



**International Convention on
the Elimination
of all Forms of
Racial Discrimination**

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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION

**REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9
OF THE CONVENTION**

Fourth, fifth and sixth periodic reports of States parties due in 2005

Addendum

SWITZERLAND*

[14 November 2006]

* This document contains the fourth and fifth and the sixth periodic reports of the Swiss Confederation, due on 29 December 2003 and 29 December 2005 respectively, submitted in one document. For the second and third periodic reports and the summary records of the meetings at which the Committee considered them, see documents CERD/C/351/Add.2 and CERD/C/SR.1495, 1496 and 1520.

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Introduction

1. Switzerland acceded to the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (hereinafter "the Convention") on 29 November 1994.¹ The Convention entered into force for Switzerland on 29 December 1994.² In its article 9, States Parties undertake to submit periodic reports on the legislative, judicial, administrative or other measures that they adopt to give effect to the provisions of the instrument.
2. In its concluding observations (CERD/C/60/CO/14), the Committee on the Elimination of Racial Discrimination (hereinafter "the Committee") requested Switzerland to submit its fourth periodic report, due on 29 December 2003, and its fifth report, due on 29 December 2005, in a single document perhaps also including the sixth report.
3. The present report has been drawn up in accordance with the Committee's guidelines (CERD/C/70/Rev.5). Switzerland's main demographic, economic and social characteristics and the description of its political system can be found in the country's core document (HRI/CORE/Add.29/Rev.1). The present joint report, containing the fourth, fifth and sixth periodic reports, covers the period from February 2002 to April 2006.³ It follows on from, updates and supplements the second and third periodic reports (CERD/C/351/Add.2) and supplementary report that the Swiss delegation presented to the Committee on 4 and 5 March 2002.⁴
4. For ease of reading, the present report is divided into three parts:
 - Part One, "General Information", contains information on changes in Switzerland's demographic structure and in Swiss law and policy in the areas covered by the Convention since the submission of the second and third reports;
 - Part Two examines those changes in the light of the provisions of the Convention and contains an updated commentary on its articles 2-7;
 - Part Three addresses the Committee's concluding observations on the country's second and third periodic reports. It sets out Switzerland's comments on the Committee's concerns and the points regarding which the Committee requested additional information.
5. The present report was designed and written by the Directorate of Public International Law. The other offices concerned were consulted according to the established procedure. The Federal Commission against Racism (FCR), the Federal Commission for Foreigners (FCF) and a number of independent bodies were also invited to give their opinion.
6. The report has been issued in French, German and Italian and can be consulted on the website of the Federal Department of Foreign Affairs (FDFA).⁵

¹ RO 1995 1163 et seq.; FF 1992 III 265.

² RS 0.104.

³ At the time of writing, the Federal Statistical Office (FSO) was only able to provide data up to 2004.

⁴ See the summary records of the Committee's 1495th and 1496th meetings, held on 4 and 5 March 2002 respectively (CERD/C/SR.1495 and 1496).

⁵ www.ddip.admin.ch.

I. GENERAL INFORMATION

A. Foreword

7. This chapter opens by outlining the changes in the resident population of Switzerland since the submission of the second and third periodic reports. It then summarises the developments in domestic law since those reports and the policy being pursued by the Swiss authorities in order to combat all forms of racial discrimination.

B. Changes in demographic structure

1. Resident foreign population

8. As of the end of 2004, persons classified as permanently resident in Switzerland numbered 7,415,102, of whom 20.6% did not have Swiss nationality.⁶ At 1,524,663, the number of permanently resident foreigners was 23,756 (1.6%) higher than the previous year. The proportion of persons holding short-term residence permits (maximum validity: 12 months) rose by 57%, whereas the proportion of foreigners with longer-term permits was virtually unchanged.⁷ By gender, the foreign population comprised 53% males and 47% females.⁸

TABLE 1
Permanently resident foreign population, by nationality, 2001-2004

<i>Nationality</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>%</i>
Italy	315 619	309 913	305 371	301 736	19.8
Serbia and Montenegro	195 436	198 700	200 349	199 739	13.1
Portugal	136 135	141 696	150 448	160 249	10.5
Germany	117 656	126 048	134 681	145 967	9.6
Turkey	79 990	79 330	78 120	77 058	5.0
Spain	81 806	79 729	77 578	75 085	4.9
France	63 329	65 113	66 917	68 850	4.5
Macedonia	58 549	59 926	60 676	61 008	4.0
Bosnia-Herzegovina	45 913	46 138	45 554	44 872	2.9
Croatia	44 035	43 510	42 852	41 908	2.7
Other	305 739	323 459	334 952	348 191	22.8

Source: Federal Statistical Office (FSO), Statistics of permanently resident foreign population (PETRA), as at 31 December.

⁶ *Source:* FSO, Statistique annuelle sur l'état de la population (Yearbook of Population Statistics, ESPOP). The figure does not include holders of short-term permits or persons present in Switzerland in connection with the right of asylum.

⁷ Federal Office for Migration (FOM), Effectif de la population résidente permanente étrangère par cantons de résidence et groupe d'étrangers (Permanently resident foreign population by canton of residence and ethnicity), end December 2004.

⁸ *Source:* FSO, ESPOP 2004 (provisional figures), February 2005.

TABLE 2
Origin, by continent

<i>Continent</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>	<i>%</i>
Europe	1 272 457	1 288 587	1 304 169	1 321 981	86.7
of which EU/EFTA countries	(833 515)	(844 828)	(859 489)	(879 153)	(57.6)
Africa	38 785	41 676	44 326	46 578	3.0
America	53 268	55 875	57 560	59 325	3.9
Asia	79 609	87 260	91 369	93 275	6.1
Australia, Oceania	3 180	3 317	3 259	3 278	0.2
Stateless or origin unknown	254	251	224	226	0,02
Total	1 447 553	1 476 966	1 500 907	1 524 663	

Source: FSO, Statistics of permanently resident foreign population (PETRA), as at 31 December.

2. Immigration

(a) Immigration, by nationality

9. In 2004, the total number of foreign immigrants was again slightly higher than the previous year. Counting all the residence permits granted under the law on aliens, the number of foreign immigrants has, except in 1997, 2000 and 2003, when there were slight declines, been rising since 1995.⁹

TABLE 3A
Immigration, by nationality

<i>Immigrants, by nationality</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Europe					
Germany	12 011	14 121	15 574	15 133	18 221
Portugal	4 311	4 347	9 005	12 228	13 539
Former Yugoslavia	9 868	11 628	11 609	9 705	8 906
France	6 365	6 491	6 936	6 865	6 936
Italy	4 541	4 625	5 961	5 820	5 859
United Kingdom	3 631	3 948	3 248	2 980	3 069
Turkey	2 403	2 858	3 063	2 806	2 467
Austria	1 887	2 350	2 629	2 046	2 273
Spain	1 490	1 540	1 833	1 819	1 752
Netherlands	1 215	1 322	1 209	1 100	1 137
Other European countries	9 171	10 348	9 481	8 776	9 050

⁹ *La population étrangère en Suisse* (Switzerland's foreign population), ed. 2005, FSO, Neuchâtel 2005, p. 36.

<i>Immigrants, by nationality</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Other continents	2000	2001	2002	2003	2004
Asia	11 535	18 189	16 486	12 911	11 569
America	9 764	10 750	10 604	9 697	9 582
Africa	5 158	6 265	6 536	6 254	5 800
Australia, Oceania	824	943	814	652	637
Stateless or origin unknown	26	21	26	20	37
Total	84 200	99 746	105 014	98 812	100 834

Source: FSO, Statistics of permanently resident foreign population (PETRA). The figures do not include holders of short-term permits or persons present in Switzerland in connection with the right of asylum.

(b) *Reasons for immigration*

10. The trend apparent since the early 1990s towards a profound change in the reasons for immigration continued in 2004: barely a third (31.7%) of long-term immigrants entered Switzerland under the quotas for foreign workers. In 40.3% of cases, entry was for family reasons (family reunification, marriage with a Swiss citizen). Relative to the total number of immigrants in 2004, entrants for a stay of several years accounted for 36.9 %, entrants for a short stay were in the majority (55.4%) and entrants under asylum law accounted only 7.7%.¹⁰

TABLE 3B
Immigration in 2004, by reason for immigration

<i>Immigration in 2004, by reason</i>	<i>Total</i>	<i>%</i>
Family reunification	38 836	40,3
Gainful activity subject to quota	30 487	31,7
Gainful activity not subject to quota	3 633	3,8
No gainful activity	4 765	4,9
Returns to Switzerland	148	0,2
Initial or further vocational training	13 003	13,5
Recognized refugees	1 007	1,0
Hardship cases	3 344	3,5
Other	1 047	1,1
Total	96 270	100 %

Source: Federal Office for Migration (FOM).

¹⁰ Ibid., p. 32

3. Asylum

11. In 2004, the number of new applications for asylum declined more heavily in Switzerland than elsewhere in Europe. Although such applications were less numerous than the previous year throughout Western Europe, they were 32.3% less numerous in Switzerland, where they totalled 14, 248, or fewer than at any time since 1987. In the case of Switzerland, the greatest number of applicants came from south-eastern Europe, with, as for several years previously, the Commonwealth of Independent States in second place. Applicants from West Africa, on the other hand, were far fewer than some years earlier.¹¹

TABLE 4

Persons concerned by asylum law, by nationality

<i>Persons concerned by asylum law, by nationality, (at 31 December, thousands)</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>	<i>2004</i>
Total	65.7	66.5	64.6	55.1
Serbia and Montenegro	17.0	15.3	13.4	11.4
Bosnia-Herzegovina	5.5	5.6	5.0	4.0
Turkey	3.6	4.0	3.8	3.2
Sri Lanka	9.7	5.6	3.9	3.0
Somalia	4.3	3.9	3.8	4.0
Iraq	3.0	3.1	3.8	3.7
Angola	2.8	3.3	3.2	2.9
Ethiopia	1.4	1.6	1.8	1.7
Algeria	1.1	1.5	1.6	1.1
Iran	1.1	1.2	1.2	1.2

Source: FSO, Statistics of permanently resident foreign population (PETRA), not including recognized refugees.

12. At the end of 2004, there were 79,374 people living in Switzerland under asylum-related residence permits: 30.6% of them had refugee status, 29.5% had been temporarily admitted to the country, and 17.9% were awaiting enforcement of a final decision. As regards the remainder (22% of persons concerned by asylum law), 6,251 applications were awaiting a decision at first instance and 11,214 applications were awaiting enforcement of a decision at first instance.¹²

13. In 2004, applications for asylum concerning which there was a first-instance decision totalled 19,157, or 29.9% fewer than in 2003. Applications that were dismissed without entering into the substance of the case (hereinafter "dismissed") numbered 5,193; 9.2% of applications were accepted. More people ceased to be within the scope of asylum law than came within it for the first time. The persons in the first category comprised those who, either voluntarily or under

¹¹ FOM, Asylum statistics, 2004.

¹² Ibid.

control, left Switzerland for their country of origin or a third country after asylum proceedings had been closed and those who abandoned asylum proceedings after the dismissal of their application. In addition, 1,143 people moved from the competence of the Confederation to that of the cantons.

14. A monthly decline in new applications for asylum began in June 2004 and bottomed out in February 2005 (674 applications). Thereafter, applications rose again, to reach 892 in August 2005. At the end of that month, a total of 73,379 people were registered as being within the scope of asylum law. First-instance proceedings were in progress for 5,214 people.¹³

4. Linguistic minorities

15. As before, the languages most widely spoken in Switzerland are German (63.7%), French (20.4%), Italian (6.5%) and Romansh (0.5%). The proportion of other languages is 8.9%. While the breakdown between the four national languages is virtually unchanged by comparison with 1990, the number of speakers of Serbian, Croatian, Albanian, Portuguese, Spanish, English or Turkish is now far higher than the number of speakers of Romansh.

16. Unlike the breakdown between the national languages, the breakdown between the other languages has changed. Slavic languages, while representing much the same proportion of the whole as before, have gained ground at the expense of Romance languages: 1.4% of the population speak a Slavic language from the former Yugoslavia, 1.3% speak Albanian, 1.2%, Portuguese, 1.1% Spanish, 1% English and 2.9% another language.¹⁴ However, the great majority of foreigners speak one of the national tongues and use it as their main language.

5. Religious minorities

17. Roman Catholics (41.8%) and evangelical reformists (33.0%) remain the two largest religious groups in Switzerland. In the 1990s, there were two strong trends as regards religion: the marked increase (from 7.4% to 11.1%) in the proportion of people who did not belong to any religious community, and the expansion of the Orthodox Christian and Muslim communities.

18. In particular, the number of Muslims more than doubled in 10 years, rising from 152,200 to 310,800 (4.3% of the resident population), a rate of growth attributable principally to migratory flows from Kosovo, Bosnia-Herzegovina, the former Yugoslav Republic of Macedonia and Turkey. The Orthodox Christian communities were also swelled by immigrants from Serbia, Montenegro, Bosnia-Herzegovina, the former Yugoslav Republic of Macedonia and other countries in Central or Eastern Europe. They now total more than 130,000 members (1.8%) and constitute the country's third-largest Christian group. The overall size of the Jewish religious communities has remained steady at 0.2%.¹⁵

6. Ethnic minorities

19. In its report on the development of facilities for, and the legal status of Travellers, issued in 2001, the Foundation "Assurer l'avenir des gens du voyage suisses" (Safeguard the future of

¹³ FOM, Asylum statistics, August 2005.

¹⁴ FSO, Neuchâtel 2003, Federal Population Census, 2000 -- Population structure, main language, religion.

¹⁵ Ibid.

Swiss Travellers) estimated that there were approximately 35,000 members of this population group in Switzerland and that some 3,000 of them still had a nomadic lifestyle.

C. Constitutional and legislative foundations

20. The general constitutional and legislative foundations for the combating of racism were described in Switzerland's earlier reports (CERD/C/351/Add.2 and HRI/CORE/Add.29/Rev.1). The following chapter will therefore refer only to such of those foundations as have been altered or have come into force since then. Depending on their relevance, the instruments in question will be discussed in greater detail in the second or third parts of this report.

1. Signature and ratification of international conventions

(a) United Nations conventions

21. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict came into force for Switzerland on 26 July 2002.¹⁶

22. Switzerland signed the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on 7 September 2000. Its ratification by Parliament necessitated bringing the country's criminal law on human trafficking (CP, art. 182) into line with the relevant international standards by broadening the definition of the offence.¹⁷

23. Switzerland signed the Optional Protocol of 18 December 2002 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 25 June 2004. The purpose of this instrument is to provide increased protection for prisoners or detainees by means of visits and checks by independent national or international bodies. The process of consultation with a view to the ratification of the Optional Protocol have been completed, but analysis of its results has not. A government message on ratification of the Protocol and the legal requirements for its entry into force is expected to be submitted to Parliament by the end of 2006.

24. The two protocols supplementing the International Convention against Transnational Organized Crime that Switzerland signed on 2 April 2002:

The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which aims to counter trafficking of human beings, especially women and children, for the purposes of exploitation, and

The Protocol against the Smuggling of Migrants by Land, Sea and Air, which requires States to prosecute persons who smuggle migrants for the purposes of their exploitation or who make or supply fraudulent documents

are ready for submission to Parliament.

¹⁶ RS 107.1.

¹⁷ FF 2005 2639.

25. The parliamentary calendar calls for the ratification by 2007 of the Optional Protocol to the Convention on the Elimination of Discrimination against Women and preparations are therefore under way for that event.

(b) Regional human rights conventions

26. Switzerland ratified Protocol No.13 of 2002 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR) concerning the abolition of the death penalty in all circumstances on 3 May 2002.¹⁸ The Protocol came into force for Switzerland on 1 July 2003.

27. The Federal Council signed the Additional Protocol to the Council of Europe Convention on Cybercrime on 9 October 2003. Switzerland is convinced of the need for international criminalization of acts of a racist and xenophobic nature committed through computer systems. The States Members of the Council of Europe deemed the Additional Protocol necessary to harmonize the fight against this kind of crime. To that end, the Swiss Coordination Unit for Cybercrime Control (CYCOS)¹⁹ has been set up within the Federal Department of Justice and Police (FDJP). It serves as a focal point to which people can report the existence of websites with racist content.

(c) Revision of the Federal Constitution

28. In connection with the revision of the Constitution, the Government prepared a series of measures for the comprehensive reform of the population's rights. The package, which aimed at filling in lacunae in those rights, was rejected by the Parliament, which did not want to see the planned extension of direct democracy linked to an increase in the number of signatures required for the exercise of the right of referendum or popular initiative. Parliament did, however, accept some of the Government's ideas, incorporating them in the reforms described in the next two paragraphs.

29. Provisions making international treaties more widely subject to referendums came into force on 1 August 2003. Until then referendums could be held on international treaties in four cases: if the treaties were valid indefinitely and could not be denounced; if they provided for membership of an international organization; if they entailed multilateral harmonization of legal provisions, or if the Federal Assembly decided of its own accord that they should be submitted to a referendum. Now, under article 141, subparagraph 1.d.3, of the Constitution, referendums can also be held on international treaties if the treaties contain significant provisions laying down rules of law or if new federal laws are needed to put the treaties into effect.²⁰

30. On 9 February 2003, there was a double majority of the population and the cantons in favour of establishing the right of general popular initiative. The change in question would give citizens the right to propose changes in the law. However, the relevant article of the Federal Constitution, article 139 a, is not yet in force.

¹⁸ RS 0.101.

¹⁹ <http://www.cybercrime.admin.ch>; see also para. 229 below.

²⁰ RO 2003 1949.

2. Changes in criminal law

(a) *The Criminal Code*

31. The general part of the Swiss Criminal Code (CP)²¹ has been revised. The changes, consisting essentially of alterations to the system of penalties, will come into force on 1 January 2007. Article 386 of the Code, which was originally among the changed sections of the general part, has already come into force, on 1 January 2006. It provides for the adoption of preventive measures against crime and delinquency and serves as a legal basis for the establishment and support of organizations taking such measures. The Federal Council opted for the article's early entry into force in order expressly to demonstrate its support for projects against racism.

32. Since 1 April 2004, physical or sexual violence in couples, whether they are married or not or heterosexual or homosexual, gives rise to automatic prosecution, and no longer to prosecution only if a complaint is filed. The effect of the changes to the Code is that sexual coercion and rape are now automatically prosecutable offences even if they are committed within a couple against a spouse or a partner.

33. In action reflecting calls by Parliament and its own desire to adjust the resources and instruments for the maintenance of internal security to the new forms of threat, the FDJP has accelerated the revision of the relevant legal rules. Work is therefore in hand on the partial revision of the Federal Act instituting Measures for the Maintenance of Internal Security (LMSI I, II)²² and on the inclusion in the CP of a provision to strengthen the fight against racism by banning racist emblems.²³

(b) *Criminal procedure*

34. Preparations are under way for a federal code of criminal procedure which it is intended will one day replace the 26 cantonal codes of criminal procedure and the federal rules on criminal procedure. The preliminary drafts of the federal code and of the proposed federal law on criminal procedure in cases involving minors were generally well received at the consultation stage. On the basis of this result, the FDJP drafted a message on the standardization of rules of criminal procedure which has been approved by the Federal Council and will shortly be submitted to Parliament. Given the complexity of the project, the new rules are unlikely to come into force any earlier than 2010.²⁴

(c) *Introduction of a federal act on secret investigations*

35. The Federal Act on Secret Investigations (LFIS) came into force on 1 January 2005. It lays down very clear, uniform rules for the use of undercover agents in Switzerland and applies to criminal proceedings at the levels both of the Confederation and the cantons.²⁵

²¹ RS 311.

²² RS 120.

²³ For more details, see paras. 108 et seq.

²⁴ See also paras. 115 et seq.

²⁵ RO 2004 1409; see also para. 118 below.

3. Changes in civil law

36. Civil procedure is not yet regulated at the federal level, but is mostly governed by cantonal codes. Article 122 of the Federal Constitution currently provides that as regards civil law the organization of the judiciary, procedure and the administration of justice are within the competence of the cantons. Only proceedings before federal judicial authorities are governed by federal law. Although the Swiss public voted to accept it in the context of the reform of justice, an amendment to article 122 that would harmonize civil procedure is not yet in force. Parliamentary discussions on a message drawn up by the FDJP on the basis of the preliminary draft of uniform rules of civil procedure elaborated by a committee of experts and of the opinions expressed at the consultation stage began in the spring of 2006. Harmonization will ensure that people seeking justice before civil courts will be treated according to the same rules throughout the country.

4. Changes in public law

(a) *Partial revision of the Asylum Act*

37. The Federal Government adopted its message on the partial revision of the Asylum Act (LAsi) on 4 September 2002.²⁶ The changes it proposed were based on experience of operation of the new law, which came into force on 1 October 1999, recent international jurisprudence and the proposals regarding new financial incentives made in March 2000 by the official working group on financing in connection with asylum. The changes concerned mainly the rules with respect to third States, asylum procedure and the possibilities of appeal at registration centres and airports, the legal status of persons provisionally admitted to Switzerland, the new financing system, and health and social security services.

38. Parliament adopted the final version of the partial revision of LAsi on 16 December 2005. The main changes that it made to the text submitted to it by the Government were as follows:

- Extension of exclusion from social assistance to all asylum-seekers whose applications are rejected;²⁷
- Extension of the maximum period of detention pending removal from 9 to 18 months (maximum of 12 months for persons aged between 15 and 18);
- Extension to persons who fail to respect time limits for their departure of the possibility of placing them under compulsory residence orders and banning them from entering specified places;
- Harmonization of cantonal practice through the setting of a limit of three days on the holding of persons for the purposes of establishing their identity (in order, for example, for them to be taken to an embassy to obtain the necessary documents);
- Broadening of the circumstances in which asylum applications can be dismissed on the grounds of failure to supply travel or identity documents: if an applicant fails to

²⁶ FF 2002 6359.

²⁷ Requested by motion 03.3593 of 3 December 2003.

supply a passport or identity card, the application will automatically be dismissed unless there is a valid reason for the document's absence, the person is manifestly a refugee or there is a clear need to obtain further information;

- Introduction of a fee for the re-examination of an application or the submission of a fresh application;
- Introduction of detention for a maximum of 18 months in the event of insubordination. The purpose of this change is to ensure compliance with obligations to leave Switzerland. The new measure supplements the existing provision for detention pending refoulement in cases in which a person's departure is possible, legal and reasonable, but the person refuses to leave;
- Authorization for cantons to grant residence permits on humanitarian grounds to (former) asylum-seekers who have been present in Switzerland for at least five years;
- Provision for the Federal Council to co-operate closely with asylum-seekers' countries of origin and transit countries in combating illegal migration and promoting the return of persons subject to removal orders.

39. All of the above measures, taken in response to pressing requests from cantons and the population, are consistent with the Constitution and public international law. They will enable cantons and the Confederation to make substantial savings without detriment to the foundations of the right of asylum, which was instituted to provide protection to persecuted persons. They are expected to improve the situation by making Switzerland less attractive than in the past to foreigners who seek asylum without valid cause.²⁸

40. The decision by the Council of States to abolish emergency assistance to asylum-seekers whose applications were definitively refused was overturned in the process of eliminating the differences between the views of the Federal Assembly's two chambers. The Federal Supreme Court was asked to rule on the matter and held on 18 March 2005 that it was unconstitutional not to give emergency aid to unsuccessful asylum-seekers and that it was still obligatory for cantons to meet their fundamental needs such as those for food, lodging, clothing or basic medical care.²⁹ The cantons are, however, free to choose how they will provide the resources essential for a decent standard of living. In this regard, the Conference of Cantonal Directors of Social Affairs (CDAS) has issued recommendations designed to ensure that services are provided according to uniform criteria throughout the country.³⁰

41. A request was made for a referendum against the partial revision of LAsi and obtained the required number of valid signatures. A referendum was therefore held on 24 September 2006. It resulted in a majority overall and in every canton in favour of the revised version, with some 68% of the electorate voting for the new law.

²⁸ FOM, press release, Partial revision of the Asylum Act, 25 August 2004.

²⁹ ATF 131 I 166.

³⁰ CDAS, Recommendations on emergency assistance to asylum-seekers whose applications are dismissed; revised version, approved by the CDAS Steering Committee (27 May 2004).

(b) Complete revision of the Federal Act on Foreign Nationals

42. The Federal Act on Temporary and Permanent Residence of Foreigners (LSEE) does not measure up to the requirements that legislation on aliens must meet in a State concerned to uphold its Constitution. Regarding immigration, some fundamental rules are laid down only in regulations and are therefore not subject to democratic control by Parliament. The question of immigrants' integration, long a matter of little concern, is hardly touched on in the Act, which, furthermore, is unsuitable for the effective countering of new phenomena such as people trafficking.

43. With a view to remedying these shortcomings, both chambers of Parliament approved totally revised legislation on foreigners by large majorities during the 2005 winter session. Under the new Federal Act on Foreign Nationals (LEtr), the binary system for admission to Switzerland will be regulated by federal law. Whereas there has been free movement of persons between Switzerland and State Members of the European Union (EU) or the European Free Trade Area (EFTA) since 2002, only highly qualified persons will be admitted from other States. This restriction will not apply in cases of family reunification, entry for training or admission on humanitarian grounds. The new Act is the first piece of legislation on foreigners to contain detailed provisions on the Confederation's efforts regarding integration. The aim is to improve the situation of foreigners legally present in Switzerland. Persons who try actively to integrate will be able to obtain a permanent residence permit in five years, instead of ten. It will be possible to fight crime and abuses of the law on foreigners more efficiently and to punish them more severely than in the past. For example, the new Act contains special measures against people traffickers, undeclared employment and marriages of convenience.³¹

44. A request for a referendum against the new Act obtained the required number of valid signatures. The referendum, held on 24 September 2006, resulted in a majority overall and in every canton in favour of the Act, with some 68% of the electorate voting for it.

(c) Other changes in the law on foreigners and asylum

45. For the partial revision of the Ordinance on the Integration of Foreigners, see paragraphs 74-78 below.

46. The new Federal Vocational Training Act,³² which encompasses a partial revision of the LSEE,³³ aims at the lasting improvement of the vocational integration of young foreigners. The LSEE requires the Federal Council to ensure, through the criteria for the issuance and application of residence permits for the unmarried children under 18 years of age of beneficiaries of annual residence permits who are not nationals of an EU or EFTA State, that the children are guaranteed basic vocational training. That means that the children must, whenever possible, enter Switzerland before they are too old to receive such training. That is one of the reasons why the Act on Foreign Nationals provides that family reunification must be completed within 12 months when the family contains children under 12. The aim in accelerating family reunification in this

³¹ FOM, the new Act on Foreign Nationals, status: January 2006

³² RS 412.10; in force from 1 January 2004.

³³ RS 142.20; art. 17, para. 2 bis.

way is to ensure that, by enabling the children to receive training, the basis is laid for their integration into the employment market.

47. For the intended changes in nationality law, see paragraphs 253-261 below.

48. A federal act on the use of coercion against foreigners and in the transport of foreigners on the orders of federal authorities is in the final stages of adoption. It is intended to lay down clear and uniform rules for the use of force by the police in connection with the removal of foreigners (see para. 131 below).

(d) Other changes in public law

49. With reference to Switzerland's second and third reports, mention must be made of the changes as regards the freedom of information (CERD/C/351/Add.2, para. 188).³⁴ The Federal Act on Freedom of Information in the Administration (Freedom of Information Act), which will come into force on 1 July 2006, reverses the principle of confidentiality by giving all citizens of the right of access to official documents without their having to prove a special interest in the documents in question. The principle of transparency is not, however, absolute and can, in a number of cases enumerated in detail in the Act, be limited to protect public or private interests.

50. On 20 April 2004, the Government decided against submitting to Parliament a federal bill on the national languages and understanding between the linguistic communities. It did so because of its confidence that the Confederation already has the instruments needed to obtain the targets set in the bill. A number of moves are, however, afoot in Parliament to have the bill brought back before the legislature.³⁵

5. Reforms of cantonal constitutions

51. Since the previous report, a number of cantons have fully revised their constitutions.³⁶

52. The constitutions of the cantons of Vaud (art. 10), Schaffhausen (art. 11), Fribourg (art. 9), Zurich (art. 11) and Basel (art. 8) now contain provisions clearly prohibiting all forms of discrimination. The new constitutions of the cantons of St. Gallen (art. 2) and Graubünden (art. 7) list, without elaborating on them, the fundamental right to guaranteed by the Federal Constitution.

D. General policy against racial discrimination

1. General comments

53. For Switzerland, 2002 was the year of the country's admission to the United Nations as the Organization's 190th member State. Thanks to its new status, Switzerland is able not only to continue its humanitarian tradition, but also to give more weight to its commitment to human

³⁴ FF 2004 6807.

³⁵ Green Group motion of 6 May 2004, "Language Act. A constitutional mandate" (04.3242); motion by Fabio Abate, 4 May 2004, "New act on the national languages" (04.3217); parliamentary initiative by Christian Levrat, 7 May 2004, "Federal Act on the national languages" (04.429).

³⁶ Graubünden, Fribourg (RS 131.219), Schaffhausen (RS 131.223), St. Gallen (RS 131.225), Vaud (RS 131.231), Zurich and Basel-Stadt.

rights in general and its fight against racism in particular. Much has already been achieved since the country's ratification of the Convention on 29 December 1994, its recognition of the procedure for individual communications under article 14 of the Convention in June 2003 and the entry into force on 1 January 1995 of criminal-law provisions against racism. There is no doubt, however, that more needs to be done.³⁷

54. The Federal Government views the combating of racism, anti-Semitism and xenophobia as a permanent obligation. One proof of this is its recent decision to provide the Federal Service for Combating Racism (SLR) with a budget for long-term projects (see paras. 278-279 below), a decision that underscores the Government's belief that, along with civil society and private actors, the State has an important role to play in preventing racism.

55. The Federal Council's concern to combat racism, anti-Semitism and xenophobia has been demonstrated in many of its responses to points raised in Parliament. For example, in its response to a motion seeking the decriminalization of racism,³⁸ it reasserted before the National Council its belief that the law must punish public incitement to hatred or discrimination on grounds of race, ethnicity or religion, treatment contrary to human dignity, the refusal of public services, and the propagation of racist ideology. It further stated that freedom of expression is not absolute and can be limited, particularly in order to protect the dignity and honour of others. There could therefore be no question of repealing article 261 bis of the CP or article 171 c of the Military Criminal Code (CPM), which were, among other things, a concrete expression of Switzerland's efforts to fulfil its obligations under the Convention.³⁹

2. National minorities

(a) Linguistic minorities

56. Concerning this issue, see Switzerland's second and third periodic reports to the Committee (CERD/C/351/Add.2, paras. 45 et seq.).

(b) Religious minorities

57. There was a marked increase during the reporting period in acts of intolerance against members of Muslim communities in Switzerland. In particular, during the campaigning that preceded the national referendum on the easing of naturalisation law, the FCF complained on several occasions that press adverts by some right-wing circles defamed Muslims.⁴⁰

³⁷ A conclusion shared by Mr. Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe in his report of 8 June 2005 on his visit to Switzerland.

³⁸ Motion by Bernhard Hess, 8 October 2004, "Decriminalization of racism" (04.3607).

³⁹ Response of the Federal Council to the UDC Group motion of 28 February 2005, "Decriminalization of racism" (05.3013).

⁴⁰ In a series of advertisements, the "Committee against Mass Naturalisations" claimed that Muslims were a threat to Switzerland because of their higher-than-average birth rate. The authors of another advertisement listed five things that allegedly would come about if naturalised Muslims were able to take political decisions: intolerance of other religions; inequality between the sexes; forced marriages of minors; wearing of headscarves; terrorism (see FCF, Annual report 2004, pp. 5 and 6).

58. On 30 September 2004, a number of members of Parliament formally requested the Federal Council to state whether it considered radical Islamism a threat to Switzerland. In its reply, the Federal Council emphasized that it made a clear distinction between Islam and Islamism, between religion and ideology. It further stated that it did not consider that Islam generally incited to violence or was not peaceful.⁴¹

59. Early in 2005, there was an increase in anti-Semitic activity in a number of parts of Switzerland. Holy places and symbols of the Shoah were profaned in Lugano, Geneva and on the Vaudois Riviera.⁴² The Middle East conflict figured widely in the media during the reporting period. There were occasional echoes in the press of anti-Semitic opinions or opinions that could lead to anti-Semitism. The Jewish community felt that journalists' reporting of events in Israel was increasingly biased.

60. Following the arson attacks on the synagogue and a Jewish business in Lugano on 14 March 2005, the President of the Confederation unreservedly condemned all forms of anti-Semitism and assured all Jews living in Switzerland that the Government would do everything in its power to protect them against such acts.⁴³ On 17 March 2005, the Swiss delegation to the OSCE Permanent Council condemned the offences and said that intolerance and discrimination were social problems that it was incumbent on Switzerland to take seriously.

61. On 27 January 2004, in response to the proposal that the day should be one for the commemoration of the Holocaust and other genocides in European history, Swiss schools celebrated the Day of Remembrance of the Holocaust and for the Prevention of Crimes against Humanity for the first time.⁴⁴ The purpose of the commemoration is to promote respect for others, human rights, opposition to racism and anti-Semitism, and dialogue between cultures and religions.⁴⁵

62. In 2004, the Swiss working group for the Task Force on International Cooperation on Holocaust Education, Remembrance and Research (ITF) was set up on the initiative of the Centre for Analysis and Prospective Studies of the Federal Department of Foreign Affairs. The ITF was set up following the International Forum on the Holocaust held in Stockholm in January 2000. At that Forum, 18 States signed the Stockholm Declaration, in which they undertook in particular to promote Holocaust research. Switzerland endorsed the Declaration and promised to make an annual contribution. The Swiss working group comprises representatives of interested organizations and institutions and enjoys wide support among the Jewish community. It serves as an interface between the basic work of ITF and the concrete projects carried out in Switzerland.

63. In 2002, the Swiss Federation of Jewish Communities set up a media observation centre in response to what it saw as the increasingly polemical portrayal of the Middle East conflict in the

⁴¹ Response of the Federal Council to formal request for information from Maurice Chevrier dated 30 September 2004, "Is radical Islamism a threat to Switzerland?"(04.3477).

⁴² Federal Commission against Racism press release, 13 May 2005, "Profanation of graves in the Jewish cemetery at Vevey-Montreux".

⁴³ The investigation revealed that, as the Lugano Criminal Court said in its verdict, the perpetrators of these criminal acts had not had anti-Semitic motives.

⁴⁴ The date was chosen in memory of the liberation of the Auschwitz concentration camp by the Red Army on 27 January 1945.

⁴⁵ <http://www.edi.admin.ch/ekr/themen/00104/00338/index.html?lang=fr>.

media. A report on the stereotyping of Jews in the media was submitted in March 2004. It was commissioned by the Anti Defamation League (ADL), B'nai Brith Zurich, and carried out by media specialists (see para. 230 below).

(c) *Travellers*

64. Regarding the situation of Travellers, see, in paras. 281-288 below, the comments on paragraph 15 of the Committee's concluding observations on Switzerland's previous reports (CERD/C/60/CO/14).

3. Foreign population

(a) *Immigration policy*

65. With the enlargement of the European Union on 1 May 2004, the bilateral agreements between Switzerland and the Union were automatically extended to the Union's 10 new members. The exception was the Agreement on the Free Movement of Persons (ALCP), to which amendments had to be negotiated with the EU: immigration from the new member States is limited by a protocol signed with the EU that provides for the controlled and gradual introduction of free movement of persons from those States (transitional regime until 2011). Pursuant to the protocol, immigration from the new member countries can, as the ALCP permits for immigration from the 15 States belonging to the Union in 2004, be controlled and limited by means of appropriate transitional regulations. The transitional periods are longer for the new member countries.

66. Since 1 June 2004, accompanying measures have afforded additional protection on the Swiss labour market against undercutting of the normal levels of remuneration and social benefits. In view of the expansion of the EU, the effectiveness and application of these measures will be improved by means of additional instruments. In 2009, the population will have another opportunity to decide by referendum whether to maintain the agreement with the EU of 25 States.

67. The extension of the ALCP is giving Switzerland access to a huge pool of both highly- and low-skilled labour. It is consistent with the Federal Government's immigration policy, which is one of openness towards the European Union and EFTA on the one hand and restriction of immigration from third countries to highly-qualified persons on the other (the binary admission system) (see CERD/C/351/Add.2, paras. 81 et seq.). Conversely, the principle of free circulation applies to Swiss nationals wishing to live and work in a European Union country.

68. On 25 September 2005, the Swiss people accepted by popular vote both the extension of the ALCP to the new EU countries and the revision of the accompanying measures. In each case, the new legislation came into force on 1 April 2006.

69. On 7 June 2004, the Federal Council decided to merge the Federal Office of Immigration, Integration and Emigration (IMES) with the Federal Office for Refugees (ODR) to form the FOM. The merger became effective on 1 January 2005.

70. With respect to Switzerland's reservation concerning article 2, subparagraph 1 (a), of the Convention, see paragraph 280 below.

(b) *Asylum policy*

71. The number of applications for asylum declined markedly during the period under review (see para. 11 above). This can be attributed to improvements in the political situation in the former Yugoslavia and in Turkey. In addition, measures were taken (exclusion from social assistance coverage of asylum-seekers whose applications were dismissed, acceleration of asylum proceedings, strict implementation of decisions) to combat abuses more effectively.

(c) *Integration policy*

72. The integration of foreign residents is one of Switzerland's main political and social challenges. Integration is a comprehensive, collective task: it concerns such fundamental matters as schooling and training, employment, health and social security. The aim of Swiss integration policy is to create conditions that will give the foreign population equal opportunities to access social and economic resources and be part of Swiss society.⁴⁶ The policy views integration as a reciprocal process requiring both foreign nationals' readiness to be integrated and openness on the part of the Swiss population. It requires the involvement of society, of federal, cantonal and communal authorities and of foreigners' organizations. The FOM coordinates measures by the federal authorities to promote integration, especially as regards unemployment insurance, vocational training and health, and ensures the exchange of information and experience with the cantons.⁴⁷

73. The legal foundation for the Confederation's financial participation in promoting integration is laid down in article 25 of the LSEE. The enabling legislation is contained in the Ordinance on the Integration of Foreigners (OIE).⁴⁸ The annual contribution in 2002 and 2003 was 12.5 million francs; it has been increased to 14 million francs for the years 2004-2007. The Confederation's financial assistance goes primarily towards: promotion of language and integration training for hard-to-reach target groups; initial and further training of people with key roles; support for action to promote neighbourhood development and cohabitation; monitoring of innovative nationally-relevant pilot projects; strengthening of regional structures through the support of services for foreigners, and development of quality standards and control tools.⁴⁹ The requests for financing are drawn up by the FCF, which forwards them, together with its opinion concerning them, to the FOM. The latter can authorise disbursements up to a maximum of 300,000 francs; beyond that, the decisions are taken by the FDJP. The other activities of the FCF are described in paragraphs 212-215 below.

74. The purpose of the changes to the OIE which came into force on 1 February 2006 is to improve the integration of foreigners. The legislature refers expressly to the importance of foreigners' taking their share of responsibility. They are called on to respect the law and democratic principles and to make efforts to integrate. Those efforts include learning a national language and demonstrating willingness to participate in economic life and acquire a skill.⁵⁰ The

⁴⁶ FOM, Principles of Swiss integration policy, <http://bfm.mit.ch/index.php?id=182&L=3>. See also art. 3, subpara. 1 d, of the Ordinance on the Integration of Foreigners (OIE), 142.205.

⁴⁷ OIE, art. 14a.

⁴⁸ RS 142.205 see also CERD/C/351/Add.2, para. 71.

⁴⁹ List of priorities for 2004-2007, http://www.eka-cfe.ch/f/doku/prioritaetenordnung_f.pdf.

⁵⁰ OIE, art. 3a.

Swiss authorities are empowered to require persons from third countries who will be serving as religious leaders or teaching their native language or culture to undergo language and integration training before entering Switzerland. The OIE gives the coordinating role referred to in paragraph 72 above to the FOM. In addition, each canton is required to set up an office to deal with integration matters.⁵¹

75. As experience has shown that most people provisionally admitted to Switzerland remain in the country for several years or for good, improvements have been made to their situation as regards access to the labour market⁵² and to integration support measures.⁵³ Furthermore, pursuant to the LEtr, they can benefit from family reunification three years after the decision on provisional admission.⁵⁴ These measures in support of integration are aimed at facilitating the economic independence and social acceptance of people provisionally admitted to the country. Maintaining their social skills in this way makes it easier for them to return to their home countries, should they decide to do so.⁵⁵ The revised version of the OIE contains incentives to integrate in that the degree of integration is taken into account in the decision (which may, in certain circumstances, be an early decision) to grant a permanent residence permit or order removal or expulsion. In its role as coordinator, the FOM has, together with the cantonal immigration offices, devised criteria for determining what, for legal purposes, constitutes "successful integration". These criteria serve as guidelines for the authorities responsible for assessing the situation.⁵⁶

76. The need for new rules arose out of a combination of the Confederation's efforts in support of integration and the actions of cantons and communes in this connection. Almost half the country's cantons and numerous towns and cities have drawn up integration strategies and appointed integration officers. The Swiss Conference of communal, regional and cantonal integration officers (CDI) was established on 13 February 2003. Its objectives are to expand interregional cooperation between immigration officers and improve the exchange of information and experience between the various parts of the country.⁵⁷ At a meeting, the cantonal integration officers decided that their tasks should include the combating of discrimination. For the time being, however, only a few officers have proper mandates.

77. Integration is also the keynote of the LEtr. The objective of integration is peaceful coexistence on the basis of the values expressed in the Federal Constitution and the principles of tolerance.⁵⁸ In drafting the LEtr, the provisions on integration were greatly expanded. The Act therefore refers to the objectives set in the OIE, the tasks of the FOM, FCF and cantonal and communal authorities, the expectations that Switzerland has of foreigners and the consideration

⁵¹ FOM press release, "Improving the integration of foreigners", 7 September 2005.

⁵² Revision of the Ordinance Limiting the Number of Foreigners (OLE), 1 February 2006, RS 823.21; art. 7, para. 3.

⁵³ OIE, art. 2, subpara. 1 b.

⁵⁴ LEtr, art. 85, para. 7.

⁵⁵ Message concerning the amendment of the Asylum Law/Act, 4 September 2002, FF 2002, p. 6370.

⁵⁶ Circular of 1 February 2006 on the partial revision of the OIE, including the list of criteria; http://www.weisungen.bfm.admin.ch/rechtsgrundlagen/rechtsquellen/weitere/index_f.asp#inte.

⁵⁷ FOM, Explanatory report on the OIE and OLE, http://www.imes.admin.ch/alt/rechtsgrundlagen/aktuell/integration/bericht_f.asp#11.

⁵⁸ Message concerning the Act on Foreign Nationals, FF 2002 3516 Office.

of the degree of integration in deciding whether to issue permanent residence permits (see paras. 72 and 74 above). To facilitate the integration of children authorized to enter the country on the ground of family reunification, the Act provides that they must be admitted within five years or, in the case of those aged 12 to 18, within one year. The purpose of this measure is to ensure that the children are integrated as soon as possible into the Swiss school and education system. Requirements already in force, such as those of residence under one roof, the economic independence of the family and the availability of suitable accommodation, continue to apply. The Act also facilitates occupational mobility for workers from third countries. It also refers to the Confederation's, cantons' and communes' duty of information, which entails informing foreigners of their rights and obligations, of living and working conditions in Switzerland and of the incentives to integration available to them and informing the Swiss population of the foreigners' special situation. Reliable, objective information is a *sine qua non* if the various population groups are to live peacefully together and accept one another.⁵⁹

78. Both equality of opportunities and foreigners' participation in social, economic and political life are considered crucial. The bills which would have eased the naturalization requirements for second- and third-generation immigrants were nonetheless rejected by Swiss voters in a referendum on 26 September 2004 (see also below, paras. 250-263).

(d) *Undocumented persons*

79. According to a study commissioned by FOM made in autumn 2004, there are some 90,000 illegal residents (undocumented persons) in Switzerland. The study was based on inquiries among approximately 60 experts in various cantons. Prior to its publication, the number of undocumented persons was estimated to be between 50,000 and 300,000. In addition to correcting the figures, the study dispelled another misconception by showing that the presence of undocumented persons is due less to the country's asylum policy than to the situation on the labour market. Undocumented persons are not more numerous in areas where there are large concentrations of refugees, nor do their numbers increase when more asylum applications are rejected. The study also showed that most undocumented persons are gainfully employed, although it is often precarious employment with low wages and long working hours.⁶⁰

80. In dealing with persons not authorized to live in Switzerland, the authorities base themselves on the long-standing rules concerning hardship cases. Those rules permit people without valid residence permits to apply for exemption from the maximum-numbers rule if their personal situation is extremely serious (OLE, art. 13 f). If the application is accepted, the applicant can be given an annual residence permit. In examining applications, account is taken of all the aspects and details of the case in question. The authorities determine, by collecting the necessary information, whether, in view of his or her personal, economic and social situation, the applicant can reasonably be required to return to and remain in his or her home country. To this end, the foreigner's future situation must be compared with his or her personal situation in Switzerland. Exemption on the grounds of hardship can only be granted if the person's situation is critical. In addition, the person's living conditions must be below the average for foreigners. The criteria for determining hardship include: the time the applicant has been in Switzerland; the children's educational status; the applicant's behaviour, reputation, state of health and integration

⁵⁹ Message concerning the Act on Foreign Nationals, FF 2002 3558.

⁶⁰ Undocumented persons in Switzerland (study), gfs.Bern (Political, communications and social research), February 2005.

in the labour market, and the question whether the applicant has relatives in Switzerland or abroad. Account is also taken of the person's chances of finding accommodation and integrating into society in their native country, as well as of any previous applications.⁶¹ This practice, which has so far proved satisfactory, will be continued under the LEtr.

81. Between September 2001 and May 2006, the authorities legalized the situation of approximately 1,900 people. There were negative decisions in the cases of 1,168 people and 218 cases were dismissed.

82. The FOM circular limits the seeking of classification as hardship cases to persons coming under the law on foreigners. It thereby excludes from such classification unsuccessful asylum-seekers resident in Switzerland for some years.⁶² Article 14 of the revised LAsi gives such persons a fresh opportunity: under certain conditions, asylum-seekers whose applications are rejected can be granted an annual residence permit. To qualify, they must have been present in Switzerland for at least five years after submitting their asylum application and their place of residence must always have been known to the authorities. A further requirement is that the case must be one involving hardship because of the person's high degree of integration. A Group for Undocumented Persons (Groupe Sans-papiers) has been set up on the initiative of the FCF and with the support of the platform "For a roundtable on undocumented persons". The Group, which comprises experts and is headed by a member of the FCF, examines individuals' situations in the light of the circular on hardship cases. If it deems that classification as a hardship case would be justified, it returns the case file to the person who submitted it, informing them of its opinion. On the basis of that opinion, the person can then apply to the relevant cantonal authorities for formal examination of the case and a final decision.⁶³ To keep itself informed about the practice of federal and cantonal authorities and discuss the opportunities for wider cooperation, the Group maintains contact with senior officials of the FOM and representatives of the Conference of Cantonal Justice and Police Directors (CCJDP).

4. Action against racism

(a) Action within Switzerland

83. The efforts to combat racism were again intensified during the period under review. Apart from the courageous and untiring work by a variety of governmental and non-governmental bodies, much of the credit is due to two organs specially created by the Confederation: the SLR, which is part of the federal administration, and the FCR, which is independent. Through campaigns, studies, conferences and other events, these organs have made a significant contribution to the fight against racism, anti-Semitism, xenophobia and right-wing extremism. For more information on the activities of the SLR and FCR, see below, paras. 194-205 and 206-211 respectively.

84. On 13 June 2004, the Parliament voted to earmark a total of 15 million francs for education and prevention during the period 2001-2005 in the fields of human rights and action against anti-

⁶¹ IMES, Circular, 17 September 2004: IMES practice concerning residence of foreigners in extremely serious personal situations. Amendment of the practice of the ODR relative to the circular of 21 December 2001, pp. 2 et seq.

⁶² See IMES circular of 17 September 2004, para. 61.

⁶³ FCF, <http://www.eka-FCF.ch/f/sapa.asp>.

Semitism, racism and xenophobia.⁶⁴ By so doing, it demonstrated its resolve to wage a sustained combat against racism, anti-Semitism and xenophobia and for human rights. The funds, management of which was entrusted to the SLR, provided substantial support for a variety of third-party projects.

(b) *International action*

85. Switzerland plays an active part in international efforts against discrimination and intolerance. In addition to the activities mentioned in the second and third periodic reports, some of which are ongoing at the time of writing, it has launched a variety of other initiatives, examples of which appear below:

- At the meeting of the Ministerial Council of the Organization for Security and Co-operation in Europe (OSCE), held in Porto in 2002, Switzerland was, with Kazakhstan, at the origin of Decision No. 6 on tolerance and non-discrimination which made the combating of all forms of intolerance, anti-Semitism, racism and xenophobia one of the Organization's priorities. Further to that decision, in 2003 and 2004 a Swiss delegation comprising leading experts made important statements about anti-Semitism at a number of high-level meetings;
- In 2003 and 2004, in the United Nations Commission on Human Rights and the Working Group on Minorities of the Sub-Commission for the Promotion and Protection of Human Rights, Switzerland proposed the introduction of a special procedure to encourage States to implement the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. Switzerland believes that such a special procedure would complement the five-point Action Plan to Prevent Genocide put forward by the Secretary-General of the United Nations in April 2004;
- In its capacity as a “national specialized body”, FCR has regular contacts with representatives of the European Commission against Racism and Intolerance (ECRI), the Council of Europe, the Office of the United Nations High Commissioner for Refugees, the Office of the United Nations High Commissioner for Human Rights and the International Coordinating Committee for National Human Rights Institutions (ICC NHRI). In addition, representatives of the FCR President and secretariat have attended a variety of international human rights and anti-racism conferences, including the second OSCE Conference on Tolerance and the Fight against Racism, Xenophobia and Discrimination, the follow-up conference to the Durban World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and an ECRI Round Table on national antiracism bodies.⁶⁵

⁶⁴ FF 2001 2809.

⁶⁵ CRR, Annual report, 2004.

II. CONSIDERATION OF THE IMPLEMENTATION OF ARTICLES 2 TO 7 OF THE CONVENTION

A. Condemnation of racial discrimination (art. 2)

1. Respect for the principle of equal treatment by the State (art. 2 (1) (a) and (b))

86. As stated in the second and third periodic reports, the case law of the Federal Supreme Court has been confirmed and consolidated by the rewording of the references in article 8 of the Federal Constitution to the principle of equality and the prohibition of all forms of discrimination. The Federal Supreme Court continues to adhere to the principle that treatment must be equal in so far as situations are equal, which does not preclude unequal treatment in so far as situations are unequal. Consequently, some instances of unequal treatment may be justified if there are serious, objective reasons for them.

87. There is discrimination when someone is disadvantaged solely because they belong to a group that has tended or tends to be excluded or considered as inferior. Discrimination is an aggravated form of unfair treatment of people who are in comparable situations in that it leads to disparagement or exclusion because of a difference that is an integral part of the victim, a characteristic that he or she cannot alter or could only alter with great difficulty. However, the prohibition of discrimination in Swiss constitutional law does not categorically preclude the basing of unequal treatment on such a characteristic (origin, race, sex, language or any other of the non-exhaustive criteria mentioned in article 8, paragraph 2, of the Federal Constitution). Initially, such inequality generates only a suspicion of unlawful differentiation, a suspicion that cannot be removed without sufficient reason. Legally, therefore, the ban on discrimination means that unequal treatment must be very thoroughly justified.⁶⁶

88. That principle must be observed both in legislation and in the application of the law. All organs of the State, whatever their functions, must ensure that their activities are in accordance with it.⁶⁷

2. The problem of discrimination between foreigners and the reservation made by Switzerland in respect of its immigration policy (art. 2 (1) (a))

89. On these questions, see paragraph 280 below.

3. The prohibition of discrimination and its application to relations between individuals (art. 2 (1) (c) and (d))

90. On the question of the effect that the prohibition of discrimination can have on relations between individuals, see the second and third periodic reports (CERD/C/351/Add.2, paras. 86-88) and paragraphs 310-344 of the present report.

⁶⁶ See ATF 129 I 392 recital 3.2.2., 126 II 377 recital 6 a.

⁶⁷ Ulrich Häfelin/Walter Haller, *Schweizerisches Bundesstaatsrecht* (Swiss federal constitutional law), 6th edn., Zurich 2005, para. 747.

B. Condemnation of apartheid (art. 3)

1. In Switzerland

91. Switzerland has repeatedly clearly condemned the apartheid regime. It was one of the first countries to introduce sanctions against South Africa (1963: embargo on arms supplies). It has also played an important role in the process of reconciliation and transition in South Africa by promoting the passage to democracy through a programme of positive measures. It will continue developing the excellent relations that it now has with South Africa in a great many fields.

92. After an initial report by an interdepartmental working group in July 1999, Switzerland launched a National Research Programme (NRP)⁶⁸ to obtain an objective view of the historical events. The aim of the Programme, entitled "Relations between Switzerland and South Africa" was to develop scientific foundations through a small number of coordinated research projects taking into account the economic, legal, political and historical aspects of the question. The projects will help to inform the public about Switzerland's role in the apartheid era and to provide bases for discussion of this issue. The Federal Government welcomed the report as a positive contribution towards better understanding of the past relations between Switzerland and South Africa.⁶⁹

2. In South Africa

93. The Swiss Agency for Development and Cooperation's (DDC) Special Programme, the second phase of which is under way, aims at promoting the transition to the post-apartheid era by keeping social tension and violence to a minimum. The priority areas under the Special Programme are: good governance (decentralization of government services, reform of the judicial system, defence of human rights), basic education (teacher training, curriculum design, better school management in the historically disadvantaged homelands) and land reform (distribution of public lands to the disadvantaged, return to its black owners of land expropriated under apartheid, establishment of landholding rights for migrant workers in the former homelands). The DDC's partners in South Africa are civil-society organizations (particularly NGOs) and the State, at both the national and the provincial levels. In 2004, the Special Programme was converted into a regional programme having a South African component and focusing on good governance, HIV/AIDS prevention and the management of natural resources. The DDC's budget for the Special Programme for South Africa 2000-2004 amounted to some 35 million Swiss francs.

94. Activities under the Special Programme included the establishment on 1 February 2001 of the Swiss-South African Cooperation Initiative (SSACI), a fund for which major Swiss companies provide half of the financing. SSACI, which has an annual budget of 10-15 million Swiss francs, supports projects by South African NGOs to facilitate access to the labour market by young blacks and persons of colour in general.

95. The Swiss State Secretariat for Economic Affairs (SECO) provides support for South Africa and 26 other countries as part of its activities in the field of economic co-operation for development. Its annual contribution of over 3 million francs to South Africa is used for

⁶⁸ NRP 42+, www.snf.ch/NFP/NFP42+.

⁶⁹ Press release, Publication of the PNR 42+ Synthesis Report, 27 October 2005 (http://www.snf.ch/fr/com/prt/prt_arh_05oct27.asp).

promoting, inter alia, small and medium-sized businesses run by people from disadvantaged population groups and a project to introduce social standards in business.

96. In addition to providing economic assistance, the FDFA pursues a programme of measures for promoting peace. Its Political Affairs Division IV (PADIV) plans to increase its involvement in promoting peace in Africa in close cooperation with the South African Department of Foreign Affairs.

97. Including assistance to relief organizations, the Confederation's contributions to South Africa under the heading of development cooperation amounted in 2003 to almost 14 million francs. Eastern Cape, one of the poorest provinces, was among the main beneficiaries.

TABLE 5

Swiss development aid to South Africa (millions of francs)

	<i>2002</i>	<i>2003</i>	<i>2004</i>
DDC programme contributions (bilateral.)	8.6	9.2	10.8
DDC programme contributions to Swiss relief agencies	0.25	0.37	0.4
FDFA (PAD IV) peace-promotion programmes	1.2	1.2	1.0
SECO	1.7	3.1	3.0
Total official development assistance	11.75	13.87	15.2

C. Measures to make certain acts of racial discrimination punishable by law (art. 4)

98. On 13 December 2005, the FCR posted on its public web site a compilation of case law for the period from 1995 to the end of 2002 concerning article 261 bis of the CP.⁷⁰ It contains fully anonymized summaries of all the court verdicts and all the decisions by appeal bodies during the period in question. Visitors to the site can make searches by case or, using the statistical tables, gain an overview of case law concerning the article. The compilation will be regularly updated.

99. The compilation shows that 212 acts of racial discrimination were brought before judicial authorities between 1995 and 2002 and that they resulted in a total of 277 decisions or verdicts. Approximately half of the 212 cases were dismissed; the others gave rise to criminal proceedings. The alleged perpetrator was found guilty in over 80% of the 110 cases in which there was a final judgment.⁷¹

100. By way of example, there follow descriptions of five cases, each relating to a different part of article 261 bis, in which a court handed down a guilty verdict.

101. Art. 261 bis, first para.: the quotation "Let us bow down before the Star of David, the Gessler's hat of our day" was held to constitute incitement to hatred and discrimination within the

⁷⁰ <http://www.edi.admin.ch/ekr/db/start/index.html?lang=fr>.

⁷¹ FCR, press release, 13 December 2005.

meaning of the first paragraph of the article. The judges held that "Gessler's hat" was a symbol of oppression and enslavement and that through its use Jews had been accused of wanting to subjugate other peoples or religious communities. As it was in the nature of things that oppressors should be hated, the court found that the quotation constituted a call to hatred, scorning and even annihilation of the Jews, since William Tell ultimately killed Gessler.

102. Art. 261 bis, second para.: in 1999, the competent criminal law enforcement authority of the canton of Zurich held the writing in a book of remembrance of the words "Do business with a Jew and I tell you you will reap swindling and fraud. Read Adolf Hitler's *Mein Kampf*, what was true 50 years ago is still true today" to constitute the propagation of an ideology of systematic denigration or debasement of Jews. The guilty party was fined 600 francs.

103. Art. 261 bis, fourth para.: following a workplace argument in a warehouse to which some 100 drivers from a variety of haulage firms came every day, the foreman who was the defendant in the case called the plaintiff a "Serbian pig", an "arsehole" and a "bastard" and said to him "It's war. I'll do you in". The competent criminal law enforcement authority of the canton of Basel-Landschaft held that use of the expression "Serbian pig" constituted a criminal offence since it was intended to denigrate and discriminate against the person to whom it was addressed by infringing his human dignity. In 2002, the defendant was fined 500 francs for racial discrimination, threatening behaviour and slander.

104. Art. 261 bis, fourth para., second part: in 2000, the Federal Supreme Court held that disputing the use by the National Socialist regime of gas or gas chambers to exterminate human beings was in itself gross playing-down of the Holocaust. It said that it had reached that conclusion in particular "because the systematic extermination of Jewish prisoners in gas chambers (an act unique in the history of humanity) had set the National Socialist regime apart from other totalitarian regimes that had sown terror and because, precisely for that reason, denial of the existence of the gas chambers was used by some circles in order, inter alia, to offend Jews". It thereby upheld a verdict issued by a court in the canton of Aargau in 1998 sentencing the author of a revisionist work to 15 months' imprisonment and an 8,000 franc fine.

105. Art. 261 bis, fifth para.: in 2001, the Supreme Court of the canton of Zurich fined the owner of a business who had refused to serve a client of colour and who had shown her the door, saying "I don't want people from your country", 600 francs. The Court ruled that refusal on racial grounds to supply a service or goods intended for public use was contrary to anti-racism law (CP, art. 261 bis, fifth para.). The relatively low penalty imposed was attributable to the minor nature of the offence.

1. Case law of the Federal Supreme Court concerning article 261 bis of the Criminal Code and article 171 (c) of the Military Criminal Code

106. In a decision dated 27 May 2004,⁷² the Federal Supreme Court clarified the concept of publicity as referred to in article 261 bis of the CP. According to that article, racist utterances or behaviour are only punishable if they take place publicly. Until its decision, the Court had held that an act should only be considered public if it occurred in a large group of people between whom there were no personal ties. Because of that restrictive definition, it had been possible to hold skinhead concerts or meetings promoting extreme right-wing ideas in Switzerland: it had

⁷² Decision 6S.318/2003, 27 May 2004.

sufficed to give the appearance of a private gathering by setting up entry checks and not publicized where the event was to be held. Since the decision, the Court considers racist utterances are public within the meaning of article 261 bis of the CP and, therefore, punishable whenever they are not addressed solely to a very small private circle. Meetings, for example, are not considered private even if there are entry checks and only very carefully selected persons are allowed in. As regards the offence of racial discrimination under article 171 (c) of the CPM, military courts follow the Federal Supreme Court's new case law: racist acts occurring in the armed forces are considered as a matter of principle to be public acts. The fact, for example, that they take place in a barracks or that only members of the armed forces witness them is not in itself sufficient to make them non-public.

107. In another case, concerning denial of the Armenian genocide, the Court clarified the meaning of the second part of the fourth paragraph of article 261 bis of the CP⁷³ by holding that the offence in question had been a public order offence. In the Court's opinion, therefore, individual legal rights were only indirectly protected. It followed that individual victims could not participate as parties within the meaning of the Aid to Victims of Offences Act (LAVI) in the case against the perpetrator since the injury resulting from the act at issue could only have been indirect. Further, the (mere) denial, gross minimisation or attempted justification of genocide within the meaning of the fourth paragraph of article 261 bis did not constitute an act of racial discrimination in the strict sense of the term. While it was true that the utterances in question could have affected individuals, the injury, even if serious, remained an indirect one. Natural persons were therefore not entitled to take part in the case as injured parties. It was therefore for the cantonal law enforcement authority to decide whether proceedings should be taken, or in other words whether it had sufficient reason to consider an offence to have been objectively and subjectively constituted.⁷⁴

2. Changes to anti-racism law

108. The Act instituting Measures for the Maintenance of Internal Security (Incitement to Violence, Violence at Sporting Events) (LMSI I) will provide a legal basis for strengthening of the means of combating violence in sports stadiums. It provides in particular for the establishment of a hooliganism databank and for the confiscation of materials and equipment for promoting violence. As the European Football Championship begins soon, the question is being given priority. Parliament voted in favour of the measures set out in the Act during its 2006 spring session. It now remains to embody them in appropriate regulations.

109. It is also planned to make it a criminal offence to display or wear symbols of racial discrimination in public or to make such symbols accessible to the public in any other way. Both parliamentary chambers' legal affairs committees feel that the new rules should not be limited to the use of extreme right-wing symbols but should apply to all symbols that glorify extremist movements which advocate violence or racial discrimination.

110. The question of racism in the armed forces has been studied in the context of an intermediate report on "extremism in the armed forces". As cases of extremism and racism are very infrequent in the Swiss armed forces and the competent military authorities take firm action

⁷³ ATF 129 IV 95 et seq.

⁷⁴ In the summer of 2005, the Winterthur public prosecutor opened proceedings against the President of the nationalist Turkish Workers' Party for an offence under the fourth paragraph of article 261 bis of the CP.

against them when they do occur, it was concluded that no special action is required and the idea of a special legal rule providing for the dismissal from the armed forces of perpetrators of extremist acts has therefore been abandoned.

D. Elimination of racial discrimination, with particular reference to specific human rights (art. 5)

1. Right to equal treatment before the tribunals and all other organs administering justice (art. 5 (a))

111. The conduct of judicial and administrative proceedings is governed principally by the procedural guarantees set forth in the Constitution. Articles 29-32 of the Federal Constitution set minimum standards and are supplemented by the provisions of the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights where those go further than the Constitution. Thus, for example, article 6, paragraph 1, of the European Convention and article 14, paragraph 1, of the International Covenant guarantee everyone the right to a hearing by a tribunal and can be relied on until the corresponding constitutional provision comes into force.

112. The procedural guarantees set forth in article 29 of the Federal Constitution apply to all judicial and administrative proceedings,⁷⁵ but article 30 of the Constitution is applicable only to proceedings before courts. The court in question must be legally established, competent, independent and impartial. The procedural guarantees cannot be limited by article 36 of the Constitution as its provisions concern only fundamental rights and are not intended to apply to procedural guarantees. There must be no circumstances in which authorities can deprive proceedings of the protection of the basic guarantees associated with the rule of law.⁷⁶

(a) Judicial reform

113. A variety of changes are under way in the area of the administration of justice: the process of judicial reform accepted by popular vote is gradually being implemented.⁷⁷ The objectives are to improve the protection afforded by the law by guaranteeing the right of recourse to the courts, reduce the caseload of the Federal Supreme Court and standardise civil and criminal procedure. The first steps have been to revise article 123 of the Federal Constitution and to add to the Constitution a new article, article 191 a. Both those provisions came into force on 1 April 2003.⁷⁸

114. When the guarantee of recourse to the courts is in force, would-be litigants will have a comprehensive right to bring any legal dispute, of whatever kind, before a judicial authority. Article 29 a of the Federal Constitution provides for the possibility of legally sanctioned exceptions to that right. The date of entry into force of the new guarantee, which will be set by Parliament, is not yet known.

⁷⁵ FF 1997 I 183.

⁷⁶ FF 1997 I 197.

⁷⁷ RO 2002, p. 3148.

⁷⁸ RO 2002, p. 3147.

115. A draft federal code of criminal procedure has been drawn up as part of the reform process. Pursuant to the revised version of article 123 of the Federal Constitution, the Confederation is competent to legislate not only on criminal law but also on criminal procedure. The draft code is based on the "public prosecutor" system, whereby criminal investigations are the direct responsibility of a public prosecutor's office. To counterbalance the power of this office, the legal guarantees available to defendants and plaintiffs have been strengthened. Hence, provision is made for a "measures of constraint court" to rule on the severest such measures ordered by the prosecutor. In addition, provision is made for immediate access to counsel: anyone provisionally arrested by the police will be able to communicate immediately and freely with his or her defence counsel and the counsel will be entitled to be present from the start of questioning of the client. That change has been proposed in response to requests by a number of international human rights committees.⁷⁹

116. The harmonization of procedures will make for greater consistency in the application of law and lead to fewer instances of unequal treatment. It will facilitate prompt action across cantonal boundaries and so make crime-fighting more efficient, without, however, limiting the rights of the defence.

117. Concerning the harmonization of civil procedure, see paragraph 36 above.

(b) *The Federal Act on Secret Investigations and the Federal Act on Surveillance of Postal and Telecommunication Traffic*

118. The Federal Act on Secret Investigations came into force on 1 January 2005. In secret investigations, police officers, who are not identifiable as such, infiltrate criminal circles under an assumed identity in order to investigate offences. The Federal Act takes into account the requirements of effective criminal proceedings and at the same time guarantees that the procedures followed will be consistent with the rule of law. Recourse to undercover agents is limited to investigations into certain especially serious crimes, an exhaustive list of which appears in the Act. Operations involving undercover agents must, in addition, be proportionate to the offences committed and have been authorized by a judge.

119. The Federal Act on Surveillance of Postal and Telecommunication Traffic (LSCPT) came into force on 1 January 2002. Authorization of such surveillance is subject to the same conditions throughout the country: there must be sound reasons for suspecting the person in question of having committed one of the crimes exhaustively listed in the Act and the surveillance must be warranted by the gravity of the offence and have been authorized by a judge. The infringement of privacy consequent upon surveillance is compatible with article 8, paragraph 2, of the ECHR and with the case law of the European Court of Human Rights.⁸⁰

(c) *Total revision of the federal judicial system*

120. On 28 February 2001, the Federal Government submitted to Parliament its message on the total revision of the federal judicial system, so initiating legislative action on the judicial reform process. Parliament adopted the Federal Act on the Federal Supreme Court (LTF), which will replace the Federal Act on the Judicial System, on 17 June 2005 and the time-limit for the

⁷⁹ FDJP, press release, 2 July 2003.

⁸⁰ Series A, vol. 238 = EuGRZ 1992, p. 300.

requesting of a referendum on the new text expired on 6 October 2005 without any such request having been made. Among the most noteworthy innovations is the introduction of the unified appeal in civil, criminal and public law matters. The simplified appeal system will make for greater consistency in the application of law and will save appellants effort, time and money. Parliament also approved the Act on the Federal Administrative Court (LTAF), which provides for the replacement of the present appeals and conciliation boards by a single federal administrative court. The Federal Administrative Court will be operational as from 2007. The Act on the Federal Criminal Court has already been adopted and the Court commenced work on 1 April 2004.

121. There have already been a number of attempts to establish a federal mediation service. The most recent was that by the National Council's Foreign Affairs Committee, which submitted a preliminary draft of a federal law on a federal mediation office. According to this text, the mediator's function would have been to advise physical and legal persons in their dealings with the federal authorities and to mediate in the event of disputes. In view of the results of the consultation procedure and the very difficult financial situation, the Committee ultimately decided to abandon the project.⁸¹ Shortly afterwards, the National Council rejected an identically worded parliamentary initiative.⁸²

2. Right to security and protection by the State (art. 5 (b))⁸³

122. Victims of criminal ill-treatment by police officers can file complaints for the offences. Such ill-treatment, which is necessarily linked to abuse of authority (CP, art. 312), entails automatic prosecution. In many cantons, the complaint can be filed with one or other of the various prosecution authorities. Judgements at first instance and decisions to dismiss the complaint can be appealed, first at the cantonal level and then before the Federal Supreme Court.⁸⁴

123. Improper police behaviour may also give rise to disciplinary measures. Such measures do not constitute a penalty in the strict sense of the term, but an administrative sanction the purpose of which is to preserve the reputation of, and public confidence in the authorities. Proceedings for professional misconduct are generally conducted by the police supervisory authority.⁸⁵

124. There have been several problems of police violence during the removal of foreigners from Switzerland. In 1999 and 2001, coercion regrettably caused two fatalities. These developments aroused the concern of the CCJDP, which issued guidelines with a view to harmonizing the criteria for the use of force. Guidelines alone not being sufficient to legitimise restriction of personal liberty, the necessary legal basis has had to be created.

⁸¹ National Council, Foreign Affairs Committee, press release, 20 February 2004.

⁸² Parliamentary initiative by Peter Jossen, "Establishment of a federal mediation service"(02.431).

⁸³ Concerning police violence, see also paras. 270 et seq.

⁸⁴ Spenlé/Fumeaux, Aspekte der polizeilichen Gewalt aus völker- und verfahrensrechtlicher Perspektive (Aspects of police violence from the international-law and procedural-law viewpoints), Schweizerische Juristen-Zeitung 1001 (2005) Nr. 6, p. 135

⁸⁵ Spenlé/Fumeaux, p. 136.

125. A bill has therefore been drawn up on the matter.⁸⁶ The proposed Act on the Use of Constraint (LusC) will apply to federal and cantonal police forces when, on instructions from a federal authority, they undertake the forced repatriation of foreigners or transport persons within Switzerland. The new rules, which are uniform and clear, are designed to ensure that authorities needing to apply police coercion respect the principle of proportionality. The use of physical force, additional aids or firearms must be appropriate to the circumstances and such as to cause the least possible physical injury to the persons concerned. The bill defines additional aids as handcuffs and other restraints and service dogs. It prohibits the use of additional aids that may hinder breathing or cause serious health damage. It also prohibits the use of incapacitating devices (electroshock devices). In addition, it regulates medical assistance and the use of medicaments. The latter may only be administered for medical purposes. They may not be used instead of coercion in order to calm someone or put them to sleep. Lastly, the bill provides that the authorities may only use for tasks that may entail the use of police coercion people who have been specially trained for the purpose. The Federal Council adopted its message in support of the bill on the use of constraint on 18 January 2006.

3. Political rights (art. 5 (c))

126. At the federal level, the right to vote is governed by articles 136 and 39 of the Federal Constitution and the Federal Act concerning Political Rights (LDP) of 17 December 1976 (see CERD/C/351/Add.2, paras. 138-142). Article 136 of the Constitution reserves the exercise of political rights to persons having Swiss nationality. Two requests from parliamentarians for the Federal Council to consider introducing bills giving foreigners the right to vote were rejected.⁸⁷

127. Pursuant to article 39 of the Federal Constitution, it is the cantons that govern the exercise of political rights at the cantonal and communal levels. The list of cantons that have given voting rights to foreigners has grown since the submission of the second and third periodic reports: in 2002, the canton of Neuchâtel gave foreigners holding a permanent residence permit and resident in the canton for at least five years the right to vote on cantonal matters. The constitutions of the cantons of Graubünden and Basel-Stadt permit communes to give foreigners the vote. In the canton of Vaud, foreigners have the right to vote providing they have been resident in Switzerland for at least 10 years, including at least three years in the canton. The canton of Fribourg recently gave the right to vote on communal matters to all foreigners holding a permanent residence permit and resident in the canton for at least five years.

128. There have also been changes as regards the rules on admission to the civil service. The new Act on Federal Personnel (LPers), which came into force on 1 January 2001, no longer restricts access to posts entailing the exercise of public authority to persons having Swiss nationality.⁸⁸ In the case of certain special functions, especially in the international sector, employment can, however, be subject to possession of Swiss nationality. The fields in which such restrictions are possible are defined in the Ordinance on Federal Personnel (OPers).⁸⁹

⁸⁶ <http://www.admin.ch/ch/f/ff/2006/2457.pdf>.

⁸⁷ Postulate 96.3366 (15 August 1996), Postulate 00.3512 (4 October 2000).

⁸⁸ LPers, art. 8, para. 3 (RS 172.220.1).

⁸⁹ OPers, art. 23 (RS 172.220.111.3).

4. Other civil rights (art. 5 (d))

(a) *Right to freedom of movement and residence within the border of the State (art. 5 (d) (i))*

129. As stated in the previous report, only Swiss nationals have the right to freedom of residence within Switzerland (Federal Constitution, art. 24, para. 1). However, 60% of the foreigners living in Switzerland have, since 1 June 2002, been covered by the ALCP. This applies to nationals of EU or EFTA countries and gives them the right of professional and geographical mobility, so ensuring them a status equivalent to that of Swiss nationals. Permits awarded under the law on foreigners are no longer restricted to particular cantons, but are valid throughout the country. Furthermore, foreigners who change their job no longer require a supplementary permit.

130. All other foreigners remain subject to the LSEE. For information on this topic, see the second and third periodic reports (CERD/C/351/Add.2, paras. 153-155).

131. In preparing the total revision of LEtr, the opportunity was taken to relax the rules on movement: holders of a temporary or permanent residence permit have freedom of residence within the canton that issued the permit (LEtr, art. 36). They are also entitled to change their place of residence to another canton, although they will require the permission of the new canton to do so (op. cit., art. 37).

(b) *Right to leave any country, including one's own, and to return to one's country (art. 5 (d) (ii))*

132. On this topic, see the second and third periodic reports (CERD/C/351/Add.2, paras. 156 and 157).

(c) *Right to nationality (art. 5 (d) (iii))*

133. During the reporting period, the Swiss people rejected the two bills that would have made it easier for young foreigners having grown up in Switzerland to acquire Swiss nationality. Apart from some amendment of laws, there have been no fundamental changes in the country's naturalisation policy (see below, paras. 256-273).

134. Table 6 gives an overview of naturalisations in 2003 and 2004, broken down by country of origin of the persons concerned.⁹⁰

⁹⁰ The figures in the table do not take into account the other ways of acquiring Swiss nationality, e.g. following investigation in cases of doubt as to its possession, or on adoption.

TABLE 6
Overview of naturalisations by country of origin, 2003 and 2004

<i>Country of origin</i>	<i>Total</i>		<i>Ordinary</i>		<i>Facilitated</i> ⁹¹	
	<i>2003</i>	<i>2004</i>	<i>2003</i>	<i>2004</i>	<i>2003</i>	<i>2004</i>
Serbia and Montenegro	6 316	7 840	5 994	7 485	322	355
Italy	5 357	4 408	3 874	3 001	1 478	1 406
Turkey	4 212	3 558	4 006	3 382	206	186
Bosnia-Herzegovina	2 268	2 369	2 157	2 308	111	61
Macedonia	1 795	1 976	1 734	1 940	61	36
Croatia	1 560	1 615	1 456	1 521	104	94
Portugal	1 153	1 189	971	1 008	182	181
Sri Lanka	1 138	1 563	1 095	1 527	43	36
Spain	814	842	603	547	211	295
Other	10 123	11 587	4 478	4 623	5 538	6 810
Total	37 070	36 947	27 015	27 342	9 865	9 460

135. Table 7 gives an overview of naturalisations broken down by category.

TABLE 7
Overview of naturalisations, 1999-2003

	<i>1999</i>	<i>2000</i>	<i>2001</i>	<i>2002</i>	<i>2003</i>
Ordinary naturalisation	14 634	20 418	19 239	27 216	27 015
Facilitated naturalisation	6 818	9 759	10 563	11 400	9 865
Renaturalisation	246	275	273	217	190
Total	21 698	30 452	30 075	38 833	37 070

Source: FOM, Naturalisation, renaturalisation and facilitated naturalisation since 1978 –overview; situation as at 22 March 2004.

136. The rise in the number of naturalisations in the past few years is due mainly to the increases in the proportions of long-term foreign residents and foreigners having grown up in Switzerland or married Swiss citizens. While the number of naturalisations is rising steadily, only 2.4% of the foreigners living in Switzerland acquired Swiss nationality in 2002.⁹²

⁹¹ The persons concerned include primarily the spouses of Swiss nationals (possibility of facilitated naturalisation after three years of marriage for persons resident in Switzerland for at least five years) and children who, while having a Swiss father or mother, did not already have Swiss nationality.

⁹² FSO, Key figures, Current population and population growth.

(d) *Right to marriage and choice of spouse (art. 5 (d) (iv))*

(i) Right to marriage

137. The right to marriage, which is guaranteed in article 14 of the Federal Constitution, implies freedom to marry without having to comply with official, particularly police restrictions and freedom to found a family. Privacy within marriage is principally protected by article 13 of the Federal Constitution and article 8 of the ECHR.

138. Annex 1 to the ALCP contains provisions relating to family reunification. Whatever their nationality, members of the family of a foreign worker will be given the same residence permit as the worker. They will also have the right to take up an economic activity and the children will have freedom of access to educational establishments.

139. No one can deduce that they have a right to family reunification under the ECHR or the Federal Constitution unless they themselves have a well-established right of presence in Switzerland. Besides possession of Swiss nationality or of a permanent residence permit, possession of an annual residence permit will be held to constitute evidence of such a right providing the holder of the permit was legally entitled to it. For example, the Federal Supreme Court recently recognized such a right to a man originating from Serbia and Montenegro who had been living in Switzerland for 20 years, had been married for 10 years and had two daughters. Despite his debts and lack of a fixed occupation, the Federal Supreme Court held that his connections with Switzerland were sufficient to justify the recognition to him of a right of presence in Switzerland on the basis of the available guarantees of private and family life.⁹³

(ii) Right to choice of spouse

140. As Swiss society becomes increasingly multicultural, forced marriage⁹⁴ is becoming a growing topic of discussion. Provisions exist to punish this infringement of the right freely to choose one's spouse. The contracting of a marriage because of the threat of grave and imminent danger to one's own or a relative's life, health or honour constitutes grounds for annulment (Civil Code (CC), art. 107, para. 4). Pursuant to article 181 (Coercion) of the CP, persons making such threats are liable to prosecution and to imprisonment for a maximum of three years or a fine.

141. Notwithstanding the existence of these civil and criminal law remedies, consultations are in hand concerning the establishment of an explicit legal ban on forced marriages. The Council of States has given its approval to the idea of adding to the CP a provision punishing coercion to marry. The matter now needs to be discussed in greater detail by the competent committees.⁹⁵ The National Council has requested the Federal Council to investigate how civil and criminal law could be used against forced and arranged marriages of people resident in Switzerland and to present its findings in a report. It should be noted, however, that even if there were a legal rule it would still be difficult to collect sufficient evidence to bring proceedings. People who are forced into marriage are often afraid to talk about it and in many cases it is hard, not to say impossible, to prove that there was coercion.

⁹³ ATF 130 II 281 et seq.

⁹⁴ Marriage against the will of one of the spouses.

⁹⁵ Parliamentary question by Boris Banga, 18 March 2005, "Combating forced marriages and protecting the victims better" (04.1181).

(e) *Right to own property (art. 5 (d) (v))*

142. On this topic, see the second and third periodic reports, paras. 170 and 171.

(f) *Right to inherit (art. 5 (d) (vi))*

143. On this question, see the explanations in Switzerland's initial report (CERD/C/270/Add.1, para. 119).

(g) *Right to freedom of thought, conscience and religion (art. 5 (d) (vii))*

(i) Right to express and practise religious beliefs

144. Competence to recognise religious communities in public law and to set the conditions for such recognition lies with the cantons. Since the submission of the previous report, Jewish communities have been given public-law recognition in the revised constitutions of the cantons of Bern, St. Gallen and Basel-Stadt. The possibility of additions to the list of recognized religious communities is allowed for in the cantons of Basel-Landschaft, Basel-Stadt, Bern, Obwald, Nidwald, Glaris, Fribourg, Solothurn, Jura, Schaffhausen, Appenzell Ausserrhoden, Graubünden, Neuchâtel, Aargau, Ticino, Vaud and Valais. In some of these cantons, the conditions for such recognition are already set out in the constitution; in others, they are being embodied in law.

145. There is no provision for additions to the list of recognized religious communities in the constitutions of the country's remaining cantons. As a general rule, religious communities that are not recognized in public law are subject to private law. On 30 November 2003, the electorate of the canton of Zurich rejected a proposed law on the recognition of additional religious communities. The opponents' campaign was based essentially on anti-Muslim slogans.⁹⁶

146. Even if most cantons are not adding to their lists of religious communities having public-law status, members of communities without such status are free to practise their religion. The question of burial remains one of the Muslim community's main concerns. There are only a few communes where people can be buried according to the Muslim rite. There is, however, a growing trend towards the creation of Muslim sectors in public cemeteries. The cities of Geneva, Basel, Bern, Neuchâtel, Zurich and Lucerne and smaller municipalities too have shown the example in this regard in recent years. In other towns, the matter is under discussion and positive steps have been taken.

147. The building of places of worship, especially places of prayer for the Muslim minority, has recently been the subject of much public discussion. A legal opinion requested by Switzerland on the treatment in planning and building law of the construction of places of worship in the light of the freedom of conscience and belief has revealed that religious communities wishing to make alterations to or build places of worship often come up against the problem of the absence from local land-use plans of zones reserved for religious structures. Examples from recent case law show that all religious communities can encounter this difficulty, but that those which have been in Switzerland for a long time generally already have premises, whereas faiths which are new to

⁹⁶ For example, a poster issued by the UDC party bore the slogan "Our taxes for Koranic schools?"

the country do not.⁹⁷ The building of places of worship is in principle protected by the freedom of belief (Federal Constitution, art. 15, para. 2). To prohibit or restrict it is therefore to infringe the freedom of belief and is legal only if it is adequately founded in law, if it is in the public interest, if the principle of proportionality is respected and if the essence of the freedom of belief is preserved (Federal Constitution, art. 36). Each case must be examined individually to determine whether those conditions are met. Recently, in a case which caused a considerable stir, a communal authority refused a permit for the building of a minaret on a place of prayer on the ground that the minaret was in keeping neither with the zone in question nor with cantonal building law.

148. In penal establishments, restrictions may be placed on the freedom of worship if it would be in the public interest to do so (in order, for example, to lessen the risk of escape or to ensure the orderly functioning of the establishment). However, they must not lead to discrimination against religious communities that do not have official recognition.⁹⁸ Ways must be found of enabling prisoners to practise their religions without unduly disrupting the serving of sentences. In this regard, the Federal Supreme Court has held that Muslim prisoners are entitled to the joint celebration of Friday prayers.⁹⁹

(ii) Religiously neutral public schools

149. On 15 February 2001, the European Court of Human Rights confirmed a judgment of the Federal Supreme Court prohibiting a woman teacher in a primary school from wearing the Islamic headscarf while carrying out her teaching duties.¹⁰⁰ The Court concluded that the judgment was not contrary to the ECHR in that, while the wearing of garments of a religious nature came within the scope of the right to freedom of worship and conscience, that fundamental right also guaranteed the religious neutrality of the education provided in State-run schools and the latter aspect prevailed.

150. There has, however, never been any judicial decision concerning the wearing of religious symbols by school pupils. The cantons, which have responsibility for dress codes in schools, have never yet banned the wearing of religious symbols and there seem to have been virtually no disputes concerning it. The governments of the cantons of Zurich and Basel-Stadt have given thought to, but decided against banning the wearing of the headscarf.¹⁰¹

151. Discussion continues concerning the questions that arise in connection with the exemption of pupils from some parts of the school curriculum such as swimming, gymnastics or sexual education classes on religious grounds or exemption from school on religious holidays. Three now relatively old decisions by the Federal Supreme Court are relevant¹⁰² (see also CERD/C/351/Add.2, para. 181). In them, the Court gave particular attention to the question of

⁹⁷ Cf. Kiener / Kuhn, Die Bau- und Planungsrechtliche Behandlung von Kultusgebäuden im Lichte der Glaubens- und Gewissensfreiheit (The treatment in planning and building law of the construction of places of worship in the light of the freedom of conscience and belief), legal opinion.

⁹⁸ Häfelin/Haller, para. 439.

⁹⁹ ATF 113 Ia 304 et seq..

¹⁰⁰ ATF 123 I 296, see also CERD/C/351/Add.2, para. 182.

¹⁰¹ *Tages-Anzeiger*, 20 December 2003; *Basler Zeitung*, 19 January 2004.

¹⁰² ATF 114 Ia 129, 117 Ia 311, 119 Ia 178.

the proportionality of the measures taken to preserve the compulsoriness of education. It held that only a conclusively proven substantial and compelling public interest could prevail over the constitutionally guaranteed freedom of religion. These decisions show what delicate issues school authorities may face in trying to preserve the compulsoriness of, and comply with the obligation of neutrality in education. They show too the need for flexibility in applying the rules. Some cantons have issued recommendations in this regard¹⁰³ or laid down instructions for dealing with particular issues in cantonal ordinances.¹⁰⁴

152. The guarantee of freedom of religion and conscience precludes all forms of compulsory religious education. Religious education in schools is within the competence of the cantons, which do not all have the same approach to it. However, as the religious composition of the Swiss population has changed considerably in recent years, a trend can be seen in many cantons towards religious neutrality in education. Instruction in subjects such as "ethics and religion" or "religion and culture" must provide the most neutral possible information about the major religions. The aim is to introduce pupils to, and encourage them to take an interest in the variety of religious beliefs that exist in the world.

153. A number of cantons are considering whether and on what conditions religious communities not recognized in public law might be allowed to conduct religious instruction in schools. For example, instruction in Islam has been introduced in two communes in the canton of Lucerne: the school authorities provide the necessary time-slots and premises and the religious community concerned is responsible for the content of the lessons, the teaching methods and the training and payment of the teachers.¹⁰⁵ The purpose of the project is to introduce the children to the fundamentals of Islam, enhance their powers of thought and sense of democracy and promote the social integration of Muslim immigrants.¹⁰⁶

(h) Right to freedom of opinion and expression (art. 5 (d) (viii))

154. The right to freedom of opinion and expression is guaranteed by the Federal Constitution (art. 16), the ECHR (art. 10) and the International Covenant on Civil and Political Rights (art. 19). Restrictions to it are permissible only if they are provided by law, are in the public interest and are not disproportionate.

155. In a recent judgment, the Federal Supreme Court took the right to freedom of opinion into account in interpreting article 261 bis of the CP: it held that, because of the existence of that right, it could not be concluded without due consideration that there had been denigration or discrimination within the meaning of the fourth paragraph of article 261 bis in the context of a political debate. In the Court's opinion, making an unflattering remark about a segment of the population was not sufficient to constitute that offence if the person who had made the remark

¹⁰³ Zurich Cantonal Directorate of Education, Richtlinien – Muslimische Schülerinnen und Schüler an der Volksschule: Empfehlungen (Guidelines -- Muslim children in public schools: recommendations), June 2003.

¹⁰⁴ Canton of Zurich, Volksschulverordnung (Public school ordinance), 412.111, particularly paras. 55 et seq.

¹⁰⁵ Tanner, Islamischer Religionsunterricht an der öffentlichen Schule und Ausbildung für Imame – Ein Tagungsbericht (Instruction in Islam in public schools and training for imams -- a seminar report), Institut für Religionsrecht, seminar, 9 April 2005.

¹⁰⁶ Islamischer Religionsunterricht im Schulhaus – Ein Projekt in Kriens und Ebikon, Ein Evaluationsbericht (Islamic religious instruction in school -- a project in Kriens and Ebikon; an evaluation), Zentrum für interkulturellen Dialog.

had done so in the wider context of an objective criticism based on fact. The possibility of defending points of view that were not shared by a majority of the population and that some people might even find shocking was essential to the functioning of a democracy. The importance given to freedom of expression must not, however, be such as to render efforts against racial discrimination meaningless.¹⁰⁷

156. The new Act on transparency in the administration (see above, para. 49) will strengthen the position of freedom of information as a component of the freedom of opinion and expression and will help to make government more transparent.¹⁰⁸

(i) Right to freedom of peaceful assembly and association (art. 5 (d) (ix))

157. Demonstrations are protected not only by the freedom of expression but also by the freedom of assembly. As they entail out-of-the-ordinary use of the public thoroughfare, cantons may require that they be officially authorized. However, the Federal Supreme Court has in its recent case law recognized the existence of a conditional right to use of the public thoroughfare for the holding of demonstrations.¹⁰⁹ Foreigners may also invoke this right, but demonstrations by foreigners may be subject to additional police restrictions, especially if there is the risk of clashes between rival groups.¹¹⁰

158. Freedom of association is guaranteed by article 23 of the Federal Constitution. Protection under this article does not, however, extend to associations that are unlawful or dangerous to the State (see CERD/C/270/Add.1, para. 146). The right of freedom of association can be invoked by foreigners, legal persons and associations.¹¹¹

5. Economic, social and cultural rights (art. 5 (e))

159. For full and detailed information on economic, social and cultural rights, see Switzerland's initial report, dated 30 June 1994, on implementation of the International Covenant on Economic, Social and Cultural Rights. The situation in the country regarding those rights has been developing constantly since the report was submitted in 1998. The second report is under preparation and will be submitted to the Committee as soon as possible.

160. Switzerland's position of principle as a party to the International Covenant on Economic, Social and Cultural Rights is that the rights guaranteed in that instrument have programmatic value. It therefore considers itself bound gradually to put them into effect using every opportunity and all the means it has, especially legislation. The rules in the Covenant cannot, generally speaking, be invoked by individuals and members of the public cannot therefore petition the Swiss administrative or judicial authorities for their implementation. The Federal Supreme Court has, however, held that some rights, such as the right to strike, which is guaranteed in article 8, paragraph 1 (d), of the Covenant are, exceptionally, directly applicable.

¹⁰⁷ ATF 131 IV 23 et seq...

¹⁰⁸ Häfelin/Haller, para. 467.

¹⁰⁹ Häfelin/Haller, para. 471.

¹¹⁰ Müller, Grundrechte in der Schweiz (Fundamental rights in Switzerland), 3rd edn., Bern 1999, p.331.

¹¹¹ FF 1997 I 167.

161. Article 41 of the Federal Constitution contains a list of what are termed “social goals”. These do not give citizens direct rights to services from the State, but constitute a programme showing the political authorities in what areas action is required on their part. The right to assistance in situations of distress (Federal Constitution, art. 12), the right to adequate, free basic education (ibid, art. 19), the right to a decent funeral (which derives from the right to protection of human dignity, ibid, art. 7) and the right to free legal aid (ibid, art. 29, para. 3) are rights whose realization everyone can claim before the competent authority. They can also be invoked by foreigners, irrespective of their residency status (including by foreigners illegally present in the country).¹¹²

162. Article 12 of the Federal Constitution provides that anyone who is in a situation of distress and unable to provide for themselves is entitled to assistance and care and to the resources necessary for a dignified existence. This provision does not guarantee a minimum income in the sense of the subsistence income referred to in the law on prosecution for debt, but simply what a person needs to live in a manner befitting human dignity.¹¹³

163. Pursuant to article 12 of the Constitution, the Federal Supreme Court has ruled the withholding of emergency assistance to be unconstitutional, even when the persons concerned are asylum-seekers illegally present in Switzerland who are not co-operating with the authorities. It considered it impermissible to use refusal of minimum aid as a means of pressuring someone to accept removal from the country.¹¹⁴

(a) *Right to work (art. 5 (e) (i))*

(i) Right to work

164. Regarding the horizontal effect between individuals of the prohibition of discrimination, see the second and third periodic reports (CERD/C/351/Add.2, paras. 86-88). Supplementary information follows.

165. The statistics for 2004 show that of the people gainfully employed in Switzerland one in four (25.3%) is a foreigner. Over half of the foreigners (52.8%) work for firms having more than 50 employees (corresponding proportion for Swiss: 46.6%). Most foreign employees work in the hotel and restaurant sector (53%) and there are also high proportions in private households (40.1%) and the building industry (36.5%). One foreign worker in five (19.3%) has irregular working hours and one in five (20.1%) works at weekends.¹¹⁵

166. For citizens of EU and EFTA countries, the right of access to the Swiss labour market is being realized in stages. The ALCP provides that free movement, meaning the unconditional, quota-free opening of the labour market, is to be achieved by 2007, following a five-year transitional period (ALCP, art. 10).

¹¹² See ATF 130 I 1, 82 and 2P. 318/2004.

¹¹³ See ATF 130 I 71, 74 et seq. and 121 I 367, 373.

¹¹⁴ See ATF 131 I 166.

¹¹⁵ FSO, Study of the working population, 2004; press release, 27 January 2005.

167. The admission to Switzerland of foreigners who are natives of third countries, i.e. countries that are not EU or EFTA countries is governed by the OLE. The Federal Government periodically fixes the maximum permissible number of such persons (OLE, art. 12) and Swiss workers and nationals of EU and EFTA countries are given priority (ibid, arts. 7 and 8).

168. On 1 September 2000, the Swiss Government abolished the general employment ban for asylum-seekers that is mentioned in the second and third periodic reports (CERD/C/351/Add. 2, para. 196). The numbers of asylum-seekers and persons provisionally admitted to the country had fallen to the point where the legal conditions for a continued ban no longer obtained.¹¹⁶ As a result, the previous rule, whereby asylum-seekers are entitled to engage in gainful employment three months after submitting their request for asylum, again applies (LAsi, art. 43). If the proposed partial revision of the LAsi is approved, the Government will, under article 43, paragraph 3 bis, be empowered temporarily to ban certain groups of asylum-seekers from working.

169. Asylum-seekers are provisionally admitted to Switzerland when application of the decision to remove them from the country would be illegal, impossible or unreasonable. At the end of January 2006, the number of persons present in the country under this rule was 24,600. The proportion of them in employment (34%) was not even half that of foreigners holding an annual residence permit. Experience has shown that the great majority of provisionally admitted asylum-seekers remain in Switzerland either for a long time or for good. To enable them to integrate into working life as soon as possible, and to save on social assistance costs, the Federal Council amended the rules on priority in hiring workers on 1 April 2006 (OLE, art. 7, para. 3): for a person's first job, priority is given not only to Swiss, but also to foreigners already present in Switzerland who are authorized to work. This treatment extends to provisionally admitted foreigners.

(ii) Right to free choice of employment

170. The ALCP guarantees nationals of EU and EFTA countries a full right of occupational mobility, including the right to work as self-employed persons.¹¹⁷

171. The proposed new LEtr provides for the right to change profession or job without prior permission.

(iii) Right to just and favourable conditions of work

172. Apart from the general principle of non-discrimination on the ground of nationality stated in its article 2, the ALCP establishes, in article 7, paragraph a, and in annex I, article 9, the right to equal treatment with nationals in respect of access to, and the pursuit of an economic activity and of living, employment and working conditions. The prohibition of discrimination directly affect third parties, since the Agreement provides, in Annex I, article 9, paragraph 4, that any clause in a collective or individual agreement concerning access to employment, pay or other terms of employment or dismissal that provides for or authorises discriminatory conditions with respect to foreign employed persons who are nationals of the contracting parties will be void.

¹¹⁶ Employment ban for asylum-seekers, oral statement by Achille Casanova, Vice-Chancellor of the Confederation.

¹¹⁷ ALCP, art. 4, and Annex I, art. 2.

173. To forestall the risk of social and wage dumping, the Federal Act on Minimum Working Conditions and Pay for Workers posted to Switzerland and on Accompanying Measures was adopted at the same time as the bilateral agreements.¹¹⁸

174. With respect to nationals of non-EU and non-EFTA countries, the OLE provides that work permits will only be granted if the employer gives them the same conditions of remuneration and employment as are usual for Swiss workers in the place and occupation concerned (op. cit., art. 9, para. 1).

(iv) Rights to equal pay for equal work and to just and favourable remuneration

175. On this topic, see paragraph 176 below and the initial report (CERD/C/270/Add. 1, para. 157).

176. Recent statistical surveys have revealed that in 2002 only a third of foreigners (34.5%), as against more one half of Swiss nationals (53.8%), had a monthly wage above the national mean of 5,417 francs. While the gap is partly attributable to differences in training, working experience, length of service, age structure and sector of employment, recent studies have shown that it is principally due to the fact that foreigners are primarily employed on simple, repetitive tasks in low-wage sectors and less frequently occupy responsible positions requiring good qualifications in high-paying branches of the economy. In some branches, there are sometimes significant wage disparities between Swiss and foreigners, especially foreigners holding only short-term residence permits, even when job requirements are equal.¹¹⁹

(iv) Right to protection against unemployment

177. See the information contained in the initial report, which is still relevant (CERD/C/270/Add.1, para. 158).

(b) *Trade union rights (art. 5 (e) (ii))*

(i) Rights to form and join trade unions and to strike

178. On these topics, see the initial report (CERD/C/270/Add.1, paras. 160 et seq.) and the second and third periodic reports (CERD/C/351/Add.2, paras. 201 and 202).

(c) *Right to housing (art. 5 (e) (iii))*

179. As part of the year 2000 census, the FSO collected data on housing conditions in Switzerland. It found that the proportion of persons owning their dwelling had risen since 1990 from 31.3% to 34.6%. Only 10% of foreigners were homeowners, a fact attributable to, inter alia, their desire to return one day to their native country or their uncertain status in Switzerland.¹²⁰ Among Swiss, the proportion of people renting their dwelling was 64%; among foreigners, it was

¹¹⁸ RS 823.20

¹¹⁹ Federal Statistical Office, Report on the foreign population in Switzerland, 2004, p. 62.

¹²⁰ FSO, Federal Population Census, 2000: Migration and Integration, p. 50.

far higher, at 91%.¹²¹ Fewer than 40% of Swiss households, but 80% of foreign households, lived in a building containing three or more dwelling units.

180. Housing has become a rare commodity, especially in urban centres and conurbations. Lessors are therefore in the position of being able to choose their tenants according to criteria such as their name, their language skills or their residence permit. As a result, foreigners often have difficulty in finding housing and have to settle for unattractive dwellings with a poor price/quality ratio. As they are usually unfamiliar with Swiss rental law, they are ill placed to defend themselves against prejudice and injustice.

181. Recognized this problem, the Association Suisse des locataires (Swiss Tenants' Association) runs a project entitled "Egalité des chances (aussi) dans le droit du bail à loyer" (Equal opportunities in property leasing law (too)). This combines modules on property leasing law with language and integration classes. Participants find the project very helpful and it is helping to keep down the number of disputes concerning property leases.¹²²

182. In 2004, the activities of the FCF, which promotes integration and good relations between the Swiss and foreign residents, focused on "Integration and habitat -- housing, housing policy and land use". Following research and discussions with a variety of actors in the spheres of housing and housing policy, the Commission made a number of recommendations. It advocated equal opportunity for all, whatever their nationality and residency status, on the housing market and called on lessors, real estate agencies and building owners to desist from any discriminatory attitudes or practices and work to promote integration.¹²³

183. As was said in the initial report, the conclusion of property leases is subject to the principle of contractual freedom, meaning that everyone is at liberty to enter into, or refrain from entering into such contracts (see below, paras. 326-329, and CERD/C/270/Add.1, paras. 162 et seq.).

(d) *Right to medical care and social security (art. 5 (e) (iv))*

(i) *Right to public medical care and medical follow-up*

184. The social goals to which the Confederation and cantons commit themselves in article 41 of the Federal Constitution include, in paragraph 1 b, the availability to all of the necessary health care. The right to assistance when in distress (op. cit., art. 12) implies, inter alia, a right for all, without any discrimination, to basic health care.¹²⁴

185. Pursuant to the Federal Health Insurance Act (LAMal), basic insurance is compulsory for everyone living in Switzerland and has as its purpose to ensure that everyone in need of care receives it. The obligation to have medical insurance extends to asylum-seekers, persons provisionally admitted to the country, persons admitted on humanitarian grounds and protected persons who have no residence permit.¹²⁵ Health insurance funds may neither refuse to provide

¹²¹ FSO, Housing 2000, Detailed study of the building and housing census

¹²² *Terra cognita*, "Chancengleichheit (auch) im Mietrecht" (Equal opportunities in property leasing law (too)), Barbara Peyer, May 2004.

¹²³ Integration and housing, Recommendations of the FCF, November 2004

¹²⁴ Häfelin/Haller, para. 918.

¹²⁵ Message on amendment of the LAsi and the LAMal, 4 September 2002.

someone with basic insurance cover nor withdraw such cover from any of their members. A circular from the Federal Social Insurance Office provides that health insurance funds must also insure undocumented persons and persons whose applications for asylum have been dismissed.¹²⁶

186. With a view to keeping down health costs in connection with the country's asylum policy, the proposed amendments to the LAsi include provision for excluding asylum-seekers from the pool of insured persons taken into account in risk-balancing. That would entail the amendment of the LAMal. Another proposed amendment to the LAsi would limit the range of insurers and service providers from which asylum-seekers entitled to social assistance could choose.

(ii) Right to social security and social services

187. Concerning the AVS/AI (old-age and survivors and disability insurance schemes), see the information contained in the second and third periodic reports (CERD/C/351/Add.2, paras. 209-212).

188. Under current law, asylum-seekers with no gainful activity are automatically covered by the AVS/AI and APG (loss of earning capacity) schemes six months after the date of deposit of their asylum application. As most asylum-seekers only stay in Switzerland for a short while, the administrative burden that this rule entails is considerable. It is therefore intended to take advantage of the amendment of the Old-Age and Survivors Insurance Act (LAVS) in the context of the revision of the LAsi to provide for the suspension of premium collection. Then, if an insured event occurs or the insured person is authorized to remain in Switzerland, the suspension will be lifted and premiums will be collected retroactively to the extent that that is not time-barred.¹²⁷

189. With respect to the right to emergency assistance, see paragraphs 162 and 163 above.

(e) *Right to education and training (art. 5 e (v))*

190. All children living in Switzerland are entitled to the (free) basic education that is guaranteed by the Federal Constitution (art. 19), the Convention on the Rights of the Child (art. 28), which Switzerland has ratified, and the International Covenant on Economic, Social and Cultural Rights (art. 13). Article 62, paragraph 2, of the Federal Constitution makes it incumbent on the cantons to provide basic education and to make it open to all children. As long ago as 1991, in its Recommendations on the schooling of foreign-tongue children, the Swiss Conference of Cantonal Education Directors (CDIP) established the principle that all foreign-tongue children living in Switzerland must be integrated into the public school system. On 7 September 2005, the District Council (parliament) of the City of Zurich rejected a call for it to be obligatory for foreign-tongue children to pass an admission test for entry to an ordinary class, for their residency status to be recorded on their admission to school and for that information to be published.

(f) *Right of access to any place or service intended for use by the public (art. 5 f)*

191. On this topic, see the second and third periodic reports (CERD/C/351/Add.2, paras. 213 and 214).

¹²⁶ Guidelines, 19 December 2001 (02/01).

¹²⁷ Message concerning amendment of the LAsi and the LAVS, 4 September 2002.

E. Effective remedies (art. 6)

192. Public-law remedies are available in the event of breach of the general prohibition of all forms of discrimination that is set forth in article 8 of the Federal Constitution. Those remedies can be invoked by anyone who claims to have suffered discrimination because of their membership of a group of persons protected under article 8, paragraph 2, of the Constitution. In this regard, the Federal Supreme Court has held, in ATF 129 I 217, that the recognition of the existence of a legally protected right as a direct consequence of the general prohibition of all forms of discrimination guaranteed the possibility of appeals to itself for public-law remedies against discriminatory acts by cantonal or communal authorities. Switzerland is therefore in compliance with its obligation under article 6 of the Convention to assure all victims of racially motivated discrimination effective remedies through the competent national tribunals.

193. The Federal Supreme Court has also handed down a decision on when someone can be considered in law to be a victim of an offence under article 261 bis of the CP. The LAVI,¹²⁸ which seeks to provide effective assistance to, and improve the legal status of victims of criminal offences, may under certain conditions be applied in the context of that article of the CP. The Court ruled that, depending on the circumstances, a person could be considered to be a victim if a racially discriminatory attack was accompanied by violence. If the attack was not so accompanied and did not have the characteristics of another offence such as bodily injury or arson, recognition as a victim would only be possible in particularly serious cases. A case would qualify as particularly serious if the person attacked suffered serious mental injury. That ruling applies to offences falling under either the first part of the fourth paragraph or the fifth paragraph of article 261 bis.¹²⁹ In the Court's opinion, denial of genocide or of other crimes against humanity, to which the second part of the fourth paragraph of the article refers, is a public order offence and can at most cause mental injury indirectly. That being so, the LAVI is inapplicable.¹³⁰

F. Measures in the fields of teaching, education, culture and information (art. 7)

1. The Service for Combating Racism (SLR)

194. As an expression of its resolve to follow up on the results of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (the "Durban Conference"), the Government has established the SLR within the Federal Department for Home Affairs. The Service is responsible for coordinating and networking the Federal Administration's measures against racism and extremism. It is the Confederation's principal point of contact with the cantons, communes and others on all matters concerning racism. It promotes cooperation and exchanges with non-governmental organizations and research institutes that seek to combat racism, and with relevant international bodies (the Council of Europe, the United Nations, the EU). It makes its specialized knowledge available to authorities and institutions and provides support for action to combat racism, xenophobia and right-wing extremism.

¹²⁸ RS 312.5 (see the core document for Switzerland, HRI/CORE/1/Add. 29/Rev .1, para. 62,

¹²⁹ ATF 131 IV 78, para. 1.2.

¹³⁰ Judgment of the Federal Supreme Court, 7 November 2002, 6S.196/2002, para. 3

(a) *Activities of the SLR*

195. The Service organises regular working meetings in the country's various linguistic regions. Through the meetings, government bodies, charities and NGOs are able to gain knowledge of use in their awareness-raising and preventive activities in a variety of areas (education, employment, dealings with the administration, young people, etc). The meetings serve both to pass on information and to stimulate discussion between the participants. It is also hoped that they will lead to more coordinated action by, and greater awareness of the work of the SLR among other relevant federal bodies (e.g., the FCR and FCF). The SLR has already held knowledge-transfer seminars on the following themes: "Promoting integration and combating racism: differences and complementarities" (Olten, Yverdon, Bellinzona, 2003), "Evaluation -- a tool for boosting the quality of anti-racism and human rights projects" (Olten, Yverdon, 2003), "Classifying the problems: assessment, counselling and assistance for victims of xenophobia or racial discrimination" (Olten, Yverdon, 2003), "How to say it to the media and, through them, to the public?" (Olten, 2004), "Introduction to the media" (Yverdon, 2005) and "Combating racism among young people -- successful projects" (Olten, 2004).

196. The SLR has issued a number of publications on particular aspects of its activities against racism. Examples are a study entitled "A discrimination-free working environment -- ways of combating discrimination in employment" (2003) and a booklet describing concrete measures employers can take to prevent workplace disputes and reduce the risk of discrimination in employment, hiring and vocational training. It has also held a symposium on the topic of "A discrimination-free working environment" that was attended by 150 participants from a wide variety of sectors. Through its cooperation with employers' associations, trade unions and federal organs dealing with employment and vocational training, the Service has been able to alert major players to the problem of discrimination. Its report "Civil servants and cultural diversity: training to prevent discrimination" gives an overview of the anti-discrimination training available for public servants, and its symposium on that topic was attended by 130 professionals from the fields of social work, education and government. The Service's extensive experience in connection with management of the Fund for anti-racism and human rights projects is described in a publication aimed at encouraging people to undertake new projects. The publication is entitled "Taking action against racism. Experience and recommendations for project management" and includes a DVD.

197. Together with the FDFA, the SLR has issued Switzerland's second and third reports to the Committee in three languages. Together with the FCR, it has published the final documents of the Durban Conference.

198. Unlike the FCR, the SLR has no authority to act as a mediator in disputes. However, its website contains a list of contact points and counselling centres for victims of racial discrimination. The list, which contains 175 addresses,¹³¹ has also been issued in a booklet (available in three languages) entitled "Counselling centres for victims of discrimination and persons involved in disputes -- addresses". The Service is empowered to, and does support the training of the staff of counselling centres for victims of racial discrimination. With the FCF, it has held a meeting for training institutes, contact points and, as potential providers of financial assistance, cantons and communes. The meeting drew up, and commented on a list of training

¹³¹ <http://www.edi.admin.ch/frb/beratung/adressen/index.html?lang=fr>.

needs and existing training opportunities. The results of the meeting can be seen in a booklet (available only in German) and (again in German only) on the Service's website.¹³²

(b) *Fund for anti-racism and human rights projects*¹³³

199. The SLR managed the Fund for anti-racism and human rights projects from 2001 to 2005. The Fund was set up by the Swiss Government to support training, awareness-raising and prevention and counselling for victims of discrimination and persons involved in disputes.¹³⁴ It was allotted a total of 15 million francs for the five-year period 2001-2005, with a sixth of the sum being reserved for projects in schools (see below, paras. 218-221). The objective behind the Fund was to win recognition for the combating of racism and xenophobia as a sometimes painful but nonetheless essential and manageable part of daily life and to achieve that without moralized or finding scapegoats. The idea was to interest the widest possible range of social groups and to encourage the development of innovative, experimental projects of as many kinds as possible. The types of activity for which interested parties were invited to request funding were chosen so as to ensure coverage of actual problems that arise in various spheres of life and to bring home to the organizations and institutions working in those spheres the need and potential for action to combat racism. While projects did not necessarily have to be limited to it, a theme was suggested for each year's activities. The themes were:

- 2001: adult education;
- 2002: young people;
- 2003: implementation of the decisions of the Durban Conference;
- 2004: the working environment;
- 2005: action for the long term -- promotion of human rights and non-discrimination in daily life.

200. Of the 994 projects for which funding was sought, 529 were accepted. They were put forward by a very wide range of people and bodies: school classes and youth groups, cantonal and communal authorities, employers and employees, charities and organizations of foreigners. It is noteworthy that the number of projects put forward by public authorities, which was never small, rose steadily as time went on.

201. The number of projects in the educational sector, too, was high from the outset and increased each year. Projects against violence also increased until 2005, a situation attributable in part to the public perception of the problem and in part to budgetary restrictions in cantons and communes. The increase is evidence of the long-term promise of an approach involving frank discussion of the problems created by prejudices and xenophobia.

202. The projects and the SLR's follow-up activities have been very helpful in promoting public awareness of the problem of racism and xenophobia and acknowledgement of those phenomena as distressing, but unavoidable and manageable features of modern Switzerland. The main positive outcomes have been the following:

¹³² <http://www.edi.admin.ch/frb/themen/00083/00293/ausbildung.pdf>.

¹³³ Legally speaking, this is not a fund, but a commitment appropriation approved by Parliament and including annual payment appropriations.

¹³⁴ www.edi.admin.ch/frb/.

- Establishment and networking of advice services for victims and public authorities;
- Transfer to general counselling services of know-how enabling them to take a professional approach to the problem;
- Professionalization and networking of specialized organizations;
- Increase in, and appropriate targeting of basic and further training programmes.

203. Nowhere else in the world have the activities of a body such as the Fund been analysed from so many different viewpoints:

- There were annual evaluation reports on the management and results of the projects supported by the Fund and the SLR has produced a concluding report on the five years of operation of the Fund;¹³⁵
- Every project in the educational sector was assessed by one of the Foundation for Education and Development's regional centres and the findings were reviewed by groups of experts;
- Performance-analysis workshops were held for project leaders in 2005 and formed the basis of the summary document and the accompanying DVD;
- Many of the projects undertaken as part of National Research Programme NRP 40+ "Right-wing extremism. Causes and countermeasures" are based on experience gained in implementing projects supported by the Fund.

204. In 2005, the SLR made a full evaluation of all the projects. A number of the projects were reviewed and prospects for future activity were outlined at a concluding meeting held in November of that year and attended by Federal Councillor Pascal Couchepin, Mr. Doudou Diène, United Nations Special Rapporteur on contemporary forms of racism, and Mr. Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe.

205. In 2006, the Confederation began providing the SLR with an annual allotment of 1.1 million francs (900,000 francs to finance projects and 200,000 francs for operating expenses) to support its work and third-party projects. The purpose of the allotment is to promote prevention and awareness-raising activity that will have long-lasting effects. The Service will continue to contribute through targeted action towards training, professionalization and networking to combat racism. Substantial added value and a new, multidisciplinary approach will result from the fact that the combat against racism will be taken into account in the work programmes of other federal bodies, particularly in the fields of integration, health, youth, education and research.

2. Federal Commission against Racism (FCR)

206. The FCR celebrated its tenth anniversary in September 2005. Its operating budget averages 185,000 francs a year. For detailed information on the Commission's mandate and activities, see

¹³⁵ The evaluation reports can be obtained from the SLR.

the second and third periodic reports (CERD/C/351/Add.2, paras. 218-226). The Commission's main focuses and projects in the period since those reports are described below.

207. After devoting much of its energy in the past few years to tackling the phenomenon of racism from the ideological and symbolic viewpoints, the Commission now intends to pay more attention to making equality of opportunity a reality. In the areas of employment and housing, for example, it will seek an explicit ban on discrimination between private individuals. It is in favour of the strengthening of criminal law, particularly as regards the prohibition of racist organizations and symbols.¹³⁶ After a decade of activity and looking ahead to the years to come, it has proposed a five-point strategy "for a common policy against racism".¹³⁷

208. A recent awareness-raising campaign entitled "No exclusion" used posters and cards to draw the public's attention to everyday situations that people of a different religion, colour or origin may perceive as affronts to their dignity. The campaign was sponsored by a variety of firms and organizations, which distributed the material free of charge.

209. The FCR uses press releases to comment on political events and in all instances where it perceives or fears discrimination.¹³⁸ It gives its opinion on matters within its sphere of competence during the consultation stage of the legislative process, doing so, for example, during the consultations in connection with the proposed federal mediation office, the ordinance on the integration of foreigners and the total revision of the LAVI. In addition to *Tangram*, its twice-yearly newsletter, it issues reports and studies on specific issues (see above, para. 92). Its website and the information posted there are increasingly important for its activities.

210. In its role as a mediator, the Commission provides advice to people who believe they have suffered racial discrimination and to firms and counselling services that have to deal with racism issues. It receives at least one report of a dispute a day. The Commission is also the body to which people wanting to submit communications to CERD under article 14 of the Convention can turn for advice as to the procedure to be followed, the value of such a submission and the chances of a successful outcome.

211. In its response to a parliamentary motion seeking the abolition of the FCR,¹³⁹ the Federal Government reaffirmed the importance of the Commission's work. The strong interest shown in that work not only by federal, cantonal and communal authorities but also by NGOs and private persons and the Commission's international reputation are proof of the professionalism with which the FCR has discharged its mandate over the past ten years.

¹³⁶ *Neue Zürcher Zeitung*, 13 October 2005.

¹³⁷ Society must be constantly on guard against racism and discrimination. The legal tools for protecting victims must be strengthened. Larger numbers of easily accessible aid structures, such as mediation, counselling and arbitration centres, must be created for affected persons. A fight must be waged against racism and xenophobia in politics and against media stereotypes. Action against racism and discrimination must form part of a comprehensive human rights policy. The document setting out the strategy can be viewed at http://www.edi.admin.ch/ekr/portraet/00568/5-punkte-strategie_lang_fr.pdf.

¹³⁸ Examples include press releases about the profanation of graves in the Jewish cemetery at Vevey-Montreux and the arson attack on the Lugano synagogue.

¹³⁹ Motion from the UDC group, 17 December 2004, "Abolish the Federal Commission against Racism" (04.3771).

3. Federal Commission for Foreigners (FCF)

212. The FCF is an extra parliamentary body charged with advising the Federal Council. It examines social, economic, cultural, political, demographic and legal issues arising in the context of the coexistence of Switzerland's native and foreign populations. It strives in particular to promote integration and equal opportunity (see CERD/C/270/Add.1, para. 174, and CERD/C/351/ Add.2, paras.227-229).

213. The FCF has a twofold mission. First, it manages the subsidies that, as mentioned in paragraph 227 of the second and third periodic reports, are available for integration projects in priority domains.¹⁴⁰ It reviews applications for subsidies and forwards its opinions concerning them to the FOM for it to make the final choice. Implementation of the programme of priorities for 2001-2003 was generally well rated.¹⁴¹ The integration promotion programme for 2004 had 2007 was designed on the basis of the experience gained with that first programme and taking into account significant changes in the sphere of integration. In the period 2004-2005, the sum allotted for programme support was 13.7 million francs a year and over 600 projects were financed each year.¹⁴²

214. In addition, the Commission does important political work. It studies issues connected with integration, makes recommendations, gives its opinion on migration- or integration-related matters at the consultation stage in the legislative process, and works to support and network government and civil-society players active in the sphere of integration. It publishes a twice-yearly magazine, *terra cognita*, covering a variety of topics having to do with integration and migration. It has established the Swiss Integration Prize to reward the best integration initiatives and projects. The Prize was awarded for the first time in 2005.

215. Each year the Commission chooses a theme on which to focus in its political activity. In 2005, with the aim of encouraging public authorities and civil-society organs to rethink their approaches and activities in the light of the pluralism of Swiss society, it picked the opening-up of institutions. It therefore provided financial support under the integration promotion programme to civil-society institutions wanting to make themselves more accessible to foreigners. Among the other relevant activities and projects in which it engaged, it issued recommendations on the opening-up of government and civil-society institutions, commissioned a number of studies and organized a national day on the subject and produced a DVD aimed at encouraging institutions to become more open. The theme for 2004 was "Integration and housing -- housing, housing policy and land use". It was the subject of a variety of studies and documents and of a national day. The theme for 2003 was the integration of migrants in the labour market and the working environment.

¹⁴⁰ The Commission made a substantial contribution to the design of the Confederation's integration promotion programme.

¹⁴¹ Assessment of the integration promotion programme for 2001-2003 (Summary) 2004, www.eka-FCF.ch/f/publikation.asp.

¹⁴² <http://www.eka-FCF.ch/f/integration.asp>.

4. Measures concerning teaching and education

216. In 2003, CDIP decided that as from 2004 Swiss schools should hold a Holocaust memorial day on 27 January each year.¹⁴³ This was in response to a proposal by the Council of Europe and a resolution adopted by European ministers of education in October 2002. On the Swiss education server *educa*, teachers can find a package of material prepared by CDIP to help them in preparing to commemorate the Holocaust.¹⁴⁴ Since 2001, CDIP's efforts in the field of education policy have been significantly boosted by an allotment of funding for anti-racism projects. The allotment is managed by the Foundation for Education and Development, which assesses the applications for support and fixes the two dates by which applications must be submitted each year.¹⁴⁵

217. Since the start of the anti-racism and human rights programme in 2001, projects in schools have become a mainstay of prevention. Through its cooperation with CDIP and the Foundation for Education and Development, SLR has become a platform for action and information for those involved with such projects.

218. Of the 440 potential school projects submitted, 184 have been selected for funding. They cover all types of school, from infants' to academic and vocational secondary schools, and all the linguistic regions. In size they range from brief workshops for individual classes to whole-school projects lasting several years. The activities include theatre and music workshops, touring exhibitions, playground events and intercultural exchanges. In most of the cases, the teaching staff were prompted to start an anti-racism project by a latent conflict or an actual incident between young people of differing cultures. CDIP believes that the projects generally have a tangible, lasting effect.

219. To ensure that the experience gained from projects is widely shared and to encourage the submission of further projects, the Foundation for Education and Development has set up a website describing 33 of the 184 projects to have been selected.¹⁴⁶ The site, which is aimed in particular at teachers and trainers, offers practical advice and ideas for launching projects, together with useful addresses and links and information on teaching aids available through the Foundation.

220. It is intended that the Foundation, which is financed by the Confederation and CDIP, should continue to serve as a centre of competence dealing actively with racism-related issues and selecting, monitoring and evaluating projects in schools.¹⁴⁷ From 2006 onwards, the annual allotment for such projects will be 300,000 francs.

221. "Klartext" is another example of efforts against racism in schools and in education in general. It is a national youth-culture project in support of tolerance and against racism and violence. It is run by INFOKLICK.CH and Caritas Switzerland under the aegis of FCR and supported from the Fund for anti-racism and human rights projects. Klartext offers children and

¹⁴³ www.educa.ch

¹⁴⁴ <http://www.educa.ch/dyn/1471.htm>.

¹⁴⁵ Cf. www.globaleducation.ch.

¹⁴⁶ www.projetscontreleracisme.ch.

¹⁴⁷ Ordinance on human rights and anti-racism projects, art. 9 (RS 151.21).

young people platforms for active, creative intercultural discussions, involvement and cooperation regarding racism, violence and integration. It also promotes their cultural activities in general.¹⁴⁸

5. The media

222. A number of bodies in the media sector have drawn up codes of conduct to ensure that, while reporting is free and critical, it respects human dignity and avoids discrimination. There follows a description of the steps taken by the three main bodies in question.

(a) *Swiss Press Council*

223. The Swiss Press Council, the body to which members of the public and journalists can submit complaints about media ethics, has issued a Declaration¹⁴⁹ and Directives¹⁵⁰ for journalists. These, it should be noted, contain rules that journalists have adopted for themselves. The paragraph of the Declaration which prohibits discrimination, paragraph 8, reads as follows:

“In respecting human dignity, the journalist must avoid any allusion by text, image or sound to a person's ethnic or national origin, religion, gender, sexual orientation as well as to any illness or physical or mental handicap that could be discriminatory in character. The reporting of war, acts of terrorism, accidents and catastrophes by means of text, image and sound should respect the victims' suffering and the feelings of their loved ones”.

224. In 2001, the Council noted in a position statement that, while overt racism had virtually disappeared from Swiss news media,¹⁵¹ there remained two areas in which discriminatory wording was frequent: readers' letters and crime reports. The Council had already dealt in detail, in an earlier position statement, with the question of racist letters from readers.¹⁵² With respect to crime reporting, it reaffirmed the inadmissibility of discrimination in a new position statement and added to the Directives a new paragraph that is still the topic of much discussion among journalists. As one commentator has put it, it seems that it is not easy even for the Press Council to find a middle way between sensible non-discrimination and pusillanimous political correctness.¹⁵³ Paragraph 8.2 of the Directives is entitled "Prohibition of discrimination" and reads:

"When information relates to criminal offences, any mention of ethnic origin, nationality, religion, sexual orientation, sickness or mental or physical handicap should be included only if necessary to the understanding of the story. If nationalities are mentioned, then this practice must apply to Swiss nationals as well. Particular attention should be paid to the fact that mentioning these factors can reinforce prejudice against minorities”.

¹⁴⁸ See www.infoklick.ch/site/fichiers/klartext.php.

¹⁴⁹ Declaration of the Rights and Duties of the Journalist, www.presserat.ch.

¹⁵⁰ Directives relating to the Declaration of the Duties and Rights of the Journalist, www.presserat.ch.

¹⁵¹ Rassismus in der Kriminalberichterstattung (Racism in crime reporting), position paper No. 10/2001, Swiss Press Council, 19 January 2001.

¹⁵² Position statement No. 22/99, 13 December 1999.

¹⁵³ *Medienheft* electronic magazine, 29 May 2002, “Zwischen Diskriminierung und Political Correctness“ (Between discrimination and political correctness), Peter Studer; www.medienheft.ch.

(b) *Independent complaints authority for radio and television*

225. As a quasi judicial body, the Autorité indépendante d'examen des plaintes en matière de radio-télévision (Independent Complaints Authority for Radio and Television, ICA) rules on complaints concerning Swiss broadcasters' radio and television programmes.¹⁵⁴ In discharging its functions, it is not bound by any instructions from Parliament, the Government or the federal administration.

226. The Authority has set out the principles of its practise regarding the most important aspects of broadcasting law in Guidelines.¹⁵⁵ These state that Swiss radio and television broadcasters have a general obligation to fulfil a cultural function and that broadcasts which are directly contrary to that obligation (because, for example, of their fundamentally destructive nature) are prohibited. As regards individual programmes, fulfilment of the cultural function entails additional constraints in connection with sensitive areas such as human dignity or racism.

227. The Guidelines state that programmes which ridicule or humiliate people by reducing them to the status of objects infringe human dignity. Protection extends not only to the persons mentioned in a broadcast but also to the essence of human dignity, meaning the protection of fundamental cultural and social values.

(c) *Swiss Broadcasting Corporation (SRG SSR)*

228. Schweizer Fernsehen (SF), the public television company in German-speaking Switzerland, has issued guidelines applicable to all its production teams that are even more detailed than the Charter of Ethics drawn up by its counterpart company, Télévision suisse romande (TSR), in French-speaking Switzerland.¹⁵⁶ Paragraph 39 of the guidelines says with regard to racist remarks and the law against racism:

"It is permissible for SF to report on politicians' or skinheads' propagation of racist slogans. Such persons can be quoted using the original sound recording even if this means that their racist and possibly criminal utterances are given a wider hearing. The commentary and the way in which the racist utterances are presented in the report should be such as to deprive them of any propaganda value. In addition, use can be made of the opinions of political opponents, injured parties or investigatory authorities to restore balance.

In crime reporting, identification of perpetrators or suspects by ethnic origin or nationality is a sensitive matter. When, because of its informative value, mention is made of a nationality, the reference must be complete (equality of treatment between Swiss and foreign nationals). Racist stereotypes such as "Balkan-looking" or "of North African appearance" must be avoided.

¹⁵⁴ The activities of the ICAP are based on article 93, paragraph 5, of the Federal Constitution (RS 101) and articles 58 et seq. of the Federal Radio and Television Act (LRTV; RS 784.40); www.ubi.admin.ch

¹⁵⁵ <http://www.ubi.admin.ch/verfahr/f/guidelines.html>.

¹⁵⁶ Publizistische Leitlinien (Guidelines for journalists), http://www2.sfdrs.ch/unternehmen/media/publ_leitlinien.pdf ; the Charte d'éthique (Charter of Ethics) of TSR was issued in February 2003, www.tsr.ch

In televised discussions, latent racism comes to the surface whenever negative characteristics are attributed to an ethnic or racial group. If that happens, the moderator must react immediately by denying the biological concept of race or, if the programme is being broadcast live, by eliciting a contrary opinion".

(d) *Swiss Coordination Unit for Cybercrime Control (CYCOS)*

229. The Swiss Coordination Unit for Cybercrime Control (CYCOS) is part of the Federal Office of Police. It was set up in 2003, thanks to an administrative arrangement between the Confederation and the cantons. The situation with respect to the fighting of cybercrime was unsatisfactory, especially where the coordination of police action was concerned. CYCOS enables the Confederation and cantons to take concerted action against cybercrime. It serves as a focal point to which people can report the existence of suspect websites and it performs web searches to detect offences.

(e) *Study on stereotyping of Jews in the media*

230. A recently published study examined the media in German-speaking Switzerland for stereotypes of Jews or Judaism in general with a view to comparing them with stereotypes of Muslims or Islam.¹⁵⁷

231. The study's authors found differences in the way Jews and Muslims are portrayed in the media: the image of Jews was often positive and aroused sympathy; Jews are often considered as victims, whether as members of a minority that has been threatened and persecuted throughout history or, in the modern context, because of the dangers to which they are exposed, especially that of terrorist attacks. The authors found repeated evidence of a latent or clear risk of anti-Semitism that was only rarely the subject of inquiries. Their findings with respect to Muslims were very different: Muslims are very often portrayed as perpetrators of acts of aggression or fomenters of conflict. While the "perpetrator" stereotype is relativized in so far as it is usually applied to Islamists or Muslim fundamentalists and not to the Muslim community as a whole, it is very worrying because it distorts the public's image of Islam and Muslims: the term "Islamist" is associated directly with Islam as a religion and in the media almost always has a negative connotation.

(f) *Conferences*

232. The SLR has investigated the work of the media in a publication entitled "How to get media attention? Advice on presenting information against racism and in support of integration" and in related workshops. The purpose of the publication and workshops was to familiarise anti-discrimination and pro-integration organizations with the work of the media. The underlying aim was, by interesting local media and the specialized press in anti-racism and anti-discrimination projects, to increase public awareness of the importance of such activities and, in

¹⁵⁷ Typisierung jüdischer Akteure in den Medien – Vergleichende Analyse von jüdischen und muslimischen Akteuren in der Berichterstattung Deutschschweizer Medien (Media stereotyping of Jews -- a comparative analysis of references to Jews and Muslims in crime reporting by the media in German-speaking Switzerland), study commissioned by the Anti-Defamation League B'nai Brith Zurich and carried out under the aegis of the FCR by Markus Meier, Monica Müller und Mark Eisenegger of the Public and Society Research Unit (fög – Forschungsbereich Öffentlichkeit und Gesellschaft) of the University of Zurich; 1 March 2004.

the longer term, to implant concern for combating discrimination firmly in the minds of people in key sectors of society.

233. In 2003, the FCR held a national conference on the portrayal of minorities in the media. Under the general heading “Speaking with, not about minorities – racism and minorities in the media”, the discussions centred around the following themes: how, in the hectic environment of journalism, to reconcile the duties to inform and to avoid discrimination, and how journalists could respond to the wishes of minorities, who no longer wanted to be treated as objects but instead to be active participants in the process of media coverage. The conference was attended not only by media representatives but also by representatives of minorities and enabled all of them to put forward their points of view.

III. POSITION ON THE CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION OF 21 MARCH 2002

A. General information

234 The Committee considered Switzerland’s second and third periodic reports of 29 December 1997 and 29 December 1999 respectively (CERD/C/351/Add.2) and a supplementary report at its 1495th and 1496th meetings on 4 and 5 March 2002. At its 1520th meeting on 21 March 2002, it adopted the concluding observations (CERD/C/60/CO/14) which are commented on below.

B. Federalism (CERD/C/60/CO/14, para. 8)

235. Very generally speaking, federalism as it functions in Switzerland is in itself an effective means of protecting minorities. It guarantees that population groups which belong to a minority but are in the majority in a given geographical region will be represented in the institutions of the Confederation. In addition, thanks to federalism, communes and cantons where such minorities live have a degree of autonomy as to their own structures.

236. Federalism and democracy are thus two of the pillars of the Swiss State. By allowing for the country's cultural pluralism and the federated states' needs for autonomy, federalism preserves national unity while respecting the diversity of country's constituent parts. The country's federal structure is in itself sufficient to ensure the protection and support of minorities.

237. "According to the Swiss concept of law, public international law and domestic law form a single legal order"¹⁵⁸ Pursuant to article 5, paragraph 4, of the Federal Constitution, the rules of international law are automatically assimilated to domestic law as soon as they enter into force. Switzerland thus remains faithful to the monistic concept of law that it has applied for many years. The hierarchy of international agreements and cantonal or communal legislation is therefore clear, since treaties ratified by the Confederation are considered as federal law and that takes precedence over all cantonal or communal rules.¹⁵⁹ Moreover, article 190 of the Federal

¹⁵⁸ René Rhinow, *Grundzüge des Schweizerischen Verfassungsrechts (Fundamentals of Swiss Constitutional Law)*, 2003, p. 565

¹⁵⁹ Federal Constitution, art. 49, para. 1.

Constitution makes it compulsory for the Federal Supreme Court and other authorities to apply not only federal law, but also international law.

238. Article 54, paragraph 1, of the Federal Constitution confers on the Confederation full competence as regards the conclusion of international treaties. When the application of international treaties requires enabling legislation, its adoption is fundamentally, within the spheres of their competence, the responsibility of the cantons. That is because, just as they are required to apply and execute all federal laws, cantons are required to apply and execute treaties ratified by the Confederation. In discharge of its supervisory function, the Confederation can, if necessary, enjoin cantons to apply international treaties correctly and promptly.¹⁶⁰

239. The Confederation established the SLR (see above, paras. 194-198) in order, inter alia, to ensure more coordinated action to prevent racism, anti-Semitism, xenophobia and right-wing extremism. The Service is the Confederation's principal point of contact with the cantons, communes and others (private organizations, research institutes and non-governmental organizations) concerning such measures and works closely with them in that regard. It also plays an important role with respect to the realization of international commitments such as those under the Convention or in the recommendations of the Durban Conference. The FCR, on the other hand, is an extra-parliamentary body with a focus on policy and public awareness (see above, paras. 206-211). It holds an annual conference to which it invites all cantonal anti-racism officers in order to discuss with them issues relating to the fight against racism at the cantonal level.

240. Cantonal and communal integration officers have an umbrella organization in the CDI (see above, para. 76). Where discrimination and racism are concerned, the integration officers act as local partners of the SLR, in agreement with which they have altered the statutes of their Conference to state expressly that combating discrimination is part of their work to promote integration. Representatives of the SLR are regular participants in meetings of integration officers.

C. Persistence of hostile attitudes towards black people, Muslims and asylum-seekers (CERD/C/60/CO/14, para. 9)

241. In a multicultural society, laws alone are not enough to combat racist tendencies. Efforts to bring cultures and religions closer together by seeking to eliminate prejudices against people with a different colour or religion or a particular residency status are every bit as important. The integration of these minorities is viewed as a significant step towards an open, tolerant society. Switzerland's integration policy (concerning which, see paragraphs 72-78 above, especially the information about the integration fund managed by the FCF) is helping to move the process forward. In this connection, it is equally important to provide the Swiss population with trustworthy, objective information on foreigners' special situation. The LEtr has conferred the responsibility for supplying that information on the Confederation and the cantons and communes.¹⁶¹ By fulfilling that mission, the authorities can help to create a climate of mutual tolerance without being seen as opinion-makers. For more information on this topic, see paragraph 76 above.

¹⁶⁰ Message on a new federal constitution, 20 November 1996, pp. 231 et seq.

¹⁶¹ LEtr, art. 56, para. 3.

242. Switzerland's antiracism policy, which entails the combating of all forms of racism, anti-Semitism and xenophobia, is not restricted to the protection of particular minorities. Switzerland is, however, aware of the hostile attitude towards the groups mentioned by the Committee and has taken special measures to deal with it. Basically, it can be seen from information meetings and seminars that there is growing public awareness of the problem of discrimination against particular groups (black people, Muslims, etc.).

243. Using the Fund for anti-racism and human rights projects, substantial sums have been allotted to projects in support of minority groups and potential victims of racism (Travellers, Jews, blacks). The projects have contributed towards the beneficiaries' empowerment and the overcoming of the discrimination they suffer. The Fund has also been used to combat the multiple forms of discrimination against women, especially immigrants and asylum-seekers.

244. The projects have also boosted the confidence of groups that have suffered from racism and enabled them to take the initiative in organizing their defence. Funding has been provided for a variety of counselling and support centres for victims of racial discrimination.¹⁶²

245. Pursuant to the Programme of Action of the Durban Conference, the FCR has given increased attention in recent years to the problem of racist attitudes towards, and exclusion of people from Africa or of African origin. In 2002, it held a national conference on the theme of "The Shadows of the Past and the Weight of Images – Anti-black Racism in Switzerland": in discussions and round tables, participants reviewed the historical origins of anti-black racism (colonialism, slavery) and analysed the forms it takes in present-day Switzerland. The FCR has also devoted an issue of its twice-yearly magazine *Tangram* to this topic.¹⁶³

246. Since then, the FCR has commissioned a study entitled "Black people living in Switzerland. Between integration and discrimination",¹⁶⁴ which describes how people with dark skins feel in Switzerland and what problems they encounter in daily life. The two female authors, themselves members of the target group, reveal the lives of the black population through "qualitative" interviews and analyse from a psychosocial viewpoint what blacks feel by describing their reactions to the hurts they have suffered. The study concludes with recommendations from both the interviewees' and the authors' viewpoints on ways of promoting integration and acceptance. The study showed that most instances of racism or discrimination belong to the category of latent racism: disdainful looks, insults, and the fact of being ignored or treated as invisible. These are forms of racism against which the victims feel particularly helpless because they are hard to prove and are often treated as if they were of no importance. Manifestations of overt racism include verbal and physical aggressiveness, and sometimes actual physical assault, in public places. One in two of the interviewees had been insulted at least once because of the colour of his or her skin.¹⁶⁵

¹⁶² E.g., The Carrefour de réflexion et d'action contre le racisme anti-noir (Platform for Reflection and Action against Anti-Black Racism, CRAN); publication of a guide entitled "Your rights vis-à-vis the police", which also gives advice on how to behave during police checks; establishment by ACOR-SOS Racism of a free telephone hotline that provides victims of racist acts with advice and information on defending themselves.

¹⁶³ La Suisse de couleur (Coloured Switzerland), *Tangram*, No. 8, March 2000.

¹⁶⁴ <http://www.ekr-cfr.ch/ekr/dokumentation/shop/00019/00142/index.html?lang=fr>.

¹⁶⁵ "Black people living in Switzerland. Between integration and discrimination", abridged version, Carmel Fröhlicher-Stines, Kelechi Monika Mennel, Bern 2004.

247. After the events of 11 September 2001 and other terrorist attacks that radical Islamist groups claimed to have carried out, persons of the Moslem faith were for a while a focus of public and sometimes polemical discussion. As a religious minority, they are often the target of negative generalizations and discriminatory attitudes. The FCR has drawn attention to this problem in a press release and called for a public debate that would be factual and from which the Muslim community would not be excluded.¹⁶⁶

248. As part of a study entitled "Muslims in Switzerland -- identity profiles, expectations and attitudes" commissioned by the FCF, a team of researchers interviewed Muslims about various aspects of their religion, their identity and their role in Switzerland. To summarise, the study showed that the Muslim residents of Switzerland are far from all alike and that the stereotypes and views of Islam that are common among the native population are not borne out in reality. The researchers also looked into the question how to bring the country's Muslim communities and majority population closer together. In this connection, they recommended wider recognition of Muslim religious communities and efforts to involve Muslims more closely in political processes so that they could take part in decision-making rather than simply have decisions imposed upon them. They also said that Muslim communities too must make efforts at rapprochement so that the State had people with whom it could speak.

249. For more detailed information on hostile attitudes to Muslims, see paragraphs 57-63 above.

D. Naturalisation procedures (CERD/C/60/CO/14, para. 10)

1. Judgements of the Federal Supreme Court

250. Some cantons' naturalisation procedures are not satisfactory and have given rise to in-depth discussions about the conditions they need to meet to measure up to requirements of the rule of law. The Federal Supreme Court has contributed to the debate through two fundamental decisions.¹⁶⁷ In the Court's opinion, competence to choose the bodies to have responsibility at the cantonal and communal levels for naturalisations should remain with the cantons, but principles of the rule of law such as the prohibition of all discrimination and the obligation to give the reasons for decisions must be safeguarded.¹⁶⁸ Several cantons have already altered their naturalisation procedures to comply with those decisions. Further changes at the federal level are under discussion.

251. It is clear from Federal Supreme Court decision 129 I 232 that the Court does not consider the principles of the rule of law to be respected in the event of popular ballots on naturalisation applications. Naturalisation decisions must be explained and that is, by definition, impossible when they are taken by popular ballot. The shortcoming cannot be remedied by the subsequent statement by a communal authority of the reasons for a decision. Seeing no other possible means of making up for the absence of explanations in such circumstances, the Court ruled that it was unconstitutional for naturalisation applications to be taken by popular ballot.

¹⁶⁶ FCR, press release, 26 November 2004.

¹⁶⁷ ATF 129 I 217 and 129 I 232.

¹⁶⁸ Prohibition of all discrimination, Federal Constitution, art. 8, para. 2; obligation to give the reasons for decisions, *ibid.*, art. 29, para. 2.

252. In the second decision,¹⁶⁹ the Court ruled that actions under domestic law for breach of the prohibition of all forms of discrimination are permissible even when, as in the case of refusal of naturalisation, there is no right to thing refused. By thus acknowledging that a legally protected right can arise directly from the prohibition of all forms of discrimination the Court safeguarded the possibility of appeals to itself against any discriminatory acts by cantonal or communal authorities.

2. Changes to the law in connection with naturalisation

251. Following the above decisions by the Federal Supreme Court, the Council of States took up a parliamentary initiative¹⁷⁰ calling for cantons and communes to be free to establish the naturalisation procedures they wished and for appeal to the Federal Supreme Court to be permissible only in the event of infringement of a constitutional procedural guarantee. The Council's Political Institutions Committee has set itself the goal of incorporating the Court's to decisions in law and has therefore taken up the delicate task of closing the gap between the democratic procedure followed by some cantons with regard to naturalisation on the one hand and the requirements of the rule of law on the other.

254. The solution proposed by the Political Institutions Committee as regards naturalisations at the communal level is that the procedure should be defined by the cantons and that reasons should be given for negative decisions. The Committee's bill does not, however, say what organ should be competent to judge naturalisation applications. It does provide for a right of appeal at the cantonal level against naturalisation decisions taken according to the ordinary procedure. It further provides that, in order better to protect applicants' privacy, cantons should only make public the personal details needed to reach a decision on an application. The Federal Council approved the bill on 2 December 2005 and the Council of States did the same on 14 December 2005.

255. Following the above two Supreme Court decisions, two parliamentary initiatives were put before the National Council.¹⁷¹ Much the same concerns were also expressed in cantonal initiatives submitted by Schwyz, Luzern and Aargau.

256. In addition, a popular initiative entitled "For democratic naturalisations" submitted by the UDC (Democratic Union of the Centre or Swiss People's Party) has obtained the necessary number of valid signatures and will therefore be put to a nationwide vote. It calls for communes to be left free to decide which organ should be competent to grant communal citizenship and for that organ's decisions to be final. The Federal Council is currently preparing its message on this initiative. The Political Institutions Committee of the Council of States has decided to deal simultaneously with the Pfisterer parliamentary initiative and the UDC popular initiative. Parliament's two chambers will probably debate them in the spring of 2007.

257. In response to the above parliamentary motions and popular initiative, the Federal Council asked the FDJP to prepare a report on the issues outstanding with regard to naturalisations. This report was submitted in the spring of 2006.

¹⁶⁹ ATF 129 I 217, Synopsis and Deliberations, para 1.1.

¹⁷⁰ Parliamentary initiative by Mr. Thomas Pfisterer, 3 October 2003, "Nationality Act. Amendment" (03.454).

¹⁷¹ Parliamentary initiative by Thomas Pfisterer, 3 October 2003, "Nationality Act. Amendment" (03.454) and parliamentary initiative by Rudolf Joder, 3 October 2003, "Naturalisations -- increasing the powers of the cantons and communes" (03.455).

258. On 26 September 2004, Swiss voters rejected two bills that would respectively have made naturalisation easier for young second-generation immigrants and given Swiss nationality on birth to third-generation immigrants.

259. Not having been the subject of requests for referendums, other proposed changes in naturalisation law did, however, come into force on 1 January 2006.¹⁷² Pursuant to the first of them, cantonal and communal authorities will no longer be able to charge naturalisation fees that exceed their costs. They will therefore no longer be able to require people to pay several thousand francs in order to obtain citizenship.

260. The effect of another amendment has been to improve the situation of stateless children: the new article 30 of the Nationality Act provides that such children may apply for facilitated naturalisation if they have spent at least five years, including the year preceding their application, in Switzerland. The article also applies to children who have been brought to Switzerland with a view to adoption but not adopted if, under the law of their country of origin, they have lost the nationality of that country.

261. Most of the other amendments to the Nationality Act concern facilitated naturalisation and renaturalisation and are primarily of benefit to persons of Swiss origin.

3. Language tests

262. A suggestion that the procedure for naturalisation should include a written language test gave rise to heated discussion about such tests' value as a measure of applicants' integration. There is general agreement that learning a national language is essential for integration and that knowledge of that language should therefore be considered a criterion of suitability in naturalisation proceedings.¹⁷³ In fact, the great majority of cantons already apply express language requirements, either through law, through regulations or through recommendations. The point at issue was how the language criterion should be taken into account in assessing a person's integration. In view of the impassioned discussions to which this question gave rise in German-speaking Switzerland in particular and of the fact that some communes had already begun to design their own tests, the FCF asked the University of Fribourg's Foreign Language Teaching and Research Unit to develop guidelines for verifying language skills in the context of naturalisation proceedings. On the basis of the results of that work, the FCF issued recommendations for authorities wishing to use the ability of applicants for naturalisation to communicate in the local language as a criterion of their integration. The recommendations are intended to assist the authorities in designing transparent, fair tests.¹⁷⁴

263. For its part, the Federal Supreme Court has so far handed down one decision concerning assessment of language skills in naturalisation proceedings: it ruled in favour of a commune that had rejected a naturalisation application because of the applicant's poor knowledge of the national language spoken locally. The commune's decision was appealed to, and overturned by the cantonal government, whose verdict was in turn appealed to the Federal Supreme Court. The

¹⁷² FF 2003 6179.

¹⁷³ See message concerning nationality law for young foreigners and revision of the Nationality Act, 21 November 2001, FF 2002 1815.

¹⁷⁴ "Naturalisation and language skills. Recommendations of the FCF to communes, cantons and the Confederation", 2006

Court held that the canton had infringed the commune's autonomy and did not have the right to naturalise an applicant against the commune's will. It stated that, in so far as cantonal law gave them autonomy with respect to naturalisations, communes were free to apply stricter language standards than the canton. Those standards must not, however, be so high as to constitute an undue obstacle to naturalisation.¹⁷⁵

**E. Creation of separate classes for foreign pupils
(CERD/C/60/CO/14, para. 11)**

264. Some years ago, two Swiss towns experimented with separate primary school classes for Swiss and foreign children. It was a time when there had been many calls in cantonal and communal parliaments in German-speaking Switzerland to establish separate classes for German-speakers in schools where Swiss children were in the minority. According to its proponents, such action was needed to preserve the chances of German-speaking children in the schools in question. The calls were hotly debated in the media and in the parliaments concerned (see CERD/C/351/Add.2, para. 323). Most of them were refused and the experiments were confined to a few classes in Rorschach and Lucerne. Their aim was to ensure the best possible learning opportunities for Swiss and foreign children alike. In Rorschach, where there were large numbers of children of Albanian-speaking refugees, the authorities set up two special classes at the preschool and primary levels. Teaching in them was conducted alternately in Albanian and German. After two years, the experiment was halted and the children's education continued in normal classes. In the case of Lucerne, one primary school class was, exceptionally, formed entirely from foreign children. Since those experiments, there have been no more separate classes for foreign children anywhere in the country and the idea of separation has been abandoned because, on the one hand, of the strong political opposition to the experiments and, on the other, of the very encouraging results of innovative projects based on integration of foreign children in ordinary classes.

265. In its Recommendations of 24 October 1991 concerning the education of foreign-tongue children, CDIP came out clearly in favour of the integration of such children in ordinary schools and recommended that cantons should ensure that children coming to Switzerland commenced studying as soon as possible after their arrival in types of school and class that were appropriate to their age and educational background. In 1999, to give itself the means of countering developments such as those mentioned in the previous paragraph, the Conference included specialized teaching theory and intercultural teaching theory among the obligatory fields of study in its Rules on the recognition of preschool, primary and lower-secondary teaching diplomas. It has also set up a standing working group to advise it on issues relating to migration and integration in schools.

266. Immigrant children who so wish can attend courses on the language and culture of their country of origin. CDIP recommends that cantons should: include at least two hours of such courses a week in their school timetables, give the courses appropriate support, and record attendance at them and, where appropriate, performance in them in children's school reports. According to a survey carried out by the Conference in 2002, more than a third of cantons had included such courses in their school timetables.

¹⁷⁵ Judgment 1P.214/2003, 12 December 2003.

267. It is still difficult, however, to guarantee equal opportunities for foreign children in schools. According to the PISA 2000 report, children of immigrant families are generally disadvantaged in several ways.¹⁷⁶ Firstly, they do not have enough support and encouragement from their families. Second, their parents are often unfamiliar with the local education system. Lastly, because of their language difficulties they have to make special efforts to follow classes. This handicaps them both as regards reading and as regards mathematics or science. Furthermore, most immigrant families live in adverse economic conditions, the parents often have no higher education and in many cases the family environment lacks cultural resources. For all those reasons, children from immigrant families often perform worse than might be expected from their socialization in a multilingual environment. On the other hand, the longer they spend in a given linguistic region, the further they catch up. The PISA 2000 report shows that cultural diversity places greater demands on the education system, but also that children from immigrant families are capable of achieving excellent results.

268. The various cantonal school systems offer a wealth of integrative or separative forms of support and encouragement for children with special needs. Some of them are particularly intended for children and adolescents from immigrant families and emphasise the acquisition of a second language in the local language of instruction. There are also classes for non-speakers of the local language that children and adolescents who do not know that language well enough to integrate directly into a regular class can attend temporarily, after which they can, if necessary, be given individualized language support within the framework of the normal curriculum.

269. Although cantons' policies regarding the schooling of immigrant children are far from uniform, special classes are a frequent topic of discussion.¹⁷⁷ According to a CDIP publication,¹⁷⁸ children who do not speak the local language are more readily assigned to special classes than Swiss children, but the phenomenon varies widely from canton to canton, as well as from one school board to another within the same canton.¹⁷⁹ According to the same publication, the percentage of pupils in special classes was twice as high in 2001 as in 1980, an increase due solely to the more frequent assignment of foreign children to special classes, where they accounted for 28% of the pupils in 1980 and 53% in 2001. In 2001, one in ten foreign children attended a special school. The high proportion of foreigners was not, however, attributable to the educational support programmes introduced expressly for foreign children and adolescents (e.g., the classes for non-speakers of the local language of instruction).¹⁸⁰ Notwithstanding the efforts made to integrate them in the compulsory stages of schooling, the trend towards an above-average in the number of non-local-language children in special classes continues.

¹⁷⁶ Synthesis of the national PISA 2000 report, FSO and CDIP, Neuchâtel, 2001, p. 20.

¹⁷⁷ Special classes are intended primarily for children with learning difficulties or behavioural problems. The classrooms are generally situated in ordinary schools and form part of the local school system. Classes for non-speakers of the local language are not considered as special classes for children with learning difficulties.

¹⁷⁸ Sonja Rosenberg, *Le parcours scolaire et de formation des élèves immigrés à «faibles» performances scolaires* (The school and training paths of immigrant children with "weak" school performance) – CONVEGNO 2002: Final report, CDIP, Bern 2003, p. 7; http://www.edk.ch/PDF_Downloads/Dossiers/Stub19B.pdf.

¹⁷⁹ "In some cantons, the likelihood that immigrant children will find themselves in a special class intended for children with learning difficulties is seven times higher than in others", *ibid.*

¹⁸⁰ *ibid.*, footnote 209, p. 17, Rolf Lischer.

F. Police (CERD/C/60/CO/14, para. 12)

1. Police violence

270. In its third report on Switzerland, adopted on 27 June 2003,¹⁸¹ ECRI said that police behaviour towards members of minority groups remained a matter of concern. The Swiss Government responded that "the police are well aware that, given the numerous police operations carried out round the clock every day, mistakes may sometimes occur. But issues such as xenophobia and police violence are systematically covered during basic and in-service police training. They are dealt with in detail and with due diligence in the initial and further training courses for the cantonal police".¹⁸² An investigation is carried out whenever it is suspected that the police may have made a mistake and the steps are taken to improve the work of the police whenever that is found to be necessary.

271. The FCF is in contact with the Swiss Conference of Cantonal Police Commanders and the CCJDP with a view to furthering efforts against racism in the police.

272. A delegation from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) visited Switzerland in October 2003. It saw the section of the prison at Zurich-Kloten Airport where persons are held pending their removal from Switzerland and examined the procedure for expulsions and the way in which Switzerland applies the Committee's rules concerning the deportation of foreign nationals by air. It found no evidence of torture or serious mistreatment. It confirmed that substantial progress had in made since its previous visit,¹⁸³ particularly with respect to the deportation of foreign nationals by air.¹⁸⁴ The delegation also inspected the Federal Office for Refugees/FOM swissREPAT unit at the airport. Thanks to the establishment of this unit and the introduction of the above-mentioned CCJDP guidelines of April 2002, there is now transparency regarding the use by the police of measures of restraint during deportations by air. Since the changes were made, there have been no instances of use by the police of disproportionate force in executing removal decisions.

2. Ombudspersons

273. Citizens are better protected against abuse of authority by the police. Since 2003, the canton of Zug has had a cantonal ombudsperson, the "Vermittler in Konfliktsituationen" (mediator in conflict situations).¹⁸⁵ There are also ombudspersons with broad powers in the cantons of Zurich, Basel-Stadt and Basel-Landschaft, as well as in the towns of Winterthur, Bern and St. Gallen. Following the discovery of a series of abuses by the municipal police, the city of Zurich set up an independent police complaints unit. This found no evidence of systematic violence by the municipal police and, after its head had proposed a series of measures to keep police violence to a minimum, the unit was merged with the Zurich City Ombudsman's Office in

¹⁸¹ www.coe.int/ecri, paras. 25 et seq.

¹⁸² *ibid*, ECRI Third report on Switzerland, Position of the Swiss Government, p. 33

¹⁸³ During that visit, in 2001, the CPT expressed concern over the use of means of coercion during the deportation of foreigners by air.

¹⁸⁴ FDJP, press release, 24 October 2003.

¹⁸⁵ www.zug.ch/vermittler.

mid-2003.¹⁸⁶ In the canton of Basel-Stadt, only one case of police violence against a foreigner has been reported to the complaints officer of the Department of Police and Military Affairs¹⁸⁷ in the past two years. The guilty police officer was disciplined.

3. Recruitment of members of minority groups into the police

274. In the cantons of Basel-Stadt, Schwyz and Geneva, nationality is no longer a criterion of admission to the police training schools.

4. Training and sensitization

275. The job title "(female/male) police officer" was formally defined in 2004. The training requirements for police officers are the same throughout the country. From now on, people will only be able to serve in a police force if they have the appropriate certificate. The job title "police officer" will only be awarded to people who have undergone a full course of training in, and graduated from a recognized police training school. The topics in the graduation exams will include police ethics and human rights. Police officers must be taught the importance of respecting human dignity and human rights.¹⁸⁸ Among the subjects to be covered in this respect are human rights, offences by police officers, the rights of arrestees, the prohibition of all forms of discrimination, measures of coercion, the protection and rights of victims and the prohibition of all forms of racial discrimination.

276. The basic training courses for prison staff at the Swiss Prison Staff Training Centre¹⁸⁹ include instruction in human rights and the supervision of foreign detainees. The list of training targets includes the following: trainees must develop awareness of the special situation of foreign detainees; they must have basic knowledge of other cultures' religious and social rules and of the possible effects on detainees' behaviour. Regarding fundamental and human rights, they must know what are the main international conventions, the fundamental rights enshrined in the Federal Constitution and the main rules of criminal law. They must also be familiar with the structure of human rights and know under what circumstances those rights can be limited. They must also know what are the main procedural steps to be taken for the realization of fundamental and human rights. They must be able to identify and deal with conflict situations. The objectives of the in-service training courses for prison staff are to prevent the emergence of xenophobic tendencies in the prison environment, to inform the staff about the problems that can arise when people of different cultures are confined together and to help them to find appropriate solutions and to take a constructive approach.

277. Support from the SLR has made possible the development of a variety of basic and further training activities for members of police forces and official organs in general concerning the problems that can arise during contact with people from different cultural backgrounds. For example, the cantonal police in Basel-Stadt has developed an initial and further training module for its staff with the aims of preventing problems in contacts between the police and persons of

¹⁸⁶ www.om.stzh.ch

¹⁸⁷ The complaints officer operates as an impartial, independent complaints authority.

¹⁸⁸ Guide méthodique afférent au Règlement d'examen professionnel supérieur de Policier/Policière (Qualifying examination for the title of Police Officer -- Handbook), 2002, www.institut--police.ch

¹⁸⁹ www.prison.ch.

colour in particular and of generally improving relations between the two groups. On the one hand, organizations of blacks complain that young people of colour are increasingly being subjected to what they regard as humiliating identity checks because the men are often viewed as drug dealers and the women as prostitutes, and on the other police officers are increasingly annoyed by the allegations of racism made against them. Police officers need to be equipped to handle their emotions so that there is no hardening of attitudes and no discriminatory treatment. In Lugano and Chiasso, the SLR is supporting training to help police officers and other officials to be as non-discriminatory and non-prejudicial as possible in their contacts with foreigners

G. Federal Commission against Racism (CERD/C/60/CO/14, para.13)

1. Federal Commission against Racism and Federal Service for Combating Racism

278. The establishment in 2001 of the SLR doubled Switzerland's anti-racism forces. It has enabled the FCR to concentrate on awareness-raising and ground work, since the SLR now performs all the relevant tasks within the federal administration. The FCR is not an official organ for the protection of human rights within the meaning of the Paris Principles, but a national specialized institution for combating racism. To publicise its role as such an institution, it maintains contacts with other national anti-racism and human rights bodies. That facilitates the transfer of know-how and the comparison of the situation in Switzerland with that in other European countries.

2. National human rights body

279. The debate as to whether to establish a federal human rights commission was triggered by two parliamentary initiatives calling for the setting up of such a body.¹⁹⁰ The Federal Council was subsequently asked to submit a report on the issue.¹⁹¹ After questioning experts and concerned persons in the administration, the Parliament, the cantons and economic and scientific circles, consultants from outside the administration submitted a feasibility study suggesting six models for a federal human rights commission taking into account, inter alia, the Paris Principles.¹⁹² On the basis of this report, the FDFA has examined the possibility of adjusting the functions of an existing parliamentary committee working in the field of human rights to suit. It has had contacts on the matter with the FCR and the Federal Department of Home Affairs and consideration has been given to broadening the mandate of the FCR. In the light of the work done and the contacts made so far, the FDFA considers it entirely possible to find a broadly-based model that would have the advantage of creating synergies. The matter needs to be studied further in the light of the institutional and financial options.

¹⁹⁰ Parliamentary initiatives by Vreni Müller-Hemmi of 10 December 2001 and Eugen David "Federal human rights commission" (01.461 and 01.463).

¹⁹¹ Postulate from the Foreign Affairs Committee, 9 September 2002, "Federal human rights commission" (02.3394).

¹⁹² Schläppi, Möglichkeiten zur Schaffung einer nationalen Menschenrechtskommission in der Schweiz (Options for creating a national human rights commission in Switzerland), 2003.

H. Immigration policy (CERD/C/60/CO/14, para. 14)

280. When it ratified the Convention, Switzerland felt it necessary to enter a reservation concerning the law governing access to the labour market. Current policy regarding access to the market is based on a binary system which distinguishes between nationals of EU states and those of other countries. The distinction is not contrary to the Convention in as much as it is based on treaties concluded with the countries in question. Since the bilateral ALCP is consistent with the requirements of the Convention, Switzerland could withdraw its reservation. However, it feels it preferable to maintain it in order to keep some freedom of manoeuvre for the future. Easing of the restrictions on admission of nationals of non-EU States cannot be considered until the effects of the ALCP are known and the scope for recruiting lower-skilled workers from within the EU or EFTA on decent wage and working conditions has been exhausted.¹⁹³

I. Travellers (CERD/C/60/CO/14, para. 15)

281. The situation of Travellers is examined in detail below.

1. Developments at the national level

282. The Foundation entitled "Ensuring the Future of Swiss Travellers" (see CERD/C/351/Add.2, para. 57) was allotted a credit line of 750,000 francs for the period 2002-2006 to enable it to continue its work on a sound footing and to develop new activities. For the period 2007-2011, the Federal Government has asked Parliament to give the Foundation a fresh credit line of 150,000 francs a year¹⁹⁴ to enable it to continue its work.

283. The *Radgenossenschaft der Landstrasse* (hereinafter "Radgenossenschaft"), the national self-help organization of the Jenisch, was founded in 1975. The Confederation recognized its status as the umbrella organization of this people in 1986 and provides it with an annual financial contribution (250,000 francs in 2006) covering approximately 85% of its running costs. The Radgenossenschaft acts as an intermediary between the authorities and Travellers in order to settle problems concerning long-term or temporary parking sites, trading licences and schooling. In addition, it provides them with advice on the law and public assistance benefits. It is represented in the Foundation "Ensuring the Future of Swiss Travellers", a point of great importance since that enables it to ensure that the Foundation's proposals, recommendations and action reflect Travellers' ideas and have their support. The Radgenossenschaft also does a great deal of public relations work to ensure that the general public appreciates Travellers' needs. It is with the support of the Radgenossenschaft that the Confederation defends this cultural minority's interests through an independent organization managed by Travellers themselves. Europe's first documentation and meeting centre for Jenisch opened in Zurich in November 2003. The Foundation "Ensuring the Future of Swiss Travellers" made a substantial contribution towards its costs. Mention should also be made of the generous financial support given by most cantons and the substantial allotment from the Fund for anti-racism and human rights projects. An exhibition in the centre of the history and culture of Travellers was put together by Travellers themselves.

¹⁹³ FF 2002 3473.

¹⁹⁴ FF 2006 2951.

284. Three research projects concerning the history of the Jenisch were approved and given total funding amounting to one million francs as part of national research programme 51, " Integration and exclusion" (2003).¹⁹⁵

285. Switzerland ratified the Council of Europe Framework Convention for the Protection of National Minorities of 1 February 1995 on 21 October 1998 (RS 0.441.1). In its message to Parliament dated 19 November 1997,¹⁹⁶ the Federal Government expressly stated that Swiss Travellers constituted a national minority within the meaning of the Framework Convention. Switzerland thereby committed itself to promoting conditions enabling members of national minorities to maintain and develop their culture.

286. In its judgment of 20 March 2003,¹⁹⁷ the Federal Supreme Court confirmed that Travellers' desire to preserve their traditional lifestyle and culture was protected by the Constitution and international law and that Travellers' needs should be taken into account in land-use planning. The Court also said, however, that that did not give Travellers the right to a lifestyle free from restrictions deriving from such planning. In the Court's opinion, restrictions provided for in planning law in the interests of orderly development were contrary neither to the freedom of domicile guaranteed in the Constitution (art. 24) nor to the right to respect for family and private life laid down in the ECHR (art. 8) or to the guarantees for ethnic minorities contained in the International Covenant on Civil and Political Rights (art. 27).

287. In its formal statement of opinion on the legal considerations pertaining to Travellers' status in Switzerland as a recognized national minority,¹⁹⁸ the Federal Office of Justice said: "Travellers, as a population group with Swiss nationality and a non-sedentary cultural and economic lifestyle, have the status of a protected national minority. It is recognized that current law indirectly discriminates against Travellers in a number of ways, particularly as regards land-use planning, building regulations, trading regulations and compulsory education. Legislation is needed to end that indirect discrimination and, where appropriate, to provide State compensation and assistance". According to the Office, the requisite constitutional foundations exist. The Federal Supreme Court confirmed that opinion in its above-mentioned judgment, noting that land-use plans were supposed to include zones and areas suitable for occupation by Swiss Travellers and the preservation of their constitutionally protected lifestyle.

288. A number of parliamentary debates are in progress concerning the situation of, Travellers in Switzerland. The Federal Government rejected motion 00.3604, "Ratification of ILO Convention No. 169 by Switzerland", from the National Council's Foreign Affairs Committee on the ground that the legal situation in Switzerland is not consistent with the Convention. At the same time, SECO was asked to submit a report showing what changes to the law would be needed for ratification and what the financial consequences would be for Switzerland. In response to a postulate (03.3426), "Eliminate discrimination against Travellers in Switzerland", from the National Council's Committee for Social Security and Health, SECO describes in the second part of that report the measures that could be taken to improve the situation of nomads in Switzerland, focusing on the main problem, the shortage of long-term and temporary parking sites. The results of this report are analysed in greater detail in paragraphs 293-309 below. The consultation

¹⁹⁵ Projects by Thomas Huonker, Georg Jäger, Roger Sabloner and Thomas Meier, www.nfp51.ch.

¹⁹⁶ FF 1998 1033.

¹⁹⁷ ATF 129 II 321.

¹⁹⁸ JAAC 66.50, www.vpb.admin.ch/franz/doc/66/66.50/html.

process concerning the Federal Council's preliminary draft report on the situation of Travellers in Switzerland was completed in November 2005 and the Government is expected to approve and publish the final version of the report in the autumn of 2006.

2. International organizations

289. At its Maastricht meeting on 1 and 2 December 2003, the OSCE Ministerial Council adopted the Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area.¹⁹⁹ This calls for the elimination of all forms of discrimination in the fields of residence, citizenship, education, employment, health and social services. Switzerland declared itself ready to support that Plan. Although the Plan speaks only of "Roma and Sinti", it applies to all Travellers, whatever their ethnicity.

290. On 10 December 2003, the Council of Europe Committee of Ministers adopted a resolution on the implementation on Switzerland's implementation of the Framework Convention for the Protection of National Minorities.²⁰⁰ The resolution deals with the situation of Travellers and calls for improvements with respect to the shortage of stopping places and transit sites and to participation mechanisms for Travellers.

291. In January 2004, the Council of Europe issued the third report of ECRI on Switzerland.²⁰¹ In it, the Commission calls for the provision of sufficient permanent and transit stopping places for Travellers. Switzerland took note of the report and of the Commission's comments.²⁰²

292. As regards the European Charter for Regional or Minority Languages, the Confederation is currently studying, together with representatives of Travellers, the concrete ways of preserving and promoting Yenish.²⁰³ This is in response to a request made by the Council of Europe Committee of Ministers in its recommendations of 22 September 2004.²⁰⁴

3. Education

293. Public schools, are, of course, open to Travellers. In practice, however, education in an ordinary school is not readily compatible with a nomadic lifestyle. Travellers' children's prolonged absences during the period of compulsory education are not without effect on their level of formal education, which is often relatively low.²⁰⁵ Cantons try to find very pragmatic

¹⁹⁹ www.osce.org/documents/odihr/2003/11/1562_en.pdf.

²⁰⁰ www.ddip.admin.ch.

²⁰¹ www.coe.int/ecri.

²⁰² For more detailed information, see paras. 309 et seq..

²⁰³ The Federal Council will shortly approve Switzerland's third report on application of the European Charter for Regional or Minority Languages. The report will be available on the website of the Federal Office of Culture (FOC), www.bak.admin.ch/bak/

²⁰⁴ European Charter for Regional or Minority Languages, Application of the Charter in Switzerland (second monitoring cycle), Report by the Charter's Committee of Experts, 22 September 2004, (ECMRL/2004/6), pp. 12 and 41; available on the Council of Europe website: <http://www.coe.int>.

²⁰⁵ According to information provided by the city of Bern, children at the Buech permanent stopping site "have little or no chance of finding an apprenticeship". The headmistress concerned believes that "the nomadic lifestyle

solutions to the problem of providing schooling for Travellers' children by admitting them to school even during short stays in a place. In winter, which Travellers spend at fixed sites, the children attend the local school like any others and make-up classes are provided for them. During the summer months, the teachers provide them with the requisite educational materials and a study plan and are at their disposal to answer any questions (see CRC/C/78/Add.3, paras. 790-794).²⁰⁶

294. The Radgenossenschaft has issued guidelines on compulsory schooling for Travellers' children: in the winter, when they do not travel, the children must attend the school in the commune where the family is staying. For the summer months, the guidelines recommend that parents and teachers agree on the intervals for the sending of homework to the children and its return to the teachers. It is obligatory for the parents to return the completed exercises to the teaching staff. Children may be released from compulsory education at the age of 15 as that is the age at which they can first obtain an itinerant trader's licence.

4. Prohibition of child labour

295. Enforcement of the protective provisions of labour law, especially those prohibiting child labour, has been seen as a particular problem in recent years because the children of families with a nomadic lifestyle often share in their parents' commercial activities before reaching the end of their compulsory education.

296. Swiss law²⁰⁷ generally prohibits the employment of children aged under 15.²⁰⁸ However, the provisions of the Labour Act (LTr) on the minimum age of employment do not apply to family businesses (op. cit., art. 4, para. 1). That does not mean that children can be shamelessly exploited in a family business: the child protection authority to intervene to protect the child if its development is threatened and the parents themselves do not remedy the situation.²⁰⁹

297. As long as the children of nomadic families work with their parents and the parents respect the children's basic physical and mental needs (in particular those for education, rest, leisure and play and protection against exploitation), the prohibition of child labour does not interfere with Travellers' habits. As soon as the children work not in a strictly family business, but in larger economic units managed either by the family in the broad sense of the term or by several families simultaneously, the provisions of Swiss law prohibiting the employment of young people

pursued during the summer months is not readily compatible with apprenticeship training and that the children therefore need a "specially designed course of study", *Berner Zeitung*, 17 April 2003.

²⁰⁶ Initial report of Switzerland on implementation of the Convention on the Rights of the Child, November 2000, paras. 790 et seq.

²⁰⁷ Swiss law has been brought into line with the international agreements the country has ratified: ILO Conventions No. 138 (RS 0.822.723.8) and No. 182 (RS 0.822.728.2) and the United Nations Convention on the Rights of the Child (RS 0.216).

²⁰⁸ Labour Act (RS 822.11): children aged under 15 may not normally be employed otherwise than in the context of cultural, artistic or sporting events (art. 30, para. 1); children aged 13 or over may be used to run errands and perform light work (art. 30, para. 2). Young people aged under 18 may not carry out hazardous work (ILO Convention No. 182, art. 3, and Convention on the Rights of the Child, art. 32).

²⁰⁹ Civil Code (RS 210), arts. 307 et seq.

apply.²¹⁰ Any judicial decisions to the contrary would undermine the protection of the rights of the child which Switzerland has recognized through, in particular, its ratification of the Convention on the Rights of the Child.

5. Itinerant traders' licenses

298. Parliament adopted the Itinerant Trade Act on 23 March 2001.²¹¹ Since the Act's entry into force on 1 January 2003, licenses are no longer valid only for one canton but valid throughout the country for five years. The Act replaces the host of previous rules in this sphere, thereby facilitating the practice of itinerant trades.

6. Language

299. Many Swiss Travellers view Yenish as an important part of their identity that is handed down from generation to generation and even today has the characteristics of a secret tongue. Until recently, it was not a written language. The first Yenish dictionary was not published until 2001.²¹²

300. Switzerland recognises Yenish as a language that is not associated with a territory.²¹³ The Confederation therefore tries, together with Travellers' representatives, to find concrete ways of preserving and promoting the language. As most Travellers do not want to make Yenish accessible to the sedentary population, they have not yet finished discussing amongst themselves what form the promotion should take. The Radgenossenschaft conducts hearings at Travellers' stopping places to discuss the possible means of promotion with the people directly concerned.

301. So far, Travellers have never asked for their children to be taught in Yenish in public schools. Within the framework of the Confederation's efforts to promote the language, priority is given to developing teaching aids -- if possible in the form of games -- to help children learn Yenish in their families.²¹⁴

7. Long-term and transit stopping sites

(a) *Situation and needs*

302. In 2001, the Foundation "Ensuring the Future of Swiss Travellers" published an expert report prepared in close cooperation with the Radgenossenschaft.²¹⁵ The report contains a

²¹⁰ Consultation on the Federal Council's preliminary draft report on the situation of Travellers in Switzerland, first part, pp. 32 et seq. (currently available only in German).

²¹¹ RS 943.1.

²¹² Roth, *Jenisches Wörterbuch: Aus dem Sprachschatz Jenischer in der Schweiz* (Jenisch dictionary: from the vocabulary of the Jenisch in Switzerland), Frauenfeld/Wien 2001.

²¹³ European Charter for Regional or Minority Languages, second report of Switzerland, p. 12

²¹⁴ Cf. ECRI - Third report on Switzerland (2003), Position of the Swiss Government, p. 33, para. 48.

²¹⁵ Eigenmann/Eugster, *Fahrende und Raumplanung* (Travellers and land-use planning), St. Gallen 2001, and on the Internet at www.bak.admin.ch.

detailed survey of the long-term and transit stopping sites for Travellers in Switzerland and identifies the additional needs in this regard. An updated version was produced in 2006.²¹⁶

303. In the summer of 2005, there were 12 long-term stopping sites accommodating approximately 600 people in Switzerland. With one exception, they were all full in 2005. An estimated 29 more such sites (with 10 places each) are required.

304. In 2005, the experts found there were 44 official transit stopping sites of varying sizes. This does not include one site that is used only by foreign Travellers. The official transit sites had room for approximately 1,500 people, meaning that their 490 places were sufficient only for about 60% of Swiss Travellers. According to the above report, 38 more transit sites (with 10 places each) are required. For foreign Travellers, who often pass through Switzerland in large groups, a further 10 transit sites (each with room for between 35 and 50 caravans) are needed.

305. Establishing new sites for Travellers is often a long and difficult business. It requires the application of a variety of rules and regulations concerning land use and cooperation at several levels of authority. Responsibility for land-use planning lies principally with the cantons, which coordinate projects for new sites using their cantonal master plans. Communes are required to record needs in their land-use plans in the manner stipulated by law. Lastly, local citizens may, depending on communal regulations, have a right to a say in the decision-making and reject the plans in a popular ballot.²¹⁷ It follows from the judgment of the Federal Supreme Court mentioned in paragraph 286 above that under current law Travellers' needs must be taken into account in land-use planning.²¹⁸

306. Instead of using transit sites, Travellers may stop spontaneously on private land. Farmers or owners of industrial land allow Travellers to stop on their property in return for payment. Very often, however, cantonal building law or cantonal or communal camping regulations make such spontaneous stopping difficult or even illegal. In many places, parking a caravan for an extended period of time requires a building permit or is allowed only in specially designated areas. Such regulations hinder spontaneous stopping by Travellers even when the landowner has no objection to it. Organized camping sites generally refuse to admit Travellers, principally because, unlike tourists, Travellers engage in gainful activity and that is considered undesirable in such places. For spontaneous stopping to be permissible, changes are needed in land-use and building laws. In several cantons, such changes have already been made and the legislation expressly authorises short-term parking of Travellers' caravans without requiring a building permit.

(b) Measures already taken

²¹⁶ Eigenmann/Eugster, *Fahrende und Raumplanung*, Standbericht 05 (Travellers and land-use planning, Status report 2005), St. Gallen 2006.

²¹⁷ In the commune of Versoix in the canton of Geneva, construction of a new stopping site for Travellers was rejected by popular ballot. Voters in the commune of Boudedvilliers (Neuchâtel) rejected a similar project by 59% to 41%, and in Winterthur (Zurich) a project was rejected in the vote on the local land-use plan.

²¹⁸ "Provision must be made in local land-use plans for zones and places suitable for occupation by, and in keeping with the traditions of this population group. Otherwise, the competent authorities must adjust existing buildable areas to make this type of use possible"; ATF 129 II 321, 327.

307. It is not only land-use rules that are relevant: there have been frequent references in some cantons to the shortage of land for long-term and transit stopping sites. The constitutions of Basel-Landschaft²¹⁹ and Aargau²²⁰ require the authorities to look for land suitable for the creation of such sites. Several cantons and communes have made land available either for the direct creation of sites for Travellers or for exchange against more suitable plots.

308. The Confederation has also been active in this regard: in recent years, the Federal Department of Defence, Civil Protection and Sports (DDPS) has, whenever possible, made temporarily unused land available for spontaneous stopping by Travellers. It is also planned to see in coming years whether facilities that the military no longer requires could not be converted into transit or long-term stopping sites. Following the adoption of the Army XXI reform programme, the DDPS intends to dispose of some 10,000 pieces of land by 2010; they will be sold in agreement with the cantons. As the Confederation is also obliged to contribute towards the application of the Federal Supreme Court's ruling of 28 March 2003, the DDPS will draw cantons' attention to the plots it intends to sell that might be suitable for Travellers' stopping sites and will, if possible, sell them to cantons and communes subject to their use for that purpose.

309. Over the past few years, the activities of the Foundation "Ensuring the Future of Swiss Travellers" have focused on the problem of the shortage of stopping sites. The Foundation's secretariat serves as a contact point both for Travellers and for communes. It advises and assists them in the event of problems with long-term or transit stopping sites and even acts as a mediator. The Radgenossenschaft works closely with other organizations of nomads and acts as an intermediary between the authorities and Travellers concerning the fitting-out and maintenance of stopping sites.

J. Racial discrimination in the private sector (CERD/C/60/CO/14, para. 16)

310. The following paragraphs contain Switzerland's response to the Committee's request for information concerning legislation in force prohibiting racial discrimination within the private sector in fields such as employment, housing, education, health and access to public places.

1. General information

311. Concerning the prohibition of all discrimination and the possibility of a horizontal effect on the private sector, see the initial report (CERD/C/270/Add.1, para. 57) and the second and third periodic reports (CERD/C/351/Add.2, paras. 86-88).

312. In addition to provisions guaranteeing fundamental rights (Federal Constitution, ECHR, International Covenant on Civil and Political Rights), Swiss law contains provisions that help to

²¹⁹ Systematische Gesetzessammlung des Kantons Basel Landschaft (SGS) 100, art. 109: "Kanton und Gemeinden helfen Fahrenden bei der Suche nach Standplätzen" (Systematic collection of the laws of the canton of Basel-Landschaft, 100, art. 109: "The canton and communes shall assist Travellers in finding long-term stopping sites").

²²⁰ Systematische Gesetzessammlung des Kantons Aargau (SAR) 110, art. 148: "Der Kanton kann in Zusammenarbeit mit den Gemeinden nichtsesshaften ethnischen Minderheiten geeignete Örtlichkeiten für einen besseren Aufenthalt zur Verfügung stellen" (Systematic collection of the laws of the canton of Aargau, 110, art. 148: "The canton may, in cooperation with communes, make suitable points available to non-sedentary ethnic minorities for the purposes of improving their conditions of sojourn").

prevent discrimination in the application of particular laws. Article 35, paragraph 2, of the Federal Constitution requires the authorities to ensure that fundamental rights are also observed to the appropriate degree in relations between individuals. Courts may therefore, through suitable interpretation of civil-law rules in a private-law situation and by reference to the State's duty of protection, enforce the prohibition of all forms of discrimination in dealings between private persons.

313. Swiss private law is based on the concept of individual autonomy. As regards the law of obligations that autonomy is materialized in the principle of contractual freedom, which entails, inter alia, the following freedoms: to transact, to choose the other party to the contract, to choose the content and form of the contract and to terminate a contract. Freedom to transact and the freedom to choose the other party to the contract may exceptionally be limited by constraints on the contracting parties. Constraints of this kind are founded either on a contract or on law. Pursuant to the Constitution, private persons may in principle make distinctions where the same action by the State would be seen as unconstitutional inequality of treatment or discrimination.

314. In accordance with case law and the prevailing doctrine, and other than in a few special cases, the prohibition of all forms of discrimination can in principle have no direct effect on relations between private individuals. In a recent judgment, the Federal Supreme Court²²¹ held that, in the absence of explicit legal provisions, the existence of an obligation to contract could quite exceptionally be deduced from general principles of private law. In the Court's view, such an obligation could be said to exist when all four of the following conditions were met:²²²

- The service in question was on general and public offer;
- The service concerned a usual need, was available to virtually everyone and was availed of in daily life;
- Because of the service provider's domination of the market, potential customers had no acceptable alternative for covering their normal needs;
- The service provider put forward no objectively justified reasons for his refusal to contract.

315. It can be seen from the above that, a few exceptions apart, there is no general obligation to contract in Swiss private law. Consequently, providing that they do not breach criminal law, private persons may in their private legal relations conclude contracts -- for example, employment contracts or accommodation leases -- with whom they wish, notwithstanding the prohibition of racial discrimination.

316. In the private sector, Swiss civil law recognises the principle of protection of personality rights (Civil Code (CC), art. 28). This applies not only to the person's moral integrity, but also to their professional and social standing. Racially motivated defamation that could be considered as

²²¹ ATF 129 III 35.

²²² Bucher, Nicht "Kontrahierungspflicht" – Schon eher Schutz vor Boykott (Not "an obligation to contract" so much as protection against boycotting), Recht 2003, book 3, p. 101-115.

infringing human dignity would therefore be a breach of the civil-law principle of protection of personality rights.²²³

2. Employment

317. The following may be said concerning the law of employment contracts.²²⁴

318. In its responses to two parliamentary questions concerning racial discrimination in employment,²²⁵ the Federal Council said that strict enforcement of the existing provisions should take priority over the introduction of special legislation to combat discrimination in employment. Before consideration was given to introducing new legislation, businesses and social partners should be given the chance and the time to cooperate voluntarily in developing tools for prevention and action. The Council also expressed its belief that success in combating discrimination depended on measures at various levels to promote the integration of foreigners.

319. In the event of injury to honour as a result of racially motivated defamation in employment, article 28 of the CC applies.²²⁶ Protection of personality rights is also guaranteed by article 6 of the LTr.²²⁷ Employers must therefore take all necessary steps to protect employees' personal integrity.

320. Article 328 of the Code of Obligations (CO)²²⁸ provides that employers must protect and respect employees' personality rights in labour relations. That implies obligations to protect against both racial harassment and emotional abuse (mobbing) and to observe the principle of equal treatment.

321. Article 336 of the CO provides that dismissal of an employee is wrongful when motivated by an inherent feature of the person, such as their ethnic origin, that has no connection with the employment relationship or is not seriously prejudicial in some vital respect to work in the business. For further information, see the second and third periodic reports (CERD/C/351/Add.2, para. 87).

322. On the basis of the above provisions, labour tribunals have, in two separate cases, sentenced employers to pay compensation for having, because of the persons' origin, refused to employ Swiss job applicants who were not of Swiss origin. The Zurich tribunal based its decision on article 28 of the CC and described the employer's attitude as a serious infringement of the injured

²²³ Caplazi, "Wissentransfer" gegen Diskriminierung in der Arbeitswelt ("Knowledge transfer" against discrimination in the work environment), humanrights.ch Newsletter No. 1, June 2004, p. 3.

²²⁴ Egger/Bauer/Künzi, Möglichkeiten von Massnahmen gegen rassistische Diskriminierung in der Arbeitswelt – Eine Bestandesaufnahme von Problemlagen und Handlungsmöglichkeiten (Combating racial discrimination in the work environment -- An inventory of problems and means of action), study commissioned by the SLR, Bern, March 2003 (available only in German).

²²⁵ Question from Cecile Bühlmann, 19 June 2003, "Racial discrimination in employment" (03.3372), and Green Group motion, 17 December 2004, "A law against racial discrimination in employment" (04.3791).

²²⁶ RS 210.

²²⁷ RS 822.11.

²²⁸ RS 220.

party's personality rights.²²⁹ The Lausanne tribunal held that there had been a breach of the obligation in article 328 of the CO to protect employees' personality rights.²³⁰

323. Collective labour agreements providing expressly for non-discrimination vis-à-vis immigrant workers are still rare in Switzerland. The non-discrimination principle is written into the collective labour agreements of the Post Office, the telecommunications company Swisscom and the Federal Railways. The grounds on which the agreements prohibit discrimination include, in addition to sex and health, origin, culture, language, religion and lifestyle. The Post Office agreement also lists the spheres in which the prohibition of all forms of discrimination applies and the measures for its enforcement.²³¹

324. With the assistance of the Fund for anti-racism and human rights projects, the SLR commissioned a study entitled "A discrimination-free working environment".²³² After reviewing the means available to combat discrimination in employment, this proposes concrete choices. The study was presented and publicly discussed at a seminar attended by senior representatives of employers' associations, trade unions, SECO and the Federal Office for Professional Education and Technology (OPET).

325. In 2003, following a study of the topic, the FCF issued recommendations aimed at improving the integration of immigrants in the labour market. It said that all the actors concerned must work to improve the situation on the labour market of immigrants legally present in Switzerland. State bodies, social partners and private business too had a contribution to make. The relevant principles were those of equal treatment of Swiss and foreign workers and equality of opportunity and non-discrimination in training and people's working life. On the basis of those principles, which, it said, were decisive for the improvement of foreigners' situation, the Commission recommended: facilitation of young people's access to employment, knowledge development to make finding a job easier, and measures to further integration in businesses.²³³

3. Housing

326. At present, the demand for housing exceeds the supply.²³⁴ Lessors are therefore able to choose among a large number of potential tenants -- the type of situation in which foreigners may find themselves at a disadvantage. For example, one owner stated in his advertisement that "for demographic reasons" he wanted his future tenant to be a Swiss passport-holder.²³⁵ A number of

²²⁹ Zürich Labour Tribunal, judgment of 13 January 2006, AN05 04 01.

²³⁰ Lausanne Labour Tribunal, judgment of 1 June 2005.

²³¹ Egger/Bauer/Künzi, Möglichkeiten von Massnahmen gegen rassistische Diskriminierung in der Arbeitswelt – Eine Bestandesaufnahme von Problemlagen und Handlungsmöglichkeiten (Combating racial discrimination in the work environment -- An inventory of problems and means of action), Bern, March 2003, p. 63.

²³² RS 220.

²³³ Integration and employment -- Recommendations of the FCF for improving immigrants' integration in the labour market, November 2003, http://www.eka-FCF.ch/d/Doku/Integration_Arbeit_Empfehlungen_2003_d.pdf

²³⁴ In 2003, the dwelling vacancy rate in Switzerland was 0.91%. Housing is a rare commodity, especially in conurbations. In the canton of Geneva, the proportion of vacant dwellings is 0.17%. Housing market review, May 2004, Federal Housing Office, www.bwo.admin.ch.

²³⁵ www.espace.ch, *Berner Zeitung*, Bernhard Ott, "Nur für Schweizer Mieter" (For Swiss tenants only", 6 July 2004.

projects have been undertaken in the hope of improving the situation. The following are two examples:

- The city of Bern has for some time been running a roundtable for property managers and courses for concierges and real estate agency staff with a view to helping them deal with intercultural and racial disputes in buildings under their responsibility;²³⁶
- In the canton of Zurich, real estate agency staff in key positions are given awareness training and other projects for improving relations and tenant satisfaction in problem neighbourhoods are planned.²³⁷

327. For national projects, see paragraphs 181-183 above.

328. The general comments in paragraphs 311-316 above concerning the concept and limits of individual autonomy also applies to real estate rental law. If a lease is terminated for racist reasons, the lessee can invoke in his or her defence the law on the protection of personality rights(CC, art. 28) or on the principle of good faith (CC, art.2).

329. The freedom to contract does not permit lessors to refuse, on grounds of vague apprehensions, antipathy or a negative attitude in principle towards a certain category of persons, suitable replacement tenants proposed to them by a tenant who terminates his lease early. The Federal Supreme Court has ruled that asylum-seekers are suitable replacement tenants and that lessors do not have the right to refuse them merely on account of their legal status.²³⁸

4. Education

330. During the period of compulsory schooling, education is basically within the competence of the cantons. Elementary education (primary and lower secondary (“secondary I”) levels) is compulsory and must be free for all children attending public schools. Parents have the option of sending their child to a private school.²³⁹ Pursuant to the principle of individual autonomy, private schools set their own admission criteria.

331. After completing the period of compulsory schooling, 90% of young people continue in education. At the post-compulsory level (upper secondary (“secondary II”)), they have a choice between general education (pre-university and diploma-level schools)²⁴⁰ and vocational training. Tertiary level B includes the advanced vocational colleges and institutions delivering vocational certificates or higher vocational certificates. This sector is governed by the recent Vocational Training Act (LFPr). Tertiary level A includes the universities, the federal institutes of

²³⁶ Welten unter einem Dach (Worlds under one roof), Bern City Integration Coordination Office, www.bern.ch.

²³⁷ Domicil Wohnkultur – Dialog statt Konfrontation (Domicil Lifestyle Association– Dialogue instead of confrontation), www.domicilwohnen.ch.

²³⁸ ATF 119 II 36 et seq., 38 et seq.; 117 II 156 et seq., 159.

²³⁹ According to information from CDIP, the proportions of pupils enrolled in private schools were 2.3% at the primary level and 5.4% at the lower secondary level. Swiss contribution to the Eurybase information database on education systems in Europe, status on 1 January 2001.

²⁴⁰ At this level, some 11% of pupils attend private schools (information from CDIP, Eurybase as at 1 January 2001).

technology and the universities of applied science. Most of these are public-sector institutions and are therefore subject to public law.²⁴¹ Vocational training is very important in Switzerland: two thirds of young people complete education of this kind. As economic and social conditions change, the vocational training market is coming under increasing strain. The young people who have the most difficulty in finding vocational training places are those with poor school records and those from the latest influx of immigrants.²⁴² Natives of the former Yugoslavia are the worst affected. In immigrant families, the search for a training place is often complicated by poor knowledge of the local language.²⁴³

332. Applying a method of analysis used by the International Labour Organisation, Swiss researchers have measured the degree of discrimination against young foreigners seeking their first job.²⁴⁴ At equivalent skill levels and even when they had been to school in Switzerland, young immigrants had a much lower-than-average chance of finding a job if their parents came from outside the European Union.

333. The Confederation is aware of these difficulties and has therefore taken steps to improve young people's chances of finding a training place.

334. Specialized staff point out vacancies to young people with no apprenticeship places, advise them and assist them in their contacts with businesses. In the case of immigrants, these services are provided by people from their own cultures.

325. In recent years there has been an increase in the inflow of young immigrants who are aged over 16 and are therefore too old to attend a school providing compulsory-level education. OPET has recommended²⁴⁵ the establishment for new immigrants aged between 15 and 21 of bridging programmes to help them with subjects in which they are weak so that they can go on to join regular vocational training programmes. It has also called for businesses that offer apprenticeships and vocational training schools to show more understanding and sympathy for these young people's situation. Providing they are in keeping with the OPET recommendations, the Confederation provides financial support for cantons' bridging programmes. A CDIP survey of cantons has found that the recommendations are followed almost everywhere.

336. The second Ordinance on apprenticeship places²⁴⁶ was designed as an action programme involving investment by cantons, vocational associations, institutions and the Confederation in future-oriented projects at the secondary II level of education. The programme lasted from 2000 to 2004 and provided support totalling more than 100 million francs for innovative projects. The aims were to ease the structural problems affecting the availability of apprenticeship places,

²⁴¹ The proportion of students attending private institutions is 17.6% (information from CDIP, Eurybase as at 1 January 2001).

²⁴² Report on the availability of apprenticeships, OPET, June 2004.

²⁴³ Final report of the "Apprenticeship places 2003" task force, OPET, 22 March 2004.

²⁴⁴ *Forum* No. 3/2004, Rosita Fibbi, Bülent Kaya, Etienne Piquet, "Quand s'appeler Pierre, Afrim ou Mehmet fait la difference" (When it makes a difference whether you're called Pierre, Afrim or Mehmet), pp. 38-41, Neuchâtel, Swiss Forum for Migration and Population Studies, www.migration-population.ch.

²⁴⁵ OPET, Recommendation 2000 on bridges between compulsory education and vocational training, Bern, May 2000, www.bbt.admin.ch/berufsbi/publikat/transit/d/ofform.pdf.

²⁴⁶ RS 412.100.41.

increase the number of training places on offer and promote equality between men and women. The programme was replaced by the LFPr²⁴⁷ which came into force on 1 January 2004. The LFPr, in which account has been taken of the very significant changes in the world of vocational training and work, meets present-day needs. One of the main tasks of education and training is to ensure the integration in the economy and society of young people and adults with gaps in their educational background. As requirements become ever more demanding, the educational opportunities available to the gifted and to the less gifted must be expanded to suit. It is therefore planned to establish programmes with a practical focus and their own qualifications profile for less able pupils.

5. Public health

337. Immigrants mostly belong to disadvantaged social strata and job categories. This has an adverse effect on their health, a problem compounded by the precarity of their situation, especially if they are in Switzerland illegally. Language problems and structural and social handicaps such as exclusion and discrimination are further obstacles that they have to overcome in order to access health services. In recent years, research and practical experience has shown that accessing the health system is more difficult for foreigners, who constitute some 21% of the resident population, than for Swiss.

338. To deal with this problem, the Confederation has developed the "Migration and Health 2002-2007" strategy,²⁴⁸ which is based on the results of a large-scale study concerning migration. The Federal Council adopted these strategic guidelines for the Confederation regarding health and migration in the summer of 2002. Its long-term objective is the creation of a health system that meets the needs of, and makes access to health services easier for a society altered by migration. To remove the barriers to their access to regular health care, it is planned to create health-service coordination offices offering migrants special services and help from interpreters and intercultural mediators.

339. The Migration and Health 2002-2007 strategy focuses on the following five areas:

- Training (initial and in-service);
- Information,²⁴⁹ prevention and health promotion;
- Health care;
- Therapy for traumatised asylum-seekers and refugees, and
- Research (bases, evaluation and monitoring).

²⁴⁷ SR 412.10.

²⁴⁸ The strategy was elaborated by the Federal Office for Public Health, together with ODR and IMES (which were subsequently merged to form the FOM)) and the FCF. For the revised version, produced in February 2002 after consultation with the Offices, see <http://www.bag.admin.ch/themen/gesundheitspolitik/00394/00395/00396/index.html?lang=fr>. On 18 May 2005, the Federal Council extended the strategy by a year, to 2007. For additional information on migration and health, visit www.bag.admin.ch/themen/gesundheitspolitik/00394/index.html?lang=fr.

²⁴⁹ The new website www.migesplus.ch provides health, social assistance and education specialists with an overview of the health information media available in immigrants' languages.

340. Concern for migrants is not limited to persons authorized to reside in Switzerland: asylum-seekers and illegal immigrants are a real challenge for the preventive and the curative sectors of public health services (see above, paras. 184-186). The Confederation has a general duty to protect the health of persons living in Switzerland, whether they are Swiss nationals or foreigners. Its obligations as regards the health of immigrants are implicit in the general objective of a comprehensive approach to health. Like the above-mentioned strategy, they are based on the three principles of equal opportunity, good service and personal responsibility.

341. To sum up, efforts are in hand to make the Swiss health system more open to immigrants and more responsive to the particular needs of these economically and socially disadvantaged groups of people. The need for special measures stems less from cultural differences than from problems of communication and social handicaps. The improvements being pursued could also be of benefit to a number of marginalized groups of native Swiss, who are often faced with similar problems to those of immigrants.²⁵⁰

6. Access to any place or service intended for use by the public

342. On this topic, see the second and third periodic reports (CERD/C/351/Add.2, paras. 213-214).

343. Refusal of service within the meaning of the fifth paragraph of article 261 bis of the CP is a form of racial discrimination. It consists in refusal "to provide a public service to a person or group of persons on account of their racial, ethnic or religious affiliation", so that, for the offence to be constituted, the service in question must be offered publicly. What is at issue, therefore, is a quasi-public relationship that, as such, is no longer protected by the rules on privacy. Since it is not easy to prove that the offence has been committed -- it is rare for anyone to confess during proceedings to have acted for a racial motive -- there have been few convictions under this provision. It is unquestionably very difficult to prove in practice that it was indeed on account of someone's racial, ethnic or religious affiliation that a service was refused.

344. There have, however, been cases in which law enforcement authorities have had to deal with refusals of service. Most have concerned refusal of admission to clubs. The refusal to certain groups of a service intended for the public is not a criminal offence when there is objective justification for it. The courts have yet to reach a definitive decision as to what constitutes such justification. Refusal is hard to justify when the group of persons in question has not previously caused problems by reason of improper behaviour.

K. Article 14 of the Convention (CERD/C/60/CO/14, para. 17)

345. On 19 June 2003, Switzerland recognized the individual communications procedure under article 14 of the Convention. The FCR offers its help to affected persons, counselling and support centres and lawyers wishing to know more about the procedure for submitting communications to the Committee.²⁵¹

²⁵⁰ *Forum* No. 3/2004, Spang/Hanselmann, Bundesstrategie "Migration und Gesundheit 2002-2006", Struktureller Ansatz unter Berücksichtigung der Zielgruppen (Federal "Migration and Health 2002-2006" strategy, Target-group oriented structural approach), pp 21-26, Neuchâtel, Swiss Forum for Migration and Population Studies, www.migration-population.ch/fileadmin/sfm/publications/f/03_forum.pdf

²⁵¹ <http://www.edi.admin.ch/ekr/beratung/00556/00558/index.html?lang=fr>.

**L. Implementation of the Durban Declaration and Programme of Action
(CERD/C/60/CO/14, para. 18)**

346. Switzerland participated actively and successfully in the preparation and organization of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. Far from being the beginning or end of a process, the Swiss presence at the Durban Conference was only one effort among many: Switzerland is constantly developing and multiplying its tools to promote awareness of, and to prevent and combat discrimination. In its opinion, therefore, there is no need for a new programme of action to implement the results of the World Conference. What is required is to take a critical look at the existing tools in the light of the Durban experience and to set priorities accordingly.

347. The first step the country took was to post on the Internet and publish in booklet form, before the end of 2002, French and German versions of the Durban Declaration and Programme of Action.

348. On the basis of the discussions at, and results of the Durban Conference, the SLR²⁵² has defined four main areas on which, together with the competent organs, it will focus during the coming years:

- (a) Protection of, and assistance to potential victims, professionalization of conflict prevention and intervention, establishment and professionalization of organizations of people in targeted groups such as people of colour or Travellers: the Service has been charged with setting up, together with cantons and private bodies, a network of counselling and support centres for victims of racial discrimination. Three projects within the framework of National Research Programme 51, "Social integration and social exclusion", will deal specifically with the history of discrimination against Travellers in Switzerland;
- (b) Institution of systematic monitoring of racist and discriminatory acts: the Federal Government has tasked the SLR with studying the possibility of instituting such monitoring in the light of the need to harmonize it with similar efforts elsewhere in Europe. The pilot project of this kind is to be supported under National Research Programme 41, "Right-wing extremism: causes and countermeasures";
- (c) Prevention of discrimination and integration of immigrants: the Confederation is aware of what remains to be done in this sphere and gives cantons substantial support in that regard. The competent authorities are the FOM and the FCF;
- (d) Combating of new forms of racism: the Federal Council recognises right-wing extremism as a risk factor, and not only because of some young people's propensity to violence. An FDJP working group has made concrete proposals for curbing it. In addition, the Federal Council has established a research module for the elaboration of a series of projects under the National Research Programme "Right-wing extremism: causes and countermeasures" (NRP 40+).

²⁵² The SLR is, for Switzerland, the body responsible for implementation.

List of abbreviations

ALCP	Agreement on the Free Movement of Persons
ATF	Decisions of the Federal Supreme Court (official compendium)
AVS/AI	Old-age and survivors' insurance/disability insurance schemes
CC	Civil Code of 10 December 1907 (RS 210)
CCJDP	Conference of Cantonal Justice and Police Directors
CDAS	Conference of Cantonal Directors of Social Affairs
CDI	Conference of Communal, Regional and Cantonal Integration Officers
CDIP	Swiss Conference of Cantonal Education Directors
CO	Code of Obligations of 30 March 1911
CP	Swiss Criminal Code of 21 December 1937 (RS 311.0)
CPM	Military Criminal Code of 13 June 1927 (RS 321.0)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CYCOS	Swiss Coordination Unit for Cybercrime Control
DDC	Agency for Development and Cooperation
DDPS	Federal Department of Defence, Civil Protection and Sports
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (RS 0.101)
ECRI	European Commission against Racism and Intolerance
EFTA	European Free Trade Association
EU	European Union
FCF	Federal Commission for Foreigners
FCR	Federal Commission against Racism
FDFA	Federal Department of Foreign Affairs
FDJP	Federal Department of Justice and Police
FF	<i>Feuille fédérale</i> (Official Gazette)
FOM	Federal Office for Migration
FSO	Federal Statistical Office
ICA	Independent Complaints Authority for Radio and Television
ILO	International Labour Organization
IMES	(former) Federal Office of Immigration, Integration and Immigration

JAAC	Jurisprudence des autorités administratives de la Confédération (Decisions of the Administrative Authorities of the Confederation)
LAMal	Federal Health Insurance Act of 18 March 1994 (RS 832.10)
LASi	Asylum Act of 26 June 1998 (RS 142.31)
LAVI	Aid to Victims of Offences Act of 4 October 1991 (RS 312.5)
LDP	Federal Act concerning Political Rights of 17 December 1976 (RS 161.1)
LEtr	Federal Act on Foreign Nationals (02.024)
LFIS	Federal Act on Secret Investigations of 20 June 2003 (RS 312.8)
LFPr	Vocational Training Act (RS 412.10)
LMSI	Federal Act instituting Measures for the Maintenance of Internal Security (RS 120)
LPers	Act on Federal Personnel (RS 172.220.1)
LSCPT	Federal Act on Surveillance of Postal and Telecommunications Traffic (RS 780.1)
LSEE	Federal Act on Temporary and Permanent Residence of Foreigners of 26 March 1931 (RS 142.20)
LTr	Federal Act on Labour in Industry, Handicrafts and Trade (Labour Act) of 13 March 1964 (RS 822.11)
NGO	Non-governmental organization(s)
NRP	National Research Programme
ODR	(former) Federal Office for Refugees
OIE	Ordinance on the Integration of Foreigners of 13 September 2000 (RS 142.205)
OLE	Ordinance Limiting the Number of Foreigners of 6 October 1986 (RS 823.21)
OPET	Federal Office for Professional Education and Technology
OSCE	Organization for Security and Co-operation in Europe
PAD	Political Affairs Department
RO	<i>Recueil officiel des lois fédérales</i> (Official compendium of federal statutes)
SECO	State Secretariat for Economic Affairs
SLR	Federal Service for Combating Racism
UDC	Democratic Union of the Centre or Swiss People's Party