

Committee on Economic, Social and Cultural Rights considers report of Switzerland

8 November 2010

The Committee on Economic, Social and Cultural Rights has considered the combined second and third periodic report of Switzerland on how that country implements the provisions of the International Covenant on Economic, Social and Cultural Rights.

Introducing the report, Jean-Jacques Elmiger, Ambassador at the State Secretariat for Economic Affairs of the Federal Department of Economic Affairs of Switzerland, said that the Swiss Government attached the greatest importance to the defense of human rights but also to the principles of democracy and the rule of law. These principles had also guided the work which had led to the adoption of the new Constitution. The Constitutional reform had contributed to strengthening the law system. The drafting of the combined report had been done with full respect of the Committee's guidelines. In it, they had attempted to describe the situation prevailing in Switzerland, underscoring the progress made but also highlighting the existing gaps.

Since the submission of the report, Switzerland had acceded to the Optional Protocol on the Convention on the Elimination of Discrimination Against Women and the Optional Protocol to the Convention Against Torture and other Forms of Degrading Treatment, Mr. Elmiger said. The ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights had led to many discussions. The Federal Council currently remained on the position that it would not accede to it. The question of the direct applicability of the rights enshrined in the Covenant had not been definitely decided upon yet. While Switzerland attributed a programmatic nature to the rights enshrined in the Covenant, the Federal courts did not exclude the direct applicability of some of the rights covered by the Covenant.

During the questions and issues raised by Committee Experts many comments were made on the direct applicability of the rights enshrined in the Convention. Several Experts made comments on the fact that the Constitution was speaking about "social objectives", while the Covenant was talking about very precise rights. Among other issues that were touched upon were the percentage of Switzerland's Gross Domestic Product that was targeted for development aid; Switzerland's position with regard to intellectual property rights; the difference of treatment between refugees and so-called refugees on provisional admission; the establishment of a national human rights institution in Switzerland; the issue of Roma people; the current popular initiative that aimed to send back foreigners that had committed a crime; whether multiculturalism was working in Switzerland; and why Switzerland did not have a complete legislation against discrimination? A number of questions were also raised on the issue of forced marriages, human trafficking, the treatment of Roma, terminating pregnancies, domestic violence against foreign domestic workers and the causes behind the exceptionally high suicide rate in Switzerland. Finally, the delegation answered a number of questions on its educational system and the provisions in place for the protection of children from migrant families.

In concluding remarks, Mr. Elmiger thanked the Experts for their questions and said that the questions and comments raised by the Experts showed that there were still some shortcomings but Switzerland was putting as much effort as possible to make legislative changes in the promotion and protection of economic, social and cultural rights. The questions were very useful for the Swiss delegation and the delegation would be happy to continue the discussion and debate after this Committee meeting. The Swiss authorities would provide a proper follow up once the Committee submitted its recommendations.

In concluding remarks, Jaime Marchan Romero, Committee Chairperson, said that the overview was very comprehensive and the exercise was interactive and a useful tool for everyone. It was hoped that the dialogue would be continued and that the Swiss delegation would continue to

maintain such high standards when addressing these issues. The Committee would be preparing formal recommendations and sending them to the Swiss delegation.

The Swiss delegation also included representatives from the Swiss Conference of Gender Equality Delegates, the Federal Office for Migration, the Federal Office for Gender Equality, the Swiss Conference of Public School Directors, the Federal Social Insurance Office, the Federal Office of Public Health, the Directorate of International Law, the Federal Office of Justice, and the Permanent Mission of Switzerland to the United Nations Office at Geneva.

The next meeting of the Committee will be at 3 p.m. this afternoon, when it will begin its consideration of the combined second to fourth periodic report of Sri Lanka (E/C.12/LKA/2-4). The Committee is scheduled to consider the report over three meetings, concluding on Tuesday, 9 November at 6 p.m.

Report of Switzerland

The combined second to third periodic report of Switzerland (E/C.12/CHE/2-3) states that the people and cantons of Switzerland adopted a new Constitution on 18 April 1999. It entered into force on 1 January 2000. The adoption of the new Federal Constitution marked the end of a long process of reforming and revitalizing a Constitution dating from 1874. In fact, the written and unwritten material constitutional law was no longer contained in the old Constitution but rather in the sources annexed to it, such as jurisprudence and the international treaties ratified by Switzerland. The reform of the Constitution was thus designed to update the text of the Constitution itself so that it would reflect the whole body of constitutional law in force, in principle without introducing any material innovations in the text. The updating project was supported by two other separate draft texts, one on reform of citizens' rights and the other on reform of the justice system, which did introduce material innovations. These texts were adopted after the entry into force of the new Federal Constitution. The fundamental rights, which had received little regulatory attention in the Federal Constitution of 1874, had been guaranteed by various international agreements or had been established as unwritten constitutional law by the jurisprudence of the Federal Court, and are now brought together in a single listing. The Federal Constitution makes express reference to the main fundamental rights, such as the rights to life and liberty of person, the right to obtain assistance in situations of hardship, the right to marry and found a family, the right to human dignity, the principle of non-discrimination, the freedom of opinion, and the freedom of association. The Constitution also addresses six core areas of social policy: social security; health; labour; housing; education; and youth. These six areas correspond broadly to the objectives set out in the Covenant.

Improvement of the integration of foreigners living in Switzerland is one of the big challenges facing politicians and society. Switzerland's integration policy regards integration as a reciprocal process implying both the wish of the foreigners to integrate and the openness of the Swiss people towards them. Integration must allow legally and permanently resident foreigners to participate in economic, social and cultural life. It follows that the purpose of integration is to establish equality of opportunities and the participation of foreigners in public life. In the revised Ordinance on the integration of aliens the Legislature stresses expressly how important it is for foreigners to assume their share of the responsibility. They must respect the legal order and democratic principles and contribute actively to their own integration. The granting of a long- or short-term residence permit may require attendance at a language or integration course. According to a study published in 2005, there are about 90,000 persons currently living in Switzerland without permission (undocumented persons).

The Constitution gives the Legislature a mandate to ensure de jure and de facto gender equality, in particular with regard to the family, education and work. The jurisprudence of the Federal Court holds that the positive measures prescribed by law for establishing de facto equality are in principle

justified. The proposals for introducing quotas in politics have not yet found majority support at either federal or cantonal level. However, the flexible quota rules, which give priority to candidates' abilities and do not favour the underrepresented sex except when candidates are equally qualified, are applied in the areas of training and employment. The Federal Court stated in a 1997 decision that regulations setting fixed quotas to secure the equal representation of women in Parliament, the Government and the courts without taking qualifications into consideration would constitute a disproportionate impairment of gender equality and that such regulations would therefore be unlawful. It stated further that the imposition of quotas in politics restricted the equal right of all citizens to elect and to be elected. Such a restriction would be admissible only if it was "determined by the voting system"; this is not the case for female quotas.

Presentation of Report

JEAN-JACQUES ELMIGER, Ambassador at the State Secretariat for Economic Affairs of the Federal Department of Economic Affairs of Switzerland, introducing the report, said that the delegation of Switzerland would participate in the discussion in a spirit of frankness and openness. The Swiss Government attached the greatest importance to the defense of human rights but also to the principles of democracy and the rule of law. These principles had also guided the work which had led to the adoption of the new Constitution. The Constitutional reform had contributed to strengthening the law system.

The drafting of the combined report had been done with full respect of the Committee's guidelines, said Mr. Elmiger. In it, they had attempted to describe the situation prevailing in Switzerland, underscoring the progress made but also highlighting the existing gaps. The report had been subjected to a broad consultation with civil society. The Federal Administration had also broadly disseminated the report. They had taken into account the comments made by civil society.

Mr. Elmiger said that Switzerland regretted the delay with which the combined second and third report had reached the Committee. Drafting the report had been a huge task as it had to reflect the major Constitutional and legislative changes that had taken place in the country, as well as the many changes in practice with regard to the rights enshrined in the Covenant. Further, in addition to the new Federal Constitution, the Cantons had also adopted new Constitutions. The new Federal Constitution enshrined fundamental rights and fundamental freedoms, as well as social objectives.

Many Federal laws had been modified in the process, said Mr. Elmiger. The earlier comments made by the Committee had been broadly taken into account in these changes. But there still remained many questions that needed to be addressed, such as inequality between men and women in their wages and training; as regards to foreigners; living standards; revenue and wealth. These issues all affected social cohesion.

Concerning the Swiss policy with regard to foreigners and asylum seekers, Mr. Elmiger said that Switzerland had one of the highest foreign population rates in Europe. Since 2008, the Swiss legislation on foreigners enshrined the objectives of integration policy and the funding for it was constantly increasing. Also, the creation of a new law on integration was currently being discussed.

Mr. Elmiger noted that the Swiss Federal system was based on the principle of the sovereignty of the Cantons. The people could give their opinion via direct referendum. Federalism was a central element of their political culture. It could present advantages and disadvantages. It could lead to a better well-being and enjoying of the rights covered in the Covenant. But disadvantages could arise when one tried to get an overall view of all the elements adopted on Cantonal and regional level.

Since the submission of the report, Switzerland had acceded to the Optional Protocol to the Convention on the Elimination of Discrimination against Women and the Optional Protocol to the Convention Against Torture and Other Forms of Degrading Treatment. The process of ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights

had led to many discussions, said Mr. Elmiger. The Federal Council was currently not taking any steps to sign and ratify this Protocol. The Federal Council currently adhered to the position that it would not accede to it. The question of the direct applicability of the rights enshrined in the Covenant had not been definitely decided upon yet.

While Switzerland attributed a programmatic nature to the rights enshrined in the Covenant on Economic, Social and Cultural Rights, the Federal courts did not exclude the direct applicability of certain rights of the rights covered by the Covenant, such as, for example, those linked to social unions, said Mr. Elmiger.

Turning to labour rights, Mr. Elmiger said that legislation had been slightly altered in order to ensure that it was in tune with their economy. Working conditions had been discussed, as well as measures to combat wage dumping. The law on informal work had also helped them to combat it. Mr. Elmiger said that on 1 October 2010 they had started consultations which would last until mid-January 2011 to revise the code on abusive and unjustified dismissal. The new Code would for example include increasing from 6 to 12 months the maximum indemnity paid in the case of an abusive or unjustified dismissal.

On social security, Switzerland was striving to provide the sustainability of the system, said Mr. Elmiger. Branches of the social security that were severely indebted were being revised in order to re-establish a financial equilibrium. The financial crisis had had an impact on the funding capacity of the social system, particularly the pension funds. The crisis had also shown how important the Swiss social security system was as a stabilizing factor.

The health insurance system was still being reformed, said Mr. Elmiger. Further, the health of the Swiss population was good. Special measures to combat drug abuse and abuse of alcohol and smoking had been introduced. Discussions with regard to the question of preventing suicide had led to measures limiting the access to firearms.

With regards to the standard of living, while Switzerland was one of the richest countries in the world, 8.8 per cent of the population was living under the poverty threshold, said Mr. Elmiger. A strategy to fight poverty had been adopted in 2010, the aim of which was to reduce poverty and improve the situation of those affected by poverty.

Concerning culture, Mr. Elmiger said that at the end of 2009, the majority of the population and the Cantons had accepted the initiative against the construction of minarets. This however did not affect existing minarets, or the construction of mosques, nor the exercise of the Muslim faith in Switzerland. Since this vote, the Federal Council had worked towards facilitating the dialogue between the various religious communities.

Mr. Elmiger also highlighted the fact that since September 2010, a majority of women was sitting in the Federal Government.

Questions by Experts on Articles One to Five of the Covenant

Addressing issues linked to articles one to five of the Covenant, an Expert said that the report was comprehensive and balanced and the efforts performed to draft the report were appreciated. However, he wondered whether one could really cover ten years in 140 pages? While the report included nine graphs and 26 precise tables he would have appreciated specific statistical annexes from the base year of the report to the end of the period covered. It was very difficult to reach a conclusion without such figures.

Another Expert said that he was not happy about the use of the term “gradual realization” in the State party’s report with regard to the rights covered in the Covenant. The concept given in the Covenant was that of a progressive development towards the full realization of the rights in the Convention, not a gradual realization.

Questions were also asked by the Experts on the percentage of Switzerland's Gross Domestic Product that was targeted for development aid, and Switzerland's position with regard to intellectual property rights.

While Switzerland's Constitution included a list of fundamental rights it protected, one Expert noted that that list did not include many of the rights that were enshrined in the International Covenant on Economic, Social and Cultural Rights. However, the Constitution stated that the Covenant was said to enter directly into force, together with all other international human rights instruments. Also the Constitution talked about "social objectives". What was the meaning of objectives?

Concerning refugees, one Expert noted that there were two categories of refugees in Switzerland: refugees and so-called refugees on provisional admission. This meant two different sets of people with differential treatment for each group. One of the differences was for example in areas such as the length of the period before family reunification could be undertaken. While both groups had the same needs as refugees, could this differential treatment not be harmonized, so that both of these groups had their rights harmonized?

Concerning the establishment of a national human rights institution in Switzerland, an Expert noted that a commission had been put in place to discuss this and that in five year's time they would discuss whether a renewal of the commission was needed or if a national institution would be established. Why was this taking so long wondered one Expert.

Several Experts touched upon the direct applicability of the rights enshrined in the Covenant. An Expert highlighted the fact that the Covenant did not talk about social aims but about social rights. These rights were very precise.

An Expert touched upon the issue of Roma people in Switzerland. As in all other countries in Europe this community was being discriminated against. But these persons were coming from countries that were members of the European Union, thus they should enjoy the same rights as other European Union's citizens.

While one could admire the direct democracy system, such a system could also lead to backtracking, said an Expert. This was showed by the current popular initiative that aimed to send back foreigners that had committed a crime. Did the delegation believe that foreigners having committed a crime had to be expelled? A country was entitled to expel someone, but by definition it had to be done on an individual basis and not collectively.

An Expert said that Switzerland was currently on a collision course with the Committee and with the international community. There was a tidal wave that saw the provisions included in the Covenant as rights and not as objectives or guidelines. The proof of that rising idea had been the adoption of the Optional Protocol to the Covenant. It was hoped that Switzerland would move away from this collision course and join the international community.

One Expert noted that Germany's Chancellor had recently stated that multiculturalism had not worked in Germany. What was the opinion of the delegation with regard to the success of multiculturalism in Switzerland?

An Expert said that the attitude of Switzerland confused the Experts. The attitude of Switzerland was ambivalent. Further, after what Switzerland had said after its Universal Periodic Review, the Expert even doubted that Switzerland was going to do what it was saying it would do. Social goals could not be justiciable. Why were these not considered as fundamental human rights? This clearly showed that Switzerland was making a distinction between civil and political rights and economic, social and cultural rights.

It was a shame, as it seemed that Switzerland had joined the club of the Anglo-Saxons who believed in this difference between the two sets of rights. But the Anglo-Saxons did not dare come

before the Committee and tell this in the face of the Experts as Switzerland had done this morning, said an Expert. Switzerland was currently not on the side of the progressive vanguard. This had been Switzerland's position since 1998 and it had not changed since then. Yet, the Ambassador was letting the Committee believe that the issue was still being considered.

On the reason why Switzerland refused to sign the Optional Protocol, it could not have to do so much with its implementation, said an Expert, because there was not so much implementation to do. For him, it was rather an issue relating to the implementation of the rights enshrined in the Covenant itself and allowing the victims of violations of these rights to come before the Committee. Was Switzerland afraid that people would come before the Committee, publicize their cases and show to the world that these rights were in fact justifiable?

Also, why did Switzerland not have complete legislation against discrimination? For example there was one law against discrimination on the basis of disability, but none about sexual orientation, said an Expert. On the national plan to combat poverty, would Switzerland consider recognizing the right to be free of poverty as a right or did it rather see it as a charity?

Concerning development aid, one expert noted that it did not attain the international set goal of 0.7 per cent of the Gross Domestic Product. Switzerland was only giving 0.4 per cent of its Gross Domestic Product.

Another Expert wondered how Switzerland reconciled its position with regard to the programmatic rights and its attitude in the Human Rights Council and in the discussions on the reform of the treaty body system.

An expert added that if the provisions included in the Covenant were objectives, there would not be a committee of independent experts but rather a working group. There were international obligations that were linked to the Covenant. The adoption of the Optional Protocol had settled the differentiation that had existed until now between civil and political rights and economic, social and cultural rights.

Response by Delegation

Answering those questions and others, the delegation said that they had expected some of the questions put today, especially those linked to the direct applicability of economic social and cultural rights. Concerning the contradictions that were highlighted by the Experts, the delegation felt that there were not that many in the Swiss position, but that there were however some confusions and misunderstandings of the Swiss system and in the relationship between international law and domestic law.

The place of international law in Switzerland depended on three factors: whether it required immediate validity inside the country; whether the courts might apply the rights directly or through a normative act coming from the legislator; and whether they had to determine which international or national law ranked higher than the other, said the delegation. They avoided contradiction in interpreting national law with regard to international law.

The delegation also said that it was the courts which decided on the direct applicability of international norms. For international law that was not self executing and was more programmatic in its nature, it was thus up to the legislator to make it more concrete.

Concerning Switzerland's position on the Optional Protocol, the delegation said that it was clear that, at the international level, Switzerland recognized that all rights were universal, interrelated, indivisible, interdependent and closely linked. However, the applicability of these rights had to be discussed in order for them to be prepared for the courts.

The delegation also said that the Federal court recognized the justiciability of economic, social and cultural rights but not a direct applicability of the rights enshrined in the Covenant.

Regarding the absence of anti-discrimination legislation in Switzerland, the delegation said that prohibitions existed at several levels of the Government. There was however no draft legislation planned with a view to introduce a general concept for a law on equal treatment.

On cooperation in development, the delegation said that the Federal Council aimed to combat poverty, support democratization, and promote peace as part of its multilateral engagements. Switzerland's poverty reduction effort aims had three pillars: emergency assistance; reducing the number of poor; and supporting durable economies. It was engaged in promoting the right to food, the right to water and sanitation and the right to health. Switzerland supported the Special Rapporteur on the right to food, had supported the creation for the Special Rapporteur on water and sanitation and supported the integrated access to water and sanitation.

The delegation said that Switzerland's development did not reach the required 0.7 per cent of the Gross Domestic Product. The Federal Council was currently discussing the issue and was proposing an increase in the credits. Discussions on this were also ongoing in the Parliament.

Concerning the setting up of a national human rights institution, the delegation indicated that in July 2009 they had launched a pilot project for a five-year period; a commission had been created with a budget of 1 million Swiss Francs annually to look into this issue. At the end of the five-year period, the pilot phase would be assessed by the Government and it would then take a decision about its future.

On migration, the delegation said that the legal position of temporary admitted refugees had been improved since the revision of the asylum law in 2007.

On the popular referendum on the expulsion of criminal foreigners, the delegation said that the vote would take place this November. Every Swiss citizen had received documents which included information that had been drafted by the Federal Council to inform the citizens of the content of the ballot. It clearly stated that the provisions of the initiative were not in line with fundamental rights and that it was counter to international law. The Federal Council and the Parliament rejected the initiative and had proposed a counter-project, which would also be voted at the same time.

On multilateralism, the delegation said that the aims of integration were mentioned in the legislation. Concerning the comment made by the German Chancellor, this was a personal opinion. The delegation's opinion was that this was not the case in Switzerland. The country had a rate of foreigners of 22 per cent of the population and foreigners were very much appreciated in the country. This population made a very important contribution to many sectors.

Follow-up Questions

In a follow-up comment one Expert said that in the answers that were provided earlier by the delegation in relation to the direct applicability of the Covenant, the delegation had stated that this was because the articles of the Covenant were not sufficiently clear. However, the articles of the International Covenant on Civil and Political Rights were not any clearer than those of the International Covenant on Economic, Social and Political Rights. This was simply a question of political interpretation of the Covenant.

Questions by Experts on Articles Six to Nine

Turning to articles six through nine, an Expert asked a question about the revisions of the law on unemployment insurance. These revisions seemed to reduce the benefits linked to the unemployment insurance. Why was this so? Was it linked to the financial crisis? Also, did Switzerland plan to ratify the International Labour Organization's Convention 98 on the right to organize and to collective bargaining?

While the delegation had stated that the new Constitution was based on the Committee's recommendation, the Constitution stated that Switzerland's commitment was to ensure that

everyone fit to work could earn a living in a fair manner. But the Committee's assertion had been different, said an Expert. The Committee, in its last recommendations had expressed concerns at the fact that certain Covenant rights were not constitutionally recognized. This had included the right to work, the right to education and the right to culture. The right to work continued to not be recognized in the new Constitution. It was only guaranteed in the Constitutions of four of the Cantons and only in the form of a social objective. Was there a willingness by the Government to heed the recommendation of the Committee, which dated back to 1998?

Other questions that were asked by the Experts dealt with the right to strike of senior civilian managers of the departments of the Federal administration and why it was forbidden. Also, the figures of the social security expenditure provided in the report dated back to 2004. As Switzerland seemed to be a well organized country, it should be able to provide more updated statistics.

Concerning the health insurance system, an Expert noted that a premium was charged to each individual. But what happened to those who could not afford to pay the premium? In the Committee's last concluding observations, it had been recommended that Switzerland review its system of healthcare to prevent its high cost from having negative effects. How had the revised healthcare security act addressed this issue? Could the delegation also elaborate on the Federal law on medical insurance on the possibility for the insurance company to suspend benefits to those individuals who were behind on their payments?

Concerning maternity protection, an Expert said that it was supposed to cover everyone and wondered why, in the State party's written answers it was indicated that maternity protection could not be extended to women agricultural workers. No reason was given in the document, could the delegation elaborate? Also, did Switzerland plan to ratify the International Labour Convention 102 on the social security minimum standards?

Response by Delegation

Answering these questions, the delegation said that they had gone through the fourth partial revision of the unemployment insurance system this September. This had proved necessary to ensure its long term funding. Since their dialogue with the Committee in 1998, Switzerland had also revised the unemployment insurance system in 2003 to balance the income and outgoing of the unemployment benefits. However, as the unemployment rate had risen since then this additional revision had been necessary.

The delegation added that it was possible to revise a social security system sometimes through a reduction of services, if the durability of the system was being guaranteed for the long term. The basic services of the unemployment insurance system remained however unchanged.

On the right to work, the delegation said that the Swiss Federal Council had always felt that it was not an individual right. Switzerland however recognized this as a social aim and was committed to ensuring that everyone fit to work could benefit of a work. This was commonly accepted in the international community as the promotion to the right to a decent job.

Concerning the minimum wage, the delegation said that this was not covered by the law and that it would probably not be the case in the near future. Social partners preferred the use of bilateral negotiations without the State's interference. But one should not think that everything was left up to the social partners.

The delegation also indicated that Switzerland had ratified International Labour Organization Convention 98 on the right to organize and to collective bargaining.

Concerning the right to strike, the delegation said it did not see the situation as alarming as it had sounded from the Expert's question. The right to strike was recognized in the Constitution. But it was also clear that it was not a completely unlimited right. The law could limit this right when the

public interest had to be protected, for example for the supply of necessary goods and services. Those restrictions should also not infringe on Constitutional guarantees.

Concerning the situation in the Federal Administration with regard to the right to strike, it was limited and thus mechanisms had been set up in the Federal Administration for negotiations to take place if there were disputes.

Turning to unemployment, the delegation said that the present economic and financial economic crises had increased the level of unemployment. This year, the unemployment rate had been 4 per cent in January and 3.5 per cent in September 2010. Disaggregated, the unemployment rate of women was 3.8 per cent and 3.3 per cent for men. The unemployment rate for Swiss nationals was 2.6 per cent and that of foreigners was 6.6 per cent. The unemployment rate for the 15 to 20 age group was 4.3 per cent, for the 25 to 49 age group was 3.5 per cent and that of the 50 plus age group was 3.2 per cent.

On unemployment among young foreigners, the delegation said that this group was more affected than the young Swiss. In 2009, young foreign adults had an unemployment rate of 8.8 per cent, practically the double of the Swiss nationals of the same age group. The State had taken measures to improve this situation.

Concerning the wage equality, the delegation said that the figures on the wage gap between men and women showed that the average difference in the private sector had slightly increased between 2006 and 2008.

The delegation also indicated that illegal migrant workers in Switzerland were covered by the health insurance. However they were not covered by the unemployment insurance, as the law requested a resident permit for it.

Also with regard to the health security system, the delegation said that there were three pillars in the Swiss system; two of them fell within the State's competency. There was the Federal law on compulsory insurance and the second was that Cantons had to finance hospitals through a general tax. In conformity with the law, a person who could not pay insurance received warnings and the insurer could prosecute for the missing amounts. The insurer could then suspend coverage but an insurer could not cancel the insurance and a person could not be excluded from the system. Health providers were thus doing their work by taking the risk of not being paid. A new reform would enter into force in 2012 which would not provide for a suspension of payments of benefits.

Follow-up Questions

In follow-up questions, Experts asked what were Switzerland's criteria for determining the retirement age. On the minimum wage, an Expert said that neither the Covenant nor the International Labour Conventions required States parties to have a law to set a minimum wage. He was rather interested in knowing whether there were collective agreements and whether all sectors of the economy were being covered and that nobody was left out. Did all workers in Switzerland benefit from a minimum wage?

Another Expert said that, as he understood it, all citizens residing in Switzerland were entitled to medical insurance, that it was compulsory and that this insurance was for everyone, irrespective of their migratory status. However it had also been said that there were some exceptions, could the delegation elaborate? In order to get this medical insurance what did one person have to do? And could an undocumented person be excluded from it?

Also, an Expert said that he had understood that there were three categories of migrants in Switzerland: regular, irregular and undocumented. Was this correct?

Answers by Delegation

Answering these questions and others, the delegation said that the Federal law on the retirement age had been established after the war. Back then, retirement age was the same for men and women: 65 years of age. Later on, the retirement age of women had been lowered to 62 as it had been felt that women were disadvantaged as they had a double responsibility, as they also had to look after the family. After the tenth revision of the retirement insurance law in 1997, the retirement age of women had been increased again. An eleventh revision of the law had recently been rejected, after a six-year-long debate in the Parliament.

Concerning the categories of migrants in the country, the delegation explained that there were only two categories: legal migrants and illegal migrants. There was not a third category.

Concerning the health insurance, the delegation said that any person residing in Switzerland had to be insured. The person had to go to an insurer to register; it did not go through the employer. An insurance company could not refuse a person, even on the basis of illegal status. The Cantons were obliged to ensure that everybody residing on the territory was insured. But some people were not sufficiently integrated and did not know that they had to register for insurance.

On minimum wages and whether all Swiss workers enjoyed from it, the delegation said that it was difficult to answer yes or no. Not all Swiss workers had a minimum wage. But for example, all workers in the restaurant sector had one, as well as all domestic workers. Also, all collective labour conventions were binding on the whole of the territory. Foreign workers were also protected. Thus protection was not systematic. But there were a series of mechanisms that guaranteed that a broad proportion of workers in Switzerland had a minimum wage.

Questions by Experts on Articles Ten to Twelve

Turning to articles ten to twelve of the Covenant, Committee Experts noted that there was no specific article on sexual violence in the Criminal Code which would make this kind of act an offence. Could the delegation elaborate? Corporal punishment on children was also not prohibited at the Federal level. What was the State party's position about this? Further, what was happening with the State party's campaigns on sexual violence against children?

An Expert also asked questions on the interruption of pregnancy among teenagers; services provided for sexual and reproductive health; and the kind of sexual and reproductive health education programmes that were being offered.

An Expert noted that arranged and forced marriages amounted to 17,000 per year. This was quite a high number, why did this problem continue to exist? What measures had been taken by the State party to combat this problem?

Concerning cigarette smoking, an Expert said that he had not noticed any campaigns in Geneva. Were there any such campaigns, especially targeted at young people?

Another Expert noted that the Organization for Economic Co-operation and Development and the World Health Organization had concluded that most of the Swiss population was in good health. However there were disturbing statistics offered on the number of persons affected by HIV/AIDS, cancer and cardiovascular illnesses. Could the delegation elaborate?

Concerning the suicide rate in Switzerland, one Expert highlighted the fact that it was, aside traffic accident, the highest cause of death among youngsters. Information that was provided to the Committee talked about three to four suicides daily. Had surveys been conducted on this issue? Had objective scientific studies taken place on the causes behind these suicides? It was a bit too easy to say that it was depression and easy access to firearms that was the cause.

Another Expert wondered asked what the nature of the reservation of Switzerland on the Convention on the Rights of the Child was. Also, in Switzerland the detention of foreign minors aged from 15 to 18 years of age was made possible by the legislation. However, international standards stated that the detention of children should happen as a last resort and for the shortest possible time.

An Expert said that the poverty rate of Switzerland, 8.8 per cent, seemed to be way too high and even inadmissible for a county like Switzerland. The recent adoption of a global strategy in the fight against poverty was commendable. Also, could all children be accommodated in day care facilities?

Could the delegation also explain why the Federal and Cantonal laws on mental health provided for care to be provided through third-party consent or without the patient's consent? Why was that so?

Another Expert wondered whether asylum seekers who were not issued asylum status and who could not be deported could benefit from social benefits? What about those that were about to leave the country?

An Expert also wondered whether the State party planned to ratify the European Convention on against human trafficking.

Another Expert also asked whether underground nuclear facilities were the best place to house asylum seekers. These did not seem to be ideal living conditions for people who had suffered trauma.

Response by Delegation

In its responses to the Committee, the delegation said that there was no Federal law article on domestic violence; however, some Cantons had specific acts on this.

Concerning day care facilities for children, the delegation indicated that the Canton of Vaud had recently adopted a law on the day care of children. Some other Cantons wanted to imitate this and one could say that in the near future there could be a Federal law on this.

Concerning the national strategy against poverty, the delegation said that a conference on poverty would take place next Tuesday. This would be an occasion to present the national strategy to the public. Concerning family allowances, a new minimum level for family allowances had recently been adopted, which set a federal minimum for it. However Cantons could increase these allowances.

On Switzerland's strategy to fight violence against children, the delegation said that on August 2008, a report on Swiss childhood and youth policy in the field of prevention and protection against violence and awareness of the child had been published. Concerning the national strategy to fight violence against children, this issue would be taken in the framework of a Parliamentary request to the Government to draft a plan of action. A response to this Parliamentary request was expected by August 2011.

On the question of sexual abuse of children, the delegation said that Switzerland had signed the Convention of the Council of Europe on the Protection of Children against Sexual Exploitation and Sexual Abuse. This was the first international instrument repressing all kinds of sexual abuses against children. It included measures of protection and a monitoring mechanism. At the moment Switzerland's legislation was not entirely compatible with all the provisions of the Convention and this required several amendments of the Swiss code.

On the issue of Switzerland's reservations on the Convention on the Rights of the Child, the delegation said that the Government was regularly considering removing its reservations. They had already removed some of them in the past but certain reservations remained, namely on Articles 10, 7 and 40. The last two concerned the penal procedure, which was now being revised. Next year a

new criminal procedure would come into force, thus there might be a possibility to remove those reservations.

Regarding the United Nations Convention on the Rights of Persons with Disabilities, the delegation said that the Federal Department of Foreign Affairs was preparing the official procedure of consideration of the ratification. It was not easy to give a fixed timetable for this but the process would start next year.

Responses by Delegation

The Swiss delegation briefly responded to the remaining questions from Friday. On the issue of employment quotas, the delegation stated that there were no official quotas to employ persons with disabilities but incentives had been put into place to encourage their employment. As a general rule, any company employing more than two hundred persons should have at least one percent of their workforce composed of persons with disabilities and they were given tax deductions for adhering to this rule.

The Swiss civil code stated that a child could be removed from their parents or guardians if their personal development was under threat. Of course, preserving the family unit was always the primary objective and removing children from their custodians was a last resort.

With respect to the issue of marriage, the delegation confirmed that marriages could be legally annulled if one of the spouses was found to be a minor at the time of marriage or if it was proven that one of the spouses was coerced or had not fully consented to the marriage. These measures were intended to both protect from and prevent forced marriages. In this respect, forced marriage would qualify as a cause for State intervention. Moreover, the Swiss delegation had established dialogues and public debates on the issue of forced marriages. While there still remained some legal discrepancies between the Cantons, there was a move to make marriage law, and its annulment, more uniform across the country. As such, federal authorities would need to be informed of the identity of the persons to be married, even if the persons were legal residents of Switzerland.

With regard to the issue of human trafficking, Switzerland signed in September 2008 a new law concerning the protection of victims of human trafficking. This proposed law still needed to be ratified by Parliament. The most recent figures indicated that this was a problem that affected all of Switzerland. Efforts were being made to better monitor the situation and to compile data on a Europe-wide scale in order to compare information and results internationally.

On the subject of terminating pregnancies, the statistics indicated a slight decline in this trend in 2009. This trend also appeared to be diminishing among young women under the age of sixteen. The delegation attributed the decline in abortions in part because of more frequent use of the morning-after pill. Moreover, the Federal Government had invested more energy into nation-wide sexual education programmes.

The Swiss delegation also addressed the issue of women who had been victims of domestic violence by partners who were not Swiss nationals. If a non-Swiss national was found guilty of domestic violence, they would no longer be able to renew their residency permits automatically and such acts would come under review when considering the renewal of their residence permit. To this end, clearer lines of communication were being established with the cantonal population offices and local police departments and records.

The rights of foreign nationals and asylum seekers were an important issue for the Swiss Government, particularly when it affected unaccompanied minors. The length of detainment for minors remained an important issue and Cantons had special facilities and housing for minors during the course of the asylum procedure. The family unit was always respected if minors arrived with their parents and, irrespective of their status, children went to public school during the asylum process.

In connection to the questions raised about public health, the delegation addressed measures that it had taken to deal with the fight against AIDS. New cases had been declared in 2009 but the rate of new cases had continued to decline, largely due to the implementation of anti-retroviral treatments around 1995. Every year tobacco smoke caused some 9,000 premature deaths in Switzerland. In spite of these alarming numbers, smoking was being reduced amongst those aged between 14 and 19 years old. A Government initiative, known as the anti-tobacco programme, was established for the period of 2008-2012. A fund had also been implemented to help people stop if they desired to do so and also to educate people on the risks of second-hand smoke. Moreover, a tax levy had been added on cigarettes to help deter smokers and to help fund the various anti-tobacco initiatives. On the issue of the suicide rate, the bad news was that the rate of suicides had remained largely the same. There was a higher rate of suicide amongst older age groups.

In 2011, the Swiss would vote on a law against firearms. Hospital planning was also an important issue for the delegation, especially with regard to psychiatric care. On this issue, uniform legal foundations were being discussed in Swiss Parliament and best practices were being considered around Europe with the help and involvement of the World Health Organization.

Follow Up Questions

In follow-up questions, Experts asked the delegation to elaborate on efforts that were being taken to protect foreign domestic workers that were victims of domestic violence. Due to the fact that residency permits were linked to one's employment, many women domestic workers were afraid to speak out against incidents of domestic violence for fear of losing their residency permits.

Another Expert asked for clarification on the rules guiding the removal of children from custody of their parents. If legal custodians did not have the financial means to take care of their children, were they given Government subsidies? And at what point was it decided that it made more sense to remove the children from their homes?

On the issue of forced marriage, one Expert asked how it was possible to access information when a marriage had occurred outside of Switzerland. And also, what category would an asylum seeker be in if he or she wanted to get married in Switzerland during the asylum process?

Given the exceptionally high rate of suicide in Switzerland, another Expert asked what role the availability of weapons played in this phenomenon? And if the availability of weapons was indeed a main factor then why was Switzerland so far behind in weapons control?

Another question posed to the delegation was on the rights of the homeless. How many homeless people were living in Switzerland? Reports had been given that emergency shelters were insufficient and claims had been made that Roma populations living in unofficial settlements faced police interventions in 2009 in Geneva. What measures were being taken to address this critical issue?

Answers by Delegation

Answering these questions, the delegation said that some responses would be sent in writing in the coming days. On the issue of forced marriage, it was up to the Cantons to apply the law. Regarding abortion, there were legal grounds for the termination of pregnancy. However, abortion could also be considered illegal, and punishable by law, if the woman did not consent to the abortion or had performed the abortion herself.

Taking children away from their parents or legal guardians was always a last resort. The aim was then to find appropriate foster parents or host families and the child was closely monitored. Statistics to verify the quality of childcare in homes were being worked on and would be implemented in 2013.

As of next January, asylum seekers would have to leave the territory of Switzerland in order to apply for marriage and to legalize their living situation in Switzerland before being eligible for

marriage under Swiss law. Both parties of a marriage needed to be freely consenting and verifications of this fact would take place. Finally, the delegation reiterated that a marriage could not occur if one of the parties was a minor.

On the subject of public health and suicide, the delegation said it was a complex phenomenon, with cultural causes as well. Statistically, Switzerland had identified hotspots, so to speak, and numerous debates were being held to discuss the best measures and practices to tackle this problem. A website aimed at teens who were considering suicide had been established. Furthermore, family physicians were being brought into the discussion to help diagnose possible individuals who could be susceptible to suicide.

Specifically on the issue of sexual education, the curriculum was linked to specific age groups but essentially they informed students of sexually transmitted diseases and the importance of protection and self-respect.

On the issue of the forced removal of Roma, an enquiry was ongoing and it was hoped that the delegation would have more information to communicate in the next 48 hours.

Questions by Experts on Articles Thirteen to Fifteen

Turning to articles thirteen to fifteen of the Covenant, Committee Experts asked the delegation to elaborate on the number of children coming from underprivileged groups and the measures taken to give them specialized education. Despite the claim that Switzerland provided some 850 projects, scholarships as well as financial assistance each year, it seemed that many young people from migrant families were pushed into vocational programmes rather than university education. Why was there such a large proportion of children from migrant families in apprenticeships and vocational education? Also, were there private vocational schools associated directly with companies and how were their acceptance and recruitment policies regulated?

Greater efforts also needed to be focused on targeting girls to ensure that they were given real educational opportunities. Preschool education was not compulsory but there was a trend toward making it so. One Expert asked if there were statistics regarding which children were not attending preschool education and what backgrounds they came from? If there was no compulsory schooling between the ages of three and six, were daycare facilities being provided instead?

There was also some discrepancy regarding the rise in university fees around Switzerland. In the report, there was conflicting information on this issue and one Expert asked for clarification and further information on the differing costs between universities and the flagrant divergence between tuition fees for Swiss nationals and foreign students.

On the right to culture, what measures had been applied to minority groups to help them preserve their cultural traditions and languages? Was there a federal cultural office to deal with such issues or was it left entirely for the Cantons to deal with? Preserving culture was important in any society, especially for the second generations who may have been born in Switzerland of foreign parents.

Response by Delegation

In its responses to the Committee, the delegation said that in 2007, a common educational framework had been proposed for all Cantons, making preschool compulsory. This was followed by a referendum in a number of Cantons. While only fifteen of Switzerland's Cantons had ratified the framework to date, it accounted for almost 70 per cent of Swiss school children.

Vocational training in Switzerland was incredibly important. Nearly 65 per cent or two thirds of school children went through vocational training. This path was not considered secondary or of lesser importance or status than an academic path. The delegation confirmed that there a large proportion of children from migrant families chose the vocational training path but this was also the case amongst many Swiss communities, not just migrant families.

The role of migrant community centers was crucial in terms of preserving the right to culture and the preservation of cultural ties for children of migrant families. Regarding education in different languages, there were around 160 different nationalities of children studying in Geneva alone. Efforts were therefore being made to provide Swiss education in many different languages, to ensure that no children were left behind because of their linguistic capacities.

On the issue of university fees, they varied quite dramatically from school to school. There were some cases, oftentimes of universities near bordering countries, where foreign fees were close to double that of Swiss nationals. This was a decision of the university and was not regulated by the Swiss Government.

School and vocational training required traveling communities to be more sedentary and these semi-nomadic groups often removed their children from school in order to travel to new locations. For 2005, twelve areas were utilized as unofficial campsites and new expert information, which would be published in early 2011, showed that the situation had not gotten significantly worse since 2005. The authorities in St. Gallen had requested 2.5 million Swiss francs to help establish a campsite for traveling communities in their Canton.

Concluding Remarks

JEAN-JACQUES ELMIGER, Ambassador at the State Secretariat for Economic Affairs of the Federal Department of Economic Affairs of Switzerland, in concluding remarks, thanked the Experts for their constructive comments. The questions and comments raised by the Experts showed that there were still some shortcomings but Switzerland was putting as much effort as possible to make legislative changes in the promotion and protection of economic, social and cultural rights. The questions were very useful for the Swiss delegation and the delegation would be happy to continue the discussion and debate after this Committee meeting. The Swiss authorities would provide a proper follow up once the Committee submitted its recommendations.

JAIME MARCHAN ROMERO, Committee Chairperson, in concluding remarks, said that the overview was very comprehensive and the exercise was interactive and a useful tool for everyone. It was hoped that the dialogue would be continued and that the Swiss delegation would continue to maintain such high standards when addressing these issues. The Committee would be preparing formal recommendations and sending them to the Swiss delegation.