# Switzerland
# and
# the International Convention
# on the Elimination of all Forms
# of Racial Discrimination (ICERD)

**Second NGO-Report**

**to the**

**UN-Committee on the Elimination of Racial Discrimination (CERD)**

**Forum against Racism**

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# Switzerland and the International Convention on the Elimination of all Forms of Racial Discrimination

## NGO-report on Switzerland's second and third periodic report to the UN-Committee on the Elimination of Racial Discrimination (CERD)

**Forum against Racism, February 2002**

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## Questions concerning Switzerland's report

Paragraph 259 - 268 / pages 7 - 8
Is it not contradictory, to take up a quite comprehensive article against discrimination in the constitution on the one hand, and not to adopt a corresponding legislation on the other?

Paragraph 259 / pages 9 - 10
What concrete measures and laws Switzerland wants to adopt to combat labour market discriminations that are based on origin, ethnic background or skin colour?

Paragraph 263 / pages 10 - 11
Is it not an undermining of the independence of courts as well as a violation of the equal treatment principle and of the discrimination prohibition, when the aliens police, using an administrative procedure, can expel from Switzerland foreigners who were never sentenced by a Swiss court to leave the country?

Paragraph 259, 268-272 / pages 11 - 13
Are not non-EU nationals discriminated on the ground of their origin and nationality by the legal anchoring of their "non-desiredness" and by a legislation specially intended for them, and who are moreover subject of a related perception as inferior human beings?
"Sans-papiers": Has Switzerland planned a clear and criteria-based regularisation procedure for long-dwelling "Sans-papiers" (illegal residents), tackling thereby, in a fundamental and efficient way, the structural exploitation problem of many people without residence permit? What kind of social rights are guaranteed to this vulnerable human group?

Paragraph 271 / page 14
Is Switzerland envisaging to join the "Convention on the Protection of Migrant Workers and their Families"?

Paragraph 273 - 280 / pages 16 - 17
Does the federal administration examine the introduction of a uniform right to citizenship, which could be obtained through a lawfully correct and non-discriminatory procedure?

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Is Switzerland ready to establish independent monitoring instances - to be contacted by deportee family-members, legal representatives and human rights NGOs - to supervise actual expulsion measures as well as exceeding and abusive police acts against foreigners?

Paragraph 292 - 299 / pages 21 - 23

What does the Swiss government undertake to be able to ratify the ILO-Convention 169, despite the negative decision of the Council of States?

Do authorities take interests in “travellers” by adopting adequate measures to facilitate their way of life in Switzerland and to further the acknowledgement of their culture?

Paragraph 323 / page 25

What do the State, the cities and suburban agglomerations undertake to prevent the emergence of immigration ghettos and to reach a better population mingling?

How does Switzerland control segregation in schools, i.e. the formation of “regular” classes only for foreign children or foreign language speaking children?

Is Switzerland eager to join the UNESCO-Convention against Discrimination in Education?

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What does Switzerland undertake, apart from helping singly projects, to financially support long-lasting organisations that combat racism on one hand and promote integration and comprehension on the other?

Paragraph 233-236 / page 27 - 28

Does not Switzerland consider the low number of local independent Ombudsman instances and the absence of a national Ombudsman instance as a deficiency to be addressed quickly (the establishment of an Ombudsman instance has already been deferred for over 30 years)?

How does Switzerland value such independent multi-faceted mediation authorities?

Paragraph 16 of the Concluding Observations / pages 29 - 30

Are there any reasons impeding the publication of the Swiss Report and the CERD recommendations in the official federal publication organ, the “Federal White Paper”?

Paragraph 62-68 / pages 31 - 32

Asylum legislation: Does not Switzerland consider the 24-hour appeal period in order to efficiently object an expulsion order as contrary to human rights and is she willing to extend such appeal periods to at least 72 hours?

Is Switzerland ready to grant free-of-charge assistance in the appeal procedure and to renounce to financial advances for asylum seekers?

Is Switzerland willing to acknowledge third party persecution if the state in question is neither willing nor able to grant the necessary protection?

Paragraph 62 / page 31

After a certain staying period, does the lack of a legal right to a better residence status for foreigners with a temporary admission (mostly people from non-EU countries) not forcibly lead to the non-integration of entire population groups (such as Somali who have been living in Switzerland with a temporary admission for nearly 10 years)?

Paragraph 90 / page 33

After close entanglements between Switzerland and the South African apartheid-system have been brought to light, should not Switzerland launch an examination that would look comprehensively into this issue, following the model of the “Independent Expert Commission ‘Switzerland - World War II’”?

Paragraph 237 - 245 / pages 34 - 35

What does Switzerland undertake to guarantee a fast school integration of all refugee children?

Paragraph 240 / page 34

What can Switzerland do to encourage cantons to integrate into public schools “courses in native language and culture,” which could help overcome the discrimination of foreign language speaking children?

Paragraph 252 – 253 / page 35 - 36

What does Switzerland undertake to improve the training of journalists and to protect their professional status?

## Introduction

In May 2000, for the second time after 1996, the Swiss Federal Council submitted a report on its policy regarding the implementation of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) to the UN-Committee on the Elimination of Racial Discrimination (CERD). Also for the second time, the "Forum against Racism" (Forum gegen Rassismus) has critically assessed Switzerland's report to the CERD and is putting forward its results within the present NGO-report.

Our report has two aims. Firstly, we would like to support the CERD in its difficult task of examining reports from over 150 countries. The CERD can come to sound judgements on the Swiss reality and politics only provided that its information sources are independent from the government. Secondly, racism is still a widely repressed topic in Switzerland. We hope to have succeeded in bringing light into this matter by presenting a basic document for public discussion. This publication does not claim to have found ultimate truth, but rather offers a collection of information, judgements, assessments and points of discussion regarding the issues raised in the government report.

Compared to the first report, Switzerland's second and third periodic report to the UN-Committee (hereafter "Swiss Report") has taken big steps forward and provides some substantial information. We are glad to acknowledge this positive development. This also reflects a global progress of anti-racism activities in Switzerland. Most importantly involved in this venture is the Federal Commission against Racism (Eidgenössische Kommission gegen Rassismus (EKR)), which participated in the elaboration of the Swiss Report. However, as with the first report, no consultation procedure (Vernehmlussungsverfahren) among involved circles was conducted.

We refrain from a general criticism of the Swiss Report. Our main aim is to consider whether the 1998 recommendations of the CERD were carried out. Therefore, our NGO-report does not respect the structure of the Swiss Report. It is mainly framed according to the CERD recommendations and contains also some additional chapters, which discuss issues not mentioned in the UN recommendations but which we consider pertinent to the Swiss Report.

We have left out the very important topic of anti-Semitism. Lately, this topic has unfortunately gained momentum in Switzerland. The discussions on Switzerland's role in World War II and her refugee policy as well as the "unclaimed" bank accounts and the gold

business with Nazi Germany have shown the still widespread anti-Semitic feelings held in Switzerland.[1]

The final report of the «Independent Expert Commission 'Switzerland - World War II'» (Bergier-Commission) will be published soon and can serve as a basis for a broad discussion on that question. The Bergier-Commission was initiated through strong international pressure. We do not want to anticipate its publication as our next NGO-report will give broad consideration to its results and the ensuing discussion.

We would also like to refer to the study "When extremism becomes commonplace" (Wenn Extreme Alltag werden).[2] Based on an analysis of newspaper articles on migration policy, this study shows how, from 1989 to 2001, one-time extremist right-wing labelled arguments were taken up by national conservative parties (Swiss People's Party (Schweizerische Volkspartei (SVP)) and Campaign for an Independent and Neutral Switzerland (Aktion für eine unabhängige und neutrale Schweiz (AUNS))). This dangerous development clearly shows the ongoing importance of anti-racist work in Swiss everyday life.

# PART I

# Remarks as to the Swiss Report Statements concerning the Concluding Observations of the CERD

## Lack of a Comprehensive Legislation to Combat Discriminations (paragraphs 5 and 10 of the Concluding Observations)

On examining the first Swiss Report, the CERD dealt extensively with Switzerland's handling of discrimination and showed concern "about the lack of an extensive legislation to

[1] The Federal Councillors refused to lift the immunity of National Councillor Blocher because of his controversial declarations in the 1997 speech „Switzerland and World War II. A clarification". They justified their conclusion as follows, "the free exercise of a parliamentary mandate carries inevitably the right to polemics, which are even sharpened in political debates." This conclusion prevented the passing of a principal judgement, which would have been important for all political sides.

[2] „When extremism becomes commonplace" (Wenn Extreme Alltag werden), Analysis of the right-wing argumentation as to asylum policy and foreigner policy, by Natalie Känel and Hanspeter Bigler, Berne, June 2000, published by the Society for Endangered People (Gesellschaft für bedrohte Völker), Waisenhausplatz 21, 3011 Berne.

combat discrimination based on race, skin colour, descent, and national or ethnic origin" and recommended, to the satisfaction of Swiss NGOs, that Switzerland "should seriously consider the adoption of a comprehensive law in order to fight discrimination based on race, skin colour, descent, and national or ethnic origin".[3]

From a NGO point of view, the deliberations in the Swiss Report as to this issue (259-268) are hardly satisfactory. Although the new Federal Constitution took up quite a broad range of discrimination prohibitions (see the new Federal Constitution, paragraphs 28-34, 76-80 and 317-319 / article 8, paragraph 2) – what is a substantial improvement in comparison with the former constitution - the federal authorities still refrain from adopting an extensive anti-discrimination law.[4] For years, NGOs have asked for such a law. Moreover, different organisations had already suggested the elaboration of an anti-discrimination law when Switzerland joined the ICERD.

The revision of the Federal Law on Trading Travellers (Bundesgesetz über Handelsreisende) (262), mentioned in this context, is a reaction to longstanding criticism as to "travellers'" discrimination in the exercise of their profession (in the first NGO-report to the CERD, we also criticised this point; see page 14 (English version); page 29 (French version); page 30 (German version)).

Experiences up to this day do not suggest that the federal authorities will themselves adopt a legislation "with the aim of a monitoring, as complete and flexible as possible, of all forms of discrimination". It should also be reminded that Switzerland, on the international level, has not yet joined the 1960 UNESCO-Convention against Discrimination in Education and, on the European level, has not yet ratified the 12th additional protocol (general prohibition of discriminations).

As to the combat of racial discrimination, it should particularly be reminded that Switzerland, when joining the ICERD, indeed adopted new articles in its criminal laws – (respectively Article 261bis Criminal Code (Strafgesetzbuch (StGB)) and article 171c Military Criminal Code (Militärstrafgesetz (MStG)), but these articles do not cover all areas (see also the 1998 recommendation of the commission, point 5). Even if the offences under article 261bis Criminal Code are punishable as offences requiring public prosecution, it happens again and again that the prosecution authorities only become active after a complaint. Another deficiency is that the article does not grant NGOs a formal complaint right or allow

[3] number 5 respectively 10 of the Concluding Observations (CERD/C/340/Add. 44), 30 March 1998.

[4] In the revised „Basic document as first part of the realisation of the UN-Agreement in the human rights domain" of 20 December 2000 (HRI/CORE/1/Add. 29/Rev. 1) in chapter III. C „Protection of basic rights by the Federal Constitution," the Federal Council unfortunately did not expressly point to the anchoring of the discrimination prohibition in the Constitution as it did in its report (Swiss Report).

them to appear in court as a third party (both of which should be taken into consideration in an anti-discrimination law). Moreover, there are areas where it is more useful to victims if they could get justice through means of civil law than to have the perpetrator penalised.

## Combating Labour Market Discrimination due to National Origin (paragraph 259)

Discrimination on the labour market on the grounds of skin colour, descent, and national or ethnic origin does not restrict itself to individual cases but is inherent in Swiss structures and the legislation concerning foreigners.

The Swiss labour market shows a clear segmentation according to a worker's origin and sex. On the one hand, foreigners are over-represented in such branches as private households (34%), other services (30%) and public health (27%), on the other, they are under-represented in the fields of instruction (14%) and public administration (11%).[5]

Differences in professional positions and situations are obvious. The percentage of unqualified manpower is much higher among people from non-European Union countries and from Southern Europe than among Swiss and Northern/Western Europeans, a fact which is mainly due to the foreigner status (see also commentary on article 62). In 1999, manager positions were held above proportion by Northern/Western Europeans: 43% of Northern/Western Europeans occupied a leading position while there were only 26% among Southern European Union nationals, 22% among non-European Union nationals and 31% among Swiss. In all groups, men were more represented than women.[6] The double discrimination of sex and origin is particularly striking among women from Southern Europe and from non-European Union countries (with less than 20% in leading positions). The professional status is generally lower with women than with men. Migrants, who often work in insecure employment areas, are more prone to become unemployed than indigenous women, and they thereby also risk their expulsion. 36% of all registered unemployed women are foreigners (three times more than their percentage among employed women).[7] Moreover, a number of unemployed women migrants are expelled and are therefore not accounted for in these statistics.

[5] Foreigners in Switzerland, Report 2000, Federal Office for Statistics.
[6] Foreigners in Switzerland, Report 2000, Federal Office for Statistics.
[7] "Women migrants in the canton of Berne" (Migrantinnen im Kanton Bern), by Sancar, Hungerbühler and Paiva, Cantonal Office for Equality for Women and Men, Berne, February 2001.

Scientific studies within the framework of the National Research Program 39 have examined more carefully the discrimination of foreigners on the Swiss labour market and have come to the following very revealing results. For instance, the comparison of people with the same qualifications showed that salary discrimination is worse with people from Africa (over 20%) than Eastern Europe. One important factor is that education certificates and diplomas are the less recognised, the further the "cultural distance" towards the country it was obtained is perceived.[8] Trade unions have again and again pointed to the pointed discrimination of dark skinned people on the Swiss labour market, especially related to job applications. At a conference in June 2000 of the "Reflection and Action Group against Anti-Black Racism" (Groupe de réflexion et d'action contre le racisme anti-noir (GRAN)), a number of black people's discrimination experiences on the labour market and with job prospects were gathered.[9]

In the asylum domain, unpaid work has been introduced in the form of "voluntary deployments," which is bound to the duty of collaboration during a foreigner's asylum procedure. The asylum seekers earn no more than some pocket money while they are granted social benefits, which, however, are 20-50% less than a Swiss citizen would receive.

## Prohibition of Discrimination in the Criminal Legislation Practice (paragraph 263)

With the judgement in the case of Boutlif versus Schweiz (application number 54273/00), the European Court for Human Rights reprimanded Switzerland on 2 August 2001 that she had expelled a sentenced foreigner who was married to a Swiss woman. As a fact, spouses of Swiss women and fathers of Swiss children who have committed a criminal offence are, on top of their legal punishment, expulsed from the country and prohibited to re-enter it. Such expulsion orders are mostly pronounced by the aliens authorities and not by the courts. In that way, in 1999, a chronically ill Chilean with a permanent residence permit (Niederlassungsbewilligung) was separated from his Swiss family (wife and two children) through a unlimited entry ban after he had served his sentence. The same fate menaced a Kosovo-Albanian married to a Swiss woman (and with a common child). He had also served

[8] "Inequalities between Swiss and immigrants: consequences of migration policies" (Inégalités entre Suisse et immigrés: conséquence de la politique migratoire), by Yves Flückiger, in: TANGRAM Nr. 11, Arbeitswelt, Bulletin of the Federal Commission against Racism.
[9] Bulletin 4 (August 2001), Forum against Racism, First meeting of black communities in Switzerland.

his sentence and should now be separated from his family by this additional punishment of the aliens police (Fremdenpolizei). Several legal steps and interventions by NGOs were not efficient in dissuading the aliens authorities from the practice of additional punishment against foreign family members, despite the recent judgement by the European Court for Human Rights.

Another area of concern is the arbitrary controls and arrests of people of black skin colour. In an undiscriminating way, the police suspects people of black skin colour of drug-trafficking. Occasionally, police officials frankly admit that the skin colour is their main tool to recognise drug-dealers; that all blacks would have to be checked regularly since the drug-trafficking were in the hands of black Africans.[10] Black Africans who protest against the illegal police procedures - after being subject of such controls and arrests - face to be charged with hindering of official police procedures.[11] Such an infringement can be followed by the withdrawal of the residence status.

## Bill for a New Law on Foreigners (Ausländergesetz (AuG)) (paragraph 268)

In summer 2000, the Federal Council forwarded a draft version of a Law on Foreigners (Ausländergesetz (AuG)) to the consultation procedure (Vernehmlassungsverfahren). The bill had not yet been presented to the parliament. The particularity of this bill is that it proposes that non-European Union nationals (that is people from the rest of the world) are treated as a separate group with a different law applicable to them. Entry to and the stay in Switzerland of European Union nationals are regulated in the bilateral Swiss-EU agreements on the free circulation of people (Personenfreizügigkeit), whereas the Bill on Foreigners almost exclusively proposes articles for non-Europeans, which are very restrictive regarding admission, family reunion (Familiennachzug) and criminal regulations and which differ crucially from the rather liberal regulations in the EU agreements. According to our opinion (which is completely opposite to that of the Federal Council), the current revision of the Bill on Foreigners proposes in many points a

[10] A discriminatory police conduct against people of dark skin colour and against other ethnic groups is provoked among others by the Final Report of the "Work Group on Foreigners' Criminality" (Arbeitsgruppe Ausländerkriminalität (AGAK), by the Federal Department of Police and Justice of 6 March 2001, see in particular paragraph 3.2. Need for Action.

[11] See individual case in bulletin 3/2001 of "Solidarité sans frontières".

substantially worse treatment of non-European Union nationals and therewith sketches a two-class migration system. Instead of the “seasonnier” (seasonal) status, it wants to introduce a temporary residence permit, which - in contrast to such a status for EU members - expires after two years and can neither be prolonged nor changed into a permanent residence permit.[12] Two years at the latest, nationals from non-EU countries have to leave Switzerland. The right for family reunion is linked to the income level. Given that the salaries of non-EU nationals are much lower than that of EU nationals (a statistically proven fact), the right for family reunion is crucially restricted by this condition. Moreover, family reunion is only allowed within the first 5 years of stay. This is the very period, when family reunion is not permitted because of insufficient income. Therefore, for many foreign families, family reunion remains unattainable.

According to the Foreigners Bill, a stay permit for foreign spouses (of a Swiss national or a person with a permanent residence permit) is only guaranteed, if the couple lived in the first five years of their marriage in a common apartment. Recently, also Swiss spouses in a bi-national marriage are said to be forced to a common living. This obsolete rule would be applicable to an important part of the population. Each fourth marriage in Switzerland is a bi-national marriage.

Aliens’ authorities and many a registry office bear a fundamental grudge towards bi-national marriages, in particular if the foreign spouse is not a EU national. In the framework of the Foreigners Bill revision, it is considered that registry office officials can refuse a marriage with a foreign spouse if there is the suspicion of a "fake marriage." Already now, many bi-national applicants are subject to unfair treatment if the foreign partner is asylum seeker. Marriages are often delayed by the setting up of always new conditions and by long waiting periods so as to achieve that a marriage does not stop a possible expulsion.

The CERD reminded Switzerland, when examining the second periodic Swiss report to the pact of II (CCPR), to revise existing legal inequalities between Swiss nationals and foreigners of all categories, especially the unfavourable treatment of foreign spouses and “Sans-papiers” (illegal residents)[13] (see also our comments in regard to the "Sans-papiers"). The Swiss government is intensifying discrimination against foreign spouses despite contrary efforts of the NGOs.

[12] see also paragraph 85, footnote 123, Swiss Report.
[13] Concluding Observations of the Human Rights Committee: Switzerland 73rd sessions, 5.11.2001, (CCPR/CO/73/CH).

## Immigration Policy

## (paragraphs 6 and 11 of the Concluding Observations)

Paragraphs 269 - 272

The Swiss report ascertains in paragraphs 269 and 270 that the reprimanded Three Circle Model (Drei-Kreise-Modell) has been abolished. The Three Circle Model included the circle of desired foreigners from EU- and EFTA-countries (First Circle), the undesirable foreigners from non-EU-countries (Third Circle), and the partially desired foreigners from states like Canada, USA, New Zealand, Australia, Japan and possibly Eastern European countries (Second Circle).[14] What kind of nationals were considered belonging to the Second Circle was never clearly determined. With the recent "elimination" of the Second Circle, a "binary admission system" was created, without an important change of concept (paragraph 82-84 and 270). However, in the binary admission system, the immigration of non-EU nationals, except for highly qualified people, is excluded. This concept is even more discriminatory for non-EU nationals regarding admission policies than the Three Circle Model and contradicts the labour market reality as non-EU nationals perform mostly unqualified work in subordinate positions (see above-mentioned commentary on "Combating Labour Market Discrimination due to National Origin", paragraph 259). This discrepancy leads to an increasing employment of individuals without any stay permit ("Sans-papiers"). It is noteworthy to mention that, in practice as well as in their writings, the administration still recurs to the Three Circle Model. For instance, the foreigner report published in 1999 by the Federal Aliens Office (Bundesamt für Ausländerfragen (BFA)) is explicitly based on this categorisation.[15] Such concepts as "cultural remoteness" and "low integration ability," attributed to non-EU nationals, have not vanished from the official discourse. Non-EU nationals are principally not desired in Switzerland, except for highly qualified manpower.[16] On 24 September 2001, with 64% of all votes, the Swiss population rejected a popular initiative of similar content (restriction of foreigners to 18% of the total population).[17]

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[14] see paragraph 82, Swiss Report.

[15] at different positions in the Foreigner Report by the Federal Aliens Office (Bundesamt für Ausländerfragen) (Berne 1999), the term "Third Circle" is still used, for instance on page 27 and page 29.

[16] From the adjoining report to the Federal Foreigners Bill , Berne, June 2000, page 10. „A permanent residence permit or a short residence permit for an employment should, according to the new Foreigners Bill, be granted to EU and EFTA nationals. Only if there cannot be found any suitable employees from EU and EFTA countries, permits can be granted to managers, specialists and other qualified manpower from third countries" (see also footnote 123, Swiss Report).

[17] The popular initiative „for a regulation of immigration" was launched by a right-wing committee. It considered that immigration is to be restricted to highly qualified employees such as qualified scientists and

## Reservations as to Article 2 Paragraph 1a of the CERD

(paragraph 271)

One of the arguments of the Federal Council in its implementation document for to the adoption of the ICERD runs as follows, "although the Swiss admission policy does not pursue any racial discriminatory goals, the Federal Council pronounced a reservation in regard to the Swiss labour market admission policy since the ensuing effects of this admission policy could engender a reproach of incompatibility with the present agreement. In its opinion, in order to overcome future problems, it is important to stick to the goals and principles of our foreigner policy, as formulated in the mentioned report. Such a reservation guarantees Switzerland the necessary liberty of action."[18] In paragraph 271 of the Swiss Report, a possible waive from this reservation is promised "given that the bilateral agreements with the EU and the new Law on foreigners from third countries will be in force." Even though the form of the model used to define a foreigner domestic policy is altered, no changes can be seen as to its goals.[19]
So far, there is no discussion on whether Switzerland will ratify legal instruments that improve the legal status of foreigners such as the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, the two Council of Europe Conventions (Convention on the Legal Status of Migrant Workers (1977) and Convention on the Participation of Foreigners in Public Life at Local Level (1992) as well as the 4th additional protocol to the European Human Rights Convention of 1963.

## The "Sans-papiers" (this chapter is not mentioned in the Swiss Report)

The Swiss report does not mention the issue of foreigners without any regular stay permit ("Sans-papiers"/illegal residents), although many "illegal residents" live and work in Switzerland under most precarious conditions. Numerous NGOs have asked for a possibility of regularisation since 1997, when a woman National Councillor made a proposal for "an amnesty of 'illegal residents'". As a rule, "illegal residents" are not nationals of EU states. As

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managers and to family reunion. The initiative was clearly rejected with 64% of the votes (especially by women voters, 71%).

[18] Message on Switzerland's adoption of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination and on the corresponding revision of the Criminal Code, 2 March 1992, BBI 1992 III 269, Special publication (92.029), citation on page 30/31.

a residence permit, according to the current law, is tightly bound to a staying purpose (for ex. a spouse or an employer), foreigners lose their permit if the staying reason vanishes (for ex. loss of working place or separation/divorce before completing 5 years of marriage). Such foreigners often become "illegal residents." They then live and work under most precarious conditions and cannot fight exploitation and abuse without risking their immediate expulsion. According to a press release of 16 November 2001, the "Swiss Forum for Migrations Studies" (Schweizerische Forum für Migrationsstudien) estimates that 70'000 to 180'000 foreign employees work in the Swiss economy without any residence permit. This number does not include unemployed spouses and children. The cheap manpower of "illegal residents" presents an important economic factor. For political reasons, the publication of the complete study was postponed several times by the Federal Department of Justice and Police (Eidgenössisches Justiz und Polizei Department), which had ordered the study.

Since spring 2001, the "illegal residents" in Switzerland have begun to organise themselves and to go public. They have sensitised media about their lawless status and about their discrimination experiences. Under the pressure of the media, the Federal Parliament finally had to deal with the issue of the "illegal residents." It has however not lent its hand to find a new solution: according to the Federal Council, only a few "cases of hardship" should be regulated.[20]

The conservative parties demand short residence permits of three to four months for people working in low wage jobs without the right of being joined by their family members.[21] People with such a short residence permit are exposed defencelessly to exploitation, as they are not able to sue anyone for abusive employment conditions within such a short time. Many of them would still be employed as "illegal residents " after the expiration of the three to four months, but to a even more disadvantageous salary.

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[19] This term, in the German original text of the Swiss report, corresponds to term „Drittausländer," which is farfetched and cannot be translated; in the French Version submitted to the UN it says „ressortissant d'Etat tiers"; in the English translation is says „nationals of third States.").

[20] see National Council debate of 10 December 2001, Administrative Bulletin. The incidents having occurred since 1997 are documented in the booklet "The Swiss 'Sans-papiers' movement from 1997 to November 2000" (Die Schweizerische Sans-papiersbewegung von 1997 bis November 2000)) by by "Solidarité sans frontières," Tel 031 311 07 70.

[21] see; Positional paper of the Radical Democratic Party (Freisinnig-demokratische Partei (FDP)) on the draft version of the Foreigner Bill, 1 December 2000 and the announcement of the "Trade and Farmer Association" (Gewerbe- und Bauernverband), Sontags Zeitung, 2 July 2000 and Basler Zeitung, 21 February 2001.

## Naturalisation Policies (paragraph 6 of the Concluding Observations)

Paragraphs 273 - 280

During the last years, as stated in the Swiss Report (paragraphs 158-159 and 273-278), naturalisations have become on object of xenophobia and racism. How is this possible?

"Switzerland's naturalisation procedure is characterised by the peculiarity of a three-level system. In other words: The Swiss citizenship is only then fully effective when federation, canton and community have decided positively on a claim. Each of the three administrative levels can, within their authority limits, link their consent to different prerequisites. The naturalisation procedure is therefore composed of three procedures (a federal, cantonal and communal procedure). This three-level system reflects the federalist construction of Switzerland and the autonomy of her communes." In addition, "according to the traditional concept, naturalisation constitutes a political act: The legislative decides on the naturalisation demands. (...) In the communes, in which the decision-taking authority is delegated to the executive, the granting of a commune naturalisation is not a political but an administrative act, provided that an appeal is guaranteed against this decision."[22]

Communal meetings or communal ballots serving as voting platforms for the granting of a communal citizenship open doors to agitation ranging from xenophobia to racism through hidden maliciousness. This happened repeatedly in the last years as shows the regularly publicised chronicle "Racist Incidents in Switzerland" (Rassistische Vorfälle in der Schweiz) by the "Foundation against Racism and anti-Semitism" (Stiftung gegen Rassismus und Antisemitismus (GRA)).[23] Even if that chronicle cannot claim to record any single event, it can be judged as very reliable. Its has recorded the following figures of total complaints and complaints related to naturalisation procedures (mostly rejected claims):

| Year | Total of racist complaints | Racist complaints concerning naturalisation | Percentage of racist complaints concerning naturalisation among total of racist complaints |
|---|---|---|---|
| 1997 | 80 | 7 | 9 |
| 1998 | 115 | 25 | 22 |
| 1999 | 139 | 31 | 22 |
| 2000 | 116 | 17 | 15 |
| 2001 | 117 | 34 | 30 |

[22] „The cantonal procedures for an ordinary naturalisation of a foreigner" by lic. Iur. Barbara Bonder, published by the Federal Commission against Racism, the Federal Commission on Foreigners and the Federal Aliens Office, 2000, citation on respectively page 14 and 15/16.

[23] Racist incidents in Switzerland. A chronology and an assessment, by Hans Stutz, published by the "Society of Minorities in Switzerland" (Gesellschaft Minderheiten in der Schweiz (GMS)) and the "Fund against Racism and anti-Semitism" (Stiftung gegen Rassismus und Antisemitismus (GRA)), Zurich.

In the "message (Botschaft) on the Law on Citizenship for Young Foreigners (Bürgerrecht für junge Ausländer und Ausländerinnen) and on the revision of the naturalisation rights legislation" homosexual couples are excluded. Concubinage is prevented if one of the partners has neither Swiss citizenship nor Swiss residence permit. The bill does not abide by Federal Constitution rule, which prohibits discrimination on the grounds of "life style."

## Stateless Children (paragraph 158)

Still unfulfilled is the lack of a naturalisation right for stateless people. This is particularly problematic for children.[24] Refugees' children as well as foreign children who came to Switzerland for a later adoption are particularly hit by the problem of statelessness.[25] There is a positive development as, with the revision of the constitution, the state was entrusted with the facilitation of naturalising stateless children (see paragraph 158, Swiss Report), and as, with the revision of the naturalisation rights legislation, the Constitution amendment should be implemented on a legal level. However, the Federal Law on Naturalisation does not automatically guarantee to stateless children a right to be naturalised. Therefore, the Federal Council is not sure whether this legal revision is sufficient to withdraw the reservations concerning article 7 as to the Convention on the Right of the Child, "Whether and possibly at which degree this reservation will still be justifiable, must be closely examined, once these law amendments are accomplished."[26]

[24] Switzerland therefore expressed a reservation concerning article 7, when ratifying the Convention on the Right of the Child.
[25] Children and adolescents in Switzerland: Report as to their situation, published by UNICEF Switzerland, Swiss co-ordination "Children's Rights", "Pro Familia Switzerland", "Foundation Children-Village Pestalozzi" (Stiftung Kinderdorf Pestalozzi), "Swiss Association to the Protection of Children" (Schweizerischer Kinderschutzbund) and "Pro Juventute", November 1999, page 60.
[26] Federal Council position of 13 February 2000 on the motion 99.3627, Didier Berberat in the National Council, 22 December 1999

## System of Extensive Police Controls of Foreigners and Police Brutality against People from other Ethnic or National Origin (paragraphs 6 and 10 of the Concluding Observations)

Paragraph 273, 279 - 287

Young men of dark skin colour are increasingly subject to exceeding and abusive acts by the police. In general, the former are not instructed on their rights when arrested and the use of force is normally not limited to the minimum. When lodging a complaint for ill-treatment by the police, the victims have to be prepared to face a counter-suit by the police because of hindering an administrative act or because of violence against civil servants. Such a counter-suit puts foreigners in the shoes of a criminal and hinders their right to stay.

As lawyers have repeatedly noticed, victims of exceeding and abusive police acts are often people with a restricted power of complaint (such as "Sans-papiers" (illegal residents), prostitutes, asylum seekers, members of a social minority). The police as perpetrator act in principle as a collective body. During controls, the police mostly request bystanders to leave the place, and therefore hardly ever are there witnesses of exceeding and abusive police acts. People being controlled are often undergoing a police ritual of submission and those putting the police control in question risk to be accused of resisting police enforcement. Criminal investigations against police officials by police and instruction judges seldom serve truth-finding. They so differ in crucial points from other criminal investigations that incriminated police officials are able to conspire before the criminal procedure. The victim or his/her legal adviser are often not invited to the hearings of accused police officials. Moreover, police officials and district attorneys (Bezirksanwälte) are not able to investigate in an unbiased way against their professional colleagues. This preconditions often lead to the suspension of the criminal procedure and to the acquittal of police officials.[27]

Examinations on illegal custody conditions of expulsion detainees are mostly conducted by administrative commissions (which are interest-bound), as it was the case with the Algerian Hamid Bakiri, who killed himself on 20 October 2001 while being detained in Chur. The deceased had been held illegally in isolation detention and moreover, after an accident, had received inappropriate medical treatment, which impeded his recovery. The expulsion detainee, objecting to military conscription, refused to be accompanied under any conditions by a police escort into his country of origin since he felt that his life was

[27] Marcel Bosonnet, lawyer, a short report on „Police brutality in Switzerland".

particularly endangered by such a procedure. This wish was to be rejected, whereupon Hamid Bakiri hanged himself in his cell.[28] NGOs discover such ignominies mostly by coincidence, because the right to visit expulsion detainees are often restricted by delay tactics and innuendoes. In Switzerland, there is no independent monitoring instance[29] that would systematically oversee expulsion detentions. The executive's structural changes in the organisation of expulsion procedures («swissREPAT», «procedures Airport» etc.) impede the monitoring by experts and NGOs considerably.[30]

Thanks to its extraordinary commitment, the human rights organisation "augenauf" (open your eyes) manages now and again to document abusive and exceeding administrative acts against foreigners and expulsion detainees; for instance in the case of Joao L., who was forcibly deported. Under a false name, handcuffed and chained, he was handed over to the Congolese administration on 14 October 2000 and then to the secret service. The Swiss authorities denounced the deportee as a military person and deserter. Subsequently, the Congolese administration interrogated Joao L. several times and detained him for over 10 months in prison and camp. "augenauf," which has uncovered different cases of abusive and exceeding administration acts on expulsion detainees and deportees, is massively hindered by the authorities in its activities of monitoring and legal counselling. Moreover it has been stigmatised as a "subversive" NGO and, as such, is ostracised and shunned.

In January 2002, the city police of Lausanne announced publicly the launching of the "Operation Alpha," which depicts the "black drug dealer" as criminals' profile. "The Reflection and Action Group against Anti-Black Racism" (Groupe de Réflexion et d'Action contre le Racisme anti-noir) protests against this police measure, which, based on skin colour, is intentionally aiming at black people who thereby are generally considered as suspects and prone to innuendoes. Such measures jeopardise the security of all black-skinned people.

Switzerland has often been criticised for exceeding and abusive police acts towards foreigners by international human rights organisations, such as amnesty international[31], but

[28] see reports of „augenauf" and "Solidarité sans frontières".
[29] see „Expulsion procedures in conformity with human rights and enforced with respect for safety and dignity," Doc. 9196, Committee on Migration, Refugees and Demography (European Council), rapporteur Ms. Ruth-Gaby Vermot-Mangold, Switzerland.
[30] Final report of the blueprint project „Airport procedure" (Verfahren Airport), 30 August 2000, Federal Office for Refugees.
[31] amnesty international: Concerns in Europe, September 2001, AI Index: EUR 01/003/2001 and August 1999, AI Index 01/02/99; Amnesty Internationel: Press release (London 29.6.2001, Switzerland: Urgent need of reforms after deaths related to forced expulsions;
Ligue suisse des droits de l'homme: Bilan d'une année de visites aux prisons qui sont détenues en vertu des mesures de contrainte, April 1999, Geneva

also by UN-committees (UN-Committee on Human Rights and the UN-Committee against Torture) as well as the European Committee against Torture.[32]

The UN-Committee on Human Rights stands by its recommendations of 2001:

11. The Committee is deeply concerned by reported instances of policy brutality on people arrested and detained, noting that such people are frequently foreigners. It is further concerned that many cantons lack independent investigation mechanisms for complaints related to violence and other forms of misconduct by the police. The possibility of resorting to court action cannot serve as a substitute for such mechanisms.

    The State should ensure that independent bodies, with authority to receive and investigate effectively all complaints of excessive use of force and other abuses of power by the police, are established in all cantons. Such bodies' authority should be sufficient to ensure that those responsible are brought to justice or are subject to disciplinary sanctions likely to deter future abuses and ensure adequate victims compensation (Article 7, ICERD).

13. The Committee is deeply concerned that in the course of foreigners deportation there have been instances of degrading treatment and use of excessive force, resulting in some occasions in the death of the deportee.

    The State should ensure that all cases of forcible deportation are carried out in a manner that is compatible with articles 6 and 7 of ICERD. In particular, it should ensure that restraint methods do not affect the life and physical integrity of people concerned.

The UN-Committee against Torture stands by its recommendations of 1997:

90. The Committee is concerned about frequent reports of ill-treatment during arrests or police custody of foreign nationals. In all of these cantons, there does not seem to exist any independent body monitoring and following up complaints of ill-treatment. The

[32] Concluding Observations of the Human Rights Committee: Switzerland. 73rd session, 2.11.2001 (CCPR/CO/73/CH)
Concluding observations of the Committee against Torture : Switzerland. 27/11/97. 19th session, 10-21 November 1997 A/53/44, paras.80-100. (Concluding Observations/Comments)
CPT: Rapport au Conseil Fédéral Suisse relatif à la visite effectuée par le Comité européen pour la prévention de la torture et des peines ou traitements inhumain ou dégradants (CPT) en Suisse du 11 au 23 février 1996

Committee is seriously concerned by the lack of an appropriate response on behalf the relevant authority.

93. The Committee is concerned by reports from non-governmental organisations, saying that, doctors have engaged in medical treatment of foreigners during the expulsion procedure.

94. The Committee recommends that devices should be set up in all cantons to record complaints against policemen regarding ill-treatment during arrest, questioning and police custody.

98. The Committee recommends to the State to devote the greatest possible attention to the handling of files concerning accusations of violence against public officials with a view to open investigations and, in proven cases, to apply appropriate penalties.

## Discrimination of „Travellers“ (paragraph 7 of the Concluding Observations)

Paragraphs 292 - 299

On 14 November 2000, the National Council Commission on Foreign Policy submitted a motion to ratify the Convention 169 of the International Labour Organisation (ILO). This convention should guarantee collective rights to indigenous people world-wide. However, it was unclear whether “travellers” in Switzerland would fall into the category of people protected by that convention.

Although the Federal Council rejected the motion, it was accepted by the National Council. Finally, it was rejected by the Council of States on December 5, 2001. The argumentation brought up by the Council of States in refusing the proposal is very problematic considering the recently uncovered 20$^{th}$ century “Swiss Gypsy Policy”. The Council of States refused a ratification saying that the Swiss “travellers” would probably cause additional costs. Out of fear of possible additional rights for a Swiss minority, who has been discriminated for decades, rights for indigenous people world-wide were rejected. A disadvantaged minority was played off against other disadvantaged people.

*Parking and Passing Places (paragraph 294)*

Today's parking places are all located at inconvenient sites, such as motorway borders and often overflowed river banks, which offer no privacy, no peace and no dignity. Even new sites are established without real consultation of the "travellers" (only after their decision of a site choice, the authorities inform the "travellers", violating thereby the European Convention on Minorities). There are even more despicable cases such as the use of a neighbouring area to a "travellers" site for construction purposes, once the latter have agreed to settle on the place in its former condition; for example in Fribourg, where a highly noisy and polluting waste plant borders the new "travellers'" site offered by the authorities who labelled it environment-friendly.

*Itinerant Commerce, Children Education (paragraphs 295- 297)*

The new Law on Itinerant Commerce has simplified administrative procedures, but it will cause future problems of a different nature: this law – under the pretext of being compatible with European Union standards – opens up the market to foreign "travellers," who are likely to arrive in Switzerland in huge numbers and bring major problems (dealt with in a later paragraph) but who also are a devastating competition with the traditional activities of "travellers". The refusal to protect traditional activities under the false pretext of globalisation is another way of destroying Swiss "travellers".

The report suggests that the children's education is guaranteed. However, indeed, the discriminatory prejudice is so deeply rooted in the population that young "travellers" are once for all considered as special school cases, what leads to them being seriously handicaped in schools, besides their speaking of the "manouche" language at home, what many teachers do not take into consideration at all.

Semi-nomadic "travellers'" children who leave school from Easter to November, have neither school-related follow up nor a caring (except for rare cases) and have to attend extra lessons to catch up, which by all means is not an adequate solution.

*Foreign "Travellers" in Switzerland (paragraph 298)*

This issue epitomises the peak of the Swiss authorities' confusion as to the perception of the "travellers". Although the coming of foreign "travellers" to Switzerland raises such problems as *tourist infrastructure*, *hygiene police*, it cannot be handled the same way as actions intended to better integrate the Swiss "travellers'" community in Switzerland. Despite its obvious social raison-d'être, the fact that the Foundation "Ensure a Future to Swiss

travellers" (Assurer l'avenir des Gens du voyage suisses) is occupied with questions on travellers from abroad, only adds to the *amalgam* produced abusively between problems of a totally different nature, *reinforces* discriminatory feelings, *revives* tensions and *prevents* a change of mentalities.

*Acknowledgement of the "Travellers'" Culture (paragraph 299)*

It is striking that the Swiss Federal policy has limited itself to establishing a Foundation: that is an institution out of norms and outside the administration and the traditional state activities. It should be reminded that it was also a Foundation - Foundation pro Juventute – that during 50 years kidnapped "travellers'" children from their parents to place them in orphanages or non-Roma host families, what constitutes a genocide according to article 2f of the 1948 Convention against Genocide. Now, today's foundation is led by a majority of "gadjes" (non-Roma people), composed of cantonal and communal representatives, who think in terms of a *police-body and not a political one*. The members of the council have neither an adequate training or a specific knowledge nor a particular sympathy with the "travellers," who are a minority within the foundation and can not make themselves heard.

The "travellers" in their moving from one place to another face the hostility of 3000 communes (in Switzerland there are about 3000 communes), whose communal police rules are intended to prohibit a stop in their communes. The cantons have no particular policy as they are not stimulated on the Federal level. Finally, the police ill-treats the Swiss "travellers" by numerous annoying and provoking check-ups, stirring sometimes incidents that could quickly turn into a serious problem. Two years ago, a foreign "traveller" was killed with a shot into his back by the Geneva police. Posters saying "Chase the Gypsies" (Chasse aux Gitans) were hanged up in Geneva police offices.

## Aspects of Criminal Law and Criminal Procedure (paragraphs 8 and 13 of the Concluding Observations)

Paragraphs 300 - 316

In paragraphs 300-307, the Swiss Report tries to give an account of the current application of article 261bis of the Criminal Code. Thereby, it refers to a number of publications and synopses. It is very striking that none of these studies was done by an official instance.

Obviously, there is a huge lack of official statistics in the domain of combating racism.

The Swiss Report frankly admits that there are a number of unclear and uncertain points as to the application of the Federal Law on Assistance for Victims of Offences (paragraph 308-310). In this context, it should be pointed out that a uniform Swiss Code of Criminal Procedure is being elaborated (see paragraph 37). The consultation procedure (Vernehmlassungsverfahren) on its draft proposal is running until end of February 2002. Question addressed to the Swiss delegation: how can this revision do away with the above-mentioned uncertainties and how can it moreover ensure that Anti-Racism Law violation victims (Article 261bis, Criminal Code) receive compensations according to the Law on Assistance for Victims of Offences?

## Reform of the Federal Constitution (paragraph 9 of the Concluding Observations)

Paragraphs 317 - 319

As to the legal anchoring of the discrimination prohibition – and not only regarding racial discrimination – we as an NGO are satisfied with the new Federal Constitution.[33] However, a concrete reshaping of the Constitution towards a comprehensive Anti Discrimination Law is still missing. As we take from the Swiss Report (paragraph 260), the

[33] Art. 8 Equality before the Law
1 All human beings are equal before the law.
2 Nobody shall suffer discrimination, particularly on grounds of origin, race, sex, age, language, social position, lifestyle, religious, philosophical or political convictions, or because of a corporal or mental disability.
3 Men and women have equal rights. Legislation shall ensure equality in law and in fact, particularly in family, education, and work. Men and women shall have the right to equal pay for work of equal value.
4 Legislation shall provide for measures to eliminate disadvantages affecting disabled people.

Federal authorities are not intending to tackle this issue. We have dealt in detail with this problematic issue in the chapter "Lack of a Comprehensive Legislation to Combat Discriminations (paragraphs 5 and 10 of the Concluding Observations)".

## Combating Apartheid Tendencies and Tensions (paragraph 12 of the Concluding Observations)

Paragraphs 322 and 323

*«Separate classes»: segregation in schools (paragraph 323)*

As single example of "tensions, which could lead to racial discrimination" (recommendation 12), the Swiss Report refers to a Federal Council's reply to a National Councillor's question on separate school classes for foreign language speaking children. It therefore ignores the two issues of area planning and housing policy,[34] which are mentioned in comment 19 ("General Comment 19") by the CERD and restricts its field of application to the education domain.

In its second part, which is dealing with schooling and education (paragraphs 237-245), the Swiss Report emphasises the segregation issue - that is the creation of regular classes with exclusively foreign children or foreign language speaking children (so-called separate classes). The comprehensive presentation in the excellent Federal Commission on Racism report (paragraph 243) and the positive comment of the Federal Council (paragraph 244) could make believe that this issue is settled in terms of human rights. This impression is even echoed through the political proposals in cantonal and communal parliaments in favour of separate classes, which had their climax in the years 1998 and 1999. No commune or canton has adopted a law or a fixed rule to establish separated classes. At this point, there are no separate classes in Switzerland explicitly declared as such. However, it is unknown how many classes in "ghetto quarters" had to be formed exclusively with foreign children or foreign language speaking children (because there are no more Swiss children). Also unknown is how many such classes were formed "unofficially" through special pupils' class composition, regrouping the few Swiss children in the same class. Therefore, the discussion about separate classes continues.

[34] The creation of immigrants' urban and sub-urban ghettos is a problem Swiss politics have not yet tackled and no counter-strategies or solutions have been developed. At least, this development is recognised by some urban integration concepts. Its solution demands the contribution of politicians.

It is to be reminded that until now Switzerland has neither ratified the 1960 UNESCO Convention against Discrimination in Education nor the 1st addition protocol to the 1952 European Convention on Human Rights (which guarantees the right to education) because of resistance within circles of the Conference of Cantonal Directors of Education (Erziehungsdirektorenkonferenz).[35]

## Support to Institutions and Contributions to Combat Racism (paragraphs 14 of the Concluding Observations)

Paragraphs 324 - 327

"The committee invites the signatory State of the agreement to make a contribution in funds to this decade's racism combating program. Furthermore, the committee wants, on the one hand, the Federal Commission against Racism to put at disposal sufficient means allowing it therewith to execute its tasks efficiently, and, on the second hand, other organisations and institutions active in that field to also receive necessary support."

It is difficult for people not directly involved to have an overview of the State's expenditures on combating and preventing racism (and even impossible to have an idea of the 26 cantons' and over 3000 communities' expenditures). Apart from the question of what can be subsumed as being pertinent to the issue,[36] the difficulty in determining expenditures is due to the fact that different offices in different contexts are in charge of the issue (and not one single federal instance), which may grant credits judging case by case. A good illustration of this are the deliberations in paragraphs 326 and 327 of the Swiss Report. Therefore, state budgets and bills do not show the total expenditures for the combat against racism.

[35] See: "Federation of the Public Administration Personnel Magazine for School and Kindergarten" (VPOD-Magazin für Schule und Kindergarten), Nr. 98, September 1996 "Education is a human right – also in Switzerland?" (Bildung ist ein Menschenrecht – auch in der Schweiz?), page 6 and 8.

[36] We doubt for example that the 5 million SFr. mentioned at the end of the Swiss Report list, intended for the „Integration of foreigners," are correctly subsumed under combat against racism, without wanting to question the necessity for integration measures for foreigners. It is yet another question whether the 5 million SFr. are appropriate for this huge task.

The Federal Commission against Racism (Eidgenössische Kommission gegen Rassismus (EKR)) is equipped with only a small secretariat (2 full-time jobs, shared among 3 people) and does not dispose of a lot of other financial means (see paragraph 325, Swiss Report). Nevertheless, it can give an astonishing account of achievements during the last years, which can be explained by nothing else than the enormous motivation of the secretariat personnel and the benevolent commitment of its commission members – as well as the backing by the Federal Department of Home Affairs (Eidgenössisches Departement des Innern (EDI)) and its director Federal Councillor Ms Dreyfuss (see figure in part II, paragraphs 218-226). How minimal staff resources are, can be judged for example from the following incident: This year, the second issue of "Tangram", the Federal Commission against Racism's publication, had to be dropped because of the departure of one of its employees.

When Switzerland joined the ICERD, the creation of an Ombudsman office for racial questions was claimed, but this claim was eventually refused by the majority in parliament. In a way as a substitute, the president of the Federal Commission against Racism (Eidgenössische Kommission gegen Rassismus (EKR)) was charged with the task of advising activities, that is the counselling of private people who declare to be victims of racial discrimination (compare paragraph 224-225). It is obvious that a person holding a honorary position cannot counsel all victims of racism in the whole of Switzerland. The creation of an Ombudsman instance is therefore still needed. But furthermore it is desirable, also from the point of view of a NGO, that the Federal Commission against Racism (Eigenössische Kommission gegen Rassismus (EKR)) is better endowed with staff and financial means .

## Ombudsman Instances (paragraph 233-236)

For several years, Swiss NGOs (such as the "Forum against Racism", "Solidarité sans frontières" and different women organisations) have tried in vain to create a national Ombudsman instance and regret very much that the executive has prevented the establishment of such an instance until now. The proposal for a national Ombudsman instance has been on the agenda for over 30 years (postulate of National Councillor Otto Fischer of 14 December 1970, but the executive has postponed this topic permanently for 30 years although there are

no valid arguments against such an institution).[37] Numerous renewed proposals in the parliament remained fruitless. The issue continues to be deferred by the executive as well as the legislative.

Also at the local level, there are by far too few Ombudsman positions. Although the existing positions have only been known for good work, most cantons or cities are opposed to their introduction.

The counselling instances mentioned in paragraph 235 and 236 can in no way fulfil the tasks of the Ombudsmen instance. The counselling instances mentioned in paragraph 235 are intern administration positions. The counselling offices mentioned in paragraph 236 are NGOs. The latter work partly with volunteers, without any State financial support and are moreover ignored and silenced as soon as they assume tasks of monitoring.

## New Federal Office and Open Questions

Throughout the course of the year 2001, in addition to the Federal Commission against Racism, an "Expert Instance to Combat Racism" (Fachstelle zur Bekämpfung von Rassismus) was created as well as a "Fund for Projects against Racism and for Human Rights" (Fonds Projekte gegen Rassismus und für Menschenrechte), endowed altogether with 15 million Swiss Francs. The establishment of this fund was triggered by the publication of the report by the "Independent Expert Commission on 'Switzerland-World War II'", which studied the role of Switzerland in World War II. This step is welcomed by NGOs. However, in this present report, it is not yet possible to seriously assess the work of the expert instance and the achievements of the fund.

In view of the European and World Conference against Racism, the Federal Department of Foreign Affairs (Eidgenössisches Departement für auswärtige Angelegenheiten (EDA)) entrusted the "Forum against Racism" for the period autumn 1999 until 2001 with the mandate of co-ordinating NGO-activities in Switzerland (altogether 35'000 Swiss Francs). This allowed the organising of several meetings and the publishing of altogether 5 bulletins for an interested audience. As desirable and welcome the funding of such particular activities is, as limited is its contribution to the daily work of these organisations, which have been active on anti-racist issues for long. Likewise, the creation of

[37] See: national ombudsman instance – a proposal by the conservatives in 1970. Arguments for a parliament initiative 98.445 "Federal ombudsman institution" (Eidgenössische Ombudsstelle), to be obtained by "Solidarité sans fronitères" (Sekretariat@sosf.ch, www.sosf.ch).

an expert instance and the establishment of the project fund are welcome, but the recommendations (paragraph 14) of the CERD are therewith only partly respected. The demand for more means for the Federal Commission against Racism (Eidgenössische Kommission gegen Rassismus) and the necessary support for "organisations and institutions active in the domain of race relationship support" still remain to be addressed.

## Explanations as to Article 14 of the CERD (paragraph 15 of the Concluding Observations)

Paragraphs 328 and 329

On 29 August 2001, the Federal Council passed "the message (Botschaft) on the acknowledgement of the responsibility of the Committee on the Elimination of all Forms of Racial Discrimination (CERD) in order to receive and discuss communications according to article 14 of the 1965 International Convention on the Elimination of all Forms of Racial Discrimination." On 10 December 2001, after a short debate, the National Council agreed to a proposal by the Federal Council with 86 against 35 votes (11 abstentions, 67 absentees).[38] The Council of States has not yet decided on the issue, but it can be expected that it will follow the vote of the Federal Council. Therefore, it is likely that Switzerland will adopt the Communications Procedure according to article 14 of the Convention this very year.

## Public Relations Activities (paragraph 16 of the Concluding Observations)

Obviously the Federal Council has a problem in how to introduce the topic of racism to the public. In the last years, human rights issues have undoubtedly gained importance in the political affairs of the Federal Council. But in two crucial domains other topics dominate. In foreign trade policy, business interests prevail over human rights concerns and, in migration

[38] To be critical it should be mentioned that the representatives of the Radical Democratic Party (Freisinnig-demokratische Partei (FdP)) were hesitant, in particular the Radical Democratic Party's business wing. No one participated in the debate and there was no communication as to the stance of the fraction. 14 of its members accepted the proposal, 4 rejected it and 8 abstained from voting (16 absentees). The present party president Bührer as well as his predecessor Steinegger abstained from voting; the director of the "Swiss Business Association" (Schweizerischen Gewerbeverband), Triponez, and police director of Berne city, Wasserfallen, voted against the proposal. The only member of Christian Democratic People's Party (Christlichdemokratische Partei ((CVP) who abstained from voting was Mr Hess, last year's National Council President.

policy (foreigner and refugee policy), the ideology of “being overwhelmed by foreigners” (Überfremdung) and ideas about defence strategies oust human rights issues.

## Proclamation of the CERD Recommendation

In March 1998, the Direction for International Law (Direktion für Völkerrecht) of the Federal Office of Foreign Affairs (Bundesamt für auswärtige Angelegeneheiten (EDA)) and the Federal Commission against Racism jointly published the brochure “Presentation of the first Swiss Report to the UN-Committee on the Elimination of Racial Discrimination”, this in the three official languages German, French and Italian. It comprises the first Swiss Report to the UN-Committee, the CERD recommendation, the Swiss delegation leader’s introductory speech to report to the CERD and the text of the ICERD.

It is the first time that Switzerland officially takes steps to convey to a wider public the recommendations of a Convention Committee. This is a very positive development.

At the same time, it is to be criticised that neither the Swiss Report nor the CERD recommendations were published in the state official publication organ, the Federal White Paper (Bundesblatt) - what unfortunately is customary in Switzerland’s handling of Swiss reports to UN-conventions and recommendations of convention committees. There is no official explanation to this; but it is obvious that such reports and recommendations are not intended to a wider public. It is to be hoped that the Federal Council finally steps up efforts in order to publicise and publish in the Federal White Paper (Bundesblatt) its reports to the UN-Committees as well as the UN recommendations.

# PART II

## ISSUES NOT TREATED IN THE CONCLUDING OBSERVATIONS

### Asylum Policy (paragraphs 62 – 68)

*Goal of a Comprehensive Migration Policy (paragraph 62)*

According to its present interpretation, the Swiss Asylum Law does not, as yet, accept, as a ground to grant asylum, threats and persecutions that do not stem from a state or a state organ. In that way, many people who fled their countries because of non-state persecution or threat are denied the asylum status, even though their country of origin is not able to protect them from human rights violations by third parties. This specific Swiss interpretation of "international recognised criteria" applies in particular to women who flee gender specific violence directed towards them. If violence does not immediately stem from state organs, asylum seekers receive, in the best case, a temporary admission, which is a very precarious residence status.

Temporary admitted foreigners are allowed neither to leave Switzerland nor to visit family members in neighbouring countries. They are disfavoured on the labour market, i.e. they only have access to unqualified and badly paid jobs. Due to their situation, they fulfil the demand of low paid manpower, although many of them are professionally qualified. Moreover, they have no legal rights to transform their stay permit into a permanent residence status. They are excluded from integration measures and teenagers hardly have any possibility to start a vocational training. Temporary admitted people, as for example Somali refugees – who for lack of state structures cannot validate a persecution by state structures – have often lived for 10 or more years in such a precarious situation.[39]

*Total revision of the Asylum Law (paragraph 63)*

Hardly had the totally revised Asylum Law come into force on 1 October 1999, that a partial revision of the same law was announced. A proposal, which suggests amendments with a restrictive trend in nearly one third of all the Asylum Law articles, was forwarded to the consultation procedure (Vernehmlassungsverfahren) in summer 2001. Following the right-

[39] In Switzerland, on 30 December 2001, there were 30'734 persons with a temporary admission, that is 33% of all people in the asylum domain. Recognised refugees (26'577) make up only 29% of this population group; see asylum statistics, December 2002, Federal Office for Refugees, Berne.

wing populist idea of "fighting misuses in the asylum domain," the Federal Council proposes a third country rule that would be by far the most restrictive in Western Europe. Since Switzerland is not member of the Dublin Agreement, she is not confronted with any obligations as to the handling of an asylum request. The proposed third country rule would enable Switzerland to refuse an entry to any asylum seekers who came into the country by land and would expulse the person to a neighbouring country. The proposed regulation would not guarantee that objections to an expulsion would be examined case by case since the application would not be examined in substance ensuing thereby the withdrawal of the suspensive effect. The asylum seekers would only be granted 24 hours to lodge an appeal with "qualified proofs" underlining that security in a third-state is not given and that would restore the suspensive effect.

The 24-hour delay is already effective under the current legal dispositions for decision not examined in substance (according to articles 32-34, Asylum Law). However, with the newly proposed ground for not examining a claim in substance (entry through a safe third state), the number of cases with an immediate expulsion order would raise importantly.[40] Moreover, in this short period of stay, the asylum seekers can be taken into custody. The extremely short delay to request the restoration of the suspensive effect violates the right to lodge an effective complaint (Article 13, European Convention on Human Rights).

*Temporary Admission (paragraph 65)*

With the total revision of the Asylum Law, entered into force on 1 October 1999, the "tool" of "temporary protection" was introduced for war expellees (articles 35, 39, 66, 68-71, Asylum Law). The government can design groups of people needing protection, who then are temporarily admitted in Switzerland. However, this as a generous and humanitarian claimed "tool" has never been applied up to now, neither with the innumerable war expellees from Kosovo (in the year 1999) nor with the refugees from Macedonia (in the year 2001). Both groups of war expellees have many a family member in Switzerland, who had been taken to Switzerland as "saisonniers" (seasonal workers). The Swiss government did not reach the decision to actually apply the newly introduced "tool" to the welfare of war expellees.

[40] See "Legal questions related to the planned revision of the Asylum Law; expertise to the UNHCR," by Professor Walter Kälin, in "Asylum" ((Asyl) Swiss magazine for Asylum Law and Practice), 4/01, Bern 2001.

## Condemnation of Apartheid (paragraph 90)

The Swiss official condemnation of the apartheid system was always paralleled with a justification of that system as well as with hidden relationships in the domains of economy and national security. Recently, there were repeated revelations about Swiss support actions to the apartheid regime, for example in the new publication of David Gygax, according to which Swiss ambassador Franz Kappeler requested the South African bank not to mention overtly Swiss credits any longer.[41]

Since the end of World War II, Switzerland had been one of the most important supporters of the apartheid regime. Top apartheid supporters were big Swiss enterprises that were linked to the "Swiss-South African Association" (SSAA) and which, beside economic and political co-operation, also engaged in public relations activities to justify the apartheid system. The apartheid state was considered by the SSAA as bulwark of the western civilisation against black predominance and communism. The SSAA was tightly entangled with the Swiss authorities, with leading representatives of the apartheid regime and the South African world of economy. Critical Swiss NGOs like "Boycott South Africa" and anti-apartheid-movements were faced in their work with insurmountable hurdles from the economic and political establishment. Still today, an extensive research of Switzerland's implication in supporting the apartheid system is hindered.

Because of the political pressure of different NGOs and revealing media reports, the government has started to look into the matter. It has ordained certain measures such as an internal administration investigation and the support of a research project of the Swiss National Fund on the relationship between Switzerland and South Africa at the time of apartheid. The examination is, however, essentially restricted to records available in the Swiss Federal archive since private enterprises have no obligation to open their archives. Also have researchers no access to national security files. The current lawsuit in South Africa against the former leader of the South African biological-chemical warfare program, Wouter Basson, who had a particularly intensive relationship with Switzerland, has shown the importance of a deep examination of the relationship between Switzerland and South Africa during the apartheid system. A new study has proved that apartheid was structurally and strategically supported by Swiss bank credits granted to South African state enterprises, such as the

[41] David Gygax: „Ths Swiss-South African Association (SSAA), a South Africa-based Swiss investment body" (La Swiss-South African Association (SSAA), un organe du capital helvétique en Afrique du Sud), Aux Sources du Temps Présent, Fribourg 2001.

electricity monopoly Eskom.[42] The National Councillor (Hollenstein) parliamentary initiative, which request a profound historic examination supported by an independent investigation commission, will be again on this year's agenda of the national Parliament instances and will be debated in publicly.

## School and Education (paragraph 237-245)

The issue of separate classes is discussed in chapter "Combating Apartheid Tendencies and Tensions" (paragraph 12 of the Concluding Observations).

*Refugee Children's Education (not mentioned in the Swiss report)*

There was a debate on the establishment of special refugee classes in 1999, when, within a short time, huge number of refugees streamed into Switzerland as a result of the massively intensified expulsion policy by the Serb regime after the beginning of the NATO bombing. The state administration in charge of the refugee policy strongly opted for the non-integration of refugee children into the Swiss school system. A "working team for the schooling of Kosovo-Albanian refugee children", which was widely supported by NGOs, worked out a three-level-model based on the principle of children's integration into Swiss schools (with the possibility of special, timely limited introductory school classes) and did political lobbying to realise this project. The Conference of Education Directors (Erziehungsdirektorenkonferenz (EDK)), after intern debates, decided to recommend the refugee children's schooling, who have a fundamental right to schooling and to a good quality education.[43]

*Courses in Native Language and Culture (paragraph 240)*

Referring to a seminary,[44] paragraph 240 of the Swiss Report tackles the issue of "courses in native language and culture" (Heimatliche Sprach- und Kulturkurse (HKS)). The report's deliberations are however not sufficient.

[42] Gottfried Wellemer, Credits to Eskom – An example of collaboration with the apartheid regime, published by the "Solifonds research group Switzerland-South Africa", Zurich 2002.
[43] see comprehensive report in: VPOD-magazine for school and kindergarten, Nbr. 112, June 1999 and nbr. 117, August 2000.
[44] Unfortunately, the reference to the relevant publication is missing in the Swiss Report, EDA/EDK-seminary of 10 June 1998. Seminary report. "The care for one's one language and culture: a gain for society and economy?," to by obtained from EKA-Secretariat, 3003 Berne

Theses courses were created on pressure of the so-called "traditional" foreign manpower countries, above all Italy. Originally the ideas was to keep up the linguistic and cultural relationship with the country – as both sides, the foreigners as well as the Swiss, assumed a time-limited stay in Switzerland. The courses for the "traditional" foreign manpower are regulated in agreements between these states and Switzerland and are financed by the former. The character of these courses has changed throughout the past decades, as it became evident that a return to the country of origin was rather an exception (especially for families) and that integration into the Swiss society was primordial. There was another change as more and more courses were no more launched and financed by the countries of origin, but which were in charge of (private) migrant associations.

Up to now today, the cantons show no willingness to take in charge the legal, organisational and financial responsibility for the "courses in country of origin languages and culture". They abstain from organising such courses together with countries of origin or from launching such courses for other languages. The government took a step towards the support of such courses with a draft proposal of a Law on Languages.[45] According to article 17c, the State should grant cantons financial support for «language and culture courses for people whose traditional language is not a national language.»

As long as such courses are not an integrated component of Swiss schools, children whose mother-tongue or first-language is not the language of instruction, are structurally discriminated in schools (this in contradiction with article 8 paragraph 2 of the Federal Constitution, which prohibits language-based discriminations).

## Information and Media (paragraph 251-257)

*Media (paragraph 252 and 253)*

There is a fundamental problem as the title "journalist" is not legally protected in Switzerland. Therefore there is no compulsory training for future media professionals. The training courses offered in the media field have recently become quite abundant and some are very excellent. However, they are not taken up by every journalist and are normally done as

[45] Federal Law on National languages and the comprehension between different language communities (Law on Languages (Sprachengesetz (SpG))), draft proposal for the consultation procedure; the consultation procedure runs until end of January 2002.

in-service training. Practical skills are often emphasised (writing techniques, and in the best cases techniques of research and program-applications) while media ethics are mostly neglected in the training and continuing education. However, the latter should be compulsory for media people.

In so-called crises situations of publishing houses, the budgets are cut and sometimes also is personnel reduced. Such measures increase enormously the production pressure and working stress in the redaction offices, leading to working conditions, where journalistic diligence tends to become secondary and quality protection to be unbinding. Also do such working conditions slowly abrogate journalists' professional ethic rules.

Because of this protected legal position of media people in Switzerland, here and there, the professional exercise is hindered. There are even abusive acts, especially against critical media people, by the cantonal administrations, in particular the police. The media trade union C*omedia* has monitored different incidents in Zurich.

*Internet (paragraph 254 and 255)*

Initiatives and measures by single States to fight racist and anti-Semitic contents on the internet are surely praiseworthy. However there is a lack of complementary and co-ordinated efforts at an international level since authors or suppliers of such web sides can avoid a criminal suit by dealing with foreign service providers. We would like to underline the necessity for international co-operation of the expert instance "Internet-Monitoring" as mentioned in the footnote 268 of the Swiss Report.