



## Economic and Social Council

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### Committee on Economic, Social and Cultural Rights Forty-fifth session

#### Summary record of the 37th meeting

Held at the Palais Wilson, Geneva, on Friday, 5 November 2010, at 10 a.m.

*Chairperson:* Mr. Marchán Romero

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*Combined second and third periodic reports of Switzerland (continued)*

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*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** *(continued)*

*Combined second and third periodic reports of Switzerland* (continued) (E/C.12/CHE/2-3; E/C.12/CHE/Q/2-3 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Switzerland took places at the Committee table.*
2. **Mr. Elmiger** (Switzerland), introducing his country's combined second and third periodic reports (E/C.12/CHE/2-3), said that the principle of the promotion and protection of human rights had been an essential consideration in the revision of the Swiss Constitution, several cantonal constitutions and a wide range of legislation over recent years. The combined second and third periodic reports had been drafted in accordance with the guidelines issued by the Committee and with the full participation of social partners and civil society, as well as other interested parties. The report had been broadly disseminated among the members of the Federal Administration. The Government welcomed the contributions made by civil society, which complemented the information provided by the State.
3. The Federal Constitution enshrined fundamental rights and freedoms, as well as pursuing social objectives that the Confederation and cantons were jointly responsible for achieving. Legislative amendments introduced since 1998 reflected the Committee's recommendations. A number of sensitive issues persisted, however, which hindered the promotion of social cohesion. Swiss policy on asylum and the integration of foreign nationals should be viewed in the light of the fact that it had one of the largest populations of foreign residents of any European country. The possibility of drafting new legislation on the integration of foreign residents was currently under consideration, and the development of an integration policy had been discussed in a Federal Council report published in March 2010.
4. The Federal system had a number of advantages, as it fostered a healthy sense of competition and the development of new ideas, which led to a general increase in well-being and fuller implementation of the rights enshrined in the Covenant. The main disadvantage, however, was that it could be difficult to get an overview of a given situation owing to the variety of approaches taken by the different cantons and regions.
5. Since the submission of its combined second and third periodic reports, Switzerland had ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment. Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights had been the subject of considerable political debate. It was difficult to predict the impact of ratification on the Swiss legal framework, and the Federal Council therefore had no plans to sign the Optional Protocol for the time being, since it did not wish to accede to an international instrument when it could not guarantee that it would be able to ratify and implement that instrument effectively.
6. The question as to whether the Covenant could be directly applied under the Swiss legal system had not yet been resolved. The jurisprudence of the Supreme Court tended to indicate that the rights enshrined in the Covenant fell within the domain of soft law. It did not, however, preclude the direct application of particular Covenant rights, such as the trade union freedoms dealt with in article 8 (1). The inclusion of social objectives in the

Constitution and federal and cantonal laws guaranteed access to rights and services, as well as forms of redress, which contributed to the effective implementation of the Covenant rights. The Federal Council had reaffirmed its commitment to supporting the development potential of economic, social and cultural rights, both in bilateral programmes for poverty eradication, democratization, respect for the rule of law or the promotion of peace, or in multilateral programmes.

7. Federal labour law had been amended to bring it into line with economic requirements while maintaining a high level of protection for all persons employed in Switzerland. Labour conditions had been given particular attention in the implementation of the Agreement on the Free Movement of Persons, and specific measures were in place to prevent wage dumping. Its labour laws were helping the country to combat the informal economy, and the right to strike was recognized in the Constitution. Following a complaint lodged by the Swiss Federation of Trade Unions with the International Labour Organization, the Federal Council had decided to launch consultations with a view to the partial revision of legislation on unfair dismissal in order to increase the compensation granted for unjustified or unfair dismissal, strengthen protection for staff representatives and provide greater protection under collective labour agreements. The Government was thus seeking a balanced solution, in conjunction with Swiss social partners, which would provide adequate protection for trade unionists against unfair dismissal, while still maintaining the flexibility of the Swiss labour market in order to keep unemployment low.

8. Certain elements of the social security system, such as disability insurance and unemployment benefits, had been modified in order to render them financially stable. The global economic and financial crisis had reduced the State's capacity to fund social security, in particular the pension scheme, although the situation had improved since the financial market had started to recover. The crisis had also demonstrated the importance of the social security system as a stabilizer, as it had buffered domestic demand and consumption from the effects of the crisis. Health insurance was being reformed to address the increase in health-care costs in the context of an ageing population and the shortage of specialized staff. The general state of health of the population was good, and specific measures were being taken to prevent drug abuse, alcohol abuse and tobacco dependency. Suicide prevention activities had included the introduction of restrictions on access to firearms. Coordinated action was also taking place among several cantons to establish mental health programmes.

9. Although Switzerland was one of the wealthiest countries in the world, poverty remained a reality; in 2007, 8.8 per cent of the population had been living below the poverty line. A comprehensive poverty eradication programme had been adopted in March 2010. On education, he said that an inter-cantonal agreement on the harmonization of schooling was being implemented.

10. Turning to cultural rights, he acknowledged that in November 2009 the majority of cantons had approved a ban on the construction of minarets, despite the fact that the Swiss Parliament and Government had advocated its rejection. The initiative did not apply to existing minarets, to the construction of mosques or to the exercise of the Muslim religion. Since that decision, the Federal Council had undertaken to promote interfaith understanding and a dialogue with Muslim communities, to work within the framework of the Alliance of Civilizations and to inform international institutions and States about the Swiss direct democracy system and the limited nature of the ban's practical consequences in terms of integration policy.

#### *Articles 1 to 5*

11. **Mr. Abdel Moneim** said that he was surprised that Switzerland had been able to report on 10 years of activities in as little as 140 pages. Future reports should provide

comprehensive statistics, presented from the base year until the end of the reporting period. He asked whether development assistance was used to contribute to the fulfilment of economic, social and cultural rights. The question of the direct applicability of the Covenant should not be controversial, since Covenant rights were part of international human rights law. Nothing should be held more sacred than human rights. That issue must be settled.

12. **Mr. Elmiger** (Switzerland) welcomed the suggestion made by Mr. Abdel-Moneim concerning the provision of comprehensive statistics and said that such data would be incorporated into the next periodic report.

13. **Mr. Dasgupta** said that, while he welcomed the focus on the use of development cooperation for poverty eradication and the realization of such rights as the right to education and the right to the highest attainable standard of health, he wished to know whether Switzerland was meeting the United Nations target by allocating at least 0.7 per cent of its gross domestic product (GDP) to official development assistance (ODA).

14. Turning to the question of the State party's fulfilment of its international obligations under the Covenant when negotiating bilateral and multilateral trade agreements, particularly on trade in medicines, he expressed concern regarding Switzerland's emphasis on the need to protect intellectual property rights beyond the conditions set in the Agreement on Trade-Related Aspects of International Property Rights (TRIPS Agreement). An insistence on exceeding the TRIPS Agreement provisions would increase the cost of, and therefore adversely affect access to, medicines. He asked what measures were being taken by the Swiss Government to assess the impact of those conditions on poorer countries, which would thus be denied access to medicines, and the extent of the human suffering that would ensue.

15. **Ms. Bras Gomes** said she would like to know why many of the Covenant rights were not mentioned in the list of actionable fundamental rights under the 2000 Federal Constitution, even though the State party's periodic report indicated that economic, social and cultural rights were accorded the same protection as civil and political rights. It would be useful to know how the promotion of common prosperity, to which reference was made in the Constitution, was linked to the realization of economic, social and cultural rights and what was meant by "social objectives" in the context of the Constitution.

16. The Committee had been informed of gaps in Switzerland's anti-discrimination laws and she wished to know why Switzerland seemed unwilling to introduce comprehensive legislation to prohibit discrimination. She also asked whether the State party treated refugees and persons granted provisional refugee status equally, particularly with regard to the rules governing family reunification, and requested clarification on a special tax paid by asylum-seekers.

17. **Mr. Atangana**, recalling the Committee's general comment No. 9 on States parties' obligations when they ratified the Covenant, wished to know whether the Covenant was directly and immediately applicable in Switzerland, without the need for national legislation. He asked whether a human rights centre pilot project launched in 2009 would lead to the creation of a national human rights institution or would be prolonged for a further five years.

18. **Mr. Abashidze** said that he would like a clear answer as to whether the State party considered its obligations under the Covenant to be legally binding, as were those under the International Covenant on Civil and Political Rights. If so, he wished to know what specific measures had been taken in that context since 2000. Noting that two thirds of Switzerland's cantons did not have anti-discrimination laws, he wondered if the time had finally come to introduce comprehensive federal anti-discrimination legislation.

19. **Mr. Texier** said that judgements by the Federal Court indicated that some articles of the Covenant were deemed directly applicable, and he suggested that the Covenant's remaining articles should be viewed in the same way. Switzerland should also ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

20. He asked what would be done to end discrimination against Roma from Romania and Bulgaria, who were citizens of the European Union and who, sooner or later, would have to be allowed to enter and work in Switzerland, in the same way as other European Union citizens did. Regarding the referendum on the automatic expulsion from the State party of all foreign citizens convicted of certain offences, which was due to take place in late November 2010, he asked whether the Government could not have modified the wording of the referendum question, which proposed collective, and therefore discriminatory, legislation.

21. **Mr. Sadi** said that the Committee expected exemplary behaviour from Switzerland, which was home to so many international human rights bodies. The State party should change its position concerning the direct applicability of economic, social and cultural rights, which were not merely guidelines, and on the adoption of the Optional Protocol.

22. He asked whether the State party considered that multiculturalism had failed in Switzerland. He expressed regret that there were discrepancies between Switzerland's anti-discrimination legislation and its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination and that the Federal Commission against Racism did not have the power to hear complaints.

23. **Mr. Pillay** said that the delegation's ambivalent attitude towards economic, social and cultural rights was highly regrettable. Ratification of the Covenant brought with it core obligations, which included the duty to ensure that each provision of the Covenant was fulfilled. He asked the delegation for confirmation that the Government viewed all civil and political rights, but only some economic, social and cultural rights, as being self-executing. It appeared from court judgements that certain provisions of the Covenant required specific legislation because they were considered to be social objectives only. The State party appeared to have joined such States as the United Kingdom of Great Britain and Northern Ireland, Ireland and the United States of America, which considered economic, social and cultural rights to be no more than aspirations. Those States parties had not been so bold as to say so directly to the Committee, whereas the Swiss delegation had. Switzerland claimed to be monist but did not consider all the provisions of the Covenant to be rights. The lack of comprehensive anti-discrimination legislation was but one example of that attitude. The delegation's opening statement intimated that the State party might change its position, but it had done nothing in that regard since it had last met with the Committee in 1998. He expressed surprise that the State party viewed ratification of the Optional Protocol and its subsequent implementation as a difficult proposition. What was there to put into practice? The aim of the Optional Protocol was to allow victims of violations of economic, social and cultural rights to be heard. He asked if the State party was reluctant to admit that economic, social and cultural rights were, in fact, justiciable.

24. With regard to plans to deal with poverty in Switzerland, he wished to know if the State party would adopt a human rights approach in combating poverty and whether it considered freedom from poverty to be a right and entitlement, or simply the outcome of acts of charity. He also wondered why a country as rich as Switzerland allocated only 0.4 per cent of its GDP to development aid.

25. **Ms. Barahona Riera** asked the delegation to explain how Switzerland reconciled its position that economic, social and cultural rights were merely programmatic objectives with its active participation in the Human Rights Council and the human rights treaty bodies, which held that the implementation of economic, social and cultural rights was a

legal obligation of States parties. It was to be hoped that, in the future, developments in Switzerland's policy on the applicability of those rights would overcome that contradiction.

26. Concerning article 3, she noted that the Swiss Federal Court had ruled that quotas for equal representation of women in legislative bodies constituted a violation of freedom of choice. She recalled that internationally recognized standards existed on the use of quotas to promote gender equality. It remained to be seen whether the Federal Court would change its restrictive approach and become more progressive. Quotas were a way of promoting women's rights; they did not violate the rights of others. Turning to another aspect of gender equality, she said that there appeared to be a serious problem in Switzerland with childcare centres. What steps were being taken to make it easier for women who had children to hold a job?

27. **Ms. Bonoan-Dandan**, referring to the upcoming referendum on whether to deport immigrants who committed certain crimes, said that the debate on the issue had fanned the flames of xenophobia. She asked the delegation to comment on reports indicating that xenophobia was on the rise in Switzerland.

28. Paragraph 46 of the report stated that the universality and interdependence of human rights meant that the right to property played an important role in relation to the right to housing, the right to water and food, in particular, and the right to a decent life. She pointed out that the right to property was not included in the Covenant and wondered how it had found its way into a report on economic, social and cultural rights.

29. Paragraph 43 of the report stated that in 2006 Switzerland had adopted a new policy in which it set out the Swiss rights-based approach and its linkage to poverty reduction issues. Given that Switzerland regarded the Covenant as simply a set of objectives, it was odd that, when deciding on matters relating to development cooperation, the State party should expect other countries to apply that instrument. As Switzerland did not consider the articles of the Covenant to be justiciable, what criteria did it use to assess the efforts of other countries to discharge their obligations? It would be useful for the delegation to comment on that apparent contradiction.

30. **The Chairperson**, speaking as a member of the Committee, said that if the Covenant did not contain legal obligations, but merely objectives, the Committee would be a mere working group, and States parties would not need to report back on the progress made in complying with their international legal obligations.

31. **Mr. Spenlé** (Switzerland) noted that several members of the Committee had referred to contradictions in the Swiss position on the Covenant. He would try to dispel the confusion about the relation between international law and domestic law in Switzerland. In Switzerland, every effort was made to interpret international law in a manner that was in conformity with domestic law. Switzerland's viewpoint on the place of international law in domestic law was not fundamentally different from that of other countries. Its particularity had to do with the role of the referendum, an institution of direct democracy unknown in many other countries.

32. Switzerland considered international law to be directly applicable as long as it was sufficiently specific to serve as the basis for a decision in a particular case. International law took precedence over domestic law as a matter of principle. However, it was up to the courts to decide on the direct applicability of norms of international law, which were not all equally suited to the imposition of direct obligations. International law that was not directly applicable or did not have a self-executing character was usually viewed as soft law to which legislators needed to give concrete form.

33. The Federal Court had established three criteria for determining whether a provision of international law was directly applicable: first, the provision must concern the rights and

obligations of individuals; second, it must be justiciable, i.e., sufficiently specific and clear to be directly applicable in a particular case by an authority or a court; and, third, it must fall within the competence of the authorities responsible for implementing the law rather than the legislative authorities. At international level, Switzerland recognized that all human rights were universal, indivisible, interdependent and interrelated. It was also of the view that economic, social and cultural rights were the human rights that were most likely to evolve, a potential which it was determined to support.

34. Switzerland was not the only country for which the question of the justiciability of economic, social and cultural rights was controversial. During the negotiations on the Optional Protocol, the State party had indicated that the Covenant was not directly applicable in Switzerland and that the Federal Council and the Federal Court regarded it as a soft-law instrument. Switzerland was prepared to assess whether the Optional Protocol was compatible with the national and cantonal legal orders, but that was above all for the courts and the authorities concerned with the implementation of those rights to decide.

35. **Ms. Steiger Leuba** (Switzerland) said that she would provide the Committee with a number of examples of cases in which the decisions reached by the Federal Court were of relevance to the question of the justiciability of economic, social and cultural rights and the direct applicability of the Covenant. In 1995, the Federal Court had recognized the existence and justiciability of an unwritten constitutional right to minimum conditions of subsistence, including the fulfilment of all basic human needs, such as food, clothing and lodging. One year later, that ruling had been invoked in a decision that ensured access to social benefits for rejected asylum-seekers. In 2005, the Federal Court had ruled in favour of guaranteeing access to emergency assistance for such persons. According to the Court, that right was not dependent on the legal status of the person who invoked it and could not be restricted. In 2002, the Federal Court had recognized the justiciability of the right to basic education set forth in article 19 of the Constitution.

36. Article 2, paragraph 2, of the Covenant had been invoked before the Federal Court in a case concerning the conversion of a seasonal work permit to an annual one for nationals of States which were not members of either the European Free Trade Association or the European Union. In its decision, the Federal Court had recalled its case law, pursuant to which the Covenant was a soft-law instrument. It had also stated that the question of whether that particular provision of the Covenant constituted a directly applicable guarantee could be left open, since the prohibition on discrimination which had been invoked was secondary.

37. Article 2, read together with article 7, of the Covenant had also been invoked before the Federal Court. The applicant had been denied a residence permit and had argued that he was at risk of being discriminated against in hiring if he was forced to return to Bosnia and Herzegovina. The Federal Court had found that the right set out in those provisions of the Covenant laid an obligation upon the State party in which the person intended to work only if the person was legally entitled to reside there. It could not be interpreted as granting a right of residence in one State party to avoid possible discrimination in another.

38. In a ruling of 4 May 2010, the Federal Court had examined, in the light of article 7, subparagraph (d), of the Covenant, whether workers paid by the hour were entitled to claim compensation for holidays. It had concluded that that rule was for lawmakers to decide. It had added that the Covenant was not very clear on that point. It did not imply that the provision concerned all workers, including those paid by the hour, nor did it indicate the number of hours needed to qualify or how it was to be applied in a specific case. Instead, it merely posed a general idea. The Federal Court had also noted that the adoption of the provision had given rise to protracted discussions, which probably would not have been the case if its self-executing character had been evident.

39. Article 8, paragraph 1 (d), had also been invoked before the Federal Court. The Court had found that there were good reasons to recognize the self-executing nature of that provision, but had ruled that the question could remain open, as was also the case for the question of whether freedom of association and freedom to form trade unions, set out in article 22, paragraph 1, of the International Covenant on Civil and Political Rights, protected the right to strike.

40. Article 13, paragraph 2 (c), of the Covenant had been invoked before the Federal Administrative Court by an applicant who claimed that he had not had access to an occupational training course. The Court had recalled the established case law of the Federal Court, pursuant to which that provision of the Covenant was not directly applicable.

41. With regard to the legal framework for non-discrimination in Switzerland, she said that the Constitution prohibited any discrimination based on race, sex, language, social situation, lifestyle (which included sexual orientation) or religious, philosophical or political convictions, and it explicitly guaranteed freedom of conscience and creed and freedom of choice of language. It also provided that all State bodies were required to respect basic rights and to contribute to their realization. Provisions of constitutional law, private law, criminal law and the law of criminal procedure also prohibited discrimination. All persons living in Switzerland, regardless of nationality, were entitled to those basic rights.

42. The Federal Court was of the view that the existing legal foundation provided sufficient protection against discrimination. Thus, there was no plan to introduce a general anti-discrimination bill. On 4 May 2009, the Legal Affairs Committee of the Federal Council had decided not to act on a legislative initiative calling on the Council to promulgate a law on equality of treatment. Most of the Committee members felt that, while protection against discrimination was important, existing provisions were adequate. In June 2009, a legal guide had been published that provided practical advice on ways of combating racial discrimination. The Federal Court had handed down several rulings condemning racism, anti-Semitism, incitement to hatred and discrimination, oral and written discrimination, discrimination on the basis of religion and negation of the Armenian genocide. It had denied a request to put applications for naturalization to a vote and had reversed the refusal of a naturalization application in a case involving the wearing of a veil.

43. Two decisions at cantonal level concerning discrimination in hiring were also worth noting. In one, the Lausanne Labour Court had ruled in favour of a person who had been refused employment as a guardian in an old age home because of his skin colour. In another, a court in Zurich had ruled in favour of a Swiss citizen of Macedonian origin who had been denied employment by a cleaning company which had specified in a newspaper advertisement that it would not hire anyone from the Balkans.

44. **Mr. Ledergerber** (Switzerland), reiterating his country's recognition of the indivisibility of human rights, said that its domestic approach to human rights was broadly similar to the one taken to the incorporation of human rights into its international development policy. The Federal Council supported the promotion of economic, social and cultural rights through bilateral and multilateral programmes on poverty reduction, democratization, respect for the rule of law and peacebuilding.

45. There was a strong link between development cooperation and respect for human rights, as poverty represented a failure to fulfil fundamental needs recognized by the international community. It was therefore important to ensure that human rights formed the basis for development programmes and strategies. Switzerland pursued a sectoral approach aimed at promoting good governance in partner countries.

46. Poverty reduction hinged on recognizing the rights of the poorest and enhancing their role as active citizens. Swiss policy in that area was founded on three pillars: aiding



people in emergency or conflict situations; promoting growth to reduce the number of people living in poverty; and working towards socially and environmentally sustainable development. Switzerland focused particularly on the rights to food, water and health through practical measures on the ground and action in international forums such as the United Nations Human Rights Council.

47. Switzerland's contribution to development cooperation for 2011–2012 would account for 0.47 per cent of its GDP, up from 0.34 per cent in 2000, and the legislature was considering increasing it to 0.5 per cent by 2015. With regard to the right to property in the context of development, he explained that work had only recently begun in that area and that much remained to be clarified.

48. **Mr. Elmiger** (Switzerland) added that the periodic report had highlighted the attention being devoted to the potential role of the right to property as a tool for socio-economic development. Switzerland had supported the work of the Commission on Legal Empowerment of the Poor, which had produced its final report in 2008.

49. **Mr. Spénlé** (Switzerland) said that, in line with a legislative decision of 1 July 2009, tenders had been invited for the establishment of the Swiss Competence Centre for Human Rights as a five-year pilot project. The bidding process had been won by a joint bid from the Universities of Bern, Fribourg, Neuchâtel and Zurich, in association with the Kurt Bösch University Institute, the University of Teacher Education Central Switzerland (PHZ) and Humanrights.ch (MERS). The Competence Centre would begin functioning in 2011 and would provide advice, support and a platform for exchange for federal, cantonal, communal and municipal authorities and the private sector in order to build human rights capacity and enhance implementation throughout the country. The Centre, with its nucleus at the University of Bern and clusters at other institutions, would work on a contractual basis and cooperate closely with the public authorities and others already active in the same field. Federal funding of 1 million Swiss francs per year for five years would be provided, and the work and impact of the Centre would be monitored so that a decision could be taken on whether it should continue in the same form or whether a different national human rights institution should be created. The options remained open.

50. **Mr. Ledergerber** (Switzerland) said, with regard to international trade agreements, intellectual property rights and access to medicines, that protecting intellectual property played a vital role in encouraging pharmaceutical companies to invest in the research, development and marketing of new medicines. It thus helped to ensure sustainable access to pharmaceutical products. After a period of exclusive use that allowed companies to recoup the substantial costs of research and development, restrictions were lifted and generic copies could be produced by others. Nevertheless, intellectual property protection was only one of several factors affecting the end price of medicines. Given that various elements of the World Trade Organization TRIPS Agreement were open to interpretation, Switzerland took pains to make its position clear by including specific provisions in any free-trade agreements it negotiated.

51. Turning to the issue of impact assessments for sustainable development in trade negotiations, he said that, in 2009, the Federal Council had decided that, despite their high cost, such assessments could not satisfactorily respond to the complex questions which they sought to answer and that it was therefore more appropriate for Switzerland to continue its policy of dialogue and collaboration with its free-trade partners. The results of impact assessments conducted by others, for example the European Union, had been judged inconclusive. In general, there was a lack of disaggregated statistics on the impact of bilateral trade on the environment, human rights, etc. The Government might change its position following further consideration, but for the moment would continue to apply its current approach in an effort to ensure policy coherence in potentially conflicting areas such as foreign trade, the environment and human rights.

52. **Mr. Elmiger** (Switzerland) added that the subject of impact assessments had been discussed at a recent round table in Brussels in which members and non-members of the European Union had participated. The meeting had focused on measures to strengthen economic, social and cultural rights in the commercial sphere, particularly in connection with free-trade agreements. Even within the European Union, approaches differed with regard to impact assessments. It was important to note that adequate follow-up and consolidated indicators were often lacking, which undermined the value of such studies. Switzerland engaged in dialogue on the issue with a range of partners with a view to finding the best way forward.

53. **Mr. Flükiger** (Switzerland) said that the legal situation of asylum-seekers admitted on a provisional basis had improved since the revised Asylum Act had entered into force on 1 January 2007. Work permits could now be granted irrespective of the state of the job market and economic situation, and the families of those admitted provisionally could join them in Switzerland after three years. Applications for residence could be submitted after five years. Provisional admission was intended to be a temporary measure; families were therefore not brought together unless a return to the country of origin was unlikely. For the moment, there were no plans to grant those admitted provisionally the same status as refugees or to change the regulations on family reunification.

54. In advance of the November 2010 referendum on legislation proposing the automatic expulsion of foreigners who committed certain offences, including benefit fraud, every Swiss citizen had received clear information on the content and potential impact of the proposal. Neither the legislature nor the executive branch supported the proposal, which would restrict fundamental rights and whose compatibility with the principles underlying the Constitution, including the proportionality of measures taken by the authorities, was questionable. It also violated international law. The Government had submitted a counterproposal to the effect that decisions should continue to be taken on a case-by-case basis. The counterproposal also advocated innovative constitutional provisions to promote the integration of the foreign population, which would help to reduce crime, and obviated the legislative and practical difficulties associated with the original proposal.

55. The many foreigners in Switzerland — some 22 per cent of the population — contributed significantly to various sectors of society and the economy, and their presence was appreciated by the majority of the population. Although there would always be some dissenting voices, in general multiculturalism was alive and well.

56. **Ms. Lempen** (Switzerland) said that the Federal Court had ruled that setting quotas for seats in parliament to be filled by women presented a disproportionate threat to the right to be elected and to elect. Quotas for the inclusion of women candidates in electoral lists, however, had been judged acceptable. Various measures had been taken at cantonal level both to raise awareness among political parties of the need to field women candidates and to provide training and professional development to support women candidates in political life. Switzerland was proud to say that a majority of the members of the Federal Council were women. Outside the political sphere, the Federal Court distinguished between flexible and rigid quotas. Flexible quotas that took into account qualifications and other factors were generally acceptable; rigid quotas could be used only if expressly provided for by law.

57. With regard to work-life balance, the Government was aware of the lack of sufficient childcare services outside the family. Under a special programme, federal funding had been allocated for 2003–2011 to create additional childcare capacity. A Government request for the funding to be extended was before the legislature. Reforms to the tax system had been passed to provide tax relief for families with children, and a new deduction had been introduced to cover childcare outside the home. A database had been created to give ready access to information on the situation in different cantons.

58. **Ms. Durrer** (Switzerland) explained that the cantons had wide-reaching powers in matters having to do with compulsory education. In August 2009, an inter-cantonal agreement on harmonizing compulsory schooling had come into force, under which signatory cantons would not only harmonize their education structures and objectives, but also facilitate work-life balance, particularly by promoting preschool education and supervised extra-curricular activities. Some cantons were taking innovative steps, such as introducing the rights to preschool and to out-of-school care and requiring businesses to help cover the cost. It was hoped that such steps would create additional childcare places, assisting single-parent families in particular. Families were also being encouraged to consider their distribution of domestic responsibilities and to ensure that both parents were fully involved in caring for children.

*The meeting rose at 1 p.m.*