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Overview

The review of Switzerland under the universal periodic review (UPR) mechanism on 8 May 2008 comprised of a quite open and frank discussion between the delegation and the Working Group on the UPR. 43 States took the floor, and most were very appreciative of the structure of Switzerland's report, and the way it had handled the consultations with national stakeholders.

Ms Micheline Calmy-Rey, Minister for Foreign Affairs of Switzerland headed the delegation. She presented the national report, spending a considerable amount of her initial presentation on relaying the points and arguments put forward by civil society in during the national consultations. This included the call for a national human rights institution (NHRI), justiciability for economic, social and cultural rights as well as the adoption of a general non-discrimination law at federal level. While acknowledging these demands in an open way, the Minister gave counter-arguments for all, justifying why Switzerland could not implement the requests. Other points raised in her presentation included discrimination in general and the government's approach thereto, gender equality and in particular efforts undertaken in implementing the 1996 *Law on Equality*, and responses to written questions put to Switzerland prior to the review.

During the interactive dialogue, many States commended the efforts of Switzerland in improving its human rights record. Many also appreciated the constructive role Switzerland plays in the Human Rights Council and other international mechanisms. There were many constructive recommendations put to Switzerland. Al-

though and many of them took up the points raised by civil society, the OHCHR compilation of stakeholder's information was rarely explicitly referenced. Several States reiterated recommendations made by treaty bodies and special procedures, in particular the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee on the Rights of the Child (CRC), and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The issues discussed and recommendations made included:

- The establishment of a national human rights institution in compliance with the *Paris Principles*.¹
- Measures to improve the situation of migrants in Switzerland, including the ratification of the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW).
- Take further measures to combat racism, including through an analysis of the recently adopted *Law on Asylum* and the *Law on Foreigners*.
- To adjust its position in relation to economic, social and cultural rights and regard them as fully-fledged human rights.
- The lifting of reservations to various core human rights treaties, including to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) and *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).
- Ratification of other international instruments, including the optional protocols to CEDAW and the *Convention against Torture* (CAT).

Switzerland provided answers to most of the questions asked, and proposed to answer others in written form. Ms Calmy-Rey was very candid on two of the recommendations that were made by many States, namely the ratification of the ICRMW and the nature of obligations under the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). She left no doubt that Switzerland would not accept these recommendations, and did not attempt to enter into a detailed explanation as to why that was the case. It was therefore not surprising that Switzerland, during the adoption of the report, clearly rejected the recommendations in these two areas. It divided the remaining recommendations in two categories; the first cluster was accepted as such, whereas the second cluster requires consultations with various ministries and will be commented upon during the adoption of the report by the 8th session of the Council in June.

Overall, the review of Switzerland by the Working Group seems to have been successful. The elaboration of the national report, the consultations with stakeholders, as well as the elaboration of a joint NGO report by a large coalition of civil society organisations have contributed to a positive dynamic in the country, and it would seem advisable that this cooperative national dynamic be maintained.

General information on Switzerland

Membership of the Human Rights Council

Switzerland is a member of the Human Rights Council (1st term, 2006 – 2009).

Members of the troika

Uruguay, Pakistan, South Africa.²

¹ The 'Paris Principles' were adopted by the United Nations General Assembly as an Annex to *Resolution 48/134*. They define the role and functions of national human rights institutions in the promotion and protection of human rights. Available at: <http://www.un.org/Depts/dhl/res/resa48.htm>.

National consultation

According to the State report, cantonal authorities, extraparlimentary federal commissions and more than one hundred representatives of civil society were consulted on the preparation of the draft. A day of discussion was held in late February 2008, bringing together representatives of civil society and the Federal Government. The main concerns raised by NGOs on the occasion of this day of consultations are included in the State report in a substantive way.

Information submitted to the Working Group

State report³

Switzerland's State report is organised in four chapters. The first chapter focuses on the methodology and consultation regarding the drafting of the report, the second on the legal and institutional framework regarding the protection of human rights.⁴ The third chapter combines the promotion and protection of human rights on the ground, the assessment of achievements and the identification of challenges and the priorities to be met in several areas. It is divided into several subsections, following the order of the rights and freedoms listed in the *Universal Declaration of Human Rights* (UDHR).⁵ The UDHR served as the general framework for the report. The fourth chapter contains concluding remarks including the main points raised by civil society during the day of national consultations. These included the absence of any national human rights institution, the absence of a federal law against all forms of discrimination, and Switzerland's position on the justiciability of economic, social and cultural rights. In a notable effort to transparency, Switzerland reflected not only the positions, but also the main arguments of civil society in its national report.

While the overall human rights situation in Switzerland was assessed to be satisfactory in the State report, a growing level of perceived 'insecurity' in a number of areas was noted. The growing number of working poor, the risk of single-parent families and large families falling into poverty, job insecurity, the barriers to economic and social integration of young people of foreign origin and the increasing difficulties of low-income families in finding adequate housing in urban centres were identified as particular areas of concern.

Overall, Switzerland has made an effort at presenting a balanced report, and has not shied away from acknowledging areas with difficulties. However, while difficulties are acknowledged, the report takes a relatively defensive approach. In many instances the report seems to try to justify the noted shortcomings, rather than proposing courageous solutions.

² Switzerland did not request a member of its own regional group. Regional groups selected: African Group, Asian Group, GRU-LAC. There were no objections by Switzerland or by the members of the troika to the selection. For a full summary of the selection of troikas, see http://www.ishr.ch/hrm/council/councilalert/council_update_7session.pdf

³ A/HRC/WG.6/2/CHE/1, available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/CHSession2.aspx>

⁴ For instance, it was mentioned that in 2007, Switzerland withdrew several reservations to the International Covenant on Civil and Political Rights and the Convention on the Rights of the Child, in accordance with the voluntary commitments it made in March 2006 in its application for membership of the Human Rights Council.

⁵ A) equality, non discrimination and subjects of specific rights (including women, children, persons with disabilities, migrants, racism, and sexual minorities), B) Life, prohibition of slavery, torture, C) Administration of justice and fair trial, D) Right to seek asylum, E) Freedom of thought, conscience and religion, of expression and of assembly and association, F) Participation in political life and right to vote, G) Work, H) Adequate standard of living and I) Education.

Official UN documents⁶

A number of treaty bodies called upon Switzerland to ratify human rights instruments it has not yet ratified,⁷ and to withdraw its reservations to the treaties to the *International Covenant on Civil and Political Rights* (ICCPR) and the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD).⁸ The adoption of the revised federal Constitution (containing a bill of rights) in 2000 was noted⁹ and welcomed¹⁰ while concern was raised that the federal structure of the State may hamper the application of Switzerland obligations under different instruments.¹¹ Likewise, while commending the Federal Commission against Racism's efforts to combat anti-Semitism, racism and xenophobia, the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women noted the Commission's limited powers recommended and the establishment of a federal independent human rights institution and the strengthening of the existing machinery for gender equality.¹² Switzerland's extensive cooperation with Office of the High Commissioner for Human Rights (OHCHR), in particular its hosting of OHCHR's headquarters in Geneva and its voluntary contributions were commended.

Considering the promotion and protection of human rights on the ground, a number of treaty bodies and special procedures raised specific concerns regarding equality and non-discrimination of women and especially migrant women,¹³ the lack of comprehensive national legislation against racism¹⁴ and rising racial intolerance,¹⁵ the use of force by police during deportations and during the transport of detainees,¹⁶ the lack of comprehensive data on child abuse¹⁷ and the prevalence of violence against and trafficking in women and girls,¹⁸ the existence of unacceptable levels of poverty,¹⁹ as well as the increasingly restrictive asylum and migration policy and legislation.²⁰ A number of achievements, such as the creation of a Service to Combat Racism and the integration of a gender dimension into development and cooperation programs were welcomed.²¹

Other relevant stakeholders²²

⁶ A/HRC/WG.6/2/CHE/2, available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/CHSession2.aspx>

⁷ Core universal human rights treaties to which Switzerland is a party: *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), *International Covenant on Economic, Social and Cultural Rights* (ICESCR), *International Covenant on Civil and Political Rights* (ICCPR), *Second Optional Protocol to the International Covenant on Civil and Political Rights* (ICCPR-OP2), *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW), *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (CAT), *Convention on the Rights of the Child* (CRC), *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict* (CRC-OP-AC), *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* (CRC-OP-SC). It is not yet party to the *Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (OP-CAT), *Optional Protocol to the International Covenant on Civil and Political Rights* (OP-ICCPR1), *Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (OP-CEDAW), nor to the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (ICRMW)

⁸ ICCPR, ICERD

⁹ Human Rights Committee (HRC), 2001

¹⁰ Committee on the Elimination of Racial Discrimination (CERD), 2002

¹¹ ICCPR, ICERD, CEDAW

¹² Committee on the Rights of the Child (CRC), CEDAW

¹³ CEDAW

¹⁴ Special Rapporteur on racism

¹⁵ HRC, CERD

¹⁶ CAT

¹⁷ HRC

¹⁸ CEDAW

¹⁹ CESCR

²⁰ United Nations High Commissioner for Refugees (UNHCR), CAT

²¹ CERD, CEDAW

²² A/HRC/WG.6/2/CHE/3, available at <http://www.ohchr.org/EN/HRBodies/UPR/PAGES/CHSession2.aspx>

This summary report compiles information submitted by seven stakeholders, representing civil society²³ (including a coalition of 30 non-governmental organisations)²⁴ and regional intergovernmental organisations.²⁵ Regarding the scope of international obligations, the ratification of specific international conventions and their optional protocols was recommended. Regarding the constitutional and legislative framework, NGOs also questioned the efficient application of human rights obligations under the federal structure of the State, and deplored the lack of justiciability of economic, social and cultural rights. From an institutional perspective, civil society regretted the absence of a national human rights institution (NHRI).

Specific concerns were raised in relation to the promotion and protection of human rights on the ground, namely the weak statistical data of human rights related issues, the weak national legislation concerning discrimination, the insufficient promotion of gender equality on the institutional level, the stigmatisation campaigns led by some political parties against migrants and socially marginalised persons, the use of ‘diplomatic assurances’²⁶ against torture and ill-treatment when extraditing foreign nationals, the disproportionate use of force by the police, the detention and expulsion practice and overpopulated prisons, weak legislation concerning the possession of weapons and the alarmingly high rate of suicide among young people. Finally, NGOs also criticised the toughening of the *Law on Asylum* and of migration policies in general. However, civil society also highlighted a number of achievements, including Switzerland’s long tradition of support for international human rights and humanitarian law was highlighted. No information was included under the sections on key national priorities, initiatives and commitments, and capacity building and technical assistance.

Interactive dialogue²⁷

²³ Global Initiative to End All of Corporal Punishment of Children (GIEACP), Human Rights Watch (HRW), Ligue Suisse des droits de l’Homme (LSDH) and Fédération internationale des Ligues des droits de l’Homme (FIDH) in a joint submission, Stop Suicide.

²⁴ The NGO coalition: ACOR SOS Racisme, Action des Chrétiens pour l’Abolition de la Torture (ACAT), Action de Carême, alliance sud, Amnesty International Section suisse, Association pour la prévention de la torture (APT), Association de soutien à une institution suisse pour les droits humains, ATD Quart-Monde, Caritas, Centre d’information pour femmes migrantes (FIZ), Coalition Post-Beijing, Centre de conseils et d’appui pour les jeunes en matière de droits de l’homme (CODAP), Collectif de soutien aux sans-papiers, Déclaration de Berne, Ecole Instrument de Paix, Egalité Handicap, Fédération Internationale des Droits de l’Homme (FIDH), Femmes Juristes Suisse, Fighting Hunger with human rights (FIAN Suisse), humanrights.ch/Mers, Ligue suisse des droits de l’homme, Organisation suisse d’aide aux réfugiés (OSAR), Organisation Mondiale contre la Torture (OMCT), PLANeS - Fondation suisse pour la santé sexuelle et reproductive, Pink Cross, Société des peuples menacées, Swissaid, Stop Suicide, Réseau pour les droits de l’enfant, Terre des Hommes – aide à l’enfance

²⁵ Council of Europe (CoE), of the Organization for Security and Co-operation in Europe Representative on Freedom of the Media (OSCE RFOM)

²⁶ ‘Diplomatic assurances’ in the case of extraditions denote the practice of the receiving State promising to not treat an individual contrary to human rights norms when that person is extradited by a sending State; they are used by States in an attempt not to violate the principle of non-refoulement, which prohibits extradition to a State where the person is likely to be subjected to torture. The use of diplomatic assurances is criticised by a number of UN mechanisms including several special procedures of the Human Rights Council and treaty bodies, because they do not guarantee the human rights of the person to be extradited.

²⁷ Most statements made at the UPR Working Group can be found at <http://portal.ohchr.org/portal/page/portal/UPR>. Fill in the form at www.ohchr.org/english/bodies/hrcouncil/form.htm to receive username and password. Audiovisual archives of the meetings of the Working Group ‘webcast’ are available at www.un.org/webcast/unhrc/index.asp.

Presentation by the State

Ms Micheline Calmy-Rey, Foreign Minister of Switzerland, presented the report by Switzerland to the UPR.²⁸ Ms Calmy-Rey illustrated Switzerland's commitment to the international human rights system by recalling that Switzerland volunteered to be reviewed under the UPR with priority. She recalled that the UPR could only be really effective, if it was lead in a cooperative way. She expressed her hope that the constructive example of the first session of the UPR was an indication that the UPR would lead to a real improvement of the situation of human rights in the countries reviewed.

She briefly described the particular federal system of Switzerland, its direct democracy and its institutional system based on consensus. Ms Calmy-Rey stressed that this system based on political participation had allowed for a harmonious coexistence of different linguistic and cultural communities. Cantons in Switzerland have all rights not exercised by the federal authorities, which are only competent as far as the cantons and the people of Switzerland attributed them such competencies.

Turning to the State report submitted by Switzerland, she explained that it is structured along the UDHR, reflecting the conviction of Switzerland that all human rights are interrelated. However, she later put this statement into context by stating that while all human rights are interdependent, Switzerland does not see them as equal in nature and rejected the notion of 'justiciability' of economic, social and cultural rights outright. Ms Calmy-Rey, in her opening remarks, outlined the process of consultations Switzerland had followed in the preparation of the State report. During a day of consultations with civil society, numerous observations and recommendations had been made, which were subsequently integrated in the State report.²⁹ Since many of the concerns raised by civil society prior to the UPR seemed to be shared by States and made the subject of written questions, Ms Calmy-Rey reacted to some of these as well. On the issue of the **lacking national human rights institution (NHRI)**, she indicated that a working group was currently preparing a report on ways to establish an NHRI, a report that would be considered by the Government shortly. On the issue of the **justiciability of economic, social and cultural rights**, Ms Calmy-Rey responded to demands by civil society and States in written questions submitted before the review. She repeated the Government's well-known position that economic, social and cultural are only programmatic in nature, and therefore not deemed individual rights, nor justiciable. Accordingly, it seems that Switzerland is set to maintain its 'à la carte' approach to the optional protocol to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)*.³⁰ On the matter of a **federal non-discrimination law** prohibiting any form of discrimination. Switzerland defended its current 'sectoral approach', whereby each form of discrimination is subject to specific measures.³¹ In addition, any international treaty is directly applicable after ratification. Finally, Switzerland mentioned that federal authorities are currently examining the possibility of signing the *International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED)* and the *Convention on the Rights of Persons with Disabilities (CRPD)*.

²⁸ Oral statements made during the dialogue are available on the OHCHR extranet at <http://portal.ohchr.org/portal/page/portal/UPR/2nd%20Session/Switzerland>.

²⁹ As an integral part of the report, the last page summarises these contributions in a very frank and open manner.

³⁰ This clear rejection of the justiciability of economic, social and cultural rights has to be seen in the light of the recent adoption of a draft optional protocol to the *International Covenant on Economic, Social and Cultural Rights (ICESCR)* by the Open-Ended Working Group on an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. The draft optional protocol has been transmitted to the Human Rights Council and will be considered at the upcoming 8th session from 2 to 18 June 2008. The Swiss position is significant in that it was not retained in the draft optional protocol, and the Swiss recalcitrance to adapt its position might foreshadow the debates during the 8th session of the Council.

³¹ Switzerland justified this approach first of all with the difficulty of having a *federal* law on non-discrimination, because Cantons have wide-ranging competencies in the areas of education, health and policing. Secondly, Switzerland claimed that having the more flexible, sectoral approach allowed for tailored measures for each form of discrimination. Racism, for example, is tackled through criminal legislation, while gender based discrimination is tackled through the equality act.

Anticipating a number of the issues that were later raised in the interactive dialogue, Ms Calmy-Rey reviewed some aspects of the implementation of human rights in Switzerland. On the issue of discrimination, she made reference to the various measures taken by the Government, including the penal and administrative measures to combat different forms of discrimination. While she acknowledged the positive effects that penal legislation could have in combating discrimination, she stressed that social policies were key in the long run.

Ms Calmy-Rey then responded to a series of detailed written question submitted prior to the review.³² On the issue of the new asylum laws, the Foreign Minister claimed that the legislation is not tougher than before it was revised and was in full conformity with the Constitution and international law. She in particular outlined the possibilities of appeal that are open to asylum seekers. In relation to the new *Law on Foreigners*, she suggested that it for the first time acknowledges the aim for better integration of foreigners and therefore had positive aspects as well. According to a comprehensive study by the Federal Office of Migration on the effective implementation of this aim of equal opportunities for foreigners, deficiencies in the areas of education, work, health and professional activities for refugees, as well as a linguistic gap were noted. The study has resulted in a national action plan on integration adopted recently.³³

She was very frank in her response to questions regarding gender equality, saying that it is still very difficult for women in Switzerland to reconcile professional and family life. Many of these difficulties are due to the lack of paid maternity leave, a gap that was recently closed by the adoption of a new law giving 14 weeks of paid leave to mothers, including for farmer women. On the occasion of the 10th anniversary of the *Law on Equality* the federal authorities had commissioned a study on the implementation of the law, which had showed positive effects. Based on that study, the Government has decided on new measures, including the consideration of the establishment of a monitoring authority. Related to the issue of gender equality, she announced that the optional protocol to the *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW) would be ratified in July 2008 if no referendum would be called for.

Regarding questions on the high ratio of suicide among adolescents, Ms Calmy-Rey deferred the responsibility to the cantons and the health care system in general, specifying that they were responsible to strengthen prevention mechanisms. This seemed like a somewhat evasive answer, given that the question put had been what Switzerland was doing at the federal level in this regard.

In relation to violence against children, Ms Calmy-Rey pointed to a lack of statistical data, and acknowledged the need for further studies. Related to this, she also touched on the issue of corporal punishment for children, which remains legal in the home. While Switzerland generally favours a restrictive policy in this regard, Ms Calmy-Rey acknowledged that parents may inflict light physical punishment under certain conditions if the child behaves in an inappropriate manner, and for educational purposes. Corporal punishment is prohibited in schools, and the Constitution specifically protects children from degrading treatment.

³² See

<http://portal.ohchr.org/portal/page/portal/UPR/2nd%20Session/Switzerland/QUESTIONS%20TO%20SWITZERLAND%20rev.2.pdf>.

³³ The action plan was adopted in August 2007 and is comprised of 45 specific measures.

Table on the interactive dialogue

Country	Positive comments	Critical comments	Questions	Recommendations <small>(including questions as recommendations, bold text denotes recommendations that enjoy the support of the State under review)</small>	References to State report/ UN compilation/ OHCHR summary	Replies by the State under review
Algeria (see statement)	Very moved by the presentation. Very constructive approach to the UPR.	Lack of non-discrimination law against racial discrimination is an obstacle in the fight against racial discrimination.	Are there any measures planned to stop the rise of xenophobia and in particular islamophobia?	Pursue efforts in preventing and combating xenophobia. Support recommendation of CRC with particular attention to children seeking asylum. Ratify the ICRMW. Establish an NHRI, in accordance with the <i>Paris Principles</i> , and appreciate the assurances by Switzerland in that regard.	CRC – children of migrants, CERD – combating xenophobia. State report welcomed.	<i>ICRWM</i> : no intention of ratifying number of reasons. First, it has only been ratified by sending States, second, the new <i>Law on Foreigners</i> is not compatible with the ICRMW (particularly in relation to illegal migrants) and third, acceding to the ICRMW ‘is not in keeping with the requirements of domestic law’. <i>NHRI</i> : No more information was provided in the replies, as this was already covered in the opening statement (see above).
Brazil	Recognise the efforts to face human rights challenges, in particular child rights, the rights of persons with disabilities, and in fighting discrimination based on sexual		What are the steps taken to fulfil the promotion and protection of the rights of the child? What are the policies regarding the treatment and hu-	Consider ratifying the optional protocol to the CEDAW and acceding to the first optional protocol to the <i>International Covenant on Civil and Political Rights</i> (ICCPR).		<i>Protection of children</i> : responsibility for this is shared by a number of offices, there are federal subsidies for associations active in this area, there is a national hotline to help young peo-

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	orientation.		<p>human rights of migrants? What are the main steps taken in combating racism and other forms of discrimination? Comment on challenges regarding the federal system?</p>	<p>Foster internal analysis of the recently adopted <i>Law on Asylum</i> in view of the UDHR and other relevant international human rights law.</p>		<p>ple, and NGOs play an important role in all these efforts. <i>Human rights of migrants</i>: all human rights of foreigners are guaranteed by the Constitution, and human rights obligations stemming from treaties are directly applicable and can be claimed before the courts by non-nationals as well. Full integration and participation of foreigners in the economic and social life of the country is important. <i>Action plan against racism</i>: combating racial discrimination is the task of everyone and not only about ratifying conventions. Switzerland's participation in the Durban conference is one piece of the puzzle. The private sector has undertaken efforts</p>

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						to help victims and raise awareness.
Belgium		Civil society noted a toughening of asylum law. In relation to the popular initiative on democratic naturalisation, Belgium recalled that the federal court had decided that communes should not do naturalisation. Note that there is no constitutional test on the legality of an initiative, but only the parliament can reject an initiative as unconstitutional.	How will you check that popular initiatives are compatible with international human rights law?	Recommend that legislative and other steps be taken to ensure that human rights may be taken into account by legislative authorities when popular initiatives risk to be contrary to fundamental freedoms	Reference to OHCHR summary – toughening of asylum law.	<i>Popular initiatives</i> : the Parliament always in advance checks the initiative for conformity, and sometimes also rejects them (which was the case of a 1996 initiative for a reasonable asylum policy which violated the principle of non-refoulement). If the initiative is not deemed contrary to law, it is submitted. Possible conflicts are then resolved in the implementation phase. Implementation of popular initiatives is then carefully monitored to make sure it is not contrary to international law.
India		No definition in domestic law for discrimination against women.	Why is slavery not formally prohibited?	Committee on the Rights of the Child (CRC), the Human Rights Committee (HRC), and Swiss civil society all recommended the establish-	CRC, HRC – establish an NHRI. Information provided by civil society report annexed to the State report –	<i>NHRI</i> : see Algeria above.

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				ment of an NHRI at the earliest opportunity, and India supports this recommendation. Establish a national commission on women.	establish an NHRI.	
Malaysia	Commend the upholding of the principle of universality by Switzerland.		How do the various bodies against discrimination interact and what synergies exist between them?	Establish an NHRI as recommended by CRC.	CRC – NHRI.	<i>NHRI</i> : see Algeria above.
Egypt	Thanks for recognising that situation of foreigners, migrants and asylum seekers is a cause of concern.	Situation of foreigners, migrants, and asylum seekers is a cause of concern. Switzerland as centre of humanitarian affairs has special responsibility. It is an anomaly to describe economic, social and cultural rights as mere ‘policy measures’. Incitement for racial hatred is widespread in politics. While recognising the statements, we note the lack of institutional mechanisms to prevent this.	Has the time not come to develop a specific law against racial discrimination? Is article 261bis of the Penal Code sufficient to prevent racial discrimination?	Establish a law to prohibit incitement to racial hatred. Recommend acceding to the ICRMW.		<i>Economic, social and cultural rights</i> : the rights in ICESCR are not directly applicable, but a catalogue that each State party undertakes to implement progressively a view that was confirmed by the federal court (supreme court). Thus, the rights are programmatic and should serve as guidance in defining government policies. <i>ICRMW</i> : see Algeria above. <i>Migrants</i> : see Brazil above.

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Canada	Welcome the use ‘droits humains’ instead of ‘droits de l’homme’ to ensure gender equality.	Concerned about the popular initiative on democratic naturalisations. Concerned about young offenders imprisoned together with adults. Migrant women remain particularly vulnerable, and CEDAW has voiced concern. CERD mentioned excessive use of force against foreigners during deportation.		Recommend setting up an NHRI in accordance with <i>Paris Principles</i> . Maintain judicial recourse in the process of granting of citizenship. Treat prisoners of less than 18 years of age differently from adults. The system of temporary permits for women should be reviewed. Minorities should be recruited into the police force, set up a body to investigate complaints against the police force. Continue to ensure that the language used in the UN is consistent with gender equality (use ‘droits humains’ instead of ‘droits de l’homme’).	CEDAW – vulnerable migrant women. CERD – excessive use of force against foreigners during deportation.	<i>NHRI</i> : see Algeria above.
France	Very original democratic system. Appreciate the work of Switzerland in the Council.	Lack of NHRI undermines getting a comprehensive view of the human rights situation.	What is the status of a new federal law on non-discrimination law? What will you do to punish those guilty	Recommend establishing an NHRI. Follow-up to the study on the legal impact of the ratification of the ICPPED.		<i>NHRI</i> : see Algeria above. <i>Ratification of the ICPPED</i> : no more information provided, see presentation by the State

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			of discrimination on the basis of sexual orientation?			above.
Mexico	Thanks for the methodology in the UPR report. Thanks for the commitment to the institution-building process.	Lack of NHRI. Lack of a federal law against discrimination. Criticised the view that economic, social and cultural rights are just programmatic. Non specific definition of torture	Will you define torture? Was there any study on the compatibility of the new asylum law in light of international instruments? Welcome initiatives to ensure education for travelling children. What is their access to schooling?	If not study was made (see question), the parliament should review the new law of asylum, in the light of international instruments. Ensure generally that popular initiatives are in line with international human rights instruments Ratify the optional protocol to CAT and establish a national protection mechanism. Ratify the optional protocol to CEDAW Ratify CRPD.	State report.	<i>Compatibility of asylum law</i> : the Swiss Federal Council and the parliament do everything to make sure it is compatible with international law, including the 1951 Convention on the Status of Refugees. The issue has been discussed and there is also the possibility of recourse for rejected asylum seekers. The rejection of an initiative by the parliament (see the response to Belgium above) shows commitment to respect international law. <i>Education for 'traveling children'</i> : Flexible approach by cantons addresses this properly.
Cuba	Pay tribute to the commitment when setting up the Council.	Obviously not a perfect country. Social problems exist.	Official development assistance (ODA) is not 0.7%	Increase ODA to developing countries to achieve Millennium De-	State report, UN compilation.	<i>ODA</i> : the federal Council has set ODA at 0.4% of the GDP, and has

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	Huge progress on human rights. Swiss law punishes incitement to racial hatred	Resurgence of xenophobia, hope it will withdraw its reservation to article 4 of ICERD.	of GDP but only 0.4, what do you intend to do to reach the goal of 0.7%? What measures have you planned to curb the high rates of suicide?	development Goals (MDGs). Consider withdrawing the reservation to article 4 of ICERD.		budgeted an increase of 3.3%, which is higher than for other budgetary posts. Reservation to <i>ICERD</i> : considered this question, but will not withdraw the reservation, as article 261 of the Penal Code is deemed sufficient.
China		Women still suffer from discrimination in terms of political and professional participation, and violence against women remains high.	Are there measures adopted to correct the discrimination against women?			
Morocco	Outstanding report in clarity and transparency. Welcome the organisation of a seminar on the UPR. Welcome the information on the withdrawal of reservations of the ICCPR and the ICESCR in 2007.	System could be improved by an NHRI in keeping with the <i>Paris Principles</i> . Concern about a popular initiative disregarding the rights of religious communities, particularly Muslims.		Take strong measures to ensure equal treatment of all religions. Strengthen measures to guarantee equal opportunities for migrants, and consider acceding to CMW.	National report follows closely the guidelines adopted by the Council.	<i>NHRI</i> : see Algeria above.

Country	Positive comments	Critical comments	Questions	Recommendations (including questions as recommendations, bold text denotes recommendations that enjoy the support of the State under review)	References to State report/ UN compilation/ OHCHR summary	Replies by the State under review
	Welcome the establishment of the Swiss Council on Religions.					
Slovenia	Thanks for the national report prepared in broad consultation with civil society. Active and positive role in the Council.		Reservations to ICCPR and ICERD. Do you intend to withdraw those soon? Are you planning to establish an NHRI? You announced in your pledge to develop a country-by-country human rights index. What is the state of play of that project?	Further address and enhance combating the root causes of gender-based discrimination, particularly to migrant women, by removing legal and other obstacles. Protect migrant women at risk of deportation when reporting violence against them. Integrate a gender perspective in the follow-up to the UPR.		<i>NHRI</i> : see Algeria above. <i>Human rights index</i> : project was set up together with the University of Bern. ³⁴
Netherlands	Welcome efforts to increase participation of women in labour market.	Number of women elected to high government posts is still insufficient. HRC and CEDAW remain concerned that women are still under-represented.	Do you consider it a potential problem for your system of direct democracy that 20 % of the population, being foreigners, do not have political rights, and do you intend to	Recommend strengthening efforts to guarantee equal opportunity of women in the labour market, particularly those belonging to minority groups. Discrimination and hate crimes based on sexual	UN compilation.	<i>Democratic system</i> : this is not a problem; the new <i>Law on Foreigners</i> determines that integration is fundamental, and in some cantons, foreigners can be elected. If foreigners should be given the right to vote,

³⁴ www.universalhumanrightsindex.org.

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			increase the participation of minority groups in political life?	orientation or gender identity are not specifically prohibited, therefore recommend establishing legislation prohibiting all forms of discrimination, including based on sexual orientation and gender identity.		cantons and the people have to agree. <i>Sexual orientation:</i> constitution prohibits discrimination based on ‘lifestyle’ – which also covers sexual orientation. The law on registered partnership for same-sex couples entered into force on 1 January 2007, which gives these couples equal rights with married couples (except adoption and invitro fertilization). Acknowledge that there is currently no punishment for homophobia.
Philippines	Exceptionally high standards of living. Encourage and support the efforts to promote the positive effect of migration, since they contribute to the economic welfare.	Step up efforts to increase welfare of migrants.		Consider ratification of ICRMW. Consider favourable the establishment of an NHRI in accordance with the <i>Paris Principles</i> .		<i>ICRMW:</i> see Algeria above. <i>NHRI:</i> see Algeria above.
United	Welcome emphasis on	Area of concern are	What is Switzer-	Continue to consult	Stakeholder’s	<i>Law on Asylum and</i>

Country	Positive comments	Critical comments	Questions	Recommendations <small>(including questions as recommendations, bold text denotes recommendations that enjoy the support of the State under review)</small>	References to State report/ UN compilation/ OHCHR summary	Replies by the State under review
Kingdom	human rights issues as evidenced in contribution to this Council and other human rights mechanisms. Welcome answers to written question. Pleased to note the consultation of over one hundred NGOs and trade unions, economic groups and religions. Welcome the possibility to have same-sex partnerships recognised.	the recent legislation on foreigners and asylum, children's rights and the rights of detainees.	land's reaction to the criticism in the area of foreigners and asylum, in particular for discriminating against non-Europeans, and do you plan to adapt?	civil society in the follow-up to the UPR. Establish NHRI in line with the <i>Paris Principles</i> and in the shortest possible delay. Make sure that same-sex couples are not discriminated against. Improve situation of migrant women. Take further steps to ensure that there is no discrimination against same-sex couples. Ratify the OPCAT in the near future.	summary – tradition for human rights and humanitarian law.	<i>foreigners:</i> See Mexico and Belgium above. <i>NHRI:</i> see Algeria above. <i>Same sex couples:</i> see Netherlands above.
Qatar	Welcome prominent role in setting up UPR. Consider ratifying ICPPED and CRPD and withdrawing reservations to other treaty bodies.		What are the efforts taken to ensure that foreigners, particularly Muslims, are not targeted? What is your effort to balance freedom of expression and ensuring that members of other religions are not abused?			<i>Religions:</i> a number of religions, cultures, and linguistic communities live in Switzerland in 'harmonious coexistence', and the institutional system is built with this in mind. The dynamics of globalisation and the increase in diversity can lead to fear for identity, which can be politically ex-

Country	Positive comments	Critical comments	Questions	Recommendations (including questions as recommendations, bold text denotes recommendations that enjoy the support of the State under review)	References to State report/ UN compilation/ OHCHR summary	Replies by the State under review
						ploited. Political campaigns can lead to inappropriate statements.
Colombia	Welcome broad report, and the broad consultations. Welcome contribution of Switzerland to the institution-building process of the Council. Welcome that Switzerland appears voluntarily before the UPR, just as Colombia.		What are the specific measures taken to ensure greater equality of men and women in the labour market, particularly equal pay? Measures to provide for greater care of children? Policies to guarantee the rights of migrants, particularly women? Do you consider ratifying ICRMW?			<i>Migrants</i> : see Brazil above. <i>ICRMW</i> : see Algeria above.
Senegal	Significant progress in health care and fundamental freedoms as a whole.	Situation of migrants is a cause of concern. Measures need to be found to better counter poverty. Combating xenophobia is also a major challenge.	Considering lifting reservation on article 4 of ICERD? Ratification of ICRMW?			<i>Migrants</i> : see Brazil above. <i>ICRMW</i> : see Algeria above. <i>Reservation to ICERD</i> : see Cuba above.
Azerbaijan	Amongst the signatories of OPCAT.		When will you ratify the first optional protocol to the ICCPR?		UN compilation.	<i>Ensure respect of international law at cantonal level</i> : Switzerland is constantly trying to en-

Country	Positive comments	Critical comments	Questions	Recommendations (including questions as recommendations, bold text denotes recommendations that enjoy the support of the State under review)	References to State report/ UN compilation/ OHCHR summary	Replies by the State under review
			<p>Federal structure might hamper the implementation of international norms, what do you do to make sure cantons know and respect them?</p> <p>Steps taken to establish an NHRI?</p>			<p>sure human rights at all levels, by trying to inform cantonal and municipal levels. International conventions are directly applicable and can be invoked by foreigners. Recourse is possible before the supreme court. <i>NHRI</i>: see Algeria above.</p>
Saudi Arabia	<p>Switzerland plays an important role at the international level. Thanks for the prohibition of incitement to racial hatred, which means there is a</p>	<p>There is no national human rights institution. Body to oversee racial discrimination does not have any legal role.</p>	<p>Are the several sectoral bodies the equivalent of an NHRI?</p> <p>What measures have you taken to reduce the phenomenon of racial discrimination and to give the federal commission on racism a more legal role?</p>			
Turkey	<p>High quality of the national report. Welcome the inclusion of comments from NGOs.</p>	<p>Legislation to prevent incitement to racial hatred and in particular 261bis of the penal code could lead to an unjustified curbing of</p>	<p>Have you considered acceding to the ICRMW?</p> <p>Have you considered acceding to the ICPPED?</p>		<p>State report.</p>	<p><i>ICRMW</i>: see Algeria above.</p>

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		freedom of expression.	Have you considered acceding to the CRPD?			
Romania		Discrimination against women.	How do you intend to implement the right to housing? Additional measures to reduce discrimination against women?			<i>Right to housing:</i> under the Constitution, there is no right to housing as such, article 41 of the Constitution which mentions social aims does not lead to direct intervention by the States, but we are determined to assist people in finding appropriate housing for themselves and their families.
Cote d'Ivoire	Continue to be one Europe's most hospitable countries.	Note that foreigners, whether legal or illegal, are discriminated against, particularly regarding right to work and right to family.	Some cantons suggest DNA tests for Africans wanting to bring their family. Why this discrimination? How will you make sure that there is no element of arbitrariness in how family reunion is handled? What is the basis in national or interna-	Encourage greater equality of migrants, particularly those not coming from Europe, EFTA, US or Canada.		<i>DNA test:</i> no one can be forced to take such a DNA test, it is a measure of last resort and there is an option of appeal.

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			tional law for the system of different ‘circles’ of migrants depending on their country of origin when granting work permits?			
Japan	Cooperative and important contribution to the successful start of the UPR.		Elaborate on the status of considering the ICPPED, what studies are being undertaken? How do you evaluate the current situation of discrimination against women, in particular in relation to the wage gap between men and women, and what policy measures are planned?		Comprehensive national report.	<i>ICPPED</i> : internal clarification about compatibility and necessary adaptations that might be necessary are underway.
Portugal	Welcome the wide publicity given to the CEDAW report and the recommendations by the Committee. Welcome intention to ratify the optional protocol to ICEDAW this	Women remain disadvantaged, namely in the labour market, regarding remuneration and appointment to senior positions.	In which measure where the recommendations by CEDAW tackled?		CEDAW – Equality between men and women. UN compilation, formulation of a comprehensive strategy to combat forced prostitution.	<i>Migrant women</i> : they are doubly discriminated, and according to the <i>Law on Foreigners</i> , federal and cantonal authorities have to take special account of women and children.

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	summer.					Switzerland also encourages language study for migrant women. <i>Recommendation of CEDAW</i> : there is an action plan for integration of the Federal Council, the Bureau for Equality provides financial assistance to women, and the <i>Law on Equality</i> and the law on maternity leave are drafted in several languages.
Finland		According to current estimations, the popular initiative on democratic naturalisations has relatively good chances of being approved.	How do you make sure your naturalisation policy is in line with international human rights obligations, in particular in light of the good chances of the initiative on democratic naturalisations being adopted?			<i>Compatibility of initiatives with international law</i> : See Belgium and Mexico above.
Guatemala	Welcome positive role Switzerland has played in the institution-building process.	Xenophobia and racism are a real problem, as seen by openly xenophobic election		Continue efforts to prevent and combat racism and xenophobia particularly through education	Welcome honesty and self-critical approach of the State report.	<i>Racism</i> : see Brazil above. <i>ICRMW</i> : see Algeria above.

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	Welcome the establishment of institutions to combat racism, in particular the Federal Service to Combat Racism and the Federal Commission Against Racism.	campaigns.		and awareness raising campaigns and the development of an appropriate legislative framework to prevent racism (as recommended by CERD). Urge to consider ratifying ICRMW.	UN compilation, CERD – awareness raising and appropriate legislative framework to prevent racism.	
Nigeria	Congratulations for the quality of the Swiss national report.	Racism and xenophobia is a reality, but CERD has not received any complaints until 2007, which means that there is a system failure.		Recommend addressing acts of racist violence by security forces and bringing perpetrators to justice.	State report is of high quality.	
Germany	Acknowledge active engagement of Switzerland in the Council. Welcome the consideration of establishing an NHRI.		What can be done at federal and local level to address high rate of suicides?	Lift reservations and ratify optional protocol to ICEDAW.	Stakeholder's summary.	<i>Reservations (to CERD):</i> see Cuba above.
Republic of Korea	Fight against racism is important, and we welcome the establishment of Federal Service to Combat Racism and the Federal Commission Against Racism.		In 2007, the Special Rapporteur on racism recommended to recruit staff from the immigrant population to all State services and institutions and provide		Special Rapporteur racism – recruit staff from migrant populations.	<i>Racism:</i> see Brazil above. <i>Implementation of recommendation by Special Rapporteur on racism:</i> 45 integration measures taken by the Federal Council dealing with

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			training to promote integration. What are the measures taken to implement this?			language, training, neighbourhood issues, and other areas. Through the new <i>Law on Asylum</i> we seek to improve the situation of persons likely to stay for a long time, and persons admitted temporarily are given easier access to the labour market.
Norway	Commend the inclusive national consultations.		If the initiative for democratic naturalisations is accepted, it will be contrary to several international norms. How do you intend to address this incoherence? How do you monitor the implementation and follow-up to treaty body recommendations?			<i>Compatibility with international law:</i> see Belgium and Mexico above. <i>Monitor implementation of treaty body recommendations:</i> Switzerland tries to respect and implement recommendations and to that end recommendations are forwarded to the relevant cantons, and if there are deadlines involved, cantons are informed of those, and cantons are consulted in the elaboration of sub-

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Russian Federations			<p>What is your position on the coexistence between the prohibition of incitement to hatred, and the appearance of posters of openly racist character put up by a political party?</p> <p>How are new forms of slavery combated, and in particular sexual exploitation? What difficulties do you face in this respect?</p> <p>Are there plans to combat prostitution?</p>		<p>Note the national report, the documents prepared by OHCHR and the additional info given today.</p>	<p>sequent reports.</p> <p><i>Combating sexual exploitation:</i> Assistance can be given to cabaret dancers who are exploited.</p>
Iran	<p>Welcome article 261 of the Penal Code, which criminalises incitement to racial hatred.</p>	<p>In 2007 Special Rapporteur on racism noted that the lack of comprehensive national legislation against racism is a major obstacle to the fight against racism. Intolerance against black people, Muslims</p>		<p>Comprehensive strategy to combat sexual exploitation of women and girls.</p>	<p>UN compilation: Special Rapporteur on racism – lack of comprehensive legislation against racism, CAT – no specific definition of torture, no possibility for complaints against po-</p>	

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		<p>and other foreigners is of concern. Concerned about sexual exploitation of women and girls, and about the situation of migrant women in Switzerland. No specific definition of torture as expressed by CAT. All but one canton do not allow for complaints against allegations of torture by police.</p>			<p>lice in cases of alleged torture.</p>	
Thailand	<p>Applaud commitment to the UPR. Set a good example for the promotion and protection of human rights by extending a standing invitation to all special procedures since 2001. Welcome the consideration of ICPED and CRPD.</p>	<p>Many challenges remain to be tackled. Encourage Switzerland to continue fight against racism through education and public information campaigns.</p>				
Bosnia and Herzegovina	<p>Welcome methodology and the consultations with civil society</p>	<p>No complete de-facto equality. CEDAW was concerned that women</p>	<p>What steps have been taken to address discrimination</p>	<p>Strengthening existing machinery for gender-equality, and systemati-</p>	<p>National report is comprehensive. UN compilation: CE-</p>	<p><i>Reservations:</i> have taken note of the remarks, and have already</p>

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	used in the elaboration of the national report. Recognised the practice of not signing a treaty before the domestic framework is deemed ready for ratification and implementation, and understand this position as a useful message. Note the excellent cooperation with OHCHR.	are discriminated against in the labour market. No NHRI that could take direct action before the courts.	of women in the labour market?	cally integrating a gender-perspective in development cooperation programs, as recommended by CEDAW.	DAW – discrimination in the labour market.	lifted a number of reservations to the ICCPR and the CRC. Switzerland has a policy of constantly reviewing reservations and withdrawing them whenever possible.
Haiti	Noted various measures take to combat racism.	One of the highest proportions of firearms in relation the population.	Despite the progress made, human rights violations on racist motives by police are regularly perpetrated, particularly against migrants in the course of expulsion. What do you intend to do about this? How can you have such a high ratio of firearm possession to the population, especially in a coun-	Adopt further normative and institutional measures to combat persistent practices of racism, racial discrimination and xenophobia.	Reference to OHCHR summary – information provided by Stop Suicide on high ratio of firearms.	<i>Racist acts in the context of expulsion:</i> recently legislation adopted on the use of restraint measures in such situations, which clearly defines under what circumstances such measures can be used, and also provides recourse and possibly compensation. <i>High ratio of firearms:</i> weapons are not used against other countries, but due to the militia

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			try that is known for its calmness?			army service men have their arms at the ready to defend national territory.
Chile	Welcome inclusive consultations that Switzerland undertook with civil society in preparing the national report.		Situation of women has improved since the entry into force of the equality law in 1996. What follow-up is given to the measures in the report of the OECD referred to in paragraph 19 of the national report? Protection of children. How is the work divided between authorities and NGOs in relation to the protection of children?		State report – gender equality.	<i>Cooperation with NGOs in relation to the protection of children:</i> will be answered in writing.
Ukraine	Welcome efforts of the Government of Switzerland.		Have measures on improving gender equality been taken in the framework of a comprehensive strategy as recommended by CEDAW?			

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Jordan	Methodology in preparing the national report shows the importance Switzerland attaches to international mechanisms.	Paragraph 58 of the report on religious freedom.	Could you give more information on the issue of freedom of religion and belief?	Establish an NHRI.	National report.	<i>NHRI</i> : see Algeria above.
Italy	Switzerland has a tradition of human rights.	Not signed CRPD and ICPPED. CRC remains concerned about the low age for criminal responsibility. Corporal punishment is not physical violence if not excessive.	What are the problems, if any, related to the signature and ratification of ICPPED and CRPD?	Consider prohibiting all corporal punishment for children.	UN compilation: CRC- low age of criminal responsibility, corporal punishment for children.	<i>Corporal punishment for children</i> : see presentation by the State above why such legislation cannot be adopted.
Mauritania	Welcome the progress made in human rights, and the information campaign on information between the sexes.		Do you intend to establish a federal NHRI in accordance with the <i>Paris Principles</i> ?			<i>NHRI</i> : see Algeria above.

Adoption of the report [13 May 2008, noon]

The report of the Working Group was considered and adopted as scheduled at midday on 13 May 2008. The process went smoothly and lasted less than 15 minutes.³⁵

Before the adoption of the report, the Ambassador of South Africa made a short statement on behalf of the troika. She briefly outlined the structure the report and introduced two oral changes,³⁶ both of which had already been accepted by Switzerland. The Ambassador commended the constructive and transparent manner in which the dialogue between Switzerland and the troika was carried out, and also expressed the troika's sincere appreciation to the secretariat for its 'expeditious work'.

The Ambassador of Switzerland, Mr Blaise Godet, also spoke before the adoption of the report. He expressed his gratitude to all delegations that participated in the interactive dialogue, and assured the Working Group that the head of the delegation, Ms Micheline Calmy-Rey, had been impressed by the quality of the dialogue. He furthermore informed the Working Group that Switzerland had carefully examined the numerous recommendations addressed to it, and had divided them into three categories: those it is ready to accept immediately, those that require consultation with various ministries,³⁷ and those that it cannot accept.

The first of the two recommendations contained deemed unacceptable is the ratification of the *International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families* (ICRMW), which contains provisions on illegal migrants which are incompatible with the 'spirit' of Swiss regulations. The second recommendation that was rejected is the recommendation to include justiciability of the status of economic, social and cultural rights in the domestic legal framework. However, Mr Godet assured the Working Group that the Government does recognise that the 'programmatic nature' of such rights does not prevent them from being rights or from being justiciable in certain cases. Mr Godet reiterated Switzerland's commitment to continue the constructive dialogue under the UPR, and expressed his Government's intention to use this new mechanism to further the promotion and protection of human rights in the country. He also promised to submit a follow-up in the next few weeks to the recommendations, and that the Government will consider entering into voluntary commitments.

After these two short statements, the report of the Working Group on Switzerland was adopted by consensus. The President reminded the Working Group that that editorial changes must be submitted not later than 22 May 2008, to ensure that the document will be ready for consideration in the plenary in June.

³⁵ The report will be available on the OHCHR extranet. However, due to the considerable time lag in the publication of these reports, they are usually available earlier on www.upr-info.org.

³⁶ Paragraph 16: The last sentence in Canada's statement should be deleted and replaced with 'Canada recommends that Switzerland continue its efforts to use non-gender specific language'.

Paragraph 18: The last sentence in Mexico's statement should read 'It also recommends the creation or designation of a national mechanism for the prevention of torture'. Paragraph 56 has also been adapted in the same way.

³⁷ Mr Godet promised to inform the Working Group on the outcome of these on 12 June 2008.

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