



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

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**Committee on the Elimination of Racial Discrimination**

**Combined tenth to twelfth periodic reports  
submitted by Switzerland under article 9 of the  
Convention, due in 2017<sup>\*, \*\*</sup>**

[Date received: 3 December 2018]

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\* The present document is being issued without formal editing.  
\*\* The annexes can be consulted in the files of the secretariat.



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## Introduction

1. In its concluding observations, the Committee on the Elimination of Racial Discrimination recommended that Switzerland present its combined tenth to twelfth periodic reports due on 29 December 2017 in a single document.<sup>1</sup>

2. This document covers the period between February 2014 and September 2018. The statistical data are available up to the end of December 2017. For data that have not changed since the previous reporting period, a reference is made to the relevant report.

3. This report was drawn up by the Directorate of International Law of the Federal Department of Foreign Affairs in collaboration with the Service for Combating Racism of the Federal Department of Home Affairs. Other relevant departments of the federal administration were invited to give their opinion during the consultation procedure. The Federal Commission against Racism, the Federal Commission on Migration and organizations involved in combating racial discrimination had the opportunity to take a position on the report.

4. The report has been published in French, German and Italian. It is available on the websites of the Federal Department of Foreign Affairs and the Service for Combating Racism.

## Part one General information

5. Part one provides general information on the development of domestic law and gives an overview of the policy currently being implemented by the Swiss authorities to combat all forms of racial discrimination.

### 1. Population change in Switzerland

6. Information on this subject is provided in the common core document forming part of the reports of Switzerland (common core document, chap. II, A, 3).

### 2. Constitutional and legislative bases

7. Since the primary constitutional and legislative bases used to combat racism have already been addressed in previous reports, this section gives only a brief summary of the amendments and new developments introduced since their submission. Major developments are described in detail in part two.

#### 2.1 Major new constitutional developments

8. Simplified naturalization for third-generation immigrants: since 15 February 2018, young foreign nationals whose grandparents immigrated to Switzerland can use a simplified naturalization procedure. This means that the application is examined directly by the Confederation (after consultation with the canton, before approval, see sect. 5.1).

9. Amendment of article 121 (3) to (6) of the Constitution: The federal popular initiative on deporting foreign criminals was accepted by the people and cantons on 28 November 2010 (with 52.3 per cent voting in favour of it). On 1 October 2016, the Federal Council brought into force the legal provisions of the Criminal Code and the Military Criminal Code drafted by the parliament to implement this amendment to the Constitution. Compared to the deportation and expulsion procedures set out in the Foreign Nationals Act, these provisions introduce stricter rules (including mandatory expulsion with no minimum penalty clause and the possibility of expulsion for life). However, a hardship clause allows the courts to take individual situations into account on an exceptional basis, for example in

<sup>1</sup> Concluding observations of 13 March 2014 (CERD/C/CHE/CO/7-9, para. 25).

the case of second or third-generation immigrants. The implementing provisions came into force on 1 March 2017.

10. New article 121a of the Constitution: On 9 February 2014, the federal popular initiative against mass immigration was accepted by 50.3 per cent of the Swiss electorate and a majority of the cantons. By virtue of the corresponding constitutional provision (Constitution, art. 121a), the Federal Council and the parliament were required to establish a new admissions system within three years, enabling Switzerland to manage the numbers of people entering the country while conserving its economic interests and introducing a system of domestic recruitment preferences. Since 1 July 2018, in order to better exploit the potential of the local labour force and thereby indirectly control immigration, employers have been required to declare to the regional employment centres all the vacant positions in professions with an unemployment rate at or above a certain threshold.

11. In March 2016, a committee launched a popular initiative for a ban on face coverings. The initiative was filed in October 2017.<sup>2</sup> It proposed a ban on such coverings in public and in places accessible to the public. In June 2018, the Federal Council announced its opposition to the initiative on the grounds that introducing such regulations was a matter for the individual cantons. To tackle the problems that may be caused by face coverings, it made an indirect counterproposal to the initiative. This counterproposal provides that people are required to show their faces when visual identification is the only way for a federal or cantonal authority to carry out an official federal task without disproportionate effort and expressly states that forcing a person to cover his or her face is a punishable offence (by supplementing the provision on coercion in the Criminal Code). At the time of writing, the counterproposal made by the Federal Council is still in the consultation phase.

## 2.2 Major new legislative developments

12. Extension of the scope of the criminal provision against racism (Criminal Code, art. 261 bis; RS 311.0): In June 2017, in response to a parliamentary initiative,<sup>3</sup> the Legal Affairs Committee of the National Council launched a consultation procedure on a preliminary bill to extend the criminal offence of racial discrimination (Criminal Code, art. 261 bis) to discrimination based on sexual orientation and gender identity. The results<sup>4</sup> of the consultation, published in December 2017, show that this proposal is widely supported. On 3 May 2018, the competent parliamentary commission therefore decided to submit a final version of the bill to the National Council.<sup>5</sup> The Federal Council considered the bill on 15 August 2018. In its opinion, published the same day,<sup>6</sup> it specifically noted that the open-ended wording of the concept of gender identity could cause problems for implementation. It therefore proposed to abandon that ground and include only the ground of sexual orientation. Parliamentary debates are under way.

13. Swiss Citizenship Act (RS 141.0): On 1 January 2018, the Federal Council brought into force the amended Citizenship Act, which is the law regulating naturalization. With the amendment, the period of residence required to begin an ordinary naturalization procedure was reduced from 12 to 10 years (the time spent in Switzerland between the ages of 8 and 18 counts double, but the total period of residence in Switzerland must be at least 6 years). The integration requirements were also specified (see sect. 5.1).

14. Foreign Nationals Act (RS 142.20): On 16 December 2016, the parliament approved an amendment to the Foreign Nationals Act aimed at improving integration. It is planned to implement it in two phases. The first phase, which came into force on 1 January 2018, included the elimination of the special income tax for refugees and asylum seekers (which was a major impediment to pursuing gainful employment). It also amended the rules for allocation of integration funding, which now depends on the fulfilment of strategic objectives in terms of services and efficiency, and introduces an obligation to reimburse the

<sup>2</sup> Text of the initiative at: [www.bk.admin.ch/ch/f/pore/vi/vis465t.html](http://www.bk.admin.ch/ch/f/pore/vi/vis465t.html).

<sup>3</sup> Parliamentary initiative, "Lutter contre les discriminations basées sur l'orientation sexuelle" (Mathias Reynard, 13.407).

<sup>4</sup> [www.parlament.ch/centers/documents/fr/vernehmlassungsergebnisse-rk-n-13-407-2017-12-14-f.pdf](http://www.parlament.ch/centers/documents/fr/vernehmlassungsergebnisse-rk-n-13-407-2017-12-14-f.pdf).

<sup>5</sup> Feuille fédérale (Official Gazette) FF 2018 3897.

<sup>6</sup> FF 2018 5327.

funds if these objectives are not met. The second phase will come into force on 1 January 2019. It includes amendments to the ordinance on admission, residence and the pursuit of gainful employment and the complete overhaul of the ordinance on the integration of foreign nationals.

15. Asylum Act (RS 142.31): In the referendum of 5 June 2016, the people approved a fast-track asylum procedure by 66.8 per cent of the vote. The amendment aims to expedite the execution of asylum procedures significantly, while ensuring that they remain consistent with the principles of the rule of law. Henceforth, some 60 per cent of such procedures will result in a final decision within no more than 140 days, including direct deportation of rejected asylum seekers. These procedures will be carried out in Federal Centres for Asylum Seekers. Asylum seekers whose application requires clarification will continue to be divided among the cantons. Such “extended” procedures (approximately 40 per cent of asylum procedures) will result in a decision within one year, including deportation in the event of a rejected application. In order to ensure that the procedural safeguards enshrined in the Constitution are respected despite the faster processing, asylum seekers have the right to free and extensive legal protection. Speedier asylum procedures enable faster integration and therefore encourage access to the labour market and participation in social life. The amended law will come into force on 1 March 2019.

16. Swiss Code of Civil Procedure (RS 272): In spring 2018, the Federal Council began consultations (in response to several requests from the parliament) on a proposal to amend the Swiss Code of Civil Procedure. The main changes include the reduction of risks related to procedural expenses (advance fees reduced by half) and a simplification of the collective enforcement of rights (introduction of a group settlement procedure and an extension of the right to take legal action for organizations with a claim to group damages; see paras. 38 and 120 ff.).

### 2.3 Major developments at canton level

17. Since 1 January 2015, the Canton of Bern has had a law on integration of the foreign population (Integration Act). This law provides that: “Encouragement of integration is based on the principle that no one may be discriminated against, including for reasons of race, skin colour, sex, age, language, origin, way of life, sexual orientation or political or religious beliefs or because of a physical, mental or psychological disability” (Integration Act, art. 4 (2) (d)). The canton and the communes are responsible for preventing and combating discrimination against both foreign and Swiss nationals, specifically by adopting targeted public relations and awareness-raising measures and offering counselling services to affected persons (Integration Act, art. 14 (1) and (2)). Although the law cannot be used to bring claims, it nonetheless serves as policy guidance and explicitly highlights that protection from discrimination is part of the canton’s immigration policy.

18. In the Canton of Vaud, article 100 of the implementing regulations for the Compulsory Education Act of 7 June 2011 came into force on 2 July 2012. The article explicitly reaffirms a commitment to rejecting any racist acts.

19. On 1 July 2016, Ticino brought into force a legal provision banning face coverings in public places.<sup>7</sup> Six months after its entry into force, an initial assessment listed six proceedings opened for breaches of the law and about ten warnings.<sup>8</sup> On 23 September 2018, the citizens of the Canton of St. Gallen also voted in favour of a ban on facial coverings in public places. Other cantons are currently debating a similar ban. After an extensive debate, the *Landsgemeinde* (citizens’ assembly) of the Canton of Glarus voted against this type of ban on 7 May 2017.

<sup>7</sup> Many cantons (Basel Stadt, Zurich, Bern, Luzern, Thurgau, Solothurn, St. Gallen) have legal provisions banning people from making themselves unrecognizable during demonstrations (ban on face coverings). However, these bans are restricted to demonstrations organized in public places and requiring authorization. Their aim is to ensure public safety and order by preventing individuals from committing offences anonymously.

<sup>8</sup> [www.ti.ch](http://www.ti.ch) > Comunicati > Tutti i comunicati > Nuove Leggi sull’ordine pubblico e la dissimulazione del volto: un primo bilancio (press release of 6 February 2017).

## 2.4 New developments regarding international law

20. In the reporting period, Switzerland ratified or planned to ratify the following instruments of international law:

- Convention on the Rights of Persons with Disabilities (13 December 2006): Switzerland acceded to the Convention on 15 April 2014 (in force since 15 May 2014)
- International Convention for the Protection of all Persons from Enforced Disappearance (20 December 2006): Switzerland ratified the Convention on 2 December 2016, one month after it had adopted an ordinance regarding the Federal Act on the International Convention for the Protection of all Persons from Enforced Disappearance (entry into force on 1 January 2017)
- Council of Europe Convention on Action against Trafficking in Human Beings (16 May 2005): Switzerland ratified the Convention on 17 December 2012 (in force since 1 April 2013)
- Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) (25 October 2007): Switzerland ratified the Convention on 18 March 2014 (in force since 1 July 2014)
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure: Switzerland has acceded to the Optional Protocol (in force since 24 July 2017)
- Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) (11 May 2011): on 14 December 2017, Switzerland deposited the instrument of ratification and the Convention entered into force for Switzerland on 1 April 2018
- Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms: Switzerland ratified the protocol on 15 July 2016 (it will only come into force once it has been ratified by the 47 member States of the Council of Europe)
- International Labour Organization (ILO) Domestic Workers Convention, 2011 (No. 189): Switzerland ratified the Convention on 12 November 2014 (in force since 12 November 2015)

## 3. General policy on combating racial discrimination

21. The general policy on combating racial discrimination in Switzerland is focused on the following areas: providing protection against discrimination at the cantonal and communal levels within the framework of cantonal integration programmes; protecting minority and migrant groups; providing legal protection; opening up institutions and mainstreaming anti-discrimination policies; promoting initiatives from the population; and monitoring racial discrimination. The Service for Combating Racism is responsible for creating and coordinating measures at the federal level; however, their implementation falls to various competent specialized departments. Furthermore, extra-parliamentary commissions play a major role.

### 3.1 Legal protection

22. While the Federal Council, in line with the conclusions of the Swiss Centre of Expertise in Human Rights, considers that the current legal framework generally provides good protection, in 2016 it observed that private law provisions in particular were not sufficiently known and recognized and that they could be improved by targeted measures. For more information, see part two (sects. 2 and 6).

### 3.2 Protection of minorities and migrants

23. Some groups of people are particularly likely to be victims of racial discrimination or racist behaviour. It is therefore important to supplement general instruments for combating racial discrimination with approaches that take account of the specificities of certain particularly vulnerable groups. The measures taken by Switzerland are presented in section 5.3.

### 3.3 Monitoring

24. In order to oversee measures and observe how the situation develops, adequate data are required. Switzerland has a monitoring system that integrates different sources of existing data (relating to the multiple aspects of racial discrimination). It has also developed measuring instruments for identifying trends in the attitudes of the Swiss population to the phenomena of racism and racial discrimination (for more information, see sect. 2.2).

### 3.4 Promotion of initiatives from wider society

25. In all areas of the fight against discrimination, society has a major role to play. Every year, the Service for Combating Racism provides approximately 1 million Swiss francs (SwF) to support projects, with one third devoted to school projects. The grants can also be used to support projects handling more specific issues such as the multiple forms of discrimination faced by lesbian, gay, bisexual, transgender and intersex asylum seekers.

### 3.5 Opening up institutions and mainstreaming

26. The responsibility for implementing protective measures against racial discrimination falls to the competent authorities (e.g. the Federal Office of Public Health, the Federal Office of Housing, the State Secretariat for Migration, the Federal Social Insurance Office, etc.). For example, under the “Swiss Hospitals for Equity” project, affiliated hospitals have developed measures to ensure that migrants have access to adequate services.<sup>9</sup> At the cantonal and communal levels, the cantonal integration programmes also provide for integration officers to work directly with ordinary organizations in order to promote protection from racial discrimination.

### 3.6 Providing protection from discrimination at the canton and communal levels

27. Racial discrimination often occurs in areas that are primarily the responsibility of cantons, communes and cities (schools, health system, social policy, police, etc.). Therefore, measures must be appropriate to the specific facts on the ground, with the involvement of local organizations in the process. Since 2014, the cantonal integration programmes have provided Switzerland with an instrument to set common objectives on discrimination for all cantons, with implementation tailored to local realities. The resulting measures must directly benefit all groups of people, especially migrants, but also Swiss nationals who are victims of racial discrimination. They thus fall within the scope of the 2030 Agenda for Sustainable Development, particularly Goal 10.2 (for more information on the cantonal integration programmes, see sect. 7.2).

### 3.7 Contributions from extra-parliamentary commissions

28. The two extra-parliamentary commissions working on racial discrimination, the Federal Commission against Racism and the Federal Commission on Migration, are monitoring and advisory bodies independent of the federal administration that do not themselves carry out State functions.<sup>10</sup> The role of the Federal Commission against Racism is to keep a critical watch over the situation in this area at the level of the State and within

<sup>9</sup> [www.hplus.ch/fr/prestations/solutions\\_de\\_branche/swiss\\_hospitals\\_for\\_equity\\_migrant\\_friendly\\_hospitals/](http://www.hplus.ch/fr/prestations/solutions_de_branche/swiss_hospitals_for_equity_migrant_friendly_hospitals/).

<sup>10</sup> The general conditions regulating extra-parliamentary commissions (conditions, composition, duration of mandates, terms of office, age limit, reimbursement of expenses, etc.) are set out in the Government and Administration Organization Act (art. 57a et seq.) and the Ordinance on government and administration organization (art. 8a et seq.).

society. Sensitive to the needs and concerns of minorities, the Federal Commission against Racism can express its views freely without being obliged to follow the public authorities' position or a political line. For its part, the Federal Commission on Migration is legally mandated to address any social, economic, cultural, political, demographic and legal issues that may arise owing to the presence in Switzerland of foreign nationals. Both commissions advise the Federal Council and the administration and publish reports, opinions and recommendations. They have an important role to play in developing measures to counter racial discrimination.

29. In accordance with its mandate, the Federal Commission against Racism considers the focus of its activities to be: prevention and awareness-raising; analysis and research; information, communication and advice; recommendations/opinions; and monitoring. The Federal Commission against Racism works on long-term issues, and the related activities can sometimes take several years. Here are some examples of its activities during the period under review:

- The “A Switzerland in Our Colours” campaign, run in 2015 for the twentieth anniversary of the Federal Commission against Racism, made a major contribution to combating hate speech and racial discrimination on the Internet and social media.
- In 2017, the Federal Commission against Racism organized a public forum at the University of Fribourg called “Hostility to Muslims: society, media, politics”, which brought together experts, workers on the ground and representatives of non-governmental organizations (NGOs). Using various studies and field observations, the speakers highlighted the changing discourse in public debate and the current public perceptions of Muslims in Switzerland.
- Also in 2017, the Federal Commission against Racism published a study by the Zurich University of Applied Sciences examining anti-black racism in Switzerland.<sup>11</sup> Based on the results of the study, the Commission drafted a series of recommendations.<sup>12</sup>
- Twice a year, the Commission publishes the bulletin *TANGRAM* devoted to a thematic issue that stimulates discussion and helps to shape public opinion. The themes covered in the reporting period include sport and racism, hostility to Muslims, anti-Semitism, anti-black racism, Yenish, Manush/Sinti and Roma in Switzerland, access to justice and racism in schools.

30. The Federal Commission on Migration deals with issues ranging from refugee protection and economic migration to social cohesion and transnational issues. Twice a year, the Commission publishes the journal *terra cognita*, which deals with the subject of integration and migration, and organizes an annual conference on a topical subject related to migration. Its website contains detailed information aimed at raising awareness among readers. Lastly, in 2016 it launched the travelling exhibition *Displaced*, in cooperation with the Swiss Agency for Development and Cooperation, the State Secretariat for Migration and the Office of the United Nations High Commissioner for Refugees. During the reporting period, Federal Commission on Migration projects and recommendations included:

- Naturalization: proposals and recommendations for citizenship in keeping with the times (2012)
- Old age and migration (2012)
- Temporary residence for gainful employment (2013)
- Granting protection (recommendation for a new protection status) (2014)
- Focus on the economy and labour (2016)

<sup>11</sup> T. Naguib et al.: *Anti-Schwarze-Rassismus. Juristische Untersuchung zu Phänomen, Herausforderungen und Handlungsbedarf*. Basel, 2017 (in German only).

<sup>12</sup> The recommendations and the study are available at the following address: <http://www.ekr.admin.ch/services/fl15/1320.html>.



- Restructuring the asylum process (2017)
- Integration – Not a yardstick but a task for us all! (2017)

## **Part two**

### **Review of the implementation of articles 1 to 7 of the Convention**

31. The comments on the articles refer to the recommendations relating to the combined seventh to ninth periodic reports of Switzerland made in the concluding observations adopted by the Committee on 20 February 2014 at its 2291st meeting.

#### **1. Article 1**

##### **Definition of racial discrimination**

##### **1.1 Application of the Convention under domestic law**

*Implementation of the recommendation made in para. 6 (a) of the concluding observations*

*The Committee recommends that Switzerland adopt a clear and comprehensive definition of racial discrimination, including direct and indirect discrimination, covering all fields of law and public life.*

32. The information provided in the combined seventh to ninth periodic reports of Switzerland remains accurate. The Swiss legal order is characterized by its attachment to the monist tradition. As soon as the Convention was ratified, the Federal Supreme Court began to refer to it in its case law. Recognition of the individual communications procedure under article 14 of the Convention has also contributed to ensuring even stricter compliance with its provisions.

##### **1.2 Data on discrimination in Switzerland**

*Implementation of the recommendation made in paragraph 9 of the concluding observations*

*The Committee recommends that Switzerland establish an effective data collection system, using various indicators of ethnic diversity on the basis of anonymity and self-identification of persons and groups, to provide an adequate empirical basis for policies to enhance the equal enjoyment by all of the rights enshrined in the Convention.*

33. Since racism and racial discrimination encompass a wide range of phenomena, the data relating to them come from various sources. Different public bodies record the acts covered by law that are the cause of a complaint, proceedings or a conviction. Different media and independent organizations (e.g. advice centres or services handling complaints) also list incidents that might not be referred to the courts. Lastly, representative surveys provide information both on the discrimination faced by the persons questioned and on public opinion concerning racism and racial discrimination.

34. To give an overview of the situation, since 2012 the Service for Combating Racism has published a report on racial discrimination in Switzerland once every two years. This report covers different areas of life and considers particularly vulnerable population groups. The latest report was issued in October 2017.<sup>13</sup>

35. Since 2016, the Federal Statistical Office has also produced a survey on diversity and coexistence in Switzerland, which covers racist or hostile attitudes in the Swiss

<sup>13</sup> Service for Combating Racism: “Racial discrimination in Switzerland”. Bern, October 2017: <https://www.edi.admin.ch/edi/en/home/fachstellen/frb/berichterstattung-und-monitoring/bericht--rassistische-diskriminierung-in-der-schweiz-.html>.

population as well as the discrimination experienced by the persons surveyed.<sup>14</sup> After the third survey in 2020, the results will be sufficiently meaningful to identify trends and adjust measures accordingly.

36. Switzerland does not divide its population into ethnic groups in official statistics. In this regard, Swiss practice is in line with European practice in that measuring or collecting statistical information on “race” or ethnicity and, accordingly, differentiating or categorizing the population into different “racial” or ethnic groups is not a common practice, and the concepts of “race” and ethnicity are not used as social or demographic statistical concepts (except in the United Kingdom). It should be noted that there is no consensus on the collection of this type of data among the groups to which it could apply. While some participants in the forum on anti-black racism organized in 2018 were in favour of collecting data on black people in Switzerland, the Swiss Federation of Jewish Communities expressed reservations during the consultation process for this report, observing that the annual population census carried out by the Federal Statistical Office since 2010 already collects data of this type and that many people do not like to provide information about their ethnicity.

## 2. Article 2 Condemnation of racial discrimination

*Implementation of the recommendation made in paragraph 6 (b) of the concluding observations*

*The Committee recommends that Switzerland introduce an overarching provision in its civil and administrative law prohibiting both direct and indirect racial discrimination in all areas of private and public life, and provide adequate remedies for such discrimination.*

37. Switzerland does not have one comprehensive law designed to combat all forms of discrimination. This is explained in large part by the specific nature of the Swiss legal order, which is characterized by its attachment to the monist tradition and by its federalism, as explained in the common core document and in previous reports.

38. In a study on access to justice in cases of discrimination published in 2015, the Swiss Centre of Expertise in Human Rights noted that it is not recommended to create a general anti-discrimination law in Switzerland. The problems vary greatly depending on the area in question, and it would be very challenging to draft a law that would cover all of them. Furthermore, an overarching anti-discrimination law could put established gains at risk and weaken the existing monitoring, advice and support in each specific area.<sup>15</sup> Moreover, the Swiss parliament has systematically rejected any parliamentary procedural request for the establishment of a law against racial discrimination covering all areas of public and private life.<sup>16</sup>

39. Nonetheless, the fact that court cases are rarely brought could indicate that victims are unaware of the legal instruments available to them or that they do not make use of them given the procedural barriers. The Federal Council has examined and implemented measures to remedy this situation (see sect. 6).

<sup>14</sup> <https://www.bfs.admin.ch/bfs/en/home/statistics/population/surveys/zids.html>.

<sup>15</sup> Kälin Walter, Locher Reto et al. *Accès à la justice en cas de discrimination*. Swiss Centre of Expertise in Human Rights, Bern, July 2015: <http://www.skmr.ch> > Home > Thematic Clusters > Gender Policy > Publications.

<sup>16</sup> However, the Federal Council and the parliament systematically oppose parliamentary procedural requests aiming to repeal the criminal provision against racial discrimination (Criminal Code, art. 261 bis) and, in May 2018, the Legal Affairs Committee of the National Council decided to submit a bill to the National Council aiming to extend article 261 bis of the Criminal Code to discrimination based on sexual orientation and gender identity (FF 2018 3897; see para. 12).

*Implementation of the recommendation made in paragraph 6 (c) of the concluding observations*

*The Committee recommends that Switzerland incorporate a provision in the Criminal Code to the effect that committing an offence with racist motivation or aim constitutes an aggravating circumstance allowing for more severe punishment, as set out in the Committee's general recommendation No. 31.*

40. Swiss law does not contain a specific definition of hate crime. Nor does it provide for an element of an offence that would allow any offence committed with a racist motive to be classed as a hate crime, which would then be put in a special category, investigated in a specific way and punished more severely than other offences. However, racist motivation is regularly taken into account in sentencing at the individual level (e.g. when assessing culpability under article 47 (2) of the Criminal Code and when there is a coincidence of several offences under article 49 of the Criminal Code), particularly for offences against life and physical integrity (Criminal Code, art. 111 et seq.), offences against personal honour (Criminal Code, art. 173 et seq.), offences against liberty (Criminal Code, art. 180), infringement of freedom of belief and freedom to worship (Criminal Code, art. 261) or racial discrimination (Criminal Code, art. 261 bis). Therefore, no changes to the law are required in order for racist motives to be duly taken into account when setting penalties.

41. Since 2009, police crime statistics and the clear-up rate for criminal cases have been recorded for offences reported throughout Switzerland using uniform principles for entering and handling data. The Police Crime Statistics may indicate a racist motive for any offence that does not fall under article 261 bis of the Criminal Code. However, entering such a variable is optional. Specifically regarding the collection of statistics on hate crimes based on sexual orientation, gender identity, gender expression or sexual characteristics, the Federal Council, in its response to a parliamentary motion (Quadranti motion 17.3667), highlighted that it was important to promote equality and continue to eliminate all forms of discrimination, including discrimination based on sexual orientation and gender identity, and to obtain figures in order to implement appropriate measures. However, effective, uniform and mandatory collection of data in the police crime statistics remains difficult.

## **2.1 Popular initiatives**

*Implementation of the recommendation made in paragraph 8 of the concluding observations*

*The Committee urges Switzerland to step up its efforts to introduce an effective and independent mechanism to review the compatibility of popular initiatives with the State party's obligations under international human rights law, including the Convention. It also recommends that the State party urgently and systematically strengthen its efforts at all levels to widely publicize and raise awareness among the public about any conflict between a proposed initiative and the State party's international human rights obligations, as well as the ensuing consequences.*

42. The right of citizens to modify the Constitution by means of a popular initiative is a fundamental element of Swiss democracy. In 2016, the parliament rejected a legislative package aiming to improve the compatibility of popular initiatives with non-binding international law. Switzerland will continue to honour its human rights obligations and resolve potential conflicts between its Constitution and human rights on a case-by-case basis and with respect for the will of the people.

43. Popular initiatives must comply with mandatory provisions of international law (Constitution, arts. 139 (3), 193 (4) and 194 (2)). If a popular initiative does not comply with mandatory provisions of international law, it is declared null and void by the parliament and is not put to the vote of the people and the cantons.

44. The compatibility of a popular initiative with the international commitments of Switzerland is first considered by the Federal Council and the parliament. The result of this consideration is included in the Federal Council dispatches submitted to the parliament, with a recommendation to accept or reject the relevant popular initiative. If necessary,

compatibility with international law is also covered in the explanations of the Federal Council sent before each vote to all Swiss citizens of voting age.

## 2.2 National human rights institution

*Implementation of the recommendation made in para. 10 of the concluding observations*

*The Committee reiterates its previous recommendation that Switzerland consider establishing a national human rights institution in accordance with the Principles relating to the status of national institutions (the Paris Principles). It also recommends that the Federal Commission against Racism be provided with adequate funding and resources.*

45. Under a five-year pilot project, the Confederation has purchased services worth SwF 1 million per year from the Swiss Centre of Expertise in Human Rights. Since the start of its operations in 2011, the Centre has carried out numerous projects, including studies, thematic seminars, training courses and publications (see common core document, paras. 54 and 55). Based on an evaluation, in 2015 the Federal Council decided to extend the pilot project for a further period of five years and requested the Federal Department of Foreign Affairs and the Federal Department of Justice and Police to submit proposals for a permanent solution. These proposals were assessed by the Federal Council in June 2016.

46. The competent services of the federal administration are currently working to establish the foundations of a national human rights institution.

47. Since 2001, the fight against racism and discrimination has been institutionalized at federal level. The Service for Combating Racism, part of the Federal Department of Home Affairs, is responsible for formulating and coordinating national policy on combating racism.<sup>17</sup> The relevant government departments are then responsible for defining and implementing the measures in different areas of daily life and at the cantonal and communal levels. Extra-parliamentary commissions are an important review mechanism within this system; consisting of specialists and persons directly affected by the issues addressed, their role is not to define government policy on protection from racial discrimination but to observe government actions with a critical eye and provide their expertise.

48. For this reason, the Federal Commission against Racism may freely record the needs and applications of minorities and adopt a position without following a government or political line. It monitors social and political life and regularly meets with different groups specifically affected by discrimination and racism. It also monitors the application of the criminal law on racial discrimination (Criminal Code, art. 261 bis).<sup>18</sup> Between 2011 and 2018, the annual budget of the Federal Commission against Racism varied between SwF 180,000 and SwF 200,000.

49. In the decision to establish the Federal Commission against Racism of 22 May 2013, the Federal Council strengthened the independence of the Commission. External communications no longer needed to be submitted to the General Secretariat of the Federal Department of Home Affairs for approval, but only brought to its attention. For anything related to parliamentary and Federal Council business, the Federal Commission against Racism is directly involved through the interdepartmental consultation procedure. It is authorized to present independent reports to bodies of the United Nations, the Council of Europe, the Organization for Security and Cooperation in Europe and other organizations. Furthermore, the Federal Commission against Racism may report on cases and liaise with cantonal authorities, political parties and other organizations within its mandate. It may also

<sup>17</sup> Ordinance on projects to promote human rights and combat racism (RS 151.21), art. 3: The Service for Combating Racism (Service), part of the General Secretariat of the Federal Department of Home Affairs, is responsible for the following tasks: (a) encouraging and coordinating activities aimed at preventing racism, anti-Semitism and xenophobia and promoting human rights at the federal, cantonal and communal levels; (b) coordinating its activities with the federal administration, extra-parliamentary commissions, cantons, communes and relevant inter-cantonal conferences; (c) carrying out projects alone or in cooperation with third parties.

<sup>18</sup> Swiss Criminal Code of 21 December 1937, RS 311.0.

commission legal opinions on general questions of law, call on experts and carry out audits for the purposes of its deliberations.

50. The Federal Council considers that this model and the division of responsibilities between the Federal Commission against Racism and the Service for Combating Racism have demonstrated their effectiveness. That is why the Federal Council has systematically opposed any parliamentary initiative to dismantle or weaken the Federal Commission against Racism.

### 2.3 Reservation concerning article 2

*Implementation of the recommendation made in paragraph 11 of the concluding observations*

*The Committee recommends that Switzerland consider withdrawing its reservations to article 2, paragraph 1 (a) of the Convention. Should Switzerland decide to maintain the reservations, the Committee requests that Switzerland explain why the reservations are necessary.*

51. Switzerland is a party to most major human rights conventions protecting the individual from discrimination. The Federal Council regularly examines whether, in the light of the current legal and political situation, it is possible to ratify further international human rights instruments or to withdraw reservations. The list of newly ratified conventions is given in paragraph 20.

52. The reasons that led Switzerland to make a reservation concerning access to the labour market were explained in detail in the initial report of Switzerland of 14 March 1997 (paras. 50 ff.) and are still valid. The distinction between nationals of the country members of the European Union and European Free Trade Association and nationals of third countries, which ensues from the dual system for the admission of foreign workers in place, depends on bilateral agreements with the countries concerned. It is considered lawful by the European Court of Human Rights.<sup>19</sup> Concerned with allowing a degree of flexibility for the future, Switzerland deems it preferable to maintain the reservation.

## 3. Article 3 Condemnation of apartheid

53. At the national level, Switzerland continues to pursue its policy of promoting integration and combating segregation through a number of programmes and measures, some of which are described below.

54. The “Urban Projects – Social Integration in Residential Areas” programme for 2008–2015: the Confederation implemented this programme, with support from the cantonal authorities, in order to help communal authorities to improve living conditions, promote social integration and reduce residential segregation in residential areas facing particular challenges.<sup>20</sup> Building on the success of this initiative, public and private bodies are now working to ensure that many of the measures continue to be implemented in the long term. The Federal Council tasked the Federal Office for Spatial Development with designing a new programme in line with the federal policy on urban areas for 2016 onwards. This programme is called “Neighbourhood Cohesion” and implemented in coordination with the local authorities; its aim is to ensure the social integration of the various population groups, taking into account the diversity of needs within a pluralistic society.<sup>21</sup>

55. The Peri-urban Programme: through this programme, the Federal Commission on Migration helps to promote integration in regions where there has been little or no work towards social cohesion until now or where measures have been taken without support from

<sup>19</sup> *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, para. 84.

<sup>20</sup> [www.are.admin.ch](http://www.are.admin.ch) > Villes et agglomérations > Programmes et projets > Projets urbains.

<sup>21</sup> [www.are.admin.ch](http://www.are.admin.ch) > Villes et agglomérations > Stratégie et planification > Politique des agglomérations 2016+ de la Confédération.

the Confederation. The third and final phase of this programme, which began in 2016, will ensure support up to 2020 for communal authorities in rural areas that wish to increase social cohesion and public participation through innovative projects.<sup>22</sup>

56. The “Citizenship – Exchanging, Creating, Deciding” programme: the Federal Commission on Migration encourages the development of new forms of participation through pilot projects that are based on the concept of citizenship and designed above all to promote joint decision-making and the participation of all, regardless of nationality. The programme aims to enable people to form an opinion, express their wishes and deepen their knowledge of democratic principles and fundamental rights. Support is provided for projects that allow for the widest possible participation in public debates and decision-making processes.

57. The measures taken in the field of education, which are described in sections 5.3 and 7.2, also help to combat segregation and social exclusion, particularly with respect to minorities and persons with an immigration background.

#### **4. Article 4**

##### **Measures to make certain acts of racial discrimination punishable by law**

##### **4.1 Reservation concerning article 4**

*Implementation of the recommendation made in paragraph 11 of the concluding observations*

*The Committee recommends that Switzerland consider withdrawing its reservations to article 4 of the Convention. Should Switzerland decide to maintain its reservations, the Committee requests that Switzerland explain why the reservations are necessary.*

58. In Switzerland, checks are not carried out prior to the establishment of an organization. Making it punishable by criminal law to establish or lead a group that promotes racism, to support such a group or to participate in the activities of such a group would require the persons subject to the law to recognize in advance the illegal nature of an organization (which may not be obvious) and to decide, on that basis, not to join the organization, so as not to face prosecution. That would hardly be compatible with the fundamental right to freedom of association (Constitution, art. 23). In 2003, the proposal to introduce a provision to that effect was rejected by most of the participants in the consultation procedure and there have been no developments giving reason to believe that the situation has changed.

59. Nevertheless, the Civil Code provides that a judge may, at the request of the competent authority or any person concerned, dissolve an association whose purpose is unlawful or immoral, such as an organization that seeks to promote racist ideology (Civil Code, art. 78).

*Implementation of the recommendation made in paragraph 12 (c) of the concluding observations*

*The Committee also recommends that the State party sensitize legal personnel, including the judiciary, to international standards to protect freedom of opinion and expression and to combat racist hate speech.*

60. In Switzerland, human rights and legislation on racial discrimination are a compulsory component of the courses taught at law schools, and prosecutors and permanent judges must hold a qualification in the study of case law in order to be able to practise their profession. Various universities, including the Universities of Geneva and Basel, offer specific classes and seminars on these topics or plan to do so.

<sup>22</sup> [www.periurban.ch](http://www.periurban.ch) > Periurban > Programme.

61. In Switzerland, judges are not required to have completed a specific course of study. The cantonal authorities are responsible for the organization and training of the judiciary at the cantonal level. Federal prosecutors and judges are not required by law to have completed specific training (see the Federal Act on the Organization of the Criminal Justice Authorities of the Confederation, art. 42).

62. As far as raising awareness about international standards is concerned, justice officials have access to in-service training. The Human Rights Training Centre at Lucerne Teacher Training College boasts extensive expertise in the field of human rights education. Other institutions, such as the Fondation pour la formation continue des juges suisses (Foundation for In-Service Training of Swiss Judges), also provide further training for judges, registrars, prosecutors and investigating judges. In addition, the Swiss Centre of Expertise in Human Rights organizes symposiums, including for legal personnel, on a regular basis.

63. For further details, see the additional information submitted by Switzerland regarding three recommendations made by the Committee in its concluding observations on the combined seventh to ninth periodic reports of Switzerland, in accordance with paragraph 23 of those concluding observations.

*Implementation of the recommendation made in paragraph 12 (d) of the concluding observations*

*The Committee recommends that Switzerland take swift measures, in addition to prosecution, to respond to instances of racist remarks or acts, including formal rejection by high-level public officials and condemnation of hateful ideas expressed.*

64. Public incitement to hatred or discrimination based on the race, ethnicity or religion of a person or group of persons is punishable by up to 3 years' imprisonment or a fine (Criminal Code, art. 261 bis). If the Reynard parliamentary initiative is implemented, this provision will also apply to discrimination on the basis of sexual orientation and gender identity (see para. 12).<sup>23</sup> As regards civil law, article 28 of the Civil Code establishes penalties for infringements of personality rights that arise when a person is directly subjected to hate speech. The advice mechanisms that have been set up at the cantonal level under the cantonal integration programmes support the effective implementation of these instruments.

65. Generally, there has been little variation over time in the number and type of racism cases concerning violations of article 261 bis of the Criminal Code that have been brought before the courts (41 decisions in 2016, 57 in 2015, 22 in 2014 and 47 in 2013). Only a small proportion of the cases brought before a court involve the media (according to the collection of decisions under article 261 bis of the Criminal Code kept by the Federal Commission against Racism, 2 in 2016, 8 in 2015) or politicians (0 in 2016, 1 in 2015). However, a large proportion of the cases registered concern the use of racist language in electronic communications (12 per cent of the cases registered between 1995 and 2016).<sup>24</sup>

66. The punitive measures taken to address this problem must be supplemented by awareness-raising and preventive measures. The authorities must also practise and promote the spread of counter-speech that is clearly focused on the concept of coexistence. The Federal Councillors often make public statements in which they emphasize the need to preserve social harmony and to resist intolerance. Federal Councillor Alain Berset, head of the Federal Department of Home Affairs and President of the Confederation in 2018, has made many speeches calling for unity and coexistence.<sup>25</sup>

<sup>23</sup> Parliamentary initiative 13.407 on combating discrimination on the basis of sexual orientation, submitted by Mathias Reynard.

<sup>24</sup> Federal Commission against Racism collection of decisions under article 261 bis of the Criminal Code. At the time of writing, the figures for 2017 were not yet available.

<sup>25</sup> See, for example: <https://www.admin.ch/gov/en/start/documentation/speeches/speeches-given-by-federal-councillors.msg-id-65398.html> and [www.edi.admin.ch/edi/fr/home/dokumentation/reden.msg-id-64372.html](http://www.edi.admin.ch/edi/fr/home/dokumentation/reden.msg-id-64372.html).

67. For further details, see the additional information submitted by Switzerland regarding three recommendations made by the Committee in its concluding observations on the combined seventh to ninth periodic reports of Switzerland, in accordance with paragraph 23 of those concluding observations.

## **5. Article 5 Elimination of racial discrimination that affects the enjoyment of certain human rights**

### **5.1 Naturalization**

*Implementation of the recommendation made in paragraph 13 of the concluding observations*

*The Committee recommends that Switzerland ensure that any revision of the Swiss Citizenship Act does not have a disproportionate and discriminatory impact on certain groups. It also reiterates its previous recommendation that Switzerland adopt uniform standards on integration for the naturalization process, in conformity with the Convention, and take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of Switzerland, including by establishing an independent and uniform appeals procedure in all cantons.*

68. Besides the developments outlined in the additional information submitted by Switzerland regarding three recommendations made by the Committee in its concluding observations on the combined seventh to ninth periodic reports of Switzerland, in accordance with paragraph 23 of those concluding observations, the following developments have taken place.

69. Under the revised Swiss Citizenship Act, which entered into force on 1 January 2018, the criteria for naturalization have been harmonized nationwide, which means that the same procedure applies throughout Swiss territory. The revised Swiss Citizenship Act provides that the holder of a permanent residence permit may be naturalized if he or she has been living in Switzerland for at least 10 years and is well integrated. Persons are considered well integrated if they are able to communicate in a national language, they respect public order and security and the basic principles of the Constitution, they are participating in economic life or acquiring an education, and they are working towards the integration of their families. Applicants for naturalization must also demonstrate knowledge of features of Switzerland and must not pose a threat to the country's internal or external security. The implementing ordinance details the integration criteria that are decisive for naturalization and the practice that is followed in cases of prior conviction and reliance on social assistance. The Act now states explicitly that the relevant authorities should take into account the personal situation of applicants for Swiss nationality when evaluating their language skills and financial autonomy. A disability, illness or other major personal reason that prevents an applicant from meeting these criteria does not constitute sufficient grounds for rejecting an application for naturalization from the outset (Swiss Citizenship Act, art. 12 (2)).

70. The proposal to introduce a simplified naturalization procedure for young third-generation immigrants was adopted in a popular vote on 12 February 2017, by a majority of 60.4 per cent. As a result, young third-generation immigrants who have spent their whole lives in Switzerland and generally have stronger ties to Switzerland than to the country of origin of their grandparents have access to a naturalization procedure that is much shorter and less expensive than the standard procedure.

71. In preparation for the entry into force of the new provisions, the federal authorities responsible for naturalization published a large amount of information on their website. In particular, they produced a citizenship guide that explains the various naturalization procedures and the conditions that apply. Before the new legislation had even entered into force, the nationality division of the State Secretariat for Migration held many conferences and information meetings with the cantonal authorities and other relevant parties. This



enabled the cantonal authorities, in turn, to provide appropriate information to the communal departments responsible for naturalization.

72. Despite these efforts to provide information, the introduction of the new legislation has inevitably given rise to questions at all levels. The federal authorities have compiled a list of frequently asked questions that is available online. Persons wishing to obtain Swiss nationality and the competent authorities can also consult the fact sheets on the various procedures that have been drawn up by the Confederation and disseminated widely.

73. The legislative changes also affect cantons and communes, the aim being to establish uniform naturalization criteria so that communal authorities are able to perform their work (including verification of integration criteria and other naturalization requirements) transparently, properly, fairly and in accordance with the rule of law. The new legislation should ensure that the level of integration of each applicant is evaluated fairly and without discrimination, for example through standardized language tests.

74. The Federal Commission on Migration has likewise produced accessible documentation on the simplified naturalization procedure, the various stages of that procedure and the persons to whom it is available. It has also produced a two-minute animated video and a step-by-step guide that is available online.

## 5.2 Racial profiling

*Implementation of the recommendation made in paragraph 14 of the concluding observations*

*The Committee calls on Switzerland to take effective measures to ensure that individuals are not targeted for identity checks, searches and other police operations on the grounds of race or ethnicity, and to take appropriate legal measures against law enforcement officials for unlawful conduct based on racially discriminatory grounds. It also recommends that Switzerland establish an independent mechanism to receive and investigate complaints concerning misconduct by police officers in each canton, and ensure that human rights training for police officers is conducted in all cantons.*

75. The investigation of criminal complaints against the police is regulated by the Swiss Code of Criminal Procedure, which was consolidated in 2011. The Code establishes that such complaints must be dealt with by an independent criminal justice authority, namely the public prosecutor's office (Code of Criminal Procedure, art. 4). The public prosecutor's office is required by law to initiate and conduct proceedings without delay when it becomes aware of offences or evidence that offences have been committed (Code of Criminal Procedure, art. 7). More generally, the criminal justice authorities are obliged to report to the competent authorities any offences that come to their attention in the course of their work (Code of Criminal Procedure, art. 302).

76. All persons may file a complaint directly with the public prosecutor's office, without going through the police (Code of Criminal Procedure, art. 301). Moreover, each party to the proceedings may request the recusal of a person acting for a criminal justice authority (including the police) if there are grounds to suspect that the person may not be impartial (Code of Criminal Procedure, art. 56 et seq.). In addition, the parties may appeal against the rulings and the procedural acts of the police and the public prosecutor's office (Code of Criminal Procedure, art. 393).

77. Measures that go beyond these criminal procedural safeguards established by federal law are, first and foremost, the responsibility of the cantonal authorities, on account of Swiss federalism. In some cantons, for example, hearings involving complaints against the police are conducted solely by the public prosecutor's office or an officer from another police force; other cantons have set up a specific unit to deal with this type of case. In some places there is also an ombudsman's office or a mediation service. Lastly, it is always possible to contact the relevant supervisory authority, by means of an administrative procedure, in order to complain about the behaviour of a police officer or the police in general, in cases where that behaviour does not constitute a criminal offence. The Swiss

Centre of Expertise in Human Rights published a study on complaint mechanisms in 2014.<sup>26</sup>

78. Switzerland does not collect official statistical data at the federal level on racial profiling and the frequency with which it occurs. This is due to the fact that this form of discrimination is associated with routine checks and checks carried out on suspects, which fall under cantonal jurisdiction. However, the Federal Statistical Office is able to identify from police crime statistics cases where offences were committed under both article 312 of the Criminal Code (Abuse of authority) and article 261 bis of the Criminal Code (Racial discrimination). Between 2009 and 2017, seven cases of this kind were recorded. This breaks down to around one or two cases per year, with the exception of 2009, 2014, 2016 and 2017, for which no such cases were recorded. Meanwhile, advice centres for victims of racism recorded 25 racist incidents relating to the police in 2017, compared with 19 in 2016, 23 in 2015, 19 in 2014, 17 in 2013 and 13 in 2012.<sup>27</sup> Such cases account for around 10 per cent of the cases registered each year. These figures are only indicative and do not reflect the total number of cases, since not every victim contacts an advice centre.

79. The management of diversity and issues related to protection from discrimination are an integral part of police training. During their basic training, future police officers learn how to perform their work with due respect for the dignity and rights of each person, in accordance with the Constitution, the European Convention for the Protection of Human Rights and Fundamental Freedoms, national legislation and the United Nations Code of Conduct for Law Enforcement Officials.<sup>28</sup> The training is designed to raise their awareness of different cultures and ethnic minorities and matters related to migration and human rights. Moreover, psychology, police ethics and human rights are an integral part of the professional examination for police officers and account for more than a third of training time. In 2012, the Swiss Police Institute published a revised version of its course on human rights and professional ethics, which was drawn up with support from the Swiss Centre of Expertise in Human Rights. These topics are also covered by in-service training courses, such as those run by the Eastern Switzerland Police Academy, the Savatan Police Academy and the Swiss Police Institute in Neuchâtel.<sup>29</sup> For several years, the Service for Combating Racism has been providing cantonal police academies and forces with help in designing and implementing in-service training activities.

80. In December 2016, the Swiss Centre of Expertise in Human Rights held a daylong event where representatives of the police, the State and NGOs could compare their views on this subject and discuss new solutions. The Swiss Centre of Expertise in Human Rights was also commissioned by the Department of Security of the city of Zurich to conduct a study on the legal standards governing checks on persons and measures that could help to prevent racial and ethnic profiling. The Swiss Centre of Expertise in Human Rights recommended a number of measures to improve the effectiveness and ensure the constitutionality of police checks, including clearly drafted service regulations, police training and the issuing of police certificates for such checks.<sup>30</sup>

<sup>26</sup> Jörg Künzli, Evelyne Sturm and others, *Protection juridique contre les abus de la part de la police – Présentation des mécanismes de plainte possibles en Suisse* (Bern, Swiss Centre of Expertise in Human Rights, 21 February 2014).

<sup>27</sup> Network of Advice Centres for Victims of Racism, reports on racist incidents registered by advice centres. Available at: [www.network-racism.ch/rapports/index.html](http://www.network-racism.ch/rapports/index.html).

<sup>28</sup> See figure 5.11 of the Regulations of 18 June 2012 concerning the Professional Examination for Police Officers. Available at: [www.institut-police.ch/examens/brevet/Règlement et guide méthodologique > Règlement concernant l'Examen professionnel de Policier / Policière du 18 juin 2012](http://www.institut-police.ch/examens/brevet/Règlement_et_guide_méthodologique/Règlement_concernant_l'Examen_professionnel_de_Policier_Policière_du_18_juin_2012) (accessed on 28 July 2015). See also the Framework Syllabus for Police Officers of 5 November 2014, pp. 7 and 12. Available at: [www.institut-police.ch/examens/brevet/Plan d'étude cadre pour policier/policière du 05.11.2014](http://www.institut-police.ch/examens/brevet/Plan_d'étude_cadre_pour_policier/policière_du_05.11.2014) (accessed on 28 July 2015).

<sup>29</sup> The Eastern Switzerland Police Academy trains officers from the Cantons of Appenzell Innerrhoden, Appenzell Ausserrhoden, Graubünden, Schaffhausen, St. Gallen and Thurgau and from the cities of St. Gallen and Chur. The Savatan Police Academy trains officers from the Cantons of Geneva, Vaud and Valais and from the city of Lausanne.

<sup>30</sup> Jörg Künzli, Judith Wytenbach, Vijitha Fernandes-Veerakatty and Nicola Hofer, *Personenkontrollen durch die Stadtpolizei Zürich - Standards und Good Practices zur Vermeidung von racial und ethnic*

81. Cantonal and city authorities, including those of Zurich, Bern, Geneva and Lausanne, review their own practices regularly and take measures to improve the effectiveness and quality of checks. Examples of measures can be found in annex 2.

82. As a result of the cantonal integration programmes launched in 2014, all cantons except one (Appenzell Innerrhoden) now provide advice services for victims of discrimination and racial profiling. In addition, five cantons (Basel Landschaft, Basel Stadt, Vaud, Zug and Zurich) and five cities (Bern, Rapperswil-Jona, St. Gallen, Winterthur and Zurich) have a mediation service.

83. In 2016, various people from the scientific, cultural and legal spheres came together to form the Alliance against Racial Profiling.<sup>31</sup> At the same time, a movement called “Who’s Next? Black Lives Matter” was founded in French-speaking Switzerland. These movements gather information, call on the authorities to bring about changes and raise public awareness, for example by ensuring media coverage of court cases. They help to foster social debate; this is illustrated by the fact that, since 2016, several parliamentary procedural requests have been submitted with the aim of drawing attention to the issue of discrimination during police checks or activities carried out by the Swiss Border Guard.<sup>32</sup> During consultations on the present report, the Fédération d’organisations islamiques de Suisse (Federation of Islamic Organizations in Switzerland) (FOIS) and the Fédération suisse des communautés israélites (Swiss Federation of Jewish Communities) (FSCI) expressed the view that racial profiling should be countered primarily through preventive measures intended to encourage dialogue and through in-service and further training for police officers.

### 5.3 National minorities

*Implementation of the recommendation made in paragraph 15 of the concluding observations*

*The Committee recommends that Switzerland strengthen its efforts to promote and protect the rights of national minorities, particularly with regard to access to education and the preservation of their language and lifestyle. It calls on Switzerland to ensure that laws and policies which may seem neutral do not have any discriminatory impact on the rights of members of national minorities. The Committee also encourages Switzerland to raise awareness among the public about the history and characteristics of different national minorities, and to take effective measures to avoid generalizations and stereotypes in the media.*

84. When Switzerland ratified the Council of Europe Framework Convention for the Protection of National Minorities (hereinafter “the Framework Convention”) in 1998, it recognized national linguistic minorities, members of the Jewish community and travellers as national minorities. In the fourth periodic report of Switzerland on the implementation of the Framework Convention, submitted on 15 February 2017, the Federal Council clarified which travellers were recognized as a national minority, namely all Swiss Yenish and Sinti/Manush. By granting the status of national minority to the Yenish and the Sinti/Manush, Switzerland committed to enabling them to preserve and develop their culture. Between 2012 and 2015, the Federal Office of Culture allocated a total of SwF 400,000 in funding to the Radgenossenschaft der Landstrasse and the foundation called Assurer l’avenir des gens du voyage suisses (Ensuring the Future of Swiss Travellers), under article 17 of the Federal Act of 11 December 2009 on Culture Promotion. The dispatch of the Federal Council aimed at the promotion of culture for the period 2016–2020

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*profiling* (Bern, 28 February 2017) (PDF in German, 81 pages). Summary in French available at: [www.skmr.ch/cms/upload/pdf/171214\\_resume\\_etude\\_police\\_controles.pdf](http://www.skmr.ch/cms/upload/pdf/171214_resume_etude_police_controles.pdf).

<sup>31</sup> <http://www.stop-racial-profiling.ch/en/alliance-2/>.

<sup>32</sup> See, in particular: Postulate 18.3353 of 16 March 2018 on preventing all forms of discrimination during checks on persons carried out by the Swiss Border Guard, submitted by Mattea Meyer; Postulate 18.3356 of 16 March 2018 on preventing all forms of discrimination during checks on persons carried out by the police, submitted by Sibel Arslan; and Interpellation 17.3601 of 16 June 2017 on the Federal Council’s position on racial profiling, submitted by Sibel Arslan.

(Culture Dispatch 2016–2020) states that this sum will be increased by SwF 300,000 per year between 2016 and 2020, which will enable Assurer l’avenir des gens du voyage suisses to play an active role in the development of permanent sites and transit sites.

85. At the cantonal level, new sites of this kind are under construction. For example, in June 2017, the Canton of Fribourg opened a new transit site in Joux-des-Ponts on the A12 motorway, which also serves as a rest area for drivers of heavy goods vehicles. This site is the result of collaboration between the Federal Roads Office, which was responsible for its construction, and the authorities of the Canton of Fribourg, which funded the project and now manage the site in a way that satisfies its users. The authorities of the Canton of Neuchâtel have set up a cantonal interdepartmental steering committee to improve coordination in this area; the unit responsible for the prevention of racism is represented on this committee.

86. On 1 June 2018, the Federal Council examined a request submitted by two organizations concerning the recognition of Swiss Roma as a national minority under the Framework Convention. This request for recognition was the first to have been submitted since the ratification of the Framework Convention by Switzerland in 1998. The Federal Council noted that the cumulative criteria set forth in the interpretative declaration made by Switzerland at the time of ratification of the Framework Convention had not all been fulfilled. However, it wishes to point out that, leaving aside the question of their recognition as a national minority, Roma are an integral part of Swiss society and are recognized as such. Swiss Roma enjoy the same rights as other Swiss citizens, including the right to practise their culture and to speak their language. The Federal Council reaffirms its commitment in that regard and notes that Swiss authorities have an obligation to counter the racism and negative stereotypes faced by Roma and to protect them from discrimination.

87. In 2014, the Yenish and the Sinti/Manush drew public attention to the shortage of permanent sites and transit sites. Their demands led to the submission of three parliamentary procedural requests at the federal level and the subsequent creation of a working group, under the authority of the Federal Office of Culture, on improving living conditions for travellers and promoting the culture of Yenish, Sinti/Manush and Roma persons. An invitation to participate in the working group was extended not only to representatives of the Yenish and Sinti/Manush communities but also to representatives of the Roma community, since, in practice, the three communities are often associated with one another and the Roma themselves have called for their culture to be protected. The working group, which also includes representatives of the federal, cantonal and communal authorities, has submitted to the Confederation a series of proposals on how to address various issues in a constructive manner. In its interim report, the working group identified five areas of focus: stopping sites; training; culture and identity; social issues; and the repositioning of Assurer l’avenir des gens du voyage suisses.<sup>33</sup>

88. Travellers such as the Yenish and the Sinti/Manush were subjected to compulsory social measures up until the 1980s. The Confederation offered them a formal apology in 1986. The Federal Act of 30 September 2016 on Compulsory Social Measures and Placements prior to 1981 (RS 211.223.13), which entered into force on 1 April 2017, is designed to help ensure that this injustice is recognized and remedied. In addition, National Research Programme 76 was launched in 2017; the aim of this programme is to analyse the characteristics, mechanisms and effects of Swiss social assistance policy and practice in various contexts, to identify the possible causes for the adoption of social measures that violate – or protect – the integrity of the persons concerned and to analyse the impact of such measures on the persons concerned. The Federal Council is also considering supporting an initiative for the creation of a memorial dedicated to the victims of the

<sup>33</sup> The working group on improving living conditions for travellers and promoting the culture of Yenish, Manush and Roma persons published an interim report and action plan on 21 December 2016. See [www.bak.admin.ch](http://www.bak.admin.ch) > Création culturelle > Les Yéniches et les Manouches sont une minorité nationale.

“Children of the Open Road” project. It believes that keeping in mind past mistakes is one way to counter structural and cultural stigmatization of the Yenish.<sup>34</sup>

89. Over the past 10 years, the Service for Combating Racism has supported a number of projects developed by or for the Yenish and the Sinti/Manush and projects that promote the spread of Roma culture, challenging the usual clichés. For example, it provided SwF 24,000 to support a project run by the Centre for Political Education and History Teaching of the teacher training faculty of the University of Applied Sciences and Arts Northwestern Switzerland that was focused on the development of the appropriate framework for history teaching and the production of teaching materials on the way of life of travellers. The Federal Statistical Office plans to conduct an omnibus survey in 2019 on the theme of racism linked to the travellers’ way of life, in collaboration with the Service for Combating Racism, the Federal Office of Culture, the Directorate of International Law and the associations that represent the Yenish and Sinti communities. The Federal Office of Culture is supporting a documentation project on the Yenish language and culture. In order to preserve the Yenish language, Radgenossenschaft der Landstrasse, which represents the Yenish community in Switzerland, runs afternoon language classes for children, using a teaching aid developed for that purpose.

90. The recognition of the Jewish community as a national minority means that this community enjoys certain rights, such as the right to preserve its identity, and that the Government must meet certain obligations, such as the obligation to protect against intolerance and discrimination. Since 2004, Holocaust Remembrance Day has been held annually on 27 January, in accordance with a decision made by the Swiss Conference of Cantonal Ministers of Education. On that occasion, the Federal Council issues a dispatch in which it pays tribute to the victims of the Holocaust.

91. In 2016, the Service for Combating Racism published a report, for the first time, on the measures taken by the Confederation to counter anti-Semitism. The report gives an overview of the relevant awareness-raising and preventive measures, legislation and other efforts to protect Jewish persons and institutions in Switzerland.<sup>35</sup> According to the report, the Federal Council believes that it has an ongoing duty to demonstrate a consistent and unwavering commitment to combating all forms of racism and anti-Semitism. The many activities carried out by the various federal offices, as well as the cantonal and communal authorities, contribute to the implementation of a systematic policy of awareness-raising and prevention. The report also notes that the Confederation and the cantons must take action if there are clear indications that the Jewish community, Jewish persons or Jewish institutions may be the target of violence. The publication of this report gave rise to an in-depth discussion on anti-Semitism and the protection of religious and ideological minorities. On the basis of that discussion, the Federal Council tasked the delegate for the Swiss Security Network with developing a way to improve the coordination of measures to protect minorities who are under threat, in close collaboration with the Confederation and the cantons and in cooperation with the groups concerned.

92. In that context, the Federal Council decided, in July 2018, to draft an ordinance reflecting the support of the Confederation for preventive measures within the meaning of article 386 of the Criminal Code, and to hold consultations on the ordinance before the end of 2018. As of 2019, it should be possible for information, awareness and training measures to be supported on the basis of this ordinance. As a second stage, it will be necessary to examine whether a legal basis needs to be developed to allow the Confederation to support protective measures aimed at institutions or persons belonging to minorities that are particularly under threat.

93. In March 2017, Switzerland assumed the chair of the International Holocaust Remembrance Alliance (IHRA) for a period of one year; this was an opportunity for it to

<sup>34</sup> Opinion of the Federal Council in response to Interpellation 16.3370, submitted by Barbara Gysi. In 2015 and 2016, five procedural requests relating to the Yenish, Sinti/Manush and Roma communities were submitted to the parliament.

<sup>35</sup> In October 2017, the Service for Combating Racism updated its report on the measures taken by the Confederation to counter anti-Semitism in Switzerland:  
<https://www.edi.admin.ch/edi/en/home/fachstellen/frb.html> > Monitoring and reporting.

step up its efforts to combat all forms of anti-Semitism.<sup>36</sup> During that period, the Gamaraal Foundation organized the exhibition *The Last Swiss Holocaust Survivors*, with support from the Federal Department of Foreign Affairs and the Service for Combating Racism. The exhibition puts a human face on the Holocaust, through photographs and audio recordings of 150 of the last survivors living in Switzerland. In addition, the fifteenth and final volume of the memoirs of Holocaust survivors was published in 2015. This series of books, which was produced with the support of the Federal Department of Foreign Affairs, contains the first-hand accounts of Holocaust survivors living in Switzerland. In 2017, the series was translated into French, partly by school students and partly by the general secretariat of the Federal Department of Home Affairs; the publication of the French version was funded by the Federal Department of Foreign Affairs.<sup>37</sup>

94. Between December 2011 and December 2017, the Service for Combating Racism allocated a total of SwF 241,700 to projects for the prevention of anti-Semitism. In 2015, for example, FSCI extended its project entitled “*Likrat – An Introduction to Judaism*” to French-speaking Switzerland. This project provides an opportunity for Jewish adolescents to visit schools to speak about Judaism and to spark a debate on anti-Semitism, racism and discrimination. Visits of this kind encourage pupils to be open-minded and to engage with topical and controversial issues.<sup>38</sup> At the cantonal level, the majority of projects to combat anti-Semitism are organized by schools, in the context of Holocaust Remembrance Day (27 January) for example. Teacher training colleges organize workshops and specific days devoted to the issue of anti-Semitism. Lucerne Teacher Training College held a conference and an educational workshop on the Holocaust and National Socialism in 2016. The IHRA research project on Holocaust education concluded with the International Research Conference on Education about the Holocaust, which was partly funded by Switzerland. This event was primarily aimed at Jewish and secular organizations.

95. In the field of education, all children are guaranteed access to an adequate and free basic education, without discrimination (Constitution, art. 8 (2)). The city of Bern is currently running a pilot project for the children of travellers staying at the permanent site in Buech. This project consists of educational workshops held during the winter months, alongside class lessons, to help these children to catch up with what they might have missed while they were away between the Easter holidays and the autumn holidays. New teaching aids and online teaching methods are being developed for this purpose.

96. Almost all the projects supported by the Service for Combating Racism are focused partly on challenging clichés and stereotypes in the media. The Declaration of the Duties and Rights of the Journalist of the Swiss Press Council stipulates that journalists must respect human dignity and avoid any allusions that could be discriminatory. The related guidelines warn against mentioning a person’s ethnicity, nationality, origin, religion or skin colour, as such references can have a discriminatory effect. Further information about the media can be found in section 7.1 (paras. 123 ff.).

97. For more information, see the fourth report of Switzerland on the implementation of the Council of Europe Framework Convention for the Protection of National Minorities, submitted in February 2017 (RS 0.441.1) and the sixth report of Switzerland on the implementation of the European Charter for Regional or Minority Languages, submitted in December 2015 (RS 0.441.2).

98. Owing to the diversity of the Swiss population, several other population groups are at particular risk of racial discrimination. According to the Federal Statistical Office survey on diversity and coexistence in Switzerland, 6 per cent of respondents in 2016 reported that they felt uncomfortable in everyday life around people with a different skin colour, while 10 per cent reported that they felt uncomfortable around people of other religions. The

<sup>36</sup> <https://www.eda.admin.ch/eda/en/home.html> > News > FDFA news > Switzerland to chair the International Holocaust Remembrance Alliance in 2017 (press release dated 5 November 2015). Switzerland has been a member of IHRA since 2004.

<sup>37</sup> <https://www.admin.ch/gov/en/start.html> > Documentation > Press releases > FDFA: Stories and Faces of Holocaust Survivors (press release dated 2 June 2015).

<sup>38</sup> <https://www.likrat.ch/en/> > For schools.

Swiss authorities recognize that specific measures are needed to prevent racial discrimination against these population groups.

99. In 2016 and 2017, the Service for Combating Racism and the Federal Commission against Racism focused their attention on racism against black persons in particular. They launched studies reviewing, firstly, the experiences of persons who face racism of that kind in Switzerland and the attitude of the general population towards such persons (Service for Combating Racism, in collaboration with the Federal Statistical Office) and, secondly, the institutional and legal aspects of this form of racism (Federal Commission against Racism).<sup>39</sup> In December 2017, the Federal Commission against Racism drew up a series of recommendations aimed primarily at the civil service, the security and justice authorities, politicians, media professionals, and reception and advice centres for victims of discrimination. On 7 December 2017, the Commission met with the cantonal delegates for integration to discuss these recommendations. The various reports, studies and recommendations on this subject will also be discussed with representatives of the relevant sectors at a symposium held by the Service for Combating Racism in the spring of 2018. In addition, the Service for Combating Racism and the Federal Commission against Racism supported the launch of the International Decade for People of African Descent in Switzerland, which took place in September 2017.

100. The dialogue between the relevant government departments and representatives of Muslim organizations in Switzerland that took place between May 2010 and April 2011 led to the conclusion that practical solutions to the various issues that have arisen should be worked out, first and foremost, on the ground, that is to say at the cantonal and communal levels. The Confederation nevertheless provides funding to support various projects run by the Swiss Centre for Islam and Society of the University of Fribourg on key topics relating to the participation of Muslims in Swiss society. In addition, the Service for Combating Racism often supports projects that aim to raise awareness of hostility towards Muslims; between 2012 and 2018, it provided SwF 258,000 in funding to support 22 such projects.

#### 5.4 Persons granted temporary admission (“F” permit)

*Follow-up to the recommendation contained in paragraph 16 of the Committee’s concluding observations*

*The Committee urges Switzerland to eliminate any indirect discrimination and undue obstacles for persons granted provisional admission status to enjoy their basic human rights. The Committee recommends that Switzerland eliminate disproportionate restrictions on the rights of provisionally admitted persons, in particular those who have been in the country for a long time, by enabling them to move freely within Switzerland and by facilitating the process of family unification and access to employment, educational opportunities and health care.*

101. For further details, see the additional information submitted by Switzerland regarding three recommendations made by the Committee in its concluding observations on the combined seventh to ninth periodic reports of Switzerland, in accordance with paragraph 23 of those concluding observations.

102. Temporary admission makes it possible to reside in Switzerland for persons who are generally excluded from the Convention relating to the Status of Refugees and whose removal is not possible, not lawful or cannot reasonably be required. It is an essential instrument for the protection of persons who, if returned to their homeland or country of

<sup>39</sup> Denise Efiouyi-Mäder et al., *État des lieux du racisme anti-Noire en Suisse. Étude exploratoire à l’attention du Service de lutte contre le racisme (SLR)* (October 2017). Available at: <https://bit.ly/2ucDigw>. Kurt Pärli et al., *Racisme anti-Noirs. Analyse juridique sur le phénomène, ses enjeux et les mesures à prendre*, study commissioned from Zurich University of Applied Sciences by the Federal Commission against Racism (December 2017). Available at: [http://www.ekr.admin.ch/pdf/Studie\\_AntiRassismus\\_F.pdf](http://www.ekr.admin.ch/pdf/Studie_AntiRassismus_F.pdf). Federal Statistical Office, survey on diversity and coexistence in Switzerland – racism against black persons, April 2018. Available at: <https://www.bfs.admin.ch/bfs/en/home/statistics/population/surveys/zids.html>.

origin, would face situations such as war, civil war, widespread violence or health emergencies. Temporary admission also protects particularly vulnerable persons and unaccompanied minors. The revised Foreign Nationals Act is scheduled to enter into force on 1 January 2019 (Integration; 13.030); it makes it possible to remove the obstacles that existed in terms of access to the labour market, since the pursuit of gainful employment is no longer subject to authorization but must simply be declared. The purpose of such declarations is to monitor compliance with regulations on working conditions and remuneration and thus to protect persons admitted on a temporary basis. The legislative amendment abolishing the special 10 per cent tax on income from gainful employment came into force on 1 January 2018.

103. Since 1 July 2018, work wanted advertisements will be posted at employment agencies for people admitted temporarily seeking employment or able to work who are receiving social assistance. The aim is to offer them better opportunities to enter the Swiss labour market in a targeted and sustainable way. To help refugees and provisionally admitted persons find employment, the cantons have also taken numerous measures within the framework of the cantonal integration programmes (e.g. in Grisons, St. Gallen and elsewhere).

104. At present, the freedom of movement of provisionally admitted persons is limited in the sense that it is difficult for them to change their canton of residence. In the context of the current implementation of motion 18.3002 of the Political Institutions Committee of the Council of State, entitled “Specific adjustments to the status of provisionally admitted foreigners”, which has been adopted by the parliament, it is planned, in particular, to provide relief in the event that provisionally admitted persons in gainful employment change cantons.

105. Like all persons domiciled in Switzerland, persons admitted on a temporary basis must take out health insurance (Foreign Nationals and Integration Act, art. 86 (2), in connection with Federal Health Insurance Act, art. 3 (1)). Insurance coverage takes effect on submission of the asylum application or the order for temporary admission or for granting of interim or temporary protection (Ordinance of 27 June 1995 on Health Insurance, art. 7 (5)). All persons provisionally admitted are therefore entitled to all basic health insurance benefits.

106. The Federal Constitution guarantees the right to a sufficient and free basic education, regardless of status (under the law relating to foreign nationals) of the persons of school age (Constitution, art. 19). The children of provisionally admitted persons are also guaranteed the right to attend school under this fundamental provision. It should be noted that public education is the responsibility of the cantons (Constitution, art. 62), which must provide for adequate compulsory basic education.

107. As an overall contribution to the political debate, the Federal Commission on Migration proposed, as part of its recommendations, a new protection status that would replace provisional admission.<sup>40</sup>

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<sup>40</sup> [www.ekm.admin.ch/ekm/fr/home/dokumentation/empfehlungen.html](http://www.ekm.admin.ch/ekm/fr/home/dokumentation/empfehlungen.html).



## 5.5 Non-citizens

*Follow-up to the recommendation contained in paragraph 17 of the Committee's concluding observations*

*The Committee calls upon Switzerland to take effective measures to eliminate discrimination against non-citizens, in particular migrants, undocumented persons, asylum seekers and refugees, and to ensure that any restriction on their rights is based on a legitimate aim and is proportionate to the achievement of the aim. It also urges it to address the particular risks and vulnerability faced by women belonging to those groups, and to ensure that victims of marital violence can remain in the country without undue procedural obstacles.*

108. **Migrant persons:** When a migrant person is a victim of racial discrimination in Switzerland, he or she is entitled to protection and counselling measures on the same basis as any person residing in Switzerland. Many cantons have taken awareness-raising measures not only for the general public but also for specific target groups, such as employers. For example, the Canton of Fribourg has developed a good practice guide and a checklist to encourage employers to contribute to the integration of migrants into the labour market. Every two years, it also awards a prize to an employer who has particularly distinguished itself in this field.

109. **“Undocumented persons”:** Article 30 (1) (b) of the Foreign Nationals Act allows for a residence permit to be issued to persons residing illegally in Switzerland (undocumented migrants) in extremely serious individual cases. The granting of residence permits is the responsibility of the cantonal authorities, subject to the approval of the State Secretariat for Migration. There is no right to obtain a residence permit as such in an individual case of extreme seriousness. The cantonal authorities as well as the Secretariat have a margin of discretion. The Federal Council and the Swiss parliament opposed a collective regularization (amnesty) of undocumented migrants, as the individual and specific examination of cases of extreme gravity had proved its worth. The following table shows the development of the practice of approving applications between 2009 and 2017.

### **Persons without permission to stay (Foreign Nationals Act, art. 30 (1) (b))**

<i>Year</i>	<i>Applications approved</i>	<i>Applications denied</i>
2017	607	10
2016	410	4
2015	316	16
2014	294	11
2013	280	31
2012	270	47
2011	163	26
2010	129	21
2009	88	93

110. In February 2017, the Canton of Geneva launched Operation Papyrus, a cantonal pilot project due to be completed by the end of 2018. The project provides for the formalization of the residency of a number of well-integrated, undocumented migrants and the implementation of various support measures intended, in particular, to improve the domestic service sector while ensuring that they do not attract increased immigrant inflows. As the approving authority, the State Secretariat for Migration carries out individual examinations of the cases submitted to it under the Papyrus project, taking into account the legal criteria for the sorting out of extremely serious individual cases (Foreign Nationals Act, art. 30 (1) (b)). The Papyrus project constitutes neither collective regularization nor a form of amnesty. The Secretariat and the Canton of Geneva strictly apply the existing legal

provisions, using the latitude granted to them by law. The project is being rigorously monitored.

111. On 12 June 2018, the National Council adopted postulate 18.3381 of its Political Institutions Committee, entitled “For a comprehensive review of the problem of undocumented migrants”. This procedural request mandates the Federal Council to draw up a report on certain issues, including the rights of undocumented migrants to join social insurance schemes and receive the benefits provided by them, the consequences of having those rights withdrawn, current practice on the exchange of information between the various authorities, and customary practice on the regularization of the residence status of undocumented migrants and authorization for them to engage in gainful employment in accordance with the criteria used to define cases of hardship. The report, which is to be submitted by spring 2020 at the latest, must also put forward possible solutions for persons without a residence permit.

112. The right to free basic education is guaranteed for all children living in Switzerland by article 19 of the Constitution, article 28 of the Convention on the Rights of the Child and article 13 of the International Covenant on Civil and Political Rights. Under the Constitution, the cantons are required to provide adequate basic education without discrimination (art. 62 (2)). With regard to the schooling of children speaking a foreign language, the Swiss Conference of Cantonal Ministers of Education stressed in its recommendations of 24 October 1991 that “it is important to integrate into State schools all children speaking a foreign language who live in Switzerland”, irrespective of their residence status. The Foreign Nationals Act also contains provisions allowing young undocumented migrants who have completed part of their schooling in Switzerland to obtain a residence permit for initial vocational training (Ordinance on Admission, Stay and Gainful Employment, 30a).

113. Subject to certain conditions, undocumented migrants facing social risks may receive social security benefits. Social insurance coverage does not, in principle, depend on a person’s status under legislation on foreign nationals but arises from the legal obligation to have subscribed to the insurance concerned.

114. Restriction on the freedom of movement of asylum seekers: the new Asylum Act, which will enter into force on 1 March 2019, provides that applicants who pose a significant threat to public order and security, and who are accommodated in a specific centre, will automatically receive an order banning them from certain areas (new Asylum Act, art. 24a (1), and new Foreign Nationals Act, art. 74 (1 bis) and (2)). Such a measure must, however, be considered on a case-by-case basis, in particular in the light of the principle of proportionality. Appeals against bans on entering certain areas may be submitted to a judge (Foreign Nationals Act, art. 74 (3)). The assignment of a person to a specific centre also presupposes that an individual review will be conducted to determine whether he or she poses a significant threat to public order and safety or would noticeably affect the operation and security of federal centres.

115. **Exclusion of unsuccessful applicants from the social welfare system:** Under article 82 of the Asylum Act, persons subject to an enforceable removal order who have been given a time limit to leave are excluded from the social welfare system. Upon request, they may receive emergency assistance within the meaning of article 12 of the Federal Constitution, which concerns the right of persons experiencing hardship to obtain assistance. Thanks to emergency assistance, which can be seen as a form of subsistence support, such persons receive the essential resources (food, clothing, shelter and basic medical care) required for a life consistent with human dignity, thus ensuring that they do not have to beg. The competent cantonal or communal authorities grant emergency assistance in accordance with the specific needs of the person concerned and any particular circumstance that makes them vulnerable (e.g. membership of a minority group). As recipients of emergency assistance remain subject to the obligation to take out health insurance, they have access to all the compulsory benefits made available by the Federal Act on Health Insurance. This obligation, which is enshrined in law (Health Insurance Ordinance, art. 92d, in conjunction with the Asylum Act, art. 82a), has been confirmed by the case law of the Federal Court. According to the Court, recipients of emergency assistance are responsible for complying with this obligation by joining a health insurance fund. However, the canton or commune

responsible for paying emergency assistance is free to take out such insurance on behalf of the person concerned. The reduction in the level of support resulting from the transition from social assistance to emergency assistance is intended to reduce the economic incentives to remain in Switzerland in order to encourage those concerned to comply voluntarily with the order to leave the country.

116. **Foreign women victims of marital violence:** The parliamentary procedural request of 5 May 2015 (“Right of residence for victims of domestic violence”, Feri postulate 15.3408) calls on the Federal Council to submit a report on the application of provisions governing the right of residence of migrants who are victims of domestic violence. The Federal Council adopted the report in April 2018. On the basis of the findings of the study published in conjunction with the report,<sup>41</sup> the Federal Council notes that the introduction of article 50 (1) (b) of the Foreign Nationals Act constitutes an effective measure to protect foreign victims of domestic violence and that no further legislation is required. Nevertheless, the Federal Council undertakes to promote additional measures in the area of training and raising awareness among actors dealing with cases of hardship, information on the persons concerned, exchanges, cooperation with the relevant authorities and services and the quality of the evidence to be presented.

## 6. Article 6 Guarantee of effective legal remedies

*Implementation of the recommendations made in paragraphs 7 and 9 of the concluding observations*

*The Committee urges Switzerland to take effective measures, as provided for in article 6 of the Convention, to ensure that everyone within its jurisdiction enjoys effective protection and remedies through the competent national courts and other State institutions against any acts of racial discrimination which violate his or her rights, as well as the right to seek from such courts just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination, including restitution. The Committee calls on Switzerland to sensitize legal personnel, including the judiciary, to international norms against racial discrimination.*

*The Committee also urges Switzerland to ensure that everyone within its jurisdiction enjoys the right to effective protection and remedies against discrimination in all areas of public and private life, including in accessing housing and the labour market, and in treatment at work and at school, with adequate reparation or satisfaction for any damage suffered as a result of such discrimination, in accordance with article 6 of the Convention.*

117. For detailed information on the relevant legal provisions, please refer to paragraphs 215 ff. of the combined second and third periodic reports of Switzerland, paragraphs 192 ff. of its combined fourth to sixth periodic reports and paragraphs 228 ff. of its combined seventh to ninth reports.

118. Any violation of article 261 bis of the Criminal Code is punishable by a term of imprisonment of up to 3 years or by a fine. An amount corresponding to the fine paid by the convicted person may be awarded to the injured party if certain conditions are met (see article 73 of the Criminal Code). Article 171c of the Military Criminal Code provides for the same sanctions, although a disciplinary sanction is imposed for minor offences (art. 171c (2)). With specific regard to the status of injured parties and victims, articles 115 et seq. of the Code of Criminal Procedure provide that persons directly affected by an offence may become parties to the proceedings and assert all the rights deriving from them, such as the right to be heard, the right to be assisted by a lawyer and the right to give an opinion

<sup>41</sup> Jürg Guggisberg, Theres Egger, Tanja Guggenbühl, Margaux Goumaz, Severin Bischof (Büro BASS), Prof. Dr. Martina Caroni, Claudia Inglin (University of Lucerne). *Bericht über die Praxis der Regelung des Aufenthaltsrechts von gewaltbetroffenen ausländischen Personen*. Bern, 22. June 2017 (this document is not available in French).

about the case and the proceedings, including the right to submit proposals relating to the evidence. They also have a right of appeal.

119. An act of racial discrimination may also constitute an unlawful infringement of personality rights within the meaning of article 28 of the Civil Code when the infringement is sufficiently serious. The injured party must provide proof of this (Civil Code, art. 8). He or she may take legal action to prohibit an unlawful violation as a preventive measure, to stop it occurring or to have it declared unlawful (Civil Code, art. 28a). In addition, the injured party may, in the event of a serious violation, claim compensation for the damage caused and for non-pecuniary injury (Civil Code, art. 28a (3), in conjunction with the Code of Obligations, arts. 41 (1), 47 and 49). He or she may bring civil claims in criminal proceedings (Code of Criminal Procedure, art. 122 et seq.).

120. Under the Assistance to Victims of Offences Act (RS 312.5), the State (canton) must compensate victims of racial discrimination if they have suffered a direct violation of their physical, mental or sexual integrity. In such cases, the violation must be of a certain degree of severity. This compensation is subsidiary and capped. In the event of a serious violation, the law provides for non-pecuniary damages, which are also capped. As to whether, and to what extent, a person subject to racial discrimination within the meaning of article 261 bis of the Criminal Code can be considered a victim within the meaning of the Assistance to Victims of Offences Act, the Federal Court has clarified (Federal Court decision 128 I 218) that, within the meaning of article 2 (1) of the Act (art. 1 since 2009), and depending on the circumstances, a person could be considered a victim in the event of a violation of article 261 bis (4) of the Criminal Code if the racial discrimination is accompanied by an assault. If this is not the case, and no other criminal offences, such as bodily harm or arson, have been committed, a person is considered a victim only in particularly serious cases (128 I 218, preambular paras. 1.5 ff.). The decision specifies that it is the degree of harm suffered by the person, and not the seriousness of the offence, that determines whether he or she may be considered a victim within the meaning of article 2 (1) of the Assistance to Victims of Offences Act (preambular para. 1.2).

121. In May 2016, the Federal Council submitted its report on the right to protection against discrimination in response to the Naef postulate (see also para. 12).<sup>42</sup> On the basis of a study carried out by the Swiss Centre of Expertise in Human Rights,<sup>43</sup> the Federal Council has recognized that private law remains incomplete in this field and that some of the recommendations made by the Centre are worth developing further. These include the recommendations concerning the introduction of additional anti-discrimination standards in certain areas covered by private law (e.g. labour law, tenancy law and contract law in general), the extension of the scope of the right of organizations to take legal action, the reduction of charges for civil proceedings (see sect. 1.3.6) and the raising of awareness of multiple discrimination. In addition, the Federal Council has stated that it is willing to improve the collection of data relating to discrimination based on sexual orientation or gender identity and that, in this regard, the question of how to gather data on multiple discrimination may also be considered.

122. The Centre's study shows that specialists still show an insufficient level of knowledge and awareness of the matter. This view is shared by several of the NGOs consulted (see the views expressed by FOIS and FSCI during the consultation procedure). For that reason, the Service against Racism, in collaboration with the Swiss Centre of Expertise in Human Rights, organized a conference on access to justice in cases of racial discrimination in 2017. Aimed at legal specialists and the staff of advice centres, this conference presented an overview of the current legal situation in Switzerland and highlighted challenges, obstacles and possible strategies in the area of civil and criminal law. For further information on the basic and further training of legal staff, see section 4.1 (paras. 59 ff.).

<sup>42</sup> Report of the Federal Council in response to Naef postulate 12.3543 of 14 June 2012. The right to protection against discrimination. Bern, 25 May 2016.

<sup>43</sup> Kälin Walter, Locher Reto et al. *Accès à la justice en cas de discrimination*. Swiss Centre of Expertise in Human Rights, Bern, July 2015: <http://www.skmr.ch> > Home > Thematic Clusters > Gender Politics > Publications.

123. Furthermore, the Service against Racism, in close collaboration with the secretariat of the Federal Commission against Racism, updated its legal guide on racial discrimination and published an online version of the guide in July 2017.<sup>44</sup> Designed for specialist advisers, legal professionals, victims and trainees, this online legal guide provides quick access to useful information, gives an overview of the main definitions, legal framework and advisory services available and sets out the regulations that apply in different areas, including employment, housing and leisure. In addition to explaining available legal channels, each module describes tried and tested non-judicial means of redress.

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

### **7.1 Information and public awareness campaign to combat racial discrimination**

*Implementation of the recommendation made in paragraph 12 (a) of the concluding observations*

*The Committee recommends that the Government undertake extensive and systematic awareness-raising activities at all levels in the public and political spheres to combat stigmatization, generalization, stereotyping and prejudice against non-citizens, sending a clear message concerning the abhorrence of racial discrimination, which degrades the standing of individuals and groups in the estimation of society.*

124. The most effective campaigns to combat and raise awareness about racial discrimination are those that are close to people's daily lives and carried out by actors known to them. The Service against Racism therefore encourages and supports projects led by local actors, cantons and communes.

125. In 2014 and 2015, in order to counter racism on the Internet, Switzerland participated in the No Hate Speech Movement campaign run by the Council of Europe. On the instructions of the Federal Social Security Office, the National Youth Council of Switzerland has carried out a number of actions, including the development of a website that provides information on online hate speech and proposes ideas for action.<sup>45</sup> In 2015, the Federal Commission against Racism launched the "A Switzerland in Our Colours" campaign, which seeks to raise public awareness of racism and measures to protect against online discrimination and is targeted mainly at young people. The Service against Racism also supports projects related to racism in digital media and publishes information on its website.

126. Since 2014, emphasis has been placed on developing awareness-raising and information-sharing activities within the framework of the cantonal integration programmes. In this regard, the Canton of Basel Stadt led a major campaign against racial discrimination in 2014 (entitled "*Basel zeigt Haltung*" and extended under the name "*Chance*", with particular attention paid to the acceptance of refugees). At the national level, the Swiss Conference of Services Specialized in Integration enables the cantons to share their good practices in this field. For further details, see section 7.2 and the additional information submitted by Switzerland regarding three recommendations made by the Committee in its concluding observations on the combined seventh to ninth periodic reports of Switzerland, in accordance with paragraph 23 of those concluding observations.

<sup>44</sup> [www.rechtsratgeber-frb.admin.ch](http://www.rechtsratgeber-frb.admin.ch).

<sup>45</sup> [www.nohatespeech.ch](http://www.nohatespeech.ch).

*Implementation of the recommendation made in paragraph 12 (b) of the concluding observations*

*The Committee recommends that Switzerland take appropriate measures towards ensuring that media representations of ethnic groups are based on the principles of respect, fairness and the avoidance of stereotyping, and that the media avoid referring unnecessarily to race, ethnicity, religion and other group characteristics in a manner that may promote intolerance.*

127. In the light of the freedom and independence of the media guaranteed by article 17 of the Constitution, the media are responsible for complying with article 8 of the Declaration of the Rights and Duties of Journalists, which stipulates respect for human dignity and the prohibition of discrimination on grounds of ethnic or national origin. Mechanisms providing for the self-regulation of the traditional media are in place. The Swiss Press Council and the Independent Complaints Authority for Radio and Television are responsible for assessing the work of the media in this regard (Federal Radio and Television Act, art. 4 (1)). It is also important to stress that the media act as observers who draw attention to difficult issues and developments, thus generating public debate.

128. Mechanisms for the self-regulation of social media are not as formally established, although several online media outlets have introduced measures to combat racist hate speech (see annex 1 to this report). In this regard, the Government prioritizes awareness-raising through campaigns and the establishment of the “Youth and Media” platform, which aims to enhance media literacy among children and young people, including in relation to hate speech and extremism. For the period 2017–2019, the platform is focusing on the prevention of online extremist radicalization.

129. It remains essential, however, for the police, the judicial authorities and social media outlets to collaborate closely and directly with one another. In a judgment issued on 23 June 2017 (6B\_43/2017), the Federal Court confirmed that the racist remarks published on a blog had been of a public nature. However, it is difficult to identify the perpetrators of such offences and the judicial authorities often have no choice but to resort to IP addresses. In addition, it is often difficult to enforce the law at the international level, i.e. to hold perpetrators accountable when they are abroad.<sup>46</sup>

130. In the view of the NGOs consulted (FSCI and Christlicher Friedensdienst (cfd)), media coverage of ethnic, cultural and religious groups and minorities remains an important issue on which progress must be made by training and raising the awareness of professionals and promoting the establishment of a diverse range of media (FOIS and cfd). The Federal Commission against Racism is in contact with the Media Training Centre and the Journalism and Media Training Centre. The Media Training Centre offers German-language journalists a three-day course on ethics and fairness in journalism, in which racial discrimination is discussed. The Journalism and Media Training Centre offers French-language journalists a one-day course on the legal framework of journalism, which deals, among other things, with the implications of article 261 bis of the Criminal Code for journalistic work.

131. The Service against Racism supports projects aimed at providing journalists and editors with information, analytical tools and information-sharing platforms through which they can evaluate their own practice without their work suffering any interference. Many cantons and cities also support projects or develop measures intended to combat stigmatization based on a person’s origins. Since November 2017, for example, the Zurich municipal police force has refrained from including the nationality of alleged perpetrators in press releases. This information is provided only on request.

132. For further details, see the additional information submitted by Switzerland on the three recommendations made by the Committee in its concluding observations on the

<sup>46</sup> See “A Legal Framework for Social Media: New State of Play”, May 2017, supplementary report of the Federal Council on the Amherd postulate 11.3912 “Legal framework for Social Media”, p. 47 > [www.ofcom.admin.ch](http://www.ofcom.admin.ch) > digital Switzerland and the Internet > digital communication > social media.

combined seventh to ninth periodic reports of Switzerland, in accordance with paragraph 23 of those concluding observations.

## 7.2 Education and training on combating racial discrimination

*Implementation of the recommendation made in paragraph 18 of the concluding observations*

*The Committee reminds Switzerland that integration is a two-way process involving both majority and minority communities, and recommends that Switzerland adopt additional measures targeting the majority community to combat racial discrimination. In this regard, the Committee reiterates its previous recommendation that Switzerland adopt a national action plan to combat racial discrimination, and carry out information campaigns to raise awareness among the public of the manifestations and harms of racial discrimination. It also encourages Switzerland to ensure that school curricula, textbooks and teaching materials are informed by and address human rights themes and seek to promote mutual respect and tolerance among nations and racial and ethnic groups.*

133. **National action plan:** Since 2014, the cantonal integration programmes have provided Switzerland with an instrument for establishing goals on combating racial discrimination that are common to all cantons but implemented in a manner that is tailored to local realities. These plans are therefore equivalent to a national action plan to combat discrimination of the kind recommended by international organizations such as the United Nations and the European Commission against Racism and Intolerance.

134. Under the plans, the Confederation and cantons have established the following goals in the fight against discrimination: to ensure that all victims of discrimination are offered advice; to open up institutions to a diverse population; and to raise awareness among the wider public through public actions and campaigns. The resulting measures benefit all sectors of the public potentially affected by racial discrimination, including persons with an immigration background and Swiss nationals who are victims of racial discrimination because they belong to a minority group.

135. **Advice services for victims of racial discrimination:** Between 2014 and 2017, a new advice service was established in 17 cantons while 9 cantons developed existing services (e.g. a new specialized legal office was set up in the Canton of Bern). Following the establishment and consolidation of these services, their quality must now be improved. In 2016, the Service against Racism, in collaboration with the network of advice centres, published a guide on the quality of advice services in the field of protection against discrimination. In 2017 and 2018, a number of workshops were held to promote the quality of the work undertaken by actors working in the area and a conference was organized in October 2017 to discuss the legal aspects of consultation. In addition, the Service against Racism, in collaboration with the professional association AvenirSocial, has developed measures to raise social workers' awareness of the risks of racial discrimination in their professional practice and to enable them to identify victims of racial discrimination and refer them to specialized advisers. At the cantonal level, a number of measures are taken to enhance the quality of the advice services on offer. For instance, a case analysis method is applied in the cantons of central Switzerland and training courses, exchange sessions and round tables are organized in the cantons of Bern and Basel Stadt.

136. **Training measures:** During the reporting period, all but one of the cantons offered basic and further training courses for internal and external staff. Around half the cantons explicitly focused on issues related to discrimination while the others addressed discrimination through training in interculturalism.

137. **Public awareness-raising:** Almost a third of the cantons (Aargau, Fribourg, Geneva, Jura, Neuchâtel, St. Gallen, Ticino, Vaud and Valais), and several cities (Bern, Lausanne, Lucerne and those of other communes), took the opportunity presented by the Week against Racism, which takes place in March every year, to set up round tables, cultural activities and other events to raise public awareness. The French- and Italian-speaking cantons

promote their programmes on a website and on Facebook.<sup>47</sup> The Week against Racism provides an opportunity for strengthening ties between the various actors in society and those in cultural, political and scientific circles. Examples of measures taken at the cantonal and communal levels can be found in annex 3.

138. **Measures to promote religious tolerance:** Many cantons have taken steps to promote interreligious dialogue and religious tolerance, including by organizing interfaith round tables, information campaigns and training. Examples of measures taken at the cantonal and communal levels can be found in annex 3.

139. **Measures in the area of education:** issues surrounding racial discrimination are addressed in the regional curricula for compulsory education. In the *Plan d'études romand* (curriculum for French-speaking Switzerland), such issues are mainly discussed in the field of human and social sciences, while in *Lehrplan 21* (the curriculum for German-speaking Switzerland) they are taught as part of the subject *Ethik, Religion und Gemeinschaft* (ethics, religion and community). *Lehrplan 21* also contains a section on politics, democracy and human rights that is one of seven cross-disciplinary subjects related to sustainable development. In the context of Holocaust Remembrance Day, the Information and Documentation Centre (IDES) of the Swiss Conference of Cantonal Ministers of Education gathers educational material on this subject and on issues related to xenophobia, tolerance, racism, human rights and intercultural and interfaith dialogue. Information on measures applicable to post-compulsory education was presented in the previous report. On that basis, many cantons are setting up programmes or measures for children and young people. An overview of these can be seen in appendix 4.

140. The *éducation21* foundation is the national competence and service centre for education for sustainable development in Switzerland. As such, it develops and brings together material on the subjects of racism, human rights and citizenship, which may be found in its catalogue. During the reporting period, the Service against Racism, in collaboration with the *éducation21* foundation, allocated a total of SwF 1.4 million in support of 99 projects aimed at preventing racism.<sup>48</sup> Teacher training colleges address the issue of racism in the initial and in-service training of teachers and in their research and services.

141. From an institutional point of view, mention should be made of the role played, at the cantonal level, by the Education and Migration Committee and the Swiss Conference of Cantonal Ministers of Education. The national conference on education and migration held in 2015 was devoted to discrimination and equal opportunities in the education system. One of the workshops was specifically devoted to discrimination in everyday school life.<sup>49</sup>

142. Where NGOs are concerned, the Foundation against Racism and Anti-Semitism has been offering an online training tool since 2016 for students and teachers who wish to study subjects related to human rights and discrimination. Other associations, including the Intercommunity Committee against Anti-Semitism and Defamation, organize awareness-raising activities for schools on these subjects.

<sup>47</sup> [www.semainecontreleracisme.ch](http://www.semainecontreleracisme.ch).

<sup>48</sup> [www.education21.ch/de/lernmedien/katalog](http://www.education21.ch/de/lernmedien/katalog).

<sup>49</sup> [www.edk.ch/dyn/14699.php](http://www.edk.ch/dyn/14699.php).



## 8. Other recommendations

### 8.1 Ratification of other treaties

*Implementation of the recommendation made in paragraph 19 of the concluding observations*

*The Committee encourages Switzerland to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be the subject of racial discrimination.*

143. Please see section 2 of part one of this report.

### 8.2 Consultations with organizations active in the fight against racial discrimination

*Implementation of the recommendation made in paragraph 20 of the concluding observations*

*The Committee recommends that Switzerland continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular combating racial discrimination, in connection with the preparation of the next periodic report and the follow-up to the present concluding observations.*

144. In drafting this report, the Service against Racism invited national organizations that combat racial discrimination to express, in writing, their views on the recommendations of the Committee and their implementation. The aim was to include these views directly in the report, in the form of additional information, or to place them in the annex as critical comments. Of the 32 organizations consulted, 3 responded, namely, cfd, FOIS and FSCI. All the organizations will be consulted again as part of the drafting of the alternative report.

145. Feedback from the NGOs that participated in the consultation has been included directly in the relevant sections of this report. In general terms, these NGOs highlighted the need to strengthen the Swiss legal framework in the area of racial discrimination. According to the Swiss Federation of Jewish Communities and Christliche Friedensdienst, civil and administrative legislation should include provisions on the prohibition of racial discrimination and the protection of victims. In addition, criminal legislation intended to combat racism was said to be easily circumvented (e.g. the Federation of Islamic Organizations in Switzerland believes that, increasingly, Muslims are deliberately being denigrated in private rather than in public). In the view of Christliche Friedensdienst, the law should provide for the allocation of the funding needed by the competent services to carry out their tasks effectively. That organization also expressed the view that relatively little emphasis is placed on protection against discrimination in the cantonal integration plans. The NGOs indicated that information and awareness-raising measures should be continued and stepped up. They recommended establishing a national human rights institution and continuing the support given to the Federal Commission against Racism. Lastly, all the NGOs stressed that politics and the media play a key role in combating racial discrimination and the stigmatization of minorities.

146. Documents relating to the consultation and a table summarizing the views expressed can be found in annex 5.

### **8.3 Dissemination**

*Implementation of the recommendation made in paragraph 21 of the concluding observations*

*The Committee recommends that the reports of Switzerland be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages.*

147. Please see the combined seventh to ninth periodic reports of Switzerland (paras. 380 ff.).

### **8.4 Common core document**

*Implementation of the recommendation made in paragraph 22 of the concluding observations*

*Noting that Switzerland submitted its core document in 2001, the Committee encourages it to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document.*

148. The core document is being updated and is expected to be submitted to the Office of the United Nations High Commissioner for Human Rights before the end of 2018.

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