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SUMMARY RECORD OF THE 1539th MEETING

Held at the Palais des Nations, Geneva,
on Friday, 25 October 1996, at 10 a.m.

Chairman: Mr. AGUILAR URBINA

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GE.96-18709 (E)

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

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Initial report of Switzerland (HRI/CORE/1/Add.29, CCPR/C/81/Add.8, CCPR/C/58/L/SWI/3) (continued)

1. At the invitation of the Chairman, the Swiss delegation took places at the Committee table .

2. The CHAIRMAN invited members of the Committee to put any additional questions they might have to the Swiss delegation after having heard its replies to those in the list of issues to be taken up.

3. Mr. EL SHAFEI wished to know whether solitary confinement implied complete deprivation of contact with the outside world, including family visits and contacts with a lawyer, whether that form of detention before sentencing was practised regularly, whether detainees had the right to appeal that decision to a legal body, whether the health of detainees was monitored, whether the family was kept informed of their state of health and whether detainees could listen to the radio, watch television and take exercise.

4. He also asked whether scientific experiments were carried out on detainees, whether the conduct of medical experiments without the consent of detainees was expressly prohibited by law, whether cases of that nature were brought to the attention of the courts, what actual experiments were conducted with the consent of the detainee and whether there were guarantees of the authenticity of the consent given by detainees.

5. Lastly, the information contained in the initial report (paras. 359 to 374), as well as that provided by the Swiss delegation concerning the application of article 19, indicated that the import or sale of foreign publications was not subject to restrictions or censorship. In practice, however, the sale of foreign publications had been suppressed in some cases. What was the procedure in the matter?

6. Mr. BÁN said he would appreciate clarification of incommunicado detention. The need for that kind of detention was unquestionable in cases of serious crimes, such as those involving the mafia. Nevertheless, it constituted a stricter restriction of personal freedom, whence the need for more rigorous guarantees to prevent violations. Although he realized it was difficult to provide specific answers in view of the existence of 26 different cantonal systems, he would like to know who was responsible for ordering incommunicado detention - the examining magistrate, the court, the police officer in charge of the investigation, or his superior? Did that decision entail any special formalities involving notification of the detainee, his lawyer or both? The report failed to give details about the length of the period of incommunicado detention; was it specified in the cantonal codes, and could it be renewed or extended? Could the detainee lodge a complaint against that form of detention at the time the decision was taken or only after it had been applied? Lastly, how was it that the Federal Tribunal had not developed a body of case law on incommunicado detention?

7. On the subject of prison conditions, he was rather surprised to learn from paragraph 152 of the initial report (CCPR/C/81/Add.8) that private institutions were authorized to take “certain special measures”; did those measures involve imprisonment or something else? With respect to the application of article 17 (right to respect of privacy), he requested clarification of what was stated in paragraph 345. It was his understanding that there were two parallel systems of surveillance measures - one being authorized in the context of a criminal investigation and the other used for reasons connected with the internal or external security of the country. If a distinct system was in point of fact used in cases involving the country's internal or external security, were the courts competent to authorize its use?

8. Lastly, he endorsed Ms. Medina Quiroga's observations concerning the federal commission on racism (para. 71, HRI/CORE/1/Add.29). Moreover, in view of the discussions of the “negation of the holocaust” that had taken place in several European countries, he would like to know whether Swiss law recognized the crime of historical “revisionism” and, if so, whether any investigations or criminal proceedings had been initiated in that connection.

9. Mr. LALLAH noted that the freedom of expression of foreigners referred to in paragraph 369 of the initial report had given rise to questions concerning the conformity of Swiss legislation with the Covenant. He was surprised that the explanations provided by the delegation, which had dissipated the doubts expressed, had not been given in the report, and wondered whether Switzerland should not consider putting an end to restrictions on the freedom of expression of foreigners. Members of the Committee sometimes granted interviews to the press on concluding their consideration of a State party's report, and they might well find themselves subject to the restrictions mentioned in paragraph 369 of the initial report, since it was sometimes difficult to make a distinction between what was political and what was not when the subject of human rights arose.

10. He was also surprised by the absence of non-governmental organizations (NGOs) during the Committee's consideration of the initial report of Switzerland. It was the Committee's practice to draw attention to their absence when the State party was a third world country and it therefore seemed natural that it should do so in the case of Switzerland. In that connection he would like to know what was being done not only at the federal level but also at the cantonal level to make the Covenant better known.

11. Mr. FRANCIS , noting that certain cantons had no legislation on legal remedies that would provide better protection of the rights recognized in the Covenant, asked whether Switzerland as a whole had any legislation specifying what remedies were available and what was the period during which a person who considered that his rights had been violated could bring an action against the State party.

12. Mr. BHAGWATI referred to a draft law on which the Swiss people were to vote under which asylum-seekers who illegally crossed the Swiss frontier would no longer be covered by the refugee status determination procedure, despite the principle of non-refoulement. Illegal entry into Switzerland would thus

become a reason for refusing to grant refugee status. He wondered if that were so and pointed out that persons fleeing persecution and seeking asylum in a country usually arrived without prior authorization.

13. He also wondered whether, when members of a family arrived in Switzerland at different times, they were sent to various cantons on the basis of the allocation system. The family nucleus might well be preserved but other members of the family in the broad sense of the term and in the context of other cultures might be isolated and far away; that was unlikely to facilitate their adaptation. Could the Federal Government try to convince the cantons to adopt a more positive attitude in the matter?

14. He would also like to know where persons whose request for asylum had been rejected at the airport were detained, what their living conditions were like and whether there was a limit to the period of their detention. He also wondered whether it was true that persons whose request for asylum had been rejected - and even some of those whose requests were being considered - were sometimes detained with other prisoners for a period that might be as much as nine months. Could such persons contact lawyers? Lastly, he said that he shared the concern expressed by Mr. Lallah concerning the freedom of expression of foreigners and the meaning of the term “speak on a political subject” (para. 369 of the initial report).

15. Mr. SCHÜRMANN (Switzerland) said he would reply both to the questions raised the previous day which he had not had time to answer as well as to those put at the current meeting. With respect to the guarantees enjoyed by a person placed in a psychiatric institution, he explained that, under article 397 (d) of the Civil Code, introduced in 1981, the person in question or a near relative could appeal in writing to the judge within 10 days following the communication of the internment decision. The procedure was governed by cantonal law, subject to a number of conditions and in particular the following: any person entering an institution must be immediately informed in writing of his right to appeal to the judge against his retention in that institution or against the rejection of an application for release; moreover, the application for a judicial ruling must be transmitted immediately to the competent judge (see initial report, para. 136). As for the composition of the body responsible for monitoring such decisions, the law stated that a decision concerning a person suffering from psychological disorders could be taken only with the agreement of experts. In the canton of Zurich the decision was taken by the Legal Psychiatric Commission consisting of a judge and two physicians, as constituting the tribunal within the meaning of article 14 of the Covenant. Federal law stipulated that such decisions had to be taken by mixed bodies. Should the Committee wish to be informed of all the regulations in force in the various cantons, his delegation would communicate them in writing.

16. Questions had been raised concerning the possible remedies available in the event of allegations of ill-treatment. Such remedies varied, depending on their legal basis. In the first place, all codes of criminal procedure provided for the possibility of a remedy before a higher authority against any act or omission on the part of prosecuting bodies. In the canton of Bern, for example, article 327 of the Code of Criminal Procedure stated that an appeal against judicial misconduct could be lodged with the Indictment Division on

grounds of a breach of the accusation procedure or an omission on the part of the criminal prosecuting authorities. An appeal against judicial misconduct could be lodged in respect of any clear violation of the law, including infringement or abuse of the power of assessment, the denial of justice and unjustified delay. In addition, charges could be brought for bodily injury (Penal Code) and abuse of authority. At the same time, a civil action could be brought for bodily injury and State liability - the latter being covered by cantonal law. Lastly, quite apart from an action brought by an individual, sanctions and measures could be taken by the supervising authority on its own initiative. In the canton of Bern the supervising authority was the Indictment Division.

17. The legal basis for an arrest depended on the reasons for it. If a person was arrested with a view to extradition or expulsion, the legal basis was the Federal Law on the Establishment and Residence of Foreigners or the Law on Asylum. If the arrest was made with a view to deprivation of liberty for assistance purposes, it was the Civil Code, and if it was carried out with a view to pre-trial detention it was the cantonal codes of criminal procedure.

18. He recalled that each of the 26 cantons had its own Code of Criminal Procedure in addition to the Federal Code of Criminal Procedure for offences within the jurisdiction of the Confederation. The latter reserved for itself the right to investigate and hear exceptional cases, among the most recent of which had been an economic crime case and a complaint against a former member of the Swiss Government. Steps were being taken to unify the criminal procedures of the cantons.

19. Replying to the questions put concerning the age of criminal responsibility, he explained that it was at present fixed at seven years. The Commission of Experts, which was engaged in completely recasting the general part of the Penal Code, proposed raising that age to 12 years while the Federal Council envisaged raising it to 10 or 12 years. However, the regulations at present in force appeared to be compatible with the provisions of article 40, paragraph 3 (a) of the Convention on the Rights of the Child, which stated that a minimum age should be established, but did not specify it. In any event, court decisions affecting children of seven or eight years of age did not involve punishment as such but rather educational measures which were almost indistinguishable from the measures for the protection of the child envisaged by the Civil Code.

20. On the same subject, he provided further details on the meaning of the provision of the Swiss Civil Code referred to in paragraph 121 of the initial report (CCPR/C/81/Add.8) concerning deprivation of liberty for assistance purposes. It stated that a person “may be placed or retained in a suitable institution when ... personal assistance cannot be provided to that person in any other manner”. The idea behind the phrase “personal assistance provided in any other manner” was that, as far as possible it should be up to private individuals, namely, the family of the person concerned, to provide such assistance. It was better that the desired results should be achieved by measures of a private nature.

21. Questions had been put and observations made concerning the freedom of expression of foreigners. Mr. Bán had asked whether charges were likely to be

brought against a person denying the existence of the holocaust, and Mr. Lallah had expressed concern about the application of the Decree of the Federal Council relating to political speeches made by foreigners. One of the very rare cases in which the Decree in question had been invoked to prevent a foreigner from speaking on a political subject without special authorization went back to the 1970s, when a member of the State Council of Geneva (Executive Council) had prohibited two Frenchmen championing revisionist ideas from coming to Geneva to make a speech. They nevertheless showed up and the police had had to intervene. Information supplied by the Government Procurator's Office on cases in which that Federal Decree had been invoked indicated that they were very rare and that only about one authorization was refused per year.

22. Concern had been expressed about the remedies which, in the absence of specific cantonal legislation, were available to protect a right recognized in the Covenant. Since Switzerland was a monist State, it was unnecessary to adopt laws incorporating the Covenant into domestic legislation. Even if the cantons had not included provisions of the Covenant into their legislation, it was directly applicable in the cantons on the basis of the remedies that had already been described.

23. Mr. LINDENMANN (Switzerland) said he wished to supplement his reply about the regime governing adoption abroad and the scope of article 78 of the Federal Law concerning private international law. An adoption that had taken place abroad could be recognized in Switzerland if it was pronounced in the State of residence of the adopter or the adoptive spouses, or in the national State of at least one of the two adopters. Forms of adoption varied from country to country and had legal effects that varied accordingly. By definition, recognition of an adoption that had taken place abroad could not have legal effects that were in essence different from those resulting from the adoption in the State in which it was pronounced. For that reason, its actual legal effects could not be greater in Switzerland than abroad. The idea behind article 78 to which he had referred was that, when the adoption that was pronounced on the basis of a foreign law did not provide for the complete integration of the child into the adoptive family and left certain links with the biological family, that simple adoption could not be recognized to have all the effects of full adoption under Swiss law. If the adoptive parents desired additional rights, they could request full adoption under Swiss law on the basis of the conditions set out in the Civil Code. The latter provided, among other things, for safeguards of the welfare of the child, namely, a probationary period of two years during which the adoptive parents must care for the child and provide for its education. In other words, a probationary period of two years was necessary before the adoption had the effects of full adoption.

24. Replying to a question about guarantees of a fair trial under Swiss law, he referred to article 4 of the Constitution. Admittedly the text of that article did not expressly refer to those guarantees but, as had already been pointed out by Mr. Caflisch, the Constitution was an extremely old instrument and it should be borne in mind that guarantees of a fair trial were reflected in the Federal Tribunal's extremely rich body of case law. He mentioned the availability of a compilation of references to the relevant decrees issued during the previous 10 years, of which over 40 pages were devoted to an

interpretation of article 4 of the Constitution. He went on to list a number of headings in that compilation which clearly revealed that the right to a fair trial was guaranteed in Switzerland (interdiction of the denial of justice, principle of an expeditious trial, interdiction of excessive formalism, the right to be heard, the right to consult the case file, the right to free legal assistance, the right to a court-appointed defence counsel, etc.). Switzerland's reservation in respect of article 26 of the Covenant could therefore obviously not be explained by the absence of guarantees in respect of legal proceedings; it was based on other considerations that his delegation had already described.

25. Replying to a question concerning the legal status of natural children, he said that for some 20 years the Swiss Civil Code had made no distinction between children born during wedlock and those born outside, except for a few minor details, such as the fact that a child born of an unmarried couple took the name of his mother whereas a child born of married parents took that of his father. Moreover, in the case of cantonal citizenship, the child of unmarried parents had the right to the cantonal and communal citizenship of his mother whereas a child of married parents had that of his father. Generally speaking, however, no fundamental distinctions were made.

26. The legislation governing divorce was being revised and the new draft law on the subject made no distinction between men and women. Moreover, the revision of the law should not yet have any immediate effect on the reservation entered in respect of article 26 of the Covenant.

27. One member of the Committee had asked whether there were any plans to extend compulsory military or civilian service to women. There was no intention of doing so. In any event, feeling in the country was veering in the direction of doing away with compulsory military service and even the army itself.

28. As for the question about the need for a legal basis to authorize the use of the public domain, which had been raised in connection with article 19 of the Covenant, he said that the Federal Tribunal, in its case law, followed the principle that the power to administer the public domain was inherent in the executive. A specific legal basis was therefore unnecessary, particularly in the case of demonstrations or the erection of stalls in markets. However, the matter could be viewed from a different angle, namely, that of fundamental rights, and freedom of expression and even the freedom of commerce and industry might give rise to an individual right in connection with the issue of an authorization. Yet that right was not unlimited and was regulated by the competent authority in the locality in question, which specified the duration, place and other features of the authorization to be granted. But in the case of a demonstration, for example, the authorities exercised no prior control over the message or information that the demonstrators intended to put over. In general, the guiding principle was that extremely few requests for authorization should be expressly rejected.

29. A question had been raised about what was said in paragraph 364 of the report (CCPR/C/81/Add.8). The question of access to information in the possession of the administration was an extremely complex aspect of the freedom of expression and fundamental freedoms in general. The principle of

access to such information was not only characteristic of sound State administration; it also had human rights aspects, particularly in the case of legal proceedings (access to the court file, publicity of proceedings, etc.). Article 4 of the Federal Constitution contained guarantees in that connection and others were provided by the European Convention on Human Rights and in the Covenant. In a more general manner, Swiss law provided numerous guarantees of access to certain information in the context of or relating to legal proceedings. In all cases in which an individual was personally affected by information in the possession of an authority, there were national guarantees (personal freedom as an unwritten fundamental right, application of the provisions of the European Convention and the Covenant) which enabled the person concerned to have access to information concerning him and, if necessary, to correct it. Furthermore, in cases where the Federal Tribunal decided to grant access to information, it had to ensure respect for the principle of equality of treatment of all the parties concerned.

30. Lastly, in the case of a “popular vote”, the people were entitled to the information they needed in order to make their decision. In the event of refusal by the authorities, a remedy under public law was available. It would nevertheless be going too far to say that access to information held by the authorities should be unlimited and to require that any restriction of that right should remain the exception and should have a legal basis. Either the legal provisions would be too vague to have any real meaning or, conversely, any enumeration of applicable cases would be likely to be incomplete. Furthermore, the administration dealt with information that was officially classified, as well as data made available on terms of confidentiality (police, finances, health, social insurance, etc.), and it was therefore bound to ensure the protection of personal data. Ultimately, an administration that sought to be democratic had to recognize differing opinions on all matters of State. In order to be in a position to take reasonable decisions, judges and members of the administration needed a certain freedom to allow for such differing opinions internally, without having to fear outside criticism. The authorities therefore had to practise transparency in that area while taking full account of two considerations which at the same time set the limits for such transparency: the fundamental rights of individuals, on the one hand, and the proper functioning of the executive branch, on the other.

31. Mr. VOEFFRAY (Switzerland), replying to a question concerning the views adopted by the Committee under the Optional Protocol to the Covenant, said that although Switzerland had not as yet acceded to the Optional Protocol, the views adopted by the Committee under that instrument helped to determine the interpretation that should be given to the guarantees stemming from the Covenant and thus had to be taken into account by the Swiss courts. Several decisions of the Federal Tribunal referred explicitly to the Committee's views. Of course, the Swiss courts were more readily guided by case law deriving from the European Convention for the Protection of Human Rights and Fundamental Freedoms, no doubt because that Convention had been in force for more than 20 years for Switzerland, but they did not hesitate to invoke the Covenant as a basis for their decisions when the provisions of that instrument went further than those of the European Convention. That had happened in several cases, where article 14 of the Covenant had been invoked.

32. The wearing of the Islamic veil raised the issue of the religious freedom of the teacher concerned and that of the parents of school-age children. Reference should be made, in that regard, to the provisions of article 18, paragraph 4, of the Covenant and to the statement in paragraph 358 of the initial report (CCPR/C/81/Add.8). According to his information, the decision concerning the teacher in the case referred to by a member of the Committee had been upheld by the Council of State (executive body) of the Canton of Geneva. The teacher would appear to have announced her intention to appeal to the Federal Tribunal, and the case was therefore still pending.

33. Regarding the question about the children's charity known as “Les enfants de la route”, founded in 1926 by Pro Juventute, some abuses had indeed been committed by that organization, which had separated children from their families. It had been dissolved in 1972, and Pro Juventute had formally apologized to the community affected. Furthermore, by decision of the Parliament, the Confederation had decided to allocate a total of 11 million francs in compensation.

34. A question had been raised about the phenomenon of racism and xenophobia in Switzerland. By definition, that phenomenon was not quantifiable, and it was therefore difficult to assess its actual extent. Admittedly, quite a large number of offences targeting reception centres for asylum-seekers had been committed between 1990 and 1992. The number of incidents had, however, diminished significantly since 1993 and only 6 had been recorded in 1995, as against 71 in 1992.

35. The activities of the Federal Commission against Racism, set up the previous year with the task, among other things, of encouraging research and initiating its own studies on racism, should enable more light to be shed on that phenomenon.

36. As to whether there were provisions in the federal criminal law for punishing so-called “revisionism”, he indicated that at the time of Switzerland's accession to the International Convention on the Elimination of All Forms of Racial Discrimination, the Penal Code had been supplemented by an article providing for sanctions in the case of an attempt, for example, to negate crimes against humanity. That provision fully applied to “revisionism”. Since its entry into force, about 10 cases had been tried under that article, and others were still pending in several cantons.

37. Concerning the grounds of civic incapacity referred to in paragraph 459 of the initial report (CCPR/C/81/Add.8), he pointed out that such exclusions now concerned only two cantonal constitutions, those of Schwyz and Saint Gallen, and that the Swiss authorities regarded them as generally obsolete. It was highly unlikely, moreover, that they would still be applied in the two cantons concerned.

38. A member of the Committee had asked whether the provisions of the Penal Code calling for sanctions in the event of violation of emblems concerned only Swiss emblems. The Penal Code also included provisions to punish insults against foreign States and inter-State institutions. As to whether the provision concerning the violation of Swiss emblems was now a dead letter, he indicated that, according to statistics for 1994, the thirteenth title of the

Penal Code, containing the provision in question, had been invoked in only one case, and with respect to a different matter. Everything suggested that the provision was applied only very rarely, if at all.

39. A member of the Committee had expressed surprise at the small number of NGOs represented in the room. That was a question to be directed to the NGOs concerned. He would point out, however, that the report had been translated into Switzerland's three main languages - French, German and Italian - and had been distributed. The federal authorities had issued two press releases, one at the time of submission of the report to the Committee, and the other a few days before the consideration of the report. Generally speaking, in the case both of proposed legislation and the Government's "message" to Parliament, the authorities responsible for preparing those texts had been referring more and more frequently to the Covenant since 1992. An example was the proposed reform of the Constitution. While the Covenant was perhaps not as well known to the public as the European Convention for the Protection of Human Rights and Fundamental Freedoms, which had been in force for Switzerland much longer, things were improving every day. Most universities had included study of the provisions of the Covenant in the curricula of their law faculties, and a commentary on the application of the Covenant in the Swiss legal system, currently being written by two eminent jurists, should contribute to better knowledge of the Covenant in Switzerland.

40. Mrs. PEYRO (Switzerland), replying to questions concerning the vocational integration or reintegration of women, and the relevant measures taken, said that domestic work was still mostly performed by women. Some 63 per cent of women did housework by themselves, 28 per cent had someone to help them and 9 per cent entrusted the work to a third party. Efforts had nevertheless been made in recent years to remedy that situation. In particular, studies aimed at raising public awareness of the fact that housework constituted a job in its own right had been carried out and made public. The studies also aimed to evaluate that type of activity as a percentage of the gross domestic product.

41. Regarding measures of vocational integration or reintegration, it should be pointed out that under the federal law on equality between women and men, the federal authorities could allocate financial aid to programmes providing incentives and counselling services. Concerning incentive programmes, aid was allocated to public or private organizations setting up programmes aimed at ensuring equality between women and men in professional life. The federal authorities could also institute such programmes themselves, in particular for the purposes of training and skills upgrading, greater representation of women in all sectors and at all levels, as well as measures to help women combine their professional and family obligations, and the establishment of working arrangements to promote equality. With regard to counselling services, aid was allocated to some private bodies. The aim was in particular to offer guidance for the reintegration of men or women wishing to resume an activity after having devoted themselves to family tasks.

42. In response to a question concerning employment services, she indicated that Switzerland had 26 cantonal employment offices and 3,000 communal offices responsible for placement. The review of the federal law on unemployment insurance, effective from 1 January 1996, strengthened the measures taken to

promote the reintegration of unemployed persons (refresher, conversion or occupational training programmes). In that context, courses were provided for women wishing to resume a professional activity after having devoted themselves to household tasks.

43. Mr. CAFLISCH (Switzerland), referring to the procedure for the appointment of judges and the independence of the judiciary, said that the question which had been asked covered a vast area and he could reply to it only in general terms. The method of election of judges differed from one canton to another, but in all cases the term of office of judges was limited; justices could not, however, be removed for the duration of their term of office and were not subject to any directive or instruction from the legislative or executive branch. Cantonal judges were elected by the cantonal parliament or the people, while justices of the higher courts (Federal Tribunal and Federal Insurance Court) were elected by the Federal Parliament. With regard to appeal bodies, including the many administrative tribunals, the criteria for their composition were set by the law. Their members were sometimes designated by the executive branch, but they never formed part of the administration. Generally speaking, the independence of judges had never been questioned in Switzerland.

44. Concerning scientific experiments reportedly performed on detainees, he had to admit that he had been a little shocked by the question asked. To his knowledge, there had been no case whatsoever of that kind, but in view of the gravity of the matter he would nevertheless seek formal assurance from the competent authorities and would inform the Committee in writing of the outcome of his inquiries. With regard to a number of other questions, in particular concerning asylum, police custody and incommunicado detention, his delegation was not in a position to provide exact and detailed replies immediately. The Committee could rest assured, however, that he would not fail to provide answers in writing at a later stage.

45. Mr. FRANCIS asked for information about the remedies available to an individual who believed that one of his rights as guaranteed in the Covenant had been violated, in a case where the cantonal legislation did not cover the specific situation. He understood that the federal Government was bound to provide for a remedy, but he would like to know whether there was a time-limit for the lodging of an appeal.

46. Mr. SCHÜRMANN (Switzerland), replying with a concrete example, said that in the canton of Zurich, a defendant who did not speak German or the Zurich dialect and whose request for the services of an interpreter was denied would first have to apply to the competent authority at the cantonal level. If it upheld the decision of the prosecuting authority, the defendant then had the possibility of appealing to the cantonal court, which could examine the complaint under the terms of article 4 of the Constitution or article 6 of the European Convention on Human Rights, or else article 14 of the Covenant. In the case of the canton of Zurich, the defendant could also appeal to the court of cassation, before applying to the Federal Tribunal. Jurisdiction for appeals at the initial stage varied from one canton to another, but the procedure was the same everywhere and defendants were entitled to appeal in

last resort to the Federal Tribunal. Regarding the question of time limits, all forms of appeal were subject to a deadline, but that deadline was generally not difficult to meet.

47. The CHAIRMAN, noting that the Swiss delegation had replied to all the questions it could deal with orally, invited members of the Committee to make their final comments in connection with the consideration of the initial report of Switzerland.

48. Mr. BUERGENTHAL said that he wished to pay a tribute to the Swiss people, who had established an exemplary democracy. The consideration of the initial report had been particularly useful for an understanding of the ways in which that democracy worked. Obviously, no country could claim not to have encountered any problem in the field of human rights, and that applied equally to Switzerland. He was thinking, in particular, of shortcomings with regard to police custody and pre-trial detention, as well as the suppression of excesses committed by the police, especially in respect of foreigners. It also seemed to him that some aspects of immigration policy could be made more human. He was sure, however, that the Swiss authorities themselves were not unaware of those difficulties.

49. Mrs. MEDINA QUIROGA thanked the Swiss delegation for its replies, which had provided very detailed information in every respect. Regarding the situation as it had emerged from the dialogue with the Committee, she welcomed the broad interpretation of article 4 of the Constitution that was evident in the case law of the Federal Tribunal. She was surprised, however, that the principle of the equality of all Swiss before the law, as set forth in that article, was not always given concrete form in respect of both sexes, even in legal terms. None the less, she noted that a major effort was now being made to remedy that shortcoming. In regard to women, she hoped that the issue of child custody would be resolved soon because in the absence of legislation children were almost automatically entrusted to the mother, a policy that necessarily reduced the opportunities for complete equality.

50. On the question of detention, she agreed with the comments of Mr. Buergenthal and felt that the Swiss authorities might do well to consider the meaning of the expression “within a reasonable time” (“anyone arrested ... shall be entitled to trial within a reasonable time or to release”) in article 9 of the Covenant.

51. Concerning the right to seek information, recognized in article 19, paragraph 2 of the Covenant, she had the impression that the idea prevailing in Switzerland was that everything done by the State applied in principle to the private sphere and that access to information was possible, but only when necessary; she herself was convinced that the right to obtain information should, on the contrary, be laid down in principle, with restrictions to that right coming only in the last place. That was a difference of approach. Lastly, she had been pleased to hear from the delegation that the grounds for civic incapacity mentioned in paragraph 459 of the report were now obsolete, but it would be more reassuring to learn that they had been eliminated completely.

52. Mr. PRADO VALLEJO said that the dialogue with the Swiss delegation had been very constructive and useful. Switzerland served for everyone as an example of democracy and respect for the value of the human being. However, some subjects of concern remained. There was a need to harmonize legislation and practice with the Covenant and not only with the European Convention on Human Rights. The same applied to the right to the assistance of counsel, which under article 14 of the Covenant had to be assured at all procedural stages and not only after initial questioning. Likewise, in cases of arrest, the State had a duty to require the authorities to inform families and not leave that safeguard to the discretion of the judge, as currently provided for in Swiss legislation. A code of conduct also had to be adopted for members of the police to prevent them from engaging in ill-treatment, as was too often the case, especially in the canton of Geneva. Lastly, pre-trial detention was too long; there also, strict conditions had to be applied, in the light of the Covenant, and the idea that "the prisoner's interest ... and the public interest ... are to be balanced" (para. 133 of the initial report) should be reconsidered since that principle could only work to the disadvantage of the prisoner.

53. Mr. KLEIN welcomed the dialogue which had just taken place with the Swiss delegation, enabling the Committee to learn a good deal about the situation in Switzerland. He hoped that the exchange had been truely reciprocal. He had found the report to be both frank and detailed, reflecting a generally satisfactory situation, and was pleased to note the ratification of the Second Optional Protocol to the Covenant and the withdrawal of the reservations made in regard to article 20, paragraph 2. He would, however, like to recommend a few improvements. Firstly, it would be a good idea to publish the results of the dialogue with the Committee and its final comments. Also, while he was pleased to learn that the Federal Council judged the decree of 1948 limiting foreigners' rights to be obsolete, it would be still more reassuring, when the next periodic report was considered, to hear that the decree had been repealed altogether. He, too, was concerned about excesses committed by the police and the situation of persons held in police custody and pre-trial detention. Police brutality was a universal phenomenon and while it was important to provide remedies, there was equally a need to raise the level of training of police officers through appropriate instruction. Improvements could be made in the conditions under which detained persons could communicate with their families and lawyers. Lastly, he was pleased at the announcement of plans to consider ratification of the first Optional Protocol to the Covenant and hoped that steps would have been taken by the time the Committee came to consider the next periodic report.

54. Mrs. CHANET thanked the Swiss delegation for its presentation of a report that could be considered in many respects as a model. She was impressed by the importance given to the Covenant in domestic law, a fact that was all the more laudable in view of its recent ratification. She hoped that Switzerland could ratify the first Optional Protocol at the earliest possible date.

55. She had been pleased to note that some of the essentially legal points that the Committee had found incompatible with the Covenant had been described as archaic by the delegation, which had also given an assurance that reforms were under way. That applied in particular to new article 4 of the

Constitution, to the legislation on divorce and marriage of mentally-ill persons and especially to the harmonization of criminal procedure. The safeguards set forth in articles 9 and 14 of the Covenant were all the more difficult to implement when there was a multiplicity of procedures. Reference should be made in that regard to article 50 of the Covenant, which stipulated that the provisions of the Covenant should extend "to all parts of federal States".

56. She had been pleased to learn that the reservation to article 20 had been withdrawn and that the reservation concerning article 14 might also be lifted shortly. The harmonization of criminal procedure undertaken in Switzerland would perhaps afford an opportunity for further reflection on the measures suggested by several members of the Committee: the presence of a lawyer during custody, the keeping of an exhaustive record of conditions of detention and the presence of an independent doctor before, during and after custody. The presence of a doctor was the best guarantee for preventing ill-treatment, which, as the Committee had learnt from concordant sources, were frequent in police stations. The delegation had said very little about follow-up to complaints lodged by persons claiming to be victims of ill-treatment and a major effort was needed in that area. She was sure that the consideration of the next periodic report would enable the Committee to note that significant progress had been made as a result of the analysis and reforms undertaken.

57. Mr. LALLAH commended the quality of Switzerland's written report and the remarkable competence of the delegation, which had furnished particularly detailed information. The consideration of the report could be said to have been an enriching experience and had shown, if proof were ever needed, that Switzerland was a democracy that worked well.

58. Equal treatment was essential, and it was unfortunately there that a major shortcoming was to be noted. He could not but wonder what the Swiss would feel if one of their compatriots arrested abroad by the police had been allowed no contact with a lawyer, a doctor or his family. It was obviously important to be able to investigate crimes efficiently, but it was just as important to ensure that suspects were entitled to fair questioning and to a fair trial. The Committee had always considered that access to counsel, the comfort of communication with family members and medical care were an essential part of article 7 of the Covenant, which prohibited cruel, inhuman or degrading treatment or punishment. That held true for all countries, but the issue was of even greater relevance in the case of Switzerland, where a large part of the prison population was made up of foreigners who, as aliens, were in a weaker position vis-à-vis State authority.

59. Lastly, concerning the reservation made by Switzerland to article 26 of the Covenant, which according to paragraph 484 of the report was justified by the desire not to create different levels of protection under the international instruments - the European Convention on Human Rights not providing for such a broad safeguard - he would point out that if the European Convention on Human Rights had been drafted, like the Covenant, in 1966 and not in 1950, its safeguards would undoubtedly have been identical to those in article 26 of the Covenant. He therefore hoped that Switzerland would give serious thought to withdrawing that reservation.

60. Mr. KRETZMER agreed with other members of the Committee who had stressed the excellence of the report and the very instructive nature of the replies. He had been very pleased to note the delegation's willingness to provide written replies later rather than give imprecise answers. He associated himself with the comments of members of the Committee who had emphasized the need to ensure the assistence of counsel at all procedural stages; some countries had even established a system of duty solicitors at police stations. He hoped that the next report would reflect positive developments in that regard in all the cantons. He remained concerned about the inadequacy of the system for investigating complaints made against the police; it was still his impression that there was no completely independent external mechanism for that purpose and he therefore urged the Swiss authorities to examine the possibility of instituting such machinery. He looked forward with keen interest to the next periodic report of Switzerland.

61. Mrs. EVATT said that she, too, welcomed the quality of the dialogue held with the delegation, as well as the manifest intention of the Swiss Government to comply with its obligations under the Covenant. In that regard, she hoped that the Government would shortly be in a position to withdraw all the reservations it had made concerning various articles of the Covenant, especially article 26, to which she attached the highest importance. She also hoped that all the necessary steps would be taken to eliminate all forms of xenophobia and racism in Switzerland and to guarantee minorities the observance of their rights in accordance with article 27 of the Covenant.

62. Mr. ANDO joined other members of the Committee in thanking the Swiss Government for the excellent initial report it had submitted, and the Swiss delegation for the precision with which it had replied to questions from members of the Committee. It seemed that the rights set forth in the Covenant were for the most part duly respected in Switzerland, but some problems nevertheless remained, particularly concerning the rights of persons placed in temporary detention, prison conditions and the treatment of foreign detainees. He therefore hoped that the Swiss authorities would re-examine the applicable legal provisions. Lastly, he hoped that Switzerland would withdraw all the reservations it had made at the time of ratification of the Covenant, particularly in respect of article 26.

63. Mr. EL SHAFEI noted with satisfaction the Swiss delegation's commitment to provide the Committee with replies to the questions left unanswered during the dialogue. He wished to point out that members of the Committee asked questions solely for the purpose of obtaining information and made comments without in any way prejudging the issues.

64. Regarding the place of the Covenant in Swiss legislation, he understood that the provisions of the Covenant had not as yet been invoked directly before the courts, no doubt because Switzerland had ratified the instrument only recently. In that regard, the Swiss authorities should be encouraged to make the existence of the Covenant more widely known, particularly among lawyers.

65. Furthermore, it seemed that articles 19 and 26 of the Covenant were not fully observed in practice, as the conditions of pre-trial detention, police behaviour in certain cases and the treatment given to foreigners and asylum

seekers left something to be desired. It was to be hoped that the Swiss Government would take the necessary steps to remedy those shortcomings and also consider withdrawing the reservations it had made with regard to articles 10, 12, 14, 25 and 26 of the Covenant, as well as ratify the first Optional Protocol to the Covenant.

66. Mr. BHAGWATI thanked the Swiss delegation for the detailed and precise answers it had provided to the questions put by members of the Committee. Very few of the questions he had raised had been left unanswered, and in that connection he would welcome information on the legal status of children adopted by Swiss families and the status of the child during the two-year trial period that was provided for when the legislation of the child's country of origin did not allow for full adoption immediately. Furthermore, he associated himself with the concerns expressed by members of the Committee regarding the rights of persons placed in custody, as well as the rights of foreign and seasonal workers. He, too, hoped that by the time it submitted its next periodic report, the Swiss Government would have withdrawn the reservation it had made concerning article 26 of the Covenant.

67. Mr. POCAR said that he had regrettably not been able to attend all the meetings of the Committee at which the initial report of Switzerland had been considered. He had, however, noted that the report provided detailed and complete information on the way in which the provisions of the Covenant were being applied in the Swiss Confederation. He would say only that, in his view, the argument put forward by the Swiss Government to justify the reservation it had entered concerning article 26 of the Covenant, namely that it was important to avoid creating two different levels of protection - under the Covenant and under the European Convention on Human Rights - was hardly well-founded and that, in making the reservation, the Swiss Government had in fact missed an opportunity to resolve a constitutional issue affecting the implementation of article 4 of the Swiss Constitution. He did not, of course, question Switzerland's right to enter such a reservation, but he hoped that the conditions would soon be right for the Swiss authorities to withdraw it.

68. Mr. BÁN joined with other members of the Committee in expressing thanks to the Swiss Government and delegation. He hoped that, in the drafting of the next periodic report of Switzerland, non-governmental organizations would be duly consulted and would contribute to its preparation. He also hoped that Switzerland would soon be in a position to withdraw the reservations it had made regarding various articles of the Covenant, but for his part felt that, in entering reservations at the time of ratification Switzerland had perhaps shown a measure of prudence and circumspection for which it could not be reproached. In the same way as the majority of members of the Committee, he would like to express the wish that Switzerland should accede to the first Optional Protocol to the Covenant.

69. Lord COLVILLE said that, in view of the lack of time available to the Committee, he would simply associate himself with the thanks and comments expressed by his colleagues.

70. Mr. CAFLISCH (Switzerland) thanked the Committee for the interest it had shown in Switzerland's initial report and the replies provided by his delegation. The dialogue with the Committee had been extremely fruitful and

his delegation would certainly bring the Committee members' findings to the attention of the Swiss authorities. He assured the Committee that the points which had not been dealt with fully would be addressed in written replies to be communicated to it at a later stage.

71. The CHAIRMAN said that the Committee had thus completed its consideration of the initial report of Switzerland and pointed out that the second periodic report of the State party was due on 19 September 1998. On behalf of the Committee, he thanked the Swiss delegation for its cooperation.

The meeting rose at 1.05 p.m.