



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

Distr.: General
14 May 2013
English
Original: French

Committee on the Elimination of Racial Discrimination

**Reports submitted by States parties under
article 9 of the Convention**

**Seventh to ninth periodic reports of States parties due
in 2012**

Switzerland*, **

[20 December 2012]

* This document contains the seventh to ninth periodic reports of the Swiss Confederation, due in 2010 and 2012 respectively, submitted in one document. For the fourth to sixth periodic reports and the summary records of the meetings at which the Committee considered them, see documents CERD/C/CHE/6 and CERD/C/SR.1892 and CERD/C/SR.1893.

** In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not edited before being sent to the United Nations translation services.

Contents

	<i>Paragraphs</i>	<i>Page</i>
Introduction.....	1–7	4
I. General information	8–118	5
1. Changes in demographic structure.....	9–23	5
2. Constitutional and legislative foundations.....	24–51	7
3. General policy against racial discrimination.....	52–118	14
II. Consideration of the implementation of articles 2 to 7 of the Convention	119–250	35
1. Article 1: Definition of racial discrimination.....	119–127	35
2. Article 2: Condemnation of racial discrimination.....	128–131	37
3. Article 3: Condemnation of apartheid.....	132	38
4. Article 4: Measures to make certain acts of racial discrimination punishable by law	133–141	39
5. Article 5: Elimination of racial discrimination with regard to certain human rights	142–227	42
6. Article 6: Effective remedies	228–234	59
7. Article 7: Measures in the fields of teaching, education, culture and information	235–250	60
III. Response to the Committee’s concluding observations of 14 August 2008.....	251–385	64
1. General remark	251	64
2. Persistence of hostility towards certain minorities (paragraph 7 of the concluding observations).....	252–258	64
3. Federalism (paragraph 8 of the concluding observations).....	259–262	66
4. Anti-discrimination legislation at all levels and lack of a national plan of action (paragraph 9 of the concluding observations).....	263–268	66
5. Lack of an independent national human rights institution (paragraph 10 of the concluding observations).....	269–274	68
6. Lack of a clear and full definition of direct or indirect racial discrimination (paragraph 11 of the concluding observations).....	275–277	69
7. Information on the activities undertaken by the cantons (paragraph 12 of the concluding observations).....	278–280	70
8. Reservation to article 2 of the Convention (paragraph 13 of the concluding observations).....	281–291	70
9. Racial profiling (paragraph 14 of the concluding observations).....	292–296	72
10. Reservation to article 4 of the Convention (paragraph 15 of the concluding observations).....	297–301	73
11. Police violence (paragraph 16 of the concluding observations).....	302–325	74
12. Legislation on foreign nationals and asylum-seekers (paragraph 17 of the concluding observations).....	326–335	80

13. Naturalization process (paragraph 18 of the concluding observations)	336–342	82
14. Travellers (paragraph 19 of the concluding observations).....	343–367	85
15. Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (paragraph 20 of the concluding observations)	368–371	91
16. Implementation of the Durban Declaration and Programme of Action (paragraph 21 of the concluding observations).....	372–376	91
17. Ratification of the amendment to article 8, paragraph 6, of the Convention (paragraph 22 of the concluding observations).....	377–378	92
18. Publication of the report and concluding recommendations (paragraph 23 of the concluding observations).....	379–382	93
19. Consultation of organizations of civil society and other actors (paragraph 24 of the concluding observations).....	383–384	93
20. Other recommendations to the State party (paragraphs 25 to 27 of the concluding observations)	385	94
Acronyms and abbreviations		95
Annexes		97

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 Convention.

2. In its concluding observations, the United Nations Committee on the Elimination of Racial Discrimination (hereinafter “the Committee”) requested Switzerland to submit its seventh and eighth periodic reports, due on 14 November 2010, in a single document.³ As a result of the delay in its submission, it was agreed that these reports should be merged with the following one, namely the ninth.

3. The present report has been drawn up in accordance with the Committee’s guidelines, taking into account the decision not to draft a new common core document.⁴ Switzerland’s main demographic, economic and social characteristics and the description of its political system can therefore be found in the country’s core document.⁵

4. The present document, containing the seventh, eighth and ninth periodic reports, covers the period from August 2008 to December 2011. The statistical data run to the end of December 2010; where it has been possible to take account of more recent data, this is indicated. This report follows on from the fourth, fifth and sixth periodic reports, together with the supplementary report,⁶ that the Swiss delegation presented to the Committee on 8 and 11 August 2008.⁷ Where data are unchanged in relation to a previous period, reference is made to the report in question.

5. For ease of reading, the present report is divided into three parts:

- Part I, “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 previous reports.
- Part II examines those changes in the light of the provisions of the Convention and contains an updated commentary on its articles 1–7.
- Part III addresses the Committee’s concluding observations on the country’s fourth, fifth and sixth periodic reports. It sets out Switzerland’s position on the questions on which the Committee had expressed concern and the points regarding which the Committee had requested additional information.

6. This report has been drawn up by the Directorate of Public International Law (DDIP) of the Federal Department for Foreign Affairs (DFAE) in collaboration with the Service for Combating Racism (SLR) of the Federal Department of Home Affairs (DFI). The other federal administrative offices concerned were invited to give their opinions in accordance with the established procedure. The Federal Commission against Racism

¹ Official Compendium of Federal Statutes (RO 1995 1163 ff); Official Gazette (FF 1992, III, 265).

² Systematic Compendium of Federal Law (RS 0.104).

³ Concluding observations of 14 August 2008 (CERD/C/CHE/CO/6), para. 27.

⁴ CERD/C/2007/1.

⁵ See HRI/CORE/1/Add.29/Rev.1 of 22 February 2001.

⁶ United Nations version of Switzerland’s periodic report of 14 November 2006 (CERD/C/CHE/6).

⁷ See the summary records of the Committee’s 1892nd and 1893rd meetings (CERD/C/SR.1892 and CERD/C/SR.1893), held on 8 and 11 August 2008.

(CFR), the Federal Commission on Migration (CFM) and independent civil society bodies were also invited to give their views on the report and to submit their own reports.

7. The report has been issued in French, German and Italian and can be consulted on the websites of the Federal Department for Foreign Affairs and the Service for Combating Racism.⁸

I. General Information

8. Part I outlines the changes in the population of Switzerland since the submission of the previous periodic reports. It then summarizes the developments in domestic law and the policy being pursued by the Swiss authorities in order to combat all forms of racial discrimination.

1. Changes in demographic structure

1. Resident foreign population

9. As of the end of 2010, persons classified as permanently resident in Switzerland numbered 7,870,134, of whom 22.4 per cent were foreign nationals. At 1,766,277, the number of permanently resident foreigners was 40,354 (2.3 per cent) higher than the previous year. The number of persons settled in the country increased only slightly, while those holding a residence permit rose by 5.8 per cent. By gender, women comprised 53.1 per cent of the foreign population compared with 46.9 per cent of men.

2. Permanently resident foreign population, by nationality, 2007–2010

10. Almost two-thirds of foreign nationals (62.4 per cent, or 1,101,501 persons) came from member countries of the EU of 27 or EFTA. With 287,130 persons, Italians continued in 2010 to represent the largest foreign community in Switzerland, followed by German nationals (263,271) and Portuguese nationals (212,586). In 2010, there was a further reduction in the number of nationals from the former Serbia and Montenegro (Kosovo included). At the end of 2010, they represented 10.3 per cent of the permanently resident foreign population in Switzerland. The corresponding tables can be found in annex 1.

3. Immigration

11. As of the end of December 2011, the number of foreigners living in Switzerland totalled 1,772,279. The majority (1,147,185) came from member countries of the EU of 27 or EFTA. In 2011, they were slightly more numerous than in the previous year (4.1 per cent compared with 3.3 per cent in 2010).

12. Also at the end of December 2011, the number of nationals of other countries totalled 625,094, representing an increase of 1 per cent compared with the previous year. This trend is explained by the immigration policy of the Federal Council and by the system of admission under the Federal Aliens Act, (LETr) whereby nationals of non-member countries of the European Union can be recruited only if particularly well qualified.

13. In all, 142,471 foreigners immigrated to Switzerland in 2011 (compared with 134,171 in 2010). As for the number of those emigrating, it was slightly lower than in the previous year: in 2011, 64,038 foreigners emigrated from Switzerland (compared with 65,523 in 2010).

⁸ www.eda.admin.ch/eda/fr/home/topics/human/humri/humtr/humrep.html.

14. Immigration was most marked among nationals of Germany (12,601 persons), followed by Portugal (+11,018), Kosovo (+8,923), France (+4,370) and Eritrea (+2,575). The largest decrease concerned nationals of Serbia (-10,386), Bosnia and Herzegovina (-1,053), Croatia (-1,011), Sri Lanka (-941) and Turkey (-452), confirming the trend of previous years. The corresponding tables can be found in annex 1.

4. Asylum

15. In 2011, the number of applications for asylum increased by some 45 per cent compared with the previous year, totalling 22,251. This was the highest number since 2002. The main country of origin was Eritrea with 3,356 applications, followed by Tunisia (2,574) and Nigeria (1,895). The large increase in the number of applications is mainly explained by the crisis in the countries of the Maghreb, which since March 2011 has set many immigrants on the path to Europe.

16. In 2011, applications for asylum on which there was a first-instance decision totalled 19,467 (1,223 less than in 2010). Asylum was granted to 3,711 persons. The proportion of successful applications was 21 per cent, a 17.7 per cent increase compared with the previous year. In 2011, a total of 3,621 asylum-seekers were transferred to the competent Dublin State; monitored by the authorities, 9,461 persons left Switzerland by air. For further information, see annex 1.

5. Linguistic minorities

17. The most recent figures on the main languages spoken date from 2000, that is from the last comprehensive federal census. The official national languages are German, spoken by 63.7 per cent of the population, French (20.4 per cent), Italian (6.5 per cent), Romansh (0.5 per cent) and other languages (8.9 per cent).

18. While their proportion has remained stable on a whole, Slavic languages have gained ground at the expense of Romance languages: 1.5 per cent of the population speak a Slavic language from the former Yugoslavia, 1.3 per cent speak Albanian, 1.2 per cent, Portuguese, 1.1 per cent Spanish, 1 per cent English and 2.9 per cent another language. The great majority of foreigners speak one of the national tongues and 62.3 per cent use it as their main language.

19. In 1997, Switzerland acceded to the European Charter for Regional and Minority Languages (RS 0.441.2). It defined Romansh and Italian as regional or minority languages within the meaning of the Charter and recognized Yenish as a non-territorial language. Since 1999, Switzerland is also a party to the Framework Convention for the Protection of National Minorities (see para. 23). Under the interpretative declaration formulated by Switzerland in the context of ratification, national linguistic minorities are recognized as national minorities, including the Romansh-speaking and Italian-speaking minorities.

6. Religious minorities

20. The most recent figures on religious affiliation also date from the last federal population census in 2000. At that time, Roman Catholics (41.8 per cent) and evangelical reformists (33.0 per cent) remained 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 per cent) in the proportion of people who did not belong to any religious community, and the expansion of the Orthodox Christian and Muslim communities (see Part I, section 3.2 (b)).

21. The number of Muslims more than doubled in 10 years, rising from 152,200 to 310,800 (4.3 per cent of the resident population), a rate of growth mainly due to migratory flows from Kosovo, Bosnia-Herzegovina, the Republic of Macedonia and Turkey. The

Orthodox Christian communities were also strengthened by immigrants from Serbia, Montenegro, Bosnia-Herzegovina, the Republic of Macedonia and other countries of Central or Eastern Europe. They now total more than 130,000 (1.8 per cent) and constitute the country's third-largest Christian group. The overall size of the Jewish religious communities has remained steady at 0.3 per cent.

22. Since 2010, a structural survey is carried out annually among 200,000 persons to collect information, in particular on language and religion. The initial results of the 2010 survey are expected by June 2012. It is also planned to enlarge upon these results through a sample-based thematic survey on language, religion and culture. The first such survey will take place in 2014 and the initial results will be made known in 2015. The survey will be renewed every five years.

7. Ethnic minorities

23. In keeping with the Framework Convention for the Protection of National Minorities (RS 0.441.1), Switzerland recognizes Travellers (see section 14 of Part III, statement of position on paragraph 19 of the Committee's concluding observations) and the Jewish community (see section 3.2 (b) of Part I) as national minorities.

2. Constitutional and legislative foundations

24. The general constitutional and legislative bases for combating racism were described in Switzerland's earlier reports.⁹ The following chapter will therefore confine itself to those constitutional or legislative bases that have been modified or have come into force since then. Details of the relevant developments will be found in Parts II or III of this report.

1. Signature and ratification of international conventions

25. Since the last report, Switzerland has ratified or is considering ratifying the following conventions:

- In 2008, Switzerland ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, enabling groups and individuals to submit to the Committee claims of violations of rights protected under the Convention once domestic remedies have been exhausted. During the period under review, this procedure has not been used to contest a judgement by a Swiss court of final appeal.
- On 21 January 2011, Switzerland signed the International Convention for the Protection of All Persons from Enforced Disappearance. This Convention draws on other international human rights conventions: in addition to many substantive provisions, particularly concerning the prevention and remedying of violations, it provides for important enabling mechanisms. Preparatory work with a view to ratification of the instrument is in progress.
- The question of accession to the Convention on the Rights of Persons with Disabilities is currently under examination. The consultation procedure was completed on 15 April 2011.

⁹ See the second and third CERD reports and the core document, paras. 21 ff.

2. Revision of the Federal Constitution

26. Since 2008, the electorate has approved the following popular initiatives entailing changes to the Constitution:

- On 28 November 2010, the popular initiative on the expulsion of foreign criminals was adopted by the cantons and the people by a majority of 52.9 per cent of the votes, against the advice of the Federal Council and the Parliament. The initiative is designed to ensure that foreigners convicted of certain offences or of fraudulently obtaining social security or social assistance benefits are deprived of all their legal rights to remain in Switzerland and are expelled from the country. The persons concerned are to be banned from returning to Switzerland and punished if they contravene the ban or if they enter Switzerland illegally by other means. A transitional clause in the Federal Constitution provides that the new constitutional provisions are to be transposed into law within five years. On 23 May 2012, the Federal Council submitted for consultation two proposals for implementing the new constitutional provisions. It is now open to the cantons, political parties and interested stakeholders to express their views on the Federal Council's proposals.¹⁰ In 2010, the Federal Commission on Migration published the study "Wegweisen. Ausschaffen. Ein Grundlagenbericht zu den ausländerrechtlichen Folgen der Straffälligkeit" (in German only), which describes the cantons' current practice.
- The popular initiative against the construction of minarets was adopted on 29 November 2009 by a majority of 57.5 per cent of the votes. The Federal Council and a large majority of the members of the two Chambers of Parliament had recommended that the initiative be rejected. Conscious that this vote could be interpreted as a sign of growing discrimination and intolerance towards the Muslim population, the Federal Council did not wait for the initiative to be adopted to issue information in the interest of transparency, underlining in particular that in Switzerland initiatives can be launched by private individuals and do not necessarily reflect the position of the Federal Government or the Parliament.¹¹ In particular, the Federal Council made special efforts to strengthen the dialogue with members of the Muslim communities in Switzerland (see on this subject section 3.2 (b) of Part I).
- The ban on the construction of minarets was the subject of a number of appeals to the European Court of Human Rights. However, the Court declared them inadmissible on the grounds of lack of entitlement to bring proceedings.¹² Even before the vote, the aim of the initiative as well as the posters displayed by its author had provoked a great deal of debate. A number of municipalities requested an expert opinion from the Federal Commission against Racism concerning the content of these posters, suspected of being racist. The Commission came to the conclusion that, in view of the priority given to freedom of opinion, the posters could not be said to infringe the criminal provision against racism (article 261 *bis* of the Swiss Criminal Code) but that they did fuel prejudice by suggesting that the Muslim community represented a danger. On the basis of this opinion, some municipalities decided to ban display of the posters in the public arena while others publicly labelled them discriminatory.¹³

¹⁰ See Federal Department of Justice and Police (DFJP) press release of 23 May 2012.

¹¹ See the Federal Council's reply to the request for information from Kathy Ricklin 09.3221, 13 May 2009.

¹² Decisions of 28 June 2011 on the admissibility of appeals Nos. 66274/09 and 65840/09 *Ouardiri v. Switzerland* and *Ligue Des Musulmans de Suisse and Others v. Switzerland*.

¹³ Federal Commission against Racism press release of 7 October 2009.

27. Given that they violate commitments under international human rights law, these two initiatives have provoked wide-ranging debate on popular initiatives in Switzerland and on the rules governing them. Responding to parliamentary initiatives on the subject, the Federal Council has reached the conclusion that a preliminary examination of substance and stricter conditions of validity for popular initiatives should make it possible to reconcile the draft constitutional provisions with international law.¹⁴

28. Under existing constitutional law, the Federal Assembly must declare invalid any popular initiative that violates the peremptory norms of international law. This is why the preliminary examination by the Federal Chancery is essentially confined to formal questions. It might also be possible for substantive monitoring to be carried out jointly by the Federal Office of Justice and the Directorate of Public International Law. Prior to the collection of signatures, these authorities would submit to the authors of any popular initiative an opinion on the compatibility of their text with international law. In its report, the Federal Council also proposes that the result of this preliminary examination (in favour or against) should appear on the lists of signatories.

29. This measure would not however prevent popular measures incompatible with international law from being endorsed. The Federal Council therefore proposes as an additional measure that the Parliament should declare invalid any popular initiative that violates the basic principles of fundamental laws. A case in point would be a popular initiative that advocated the reintroduction of the death penalty, since it would violate the fundamental right to life. On the other hand, the anti-minarets initiative in 2009 would not have been declared invalid on this criterion.

30. The Parliament debated these proposals in February 2012 and invited the Federal Council to prepare a specific draft law or constitutional provision with a view to their implementation.

3. Overview of the amendments to federal law

(a) Criminal law and criminal procedure

31. In keeping with the Statute of the International Criminal Court, known as the Rome Statute, and to ensure more effective, transparent and indefatigable prosecution of genocide, crimes against humanity and war crimes, Switzerland has amended its Criminal Code (CP; RS 311.0) and Military Criminal Code (CPM; RS 321.0). The amendment, which came into effect on 1 January 2011, served in particular to extend the scope of the provision on genocide to include social and political groups, to incorporate crimes against humanity in Swiss law and to define war crimes more precisely. Switzerland had already ratified the Statute of the International Criminal Court in 2001. It went on to enact the legal provisions necessary to cooperate with the International Criminal Court. Swiss criminal law was subsequently adapted to make it wholly compatible with the Rome Statute (on the subject of other adaptations of the Criminal Code, see the remarks in section 4 of Part II).

32. The new Swiss Code of Criminal Procedure of 5 October 2007 (CPP; RS 312.0), replacing the 26 cantonal codes of criminal procedure and the old criminal procedure act, came into force on 1 January 2011. It provides in particular for strengthening the rights of the defence, extending victims' rights and expanding witness protection measures. A separate law governs the procedure applicable to minors, placing the emphasis on their protection and education. Ending the disorganization of the law on criminal procedure

¹⁴ Report of the Federal Council supplementing the report of 5 March on the relationship between international law and domestic law, 30 March 2011 (FF 2011 3401).

makes it easier to observe the principles of equality before the law and consistency in its application, and to combat crime more effectively.

(b) *Civil law and civil procedures*

33. The most significant development in realm of civil law concern the new requirements concerning marriage, which are set out in section 5.4 (d) of Part II.

34. The Civil Procedure Code of 19 December 2008 (CPC; RS 272) came into force on 1 January 2011. It replaces the 26 cantonal civil procedure laws. The new bill enables civil claims to be pursued in a simpler and more unified manner throughout the country. Under the terms of article 89 of the Civil Procedure Code, organizations can bring an action for violation of the personality of the members of a particular group of individuals. This right of litigation makes for more effective protection of the rights of protection relating to violations of personality.

4. Other legislative adaptations and amendments

(a) *Legislation on migration*

35. On 24 September 2006, the people adopted the new Federal Aliens Act of 16 December 2005 (LEtr; RS 142.20) and the amendment of the Asylum Act of 26 June 1998 (LAsi; RS 142.31).¹⁵ Implementation took place in stages. A first set of measures came into effect on 1 January 2007; the remaining provisions on the partial amendment of the Asylum Act and the new Federal Aliens Act as well as the implementing ordinances came into effect on 1 January 2008.¹⁶

(i) Federal Aliens Act (LEtr)

36. Prior to 1 January 2008, the main legislative provisions on foreign nationals were contained in the ordinances of the Federal Council. The entry into force of the Federal Aliens Act (conceived as a framework law) made for broader regulation of the legal status of foreign nationals and, in so doing, conferred greater political legitimacy on the regulations governing them.

37. Given that the Agreement on the Free Movement of Persons of 21 June 1999 (ALCP; RS 01.142.112.681) has governed the status of citizens of EU/EFTA countries since 1 June 2002, LEtr is mainly applicable to nationals of third States. However, it remains applicable in fields not covered by the ALCP or in those fields where its provisions are more favourable.

38. The Federal Aliens Act has improved the legal status of many foreigners, in particular by extending family reunification to holders of short-term residence permits and students (subject to compliance with certain conditions such as the availability of suitable accommodation). Moreover, where the marital union has been dissolved, the spouse and children of a person of Swiss nationality or holder of a residence permit can claim the right to a residence permit after three years of marriage provided they are well integrated. Where the person's situation is extremely serious (for example, in the case of domestic violence), a residence permit may be granted earlier. LEtr also lays down principles with regard to integration. In addition, with a view to encouraging the early integration of children, it introduces a system of time limits for family reunification.

¹⁵ FF 2006 8953.

¹⁶ RO 2007 5437.

39. In keeping with its commitment as a member State of the Schengen area,¹⁷ Switzerland amended the Federal Aliens Act on 1 January 2011 to bring it into line with the European Return Directive.¹⁸ The goal of the Directive is to achieve a minimum level of harmonization of the procedures applicable to nationals of countries that are not Schengen member States (third countries) whose migratory status is irregular. It includes provisions relating to deportation orders, to custody prior to enforcement of the orders, to deportation or expulsion and to an entry ban. It improves cooperation between Switzerland and other Schengen States in enforcing deportations to third countries. The harmonization of procedures, for example, simplifies the organization and execution of special joint flights. The introduction of uniform procedures reduces the risk that irregular migration will affect different States unequally as a result of divergences in their regulations. In addition, the Directive reduces the maximum period of detention prior to deportation to 18 months whereas LEtr had previously set it at 24 months.

40. In November 2011, the Federal Council issued a draft partial amendment of LEtr in the form of a consultation document and a draft adaptation of five federal laws aimed at regulating integration more strictly for all and involving the various parties more closely. The projected changes form part of the integration plan adopted by the Federal Council. Through cantonal integration programmes, the Confederation and the cantons wish to encourage integration by defining common objectives and freeing up additional financial resources to a maximum of 40 million francs. The dialogue on integration with the main partners is to be intensified.

41. With regard to undocumented persons, the Federal Council has circulated for consultation a draft amendment to the implementing ordinance of LEtr, which is aimed at giving undocumented young people access to learning opportunities (see section 5.5 (e) of Part III).

(ii) Asylum Act (LAsi)

42. The partial revision of the Asylum Act, adopted by Parliament on 16 December 2005, came fully into effect on 1 January 2008 (certain parts of the Act having been operative since 1 January 2007).¹⁹

43. Like the Federal Aliens Act, the Asylum Act was adapted piecemeal in the framework of the Schengen and Dublin Agreements²⁰ and subsequent developments. On 26 May 2010, the Swiss Government adopted its message on the new partial amendment. The proposals set out in the draft amendment were primarily aimed at accelerating the asylum procedure to make it more effective.

- The summary dismissal procedure (whereby the application is rejected without entering into the substance of the case) will only be applied (i) under the Dublin procedures; (ii) in the case of removal to a safe third State; (iii) in cases where the grounds cited by the asylum seeker are of an exclusively medical or economic nature. In other cases a substantive procedure will be followed.

¹⁷ Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (RS 0.362.31).

¹⁸ Directive 2008/115/CE of 16 December 2008.

¹⁹ The changes involved in this amendment were mentioned in the fourth, fifth and sixth periodic reports submitted by Switzerland in September 2006 (FF 2010 4035, FF 2011 6735).

²⁰ Agreement between the Swiss Confederation and the European Community concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in a Member State or in Switzerland (AAD; RS 0.142.392.68).

- Persons placed at serious risk or fearing with reason to be so on the sole grounds of conscientious objection or desertion will not be recognized as refugees in Switzerland and will therefore not be granted asylum. If enforcement of the removal order proves to be unlawful, for example because of the risk of inhuman treatment in the country of origin, those concerned will be admitted to Switzerland on a provisional basis.
- Abuses involving the pursuit of political activities in Switzerland with the sole purpose of justifying the status of refugee following flight from a third country will be subject to criminal sanctions.
- The possibility of lodging a request for asylum with a Swiss representative abroad will be abolished.
- Requests and multiple requests for review will be made in writing to enable processing to take place rapidly. Moreover, persons submitting multiple requests will be subject to the emergency assistance procedure, which was already the case for persons requesting a review.

44. On 23 September 2011, the Swiss Government adopted an additional message concerning the amendment to the Asylum Act. The additional proposals are aimed at simplifying the asylum procedure through a selective strengthening of legal protection for asylum seekers:

- Introduction of a preparatory phase under the asylum procedure: this will enable all necessary investigations to be carried out, where feasible, prior to the processing of an asylum request; it will help to speed up the asylum procedure;
- Free examination by health professionals appointed by the Confederation for asylum-seekers whose health is affected by abuses crucial to the procedure. At the latest during the hearing on the grounds for asylum, applicants will be required to report any damage to their health of which they are aware that could prove crucial for the asylum and removal procedure;
- Legal protection for asylum-seekers will be strengthened during the appeal procedure;
- Regular exchanges of information will take place between the Federal Department of Justice and Police and the Federal Administrative Court (TAF) concerning coordination and administrative processes relating to procedures at first and second instance.

All these amendments are in conformity with the Constitution and public international law. They have been the subject of parliamentary debates during the drafting of this report.

45. The Asylum Act has moreover been amended several times to take account of the "return directive"²¹ and to establish an information system to process asylum-seeker data collected at registration centres and asylum-seeker accommodation at airports.

(b) *Other changes in the field of public law*

46. Since the last report, the Federal Law on the National Commission for the Prevention of Torture of 20 March 2009 (RS 150.1) has been adopted pursuant to the Optional Protocol of 18 December 2002 to the Convention against Torture and Other Cruel,

²¹ Directive 2008/115/EC of 16 December 2008.

Inhuman or Degrading Treatment or Punishment of 10 December 1984 (RS 0.105). It came into effect on 1 January 2010.

47. The Federal Law on the Acquisition and Loss of Swiss Citizenship (LN; RS 141.0) was amended on 25 September 2009 with the effect of extending the deadline for declaring the naturalization decision null and void. This change came into force on 1 March 2011. On 4 March of the same year, the Federal Council adopted a message concerning a fundamental revision of this Act, which has as its main aims:

- To ensure broad consistency with the Federal Aliens Act with regard to the integration and language requirements applicable to foreign nationals;
- To improve decision-making procedures to ensure that only well-integrated foreigners obtain Swiss nationality;
- To harmonize cantonal and communal requirements concerning length of residence;
- To reduce the administrative burden on cantonal and federal authorities by simplifying and harmonizing procedures and by clarifying their respective roles in naturalization matters.

48. In 2009, the Federal Council issued the Ordinance on Human Rights and Anti-Racism Projects of 14 October 2009 (RS 151.21), based on article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. This ordinance came into force on 1 January 2010 and regulates the financing of anti-racism projects by the federal authorities.

5. Legislative changes at the cantonal level

49. Since the last report, the cantons of Lucerne and Schwyz have completely revised their constitutions. While not containing any provision expressly prohibiting discrimination, the new constitutions guarantee all the fundamental rights protected by the Federal Constitution, and therefore prohibit discrimination.²² In general, the rights protected by the Federal Constitution are guaranteed even where not expressly guaranteed under cantonal legislation.

50. Most of the cantons have however favoured the inclusion in their constitutions of a rule expressly prohibiting discrimination. A provision of this kind is to be found in the constitutions of the following cantons: *Zurich* (art. 11, para. 2), *Bern* (art. 10, para. 1, 2nd sentence), *Uri* (art. 11, para. 2), *Nidwald* (art. 2, para. 2), *Genève* (art. 15, para. 2), *Glarus* (art. 4, para. 2), *Fribourg* (art. 9, para. 1, 2nd sentence), *Basel-City* (para. 8, subpara. 2), *Basel-Country* (para. 7, para. 2), *Schaffhausen* (art. 11, para. 1, 2nd sentence), *Appenzell Rhodes-Extérieures* (art. 5, para. 2), *Argovie* (para. 10.4, subpara. 2), *Tessin* (art. 7, para. 1), *Vaud* (art. 10, para. 2), *Valais* (art. 3, para. 2), *Neuchâtel* (art. 8, para. 1, 2nd sentence) and *Jura* (art. 6, para. 2).

51. Most of the cantons have taken or are planning legal measures in line with changes in the integration policy at federal level. Where they have not yet taken such measures, the cantons are adopting new laws on the integration of foreign nationals which mention, sometimes explicitly, protection against discrimination.

²² Para. 10, subpara. 2, of the Constitution of Lucerne (RS 131.213): “Fundamental rights are guaranteed within the limits of the Federal Constitution”, para. 10 of the Constitution of Schwyz (awaiting federal guarantee): “The canton guarantees the fundamental rights embodied in the Federal Constitution and in international law binding upon Switzerland.”

3. General policy against racial discrimination

1. General comments

52. In its response to the request of the Office of the United Nations High Commissioner for Human Rights concerning the implementation of the Durban Declaration and Programme of Action, the Government reaffirmed its view that racial discrimination constitutes a serious human rights violation.²³ It regards its commitment to combating racism, antisemitism and xenophobia as a permanent one and is convinced that, alongside private and civil society actors, the State should play an important preventive role in this regard. This view is reflected in the measures and projects described in section 3.4 of Part I.

2. National minorities

(a) Linguistic minorities

53. Reference should be made here to Switzerland's second and third periodic reports to the United Nations Committee on the Elimination of Racial Discrimination, its fourth report of December 2009 on the application of the European Charter for Regional or Minority Languages (RS 0.441.2), its third report on the application of the Council of Europe's Framework Convention on the Protection of National Minorities (RS 0.441.1) and section 14 of Part III below (statement of position on paragraph 19 of the Committee's concluding observations).

(b) Religious minorities

54. Religious groups in Switzerland are very diverse. Apart from the traditional faiths (Roman Catholic Church, Catholic Christian Church, Evangelical Reformed Church, Free Churches and the Jewish Community), they include numerous other religious faiths that have arrived in Switzerland since the 1970s in the context of labour migration and as a result of the break-up of Yugoslavia and the Soviet Union (Orthodox, Muslim, Hindu, Buddhist, etc.). In reality, every religious faith is now a minority in Switzerland.

55. From the legal standpoint, the religious policy pursued by Switzerland is based on the following tenets:

- *Freedom of conscience and belief* guaranteed for all religious faiths (art. 15 of the Constitution), and the corresponding religious and denominational neutrality of the Confederation: the Federal Constitution guarantees freedom of conscience and belief to all the inhabitants of Switzerland. The belief in and practice of a religion, its transmission to others and the freedom at any time to join or leave a religious community are guaranteed, subject to certain restrictions applicable to any fundamental law. Everyone is also free, in accordance with the provisions of the Civil Code, to establish a religious community as a non-profit-making association with legal personality (Freedom of association, article 23 of the Constitution).
- *Federalist conception of the relations between religious communities and the State* (art. 72, para. 1, of the Constitution): the cantons are responsible for regulating the relations with religious communities. For example, they can recognize religious

²³ Reply by Switzerland to the request of the Office of the United Nations High Commissioner for Human Rights concerning paragraph 191 (a) of the Durban Programme of Action, Bern, 26 May 2011.

communities in public law²⁴ or as being in the public interest and define the conditions for such recognition. They can also discontinue recognition entirely. The Cantons of *Basel-Country, Basel-City, Bern, Lucerne, Obwald, Nidwald, Glarus, Fribourg, Solothurn, Jura, Schaffhausen, Appenzell Outer-Rhodes, Graubünden, Aargau, Ticino, Vaud* and *Valais* allow for the possibility of recognizing religious communities other than those already recognized in their respective constitutions.²⁵ The other cantons do not possess constitutional provisions enabling them to recognize other religious communities. Furthermore, two cantons make no provision for recognition of religious communities in public law (*Neuchâtel* and *Geneva*). In these cantons, private-law provisions are applicable to religious communities (particularly as regards their incorporation as associations).

This authority conferred by the Constitution on the cantons enables them to deal with questions of cohabitation pragmatically and seek solutions adapted to the local context in a spirit of mutual understanding (e.g. the creation of denominational sectors in cemeteries, religious education, resolution of conflicts between compulsory schooling and religious precept, the construction of places of worship, etc.).

- *Preservation of religious peace, a joint responsibility of the Confederation and the cantons* (art. 72, para. 2, of the Constitution): this provision enables the Confederation and the cantons to take measures to keep the peace between the members of religious communities. However, the Confederation is responsible when tensions take on a national or even international dimension.
- *Criminal proceedings*: under article 261 of the Swiss Criminal Code of 21 December 1937 (CP; RS 311.0), attacks on freedom of belief and worship are punishable in law. Article 261 *bis* of the Constitution protects individuals and groups of persons against any form of discrimination based on religious affiliation.

56. In accordance with its international obligations, Switzerland regularly welcomes the representatives of international organizations. For example, the President of the Organization for Security and Cooperation in Europe (OSCE) sent three personal representatives responsible for questions of tolerance and non-discrimination to Switzerland from 7 to 9 November 2011 to learn of the efforts being made to combat intolerance and discrimination towards religious minorities.²⁶ Their final report of 24 January 2012 was devoted to legal issues, racism, antisemitism, intolerance and discrimination against Muslims as well as the ban on the construction of minarets, the situation of Travellers and other forms of discrimination. Overall, the report commended the measures taken so far by the Confederation and the cantons to combat racism, xenophobia and discrimination. Its recommendations to Switzerland calling for improvements in certain key areas were forwarded to the departments concerned for consideration.²⁷

²⁴ This statute does not include recognition as a State religion but only the granting of certain rights such as levying taxes or providing religious instruction in State schools.

²⁵ The most recent example: in February 2012, the cantonal parliament of Basel-City decided, following vigorous debates, to grant public-law status to the New Apostolic Church, mainly on the grounds that it would thereby be able to play a closer role in interreligious dialogue.

²⁶ They were Rabbi Andrew Baker on antisemitism issues, Massimo Introvigne on discrimination against Christian religions and other forms of discrimination, and Ambassador Adil Akhmetov on intolerance towards Muslims.

²⁷ Country Visit: Switzerland, Report of the Personal Representatives of the OSCE Chair-in-Office on Tolerance Issues, November 7-9, 2011 (CIO.GAL/262/11). The report can be downloaded on the

57. At national level, the Jewish and Christian communities make a particular effort, in cooperation with Muslim associations, to promote better understanding of and between religions (interreligious dialogue). Muslim organizations are increasingly active in launching initiatives to promote mutual knowledge. Many Islamic centres and cantonal umbrella associations organize regular information sessions, public debates and meetings or carry out projects to encourage encounters between children and young people from different religious backgrounds.

58. Since 2006, Confederation representatives have regularly exchanged views with the Swiss Council of Religions (SCR), in which the Christian, Jewish and Muslim religions are represented. The SCR was set up as a platform for dialogue between the three religions and serves as an interlocutor with the Confederation.

59. Several cantons have taken measures to foster interreligious understanding or are active in the field of interreligious dialogue:

- The Canton of Zurich has introduced in compulsory schooling a class on “Culture and Religion” which is non-denominational in nature and provides children and adolescents with basic knowledge about the world’s major religions. The class is designed to promote respect and understanding towards persons of different faiths, cultures and worldviews.
- Every second year since 2005, the canton of St. Gallen has organized a week of interreligious dialogue and activities in collaboration with the canton’s Catholic and Evangelical Reformed Churches as well as the Federation of Islamic Communities of Eastern Switzerland and the Principality of Liechtenstein (Dachverband der islamischen Gemeinden der Ostschweiz und des Fürstentums Liechtenstein), the St. Gallen branch of the Round Table of Religions (Runder Tisch der Religionen St. Gallen) and other religious communities.
- The canton of Basel-City has established a coordination service on religious questions, which addresses religious issues with the necessary tact in a spirit of inclusion and prevention. It does so through an important tool, namely the Roundtable of Religions of the twin cantons of Basel, established in 2007, which brings together 16 religious bodies to discuss interrelated questions of government, religious communities and population. Since 2009, the coordination service on religious questions has organized the opening in the two cantons of the Religious Associations Week (Basel-City/Basel-Country), which takes place alternately at Basel and Liestal. Basel-City is also in permanent contact with the Basel Interreligious Forum (Interreligiöses Forum Basel) and the Christlich-Jüdische Projekte Foundation as well as its Abraham’s Tent (Zelt Abrahams) subproject. Mention should also be made of the further training course offering support and information to persons responsible for religious counselling (Unterstützung und Information für religiöse Betreuungspersonen), which has been organized since 2011 by the coordination service on religious questions in association with the GGG Ausländerberatung (migrants counselling centre) and which covers a wide spectrum of information needs.
- In the canton of Geneva, the Office for the Integration of Foreigners (BIE) has organized several events on religious topics, in particular two study days in 2010 on the rise of an anti-Muslim climate in Switzerland and Europe. In 2009 and 2010, the Office also supported open days in places of Muslim worship in the canton, hosted

website of the Federal Department for Foreign Affairs: www.eda.admin.ch/eda/fr/home/topics/intorg/osce.html (in English only).

the Dome-Temple-Minaret exhibition in 2009 (overview of the places of worship and prayer of the different religions) and organized a roundtable on religions, cultures and integration in 2009.

- In the canton of Vaud, a Vaudois Ecumenical Council brings together the religious communities recognized by the canton (the Evangelical Reformed Church and Catholic Church as well as the Jewish Community of Lausanne and the canton of Vaud). The authorities and the Vaudois Muslim Union have maintained a regular dialogue since 2010. The association *L'Arzilier, Maison du dialogue*, which seeks to build bridges between the different religious communities and non-believers, is supported in its efforts by the cantonal authorities. The Muslim and Christian Group for Dialogue and Friendship was established in 2001 at the communal level. Active in a number of municipalities within the canton, it organizes encounters and meetings.
- In many other cantons, as well as in the cities of Zurich and Yverdon-les-Bains, there are platforms and forums devoted to interreligious dialogue, and outreach days or weeks are organized regularly.
- The “House of Religions – Dialogue of Cultures” building is currently under construction in the city of Bern. This innovative project unites the communities of the great world religions. It enables the different religious communities, which have sole responsibility for it, to live their religious lives under the same roof. The Alevi, Buddhist, Christian, Hindu and Muslim communities will have their own places of worship. The city and canton of Bern are participating in this project (including in practical ways).
- Since June 2012, the city of Lucerne has allowed Hindus to scatter the ashes of their dead in the Reuss. An appropriate site has been found for the funeral ceremony and the burial.

60. The Zurich University of Applied Sciences, in association with the “Integration, Equality and Projects” Resource Centre (*Centre de compétence Intégration, égalité et projets*) of the canton of St. Gallen, has been offering a certificate of advanced studies entitled “Professionalizing interreligious communication: religious counselling in an intercultural context” (*Professionnaliser la communication interreligieuse: CAS Encadrement religieux dans un contexte interculturel*). This training is intended for persons responsible for religious counselling, irrespective of their religious community and faith. It explores the Swiss religious landscape, its origins and diversity. The aim is for participants to use this knowledge in their communication activities in coexistence with other communities.

61. Special attention is paid to the place of religion and religious tenets at school. The canton provides local school authorities and teachers with guidelines on taking account of religious sensibilities in the context of compulsory schooling. Documentation on the subject is available on the Swiss educational server *educa.ch*.²⁸ The positions adopted in this context may be summarized thus:

- Religious symbols are prohibited in the classroom; in some cantons, this ban is not applied systematically.
- Absence from school on religious grounds is possible, except in the case of important exams such as the Swiss *maturité* (school-leavers examination). Many

²⁸ guides.educa.ch/fr/liberte-de-croyance.

cantons have introduced a system whereby parents are free to choose a number of half-days when the reasons for absence are not given.

- Participation in religious feasts/events (Christmas, Easter) is allowed, but singing or religious activities are not compulsory.
- School gymnastics and swimming classes are compulsory until puberty; after that practical solutions are sought. The 1993 decision authorizing exemption from swimming classes was revised in 2008. Since then, participation in swimming courses is recommended as a general rule but cantons are free to grant exemptions.
- Wearing of the headscarf in school is forbidden for teachers and authorized for girl pupils. In St. Gallen, the Board of Education recommends that where there is a general ban on headgear (such as bonnets and hoods), no exemption should be made in the case of the headscarf.
- With regard to the adaptation of religious teaching, there is a tendency for the teaching of religion (as well as ethics and morals) to be focused on all religions. There is growing acceptance of presenting Christianity as the (historical) foundation of our society and our culture. In cantons where religious communities are recognized in public law, these communities can teach their religion in the classroom. Various cantons also try to offer religious communities lacking public law status the opportunity of teaching their religion in the classroom, subject to certain conditions.

(i) Jewish community

62. Some 39 per cent of the 17,000 or so Swiss Jews live in the French-speaking cantons. The Jewish communities of the cantons of Basel-City, Bern, Fribourg, St. Gallen and Zurich are recognized in public law. In other cantons, the Jewish communities are associations without specific status. Nationally, they are grouped within two umbrella associations: the Swiss Federation of Jewish Communities and the Platform of Liberal Jews in Switzerland.

63. The following topics have the main focus of attention during the period under review:

- Burials: Jewish cemeteries have existed in Switzerland since the 14th century; today they are to be found in half of the cantons. They are generally the result of private initiatives and are likewise privately financed.
- Place of religion and religious precepts in school: according to the Swiss Federation of Jewish Communities and the Platform of Liberal Jews in Switzerland, there is a tendency, particularly in schools, to limit freedom of religion in Switzerland. For some years, some cantons and some institutions have increasingly refused to provide exemptions for religious pupils and students when examinations take place on the Shabbat or a religious feast day, when the Jewish religion forbids working and writing. In specific cases, however, the competent tribunals have always acted to counter this trend.
- Anti-Semitic activities and negationism: Jewish organizations are very active in raising awareness of issues of anti-Semitism and negationism. Between 2009 and 2011, the Service against Racism awarded grants totalling 121,000 francs in support of 13 of their projects. Examples include:
 - A demonstration entitled *Experiencing the Unspeakable* organized by the Intercommunity Coordination against Anti-Semitism and Defamation in

Geneva on 27 January 2010 (Holocaust Remembrance Day), which honoured the camp survivors.

- An inaugural ceremony and event for schoolchildren featuring a show and cartoon on anti-Semitic prejudice, likewise organized by the Intercommunity Coordination against Anti-Semitism and Defamation in Geneva in 2011. The show and the cartoon will be distributed to pupils in French-speaking Switzerland to encourage them to reflect on racism and anti-Semitism.
- The Centre for Political Education and Historical Didactics of the University of Applied Sciences in Aargau has launched, in collaboration with the SLR, an annual conference on the topic of the *Shoah at School*, of which three events have so far been organized. Schools have also launched projects in the framework of this initiative. The online didactic platform *History Helpline* is a particularly valuable tool at the secondary level. It provides innovative course material on the topic of national-socialism (included on the school syllabus), linking key elements in Shoah research with the current problem of racism.
- The project *Anti-Semitism in History and Today: Encounter with Survivors of the Shoah*. The Zurich cantonal establishment *Hohe Promenade* is conducting an in-depth study of the topic of anti-Semitism. The aim is to stimulate reflection on racist thinking, ideologies and actions with pupils in the school-leaving certificate class. Alongside history lessons, the syllabus also provides for excursions, workshops, meetings with survivors and use of new media.
- In the *Collège Sainte-Croix* in Fribourg, two leaving certificate classes are tackling the subject of racism and the Shoah in their German, philosophy and history lessons, with the emphasis on non-cognitive knowledge. A workshop offers pupils the chance to meet a Shoah survivor and to explore the topic further by examining its contemporary relevance (racism today).
- To promote knowledge of Judaism and the Jewish community in Switzerland, the Swiss Federation of Jewish Communities and the Platform of Liberal Jews in Switzerland have offered to provide interested organizations and training institutes with speakers who, under the title “Getting to know Judaism better”, address the topics of Judaism, the Jews in Switzerland, Israel and also anti-Semitism. Over a dozen lectures of this kind were organized in 2001. Since the end of 2009, the Swiss Federation of Jewish Communities has also published clear and concise information sheets on selected subjects. These should make for a better understanding of Jewish history, religion and values as well as of the Jewish community in Switzerland.

64. The cantons also implement projects against anti-Semitism, particularly in schools. The Swiss Conference of Cantonal Directors of Education has designated 27 January as Holocaust Memory Day, explaining that: “27 January marks the liberation of the Auschwitz concentration camp by the Red Army in 1945. The Day marking the memory of the Holocaust and the prevention of crimes against humanity is addressed mainly to schools. It is designed to commemorate the Holocaust and to draw attention to other genocides in the 20th century and to promote reflection on the ideologies that have led to such crimes against humanity. Educational activities in schools, rather than national events, will be at

the centre of this Day.”²⁹ It provided the framework for three school projects organized in 2011 by the Department of Education of the canton of Zurich: the theatre forum *What does the Holocaust mean for us today?* (eleven events attended by 826 schoolchildren in the eighth to tenth grades); encounters with survivors of the Holocaust (twenty-one events bringing together 838 schoolchildren in the eighth to tenth grades; and the play *Ich wohne in einem Hühnerhaus* (four performances attended by 310 schoolchildren in the fourth to sixth grades). Each year, the University of Applied Sciences Of Northwestern Switzerland organizes a lecture on the Holocaust to mark Holocaust Memory Day. The Information and Documentation Centre of the Conference of Cantonal Directors of Education regularly brings together the activities of various cantonal institutions on the occasion of Holocaust Memory Day and makes them available to the public through the Swiss education server *educa.ch*.³⁰

65. Projects organized by groups forming part of the Task Force for International Cooperation on Holocaust Education, Remembrance, and Research³¹ included the following:

- Study visit to the Yad Vashem memorial in Jerusalem in 2010: the visit by seven students from various universities of applied science, accompanied by two teachers, was made possible by the Swiss Conference of Cantonal Directors of Education and the Ministry of Education and Research. An exchange with Yad Vashem involving twelve students will take place in 2012.
- An annual one-day continuing education visit to Auschwitz-Birkenau for Swiss German teachers: the first visit to Auschwitz-Birkenau, arranged by the Swiss Federation of Jewish Communities and the Platform of Liberal Jews in Switzerland with the participation of some 100 persons, took place in November 2011. With the support of the Conference of Cantonal Directors of Education, a follow-up day of reflection for teachers who had taken part in the visit was also organized in November 2011 at the University of Applied Sciences of Northwestern Switzerland. These trips enable teachers to form their own impressions and to reflect subsequently, with their classes, on this chapter in the history of humanity. Such trips have also been organized for a number of years by the Intercommunity Coordination against Anti-Semitism and Defamation in French-speaking Switzerland.

(ii) Muslim communities

66. The Muslim community in Switzerland has experienced strong migratory flows in recent years. Most Muslims currently living in Switzerland arrived in the country over the last twenty years. Over 10 per cent of them have Swiss citizenship. Islam is lived in the form it takes in the country, region and social class from which the migrant originates. The number of practising Muslims is not very great (the proportion, less than 10 per cent, is similar to that of the other major religions). The first generation of immigrants, which still represents the absolute majority, has little interest in religious questions and lives Islam as part of its culture and as a bulwark in moments of transition and crisis (rites of passage). Muslims belonging to an Islamic organization are even fewer in number.

67. Islamic centres and mosques mirror above all the country of origin. In recent years, various groupings of Islamic centres have given rise to cantonal or regional umbrella

²⁹ Press release of the Swiss Conference of Cantonal Directors of Education of 27 January 2004, www.edk.ch/dyn/14114.php.

³⁰ <http://guides.educa.ch/fr/journee-de-memoire-de-l-holocauste>.

³¹ www.holocausttaskforce.org/index.php.

associations, which sometimes enjoy substantial support (for example, the Verein Islamischer Organization in Zurich). Islamic associations, communities and organizations together represent only a small proportion of believers. There is to date no national federation representing all Muslims, nor any group transcending linguistic frontiers. At the national level, two umbrella associations the Coordination of Islamic Organizations of Switzerland (COIS) and the Federation of Islamic Organizations in Switzerland represent Muslims within the Council of Religions. However, they need to establish deeper roots within the Muslim community in order to be truly representative.

68. Key topics in the period under review have included:

- Burials: the claim for Muslim tombs to be separate from those of other religions has caused a stir among public opinion. According to Muslim tradition, burial rules must be respected; they include ritual cleansing of the dead, orientation of the graves, granting of the land in perpetuity and the separation of burial plots — rules that are often in contradiction with communal and cantonal cemetery statutes.³² In principle, the communes are responsible for cemetery regulations, making the prescription of national rules impossible and encouraging the adoption of pragmatic solutions at local level. In many cantons and communes, negotiations with the authorities have resulted in Muslims being assigned plots in cemeteries (e.g. in Zurich, Zunzgen Basel-Country, Basel, Olten, Lucerne, Bern, Liestal, Thun, Geneva, Lugano, La Chaux-de-Fonds and Zurich-Witikon). In the canton of St. Gallen, an amendment to the law on cemeteries and burials allows the communes to designate plots for religious communities. Schaffhausen has oriented a newly created plot towards Mecca.
- The place of religion and/or religious tenets in school: in a judgement issued in 1993, the Federal Supreme Court found for parents in Zurich who were demanding that their daughter be excused from swimming classes on religious grounds.³³ However, it amended its jurisprudence in 2008.³⁴ In future, the school authorities can refuse to excuse swimming classes on religious grounds. The Federal Court said that its ruling helped schools to fulfil their mission of promoting social integration. If they wish, however, cantons can adopt a more flexible approach. Courses in Islam, as for other religions, are starting to be available in schools, but it must be recognized that the theological and professional qualifications of teachers remain a problem.
- Residence and work permits for religious supervision (imams): those responsible for religious supervision are employed by their religious community or by an institution. If they are foreigners, they can obtain a residence permit when they meet the requirements for engaging in gainful activity in Switzerland. Nationals of an EU/EFTA member country obtain authorization for a period of twelve months or five years, depending on their labour contract. Nationals of third States have to obtain entry and work permits under the usual quota regime. Exceptions to the principle of giving priority to the recruitment of Swiss and EU/EFTA nationals may be made in favour of foreign leaders of religious communities of national or supra-regional importance. The religious community that, as employer, submits a

³² To maintain religious peace between Catholics and Protestants, the legislator withdrew from the religious authorities, in the Constitution of 1874, the right to administer cemeteries. Since then, Swiss cemeteries have been public and religiously neutral and no difference is permitted in the treatment of the dead.

³³ Judgement of the Federal Supreme Court (*Arrêté du Tribunal Fédéral*) ATF 119 Ia 178.

³⁴ ATF 2C-149/2008.

request to the cantonal employment office must possess the institutional structures (association) and the meeting facilities where believers gather regularly for religious worship. It must recognize Swiss legal standards, observe them in theory and practice, demand the same respect on the part of its members and condemn any misconduct. Religious communities must show proof that they have sufficient financial resources to remunerate the leaders in question. In view of the financial situation of Muslim religious communities, the salary requirements in the case of imams are much lower than those applicable to other specialists.

The religious leader must have received advanced theological training recognized by the supreme religious authority of his Church, special rules being authorized. In the case of Turkish imams, the employer is the central Turkish office responsible for religious affairs; in the case of the religious leaders of Sarajevo, Skopje and Pristina, they issue appointment certificates for the imams in the sector for which they are responsible.³⁵ These spiritual advisers are seen as playing a key role in the integration process; apart from possessing specialized qualifications, they are required to be familiar with Swiss social and legal systems. They should be able, where necessary, to transmit this knowledge to the foreign nationals for whom they are responsible. In particular, persons exercising a supervisory and teaching function must have a level of proficiency in the national language spoken in their place of work equivalent to level BI of the Council of Europe's Common European Framework of Reference for Languages. This linguistic requirement must be met before the residence permit is granted. The certificate of language proficiency may exceptionally be submitted during the first year of residence provided the foreign leader or teacher has undertaken to do so through an integration agreement.³⁶

An "L" residence permit not subject to the quota regime (accelerated procedure) is granted for a maximum period of four months to imams wishing to come to Switzerland during Ramadan. The usual conditions apply, with the exception of mastery of the language.

- Slaughter: under the legislation on animal welfare, the slaughter of a warm-blooded animal without prior anaesthesia is prohibited in Switzerland (with the exception of poultry). Slaughter after anaesthesia is however permitted and practised by some Muslim butchers. Strong Muslim believers only accept halal meat coming from Islamic slaughterhouses. This is mostly imported from France. Persons less attached to dogma also buy meat in ordinary butcher shops.
- Dialogue with the Muslim community: following the popular vote approving the ban on constructing minarets, meetings chaired by the Federal Department of Justice and Police were organized at regular intervals in 2010 and 2011 between the federal administration and representatives — Swiss and foreign — of various Islamic movements and practices. They drew up by consensus a report entitled *Dialogue 2010 – Exchange between the federal authorities and Muslims residing in Switzerland*, which was brought to the attention of the Federal Council on 16 November 2011. The report provides a summary of the main results of this dialogue, in particular recognition of the guidelines laid down in the Constitution, such as equality before the law, the rule of law and democracy. It also sets out the measures

³⁵ See section 4.7.16, "Religious activities", of the "Residence with gainful employment" Directive: www.bfm.admin.ch/bfm/fr/home/themen/rechtsgrundlagen/weisungen_und_kreisschreiben/auslaenderbereich/aufenthalt_mit_erwerbstaetigkeit.html.

³⁶ Ordinance on the Integration of Foreigners of 24 October 2007, art. 7: Teaching and supervision activities.

taken by the Confederation to encourage integration and equality of opportunity for Muslims as well as to ensure peaceful coexistence between all people living in Switzerland (for example, review of the system of admission for persons exercising a role of religious supervision, compatibility between religion and the obligation to serve, development of training and further training programmes for imams and religious leaders, etc.). An exchange of views, in which the cantons, towns and communes will participate, is due to take place in 2012 in order to bring this process to a close. It is designed to examine the claims of Muslims and to decide at what governmental and institutional level they should be dealt with.

69. Formal and informal contacts take place regularly at the communal and cantonal level between the Muslim authorities and communities (for example, the annual reception of the imams and Muslim communities by the Zurich Municipal Council during Ramadan).

70. In 2010, the canton of Fribourg carried out a study on the development of the religious communities in the canton and their mutual relations. In the same year it published recommendations on religious and cultural diversity at school.³⁷ The first meeting (28 May 2011) of the new Cantonal Commission on the Integration of Migrants and Action against Racism was devoted to the topic of religious affiliation. A majority of cantons have also published directives with a view to taking religious communities into account in the school context (e.g. the cantons of Jura, Solothurn and Schaffhausen). The canton of Basel-City has drawn up a list of measures adopted to take account of the situation of Muslims.

(c) *The Traveller community*

71. The situation of the Traveller community is covered in detail in section 14 of Part III (statement of position on paragraph 19 of the Committee's concluding observations).

3. Foreign population

(a) *Remarks on migration policy*

72. For centuries, Switzerland has welcomed large numbers of immigrants, and Swiss citizens have been equally numerous in seeking new horizons abroad. The country owes its current prosperity in no small measure to these migratory flows as well as to the economic and cultural exchanges that these involve.

73. Switzerland possesses a dual system of admission (the Agreement on the Free Movement of Persons for nationals of EU/EFTA countries, and quotas for nationals of other countries). As a member of the Schengen/Dublin Agreement, it cooperates with the European Union with regard to the movement of travellers, cooperation in judicial and police matters and asylum policy.

74. Switzerland's migration policy is based on a threefold strategy: promoting our country's prosperity, protecting persons subject to persecution and ensuring the safety of indigenous and foreign populations. Detailed explanations of Switzerland's migration policy are to be found in section 12 of Part III.

(b) *Asylum policy*

75. For centuries, persons persecuted for their religious beliefs or their political opinions have sought asylum in Switzerland. The number of asylum-seekers has shown a sharp increase since 1980. Switzerland welcomed almost 30,000 persons during the war in

³⁷ www.fr.ch/dics/fr/pub/actualites.cfm?fuseaction_pre=Detail&NewsID=36259.

Bosnia-Herzegovina (between 1992 and 1995) and 53,000 during the conflict in Kosovo (1998/99). Having stabilized at around 20,000 at the start of the twenty-first century, the number of asylum-seekers subsequently fell by half only to record a new increase in recent years.

76. Persons admitted on a provisional basis constitute a special category. These are persons benefiting or otherwise from a recognized refugee status, where enforcement of a removal order is not admissible (violation of international law), unreasonable (placing the person concerned in real danger) or impossible (for practical reasons). Provisional admission can be granted for a period of twelve months and extended for twelve months by the canton in which the person resides. The cantonal authorities can grant persons provisionally admitted permission to engage in gainful activity whatever the state of the economy and the employment-market situation. At the end of 2010, the statistics of the Federal Office for Migration gave a figure of 23,471 persons admitted provisionally, representing about one third of those engaged in the asylum process.³⁸ In relation to the whole, it thus represents a sizeable group of persons seeking protection in Switzerland.

77. Swiss asylum policy is based on the Geneva Convention relating to the Status of Refugees and on the following principles:

- Any person who is threatened or persecuted in accordance with criteria recognized under international law will be granted asylum in Switzerland; the asylum procedure serves to determine whether a right to protection exists.
- Switzerland endeavours to provide rapid assistance *in situ* to people suffering in regions affected by war or disaster. Switzerland participates in joint campaigns undertaken by the international community to support population groups in distress;
- Should aid measures be impossible in the regions affected due to the acute danger there, Switzerland offers temporary refuge within her own borders to the groups of persons concerned.
- Parallel to this, through co-operation with the governments of other countries, the Federal Council undertakes sustained efforts to effectively curb the causes of flight and involuntary migration.

78. See also the remarks in section 12 of Part III.

(c) *Integration policy*

79. Over 22 per cent of the resident population in Switzerland is foreign. Despite this high percentage, immigration has not resulted in any ghettoization, thereby preserving Switzerland from community separatism (*communautarisme*) and the resulting conflicts.

80. In 2005, Switzerland incorporated in law the objective of participation by the foreign population in the economic, cultural and social life of the country. It stressed in particular that encouraging integration and eliminating discriminatory obstacles are primarily tasks for existing structures such as schools, vocational training institutions, businesses and the health sector, including at all levels of federal, cantonal and communal government.

81. Integration and protection against discrimination became even greater requirements with the development of the integration policy adopted in 2011 by the Federal Council and the Conference of Cantonal Governments and the corresponding amendment of the Federal Aliens Act. See section 12 of Part III.

³⁸ Federal Office for Migration, 6 January 2012, Asylum Statistics 2011, Bern.

(d) Undocumented persons

82. Any person residing illegally in Switzerland is able to lodge a plea of special hardship. Generally speaking, the cantons are mandated to issue residence permits and to act in all categories of special hardship, subject to the approval of the Federal Office for Migration. Since the introduction of the free movement of EU/EFTA nationals, the problem of the illegal stay of this category of persons has been considerably lessened. In 2011, the Federal Office for Migration received 192 special hardship requests, the majority from French-speaking Switzerland. A total of 163 were accepted and 25 rejected.³⁹ See also section 12 of Part III; on the issue of the conditions relating to the marriage of an undocumented person, see section 5.4 (d) of Part II.

83. The situation of undocumented young people has improved with the proposal by the Federal Council to allow them access to apprenticeship. The project provides for regulating the conditions of residence of these young people during their training in Switzerland. Moreover, the parents of the young people concerned as well as their brothers and sisters may submit a request for legalization of their stay. At the end of training, their residence permit may be extended (see section 5.5 (e) of Part II and section 12 of Part III for details of the Federal Council project).

84. The Federal Commission on Migration has published a study on the situation of undocumented persons in Switzerland, along with its recommendations.⁴⁰ The Union of Swiss Cities published a report in 2010 on the access of undocumented young people to vocational training.⁴¹

4. Action against racism*(a) International action*

85. Switzerland participated actively in the preparatory process and proceedings of the Durban Review Conference, which took place in Geneva in April 2009. As a member of the Group of friends of the Chair, it participated in the preparatory work and, in particular, in the preparation of the draft final declaration. It also supported the Russian President's efforts resulting in the adoption of the final document three days before the end of the Conference. This document, adopted by consensus by 182 States, constitutes a clear message from the international community in support of the fight against racism, racial discrimination and xenophobia.

86. In September 2011, the tenth anniversary of the adoption of the Durban Declaration and Programme of Action was celebrated by a high-level meeting of the General Assembly. It saw the adoption of a political declaration reaffirming the determination to make the struggle against racism a priority. Switzerland again participated actively in the preparatory work for the high-level meeting.

³⁹ Report of the Federal Council on the free movement of persons and immigration in Switzerland, Bern, 4 July 2012.

⁴⁰ Federal Commission on Migration, 2010, *Visage des sans-papiers en Suisse. Evolution 2000–2010* [Profile of undocumented persons in Switzerland. Trends 2000–2010], Bern. Federal Commission on Migration, 2011; *Les sans-papiers en Suisse. Recommandations de la Commission fédérale pour les questions de migration* [Undocumented persons in Switzerland, Recommendations of the Federal Commission on Migration], Bern.

⁴¹ Union of Swiss Cities, 2010, *Accès à l'apprentissage pour les jeunes sans statut légal en Suisse. Etat des lieux et recommandations* [Access to apprenticeships of young people without legal status in Switzerland. Situation and recommendations], Bern, July 2010: http://staedteverband.ch/cmsfiles/bericht_sanspapiers_ssv_franzoesisch_final_1.pdf.

(b) *National action*

(i) Service for Combating Racism

87. Established by decision of the Federal Council of 21 February 2001, the Service for Combating Racism (SLR) reflects the resolve of the Government to respect the Switzerland's international commitments. It has the function of defining federal policy with regard to the prevention of racism, anti-Semitism and xenophobia as well as promoting human rights. It is the point of contact, at federal level, with the cantonal and communal authorities and institutions and makes its know-how available to them in all matters relating to discrimination. It encourages and coordinates, through targeted support measures, the struggle against racism, xenophobia, right-wing extremism and discrimination. It promotes collaboration with international organizations and institutions (United Nations, Council of Europe, Organization for Security and Cooperation in Europe, etc.) as well as exchanges with non-governmental organizations (NGOs) and research institutes.

88. The measures to combat racism and discrimination, encouraged in close collaboration with cantonal and communal partners, are all based on international standards. Their strategic thrust is comparable, over the long term, to a national plan of action.

89. The SLR's main activities and projects during the reporting period are as follows.

a. Financial assistance for anti-racism projects and the promotion of human rights

90. The SLR has an annual budget of 900,000 francs for long-term prevention and awareness activities to combat racism and xenophobia and for support to civil society. These funds are used to co-finance projects initiated by cantonal and communal institutions as well as by NGOs, associations, schools and individuals. Since its creation, the Service for Combating Racism has supported 940 projects carried out in all parts of the country at a total cost of 18,859,352 francs and, since 2008, 251 projects in the amount of 2.96 million francs.⁴² It also provides professional assistance for project implementation.

91. The sustainable planning and implementation of these projects having proved very complex, the SLR joined with the Federal Office of Equality for Persons with Disabilities (BFEH) and the Federal Office for Vocational Training and Technology in 2009 and 2010 to organize two project management courses in German-speaking and French-speaking Switzerland together with a course in Italian-speaking Switzerland. An evaluation has confirmed the positive impact of these courses on participants, with particular regard to networking and mutual support.⁴³

b. Financial assistance for projects in schools and in the field of human rights education

92. As of February 2012, support had been given to 408 projects covering all types of schools (from infants' to vocational schools and lycées) and all the linguistic regions of Switzerland. Additional funds were also made available from 2009 to 2011 to finance projects in the field of human rights education (see section 7.1 of Part II).

⁴² The projects and their content are described on the SLR's Internet site at: www.edi.admin.ch/frb/00483/00490/index.html?lang=fr.

⁴³ *Formation continue Gestion de projets pour personnes responsables de projets, Evaluation socialdesign* [Continuing education, Management of projects for project managers, Evaluation socialdesign], Bern, 12 June 2011, www.edi.admin.ch/frb/01760/index.html?lang=fr (in German).

c. Legal instruments to counter discrimination

93. The Federal Constitution prohibits any form of discrimination and protects freedom of belief, conscience and language. All administrative offices at the three levels of government are required to respect fundamental rights and to contribute to their observance. Apart from the anti-racist criminal statute, numerous provisions in constitutional, criminal, administrative and private law offer protection against discrimination. It is possible, for example, to defend oneself against discrimination on the basis of the principles of good faith and protection of the person embodied in the Swiss Civil Code, or on the prohibition against concluding contracts that are illegal, contrary to morality or in breach of public order, as laid down in the Code of Obligations.

94. The Federal Council is of the opinion that the existing legal bases offer sufficient protection against discrimination for the time being. It recognizes, however, that few actions are brought on the grounds of discrimination. Many people balk at the legal approach since the risks and costs are too high compared with the benefits of a successful outcome in the courts. The new Civil Procedure Code has made some improvements in this regard. It has introduced a simplified, relatively informal and universally accessible procedure applicable to financial disputes with a value not exceeding 30,000 francs (art. 243 ff. of the Civil Procedure Code). Certain procedures are also free of charge (art. 113–114, Civil Procedure Code, e.g. lease law or labour law in the case of discriminatory dismissal). The cantons may also provide for wider exemptions from procedural costs (art. 116, Civil Procedure Code).

95. There is a need to improve legal knowledge in the area of protection against discrimination. In June 2009, the Service for Combating Racism published a legal guide containing practical advice on the subject. This guide shows when and how the law can be useful in combating racial discrimination in everyday life. To further the transition from theory to practice, continuous training on the use of this guide is provided. From the end of 2009 to the end of 2011, almost 500 people from cantonal and communal departments, mediation bodies, integration services, trade union federations and NGOs participated in some thirty-five training courses.

96. To gain a clearer understanding of the mechanisms impeding access to justice, a number of federal offices⁴⁴ have asked the Swiss Resource Centre for Human Rights to undertake a study of the question. Its mandate covers all forms of discrimination and, in addition to judicial procedures, includes the stages prior to access to justice (e.g. provision of pre-trial legal counselling). The initial results are expected in 2013.

97. A growing number of cantonal and communal services specializing in integration questions are offering expert advice on legal protection against discrimination (or referring the persons concerned to the relevant services). They seek to promote dispute settlement mechanisms that are readily accessible and conciliatory. Their function is also gain a better insight into the problems of access to justice in the area of discrimination and to propose measures for resolving them.

d. Improvement of data

98. The State can only collect data on behaviour that has legal consequences and is placed on record (complaints, legal proceedings, sentences; see section 4 of Part II). The media and independent NGOs can however bring to public notice discriminatory incidents

⁴⁴ Federal Office for Gender Equality, Bureau for Equality of People with Disabilities, Service for Combating Racism, Human Rights Policy Section of the Federal Department of Foreign Affairs and the Federal Office of Justice.

that rarely incur legal sanctions (e.g. when a person is refused entry to a discotheque). Such data, if collected, provides valuable additional information. The following sources merit specific mention:

- The Foundation against Racism and Anti-Semitism (GRA) publishes an annual list of racist and discriminatory incidents and analyses the overall situation.⁴⁵
- The Swiss Federation of Jewish Communities (FSCI) and the Inter-Community Coordination against Anti-Semitism and Defamation (CICAD) publish an annual list of cases of anti-Semitism.⁴⁶
- Since 2008, the DoSyRa documentation and monitoring system records cases of racism registered by the counselling services affiliated to the Counselling Network for Victims of Racism. The results are analysed and published annually in anonymous form, the third and most recent report dating from December 2011. Piloted by the Federal Commission against Racism and managed by the NGO *Humanrights.ch*, this project is co-financed by the Federal Service for Combating Racism. During the second phase of the project, from 2012 to 2014, the counselling network will pursue its current activities, in particular the professionalization and quality control of its counselling work, with the aim of drawing up a qualitative report covering the whole country. It will also try to extend the scope of the project and institutionalize it in the cantons where the affiliated counselling services are located.

e. Right-wing extremism

99. The national research programme “Right-wing extremism – causes and countermeasures” (PNR 40+) initiated by the Federal Council in 2003 and concluded in 2009, studied various aspects of right-wing extremism and right-wing populism in Switzerland. The thirteen research projects advanced understanding of the origins, forms of expression, spread and consequence of extreme right-wing activities and attitudes in Switzerland. They have laid the bases for future strategies to deal with right-wing extremism at the communal, cantonal and national levels. They have also established a link between research in Switzerland and similar work abroad.⁴⁷ Based on the research it has supported, the Service for Combating Racism has published three booklets aimed at a wider public.⁴⁸ The specialized service “Extremism in the Army” had been established previously following a Parliamentary question on the subject (see Part I, section 3.4 (b) (ii)).

⁴⁵ *Racisme en Suisse. Chronologie et estimations des incidents racistes en Suisse* [Racism in Switzerland. Chronology and estimates of racist incidents in Switzerland]: <http://chronologie.gra.ch/> et <http://chronologie.gra.ch/index.php?p=5>.

⁴⁶ CICAD actively seeks out cases on the Internet, whereas FSCI/GRA only include in their statistics the cases reported to them.

⁴⁷ A final comparative publication is available in English: Marcel Alexander Niggli (ed.), 2009, *Right-wing Extremism in Switzerland. National and International Perspectives*. Baden-Baden: Nomos Verlag.

⁴⁸ Damir Skenderovic (ed. SLR), 2010, *Stratégies contre l'extrémisme de droite en Suisse* [Strategies against right-wing extremism in Switzerland], Bern; Ueli Mäder/Wassilis Kassis/Marco Storni/Thomas Gabriel (éd. SLR), 2008, *Les jeunes et l'extrémisme de droite: victimes, acteurs ou repentis* [Young people and right-wing extremism: victims, activists or repentant participants], Bern; Miryam Eser Davolio/Matthias Drilling/Christian Hirschi/Thomas Widmer (éd. SLR), 2007, *Combattre l'extrémisme de droite: mesures efficaces et instruments de travail à l'intention des communes* [Combating right-wing extremism: effective measures and tools for municipalities], Bern.

f. Incorporating protection against discrimination in the integration policy

100. In the report explaining the consultation procedure concerning the amendment to the Federal Aliens Act of 23 November 2011, it is stressed that encouraging integration should go hand in hand with combating discrimination. Public bodies should receive advice on all matters relating to protection against discrimination, while appropriate support should be given to the victims of discrimination. The Federal Council has tasked the Service for Combating Racism (SLR) with overseeing the implementation of this provision. Meetings and workshops have been organized at which the SLR has joined with partners from the integration offices and specialized integration services of the cantons and towns to define the objectives and indicators relating to the development of protection against discrimination. Many cantons now rely on these objectives and indicators to frame anti-discrimination their policies. In addition, the SLR, the Federal Office for Migration and the Conference of Cantonal Governments provide integration officials with professional coaching in the development of measures to counter discrimination as part of cantonal integration programmes.

g. Participation in the Urban Projects programme

101. The interdepartmental programme⁴⁹ “Urban projects – social integration in residential areas” is based on the 2007 report of the Federal Council on integration measures.⁵⁰ It provides technical and financial support to small- and medium-sized towns and conurbations for urban and social improvement measures. The measures envisaged should form part of a global approach and enjoy political support. A participatory approach allows those most directly concerned — in particular the migrant population and groups subject to discrimination — to be involved in the project. The programme has an annual budget of 550,000 francs. The SLR participates financially and ensures among other things that issues relating to participation, discrimination, racism are addressed within the framework of projects already supported. An overview of the projects is published on the Internet sites of the offices participating in the programme.⁵¹

h. Racism and racial discrimination in sport

102. Since the last report, verbal violence of a racist and anti-Semitic nature has been reported in Swiss football stadiums. It is supposed that right-wing extremism is present within certain supporters’ clubs. This has prompted the authorities to take action against racism in stadiums. In particular, measures were taken during the EURO 2008 Championship, organized jointly by Switzerland and Austria; some of those measures were retained following the tournament.

103. The following are among the measures and projects implemented:

- Under the national research programme “Right-wing extremism – causes and countermeasures”, one project is examining the question of whether football stadiums are places where the extreme right comes together to recruit and socialize.⁵²

⁴⁹ The pilot committee includes representatives of the Federal Office for Spatial Development (ARE), the programme director, the Federal Office for Migration (ODM), the Federal Housing Office (OFL), the Federal Office of Sport (OFSP), the SLR and the Federal Commission on Migration (CFM).

⁵⁰ Federal Office for Migration, 30 June 2007, Report on Integration Measures, Bern.

⁵¹ See in particular www.are.admin.ch/themen/agglomeration/00630/02258/index.html?lang=fr.

⁵² www.snf.ch/SiteCollectionDocuments/nfp/nfp40p/NFP40p_Projekt_2_Fussballstadion_f.pdf.

- The SLR is financing projects aimed at countering racism in sport. For example, a nationwide project led by Caritas Suisse seeks to alert trainers and footballers to fair play issues. The aim is to help participants to find fair solutions to disputes arising in matches and during training and to take practical steps to prevent violence and racism. The same approach is adopted in courses for the training staff and junior team players in the cantons of Aargau, Basel, Graubünden and Zurich. Financial aid has been granted, for example, to the Swiss Minorities Sport, Culture and Integration Association (Swiss Minor SCI), which encourages exchanges between Swiss and migrants through various sports projects, and to a group of students at the *Scuola professionale per sportivi d'élite*, who, led by their teachers, have taken as their campaign theme the role of sport in the prevention of racism.
- In 2009, a number of associations came together within the Swiss branch of the Football against Racism in Europe (FARE) network to coordinate anti-racism activities in Switzerland (an initiative that could be extended to other sporting disciplines). The Swiss representative of Football against Racism in Europe intends to fight racism and all forms of discrimination in professional and amateur football and to make the public aware that sporting events are not exempt from discrimination. The aim is to encourage leading figures in the world of sport to act against racism and other forms of discrimination in order to curb these scourges. In 2011, the SLR supported the FARE network in organizing a week of action against racism. A wide range of initiatives and activities helped to focus on the problems of racism and discrimination in sports clubs.
- In 2009, the Swiss Federal Office of Sport (OFSP) created the Integration through Sport Resource Centre (CIS), whose main aim is to implant in society the topic of integration in sport and promotion of sport and to facilitate access by migrants to sport and physical exercise. This involves promoting migrant participation, eliminating structural obstacles and fostering awareness among key figures in the relevant fields (physical exercise, sport, migration/integration, health and training). Since 2009, the CIS has provided financial assistance to projects involving the integration of migrants in and through sport. This includes, in particular, projects aimed at combating racism in sport and eliminating all forms of discrimination. Between 2009 and 2011, thirty-seven projects were supported in the amount of 271,150 francs. Nineteen projects are scheduled for 2012.
- In 2005, the SLR and the Federal Office for Sports jointly published the pamphlet entitled *Xenophobia and Racism among Football and Ice Hockey Supporters*.⁵³
- In 2008, the Federal Office for Sports, in cooperation with Fancoaching SUISSE, published the work *Fankultur und Fanarbeit in der Schweiz: eine Bestandesaufnahme* (Controlling the Supporters: the State of Play).⁵⁴

(ii) Other federal services

104. Other federal services are also carrying out projects on the crosscutting topic of protection against discrimination.

a. Specialized service Extremism in the Army

105. The specialized service Extremism in the Army has been part of the Service for Combating Racism since 2005.⁵⁵ It supports the Federal Department of Defence, Civil

⁵³ www.edi.admin.ch/shop/00019/00047/index.html?lang=fr.

⁵⁴ www.basishop.ch/de/shop/artikeldetail.aspx?art=472&kat=home.

Protection and Sport in all matters relating to extremism in the Army. Its main activities involve advice, awareness-raising and prevention. It serves as an information service to all members of the Army (military service personnel, militia cadres and professionals), their relatives, the central and cantonal authorities and the media. It provides information on the different extremist movements and advises on related legal issues, the legal means available, the procedures to be followed and the measures to be taken. It is neither an officer inspection body nor a mediation service. Its preventive activities mainly take the form of awareness-raising and training courses. The service participates in particular in training the future commanders of recruit schools. In 2010 and 2011, it also contributed to the in-service training of male and female agents of the territorial military police.

b. Federal Office of Public Health – National Migration and Health Programme
2008–2013

106. The National Migration and Health Programme, under the responsibility of the Federal Office of Public Health, is a key element in the integration policy in that it helps to improve the migrant population's health behaviour as well as its state of health; it is also responsible for ensuring that it has access to the health system and the quality of health care⁵⁶. The programme aims to reduce discrimination in this domain, and to ensure that people with a migrant background have the same opportunity as native Swiss to develop their health potential. With an annual budget of some 3 million francs, the programme helps to finance measures in the fields of health promotion and prevention, training, treatment, community interpretation services, research and knowledge management. Priority during the period covered by this report has been given to the following activities: evaluation of cantonal requirements in health prevention and promotion; production and dissemination of information materials for the migrant population; promotion of the health skills of migrants; the establishment of migrant friendly hospitals; setting up an e-learning training tool on the topic of *Interaction & Quality* for doctors, health personnel, receptionists and services; support for the training of quality community interpretation services; development of a national telephone interpretation service in the health sphere; and carrying out a second monitoring exercise on the health of the migrant population in Switzerland.

(iii) Extraparliamentary commissions

107. Apart from the services of the State, two extraparliamentary commissions play an important role in measures to combat racism and protect against discrimination.

a. Federal Commission against Racism

108. When acceding to the CERD Convention, the Federal Council established the Federal Commission against Racism (CFR) to ensure permanent monitoring of all racist or discriminatory incidents and activities. The CFR is attentive to the needs and concerns of minorities. It can take account of a range of interests and express its opinion freely without having to toe a government or political line. Its aim is to promote understanding among persons from different backgrounds and to combat racism and racial discrimination through preventive, advisory and mediation activities (for a detailed description of its remit and activities, see the second and third reports, chaps. 212 ff.).

109. Priorities and projects for the reporting period are:

⁵⁵ www.vtg.admin.ch/internet/vtg/fr/home/militaerdienst/allgemeines/fachstelle_extremismus.html.

⁵⁶ See www.bag.admin.ch/themen/gesundheitspolitik/07685/07688/index.html?lang=fr.

- Project involving a counselling network for the victims of racism: the CFR is in charge of this project in collaboration with *humanrights.ch*; it has published an annual report since 2008.
- Development of other monitoring instruments: compendium of judgements relating to article 261 *bis* of the Criminal Code and the establishment of an agenda of parliamentary affairs relating to the mandate of the CFR.
- Publication of the study *Le droit contre la discrimination raciale*, dealing with the French legal system: published in 2010, this study highlights the shortcomings of the French legal system with regard to protection against discrimination and racism.⁵⁷ The CFR is committed to comprehensive protection against discrimination.
- TANGRAM bulletin: this bulletin is published twice yearly by the CFR and each issue includes a dossier on a particular subject. The last two issues were devoted to the following subjects: security-safety; town-countryside; multiple forms of discrimination; structural discrimination; hostility towards Muslims; the political discourse.

110. In the form of recommendations, the CFR expressed its views in 2011 on the wearing of the headscarf in State schools. At the request of some cities, it adopted a position in 2009 on the poster displayed by the committee responsible for the initiative on banning the construction of minarets. Following the adoption of this initiative, it invited representatives of the Muslim communities in Switzerland, in conjunction with the Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe, to a meeting in October 2010 at which the question of the creation of a Moslem umbrella organization in Switzerland was discussed and contributors from neighbouring countries told of their experience regarding institutions of this type.

111. The Federal Commission against Discrimination is a national human rights organization, granted C status by the United Nations and entitled to submit independent views to United Nations bodies, the Council of Europe and the Organization of Security and Cooperation in Europe. In this capacity, it drafted an overview in 2009 of the implementation in Switzerland of the recommendations of the United Nations World Conference against Racism and was heard that same year by the United Nations Committee on Economic, Social and Cultural Rights. In 2012, it submitted a report on the second universal periodic review of Switzerland. The Commission regularly receives international bodies visiting Switzerland, such as the European Commission against Racism and Intolerance with which it maintains regular exchanges, representatives of the Organization for Security and Cooperation in Europe concerned with the promotion of tolerance and the European Commissioner for Human Rights. The Commission also establishes independent reports in the framework of CERD reporting procedure.

b. Federal Commission on Migration

112. The Federal Commission on Migration (CFM) was established by the Federal Council on 1 January 2008. It has thirty members, almost half with an immigrant background. It is the result of a merger between the former Federal Commission on Foreigners and the Federal Commission on Refugees. Forming a bridge between the authorities and civil society, it deals with social, economic, cultural, political, demographic and legal issues relating to the presence of foreigners in Switzerland. As an extraparliamentary commission, it advises the Federal Council and the administration, and publishes studies, analyses and recommendations relating to migration policy.

⁵⁷ www.ekr.admin.ch/shop/00007/00073/index.html?lang=fr.

113. The CFM can propose to the Federal Office for Migration the provision of financial support and give its views on requests for the funding of projects. It has itself developed two programmes: *Periurban – cohabitation in rural areas* and *Citizenship*. It supports projects aimed at promoting integration, protecting human rights and preventing discrimination. Its activities are focused on the networking of local actors, promoting opportunities for participation, opening up social structures and creating forums on opinion forming and expression.

114. Priority topics for 2008–2011 were:

- Identity issues
- Transnational relations
- Citizenship
- Federalism

115. Studies and recommendations for 2008–2011 were:

- Admission of groups of refugees and aid *in situ*
- Us, me – the others. Migrants' associations and the shaping of identity – an internalist approach
- Muslim life in Switzerland
- Deportation. Expulsion
- Integration: a way of achieving equality of opportunity or a measuring instrument for imposing sanctions?
- Profile of undocumented persons in Switzerland
- Citizenship – ensuring affiliation, participation and responsibility
- The margins for manoeuvre within federalism: migration policy in the cantons

(c) *On cantonal and communal plans*

116. The Confederation and the cantons have agreed to strengthen protection against discrimination and measures to promote equality of opportunity under the integration policy. This determination is reflected in cantonal policy (e.g. equality of opportunity is one of the ten pillars of the integration policy of the canton of Zug⁵⁸). All cantons have appointed integration officials, who have been given the task (sometimes explicitly) of combating discrimination and racism. This trend and the inclusion of protection against discrimination in cantonal integration programmes after 2013 will not only benefit the migrant population but will also open up opportunities to all those affected by discrimination or racism in Switzerland. It therefore represents a significant and comprehensive advance in protection against discrimination.

117. Many cantons and towns are attempting, particularly through stronger early stimulation measures, to remove any discriminatory impediments to integration as early as possible (detailed explanations are to be found in section 5.5 (e) of Part II).

118. What follows is a representative selection of the activities carried out at the cantonal and communal levels:

⁵⁸ See www.zug.ch/integration.

- On 21 March 2011, the canton of Fribourg awarded the Migration and Employment Prize for the first time to the joinery firm Gachet Ruffieux SA in Charmey. Carrying with it a prize of 5000 francs, the prize honours Fribourg employers who make an active and innovative contribution to the integration of migrants and efforts to combat discrimination. The concern with integration and equality of opportunity is likewise reflected in the canton's launching of the *Gemeinden gemeinsam – Friendly Communes* project to improve the quality of life and social cohesion at the communal level. In 2009, the project received the Swiss prize for integration awarded by the Federal Commission on Migration.
- On 1 April 2008, the canton of Geneva set up a Human Rights Office responsible among other things for promoting awareness in the cantonal administration and among the general public of the problem of non-respect for human rights. In this connection, the Office regularly organizes talks and discussions on racial discrimination. The Office for the Integration of Foreigners has established an information system for all population groups (in particular, foreign women, foreigners in search of employment, etc.) and is carrying out public awareness campaigns. Since 2009, the canton has organized an annual anti-racism week (planned to encompass French-speaking Switzerland in 2012). It has set up a counselling centre for victims of racism that is independent of the State, and it funds projects to combat racism.
- With the help of governmental and nongovernmental bodies, the canton of Neuchâtel has established a website offering young people information and opportunities for exchanges.⁵⁹
- The canton of Zurich's anti-discrimination provision includes specialized facilities and measures such as the civic and cantonal mediation services (Ombudsstellen), the Konfliktophon telephone service operated by the organization AOZ, the TiKK resource centre for intercultural conflict, the Mirsah (legal advice), the SOS Racism counselling service, the Domizil foundation and the Brückenbauer specialized cantonal police service. Under a pilot project for a specialized integration service, training and awareness courses are being organized for the relevant personnel in the canton and communes. For two years, in the spring and autumn, this same service has been organizing an awareness campaign — through posters, in buses and trams and on its website — to encourage mutual understanding and prevent discrimination.
- The canton of St. Gallen is opposing racism in sport through its *Sport-verein-t* project and is supporting the *Verein für sozioprofessionelle Fanarbeit FC St.Gallen* with a grant of 70,000 francs from the Sport-Toto Fund. Under the *Sport-verein-t* project, five key objectives have been set out in a charter: organization; voluntary work; integration; combating violence, conflict and substance abuse; and solidarity. Sports organizations that recognize this charter as a code of honour and take convincing measures to implement it receive the *Sport-verein-t* quality label from the St. Gallen sports associations (St. Galler Sportverbände). The quality label is officially recognized by the Swiss Olympic Association. Through this pioneering initiative, the project has made a valuable contribution along the lines of the practical guide recently published by the Federal Office of Sport entitled "Cultural Diversity in Sports Associations. Living Together – Training Together". Facilities for the socio-professional supervision of football supporters in the city of St. Gallen have been developed on the basis of a practical project developed by the Department of Social Work of the St. Gallen University of Applied Sciences. The aim is to

⁵⁹ www.ciao.ch/f/racismes.

encourage dialogue and interchange between the club, supporters' club officials, supporters, police, politicians and other groups to strengthen the opposition to violence, racism, substance abuse and vandalism and to deal with emerging conflicts as rapidly as possible.

- The cities of Winterthur, Geneva, Lausanne, Zurich, Bern, Lucerne and Renens have joined UNESCO's European Coalition of Cities against Racism. In so doing, they undertake to draw up a plan of action and implement the corresponding measures. In the city of Zurich, an interdepartmental working group established for this purpose reports regularly to the City Council. In its initial 2009 report it reviewed the current situation and explored the topics of coordination, housing, apprenticeships, conflicts and the police. Following this report, a whole series of measures was taken. The second report will be published at the end of 2012 and will focus in particular on the responsibilities of the State and the elementary school. The city of Zurich has also addressed the topic of racism and discrimination, notably in the 2009 Integration Report entitled "Wir leben Zurich. Gemeinsam. Migranten/-innen in der Stadt Zurich" (We are Zurich. Together. Migrants in the city of Zurich) and in the integration strategy for 2012–2014.⁶⁰ In the city of Bern, membership of the European Coalition of Cities against Racism has proved, in the complete absence of anti-discrimination legislation, a very useful tool for stimulating measures at the communal level. Many of the measures included in the plan of action have already been implemented, such as making the granting of private advertising rights in the public domain conditional on a ban on racist content; support for a mentoring project for qualified women migrants; the introduction of criteria for training security staff for public surveillance functions; and the provision of courses on personal courage for city employees.
- To alert a wide public to the problem of racism and to draw attention to possible measures to combat it, many Swiss cities and cantons organize an annual anti-racism week in March involving a wide range of activities. In 2012, all the cantons in French-speaking Switzerland and Ticino staged a joint campaign during this week entitled "Diversity, a Swiss value?".

II. Consideration of the implementation of articles 2 to 7 of the Convention

1. Article 1 Definition of racial discrimination

119. Switzerland possesses the necessary legal instruments to combat all forms of racial discrimination.

120. It has ratified many international legal instruments in the field of international law (including the Convention on the Elimination of All Forms of Racial Discrimination, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages). It has guaranteed that the human rights enshrined in the Conventions it has ratified will be exercised without discrimination. An international treaty ratified by the Federal Council forms part of Swiss federal law from the date of its entry into force for Switzerland, without the need for it to be incorporated in domestic law through the adoption of a special act (the monistic character of the Swiss legal order is not

⁶⁰ Documents: www.stadt-zuerich.ch/integration.

expressly mentioned in the Federal Constitution but it is implicit in the document as a whole).⁶¹ In its jurisprudence, the Federal Supreme Court has referred on a number of occasions to the obligation to respect international law under article 5, paragraph 4, of the Constitution.

121. With regard to domestic law, article 8 of the Swiss Constitution makes clear that equality before the law is a human right and that it is applicable equally to Swiss citizens and non-nationals (para. 1). Under its second paragraph, “No person may be discriminated against, in particular on grounds of origin, race, gender, age, language, social position, way of life, religious, ideological, or political convictions, or because of physical, mental or psychological disability”. Without being explicitly stated, indirect discrimination is included in this provision.

122. Article 261 *bis* of the Criminal Code and article 171 (c) of the Military Criminal Code of 13 June 1927 (RS 321.0) makes it an offence to publicly incite hatred or racial discrimination, disseminate a racist ideology, deny crimes against humanity and refuse to provide a public service. These provisions are aimed at protecting human dignity and public order. By categorizing violations of these provisions as an *ex officio* offence, the State is able to take action against racism in the public domain.

123. In its reply to a Parliamentary question in 2008, the Federal Council examined the question of the definition of racial discrimination under criminal law.⁶² It reached the conclusion that Swiss criminal legislation meets the requirements of the Convention without the need for an exhaustive definition of racial discrimination. Article 261 *bis* of the Criminal Code goes beyond the Convention’s requirements by providing a broader definition of the groups of persons protected and their defining characteristics (para. 1). Although the article in question does not explicitly refer to the category of foreigners, the legislation protects the individuals concerned with regard their race, ethnicity, nationality and religion. Moreover, under the same article, the denial of genocide or other crimes against humanity (para. 4, second half of the sentence) as well as the refusal to provide a service intended for the general public (para. 5) are offences punishable by law (para. 6). Other criteria such as gender, sexual orientation, lifestyle and disability come within the scope of the prohibition of any kind of discrimination laid down by the Constitution (art. 8) or by statute.

124. An act of racial discrimination is only punishable if committed in the public domain, not in private. In connection with demonstrations of the extreme right, the Federal Supreme Court has defined the indeterminate legal concept of “public” in the context of article 261 *bis* of the Criminal Code.⁶³ It has stated that allegations and acts are considered public when they have not taken place within the family circle or a group of close friends, or in a setting characterized by close personal relations or special trust. The fact that the persons involved have the same opinion does not exclude the demonstration from being public within the meaning of article 261 *bis* of the Criminal Procedure. Indeed, this provision is precisely aimed at preventing racist ideas from becoming rooted and spreading in circles already receptive to them.

125. On the question of a criminal provision penalizing the use of racist symbols, see section 4.2 of Part II.

⁶¹ Report of the Federal Council of 5 March 2010 on the relationship between international law and domestic law, FF 2010 2067.

⁶² Reply by the Federal Council of 12 November 2008 to a parliamentary question (Response to the recommendations of the Committee against Racism. Measures by the Federal Council. Parliamentary question by U. Leuenberger 08.1078 of 17 September 2008).

⁶³ ATF 130 IV 111.

126. Concerning anti-discrimination regulations, reference should be made to article 28 of the Swiss Civil Code of 10 December 1907 (RS 210) on protection of the personality, and certain provisions of the Federal Act of 30 March 1911, supplementing the Swiss Civil Code (Code of Obligations, RS 220), concerning labour law and lease agreements. The Federal Act on Gender Equality (LEg) of 24 March 1995 (RS 151.1) likewise contains provisions relating to protection of the personality in the context of private and public labour relations. Article 3 of the Act prohibits any discrimination on the basis of gender, with regard to both hiring and working conditions. In addition, the Federal Aliens Act provides for the promotion of equality of opportunity and equal access by foreigners to basic facilities, namely school, vocational training and work.

127. With reference to General Recommendation No. 30 (2004), article 36 of the Constitution provides that restrictions of fundamental rights (for example, the prohibition of discrimination under article 8 of the Constitution) must have a legal basis (serious restrictions must be laid down in law, except in the case of clear and present danger). Any restriction must be justified by public interest, or serve to protect the fundamental rights of other persons, and must be in proportion to the goal pursued. The essence of fundamental rights is inviolable. Any differential treatment of foreigners must also be consistent with these principles. The participation of migrants in economic, social and cultural life is encouraged in particular by the strengthening of integration policy (see Part 3, section 12) and by measures to combat racism and discrimination at the national, cantonal and communal levels (see Part I, section 3.4). It should be emphasized yet again here that the Federal Council, in its explanatory report of November 2011 on the consultation process concerning the amendment of the Federal Aliens Act, and in its report of March 2010 on the development of the Confederation's integration policy, pointed out that a comprehensive integration policy is only possible if it is accompanied by systematic protection against discrimination. The national and cantonal integration programmes foreseen in the context of the revision of the Federal Aliens Act place the emphasis on combating discrimination and thus represent an important step towards the realization of a national anti-discrimination strategy.

2. Article 2 Condemnation of racial discrimination

1. General remarks on article 2.1 (a) and (b): respect for the principle of equal treatment by the State

128. Since the reformulation of the principle of equality and the prohibition of any form of discrimination in article 8 of the Constitution, the jurisprudence of the Federal Supreme Court has been strengthened and confirmed in practice. Discrimination is an aggravated form of unfair treatment of people who are in comparable situations. It leads to the penalization of an individual and constitutes a disparagement or exclusion because of a characteristic of the person of which the other disapproves, such as race, origin, sex, language, etc. However, the prohibition of discrimination in Swiss constitutional law does not categorically preclude the basing of unequal treatment on such a characteristic, but initially generates a suspicion of unlawful differentiation, which cannot be removed without sufficient justification. Legally, therefore, the ban on discrimination means that unequal treatment must be very thoroughly justified.⁶⁴ This principle must be observed both in

⁶⁴ See ATF 129 I 392 E. 3.2.2., 126 II 377 E. 6 a.

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.⁶⁵

2. Article 2.1 (a): The problem of discrimination between foreigners and the reservation made by Switzerland in respect of its immigration policy

129. On this question, see the comments by Switzerland, which remain relevant, in paragraph 286 of the previous report and in section 8 of Part III below.

3. Article 2.1 (c) and (d): The prohibition of discrimination and its application to relations between individuals

130. Fundamental rights, as guaranteed by the Constitution, do not readily lend themselves to direct application between individuals.⁶⁶ This does not mean that they have no effect on the relations between individuals (horizontal relations). Indeed, article 35.3 of the Constitution enjoins the authorities to ensure that fundamental rights apply to relationships among private persons. They must do so in keeping with the law and the purpose of the legislation.⁶⁷

4. Article 2.1 (e): The encouragement of integrationist organizations and movements

131. This point is developed in the section on article 7 of the Convention (positive measures against racist behaviour).

**3. Article 3
Condemnation of apartheid**

132. Switzerland is one of the European countries with the highest proportion of foreigners (22.4 per cent, or over 1.76 million people). Its integration policy may be considered a success, given that the different population groups (including the domestic minorities) cohabit and spatial segregation has been avoided. To maintain this state of affairs, various measures have been taken, including the following four by way of illustration (the Confederation's integration policy is described in detail in section 12 of Part III):

- The Urban Projects interdepartmental programme⁶⁸ is based on the Federal Council's 2007 report on integration measures (it is also described in section 3.4 (b) (i) of Part I).⁶⁹ It provides technical and financial support to small- and medium-sized towns and municipal conurbations during the implementation of urban and social measures. The measures envisaged should form part of an overall scheme and should enjoy political support. A participatory approach enables the main stakeholders — in particular the migrant population and groups subject to discrimination — to be involved in the development of the project. The programme has an annual budget of 550,000 francs. The Service for Combating Racism

⁶⁵ Ulrich Häfelin/Walter Haller/Helen Keller, 2008, *Schweizerisches Bundesstaatsrecht*, 7th edition, Zurich, chaps. 747 and 774–776a.

⁶⁶ Jean-François Aubert, *Traité de droit constitutionnel* [Treaty of constitutional law], vol. 2, Neuchâtel, 1967, note 1742; Bernhard Pulver, *L'interdiction de la discrimination* [The prohibition of discrimination], a study of art 8, para. 2, of the Federal Constitution of 18 April 1999. Thesis, Nos. 228 ff.

⁶⁷ See Bernhard Pulver *op. cit.*

⁶⁸ See note 48 *supra*.

⁶⁹ See note 49 *supra*.

participates financially and ensures in particular that questions relating to the phenomena of participation, discrimination and racism are covered in the projects it supports. An overview of the projects is published on the websites of the offices participating in the programme.⁷⁰

- The Periurban Programme of the Federal Commission on Migration is focused on social coexistence in small centres in periurban areas. Specifically, it supports communes in the selected regions to initiate developments conducive to integration and social cohesion at the regional level, and to strengthen such cohesion within the local population. For the second phase of the programme, extending from 2012 to 2015, eight projects in eight different regions have been selected with a view to establishing collaboration, strengthening networks and pursuing approaches that have already proved their worth. The programme includes exchanges of experience and systematic data collection, the development of good practices and their wider dissemination.
- Through model citizenship projects, the Federal Commission on Migration seeks to foster new forms of participation. Its approach is based on the concept of *citizenship*, which stresses joint decision-making and participation without regard to nationality. The aim is to promote opinion forming and the expression of political will, as well as knowledge about democratic principles and fundamental rights. The projects encouraged are those that foster the widest possible participation in public debate and decision-making.
- Convinced of the need for local action to combat racism, discrimination and xenophobia, a total of 104 European cities have joined forces in the International Coalition of Cities against Racism, established by UNESCO in 2004. They include the Swiss cities of Winterthur, Geneva, Lausanne, Zurich, Bern and Lucerne. Joining the Coalition is a two-step process: the municipalities firstly sign a statement of intent, and this is followed by an act of accession and commitment, in which they undertake to implement a ten- point plan of action and to submit a biennial report. The plan consists of a large number of draft projects aimed at promoting public awareness of the topic, providing support to victims and informing the public at large and securing its participation. It also includes ideas for projects to promote cultural diversity and develop classroom activities. The Confederation supports this international campaign: the Service for Combating Racism is ready to assist cities interested in launching projects, and can provide financial support to specific projects.⁷¹

4. Article 4 Measures to make certain acts of racial discrimination punishable by law

1. Article 4 (a): The provisions of article 261 *bis* of the Criminal Code and article 171 (c) of the Military Criminal Code

133. In application of the criminal provision against racism (article 261 *bis* of the Swiss Criminal Code and article 171 (c) of the Military Criminal Code), racially motivated acts committed in public are liable to prosecution and sanction. Under a mandate from the

⁷⁰ See note 50 *supra*.

⁷¹ The links to all the various municipal projects are to be found on the SCR website at: www.edi.admin.ch/frb/00538/01066/02023/index.html?lang=fr.

Federal Council, the Federal Commission against Racism (CFR) monitors and analyses the application of this criminal provision. It publishes on its Internet site a compendium of court cases since 1995 relating to article 261 *bis* of the Swiss Criminal Code,⁷² including anonymized summaries of all the court verdicts. Those interested can make a targeted search of the cases or gain a clear picture of the relevant jurisprudence by consulting an overview of the cases.

134. Police crime statistics are entered by all police units in the cantons and cities according to standard principles and include all the infringements reported under the Criminal Code; the statistics have been published since 2010.

(a) *Criminal proceedings and jurisprudence*

135. According to the police crime statistics, the police investigated 230 complaints of racial discrimination in 2009 (article 261 *bis* of the Swiss Criminal Code),⁷³ resulting in the initiation of 159 criminal proceedings. The same year, thirty guilty verdicts with immediate enforcement were pronounced for racial discrimination. In 2010, the number of cases reported fell slightly to 204, of which 156 were solved. There was a further reduction in 2011, when the number of cases totalled 182, of which 128 were solved. The statistics on convictions with immediate enforcement are not yet available for 2010 and 2011. Concerning complaints, these mostly involved written or verbal racial comments, as well as the production and dissemination of racist opinions by electronic means. Racially motivated assaults were uncommon, which is largely explained by the fact that the classification concerned has only existed since 2010 and incidents are not yet systematically entered in all cantons.

136. According to CFR statistics, the number of complaints of racial discrimination lodged between 1995 and 2009 totalled 501.⁷⁴ A judgement was delivered in 273 cases and a decision not to proceed was taken in the remaining 228. Between 1995 and 2009, a verdict was passed in over 84 per cent of cases. A large majority of the cases concerned verbal or written attacks against Jewish, foreign or coloured persons. The distribution of racist material and racist attacks by electronic means represented just under 20 per cent of cases. On the other hand, refusal to provide a service and assaults were relatively rare (2.4 per cent and 3.1 per cent respectively). The offenders were mainly individuals and members of the extreme right. There has been an increase in recent years in the number of political figures condemned for racial discrimination.

137. Examples of the interpretation by the courts of the different paragraphs of article 261 *bis* of the Swiss Criminal Code are given in figures 101 ff. of the previous report.

(b) *Further information on practice*

138. Racist incidents are often not reported since the persons concerned have a sketchy knowledge of the legal situation, and feel ashamed or think that evidence is lacking. Hence the importance of the statistics on the cases recorded by counselling services or events of a racist nature, which provide valuable additional information on the extent and typology of racist incidents.

- Established under the auspices of the Federal Commission against Racism and in collaboration with Humanrights.ch and other services, the Documentation System

⁷² www.ekr.admin.ch/dienstleistungen/00169/index.html?lang=fr.

⁷³ *Source*: Federal Statistical Office, 2010, Police crime statistics, Neuchâtel (the cases recorded are those reported nationally since 2009).

⁷⁴ www.ekr.admin.ch/dienstleistungen/00169/00172/00177/index.html?lang=fr.

on Racism (DoSyRa), supported financially by the Service for Combating Racism, has kept a systematic record of all racist cases since 2008. A total of 178 out of the 230 cases dealt with by the counselling services were considered by the latter to be racist in character. Accusations of racism were levelled at 127 of the 162 cases treated in 2009. In most cases, the racism, xenophobia and attacks were motivated by skin colour or supposed affiliation to the Muslim religion and usually took the form of verbal comments.

- The Foundation against Racism and Anti-Semitism publishes an annual list of racist and discriminatory incidents and analyses the overall situation. Its main source of information is the mass media and cases reported directly to it.⁷⁵ In 2010, it recorded 109 incidents, compared with 114 in 2009 and 96 in 2008. The categories into which they most often fell were (depending in large measure on the year) verbal racism, extreme-right rallies, threats and graffiti.
- The Swiss Federation of Jewish Communities records the anti-Semitic incidents reported by or known to the public in German-speaking and Italian-speaking Switzerland. A total of 34 were recorded in 2010, compared with 28 in 2009 and 21 in 2008.
- Anti-Semitic incidents in French-speaking Switzerland are recorded by the Inter-Community Coordination against Anti-Semitism and Defamation. The most recent figures date from 2010, when the Coordination recorded 104 cases. In 2009, the number totalled 153, compared with 96 in 2008. The reason why these figures are high is because the Coordination actively seeks out incidents and anti-Semitic remarks, in particular on the Internet.

139. A comparison between the statistics concerning cases where there was a conviction and cases referred to the counselling services shows that the victims of anti-Semitism requested the counselling services less frequently (or else made use of specifically Jewish organizations) and more often lodged a complaint. On the other hand, the Muslim victims of discrimination had recourse more often to counselling services and made fewer complaints (only 2.7 per cent of the complaints lodged between 1995 and 2009).

2. Article 4 (b): Prohibition of racist organizations and propaganda activities

140. Following a motion filed in 2005⁷⁶, the Federal Council submitted to Parliament a bill aimed at punishing the public use of symbols promoting extremist movements preaching violence and racial discrimination. However, the views expressed during the consultation procedure for the bill highlighted the considerable problems of implementation (the lack of a clear demarcation between behaviour that is punishable and not punishable in law, the impossibility of clearly defining racist symbols, a legal provision too imprecise from the standpoint of restricting freedom of opinion). The authors of these views also deplored the fact that the bill did not improve the opportunities for police action. After a careful weighing of the arguments, the Parliament decided not to follow the Federal

⁷⁵ *Racisme en Suisse. Chronologie et estimations des incidents racistes en Suisse* [Racism in Switzerland. Chronology and estimates of racism in Switzerland]: <http://chronologie.gra.ch/> et <http://chronologie.gra.ch/index.php?p=5>. In 2011, the Foundation against Racism and Anti-Semitism published for the first time, in collaboration with the Swiss Federation of Jewish Communities, a report on anti-Semitism listing the anti-Semitic incidents publicized or reported in 2010 in German-speaking and Italian-speaking Switzerland.

⁷⁶ Motion 04.3224 submitted by the National Council's Legal Affairs Committee.

Council's proposal⁷⁷ and to set the motion aside. The use of racist symbols remains punishable if they embody an ideology that has as its object the systematic denigration or defamation of the members of a race, ethnic group or religion, and if the person concerned publicly engages in propaganda with the same objective.

141. Parliament has rejected repeated attempts to abolish or weaken the legal provision against racism (article 261 *bis* of the Criminal Code). On 7 August 2007, for example, the Swiss Democrats launched a federal popular initiative "In favour of freedom of expression – we shall not be muzzled!" which sought to strike the provision from the statute book. The initiative was unsuccessful, since it only mustered 80,000 signatures within the prescribed time limit (deadline 7 February 2009) rather than the 100,000 required.⁷⁸ Since then, no new initiative against the provision has been launched. On the other hand, Parliament has rejected or not dealt with a number of calls for stronger protection against racial discrimination. In spring 2012, for example, it did not act upon a parliamentary initiative calling for the adoption of a law to combat racial discrimination.⁷⁹

5. Article 5 Elimination of racial discrimination with regard to certain human rights

1. Article 5 (a): The right to equal treatment before the tribunals and all other organs administering justice

142. 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, supplemented by the provisions of the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The procedural guarantees set forth in article 29 of the Federal Constitution apply to all judicial and administrative proceedings,⁸⁰ 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 do not 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.⁸¹

143. On 12 March 2000, the people and the States approved a wide-ranging reform of the justice system, now fully implemented, designed to ensure that the Federal Tribunal continued to operate efficiently, to improve legal procedures and to achieve a better standardization of procedural rules in Switzerland: access to a judge has been guaranteed since 1 January 2007 (art. 29 (a) of the Constitution) and a comprehensive review of the administration of justice has taken place. The corresponding changes to legislation concern the organization and proceedings of the Federal Supreme Court, the involvement of the

⁷⁷ Report of the Federal Council concerning the rejection of motion 04.3224 of 29 April 2004 submitted by the Legal Affairs Committee, FF 2010 4851.

⁷⁸ FF 2009 837.

⁷⁹ Katharina Prelicz-Huber parliamentary initiative (Pi. 10.523). Parliament rejected the initiative, mainly on the grounds that the "reversal of the burden of proof" on which it relied would in the end penalize persons not displaying the characteristics mentioned in the bill (not of foreign origin, for example) and that the principle of contractual freedom would be excessively weakened.

⁸⁰ FF 1997 I 183.

⁸¹ FF 1997 I 183.

lower courts and the reform of the legal procedures leading to the Supreme Court. The Federal Council is currently assessing the effects of the reform. The initial results seem to show that the objectives have in large measure been achieved.⁸²

144. On 1 January 2011, the entry into force of the Swiss Code of Criminal Procedure and of the Federal Act of 20 March 2009 on the Criminal Procedure Applicable to Minors (PPMin; RS 312.1) has put an end to the disorganization of procedural law. In future, offenders will be prosecuted and judged according to the same procedures in all the cantons. By way of example, the right of all persons placed under arrest to have the immediate assistance of a lawyer, to inform one of their relatives and to be examined by an independent doctor is now guaranteed in all the cantons. The Civil Procedure Code, which has likewise replaced the 26 cantonal civil codes, stipulates different types of procedures according to the nature of the dispute and places special emphasis on out-of-court settlements.

145. The unification of procedural law makes it possible to ensure that the principles of equality before the law and legal certainty are upheld. The administration of justice continues to be a cantonal responsibility. The Criminal Authorities Organization Act (LOAP; RS 173.71), which also entered into force on 1 January 2011, aims to reorganize the federal criminal authorities in the light of the new Code of Criminal Procedure. Accordingly, the Office of Federal Examining Magistrates was closed down and its resources were reallocated to the Federal Public Prosecutor's Office. In addition, new arrangements were made for monitoring the activities of the Federal Public Prosecutor's Office, which is now the responsibility of a special body elected by Parliament.

2. Article 5 (b): The right to security of person and protection by the State⁸³

146. Victims of ill-treatment by police officers may lodge criminal complaints. Such acts, which are necessarily linked to abuse of authority (art. 312 of the Code of Criminal Procedure), entail automatic prosecution and are subject to criminal law jurisdiction. The complaint can be made in writing or verbally to a criminal prosecution authority (or directly to the Public Prosecutor's Office). Judgements at first instance and the decision to dismiss the complaint can be appealed, firstly at the cantonal level, and then before the Federal Supreme Court.⁸⁴

147. 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 and credibility of the authorities by punishing infringements of service obligations.⁸⁵ For further details on the situation in the cantons, please consult section 11 of Part III.

148. The Act of 20 March 2008 on the use of force and police measures in areas under the jurisdiction of the Confederation (RS 364), which came into force on 1 January 2009, defines the constitutional conditions governing the proportionate use of coercion and other police measures, with particular reference to the repatriation of foreign nationals. It also guarantees suitable training for the bodies responsible for these tasks. 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. Additional aids in the

⁸² Report on the results of the interim assessment of the new organization of the federal judiciary of 18 June 2010; FF 2010 I 4413.

⁸³ On police violence, see also section 11 of Part III.

⁸⁴ Christoph A. Spenlé/Cédric W. Fumeaux, 2005, Aspekte der polizeilichen Gewalt aus völker- und verfahrensrechtlicher Perspektive, SJZ 101 (2005) No. 6, p. 135.

⁸⁵ Spenlé/Fumeaux, p. 136.

form of handcuffs and other restraints and service dogs are also permitted. Methods that could hinder breathing or cause serious health damage are forbidden. The law also prohibits the use of incapacitating devices (Taser gun). 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 Department of Justice and Police has published a guide to repatriation of foreign nationals and asylum-seekers applicable from 1 January 2012. This guide contains two chapters, addressed respectively to the federal authorities and the cantonal authorities, concerning the use of force and police measures with respect to foreign nationals.

149. On 30. November 2011, the National Commission for the Prevention of Torture submitted to the Federal Department of Justice and Police and the Conference of Cantonal Justice and Police Directors a report on the escorting of forcible repatriations by air. In this report, the National Commission recommended a more flexible application of the forcible measures and made various recommendations for the enforcement authorities. The Expert Committee on Return and Enforcement of Removals was tasked by the Federal Department and Conference to examine these recommendations and to adopt a position for the attention of the National Commission.

150. Concerning procedures and conditions of custody prior to removal, the European Directive on standards and procedures for returning illegally staying third-country nationals (Directive 2008/115/EC) establishes a number of rules with regard to the return decision, the deadline for voluntary departure, the conditions of custody prior to removal (particularly for minors and their families) and legal protection. Switzerland has adapted its legislation to this Directive, and the amendments came into force on 1 January 2011. A judge considers in each case whether custody is justified. Moreover, Switzerland has set a minimum age of fifteen for custody of a minor, whereas the Directive does not fix any limit in this regard. Expulsions are transparent procedures, and when carried out using air transportation must be overseen by third parties.

3. Article 5 (c): Political rights

151. The information on this subject given in paragraphs 126 ff. of the fourth, fifth and sixth periodic reports remains valid.

4. Article 5 (d): Other civil rights

(a) Article 5 (d) (i): The right to freedom of movement and residence within the border of the State

152. Generally speaking, foreign nationals have the right to choose their place of residence freely on the territory of the canton that has granted them a permit. Short-stay, residence and permanent residence permits are only valid in the canton that has issued them. A person holding such a permit who wishes to change canton must first have obtained a new permit. Subject to certain conditions, the holders of a residence or permanent residence permit are entitled to change canton (art. 37 of the Federal Aliens Act).

(b) Article 5 (d) (ii): The right to leave any country, including one's own, and to return to one's country

153. See on this subject the information given in paragraphs 156 and 157 of the second and third reports.

(c) *Article 5 (d) (iii): The right to nationality*

154. See on this subject the information given in section 12 of Part III

(d) *Article 5 (d) (iv): The right to marriage and choice of spouse*

(i) Right to marry

155. Article 14 of the Federal Constitution guarantees the right to marry and have a family without interference by the State or restrictions by the police. The conditions laid down in article 94 of the Civil Code are applicable equally to Swiss and foreign nationals. However, article 97a of the Civil Code provides that the civil registrar shall not consider a request for marriage if the bride or groom clearly has no intention of living together but wishes to circumvent the provisions on the admission and residence of foreign nationals. Engaged couples who are not Swiss citizens must prove during the preparatory procedure that they are lawfully resident in Switzerland.⁸⁶ In accordance with the guarantee of the fundamental right to marriage and with the principle of proportionality, these two provisions are interpreted restrictively. Where there is simply a doubt about the sincerity of the marriage intentions, the marriage must nevertheless be celebrated. Moreover, a residence permit must in this case be delivered by the Aliens Police to the engaged couple in an irregular situation so that the marriage can take place in Switzerland.

156. The cohabitation of spouses is essentially protected by article 13 of the Constitution and article 8 of the European Convention on Human Rights. No one can infer that they have a right to family reunification under the European Convention or the Federal Constitution unless they themselves have a well-established right of presence in Switzerland. Apart from the possession of Swiss nationality or a permanent residence permit, possession of a 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.⁸⁷

157. Annex I of the free movement agreement concluded with the countries of the European Union and EFTA contains provisions concerning family reunification: whatever their nationality, members of the family receive the same residence permit as the person in paid employment. They enjoy the right to engage in paid employment, and their children have free access to education institutions.

(ii) Right to choose a spouse

158. The growing diversification of society has focused attention in Switzerland on forced marriages: this denial of the freedom of choice of spouse seriously restricts the victim's right of self-determination.⁸⁸ Provisions criminalizing forced marriage already exist. According to the Swiss Civil Code, a spouse may seek a declaration of annulment if he or she has contracted marriage because of the threat of grave and imminent danger to his or her or a relative's life, health or honour (art. 107, chap. 4, Swiss Civil Code). Such a case

⁸⁶ See also section 8 of Part III.

⁸⁷ ATF 130 II 281 ff.

⁸⁸ See the most recent study carried out at the request of the Confederation: “‘Mariages forcés’ en Suisse: causes, formes et ampleur” [Forced marriages in Switzerland: causes, forms and scope], Anna Neubauer et Janine Dahinden, SFM, Neuchâtel, 2012.

comes under the criminal provision relating to coercion (art. 181 of the Criminal Code): the person concerned is liable to prosecution and to imprisonment for a maximum of three years or a fine. The Federal Council furthermore adopted on 23 February 2011 a message to Parliament envisaging various amendments to the Criminal Code, the Civil Code and private international law to intensify the campaign against forced marriage.⁸⁹ It should result in particular in automatic prosecutions, while marriage with a minor will in future be inadmissible. The Federal Council is furthermore preparing a more inclusive scheme for reinforcing the prevention of forced marriage and for combating this practice. The draft text was approved by Parliament on 15 June 2012. Against the advice of the Federal Council the draft law now provides that a marriage contracted under constraint should be annulled, even if the spouses wish it to continue.

159. In the city of Zurich, the department in charge of equal opportunities has carried out a project on forced marriages, including training, coordination and prevention measures.⁹⁰ Similar measures have been taken in other cities and cantons (for example, in the cantons of Jura and Fribourg).

(e) *Article 5 (d) (v): The right to own property*

160. See paragraphs 170 and 171 of the second and third reports.

(f) *Article 5 (d) (vi): The right to inherit*

161. See paragraph 119 of the first report.

(g) *Article 5 (d) (vii): The right to freedom of thought, conscience and religion*

(i) The right to express and put into practice religious convictions

162. On the recognition of religious communities in public law, see also the information given in paragraphs 144 ff. of the previous report and section 3.2 of Part I of this report.

163. In March 2012, the Federal Parliament rejected a wider prohibition on the wearing of the veil in public places, which would implicitly have been aimed at the Islamic forms of the veil in particular.⁹¹

(ii) Religious neutrality in public education

164. See in this connection section 3.2 (b) of Part I.

(h) *Article 5 (d) (viii): The right to freedom of opinion and expression*

165. Freedom of opinion and expression are guaranteed under the Federal Constitution (art. 16), the European Convention on Human Rights (art. 10) and the International Covenant on Civil and Political Rights (art. 19), as well as under all the cantonal constitutions. Any restriction must be provided for by law, proportionate and in the public interest.

⁸⁹ Message of 23 February 2011 concerning a federal law on measures to combat forced marriages (FF 2011 2045).

⁹⁰ www.stadt-zuerich.ch/content/prd/de/index/gleichstellung/themen/zwangsheirat.html.

⁹¹ Motion 10.3173 "Down with the masks!" (Oskar Freysinger).

(i) *Article 5 (d) (ix): The right to freedom of peaceful assembly and association*

166. In Switzerland, the freedom to demonstrate is protected under the provisions on *freedom of expression* and *freedom of assembly*, both of which are guaranteed under the Federal Constitution (arts. 16 and 22) and all the cantonal constitutions. The cantons can however make demonstrations subject to authorization, since they involve an out-of-the-ordinary use of public space. In its jurisprudence, the Federal Supreme Court recognizes the existence of a conditional right to use of the public thoroughfare for organizing demonstrations.⁹² A demonstration may be subject to additional police restrictions, particularly if there is a fear of clashes between rival groups.⁹³ Legal theoreticians criticize the fact that, according to the jurisprudence of the Federal Supreme Court, the mere suspicion of violence can be sufficient to issue a ban on demonstrating.⁹⁴

167. On 11 March 2012, the electors of the canton of Geneva approved by a majority of 53.9 per cent an amendment to the Law on Demonstrations in the Public Domain (RSG F 3 10) making prior authorization necessary in order to demonstrate in the canton of Geneva. In addition, the organisers will be severely punished if a demonstration gets out of control, even if they are not responsible for the excesses. According to those voters opposed to this law, these measures could be detrimental to and infringe the fundamental rights of freedom of expression and assembly.⁹⁵ On 1 May 2012, an appeal was lodged with the Federal Supreme Court for violation of the fundamental right to demonstrate.

168. On 24 February 2008, the electors of the canton of Schaffhausen voted in favour of banning the wearing of masks during demonstrations. The ban, which came into force on 1 April 2008, was accompanied by measures providing for the confiscation of the weapons and dangerous objects of potentially violent individuals and for the detention of persons carrying such objects during the demonstration. In addition, a legal foundation has been created for a video recording to be made when there is good reason to believe that wrongful acts could be committed. The video recordings should be used immediately and then destroyed.

169. Freedom of association is guaranteed under article 23 of the Constitution, which applies to foreigners as well as legal persons (and therefore associations).⁹⁶ On the other hand, illegal associations or those representing a threat to the State are not protected under this provision.⁹⁷

5. Article 5 (e): Economic, social and cultural rights

170. For full and detailed information on economic, social and cultural rights, please consult Switzerland's second and third reports (April 2008) on the implementation of the International Covenant on Economic, Social and Cultural Rights.⁹⁸ See also figures 159 ff. of the previous report.

⁹² Ulrich Häfelin/Walter Haller/Helen Keller, 2008, *Schweizerisches Bundesstaatsrecht*, Zurich, § 471.

⁹³ Jörg Paul Müller, 1999, *Grundrechte in der Schweiz*, 3rd edition, Bern, p. 331.

⁹⁴ See MÜLLER/SCHEFER, *op. cit.* p. 584 ff. with reference to Federal Supreme Court ruling 127 I 164.

⁹⁵ See also see also the reply by Switzerland to the joint allegation letter of three special rapporteurs of the Human Rights Council concerning the law adopted by vote in the canton of Geneva, which modifies the "law on demonstrations in the public domain" (Communication of 5 March 2012).

⁹⁶ FF 1997 I 169.

⁹⁷ See para. 146 of this report.

⁹⁸ May be consulted at www.eda.admin.ch/eda/fr/home/topics/human/humri/humtr/humrep.html.

(a) Article 5 (e) (i): The right to work

(i) The right to work

171. With regard to the horizontal effects of the prohibition of discrimination on the private law relationship between natural or legal persons, see figures 86 ff. of the second and third reports. The following data supplement those contained in those reports and in section 8 of Part III of this report.

- Right to gainful activity:⁹⁹ the Agreement on the Free Movement of Persons (ALCP) concluded with countries of the European Union and EFTA gives the right of entry and residence to persons who have already signed a work contract (which does not in itself include the right to work). Since 1 May 2011, freedom of movement under the agreement is total for nationals of EU-25/EFTA member countries.¹⁰⁰ Articles 6 and 12 of annex I of ALCP guarantee employed and self-employed persons from a contracting party the right to the granting of a short-term residence permit (type L) or a type-B residence permit by the relevant cantonal authority. These residence permits are also work permits and give access to the labour market without discrimination. Article 5 of annex I of the Agreement provides that these rights may be restricted only by means of measures which are justified on the grounds of public order, public security or public health.¹⁰¹
- Gainful employment for asylum seekers: under article 43, paragraph 1, of the Asylum Act, asylum-seekers may not engage in any gainful employment for the first three months after filing an application for asylum. However, this restriction is not applicable to asylum-seekers who participate in occupational programmes (*ibid.*, art. 43, para. 4). After three months, the asylum-seekers may be permitted to pursue gainful employment if the economic and employment situation allows, if an employer has so requested, if the salary and labour conditions are met, and if the order of priorities is respected (art. 52, para. 1, of the Ordinance on Admission, Residence and Gainful Employment). The fact of asylum-seekers being gainfully employed and integrated in the Swiss labour market does not constitute a priority consideration while the outcome of the procedure is unknown, and the authorization to engage in gainful employment does not prevent enforcement of the removal order in the case of a negative decision. If the economic and labour situation allows, however, a temporary authorization to engage in gainful activity may be issued. This facilitates integration of the asylum seeker in the labour market in the event of the subsequent granting of asylum and, in the case of a negative decision, develops social and vocational skills and, with them, the preparedness for returning home.
- Gainful employment by persons admitted on a temporary basis: under article 61 of the Asylum Act, persons admitted temporarily to Switzerland are permitted to engage in gainful employment and to change job or profession. Since the stay of most of these persons in Switzerland is a lasting one, it is important to promote their integration in the labour market. They can therefore be permitted to exercise

⁹⁹ Cf. Directives on the gradual introduction of the free movement of persons (II.4.4.2.1).

¹⁰⁰ From 1 May 2012, the Federal Council reintroduced quotas for nationals of the eight new member countries of the European Union (countries having acceded in 2004), referring to the safeguard clause provided for in art. 10, subpara. 4 (a), of the Agreement on the Free Movement of Persons (ALCP).

¹⁰¹ Up to 31 March 2016, the special transitional provisions under the ALCP apply to Bulgarian and Romanian nationals: separate quotas for short-term residence and residence permits, national preference, preliminary checks on wages and working conditions; quotas are fixed in article 10 of the Agreement and are granted quarterly.

dependent or independent gainful employment, irrespective of the job market and economic situation, and it is not necessary to consider the question of priority for Swiss workers (art. 85, para. 6, of the Federal Aliens Act, and 53 art. of ALCP). Persons temporarily admitted may participate in occupational programmes if they meet the conditions set by the programme in question.

(ii) Right to free choice of employment

- Change of employment under the Federal Aliens Act: the gainfully employed foreign national holding a residence permit may, in principle, change jobs without authorization (art. 38, para. 2, of the Federal Aliens Act). The foreign national holding a short-term residence permit may be authorized to change jobs for good cause (art. 32, para. 3, of the Asylum Act and art. 55, of ALCP). Finally, gainful activity by the holder of a C-type permanent residence permit (which, according to art. 34, para. 1, of the Asylum Act, is granted for an unlimited duration and without conditions) is not subject to any restriction under the legislation pertaining to foreign nationals or the labour market. The foregoing is without prejudice to the general trading policy and health policy requirements.
- Change of employment under the Agreement on the Free Movement of Persons: articles 8 and 14 of annex one of the Agreement guarantees workers holding a B-type permit the right to occupational mobility (change of employment or occupation and from employed to self-employed status). This occupational mobility applies equally to EU and EFTA nationals and to Bulgarian and Romanian citizens provided they hold a residence permit in the European Union or the European Free Trade Association. Holders of a short-term residence permit (L type) must declare the change from salaried employment to self-employment; this rule applies to EU and EFTA nationals no less than to Bulgarian and Romanian nationals.
- The change from self-employment to salaried employment is directly possible in Switzerland for nationals of EU-25 and EFTA countries. The same is true, subject to certain conditions, for Bulgarian and Romanian nationals. Frontier workers from an EU-25 or EFTA country residing in the territory of a European Union or EFTA country are authorized to exercise a self-employed or other kind of activity throughout the country. Frontier workers from an EU-25 or EFTA country enjoy full occupational mobility.

(iii) Right to just and favourable conditions of work

172. Apart from the general principle of non-discrimination on the grounds of nationality (art. 2), article 7 (a) of ALCP, as well as article 9 of its annex I, establishes 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 affects 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 which provides for or authorizes discriminatory conditions with respect to foreign employed persons who are nationals of the contracting parties will be void. The risk of social and wage dumping has led to the adoption of the Federal Act of 8 October 1999 on Minimum Working Conditions and Pay for Workers Posted to Switzerland and on Accompanying Measures (RS 823.20).

173. In 2010, several federal agencies¹⁰² asked the Swiss Forum for Migration and Population Studies (FSM) of the University of Neuchâtel for a study of measures to combat inequality of treatment in the workplace. The resulting document provides an overview of the instruments and methods for preventing discrimination in access to the labour market. It analyses the effectiveness of various measures, puts forward recommendations concerning implementation and proposes approaches to a mechanism for ensuring equality of opportunity in labour market access.¹⁰³

174. With a view to mainstreaming the results, the Service for Combating Racism is exploring forms of cooperation with social partners and their associations for promoting against discrimination at work. It is also supporting specific implementation schemes.

175. Two parliamentary motions calling for measures to combat discrimination in the workplace were set aside in 2005 and 2009 having been pending for over two years.¹⁰⁴ In its reply to these motions, the Federal Council indicated that discrimination in the workplace based on factors such as gender, origin or handicap was a reality that could have serious consequences for both the victims and society as a whole. However, it was satisfied that the instruments developed and agreed by the social partners on the basis of voluntary cooperation offered a solid basis for forestalling and combating racial discrimination and that they were preferable to new binding legal instruments. However, on 5 September 2012, replying to a new motion in Parliament, the Federal Council declared itself ready to re-examine the existing law on protection against discrimination and to evaluate its effectiveness.¹⁰⁵ Parliament has not yet dealt with this motion.

176. At the end of 2007, a motion was tabled calling on the Federal Council to wage a campaign against the prejudice to which some people were subject when seeking an apprenticeship or job,¹⁰⁶ with the aim at bringing the matter to the attention of those responsible for the employment of apprentices and employees so that all candidates were treated equally, whatever their background. This led to the launching of the *formationprofessionnelleplus.ch* awareness campaign in support of foreign youngsters, comprising texts and images showing young foreigners not as problem cases but as well integrated professionals¹⁰⁷. This was the reason why the Federal Council proposed that the motion should be set aside.

177. Since 2005, the canton of Neuchâtel has been cooperating with interested watchmaking firms with a view to training middle and senior management as well as personnel managers on questions of integration, interculturality and protection against discrimination. Training of this kind has also been organized for other firms and professional groups at their request.

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

178. See on the subject, paragraph 157 of the first report.

179. According to the last Salary Structure Enquiry of the Federal Statistical Office, some 51.5 per cent of Swiss wage earners, compared with only 38.9 per cent of foreign

¹⁰² Federal Office of Equality for Persons with Disabilities (BFEH), the State Secretariat for the Economy (SECO) and the Service for Combating Racism (SLR).

¹⁰³ Swiss Forum for Migration and Population Studies (SFM), 2011, Combating discrimination in recruitment: voluntary measures implemented by employers in Switzerland, Bern.

¹⁰⁴ Motion 04.3791 "A law against racial discrimination in employment" (Cécile Bühlmann) and parliamentary question 03.3372 "Racial discrimination in employment" (Cécile Bühlmann).

¹⁰⁵ Response to the request (12.3543) by Naef "Report on the right to protection against discrimination".

¹⁰⁶ Motion 07.3879 "Campaign against discrimination" (Ida Glanzmann-Müller).

¹⁰⁷ www.berufsbildungplus.ch/Massnahmen.65.0.html?&L=1.

wage earners, received a monthly wage higher than the gross national average of 5,979 francs. Part of this discrepancy is explained by differences in employment sectors, age structures and the training and seniority of employees. But there is also 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, even when job requirements are equal, there are significant wage disparities between Swiss and foreigners, to the advantage of one group or the other. This trend will be closely monitored.

180. Where the wages that are customary for a geographical area, occupation or industry are repeatedly and unfairly undercut within a particular occupation or economic sector and there is no collective employment contract laying down a minimum wage that may be declared universally binding, the competent authority may issue a fixed-term standard employment contract providing for a minimum wage (article 360a of the Code of Obligations). It is on this basis that the Ordinance of 20 October 2010 on the standard employment contract for workers in the domestic economy (RS 221.215.329.4) came into effect on 1 January 2011.

(v) The right to protection against unemployment

181. Unemployment insurance is compulsory for all wage earners in Switzerland. The obligation to pay social insurance contributions is governed by the Federal Old Age and Survivors' Insurance Act of 20 December 1946 (LAVS; RS 830.10) and concerns all persons engaged in gainful employment from 1 January following their seventeenth birthday. Persons not gainfully employed must pay contributions from 1 January following their twentieth birthday. The obligation to contribute ends when the person reaches the age of retirement and ceases all gainful activity. The ordinary age of retirement is currently 65 for men and 64 for women. Persons who could not have been working because they were in training, ill, suffered an accident, or were in prison are exempt from the conditions relating to the contribution period.

182. An insured person who fulfils the conditions laid down in the Federal Unemployment Insurance Act of 25 June 1982 (LACI; RS 837.0) is entitled to unemployment benefits provided he or she fulfils the following conditions:

- Is unemployed or partially unemployed;
- Has suffered a loss of work (including loss of salary) for at least two consecutive days;
- Resides in Switzerland;
- Fulfils the conditions relating to the contribution period (twelve months in the two years preceding the unemployment) or is exempt from them;
- Is available for work;
- Satisfies the supervisory requirements.

183. All persons can thus claim unemployment insurance benefits under the same terms and conditions, whatever their origin. The key criterion here is availability for work. A person is considered available for work if he or she is ready, able and entitled to accept a job that he or she can reasonably be asked to perform. To be so entitled, the person must have a work permit.

(b) *Article 5 (e), para. (ii): Trade union rights*

184. The information on this subject provided in paragraphs 160–161 of the first report, and paragraphs 201 ff. of the second and third reports remains valid.

(c) *Article 5 (e), para. (iii): The right to housing*

185. As part of the 2000 census, the Federal Statistical Office collected data on housing conditions in Switzerland. Among Swiss, the proportion of renters was 64 per cent, compared with 91 per cent among foreigners. Fewer than 40 per cent of Swiss households, but over 80 per cent of foreign households, lived in a building comprising three or more apartments. There is a very marked contrast between the situation of most migrants and that of a minority of wealthy expatriates whose financial resources protected from any discrimination in the housing market.

186. The proportion of owner-occupiers increased from 33.3 per cent to 34.6 per cent between 1990 and 2000.¹⁰⁸ Only 10 per cent of foreigners were homeowners in Switzerland, a fact attributable among other things to the precariousness of their status in Switzerland or their wish to return one day to their native country.

187. Civil and criminal law in theory gives the victims of racial discrimination weapons to defend themselves in the housing market. As indicated in the first report (paras. 162 and 163), the conclusion of property leases is subject to the principle of contractual freedom, meaning that the individual is a free agent, except where an infringement of personal rights is involved. The State thus has little or no say in the matter.

188. At the individual level, greater availability of professional advice should help victims of discrimination to defend themselves effectively in the housing market. At the collective level, apart from general information and awareness campaigns, ventures such as Urban Projects, aimed at preventing the emergence of ghettos and improving the quality of life in particularly difficult areas, play an important role (see section 3.4 (b) of Part I and section 3 of Part II).

189. In 2010, the Federal Housing Office (OFL) published a report on integration and the housing market,¹⁰⁹ which shows that lessors are not well informed about questions of integration and discrimination, and that their associations should make them more aware of such questions, where necessary with the help of public or private house search networks. The Federal Housing Office in particular has supported three projects on cultural coexistence in Zurich (neighbourhood development, solving cultural conflicts) under its 2008–2011 research programme.

190. The Swiss Tenants' Association is actively studying the question of discrimination. For example, it published an article on the subject in its newsletter in 2009, those requiring more information being referred to the Internet site of the Federal Housing Office.¹¹⁰

191. Through the Nachbar? Machbar! Project (a pun on "the neighbourhood, it's possible"), the canton of Basel-City makes an essential contribution to encouraging coexistence among neighbours and preventing conflict. In particular, a brochure informs house owners, tenants and administrations about intermediaries offering mediation, community interpretation and transcultural skills in the context of disputes between neighbours or the renting of housing.

192. The canton of Vaud supports urban projects favouring social interaction and plans to place greater emphasis on the topic of interaction (social, intergenerational). It has equipped

¹⁰⁸ This figure may be thought to have increased appreciably since then, but to have remained well below 40 per cent. However, no precise figures are available in this regard, nor on the specific situation of foreign households.

¹⁰⁹ Daniela Gloor/Hanna Meier, 2010, Immobilienwirtschaft und Integration, OFL, Bern.

¹¹⁰ Wer -ic heisst, hat es bei der Wohnungssuche schwer, MV Schweiz, Mieten und Wohnen 06/09.

the Social Centre for the Integration of Refugees (CSIR) with a special unit to support its users on housing-related questions.

193. In the canton of Zurich, political initiatives have been launched at cantonal and communal level for maintaining and creating affordable housing. They concern, at the cantonal level, the parliamentary initiative on affordable housing for families and the middle classes (Grand Conseil No. 57/2011) and the popular initiative on more affordable housing. However, these have not yet been followed up with any statutory measure for implementing them.

194. A study carried out for the cantons in central Switzerland with a view to developing cantonal integration programmes revealed the need for intervention in the housing sector.¹¹¹ The authorities have recognized these needs, but have not yet framed any specific measure.

195. The city of Lausanne published a brochure to mark Neighbours' Day, called *I Love mes voisins*. The guide to good neighbourliness recalls the basic rules of coexistence among neighbours and offers some advice on settling conflicts and overcoming discrimination.

196. The city of Yverdon-les-Bains has been practising cultural mixing for over ten years through the allocation of subsidized housing on municipal land. A foundation subsidised by the commune of Yverdon-les-Bains was created in 2011 to promote projects for the construction of low-cost blocks of flats. Under the Urban Projects programme, the City is engaged in developing a community policy to improve the quality of life. The aim is to enhance social cohesion by developing local relations and promoting and supporting local initiatives and encounters in order to improve the city and its neighbourhoods. Community forums take place twice a year, bringing people together to discuss the topics of coexistence and tolerance. Walks are organized to diagnose problems and seek common solutions.

197. In July 2012, the Zurich City authorities defined various objectives and measures under the housing programme. The aim is to ensure that community housing is allocated to social sectors that have difficulty in finding an apartment on the open market. The city of Zurich manages or supports centres and help facilities serving both tenants and owners, who have been sensitized to the topic of discrimination. The City is committed to the sustained and socially responsible development of neighbourhoods supported by highly developed services (e.g. socio-cultural institutions and neighbourhood coordination) as well as architectural and town-planning measures. The Domizil Foundation provides help to house-seekers, legal advice on leases, mediation between tenants and owners over disputed rental contracts, assistance in locating emergency shelter and provisional rented accommodation, and personalized support.

198. In 2012, the city of Bern devoted its Migrants' Forum to the topic of access to the housing market. The forum is a participatory platform enabling the city's migrant population to express its concerns and needs with regard to the policy on integration. Discussions at the forum are intended to throw light on the experience of migrants in their search for housing in Bern. They are also intended to suggest ways of ensuring that migrants have the same access to suitable housing as other sectors of the population. Under the action plan against racism, the city of Bern is also envisaging various measures, still at the planning stage, to bring the issue to the attention of property owners in particular.

199. In 2011, the city of Winterthur commissioned the Zurich University of Applied Science to undertake the study *Wohnungssuchende in Winterthur – eine Analyse der Situation von Wohnungssuchenden mit geringen finanziellen Mitteln* (Looking for housing in Winterthur – analysis of the situation of persons with meagre financial resources looking

¹¹¹ Wegweiser zum Schutz vor Diskriminierung in der Zentralschweiz, SFM, Neuchâtel, 2011.

for housing). The Wohnhilfe Winterthur Association offers services with similar aims to those of the Domizil foundation mentioned above.

(d) *Article 5 (e), paragraph (iv): The right to medical care and social security*

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

200. Article 41, para. 1 (b), of the Federal Constitution, commits the Confederation and the cantons to ensuring that all have access to the necessary health care. More specifically, the right to assistance in distress (*op. cit.*, art. 12) gives everyone the right to basic health without any kind of discrimination.¹¹²

201. Pursuant to the Federal Health Insurance Act of 18 March 1994 (RS 832.10), basic insurance must provide nationwide medical coverage. It is compulsory for everyone living in Switzerland, including asylum seekers, persons provisionally admitted to the country and protected persons who have no residence permit. Health insurance funds may neither refuse to provide someone with basic insurance cover nor withdraw such cover. Persons having the right to emergency assistance are compulsorily insured against sickness until their departure from Switzerland, and have access to all the compulsory benefits laid down in the Health Insurance Act. Insurers must also insure undocumented persons.¹¹³ Some cantons make special offers to undocumented persons and those without (sufficient) cover to facilitate their access to care and to the health system (e.g. the Fri-Santé Association in the canton of Fribourg).

202. The new article 92d of the Health Insurance Ordinance (RS 832.102), which came into force on 1 August 2011, regulates the payment of premiums by the recipients of emergency assistance (asylum-seekers whose applications have been rejected or summarily dismissed) under a special scheme. In future, cantons can suspend payment of the premiums of persons who have probably left Switzerland. However, as soon as the insurer receives a request for reimbursement of a benefit and the canton does not cover it, the premiums are due retroactively with a supplement up to the moment of the suspension. Once the premiums are paid, the insurer must assume responsibility for the benefits obtained during the period of suspension. This regulation makes it possible to take into account the special situation of the recipients of emergency assistance by maintaining their insurance cover and access to medical care in accordance with the Federal Health Insurance Act of 18 March 1994 and article 82 (a) of the Asylum Act.

203. The enquiry into the health of the migrant population, already carried out twice,¹¹⁴ has highlighted the marked inequalities between the native population and migrants in Switzerland, with particular regard to physical and psychological health (but not with regard to the use of health-care facilities). Closing this gap represents sound integration policy. The Federal Council has therefore set up the National Migration and Health Programme, which is implementing the relevant strategies and methods under the responsibility of the Federal Office of Public Health (see section 3.4 (b) (ii) of Part I).

204. At the University Hospital of Lausanne, the right of access to public places and services is ensured by means of special measures. Since 2010, the Hospital has formed part of a group of five Swiss hospitals participating in the Migrant Friendly Hospitals project,

¹¹² Ulrich Häfelin/Walter Haller/Helen Keller, 2008, *Schweizerisches Bundesstaatsrecht*, 7e édition, Zurich, N. 914 ff.

¹¹³ Third Directive of 19 December 2002 (02/01), Federal Social Security Office (OFAS).

¹¹⁴ Arbeitsgemeinschaft BASS, ZHAW, ISPM, M.I.S TREND, 2010, *Second monitoring exercise on the state of health of the migrant population (GMM II)*, 2010, Bern: Federal Office of Public Health (OFSP).

with a threefold focus: interpretation; training, health care and mental health; and management.

205. The Cantons of Fribourg, Neuchâtel and Vaud are participating in an analysis, financed by the Federal Social Insurance Office, of the needs of the migrant population in the areas of health promotion and preventive health care; this analysis focuses on the question of discrimination in the health sector.

(ii) The right to social security and social services

206. Social welfare is the principal means of combating poverty and avoiding situations of distress. In Switzerland, the welfare system has three components:

- Social security, in particular old-age pension and disability insurance governed by federal law (see the information in the second and third report, paras. 209 ff., which remains valid);
- Social welfare and other forms of cantonal assistance (governed by cantonal or communal law);
- Emergency assistance reserved in particular for persons not entitled to be present in Switzerland, in particular asylum-seekers whose applications have been summarily rejected (a measure likewise governed by cantonal or communal law).¹¹⁵

207. In Switzerland, the provision of social welfare and emergency assistance to all those in need is thus the responsibility of the cantons, which fix the level and nature of the support. They are however obliged to observe the absolute minimum standard defined in article 12 of the Constitution, which guarantees to all in need the right to the financial means required for a decent standard of living. Most of the cantons and communes are guided by the standards of the Swiss Conference of Social Welfare Institutions (CSIAS).¹¹⁶

208. Persons obliged to leave the country also have the right under emergency assistance to the food, clothing and shelter required for a decent standard of living. Persons having the right to emergency assistance must also be insured against illness until their actual departure from the country and have access to all the compulsory benefits prescribed in the Health Insurance Act.

209. Provision of the benefits specified under article 12 of the Constitution must always observe the individualization principle, namely that it can and should take account of the particular needs of vulnerable persons.

210. In accordance with the principle of the separation of powers, the justice system is exclusively responsible for ensuring compliance with provisions relating to social welfare and emergency assistance. The rejection by the cantonal authorities of a request for social welfare or emergency assistance can be challenged in the cantonal courts, and then before the Federal Supreme Court. The Federal Council and the federal administration have no right to oversee the action of the cantons in this regard.

211. The authorities responsible for social welfare are confronted daily by the topic of discrimination. In 2010, the proportion of foreign nationals receiving social welfare benefits was 45 per cent.¹¹⁷ Migrants, as substantial recipients of such assistance, are increasingly

¹¹⁵ For a detailed description of the Swiss social security system, see paras. 232 *et seq.* of Switzerland's second and third reports on the implementation of the International Covenant on Economic, Social and Cultural Rights (art. 9).

¹¹⁶ www.skos.ch/fr/?page=richtlinien/.

¹¹⁷ Swiss social welfare statistics 2010. Selected results. Federal Statistical Office, Neuchâtel 2012.

the target in recent years of suspicion and accusations of abuse. The canton of St. Gallen mentions in this regard that the challenge consists in combating this negative image and continuing efforts to inform and educate.

(e) *Article 5 (e), paragraph (v): The right to education and training*

212. Article 19 of the Federal Constitution, article 28 of the United Nations Convention on the Rights of the Child and article 13 of the International Covenant on Civil and Political Rights guarantee all children living in Switzerland the right to free basic education. The Federal Constitution (art. 62, para. 2) stipulates that the cantons shall ensure the provision of an adequate basic education that is available to all children. In its Recommendations on the education of foreign-tongue children of 24 October 1991, the Swiss Conference of Cantonal Education Directors had already stressed that all foreign-tongue children living in Switzerland should be integrated in State schools, whatever their residential status.¹¹⁸ The children of undocumented persons are also entitled to schooling. Problems arise, on the other hand, concerning the access of children and adolescents to an apprenticeship comprising a job training component within a firm, which requires a work permit and, therefore, a residence permit.

213. Against this background, National Councillor Luc Barthassat submitted a motion on 2 October 2008 calling on the Federal Council to introduce a way of enabling young people educated in Switzerland but lacking legal status to have access to apprenticeships. This motion was prompted in particular by the fact that these young people can follow an academic course with no problem, whereas they are unable to pursue a twin-track course for lack of a legal residence permit. The result, depending on the purpose of the training concerned, is unequal treatment that penalizes an integrated population. The Swiss economy is in this way deprived of potential skills and know-how and the public funds invested in the compulsory training of these young people are wasted. The Parliament approved the motion in 2010 by a small majority.

214. On 2 March 2012, the Federal Council submitted its implementation project to the consultation procedure. It proposes to supplement the current provisions concerning the treatment of extremely serious individual cases by introducing a new article into the Ordinance of 24 October 2007 on admission, residence and gainful employment (OASA; RS 142.201). The article in question defines the specific conditions governing regularization of the residence status of illegal minors for such time as it takes to complete their vocational training (with the possibility of an extension of length of stay). When considering such a request, the situation of the family as a whole is taken into account. The bill does not introduce a right to the delivery of a permit, but provides the authorities concerned with criteria for exercising their powers of discretion. This enables those concerned to assess more accurately the chances of their request being successful.

215. The education of children dependent on the emergency assistance procedure is particularly difficult. These are children whose parents have not obtained the right of asylum in Switzerland, who have been ordered to leave the country and who have been denied social assistance. These families do not receive any emergency help. Legally the children have the right to schooling, like all the other undocumented children. While the families can remain in the asylum facilities, these children enjoy conditions favourable to their well-being and educational development. However, problems can arise when a child has to live in emergency accommodation.

¹¹⁸ www.edk.ch/dyn/14694.php.

216. In recent years, increasing importance has been given to early stimulation. The Federal Office for Migration and the Federal Commission on Migration have launched a joint project to encourage integration in the preschool environment. The aim is to make the opportunities more accessible to parents and children with an immigrant background, to improve the intercultural qualifications of supervisory staff, and to develop theoretical reflection on the question, particularly at the communal level. As the result of a public tender, fifty-six innovative projects were assisted financially between 2009 in 2011 with the help of federal funds allocated for the promotion of integration.¹¹⁹

217. Many cantons and communes today consider early stimulation to be a priority field of development (for example, the cantons of Basel-Country, Basel-City, Fribourg, Jura, Schaffhausen and Solothurn, as well as the cities of Bern, Lausanne, Renens, Winterthur and Zurich). This also involves ensuring access to opportunities in the field (e.g. support for the submission of applications in the city of Lucerne) and cooperation with the parents (training partnerships). In 2012 and 2013, the leaders of play workshop in every commune in the canton of Obwalden will be trained on the topics of integration and language promotion. With reference to early stimulation, the canton of St. Gallen is explicitly following the basic principle of equality of opportunity for all children, whatever their religion and background. Moreover, it is currently developing a comprehensive early stimulation strategy based on the basic principle of equality of opportunity for all children.

218. The Federal Office for Vocational Education and Technology has committed annual amounts of 6 million francs (2008), 10 million francs (2009) and 11 million francs (2011) for projects aimed at integrating youngsters confronted by failure in society and at school. These projects are not reserved for young people of foreign origin, but these youngsters makes extensive use of them. Support is also given to trade fairs that make a particular effort to integrate young people experiencing school, social or language difficulties.

219. Other measures taken at the cantonal and communal level include:

- A pilot project organized in 2011 by the canton of Fribourg providing education vouchers for low-skilled individuals. It is aimed at encouraging them to participate in continuous training (vouchers to a maximum value of 800 francs for the partial or total funding of a further training course). Persons not having completed secondary level II training are the main targets.
- Counselling and vocational and school guidance centres in the canton of St. Gallen providing support for young people in the transition from compulsory schooling to the secondary II level. They propose various opportunities, such as a mentoring programme in which an experienced person with good contacts in the world of work assists young people in their search for training.
- At the end of the reporting period, the Quality in Multi-Ethnic Schools (QUIMS) programme involved ninety-six schools in the canton of Zurich, comprising 30,000 pupils (23 per cent of the total number of pupils in the Canton's elementary school system) and over 3000 teachers. The schools carry out development projects and propose activities in the fields of social integration, school performance and language promotion. This programme, which has led other cantons to take similar measures, is well received in the school environment.
- The city of Zurich has developed its Migration=Opportunity project, an innovative concept for promoting equality of educational opportunity. Under this project, the

¹¹⁹ An overview of the different research projects and measures supported will be found at: www.bfm.admin.ch/content/bfm/fr/home/themen/integration/themen/fruehfoerderung.html.

Foreigners Council created in 2005 by the Zurich Municipal Council asks entrepreneurs with an immigrant background to identify untapped job opportunities for young people (from short-term placements to regular apprenticeship places), the aim being to highlight and turn to account the resources of immigrant talent.¹²⁰ This project continues today under the name Let Us Train Together. The city of Zurich's Department of Social Affairs stipulates in its contracts with crèches that the principle of equality of treatment and religious neutrality must apply equally to staff and children.

- In the city of Yverdon-les-Bains, the communal policy on children and young people develops the approach decided by the municipality in 2008 via the efforts of outreach social workers and sociocultural facilitators operating in the context of an open society (social links, intergenerational solidarity, diversity and integration). Schools contribute to prevention through projects financed wholly or in part by the commune on the topics of violence, respect for others and the rules of tolerance.
- Since 2007, the city of Bern has been implementing the "Primano" pilot project, which aims to: improve access to early stimulation opportunities through neighbourhood networking; bring about a progressive strengthening of parenting skills through a programme of home visits; and improve the educational quality of playgroups and kindergartens through stimulation modules. The programme of home visits targets children of Swiss and immigrant families experiencing socio-economic difficulties liable to impede child development. Since 2011, the main framework for this work with children and young people has been the cantonal ordinance on social integration benefits, whose main objectives are access to education and educational support without any form of discrimination.

(f) *Article 5 (e), paragraph (vi): The right to participate in cultural activities*

220. Most of the measures described in this report are designed to ensure that all people living in Switzerland have equal access to the services and activities available, including in the cultural field. This is why it has been decided, for reasons of space, not to rehearse specific measures or projects.

221. An example of a cantonal measure in the artistic and cultural field is the production in the canton of Vaud of leaflets in several languages to draw the attention of the widest possible public to existing opportunities and possibilities.

6. Article 5 (f): The right of access to any place or service intended for use by the general public

222. Article 261 *bis*, paragraph 5, of the Criminal Code makes it an offence against the right of access to a public service on the part of "any person who refuses to provide a service to another on the grounds of that person's race, ethnic origin or religion when that service is intended to be provided to the general public".

223. Between 1995 and 2009, complaints under paragraph 5 of article 261 *bis* of the Federal Constitution totalled only 2.4 per cent.¹²¹ This is mainly due to the difficulty of proving a racist motivation in such cases, since the refusal is often made orally and it is fairly easy to justify on non-racist grounds.

¹²⁰ See www.stadt-zuerich.ch/prd/de/index/stadtentwicklung/integrationsfoerderung/auslaenderbeirat.html.

¹²¹ On the case law of the courts, see section 4.1 of Part II.

224. Most of the cantons and communes assist new arrivals in acquiring one of the national languages (through direct provision or financing). Translation services help to ensure access to facilities and benefits. Their responsibilities sometimes go beyond purely linguistic translation and encompass community interpretation functions.

225. Since its creation, the service responsible for promoting social inclusion in the canton of St. Gallen has endeavoured to remove the obstacles to integration and promote access to public services by all, irrespective of origin. For example, it supports the development of organizations with the aim of reaching a larger proportion of target groups and provides in-service training for administrative staff. Under a pilot project, the canton's integration promotion service has made translation-vouchers available to welfare offices and regional employment centres. To benefit from these vouchers the offices concerned have to participate in a study on recourse to translation. One of the main conclusions of the study is that professional translation is very useful for counsellors. They considered its usefulness to outweigh the initial organizational workload.¹²² The next task is to study a range of public services to assess the need for innovation in different work contexts and to make recommendations on specific measures in that regard.

226. In 2009, the city of Bern (police inspectorate, neighbourhood police) published, in association with the Federal Commission against Racism and the *gggfon* information and advisory centre, an aide-mémoire and checklist on refusal of entry to bars, nightspots and clubs, which were and are distributed to the managers of the establishments concerned. However, cases of entry being refused continue occur and the search for appropriate solutions must go on.

227. In its new integration policy guidelines on promoting diversity and making integration part of everyday life, the city of Winterthur is particularly careful to ensure that its services are accessible to all population groups. It endeavours to provide them with an integration-friendly environment. Equality of opportunity is encouraged while obstacles to integration are opposed. Professional management of diversity in the public services, schools and the social system is encouraged through further training opportunities. The city of Winterthur is concerned as an employer to ensure that the diversity of the population is reflected in the municipal administration.

6. Article 6 Effective remedies

228. For a detailed account of the relevant legal provisions, see paragraphs 215 ff. of the second and third reports and paragraphs 192 ff. of the fourth, fifth and sixth reports.

229. Quantitative changes during the period under review in the case law relating to criminal provisions against racism have been detailed in section 4 of Part II. Swiss jurisprudence also recognizes, in criminal proceedings initiated under article 261 *bis* of the Criminal Code (CP), that a victim of discrimination can also have recourse to the prohibition of all forms of discrimination under article 8 of the Constitution and benefits from the status of victim under the Federal Act of 23 March 2007 on Aid to Victims of Offences (LAVI) (RS 312.5).¹²³ Aid to victims under this Act is of three kinds: (i) advice

¹²² For fuller information, see: www.integration.sg.ch/home/dolmetscherdienste.html.

¹²³ The Federal Supreme Court (ATF 128 I 218) 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

and support from counselling centres, (ii) compensation and reparation for moral damage, and (iii) protection of the person and individual rights under criminal proceedings.

230. Apart from the antiracist provision embodied in article 261 *bis* of the Criminal Code, other offences can involve racism, such as insulting behaviour (art. 177 CP), slander (art. 174 CP), defamation (art. 173 CP), damage to property (art. 144 CP), aggressive behaviour (art. 126 CP) and infliction of physical injury (arts. 122 and 123 CP). The Federal Statistical Office has been recording racist offences of this kind since 2009 under the police criminal statistics facility already mentioned. However, the system is still in the process of being set up and it will be some time before these data can be properly analysed.

231. The victims of racist discrimination can also take action under civil law provisions, in particular article 28 of the Civil Code (protection of the personality), article 41 of the Code of Obligations (unlawful acts) as well as tenancy law and labour law provisions (protection against termination of leases of residential and commercial premises, art. 271 of the Code of Obligations; provisions relating to subletting, art. 262 of the Code of Obligations; and protection of the personality of the worker under art. 328 of the Code of Obligations).

232. Federal law on gender equality also offers protection against gender-based discrimination in the workplace applicable to public and private sectors alike.

233. The Federal Aliens Act specifically mentions equal opportunities for foreigners, with particular reference to language acquisition, professional advancement, access to health care and, more generally, participation in the economic, social and cultural life of society (arts. 4 and 53).

234. In 2009, the Service for Combating Racism published its *Guide juridique discrimination raciale*¹²⁴ to inform the public about legislative protection against racial discrimination. This includes a list (regularly updated on the Internet) of counselling centres and describes the possibilities of legal defence against racial discrimination. The Service also organizes practical further training activities for organizations and individuals (some thirty courses were organized in 2011 throughout Switzerland), while in 2010 it arranged a series of training sessions for trainers over a period of several days to enable other specialists to provide similar training courses.

7. Article 7 Measures in the fields of teaching, education, culture and information

1. Measures concerning teaching and education

235. Education and training are above all the responsibility of the cantons. The Swiss Conference of Cantonal Directors of Education recognizes that the problem of coexistence between persons of different backgrounds and cultures represents a challenge for the education system. The Conference is firmly opposed to the segregation of children whether from a migrant background or otherwise. It has reaffirmed the right to education and the

ruling applies to offences falling under either the first part of the fourth paragraph or the fifth paragraph of article 261 *bis*. 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.

¹²⁴ Tarek Naguib, 2009, *Guide juridique Discrimination raciale* [Legal guide to racial discrimination], published by SLC, Bern; www.edi.admin.ch/frb/02047/02051/index.html?lang=fr.

principle of schooling without regard to the legality of the child's residential status. This principle is equally applicable to the children of undocumented migrants.

236. In 2010, the Confederation issued a law and an ordinance on languages which encourages knowledge of their first language by foreign-tongue speakers.¹²⁵ In various cantons, this law has resulted in projects aimed at developing teaching in the language and culture of origin and promoting it in the context of compulsory schooling. In the canton of Zurich, the relevant curriculum has been translated into various languages to make it easier to use by the teachers responsible for the course in question. In addition, the Zurich University of Teacher Education has organized in-service training courses for the teachers concerned, partly financed by the Confederation.

237. Following the launching in 2001 of its Programme of Action against racism and in support of human rights, the Service for Combating Racism (SCR) has since 2006 provided financial support for school projects amounting to 300,000 francs annually. The Foundation for Education and Development evaluates and monitors the projects on behalf of the SCR.¹²⁶ As of February 2012, a total of 547 school projects at all levels and from all linguistic regions had been submitted, of which 408 have received support. They range from short-term class workshops to school projects lasting a number of years; they also include theatre and musical workshops as well as travelling exhibitions, playground activities and intercultural exchanges. The Conference of Cantonal Directors of Education recognizes the long-term influence of these projects.

238. Since 2004, the Foundation for Education and Development has published descriptions of the projects on the Internet to make their benefits available to a wider public.¹²⁷ The site is aimed mainly at teachers and training providers, offering them useful addresses, Internet links, educational materials and suggestions and advice regarding their own projects.

239. The evaluation carried out in 2011 highlighted the importance of human rights and anti-racism issues in schools today, but showed that they faced competition from many other social topics. However, those questioned spoke very favourably of the projects and considered them to have a considerable impact. The challenge was to ensure that the impact was a lasting one and to extend it to other schools.

240. In general studies classes forming part of basic vocational training (identity and socialization), all pupils must learn to identify other lifestyles and to accept them: "Students must be able to distinguish other cultural realities, within an environment that takes account of the right of other people to be different and the fundamental rights of every individual. They must be able to recognize the existence of those other realities and assess them openly and with tolerance, in terms of their own lifestyle."¹²⁸

241. Human rights education is present in various forms at all educational levels. In the context of the current coordination of cantonal curricula, it is already included in the French-speaking curriculum as a subject in its own right and as an operational skill. In the Lehrplan 21 (curriculum) under preparation in the German-speaking cantons, it is planned

¹²⁵ Federal Act of 5 October 2007 on the National Languages and Understanding between the Linguistic Communities (RS 441.1), in particular articles 16 and 17.

¹²⁶ Ordinance on human rights and anti-racism projects, art. 9 (RS 151.21).

¹²⁷ www.projektegegenrassismus.ch.

¹²⁸ Federal Office for Professional Education and Technology, 27 April 2006, Framework curriculum for general academic subjects in initial professional training, p. 18.

to make human rights a crosscutting subject (in the thematic area of politics, democracy and human rights, with specific links to education through citizenship).¹²⁹

242. To mark International Year for Human Rights Learning in 2009, the Federal Council has allocated additional financing through to 2011 in support of projects in this field.

243. Since 2007, the Federal Social Insurance Office has been providing financial support for the production of educational materials on the rights of the child. It has also been responsible for the national programme on young people and violence (2011–2015), run in collaboration with the cantons, cities and communes and allocated a budget of 5.6 million francs.¹³⁰ The programme is aimed at improving the prevention of violence in Switzerland and facilitating exchanges, networking and collaboration between the responsible actors. The prevention of aggression and violence in all its forms also contributes to lessening xenophobic attitudes and violence among young people.

2. Media

244. Various media organizations have published codes of conduct guaranteeing critical and independent journalism, respect for human dignity and the prohibition of discrimination.

(a) *Swiss Press Council*

245. The Swiss Press Council, set up by the Swiss Federation of Journalists in 1977, examines complaints by the public and journalists concerning media ethics. It brings together publishers, journalists, editors and trade unions. A number of new developments have taken place since the last report.

- The Swiss Press Council's guide entitled *Repères pour un journalisme responsable* (Benchmarks for a responsible journalism) was published at the end of November 2011.¹³¹ The authors review the major topics (from research standards to press independence), referring in each case to the main principles and rules of the Journalist's Code and its accompanying Directives. The new guide includes examples, a checklist and references to similar topics, and provides easy access to decisions of the Press Council in their printed and online versions.¹³²
- On 1 July 2011, the revised version of Directive 8.2 on the prohibition of discrimination came into force. It was simpler and more precise in its formulation: "The designation of ethnic or national background, origin, religion, sexual orientation and/or skin colour can have a discriminatory effect, particularly when it generalizes on the basis of negative value judgements and thereby reinforces prejudice against minorities. This is why journalists must weigh the value of the information conveyed against the risk of discrimination. They must be guided by the principle of proportionality."
- Complaints under paragraph 8 of the Declaration of the Duties and Rights of Journalists have increased markedly in recent years. However, the complaints rarely lead to reprimands (23 out of a total of 72 decisions in 2011; 9 out of 65 in 2010; 8

¹²⁹ Report of the Federal Council on the rejection of motion 04.3224 of the Legal Affairs Committee of 29 April 2004 (Use of symbols of extremist movements inciting to violence and racial discrimination as a criminal offence), p. 11.

¹³⁰ www.bsv.admin.ch/themen/kinder_jugend_alter/00071/03021/index.html?lang=fr.

¹³¹ Peter Studer/Martin Künzi, 2011, *Repères pour un journalisme responsable* [Benchmarks for a responsible journalism], Swiss Press Council: Bern.

¹³² At the website ratgeber.presserat.ch or by iPhone or Android applications.

out of 72 in 2009; 9 out of 66 in 2008). In its decision 22/2011, the Press Council underlined that it considers an allusion to be discriminatory when it harms the reputation of a protected group through a distorted presentation and collectively demeans the group concerned. In its decision 21/2001, it recommended verifying each statement to see whether it devalues a cultural or innate characteristic or attributes humiliating characteristics to a group, whether it merely criticises individuals for actions for which they are genuinely responsible or whether the legitimate criticism of an individual has been generalized unjustifiably.

- In its decisions on the prohibition of discrimination and on human dignity (38/2000, 32/2001, 6/2002, 9/2002, 37/2002, 44/2003, 32/2006, 16/2007 and 21/2008), the Press Council has repeatedly stressed that a disparaging comment on a group or an individual must attain a certain degree of intensity before it can be regarded as derogatory or discriminatory. Reference to ethnicity, national origin or religious affiliation does not always infringe paragraph 8 of the Declaration. The prohibition on discriminatory allusions should not be interpreted as an obligation to be politically correct. A reference to ethnic, national or religious affiliation is only discriminatory when linked to a judgement that is clearly demeaning. The prohibition of discrimination does not therefore exclude criticism of a person, but is opposed to generalization. On that basis, the Council had judged that the publication of a photo of a young black man whose identity had been masked by a bar across his eyes (he was not the person referred to in the article), linked to a caption quoting a victim describing a very serious sexual aggression, infringed paragraph 8 of the Declaration.

(b) *Independent Complaints Authority for Radio and Television (AIEP)*

246. As a quasi-judicial body, the Independent Complaints Authority for Radio and Television rules on complaints concerning Swiss broadcasters' radio and television programmes,¹³³ on the basis of the Federal Act on Radio and Television of 24 March 2006 (LRTV; RS 784.40). Since the last report, the Authority has clarified its case law in a number of respects as regards the requirement of diversity (art. 4, para. 4, LRTV), and has confirmed its ruling on the protection of human dignity and the prohibition of discrimination (art. 4, para. 1, LRTV). In its annual report, it stresses that remarks that are in themselves racist should also be assessed in their context, and thereby the message communicated to the public.¹³⁴

247. During the period under review, the Independent Complaints Authority has in particular taken two decisions concerning human dignity and the prohibition of discrimination.¹³⁵

(c) *Swiss radio and television*

248. The principles relating to protection against discrimination, respect for the person and human dignity and the obligation of cultural diversity and solidarity appear in various documents of the German-, French-, Italian- and Romansh-speaking radio and television

¹³³ The AIEP's activities are based on art. 93, subpara. 5, of the Federal Constitution, and on arts. 58 ff. of the Federal Radio and Television Act (RS 784.40); www.ubi.admin.ch. In carrying out its functions, it is not bound by any instructions from Parliament, the Government or the federal administration.

¹³⁴ Extract from the AIEP's annual report for 2010, p. 13. The AIEP's decisions are also published in the annual reports.

¹³⁵ Decision b.592 of 5 December 2008; decision b.612 of 23 April 2010.

companies (guidelines, directives, ethical codes, journalistic guidelines, etc.). The Independent Complaints Authority and the Press Council are responsible for ensuring compliance with the prohibition of discrimination.

249. The project of the Federal Department of Foreign Affairs on the “Representation of Islam in the media” aims to counter a narrow and distorted view of Islam in the Swiss media. It involves, for example, the organization of workshops, bringing together journalists from Islamic countries and Switzerland.

3. Studies, publications and meetings on the topic of racism

250. For a detailed presentation of studies, publications and meetings deriving from federal departments, see annex 2.

III. Response to the Committee’s concluding observations of 14 August 2008

1. General remark

251. The sections that follow are a response to the concluding observations and comments adopted by the Committee at its 1999th session on 14 August 2008 (CERD/C/SR.1999), and to the supplementary questions contained in paragraph 26 of the same document relating to observations 9, 10, 14, and 18. Reference is confined here to the paragraphs of the concluding observations in which the Committee invites Switzerland to improve the implementation of the Convention.

2. Persistence of hostility towards certain minorities (paragraph 7 of the concluding observations)

252. “The Committee notes with regret the lack of substantial progress made by the State party in combating racist and xenophobic attitudes towards some minorities, including black persons, Muslims, Travellers, immigrants and asylum-seekers. It is particularly concerned at the hostility resulting from the negative perception of foreigners and certain minorities by part of the population, which has resulted in popular initiatives questioning the principle of non-discrimination. The Committee regrets that in the period covered by the report, the prohibition against racial discrimination had to be defended against repeated attacks in the political arena, including demands for its abolition or restriction. (art. 7) The Committee urges the State party to further intensify its efforts in education and awareness-raising campaigns to combat prejudices against ethnic minorities and promote inter-ethnic dialogue and tolerance within society, in particular at the cantonal and communal level. The State party should consider implementing the recommendations made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance following his visit to Switzerland in 2006, as well as the relevant recommendations made by the working group on the universal periodic review in 2008.”

253. The Federal Council refers firstly to the accounts in this report of the efforts made at all levels to combat racist and xenophobic attitudes towards minorities in Switzerland. The Swiss authorities consider that it is not sufficient to legislate against racist tendencies in a multicultural society: it is equally important to bring cultures and religions closer together by reducing prejudice. The success of the popular initiative, questionable in international law, on the construction of minarets in November 2009, and the so-called expulsion initiative (*l’initiative dite “sur le renvoi”*) in November 2010, have highlighted the need for action in this regard.

254. The national research programme “Right-wing extremism, causes and countermeasures” (PNR 40+), launched by the Confederation in 2003 and concluded in 2009, studied the various forms assumed by extremism and right-wing populism in Switzerland. Thirteen projects threw new light on the causes, manifestations, spread and effects of right-wing activities and attitudes in Switzerland. They provided the basis for strategies to combat right-wing extremism at the national, cantonal and communal level and enabled Switzerland to align itself with international research on right-wing extremism.¹³⁶ The Service for Combating Racism followed these activities closely and published three booklets on them for public distribution.¹³⁷ The Army’s specialized service on extremism had previously been established following a parliamentary question (see Part I, section 3.4 (b) (ii)).

255. Apart from the activities referred to above, the Service for Combating Racism supported projects for promoting tolerance towards foreigners, e.g. projects forming part of the annual week of action against racism, school projects linked to the day of commemoration of the Shoah, projects to mark World Refugee Day, and support for the migrants’ newspaper MIX.

256. The cantons are also active in the promotion of tolerance towards foreigners. Protection against discrimination, as a lynchpin of the integration policy (already mentioned on several occasions), is progressively being implemented in the cantons and communes. This is taking place at the legislative level and also through specific measures and projects in the various fields concerned.

257. The Federal Commission against Racism has expressed its concern about the climate surrounding the two popular initiatives against the construction of minarets and in favour of the expulsion of foreign criminals and has taken a position accordingly. It devoted the twenty-fifth edition of its TANGRAM newsletter to the subject of anti-Muslim racism, the twenty-sixth to security and the twenty-seventh to the political discourse. In election year 2011, the Commission has suggested a number of topics for reflection on the spread of racial discrimination through political discourse (TANGRAM No. 27, June 2011).

258. In their Fairplay initiative during the electoral campaign, NGOs, religious communities, trade unions and the Federal Commission against Racism have called on the public to speak out against discrimination and racism during the electoral campaign, pointing out that “in a democracy, it is also necessary to tackle sensitive subjects. But a campaign tinged with racism, which excludes, stigmatizes or denounces certain individuals as criminals because of their nationality, language or religious affiliation, fuels conflicts and does not serve the cause of political debate. Fair play in the electoral campaign means discussing controversial subjects objectively and not at the expense of other people, showing disregard for their rights and discriminating against them”. The appeal was signed by over 4500 persons on the eve of the legislative elections of October 11.

¹³⁶ A final comparative synthesis has been published in English: Marcel Alexander Niggli (éd.), 2009, *Right-wing Extremism in Switzerland. National and international Perspectives*. Baden-Baden: Nomos Verlag.

¹³⁷ Damir Skenderovic, 2010, *Strategien gegen Rechtsextremismus in der Schweiz*, publication SLR: Berne. Ueli Mäder/Wassilis Kassis/Marco Storni/Thomas Gabriel, 2008, *Jugendliche und Rechtsextremismus. Opfer, Täter, Aussteiger*, publication SLR: Berne. Miryam Eser Davolio/Matthias Drilling/Christian Hirschi/Thomas Widmer, 2007, *Rechtsextremismus bekämpfen. Wirksame Massnahmen und griffige Arbeitsinstrumente für die Gemeinden*, publication SLR: Bern.

3. Federalism (paragraph 8 of the concluding observations)

259. “(...) The Committee remains concerned that inconsistencies in the implementation of the Convention exist and that the laws, policies and decisions of cantons and communes could contradict the State party’s obligations under the Convention. The Committee underscores once again the responsibility of the Federal Government of Switzerland for the implementation of the Convention. The State party is invited to play a proactive role, leading the authorities of the cantons and communes to fully implement the Convention in conformity with article 54 (1) of the Federal Constitution. The Confederation should use and reinforce all existing mechanisms to monitor compliance with the provisions of the Convention, including by clearly formulating human rights requirements for the cantons and communes.”

260. The federalist system in Switzerland means that the Confederation can only intervene where it is empowered to do so. It is the Federal Parliament that assigns responsibilities; but in the Swiss regime of direct democracy its decisions in the matter are often submitted to the people (by referendum or initiative).

261. The Confederation must likewise respect this division of responsibilities and the principle of subsidiarity in the application of international treaties. The cantons and communes exercise autonomy in their implementation of Switzerland’s international obligations in the areas of responsibility delegated to them (the monistic model). The Confederation cannot act where responsibility for the measure concerned rests with the cantons. At the very most, it can propose by way of an alternative new implementing rules, most of which are subject to referendum.

262. The special characteristics of Swiss federalism and direct democracy are the subject of constant debate in Switzerland.¹³⁸ On the one hand, they impede the centralization of many important measures to combat discrimination; on the other, they can lead to innovative approaches that involve civil society organizations and are more attuned to the real-life situations managed at their respective levels by the three organs of State. This calls for highly developed vertical and horizontal co-operation. It is for this reason that the Swiss Resource Centre for Human Rights, set up in 2011, should help to improve the availability of information and reporting procedures, particularly at the cantonal and communal level. The aim is also to arrive at a unified approach, particularly on questions of implementation outside the remit of the Confederation (see also on this subject section 5 of Part III).

4. Anti-discrimination legislation at all levels and lack of a national plan of action (paragraph 9 of the concluding observations)

263. “While noting that the Convention forms an integral part of the Swiss legal system and that some of its provisions may be directly invoked before the Swiss courts, the Committee remains concerned at the lack of comprehensive civil and administrative legislation and policies to prevent and combat racial discrimination in all areas, and at the fact that only 10 cantons, out of 26, have enacted anti-discrimination laws. (art. 2 (1) (d)) The Committee invites the State party to adopt a national plan and legislation at all levels of Government against racial discrimination, xenophobia and other forms of intolerance. The State party should devote adequate financial resources for the implementation of the Convention, and ensure that the plan is integrated with other mechanisms for the implementation of human rights in Switzerland.”

¹³⁸ For example, the Federal Commission on Migration has highlighted the advantages and drawbacks of the federalist model in *Les marges de manœuvre au sein du fédéralisme: La politique de migration dans les cantons* [The margins for manoeuvre within federalism: migration policy in the cantons], CFM, 2011.

264. While it is true that Switzerland does not possess domestic legislation designed to combat racial discrimination at the federal level, this reflects not so much a lacuna of substance but rather the specific nature of the Swiss legal order. As pointed out in the previous chapter, the Swiss political order is characterized by its attachment to the monistic tradition, on the one hand, and by the federalism characterizing the division of tasks between the Confederation and the cantons, on the other. Following the ratification of the Convention, the Federal Supreme Court moreover began to refer to the question in its jurisprudence. As regards recognition of the individual communication procedure under article 14 of the Convention, it helps to ensure an even stricter observance of the provisions of the Convention.

265. In the Swiss State system characterized by federalism and subsidiarity, national plans of action are a rarity, even where key social questions are involved. It is necessary in each case to shape the necessary operational procedures step-by-step and to cement them politically through collaboration between the various State levels and the numerous bodies and stakeholders involved. This way of proceeding, customary in Switzerland, applies particularly to a crosscutting issue such as combating discrimination. This is why Switzerland does not have a comprehensive national plan of action, as called for by the United Nations Special Rapporteur: it places its faith in a long-term strategy common to the Confederation, the cantons and the communes. And it is the task of the Service for Combating Racism to frame and coordinate it.

266. Introducing the comprehensive legislative provision to combat discrimination at the national level, as demanded by the Federal Commission against Racism and many NGOs, currently comes up against a lack of political will. In 2007, the National Councillor Paul Rechsteiner introduced a parliamentary motion calling for the adoption of a comprehensive law on equality of treatment, which would prevent and eliminate by the necessary legal means all forms of discrimination;¹³⁹ its aim above all was to standardize and reinforce legal protection against discrimination in Switzerland. This initiative was rejected on 4 May 2009 by the Legal Affairs Committee of the National Council. Two similar motions were set aside the same year without having been examined. The Federal Council and the Parliament had considered the existing instruments to be adequate.

267. Parliament has similarly rejected a number of interventions aimed at expanding specific protection against racial discrimination. Coinciding with the preparation of this report, a Parliamentary initiative calling for the adoption of a law against racial discrimination was pending.¹⁴⁰

268. Today, the Federal Constitution prohibits all kinds of discrimination and protects freedom of belief, conscience and language. All branches of the administration are required to respect fundamental rights and to contribute to their observance. Apart from the antiracist criminal provision (article 261 *bis* of the Criminal Code), there are many provisions under constitutional, private, criminal and administrative law that offer a defence against discrimination. However, the Swiss Government recognizes that few cases are brought against racial discrimination, and that existing legislation should be applied more systematically. Legal proceedings seem to deter some people (the high cost compared to the rewards of success in the courts, uncertainty and fear concerning the risks of a trial). Existing legislation might be applied more regularly if potential victims of discrimination and society in general were more conscious of its existence. It is for this reason that the

¹³⁹ Paul Rechsteiner parliamentary initiative (Iv. pa. 07.422n).

¹⁴⁰ Katharina Prelicz-Huber parliamentary initiative (Iv. pa. 10.523): as the commission with priority, the Legal Affairs Committee proposed on 13 October 2011 that the initiative be rejected.

federal and cantonal authorities have taken measures to improve knowledge of the law and access to justice.

- Publication of a legal guide by the Service for Combating Racism (SLR) in June 2009: this guide provides practical advice on combating racial discrimination, and shows how and when the law can be useful in this regard in everyday life. The SLR also offers ongoing training on the use of this guide to translate theory into practice. Since the end of December 2009, over 500 persons have participated in thirty-five training courses organized in association with cantonal and municipal authorities, the ombudsman's department, integration services, trade unions and NGOs.
- Strengthening the fight against discrimination under the integration policy: by encouraging integration, the State commits itself to combating shortcomings and discriminations in the fields of language, training and information; the topic of integration and combating discrimination is thus conceived in a comprehensive and coordinated manner (for more detailed information, see Part III).
- Advisory services for victims of discrimination: at the cantonal and communal level, a growing number of specialized integration services offer advice on legal protection against discrimination and the procedure to follow (or, where appropriate, point victims in the direction of the relevant departments). They also try to encourage the introduction and use of dispute settlement mechanisms that are readily accessible and cooperative in character. They are also often responsible for identifying, in collaboration with public bodies, processes that are indirectly discriminatory and for proposing ways of eliminating them.
- In collaboration with the SLR, the Federal Bureau for Equality of People with Disabilities (FBED) and the Federal Department of Foreign Affairs, the Federal Office for Gender Equality and the Federal Office of Justice have requested the Swiss Centre of Expertise in Human Rights to carry out a study to throw light on the mechanisms furthering and impeding access to justice with regard to discrimination. The work began in 2012.
- By joining the Coalition of Cities against Racism, the cities concerned have laid the foundations for a coordinated and systematic effort to combat racial discrimination and for the action plans associated with it. The experiments undertaken by these cities and the associated action plan will be useful to other cities and communes as well as to the cantons and Confederation.

5. Lack of an independent national human rights institutions (paragraph 10 of the concluding observations)

269. "The Committee regrets that an independent national human rights institution, in accordance with the Paris Principles (General Assembly resolution 48/134), has not so far been established in Switzerland. It welcomes the commitment of the State party before the Human Rights Council to continue to consider the establishment of such a human rights institution. The Committee notes that the Federal Commission against Racism (FCR), which is responsible for preventing racial discrimination and promoting inter-ethnic dialogue, has not been provided with adequate funds. The Committee invites the State party once again to establish a well-financed and adequately staffed independent human rights institution according to the Paris Principles. The Committee reiterates its recommendation that the means of the Federal Commission against Racism should be strengthened and recommends more regular dialogue with the FCR."

270. In autumn 2010 the Federal Department of Foreign Affairs and the Federal Department of Justice and Police awarded a mandate to a consortium of four universities for the foundation of the Swiss Centre of Expertise in Human Rights (SCHR). The

consortium bought together the universities of Bern, Neuchâtel, Fribourg and Zurich in association with the Academic Institute Kurt Bösch, the Centre for Human Rights Teachings at the University of Teacher Education in Lucerne as well as the association humanrights.ch – MERS. The SCHR is directed by Prof. Walter Kälin of the Institute for Public Law at the University of Bern.

271. The Swiss Centre of Expertise in Human Rights is a service provider at the disposal of the State authorities, civil society and business. Its task is to promote and facilitate the process of implementing international human rights obligations at all levels of the Swiss political system. It has strong expertise in human rights, in particular in the six clusters of migration, police and justice, gender equality, children and young people, institutional issues and business. Through its studies, conferences, information work and practical training courses, the SCHR serves to strengthen the capacities of public authorities, civil society and business institutions with regard to the protection and promotion of human rights in Switzerland, and it helps to advance public discussion on the subject.

272. The work of the SCHR is primarily focused on identifying the legal, institutional and organizational steps necessary to enable the various stakeholders to better comply with and implement the human rights obligations of Switzerland. This approach ideally complements judicial control, which is exercised by the courts for individual violations.

273. The Confederation pays a basic grant to the Centre, and the universities in the consortium supply it with resources. The practical work is also financed by the income deriving from the services provided on demand by the Centre to public authorities, non-governmental institutions and the corporate sector.

274. The Centre started its activities on 1 April 2011 as a pilot project lasting until the end of 2015. Thereafter, it will be evaluated and decided whether it should be converted into an independent national human rights institution in compliance with the Paris Principles.

6. Lack of a clear and full definition of direct or indirect racial discrimination (paragraph 11 of the concluding observations)

275. “While taking note of article 8 of the Federal Constitution, which incorporates an explicit prohibition of discrimination, as well as the different national law provisions that may be applied in cases of racial discrimination, the Committee notes with concern that the domestic legislation of the State party does not currently contain a definition of racial discrimination in conformity with the definition set out in article 1 of the Convention. The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination, including direct as well as indirect discrimination, to cover all fields of law and public life, fully in accordance with article 1, paragraph 1, of the Convention.”

276. In response to a parliamentary question, the Federal Council in 2008 examined the current definition of racial discrimination in criminal law.¹⁴¹ It arrived at the conclusion that Swiss criminal legislation satisfied the requirements of the Convention on the Elimination of Racial Discrimination, even in the absence of an exhaustive definition of racial discrimination. Article 261 *bis* of the Criminal Code actually goes beyond requirements under the Convention: it gives a wider definition of the groups protected and their defining characteristics (para. 1), and it declares the denial of genocide or other crimes against

¹⁴¹ Reply by the Federal Council of 12.11.2008 to a parliamentary question (Response to the recommendation of the Committee against Racism. Leuenberger parliamentary question 08.1078 du 17.9.2008).

humanity (para. 4, second part of the sentence) and the refusal to provide a service (para. 5) to be punishable offences, subject in fact to automatic prosecution (para. 6).

277. For fuller information, see section 6 of Part II on the state of anti-discrimination legislation, and section 4.2 of Part II regarding the use of racist symbols.

7. Information on the activities undertaken by the cantons (paragraph 12 of the concluding observations)

278. “While welcoming the information provided by the canton of Vaud on its efforts to implement the Convention, the Committee notes the lack of information regarding the activities of other cantons to combat racism and racial discrimination. (art. 2) The State party is invited to provide the Committee in its next report with detailed and updated information on its activities and measures undertaken by the cantons in the area of racial discrimination.”

279. For the purposes of this report, the Conference of Cantonal Governments (and, indirectly, the specialized inter-cantonal conferences concerned) was first invited to express its views. Then, in the summer of 2012, all the cantons, the specialized inter-cantonal conferences concerned and the Swiss Cities Association were invited to participate in the related technical consultation (see the questionnaire in annex 4). Twenty-five of the twenty-six cantons participated; the Swiss Cities Association based its views on the information deriving from the cities of Bern, Winterthur and Zurich.

280. Information on the relevant activities of the cantons, communes and cities appear in the report under the relevant topics.

8. Reservation to article 2 of the Convention (paragraph 13 of the concluding observations)

281. “The Committee notes that the State party intends to maintain its reservation to article 2 of the Convention. The Committee also notes with concern the inadequate protection of the right to marry and found a family for foreign nationals not originating from European Union States (art. 2). The Committee invites the State party to consider the possibility of withdrawing its reservation to article 2, paragraph 1 (a) of the Convention and encourages it to ensure that immigration policies and laws do not intentionally or unintentionally discriminate.”

282. Switzerland is a party to most of the major human rights conventions protecting the individual against discrimination. The Federal Council regularly considers, in the light of the prevailing legal and political situation, whether it might be possible to ratify other international human rights instruments or to withdraw its reservations. At the time of ratification, Switzerland’s reservation concerning access to the labour market was appropriate. The distinction between citizens of member countries of the European Union/European Free Trade Association and citizens of third countries, governed by the binary system for the admission of foreigners, rests on bilateral agreements with the countries concerned and is deemed lawful by the European Court of Human Rights.¹⁴² Wishing to preserve a certain margin of manoeuvre for the future, the Switzerland deems it preferable to maintain the reservation.

283. The following points should be borne in mind with regard to this reservation.

¹⁴² See for example the judgement of the European Court of Human Rights *Moustaquim v. Belgique* of 18 February 1991.

(a) *General remarks on admission and residence*

284. Switzerland operates a binary system for the admission of foreign workers. The admission of workers from EU/EFTA member countries is in conformity with the Agreement on the Free Movement of Persons. Accordingly, over half the foreign nationals present in Switzerland today enjoy in large measure the same rights as the Swiss themselves — with the exception of political rights.

285. Management-level personnel, specialists and qualified workers from other countries (known as third countries) are admitted in limited numbers (quotas). Admission is possible in this case only if it proves impossible to find the same qualifications in Switzerland or in EU/EFTA countries. The persons concerned are mainly higher-education graduates possessing several years' professional experience. People may also be admitted where they have special training or long experience in certain professions or specialized occupations. Apart from professional qualifications, the residence permit is also issued in application of the integration criterion: the person's potential for professional and social adaptation, mastery of the language and age must offer an expectation of lasting integration in the Swiss labour market and the social fabric of the nation. Setting aside family reunification or training courses, legal admission to Switzerland is hardly possible today for nationals of third countries who do not possess special professional qualifications.

286. The admission and residence of foreigners from third countries are governed by the standard provisions of the Federal Aliens Act. One exception concerns third-country nationals married to nationals of an EU/EFTA country, who are entitled to benefit from the provisions of the Agreement on the Free Movement of Persons. It is the cantons that issue residence permits, under the provisions of the Federal Aliens Act. Type-B residence permits are issued on a temporary basis for a specific purpose (for an employment contract, for instance). A short-term residence permit (L permit) is valid for less than one year. A residence permit of unlimited duration (C permit) is issued to foreigners who have lawfully and continuously resided in Switzerland for at least 10 years; nationals of EU and EFTA countries can obtain this residence permit after 5 years' lawful and continuous residence in Switzerland. Mention should also be made of frontier workers (G permit), who are authorized to engage in independent or salaried gainful activity anywhere in Switzerland provided that their main place of residence is in one of the EU/EFTA countries.

(b) *Family reunification and right of residence*

287. The spouse and unmarried children under 18 who live with a Swiss national are entitled to be granted a residence permit and to have their residence permit extended. After a legal and uninterrupted period of stay of five years, they are entitled to be granted a permanent residence permit (art. 42, LEtr). Under article 43 of the same Act, the foreign spouse and unmarried children under 18 of a person with a permanent residence permit who live with that person are entitled to be granted a residence permit and to have their residence permit extended. The foreign spouse and unmarried children under 18 of a person with a residence permit may be granted a residence permit if they live with the permit holder, if suitable housing is available and if they do not depend on social assistance (art. 44, LEtr). The members of a family reunited under articles 42 to 44 may engage in gainful activity. Finally, the foreign spouses and unmarried children under 18 of a person with a short stay permit may, subject to certain conditions, be granted a short stay permit (art. 45, LEtr).

288. Since the number of female spouses coming to Switzerland on the basis of family reunification is greater than that of male spouses, more women than men have a residence permit conditional on their living with their spouse.

289. The revised Federal Aliens Act, which came into force in 2008, introduced substantial improvements in favour of reunited persons. After the dissolution of the marriage or of the family household, the right of a spouse and the children to be granted a residence permit and to have their residence permit extended in accordance with articles 42 and 43 subsists if the marriage lasted a minimum of three years and integration has been successful, or if important personal reasons make an extended residency in Switzerland necessary (art. 50, LEtr).

290. According to the wording of the law, there are important personal reasons in particular if a spouse has been the victim of marital violence and if social reintegration in the country of origin appears to be seriously prejudiced (art. 50, LEtr). Following a ruling of the Federal Tribunal, the Federal Office for Migration has however been forced to amend its directive on family reunification: it is no longer necessary for the two criteria to be simultaneously met; each criterion may in itself constitute an important personal reason, depending on the circumstances and seriousness of the case.¹⁴³

291. This is not an exhaustive list of the reasons justifying continued residence in Switzerland, which gives the authorities a certain margin of discretion. An extended residency in Switzerland may also be necessary when, for example, the spouse living in Switzerland has died or if the breakdown of the marriage makes family and social reintegration in the country of origin extremely problematic. This can also be the case when the couple have common issue, with whom each of the parents has a close relationship and who are well integrated in Switzerland. But account will always have to be taken of the circumstances which led to the dissolution of the marital union.

9. Racial profiling (paragraph 14 of the concluding observations)

292. “While noting the explanation provided by the delegation with regard to the exigencies of national security, the Committee is concerned at the use of racial profiling, including in airports. The Committee is also concerned by the lack of statistics regarding racial profiling at cantonal level. (art. 2) The Committee recommends that the State party review existing national security measures and ensure that individuals are not targeted on the grounds of race or ethnicity. In this regard, the Committee invites the State party to take account of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee also requests the State party to compile information regarding racial profiling at the cantonal level.”

293. The particular form of discrimination that constitutes racial profiling or facial identity checks comes under the general prohibition of discrimination in article 8 (2) of the Constitution, applicable at all levels of the State. Members of the police force, border controls and prison services are therefore forbidden from exercising any form of discrimination against a person on the basis of his or her sex, race, ethnic origin, religion or convictions, handicap, age or sexual orientation.

294. Switzerland has not, to date, collected any statistical data on this phenomenon and on its frequency. This does not mean that it denies its existence, rather that this form of discrimination is mostly associated with routine checks and verification of suspects, a field in which the cantons have sole responsibility.

295. In its annual report for 2010, the mediation service of the city of Zurich (Ombudsstelle der Stadt Zurich) took a close look at this question. It found that the practice of racial profiling existed, despite the fact that it was contrary to legal provisions and

¹⁴³ Federal Office for Migration, Directive on family reunification, dated July 2011, chap. 6.14.3.

instructions. A year later, however, it found in its annual report for 2011 a significant drop in the number of cases of racial or ethnic profiling. In the view of the service concerned, this positive trend could be due to the discussions and training that had been organized in the interim (see section 11 (c) of Part III). Updated every year, the police department's strategic plan for 2012 to 2016 contains for the first time, in the chapter on the priorities of the Zurich municipal police, a passage on the behaviour to be adopted when dealing with the different population groups. It says in substance: "Members of the municipal police must always observe, when dealing with all population groups (whatever their nationality, religion, ethnicity, skin colour and sexual orientation), correct and exemplary behaviour and avoid any form of discrimination (e.g. racial profiling)."

296. The Swiss Centre of Expertise in Human Rights states in its report on the implementation of human rights norms that the creation of a new legal definition and new criminal provision would not necessarily bring about an improvement and could even render the general prohibition on discrimination meaningless.¹⁴⁴ The Federal Council likewise considers that the Confederation, cantons and communes should try above all to improve the skills of police bodies in the area of intercultural relations and human rights. The measures taken in this regard are described in section 11 (c) of part III.

10. Reservation to article 4 of the Convention (paragraph 15 of the concluding observations)

297. "The Committee notes with concern the reasons expressed by the State party for maintaining its reservation to article 4 of the Convention relating to the prohibition of hate speeches. While taking into account the importance conferred by the Federal Constitution on the freedoms of expression and assembly, the Committee recalls that freedom of expression and assembly is not absolute and that the establishment and activities of organizations promoting or inciting racism and racial discrimination shall be prohibited. In this regard, the Committee is particularly concerned at the role played by some political associations and parties in the rise of racism and xenophobia in the State party. (art. 4) Taking into account the mandatory nature of article 4 of the Convention, the Committee invites the State party to consider withdrawing its reservation to article 4 and recommends that the State party enact legislation that declares illegal and prohibits any organization which promotes or incites racism and racial discrimination. In this context, the Committee draws the attention of the State party to its general recommendation No. 15 (1993) on article 4 of the Convention."

298. Switzerland has already expressed its position on this point in its report on the second cycle of the Universal Periodic Review in the autumn of 2012, in response to recommendation No. 57.15 (Cuba).¹⁴⁵

299. Switzerland has adopted a criminal provision that punishes acts of racial discrimination, particularly incitement to racial hatred and propaganda for a racist ideology (article 261 *bis* of the Criminal Code). This provision covers any person, whether acting individually or as part of an organization (see section 4.1 of Part II).

300. Moreover, an association pursuing such a goal is to be regarded as having an unlawful aim. In accordance with article 78 of the Civil Code, the judge should order the

¹⁴⁴ Swiss Center of Expertise in Human Rights (Police and Justice Cluster), 18 January 2012, Introducing detention, policing and justice conditions that are compatible with human rights standards. An analysis of the recommendations of human rights treaty bodies, Bern, p. 40.

¹⁴⁵ See also the message of the Federal Council (FF 1992 III 265, pp. 300–301) on the 2nd and 3rd periodic reports (§116).

dissolution of any association with an unlawful aim, at the request of the competent authority or an interested party.

301. The reservation to article 4 of the Convention mainly concerns the mere participation of an individual in an organization of that nature. Switzerland considers that this reservation remains justified in the light of other human rights such as freedom of expression and freedom of association. In accordance with article 23 of the Constitution, the mere fact of belonging to an organization cannot be declared a punishable offence without violating the fundamental right of freedom of association.

11. Police violence (paragraph 16 of the concluding observations)

302. “The Committee notes with concern the increase in reports of alleged excessive use of force by the police within the territory of the State party, in particular against black persons. (art. 4 (a) and (c)) The Committee urges the State party to take firm measures to eradicate all forms of racially discriminatory practice and excessive use of force by the police and in particular: (a) establish an independent mechanism for the investigation of complaints concerning the actions of law enforcement officials; (b) initiate disciplinary and criminal proceedings against alleged perpetrators, ensuring that the sanctions imposed are proportionate to the gravity of the offence, and grant appropriate remedy for victims; (c) continue its efforts to provide relevant training to the police, including in cooperation with the Federal Commission against Racism; (d) consider recruiting members of minorities into the police force; and (e) consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.”

(a) Creation of independent complaints mechanisms

303. Under the Swiss federal structure, the processing of complaints against the cantonal police is the responsibility of the cantons. In the areas for which they are responsible, the cantons are free to adopt the procedures they consider most appropriate (provided they are compatible with federal and international law). The Federal Supreme Court has refused to make a substantive ruling on the need for special complaints mechanisms to deal with police violence.¹⁴⁶

304. The judiciary is independent at all levels in Switzerland. Many cantons therefore believe that a special mechanism to investigate complaints against the police is unnecessary. In these cantons, offences committed by members of the police force are dealt with by the public prosecutor. Complaints concerning police behaviour are moreover investigated by the supervisory authority in administrative proceedings.

305. Some cantons also allow for the possibility of appealing to a mediation service (Ombudsstelle):

- Since 2003, the canton of Zug has a cantonal mediation service (Vermittler in Konfliktsituationen).
- In the canton of Zurich, a specialized unit of the cantonal police is charged with heading the investigation when civil servants are the subject of proceedings. Criminal proceedings against police officers generally prompt an administrative enquiry, which can result in disciplinary penalties against the individual concerned and serve to highlight organizational shortcomings. These internal investigations are conducted in accordance with the law on employees of the canton of Zurich, under

¹⁴⁶ See for example TF 1B_471/2011 du 24 novembre 2011.

which offenders can be given verbal warnings, put on notice or dismissed. The canton also has a mediation service with general jurisdiction.

- The canton of Geneva has a specific procedure, independent of the police force, to investigate allegations of mistreatment by the police. The Office of the Ethics Commissioner consists of an ethics commissioner, two deputies chosen by the State Council from outside the police force, and a secretariat. Every month police headquarters draws up a list of all the situations and circumstances that have required the use of coercion. The Office of the Ethics Commissioner examines these lists and verifies that the principle of proportionality has been respected. It conducts administrative inquiries into allegations of ill-treatment. It also draws up guidelines for police use.
- The canton of Fribourg has established a special complaints procedure, leading to a decision that can be the subject of an appeal to the Cantonal Tribunal and subsequently to the Federal Supreme Court.
- Following the discovery of a series of cases of alleged abuse by the municipal police, the city of Zurich established an independent contact and complaints service for matters concerning the police. When this service found no systematic abuse in the form of aggressive conduct by the municipal police and after the head of the service had proposed a number of measures to keep the use of violence to a minimum, the service was merged in mid-2003 with the Mediation Office of the city of Zurich.
- Mediation services with general jurisdictions also exist in the cantons of Basel-City and Basel-Country and in the cities of Winterthur, Bern and St. Gallen.

306. In all cantons, investigations into alleged breaches of the prohibition on discrimination are conducted by prosecutors from the Public Prosecutor's Office. They are independent of the judiciary in the application of the law and are subject only to the rules of law (art. 4 of the Code of Criminal Procedure). They are elected by the people, or parliament, and are authorized to intervene in offences subject to criminal jurisdiction. In other types of offence (involving professional ethics, for example), it is for the commander of the police unit and the competent political authorities to intervene.

(b) *Disciplinary and criminal proceedings to punish police abuses*

307. As a general rule, the police are bound at all times to respect the legal order and the principle of proportionality. Insofar as the use of force does not constitute an offence under the Criminal Code, acts of violence committed by the police in principle constitute an abuse of power within the meaning of article 312 of the Criminal Code. There is concurrence between article 312 of the Criminal Code and offences constituting acts of violence, so that any sentence is based on the two offences involved. Consequently, such acts are recorded in the statistics under article 312 of the Criminal Code. Since concurrent offences are not recorded as such in the statistics, it is only possible to determine on a case-by-case basis, with reference to the date of the act and other indications, whether an abuse of power also constitutes another offence. In 2010, police statistics on criminality indicate fifty-seven cases of this nature, including sixty-two criminal offences.¹⁴⁷

308. According to the information deriving from the DoSyra documentation and monitoring system of the Counselling System for Victims of Racism, there has been an

¹⁴⁷ Federal Statistical Office (OFS), 2012, Police Crime Statistics SPC: www.bfs.admin.ch/bfs/portal/fr/index/themen/19/03/02/key/02/02.Document.148236.xls.

increase in the number of racially motivated acts of police violence (23 reported cases in 2010, 16 in 2009 and 9 in 2008), although this is partly explained by the increase in the number of the Network's counselling centres, meaning that more incidents were recorded.¹⁴⁸

309. Relatively few members of the security forces have been convicted under the antiracist criminal provision (article 261 *bis* of the Criminal Code).¹⁴⁹ Various reasons are given for this low number of convictions. Some cantons mention the difficulty of obtaining objective evidence, beyond confronting the word of the accuser and that of the police officer. Other cantons point out that accusations are sometimes made in order to protest against the proceedings brought against them, to ensure more favourable treatment at the trial or to undermine the credibility of the investigator. It can also be a case of a "retaliation complaint", where the complainant declares explicitly that he or she will withdraw the complaint if the criminal proceedings against him or her are dropped. Finally, some police interventions take place in circumstances involving persons in difficult psychiatric situations.

310. Switzerland takes the view that it is less important to establish new legal bases, procedures or legal structures than to improve access to legal information, advice and assistance for those concerned. The Service for Combating Racism provides financial support for improving the quantity and quality of advice available. Reference can also be made again to the Confederation's study on access to justice, which should provide a sound base for preparing other measures (see section 3.4 (b) of Part I and section 4 of Part III). It is of equal importance to train police officers in this regard.

311. For more complete information, including on the situation in the different cantons, see the Federal Council's reply to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up following the Committee's visit from 10 to 20 October 2011.¹⁵⁰

(c) *Strengthening of police training*

312. Police activities have changed a great deal in recent years, particularly under the influence of external factors such as the development of transnational crime, the fight against terrorism and growing aggressiveness towards the police. Moreover, issues related to racism and respect for human rights form part of the increasingly multicultural reality confronting police officers daily. To deal with this new situation, a clear definition of expectations by the administrative hierarchy and the imposition of punishments in the case of infringements are essential requirements. But the staff must also be trained to cope with social diversity, and must learn to solve the problems of discrimination and racism encountered in their everyday work.

313. In their final examinations at the end of their basic professional training, police cadets are questioned among other things on ethical issues (conception of the human being, human dignity, equality of treatment, neutrality, etc.) and also on the European Convention on Human Rights and the United Nations Code of Conduct for Law Enforcement Officers. They learn in this way to exercise their profession while respecting the dignity and rights of

¹⁴⁸ DoSyRa, 2010, *Racist incidents dealt with in counselling contexts*, Bern.

¹⁴⁹ CFR: *Recueil des cas juridiques. Vue d'ensemble statistique par groupes de délinquants, état 2010* [Compendium of legal cases. Statistical overview 2010 by groups of delinquents], www.ekr.admin.ch/dienstleistungen/00169/00172/00178/index.html?lang=fr.

¹⁵⁰ The Federal Council's response to the report can be downloaded on the DFJP's website: www.bj.admin.ch/content/bj/fr/home/themen/staat_und_buerger/menschenrechte2/europaeische_antifolterkonvention.html.

each individual, as prescribed in the Constitution, in the European Convention on Human Rights and in the laws of the land.¹⁵¹ Teaching materials on human rights and professional ethics have been reshaped in collaboration with the Swiss Centre of Expertise in Human Rights. The subject has been taught in police schools in German-speaking Switzerland since the autumn of 2012

314. The State must ensure that these questions are also studied in greater depth following basic training. For years the Service for Combating Racism has been providing cantonal police academies and forces with help in designing and implementing in-service training activities. These are summarized briefly below:

- In 2011, the Zurich cantonal police developed a module on intercultural skills for use in the training of prison staff and security agents at Zurich airport. These modules will be definitively incorporated in the training plan from 2012 onwards.
- With the help of the City Ombudsman, the municipal police of Zurich is organizing courses on racial profiling for young police officers as well as in-service training for experienced staff.
- The Winterthur municipal police force has completed the intercultural skills project for police officers in the youth service. Various subjects in this field of interest to police officers will be placed on the e-learning website. The aim will be to familiarize new officers in the youth service and members of other municipal police departments with this topic.
- For three years, the Lucerne police have been holding a training course for police officers who have completed their basic training. The teaching is provided by the commander himself, with the help of external specialists from the Kompetenzzentrum für interkulturelle Konflikte (intercultural conflicts resource centre). An awareness-raising activity for all members of the force was also carried out in 2012 on the topic of racial and ethnic profiling.
- The issue was discussed with all the municipal police personnel of Chur at an internal meeting.
- A three-day course has been staged over the last three years by the Swiss Police Institute for junior ranks in all the police forces. The subject was also taken up at a two-hour session during the biennial course on hostage-taking. In-service courses on intercultural skills are at the planning stage. Under the supervision of the in-service training commission of the Swiss Police Institute, they will be addressed to all the non-specialist police officers in the force.
- The intercultural skills module now forms an integral part of the basic training at the East Switzerland Police School, where it has already been featured on four occasions. The first was in 2011 when it was included in an extended form, directly related to the experience of members of the force: at one training session, the candidates had to prepare a dossier on a real-life case and submit it to the school. The dossier was then analysed at a half-day session.
- Specific continuous training activities are also organized in the canton of Neuchâtel. Preliminary talks have taken place with the forces in another canton and two other communes with a view to the introduction of continuous training activities.

¹⁵¹ Cf. Regulations of the qualifying examination for the title of police officer, 7 May 2003, p. 7; Framework curriculum for police officers, ISP and OCN, 15 May 2010, p. 11.

315. There is as yet no complete analysis of the effectiveness of these training sessions, whose impact is usually gauged through direct surveys among the participants. Previous projects have however brought home to the police that it cannot outsource this work on issues of racism and violence. Many of these courses now form part of the police forces' standard training provision.

316. The Federal Commission against Racism devoted the December 2010 issue of its magazine TANGRAM to the fight against racism in the police and security forces, with the support of senior members of the frontier-guard service and a former President of the Conference of Swiss Cantonal Police Commanders. The publication has been sent to the twenty-six cantonal police directors.

317. Civil society has also been the source of innovative projects for promoting mutual awareness among the public and security personnel. By way of example, the Geneva Association Face à Face is organizing role-playing games among members of the border guard and young people to increase understanding on both sides of the difficulties they face.

(d) *Recruitment of members of minorities in the police*

318. In the security field, the powers of the Confederation are limited to the recruitment of members of the border guard and the federal police. Discrimination is prohibited, and no distinction is made between the linguistic minorities (German, French, Italian and other languages).

319. The eligibility criteria for other State security personnel depend exclusively on the cantons. Here again, discrimination is prohibited and access to vacant posts must be open to all candidates possessing the required qualifications.

320. With regard the hiring of foreign nationals, most of the cantons consider that the police have the monopoly of the exercise of public authority and that the function of police officer should therefore be reserved for Swiss citizens. Other cantons are more ready to hire foreign workers. The cantons can be divided into three groups:

- Six cantons currently admit persons of foreign nationality to the police force (Appenzell Inner-Rhodes, Basel-City, Jura, Neuchâtel, Schwyz and Schaffhausen). The canton of Basel-City, in particular, is careful to ensure that minorities are represented in its police force, which includes officers of various nationalities. The law of the canton of Zug enables exceptions to be made to the requirement of Swiss nationality, and the canton of Fribourg admits persons not possessing Swiss nationality as civilian employees in the cantonal police. In other cantons, discussions on the subject are in progress, notably following parliamentary interventions.
- In five cantons, holders of permanent residence permits are admitted to the police academy but must acquire citizenship at the end of their studies before they can exercise the profession of police officer (Appenzell-Ausserrhoden, Fribourg, Geneva, Nidwalden and Vaud). In Geneva, the percentage of foreign nationals who have begun training at the academy has varied between 8 and 20 per cent over the last two years. In Fribourg, there have been some candidates for recruitment, but so far none has been passed all the examination requirements.
- In the other cantons, persons of foreign nationality cannot become police officers. In the canton of Zurich, a proposal to abolish the Swiss nationality requirement for recruitment to the police force was rejected by the cantonal government (on the grounds that candidates satisfying the other criteria for admission to the police academy, including extensive knowledge of the country and its language, could for the most part acquire Swiss nationality while retaining their original nationality).

The Zurich police, as in many other cantons, includes many first- or second-generation immigrants of Swiss nationality.

321. With regard to the recruitment to the police force of Swiss nationals with an immigrant background or belonging to minorities, the canton of Basel-Country has stated that it is not guided by quotas in its recruitment of police officers, and that it chooses those candidates with the requisite qualifications. The cantons of Appenzell Outer-Rhodes, Thurgau, Valais and Vaud are also guided in the recruitment of police officers by the quality of the candidates, with the canton of Thurgau particularly favouring candidates representative of a minority. The canton of Aargau is careful to ensure that Swiss nationals with an immigrant background or belonging to other minorities are appropriately represented. Finally, the canton of Grisons, like that of Zurich, considers that persons presenting the necessary qualifications for recruitment to the police (including successful integration and good knowledge of Switzerland) fulfil the conditions for naturalization; they can therefore be expected to acquire Swiss nationality before entering the police academy. The canton of Schaffhausen has stated that in recent years the cantonal police has recruited a number of officers with Swiss nationality coming from an immigrant background. According to the canton of St. Gallen, its police force has an appropriate proportion of persons belonging to minorities.

322. The training and awareness activities supported by the Confederation in the cantons must also increase public awareness in the longer term that a police force with a representative composition is better accepted by the public and therefore performs more effectively than a non-representative body.

(e) *Ratification of the Optional Protocol to the Convention against Torture*

323. On 20 March 2009, the Swiss Parliament adopted the federal decree approving and implementing the Optional Protocol to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.¹⁵² This decree also enacts a federal law, which came into force on 1 January 2010, establishing a National Commission for the Prevention of Torture as a national preventive mechanism.¹⁵³

324. On 1 January 2010, the Federal Council appointed the 12 members of the Commission for a four-year term. In the selection of the members, account was taken of the criteria of independence and interdisciplinarity within the meaning of articles 4 and 5 of the aforementioned law. The Commission is composed of persons with expertise in the medical, legal and criminal fields, as well as professionals with a background in sentence enforcement and policing serving in a personal capacity and not exercising any professional activities entailing possible conflicts of interest. The Commission's first President is also a member of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment. The Commission has a permanent secretariat. In accordance with federal legislation, its members receive daily allowances. The annual budget of the Confederation for the functioning of this Commission amounts to 360,000 francs.

325. The Commission has unrestricted access to all those establishments where detainees are held. It formulates recommendations to the relevant authorities and makes observations and proposals on legislation in force or draft legislation. To date, the Commission has visited some 20 places of detention and has published reports on these visits. It is also responsible for monitoring the enforcement of removals under the Federal Aliens Act. For this purpose, the Commission intends to establish a pool of independent observers that will

¹⁵² FF 2009 1821.

¹⁵³ RS 0.105.1.

accompany the special flights. Reports on these visits are published on the website of the National Commission for the Prevention of Torture.¹⁵⁴

12. Legislation on foreign nationals and asylum-seekers (paragraph 17 of the concluding observations)

326. “The Committee notes with concern that the State party’s legislation on foreign nationals and asylum-seekers may not guarantee them equal rights in accordance with the Convention. For instance, pursuant to the Federal Aliens Act which entered into force on 1 January 2008, asylum-seekers whose requests are rejected are excluded from the welfare system with resulting marginalization and vulnerability. (art. 5 (b)) The Committee urges the State party to take effective and adequate measures to guarantee the rights under the Convention to foreign nationals and asylum-seekers. It invites the State party to harmonize its domestic legislation on foreign nationals and asylum-seekers with the Convention, and to take into account the recommendations made in this area by different bodies and organizations dealing with racial discrimination issues.”

327. Despite the fact that foreigners represent over 22.4 per cent of the population, immigration has not produced any ghettoization in Switzerland, thereby preserving Switzerland from community separatism and the resulting conflicts.

328. Integration made its appearance in Swiss law with article 4 of the Federal Aliens Act. Since 2009, the Federal Office for Migration has contributed six million francs annually to integration projects for promoting equality of opportunity and the participation of the foreign population in economic, social and cultural life and for opposing all forms of discrimination.¹⁵⁵ The cantons receive lump-sum payments of some 30 to 40 million francs to facilitate the social and professional integration of refugees and persons admitted provisionally to Switzerland.

329. The explanatory report on the amendment of 23 November 2011 to the Federal Aliens Act (integration) states explicitly that encouraging integration must go hand in hand with efforts to combat discrimination. To be successful, integration must be based on a shared commitment by migrants and the host society.¹⁵⁶ Foreign nationals are expected to make an active effort to integrate by supporting themselves, respecting the law and public order and familiarizing themselves with everyday life. Protection against discrimination is an integral part of the promotion of integration and of the corresponding cantonal programmes, since there is no point in encouraging integration if migrants are marginalized and disadvantaged.

330. The promotion of integration takes place in “regular” contexts, such as nurseries and schools, neighbourhoods and associations. The Confederation and cantons intend to implement a common strategy aimed at strengthening the model that encourages integration in these contexts by actively associating the world of business and civil society (associations and other organizations, particularly migrant). With regard to combating discrimination, organizations forming part of regular contexts must be able to rely on expert advice. The provision of advisory services for victims of discrimination must also be expanded, so that immigrants are less likely to be disadvantaged and conflicts can be defused at an early stage.

¹⁵⁴ www.nkvf.admin.ch/content/nkvf/fr/home/die_oe.html.

¹⁵⁵ Art. 4, subpara. 2, and art. 53, subpara. 2, LEtr.

¹⁵⁶ www.bfm.admin.ch/content/bfm/fr/home/dokumentation/medienmitteilungen/2011/ref_2011-11-232.html.

331. The overall responsibility for implementing the integration strategy rests with the Federal Office for Migration and the Conference of Cantonal Governments, which have entrusted the task of protecting against discrimination to the Service for Combating Racism. The latter has disseminated information on the subject among staff in the cantonal and communal integration offices through meetings and workshops; it has defined with them indicators and objectives for expanding protection against discrimination. It has also provided cantonal officials responsible for integration with training in devising new integration programmes (professional coaching).

332. With regard to the question of asylum, the trends have been described in section 1.4 of Part I of this report. It is important to note that all the proposed legislative amendments are in keeping with the Constitution and public international law. They are currently under discussion in Parliament.

333. Since the introduction of the free movement of persons, the problem of illegal residence by nationals of the EU/EFTA countries has been considerably reduced since those concerned now have a right of residence if they possess a work contract in Switzerland or adequate financial resources. It is possible for a person residing illegally in Switzerland to submit a hardship request. If the cantonal authorities consider they are dealing with an individual case of an extremely serious nature and are ready to grant a residence permit to the person concerned, it must submit the file to the Federal Office for Migration for approval. There is no right to such a residence permit in hardship cases, but an ordinance lays down criteria to be taken into account when assessing such requests (art. 31, para. 1, Ordinance on Admission, Residence and Gainful Employment). Key factors include the applicant's degree of integration, respect for the Swiss legal system, family and financial situation, willingness to participate in economic life and acquire a skill, length of time spent in Switzerland, state of health and the chances of reintegration in the State of origin. In accordance with the well-established case law of the Federal Administrative Court and the Federal Supreme Court, the person's situation must be critical. His or her living conditions must be worse than those generally experienced by foreigners. When examining family requests, the situation of the family as a whole is taken into consideration. The length of stay must also be taken into account in relation to the particular case. In cases of extreme seriousness, no minimum length of stay is fixed in either law or case law. With regard to asylum, however, the person must have resided in Switzerland for at least five years (art. 14.2 (a) of the Asylum Act). Requests for regularization submitted by immigrants without proper documents are therefore examined on a case-by-case basis. The statistical data annexed to this report provides an overview of the practices of the cantons in this regard (Statistics of individual cases of extreme seriousness covered by annex 3, article 30.1 (b) of the Federal Aliens Act).

334. The situation of undocumented young people has been improved with the proposal by the Federal Council to allow them access to apprenticeship training. The draft law provides for regulation of their stay in Switzerland during the period of their training provided certain conditions are met. The parents of the persons concerned, as well as their brothers and sisters, can also apply for regularization of their stay. Subject to certain conditions, an extension of the residence permit beyond the end of the training period is possible (for a more detailed account of the Federal Council's draft proposal, see section 3.1 (d) of Part I and section 5.5 (e) of Part II).

335. On the specific question of the conditions governing the marriage of undocumented persons, see section 5.4 (d) of Part II. The Federal Commission on Migration has published

a general study on the situation of undocumented persons in Switzerland, together with recommendations.¹⁵⁷

13. Naturalization process (paragraph 18 of the concluding observations)

336. “While welcoming the new legislation on naturalization which is expected to enter into force in 2009, the Committee remains concerned at the fact that the cantons and communes may introduce stricter conditions than the Confederation on naturalization matters, may infringe upon the right to private life, and that the lack of definition of integration criteria in the naturalization process could lead municipal assemblies to adopt inconsistent standards and decisions. (art. 5 (d) (iii)) The Committee encourages the State party to adopt standards on integration for the naturalization process, in conformity with the Convention, and to take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of the State party.”

337. Since the last monitoring cycle, the legal situation regarding the naturalization process has evolved significantly. In 2003, the Federal Supreme Court took the view in two very important judgements that the naturalization decision is not a political in nature but also legal (an “act involving application of the law”). On the other hand, the popular initiative “for democratic naturalizations”, launched in 2003, wished to return to the earlier doctrine and jurisprudence, according to which naturalization is a political act that does not require any justification, since the decision concerned can only be challenged on the basis of a legitimate law. The initiative was clearly rejected by the popular vote of 1 June 2008, and the legislation aligned with the jurisprudence of the Federal Supreme Court.

338. The amendment of 21 December 2007 to the Federal Act on the Acquisition and Loss of Swiss Citizenship (LN; RS 141.0) entered into force on 1 January 2009. Articles 15 (a) ff. provide that in future “Reasons must be given for rejecting an application for naturalization” and that in the case of a vote by a communal assembly “The communal electorate may reject an application for naturalization only if a reasoned motion has been made that they should do so” (art. 15 (b)). Moreover, “The cantons shall appoint judicial authorities to act as the ultimate cantonal courts of appeal in relation to decisions to refuse ordinary naturalization” (art. 50).

339. Following this partial review, the cantons implemented the necessary amendments or issued directives to ensure observance of this law. Today, all the cantons with the exception of two recognize the duty to give reasons and to provide for the possibility of appealing to a cantonal court in the case of a decision rejecting the application for Swiss nationality. The two cantons constituting an exception have begun a review of their legislation to bring it into line with federal law; while this has yet to happen, there is recognition of the right of appeal under federal law against the rejection of a naturalization application.¹⁵⁸

340. In the naturalization process, knowledge of a national language carries substantial weight, both as a measure of integration and as a precondition of professional and social integration. Finalized in 2009 as the outcome of various drafts, the Confederation has

¹⁵⁷ Federal Commission on Migration (CFM): *Visage des sans-papiers en Suisse. Evolution 2000–2010* [Profile of undocumented persons in Switzerland. Trends 2000–2010]. Bern. Federal Commission on Migration (CFM), 2011, *Les sans-papiers en Suisse. Recommandations de la Commission fédérale pour les migrations* [Undocumented persons in Switzerland. Recommendations of the Federal Commission on Migration], Bern.

¹⁵⁸ Further information on recent trends in naturalization legislation is available at www.ekm.admin.ch/de/themen/aktuelle_debatten.php.

defined standards concerning the encouragement of language learning and evaluation of proficiency in the second language.¹⁵⁹ As from 2014, the authorities will possess standardized instruments to evaluate language skills. The Confederation will recommend to the authorities responsible for naturalizations to evaluate the language skills of candidates by means of this standardized procedure.

341. A number of appeals against naturalization decisions have been lodged with the Federal Supreme Court. When examination of the facts leads to the conclusion that rejection is based solely on origin or religious symbols (such as the wearing of the Islamic headscarf), the decision is regarded as based on a characteristic that, under article 8.2 of the Constitution, cannot serve as justification for a difference in treatment, thereby rendering it unconstitutional.¹⁶⁰ The Federal Commission against Racism has noted two cases of discriminatory rejection of naturalization since 2008.

342. Additional information on developments in the cantons:

- Canton of Aargau: regarding implementation of the case law of the Federal Supreme Court, instructions have been issued to the communes, which had the opportunity to participate in training sessions in 2007. Work is currently in progress on a complete review of the law on cantonal and communal rights of citizenship. The aim is to introduce clear and uniform conditions at the cantonal level for the acquisition of Swiss nationality. The communes should also continue to verify the criteria of integration and compliance with the other conditions of naturalization. Finally, the naturalization procedure should be fair, transparent and constitutionally correct and should be completed within a reasonable period of time. New instruments have been developed under this bill. They are designed to encourage equal treatment and non-discrimination when assessing the integration status of persons wishing to acquire Swiss nationality. They include a language test to assess oral comprehension and a test of compliance with general policy. The law in its completely revised form should come into effect on 1 January 2014, subject to its adoption and acceptance in the event of a popular vote.
- Canton of Basel-Country: launched following a parliamentary initiative, the review of the law on the rights of citizenship, currently in progress, is mainly concerned with defining the conditions under which foreigners receiving or having received social welfare are refused citizenship (similar criteria to those applied in other cantons: the applicants concerned are those who have received social welfare benefits over the five years preceding the submission of their application and who have had their welfare payments reduced or terminated on the grounds of misconduct or have failed to cooperate with the social welfare authorities). The review is also aimed at incorporating in law the integration criteria applied for a number of years.
- Canton of Basel-City: since 2012, the canton has organized information meetings for potential candidates for naturalization and has sent courtesy letters to all those entitled to submit a naturalization application. Potential candidates are informed in this personal letter that they are eligible for naturalization, and that they could take advantage of the associated counselling and courses.
- Canton of Geneva: both the law on administrative procedure and cantonal legislation on the acquisition of nationality require that reasons be given for the decisions taken

¹⁵⁹ Outline concept relating to the encouragement of language learning in Switzerland – learning, teaching, testing.

¹⁶⁰ See for example ATF 129 I 232; ATF 134 I 49, ATF 134 I 56.

by the Cantonal Nationalization Service. The same applies to the notices issued by the Geneva communes and the decisions of the Council of State. It is possible to appeal to the Administrative Chamber of the Court of Justice against the rejection of naturalization applications.

- Canton of Glarus: the integration criteria, which form part of the legal conditions of naturalization, have been applied since 1 January 2011. They offer persons applying for nationality a better guarantee of being treated on an equal footing and not being subject to discrimination by the authorities concerned.
- Canton of Lucerne: directives based on cantonal case law have been drawn up for the communes with a view to ensuring non-discriminatory procedures. The communes comply with these directives. Otherwise, a remedy would be sought through an appeal procedure. Legal requirements are satisfied by the requirement to state the reasons for a decision and by the legal and judicial protection in place in the canton.
- Canton of St. Gallen: the canton's new law on nationality, which came into force on 1 January 2011, takes account of federal requirements concerning the right to a reasoned decision as well as the possibility of an appeal to a judicial authority where naturalization is rejected, and it has formally incorporated these requirements. The integration criteria with regard to naturalization are now more detailed and the corresponding ordinance, defines minimum language requirements. There has also been a fundamental change whereby a communal authority ("naturalization council") decides on the granting of communal citizenship. Voting at citizens' meetings now only takes place in the case of naturalizations that are the subject of an appeal, and the reasons for the decision taken must be stated. Finally, the residency qualification has been increased to 8 years in the canton and four years in the commune, and a permanent residence permit is in future necessary.
- Canton of Schwyz: the electors adopted the new law on the right of citizenship in the popular vote of 27 November 2011 (Official Gazette of the canton of Schwyz, 2011, p. 1940 ff.), due to come into force on 1 January 2013. The new law provides for the establishment of an authority responsible for naturalizations, on the understanding that the communes can transfer this responsibility to the communal assembly. The requirement to state the reasons for the decision is guaranteed and legal protection is provided by the cantonal administrative court. As well as being integrated into the Swiss community and the canton and commune, the candidate for naturalization must be familiar with the Swiss lifestyle and practices the mode of life and customs of the canton and commune and must enjoy an unimpeachable reputation. He or she must also sign a charter accepting the fundamental values of the Constitution, which include the prohibition of any form of racial discrimination. The language qualification is a B1 standard in the written language and a B2 standard in spoken German.
- Canton of Solothurn: legal controls exercised by the cantonal government have enabled latent discriminatory refusals to be remedied on a case-by-case basis. Between 2006 and 2010, the canton of Solothurn was among those with the lowest number of naturalizations; this was mainly due to a lack of staff, a situation corrected after 2011. The question is whether information meetings can familiarize future applicants, for a permanent residence permit for example, with the basic values of Switzerland and its political and legal system. This will require the individual concerned to have learned standard German sufficiently early.

- Canton of Uri: in November 2010, the electors adopted a new law on the right of citizenship, which prevented any form of discrimination and any arbitrary conduct in the naturalization process.
- Canton of Vaud: the canton has introduced training measures for communal officials involved in the naturalization process so as to ensure uniform treatment and avoid any form of discrimination. However, the applicant has the right of appeal against any communal decision (consultation of the State, for information purposes, essentially concerns matters of form rather than substance). Personalized meetings with the communal authorities are conducted by an official of the State department concerned in order to provide a common framework and ensure compliance with the appropriate legislation. At the present time, the Vaudois communal and cantonal authorities responsible for naturalization do not employ any standardized tool to check language skills. The appeal system is widely applied in the canton of Vaud.
- Canton of Valais: under the approach adopted since 2010, greater account is taken of the efforts of candidates for naturalization to integrate in Swiss society. Between now and the end of 2012, all the communes will receive a reminder concerning the minimum integration criteria. It is planned to adapt cantonal legislation to incorporate the essential legal right of appeal.
- Canton of Zurich: cantonal law now makes it possible for a decision to refuse naturalization to be reviewed by a judicial authority (implementation of the guarantee of a legal right of appeal under article 50 of the Federal Citizenship Act). The amendment to the Federal Act on Administrative Procedure (LS 175.2) came into force on 1 July 2010. The law provides that the district council (of first instance) then the administrative court (of second instance) shall examine decisions on naturalization taken by the communes. In order to guarantee a non-discriminatory naturalization procedure, it is moreover important that the linguistic knowledge of the candidates for naturalization should be verified on the basis of standardized criteria. To avoid the unequal treatment of candidates, the Department of Justice and the Interior has developed a standard test of language skills, which will be made available to the communes from 2013 onwards. This language test is based on the knowledge required to communicate in everyday life and should provide a fair and reliable assessment.
- Canton of Zug: since the amendment to the cantonal law on nationality in 2009, decisions concerning naturalizations are no longer taken by the cantonal legislature but by its executive body, thereby ensuring greater protection against discrimination.

14. Travellers (paragraph 19 of the concluding observations)

343. While noting with appreciation that Travellers/Yenish have been recognized by the State party as a national cultural minority under the Council of Europe's Framework Convention for the Protection of National Minorities, the Committee remains concerned that Travellers, including Yenish, Sinti and Roma, are still subjected to numerous disadvantages and forms of discrimination, particularly in the areas of housing and education. It notes with concern the lack of adequate measures to protect their language and culture as well as the persistence of racial stereotyping against them (arts.2 and 5). The Committee recommends once again that the State party strengthen its efforts to improve the situation of Travellers, in particular with regard to the means and enjoyment of their rights to housing, education and cultural rights. The State party should adopt a national coordinating policy aimed at protecting Travellers' rights.

(a) *General comments*

344. Concerning Traveller communities and ethnic groups such as the Yenish, Manush, Sinti and Roma (who are sometimes nomadic and sometimes sedentary), there is complete confusion in the public mind. In Switzerland and Europe more generally, there is a tendency to confuse lifestyle and ethnic origin, sometimes intentionally and sometimes for reasons of political opportunism.

345. With regard to ethnic origin, the main groups living in Switzerland are the Yenish as well as a small number of Manush. The Yenish are Swiss citizens with the corresponding rights and duties. The majority have become sedentary, sometimes by coercion and as a result of persecution. The nomadic lifestyle nevertheless remains a key part of their existence and is sparking renewed interest among the younger generations. Out of the 30,000 or so Yenish in Switzerland, between three and five thousand live semi-nomadic existences. They spend the winter on transit stopping sites (in caravans, wooden chalets or containers); this is where they are registered with the authorities and pay their taxes, and where their children receive their education in the neighbourhood or village school. In summer, they travel around Switzerland in small family groups and need transit sites for periods of one to 3 weeks.

346. Since the middle of the twentieth century, several generations of Roma have immigrated to Switzerland following various political events (the Prague Spring in the 1960s, emigration from ex-Yugoslavia in the 1970s and 1980s, war refugees from Bosnia and Kosovo in the 1990s). These former immigrants are today wholly integrated and some of them possess Swiss nationality. Nowadays they are settled and no longer identify themselves as Roma to outsiders.

347. Following the fall of communist regimes in Eastern Europe and in the context of an increasingly fraught economic situation in many of these countries, the situation of Roma has continued to deteriorate. They are victims of racist aggression and racial discrimination and have become social outcasts in those countries, to the extent that it is difficult today to describe their precarious (survivor) lifestyle as sedentary. This has led many Roma to emigrate and, in some cases, to live in Western countries by begging or performing undeclared labour.

348. Finally, there are Roma from abroad, who come for the most part from France or Italy, sometimes from the East. Several hundred of them cross Switzerland in the summer, where they attempt to work or do business. Unlike the Yenish, they travel in sizeable groups, in a large number of caravans. This causes problems in Switzerland because of its small size and lack of transit areas. In summer, these problems are widely reported in the media.¹⁶¹

349. This brief survey shows the very diverse needs and problems of these different groups. A separate analysis of the different groups is required to provide objectives and long-term answers.

350. In the following paragraphs, the emphasis is placed on the situation of the Yenish. The issue of long-term and transit stopping sites for Travellers is broached at the end of the chapter. The situation of Roma settled or naturalised in Switzerland is not explored in any depth since it does not raise any specific question.

¹⁶¹ See in this connection: Galizia Michele, "Fahrende – Jenische – Roma – Manouche: Von was sprechen wir? Gefährliche Vermischungen", Tangram, CFR, Bern (unpublished).

(b) *Recognition, organization and support of Yenish in Switzerland*¹⁶²

351. Switzerland is the only country in Europe that recognizes the Yenish as minorities in keeping with Council of Europe's Framework Convention for the Protection of National Minorities. It also recognizes Yenish as the language of a non-territorial minority within the meaning of the European Charter for Regional or Minority Languages.

352. Since 1986, the Confederation has provided the umbrella organization for the Yenish in Switzerland, "Radgenossenschaft der Landstrasse", with an annual contribution of some 250,000 francs, covering 85 per cent of its operating costs. The Association acts as intermediary between the authorities and Travellers, is responsible for establishing and maintaining long-term and transit stopping sites, advises Travellers on problems relating to their trading permits or the schooling of their children, and provides them with general advice on legal matters and social assistance benefits. It manages a cultural and information centre, which organizes training courses. In this way, the Confederation is strengthening the representation of the interests of a cultural minority in Switzerland through the agency of an organization independent of the State, co-managed by the Travellers themselves.

353. In 1997, the Confederation also created the foundation "Assurer l'avenir des gens du voyage suisses" (Safeguard the future of Swiss Travellers), which seeks to improve the living conditions of the nomadic population and to preserve their way of life. Its governing body includes representatives of both the Travellers and the Confederation and cantons. The presence of the association Radgenossenschaft der Landstrasse ensures that the Travellers can identify with the Foundation's proposals, recommendations and measures. The Foundation was allotted a credit line of 750,000 francs for the period 2002–2006, and another of 150,000 francs per annum was approved for the period 2007–2011.

354. Europe's first documentation and meeting centre for Yenish opened in Zurich in November 2003. An exhibition at the centre of the history and culture of Travellers was created by Travellers themselves. The Foundation, the Federal Office for Culture, a majority of the cantons and the Service for Combating Racism have all contributed to its financing.

(c) *Language*

355. For part of the Yenish community, the Yenish language is a significant component of their shared identity. It is transmitted within the group and retains in the eyes of many the characteristic of a secret language. By ratifying the European Charter for Regional or Minority Languages, Switzerland has recognized Yenish as a non-territorial minority language.¹⁶³

356. Since 2007, the Federal Office of Culture has been supporting the Yenish Language Project. This aims to inventory the Yenish linguistic heritage and guarantee its future, to study Yenish and to encourage its dissemination and use by Travellers themselves. The project aims to produce a DVD containing eighteen interviews in Yenish on various topics reflecting the everyday life of the Yenish community, with particular emphasis on their language and culture. At a later stage, a Yenish dictionary will be compiled and published.

¹⁶² More information will be found in the Swiss Government's Third Report on the implementation of the Council of Europe's Framework Convention for the Protection of National Minorities of 25 January 2012: www.edi.admin.ch/frb/00497/00498/01456/index.html?lang=fr. See also the issue of Tangram mentioned above on the situation of the Yenish in Switzerland.

¹⁶³ In 2009, the Federal Council approved the fourth periodic report of Switzerland concerning the European Charter for Regional or Minority Languages Conseil: www.bak.admin.ch.

(d) Schooling

357. State schools are naturally open to Travellers (arts. 62 and 19 of the Constitution). However, the schooling of children in regular schools is not easily compatible with the nomadic life. The children concerned generally obtain the necessary exemption from attendance during the summer months. They remain in contact with their school, have their lessons sent to them and return their homework to the teachers for marking. Teacher supervision usually involves dispatching educational materials and correcting homework during the periods of nomadism. Yet these six-month absences often result in educational difficulties, which can penalize children seeking an apprenticeship, when they decide not to accompany their parents and to learn a trade. Travellers and their organizations are increasingly aware of these problems and are trying to address them.¹⁶⁴

358. The children of nomadic families often participate in the family's income-earning activities before the end of their compulsory schooling. Travellers see this as a learning period that prepares the child for his or her nomadic working life. This situation is problematic as regards labour law provisions concerning child protection, in particular the prohibition of child labour. Moreover, Travellers deplore the fact that their children starting their working life so early do not obtain a recognized school-leaving certificate. Talks are underway to find viable solutions.

(e) Long-term and transit stopping sites

359. Their culture and way of life expose Travellers to indirect discrimination, particularly with regard to land-use planning and police regulations on building and trading activity. It is especially difficult to provide Swiss Yenish with sufficient long-term stopping sites in winter and transit sites for Travellers with diverse needs in summer (small groups of Yenish Travellers remaining several weeks on a site and large groups of foreign Roma remaining briefly on a site).

360. Enquiries reveal that there were 14 long-term sites in 2010 (2 more than in 2005), which barely meets one third of Travellers' needs in Switzerland. There has been very little change also in regard to transit sites: they numbered 43 in 2010 compared with 44 in 2005.¹⁶⁵

361. Establishing new long-term and transit sites for Travellers is often a long and difficult business, involving various levels of authority. The cantons, which are responsible for land-use planning, coordinate requests for new sites with reference to their master plans. Communes are required to record these needs in their land-allocation plans. In some communes, the citizens have the right to a say in the decision-making and can reject the plans in a popular ballot.¹⁶⁶ However, the Federal Supreme Court has stated that under current law Travellers' specific needs must be taken into account in land-use planning.¹⁶⁷

¹⁶⁴ This chapter is based on the data of the Federal Office of Culture: www.bak.admin.ch/kulturschaffen/04265/index.html?lang=fr.

¹⁶⁵ The Foundation "Assurer l'avenir des gens du voyage suisses" (Safeguard the future of Swiss Travellers), 2010, Travellers and Land-use Planning, 2010 report, Saint-Gallen.

¹⁶⁶ In the commune of Versoix in the canton of Geneva, construction of a new stopping place for Travellers was rejected by popular ballot. Voters in the commune of Boudedvilliers (Neuchâtel) rejected a similar project by 59 per cent to 41 per cent, and in Winterthur (Zurich) a project was rejected in the vote on the local land-use plan.

¹⁶⁷ "Land-use plans should therefore make provision for suitable areas and sites that could serve as stopping places for this population group, in accordance with its traditions (or, if necessary, the relevant authorities could adapt the existing building-zone regulations to permit this type of land use." ATF 129 II 321, 327.

362. In a report published in 2006, the Federal Council expressed the resolve to improve the exchange of information between cantons and communes and to strengthen intercantonal cooperation at all stages in the development of long-term or transit stopping sites.¹⁶⁸ This would require improved use of the existing intercantonal and tripartite structures, namely the Swiss Conference of Public Works, Spatial Planning and Environment Ministers (DTAP) and the Tripartite Conference on Urban Areas (CTA). Consulted on the subject, the DTAP stressed the fact that exchanges of information and experience between the cantons already existed and was very useful. However, it did not support the idea of including projects for encampment sites for travellers in urban area projects and making the allocation of federal grants dependent on the realization of long-term and transit stopping sites. In its view, the urban area development tool was very complex and it should not be overburdened still further with additional topics. This point of view was supported by several cantons.

363. Positive developments in recent years include cantonal strategic planning and overall approaches to the problem of Traveller communities. Whereas in 2005 the needs of Travellers were only taken into account and incorporated in five cantonal master plans, the number had increased to 14 by the end of 2010. Moreover, three cantons in the process of developing master plans had projects in this regard. Several communes had followed the cantonal leads and had adapted their development plans to make sites for travellers a legal requirement, so that they could not be eliminated to make way for another scheme. Yet the positive projects being developed by the communes were sometimes frustrated by the will of the people. The commune of Schwyz, for example, had proposed the creation of a special area, which had been rejected on 26 September 2010 (by 2662 votes to 1661).

364. The Federal Act on the Promotion of Culture of 11 December 2009 (LEC; RS 442.1) is likewise a positive development since it provides a broader legal basis for measures by the Confederation to enable Travellers to live their lives in keeping with their culture (art. 17).

365. The provision of transit stopping sites for foreign Travellers is a real problem. Because of the lack of large-scale pitches, they often set up camp without permission on land not intended for the purpose. This inevitably leads to conflicts with the local population, particularly because of the problems of waste. According to estimates, there is a need for ten additional large transit sites equipped to meet the needs of foreign Travellers.¹⁶⁹ Establishing adequate sites for foreign Traveller communities (particularly along the main transit routes) has thus become a priority in some cantons. A number of new sites are therefore at the project stage or in preparation:

- In Versoix, in the canton of Genève, the cantonal parliament adopted a law in November 2010 authorizing an investment credit for the development of a large long-term stopping site. The site has been available to fairground workers and Travellers since 28 September 2012.
- In the canton of Jura, in Delémont, a replacement transit site is planned and work is in progress.
- In the canton of Neuchâtel, a coordination sheet on the creation of a transit site for Travellers has been decided by the cantonal government with a view to the adoption of a cantonal master plan in June 2012. According to this document, the site will

¹⁶⁸ Report of the Federal Council on the situation of Travellers, Bern, October 2006.

¹⁶⁹ www.bak.admin.ch/themen/sprachen_und_kulturelle_minderheiten/00507/00512/00566/00569/index.html?lang=fr.

cover an area of some 4000 m² and the plan is to locate it on the Neuchâtel lakeside along an east-west axis.

- In the canton of Zurich, the Communal Council of Winterthur agreed on 5 March 2012 to the creation of a new transit site with a capacity of 20 places (intended primarily for Swiss Travellers). The canton is also working on the development of new sites forming part of an overall cantonal model. The draft cantonal master plan provides for a long-term stopping area and five transit areas (in addition to the four existing long-term sites and eight transit sites).
- The canton of Bern is currently conducting a location study for new long-term, temporary and transit sites. Site installation should begin in the spring of 2012.
- In the canton of Fribourg, the prerequisites are in place for the development of a new transit site in Sâles. Discussions are also taking place with the canton of Vaud on improving the quality of the transit site of la Broye in Payerne.
- In the canton of Solothurn, efforts continue to establish a transit area for Swiss and foreign Travellers in Oensingen (in addition to the existing transit site for Swiss travellers in Granges-Solothurn). The amended master plan has been presented to the public, and studies on new sites for Swiss Travellers have begun.
- In the canton of Valais, two transit sites are planned in the Upper-Valais and Central-Valais regions. A plan was drawn up in 2009. Among the possible sites are two plots belonging to the Confederation, hitherto used by the Army.
- The canton of Aargau is searching for locations for the development of four additional sites (one long-term stopping site within the urban area and three transit sites in the Aarau East, Freiamt and Lenzburg regions). In November 2007, the cantonal parliament voted a credit line for developing these sites. In 2011–2012, the canton of Aargau is going to rehabilitate and equip two existing transit areas located in the communes of Aarau and Windisch.
- In the canton of St. Gallen, a fourth long-term stopping site is being developed in the vicinity of the town of St. Gallen. Changes to the zone plan and site plans were submitted to a public enquiry at the end of 2009. As for the six new transit sites foreseen in the 2006 concept project, the cantonal parliament voted an appropriation of 2.85 million francs for the period 2007–2009 to develop two such sites. However, it refused to discuss a further 5.89 million francs to finance the development of the remaining sites. Two locations were chosen for the new transit areas, one on the commune of Gossau and the other on the commune of Thal, on a former military site.
- The canton of Basel-Country has drafted a bill on long-term and transit stopping sites for Travellers (Gesetz über Stand- und Durchgangsplätze für Fahrende). The text is based on the mandate defined in the cantonal constitution, which provides that the canton and communes will support Traveller communities seeking long-term and transit stopping areas and stipulates that the canton and communes should work together in the demarcation of these sites. It likewise defines the responsibilities of the canton and communes with regard to spatial planning, organization and financing. The draft cantonal master plan specifies the legal constraints with regard to spatial planning. It was the subject of a cantonal consultation procedure that continued until the beginning of November 2011; the results are currently being evaluated.

366. With the reduction in Army numbers, new sites will be transferred to the stock of available land and could be made available to the cantons, if need be and provided they

meet the criteria, to serve as Traveller sites. Each request by a canton, commune or the Foundation for a site that could be suitable as a long-term or transit site will be examined.

367. For further information on the situation of the Yenish and other Travellers, see the Swiss Government's third report on the implementation of the Council of Europe's Framework Convention for the Protection of National Minorities, dated January 2012.

15. Ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (paragraph 20 of the concluding observations)

368. "The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (annex to General Assembly resolution 45/158 of 18 December 1990)."

369. The Convention provides that migrant workers shall enjoy the same working conditions as those enjoyed by nationals of the State of employment, regardless of the regularity or irregularity of their presence.

370. Although it guarantees to legal residents most of the rights provided for under the Convention, Switzerland has not ratified the Convention, mainly because the text seeks to guarantee to migrant workers illegally present in the country the same working conditions as those enjoyed by nationals of the State party.

371. Current Swiss legislation is not compatible with the requirements of the Convention, particularly since the new migrant labour coming from third States and not able to invoke the agreement on the free movement of persons with the EU/EFTA countries must fulfil a number of entry conditions (in particular, arts. 18 to 24 of the Federal Aliens Act). In the case of ratification, Switzerland would have to grant a temporary right of residence to migrant workers illegally present so that they could assert their employment rights before the courts. Adaptation of the law in this regard does not seem feasible currently, and as a general rule Switzerland does not sign international agreements that it is not in a position to ratify or to transpose into national law.

16. Implementation of the Durban Declaration and Programme of Action (paragraph 21 of the concluding observations)

372. "The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I), when implementing the Convention in its domestic legal order, particularly with regard to articles 2 to 7 of the Convention. The Committee also urges the State party to include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level."

373. Switzerland made an active and effective contribution to the preparation and holding of the World Conference against Racism. It moreover welcomed to Geneva, in 2009, the Durban Review Conference and participated closely in the commemoration on 22 September 2011 in New York of the tenth anniversary of the World Conference against Racism. Switzerland's attendance at the World Conference enabled it to think about the existing measures and to establish appropriate priorities.

374. Reflecting the Government's concern to translate the results of the World Conference into practice, the Federal Council established by decree of 21 February 2001 the Service for Combating Racism. This service defines the Confederation's policy for preventing racism, anti-Semitism and xenophobia and for promoting human rights. It

encourages, coordinates and interconnects measures within the federal administration and cantonal and communal initiatives against racism, while offering technical and financial assistance to the authorities and institutions concerned. It cooperates with relevant institutions at the international level (United Nations, Organization for Security and Cooperation in Europe, Council of Europe, etc.) and promotes exchanges with NGOs and research institutes.

375. The specific measures relating to the Durban Declaration already mentioned in the previous report have been pursued, particularly in the following fields:

(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; since 2008, the Service for Combating Racism has financed a pilot project by the Federal Commission against Racism in collaboration with Humanrights.ch and other advisory services for victims of racism to set up a system for monitoring cases of racism in Switzerland (Dokumentations- und Monitoringsystem DoSyRa). Throughout the project phase (2012–2014), the Counselling Network for Victims of Racism will place the emphasis on professionalism and quality control in the provision of advice to the victims of racist discrimination, the aim being to draw up high-quality national reports and institutionalize the project in the cantons where the counselling centres are located.

Three projects carried out under the National Research Programme “Social Integration and Social Exclusion” (NRP 51, 2003–2007) have been specifically focused on the history of discrimination against Travellers, Yenish, Sinti and Roma in Switzerland. The programme studied the role, activities and discourse of institutional actors in the spheres of politics, legislation, justice and public opinion who contribute to the processes of inclusion and exclusion. Also considered was the impact of the activities of institutions and authorities on the identity of the persons concerned.

(b) Prevention of discrimination and integration of migrants: the decision to give greater weight to protection against discrimination under Switzerland’s migration and integration policy has already been mentioned on a number of occasions (see in particular section 12, Part III).

(c) Combating new forms of racism: the Service for Combating Racism has brought together the results of the National Research Programme “Right-wing Extremism – Causes and Counter-measures” (NRP 40+) in a booklet intended for the general public. Before that, a specialized service entitled “Extremism in the Army” had already been established. The Coordination Service to Combat Internet Crime (SCOCI) has included racism and right-wing extremism among its priority topics.

376. For an overview of ongoing measures and projects in Switzerland, see in particular section 3.4 (b) of Part I.

17. Ratification of the amendment to article 8, paragraph 6, of the Convention (paragraph 22 of the concluding observations)

377. “The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.”

378. Switzerland approved this amendment on 16 December 1996.

18. Publication of the report and concluding recommendations (paragraph 23 of the concluding observations)

379. “The Committee recommends that the State party’s reports be made readily available to the public at the time of their submission and that the observations of the Committee with respect to those reports be similarly publicized in the official and national languages.”

380. The Swiss Government publishes its national reports together with the concluding observations of the Committee on the Internet sites of the Directorate of Public International Law within the Federal Department of Foreign Affairs¹⁷⁰ and that of the Federal Office of Justice attached to the Federal Department of Justice and Police.¹⁷¹ After approving them, the Federal Council will publish the present seventh, eighth and ninth reports on the Internet site of the Service for Combating Racism in the three national languages.¹⁷²

381. Public information is also available on the Internet site of the Swiss Centre of Expertise in Human Rights¹⁷³ and that of a number of Swiss NGOs active in the human rights field and benefiting as such from financial support by the Confederation.¹⁷⁴ With the help of funds allocated by the Confederation, the University of Bern has developed a universal human rights index in the form of an online databank providing ready access to human rights information, on each country and each human right, deriving from the United Nations system. The index thus contains all the observations and recommendations concerning Switzerland made by the treaty bodies (since 2000) and the special procedures (since 2006).¹⁷⁵

382. A copy of the reports and concluding observations is also distributed to all the cantonal and communal authorities that have participated in the preparation of the reports and are concerned by their implementation and by the Committee’s concluding observations. The same applies to each federal office and each department directly concerned. Reports are available in French, German and Italian, the concluding observations being drafted in French and English.

19. Consultation of organizations of civil society and other actors (paragraph 24 of the concluding observations)

383. “The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of its next periodic report.”

384. The current report is the result of joint work by the Department of Public International Law and the Service for Combating Racism, in collaboration with the relevant federal offices. It is the outcome of numerous consultation processes in which the federal administration, the cantons and interested organizations have participated. The cantons have been heard both directly and through the Conference of Cantonal Governments and conferences of specialized directors in the context of a technical consultation. The cities and communes have also been included in the preparation process. Certain specialized

¹⁷⁰ www.eda.admin.ch/eda/fr/home/topics/human/humri/humrtr/humrep.html.

¹⁷¹ www.bj.admin.ch/bj/fr/home/themen/staat_und_buerger/menschenrechte2/uno-sozial-pakt_und.html.

¹⁷² www.edi.admin.ch/frb/00497/01770/01772/index.html?lang=fr.

¹⁷³ www.skmr.ch/frz/home.html.

¹⁷⁴ www.humanrights.ch/fr/Accueil/index.html.

¹⁷⁵ www.uhri.ohchr.org/fr/.

organizations have moreover had the opportunity to express their views on the report, the final version of which takes account of proposals and comments.

20. Other recommendations to the State party (paragraphs 25 to 27 of the concluding observations)

385. Paragraphs 25 to 27 of the concluding observations of the Committee on the Elimination of Racial Discrimination contain a series of recommendations of an administrative nature addressed to Switzerland, on which it will take a position during the oral presentation.

Acronyms and abbreviations

AIEP	Independent Complaints Authority for Radio and Television (<i>Autorité indépendante d'examen des plaintes en matière de radio-télévision</i>)
ALCP	Agreement on the Free Movement of Persons (<i>Accord sur la libre circulation des personnes</i>)
ATF	Decisions of the Federal Supreme Court (<i>Arrêts du Tribunal fédéral suisse</i>)
AVS/AI	Old-age and Survivors' insurance/disability insurance schemes (<i>Assurance-vieillesse et survivants/assurance-invalidité</i>)
BFEH	Federal Bureau for Equality for Persons with Disabilities (<i>Bureau fédéral de l'égalité pour les personnes handicapées</i>)
CC	Swiss Civil Code (<i>Code civil suisse</i>) (RS 210)
CFM	Federal Commission on Migration (<i>Commission fédérale pour les questions de migration</i>)
CFR	Federal Commission against Racism (<i>Commission fédérale contre le racisme</i>)
CICAD	Inter-Community Coordination against Anti-Semitism and Defamation (<i>Coordination intercommunautaire contre l'antisémitisme et la diffamation</i>)
CO	Code of Obligations (<i>Code des obligations</i>)
COIS	Coordination of Islamic Organizations of Switzerland (<i>Coordination des organisations islamiques de Suisse</i>)
CP	Swiss Criminal Code (<i>Code pénal suisse</i>) (RS 311.0)
CPC	Code of Civil Procedure (<i>Code de procédure civile</i>)
CPM	Military Criminal Code (<i>Code pénal militaire</i>) (RS 321.0)
CPP	Code of Criminal Procedure (<i>Code de procédure pénale</i>)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (<i>Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants</i>)
Cst.	Federal Constitution of the Swiss Confederation (<i>Constitution fédérale de la Confédération suisse</i>) (RS 101)
DFAE	Federal Department of Foreign Affairs (<i>Département fédéral des affaires étrangères</i>)
DFI	Federal Department of Home Affairs (<i>Département fédéral de l'intérieur</i>)
DFJP	Federal Department of Justice and Police (<i>Département fédéral de justice et police</i>)
ECRI	European Commission against Racism and Intolerance (<i>Commission européenne contre le racisme et l'intolérance</i>)
EFTA	European Free Trade Association (<i>Association européenne de libre-échange</i>)
FF	Official Gazette (<i>Feuille fédérale</i>)
GRA	Foundation against Racism and Anti-Semitism (<i>Fondation contre le racisme et l'antisémitisme</i>)

LAMal	Federal Health Insurance Act (<i>Loi fédérale sur l'assurance-maladie</i>) (RS 832.10)
LAsi	Asylum Act (<i>Loi sur l'asile</i>) (RS 142.31)
LAVI	Federal Act on Aid to Victims of Offences (<i>Loi fédérale sur l'aide aux victimes d'infractions</i>) (RS 312.5)
LEg	Federal Act on Gender Equality (<i>Loi fédérale sur l'égalité entre femmes et hommes</i>) (RS 151.1)
LETr	Federal Aliens Act (<i>Loi fédérale du 16 décembre 2005 sur les étrangers</i>) (RS 02.024)
ODM	Federal Office for Migration (<i>Office fédéral des migrations</i>)
OFS	Swiss Federal Statistical Office (<i>Office fédéral de la statistique</i>)
RO	Official Compendium of Federal Statutes (<i>Recueil officiel du droit fédéral</i>) (references: by year and/or by volume, p.)
RS	Systematic Compendium of Federal Law (<i>Recueil systématique du droit fédéral</i>)
SCR	Swiss Council of Religions (<i>Conseil suisse des religions</i>)
SECO	State Secretariat for Economic Affairs (<i>Secrétariat d'Etat à l'économie</i>)
SLR	Federal Service for Combating Racism (<i>Service de lutte contre le racisme</i>)

Annexes

Annex 1

Tables in Part I

Table 1 (a), Part 1, Chapter A.2

Permanently resident foreign population, by nationality (2007–2010)

<i>Country of origin</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2010 (in %)</i>
Italy	291 185	291 585	290 631	287 130	16.3
Germany	203 225	234 640	251 852	263 271	14.9
Portugal	183 028	196 842	206 019	212 586	12.0
Serbia and Montenegro	188 075	184 428	181 292	...	...
Serbia	...	...	...	121 908	6.9
Kosovo	...	...	...	58 755	3.3
Montenegro	...	...	...	2 022	0.1
France	79 278	87 385	92 473	95 643	5.4
Turkey	73 157	72 204	71 584	71 835	4.1
Spain	65 850	65 166	64 974	64 126	3.6
Macedonia	60 184	59 909	60 043	60 116	3.4
Bosnia-Herzegovina	39 414	37 631	35 907	35 513	2.0
Croatia	37 998	36 281	35 118	33 507	1.9
Other countries of origin	380 699	403 644	424 111	459 865	26.0

Source: Federal Statistical Office (OFS), Statistics of resident foreign population (PETRA) (up to 2009). Excludes short-term permit holders (< 12 months) and asylum seekers.

Notes: Situation as at 31 December of the year concerned.

From 2010, Federal Statistical Office, Population and Households Statistics (STATPOP). New method and definition of the permanently resident population, which henceforth includes asylum-seekers with a total length of stay of at least 12 months.

Table 1(b), Part 1, Chapter A.2

Permanently resident foreign population, and by continent of origin (2007–2010)

<i>Continent</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>	<i>2010 (in %)</i>
Europe	1 385 845	1 443 953	1 479 738	1 504 943	85.2
Including EU/EFTA countries	971 891	1 037 105	1 077 558	1 101 501	62.4
Africa	51 867	54 791	57 704	71 527	4.0
America	66 093	69 777	72 693	74 511	4.2
Asia	94 452	96 864	99 307	110 549	6.3
Australia, Oceania	3 560	3 845	3 996	3 990	0.2
Stateless, unknown nationality	276	485	566	757	0.0
Total	1 602 093	1 669 715	1 714 004	1 766 277	

Table 2(a), Part 1, Chapter A.3
Immigration, by nationality (2007–2010)

<i>Country of origin</i>	2007	2008	2009	2010
Europe	112 514	127 251	104 763	104 206
Germany	40 941	46 296	33 876	30 719
Portugal	15 351	17 657	13 601	12 720
France	11 603	13 852	11 137	11 726
Italy	8 540	10 025	8 668	10 226
United Kingdom	5 217	5 773	5 045	5 697
Spain	2 139	2 492	2 622	3 384
Austria	2 859	3 210	2 792	2 605
Serbia and Montenegro	5 382	5 107	4 695	...
Kosovo	...	...	...	2 402
Serbia	...	...	...	2 329
Turkey	2 089	2 207	2 251	2 051
Netherlands	1 866	1 997	1 532	1 684
Macedonia	1 240	1 228	1 238	1 159
Bosnia-Herzegovina	933	994	740	752
Croatia	570	554	549	442
Other countries of Europe	13 784	15 859	16 017	16 310
Other continents				
Africa	6 877	7 557	7 356	8 585
America	11 077	12 040	11 707	12 244
Asia	12 536	13 834	13 627	13 581
Australia, Oceania	819	871	765	769
Stateless, unknown nationality	32	76	51	110
Total	143 855	161 629	138 269	139 495

Source: Federal Statistical Office, PETRA. Excludes short-term permit holders (< 12 months) and asylum seekers.

Table 2(b), Part 1, Chapter A.3
Foreign entrants in Switzerland, by reason of immigration (2011)

Family reunification	45 048	31.6
Gainful activity subject to quota	11 258	7.9
Gainful activity not subject to quota	57 207	40.2
No gainful activity	5 429	3.8
Returns to Switzerland	55	0.0
Initial or further vocational training	16 037	11.3
Recognized refugees	3 139	2.2
Hardship cases	2 700	1.9
Other	1 598	1.1
Total	142 471	100.0

Source: Federal Office for Migration, February 2012.

Table 3(a), Part 1, Chapter A.4
Asylum statistics* (2011)

<i>Number of persons at the end of the period</i>	<i>End 2010</i>	<i>End 2011</i>	<i>+/- (in %)</i>	<i>Women</i>	<i>Men</i>
Persons involved in the asylum process in Switzerland	36 788	40 677	10,6	15 521	25 156
Persons in the procedure process	12 915	16 915	31,0	5 173	11 741
Persons temporary admitted	23 471	23 310	-0,7	10 164	13 146
Special cases	402	452	12,4	184	268
Persons with support for enforcement of removal	7 262	7 110	-2,1	1 292	5 818
Persons having obtained travel documents	4 138	3 541	-14,4	707	2 834
Persons preparing for departure	2 082	2 212	6,2	357	1 855
Recognized refugees 1)	25 342	26 978	6,5	11 567	15 411
Persons concerned by asylum law (including support for enforcement of removal)	69 392	74 765	7,7	28 380	46 385

Source: Federal Office for Migration, February 2012.

* All the 2011 asylum-related statistical data concerning recognized refugees is based on the situation as of November 2011.

Table 3(b), Section 1, Chapter A.4
Asylum-seekers, by nationality* (2007–2010)

<i>Country of origin</i>	<i>2007</i>	<i>2008</i>	<i>2009</i>	<i>2010</i>
Serbia*	7 844	7 059	6 115	4 269
Kosovo	...	...	...	709
Sri Lanka	2 356	3 101	3 964	4 137
Somalia	3 329	4 757	4 532	4 032
Eritrea	2 288	3 956	3 812	3 002
Iraq	3 501	3 575	3 266	2 799
Afghanistan	1 323	1 383	1 780	2 108
Angola	2 288	1 939	1 721	1 505
Tunisia	2 094	1 768	1 559	1 372
Congo (Kinshasa)	2 146	1 498	1 417	1 301
Syria	793	1 002	1 145	1 299
Bosnia-Herzegovina	2 250	1 660	1 454	1 020
Other countries of origin	13 100	10 756	11 008	9 583
Total	41 062	40 794	40 319	36 116

Source: Federal Office for Migration, PETRA (up to 2009), Federal Statistical Office, Population and Households Statistics (from 2010 onwards). Not including recognized refugees.

Situation as of 31 December of the year concerned.

* Up to 2009: Serbia and Montenegro; 2010: including persons who cannot yet be assigned to one of the States deriving from the former Serbia and Montenegro.

Annex 2

Sources concerning Part II

Part II, Section 7.3: Studies and publications on racism

Service for Combating Racism (SLR)

- Schönenberger, Silvia et Rosita Fibbi (2011): *Lutte contre les discriminations à l'embauche* [Combating discrimination in recruitment]. Bern: Service for Combating Racism (SLR). The study carried out by the Swiss Forum for Migration and Population Studies of the University of Neuchâtel provides an overview of the various measures taken to avoid job discrimination. It analyses the effectiveness of these measures and makes recommendations for implementing them to promote non-discriminatory access to the labour market. The study was initiated and funded by the SLR and the Federal Bureau for Equality for Persons with Disabilities (BFEH). It is available only in electronic form.
- Skenderovic, Damir (2010): *Stratégies contre l'extrémisme de droite en Suisse: acteurs, mesures et débats* [Strategies to combat right-wing extremism in Switzerland: actors, measures and debates] Bern: Service for Combating Racism. This publication outlines the history of right-wing extremism in Switzerland and the various forms it assumes. It describes the counter-measures taken by the State authorities and civil society organizations and compares the situation in Switzerland with that in other European countries.
- Service for Combating Racism (2009): *Guide juridique discrimination raciale* [Racial discrimination: a legal guide]. Bern: Service for Combating Racism. Victims of racism and counselling services will find practical advice in this legal guide. It shows how and when to have recourse to the law to combat racial discrimination, while underlining the limitations of legal remedies.

Federal Office for Migration (ODM)

- Federal Office for Migration (2011): *Rapport sur la migration 2010* [Report on migration 2010]. Bern: Federal Office for Migration (ODM). The report reviews the Office's main fields of activity and lines of work in 2010, setting them in their historical, national and international context, and contains important statistical data.
- Federal Office for Migration (2011): *Bienvenue en Suisse – Information pour les nouveaux arrivants* [Welcome to Switzerland – information for new arrivals]. Bern: Federal Office for Migration. The aim of this publication is to welcome new arrivals and provide basic information on life in Switzerland. Foreigners arriving in Switzerland often leave behind them basic systems of reference in their countries of origin and find themselves in a society they often do not understand. This tool offers newcomers information on fundamental values and on the rights and duties applicable throughout Switzerland, conveys a message on integration in keeping with current legislation and provides practical tips on living conditions and work in key areas of existence. The publication is available in the following languages: French, German, Italian, Albanian, Arabic, English, Portuguese, Russian, Serbian, Spanish, Tamil and Turkish.
- Federal Office for Migration (2010): *Vivre et travailler en Suisse* [Living and working in Switzerland]. Bern: Federal Office for Migration. The publication is

addressed to persons coming to Switzerland to work. It offers information on the country and its inhabitants, on entry to and residence in Switzerland, on living and working in Switzerland and on social security.

- Federal Office for Migration (2010): *Assurances sociales: séjour en Suisse et départ. Informations à l'attention des ressortissants étrangers* [Social insurance: residing in Switzerland and leaving the country. Information for foreign nationals]. Bern: Federal Office for Migration. This booklet summarizes old-age, survivors' and disability insurance arrangements (AVS/AI, 1st pillar) as well as occupational pension cover (2nd pillar). It also provides practical tips to people wishing to leave Switzerland definitively.
- Steinhardt, Max Friedlich, Thomas Straubhaar et Jan Wedemeier (2010): *Studie zur Einbürgerung und Integration in der Schweiz: Eine arbeitsmarktbezogene Analyse der Schweizerischen Arbeitskräfteerhebung*. Bern: Federal Office for Migration. Through an analysis of the new edition of the Swiss Working Population Survey (ESPA), the study seeks fresh insights into the relationship between naturalization and integration in Switzerland. It shows how the three categories of "naturalized citizens", "foreign nationals" and "Swiss citizens" are situated in the job market and how they are integrated in the world of work.
- Burri Sharani, Barbara, Denise Efionayi-Mäder, Stephan Hammer, Marco Pecoraro, Bernhard Soland, Astrit Tsaka et Chantal Wyssmüller (2010): *La population kosovare en Suisse*. Bern: Federal Office for Migration Office. Study of the Kosovar population in Switzerland.
- Fibbi, Rosita, Claudio Bolzman, Antonio Fernandez, Andrés Gomensoro, Bülent Kaya, Christelle Maire, Clémence Merçay, Marco Pecoraro et Philippe Wanner (2010): *Les Portugais en Suisse*. Bern: Federal Office for Migration. Study of the Portuguese population in Switzerland.
- Eyer, Philipp et Régine Schweizer (2010): *Les diasporas somalienne et érythréenne en Suisse* [The Somalian and Eritrean diasporas in Switzerland]. Bern: Study of the Somalian and Eritrean population in Switzerland.
- Haab, Katharina, Claudio Bolzman, Andrea Kugler et Özcan Yilmaz (2010): *Diaspora et communautés de migrants de Turquie en Suisse* [The Turkish diaspora and migrant communities in Switzerland]. Bern: Federal Office for Migration. Study of the Turkish population in Switzerland.
- Swiss Confederation (2008): *Libre circulation des personnes Suisse – UE: reconduction de l'accord après 2009 et extension à la Bulgarie et à la Roumanie* [Switzerland-EU: the free movement of persons: prolongation of the agreement and extension to Bulgaria and Romania]. Bern: Federal Office for Migration, Office for the Integration of Foreigners (Federal Department of Foreign Affairs/Directorate for European Affairs), State Secretariat for Economic Affairs (SECO). The agreement on the free movement of persons signed with the European Union has been in force since 2002. Following over six years of practice, Switzerland has decided to prolong the free movement of persons after 2009 and to extend it to the latest two countries to have joined the European Union, Bulgaria and Romania, while applying the transitional periods. By taking this decision, it has simultaneously taken the wider decision to pursue the bilateral agreements.

Federal Commission on Migration (CFM)

- Federal Commission on Migration (2011): *Les sans-papiers en Suisse: recommandations de la CFM* [Undocumented persons in Switzerland: Recommendations of the CFM]. Bern: Federal Commission on Migration.
- Wichmann, Nicole, Michael Hermann, Gianni D’Amato, Denise Efionayi-Mäder, Rosita Fibbi, Joanna Menet et Didier Ruedin (2011): *Les marges de manœuvre au sein du fédéralisme: la politique de migration dans les cantons* [The margins for manoeuvre within federalism: migration policy in the cantons]. Bern: Federal Commission on Migration.
- Efionayi-Mäder, Denise, Silvia Schönenberger et Ilka Steiner (2010): *Visage des sans-papiers en Suisse. Evolution 2000–2010* [Profile of undocumented persons in Switzerland. Trends 2000–2010]. Bern: Federal Commission on Migration.
- Wichmann, Nicole, Christin Achermann et Denise Efionayi-Mäder (2010): *Renvoi. Expulsion: un rapport de base sur les conséquences de la criminalité en matière de droit des étrangers* [Removal. Expulsion: a background report on the consequences of criminality in relation to the Federal Aliens Act]. Bern: Federal Commission on Migration.
- Keller, Christoph (2010): *Citoyenneté. Assumer son appartenance, sa participation et sa responsabilité* [Citizenship. Accepting one’s background, participation and responsibility]. Bern: Federal Commission on Migration.
- Kofler, Andrea Ch. et Lilian Fankhauser (2009): *Femmes en migration. L’image des migrantes dans la perception de l’opinion publique et de la politique, ainsi que dans la recherche actuelle* [Women migrants. Their image in public opinion, politics and current research]. Bern: Federal Commission on Migration.
- Moret, Joëlle et Janine Dahinden (2009): *Vers une meilleure communication. Coopération avec les réseaux de migrants* [Towards better communication. Cooperation with migrant networks]. Bern: Federal Commission on Migration.
- Matthey, Laurent et Béatrice Steiner (2009): *Nous, moi – les autres. Les associations de migrants et la formation de l’identité: une approche internaliste* [We, me – the others. Migrants’ associations and the shaping of identity: an internalist approach]. Bern: Federal Commission on Migration.
- Achermann, Alberto (2009): *Admission de groupes de réfugiés et aide sur place. Rapport et recommandations de la Commission fédérale pour les questions de migration* [Admission of refugee groups and aid *in situ*. Report and recommendations of the CFM]. Bern: Federal Commission on Migration.
- Schulte-Haller, Mathilde (2009): *Développement précoce. Recherche, état de la pratique et du débat politique dans le domaine de l’encouragement précoce: situation initiale et champs d’action* [Early development. Research, situation in practice and state of the political debate with regard to early stimulation]. Bern: Federal Commission on Migration.
- Federal Commission on Migration (2010): *“Citoyenneté” – redéfinir la participation. Recommandations de la CFM* [“Citizenship” – redefining participation. Recommendations of the CFM]. Bern: Federal Commission on Migration.
- Federal Commission on Migration (2010): *L’intégration: un moyen de parvenir à l’égalité des chances ou un instrument de mesure pour prendre des sanctions? Déclaration et recommandations de la CFM* [Integration: a way of achieving

equality of opportunity or a measurement tool for imposing sanctions? Recommendations of the CFM]. Bern: Federal Commission on Migration.

- Federal Commission on Migration (2010): *Femmes en migration. Recommandations de la CFM* [Women migrants. Recommendations of the CFM]. Bern: Federal Commission on Migration.
- Federal Commission on Migration (2009): *Encouragement précoce. Recommandations de la CFM* [Early stimulation. Recommendations of the CFM]. Bern: Federal Commission on Migration.
- Federal Commission on Migration (2008): *La notion d'intégration dans la loi. Recommandations de la CFM* [The concept of integration in law. Recommendations of the CFM]. Bern: Federal Commission on Migration.

Federal Office of Public Health

- Federal Office of Public Health (2011): *Des ponts linguistiques pour mieux guérir – L'interprétariat communautaire et la santé publique en Suisse* [Linguistic bridges as a path to healing – Community interpreting and public health in Switzerland]. Bern: Federal Office of Public Health (OFSP). The publication highlights the quantitative, legal and economic aspects of community interpreting. It provides a summary of essential knowledge on the subject and sets it in the context of contemporary research. The document is based on six expert reports and some sixty articles extracted from reviews or collections devoted to intercultural communication in the health field in Switzerland.
- Navarra, Katja (2011): *Guide de santé pour la Suisse: le système de santé suisse en bref: un manuel à l'intention des migrants vivant en Suisse. 3e éd. entièrement revue* [Guide to health care in Switzerland: the Swiss system in brief: a handbook for migrants living in Switzerland. 3rd edition completely revised]. Wabern/Liebefeld: Swiss Red Cross and Federal Office of Public Health. This health guide offers an introduction to medical care in Switzerland and explains the major laws and regulations such as health and disability insurance provisions. It also contains the addresses of the main partners in the health field.
- Kaya, Bülent (2008): *Migration and Health: a basic document on the issues. Developing documents and instruments for the "migration" dimension in health promotion and prevention*. Bern: Federal Office of Public Health. In increasingly plural societies, health institutions often have to cope with clients with very different backgrounds, ways of life and systems of reference. These institutions are therefore called upon to be more open to an increasingly diverse population (migrants, for example). They also need to develop transcultural structures to enable them to respond adequately to specific individual needs. The publication, mandated by: Promotion Santé Suisse and the Federal Office of Public Health, offers a frame of reference for devising projects adapted to the migrant population.
- Cerutti, Herbert (2008): *Migration et santé. Résumé de la stratégie fédérale phase II (2008–2013)* [Migration and health. Summary of the phase II federal strategy (2008–2013)]. Bern: Federal Office of Public Health.
- Saladin, Peter (2009): *Diversité et égalité des chances. Les fondements d'une action efficace dans le microcosme des institutions de santé* [Diversity and equality of opportunity. The bases for effective action in the microcosm of health establishments]. Bern: Federal Office of Public Health. The manual "Diversité et égalité des chances" assists hospitals, clinics and long-term care institutions that are trying to abolish barriers and acquire transcultural skills. It includes a DVD of the

film “Quand comprendre peut guérir”, which reflects the experience of migrants in hospital.

Studies at the cantonal and communal level

For reasons of space and practical reasons, a limited number of studies have been chosen to illustrate the numerous activities organized in the cantons and communes (other studies are mentioned directly in the report when the topic in question is discussed).

- Schönenberger Silvia, Wichmann Nicole (2011): *Wegweiser zum Schutz vor Diskriminierung in der Zentralschweiz. Neuchâtel*. Neuchâtel: Swiss Forum for Migration and Population Studies (available in German only).
- City of Zurich 2009 report on racism. It can be consulted, together with the annex and some additional updated information, on the website www.stadt-zuerich.ch/integration (> A-Z/Diskriminierungsbekämpfung) (available in German only).
- Familienbericht Basel-Landschaft 2010, Kapitel 6, Nutzung der unterstützenden Angebote für Familien. Daten zur Nutzung bestehender familienunterstützender Angebote nach Nationalität: www.baselland.ch/fileadmin/baselland/files/docs/fkd/fff/famber/famber_06.pdf (available in German only).
- Haute école de travail social Genève, Bureau de l'intégration des étrangers du canton de Genève, Equipe de prévention et d'intervention communautaire/Infor Jeunes de l'Hospice Genève: *L'incident raciste au quotidien: Représentations, dilemmes et interventions des travailleurs sociaux et enseignants*. *Editions IES, Genève, 2009.

Meetings and conferences

During the period under review, the Confederation organized the following conferences.

- Federal Office of Public Health: *La santé des migrants en Suisse* [Migrants' health in Switzerland]. Information meeting organized online November 2011 in the Hotel Kreuz, Zeughausgasse 41, Bern. Presentation of the main results of the second health monitoring of the migrant population in Switzerland.
- Federal Commission on Migration: *Journée annuelle de la CFM: fédéralisme et politique de migration* [Annual Day of the CFM: federalism and migration policy], 28 October 2011.
- Service for Combating Racism: seminar “Protection contre la discrimination: apprendre de l'Europe?” [Protection against discrimination: learning from Europe?], 2 December 2008.
- Federal Social Security Office: national conference “Jeunes et violence” [Young people and violence], 9 March 2012, Bern.
- Federal Social Security Office: national conference “Lutter ensemble contre la pauvreté” [Combating poverty together], 9 November 2010, Bern.
- Federal Office for Culture: symposium on illiteracy, 5 November 2010, Bern.
- Federal Department of Foreign Affairs: conference on child begging and the trafficking of minors, 31 March 2010, Bern.
- Federal Commission for the Coordination of Family Issues: Family Issues Forum on the influence of the family on training opportunities, 26 June 2008, Bern.

- Federal Office for Gender Equality (BFEG): domestic violence: national meeting of the cantonal emergency care services, 3 November.2011, Bern.

At the cantonal and communal level

For reasons of space and practical reasons, a limited number of studies have been chosen to illustrate the numerous activities organized in the cantons and communes:

- Canton of Fribourg: symposium “*Mariages forcés – mariages arrangés*”: *état des lieux en Suisse et à Fribourg et lancement d’une campagne de prévention* [Forced marriages – arranged marriages: survey of the situation in Switzerland and in Fribourg and launching of a preventive campaign]. www.fr.ch/imr/fr/pub/actualites.cfm?fuseaction_pre=Detail&NewsID=35680.
- Canton of Geneva: three talks organized by the Bureau for the Integration of Foreigners, in partnership with the University of Geneva and the Higher Institute of Social Work, on the topics: Migration and social identity; Constructing citizenship in contexts: an anthropological approach; and Immigration, young people and the social spaces for citizenship.
- City of Bern: Migrants’ forum on the topic of discrimination, autumn 2009. The city of Bern drew on the experiences and issues mentioned by the participants to identify and define priorities and fields of action for protection against discrimination. Work, housing, school and education constitute key concerns in the reports and demands of migrant participants.
- University of Lucerne, 24 September 2011: “De l’arrière-cour au centre-ville. Les religions minoritaires dans une société majoritaire” [From the backyard to the city centre. Religious minorities among the majority population].

Annex 3

Tables concerning Part III

Table concerning section 12 of Part III: Statistics on hardship cases in accordance with article 30.1 (b) of the Federal Aliens Act

Applications under article 30 (1) (b) of the Federal Aliens Act, from 1 January to 31 December 2010*

<i>Canton</i>	<i>Applications made</i>	<i>Applications accepted</i>	<i>Applications rejected</i>
BE	1	1	0
BS	4	3	1
FR	1	0	1
GE	63	55	8
NE	1	1	0
VD	79	69	10
VS	1	0	1
Total	150	129	21

Source: Federal Office for Migration, Department of Entry, Residence and Exit, Residence Section, 2011.

* www.bfm.admin.ch/content/dam/data/migration/statistik/auslaenderstatistik/haertefaelle/haertefaelle-art30-abs1-aug-2010-d.pdf (état 05.04.2012).

Applications under article 30.1 (b) of the Federal Aliens Act, from 1 January to 31 December 2009**

<i>Canton</i>	<i>Applications made</i>	<i>Applications accepted</i>	<i>Applications rejected</i>
AG	1	1	0
BE	1	0	1
FR	1	1	0
GE	138	63	75
JU	1	1	0
VD	39	22	17
Total	181	88	93

Source: Federal Office of Migration, Source: Federal Office of Migration, Department of Entry, Residence and Exit, Residence Section, 2010.

** www.bfm.admin.ch/content/dam/data/migration/statistik/auslaenderstatistik/haertefaelle/haertefaelle-art30-abs1-aug-2009-d.pdf (état 05.04.2012).

Applications under article 30 (1) (b) of the Federal Aliens Act, from 1 January to 31 December 2008***

<i>Canton</i>	<i>Applications made</i>	<i>Applications accepted</i>	<i>Applications rejected</i>	<i>Applications pending</i>
AG	1	1	0	0
BE	36	28	8	0
BL	18	18	0	0
BS	39	20	19	0
FR	87	60	27	0
GE	1 063	789	271	3
JU	6	5	1	0
LU	2	2	0	0
NE	22	17	5	0
SG	1	1	0	0
SH	4	4	0	0
SO	6	6	0	0
SZ	1	1	0	0
TI	1	1	0	0
VD	688	249	439	0
ZH	10	10	0	0
Total	1 985	1 212	770	3

Source: Federal Office of Migration, Department of Entry, Residence and Exit, Residence Section, 2009.

*** www.bfm.admin.ch/content/dam/data/migration/statistik/auslaenderstatistik/haertefaelle/haertefaelle-art30-abs1-aug-2001-2008-d.pdf (état 05.04.2012).

Annex 4

Technical consultation of the cantons, cities and communes – Questionnaire

CERD 2014 – Measures taken and developments in the cantons, cities and communes since 2008

<i>Chapter</i>	<i>Subject</i>	<i>Targets</i>
Part I, section 1.6	Check the facts quoted in the report: amendment of the cantonal constitutions regarding acts of discrimination and racism Update/supplement: amendments to cantonal laws for combating racism? Anti-racism position statements by cantons?	Cantons
Part 1, section 3.2 (b) (in particular item (ii))	Update/supplement: latest developments concerning religious communities? Examples: <ul style="list-style-type: none"> • Creation of the “Maison des religions” (“Haus der Religionen”) in Bern • City of Lucerne: provision of a burial place alongside the Reuss • New spaces reserved for Muslims in a number of communes 	Cantons
Part 1, section 3.4 (c)	Update/supplement: anti-racism position statements and activities by cantons and communes? Examples: <ul style="list-style-type: none"> • Accession to the European Coalition of Cities against Racism and related declarations • Declarations following specific events/incidents 	Cantons, cities and communes
Part 2, section 5.4.i	Update/supplement: latest developments concerning freedom of assembly?	Cantons
Part 2, section 5.5 (e); Part 2, section 7.1	Update/supplement: latest developments concerning education and training? Examples: <ul style="list-style-type: none"> • Progressive development of early stimulation: aims and effects in terms of integration or prevention of discrimination • Increase in the number of non-family care places: aims and effects in terms of integration or prevention of discrimination 	Cantons Cities and communes with regard to early encouragement

<i>Chapter</i>	<i>Subject</i>	<i>Targets</i>
Part 2, section 5.5 (c)	Update/supplement: right to housing: measures taken in the cantons and communes? Trends in judicial practice? Example: <ul style="list-style-type: none"> • Specific projects under the “urban projects” programme • Support for organizations such as the “Domicil” foundation in Zurich (helping persons of modest means to find suitable accommodation, assisting them in settling into their new home, facilitating cohabitation in the new neighbourhood, etc.) • Studies, enquiries, etc. on the situation and needs for intervention 	Cantons, cities and communes
Part 2, section 5.5 (d)	Update/supplement: latest developments concerning emergency assistance, social welfare and other benefits prior to cantonal measures linked to the CERD report?	Cantons, cities and communes
Part 2, section 5.6	Update/supplement: latest developments concerning the right of access to public places and services? Examples: <ul style="list-style-type: none"> • Projects to promote the opening up of institutions • Community interpretation • Projects such as “Safer Clubbing” (joint project by a number of clubs, bars and lounges prepared to assume their responsibilities in the areas of prevention and security, with particular regard to the topic “Discrimination/Refusal of access to establishments”) 	Cantons, cities and communes
Part 2, section 7.3	Update/supplement: studies, publications and congresses on racism and discrimination?	Cantons, cities and communes
Part 3, section 13	Update/supplement: latest developments with regard to naturalization procedures? Example: <ul style="list-style-type: none"> • General measures or training measures concerning the risks of discrimination in naturalization procedures 	Cantons