting the cantonal and local authorities, authors and teachers to the need to avoid sexist stereotypes. Considerable progress had been made in the last 20 years but the Federal Government could not have full control over the situation since not all textbooks were

produced in Switzerland, many being supplied by major foreign publishers.

69. Regarding the failure of the Federal Constitution to recognize the general right to education, it must be realized that in Switzerland amendments to the Federal Constitution required the approval of the majority of the population and also of the cantons. In the referendum held in 1973 the proposal to incorporate the right to education in the Federal Constitution had been rejected because, although 53 per cent of the population had voted in its favour, it had not been approved in a majority of the cantons. To his knowledge there were no plans at present for any further amendments to the Constitution along those lines. Since the early 1900s the Federal Constitution had provided for compulsory primary education and, in practice, that right was extended to secondary and in some cases higher education, although it was not guaranteed by the Federal Constitution.

70. All Swiss students paid fees for university education irrespective of their canton of origin. Fees currently stood at around 600 Swiss francs per semester, which was considered to be a reasonable amount by the Swiss Government and university authorities. Such modest fees could not be regarded as discriminatory. A number of different cantonal, communal and private schemes for providing financial assistance to students were available. The cantons also made a contribution towards the student fees. The inter-cantonal agreement governing the financing of universities had been revised the previous year and as a result individual fees had been increased. Students from cantons without universities were not penalized in any way and received the same treatment as students from university cantons.

71. It was difficult to say what were the real costs of education for a family, since it depended on which items were considered. Should teaching costs only be included, or stationery, equipment and clothing also? Perhaps some information might be available from consumer organizations that had conducted surveys on the subject. At Swiss primary schools, textbooks were sometimes distributed free of charge or lent for a modest fee to cover maintenance and prevent misuse.

72. There were valid arguments for and against restricting the number of entrants to certain university faculties such as medicine. It was a question of striking a balance between the right to education on the one hand and financial constraints and the need to ensure good quality teaching on the other. At some universities, including Geneva, where there was no restriction on the number of students enrolling for medicine, some 40 to 60 per cent were eliminated along the way because they dropped out or failed periodic examinations. As for the reference in the report to the effects on the health-care budget of the increasing number of students entering medical school, it was well known that the more doctors were available, the more likely people were to go for treatment, resulting in greater health costs but not necessarily a higher income for the doctors concerned.

73. With regard to concerns expressed about problems facing the children of immigrants in education, he said that although some studies indicated that children of foreign origin were less successful at school and less likely to go on to higher education than Swiss children, other studies suggested the contrary. Perhaps one reason for the perceived disparity was that the spectrum of immigration had broadened to include, for example, the former Yugoslavia, Turkey and African countries, and thus the cultural differences between immigrants and the Swiss were now far more marked than in the past. Additional measures were therefore required to ensure proper integration. Efforts were under way to secure support from the Confederation and cantons to develop appropriate integration policies and to provide an inter-cultural education, from as early as the crucial pre-school age. Some useful teaching material for that purpose had recently been introduced in the French-speaking cantons and was now being translated for use in the Italian and German-speaking cantons.

Article 15: Right to participate in cultural life

74. Mr. WIMER ZAMBRANO expressed concern about the future of the Romansch language, which apparently was now spoken by only a few hundred people. Perhaps the Swiss Government ought to review its general policy towards the language with a view to preventing its disappearance and encouraging studies and specialization on the subject.

75. Mr. MARCHÁN ROMERO wondered why there was no reference in the report to the Yenisch people. What was the size and status of that ethnic group and what steps was the Government taking to ensure its integration in society while preserving its cultural traditions and identity?

76. He sought clarification regarding the statements in paragraphs 743 and 744 of the report to the effect that the Federal Constitution contained no provision relating to culture, which was considered a cantonal responsibility. In particular, he inquired why efforts to incorporate such a provision in the Constitution had twice been rejected by popular vote.

77. Mrs. PEYRO (Switzerland) said there were currently about 5,000 people who identified themselves as Yenisch, while the total population of the travelling people in Switzerland stood at

around 25,000. Travelling people had suffered problems and even persecution in the past, but in recent years their relations with the Swiss authorities had improved through greater understanding and cooperation. A number of policy errors had been committed vis-à-vis the children of travelling people, such as forced separation from their parents and forced settlement. The President of the Confederation and the President of the Foundation Pro Juventute, which prior to 1972 had been responsible for assistance programmes to the children of travelling people, had issued a public apology to the persons concerned, who had also been provided with adequate compensation.

78. The travelling people were Swiss citizens and as such entitled to exercise the basic rights guaranteed by the Constitution, although their lifestyle posed certain obstacles, particularly where schooling and social benefits were concerned. A number of measures had been undertaken recently to ensure their full enjoyment of such rights. Firstly, in May 1997 a foundation had been set up to ensure the future of the travelling people in Switzerland and seek solutions to their particular problems, in cooperation with representatives of the competent local, cantonal and federal authorities. Secondly, the Federal Anti-Racism Commission, established in August 1995 with a very broad mandate, had devoted considerable attention in the first two years of its activity to the situation of travelling people in Switzerland. Thirdly, Switzerland had recently ratified the Council of Europe's framework Convention on the protection of national minorities. Since the Convention did not provide a definition of a national minority, the Swiss Government had made a declaration on the subject when ratifying the instrument. The definition agreed upon covered the minority language groups in Switzerland together with other communities, including those of Jewish origin and the travelling people.

79. There were as many as 6,000 Romansch-speaking people living in the canton of Graubünden. According to recent figures provided by the Federal Statistical Office, about half of the Romansch community spoke the language at home. There was a keen desire to keep the language alive. Newspapers were published in Romansch thanks to financial support from the Confederation. Furthermore, as indicated in paragraphs 39 and 40 of the written replies, Romansch was now considered as an official national language in Switzerland, so the Constitution and certain laws and treaties would be published in that language in future.

80. Mr. ELMIGER (Switzerland) said that a written reply to Mr. Marchán Romero's remaining question concerning cultural rights would be forwarded to the Committee in due course.

81. The CHAIRPERSON expressed appreciation of the high-quality delegation sent by the Swiss Government and the seriousness with which it had tackled the dialogue. He paid special tribute to the Swiss NGOs for their invaluable input to the Committee; it was a credit to the Swiss people and testified to the good working relations between the NGOs and the Swiss Government.

82. Mr. ELMIGER (Switzerland) thanked the Committee for a very constructive dialogue in which the contribution of the non-governmental community had undoubtedly played a vital role. He assured members of the Committee that their recommendations and comments would be conveyed to the highest authorities in Switzerland and that the second periodic report would be drafted bearing them in mind.

The meeting rose at 1 p.m.



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