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**Power sharing
The Swiss
experience**

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Contact:

Federal Department of Foreign Affairs
FDFA
Directorate of Political Affairs DP
Political Affairs Secretariat POLS
Politorbis
Bernastrasse 28
3003 Bern

Phone: + 41 31 325 81 52
Fax: + 41 31 324 38 39

mailto: politorbis@eda.admin.ch
www.eda.admin.ch/politorbis

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Last but not least, we want to thank Anna Lea who participated in status nascendi.

Bern, Dezember 2008

Andrea Iff

Nicole Töpferwien

Preface

Since the end of the Cold War two major changes have taken place regarding armed conflicts: Firstly, the big majority of recent conflicts are fought primarily within states. Secondly, of all conflicts that were brought to an end, only 28 were decided by victory and defeat on the battlefield. In 58 cases, conflict ended or at least temporarily stopped based on peace negotiations. Therefore, since the end of the cold war, models, concepts and ways of negotiating peace and of supporting such peace negotiations by mediation have changed and are still drastically changing.

In a majority of internal conflicts at least one party to the conflict fights for a bigger share of power. Frequently, parties are only willing to 'talk peace' and to sign a peace agreement if demands for power-sharing are addressed, a common vision for the future is developed, and there is an agreement on mutually acceptable solutions, including power-sharing mechanisms. Power-sharing mechanisms have thus become part and parcel of peace agreements, and expertise on power sharing is essential in peace negotiations. The Swiss Department of Foreign Affairs has responded to this need and regularly provides specially trained mediators and experts on power sharing.

Power sharing mechanisms are not always successful. Furthermore, power sharing mechanisms that have been successful in one context cannot necessarily be transposed to another. The attempt to transfer experience without paying full attention to differences in context is doomed to fail and may do more harm than good. Tailor-made approaches are essential. However, though the transferability of experience is limited, it is still possible to gain some useful insights from both positive and negative experiences. Real life examples and experiences of power sharing can provide ideas and inspiration for decision-makers, mediators and experts involved in peace negotiations.

Therefore, the Swiss Department of Foreign initiated this publication that deals with Swiss experiences of power-sharing. The Swiss system of state organisation is characterised by a large number of power sharing mechanisms. These have been used to accommodate cantonal, linguistic and religious (confessional) diversity. Countries dealing with conflict, especially those with multi-ethnic societies, often show great interest in Swiss experience. Swiss

experts are often asked to explain the Swiss system, to share their experience and what they have learned, and to advise on possible power sharing options for a specific context. This publication is intended to provide information and resource materials for all those who are interested in the Swiss system of power sharing, and especially for those who are involved in power sharing discussions in countries experiencing conflict.

Because the Swiss power-sharing system, like any other, is highly context dependent, this publication purposely draws attention to the specifically context dependent aspects of Swiss power sharing. The authors do not want to promote the 'Swiss model' or to say which elements should be transferred to other situations. Rather, they describe one example of power sharing arrangements and invite readers to explore the different topics and to reflect critically on its benefits and risks.

The publication aims at being as complex as necessary but as simple as possible so that no preliminary knowledge on power-sharing mechanisms and on Switzerland are required. This publication does not want to depict all details of Swiss state organisation and power-sharing. The publication focuses on those elements of power-sharing in Switzerland that can be of interest for multi-ethnic societies, especially for those confronted with ethno-political conflict. An introductory chapter provides a short introduction to multicultural Switzerland and shall help the reader to identify the chapters of his or her interest. The publication addresses nine issues that potentially are of relevance and that seem to "come up" in situations of violent conflict in multi-ethnic settings: (1) sharing history, (2) sharing identity and the state, (3) sharing territory, (4) sharing rule, (5) sharing democracy, (6) sharing language and religion, (7) sharing justice, (8) sharing wealth and income, and (9) sharing security.

A separate chapter is dedicated to each of the nine issues. Each chapter is structured the following way: (I) a context part, quickly establishes the relevance of the topic, (II) a short concept part outlines the major concepts, (III) Switzerland's approach in dealing with the respective issue is depicted, (IV) context dependent success factors as well as some more general lessons learned from the Swiss experience are identified, (V) some key questions are also given that shall help to analyse a specific context and to

develop specific approaches. The report ends with a concluding part, where aspects of how to share the future are addressed. As further resource material or for the time bounded reader, fact-sheets of two pages for each issue are provided in the annex.

I would like to take this opportunity to thank the two authors, Andrea Iff and Nicole Toepperwien, who have shared their great experience and expertise on federal systems and power sharing in general with us. Without their enthusiasm and perseverance, this study would not have reached such a happy end, and the Swiss Department of Foreign Affairs would not be able to making information on Swiss power-sharing available and thus contribute to conflict resolution.

Ambassador Thomas Greminger

Head of Political Division IV, Human Security

Swiss Department of Foreign Affairs

Short Introduction: Multicultural Switzerland

A quick look at history. The origins of Switzerland date back to 1291 when three independent states signed an alliance, mainly for the purposes of defence against outside enemies and of arbitration in the case of disputes between the member states. The Confederation grew slowly; new states were included over time, with new treaties. With industrialisation and nation-building in the surrounding countries, confederal arrangements became too inflexible and disputes began over the future organisation of the union. These internal disputes were aggravated by the French invasion in 1798, following which Switzerland was ruled by a protectorate-style government until 1815. In 1815, after the defeat of Napoleon, Switzerland again became a confederal organisation. Disputes within the Confederation continued and culminated in a short internal war in 1847. In 1848, with the adoption of a constitution, Switzerland became a federation. The constitution was completely revised in 1874 and 1999. However, the structure of the state remained largely the same.

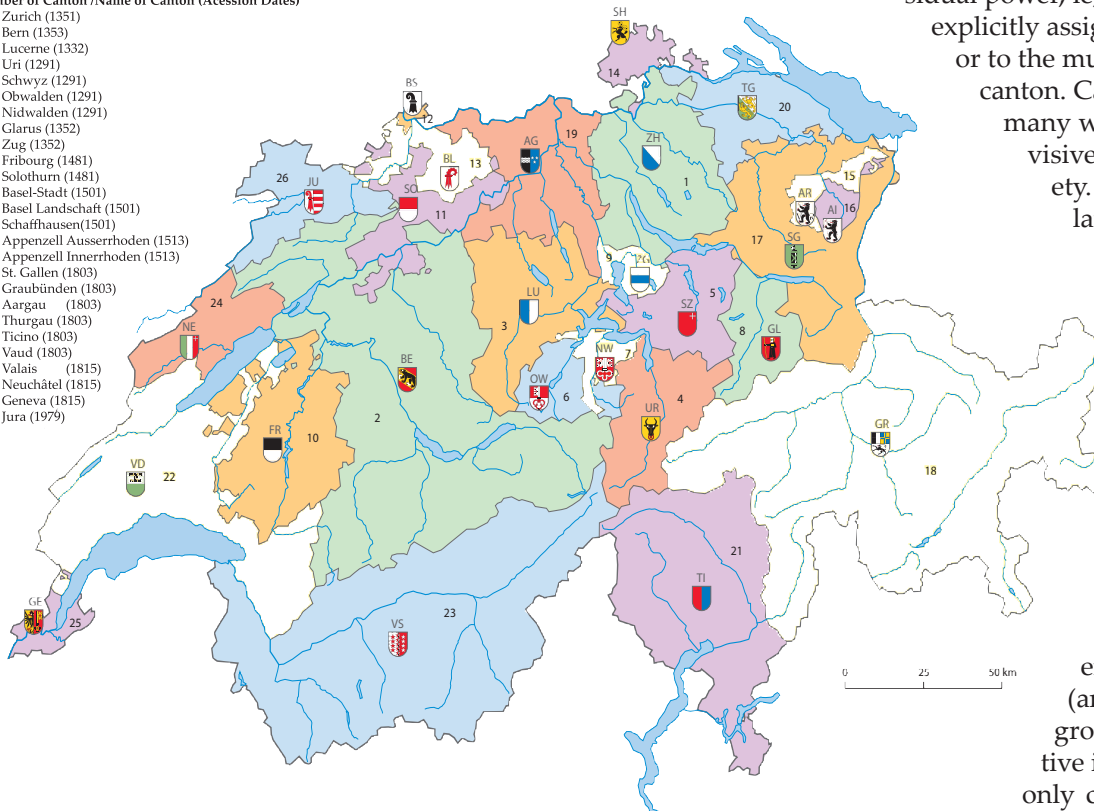
Diversity in Switzerland. Switzerland is a small landlocked country of 7.4 million inhabitants. Three major European cultures meet in Switzerland: French, German/Austrian, and Italian. The population is divided by language (German, French, Italian and Romansh) as well as by religious affiliation (mainly Protestant and Catholic). The territory of Switzerland is divided into 20 cantons and 6 half-cantons (hereafter referred to as the 26 cantons). The cantons themselves are made up of municipalities (local government units including cities, towns and villages) of which there are just under 3,000 altogether. There are not only different cantonal cultures and distinct political ways of life but also different standards of living. The demarcation lines between the linguistic, religious, and cantonal groups do not coincide. For instance, there are cantons with both Catholic and Protestant inhabitants, some of whom speak French and some German.

Vertical power sharing in Switzerland. Switzerland is composed of cantons, and cantons are composed of municipalities. Cantons have residual power, ie, all powers that are not explicitly assigned to the federal level or to the municipalities lie with the canton. Cantonal powers include many which are potentially divisive in a multicultural society. Issues such as culture, language, relations between the state and religion, policing and schooling are not allocated to the federal level but remain with the cantons. In cantons with diverse populations, important powers in these areas are normally delegated to the municipalities. This enables relatively small (and more homogeneous) groups to decide on sensitive issues: conflicts that can only create winners and losers tend to be avoided. Cantonal taxing powers and revenues from natural resources prevent cantonal dependence on the federal level. In

The 26 cantons (Accession Dates)

Number of Canton /Name of Canton (Accession Dates)

- 1 Zurich (1351)
- 2 Bern (1353)
- 3 Lucerne (1332)
- 4 Uri (1291)
- 5 Schwyz (1291)
- 6 Obwalden (1291)
- 7 Nidwalden (1291)
- 8 Glarus (1352)
- 9 Zug (1352)
- 10 Fribourg (1481)
- 11 Solothurn (1481)
- 12 Basel-Stadt (1501)
- 13 Basel Landschaft (1501)
- 14 Schaffhausen (1501)
- 15 Appenzell Auser rhoden (1513)
- 16 Appenzell Inner rhoden (1513)
- 17 St. Gallen (1803)
- 18 Graubünden (1803)
- 19 Aargau (1803)
- 20 Thurgau (1803)
- 21 Ticino (1803)
- 22 Vaud (1803)
- 23 Valais (1815)
- 24 Neuchâtel (1815)
- 25 Geneva (1815)
- 26 Jura (1979)



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this way the different communities retain their right to decide democratically on those issues that are most closely connected to their identity. The federal level also benefits from leaving sensitive decisions to the lower levels of government because this enables it to avoid taking decisions on potentially divisive issues. The federal level holds mainly those powers that are most closely connected to national sovereignty as well as those that are complex and need a high degree of coordination.

Horizontal power sharing in Switzerland. The Swiss political system is mainly characterised by the non-concentration of power in any one hand, and by the distribution of power among many actors: it is neither presidential nor parliamentary. The different institutions are designed so as to incorporate the pre-existing diversity into the political system and to create an overarching legitimacy through the democratic inclusion of the whole Swiss population.

- The bicameral parliament demonstrates this double function: one chamber, the National Council, represents the Swiss people as a whole and is based on proportional representation. The other, the Council of States, has two representatives from each canton (and one from each half-canton). The two chambers have equal rights.
- The seven-member Federal Council is at the same time the collective Head of State and the executive government. It is elected at a joint session of both chambers of parliament (the United Federal Assembly). It is constituted so as to represent the vast majority of the Swiss population. Under the Swiss Constitution, the Federal Council shall represent the different regions and linguistic groups in Switzerland. Based on an unofficial agreement, it also represents the four most important parties. The presidency rotates annually among the seven Federal Councillors.
- Switzerland has both cantonal courts and a Federal Court. The Federal Court is the court of last resort. It is intended to ensure the compatibility of cantonal law with federal law as well as the proper application of federal law. However, the Swiss Federal Court cannot rule on the constitutionality of federal statutes. Federal Court judges are selected by parliament with due regard to creating a balanced composition, similar to the composition of the Federal Council. The Federal Court publishes its decisions either in German, French, Italian or Romansh.

- Procedures also demonstrate respect for the interests of different groups. For instance, all legal drafts are discussed with the relevant interest groups before adoption. Mechanisms of direct democracy, i.e. referendums and initiatives, are a further important element of the Swiss political system.

The following paragraphs outline the contents of each chapter and can be used to identify those of particular interest to the reader.

1. Has Switzerland dealt with its history/histories?

Switzerland can look back over 150 years of intercultural peace. A 27-day low-intensity civil war in 1847 was the most serious violent confrontation between the Swiss cantons. Switzerland has therefore only limited recent experience of dealing with a violent past. However, there are still a number of historical events that are interpreted differently by the different Swiss communities. Switzerland has learned to live with different understandings of its history and has been able to emphasise those aspects of history that unite it.

→ See *Chapter 1: Sharing history*

2. Has Switzerland dealt with diversity and created a common identity?

Switzerland is not a typical nation-state. The creation of the Swiss state and the formation of its identity did not entirely follow the trends towards national unification and homogenisation that occurred in the surrounding countries. Switzerland developed a concept of the state that recognises the equality of different groups and allows them to share the state on equal terms. It did not elevate the identity of one group to a national identity but created a state identity that encompasses the different group identities.

→ See *Chapter 2: Sharing the state and identity*

3. Has Switzerland dealt with territorial claims?

Switzerland's territory is subdivided into cantons and municipalities. Cantons and municipalities have their own powers and resources. The process of defining the original Swiss cantonal and municipal boundaries was relatively unproblematic as these

had developed over time. However, the question of how to share territory re-emerged in the context of changing existing boundaries, e.g. with the creation of Canton Jura and the merging of some municipalities.

→ See *Chapter 3: Sharing territory*

4. Has Switzerland dealt with requests from different groups or regions for autonomy or rights of participation?

Switzerland has a long history of sharing rule between different levels and within different branches of government. The cantons, and similarly the municipalities, enjoy a high degree of self-rule (vertical power sharing). At the same time, the cantons are also involved in central decision-making, primarily through their representation in the second chamber of parliament (the Council of States) (horizontal power sharing). In addition, there are other horizontal power sharing mechanisms such as: proportional representation in the first chamber of parliament (the National Council); a grand coalition government (a coalition of the major political parties); and special criteria for the composition of the administration and the judiciary.

→ See *Chapter 4: Sharing rule*

5. Has Switzerland dealt with issues of democratic governance?

The Swiss political system of today has been strongly shaped by the elements of democracy. Switzerland is a multilevel democracy with three democratically organised levels of government. Switzerland is not only a representative democracy: it also has a long tradition of direct democratic governance. The right to call a referendum enables the people to vote on almost all laws that have been passed by parliament, and the right to submit an initiative gives them the power to change the constitution and introduce new policies.

→ See *Chapter 5: Sharing democracy*

6. Has Switzerland dealt with religious, cultural and linguistic differences?

The integration of different religious and linguistic communities is one of Switzerland's most important

achievements. With respect to the four Swiss language communities, the federal level has adopted a policy of equality. With respect to religious diversity, it relies on a policy of (relative) neutrality. In addition, the federal level acts as the guardian of intercommunity peace and the protector of individual rights. The cantons decide on their official languages and on the relationship between state and religion at the cantonal level. Cantons with linguistic and religious diversity recognise several official languages at the cantonal and municipal levels, and generally give official recognition to the traditional religious denominations.

→ See *Chapter 6: Sharing language and religion*

7. Has Switzerland dealt with justice and the judiciary?

The cantonal judiciaries form the building blocks of the Swiss judiciary. As a result of the federal system, Switzerland has different cantonal legislation and 26 different cantonal court systems. The Federal Court, the court of last resort in Switzerland, is relatively weak. It has only limited powers of constitutional review. The judicial systems at the federal and the cantonal levels have frequently been criticised by the European Court of Human Rights in Strasbourg. Nevertheless, Swiss citizens generally trust their judiciary.

→ See *Chapter 7: Sharing justice*

8. Has Switzerland dealt with demands for sharing wealth and income?

The power to decide and finance public services has remained largely with the cantons and the municipalities. All three levels of government - the centre, the cantons and the municipalities - have the right to raise taxes and set tax rates. In addition, the cantons own most of the natural resources. Each level of government raises about one-third of the overall state income. Thus, not only do cantons and municipalities have the legal power to decide on their policies, they also have the fiscal powers to implement them. Switzerland accepts that there are different standards of living in its regions. However, it has introduced a system of fiscal equalisation that is intended to lessen regional disparities in financial capacities and costs, and to ensure that all the cantons can deliver at least minimum services.

→ See *Chapter 8: Sharing wealth and income*

9. Has Switzerland dealt with security issues?

Switzerland has managed to establish military and police structures and institutions that are close to its citizens and that build upon the multilingual nature of its society. Internal security, and especially the police, have traditionally been under the control of the cantons and municipalities. External security, and with it the armed forces, are a federal responsibility. Switzerland's reserve army system has led to a military structure that is trusted by the people. In addition, the direct democratic instruments and mechanisms for democratic control have increased trust in internal and external security policies.

→ See *Chapter 9: Sharing security*

Chapter 1: Sharing History

I. The Context

Swiss experience of sharing history. To understand Switzerland's system of power sharing with its formal and informal rules, it is useful to understand how it has developed. Switzerland can look back over 150 years of intercultural peace. A 27-day low-intensity civil war in 1847 was the most serious violent confrontation between the Swiss cantons. Switzerland has therefore only limited recent experience of dealing with a violent past. However, there are still a number of historical events that are interpreted differently by the different Swiss communities. Switzerland has learned to live with different understandings of its history and has been able to emphasise those aspects of history that unite it. In addition, Switzerland has found that it is not always easy to deal with its own past. It took up the task of confronting the darker aspects of its role before, during and after World War II mainly in response to external pressures.

Sharing history: an important issue. History and historical arguments are inevitably raised as issues in conflict situations. The parties to the conflict may invoke their history of marginalisation or of colonisation, historical injustices, traditional claims to territory, or their fight for national self-determination. History is used to explain specific conditions and divisions and also to justify claims and actions. The conflict itself adds a new and violent chapter of history, following which a new future must be built. At some point during the peace negotiations or, at the latest, in the post-conflict phase it is necessary to address history, and especially violent history.

II. The Concepts

The challenge. Without some knowledge of past events and country-specific history, and without learning about and acknowledging the conflict parties' different readings of history, it is almost impossible to develop a new vision for the state or to design adequate institutions and procedures. To some extent history also explains the reactions of the conflict parties. In addition, especially in conflict situations, history and historical arguments are hardly ever mentioned simply to depict or explain events in a neutral way. They are generally invoked in order to convince the public, the mediator and other parties of the legitimacy or non-legitimacy of claims. A

divided past, as well as diverging understandings of history, can be obstacles to building a joint future. To achieve sustainable peace the political actors must find ways to overcome these divisions and to deal positively with the past. How can history be used constructively to achieve peace and justice? The following provides an overview of how historical arguments can be used, or even exploited, in conflicts:

History as part of context: Some understanding of history is a prerequisite for grasping the country-specific context. It can improve understanding of the conflict, the parties involved, existing institutions, and formal and informal rules.

History as explanation: History can help to explain current conditions as well as the fears, perceptions and reactions of the different parties. Past experiences are one factor that can determine whether a particular solution is acceptable. For instance, countries with negative experiences of federalism tend to be reluctant to accept federal solutions.

History as justification: History is sometimes used to justify actions or to claim entitlements. For instance, actions are legitimised as a response to past injustices; territory is claimed based on 'historical' rights with reference to traditional settlement patterns or the location of historical battlegrounds; the right to self-government is claimed based on former experience of self-rule; self-determination is advocated within the framework of de-colonialisation.

History as instrument: History is used to divide and to unite, to legitimise and to de-legitimise. An emphasis on positive common experiences can be used to foster unity. On the other hand, the invocation of symbols and events that have negative connotations for parts of the population, or that explicitly or implicitly exclude certain groups, can be instrumentalised to foster divisions. In dealing with a violent past, for instance, truth commissions or tribunals can be established to contribute to peace and justice. Institutions can be re-introduced or built on, in order to make use of the traditional legitimacy of structures that have been accepted in the past, rather than creating new 'foreign' institutions from scratch. History can be used to help establish legitimacy. However, negative historical experiences can also be instrumentalised to de-legitimise institutions.

History and legal consequences. Historical arguments may have political and, in certain cases, also legal significance. In a few cases the law attaches legal significance to particular historical circumstances. For instance, under the First Protocol

to the Geneva Convention, whenever the right to self-determination is invoked against a colonial or racist regime, internal conflicts are treated as international conflicts. This approach seems to sanction secession. Whether a war qualifies as a war of de-colonialisation can therefore decide whether there is a right to secession. In the original sense of the word, the term devolution was understood as a return (de-evolution) to a former state of self-government. On this basis, attempts at devolution would need to be based on arguments about self-rule having existed in the past. Using historical arguments as justification can however lead to competing claims, depending on the era or the version of history that is selected as relevant. In many cases, historical arguments do not provide clear answers but may lead to further complications. Nevertheless, historical arguments used as justifications must be dealt with, at least whenever the law attaches legal consequences to history.

Dealing with the past. Especially in protracted violent conflicts, the past and different readings of history tend to tell of divisions. Past institutional inefficiencies, injustices and abuses tend to de-legitimise political institutions. Historical arguments can become powerful forces and can further divide and discredit. However, positive, uniting and legitimising approaches are needed in order to build a common future. Nation-building processes normally rely on a re-invention of history, stressing those aspects that unite. The current debate on 'dealing with the past' focuses on mechanisms that may help to address past injustices, re-establish trust and achieve reconciliation. It also highlights the challenge of addressing crimes when participants in peace negotiations fear criminal liability, and the dilemmas of a mediator dealing with political leaders who have been indicted as war criminals, or with members of 'terrorist groups' whose participation may be crucial to achieving agreement. Nevertheless, the past must be dealt with, at least in the long run. Mutual trust and a shared perception of justice are pre-requisites for power sharing.

III. Sharing History in Switzerland

The essence of Swiss history. Switzerland's political history can be summarised as the continuous balancing of power to combine the highest possible degree of self-rule by the cantons, with a low level of centralisation. The maintenance and promotion of structural, mainly cantonal, diversity legitimised the confederation and later the federation.

Federation by aggregation. In 1291 Switzerland was created as a confederation of three cantons. These cantons signed the founding treaty, mainly for the purposes of defence against outside enemies and of arbitration in the case of disputes among cantons. The confederation evolved slowly; new cantons were admitted and included with new treaties so that over time a complex treaty system developed, loosely uniting the cantons. The effort to achieve a balance of power was already clearly visible during this enlargement process. For instance, when the cantons of Fribourg and Solothurn wanted to join the confederation in 1481, the predominately rural cantons in the confederation feared that, with the addition of two cantons with important urbanised centres, an imbalance could develop between urban and rural influence. Fribourg and Solothurn were finally admitted with unequal rights in order to maintain the balance of power.

Political diversity, religious diversity and neutrality. Because of the persistence of cantonal sovereignty, the cantons developed and maintained different political regimes. Most had oligarchic systems. The mountain cantons relied for decision-making on the *Landsgemeinde*, an assembly of influential families or citizens. Some areas were subject areas, for instance, Vaud was the subject territory of the City of Bern. Cantonal self-rule created political diversity. The Reformation in the 16th century added a new type of diversity: religious (or confessional) diversity. Switzerland became a patchwork of different religious (Catholic and Protestant) groups. Religious divides soon became an issue for conflict. The Thirty Years' War (1618-1648), fought mainly on the territory of modern Germany, increased religious tensions and threatened Swiss unity. Neutrality became a question of survival. At that time, the decision to remain neutral was, among other things, a decision not to take sides and therefore to some extent to abstain from a proactive foreign policy so as not to be drawn into the religious conflicts in neighbouring countries. Towards the end of the Thirty Years' War the Swiss even managed to organise a common Protestant and Catholic defence against potential intrusion from the outside.

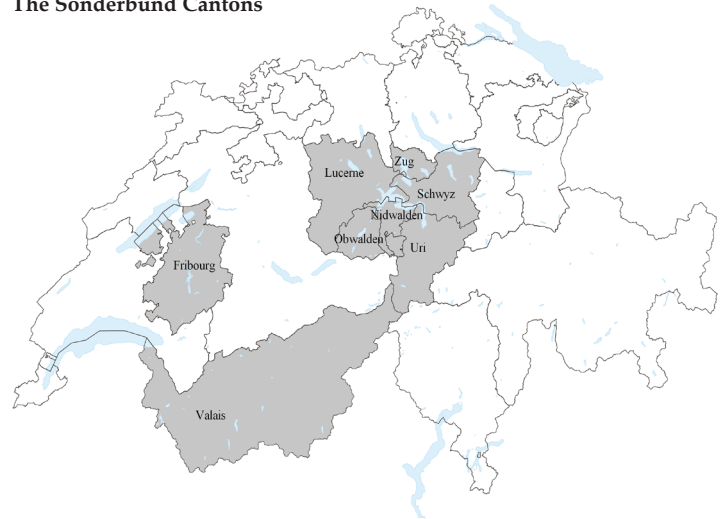
French invasion, equality of cantons and linguistic diversity. At the end of the 18th century, with modernisation in the neighbouring countries and the ideas of the French Revolution, discontent and demands for reforms in Switzerland grew. In 1798, French forces led by Napoleon invaded Switzerland and introduced a centralised state system based on the French model. The cantons were transformed

into equal but purely administrative units. Napoleon gave equal status to all of them, including formerly subject territories. Therefore, for instance in the newly created canton of Vaud, Napoleon was seen to some extent as a liberator and not simply as an invader. The granting of equal status to all the cantons also increased the significance of linguistic diversity because several French-speaking territories gained the status of canton. However, after a short time it became apparent that Switzerland could not be ruled effectively with a centralised state organisation. Napoleon re-empowered the cantons and introduced a federal state system.

Switzerland – return to confederalism and demands for change. After the defeat of Napoleon, Switzerland opted again for a loose confederation. Switzerland's neutrality and territory were recognised at the Congress of Vienna (1815). However, though Switzerland was once again a confederation, Napoleon's invasion had changed it permanently. All the cantons kept their equal status. While some re-established their old oligarchic power-structures, others – especially those created by Napoleon and those with a Protestant majority – introduced democratic representative governments. Several cantons were faced with (sometimes violent) internal conflicts between the advocates of different political visions. These eventually led to new constitutions and changes in government. In addition, demands for reforms of the confederal organisation kept re-emerging, leading increasingly to confrontation between conservative and progressive cantons.

Civil War in Switzerland. These disputes culminated in 1847 in a short civil war between the conservative Catholics and the more progressive Protestants. One of the root causes of the conflict was their different visions of a future Swiss state. The more progressive Protestant cantons wanted to limit the powers of the church and of the aristocracy/oligarchy and turn Switzerland into a stronger representative democracy based on the French model. A number of Catholic cantons were opposed to this, formed a secret union (*Sonderbund*), and threatened to leave the confederation. The Protestant cantons reacted with military measures. The war lasted only 27 days and ended with the defeat of the Catholic cantons. Just over 100 lives were lost. With the victory of the Protestant cantons it was now possible for reforms of the confederation to take place.

The Sonderbund Cantons



Overcoming the conflict. The low intensity of the conflict made peace-building afterwards easier. In addition, the victorious Protestant cantons moderated their demands. The procedure that was introduced for adopting the constitution ensured that only a compromise-driven constitution could succeed. Although the constitution included some anti-clerical elements directed against the Catholic cantons, it maintained the cantons as main building blocks of the state. For the defeated Catholics it was crucial that the victors left important powers at the cantonal level (vertical power sharing) and provided for the equal representation of all cantons at the federal level, thus guaranteeing the representation of both Catholic and Protestant cantons (horizontal power sharing) (see *Chapter 4: Sharing rule*). Moderation and compromise helped to re-establish trust.

Compromise after victory. A key question is, why were the Protestant cantons willing to compromise and to reaffirm power sharing between Protestants and Catholics? There is no clear answer to this question. The Protestant cantons did not question that Switzerland was, and should remain, a country of both Protestants and Catholics. However, they made it clear that loyalty to a church must not take precedence over loyalty to the common state, that respect for cantonal rights must not take precedence over respect for republican (individualistic) values, and that the interests of any specific group must not take precedence over the interests of the state. Of course, considerations of power were also involved. A compromise-driven approach secured the goodwill of the more progressive Catholic forces and also increased the support of the more conservative forces in the Protestant cantons, thus helping to prevent renewed intra-cantonal turmoil. Only a compromise

solution could achieve a clear majority. In addition, complete centralisation would probably have overburdened the common institutions which were still relatively weak. Last but not least, internal unity seemed the best way to prevent Switzerland's strong neighbouring countries becoming involved and interfering.

Constitutional politics to balance and re-balance the system. With the adoption of its first federal constitution in 1848, some months after the civil war, Switzerland became a federation. The main principles of state organisation have remained the same ever since, despite a number of smaller, and two total, revisions of the constitution. For example, the constitution had already specified the (limited) powers of the federal level; all other powers remained with the cantons. The cantons were already represented in a second chamber of parliament, each with two representatives. In 1874, additional direct democratic instruments were introduced and a common army and a permanent Federal Court were established. Numerous partial revisions of the Swiss Constitution followed. Proposals for revisions can come from the people or from parliament; their adoption requires a formal Popular Vote. Examples of constitutional amendments include the introduction of female suffrage (1971) and of equal rights for men and women (1981), the creation of Canton Jura (1979), further mechanisms for direct democracy, and again and again the centralisation of powers. The total revision of the constitution in 1999 involved mainly textual changes. Since then, the Swiss Constitution has been amended several times, for instance in relation to the judiciary and financial equalisation. As these numerous revisions show, the Swiss Constitution is not regarded as a sacred document that must not be touched but far more as an expression of democratic consensus and an instrument for peaceful change and re-balancing.

History to legitimise and unite. Institutional reforms in Switzerland were gradual, building on traditions and existing institutions. The democratisation of the small alpine cantons provides an example: at first the cantonal *Landsgemeinde* only included the heads of the most influential families, later all men and (after the 1970s) both men and women. Thus, step by step, the *Landsgemeinde* was redefined to become more inclusive. Two cantons still have a *Landsgemeinde* instead of a parliament. Transforming existing institutions rather than introducing new ones strengthened their legitimacy. In addition, Switzerland has avoided changes in areas that are of symbolic importance to its constituent units.

Switzerland's official name is still *Confoederatio Helvetica* or the Swiss Confederation. This name does not describe Switzerland's current state organisation, since it is now a fully fledged federation and not a confederation. However, the name was kept to emphasise continuity and to prevent disputes over a name. The name *Confoederatio Helvetica* was already a compromise as it is in Latin so as not to give preference to any of the Swiss languages. To add another example: the Swiss Constitution of 1999 still calls the cantons sovereign – as do the previous constitutions – though it can be disputed whether they are still sovereign in the technical sense of the word. In building its nation after the civil war, Switzerland relied to some extent on cantonal histories and re-invented them as Swiss history (see *Chapter 2: Sharing state and identity*).

Dealing with the past. Switzerland has managed to overcome the divisive experiences of its past, e.g. the *Sonderbund War*, pragmatically. It accepts different readings of history. Partly, but not solely, due to the cantonal power over education, there is still no standardised school history curriculum that is used in all schools and all parts of Switzerland. An example of how Switzerland has dealt with difficult past events concerns its role in World War II. Switzerland began addressing the dark aspects of its role before, during and after the Third Reich largely in response to outside pressures. Following a decision by the Federal Parliament in 1996, the Federal Council mandated an Expert Commission to conduct a comprehensive study of Swiss history during and shortly after World War II, thus also initiating a broader public debate. There was substantial resistance against dealing with the past. For instance, in several cantons political activists tried to prevent the use of a new school history book that included the findings of the Expert Commission. Although World War II was not a conflict between groups within Switzerland, in dealing with this chapter of its history Switzerland had to confront certain (mis-)perceptions about its own identity. Reactions in Switzerland show that dealing with the past is difficult even when it does not concern a conflict on one's own territory.

IV. Sharing Swiss Experience?

Addressing history. History can be re-interpreted to a certain extent but it cannot be undone. However, there are choices about what use to make of history and how to address it. In cases of long-term violent conflict, in peace negotiations and in post-conflict

situations, there will often be disagreement over the weight that should be given to historical arguments, how history can be used in a constructive way and, last but not least, how the violent past should be dealt with. Can Swiss experience – apart from providing some background information for those interested in Switzerland and Swiss institutions – provide any useful insight for countries struggling with their own history? At least three factors have positively influenced Switzerland's approach to history.

Low intensity conflict. The civil war of 1847 was extremely short and low in intensity. The small number of fatalities kept the level of enmity and of suffering among the population low. Countries that have experienced protracted conflicts with high fatality rates and widespread suffering are confronted not only with emotionalised elites but also with an emotionalised population. These situations are in no way comparable.

Loyalty and trust. In Switzerland, it was always possible to preserve or quickly to re-establish a level of loyalty and trust between the different communities. The common state, as well as the existence of the cantons, was never really called into question. The understanding that compromise and respect for diversity benefit everyone had developed over centuries and also helped people to accept compromise as a good solution after the conflict. In many countries that have experienced violent conflict, the basis of mutual trust and tolerance has been completely eroded. In a number of cases the decision to live in one state is based on a lack of other options and not necessarily on a feeling of loyalty towards the state. Without a certain level of trust and loyalty it is nearly impossible to build a common future.

Time and types of conflict. Switzerland had the privilege of time. Reforms in Switzerland were gradual and slow, thus leaving enough time for societal change. The transformation of traditional institutions, rather than the introduction of new ones, helped to achieve acceptance of change. In addition, Switzerland has been able to overcome the divisions of 1847 during 150 years of pragmatism. In this sense, it is not a good example for present-day approaches to dealing with the past. Shortly after an intra-state conflict, memories of violence and suffering are still fresh, and emotions, as well as feelings of victimhood, are still acute. This makes it far more difficult to engage with the other, embrace compromise or accept other versions of history. However, especially in situations of violent intra-state conflict, postponing reforms and putting off dealing with

the past can endanger reforms and encourage new rounds of violence.

Swiss lessons learned: The importance of the specific Swiss context must not be underestimated. However, some lessons can still be drawn.

- Though of low intensity, the civil war of 1847 showed that peace cannot be taken for granted, even in Switzerland. The conditions for overcoming the conflict were favourable. Nevertheless, moderation and compromise were also decisive in preserving and strengthening trust and loyalty.
- There is still no common 'Swiss' understanding of certain aspects of history. Swiss experience shows that it is possible to live with diverging understandings of history as long as the different versions are acknowledged and nobody claims the exclusive right to define 'the proper understanding' of history.
- Switzerland has paid careful attention to its traditions and has been aware of the importance of symbolism. Reforms have been gradual and, as far as possible, traditions and symbols have been preserved. Swiss experience shows that it is possible to retain symbols and build on traditional structures and still to modernise and democratise state structures.
- Switzerland has made use of uniting aspects of its history, e.g. for nation-building, though its past also contains divisions. Swiss experience shows that though history cannot be undone, it can be used in creative ways.

V. Key Questions

Gaining a better understanding of history and historical arguments

- Are there mutually acceptable accounts of history?
 - Are there objective accounts of country- and conflict-specific history that are acceptable to the different conflict parties?
 - Are there past events about which there is no agreement among historians or conflict parties?
- Do the conflict parties use historical arguments?
 - What is their main purpose in using historical arguments? Do they want to explain or to justify?
 - Are the different versions of history acknowledged by the conflict parties?
 - Could some of the historical arguments have legal significance?
 - Do the historical arguments lead to competing claims or can they point to acceptable solutions?

Towards a shared history

- Can history serve to unite?
 - Are there common positive past experiences, common heroes, or common symbols that could be used to express and build unity?
 - Which historical symbols are especially divisive? Can they be avoided?
 - What approaches could there be to dealing with the divisive past? Are there traditional forms of reconciliation? Are other truth and reconciliation mechanisms, in addition to judicial mechanisms, in place or planned? Are these accepted as neutral and legitimate and will they involve public participation?
- Can history serve to legitimise?
 - Are there institutions with traditional legitimacy that are acceptable to the population? How inclusive are they?
 - Can these be transformed to respond to democratic standards and new needs?

Chapter 2: Sharing State and Identity

I. The Context

Swiss experience of sharing state and identity. Switzerland is not a typical nation-state. The creation of the Swiss state and the formation of its identity did not completely follow the trends towards national unification and homogenisation that occurred in the surrounding countries. Switzerland does not consider itself to be the state of and for the German-speaking majority. It developed a concept of the state that recognises the equality of different groups and allows them to share the state on equal terms. Rather than elevating the identity of one group to a national identity, it aimed to create a state identity that encompasses different group identities and provides a shared Swiss identity for all groups and citizens. This may make the Swiss model interesting to states with multi-ethnic societies that are searching for an integrative state concept and identity.

Sharing state and identity: an important issue: Some states are faced with the simple need to accommodate different groups, for instance in order to prevent or stop violent conflict. In states with two or more self-aware ethnic groups, the question of how to share the state is bound to arise. Non-dominant groups may fight to stop discrimination or for better access to power and resources. However, they often demand more than simply *equal treatment as individuals* based on individual rights. In many cases, a non-dominant group demands rights *as a group* and to be recognised as a constituent group of the state. Its members question why the dominant group should be *the*, or the *sole*, constituent group and should have a privileged status within the state. Recognising several different constituent groups can meet these demands. It may, however, call into question the current identity of the state or the nation. In addition, it is doubtful whether a state that is based solely on the recognition of differences can prosper in the long run. To achieve sustainable peace, a common understanding and vision of the state – a shared identity – is necessary. The challenge is to recognise several different identities without jeopardising a common identity for all citizens.

II. The Concepts

The challenge. To whom should the state belong? Should one group be recognised as ‘the nation’ and have a special right to the state and to define state

identity? Should several different groups receive this special recognition, or should the state recognise only *individuals* – irrespective of their ethnicity and culture – as politically important? Without consensus on this fundamental issue there is the constant risk that competing claims over territory and state power will develop, and that the state and state identity will be continually challenged by different ethnic and cultural groups. This box provides an overview of the relevant concepts:

The state: The state can be briefly defined as the combination of the elements of *territory, people* and *sovereignty*. A state presupposes a set of institutions and implies political structures and processes. It claims a monopoly on setting rules and on the legitimate use of force within its territory.

The nation: The nation is a *group* that believes in belonging together and that wants to continue to do so and to decide its own destiny through common political action directed at achieving, maintaining and strengthening statehood.

The nation-state: The nation-state is a specific kind of state which provides a sovereign territory for a particular nation. It can be defined as a state of and for one particular nation. The term nation-state does not so much imply actual congruence between the group of people living in the state and the nation but rather a preference for such congruence. There are two major concepts of the nation-state:

- ▶ **Ethno nation-state:** The feeling of national belonging is based on aspects such as a common history, language, religion, culture and ethnicity. In this case, the nation is an ethnic or cultural group with the ambition to achieve, maintain or strengthen its own nation-state. Members of other groups are considered minorities within the ethno nation-state.
- ▶ **Civic nation-state:** The feeling of national belonging originates from having a common government and participating in common political institutions. In this sense, the nation is defined as a sovereign people. All citizens, irrespective of their ethnicity, are equal members of the nation-state. No sub-national groups are recognised as politically significant.

Limitations of nation-state concepts. These concepts of the nation-state pose problems in accommodating self-aware groups that want to be recognised as constituent. In an ethno nation-state, demands by self-aware groups call into question the primacy of

the dominant nation and the nation-state. In a civic nation-state, to recognise groups would contradict the primacy of the equality of individuals. Recognition has more than symbolic value. A state that recognises different groups as equally constituent will also be open and attentive to different group identities and group interests and accord them political significance, with consequences, for instance, for state symbols, the recognition of official languages, and the setting up of institutions and procedures as well as of policies. Both civic and ethno nation-states have problems in accommodating cultural heterogeneity and the political demands that result.

Multiple identities and loyalty to the state. Despite the limitations of the nation-state, the creation of states without nations, or states with several nations, does not seem to be an ideal solution. A state needs the loyalty of its citizens to ensure the smooth functioning of its institutions. Loyalty can best be ensured if citizens identify with state institutions and with their co-citizens. Such common identification can, for instance, be based on a belief in the legitimacy of democratic procedures or in the shared value of diversity. A shared state identity, and even more a national identity, that encompasses all citizens is an important asset for any state and need not contradict distinct group and individual identities.

III. Sharing State and Identity in Switzerland

A nation despite differences. Swiss experience shows that acknowledging the political significance of groups and accommodating them need not jeopardise national identity. A common identity has developed despite many differences. Swiss nationals have neither a common language nor a common religion. A national identity could not be based on ethnic criteria. Swiss nationals identified, and identify, with their municipalities and cantons of origin which have different political cultures. They have multiple identities based on their place of origin, their mother tongue and their religious beliefs. Some people argue that there is no Swiss nation because of these differences. Others, however, note that there is a Swiss identity encompassing these differences and that there is also the aspiration to live in one state, and to preserve and promote it. This was, for instance, expressed in the preamble to the Constitution of 1874: 'In the Name of Almighty God, the Swiss Confederation, with the intent of strengthening the alliance of the Confederates and of maintaining and furthering the unity, strength and honour of the Swiss nation, has adopted the following

The flags of Switzerland and of Swiss cantons



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constitution'.

Swiss nation-building. How was it possible for Switzerland to develop the concept of a multi-ethnic nation-state within a Europe full of mono-ethnic nation-states? From the beginning of the 19th century, the Swiss political and intellectual elites observed nation-building processes in surrounding countries. All these nation-building processes focused on creating a common language and culture (in Germany and Italy as the national culture, and in France as the state culture). However, the concept of national homogeneity based on linguistic homogeneity did not correspond to Swiss realities and would have endangered the very idea of a single Swiss nation-state. State- and nation-building based on language could have been used to argue for the annexation of parts of Swiss territory to neighbouring countries. Swiss people had and have multiple loyalties and identities (attachment to their municipality and the canton, religious and linguistic identities). The demarcation lines of these identities do not coincide. In other words, cantons are not necessarily monolingual or mono-religious (more on this in *Chapter 3: Sharing territory*). It was in the interests of Switzerland to search for a common identity that was not based on ethnic or cultural or linguistic markers.

Experience of French occupation/liberation supported the nation-building process. Swiss experience under the French protectorate from 1798 to 1815 (see *Chapter 1: Sharing history* above) was particularly important for the formation of the nation. It created a basis for a common political identity for all citizens. For the first time, citizens of the different cantons had the same rights and duties and

participated in common political institutions. At the same time, the curbing of cantonal sovereignty by Napoleon met with resistance and led people to reconfirm cantonal identities. The significance of the newly named Helvetic Republic was threefold: (1) The newly established political institutions offered opportunities for common political activity – the basic condition for the construction of a modern state; (2) this enabled the development of the ‘civic’ or political features of national identity; (3) it also indirectly strengthened the ‘pre-modern’ identity of the Swiss which was based on cantonal and municipal loyalties because it mobilised people to re-establish the old political structures. Thus, though a feeling of national identity had not yet emerged at this point, the Helvetic Republic created the foundations for its development and also for the consolidation of identities at the cantonal level.

The emergence of a Swiss nation: Reaffirmation of difference and unity. The modern Swiss state originated in 1848, a period of romantic nationalism. It was at this period in history that a Swiss nation started to emerge. Swiss nationalists redefined the oath taken by the three mountain cantons in 1291 in which they had pledged to defend each other as the glorious beginning of a national history. This originally defensive union was re-interpreted as reflecting the brave fight to remain different and free, and thus as preserving cantonal distinctness and sovereignty and preventing outside interference. This myth was also used to legitimise the fight against French occupation. The voluntary character of the union and the preservation of diversity became key themes of Swiss national history. The Swiss concept of unity was not based on the voluntary association of individuals but on the voluntary association of cantons. In addition, from 1848 onwards, common political institutions were strengthened thus continuing to provide opportunities for common decision-making.

Promotion of diversity. Diversity was accepted as a value and it became a declared purpose of the Swiss state to maintain and promote this diversity: Article 2 of the Swiss Constitution states this clearly: ‘The Swiss Confederation shall ... promote ... the cultural diversity of our country’. From this notion followed the recognition of the equality of the cantons and the language groups and also, to some extent, of the two main religious groups. State institutions were crafted so as to reflect diversity, especially cantonal diversity. Federalism and participatory democracy, in particular, made it possible to accommodate the different groups and to promote

diversity while at the same time offering an opportunity for the political participation of all citizens. Compromise was recognised as a legitimate outcome of decisions because only compromises could balance the different interests (see *Chapter 4: Sharing rule* and *Chapter 5: Sharing democracy*). Participation in institutions that were appropriate and effective strengthened a common political identity.

Reasons to belong. Any voluntary association will only last as long as those who associate are convinced that staying in is better than opting out. The system had to convince the cantons and the people of Switzerland of the value of unity. In the beginning, the unity of the Swiss people only consisted in their right to political participation in the common institutions. Cantons joined the Swiss Confederation voluntarily because they were convinced that they would be better able to pursue their interests as part of Switzerland than as part of one of the neighbouring countries or as an independent state. Over time, in addition to the rational reasons for remaining in the union, emotional reasons emerged. To some extent these emotional reasons derived from the belief that Swiss institutions and political culture were unique and best equipped to serve the interests of the groups that made up Switzerland. However, other elements also emerged. The Swiss defined their own identity by distinguishing themselves from the neighbouring nations: The French-speaking Protestant Swiss from the Catholic French, the free Italian-speaking Swiss from the (at that time) non-free Italians, the more progressive German-speaking Swiss from the more conservative Germans, and finally the democratic Swiss from their monarchic neighbours.

The Swiss nation: combination of political and cultural identities. The Swiss national identity combines *political aspects* (belief in the political institutions) and *cultural aspects* (cherishing cantonal diversity). It encompasses the pre-existing cantonal identities. Switzerland is thus neither a purely civic nor a purely ethno nation-state but combines elements of both.

The continuing challenge. Switzerland’s major success is that it has managed to create a feeling of national unity which is not contradicted by diversity but rather accepts and builds on it. However, the Swiss system also has its limitations. Switzerland, at least historically, gives more importance to groups and group equality than to individuals and individual equality. In addition, the definition of who is Swiss also defines who is not Swiss. The stronger the feeling of a common Swiss identity,

the more exclusive Switzerland became towards outsiders. While cherishing its original diversity, Switzerland was and is reluctant to accommodate new diversities, for instance immigrant cultures. In general, because political mechanisms are driven by compromise and consensus, with a relatively weak culture of individual rights, some reforms take a long time. Voting rights for women were only introduced at the federal level in 1971. In certain cantons women had to wait even longer. Equal suffrage for men and women was only finally introduced in the last canton by a court decision in 1990.

IV. Sharing Swiss Experience?

Creating multi-ethnic nations. Nations are not natural communities. Feelings of national identity can emerge and can evaporate. Can nation-building processes be influenced, and can new nations be created, which accept pre-existing diversity? Can the Swiss approach - sharing state and identity - offer any useful insights to other countries? At least three elements have helped to create a shared state and identity in Switzerland.

Voluntary association. Switzerland came into existence based on a pragmatic bottom-up process of the voluntary association of cantons. The cantons saw concrete benefits in belonging to the state and there was a sufficient level of trust and tolerance. Although the creation of Switzerland was accompanied by some fears and resistance (see *Chapter 1: Sharing history*), the level of emotionalisation cannot be compared to the situation in many countries that have experienced protracted long-term conflict. An association based on force is likely to have very different dynamics.

Diversity as a value: Switzerland recognised its pre-existing diversity as a value in itself. The creation of common state institutions which reflected and promoted this diversity was a logical step towards shared decision making. Most countries confronted with conflict do not attach the same value to diversity. It is far more common for the dominant group to experience diversity as a destructive, dismantling force, especially when other self-aware groups question the state, its institutions and its rulers. The political accommodation of other groups is usually introduced as a result of necessity and pressure rather than of a belief in the value of diversity. In addition, in their pursuit of political recognition, self-aware groups do not usually adopt diversity as a value but instead aim primarily to improve their own

situation. They may not respect diversity within their group or in relation to other groups, and may simply want to establish new structures of dominance. In contests about dominance, compromise is regarded as partial defeat.

Functioning institutions. Swiss national identity combines cultural and political aspects. An overarching political identity only emerged because there already were accepted and functioning political institutions at all levels. Weak institutions in contested states are ill-equipped to inspire a feeling of identity. It is unlikely that citizens in a state with malfunctioning political institutions will be proud of them or identify with them. If even one important group contests the legitimacy of the state and its institutions, it is unlikely that these institutions will be able to serve as key markers of a shared identity.

Swiss lessons learned: As shown above, the importance of the specific context must not be underestimated. However, some lessons can still be drawn from Swiss experience:

- It is possible to affirm both distinct identities and a common identity. Such multiple loyalties do not necessarily endanger the state. On the contrary, in the case of Switzerland they have helped to improve acceptance of the state. Distinct identities can be based on ethnic or cultural ties; the common identity on shared political institutions and values. Ethnicity and culture as well as civic values can be regarded as important.
- Political institutions can become a unifying element and can be a marker for creating a multi-ethnic nation, provided that they are seen to serve all groups and individuals effectively. Political institutions which manage to accommodate different groups without creating long-term winners and losers can help to foster a shared encompassing identity. In this way, institution-building can become part of state-building and can be a prerequisite for a common inclusive identity.
- In an ideal situation, all groups voluntarily accommodate and respect other groups and interests as well as individuals and individual interests. However, this requires a certain level of trust and tolerance. In the long run diversity must be internalised as a state value because only then will people accept compromise and accommodation as good for the state and the nation.

- People's attitudes towards diversity and what forms the basis for a common identity are more influenced by opportunities and external conditions than by the intrinsic values or the conscious decisions of a specific group or population. Nevertheless, Swiss experience shows that political institutions and the recognition of groups can provide reasons to belong.

V. Key Questions

Gaining a better understanding of national and state identity

- Does the preamble to the constitution say anything about the different groups that make up the state?
 - Is any group specifically denominated as the nation?
 - Are ethnic, linguistic and religious groups mentioned?
 - Whose history is invoked?
 - What significance is given to the individual person/citizen?

- Is the existence of different groups reflected in the national symbols?
 - Which language is used in the national anthem?
 - What does its text say?
 - Is the national flag associated with a specific group?
 - What about other items reflecting state identity, such as the currency or passports?

Towards a shared state and identity

- Are there functioning political institutions that could help to establish a common identity?
 - What kinds of institutions would be acceptable to all groups?
 - Are there institutions that can promote common democratic political action?
 - Are there institutions that can promote democratic political action at lower levels of government?
 - Can institutions balance individual, group and overall interests?

- Are there common values that could help to establish a common identity?
 - Are there positive historical experiences that are shared by all groups?
 - Are there common heroes or enemies, joint victories?
 - Are there encompassing traditions?
 - What is the level of trust and how can it be improved?

Chapter 3: Sharing Territory

I. The Context

Swiss experience of sharing territory. Switzerland has adopted a federal system of state organisation. Its territory is subdivided into cantons and municipalities. Cantons and municipalities are the units of local self-government. They have their own powers and resources as well as directly elected political institutions. The original process of defining Swiss cantonal and municipal boundaries was relatively unproblematic as these had developed over time. Switzerland can therefore contribute only limited experience of defining new internal boundaries. However, the question of how to share territory re-emerged in the context of changing existing boundaries, e.g. with the creation of the Canton of Jura and the merging of some municipalities. In these cases, Switzerland managed to find peaceful solutions to competing claims over territory.

Sharing territory: An important issue. The right to self-government often figures among the demands of conflict parties. Forms of territorial power sharing, such as, for instance, decentralisation and federalism, can be seen as structural answers to such demands. Whenever there are moves to change territorial organisation, the definition of units of self-government and decisions about how to sub-divide or share the territory can become major points of dispute. To avoid the disintegration of the country, options for sharing instead of dividing territory may be required. Many peace negotiations involve a debate about internal territorial boundaries.

II. The Concepts

The challenge. If a decision is taken to provide some form of territorially-based self-government based either on federalism or on decentralisation, the question is bound to arise of how the self-governing units will be defined and which territorially-defined group or people (the population of a unit) will have the right to self-government. The way in which the self-governing units are defined will have an important influence on how political power is distributed within the state, as well as on who has access to resources. This box provides an overview of the different criteria for defining internal boundaries:

Ethnic criteria: Boundaries can be drawn so as to create – as far as possible – territorial entities with ethnically, culturally, religiously or linguistically homogeneous populations. This presupposes that such groups are geographically concentrated. Especially in strongly mixed areas, it may be almost impossible to create anything close to homogeneous entities without ethically unacceptable and internationally condemned exchanges of populations.

Economic criteria: Boundaries can be drawn so as to create units which have sufficient resources and capacities, not only in financial terms but also in terms of well-trained personnel, to provide services effectively and efficiently. Boundaries can also be defined in line with the principles of economies of scale, aiming at an optimal size for both service delivery and homogeneity of interests.

Geographical criteria: Geographical features, as well as the existing infrastructure, can serve as criteria for defining functioning sub-units. Geographical barriers such as high mountain ranges can make communication and common political participation difficult. Watersheds may also create natural boundaries. Rivers can form communication lines. However, new technologies have reduced the importance of geographical criteria.

Mixed forms: There are also mixed forms in which some units are defined in accordance with the settlement patterns of a community, and others are based on different, e.g. geographical, grounds. The choice need not be either – or but could include a mixture of several criteria, establishing both ethnic and other units.

Optimal number and size of units? There are huge variations in the numbers of units in federal and decentralised countries. However, most experts argue that federations with fewer than three units tend to be unstable. Huge variations can also be observed with regard to the size of sub-national units; the ‘optimal size’ is also a matter of dispute. ‘Optimal size’, based solely on criteria such as population, geography, infrastructure and resources, will not necessarily lead to efficient and effective governance. Whenever ethno-political conflicts and marginalisation are replicated at the level of the unit, the efficiency and effectiveness of units can be expected to decrease.

Advantages and disadvantages of ethnically-defined boundaries. If a territorial unit is designed so that one community is in a clear majority, members of this community are likely to be successful in achieving political office within the unit. They will

probably also have an incentive to defend their community's specific interests. Ethnically-defined unit boundaries can therefore help to guarantee that the interests of different communities are taken into account. However, if there are also other groups living within the unit, this can lead to continuous confrontation between different communities and may perpetuate conflict. Any state that encourages political representation and action solely along ethno-cultural lines is at risk. Nevertheless, in cases of deep fragmentation or strong ethno-cultural identification, demands for strong rights for ethno-cultural groups are to be expected and representation along ethnic lines may be necessary.

Minorities within minorities. Formerly marginalised groups often try to gain a majority within a territorial unit so that they can decide their own destiny, at least within their unit. This can frighten other ethnic groups within the unit who fear becoming a minority and being dominated by the new majority. Competing claims over territory will emerge whenever an area is ethnically mixed. It is necessary to introduce mechanisms to reassure new minorities that they will not wake up one day within a new structure of dominance and marginalisation, and that their rights and interests will be protected within the self-governing unit.

Possible mechanisms for protecting new minorities. Possible examples include: (1) power sharing in institutions at the sub-national level; (2) minority sensitive policies, for instance, in the areas of language, religion, and education, and the avoidance of divisive symbols; (3) introducing a third level of local government so that locally-concentrated minorities can have the right to self-rule within the area/villages they inhabit; and (4) a strong Charter of Rights at the central level to protect the rights of individuals at all levels of government.

A matter of process: The effectiveness of future governance is closely linked to the general acceptance of newly-created political units and institutions. Democratic procedures, e.g. referendums, can be used to gain approval for the new territorial organisation. Some countries use democratic procedures not only to gain approval for proposed territorial organisation but also for readjusting boundaries. Such procedures increase the legitimacy of territorial changes. In addition, providing democratic options for readjustment may make it easier to get agreement on the boundaries of sub-national units in the first place; it reassures citizens that, if there is strong discontent, the boundaries can be changed. However, in ethni-

cally-mixed territories, democratic procedures can lead to ever smaller units. To prevent this, democratic procedures can be complemented by additional conditions, e.g. a minimum population size, so as to prevent damaging fragmentation. Some countries require – in addition to or instead of direct democratic procedures – special majorities for laws that include the creation of local government units or changes in boundaries.

III. Sharing Territory in Switzerland

Ethnic or cultural federalism in Switzerland? There is no straightforward answer to whether Swiss federalism is based on cultural or on other criteria. To some extent it depends on the viewpoint of the observer, and different times have required different approaches. There is no notion of different ethnicities in Switzerland. The different Swiss communities share many markers of identity with the ethnic groups in neighbouring countries, but Swiss communities still do not consider themselves part of these ethnic groups. In the past, especially during the first half of the 20th century, Swiss communities feared that if they invoked a common ethnicity with communities in neighbouring countries, those countries would want to annex parts of Swiss territory (see *Chapter 2 on Sharing the state and identity*). The notion of culture, though it is a vague and little-defined concept, is perhaps the closest to ethnicity in the Swiss context. However, when discussing different cultures in Switzerland some people may think of cantonal cultures, others of culture as defined by language or religion, and some even of the Swiss political culture.

Political entities – cantons – as the basis of the Swiss federation. The cantons form the basis of the Swiss federation. It was even pointed out in the Constitution of 1874 that «the Swiss people and the peoples of the cantons» form the federation. Cantonal identities are very pronounced and even today many Swiss citizens identify first with their fellow cantonal citizens and only then with the wider community of Swiss citizens. Before the foundation of the federation, the cantons were independent sovereign states (with some exceptions and limitations), in other words they were political entities with their own identity. In the past there have been a number of conflicts about boundaries, e.g. between the Cantons of Zurich and Schwyz as well as the Cantons of Bern and Valais. However, at the time of the creation of the federal state in 1848, the existing cantons became federal units without much discussion.

Switzerland's territorial organisation has thus developed over time.

Multi-lingual and multi-religious cantons. Even today, there is, for instance, no 'home canton' for the German-speaking community or for the Catholics. In addition, not all cantons are mono-lingual or mono-religious. For instance, three cantons are bilingual and one is trilingual; several cantons contain religious diversity, e.g. Aargau, Graubünden, St. Gallen. Nevertheless, there are no strong demands to radically change the federal set-up in order to create greater homogeneity.

Additional mechanisms to accommodate diversity. The stability of cantonal boundaries is probably mainly due to the fact that there are additional mechanisms which can accommodate existing diversities. At the federal level, and to some extent in cantons with linguistically and religiously heterogeneous populations, religious and linguistic identities are accommodated through a policy of representation and recognition. (For more information see *Chapter 6 on Sharing language and religion.*) This has helped to reassure the different communities that their interests are being taken into account. It has enabled interests other than those of the cantons to be supported and accommodated. This shows that there can be ways to safeguard interests even if the community concerned does not have 'its own' federal unit. The municipal level plays a further important role in accommodating linguistic and religious identities. The Swiss federal system has three levels of government, with the municipal level as the third and lowest level. A group that does not form a majority in the canton may form a majority in the municipality and may therefore be able to achieve self-determination through self-rule at the local level.

Changes in territorial organisation. For the sake of peace between the cantons, the Swiss Constitution obliges the federal authorities to guarantee their existence and territory (Article 53 of the Swiss Constitution). The municipalities rely on indirect constitutional protection. Boundary changes normally need the approval of the populations concerned. Though most boundaries have been largely undisputed, there have been a few changes to cantonal boundaries. Of special interest here are the more important changes made in territorial organisation that were made before and after the formation of the federation. Switzerland is composed of 23 cantons. Three of these are split into half cantons which have nearly the same rights as other cantons. The 23rd canton was only created in 1978. The splitting of cantons

into half-cantons and the creation of the new canton demonstrate how at different times, different factors have triggered demands for territorial change.

Changes in territorial organisation



Reasons for territorial reorganisation. The first division of a canton into half cantons occurred in the Middle Ages. The reason was mainly geographical: a big forest cut Canton Unterwalden in two and made communication difficult. The second division took place in 1597. This main motivation in this case was religious differences: Canton Appenzell was divided into a Catholic and a Protestant part. In the third case, in 1833, Canton Basel was divided. Here the main motivation was an imbalance of power: rural Basel felt dominated by the city of Basel. Finally, a new canton, Canton Jura, was created in 1978. In this case, a part of Canton Bern that suffered from triple minority status (Catholic in a mainly Protestant canton, French-speaking in a mainly German-speaking canton, and also economically disadvantaged) opted to leave Canton Bern and create a new canton. Swiss experience shows that reasons for taking political action can vary depending on the specific context. In Switzerland, resource distribution has never been a decisive factor in boundary changes, probably because of the limited importance of exploitable natural resources.

Creating Canton Jura. The creation of Canton Jura was the most important territorial reorganisation of recent times. It is of interest because democratic procedures were successfully applied to address demands for the creation of a new canton. At the Congress of Vienna in 1815, Canton Bern received the Jura as an indemnity for the loss of formerly subject areas. After World War II a strong secessionist movement started in the Jura region. At that time

the Swiss Constitution had no procedure for internal secession. A procedure was then established through constitutional politics in accordance with the value of diversity and with due regard to federalism and democracy.

Democratic procedures for creating a new canton. An amendment to the constitution of Canton Bern introduced the procedure for establishing the independent Canton of Jura. In 1970, Canton Bern changed its cantonal constitution to enable the population of the Jura to have the right to decide by formal Popular Vote which canton they wanted to belong to. This amendment of Canton Bern's constitution was accepted by a ratio of six to one. After another attempt to introduce special autonomy for the Jura failed, Canton Bern resorted to the procedure it had just established in the constitution and conducted a series of formal Popular Votes: the first was in 1974 when the people in the region of Jura were asked whether they wanted to form a new canton. 52% voted yes. In three districts a large majority voted for the creation of a new canton. However, in the three southern districts—whose population is Protestant, as is that of Canton Bern—the majority was in favour of remaining with Canton Bern. In a second formal Popular Vote, the three southern districts were able to vote separately and voted with a clear majority to remain with Canton Bern. Later, one of the three decided to join Canton Basel Landschaft. In a third formal Popular Vote, the municipalities on the border between those districts in favour of secession and those that preferred to remain with Bern were able to vote. Ten municipalities decided to change districts: two so as to remain with Canton Bern and eight so as to join the new canton of Jura. In a final step, the people and the cantons voted in favour of revising the Swiss Constitution to officially include Canton Jura as Switzerland's 23rd canton.

Results of democratic procedures. This series of formal Popular Votes demonstrated respect for the wishes of even the small municipalities and ensured that their wishes were taken into account. The parts of the Jura that were French-speaking and Catholic seceded from Canton Bern, while the French-speaking Protestants in the Jura remained in the German-speaking and Protestant Canton Bern. Though many observers had expected the major division to be linguistic, it became clear that only the double minority status of both linguistic and religious difference would trigger separation. Despite this 'success story', the Jura question is not completely resolved. Since the formation of the new canton there have been several initiatives to re-adjust the boundaries

and even to re-unite the whole Jura region. There are likely to be more territorial changes in the future.

Constitutional provisions for the future. A provision enabling this series of formal Popular Votes is now part of the Swiss Constitution (Article 53 of the Swiss Constitution) as a general procedure for changing the number of cantons. Switzerland is therefore one of the few countries that regulates the procedure for internal secession. In addition, a slightly less complicated system has been introduced for smaller territorial changes between cantons. Today therefore, the Swiss Constitution contains procedures for addressing new demands related to the Jura question.

Would fewer cantons be better? Globalisation and the process of European integration have led to discussions on the optimal size of cantons. Because political boundaries and socio-economic boundaries no longer coincide (e.g. in metropolitan areas and agglomerations), cantons are forced to cooperate closely with each other as well as with other entities. It seems only a small step from close cooperation to merging. Cantonal identities are, however, still important to many people. In the only instance so far of a referendum on merging cantons, the proposal was clearly turned down. The political debate on the merger was marked by very strong emotions.

Merger of municipalities. Switzerland has just under 3,000 municipalities, most of which have fewer than 1,000 inhabitants. These small municipalities face increasing problems in filling political positions, since these positions are normally largely voluntary. In addition, the small size of the municipalities limits their capacity to deliver services. Several cantons have introduced legislation to enable municipalities to merge. In almost all cases the procedures require a formal Popular Vote within the municipalities concerned. In a few cases the enforced merging of municipalities is allowed.

Swiss territorial organisation: stable but flexible. Constitutional guarantees protect the territory of the cantons and, indirectly, of the municipalities. Nevertheless, the system retains a certain flexibility due to the establishment of democratic procedures that enable changes. In the past, there have been many different reasons why people wanted to change boundaries. At present, internationalisation and economic arguments dominate. In recent years new forms of functional cooperation have been introduced in response to internationalisation. These have reduced political demands to create bigger cantons.

IV. Sharing Swiss Experience?

Creating territorial units. In cases of long-term and protracted conflict, the definition of internal boundaries is often highly contentious. Can Swiss experience provide any insights for countries that face this challenge? At least four elements have facilitated the carving out of cantons and municipalities in Switzerland.

Federation by aggregation. Because the Swiss federation was created by the coming together of existing cantons, Switzerland did not have to decide on its territorial organisation from scratch. The cantons already existed and their boundaries were in general well accepted. In many recent multi-ethnic conflicts, however, both the existing internal boundaries and the criteria for establishing new internal boundaries are contested.

Multiple divisions. Switzerland did not create one canton for, for example, each linguistic or religious group. This was possible partly because the boundaries of the cantons were already set and accepted but also because the linguistic and religious dividing lines hardly ever coincided. The fact that the dividing lines between different identity markers cut across each other prevented strong political polarisation and led to constantly changing coalitions between the cantons and between the various linguistic, religious and social groups. Many countries in conflict are faced with much clearer divisions because groups distinguish themselves from others by several identity markers all of which coincide. This leads to polarisation and deepening divisions.

No history of marginalisation. In general, none of the different communities in Switzerland, including the religious and linguistic communities, have experienced long periods of severe marginalisation. However, in many countries with protracted conflicts, a history of pervasive marginalisation is a reality. Marginalised groups are more likely to demand self-rule within their own territorial unit because this seems the best way to end their marginalisation. If there is mistrust towards the state, policies that aim to ensure general recognition and representation may not decrease demands for self-governing units.

Democratic boundaries. The use of democratic procedures in creating Canton Jura helped to avoid an escalation of confrontation. In most conflict situations, especially if federalism or decentralisation is introduced during the peace process, the boundaries of territorial units are decided as part of the

negotiations. Negotiated boundaries tend to lack democratic legitimacy and popular support. If boundaries that have been negotiated during a peace process or the implementation of a peace agreement are later rejected in a referendum, this can lead to renewed violence. In violent conflict situations, direct democratic procedures can also be dangerous because they can arouse very strong emotions (see *Chapter 5: Sharing democracy*).

Swiss lessons learned: As shown above, the importance of the specific context must not be underestimated. However some lessons can still be drawn from Swiss experience:

- Democratic procedures can increase the legitimacy of boundaries. In addition, the example of Canton Jura shows that it may be easier first to reach political consensus on a procedure for defining boundaries and then to agree on the exact border of a new sub-national unit based on that procedure.
- A system that offers flexible criteria for establishing boundaries can be an asset. Swiss experience demonstrates that it may be necessary to change internal boundaries and that the reasons for changing them can alter over time.
- Forms other than territorial forms of power sharing can help to reduce the importance of boundaries. Swiss experience shows that the recognition and representation of linguistic and religious groups have prevented demands by individual groups for ‘their own’ canton. The mechanisms of recognition and representation include, for example, recognising several national languages in the constitution and ensuring representation in the Federal Council and the public administration.
- Although boundary changes in Switzerland were conducted peacefully, they nevertheless provoked strong emotional reactions. This experience demonstrates that boundary changes have a high potential for conflict, especially in a violent context.

V. Key Questions

Gaining better understanding of internal boundaries

- Are there internal boundaries?
 - Are the internal boundaries contested?
 - Are there criteria that were used to draw internal boundaries?
 - Have these criteria changed over time?
- What kinds of procedures have been used to determine internal boundaries?
 - Have boundaries been negotiated between the elites?
 - Has there been public participation in determining boundaries?
 - Has there been a referendum on boundaries?

Towards new internal boundaries

- What could the criteria be for establishing new boundaries?
 - What kinds of criteria are brought forward in the political debate: ethnic, economic, geographic, others?
 - Is there a consensus on the criteria?
 - How useful are the proposed criteria?
- What could the procedures be for establishing new boundaries?
 - Will it be necessary to establish boundaries during negotiations?
 - Will there be public participation or a popular referendum, and who will vote?
 - Are procedures in place to enable the readjustment of boundaries in the future?
- Do the proposed criteria or processes lead to minorities within minorities?
 - What mechanisms could protect these minorities?
 - Is there a Charter of Rights and are there minority-sensitive policies and institutions?
 - Could local autonomy help to protect and accommodate these minorities?

Chapter 4: Sharing Rule

I. The Context

Swiss experience of sharing rule. Switzerland has a long history of sharing rule between different levels and within different branches of government. The cantons and the municipalities enjoy a high degree of self-rule (vertical power sharing). At the same time, the cantons are involved in central decision-making, primarily through their representation in the second chamber of parliament, the Council of States (horizontal power sharing). There are also additional horizontal power sharing mechanisms such as proportional representation in the first chamber of parliament (the National Council) and a grand coalition government, as well as special criteria for the composition of the administration and judiciary. These mechanisms have played a crucial role in sustaining multilingual and multicultural Switzerland.

Sharing rule: An important issue. Parties in a conflict tend to aim for power. The concentration of power in the hands of one particular group can be one of the root causes of conflict. In such cases, power sharing is a compromise that may lead the society out of conflict. Demands for power sharing can take the form of, for instance, demands for control over certain territories, a share of power in central institutions, or access to resources. In addition, the political process in post-conflict situations is often characterised by anxieties and mistrust. These may be countered by removing competitive features and establishing a state structure and a political system that include all the different groups in the society.

II. The Concepts

The challenge. Whenever an agreement on power sharing mechanisms is reached during peace negotiations, the challenge is to choose a power sharing option that not only accommodates the conflict parties but will also create a viable balance of power. In conflict-bound fragmented societies, a majority government tends to cater primarily to one group. Minorities risk being continuously outvoted in parliament. The public administration tends to be politicised and to reflect the interests of the dominant group both in its internal structure (e.g. recruitment policy) and in its policies (e.g. language policy). How can a state be structured so as to create a sustainable balance of power and to address both general and specific interests? These boxes provide an overview

of the different elements of vertical and horizontal power sharing:

Vertical power sharing

Self-rule: At the regional and local levels, self-rule should enable different groups or geographical areas to achieve a certain amount of internal self-determination. The distribution of powers and responsibilities between different levels of government is at the core of self-rule and can be symmetric or asymmetric.

Possible principles for establishing the distribution of powers include:

- ▶ **Identity principle:** Responsibilities that are of special importance to the identity of a group (e.g. language, education, justice and police or religion) are left to lower levels of government.
- ▶ **Economic principle:** Responsibilities are distributed to the level of government that can manage them most efficiently in accordance with economies of scale.
- ▶ **Subsidiarity principle:** Higher levels of government only take on those responsibilities that cannot be managed by lower levels of government.

All these principles remain vague. The distribution of powers is established through a political process and thus, in the end, is based on political decisions. Responsibilities must be paired with the necessary financial resources (see *Chapter 8: Sharing wealth and income*).

In order to limit the potential for conflict, it is important to define clearly which level of government is in charge of which powers:

- ▶ **Exclusive powers** are assigned exclusively to one level of government.
- ▶ **Concurrent powers** can be used by both the central and the unit levels of government. There must be clear rules about which level will take precedence if both want to make use of a power. If powers are distributed along functional lines, the powers of the central level are normally limited to setting principles and standards (framework legislation): the concretisation and implementation of laws is delegated to the sub-national levels.
- ▶ The allocation of **residual power** determines which level of government is in charge whenever powers have not been explicitly assigned.

In every multi-layered system, **cooperation** between different levels (vertical cooperation) and units (horizontal cooperation) of government is needed. In addition, there should be judicial or other mechanisms for resolving disputes (e.g. constitutional or administrative court, or institutions for arbitration).

Horizontal power sharing

The aim of horizontal power sharing is that the centre should be aware of and listen to the concerns and interests of the different communities. Shared rule can include several elements:

- ▶ **Grand coalition:** In a grand coalition, the executive is composed of a coalition of several political parties so that it represents the views of a broad spectre of the public.
- ▶ **Mutual or minority veto:** A mutual or minority veto guarantees that different groups cannot be continuously outvoted by the majority, e.g. in parliament. The veto option may be limited to crucial decisions such as constitutional amendments, or to decisions concerning sub-national units such as language or education policies.
- ▶ **Proportionality:** The principle of proportionality can be applied to various state institutions, e.g. the first chamber of parliament, the administration, the judiciary.

In federal systems, the second chamber of parliament is the main institution that enables a mutual veto. The main function of the second chamber is to represent the federal units. Its influence is primarily determined by four elements:

- ▶ **Composition of a second chamber:** In some federations, each federal unit is represented by the same number of representatives. In others, representation is weighted according to population. The composition of the second chamber can also be based on special representation of particular groups instead of, or in addition to, territorial units.
- ▶ **Method of selection:** Representatives can, for instance, be elected in sub-national elections or by a sub-national parliament, appointed by the sub-national or central government, or selected in mixed ways.
- ▶ **Policy scope:** As a rule, either the policy scope of the second chamber of parliament is identical with that of the first chamber, or the first chamber has more powers. It is important that the second chamber must at least approve those decisions that are of special concern for the sub-units.
- ▶ **Interaction between chambers:** Especially when both chambers have equal powers (i.e. both have to approve legislation) there must be special procedures to deal with cases of disagreement, e.g. referral back to the other chamber, or special joint drafting commissions.

Combining vertical and horizontal power sharing. The focus is often on either vertical power sharing or horizontal power sharing. However in fragmented societies, cohesion cannot be re-established simply by providing self-rule for different groups. Self-rule enables separate decision-making. In most cases, elements of horizontal power sharing are also

necessary to enable shared decision-making. Providing both vertical and horizontal power sharing can create a balancing effect.

Benefits and risks of power sharing. Power sharing between entities and groups is intended to improve internal self-determination and shared decision-making, with the main aim of keeping the country together. Power sharing should enable the peaceful management of political conflicts by leaving certain decisions to lower levels and by channelling different interests into the political process at the centre. However, it is important not to create an institutional set-up that might lead to a complete blocking of the political process, continuous confrontations between different ethnic groups at the centre, or the marginalisation of new groups. If all the institutions at the central level are composed on the basis of specific group identities there is a risk that fragmentation will deepen and no genuine shared decision-making will be possible.

III. Sharing Rule in Switzerland

Federal Switzerland. In the Swiss system, power is shared in accordance with the federal principle. The decision to introduce federalism in 1848 was strongly influenced by the power relationships at that time. Federalism allowed for joint decision-making—as demanded by progressive groups—and maintained far-reaching self-rule for the cantons—as demanded by conservative groups (see *Chapter 1: Sharing history*). Any stronger centralisation would have met with resistance.

Vertical power sharing. Switzerland grew from bottom up with the cantons as the founding units of the country. The cantons enjoy strong autonomy which has enabled them to maintain their own political and cultural identities. All powers emanate from the cantons which are also vested with residual power (Article 3 of the Swiss Constitution) and can delegate powers to the municipalities. Every transfer of powers from the cantons to the federal level requires a constitutional amendment and thus a formal Popular Vote. The federal powers are listed in Articles 54-125 of the Swiss Constitution. Even within the sphere of the federal powers, the cantons have a certain level of discretion because they implement the federal laws.

During the early years of the Swiss federation, the list of powers held by the federal level was relatively short. However, over the decades more and more

powers have become centralised. In addition, more and more powers have become intertwined, essentially because of the co-operative structure of the federal system (e.g. in relation to the infrastructure and social and fiscal policies). A recent reform of the federal system has tried to disentangle this intertwining of different powers because the necessary coordination measures have become too costly and non-transparent (see *Chapter 8: Sharing wealth and income*).

Right to self-organisation. The cantons' right to self-organisation is the expression of their quasi-state character and is their most important power. The Swiss Constitution contains only a few restrictions, e.g. the cantons must adopt a cantonal constitution (Article 51). The adoption and revision of cantonal constitutions need the approval of the federal level; this is given as long as the cantonal constitution does not violate federal law. In addition, the Swiss Constitution sets a limited number of minimum standards for cantonal constitutions, e.g. that the cantons permit a constitutional initiatives (Article 51). Apart from these few restrictions, the cantons are free to define their own organisation and systems. They can also decide the organisational structure of their

municipalities. Some cantons leave this right to the municipalities; others prescribe an organisational structure or provide options. The municipalities' right to organise themselves therefore varies depending on the legislation within their canton.

Distribution of powers. In policy areas that either directly concern national sovereignty (e.g. army, monetary policy, external relations) or require special coordination (e.g. social security, environment, energy, infrastructure) the federal level has exclusive powers or can enact framework legislation. The cantons retain, in particular, those powers that are important for their identity (e.g. culture, education, languages, religion and the state, police) (see *Chapter 6: Sharing language and religion*). In the field of external affairs, the cantons have the right to conclude international treaties provided they have informed the federation, and can deal directly with lower-ranking foreign authorities in matters to do with their powers. All three levels - federal, cantonal and municipal - have the right to raise taxes and thus a certain level of financial independence (see *Chapter 8: Sharing wealth and income*). The table below gives a simplified overview of the distribution of powers in Switzerland. It does not distinguish between exclusive and concurrent powers.

Table: Simplified distribution of powers in the Swiss federation

Federal powers <i>Based on the Swiss Constitution</i>	Cantonal powers <i>Residual power</i>	Municipal powers <i>Depend on cantonal legislation</i>
Organisation of Federal Authorities Foreign Affairs Army and Civil Protection National Roads (highways) Nuclear Energy Postal Services and Telecommunication Monetary Policy Social Security (pensions, invalids) Civil Law, Criminal Law Civil and Criminal Procedure Customs Education (technical universities) Energy policy Principles of Zoning Protection of the Environment Citizenship Federal Taxes	Organisation of Cantonal Authorities (own constitution, own anthem, own flag) Cross-Border Cooperation Police Relations between Religion and State Culture Public Health Cantonal Roads Forests; Water, Natural Resources Education (secondary schools and universities) Protection of the Environment Protection of Nature and Heritage Citizenship Cantonal Taxes	Education (kindergarten and primary schools) Waste Management Municipal Roads Local Infrastructure Local Police Zoning Citizenship Municipal Taxes

Protecting distribution of powers. The distribution of powers is enshrined in the Swiss Constitution. This in itself provides protection, especially because every change in the distribution of powers requires a referendum. However, Switzerland does not have a fully-fledged constitutional review. For instance, the Federal Court must apply federal laws even if they are in violation of the constitution (e.g. of the distribution of powers). In other words, the Federal Parliament could make laws affecting cantonal powers and the Federal Court would not be able to intervene. Only if *cantons* violate the distribution of powers can the Federal Court interfere. This means that the Federal Court can prevent cantons infringing on the powers of the federal level, but not the federal level infringing on the powers of the cantons (see *Chapter 7: Sharing justice*). The fact that cantonal powers have not been eroded is mainly due to the restraint of political actors at the federal level.

Horizontal power sharing. The Swiss federal system provides several mechanisms for horizontal power sharing that enable the interests of different cantons, as well as of language and other groups, to be included in central decision-making. The aim is to balance general and group interests and to institutionalise compromise-driven decision-making. Noteworthy are the Federal Council as a grand coalition government, the Council of State as the second chamber of parliament, and the principle of proportionality in the federal administration. These three elements are examined in more detail below. (For more information on the National Council and the Federal Court, see *Chapter 5: Sharing democracy* and *Chapter 7: Sharing justice*.)

Federal Council. The executive in Switzerland is a collegiate body composed of seven members (Ministers or Federal Councillors), who – under the constitution (Article 175 of the Swiss Constitution) – must come from different language communities as well as different regions of the country. Although German speakers comprise 70% of the population, there have never been more than five Federal Councillors from the German-speaking community and usually only four. Furthermore, since 1959 the four biggest parties have been represented in the Federal Council. This political representation is not constitutionally enshrined but is the result of an informal arrangement between the parties. Until 1959 the Federal Council was dominated by the conservative parties. The rationale for the grand coalition was and is that all important political forces should be part of the Federal Council in order to avoid political actors resorting to direct democratic instruments in opposition

to the executive (see *Chapter 5: Sharing democracy*). The inclusion of the different language groups, regions and political parties is intended to ensure that as many people as possible feel represented by the executive. The seven Federal Councillors are elected individually by the parliament. However, they are required to work together in a collegial manner. The Federal Council decides as one body, as far as possible based on consensus, and all the Federal Councillors must defend the decisions of the collegiate (even if they disagree). The members are elected as equals, though every year one of them is nominated President, mainly for ceremonial purposes.

Council of States. The cantons are represented in the second chamber, the Council of States, to which each of the 26 cantons, irrespective of its size, elects two members in direct elections (the six half cantons elect only one member each) making a total of 46 members. This leads to a strong over-representation of the small cantons in the Swiss system: one citizen in Canton Uri (one of the smallest cantons) outvotes 33 citizens in Canton Zurich (the biggest canton). Though the members of the Council of States are elected by the cantons, the cantons are not allowed to instruct them how to vote. Both chambers of parliament – the National Council (200 members, based on population - see *Chapter 5: Sharing democracy*), and the Council of States – have the same rights regarding the initiation, adoption or rejection of legislation: as a general rule, parliamentary decisions require a majority in both chambers. The two chambers take turns to begin discussing draft legislation. Once their deliberations are concluded, they pass the law to the other chamber of parliament. If this chamber makes amendments to the legislative proposal it refers the draft back to the first chamber for a second round of deliberations. If no agreement on the text can be reached after two rounds, the legislation is referred to a joint committee. If again no agreement can be reached, the proposal is taken off the table.

Other channels for including cantons in central decision making. In addition to the second chamber, the Swiss cantons have other ways to influence decision-making at the federal level. Firstly, they have influence through the mechanism of direct democracy. Whenever a mandatory referendum is required, as for instance for a constitutional amendment, it must have the approval both of a majority of citizens and of a majority of the cantons to pass (see *Chapter 5: Sharing democracy*). Secondly, the cantons have the right to introduce proposals in the Federal Parliament, and eight cantons together can initiate a referendum against a federal law. Thirdly, the cantons

participate actively in the process of consultation on legislative proposals even before a draft enters the Federal Parliament. Last but not least, the cantons have a certain amount of discretion in implementing federal legislation.

Proportionality of language groups in federal administration. The proportional representation of language groups is applied not only in the Federal Council but also in the selection of candidates for the federal public administration. Article 20 of the Swiss law on languages and Article 4 of the law on federal personnel require that the federal administration promote the language competencies of its staff and introduce measures to ensure the representation of all language communities both qualitatively and quantitatively. The representation of all language groups in the federal administration is still an important issue for the smaller language communities. The principle of inclusion of all language groups is also adhered to by most country-wide associations and organisations, e.g. general secretariats of political parties, even though it is not prescribed by law.

Cooperation. There are several policy areas in Switzerland in which the federation and the cantons have concurrent powers. Concurrent powers always require coordination. Switzerland is a cooperative federal system rather than a dual federal system. Federal, cantonal and municipal governments interact cooperatively and jointly to solve common problems and the federal level relies mainly on the cantonal administration to carry out its policies. Horizontal and vertical cooperation operate as follows:

Horizontal cooperation. The cantons have the right, and are encouraged to, cooperate (see Article 48 of the Swiss Constitution). The cantons realised early on that cooperation could prevent centralisation. Today, there are more than 700 intercantonal treaties in different policy fields. Most of these are between only two cantons. They concern mainly finances and taxes, education, police, infrastructure and health. Other elements of horizontal cooperation are the Conference of the Cantons and, for specific policy areas (e.g. education, police, health, finances), different Conferences of Ministers of the cantons. With the creation of the Conference of the Cantons in 1993, something like a new supra-cantonal level was introduced. Its aims include the development of common cantonal positions vis à vis the federal level. The Conferences of the Ministers of the cantons also coordinate their policies to some extent in

order to hinder centralisation by the federal level. A reform of the distribution of powers and of fiscal equalisation in Switzerland, whose implementation started in 2008, created new forms of horizontal cooperation (see *Chapter 8: Sharing wealth and income*). In nine areas (institutions for the disabled, penitentiaries, urban public transportation, sewage purification plants, waste disposal plants, universities, professional high schools, specialised medical care and hospitals, and cultural institutions of intercantonal importance) cantons that profit from services provided by other cantons must pay compensation. If the Federal Parliament receives a request from a majority of the cantons, it can declare a specific intercantonal treaty binding on all the cantons.

Vertical cooperation. Vertical cooperation concerns the cooperation of the municipalities with the cantons, of the cantons with the federal level, and of all the levels together. One example of cooperation between all three levels is the new Tripartite Conference on Agglomerations. An important area of vertical cooperation between the cantons and the federal level is foreign relations. Under Article 55 of the Swiss Constitution, the federation must inform and consult the cantons when preparing decisions relating to foreign policy which concern their powers and essential interests. In certain cases the federation must involve the cantons in international negotiations. In addition to these institutionalised forms of cooperation, there is strong informal cooperation between public administrations as well as between different organisations.

Lack of opposition? The whole arrangement of Swiss political institutions and political processes is directed towards inclusiveness and consensus-oriented decision-making. In particular because the Federal Council is a grand coalition government, the Swiss system lacks an opposition. All the important political forces are included in the government. Nearly all the members of parliament belong to parties that are in government. Parliament tends to re-elect Federal Councillors as long as they stand for re-election. (They normally resign after two or three terms.) Because parliament as a whole elects the Federal Council, every candidate needs the votes of members of other parties; this means that moderate party representatives have the best chances of election. Nearly all competitive features have therefore been removed from the Swiss political system. As a result, the political accountability of Swiss politicians is relatively low. In some ways the instruments of direct democracy have become the most important instruments of opposition in Switzerland and

are essential features of the Swiss system. They enable the people (and interest groups) to influence the political agenda (see *Chapter 5: Sharing democracy*).

IV. Sharing Swiss Experience?

Creating viable power sharing. Switzerland has a unique system of power sharing that has developed over centuries and contains many informal rules. It has managed to balance horizontal and vertical power sharing and has thus been able to establish inclusive compromise-driven political processes that protect national as well as group-specific interests. Can Swiss experience of sharing power provide any lessons for other countries with multi-ethnic societies? At least four factors have positively influenced the setting up of Swiss power sharing mechanisms.

Willingness of elites. All the major elites in Switzerland consider power sharing just, useful and necessary. Disputes may arise about how to achieve the best balance between horizontal and vertical power sharing, and between national and group interests. However, there have hardly ever been disputes about whether there should be power sharing. Compromise is considered a good outcome. Informal rules, for instance concerning the composition of the Federal Council or mechanisms for cooperation, have developed over time and complement formal rules.

In many countries that have experienced long-term violent conflict, power sharing is introduced as a necessity in the face of a power deadlock. The major aim of the parties to a conflict tends to be to maximise their power; power sharing is seen as a restriction. Compromises are considered to be partial defeats or second-best solutions. Where there is a lack of goodwill among the political elites, power sharing mechanisms function differently. For instance, powers of veto may be used as part of power games and not as alarm bells when important interests are at stake. This leads to continuous deadlocks and new confrontations. Identical mechanisms for power sharing will work differently with different informal rules or if there is a lack of cooperation.

Federalism by aggregation. The process of federalisation in Switzerland was a process of centralisation. The step-by-step transfer of cantonal powers to the federal level occurred with the consent of the people and the cantons. The consequences of this centralisation have been to some extent softened by horizontal power sharing and new forms of cooperation.

These have made it easier to agree on the distribution of powers. Because the mechanisms of self-rule existed before the creation of the federation, and the cantons already had the necessary institutions and resources to exercise their powers, special attention could be paid to horizontal forms of power sharing and forms of cooperation. These forms of shared or cooperative governance have been crucial in developing a shared vision and in keeping Switzerland together. Most countries that introduce power sharing following long-term and violent conflict are confronted with a process of de-aggregation or – to put it more dramatically – of dividing the country into different territorial units. In many of these cases, political negotiations focus primarily on vertical power sharing. In order to implement vertical power sharing, institutions and capacities must be built at the sub-national level. Horizontal power sharing and cooperation are often neglected, and thus the opportunity to create mechanisms which might keep the country united is missed.

Changing alliances. Swiss citizens have multiple identities based, for example, on religion, language and canton of origin, and it is often difficult to determine which is the most important. The different formal and non-formal mechanisms of power sharing provide a space for these different identities – instead of focussing on only one element of identity – and can therefore also encourage changing alliances, depending on the topic and the interests at stake. In contrast, in cases of long-term violent conflict, attention tends to be focussed on the most divisive marker of identity, for instance ethnicity. Power sharing is usually set up in line with these divisions: other identity markers and the root causes of the conflict (e.g. economic inequality, migration) are neglected. Paying attention to other markers of identity can provoke political resistance and may seem artificial. However, one-dimensional forms of power sharing tend to encourage static coalitions and can further entrench divisions between groups.

Dynamics of designing and building institutions: Decisions about the design of Swiss political institutions were strongly influenced by their context, including the power relationships at the time. These decisions had some unintended consequences. For instance, proportional representation in parliament and the adoption of direct democratic instruments have led to the informal rules on the composition of the federal executive mentioned above. Whenever the structure of an institution is changed, the changes will be influenced by current power relationships; unintended consequences must be

expected. Furthermore, the building of institutions in Switzerland and the emergence of power sharing mechanisms took time. Every decision about institutions triggered a series of small adjustments to the whole system, leading in the end to the current system of power sharing. It is unrealistic to assume that comparable processes could take place in other countries within a few years.

Swiss lessons learned: As shown above, the importance of the specific context must not be underestimated. However some lessons can still be drawn from Swiss experience:

- Switzerland aimed to create a balance between vertical and horizontal power sharing. Swiss experience shows that this combination can support both internal self-determination and shared decision-making. In Switzerland, both vertical and horizontal power sharing have been needed to create a functioning multicultural system that promotes both diversity and unity. The design of Swiss institutions has led to constant negotiations between all the political stakeholders.
- The second chamber of parliament is intended to represent the cantons. The mechanisms of a grand coalition (the Federal Council) as well as the system of proportionality enable the accommodation of other groups and the recognition of multiple identities and changing alliances. Swiss experience seems to suggest that power sharing does not lead to an entrenchment of fragmentation provided changing alliances are encouraged.
- The Swiss system is geared towards accommodating group interests through the political process, although the political process was not exclusively designed around group differences. The system aims to balance national and group interests. Through the first chamber of parliament, the Swiss system also protects the interests of the majority.
- Cooperation between the cantons and between different levels of government are crucial aspects of the Swiss system. Cooperation is especially necessary in dealing with concurrent powers. Swiss experience, however, also shows that intensive forms of cooperation and informal decision-making can lead to non-transparent processes with limited accountability.
- The requirement for a referendum to change the distribution of powers, as well as the restraints on the powers of the Federal Parliament to interfere in the cantonal sphere, have helped to protect the powers of the cantons. Swiss experience shows that it is necessary to protect the distribution of powers. Protection based solely on informal rules poses dangers.

V. Key Questions

Gaining a better understanding of sharing rule

- *Is there a need to share rule?*
 - Does the current political system lead to power imbalances? Why?
 - Are there power imbalances between regions (e.g. centre-periphery, urban-rural regions) or between groups, or both?
 - What is the level of centralisation? How loyal do people feel to their country? Is the regime accepted by everyone?
 - Are there marginalised groups? Are these territorially concentrated?
- *Is there a demand for shared rule?*
 - On what basis is power sharing proposed: personal or territorial? By whom?
 - What kind of power sharing is demanded? Are demands directed at horizontal or vertical power sharing, or both?
 - Do demands for power sharing take the interests of other vulnerable groups into account?
 - Do the conflict parties seem to have a clear understanding of the different power sharing options?

Towards sharing rule

- *How should power sharing be organised?*
 - Are both horizontal and vertical power sharing being considered?
- *How should vertical power sharing be organised?*
 - What criteria should be applied for the distribution of powers?
 - What powers are of special importance for the lower levels of government, e.g. to protect their identity?
 - What are the capacities of the lower levels (resources, administration, personnel)?
 - What powers should remain with the centre?
 - Should there be concurrent or exclusive powers?
 - Are there mechanisms in place for resolving disputes?
 - Are mechanisms for vertical and horizontal cooperation envisaged?
- *How should horizontal power sharing be organised?*
 - What forms of horizontal power sharing should be introduced?
 - Is the need for common decision-making in the executive, the legislature and the judiciary adequately taken into account?
 - Who should have special representation at the centre (units or groups)?
 - Should there be a second chamber of parliament? What would be its composition, its powers?
 - Should there be power sharing at the level of the executive? What viable mechanisms could there be?
 - Have all the relevant units/groups been included, or will the system introduce new marginalisation?
 - Does the system allow for changing alliances?
 - What are the possibilities/risks of blocking the system? Who has powers of veto?

Chapter 5: Sharing Democracy

I. The Context

Swiss experience of sharing democracy. The Swiss political system has been strongly shaped by the elements of democracy and, in particular, by direct democracy. Switzerland is a multilevel democracy with three democratically organised levels of government. At the federal and cantonal levels, the people are represented by parliaments. At the local municipal level, there is either a parliament (mainly in cities) or a municipal assembly of all citizens. Switzerland is not just a representative democracy; it also has a long tradition of direct democratic governance. Based on the right to call a referendum, the people can vote on almost any law passed by parliament. With the right to submit an initiative, the people have the power to change the constitution and introduce new policies. The ever-present threat of a referendum has led to the inclusion of all the relevant groups in decision-making and has contributed to Switzerland's ability to prevent and resolve conflict.

Sharing democracy: an important issue. In every society there are competing interests that can lead to conflicts. Democratic institutions are usually able to manage these conflicts, channel them in constructive ways and arrive at just and equitable solutions. It is thus important in any conflict management process to strengthen democracy. Especially following violent conflict, people often hope that democratisation and creating inclusive democratic instruments will help defuse conflict and contribute to the social integration. Groups that have felt marginalised are likely to demand more inclusive processes and better representation in democratic institutions. Direct democratic measures are often advocated as way of limiting the power of politicians and enabling the people to be the final arbiters.

II. The Concepts

The challenge. Democracy is recognised today as a necessary element of good governance. Decisions that are taken in accordance with established democratic procedures are regarded as legitimate. However, this 'rule of the people by the people' can be organised in a multitude of different ways. Political actors have a vested interest in designing political processes that are likely to produce the decisions they want. Decisions about the design of a democ-

racy today will influence the power of the different parties tomorrow. It can be a major challenge to design democratic institutions and procedures that are acceptable to most of the elites in a country and that will still achieve generally acceptable decision-making. In countries experiencing violent conflict, it is important to ensure that all segments of society are effectively represented and that everybody is able to participate in the political process (see *Chapter 4: Sharing rule*). Two main issues must be addressed. First, the issue of representative democracy: How will the different groups be represented in the various political institutions? This depends a lot on two institutional features - the party system and the electoral system - which can be designed in ways that are either more or less helpful for multi-ethnic societies. The second issue is about the participatory processes of direct democracy. This box provides an overview of the different concepts involved.

Multilevel democracy: Different levels of democratic governance within a federation or a decentralised state can bring political decision-making closer to the people and thus enhance their participation. Geographical proximity to decision-makers is assumed to translate into greater political responsiveness. In addition, citizens can elect politicians to the national level of government who have already demonstrated their ability at the lower levels.

Representative democracy: In a representative democracy, citizens elect politicians who are charged with acting on their behalf and who mediate between the citizens and the government. Political parties normally emerge as the main mediators.

Party systems: Two possible party systems are proposed for multi-ethnic societies:

- ▶ **Umbrella parties:** A party system with broad-based, inclusive and multi-ethnic political parties that have a country-wide constituency, rather than fragmented, personalised or ethnically based parties. Umbrella parties are more likely to encourage moderate political views.
- ▶ **Multiparty system:** A party system in which every important group has its own party, e.g. a multi-party system with *ethnic parties*. Especially following violent ethnic conflicts, it is often unrealistic to assume that politicians from different groups will come together to form an overarching umbrella country-wide party.

Electoral systems: The choice of electoral formulae has a crucial impact on stability, especially following violent ethnic conflict.

- ▶ **Majoritarian or plurality systems:** The most common plurality system is the first past the

post or winner takes all system. However this is considered unhelpful in multi-cultural societies as it makes it harder for smaller groups to be represented in parliament and government. The preferential voting system is a plurality system that is seen as encouraging cross-community support:

Multiple winner preferential voting system: In general, preferential voting systems are designed so that voters can indicate their preferences with regard to candidates. Candidates have to seek cross-community support, mainly through vote-pooling mechanisms, e.g. single transferable votes.

- ▶ **Proportional systems:** Proportional systems aim to achieve a close match between the percentage of votes that groups of candidates obtain in elections and the percentage of seats they receive. Proportional systems are seen as more helpful because they make it almost impossible for a single party to obtain the majority of seats and votes and thus to dominate other, non-majority, groups. Coalitions between two or more parties are often created. The list proportional system is a proportional system that is seen as especially effective in encouraging cross-community support:

List proportional electoral system: In this system, the political parties provide open or closed lists of candidates. The system encourages parties to create balanced candidate lists which are likely to appeal to a whole spectrum of voters' interests.

Public participation: Especially following violent ethno-political conflict, when trust in political parties may be low, it can be vital to adopt other ways, in addition to representative democracy, of involving the people more directly. Direct democracy provides formalised mechanisms for public participation.

Direct Democracy: Direct democracy, as opposed to representative democracy, is government by the people in which the supreme power is vested in the people and is exercised directly by them. All citizens can participate directly in decision-making without elected or appointed officials as intermediaries. Two forms of direct democracy are most common:

- ▶ **Initiative:** Citizens can submit a proposal, e.g. for a new law or to change the constitution. Once a certain number of registered voters has signed the proposal, a formal Popular Vote on the proposal must be held, or the executive must consider the topic. Initiatives can be an important way for minority groups to bring their views and concerns into the political process.
- ▶ **Referendum:** A formal Popular Vote in which citizens are asked either to accept or reject a particular proposal or legal document (e.g. a constitution, an amendment or a law), or (in certain countries) to remove an elected or appointed official. Referendums can be mandatory (required by law) or facultative (upon demand from the people or another authorised official body e.g. the president). Referendums can be binding or consultative.

Political entrepreneurship. The political landscape following a violent ethno-political conflict is especially vulnerable to 'the ethnic card'. During the first set of elections it is highly likely that a leading role will be (re)assigned to old nationalist or ethno-political parties representing the former belligerents. The strong nationalist ethno-centrist rhetoric of these parties can interfere with the aim of establishing a consolidated democratic regime. Political parties formed around ethnic allegiances alone can most easily mobilise voter support by appealing to the basic insecurities of their own community, particularly on identity issues. This can lead to a hardening and polarising of the differences between ethnic groups. Following violent conflict, it is important that the party and electoral systems promote cooperation rather than renewed confrontation.

III. Sharing Democracy in Switzerland

Democratic Switzerland. In Switzerland, the democratic tradition developed relatively early. The democratisation of state institutions occurred step by step, mainly through the transformation of municipal, cantonal and, later, federal institutions (see *Chapter 1: Sharing history*). Direct democratic instruments were introduced first at the municipal and cantonal level and then, in 1874 and 1891, at the federal level. Thus at the federal level, direct democracy was introduced more than two decades after the conflict between Protestants and Catholics. Surrounded by European monarchies and aristocracies for several centuries, the belief in the uniqueness of Swiss democracy became an essential part of Swiss identity.

Federal, cantonal and local democracy: In Switzerland, democracy and federalism are closely linked. Swiss federalism unites the democracies of the cantons and of the municipalities under a common federal democratic government. This federalised democracy ensures the legitimacy of decision-making at all levels of government. Swiss citizens can participate in federal, cantonal and municipal elections. At the federal level, they can elect the members of the two chambers of parliament: the National Council and the Council of States. Elections to the National Council are regulated by the federal level, whereas elections to the Council of States are regulated by the cantons. Depending on the particular cantonal system, the citizens of each canton elect a cantonal parliament and the cantonal executive. In some cantons they even elect the judges. In municipalities with parliaments, the citizens of the municipality elect the

municipal parliament as well as the municipal executive. In addition, at all three levels of government there are mechanisms for direct democracy.

Nationwide political parties with no linguistic ties:

In contrast to many other federations, Switzerland has a party system with segmentation along ideological lines rather than along linguistic or regional lines. However, in the beginning the federal political parties had a strong religious basis - in addition to their ideological basis - and thus reflected the main divisions of the civil war of 1847. The current Swiss political landscape is characterised by four main parties that have supporters in all the linguistic regions. The proportional electoral system, as well as ideological segmentation, have led to a diverse political landscape containing the Liberal Party, the Christian Democrats, the Swiss People's Party, and the Socialist Party. The seven Federal Councillors in the executive belong to these four parties, as do 86% of the National Council and 43 of the 46 members of the Council of States (data from most recent elections, 2007). At the federal level, politicians work within their party groups, irrespective of their linguistic or ethnic membership. There is only one party whose name refers to a specific canton: the Lega dei Ticinesi. However, at the national level this party cooperates with the Swiss People's Party and does not have a different manifesto or programme.

National party system based in cantons: Another characteristic of the Swiss party system is that it is strongly based in the cantons. It is built bottom-up. The national umbrella parties are mainly federations of the cantonal parties. According to some estimates, there are about 180 parties in the 26 cantons with some 7,000 local branches. However, 80% of these small parties belong to the big four national umbrella parties. Even if they belong to the same umbrella party, the cantonal parties can be very different from each other in terms of their political programmes and priorities. They can also make different decisions from their national umbrella party on specific policy issues, or make different recommendations for a referendum vote. Thus the cantonal political parties are strong and autonomous. The fact that the cantonal parties, and even local party branches, have their own political identity is seen as positive in terms of accommodating different linguistic and regional groups. One reason for the multiplicity of Swiss political parties is the lack of legal restrictions on the formation of parties. It is easy to establish parties at the different levels; they can be set up in the same way as other associations such as football clubs. However, although the cantonal

parties are still the backbone of the system, the national political parties are now becoming more important not only in coordinating, but also in deciding on, party manifestos and political campaigns.

A political career in a federalised democracy. The multi-level democracy and the party system have an important influence on the typical political career path. Swiss politicians normally start their political careers at the local level, are then elected to the cantonal parliament, and later to the cantonal executive or the national parliament. They have to prove their capabilities at the lower level before they are elected for higher offices. A political career in Switzerland is not a quick way to power and is not necessarily financially rewarding. Due to limited financial resources, there are hardly any professional full-time politicians on the executives of the smaller municipalities or in the municipal and cantonal parliaments. Politics are generally carried out on a voluntary basis in people's spare time at the same time as a 'normal' professional career. The Federal Parliament is also composed of non-professional parliamentarians. It meets only four times a year for three weeks, a total of 12 weeks per year. Parliamentarians receive a basic payment of 21,000 Swiss Francs as well as a blanket allowance of 30,000 Swiss Francs a year and can receive additional payments for special sessions of parliament and parliamentary commissions. In comparison, the average Swiss income in 2003 was 42,500 Swiss Francs. Most parliamentarians continue to work in their normal jobs as well. Only the members of the Federal Council, the Executive, are professional politicians and receive full salaries. The members of the cantonal executives also receive a salary on a full-time or part-time basis. The large amount of unpaid work and the small number of professional politicians make the three-level democracy more affordable.

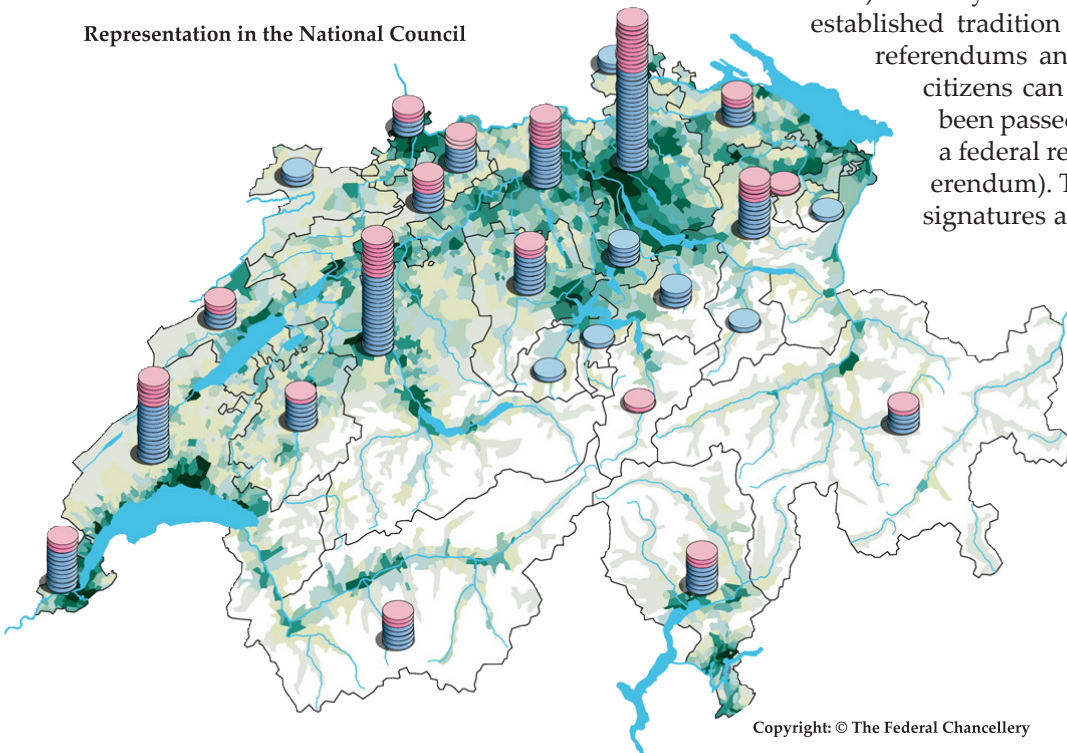
Proportional electoral system for National Council. The proportional electoral system was only introduced in 1919 as the result of an initiative supported by the Christian Democrats and the Social Democrats. Until then, the Federal Parliament, and federal politics in general, were dominated by the Liberal party. The constitution states that the members of first chamber of parliament shall be elected directly by the people through a system of proportional representation (Article 149 of the Swiss Constitution). Elections for the 200 members are held in 26 electoral districts; each canton is a separate electoral district. The number of seats representing each canton is determined by its population size. Small cantons have the right to at least one representative.

This is an open list proportional system based on the Hagenbach-Bischoff formula (equivalent to the d'Hondt system), which makes it possible to accumulate candidates within lists and to add candidates from other lists. Thus, citizens can vote for one of the lists exactly as proposed by the relevant party, or amend this list by taking some people off it, and/or add other people to the list, or vote for the same candidate twice in order to improve his or her chances, or create their own list drawing from several party lists.

Due to the different population sizes in the cantons, the practicalities of the procedures for elections can differ a great deal, though there is overall regulation by Federal Law. In cantons that are entitled to elect only one representative, the proportional system is *de facto* replaced by the majority principle. In the canton with the largest population, Canton Zurich, a political party can gain a seat in the National Council with less than 3% of the cantonal votes because it has so many representatives in the National Council.

Majoritarian electoral system for Council of States. Elections to the Council of States are a cantonal matter. All cantons hold direct elections and all except Canton Jura apply the majority principle. As a rule, each of the two representatives per canton must receive an absolute majority of votes in the first round; in the second round a relative majority is sufficient.

Representation in the National Council



Canton Geneva is an exception: in the first round a relative majority of more than a third of the votes suffices. In most cantons, representatives are elected by secret ballot. But Cantons Glarus and Appenzell Innerrhoden still follow the practice of voting for members to the Council of States in the *Lands-gemeinde*. This is a public assembly of all citizens in which people vote by a show of hands. Canton Valais ensures that there is always one representative from the French- and one from the German-speaking community in the Council of States.

Cantonal elections. Federalism has enabled the different Swiss cantons to maintain their own distinct systems of political organisation (see *Chapter 4: Sharing rule*). Nevertheless, there are some similarities, both in political organisation and in electoral systems. Most cantons elect their representatives to the cantonal parliament under a proportional system. Unlike the Federal Council, the cantonal governments are not elected by the parliaments but directly by the people. The election of most cantonal governments is based on the majority principle, although Cantons Zug and Ticino use the proportional system. Whatever their electoral system, the cantonal governments are normally grand coalitions and include ministers from different political parties.

Direct democracy – referendums and initiatives. In addition to participating in elections, Swiss citizens can also resort to mechanisms of direct democracy (Articles 138-142 of the Swiss Constitution). The key elements of Switzerland's well-

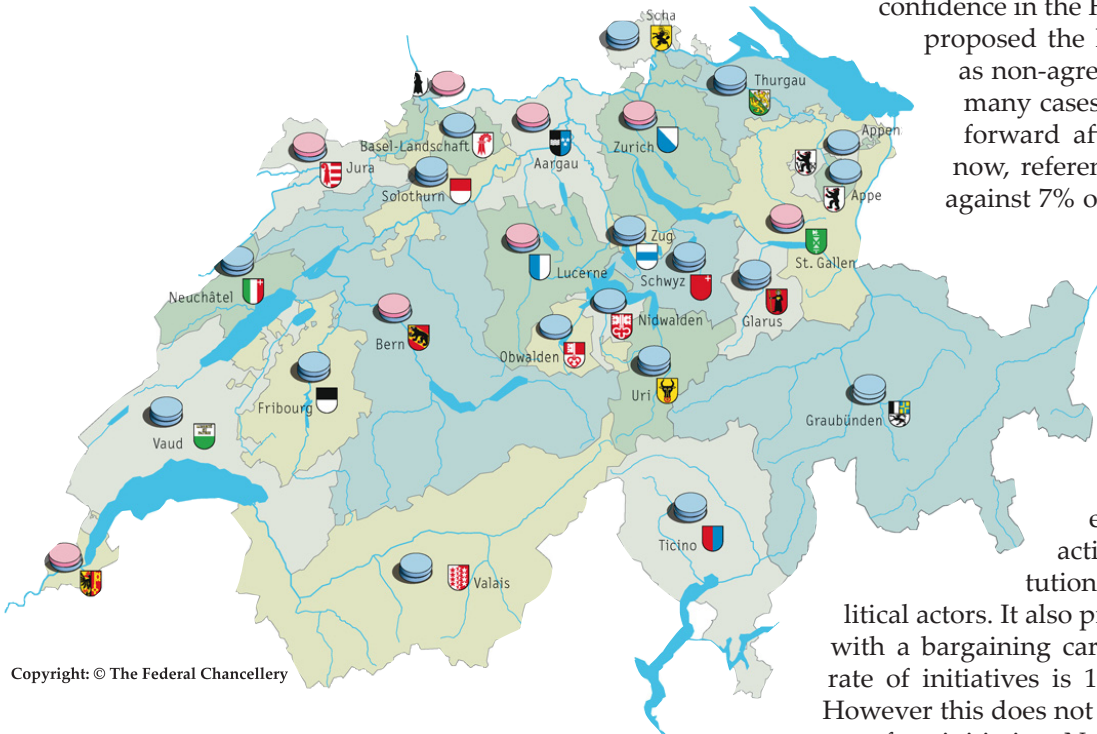
established tradition of direct democracy are referendums and initiatives.

A group of citizens can challenge a law that has been passed by parliament by calling a federal referendum (facultative referendum). They have to gather 50,000 signatures against the law within 100

days. If they do, a national formal Popular Vote is held in which a simple majority of voters decides by secret ballot whether to accept or reject the law. Eight cantons together can also call a federal referendum. In addition, there are certain situations in which, under the constitution, a referendum must take place

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Representation in the Council of States



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(mandatory referendum), e.g. for certain international treaties. A federal initiative allows citizens to propose a *constitutional* amendment if they manage to collect 100,000 signatures within 18 months. Once the necessary number of signatures has been collected, the Federal Administration must organise a formal Popular Vote. Parliament can complement the proposed amendment with a counter-proposal, with voters having to indicate a preference on the ballot in case both proposals are accepted. Constitutional amendments, whether introduced by initiative or in parliament, as well as all other mandatory referendums, require a double majority. In other words, the proposal must be accepted both by a simple majority of voters nationally and by simple majorities of voters in a majority of the cantons.

Referendums and initiatives – consequences. The referendum system gives Swiss citizens the power to act if they do not support a law that the Federal Parliament has adopted. They can take on the role of opposition to Parliament and the Federal Government. In order to try to avoid a referendum, each draft law is submitted to a long consultation process even before it enters parliament, with the aim of developing a draft that will be supported by the vast majority of parties, associations and citizens. However if, despite this process, a law is rejected in a referendum, this is not taken as a vote of no

confidence in the Federal Councillor who proposed the law. It is simply taken as non-agreement with the law. In many cases a new proposal is put forward after some time. Up till now, referendums have been held against 7% of federal laws (data up to 2003). Citizens can resort to an initiative if political actors do not take up a policy issue. The initiative is an expression of their dissatisfaction with the political agenda. It enables people to take action and to give a constitutional mandate to the political actors.

It also provides interest groups with a bargaining card. The overall success rate of initiatives is 10% (data up to 2006). However this does not reflect the political impact of an initiative. Normally, political actors become active and take up an issue either before a formal Popular Vote takes place or, if the initiative failed but still received relatively strong support, after it. For instance, an initiative that demanded the abolition of the Swiss army failed in the formal Popular Vote but received more support than had been expected by the political parties. This triggered a reform process.

Direct democracy – safeguards. Direct democracy is intended to encourage the expression of the people's will. However, the people can only express their will if the question in the initiative or referendum is clearly formulated and is limited to one issue at a time. In addition, the people's will is not necessarily always in accordance with international obligations or fundamental rights. Switzerland has introduced some safeguards in this respect. The Federal Parliament verifies that an initiative is consistent – only matters that are interconnected can be decided in one initiative – and that a referendum question is clearly formulated. In addition, an initiative must be in accordance with essential international law regulations (*ius cogens*). If it is not, the Federal Parliament can refuse to permit a formal Popular Vote on it.

Direct democracy – overrepresentation of small German-speaking cantons. As discussed above, all constitutional amendments require a majority both of the people and of the cantons in a formal Popular

Vote. This means that constitutional changes that are against the interests of the cantons have no chance of success. However, the requirement for a double majority gives disproportionate power to the small, rural, German-speaking cantons in the centre of Switzerland. French-speaking cantons may feel disadvantaged. French speakers are a numerical minority in Switzerland and French-speaking cantons are in a clear minority in relation to German-speaking cantons. Whenever political opinion differs along linguistic lines between German- and French-speaking Swiss, the French-speakers are bound to lose unless they can achieve a turnout of voters that is significantly higher than that in German-speaking areas (see *Chapter 6: Sharing language and religion*). These political divisions can be observed mainly in two policy areas: European integration and social policy.

IV. Sharing Swiss Experience?

Swiss democracy – a model? A combination of the willingness of the elites to work together and proportional representation has led to inclusive institutions. In addition, the ‘threat’ posed to politicians by the direct democratic instruments has encouraged compromise-driven decision-making. Can the Swiss way of sharing democracy offer any insights to other countries? There are at least four factors that have contributed to the success of Swiss democracy that may not be present in countries experiencing violent conflict.

Overall organisation of the state. Democratisation in Switzerland has gone hand-in-hand with the consolidation of other elements of state organisation. The direct democratic instruments have promoted and complemented the highly inclusive character of Swiss political decision-making. In this way, direct democracy has encouraged the inclusion of minorities and helped to ensure that their concerns are heard. In different contexts, especially following violent conflict or in Westminster-style democracies, similar institutions and instruments could have completely different effects. Depending on the rules, a majority can sometimes use direct democratic instruments against a minority. For instance, a majority can reject laws that are the result of a political compromise between different political groups. Especially where there is distrust, direct democratic instruments can encourage politics by emotion and even the ethnicisation of politics.

Consolidation of the system and availability of resources. The Swiss multilevel system is very costly and rather complicated, with different possibilities for participation at all levels. Nevertheless it is not experienced as overly complex because it has developed slowly over time and the democratic institutions are well consolidated. In addition, the Swiss democratic system has remained affordable, largely because of the high degree of voluntary political engagement and the successful economy. In situations following violent ethnic conflict, the necessary resources may not always be available for sophisticated electoral processes and fair campaigns. Multi-level democracy can be difficult to finance and to manage. However, democratic procedures and public participation are particularly important when fundamental decisions need to be taken (e.g. on a new constitution). The direct democratic instruments, particularly at the local level, have been used recently to establish accountability and transparency and to include citizens in political processes.

Democratic organisation of political parties. Switzerland uses a list proportional system. In this system voters have limited opportunities to decide who will represent them since the parties choose the candidates on the lists. In Switzerland, the political parties are locally anchored and relatively democratically organised. As a result, party lists have a certain degree of legitimacy. However, especially in countries with limited democratic party traditions, such a system can lead to problems: people may not be able to influence the parties’ choice of representatives for their town, district or village, nor can they easily reject an individual representative if they feel that he or she has performed poorly in office or is not the kind of person they want to represent them. This is especially problematic in countries where warlords play a strong role in politics following a violent conflict.

Uniting umbrella parties. The emergence of umbrella parties has had positive effects in Switzerland. They have contributed to cohesion and encouraged cooperation between politicians from different regions and different language groups on ideological grounds. However, especially after violent conflict, umbrella parties may not emerge of their own accord. Some countries try to promote umbrella parties by prohibiting regional or ethnic parties. Depending on the context, this can have the effect of preventing the representation of certain groups or areas

Swiss lessons learned: As shown above, the importance of the specific context must not be underestimated. However, some lessons can still be drawn from Swiss experience:

- The bottom-up political party system in Switzerland, and the very open legal framework for the creation of political parties, enable the cantonal parties to establish their own manifestoes and, if necessary, to vote against the wishes of their national umbrella party. This provides an avenue for expressing and accommodating regional differences within the main national political parties, and thus promotes openness and inclusiveness in these ideologically-based parties.
- The emergence of umbrella parties, which have managed to build on the support of citizens from different regions and different linguistic groups, has been conducive to the peaceful development of Switzerland. The four big umbrella parties have fostered the political involvement of the Swiss people along ideological, and not linguistic or ethnic, lines.
- Until the introduction of the proportional representation system, the Liberals dominated the Swiss parliament and government. The introduction of a proportional representation system allowed smaller parties and groups from the different cantons to be integrated into political decision-making at the central level. Thus, the proportional representation system has contributed to a diversified political landscape.
- In Switzerland, the direct democratic instruments foster consensus driven decision-making. Even though direct democracy can trigger political entrepreneurship, in Switzerland it has demonstrated its accommodative capacity. Depending on the political rules, direct democracy can be helpful in encouraging political elites to accommodate the demands of different groups and search for compromise.
- Swiss experience shows that the democratic will does not necessarily produce decisions that are in accordance with constitutionally guaranteed fundamental rights or international human rights standards. Switzerland has introduced certain safeguards, e.g. that initiatives can be declared invalid if they contradict fundamental standards of international law (*ius cogens*). Especially, but not only, in highly fragmented contexts, it is advisable that safeguards are provided

to prevent democratic instruments from being used to limit human rights or to violate the vital interests of a particular group.

V. Key Questions

Gaining a better understanding of the democratic system

- *How is the party system organised?*
 - How many political parties are there? Do they work together in coalitions?
 - Are there party structures at different levels of government?
 - Are parties based on ideological or ethnic divisions?
 - Are there any special requirements or prohibitions concerning the formation of new political parties?
- *How is the electoral system organised?*
 - For what kind of institutions are there direct elections?
 - How are the candidates selected?
 - Based on which electoral system are political bodies elected? What are the consequences of this?
 - Does the current electoral system encourage cross-group voting?
- *Are there forms of public participation?*
 - Is there formalised public participation?
 - Are decisions based on public participation binding or consultative?
 - Is there a tradition of direct democracy?

Towards shared democracy

- *Does the democratic process encourage integration and reconciliation?*
 - Are there possibilities for political inclusion at different levels?
 - Can the democratic process promote dialogue between different groups?
- *How can a suitable party system be promoted?*
 - Are there incentives to encourage the democratic organisation of political parties?
 - How could the emergence of umbrella parties be supported?
 - Do all groups have the same opportunities to form political parties?
- *How can an appropriate electoral system be promoted?*
 - What kind of electoral systems might be appropriate?
 - Does the proposed electoral system lead to the representation of all segments of society?
 - Are special safeguards necessary, e.g. quotas, reserved seats?
- *What kinds of direct democratic instruments could be useful?*
 - Could direct democratic instruments function as a counterbalance to the political elite?
 - What are the thresholds for making use of direct democratic instruments?
 - Are safeguards in place that prevent direct democratic instruments from being used against non-majority groups or against human rights standards?
 - Are there standards to ensure that referendum questions, in particular, are clear?

Chapter 6: Sharing Language and Religion

I. The Context

Swiss experience of sharing language and religion. The integration of its religious and linguistic communities is one of Switzerland's most important achievements. The federal level has applied different policies to accommodate linguistic diversity from those applied to accommodate religious diversity. With respect to the four Swiss language communities, the federal level has adopted a policy of equality. With respect to religious diversity, the federal level relies on a policy of (relative) neutrality. In addition, it acts as the guardian of intercommunal peace and the protector of individual rights. Each canton decides on its official language(s) and on the relationship between state and religion within it. Cantons with linguistic and religious diversity recognise several official languages at the cantonal and municipal level and usually give official recognition to the traditional religious denominations. Swiss experience of sharing language and religion may be of interest because it includes territorial and non-territorial mechanisms to accommodate diversity.

Sharing language and religion: an important issue. Both language and religious affiliation are key aspects of personal and group identity. In addition, national identity, and thus the identity of the nation-state, may be based on linguistic and religious identity. However, linguistic and religious definitions of the nation-state can lead to reluctance to accommodate people who do not share these identities. In addition, it is easy to identify those who do not belong to the dominant language or religious group. This can lead to open discrimination against individuals and groups. Several current violent ethnic conflicts have linguistic and religious components. Particularly following violent conflict, both the official position towards linguistic and religious diversity and the protection of religious and linguistic communities and their members are very important.

II. The Concepts

The challenge. Language and religion are elements of identity and identification. If the state gives preference to one language or religious group, this can lead to the alienation of the others. How can this be prevented? In the case of religious diversity, the state can remain neutral by relying on separation between

state and religion. However, the complete separation of state and religion is difficult to achieve and can provoke resistance, especially if religion is considered part of the national identity. The state needs language for its relations with its citizens and with external partners. In order not to disadvantage any group, a state can recognise several official languages. However, this can lead to increased costs and may meet with resistance, especially if language forms part of the national identity. The challenge is to find mechanisms that are both appropriate and acceptable to all the groups concerned. There is an important difference between merely accepting different languages or religions and actively promoting them. This box provides an overview of different possible mechanisms and safeguards and of the policy areas of education and the media since they are of special importance.

Recognition of the different languages and religions, for instance by listing them in the constitution, has symbolic significance because it acknowledges their special role within the state. This can be translated into **concrete policies**, e.g. having several official languages.

- ▶ **Official languages** are languages that are used by the state and its institutions in internal and external communication. There can be national and local official languages. Every state needs at least one official language. The decision about official languages will have repercussions, for instance, the languages to be used in official documents (e.g. passports, laws), and the languages in which the state can be addressed and addresses its citizens or external partners. For citizens it is especially important that they can communicate with the state and participate in political life in their own language, and that they have access to education and the media in their own language.
- ▶ **State religions** have an exclusive and official status in the state. This can have repercussions, for instance, on state funding or the employment status of clerics. (State religions must not be confused with theocracies, in which state authority is regarded as deriving directly from a divine source.) Not as far-reaching as the status of state religion is the assignment of special official recognition (public law status) to one or more religious denominations. This special status recognises the importance of particular religious denominations in the society. It can be linked to requirements for the internal organisation of religious congregations and can provide special rights, e.g. taxing rights.

- ▶ **The separation of state and religion** can mean the complete invisibility of religion in the public sphere – with no religious symbols allowed – or the complete impartiality or neutrality of the state towards all forms of religious beliefs and manifestations. Complete separation between state and religion is difficult to achieve. For instance, religious traditions are normally taken into account in deciding public holidays.

Vertical and horizontal power sharing can contribute to the integration of linguistic groups (see also *Chapter 4: Sharing rule*).

- ▶ **Vertical power sharing:** Especially if linguistic and religious groups are territorially concentrated, allocating the right to self-rule in matters of language and religion to lower levels of government can enable decision-making in these areas by those who are most directly concerned. It is also possible to allocate the right to self-rule to communities and to give them, for instance, cultural autonomy, the right to establish their own schools, and even their own legal and court systems.
- ▶ **Horizontal power sharing:** Federal institutions that are sensitive to linguistic or religious diversity can encourage integration at the central level of government. This can be achieved, for instance, in the form of a grand coalition government (a coalition formed by the major political parties), by creating special institutions such as a language commission within the parliament, or by applying the principle of proportionality in institutions and administration.

Human and minority rights, individual and collective rights can provide protection for individuals and groups.

- ▶ **International covenants** provide certain standards and guarantees. Some of these are regional e.g. the Council of Europe's Framework Convention for the Protection of National Minorities; others are global, e.g. the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, as well as the UN Declaration on the Rights of Indigenous Peoples. International standards increasingly demand not only the protection but the promotion of minority languages.
- ▶ At the national level, **Constitutions and Bill of Rights** can provide rights and guarantees. Rights can, for instance, include the right freely to choose to be treated or not to be treated as a member of a specific group, the right to non-assimilation, the right to religious freedom, the right to use one's own language in private and in public, the right to use group symbols, and the right to education in one's own language with a culture-sensitive curriculum.
- ▶ For the protection of rights to be at all effective there must be access to an **independent and impartial judiciary** (see *Chapter 7: Sharing justice*).

Education – language and religion. Education is an especially sensitive area because it can keep language, religion and traditions alive. Education can have integrative effects and promote mutual understanding, but can also deepen enmities and divisions. An educational system can provide equal opportunities but can also cement marginalisation. Linguistic groups are likely to want their own language taught in school and used as a language of instruction. Religious groups are likely to want their values reflected in the curriculum and may demand religious instruction in schools. Linguistic and religious groups may want their own schools, with or without public funding, the right to develop their own curriculum and textbooks, and the right to select teachers. The state, on the other hand, may want to limit separate schools, to control the curriculum and provide standardised text books, and to have a say in the selection of teachers.

Media – language and religion. The media are a source of information, communication and entertainment but also of power because they can create and influence public opinion. The media need language. In addition, the media and different media products tend to reflect value systems, possibly including religious values. Linguistic and religious groups want to provide information to their communities, transmit their values and express their identities. Limited access to the media limits a group's influence on public opinion and restricts avenues for the expression of its identity. Groups may demand the right to their own newspapers, radio stations or television channels with or without public financing, or at least to their own programming and sufficient time slots within the public media. Balanced and varied programming that contributes to informing the whole population is essential. Especially following conflict or crises, impartial information and professional reporting can be crucial in overcoming divisions. Joint multi-ethnic programming committees and independent self-regulating bodies can further promote the quality of the media.

III. Sharing Language and Religion in Switzerland

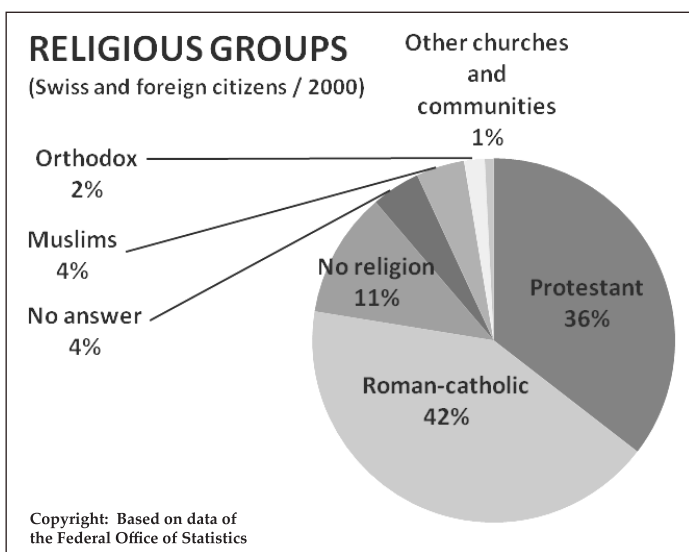
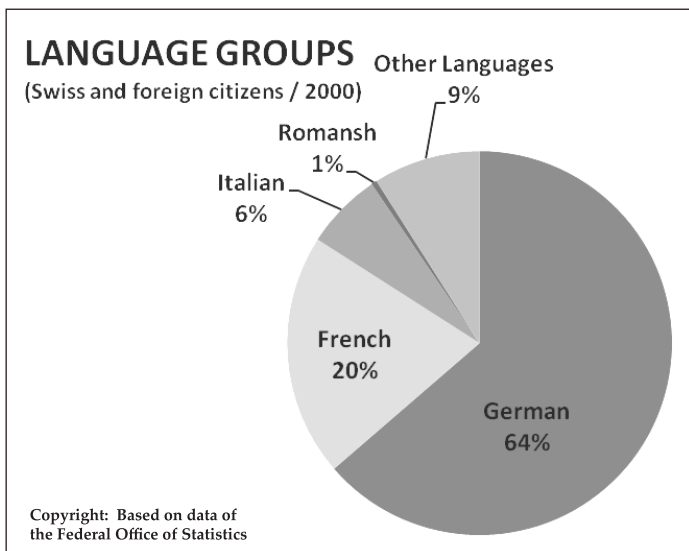
Linguistic and religious diversity in Switzerland. According to the 2000 census, 64% of the Swiss population speak German as their first language, 20% French, 6.5% Italian, 0.5% Romansh and, as a result of immigration, 10% speak another language. With regard to different religions, the picture is more

balanced, with 44% Catholics and 36.6% Protestants. Linguistic groups are territorially concentrated. There are cantons with predominately German-, French- or Italian-speaking populations. Most cantons are monolingual. Only three of the 26 cantons are bilingual and one is trilingual. The Romansh-speaking community is the only one that does not form a majority in any canton. Religious groups are slightly more dispersed. There are several regions with a patchwork of religious groups. However, even in cantons that contain religious and linguistic diversity, municipalities are relatively homogeneous.

Federalism – language and religion. In relation to linguistic and religious matters, the Swiss Constitution provides for vertical power sharing between the federal level, the cantons, and the municipalities. With respect to languages, the constitution sets out the main rules on the status of different languages at the federal level (Articles 4 and 70 of the Swiss Constitution). There is no comparable provision in relation to religion. The cantons decide on their official languages and can regulate the relations between religion and state within the canton. Some heterogeneous cantons even delegate decision-making powers on these issues to the lowest level, the municipalities. In addition, the federal level guarantees freedom of religion and of language and is required to promote intercommunal peace and understanding. A law on languages, adopted in 2007, mainly formalised existing informal rules.

Recognition of languages. Switzerland distinguishes between national and official languages. German, French, Italian and Romansh are all recognised as Swiss *national* languages (Article 4 of the Swiss Constitution). Recognition as a national language does not bring any concrete benefits; however, it has high symbolic value. It underlines the multilingual composition of Switzerland and the equal recognition of the different language communities irrespective of their numerical size. This recognition is only given to those languages that have historically been present in Switzerland. Immigrant languages do not benefit from the same kind of recognition. The bilingual and trilingual cantons also recognise the different language communities within their canton. For instance, Canton Fribourg states that bilingualism is an important feature of the identity both of the canton and of the cantonal capital. Canton Bern recognises German and French as cantonal languages.

Official languages at federal level. At the federal level, German, French Italian and Romansh all have the status of *official* languages (Article 70 of the Swiss Constitution). Romansh was only given this status in the early 1990s. In addition it is still disadvantaged in that it is only an official language for *Romansh-speaking* citizens. The other official languages, German, French and Italian, all have equal status at the federal level. Citizens can choose which of these three languages they address the federal authorities in and will receive the answer in their language of choice. In political institutions at the federal level, members and employees can use any official language for communication. As a general rule, everyone speaks his or her own language and the people they are communicating with are expected to



understand it. Simultaneous translation is only provided in the lower house of parliament, the National Council. Proposals can only be put on the parliamentary agenda if they are presented in German, Italian and French. All laws are simultaneously published in the three languages and all language versions have equal legal validity. Romansh-speaking citizens can address the federal administration and court in Romansh and will receive an answer in this language. The highest court, the Federal Court, issues its decisions in the language in which it was addressed. The official publication containing court decisions therefore includes opinions in German, French, Italian, and Romansh. However, only laws of special significance are translated into Romansh. As a counterbalance to their disadvantaged status, the constitution requires that the languages spoken by the smaller linguistic groups (Romansh and Italian) must be specially promoted. The 10% of the population who speak a language other than one of the four official languages do not benefit from comparable protection or support.

Official languages at cantonal and municipal levels. Each canton decides on its official language(s). However, the Swiss Constitution provides some guidelines: to preserve harmony between linguistic groups, the cantons must take into account their indigenous linguistic minorities and the traditional settlement patterns of linguistic groups (territoriality principle) (Article 70 II of the Swiss Constitution). The bilingual cantons of Fribourg, Valais and Bern each recognise two official languages, and the trilingual Canton Graubünden has three official languages: German, Romansh and Italian. Municipalities normally have only one official language but there are some bilingual municipalities with two official languages. In the special case of Canton Graubünden, municipalities can decide on their own official languages but they have to apply certain principles. These are based on the territoriality principle and act as powerful mechanisms to protect or even preserve vulnerable linguistic groups. If the language group that has historically been a majority in a municipality still makes up at least 40% of the population, the municipality is regarded as *monolingual*; in other words the traditional language is the sole official language even if the current majority in the municipality speaks a different language. If the language group that has historically been a majority in a municipality still makes up at least 20% of the population, both the traditional language and the language of the new majority are official languages. These principles are intended mainly to protect the Romansh- and Italian-speaking communi-

ties who live in municipalities that are experiencing or have experienced a large influx of people from the German-speaking group. This far-reaching interpretation of the territoriality principle by Canton Graubünden would probably not be permissible if less vulnerable linguistic groups were concerned.

Recognition of religious groups at federal level.

During the formation of federal Switzerland in the late 19th century, religious diversity in particular created tensions. Switzerland had just undergone a (very short) civil war with a strong religious component. Any decision by the federal level on the relationship between religion and the state would inevitably have alienated sections of the population. This is one reason why Switzerland does not enshrine separation between the state and religion at the federal level. A popular initiative on this issue was turned down by nearly 80% of the Swiss population in 1980. The position of the federal government towards religion has remained unregulated. This decision not to decide but to leave decision-making to lower levels has avoided confrontation at the federal level. The federal level has neither recognised any religious group nor decreed the separation of religion and the state. It has remained silent and neutral.

Recognition of religious groups at cantonal level.

Two cantons, Geneva (since 1907) and Neuchâtel (since 1941), have introduced formal separation between religion and the state. This separation is relative since the religious communities can still raise voluntary taxes and the state collects these taxes either free of charge (Neuchâtel) or for a fee (Geneva). Today, most cantons grant official recognition to the Protestant and Catholic churches, and some also grant official recognition to the Old Catholic and Jewish faiths. So far Islam has not been granted public law status in any canton, though 4.3% of the Swiss population is Muslim. Thus, the traditional religious communities are given preference compared to immigrant religious groups. Religious communities with official recognition normally have the right to raise taxes that are then collected by the state. These taxes are mandatory for adherents of the religions. In addition, religious communities with official recognition can receive state subsidies in exchange for the provision of certain social services. Most cantons have created rules about internal organisation that religious groups must follow in order to be eligible for official recognition, i.e. the group must be organised democratically and must provide financial transparency as well as certain procedural guarantees.

Horizontal power sharing. Because linguistic and religious groups are territorially concentrated in the cantons, they are automatically represented in the Federal Parliament, based on proportional representation in the National Council, and on cantonal representation in the Council of States (see *Chapter 4: Sharing rule*). In electing members to the Federal Council (the federal executive, elected by the Federal Parliament) the Parliament is required to ensure adequate representation of the different languages and regions. The French-speaking community has always had at least two representatives in the seven-member Federal Council. The Italian- and Romansh-speaking communities have been only irregularly represented. Since 1956, all the major political parties have also been represented in the Federal Council. Because party affiliation was originally strongly linked to religion, this has also led to the representation of different religious groups. In addition, as stated in Article 20 of the Law on Languages, the state aims to achieve proportionality of linguistic groups in federal authorities (e.g. parliamentary commissions and federal administration). Furthermore, it promotes multilingualism in the army. The bi- and trilingual cantons also ensure adequate representation in their political institutions, administration and judiciaries.

Freedom and promotion of language. In addition to special recognition and representation, the constitution guarantees freedom of language (Article 18 of the Swiss Constitution). Every person can use his or her own language in private and in public. Freedom of language, however, clashes with the principle of territoriality as well as with certain mechanisms that promote and protect vulnerable groups. In most cases the Federal Court gives precedence to the principle of territoriality and the protection of vulnerable groups over freedom of language. In addition, the federal level of government must actively promote and protect the different official languages and encourage understanding and exchanges between the linguistic communities. It supports the publication of Swiss literature as well as youth exchanges between the different language communities. The constitution also states that the Confederation must support the measures taken by the cantons of Graubünden and Ticino to maintain and promote Romansh and Italian. The cantons also guarantee rights and freedoms in this area. For instance Canton Bern has introduced the protection of linguistic, cultural and regional minorities as well as freedom of language into its cantonal constitution.

Freedom of religion and protection of inter-religious peace. In order to prevent inter-religious conflicts at the federal level, Switzerland leaves the regulation of the relationship between the state and religion to the lower levels of government. Nevertheless, the federal level is required to serve as a guarantor of the freedom of religion and to promote inter-religious peace in order to protect individuals and religious communities and prevent conflicts at lower levels (Article 15 and Article 72 of the Swiss Constitution). Freedom of religion and philosophy are guaranteed in the constitution. All people have the right to choose their religion and philosophical convictions freely and to practice their religious beliefs, alone or in community with others. Furthermore, it is not possible to force a person to join or to remain in a religious community or to participate in a religious act. Freedom of religion can be restricted if inter-religious peace is at stake. The federal level and the cantons can take measures to maintain public peace between the members of different religious communities. Based on these provisions, public authorities have, for instance, prohibited religious processions that were expected to spark inter-religious tensions.

Media – language and religion. In the federal law on television and radio, the state gives a mandate to the Swiss television and radio agency to broadcast radio and TV programmes in all three official languages and to promote mutual trust and understanding between the language communities. The television agency is funded mainly by public TV and radio fees amounting to approximately 1.1 billion Swiss Francs a year. In 2003, the smallest Italian-speaking TV station received 19% of the overall budget of the federal radio and TV programmes, i.e. disproportionate per capita funding. For the Romansh-speaking community, radio programmes must be provided as an absolute minimum. In addition, there are some Romansh television programmes on the German-language channel during prime-time as well as a daily information broadcast, and entertainment and a children's show on Sundays. In addition to these public TV and radio programmes, there are several private radio and TV providers in all the Swiss regions that receive some public funding. The print media do not receive subsidies. Because of recent changes in the media market, several newspapers have had to shut down; however, there is still at least one Swiss newspaper in each national language including, since 1997, a newspaper entirely in Romansh. There are also independent ombudsmen for public radio and TV, broadcasting in three language regions. There are no specific rules on the access of religious groups to the media.

Education and language. With some exceptions, the cantons are in charge of education, including university education. They delegate primary education to the municipalities. As a rule, the language of instruction in primary schools is the official language of the municipality, even if the child's mother-tongue is a different national language. This is another safeguard to protect the traditional language communities. In municipalities in Canton Fribourg that have two official languages, parents can choose the language of instruction. In multilingual municipalities in Canton Graubünden, the language of instruction is the traditional language. At the municipal level, assimilation is generally expected. This can be problematic. Until recently, cantons were able to decide freely which additional national or foreign languages were taught in schools. However, the cantonal ministers of education have now decided on harmonisation: all pupils learn a second official Swiss language from the 5th grade or earlier, and English from the 7th grade or earlier. Cooperation between cantons follows linguistic divisions: school curricula differ depending on the language group. Universities are also mainly cantonal. There are five cantonal universities with German as the language of instruction, three with French, one bilingual French and German, and one with Italian. There are seven universities of applied sciences (technical colleges) in Switzerland.

Education and religion. Regulations on religious education are also the responsibility of the cantons. Based on freedom of religion, the religious neutrality of public schools is guaranteed. Religious private schools are, however, permitted. In relation to public education the situation in the cantons is very diverse. In five cantons there is no religious education at all in public schools, and in fourteen cantons there is no religious education at the secondary level. In two cantons religious education is compulsory in public schools, and in the remaining cantons parents can unsubscribe their children from classes.

Two main approaches can be seen in religious education in public schools. Some cantons provide 'neutral' religious instruction that covers a broad range of issues and does not give preference to any specific religion. Religious instruction is conducted without the direct involvement of clergy, though the different religious denominations are sometimes consulted on the curriculum. Other cantons offer religious education outside the ordinary curriculum: children can enrol in separate classes depending on their religious denomination.

Language in perspective. In 1848, when the first Federal Constitution was adopted, language was not very important. Language use was mainly based on informal rules that had developed pragmatically. Over the years language became more significant and demands for explicit legal guarantees and regulations increased. A Swiss language law was only adopted in 2007, mainly enshrining the existing informal rules. At the cantonal level, rules affecting language are still developing. Newer constitutions, e.g. in Canton Fribourg, offer more comprehensive language provision than older ones. In 2007 Canton Graubünden became the first canton to adopt a cantonal language law. Furthermore, in recent years a split in voting behaviour between the French- and German-speaking Swiss has become apparent, especially in a number of referendums during the 1990s when, for example, the German-speaking part of Switzerland was opposed while the French-speaking part was in favour. The most prominent example was over integration into the European Economic Area. An overwhelming majority of Swiss citizens approve of Switzerland's position on cherishing linguistic diversity and are willing to further promote and protect the different linguistic groups. The multilingual character of Switzerland is not called into question.

Religion in perspective. In 1848, religion was the main divisive factor in Switzerland. It can be seen as a major success that the Swiss Constitution of 1848 managed to accommodate religious diversity. Interestingly, this was achieved without really referring to religious groups or explicitly guaranteeing their representation. The overall mechanisms for general representation led to the inclusion of religious groups in political institutions, and as a result of territorial federalism, the more homogeneous local communities were able to decide on religious matters. Today tensions between the Swiss religious groups have abated, not so much because of this system, but more in line with general social developments in Western Europe.

IV. Sharing Swiss Experience?

Sharing language and religion – a success? The accommodation of different religious and linguistic groups based on recognition and neutrality, vertical and horizontal power sharing, and protecting certain rights has been successful, though political arguments between groups still occur. Can Switzerland serve as an example of how religious and linguistic diversity is best accommodated? At least four factors

have positively contributed to Swiss success that may not be present in other countries.

Territorially concentrated groups – living next to each other. Federalism and the territorial concentration of religious, and especially linguistic, groups in municipalities and cantons have allowed different groups to live alongside each other without interfering in each other's business but also without really living together. In general there is not much intermingling of groups in Switzerland. Cross-cultural private relationships are rare. The small Romansh-speaking community is an exception. Their frequent intermingling, especially with the German-speaking community, is seen as further endangering their survival. Living alongside each other rather than with each other does not fit the ideal vision of a multi-ethnic society – although it has probably prevented conflicts. Today, most political arguments between groups in Switzerland arise in mixed areas, e.g. about the language of instruction in schools in multilingual municipalities, or about the language on public signs (e.g. in Canton Fribourg). In post-conflict countries in which different religious and linguistic groups live in the same areas, or whose policies aim to encourage the intermingling of groups, there will be more encounters between groups and therefore probably also more confrontations. Separating groups in such a situation is, however, highly problematic, both ethically and practically. In addition, applying the principle of territoriality in order to re-establish or maintain traditional settlement patterns could lead to severe problems and might be in violation of international laws and standards.

Intermingled groups – and tools for accommodation. Territorial autonomy is less helpful in managing conflict if groups are intermingled. In this case, in order to achieve a similar effect, autonomy would have to be allocated directly to individuals on the basis of group identity markers (i.e. a system of personal federalism), and the limits of government jurisdiction would be determined by membership of a specific group rather than by territorial borders (as with cantons). However, this raises practical challenges, for instance in defining group membership. In Switzerland it has been possible to accommodate groups based on territorial criteria and proportionality rather than directly granting autonomy or representation to individual groups on the basis of one aspect of their identity, e.g. religion. Guarantees of representation and autonomy were initially introduced to protect cantonal and religious diversity. Later, when language became more important, these guarantees also benefited linguistic groups.

Identity has evolved and may further evolve but the institutions will remain representative. If the right to representation and autonomy is granted on the basis of a specific identity marker, it is very likely that this marker will retain its importance. The chances of identity evolving so that other (more unifying) markers of identity, e.g. common political beliefs, can gain dominance are limited

Popular acceptance of accommodation of diversity.

In Switzerland, it is generally accepted that there are different linguistic and religious groups. Especially with respect to the Swiss national languages, Swiss citizens agree that linguistic diversity should be maintained and even promoted. They accept restrictions on their own freedom of language for the sake of inter-group harmony. Based on this respect for all language groups, it has been possible for informal rules to develop on the use of language that give almost equal status to all languages, even to Romansh, which is spoken by only about 0.5% of the population. These rules have only recently been formalised. In countries that have experienced conflict between religious and linguistic groups, there is often hesitation to accommodate these groups. The introduction of additional official languages may be seen as threatening the identity of the state. The creation of a multilingual state apparatus may thus face opposition. If linguistic diversity is not seen as something positive, it is unlikely that mutually acceptable informal rules about language use will develop. Linguistic and religious groups will demand binding guarantees and explicit regulations. However, laws have only limited power to achieve social change. It is difficult to implement them without political will and popular support. Additional energy and money will be needed for public awareness and trust-building measures.

Complexities and capacities of administration.

Switzerland is characterised by linguistic and religious diversity. However, it is relatively homogeneous in comparison to many other countries. Swiss language accommodation policies may work with four languages, but might be more of a challenge with ten languages. For practical reasons it may be necessary to restrict the status of official languages to only some of the languages traditionally spoken in a country. Multilingualism in public institutions creates costs and demands special capacities of the administration. Switzerland's administration has a multilingual workforce. Civil servants in the federal administration are required to have good knowledge of at least one additional official language. Politicians are also expected to understand their

colleagues from other language communities. This reduces the need for and thus the costs of translation. Especially following violent conflict, there may be a reluctance to learn the language of the other and the state may be unwilling to introduce mandatory language classes. The internal flow of information and internal communication between civil servants requires at least a passive knowledge of the other official languages.

Swiss lessons learned: As shown above, the importance of the specific context must not be underestimated. However some lessons can still be drawn from Swiss experience:

- Swiss experience shows that combining the recognition of all groups with a policy of neutrality towards all groups can prevent alienation. Recognition acknowledges the different groups and promotes their identification with the state. The distinction between national and official languages provides ways to acknowledge the equality of the different linguistic groups and at the same time to create regulations about official languages that take practical considerations into account.
 - The possibility of achieving official recognition gave religious groups an incentive to reform their internal organisations and introduce democratic structures. Democratically-organised religious congregations can also legitimately represent their members with the state.
 - Switzerland has adopted four official languages at the federal level. Swiss experience shows that multilingualism need not jeopardise administrative efficiency. The employment of civil servants from all language communities in the public administration, and early compulsory language training in schools, have contributed to affordable multilingualism in Switzerland.
 - In Switzerland, territorial autonomy for territorially-concentrated linguistic and religious groups at the cantonal and municipal levels has prevented confrontation at the federal level and thus contributed indirectly to the unity of the country. Territorial autonomy also allows a certain partisanship towards one's own identity. For instance, because of cantonal autonomy in relations between religion and the state, the federal level of government can remain neutral and the cantons can still give preferential status to one or more religious groups in accordance with their identity. Competencies at the federal level with respect to protecting individual and group rights
- and promoting inter-group peace have guarded against the suppression of religious minorities by the cantons.
- Conflicts within cantons, as well as Switzerland's recent attempts to formalise the use of language in laws and regulations, show the relative fragility of inter-group relations. Interethnic peace cannot be taken for granted but requires continuous care

V. Key Questions

Gaining a better understanding of the accommodation of linguistic and religious groups

- *Are different linguistic and religious groups constitutionally recognised?*
 - Are languages and religions mentioned in the constitution?
 - Are there provisions for official languages? How many languages have the status of official languages? Can all citizens address the administration in their own language?
 - What position does the state hold towards religion?
- *Are linguistic and religious groups guaranteed horizontal and/or vertical power sharing?*
 - Are linguistic/ religious groups equally represented in political institutions?
 - Are linguistic and religious groups guaranteed autonomy?
- *Are the rights of individuals and groups protected?*
 - Are freedom of religion and of language guaranteed?
 - Are international standards on linguistic and religious minorities met?
 - Do all groups have equal access to education and the media in their own language?
 - Does the state promote and support mutual understanding between language groups?

Towards sharing language and religion

- *How could the recognition of several religious and linguistic groups be achieved?*
 - Is there public acceptance of the recognition of several languages or religions?
 - Is there willingness to introduce several official languages for the whole country?
 - Would there be willingness to introduce the official use of other languages in certain areas of the country?
- *How could vertical and horizontal power sharing be promoted?*
 - Can lower levels of government regulate their own official languages and relations between the state and religion?
 - What measures could ensure the representation of linguistic and religious groups at the centre?
 - How could a more equitable and representative composition be achieved in the public administration?
 - What are the language requirements for public administration officials?
 - Are there sufficient translation facilities?
 - Are the main languages taught at different levels in schools?
- *How can the rights of linguistic and religious groups be safeguarded?*
 - What can be done to improve access to courts and their impartiality?
 - How could equitable access to the media for all religious groups be ensured?
 - Should there be commissions or other institutions to promote the rights of linguistic and religious groups?
 - What kinds of activities and measures could promote understanding between linguistic and religious groups?

Chapter 7: Sharing Justice

I. The Context

Swiss experience of sharing justice. The cantonal judiciaries are the building blocks of the Swiss judiciary. Under the federal system, Switzerland has 26 different cantonal legal systems and 26 different cantonal court systems. Switzerland developed its central judicial institutions relatively late. The Federal Court, the court of last resort in Switzerland, was created as a permanent institution just over 25 years after the adoption of the first federal constitution in 1848. In comparison with the 'supreme' courts of other countries, the Swiss Federal Court is relatively weak. It has only limited powers of constitutional review. Furthermore, until recently, the right to an impartial judge at the federal and the cantonal levels was not fully guaranteed and judicial proceedings were frequently criticised by the European Court of Human Rights in Strasbourg. Nevertheless, Swiss citizens generally trust their judiciary. Most people seem to support the fact that the courts are relatively weak and consider that direct democracy should serve as main guarantor of the system. The aims of current reforms to the justice system are mainly to increase efficiency and to achieve a level of harmonisation.

Sharing justice, an important issue. An effective judiciary is an essential guarantor of the constitutional and legal order. Reform of the judiciary can be a necessary step towards, for example, strengthening human rights, bringing war criminals to justice, or even re-invigorating the economy and encouraging foreign investment. Justice is a sensitive area, especially in divided societies and following conflict. There is often limited trust in the justice system. This can lead to demands for changes in the composition of the judiciary, for safeguards to guarantee its independence, and even for the establishment of individual courts for different groups or territorial units. Trust can only be re-established if the judiciary is regarded as impartial and efficient. Trust in the judiciary can also help to re-establish trust between different communities.

II. The Concepts

The challenge. It can be difficult to re-establish trust in the judiciary, especially in fragmented societies. In many cases the organisation and the composition of the judiciary are already regarded as biased, for

instance because courts are located in areas dominated by one group, or because judges come mainly from one community. The functioning of the judiciary may be viewed as untrustworthy, for instance because of political influences on court proceedings, corrupt judges, or simply very long and non-transparent procedures. And in certain cases, even the laws that the courts are required to apply may be regarded as favouring one community. How can the judicial system be organised so that all groups can trust it? The following outlines some important concepts:

Justice. A justice system should make decisions that are seen to be just. The different legal traditions have established criteria for promoting just decisions. Initially, in the continental European tradition, justice was mainly to be achieved by limiting the courts to impartially applying the law (**rule by law**). The Anglo-American tradition is based on the belief that there are certain universal rights that must always be guaranteed and taken into account by the courts (**rule of law = rule by law + rule of universal rights**). The rule of law is today considered an essential aspect of good governance and includes the following aspects:

- ▶ **Legal predictability and legal equality.** The nature of the law and the way it is applied should be predictable. The law should be applied without discrimination or favouritism: 'All shall be equal before the law'.
- ▶ **Right to a court and an independent and impartial judge.** Every individual whose case is judged in judicial proceedings has the right to a court that is established by law, has jurisdiction, and is independent and impartial. Independence and impartiality require that judges - once in office - are not dependent and do not appear to be dependent on political institutions (executive, legislature) so that they can take decisions without outside interference: 'Justice must be seen to be done'.
- ▶ **Constitutional and administrative review.** Courts should be able to review the actions of the state with regard to their constitutionality and legality. Constitutional and administrative reviews are the main safeguards against the misuse or arbitrary use of power by the state.
- ▶ **Procedural guarantees** should furthermore guarantee the fairness and transparency of court proceedings.

Organisation of the justice system.

- ▶ **Pyramid systems.** Pyramid judicial systems are hierarchically organised, with trial courts at the bottom and a supreme or constitutional court at the top, all applying the same rules. Most unitary states use the pyramid system as do many federations. In these federations, the lower courts are normally the courts of the sub-national units. The supreme court, or constitutional court, is the central court. There are no central courts at the lower level. Trials normally start in the sub-national unit courts with certain appeal options to the supreme court or constitutional court at the federal level.
- ▶ **Parallel systems.** In parallel systems there are different judicial institutions that apply different laws. Federations in the Anglo-American tradition tend to prefer this system: sub-national unit courts apply the law of the sub-national units, and federal courts apply federal law. Depending on the relevant law, a case may be tried in either of these courts. Unitary states can also introduce parallel systems e.g. by establishing indigenous courts that apply indigenous law. Normally, a supreme or constitutional court ensures some common standards and that the constitution is adhered to.

There are two main systems for the **composition of the judiciary**.

- ▶ **Career systems.** In career systems, the focus is on professionalism: the main criteria for selection are candidates' education and experience. Career systems are most common in countries that rely, or relied, on 'rule by law'. However some countries, especially following conflict, have introduced constitutional courts that do not wholly use a career system.
- ▶ **Reputation.** In some cases education and experience are not the only qualifications required. Especially to re-establish and maintain trust, the criteria for selecting judges can also include candidates' good reputation (persons of honour), as well as requirements for fair representation: e.g. representation of different political views, different communities, different language groups.

Trust and a multicultural judiciary. Certain mechanisms improve trust, e.g. transparent procedures and procedural guarantees. There are also additional mechanisms that can foster trust in the judicial system, especially in multicultural societies. The judiciary must be impartial. Traditionally, *Justitia* is depicted blindfolded. She must decide without regard to social standing, gender, age, ethnicity, culture, religion or any other identity-related factor, unless the law makes a reasoned distinction based on these criteria. Especially in multicultural societies it may be necessary visibly to ensure and

create confidence in this impartiality. Following violent conflict, members of one community may not accept a verdict from a judge from another community, even if the decision is sound. The multicultural composition of the courts can reduce this basic mistrust. Courts with judges from all communities can provide a degree of visible impartiality. Achieving the multicultural composition of the judiciary may require special training programmes for under-represented groups as well as special selection criteria and procedures.

Separate judiciaries. Especially following violent inter-group conflict, there can be demands that courts take special factors into account, i.e. that *Justitia* takes off her blindfold and provides separate courts or separate court chambers or applies different rules, standards or interpretations depending on the group or the region. Such demands can include, for instance, the introduction of Sharia courts or the right to create geographically-defined sub-national courts that only, or also, apply sub-national law. If certain courts apply particular laws, as is the practice in all federations, legal equality is to some extent limited. To maintain predictability, clear rules are needed about which court is in charge and which law should be applied in which situation. If courts can apply specific sub-national law – the law of a specific group or of a specific territorial unit – it is advisable to set out certain common standards (e.g. fundamental rights and principles) that all courts must apply in all areas to all individuals and groups. A supreme or constitutional court can guarantee that these common minimum standards are applied and also that they are interpreted in the same or similar ways.

Access to justice. Even the most balanced judiciary is ineffective if the individuals and groups whose rights have allegedly been violated do not have access to the courts. A justice system may legally and directly restrict access by not providing writs, actions, remedies or appeal possibilities. In addition, costs, language barriers, limited access to lawyers, long distances to the nearest courts or complicated formalities may be indirect hurdles. These indirect hurdles especially tend to disadvantage vulnerable groups. To create an effective judiciary, both direct and indirect barriers to access must be addressed.

III. Sharing Justice in Switzerland

Democracy and rule of law. The Swiss system gives priority to direct democracy. The people have the

final word. For instance, no federal law can be submitted to the scrutiny of the courts because the people can express their opinion on the law directly through a facultative referendum (see *Chapter 5: Sharing democracy*). If the people accept a federal law, either explicitly in a formal Popular Vote or implicitly by not demanding a referendum, no judge has the right to declare the law invalid even if it is deemed unconstitutional. The democratic process is intended to function as the main protector of the constitutional order and the general will. This concept of 'democracy first' is the main reason why the Swiss judiciary and the rule of law have remained weak. However, there have been important changes since the 1980s. The ratification of the European Convention on Human Rights in 1974 in particular has contributed to a strengthening of the rule of law in Switzerland. For more than two decades following the ratification, Swiss people were among the most frequent registrants of human rights complaints in Europe in proportion to population size. Since the ratification of the European Convention, the Swiss federal and cantonal parliaments have gradually amended the justice system to bring it closer to European standards. The authors of the 1999 Swiss Constitution explicitly introduced the principle of the rule of law (rule by law) in Article 5, according to which all state activity must be based upon and limited by the law. They also introduced an extensive Bill of Rights with a set of procedural guarantees that can be decided by legal principles or by a court of justice. However, there has been no constitutional review of federal laws so far. Politicians feared that a constitutional amendment to introduce a constitutional review would not be accepted by the necessary formal Popular Vote.

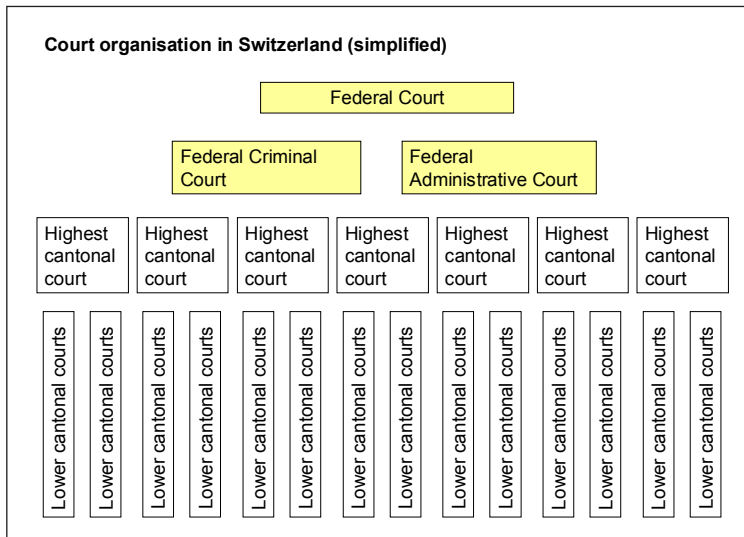
Federalised judiciary. The functioning and organisation of the judiciary are strongly influenced by Switzerland's federal system. There are federal and cantonal courts. Cantons are free to decide on their own court systems, though the federal constitution and federal statutory law set some basic rules and standards. The organisation of the cantonal judiciaries remains diverse. There are also a significant number of traditional extra-judicial mechanisms for resolving disputes at the municipal and cantonal levels. Over time, the cantonal judiciaries have lost some of their special features. Nevertheless, most citizens would be irritated if they were confronted with judges at the cantonal level who had been appointed by the centre or who were from another canton. Formerly, lawyers were only allowed to practice in the canton in which they had passed their bar exams. Since 2002, registered attorneys or solicitors can practise in

all cantons. However, due to the differences in the court systems and, until now, (civil and criminal procedures are currently being centralised) also in procedural laws, most lawyers still practise in only one canton. In general, the cantonal courts apply cantonal, federal and international law. In terms of cantonal law, citizens have to deal with different rules depending on which canton they are in. However, today, many important areas of the law, including criminal law, are regulated at the federal level. Federal law generally defines what constitutes a crime and punishments are roughly the same in all cantons. The federal judiciary unites the different cantonal judiciaries and guarantees the uniform application of federal law. In addition, the Federal Court functions as arbiter in disputes between cantons, and between the cantons and the federation.

Pyramid system. The Swiss justice system is a typical example of a pyramid system, but with some exceptions. At the top, as the highest court, is the Federal Court. This is the court of last resort. In 2000, to reduce the case load of the Federal Court, the Swiss people and the cantons approved a constitutional amendment and introduced a Federal Criminal Court and a Federal Administrative Court as lower level courts for very specific cases. In addition, there are a number of specialised courts: e.g. the Federal Insurance Court and the Military Criminal Court. The cantonal courts are the lower courts. All court proceedings normally start in cantonal courts. Under certain conditions cantonal court decisions can be appealed in the federal courts. The federal courts only very rarely function as trial courts. However, the Federal Criminal Court hears certain cases that, by law, fall directly under federal jurisdiction (e.g. crimes committed using explosives). The Federal Administrative Court functions as an ordinary administrative court, replacing a number of independent and internal appeal commissions of the federal administration.

Composition of the Federal Court. The Federal Court is composed of between 35 and 45 full-time judges and up to 30 part-time judges (the maximum permitted number of part-time judges is two-thirds the number of all judges). The court is organised in different chambers depending on the subject matter. Federal Court judges are elected at a joint session of both chambers of the Federal Parliament (the United Federal Assembly). Under the Swiss Constitution, every citizen who is entitled to vote can be elected as a Federal Court judge (Articles 143 and 136 of the Swiss Constitution). Legal training is not explicitly required; the focus is on the general

reputation of candidates. However, there is an informal rule that only experienced lawyers are elected to the Federal Court.



Multicultural judiciary. Based on an informal agreement, the composition of the Federal Court more or less reflects the composition of the Federal Parliament. The principle of proportionality concerning political parties ensures an equitable representation of both political opinions and religious communities in the Federal Court because originally the party system was strongly influenced by religious adherence. Furthermore, statutory law also requires that the different language communities are adequately represented in all chambers of the Federal Court. The multilingual composition of the court is also essential from a practical point of view. In general, people before the court can use one of the official languages (German, French, Italian or Romansh). In appeal cases, unless the parties request otherwise, the court will use the language of the appealed decision. For instance, if an appeal is directed against a decision from a court in a canton that has French as its official language, the Federal Court will conduct the hearings in French and publish its opinion in French. This requires an adequate number of judges from each language community, as well as lawyers who understand the different languages. Citizens benefit from this policy because in most cases they have a judge who is from their own community or who is at least fluent in their language. The sensibilities of the different language communities were also taken into account when selecting the locations of the federal courts. The Federal Court is located in the French-speaking part of Switzerland, the Federal Criminal Court in the Italian-speaking part, and

the Federal Administrative Court in the German-speaking part.

Job opportunities and judges from one's own community. The segmentation into cantonal judiciaries ensures that there are enough experienced lawyers from all cantons and thus from all language and religious groups for recruitment to the federal courts. Although legal training at university level is available in German and in French, there are no law schools in the Italian or Romansh-speaking parts of Switzerland. University education, including legal training, is a cantonal power. The Italian-speaking Canton Ticino, and Canton Graubünden with its Romansh-speaking population, considered it too expensive to establish law schools in their cantons. The lack of legal training in their own language creates entrance barriers to the legal profession for Italian- and Romansh-speaking people. However, these two cantons support the training of their students at other universities in Switzerland both for their own legal systems and to ensure adequate representation in the federal judiciary.

Independence and impartiality of the judiciary? The Swiss Constitution guarantees the right to an impartial judge and confirms that all judicial authorities must be independent in their judicial activity and bound only by the law (Article 30 of the Swiss Constitution). The independence of the judiciary mainly requires independence from other branches of government. The Federal Court, therefore, has organisational and financial autonomy. In addition, a judge must not receive directives from or be influenced by political parties or other interest groups. However, Federal Court judges are elected by Federal Parliament and their political affiliation is taken into account. They are not elected for life but for six-year terms. They can be re-elected. The need for re-election might jeopardise their independence, but, under informal rules, judges are normally re-elected as long as they stand for re-election. They retire at the age of 68. Federal Court judges say that they are not subject to political pressures. The cantonal court judges are elected by the cantonal parliaments or even directly by the people. Thus there could be the same concerns regarding issues of dependency as for federal judges.

Lay people as judges. Although in theory the Federal Court can have judges with no legal training, in practice all Federal Court judges are experienced lawyers. A number of cantons still appoint or elect lay people as judges. This has historical reasons. On the one hand, the legal profession developed rel-

atively late. On the other, the establishment of the courts was mainly directed against the power of some elitist families to appoint judges of their choosing and to prevent the development of a legal class. It was intended that lay people, ordinary citizens, would administer the law. However, lack of knowledge of the law can seriously jeopardise legal predictability and equality. Today, lay judges normally sit with professional judges or are at least supported by a lawyer. In 2008 the Federal Court carried out a review of whether the independence of the judiciary is violated if people without legal training administer justice. It ruled that as long as there is at least one trained lawyer involved on the court side – the requirements for independence and fairness are fulfilled.

Limited administrative review. An independent judiciary is only beneficial if citizens have access to it. Switzerland distinguishes between public law (e.g. criminal law, administrative law) and civil law (e.g. contracts, torts, family law). Swiss courts normally deal with both criminal and civil matters. However, as in many other countries in the continental European tradition, different rules used to apply for administrative law cases and access to the courts was limited. Most disputes between citizens and the administration were decided by commissions within the administration and appeals of these decisions had to be directed to political bodies, e.g. the cantonal government. The cantons in particular considered the idea that the courts should be able to scrutinise the acts of their administration and political bodies' elitist - opposed to the democratic principle. Access to the courts has been continuously improved in recent years, mainly because of the European Convention on Human Rights. The last canton to introduce an administrative court was Canton Appenzell Innerrhoden in 1996. In March 2000, the Federal Constitution was amended to guarantee that every person has the right to have legal disputes – including administrative disputes – judged by judicial authorities (Article 29a of the Swiss Constitution). However, there are still some exceptions. For instance, appeals against administrative acts in areas of internal and external security and external affairs must still go to the Federal Council (Executive). In addition, the decisions of the Federal Council cannot be brought before a court. In this respect the cantons are more advanced. Most cantons allow reviews of the decisions of their executives.

Limited constitutional review. Probably the most criticised – and the most defended – aspect of the Swiss judicial system is that constitutional changes

cannot be reviewed by a constitutional court. The Federal Court can scrutinise the constitutionality of cantonal laws but not of federal laws. Any court must apply federal law even if it is deemed unconstitutional (Article 190 of the Swiss Constitution). This is mainly, though not entirely, due to the priority given to the democratic principle (see above). Historical factors have also played a role: initially the centre was relatively weak and federal powers relatively few. The main danger to the federal system was thought to emanate from the cantons. Priority was therefore given to limiting the powers of the cantons. Today, although the power relations have changed, there are still certain limitations on the powers of the Federal Court. Some of the consequences of this have been reduced by the increased significance of international law. Swiss courts are required to apply both federal statutory law and international law.

Judiciary: an almost anonymous branch of government. Switzerland's judiciary is only rarely seriously criticised by the public. Perhaps political and administrative decision-making are close enough to the people for the limited role of the judiciary not to be perceived as a threat. Switzerland's judiciary is almost anonymous. The average Swiss citizen does not know the name of a single Federal Court judge, and even law students can rarely recall more than three names. Court decisions do not specify which of the judges was in favour of the decision and there are no dissenting opinions. Nevertheless, the courts are not completely removed from the public. Because of the Federal Court's heavy caseload, the judges often simply read the documents and come to a shared decision without meeting to discuss it. However, when the judges do actually meet, both the hearings and the judges' discussions on their decisions are held in public. Decisions are taken under the public gaze and not behind closed doors.

IV. Sharing Swiss Experience

Sharing justice – a success? Generally speaking, the Swiss people and the different communities in Switzerland trust their judiciary, partly because the judiciary pays attention to group concerns and to the public will. This high level of trust in the judiciary can be considered a major success. Aspects of the multicultural composition of the court system, in particular, may provide some positive lessons on sharing justice. With respect to other aspects, e.g. the prominence of the democratic principle, the lessons are more ambivalent, particularly because

certain aspects can be abused. At least three factors that have contributed to the successful functioning of the Swiss judiciary which do not necessarily arise in other contexts.

Voluntary restraint, informal rules and democratic control. Overall, the Swiss judiciary conforms to European standards. The rule of law is more or less ensured. Legal reforms have been the key to achieving the necessary standards. Voluntary restraint and informal rules have further helped to ensure that standards are met. Although the legal system provides incomplete institutional guarantees against political interference, the informal rules on the re-election of judges reduce possible political pressures. The law does not provide for the constitutional review of federal statutory law. However, it can be argued that voluntary restraint by political actors as well as democratic safeguards have helped to reduce the probability of violations. The increased significance of international law in the area of human rights has further prevented any negative consequences. However, following violent ethnic conflict, when there is likely to be less political restraint and strong mistrust between communities, a similar justice system could lead to a politicisation of the judiciary and the erosion of the constitutional order. Clearly defined rules and guarantees would be needed.

Broad acceptance of the federal order. The Swiss system provides only incomplete safe-guards against abuses of the federal system. If the Federal Parliament violated the distribution of powers, the courts would not be allowed to interfere. Although federalism - usually defined as 'constitutionally guaranteed self-rule and shared rule' - must be guaranteed under the constitution, constitutional guarantees do not offer much protection if there are only incomplete mechanisms to uphold the constitution. It is only because the Swiss federal system is broadly accepted and supported by politicians and the public alike that serious problems have not occurred and the Federal Parliament has not exceeded its powers. Especially in countries that have experienced violent conflict, and in which power-sharing has been introduced as part of a peace agreement, low levels of guarantees and incomplete judicial protection can create new frustrations and confrontation and lead to the usurpation of power by the centre or the sub-national units.

Multicultural composition of the judiciary without strong fragmentation. Formal and informal rules have led to the multicultural composition of the ju-

diciary. This has arguably increased trust and also improved the efficiency of the multilingual administration of justice. There are enough qualified candidates from all communities to fill vacancies. In other contexts, a similarly multicultural judiciary might be difficult to achieve. Formally marginalised groups, with limited access to the legal profession and limited job opportunities, may not have sufficient candidates with the necessary qualifications and experience. Costly special training programmes may be required. In addition, especially in situations following violent conflict with a high level of fragmentation, the multicultural composition of the judiciary could lead to divided courts in which ethnic identification influences judges' decisions. This is not an argument against the multicultural composition of the judiciary but highlights the fact that multicultural composition alone may not be enough to re-establish trust.

Swiss lessons learned. As shown above, the importance of the specific context as well as the limitations of the Swiss system must not be underestimated. In addition, the substantial differences between the continental European civil law tradition and the Anglo-American common law tradition must be taken into account. It is not possible to address these within the scope of this chapter. Nevertheless the following more general lessons can be drawn from Swiss experience.

A federalised judiciary or, more generally, the right of territorial sub-units to define their own court systems (within limits) can enable locally-anchored judiciaries to take local traditions and needs into account. Locally-anchored judiciaries are less likely to be perceived as administering the justice of the centre or of the dominant group.

- Although it carries certain risks, elected judges and the possibility of lay people being elected can contribute to overcoming mistrust between people and elites, and foster feelings of 'ownership'.
- Swiss experience also shows that cantonal (sub-national) standards concerning the rule of law are not necessarily lower, and cantonal reluctance to reform is not necessarily higher, than at the federal level. However, to guarantee certain minimum standards in all cantons (and at the federal level), it may be necessary to set federal standards or adopt the relevant international standards.

- Ensuring that the composition of the judiciary reflects the composition of the population can foster trust in the court system. In Switzerland, citizens generally encounter judges who share their identity. A multi-ethnic judiciary can also form the basis of the effective multilingual administration of justice. Being able to address the court in one's own language, to be heard without the need of translation, and to receive an answer in one's own language have been essential in creating and maintaining trust in the Swiss judiciary.

V. Key Questions

Gaining a better understanding of the justice system

- *How was the judiciary organised before the conflict? How does it look now?*
 - Is there a functioning judiciary?
 - How is the court system organised?
 - Do the courts have the right of administrative and constitutional review?
 - How do people get access to the courts? Are there formal or informal barriers to access?
- *How far does the organisation of the judiciary reflect the multicultural composition of society?*
 - How and by whom are judges selected? Do members from different communities sit as judges?
 - What are the languages of the court?
 - Are there separate courts for different groups or areas?
 - What is the level of trust in the court system?

Towards shared justice

- *How should the rule of law be achieved?*
 - Is the rule of law provided for in the constitution, in the laws? What safeguards are there?
 - What guarantees could there be to ensure that the courts are independent, that the judges are impartial and that the procedures are fair?
 - What guarantees could there be to ensure that citizens know their rights and duties?
- *Should there be multicultural composition of the judiciary?*
 - Are there rules for the multicultural composition of courts, chambers of the courts, and the president of the court?
 - What are the selection criteria for court judges?
 - Are there enough qualified candidates from all communities? If not, how could this be changed?
 - Are there special decision-making requirements for sensitive cases?
 - What are the languages of the courts?
- *Should the organisation of the courts reflect the multi-ethnic character of the country?*
 - Who decides about the establishment and organisation of the courts?
 - Should there be different courts (e.g. sub-national, traditional or religious courts) for certain subject matters or groups?
 - Over whom should such courts have jurisdiction? What law should the courts apply?
 - What guarantees could there be to ensure that these courts and their judgements meet certain basic standards?

Chapter 8: Sharing Wealth and Income

I. The Context

Swiss experience of sharing wealth and income.

The power to decide on and finance public services remains largely with the cantons and the municipalities. All three levels of government, the centre, the cantons and the municipalities, have the right to raise taxes and decide tax rates. In addition, the cantons own most of the natural resources. However, Switzerland does not have many exploitable natural resources and income from royalties on these is minimal. Each level of government raises about one third of the overall state income. Thus, cantons and municipalities have not only the legal power to decide on their policies (see *Chapter 4: Sharing rule*) but also the fiscal powers to implement them. In the end, fiscal powers decide 'real' power. Switzerland accepts that there are different living standards in its regions. However, to alleviate some of these differences, it has introduced a system of fiscal equalisation that is intended to reduce regional disparities in financial capacity and service costs, and to ensure that all the cantons can deliver at least minimum services.

Sharing wealth and income: an important issue.

Economic grievances can be important root causes of civil conflicts. Many ethno-political conflicts arise or are aggravated as a result of economic inequalities between communities. In particular, there are many conflicts about natural resources and the use of the income they generate. Demands for the equitable distribution of revenues, royalties and grants are almost inevitable. Furthermore, any scheme for decentralisation or federalisation presupposes a redistribution of wealth and income from the centre to the regions, and thus requires mechanisms for sharing wealth and income. Otherwise, central governments may use their privileged access to wealth and income to dominate and control the lower levels of government. Arrangements for sharing wealth and income are prerequisites for effective vertical power-sharing and can be essential in creating sustainable peace.

II. The Concepts

The challenge. The question of the distribution of powers has already been addressed (see *Chapter 4: Sharing rule*). However, it is essential that the distribution of powers goes hand in hand with the

distribution of finances. Otherwise the political system cannot function properly. If sub-national governments are expected to be accountable and responsive, they must be able to finance their expenditure from their own revenues. One option is to allocate a number of revenue sources to each level of government. However, the different regions within a country rarely have the same or similar financial capacities. Even with identical taxing powers, poorer regions are likely to raise fewer taxes and regions without natural resources may be financially disadvantaged. Especially following violent conflict, solidarity between groups and also the willingness to introduce schemes for fiscal equalisation tend to be limited. How many inequalities can citizens in disadvantaged areas be expected to accept, or how much solidarity can poorer regions expect from richer regions? This box provides an overview of the different revenue sources, equalisation systems and spending powers.

Sources of revenue. The following sources of revenue tend to be of major significance:

- ▶ **Taxes, duties and fees:** In most countries, especially developed countries, taxes are the most important sources of state income, for example income tax, property tax, value added tax, inheritance tax or tax on businesses. Customs and other duties can also be significant. Furthermore, the state can demand fees from citizens and businesses for the delivery of services.
- ▶ **Public property (natural resources):** The state or the different levels of government can own property, e.g. road and telecommunications infrastructure or items of cultural heritage. Natural resources can also be part of public property. Property forms part of wealth and can be used to generate income. Even if a level of government owns property (e.g. natural resources), it does not necessarily receive all the income the property generates. All or part of the generated income can be re-distributed to other levels or other units of government. Normally, the owner receives at least a share of the income.
- ▶ **Grants and transfers:** Grants and transfers are payments normally made by the centre to lower levels of government, sometimes also between sub-units. With such grants and transfers, the centre may, for instance, pay lower levels of government for services delivered on its behalf, finance the activities of lower levels of government, or balance existing inequalities in financial capacity. Grants and transfers can be either earmarked or conditional.

- ▶ **Borrowing:** The right to borrow is an indicator of financial autonomy. The lower levels of government may have the right to borrow from other levels, or from governmental or non-governmental financial institutions. If sub-national units are allowed to borrow, regulations on liability may be needed. Important questions include whether lower levels of government are allowed to accumulate debts, and whether the centre has an obligation to help lower levels of government in situations of financial distress.

Sharing revenue: Four questions are of major importance in sharing revenue: (1) the allocation of the revenue source: who can raise revenue from a potential revenue source? (2) deciding the rates: who decides the tax rate or the rate of royalties for the exploitation of natural resources? (3) collecting revenues: who administers and collects revenues and can grant exemptions? and (4) distributing revenues: how will revenues be calculated and distributed? Responsibilities for these four aspects can be allocated to different levels of government. The aspects are interlinked and the distribution of responsibilities will have implications for the accountability, transparency, efficiency and effectiveness of revenue management.

Fiscal equalisation: Fiscal equalisation is intended to correct financial distortions and improve the efficiency of resource allocation. Because financial situations can change, fiscal equalisation mechanisms should be adjusted every ten to twenty years. Fiscal equalisation may persuade financially weaker regions to accept the overall scheme of wealth and income sharing. Whether the equalisation is designed to lead to a complete equalisation of financial capacities and burdens as well as to equal services for all citizens, or whether differences and thus competition should be allowed, is a political decision. There are two forms of equalisation: vertical equalisation, where funds are distributed from the central government to sub-units, and horizontal equalisation, where funds are redistributed from richer to poorer sub-units. In addition, equalisation can be cost-based and/or resource-based. Of the two, the latter has been favoured during recent years so as to minimise negative incentives.

Spending power: The power to spend normally includes the rights to make decisions on spending, to draft one's own budget, and to approve the accounts. Spending power can be linked to decision-making power. In other words, each level of government must only spend in the areas for which it is responsible. If a country grants fiscal autonomy to its sub-units, either the central level or the sub-units may introduce hard or soft budget constraints, e.g. requiring a balanced budget, to ensure the economic viability of the country overall.

Specifics of sharing natural resources. Natural resources (e.g. oil, gas, minerals, but also timber, fish

or water) can be sources of livelihood and commodities. However, they can also be sources of conflict and dispute, for instance between the groups that live in the region that contains the natural resources and the central government. Natural resources tend to be unevenly distributed without regard to state or other boundaries. Exploiting them can incur high initial and recurring expenses, especially with respect to infrastructure or environmental protection. In addition, exploiting a resource in one place can limit access to it somewhere else, e.g. water. This creates challenges for resource management as well as for cost and benefit calculations and sharing. The state needs to find a balance between open access and commercialisation and the protection of the environment, as well as between national interests and the interests of different groups and regions. Because of these complexities, the higher levels of government often retain a protective and coordinating role.

III. Sharing Wealth and Income in Switzerland

Federal organisation of revenue sources. Each level of government in Switzerland has several revenue sources. All three levels, the federation, the cantons and the municipalities, raise direct taxes (taxes on incomes as well as on business profits). For direct taxes the federation, cantons and municipalities use the same tax base. Other tax bases are exclusively allocated to one level of government: value added tax and certain consumption taxes as well as stamp and withholding tax and customs duties are allocated to the federal level. The cantons have the exclusive right to raise taxes on business capital. They also raise other types of taxes, e.g. inheritance taxes (with some restrictions set in the Swiss Constitution). At the municipal level, in addition to direct taxation, the main sources of revenue are user fees for public services (e.g. water, sewage and purification plants or garbage collection).

Tax rates. The cantons can – at least in theory – decide their tax rates as they wish. The maximum rate of federal direct taxes and of value added tax are prescribed in the constitution (Article 128 and 130 of the Swiss Constitution). If the federal government wants to increase rates for these taxes, it must first propose a constitutional amendment. As a result of this constitutional requirement the level of fiscal centralisation is relatively low. The federal level can decide the rates of other taxes (e.g. consumption tax) and of custom duties. Nine cantons decide on

their tax rates in their parliaments; all the others require a referendum, in other words, tax rates must be approved in a formal Popular Vote (see *Chapter 5: Sharing democracy*). In setting tax scales, the federation and the cantons are required to take the economic capacity of the tax payers into account. The federation and most cantons apply progressive taxation for direct taxes. In 2008, Cantons Obwalden and Schaffhausen introduced the flat tax, a novelty in Switzerland. The federal level is required to promote the harmonisation of direct taxation. However the constitution explicitly states that harmonisation should not include tax rates or scales (Article 129 of the Swiss Constitution) so as to enable competition between cantons.

Collecting revenues. The cantons collect cantonal taxes. They also collect direct taxes and federal withholding and stamp taxes for the federal level. The federal level's right to levy direct taxes is based on a temporary arrangement that must be periodically renewed by the Federal Parliament. It was last renewed in 2006 with a vote on a new equalisation transfer: the federal level was given the right to levy direct taxes until 2020. The federal level collects all indirect federal taxes itself. Municipalities sometimes collect taxes for the cantons in addition to their own taxes. However, in most cantons the canton collects municipal taxes for the municipality. In some cases (see *Chapter 6: Sharing language and religion*) religious communities also have the right to levy taxes. These are also assessed and collected by the cantons. As a rule, each level of government receives the taxes it has levied.

Sharing natural resources. Switzerland is relatively poor in exploitable natural resources. Less than one percent of cantonal income derives from the use and exploitation of natural resources. In general, publicly-owned national resources belong to the cantons. Some cantons delegate ownership to the municipalities. Water is the most important natural resource, in particular because it is used to generate electricity. Water management in Canton Graubünden demonstrates the interplay of all levels of government in natural resource management. As the owners of the water, the municipalities have the primary right to decide how it can and should be exploited. In addition, the canton is involved because it requires permits for, e.g. the withdrawal of water in relation to construction. Furthermore, if the municipality is inactive and does not make use of its water resources, the canton can make decisions about their use. The federal level also participates in water management. It has enacted framework legislation promoting the

protection of water resources and setting out principles for the commercialisation and use of water. Also with respect to earnings, all three levels are involved in setting water charges, even though the municipal level is the owner of the water. The federal level decides the maximum rate of water charges. The municipalities collect the payments and keep up to half of them; the cantons receive the rest.

Spending power. Under Article 183 of the Swiss Constitution, the Federal Council must prepare a finance plan, draft the budget and manage the federal accounts. The Federal Parliament decides on federal spending, adopts the budget and approves the federal accounts (Article 167 of the Swiss Constitution). These decisions are taken by simple federal decree and are not submitted to a referendum. Although the cantons can interfere if their municipalities overspend or cannot agree on a budget, the federal level cannot directly interfere in cantonal finances. The cantons can develop their own financing plans in accordance with their priorities and can decide their own budgets. In contrast to the federal level, financial decisions at the cantonal and municipal levels are often open to mandatory or facultative referendums. This leads to greater accountability and transparency of public spending at these levels.

Spending – fiscal interweaving. In Switzerland, there are many areas of policy in which responsibility is shared between the three levels of government, often because the cantons actually implement the policies. A recent reform disentangled a number of responsibilities in the fields of education, culture, sports, health, environment and roads (see *Chapter 4: Sharing rule*). However, there are still other public service policy areas which are co-financed and where fiscal matters are interwoven: the main example of this is agricultural policy.

Tax competition. The cantonal right to decide tax rates leads to tax competition between cantons and results in big differences in the tax burden. In 2003, in Delémont, the capital of Canton Jura, a family with two children and a taxable income of 150,000 Swiss Francs paid 23,847 Swiss Francs in cantonal and local taxes in addition to federal income tax (approx. 3,500 Swiss Francs). That same family would have paid only 10,094 Swiss Francs in Zug. Because income tax is paid at the place of residence and not at the place of work, some wealthy people move to low-tax cantons. The relatively small distances in Switzerland enable some people to have their home in a low-tax canton and earn their income in another canton. For corporate taxes, the tax base is allocated

to the branches where it has been generated in order to prevent double taxation. The competition with regard to personal income taxes could lead to a 'race to the bottom'. However, several mechanisms have a moderating effect on this competition, in particular the system of intergovernmental transfers and the redistributive effects of income taxation.

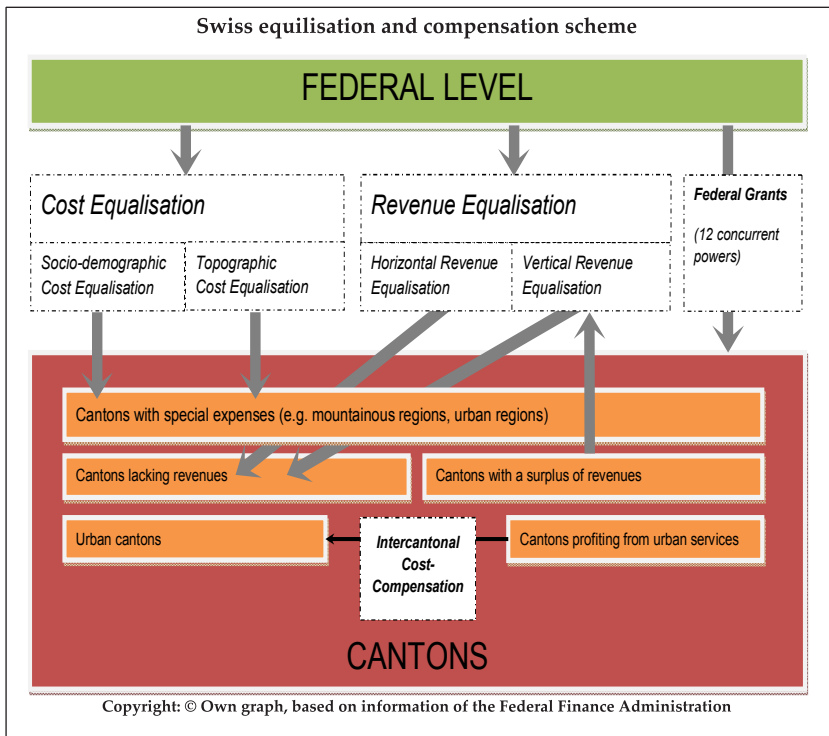
Competition with respect to services. Different policies and different cantonal incomes from taxation translate into differences in service provision. The levels of expenditure per inhabitant differ greatly between cantons. For instance, some cantons pay more social welfare than others. The cantons have introduced protective mechanisms to limit incentives for social welfare receivers to move to cantons that pay more. Individuals who change their canton of domicile continue to receive social welfare from their canton of origin at the rate of the canton of origin for the next two years. For the following eight years the costs are split between the old and the new canton.

Fiscal equalisation. To mitigate the effects of the lower revenue capacities and higher service costs of some cantons, Switzerland has recently revised its system of fiscal equalisation. Discussions about a revision began in the 1990s. In 2004, after long consultations at the pre-parliamentary and parliamentary stages, the new system was adopted by 64% of Swiss citizens in a formal Popular Vote. The implementation of the new scheme started at the begin-

ning of 2008. The reform of the fiscal equalisation system is linked to the reform and disentangling of federal and cantonal powers as well as to new co-operation mechanisms (see *Chapter 4: Sharing rule*). Fiscal equalisation in Switzerland has elements of vertical and horizontal equalisation in that both federal and cantonal levels contribute to it. Equalisation aims to balance differences in financial capacities (revenue equalisation) as well as differences in costs (cost equalisation).

Revenue equalisation. Revenue equalisation is intended to ensure that each canton has the necessary means to carry out its responsibilities and provide minimum services. The aim is not complete equality of financial capacity. Revenue equalisation is financed by the federal government and the richer cantons. All cantons receive a fixed amount from federal revenues as vertical equalisation. This amount is decided by the Federal Parliament every four years. In addition, the richer cantons contribute to horizontal equalisation based on a resource index.

Cost equalisation. Swiss cost equalisation is intended to redress two kinds of disadvantages. First, it is intended to balance the additional costs of delivering public services in cantons in the peripheral and mountain regions. Compensation for these additional costs is based on indicators such as altitude, the steepness of the ground and low population density. Second, it is intended to level out costs resulting from socio-demographic features in urban areas. The indicators for this include poverty, the percentage of people over 80 years old, the number of migrants and foreign residents, and the number of unemployed, as well as the overall number of inhabitants, population density and employment density (especially designed to deal with problems in urban agglomerations).



Intercantonal cost compensation. In addition to these equalisation measures between all the cantons, there is a compensation mechanism that was introduced mainly because of urban agglomeration problems and which involves only certain cantons. Cantons that benefit from infrastructure or services provided by another canton must pay compensation to the service provider. Contractual co-operation and cost compensation is mandatory for the following: institutions for the disabled,

prisons, urban public transportation, sewage purification plants, waste disposal plants, universities, professional high schools, specialist medical care, and hospitals, as well as cultural institutions of inter-cantonal importance. The cantons that benefit from cost compensation are those that provide extensive services, i.e. Basel, Geneva, Zurich, Berne and Vaud.

Federal grants. In relation to joint federal-cantonal powers (12 at present) the federal level is in charge of strategy, while the cantons are responsible for operations. Funds are provided by the federal level through conditional block grants. The amount of each grant is based on goals rather than costs. The funds are released once the goals are achieved.

Cohesion fund. For some cantons the introduction of the new system of fiscal equalisation has led to a net loss. As a result, a cohesion fund has been introduced to prevent excessive financial losses during the first few years. This fund is financed two-thirds by the federal level and one-third by the cantons. This transitional mechanism is an example of consensus-oriented politics (see *Chapter 4: Sharing rule*).

Performance and debt control. The 26 Swiss cantons perform quite differently: In 2003, the average cantonal debt per capita was 10,522 Swiss Francs. However, the debt ranges from six cantons with less than 4,000 Swiss Francs debt per capita to Canton Geneva with 46,512 Swiss Francs debt per capita. Given the cantons' access to resources, including grants from the equalisation system, every canton should be able to take care of its finances in a responsible manner. There are two main debt control mechanisms: democratic control and 'debt brake' mechanisms. In all the cantons there is the possibility of either a mandatory or a voluntary fiscal referendum. This allows citizens to stop the government and/or the parliament from making any proposed expenditure. The 'debt brake' mechanism forces a canton not only to balance its current budget but also to save some money if there is a surplus. Up to now eight cantons have introduced 'debt brakes'. There are also provisions for requiring a balanced budget at the federal level.

IV. Sharing Swiss Experience?

Creating a viable fiscal system. In long and protracted conflicts, the question of how to administer taxes and distribute revenues is crucial in creating a just and fair state structure and thus a sustaina-

ble peace. Can the Swiss experience provide any insights for countries facing this challenge? At least three elements have facilitated the smooth functioning of the Swiss fiscal system.

Relative economic stability and overall wealth. Switzerland was founded shortly before industrialisation in Western Europe and was able to participate in the general economic upward trend after the two World Wars. The current fiscal system, with its competitive approach and the strong fiscal autonomy of the cantons, has been possible mainly because of Switzerland's overall economic stability and wealth. There are differences in financial capacities between cantons; however, these are not as pronounced as regional differences in many other countries. The main government income derives from taxation. Income from natural resources is minimal.

Most violent ethnic conflicts, however, do not take place in stable rich countries but in those that depend on specific natural resources. Moreover, the ability to collect tax taxes tends to be reduced during and after conflicts. The allocation of natural resources can therefore become a major issue. Depending on the context, allocating revenue sources to sub-national units, and the resulting new imbalances between regions that are likely to result, may also lead to renewed confrontation, especially if national solidarity and therefore mechanisms of fiscal equalisation are lacking.

Equality versus autonomy. Cantonal autonomy and fiscal powers have led to the introduction of different tax rates. Thus the fiscal burden on individuals in the 26 Swiss cantons differs widely. The system of fiscal equalisation between the cantons insures against excessive inequalities and damaging socio-political disruptions. In addition, the progressive federal income tax has a redistributive effect. However, following a violent ethnic conflict, a fully competitive system similar to the Swiss system may not always be suitable and it may be more helpful to establish equal standards of taxation and tax administration throughout the country .

Direct democracy on fiscal issues. As in other policy fields, direct democracy plays an important role in safeguarding the fiscal system at the cantonal level. It leads to the close involvement of the population in decisions on fiscal questions and has helped to establish financial accountability. However, it is difficult to assess whether direct democratic measures would have similar positive effects in countries experiencing violent conflict (see *Chapter 5: Sharing*

democracy), especially if there is the risk that the measures will be used to the disadvantage of non-majority groups or if there is widespread corruption. Furthermore, an important percentage of funds in these countries often comes from donor countries that have their own guidelines in terms of distribution. Alternative models of democratic control, e.g. community budgeting, may therefore be more suitable.

Swiss lessons learned: As shown above, the importance of the specific context must not be underestimated. However some lessons can still be drawn from Swiss experience:

- Sub-national units need access to their own resources if they are to manage their political and administrative institutions autonomously and make use of their powers. Revenue sources are essential so that sub-national units can carry out their responsibilities in a transparent and accountable manner.
- Financial and budgetary autonomy permit the cantons and municipalities to have specific public policies. This not only enhances their ability to decide their own destiny but also strengthens their interest in achieving a sound fiscal budget, since they do not simply receive money from the centre regardless of what they do. It is important that cantons and municipalities depend as little as possible on ear-marked transfer payments.
- Competition between cantons enables citizens to compare their taxes and services with those of other cantons. This, together with their power to vote on fiscal issues, ensures that only those policies whose financial implications are accepted by the people will have chances of success. The system of direct democracy makes citizens more aware of and more responsible for local issues.
- As Swiss experience shows, fiscal equalisation systems are important aspects of federal or decentralised systems, particularly because differences in financial capacity and service costs cannot be avoided. Fiscal equalisation presupposes a certain level of solidarity and can contribute to national cohesion.

V. Key Questions

Gaining a better understanding of the fiscal system

- *Who has taxing powers?*
 - Do powers in relation to policies, and powers over the necessary resources, correspond?
 - Who can raise taxes or royalties from natural resources?
 - Who decides tax rates?
 - Who collects revenues and can grant exemptions?
- *How are revenues distributed?*
 - Who decides on the distribution of revenues?
 - Are the sub-national units dependent on grants from the central government?
 - Are grants conditional or linked to national standards?
 - Is there a horizontal and vertical equalisation system? Is it needs-based or capacity-based?
- *Is the overall fiscal system democratic and efficient?*
 - Are there incentives for sub-national units to manage their expenditures efficiently?
 - Is efficiency established through the introduction of competition?
 - Are budget decisions open to public debate?
 - How is accountability guaranteed?

Towards sharing wealth and income

- *How should revenue sources be allocated?*
 - Which sources of revenue should be allocated to the different levels of government?
 - Should revenue bases be shared or attributed exclusively to one level?
- *How should rates for taxes, duties and royalties be set?*
 - Should there be competition between sub-units and different financial burdens on citizens?
 - Which level of government should have the right to set rates?
- *How should revenues be distributed?*
 - Who should be in charge of revenue distribution?
 - Are the rules for distribution set in the constitution?
- *How should differences in financial capacity and service provision costs be equalised?*
 - Is there a sufficient basis of solidarity to enable successful equalisation?
 - How should equalisation take place? To what level? By whom?
- *How should sub-units spend their revenues?*
 - Should sub-units be able to decide on their expenditures and adopt their own budgets as they wish?
 - Should sub-units be able to borrow?

Chapter 9: Sharing Security

I. The Context

Swiss experience of sharing security. It is 150 years since Switzerland experienced violent civil war. Thus, it has not had to undergo the same kinds of security sector reforms as countries that have had protracted internal conflict. Nevertheless, some Swiss experience may still be of interest. Three main elements have characterised the development of the Swiss security system: (1) the emergence of federal control over external security; (2) the importance of cantonal control over domestic security; and (3) a reluctance to establish professional military or paramilitary forces. Switzerland has united its cantonal armies into a single Swiss Federal army. It has managed to establish military and police structures and institutions that are close to its citizens and are based on its multilingual nature. Last but not least, democratic control of the security forces has contributed to maintaining trust in the military and the police.

Sharing security: an important issue. Feeling safe from the threat of violence is fundamental to people's personal security and to sustainable economic, social and political development. In conflict situations, however, there is usually widespread insecurity. In many countries the security sector is unable or unwilling to provide effective protection to all citizens and communities. The accountability of the security institutions and people's trust in them is usually limited. State military forces are frequently believed to be involved in the conflict or close to those who are involved. The police may be discredited as the result of a history of repression towards either particular groups or the whole population. If there is widespread lack of trust in state security forces, communities may resort to establishing their own police and (para)military forces. Especially following protracted conflict, ways must be found to (re-)establish trust in security forces, e.g. through power sharing and democratic control, and to re-integrate non-state armed actors. Security sector reforms are part of almost every peace process.

II. The Concepts

The challenge. In most violent conflicts, state armed forces are dominated by one (ethnic) group. Other communities lose trust, may fear for their security and often create and arm their own security forces. Following conflict a process is needed to re-establish

trust in the security sector and to re-integrate non-state armed groups either into society as a whole or into existing armed forces. Democratic control of the armed forces is necessary in order to build a trustworthy security sector. Power sharing e.g. through the multicultural composition of armed forces, can also contribute.

Power sharing and armed forces. Power sharing can be both vertical and horizontal. In vertical power sharing, power is shared between different levels of government. For instance, in many federations external security is primarily the responsibility of the centre, whereas internal security falls primarily, but not exclusively, within the competence of lower levels of government. Methods of vertical power sharing can bring decision-making on police issues closer to the people. Horizontal power sharing can include the equitable representation of all communities in the armed forces, e.g. through special recruitment and selection processes or even quotas, or through power sharing arrangements between communities within the command structure of the army and the police.

- ▶ **Multi-ethnic military.** Ensuring that the military is multi-ethnic can improve trust. This can be achieved in two ways: (1) special measures to ensure the equitable representation of all communities within each unit (proportionality); (2) identity-based units for different communities based on parallel military structures (normally under a common command structure).
- ▶ **Multi-ethnic police.** The role of the police is crucial in improving relationships between different groups. Again this can be achieved in two ways: (1) Special measures to ensure the equitable representation (proportionality) of all communities at all levels of the police hierarchy. This can be complemented by regulations e.g. on the composition of police patrols in mixed areas. (2) Separate police forces, e.g. for different areas, based on decentralisation or federalism. In this case, special measures are necessary to ensure cooperation and coordination between police forces. In line with the principles of community policing, the police must be at the service of the community and close to the citizens.

Democratic control of armed forces. Democratic control of the armed forces requires standards, rules and procedures to govern the relationship between the armed forces (army and police) and civil institutions. Democratically controlled armed forces are subordinate to civilian elected authorities such as parliament and government. The civilian authorities are responsible for deciding the security policy as well as the mission, organisation and composition

of the armed forces, the budget and procurement. Within this framework, the military and the police have operational autonomy. A clear and effective chain of command ensures accountability. Civil society and the media are free to scrutinise the security policy and the actions of the armed forces, and thus contribute further to accountability and transparency. Democratically controlled armed forces are governed by (national and international) laws and thus are also subject to the oversight of the judiciary. There are mechanisms to ensure that complaints are followed up. In addition, the security forces must not interfere in domestic politics and must remain ideologically neutral.

Re-integrating combatants. To achieve sustainable peace, non-state armed actors must be re-integrated either into the official security forces or into society in general. The re-integration of ex-combatants into the official security forces can contribute to the representativeness of the forces and thus help to build trust; however, re-integration is often met with resistance and poses a number of practical challenges. Processes and methods for re-integrating combatants cannot be addressed in the scope of this document. However some Swiss experience e.g. on the organisation of the military, may be useful in considering integrated security forces.

Intelligence services. The composition, management and control of intelligence services are often contested. Especially because intelligence services gather and analyse sensitive information, there is normally huge reluctance to give positions in the intelligence services to former enemies. Due to the sensitivity and confidentiality of the information to which the intelligence services have access, democratic control is also more limited than in the case of the military and the police. A lot of information, e.g. statistics about personnel and funds, is classified and therefore can be accessed only by a limited number of people.

III. Sharing Security in Switzerland

A brief look at history. The Swiss federation was created in 1848 after a short civil war. The 1848 Constitution established the four main aims of the federation, among them to protect Switzerland's independence and to maintain internal peace and order. Nevertheless, the Constitution did not establish a standing Swiss army or a unified Swiss police service. Internal security was left largely to the cantons and their police forces. A hybrid system was devel-

oped for the army. The cantons maintained their own armies, and the cantonal armies carried the cantonal flag. However, the constitution gave the power to declare war and peace to the federal level. In the case of a war, the federal government could ask the cantonal armies to serve as a Swiss army under the Swiss flag. The constitution set out the number of troops the cantons had to provide. The training of ordinary troops was conducted by the cantons; the training of specialised forces and higher ranks by the federal level. In addition, the 1848 Constitution prohibited the old practice by which cantons provided troops to foreign armies. The federal level only received more extensive powers in regard to the military in 1874 when a Swiss federal army (composed of the former cantonal armies) was established.

Two levels of security. The cantons retain an important role in relation to security. Within their areas of competence, both the federal and cantonal levels are responsible for the security and protection of the population. The main powers at the federal level are in the area of external security (armed military forces). The main role of the cantons is to safeguard internal security (police). However, the federal level also has certain functions in relation to internal security. For instance, the federal army can support (federal and cantonal) civil authorities in cases of serious threats to internal security and in exceptional situations, e.g. natural disasters. In addition, there are now a small federal police force and federal intelligence services. The cantons are required to coordinate their efforts in the field of internal security with the federal level and have some, mainly administrative, functions in relation to external security (e.g. involvement in recruitment).

Active neutrality and the mission of the military. The Congress of Vienna in 1815 recognised Switzerland's neutrality. Its aim was to prevent any European power having influence on Swiss territory. Switzerland's neutrality is directly related to its security policy. The Swiss military was established mainly to defend this neutrality and to prevent any foreign military power from gaining control over Swiss territory. This very military concept of neutrality is still important today. However it has evolved and become more political in nature. Today, Switzerland embraces the concept of active neutrality. It maintains defence-oriented armed neutrality. (It is not a member of NATO.) However, it also conducts an active foreign policy based on solidarity, and participates actively in international peace-keeping missions. In line with this concept of armed neutrality, the Swiss Constitution and the Law on the Military

define three main tasks for the Swiss Army: defence, international peace support, and additional services. Most operations today concern supplementary services such as support following natural disasters and security patrols and logistics at major events such as the G8-summit or big sporting events. International peace-keeping missions are currently growing in importance, though there is not a total political consensus on this matter. The Swiss army provides military observers as well as a limited number of armed units (armed primarily for self-defence). The Swiss army can only participate in peace-keeping missions if there is a mandate from the United Nations or the OSCE. 3.7% of the overall budget (1.2% of Gross National Income) is spent on defence (2005 data).

Organisation of the Swiss military: a militia army.

Switzerland has a militia army (Article 58 of the Swiss Constitution). As a rule, all young, able-bodied Swiss males must serve in the army unless they opt for alternative (civilian) service. The initial military training lasts 18 or 21 weeks. Thereafter there are six to seven refresher courses of three weeks each, spread over a number of years. Recruits can now choose to complete all their military training in one go instead of taking a number of refresher courses. The pool of active members of the Swiss army is limited to a maximum of 140,000 members plus 80,000 reserve members who can be mobilised at short notice. There is a small nucleus of approximately 4,000 professional staff. In addition, there is a civilian protection and support service mainly equipped by people who are not able to serve in the army (38,000 active members). Women can join the army on a voluntary basis. The militia system has ensured that the army is close to the people and that its composition reflects the diversity of the Swiss population (with exception of gender representation). The militia system was largely a consequence of the people's suspicion of the upper classes and of any kind of elite. However, the need for more professionalism and technical specialisation has led to several reforms that have turned the Swiss army more into a regular army and increased the numbers of professional soldiers.

The military and cantons. The Swiss army was originally composed of cantonal armies. Even after these were merged into the Swiss Federal army, there were cantonal contingents (mainly infantry units) until the late 1990s. Following the legal reforms passed in 2001 (Army Reform XXI: implementation began in 2004) only a few links with the cantons remain. Parts of the permanent command structure of the army are organised on a territorial (regional) basis and are

responsible for liaising with the cantons. The cantons retain certain responsibilities, e.g. concerning recruitment. In addition, they still have some coordinating powers, especially with respect to the military's supplementary tasks. The cantons can also request troops for maintaining public order on their territory. There have been ten such military interventions since 1848, the most recent in Geneva in 1932 when left wingers tried to disturb a right-wing meeting. When the situation got out of hand, Canton Geneva requested the support of the Federal Council which sent military troops. Only in very severe cases would the federation have the right to deploy the army on cantonal territory against the will of a canton. So far, this right has never been used. Only once was a canton, Canton Ticino, threatened with the deployment of federal troops.

Multicultural military. By its nature, the militia system guarantees that the military are representative of the Swiss population. The military's former links with the cantons and the cantons' remaining involvement in recruitment further promote inclusiveness. Though the army is mixed, most units are organised along regional and linguistic lines in order to facilitate command. As a rule, tactical military units (from company to battalion) are monolingual, and units above battalion level are multilingual (usually bilingual). Two basic language rules are applied: Firstly, every individual may speak in her/his own language and secondly, orders (top-down) are issued in the language of the subordinate units or individuals.

Democratic control of military. Democratic control is ensured mainly through the Federal Parliament. Parliament decides the principles of the military's organization and structure as well as its budget. The Federal Council, the executive, is in charge of the military and reports regularly to the parliament. It also appoints the Chief of the Armed Forces who runs the army day-to-day. He holds the rank of a three-star general and reports to the head of the Federal Department of Defence and to the Federal Council. In the case of a war, a Supreme Commander is elected in a joint session by both chambers of parliament. In addition, external security matters can be governed by direct democracy. For example, a constitutional initiative in 1989 called for an amendment to the constitution which would abolish the army. The initiative failed the formal Popular Vote. However, an unexpectedly high number of voters (35.6%) voted to dissolve the army. This, and a second initiative in 2001, triggered a series of reforms in 1995 and 2004 which were approved in referendums. The reforms included the downsizing and further professionalisation of the army.

Organisation of police. The 26 cantons are primarily responsible for police matters. Each canton has its own police force and some have established municipal police forces. There are large municipal police forces in several bigger cities as well as around 300 small municipal forces with between one and twelve members. However, municipal police forces are increasingly integrated into cantonal police forces. The cantons and municipalities decide on the organisation of their own police forces, including training, arms, equipment and uniforms. As a result there are differences between cantons. For instance, cantons in the German-speaking part of Switzerland normally organise the police into criminal, security and traffic police. In the French-speaking cantons the police are usually divided into *Gendarmerie* (general police) and *Sûreté* (criminal police). In the Italian-speaking canton of Ticino, organisation is primarily along geographical lines.

In addition to the cantonal police forces, there is a Swiss federal police force, a non-uniformed service. This is numerically much smaller than the cantonal police forces. The Federal Office of Police (Fedpol) works with international and cantonal partners and provides a centre for information, coordination and analysis. Fedpol's activities include preventive measures in the field of national security, the protection of people and the infrastructure, and tasks connected with the criminal prosecution of certain crimes, e.g. serious cases of organised crime and corruption, drug trafficking, counterfeiting and money laundering. Fedpol's responsibilities are increasing in response to the globalisation of crime.

Police close to communities. The cantonal and municipal structure ensure a police service that is close to the communities, with police officers who come from the community where they serve, speak the local language and are familiar with local customs. Each canton or municipality recruits its own police force. This increases accountability and contributes to the embeddedness of the police in their community. The cantons also decide the official cantonal language and therefore the language used within their police service and by the police. Most citizens encounter police officers who are fluent in their language. Especially in small local police forces, the police know almost all the inhabitants. Such closeness can of course also have its drawbacks, e.g. in relation to police independence.

Cantonal structure creates need for coordination. Crime does not stop at cantonal and municipal boundaries. The existence of different cantonal and

even municipal police forces creates difficulties unless there is strong cooperation. The Conference of Swiss Cantonal Police Commanders and the Swiss Association of Municipal Police Constables at the operational level, and the Conference of Cantonal Ministers for Police and Justice at the political level, carry out important coordinating functions. There are several intercantonal agreements on cooperation and coordination. The most far reaching are those in the areas of joint police missions and common procurement. In addition, training has been standardised and four national training centres have replaced the cantonal police training schools. Police information and communication systems are not yet fully unified, though progress is being made. Coordination between the federal police and cantonal police forces mainly concerns complex issues such as the investigation of cyber crime, child pornography and human trafficking. However, Switzerland's federal structure limits opportunities for direct cooperation between federal and the municipal police forces. Legally, cooperation between them must always go through the relevant canton, even though, for instance, the City of Zurich (municipal) police force is bigger than that of Canton Uri.

Embedded in democratic structures. The police forces are embedded in the democratic structures of the cantons. The head of each cantonal police force is a member of the cantonal government (Cantonal Minister for Police and Justice), and the cantonal parliament agrees the legal and financial framework of the police forces. Changes to the organisation, mandate or financing of the police must be approved either by the cantonal parliament or by the people of the canton in a referendum. Municipal police forces are employed and controlled by the municipality.

Organisation and democratic control of intelligence services. The intelligence services in Switzerland can be divided into internal and external (including military) intelligence services. The structure of the intelligence services is complex. However, as result of pressures from parliament, the government decided to reform their structure and to concentrate the internal and external intelligence services under the Department of Defence. Intelligence services are subject to democratic control. Firstly, the ministers responsible operate internal control mechanisms. Secondly, parliamentary control is provided by a six-member delegation from the parliamentary control commissions of both chambers of parliament. In addition, the intelligence services have certain general reporting duties and are submitted to oversight by the highest finance control organ in the federal administration.

IV. Sharing Swiss Experience?

Establishing security. In cases of protracted conflict it is crucial to establish security. Can Swiss experience provide any insights for countries facing this challenge? Three elements in particular have enabled the establishment of multicultural and democratically controlled security forces.

No protracted violent conflict. The most recent violent inter-cantonal conflict took place in 1847 between different (religious) groups. It lasted less than 30 days and there were just over 100 casualties. Because of the low level of conflict as well as restraint by the troops, trust in military institutions was, by and large, maintained even at the time. In addition, until 1874 cantons had their own armies. Cantonal control over these was reduced step by step. Furthermore, cantonal police forces increased the feeling of security. Communities did not feel that they had to arm themselves for their own protection. The militarisation of society was not therefore as far-reaching as in many countries that have experienced protracted conflict. As a result the integration of the cantonal armies was less controversial than it would have been following violent conflict.

Acceptance of diversity. Because cantonal armies formed, and cantonal police forces now form, the basis of the Swiss security system, the composition of the security forces has always automatically been representative. Switzerland did not need to develop policies to integrate formally marginalised and excluded groups into the security forces, except perhaps in relation to the inclusion of women. In addition, multilingualism in the army, especially in the command structures, was generally accepted. Due to the support for linguistic diversity in Switzerland, there are enough army officers who are fluent in more than one national language. In post-conflict situations however, there may be reluctance to integrate marginalised groups. In addition, limited language ability may hamper multilingual command structures. The creation of multilingual forces and or multilingual operations will need time.

Territorial segmentation. As indicated above, the Swiss police force developed through a bottom-up process and is composed of 26 different cantonal police forces. This ensures a police force that is close to the people. Consolidated democratic structures at municipal and cantonal levels contribute to the democratic control of police forces by the people. In post-conflict situations, the division of police forces along territorial, linguistic and ethnic lines may entrench

existing segmentation and endanger minorities. If democratic control mechanisms are not consolidated and the rule of law is not guaranteed, local police forces may be put under pressure by local elites or the local community. In some cases parallel or segmented police structures can undermine reconciliation, e.g. if police fail to prosecute war criminals from their own community.

Swiss lessons learned: The relevance of the specific context must not be underestimated. However, there are still some lessons that can be drawn from Swiss experience:

- The step-by-step creation of a Swiss army, based first on cantonal armies under shared command, then by cantonal units within the Swiss army and finally by dissolving the cantonal units but maintaining cantonal liaison officers within the command structure, is one example of the slow and ordered integration of different armies into one army.
- The Swiss armed forces, the police and, to a more limited extent, the intelligence services are subject to democratic control. Not only are the military and the police governed by law, they are also accountable to democratic institutions and are constrained by the possibility of direct democratic votes. Democratic control also curbs the power of the security institutions and helps to maintain the trust of the population.
- The Swiss armed forces are aware of the importance of representing different language groups within their command structure. The requirements that officers speak at least two official languages, and that the language of command is the language of the person addressed, ensure smooth cooperation between language groups. Monolingual army units with a single language of command help to promote the functioning of non-specialised forces.
- Swiss experience of cantonal and municipal police forces suggests that police forces that are rooted in a specific region and are familiar with the local language(s) and customs generate public trust. At the same time, the scope and types of crimes have changed: the cantons are finding it increasingly difficult to control organised crime and other nationwide security threats. The cantonal police forces have therefore set up extensive methods of coordination and cooperation with each other and have delegated some of their powers to the federal level.

V. Key Questions

Gaining a better understanding of the security forces

- How are the security forces supervised?
 - Who decides on the military budget or military reforms?
 - What procedures are in place for complaints against human rights violations by police forces?
 - Are there ombudsmen or other organisations supervising the promotion of diversity within police and armed forces?

- Who constitutes the security forces?
 - Does the composition of the military and police forces at all levels mirror the diversity of the society?
 - Are military elites willing and able to accommodate different language and religious communities in the army?
 - Is the head of the army or the army in general perceived as representing a particular group?

- How are the military and police forces organised?
 - Which level of state is in charge of what kind of security?
 - Are the police forces and military troops territorially segmented?

Towards sharing security

- How should the military security forces be designed?
 - Should there be one common command structure?
 - What should the language of command be?
 - Should there be multilingual or monolingual army units?
 - Should the principle of equitable representation/proportionality be applied at all levels?

- How should the police forces be organised?
 - Which level of government should be in charge of the police?
 - Should lower levels of government have the right to their own police force?
 - Should lower levels of government be involved in the selection of police officers?
 - What selection criteria should be applied? Will the principle of equitable representation/proportionality be applied at all levels?
 - What measures are there to enable the police to communicate with citizens in their own language?
 - How should community policing be achieved?

Conclusions: Sharing the Future

I. Why Sharing the Future?

Switzerland and sharing the future. Switzerland can look back over 150 years of intercultural peace. It has managed to (1) build on its past, (2) create a common feeling of identity incorporating the value of diversity, (3) find solutions to territorial demands, (4) maintain the autonomy of the cantons and institutionalise shared decision-making, (5) create a system of compromise-driven democratic decision-making that is close to the people and is based on representative and direct democratic instruments, (6) accommodate linguistic and religious diversity based on special recognition and neutrality respectively, as well as power sharing and special protection, (7) create a multicultural judiciary that is trusted, (8) provide all levels of the state with sufficient wealth and income based on autonomy and solidarity, and finally (9) create security forces that maintain external and internal security in a multicultural context. Even if the long-term impacts of some of the decisions that were made during this process were not initially clear, Switzerland has managed its past challenges and is dealing with its present needs successfully, and is willing and ready to share its future.

Sharing the future: an important issue. In countries with multi-ethnic societies that have experienced violent conflict, the different groups often ask why they should continue to share a common state. There can be many reasons, both negative – for example, a lack of other viable options – and positive – for example, the conviction that a common state will maintain and promote the interests of all groups. Power sharing can provide positive reasons for sharing the future. It can create a viable power balance within the state, both between regions and between groups, and can promote common decision-making.

II. Context Made a Difference

The challenge. Switzerland has succeeded in building a multi-ethnic state. However, it did not make its decisions about how the state should be organised in a vacuum. The context was important and contributed to its success. Other countries face different contexts that may be less favourable to the establishment of sustainable peace or the formation and maintenance of a common state. For instance, in many post-conflict situations power must be shared

among former enemies, while in Switzerland power was and is shared among voluntary associates. Although many context-related factors cannot be controlled by the state or its political elites they may nevertheless have a decisive influence on the success or the failure of institutional structures. The following paragraphs summarise the most important context-related factors mentioned in earlier chapters and discuss a number of important elements.

No protracted ethno-political conflict. Switzerland has not experienced violent internal ethno-political conflict for more than 150 years. Furthermore, the short civil war did not lead to many deaths or widespread suffering and so Switzerland was spared emotionalised elites and an emotionalised public. Trust and tolerance between the different groups were never completely destroyed and nor was the common state seriously called into question. All this created a more conducive atmosphere in which the different cultural groups could be accommodated. The Swiss situation therefore differs fundamentally from the situations in most other countries that introduce power sharing as a way out of violent conflict.

Voluntary aggregation. Switzerland was formed as the result of a voluntary process by the decisions of the cantons. It was able to build on the cantons with their functioning institutions and legitimate boundaries. It was not necessary to invent the Swiss government from scratch: the pre-existing cantonal structures and administrations could be used. Because the cantonal institutions already existed, it was possible to focus on building acceptable shared institutions at the confederal, and later the federal, level. The cantons saw advantages in a larger, shared state and voluntarily transferred some their powers in exchange for participation in federal institutions and for new forms of cooperation between cantons. In other contexts, both political actors and citizens are confronted with a process of *disaggregation*. This process can be very difficult because there are usually no functioning institutions at the regional or local levels that could form the basis of the new or reformed institutions that are needed. In a post-conflict situation, there may not even be any functioning institutions at the central level. In addition, while some people may see disaggregation as the dangerous dismantling of their state, others, who are seeking independence, may not feel that it goes far enough. Whenever disintegration is not experienced as

voluntary, there is a risk that both the process and the resulting structures will be called into question.

Pre-existing diversity as a value. The cantons joined the Swiss confederation because they realised that a certain level of shared decision-making was necessary, for instance to defend their autonomy against international influences. Their major goal was to preserve, maintain and promote the pre-existing cantonal, religious and linguistic diversity. Thus diversity became a shared value. Political institutions were required to foster diversity and take the interests of the many different groups in Swiss society into account. In such a context, compromise is accepted as a good outcome, and a compromise-driven political culture can develop. The general acceptance of cantonal diversity in Switzerland explains the willingness of the elites to seek compromise and consensus. Although there may be disputes about how the best balance between horizontal and vertical power sharing can be achieved, power sharing in itself has never been called into question. Nevertheless, even Switzerland does not embrace all diversity, for example it does not embrace the diversity that stems from immigration. In many countries, especially those experiencing conflict, ethnic, linguistic and religious diversity are not seen as positive values but as risks and as endangering the state. Demands for recognition by self-aware groups often clash with the majority's understanding of the state. Especially in situations of violent conflict, trust and tolerance, and thus often the willingness of political elites to give new institutions a chance, are limited. Without a basic willingness to engage and to build a common future, a state is almost inevitably doomed to fail.

Limited complexity of Swiss diversity. Swiss diversity is mainly cantonal, linguistic and religious. There are 26 different cantons, each with their own identity and political diversity, four linguistic communities and two main religious denominations. In addition, there are economic differences between cantons which are addressed through fiscal equalisation mechanisms. This level of internal heterogeneity seems manageable. Many countries are confronted with much higher degrees of fragmentation. In some, identities are so multilayered and complex that it is even disputed who forms a group. Disagreements can arise about the number of ethnic or linguistic groups, as well as about who actually constitutes a group that needs to be accommodated. Statistics and the criteria used in censuses to classify the population into different groups have a high potential for creating conflict because they shape

perceptions and establish (irreversible) facts. If there is a multiplicity of groups, accommodating them may lead to an extremely complex system.

Settlement patterns. Settlement patterns in Switzerland were conducive to the accommodation of different groups. On the one hand, most groups are territorially concentrated. Territorial autonomy was possible at the cantonal and municipal level and enabled internal self-determination by cantonal, linguistic and religious groups. On the other hand, the various demarcation lines do not coincide. Citizens had, and have, multiple identities: it was possible for political representation mechanisms to address more than just one identity marker. These cross-cutting identities enable variable political alliances: for example, a citizen who lives in the French-speaking part of Switzerland, in the canton (and also the city) of Neuchâtel and is a Catholic can align him/herself with all French-speakers, but also with all Catholic German-speakers, as well as with all other citizens, whatever their language and religion, who live in urban areas elsewhere in Switzerland. Other countries are faced with very different challenges. In some cases groups are dispersed, thus limiting the possibility of territorial accommodation and increasing the risk of marginalisation. In other cases all the ethnic, linguistic and religious demarcation lines coincide. This tends to deepen fragmentation and intensify the differences between groups. In both cases, power sharing mechanisms must take patterns of settlement into account in order to avoid marginalising certain groups and to encourage variable alliances.

Time factors and flexible systems. Reforms in Switzerland have been gradual and slow, leaving enough time for societal change. Democratisation in Switzerland has gone hand in hand with the consolidation of other elements of state organisation. A balanced system of government has been developed pragmatically over time. The direct democratic instruments have encouraged and complemented the highly inclusive character of political decision-making. The Swiss political system came into being based on negotiations, actions and reactions: in many cases the full implications of institutional changes were not considered at the time of adoption. An overarching political identity emerged as a result of political institutions that were accepted and functioning at all levels. Capacities were built step by step and are still being built today. The Swiss system is relatively flexible and still allows for changes. The time factor must also not be underestimated. It is unrealistic to think that a power sharing system can be

consolidated within a short period of transition. It is also unlikely that a shared political identity will emerge in such a short time. It is important to carry out reforms systematically and in the right order, and to consider carefully what can be done and how it can be done. Furthermore, it is not possible to foresee all the effects of power sharing mechanisms. Even in the Swiss case there have been some unintended consequences, sometimes positive, sometimes negative. It is important that the system remains flexible and allows for changes while at the same time providing the necessary stability.

Prosperity. Switzerland has had the benefit of prosperity, partly because it has managed to avoid conflict. In addition, it is situated in a part of the world that has been blessed with prosperity for most of the last century. This has enabled it to cover the costs of its multilevel and multicultural state system as well as to balance disparities in wealth and income between cantons and regions. Especially in cases of violent conflict, a comparable financial and economic situation is very unlikely to arise and power sharing mechanisms may seem too expensive. Nevertheless, what can be more expensive than war?

The international factor. The context-related factors listed above are only the most prominent of those that have led to and supported accommodation in Switzerland. International factors are also relevant. Without the willingness of its neighbours not to interfere in its internal affairs, the development of Switzerland would have been different. For instance, the creation of Canton Jura would have been much more complicated if neighbouring France had interfered in favour of the French-speaking community in the region. Many so-called internal conflicts in the world today have a strong international component. This can have a decisive influence on the dynamics of a conflict and on the options available.

III. Switzerland's Choices

The challenge. The general context has contributed greatly to Switzerland's success and influenced its choices about the organisation of the state and power sharing. However, context alone cannot explain how Switzerland has managed to accommodate its pre-existing cantonal, religious and linguistic diversity. If states with multi-ethnic societies want to ensure the loyalty and support of all groups, they must establish a state system that will help to protect and promote the needs and interests of all. Certain kinds of government system are more likely than others to

accommodate multiple groups and a multicultural society. The following paragraphs outline the choices Switzerland made in building, maintaining and promoting a common state.

Sharing history. Switzerland has accepted different readings of Swiss and cantonal histories. As far as possible, it has built on traditional structures and maintained cantonal symbols while at the same time modernising and democratising its institutions. In addition, it has re-invented cantonal histories and created common myths to promote unity. Nevertheless, Switzerland has also experienced the difficulties of sharing a history: for a long time it was reluctant to address its role during World War II. This was probably partly because one of its themes in creating itself as a nation was distinguishing itself from Germans and Germany, and especially from Nazi Germany.

Sharing state and identity. In order to build a nation and a state, Switzerland both re-affirmed pre-existing distinct identities and at the same time built a common Swiss identity. Inclusive political institutions and shared decision-making, as well as a re-interpretation of history, were used to establish a common identity that encompassed pre-existing identities. However, even Swiss identity is to some extent limited and does not encompass all the identities that are present today: Switzerland is relatively reluctant to embrace the diversity arising from immigration.

Sharing territory. As a matter of principle, Switzerland kept the pre-existing cantonal boundaries. In response to demands for cantonal boundary changes, it set up constitutional and direct democratic procedures to decide legitimate new boundaries. In addition, the recognition, the representation and protection of linguistic and religious groups have helped to prevent demands for a separate canton for any particular group and have thus reduced demands for boundary changes.

Sharing rule. Switzerland introduced vertical and horizontal power sharing and thus encouraged cantonal and municipal self-determination as well as shared central decision-making. As far as possible, sensitive issues are left to the decision-making processes at the lower levels of government so that tensions at the federal level can be avoided. Political inclusion at the centre ensures that decision-making is group-sensitive and compromise-driven. The mechanisms for representation are used to acknowledge multiple identities but at the same time allow for

changing alliances. Nevertheless, the political process is not designed exclusively around group differences but establishes a common national sphere of operation. Cooperation between the cantons, as well as between different levels of government, further encourages the effective fulfilment of responsibilities at the different levels. However, the system for sharing rule in Switzerland is highly complex and this makes it relatively slow and expensive. Some people regard these downsides of Swiss shared rule as a price worth paying to maintain Switzerland; others would prefer to see the system revised and modernised.

Sharing democracy. The introduction of a proportional representation system for the National Council, the lower chamber of parliament, enabled smaller political parties and groups to be integrated into political decision-making at the central level. In addition, the flexible legal framework for political parties has led to a diverse landscape of political parties. The emergence of national parties which build on the support of citizens from different regions and different linguistic groups has encouraged the Swiss people to make decisions along ideological, as opposed to linguistic or ethnic, lines. The direct democratic instruments have further encouraged consensus-driven decision-making and have given the people the power to initiate and to veto political proposals at all levels of government. Safeguards have been introduced to prevent these instruments from being used in violation of fundamental standards of international law.

Sharing language and religion. The recognition of linguistic groups has encouraged their identification with the state. The distinction between national and official languages has made it possible to acknowledge the equality of the linguistic groups—German, French, Italian and Romansh are all national languages—and at the same time to make distinctions based on practical considerations, e.g. not all federal laws have to be translated into Romansh. The principle of proportionality with regard to the linguistic composition of the administration, and mandatory language training in schools, have contributed to affordable multilingualism. Territorial autonomy at the cantonal and municipal levels has also prevented confrontation and religion at the federal level and has thus indirectly contributed to the unity of the country. The opportunity for the main religious groups to acquire official recognition has given them an incentive to reform their internal organisation and introduce democratic structures. However, immigrant groups with different languages and

religions do not benefit from the same level of accommodation.

Sharing justice. The right of the cantons to define their own court systems has ensured locally-anchored judiciaries that are less likely to be perceived as administering the justice of the centre or of the dominant group. The fact that the composition of the judiciary reflects the composition of the population has helped to foster trust in the court system. It has also been the basis for the effective multilingual administration of justice. The introduction of a Federal Court has ensured a minimum of shared standards and has also provided mechanisms for resolving disputes in cases of conflict between the cantons, or between the federation and the cantons. Other elements of the justice system in Switzerland remain more contentious, e.g. the limited possibilities for constitutional review.

Sharing wealth and income. The allocation of sources of revenue to all three levels of government has enabled the cantons and municipalities use their decision-making powers. Competition between cantons has made it possible for citizens to compare taxes and services. This, together with the option of voting on fiscal issues at the cantonal and municipal levels, has ensured that the financial implications of policies are taken into account. A fiscal equalisation system has been introduced to balance differences in cantonal wealth and income and in service costs and has contributed to national cohesion.

Sharing security. The language requirements for army officers of the different language groups have ensured smooth cooperation and cohesion between them. At the same time, individual monolingual army units with a single language of command have helped to ensure that non-specialised forces function well. The cantonal and municipal police, who are familiar with the local languages and customs, are able to generate trust among their local communities. A federalised police system, however, requires a high level of cooperation between the different federal, cantonal and municipal police forces, especially with the increasing internationalisation of crime. Democratic control of the Swiss military and of the police has also helped to establish popular support for security policies.

An adaptable power sharing system. Looking back it is clear that Switzerland has made some good decisions. It has managed to accommodate its traditional cantonal, linguistic and religious diversity and has created a viable balance of power. Its choices have

been based on the results of negotiations between the cantons, and between the cantons and the federation. Swiss power sharing mechanisms have enabled negotiations to be conducted within a stable constitutional and political framework. There are also limits to Swiss success, such as the lack of accommodation of immigrant diversity or the challenge of integrating Switzerland in Europe. Nevertheless, the organisation of the Swiss state has so far been flexible enough to respond to new challenges and will prove so in the future.

One of many examples. According to Confucius there are three ways to act wisely: first, thought – the most noble way; second imitation – the easiest way; and third, experience – the most painful way. Switzerland offers one example of a relatively successful multicultural state system, some of whose aspects may be relevant elsewhere. As discussed in this report, the Swiss system has evolved within its own historical, political and economic context. Swiss institutions, or aspects of those institutions, transferred to a different context might succeed, fail, or be irrelevant. It is hoped that some aspects of Swiss experience and history may be interesting and useful to others. However, it is the right of every country to develop its own ideas and approaches, create its own reality and work through its own experiences.

ANNEX

- Annex I: Power-sharing in Switzerland
- Annex II: Sharing History in Switzerland
- Annex III: Sharing State and Identity in Switzerland
- Annex IV: Sharing Territory in Switzerland
- Annex V: Sharing Rule in Switzerland
- Annex VI: Sharing Democracy in Switzerland
- Annex VII: Sharing Language and Religion in Switzerland
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Power-sharing in Switzerland

Short history

The origins of Switzerland date back to 1291 when three independent states signed an alliance, mainly for the purposes of defence against outside enemies and of arbitration in the case of disputes between the member states. The Confederation grew slowly; new states were included over time, with new treaties. With industrialisation and nation-building in the surrounding countries, confederal arrangements became too inflexible and disputes began over the future organisation of the union. These internal disputes were aggravated by the French invasion in 1798, following which Switzerland was ruled by a protectorate-style government until 1815. In 1815, after the defeat of Napoleon, Switzerland again became a confederal organisation. Disputes within the Confederation continued and culminated in a short internal war in 1847. In 1848, with the adoption of a constitution, Switzerland became a federation. The constitution was completely revised in 1874 and 1999. However, the structure of the state has remained largely the same.

Diversity in Switzerland

Switzerland is a small landlocked country of 7.4 million inhabitants. Three major European cultures meet in Switzerland: French, German/Austrian, and Italian. The population is divided by language (German, French, Italian and Romansh) as well as by religious affiliation (mainly Protestant and Catholic). The territory of Switzerland is divided into 20 cantons and 6 half-cantons (hereafter referred to as the 26 cantons). The cantons are made up of municipalities (local government units including cities, towns and villages) of which there are just under 3,000 altogether. The cantons have not only different cultures and distinct political ways of life but also different standards of living. The demarcation lines between the linguistic, religious, and cantonal groups do not coincide.

Political organisation

The Swiss political system is mainly characterised by the non-concentration of power in any one hand, and by the distribution of power among many actors: it is neither presidential nor parliamentary. Switzerland is composed of cantons, and cantons

are composed of municipalities. Cantons have residual power, ie, all powers that are not explicitly assigned to the federal level or to the municipalities lie with the canton. Issues such as culture, language, relations between the state and religion, policing and schooling are not allocated to the federal level but remain with the cantons. The cantons' taxation powers and revenues from natural resources prevent their dependence on the federal level. The different Swiss institutions are designed so as to incorporate pre-existing diversity into the political system and to create an overarching legitimacy through the democratic inclusion of the whole Swiss population.

- The **bicameral parliament** demonstrates this double function: one chamber, the National Council, represents the Swiss people as a whole and is based on proportional representation. The other, the Council of States, has two representatives from each canton (and one from each half-canton). The two chambers have equal rights.
- The seven-member **Federal Council** is at the same time the collective Head of State and the executive government. It is elected at a joint session of both chambers of parliament. Under the Swiss Constitution, the Federal Council shall represent the different regions and linguistic groups in Switzerland. Based on an unofficial agreement, it also represents the four largest parties. The presidency rotates annually among the seven Federal Councillors.
- Switzerland has both cantonal courts and a **Federal Court**. The Federal Court is the court of last resort. It is intended to ensure the compatibility of cantonal law with federal law as well as the proper application of federal law. However, the Swiss Federal Court cannot rule on the constitutionality of federal statutes. Federal Court judges are selected by parliament with due regard to creating a balanced composition, similar to the composition of the Federal Council. The Federal Court publishes its decisions in either German, French, Italian or Romansh.
- **Procedures** also demonstrate respect for the interests of different groups. For instance, all legal drafts are discussed with the relevant interest groups before adoption. Mechanisms of direct democracy, i.e. referendums and initiatives, are a further important element of the Swiss political system.

Capital	Bern
Territorial organisation	Federal, 23 cantons (including 6 half-cantons): Zurich, Bern, Lucerne, Uri, Schwyz, Unterwalden (Nidwalden and Obwalden), Glarus, Zug, Fribourg, Solothurn, Basel (Basel Landschaft and Basel Stadt), Schaffhausen, Appenzell (Appenzell Innerrhoden and Appenzell Ausserrhoden), St. Gallen, Graubünden, Aargau, Thurgau, Ticino, Vaud, Valais, Neuchâtel, Geneva, and Jura
Surface	41,290 km ²
Surface of biggest canton and of smallest canton	Graubünden (7105 km ²), Basel Stadt (37 km ²)
Population	7,200,000
Population by canton	Zurich: 1'252'800 ; Bern: 956'800; Vaud: 639'200; Aargau: 549'600; St. Gallen: 453'200; Geneva: 406'700; Lucerne: 351'500; Ticino: 301'600; Valais: 270'800; Basel Landschaft: 259'700; Solothurn: 244'900; Fribourg: 240'700; Thurgau: 229'550; Basel Stadt: 189'000; Graubünden: 187'800; Neuchâtel: 168'000; Schwyz: 129'300; Zug: 100'250; Schaffhausen: 74'200; Jura: 68'150; Appenzell Ausserrhoden: 53'650; Glarus: 8'250; Nidwalden: 37'400; Uri: 34'700; Obwalden: 32'480; Appenzell Innerrhoden : 14'700
Languages	63.9% German-speaking, 19.5% French-speaking, 6.6% Italian-speaking and 0.5% Romansh-speaking, 9.5% other languages (all data from 2000)
Religion	Catholic: 44.1%, Protestant: 36.6%, Muslim: 4.5%, Orthodox: 1.2%, Jewish: 0.2%, No religious adherence: 11.7% (all data from 2000)
Federal Government	Federal Council: a grand coalition government of seven members, called Federal Councillors; elected by parliament; each member is head of one department (ministry)
Federal Parliament	Bi-cameral: National Council: 200 representatives, proportional representation; Council of States: 46 members (2 representatives from each canton; 1 from each half-canton)

Sharing History in Switzerland

Why is this relevant?

History and historical arguments are inevitably raised as issues in conflict situations. The parties to the conflict may invoke their history of marginalisation or colonisation, historical injustices, their traditional claims to territory, or their fight for national self-determination. History is used both to explain specific situations and divisions and to justify claims and actions. The current conflict also adds a new and violent chapter of history, following which a new future must be built. At some point during the peace negotiations or, at the latest, in the post-conflict phase, it is necessary to address history, and especially violent history.

Switzerland's approach

Switzerland can look back over 150 years of intercultural peace. A 27-day low-intensity civil war in 1847 was the most serious violent confrontation between the Swiss cantons. Switzerland has therefore only limited recent experience of dealing with a violent past. However, there are still a number of historical events that are interpreted differently by the different Swiss communities. Switzerland has learned to live with these different understandings of its history and has been able to emphasise those aspects that unite it. In addition, Switzerland has found that it is not always easy to deal with its own past. It took up the task of confronting the darker aspects of its role before, during and after World War II mainly in response to external pressures.

The Sonderbund Cantons



- Switzerland was created in 1291 as a confederation of three cantons. These cantons signed the founding treaty, mainly for the purposes of defence against outside enemies and of arbitration in the case of disputes among cantons. The confederation evolved slowly; new cantons were admitted and included with new treaties so that over time a complex system of treaties developed, loosely uniting the cantons.
- Because of the persistence of cantonal sovereignty, the cantons developed and maintained different political regimes. The Reformation in the 16th century added a new type of diversity: religious (or confessional) diversity. Switzerland became a patchwork of different religious (Catholic and Protestant) groups. At that time, the decision that Switzerland should remain neutral was, among other things, a decision not to take sides and therefore to some extent to abstain from a proactive foreign policy so as not to be drawn into the religious conflicts in neighbouring countries.
- In 1798, French forces led by Napoleon invaded Switzerland and introduced a centralised state system based on the French model. The cantons were transformed into equal but purely administrative units. The granting of equal status to all the cantons meant that several French-speaking territories gained the status of canton and thus the significance of linguistic diversity increased. However, it soon became apparent that Switzerland could not be ruled effectively with a centralised state organisation. Napoleon re-empowered the cantons and introduced a federal state system.
- After the defeat of Napoleon, Switzerland opted again for a loose confederation. However, though it was once again a confederation, Napoleon's invasion had changed Switzerland permanently. All the cantons kept their equal status. While some re-established their old oligarchic power-structures, others introduced democratic representative governments. Switzerland's neutrality and territory were recognised at the Congress of Vienna (1815).
- In the 19th century, there were disputes both within and between cantons about the future political organisation of Switzerland. The more progressive Protestant cantons wanted to limit

the powers of the church and of the aristocracy/oligarchy and turn Switzerland into a stronger representative democracy based on the French model. A number of Catholic cantons were opposed to this, formed a secret union (*Sonderbund*), and threatened to leave the confederation. These disputes culminated in 1847 in a short civil war that lasted only 27 days and ended with the defeat of the Catholic cantons.

- With the adoption of its first federal constitution in 1848, some months after the civil war, Switzerland became a federation. Although the constitution included some anti-clerical elements directed against the Catholic cantons, it maintained the cantons as the main building blocks of the state. A compromise-driven approach secured the goodwill of the more progressive Catholic forces and also increased the support of the more conservative forces in the Protestant cantons. For example, the constitution already specified the (limited) powers of the federal level; all other powers remained with the cantons. The cantons were already represented in a second chamber of parliament, each with two representatives.
- In 1874 the Swiss constitution was completely revised. However, the most important elements of state organisation remained the same. In 1874, additional direct democratic instruments were introduced and a common army and a permanent Federal Court were established. Numerous partial revisions of the Swiss Constitution followed. Examples of constitutional amendments include the introduction of female suffrage (1971) and of equal rights for men and women (1981), the creation of Canton Jura (1979), further mechanisms for direct democracy, and again and again the centralisation of powers.
- Switzerland remained officially neutral during World War II. It began addressing the dark aspects of its role before, during and after the Third Reich largely in response to outside pressures. Following a decision by the Federal Parliament in 1996, the Federal Council mandated an Expert Commission to conduct a comprehensive study of Swiss history during and shortly after World War II. Although World War II was not a conflict between groups within Switzerland, Switzerland had to confront certain (mis-)perceptions about its own identity in dealing with this chapter of its history.

- The total revision of the constitution in 1999 involved mainly textual changes. Since then, the Swiss Constitution has been amended several times, for instance in relation to the judiciary and to financial equalisation.

Lessons learned

- ▶ Although it was of low intensity, the civil war of 1847 showed that peace cannot be taken for granted, even in Switzerland. The conditions for overcoming the conflict were favourable. Nevertheless, moderation and compromise were also decisive in preserving and strengthening trust and loyalty.
- ▶ There is still no common 'Swiss' understanding of certain aspects of history. Swiss experience shows that it is possible to live with diverging understandings of history as long as the different versions are acknowledged and nobody claims the exclusive right to define 'the proper understanding' of history.
- ▶ Switzerland has paid careful attention to its traditions and has been aware of the importance of symbolism. Reforms have been gradual and, as far as possible, traditions and symbols have been preserved. Swiss experience shows that it is possible to retain symbols and build on traditional structures and still to modernise and democratise state structures.
- ▶ Although Switzerland's past contains divisions, it has made use of uniting aspects of its history, e.g. for nation building. Swiss experience shows that though history cannot be undone, it can be used in creative ways.

Sharing State and Identity in Switzerland

Why is this relevant?

In states with two or more self-aware ethnic groups, the question of how to share the state is bound to arise. In many cases, a non-dominant group demands rights as a group and to be recognised as a constituent group of the state. Its members question why the dominant group should be the, or the sole, constituent group and should have a privileged status within the state. To achieve sustainable peace, a common understanding and vision of the state – a shared identity – is necessary.

Switzerland's approach

Switzerland is not a typical nation state. Rather than elevating the identity of one particular group to a national identity, it has aimed to create a state identity that encompasses different group identities and provides a shared Swiss identity for all groups and citizens.

The flags of Switzerland and of Swiss cantons



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- Swiss nationals have neither a common language nor a common religion. Swiss citizens identified, and identify, with their municipalities and cantons of origin which have different political cultures. Some people argue that there is no Swiss nation because of these differences. Others, however, note that there is a Swiss identity that encompasses these differences and that there is also the aspiration to live in one state, and to preserve and promote it.
- From the beginning of the 19th century, the Swiss political and intellectual elites observed nation-building processes in surrounding countries. All these nation-building processes focused on creating a common language and culture. However, the concept of national homogeneity based on linguistic homogeneity did not correspond to Swiss realities and would have endangered the very idea of a single Swiss nation-state. It was in Switzerland's interests to search for a common identity that was not based on ethnic, cultural or linguistic markers.
- Swiss experience under the French protectorate from 1798 to 1815 was particularly important for the formation of the nation. For the first time, citizens of the different cantons all had the same rights and duties and participated in common political institutions. At the same time, the curbing of cantonal sovereignty by Napoleon met with resistance and led people to reconfirm their cantonal identities. Thus, though a feeling of national identity had not yet emerged, the Helvetic Republic created the foundations for its development and also for the consolidation of cantonal identities.
- The Swiss concept of unity was based not on the voluntary association of individuals but on the voluntary association of cantons. In addition, from 1848 onwards, common political institutions were strengthened, thus continuing to provide opportunities for common decision-making. The originally defensive union was re-interpreted as reflecting the brave fight to remain different and free and thus as preserving cantonal distinctness and sovereignty and preventing outside interference. The voluntary character of the union and the preservation of diversity became key themes of Swiss national history.
- Diversity was accepted as a value and it became a declared purpose of the Swiss state to maintain and promote this diversity. Article 2 of the Swiss Constitution states this clearly: 'The Swiss Confederation shall ... promote ... the cultural diversity of our country'. From this followed the recognition of the equality of the cantons and the language groups and also, to some extent, of the two main religious groups. State institutions

were crafted so as to reflect diversity, especially cantonal diversity.

- The Swiss national identity combines *political aspects* (belief in the political institutions) and *cultural aspects* (cherishing cantonal diversity).

Lessons learned

- ▶ It is possible to affirm both distinct identities and a common identity. Such multiple loyalties do not necessarily endanger the state. On the contrary, in the Swiss case they have helped to increase acceptance of the state. Distinct identities can be based on ethnic or cultural ties; the common identity on shared political institutions and values. Ethnicity and culture as well as civic values can be regarded as important.
- ▶ Political institutions can become a unifying element and can be used to help a multi-ethnic nation, provided that they are seen to serve all groups and individuals effectively. Political institutions which manage to accommodate different groups without creating long-term winners and losers can help to foster a shared encompassing identity. In this way, institution-building can become part of state-building and can be a prerequisite for a common inclusive identity.
- ▶ In an ideal situation, all groups voluntarily accommodate and respect other groups and interests as well as individuals and individual interests. However, this requires a certain level of trust and tolerance. In the long run, diversity must be internalised as a state value because only then will people accept compromise and accommodation as good for the state and the nation.
- ▶ People's attitudes towards diversity and towards what forms the basis for a common identity are more influenced by opportunities and external conditions than by the intrinsic values or the conscious decisions of a specific group or population. Nevertheless, Swiss experience shows that political institutions and the recognition of different groups can provide reasons to belong.

Sharing Territory in Switzerland

Why is this relevant?

The right to self-government is often included among the demands of conflict parties. Forms of territorial power sharing can be seen as structural answers to such demands. Whenever there are moves to change territorial organisation, defining units of self-government and deciding how to sub-divide or share the territory can become major points of dispute. Many peace negotiations involve a debate about internal territorial boundaries.

Switzerland's approach

Switzerland has adopted a federal system of state organisation. Its territory is subdivided into cantons and municipalities which have their own powers and resources. The original process of defining Swiss cantonal and municipal boundaries was relatively unproblematic as these had developed over time. However, the question of how to share territory re-emerged in the context of changing existing boundaries.

Changes in territorial organisation



- Even today, there is, for instance, no 'home canton' for the German-speaking community or for the Catholics. In addition, not all cantons are mono-lingual or mono-religious. For instance, three cantons are bilingual and one is trilingual; several cantons contain religious diversity. Nevertheless, there are no strong demands to radically change the federal set-up in order to create greater homogeneity.
- At the federal level, and to some extent in cantons with linguistically and religiously heterogeneous populations, religious and linguistic identities are accommodated through a policy of representation and recognition. This has helped to reassure the different communities that their interests are taken into account. The Swiss federal system has three levels of government, with the municipal level as the third and lowest level. A group that does not form a majority in the canton may form a majority in the municipality and may therefore be able to achieve self-determination through self-rule at the local level.
- Though most internal boundaries have been largely undisputed, there have been a few changes to cantonal boundaries. Of special interest here are the more important changes that were made in territorial organisation before and after the formation of the federation. Switzerland is composed of 23 cantons. Six of these are half-cantons which have nearly the same rights as the full cantons. The 23rd canton was only created in 1978. The splitting of cantons into half-cantons and the creation of the new canton demonstrate how different factors have triggered demands for territorial change at different times.
- An amendment to the constitution of Canton Bern introduced the procedure for establishing the independent canton of Jura. In 1970, Canton Bern changed its cantonal constitution to enable the population of the Jura to decide by formal Popular Vote which canton they wanted to belong to. Canton Bern conducted a series of formal Popular Votes: the first was in 1974 when the people in the region of Jura were asked whether they wanted to form a new canton. 52% voted yes. In three districts a large majority voted for the creation of a new canton. In a second formal Popular Vote, the three southern districts were able to vote separately and voted with a

clear majority to remain with Canton Bern. In a third formal Popular Vote, the municipalities on the border between those districts in favour of secession and those that preferred to remain with Bern were able to vote. Ten municipalities decided to change districts: two so as to remain with Canton Bern and eight so as to join the new canton of Jura. In a final step, the people and the cantons voted in favour of revising the Swiss Constitution to officially include Canton Jura as Switzerland's 23rd canton.

- A provision enabling this series of formal Popular Votes is now part of the Swiss Constitution (Article 53 of the Swiss Constitution) as a general procedure for changing the number of cantons. Switzerland is therefore one of the few countries that regulates the procedure for internal secession.

Lessons learned

- ▶ Democratic procedures can increase the legitimacy of boundaries. In addition, the example of Canton Jura shows that it may be easier first to reach political consensus on a procedure for defining boundaries and then to agree, based on that procedure, on the exact border of a new sub-national unit.
- ▶ A system that offers flexible criteria for establishing boundaries can be an asset. Swiss experience demonstrates that it may be necessary to change internal boundaries, and that the reasons for changing them can alter over time.
- ▶ Forms of power sharing that are not based on territory can help to reduce the importance of internal boundaries. Swiss experience shows that the recognition and representation of linguistic and religious groups have prevented demands by individual groups for 'their own' canton. The mechanisms of recognition and representation include, for example, recognising several national languages in the constitution and ensuring representation in the Federal Council and public administration.
- ▶ Although boundary changes in Switzerland were conducted peacefully, they nevertheless provoked strong emotional reactions. This experience demonstrates that boundary changes have a high potential for conflict, especially in a violent context.

Sharing Rule in Switzerland

Why is this relevant?

Parties in a conflict are generally aiming for power. The concentration of power in the hands of one particular group can be one of the root causes of conflict. Power sharing is a compromise that may lead the society out of conflict. The political process in post-conflict situations is often characterised by anxieties and mistrust. These may be countered by removing competitive features and establishing a state structure and a political system that include all the different groups in the society.

Switzerland's approach

Switzerland has a long history of sharing rule between different levels and within different branches of government. The cantons and the municipalities enjoy a high degree of self-rule (vertical power sharing). At the same time, the cantons are involved in central decision-making, primarily through their representation in the second chamber of parliament, the Council of States (horizontal power sharing).

Vertical power-sharing

- Switzerland grew from bottom up, with the cantons as the founding units of the country. The cantons enjoy strong autonomy which has enabled them to maintain their own political and cultural identities. All powers emanate from the cantons which are also vested with residual power. The powers of the federal level are listed in the Swiss Constitution.
- The cantons' right to self-organisation is the expression of their quasi-state character and is their most important power. In policy areas that either directly concern national sovereignty or require special coordination, the federal level has exclusive powers or can enact framework legislation. The cantons retain, in particular, those powers that are important for their identity.
- The way that powers are distributed is enshrined in the Swiss Constitution. This in itself provides protection, especially because every change in the distribution of powers requires a referendum. However, Switzerland does not have a fully-fledged mechanism for constitutional review. For instance, the Federal Court must apply federal laws even if they are in violation of the constitution.

Table: Simplified distribution of powers in the Swiss federation

Federal powers <i>Based on the Swiss Constitution</i>	Cantonal powers <i>Residual power</i>	Municipal powers <i>Depend on cantonal legislation</i>
Organisation of Federal Authorities Foreign Affairs Army and Civil Protection National Roads (highways) Nuclear Energy Postal Services and Telecommunication Monetary Policy Social Security (pensions, invalids) Civil Law, Criminal Law Civil and Criminal Procedure Customs Education (technical universities) Energy policy Principles of Zoning Protection of the Environment Citizenship Federal Taxes	Organisation of Cantonal Authorities (own constitution, own anthem, own flag) Cross-Border Cooperation Police Relations between Religion and State Culture Public Health Cantonal Roads Forests; Water, Natural Resources Education (secondary schools and universities) Protection of the Environment Protection of Nature and Heritage Citizenship Cantonal Taxes	Education (kindergarten and primary schools) Waste Management Municipal Roads Local Infrastructure Local Police Zoning Citizenship Municipal Taxes

Horizontal power-sharing

- The Swiss federal system provides several mechanisms for horizontal power sharing. These enable the interests of the different cantons, as well as of linguistic and other groups, to be included in central decision-making.
- The executive in Switzerland (Federal Council) is a collegiate body composed of seven members, who – under the Swiss Constitution (Article 175) – must come from different language communities as well as different regions of the country. Furthermore, since 1959 the four biggest parties have all been represented in the Federal Council. This political representation is not constitutionally enshrined but is the result of an informal arrangement between the parties.
- The cantons are represented in the second chamber, the Council of States, to which the people of each of the 26 cantons, irrespective of the size of the canton, elect two members in direct elections. Both chambers of parliament – the National Council and the Council of States – have the same rights regarding the initiation, adoption or rejection of legislation.
- -An important area of vertical cooperation between the cantons and the federal level is foreign relations. Under Article 55 of the Swiss Constitution, the federation must inform and consult the cantons when preparing decisions relating to foreign policy which concern their powers and essential interests. The cantons also have the right, and are encouraged to, cooperate with each other (see Article 48 of the Swiss Constitution). Today, there are more than 700 intercantonal treaties in different policy fields. Other elements of horizontal cooperation are the Conference of the Cantons and, for specific policy areas, different Conferences of Ministers of the cantons. The Conference of the Cantons, created in 1993, introduced something like a new supracantonal level.
- The whole arrangement of Swiss political institutions and political processes is directed towards inclusiveness and consensus-oriented decision-making. Nearly all competitive features have therefore been removed from the Swiss political system. In some ways the instruments of direct democracy have become the most important instruments of opposition in Switzerland and are essential features of the Swiss system.

Lessons learned

- ▶ Switzerland aimed to create a balance between vertical and horizontal power sharing. Swiss experience shows that this combination can support both internal self-determination and shared decision-making. Both vertical and horizontal power sharing have been needed to create a functioning multicultural system that promotes both diversity and unity. The design of Swiss institutions has led to constant negotiations between all the political stakeholders.
- ▶ The requirement for a referendum to change the distribution of powers, as well as restraints on the powers of the Federal Parliament to interfere in the cantonal sphere, have helped to protect the powers of the cantons. Swiss experience shows that it is necessary to formally protect the distribution of powers. Protection based solely on informal rules poses dangers.
- ▶ The second chamber of parliament is intended to represent the cantons. The mechanisms of the grand coalition (the Federal Council) as well as the system of proportionality enable the accommodation of other groups and the recognition of multiple identities and changing alliances. Swiss experience seems to suggest that power sharing does not lead to an entrenchment of fragmentation provided changing alliances are encouraged.
- ▶ The Swiss system is geared towards accommodating group interests through the political process, although the political process was not exclusively designed around group differences. The system aims to balance national and group interests. Through the first chamber of parliament, the Swiss system also protects the interests of the majority.
- ▶ Cooperation between the cantons and between different levels of government are crucial to the Swiss system. Cooperation is especially necessary in dealing with concurrent powers. Swiss experience, however, also shows that intensive forms of cooperation and informal decision-making can lead to non-transparent processes with limited accountability.

Sharing Democracy in Switzerland

Why is this relevant?

In every society there are competing interests that can lead to conflicts. Democratic institutions are usually able to manage these conflicts, channel them in constructive ways and arrive at just and equitable solutions. Especially following violent conflict, people often hope that democratisation and the creation of inclusive democratic instruments will help defuse conflict and contribute to social integration. Groups that have felt marginalised are likely to demand more inclusive processes and better representation in democratic institutions. Direct democratic measures are often advocated as way of limiting the power of politicians and enabling the people to be the final arbiters.

Switzerland's approach

The democratisation of state institutions occurred step by step, mainly through the transformation of municipal, cantonal and, later, federal institutions. Direct democratic instruments were introduced first at the municipal and cantonal levels and then, in 1874 and 1891, at the federal level.

- In contrast to many other federations, Switzerland has a party system with segmentation along ideological lines rather than along linguistic or regional lines. The current Swiss political landscape is characterised by four main parties that have supporters in all the linguistic regions. The proportional electoral system, in addition to this ideological segmentation, has led to a diverse political landscape containing the Liberal Party, the Christian Democrats, the Swiss People's Party, and the Socialist Party.
- Another characteristic of the Swiss party system is that it is strongly based in the cantons. The national umbrella parties are mainly federations of the cantonal parties. Even when cantonal parties belong to the same umbrella party, they can be very different from one another in terms of their political programmes and priorities. They can also make different decisions from their national umbrella party on specific policy issues, or different recommendations for a referendum vote. Thus the cantonal political parties are strong and autonomous.
- The multi-level democracy and the party system have an important influence on the typical political career path. A political career in Switzerland is not a quick way to power and is not necessarily financially rewarding. Politics are generally carried out on a voluntary basis in people's spare time at the same time as a 'normal' professional career. The Federal Parliament is also composed of non-professional parliamentarians.
- The constitution states that the 200 members of the first chamber of parliament (National Council) shall be elected directly by the people through a system of proportional representation. Elections are held in 26 electoral districts; each canton is a separate electoral district. The number of seats representing each canton is determined by its population size. An open list proportional system based on the Hagenbach-Bischoff formula (equivalent to the d'Hondt system) is used. This enables voters to accumulate candidates within lists and to add candidates from other lists.
- Elections to the Council of States are a cantonal matter. All cantons hold direct elections and all except Canton Jura apply the majority principle. As a rule, each of the two cantonal representatives must receive an absolute majority of votes in the first round; in the second round a relative majority is sufficient.
- Federalism has enabled the different Swiss cantons to maintain their own distinct systems of political organisation. Nevertheless, there are some similarities, both in political organisation and in electoral systems. Most cantons elect their representatives to the cantonal parliament using a proportional system.
- In addition to participating in elections, Swiss citizens can resort to mechanisms of direct democracy. The key elements of Switzerland's well-established tradition of direct democracy are referendums and initiatives. A group of citizens can challenge a law that has been passed by parliament by calling a federal referendum (facultative referendum). They have to gather 50,000 signatures against the law within 100 days. Eight cantons together can also call a federal referendum. The referendum system gives Swiss citizens the power to act if they do not support a law that the Federal Parliament has adopted.

In this way they can take on the role of opposition to Parliament and the Federal Government. In addition, there are certain situations in which, under the constitution, a referendum must take place (mandatory referendum), e.g. for certain international treaties. A federal initiative allows citizens to propose an amendment to the constitution if they manage to collect 100,000 signatures within 18 months.

Lessons Learned

- ▶ The bottom-up political party system in Switzerland, and the very open legal framework for creating political parties, enable the cantonal parties to establish their own manifestos and, if necessary, to vote against the wishes of their national umbrella party. This provides an avenue for expressing and accommodating regional differences within the main national political parties and thus promotes openness and inclusiveness in these ideologically-based parties.
- ▶ The emergence of umbrella parties, which have managed to build on the support of citizens from different regions and different linguistic groups, has been conducive to the peaceful development of Switzerland. The four big umbrella parties have encouraged the political involvement of the Swiss people along ideological rather than linguistic or ethnic lines.
- ▶ Until the introduction of the proportional representation system, the Liberals dominated the Swiss parliament and government. The introduction of a proportional representation system in 1919 enabled smaller parties and groups from the different cantons to be integrated into political decision-making at the central level. Thus, the proportional representation system has contributed to a diversified political landscape.
- ▶ In Switzerland, the direct democratic instruments foster consensus driven decision-making. Even though direct democracy can sometimes trigger political entrepreneurship, in Switzerland it has demonstrated its accommodative capacity. Depending on the political rules, direct democracy can be helpful in encouraging political elites to accommodate the demands of different groups and search for compromise.
- ▶ Swiss experience shows that the democratic will does not necessarily produce decisions that are in accordance with constitutionally guaranteed fundamental rights or international human rights standards. Switzerland has introduced certain safeguards, e.g. that initiatives can be declared invalid if they contradict fundamental standards of international law (*ius cogens*). Especially, but not only, in highly fragmented contexts, it is advisable to provide safeguards to prevent democratic instruments from being used to limit human rights or to violate the essential interests of a particular group.

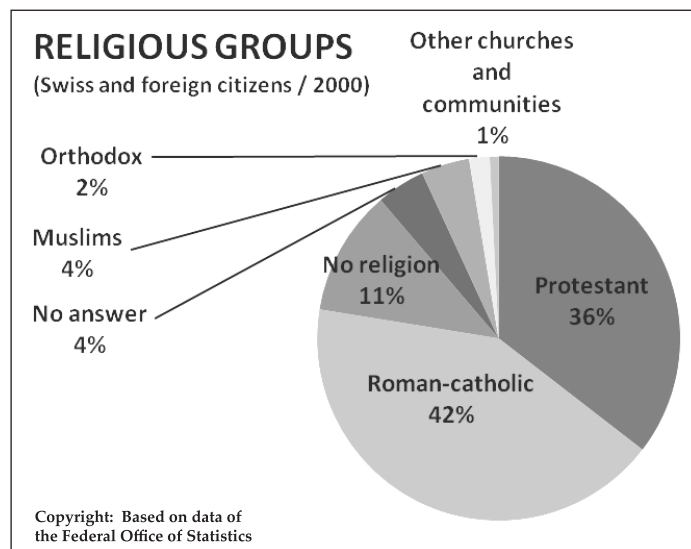
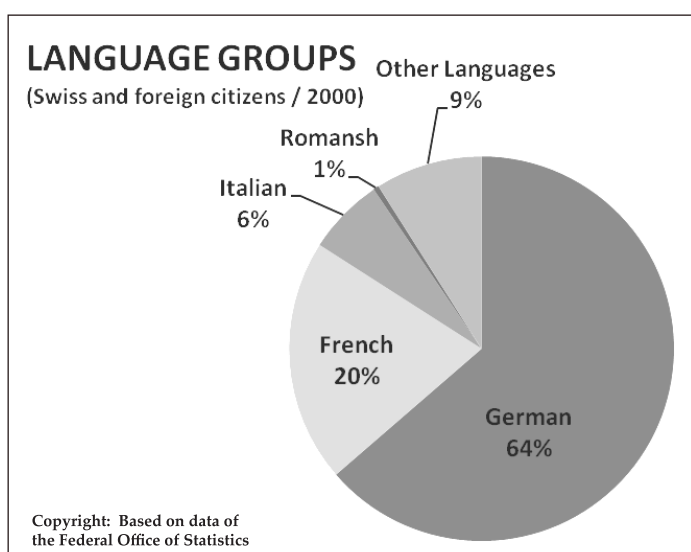
Sharing Language and Religion in Switzerland

Why is this relevant?

National identity, and thus the identity of the nation-state, is often based on linguistic and/or religious identity. However, linguistic and religious definitions of the nation-state can lead to reluctance to accommodate people who do not share these identities. Several current violent ethnic conflicts have linguistic and religious components. Particularly following violent conflict, both the official position towards linguistic and religious diversity and the protection of religious and linguistic communities and their members are very important.

Switzerland's approach

According to the 2000 census, 64% of the Swiss population speak German as their first language, 20% French, 6.5% Italian, 0.5% Romansh and, as a result of immigration, 10% speak another language. With regard to different religions, the picture is more balanced, with 44% Catholics and 36.6% Protestants. Linguistic groups are territorially concentrated. Most cantons are monolingual. Only three of the 26 cantons are bilingual and one is trilingual. Religious groups are slightly more dispersed. However, even in cantons that contain religious and linguistic diversity, municipalities are relatively homogeneous.



- In relation to linguistic and religious matters, the Swiss Constitution provides for vertical power sharing between the federal level, the cantons, and the municipalities. The cantons decide on their official languages and can regulate relations between religion and state within the canton. Some heterogeneous cantons even delegate decision-making powers on these issues to the lowest level, the municipalities. In addition, the federal level guarantees freedom of religion and of language and is required to promote inter-communal peace and understanding.
- German, French, Italian and Romansh are all recognised as Swiss *national* languages (Article 4 of the Swiss Constitution). Although recognition as a national language does not bring any concrete benefits, it has great symbolic value. The bilingual and trilingual cantons also recognise the different language communities that they contain.
- At the federal level, German, French Italian and Romansh all have the status of *official* languages (Article 70 of the Swiss Constitution). Romansh was only given this status in the early 1990s. In addition, Romansh is still disadvantaged in that it is only an official language for *Romansh-speaking* citizens. The other official languages, German, French and Italian, all have equal status at the federal level. Citizens can choose which of these three languages they address the federal authorities in and will receive the answer in their language of choice. In political institutions at the federal level, members and employees can

use any official language for communication. All laws are published simultaneously in the three languages and all language versions have equal legal validity. Laws of special significance are translated into Romansh.

- Each canton decides on its official language(s). However, the Swiss Constitution provides some guidelines: to preserve harmony between linguistic groups, the cantons must take into account their indigenous linguistic minorities and the traditional settlement patterns of linguistic groups (territoriality principle) (Article 70 II of the Swiss Constitution). Municipalities normally have only one official language but there are some bilingual municipalities with two official languages.
- The federal level has neither recognised any religious group nor decreed the separation of religion and the state. It has remained silent and neutral. Today, most cantons grant official recognition to the Protestant and Catholic churches, and some also grant official recognition to the Old Catholic and Jewish faiths. Religious communities with official recognition normally have the right to raise taxes. These are collected by the state.
- Because linguistic and religious groups are territorially concentrated in the cantons, they are automatically represented in the Federal Parliament, based on proportional representation in the National Council, and on cantonal representation in the Council of States. In electing members to the Federal Council (the seven-person federal executive, elected by the Federal Parliament) the Parliament is required to ensure adequate representation of the different languages and regions. The fact that party affiliation was originally strongly linked to religion has also led by default to the representation of different religious groups.
- In addition to special recognition and representation, the constitution guarantees freedom of language and religion. Freedom of language, however, sometimes clashes with the principle of territoriality as well as with certain mechanisms that promote and protect vulnerable groups. In most cases the Federal Court gives precedence to the principle of territoriality and the protection of vulnerable groups over freedom of language. Freedom of religion can be restricted if inter-religious peace is at stake.

Lessons learned

- ▶ Swiss experience shows that combining the recognition of all groups with a policy of neutrality towards all groups can prevent alienation. Recognition acknowledges the different groups and promotes their identification with the state. The distinction between national and official languages provides ways to acknowledge the equality of the different linguistic groups and at the same time to create regulations about official languages that take practical considerations into account.
- ▶ The possibility of achieving official recognition gave religious groups an incentive to reform their internal organisations and introduce democratic structures. Democratically-organised religious congregations can also legitimately represent their members with the state.
- ▶ Switzerland has adopted four official languages at the federal level. Swiss experience shows that multilingualism need not jeopardise administrative efficiency. The employment of civil servants from all language communities in the public administration, and early compulsory language training in schools, have contributed to affordable multilingualism in Switzerland.
- ▶ In Switzerland, territorial autonomy for territorially-concentrated linguistic and religious groups at the cantonal and municipal levels has prevented confrontation at the federal level and has thus contributed indirectly to the unity of the country. Territorial autonomy also allows a certain partisanship towards one's own identity. For instance, because of cantonal autonomy in relations between religion and the state, the federal level of government can remain neutral and the cantons can still give preferential status to one or more religious groups in accordance with their identity. Powers at the federal level with respect to protecting individual and group rights and promoting inter-group peace have guarded against the suppression of religious minorities by the cantons.
- ▶ Conflicts within cantons, as well as Switzerland's recent attempts to formalise the use of language in laws and regulations, show the relative fragility of inter-group relations. Interethnic peace cannot be taken for granted but requires continuous care and attention.

Sharing Justice in Switzerland

Why is this relevant?

An effective judiciary is an essential guarantor of the constitutional and legal order. Reform of the judiciary can be a necessary step towards, for example, strengthening human rights, bringing war criminals to justice, and even re-invigorating the economy and encouraging foreign investment. Justice is a sensitive area, especially in divided societies and following conflict. There is often limited trust in the justice system. This can lead to demands for changes in the composition of the judiciary, for safeguards to guarantee its independence, and even for the establishment of individual courts for different groups or territorial units. Increasing trust in the judiciary can help to re-establish trust between different communities.

Switzerland's approach

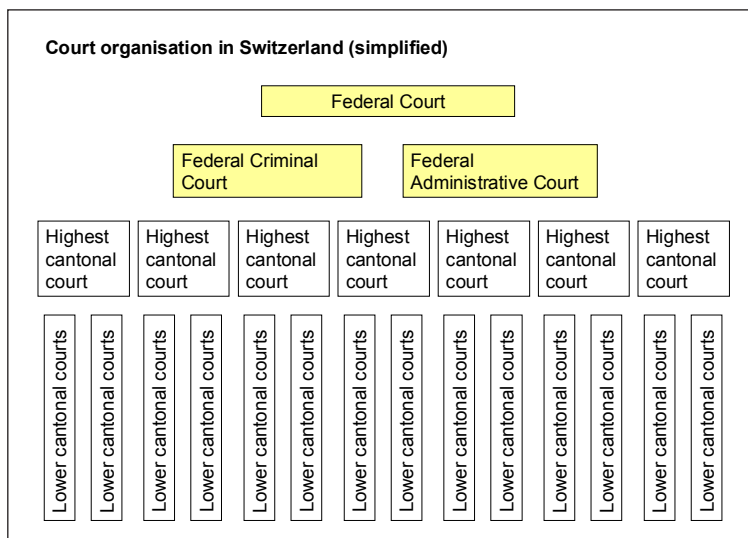
The functioning and organisation of the judiciary are strongly influenced by Switzerland's federal system. Switzerland has 26 different cantonal legal systems and 26 different cantonal court systems. The federal judiciary unites the different cantonal judiciaries and guarantees the uniform application of federal law. There are federal and cantonal courts. Cantons are free to decide on their own court systems, though the federal constitution and federal statutory law lay down some basic rules and standards. The cantonal judiciaries are still organised in a variety of ways, though they have lost some of their special features over time. Nevertheless, most citizens would be

irritated if they were confronted with judges at the cantonal level who had been appointed by the centre or who were from another canton.

— The Federal Court is composed of between 35 and 45 full-time judges and up to 30 part-time judges. Federal Court judges are elected at a joint session of both chambers of the Federal Parliament. Under the Swiss Constitution, every citizen who is entitled to vote can be elected as a Federal Court judge. Legal training is not explicitly required; the focus is on the general reputation of candidates. However, there is an informal rule that only experienced lawyers are elected to the Federal Court. A number of cantons still appoint or elect lay people as judges. Today, lay judges normally sit with professional judges or are at least supported by a lawyer.

— Based on an informal agreement, the composition of the Federal Court more or less reflects the composition of the Federal Parliament. The principle of proportionality concerning political parties ensures an equitable representation both of political opinions and of religious communities in the Federal Court because originally the party system was strongly influenced by religious adherence. Furthermore, statutory law also requires that the different language communities are adequately represented in all chambers of the Federal Court. In general, people before the Court can use one of the official languages (German, French, Italian or Romansh). In appeal cases, unless the parties request otherwise, the Court will use the language of the appealed decision. The sensibilities of the different language communities were also taken into account when selecting the locations of the federal courts. The Federal Court is located in the French-speaking part of Switzerland, the Federal Criminal Court in the Italian-speaking part, and the Federal Administrative Court in the German-speaking part.

— The Swiss Constitution guarantees the right to an impartial judge and confirms that all judicial authorities must be independent in their judicial activity and bound only by the law (Article 30 of the Swiss Constitution). The need for re-election might jeopardise the judges' independence, but, under informal rules, they are normally automatically re-elected if they stand for re-election. They retire at the age of 68.



- Access to the courts has been continuously improved in recent years, mainly because of the European Convention on Human Rights. The last canton to introduce an administrative court was Canton Appenzell Innerrhoden in 1996. At the federal level most administrative acts can be challenged in court. In March 2000, the Federal Constitution was amended to guarantee that every person has the right to have legal disputes – including administrative disputes – judged by judicial authorities (Article 29a of the Swiss Constitution). However, there are still some exceptions. For instance, appeals against administrative acts in areas of internal and external security and external affairs must still go to the Federal Council (executive). In addition, the decisions of the Federal Council cannot be brought before a court. In this respect the cantons are more advanced. Most cantons allow reviews of the decisions of their executives.
- Probably the most criticised – and the most defended – aspect of the Swiss judicial system is that federal legislation cannot be reviewed by a constitutional court. The Federal Court can scrutinise the constitutionality of cantonal laws but not of federal laws. Any court must apply federal law even if it is deemed unconstitutional (Article 190 of the Swiss Constitution). This is mainly, though not entirely, due to the priority given to the democratic principle.

Lessons learned

- ▶ A federalised judiciary or, more generally, the right of territorial sub-units to define their own court systems (within limits) can enable locally-anchored judiciaries to take local traditions and needs into account. Locally-anchored judiciaries are less likely to be perceived as administering the justice of the centre or of the dominant group.
- ▶ Although it involves certain risks, a system of elected judges which also includes the possibility of lay people being elected can contribute to overcoming mistrust between people and elites and foster feelings of ‘ownership’.
- ▶ Swiss experience also shows that cantonal (sub-national) standards concerning the rule of law are not necessarily lower, and cantonal reluctance to reform is not necessarily higher, than at the federal level. However, to guarantee certain minimum standards in all cantons (and at the federal level), it may be necessary to set federal standards or to adopt the appropriate international standards.
- ▶ Ensuring that the composition of the judiciary reflects the composition of the population can foster trust in the court system. In Switzerland, citizens generally encounter judges who share their identity. A multi-ethnic judiciary can also form the basis of the effective multilingual administration of justice. Being able to address the court in one’s own language, to be heard without the need of translation, and to receive an answer in one’s own language have been essential in creating and maintaining trust in the Swiss judiciary.

Sharing Wealth and Income in Switzerland

Why is this relevant?

Economic grievances can be important root causes of civil conflicts. Many ethno-political conflicts arise or are aggravated as a result of economic inequalities between communities. In particular, there are many conflicts over natural resources and the use of the income they generate. Demands for the equitable distribution of revenues, royalties and grants are almost inevitable. Furthermore, any scheme for decentralisation or federalisation presupposes a redistribution of wealth and income from the centre to the regions, and thus requires mechanisms for sharing wealth and income. Otherwise, central governments may use their privileged access to wealth and income to dominate and control the lower levels of government.

Switzerland's approach

Each level of government in Switzerland has several revenue sources. All three levels, the federation, the cantons and the municipalities, raise direct taxes. Other tax bases are allocated exclusively to one level of government: value added tax and certain consumption taxes as well as stamp and withholding tax and customs duties are allocated to the federal

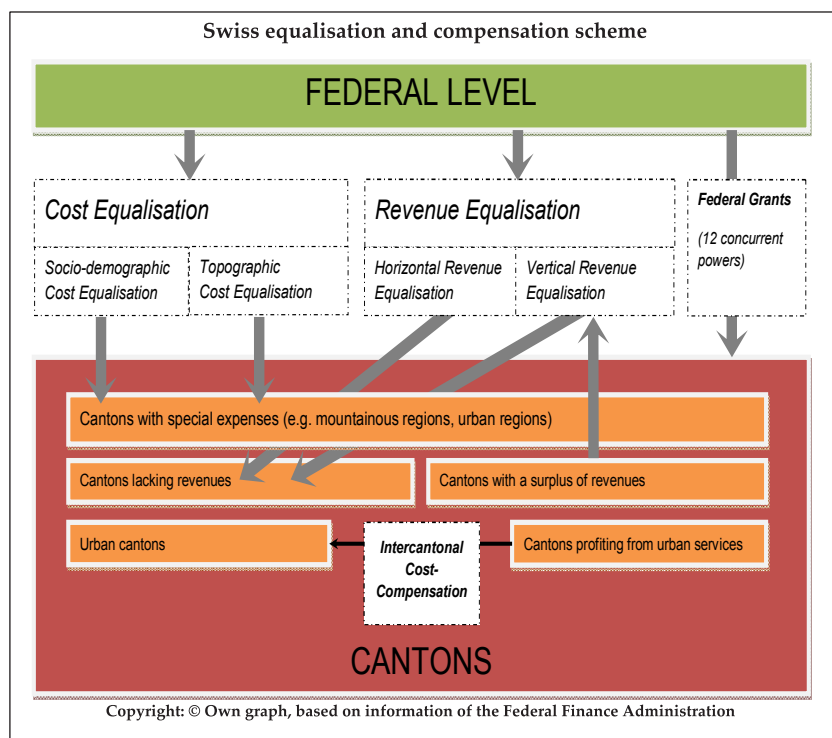
level. The cantons have the exclusive right to raise taxes on business capital. They also raise other types of taxes. At the municipal level, in addition to direct taxation, the main sources of revenue are user fees for public services.

- The maximum rates of federal direct taxes and of value added tax are prescribed in the constitution. The federation and most cantons use progressive taxation for direct taxes. Nine cantons decide on their tax rates in their parliaments; all the others require a referendum, in other words, tax rates must be approved in a formal Popular Vote.
- Switzerland is relatively poor in exploitable natural resources. Less than one percent of cantonal income derives from the use and exploitation of natural resources. In general, publicly-owned natural resources belong to the cantons. Some cantons delegate ownership to the municipalities. Water is the most important natural resource, in particular because it is used to generate electricity.
- The Federal Parliament decides on federal spending, adopts the budget and approves the federal accounts. The federal level cannot interfere directly in cantonal finances. The cantons

develop their own finance plans in accordance with their priorities and decide their own budgets. In contrast to the federal level, financial decisions at the cantonal and municipal levels are often subject to mandatory or facultative referendums.

- The cantonal right to decide tax scales and tax rates leads to tax competition between cantons and results in big differences in the tax burden. To mitigate the effects of the lower revenue capacities and higher service costs of some cantons, Switzerland has recently revised its system of fiscal equalisation.

- Fiscal equalisation in Switzerland has elements of vertical and horizontal equalisation in that both federal and cantonal levels



contribute to it. Equalisation aims to balance differences in financial capacities as well as differences in costs. The aim of revenue equalisation is to ensure that each canton has the necessary means to carry out its responsibilities and provide minimum services. Revenue equalisation is financed by the federal government and the richer cantons. Cost equalisation is intended to balance the additional costs of delivering public services in cantons in the peripheral and mountain regions. Compensation for these additional costs is based on indicators such as altitude, the steepness of the ground and low population density.

- In relation to joint federal-cantonal powers, the federal level is in charge of strategy, while the cantons are responsible for operations. Funds are provided by the federal level through conditional block grants.
- The 26 Swiss cantons perform quite differently. There are two main debt control mechanisms: democratic control and 'debt brake' mechanisms. In all the cantons there is the option of either a mandatory or a voluntary fiscal referendum. This allows citizens to stop the government and/or the parliament from making any proposed expenditure. The 'debt brake' mechanism forces a canton not only to balance its current budget but also to save some money if there is a surplus.

Lessons Learned

- ▶ Sub-national units need access to their own resources if they are to manage their political and administrative institutions autonomously and make use of their powers. Revenue sources are essential so that sub-national units can carry out their responsibilities in a transparent and accountable manner.
- ▶ Financial and budgetary autonomy permit the cantons and municipalities to implement public policies that fit their needs and resources.. This not only enhances their ability to decide their own destiny but also strengthens their interest in achieving a sound fiscal budget, since they do not simply receive money from the centre regardless of what they do. It is important that cantons and municipalities depend as little as possible on earmarked transfer payments.
- ▶ Competition between cantons enables citizens to compare their taxes and services with those of other cantons. This, together with their power to vote on fiscal issues, ensures that only those policies whose financial implications are accepted by the people will have chances of success. The system of direct democracy makes citizens more aware of and more responsible for local issues.
- ▶ As Swiss experience shows, fiscal equalisation systems are important aspects of federal or decentralised systems, particularly because differences in financial capacity and service costs cannot be avoided. Fiscal equalisation presupposes a certain level of solidarity and can contribute to national cohesion.

Sharing Security in Switzerland

Why is this relevant?

Feeling safe from the threat of violence is fundamental to people's personal security and to sustainable economic, social and political development. In conflict situations, however, there is usually widespread insecurity. In many countries the security sector is unable or unwilling to provide effective protection to all citizens and communities. The accountability of the security institutions and people's trust in them is usually limited. State military forces are frequently believed to be involved in the conflict or close to those who are involved. Especially following protracted conflict, ways must be found to (re-)establish trust in security forces and to re-integrate non-state armed actors.

Switzerland's approach

Within their areas of competence, both the federal and cantonal levels are responsible for the security and protection of the population. The main powers at the federal level are in the area of external security. The main role of the cantons is to safeguard internal security. The cantons are required to coordinate their efforts in the field of internal security with the federal level.

- Switzerland has a militia army. The pool of active members of the Swiss army is limited to a maximum of 140,000 members plus 80,000 reserve members who can be mobilised at short notice. There is a small nucleus of approximately 4,000 professional staff. As a rule, all young able-bodied Swiss males must serve in the army. In addition, there is a civilian protection and support service made up mainly of people who are not able to serve in the army (38,000 active members). Women can join the army on a voluntary basis. The militia system has ensured that the army is close to the people and that its composition reflects the diversity of the Swiss population.
- Though the army is mixed, most units are organised along regional and linguistic lines in order to facilitate command. As a rule, tactical military units (from company to battalion) are monolingual, and units above battalion level are multilingual (usually bilingual). The Federal Council, the executive, is in charge of the military and reports regularly to the parliament. It also appoints the Chief of the Armed Forces who runs the army day-to-day. In the case of a war, a Supreme Commander is elected in a joint session by both chambers of parliament.
- The Swiss army was originally composed of cantonal armies. Even after these were merged into the Swiss federal army, there were cantonal contingents (mainly infantry units) until the late 1990s. Following the legal reforms passed in 2001 (Army Reform XXI: implementation began in 2004) only a few links with the cantons remain. Parts of the permanent command structure of the army are organised on a territorial (regional) basis and are responsible for liaising with the cantons. The cantons retain certain responsibilities, e.g. concerning recruitment. In addition, they still have some coordinating powers, especially with respect to the military's supplementary tasks.
- The 26 cantons are primarily responsible for police matters. There are large municipal police forces in several bigger cities as well as around 300 small municipal forces. The cantons and municipalities decide on the organisation of their own police forces, including training, arms, equipment and uniforms. In addition to the cantonal police forces, there is a Swiss federal police force, a non-uniformed service. Its activities include preventive measures in the field of national security, the protection of people and the infrastructure, and tasks connected with the criminal prosecution of certain crimes, e.g. serious cases of organised crime and corruption, drug trafficking, counterfeiting and money laundering.
- The cantonal and municipal structures ensure a police service that is close to the communities, with police officers who come from the community where they serve, speak the local language, and are familiar with local customs. However, crime does not stop at cantonal and municipal boundaries. The existence of different cantonal and even municipal police forces creates difficulties unless there is strong cooperation.
- The police forces are embedded in the democratic structures of the cantons. The head of each cantonal police force is a member of the cantonal government (Cantonal Minister for Police and

Justice), and the cantonal parliament agrees the legal and financial framework of its police force. Changes to the organisation, mandate or financing of the police must be approved either by the cantonal parliament or by the people of the canton in a referendum.

Lessons Learned

- ▶ The step-by-step creation of a Swiss army, based first on cantonal armies under shared command, then by cantonal units within the Swiss army and finally by dissolving the cantonal units but maintaining cantonal liaison officers within the command structure, is one example of the slow and ordered integration of different armies into one army.
- ▶ The Swiss armed forces, the police and, to a more limited extent, the intelligence services are subject to democratic control. Not only are the military and the police governed by law, they are also accountable to democratic institutions and are constrained by the possibility of direct democratic votes. Democratic control also curbs the power of the security institutions and helps to maintain the trust of the population.
- ▶ The Swiss armed forces are aware of the importance of representing different language groups within their command structure. The requirements that officers speak at least two official languages, and that the language of command is the language of the person addressed, ensure smooth cooperation between language groups. Monolingual army units with a single language of command help to promote the functioning of non-specialised forces.
- ▶ Swiss experience of cantonal and municipal police forces suggests that police forces that are rooted in a specific region and are familiar with the local language(s) and customs generate public trust. At the same time, the scope and types of crimes have changed: the cantons are finding it increasingly difficult to control organised crime and other nationwide threats to security. The cantonal police forces have therefore set up extensive methods of coordination and cooperation with each other and have delegated some of their powers to the federal level.

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