

NGO-Report

**on Switzerland's fourth, fifth and sixth
periodic report to the UN-Committee
on the Elimination of Racial
Discrimination (CERD)**

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Introduction

Switzerland submitted its fourth, fifth and sixth periodic report concerning its efforts for the implementation of the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) to the UN-Committee on the Elimination of Racial Discrimination (CERD). The following shadow report analyses the point of view of civil society concerning the implementation of the provisions. It covers the time period since the examination of the second and third Swiss state report before the Committee in 2002. The order of the issues follows the provisions of the Convention or the Concluding Observations by CERD of 2002¹ to the Swiss Government.

This commentary by non-governmental organisations does not claim to be a comprehensive parallel commentary on the Swiss report. Rather, it was prompted by a desire to illustrate the gaps in the official report i.e. to illuminate areas where the compliance of Swiss law with the Covenant appears at the very least in question, and areas to which we believe little or no significance has been accorded in the official report.

The following organisations and individuals have participated by stating their position in this commentary:

- Association contre le racisme ACOR SOS Racisme (www.sos-racisme.ch)
- Amnesty International, Schweizer Sektion (www.amnesty.ch)
- CRAN - Carrefour de Réflexion et d'Action contre le Racisme Anti-Noir. Observatoire du Racisme anti-Noir en Suisse (www.cran.ch)
- gggfon – Gemeinsam gegen Gewalt und Rassismus (www.gggfon.ch)
- Fenêtre anti-racisme (FAR) Fribourg - Contre les discriminations dans le travail et la vie quotidienne d'Œuvre suisse d'entraide ouvrière (<http://www.oseo-fr.ch/index.php/fr/fenetre-anti-racisme-far-11/>)
- Gesellschaft für bedrohte Völker (www.gfbv.ch)
- GRA - Stiftung gegen Rassismus und Antisemitismus (www.gra.ch)
- IGA SOS Racisme Solothurn
- Thomas Huonker, Zürich (www.thata.ch)
- Humanrights.ch / MERS (www.humanrights.ch)
- Anni Lanz, Solidaritätsnetz Basel
- NCBI – National Coalition Building Institute (www.ncbi.ch)
- Schweizerischer Friedensrat (www.friedensrat.ch)
- Vpod (<http://www.vpod-bildungspolitik.ch/>)

This report was edited by Humanrights.ch / MERS, Hallerstrasse 23, CH-3012 Bern (E-mail: info@humanrights.ch, www.humanrights.ch).

¹ See the Concluding Observations to the second and third report on Switzerland of the CERD; [CERD/C/60/CO/14](http://www.unhcr.org/refugees/pdf/CERD/C/60/CO/14.pdf), (05/21/2002).

Abstract

It is with concern that the non-governmental organisations (NGO) note that no improvement has been made on the following points since the second and third report by Switzerland in 2002:

1. There are still no effective instruments in place to ensure the implementation of the Convention on the Elimination of All Forms of Racial Discrimination at all levels of the Federation (state, cantons, municipalities) in a sustainable and non-discriminatory manner. (ch. 1.1).
2. The existing data does not allow for a conclusive assessment of the extent of racism and racial discrimination in Switzerland (ch. 1.2).
3. The extent of hostile attitudes, particularly against black people, Muslims, persons from South-Eastern Europe and asylum seekers, has not diminished, on the contrary, it has increased. Contrary to what the government said, budgets for the fight against racial attitudes and acts have been reduced at federal level. There are not sufficient support and counselling services across the country and some of the existing services received less funding to save costs. (ch. 2).
4. Switzerland does not portray their relations to the South African apartheid regime correctly (ch. 3).
5. Because the initiative of the Swiss People's Party SVP concerning naturalization procedures failed on 1 June 2008, popular voting on naturalisation requests keeps being prohibited, but municipal assemblies are still allowed to take these decisions. Furthermore, the right to appeal against decisions relating to naturalization matters is now secured. In municipalities, where municipal assemblies decide on naturalization requests, these requests are still being refused in an arbitrary way, even if someone had already filed several applications over the years (ch. 4).
6. Although the public education system formally does not contain any racist or discriminating regulations, in many cantons severe discrimination takes place by the early selection process and the extensive system of special schools. This becomes apparent by the lower educational successes and finally the higher percentage of youth unemployment among foreign children or children with a foreign mother tongue. Ensuring access to education for the increasing number of undocumented migrant children also gives rise to some concern (ch. 5).
7. Police violence, in particular against black people and asylum seekers, is still an area of concern. Independent investigations into cases of police violence are not guaranteed. Reports of intimidations of witnesses to police violence are very alarming. There are no statistics of complaints against police officers (ch. 6.1).
8. The situation of persons in detention prior to deportation is problematic. They often become victims of racial abuses and attacks without having any kind of protection. Particularly worrying is the fact that on average adolescents are kept longer in detention prior to deportation than adults and that they do not receive any special support during that time (ch. 6.6 and 6.7).
9. Switzerland has not yet ratified the Optional Protocol to the UN Convention against Torture (OPCAT) of 2002 (ch. 6.8).
10. The mandate of the Federal Commission against Racism has not been expanded and the demand for a Swiss National Human Rights Institution has not yet been fulfilled (ch. 7).
11. Persons of foreign nationality not stemming from EU countries face various obstacles. Due to a number of measures it is more and more difficult to guarantee their right to marriage and family (ch. 8.1 pp.).

12. Refused asylum seekers are literally treated as not having any rights (ch. 8.4).
13. The situation of the Yenish, Sinti and Romanies has not improved over the last years, but rather deteriorated further, for example concerning the question of living spaces. In connection with the expansion of the bilateral agreements on freedom of movement within the EU (Bulgaria and Romania) prejudice and hatred against Romanies stemming from these countries have been stoked (ch. 9).
14. No measures have been taken to fight more effectively against racial discrimination in the private sector, as had been recommended by the Committee as early as 1998. The demand for the creation of a comprehensive anti-discrimination law is still pending (ch. 10).
15. The fact that there exists no action plan in Switzerland for the implementation of the recommendations made by CERD as well as other international bodies is of particular concern (ch. 11).

It has to be concluded that the recommendations made by the Committee in 2002 to Switzerland have not been implemented. Progress has been made thanks to the judgements by the Federal Court of 2003 and the rejection of the initiative by SVP concerning the naturalisation procedures on 1 June 2008 (see final remarks ch.10). Only recommendation number 17 has been fulfilled: the proceedings to recognising article 14 of the Convention have been successfully completed. On 19 June 2003 the right to bring individual complaints before the Committee has entered into force for Switzerland.

The NGOs would like to point out that the UN Special Rapporteur on contemporary forms of racism, Doudou Diène², the Human Rights Commissioner of the Council of Europe, Alvaro Giles-Robles³, as well as the European Commission against Racism and Intolerance (ECRI) in its third country report to Switzerland of 27 June 2003⁴ came to similar conclusions. Within the framework of the Universal Periodic Review of the Human Rights Council (UPR) incidents and tendencies of xenophobia and racism are currently being debated and the treatment of migrants by Switzerland questioned. Switzerland has agreed before the Human Rights Council to increase its efforts for the prevention and the fight against xenophobia, for the ratification of the Optional Protocol to the Convention against Torture and for the creation of a national institution for the prevention of torture.⁵

² Mission to Switzerland, [Report by Mr. Doudou Diène](#), Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (AHRC/4/19/Add.2).

³ [The Commissioner - CommDH\(2005\)7 / 08 June 2005](#) - Report of Alvaro Gil-Robles, Commissioner for Human Rights, on his visit to Switzerland, 29 November – 3 December 2004 for the attention of the Committee of Ministers and the Parliamentary Assembly.

⁴ ECRI, [Third report on Switzerland](#) (adpted on 27 June 2003 made public on 27 January 2004).

⁵ A/HRC/8/41; see the documents on www.humanrights.ch ⇒ Swiss Human Rights Policy ⇒ [UN-HR Council](#) or <http://www.upr-info.org/>.

1. General Implementation Measures

1.1. Inadequate implementation due to the federal structure of Switzerland (Article 2 ICERD, Concluding Observations par. 8)

The Committee emphasised in 2002 that despite the federal structure of the State party, which may render more difficult the full application of the State party's obligations under the Convention in all parts of its territory, the Federal Government has the responsibility of ensuring the implementation of the Convention on its entire territory and must ensure that cantonal authorities are aware of the rights set out in the Convention and take the necessary measures in order to respect them (Concluding Observations CERD, Par. 8).

The problem that the cantons pay too little attention to international human rights agreements has been known for years and is regularly mentioned by various treaty bodies.⁶ Until today, however, efficient measures to guarantee a country-wide acknowledgement and implementation of human rights are still missing. The official report refers in this respect to the coordinating duties of the Federal Service for Combating Racism (para. 240, state report). This service, however, has neither the required competencies nor sufficient resources to carry out the necessary monitoring and to initiate or implement the needed adjustments in the cantons.

1.2. Insufficient data

It arises from the Swiss official state report that there is a lack of detailed data in the Federation in order to implement the Convention. This lack of data, however, is not further enlarged upon.

In order to fight racial discrimination in Switzerland, substantiated information on the victims and the perpetrators as well as specific features of the dominant forms of discrimination is needed. Furthermore, it needs information on the attitude of the Swiss population concerning the foreign population in the country in order to implement effective measures of intervention and awareness-raising. Switzerland is still far from being able to monitor racial discrimination in the country (see also ch. 6.2).⁷ Approaches to a conceptual or systematic data collection are inexistent, either at federal, or at cantonal level, apart from first endeavours to monitor racial attitudes.⁸

⁶ See for instance [Concluding Observations on the Committee on the Rights of the Child](#), CRC, 13 June 2002 or [Concluding Observations of the Human Rights Committee](#), CCPR, 12 December 2001, Par. 6.

⁷ See [TANGRAM Nr. 20/2007](#) (pdf, 112 S.) for a detailed analysis of data, Bulletin der EKR (see on the Website of the EKR www.ekr-cfr.ch).

⁸ See the preparatory work in NFP 40+ - Rechtsextremismus (see <http://www.nfp40plus.ch/topic3951.html>; in French: <http://www.pnr40plus.ch/topic4338.html>).

2. Increase of Racial Attitudes in Switzerland (Article 2 and 5 ICERD, Concluding Observations Paragraph 9)

The Committee showed great concern in its Concluding Observations of 2002 concerning the persistence of hostile attitudes towards black people, Muslims and asylum-seekers in Switzerland. The Committee recommended that the State party continues its efforts to prevent and combat such attitudes, including through information campaigns and education of the general public. Further, in the light of its general recommendation XIX, the Committee encouraged the State party to continue monitoring all tendencies which may give rise to racial or ethnic segregation and endeavour to combat the negative consequences of such tendencies (Concluding Observations CERD, Par. 9).

2.1. The Extent of Racial Discrimination

According to the assessment of NGOs tendencies towards racial discrimination have slightly increased since 2002. In particular movements of the extreme right, Islamophobia and racism against black people have increased.⁹ Concerning the situation of Muslims in Switzerland the „Chronologie Rassismus in der Schweiz“ of 2006 came to the conclusion that „Islamophobia“ today is one of the biggest racism problems in Switzerland.¹⁰ Muslims suffer from racism and racial discrimination particularly when they want to exert their right to practice their religion. They face many obstacles, for example, in municipalities when they want their own graveyards or want to build a mosque.

Inhabitants of darker skin colour, whether of Swiss or other nationality, face degradation by security agents or custom officers more often than others. In particular young men face blanket suspicions for drug crimes and have to fear checks and hostility everywhere.

NGOs and the Federal Commission against racism observe with concern tendencies of segregation, in particular of young dark men of African descent and young men from South-Eastern Europe. These two groups in particular complain of discriminating refusals to access public localities (bars, nightclubs etc.). Despite having knowledge of these incidents the bureaus of investigations often do not investigate, although they have, according to anti-racism article 261^{bis} of the penal law¹¹, the duty by law to investigate. Furthermore, according to studies and observations in Switzerland, latent *Anti-Semitism* has increased. It manifests itself in particular in connection with the occurrences in the Middle East (as for example in the summer of 2006). One can observe a connection between criticism against Israeli policies and anti-Semitic statements.¹²

⁹ According to the latest edition 2007 of the Chronologie „Rassismus in der Schweiz“, the number of recorded racial incidents has increased in 2007. According to the Chronologie in the past year there have been 30 percent more incidents recorded. In particular increased has verbal racism, in particular against Muslims and black people. Rightwing extremism has been on the increase for years. Anti-Semitic incidents have stagnated at a high level. See „Chronologie rassistischer Vorfälle in der Schweiz“ on the website of Stiftung gegen Rassismus und Antisemitismus GRA www.gra.ch. See also „Studies and Reports about Racism in Switzerland“ at www.humanrights.ch.

¹⁰ Chronologie rassistischer Vorfälle in der Schweiz 2006 at www.gra.ch.

¹¹ Alinéa 5: „Celui qui aura refusé à une personne ou à un groupe de personnes, en raison de leur appartenance raciale, ethnique ou religieuse, une prestation destinée à l'usage public, sera puni d'une peine privative de liberté de trois ans au plus ou d'une peine pécuniaire.“ (RS 311.0).

¹² In spring 2007 the Bernese survey institute GfS published a study to anti-Jewish and anti-Israeli mindsets in Switzerland. This study could not find a direct correlation between criticism of Israel and anti-Semitic actions in Switzerland. But almost half of the interviewed people said that Israel is leading a war of annihilation against the Palestinians. And 34 percent of the interviewed even went as far as comparing Israel's actions with the Nazis, which is tantamount to a reversal of guilt. This no doubt confirms that people in Switzerland who do not make a distinction between Israel and Jewish people, even if they are not openly anti-Semitic, treat the Swiss responsibility for the Holocaust in a problematic way. How much prejudices influence anti-Semitic tendencies,

There is hardly any data available of racial discrimination against the Yenish, Sinti and Romanies in Switzerland. Representatives of the groups affected, however, complain of frequent checks by authorities and the police as well as of insults and physical attacks by the majority population (see also ch. 9).

2.2. Intentional Fuelling of Xenophobia for Political Purposes

In particular black people and Muslims have become targets during election and popular voting campaigns during the last years. The right-wing parties in particular have launched xenophobic attacks and polemics during the last few years. On various occasions representatives of these parties attacked the anti-racism penal law and demanded its abolition¹³, they took on a leading role in Europe to prohibit the erection of Minarets¹⁴ and led their election and popular voting campaigns with xenophobic posters and computer games¹⁵. Particular outrage caused a poster of the Swiss People's Party SVP, where white sheep kick a black sheep out of Switzerland.¹⁶

In a letter to the Swiss Government, the UN Special Rapporteur on Contemporary Forms of Racism, Doudou Diène, as well as the Special Rapporteur on the Rights of Migrants, Jorge Bustamante, expressed their concern about this campaign. In their answer, the Federal Council wrote that the campaign, which the SVP lead in connection with their so-called deportation initiative¹⁷, would fall under the right to freedom of expression. Furthermore, the Federal Council affirmed that it had the firm desire to not tolerate any form of racism. It was, however, the duty of the judiciary to decide, if the anti-racism law would also apply to public statements¹⁸.

NGOs are concerned by the tendency that persons, who publicly exhibit support for foreigners, for example representatives of charities, human rights organisations, individuals of left-wing parties, but also judges, are publicly defamed or ridiculed.¹⁹

In the face of the described situation it is regrettable that the resources of the Federal Service to Combat Racism to support projects for the prevention of racism have been radically reduced. While the fund had 15 million francs for the period between 2002 and 2005 at its disposal, which the Committee welcomed in its recommendations (par.7), today the fund can dispose of only 800'000 francs annually, of which 300'000 francs are earmarked for school projects and 500'000 francs for projects in other areas.

however, are naturally difficult to measure.

¹³ See [Document de travail de l'OFJ](http://www.bj.admin.ch/bj/fr/home/themen/kriminalitaet/gesetzgebung/rassismus.html), mai 2007 Hearing concernant « la norme pénale sur le racisme » <http://www.bj.admin.ch/bj/fr/home/themen/kriminalitaet/gesetzgebung/rassismus.html>

¹⁴ A committee close to the SVP has launched an initiative which wants to add to art. 72 of the Federal Constitution a 3rd paragraph with the following wording: "The erection of Minarets is prohibited". See <http://www.minarets.ch/>.

¹⁵ See *Linards Udris/Patrik Ettinger/Kurt Imhof*, Les étrangers et les minorités ethniques dans la campagne électorale. Une analyse de la couverture médiatiques des élections fédérales de 2007. See <http://tandis.odihr.pl/index.php?p=ki-mu,doc&qid=8bab5b29f8ad7b32998d185e65cfc470&sort=pubdate>

¹⁶ See the examples in the annex.

¹⁷ Federal popular initiative for the expulsion of criminal foreigners. Signatures can be collected until January 2009. The initiative officially uses a poster with white sheep that kick a black sheep out of Switzerland (see <http://www.ausschaffungsinitiative.ch/>; in French: <http://www.typo3start.ch/sites/ausschaffungf/>).

¹⁸ For further information on the campaign see http://humanrights.ch/home/en/Switzerland/Policy/Racism/Incidents/idart_5363-content.html.

¹⁹ See for instance *Weltwoche* Nr.37/07: Bundesrat Blocher spricht von Asyljustiz und richterliche Arroganz in seiner Rede gegen einen Bundesgerichtsentscheid zur Einbürgerung am 20.1.06, lässt sich über die Bevormundung durch das Völkerrecht anlässlich des Nationalfeiertags vom 1.8.07 aus und äussert sich mehrmals diskreditierend gegenüber Bundesrichtern (Tagesanzeiger vom 31.1.06 „Eine Politisierung der Justiz“, Tages-Anzeiger vom 5.2.07 „Blochers Mühe mit den Asylrichtern“).

Thanks to the fund „Projects against racism and for human rights“, the Federal Service was able to financially support advisory services for victims of racial discrimination in various parts of Switzerland (francophone part, Schaffhausen, Zurich, Basel-Landschaft, Basel, Berne, Solothurn and Ticino) between 2001 and 2005. Today there is very little financial support for these services and there are different Offices such as SOS-Racisme’s “Urgent Phone” which had to shut down their services. With a few exceptions the cantons are not willing to get involved. The quality of the counselling services varies from region to region. There are some regions in Switzerland where no support services exist for victims or witnesses of racial discrimination and their families.

3. Condemnation of Apartheid (Article 3 ICERD)

The explanations of the Swiss Government concerning the relations of Switzerland with the South African Apartheid regime are problematic. As correctly written in the official report (par. 92), the Federal Council decided in 2000 to launch a research programme on the issue of Switzerland and South Africa. Everything else that is written, however, does not correspond with the facts.

The research was hindered by the Swiss Federal Council, when in 2003 fears emerged that the results of the programme could compromise economic interests of Swiss companies, if victims of Apartheid would lodge demands for compensation with American courts. One of the measures undertaken was the massive restriction of access to files of the federal archive. Despite these difficulties the final report of the programme was able to prove that Switzerland, for purely economical reasons, not only refused to follow the sanctions that almost all other states put on South Africa, but that it also deliberately left loopholes in the legislation, so that Switzerland could be used to conduct business with South Africa. The results also showed that Switzerland was by no means one of the first countries that decided on a weapons embargo against the Apartheid regime in 1963. This “embargo”, which, by the way, was decided on following a request by the UN Security Council, consisted of only applying the then still intermittent law on war material. Swiss arms companies, with the knowledge of the authorities, continued to indirectly deliver weapons to the white minority regime. When the research programme ended in 2005, the Federal Council refused to comment on the contents of the results and until today has answered several parliamentary questions evasively.²⁰ Par. 91 and 92 of the Swiss report, which in substance exactly correspond with declarations made by Switzerland during the Apartheid era, are clear evidence for this fact.

4. Naturalization Procedures (Article 6 ICERD and Concluding Observations Paragraph 10)

The Committee is concerned at expressions of xenophobic and racist attitudes in naturalization procedures, particularly those subject to popular vote. It is also concerned that according to legislation still in force decisions taken in accordance with such procedures are not subject to legal review. The Committee is of the view that the right to appeal against decisions, in particular arbitrary or discriminatory ones, in matters relating to naturalization has to be made an integral part of the policy on naturalization, currently in the process of being amended.

On 1 June 2008 the naturalisation initiative, which aimed at permitting ballot voting in naturalisation procedures and at abolishing the right to appeal, has been rejected, which means

²⁰ See for example the response of the Federal Council to [05.3913](#) – Interpellation Anita Fetz, Conséquences du rapport de synthèse sur les relations entre la Suisse et l’Afrique du Sud de 1948 à 1994.

that the revised law on naturalisation²¹ can enter into force. The revised law requires naturalisation authorities to give reasons for the rejection and to assign a court which will deal with these complaints. The influence of xenophobic and racist attitudes on the naturalisation process will then be limited, even if not completely eliminated from the decision process, because the current legal situation still allows decisions by the municipal assembly. Furthermore, it is left to the cantons to decide whether the courts entrusted in the appeals procedure can decide instead of the court of lower instance or whether they must return the case to be re-evaluated (reformatory or cancelling decision authority). Particularly in the area of naturalisation it has been shown that this is vital for the effectiveness of a legal remedy, as it is required by article 6 RDK. The legal protection which only results in nullifying a decision against discriminatory naturalisation is ineffective, even counterproductive. In one instance, for example, the complaint authority gave an Albanian complainant right and stated that the refusal of the Swiss passport by the municipal council was discriminatory and therefore unlawful. However, according to procedural regulations the authority was not allowed to check the fulfilment of the naturalisation requirements itself. It was obliged to hand the case back to the municipal council for re-evaluation, which means handing it back to the same institution that had made the racist decision. Some of the voters were annoyed by the "verdict of the foreign stewards" and for the following municipal council stirred against the "ex-Yugoslav"²² and rejected the request again, this time even more forcefully and no longer on obviously racist grounds.²³

Finally, if municipal assemblies carry out the naturalisation procedures, the risk of infringing on the right to private life is especially high. To be able to judge the suitability of applicants, the naturalisation institution needs detailed information about the personal and social relations. In the run up to municipal assemblies, voters' data is sometimes provided on their religious affiliation as well as hobbies and in rare cases even the way partnerships are lived. The data allows for no conclusions on the degree of integration of the people, but rather they carry the danger that decisions on naturalisation applications are influenced by stereotypical views (e.g. about certain religions).

5. Right to Education and Training (Article 5 (1) (e) (v) and Concluding Observations Paragraph 11)

In 2002, the Committee expressed concern about intended moves towards the establishment of separate classes for foreign pupils in some cantons. It is the view of the Committee that segregated schooling may only in exceptional circumstances be considered as being in conformity with article 2 in conjunction with article 5 (e) (v) of the Convention.

5.1. Structural disadvantage of foreign schoolchildren

The question creating separate classes had already been settled in 2000.²⁴ For political reasons there have been no new attempts to introduce separate classes since the decision in the

²¹ Federal law on acquisition and loss of the Swiss citizenship, amendments of 21 December 2007. Not yet come into force. Text at <http://www.parlament.ch/D/sessionen/se-aktuelle-session-ueberblick/se-schlussabstimmungstexte/winter2007/Documents/se-schlussabstimmung-03-454-d.pdf> (pdf 2 pages)

²² According to an extract from the meeting minutes.

²³ Other topical naturalisation cases which indicate a similar dynamic, chronology of racist incidents found in Switzerland (http://chrono.gra.ch/chron/chron_index.asp). For more information see *Federal Commission against Racism*, Discrimination dans le cadre des naturalisations. Avis de la CFR sur la situation actuelle, Berne, Septembre 2007 (www.ekr-cfr.ch).

²⁴ See official report Sec. 267-269.

canton of Lucerne²⁵. In practice, there are however "purely foreign-language" classes because of a "ghettoisation" in some city districts where Swiss families no longer live. Changing this, however, is not a question of education policies, but rather of city and regional planning and accommodation policies.

Otherwise, the Swiss education system contains no formal racist or discriminatory regulations anymore. Despite this, there are structures that in fact lead to severe discrimination. Primarily these are the *early selection* and the *expanded special school system* in the majority of the cantons.

In most cantons, first selection already takes place after the 6th school year. For the majority of schoolchildren this already defines the direction of their educational careers and ruins their chances at a higher education. The study "Professional Orientation of single and multi-lingual Youths in Comparison"²⁶ has clearly proven this. Children from the lower classes and especially immigrant children whose first language is not the local language of education are primarily affected. As the PISA studies have already shown, the Swiss education system compensates for social differences especially badly when compared internationally (euphemistically addressed in the official report in articles 271/72).

The development of the special schooling system is of particular concern (addressed in the official report, article 273). In total, there was an increase of students in special classes from 2.7% to 3.8% between 1980 and 2005. In the same period of time, the number of foreign children in special classes rose from 4.2% to 7.9%. The Federal Office of Statistics, from whom all the data originates wrote: "The percentage of foreign children has risen from just over a quarter (1980) to over 50% today. One in ten foreign children attends special classes at school compared to one in six Swiss children. However, the large proportion of foreigners is not the result of support programmes that were introduced explicitly for foreign children and youngsters (e.g. introduction classes for foreign language speakers). Only about one in six foreign children attending special classes has been in such a programme since the mid-1990s."²⁷

The entire special school system is currently being reorganised, initiated by the new regulation of the financial perequation and the sharing of duties between the Confederation and the cantons [German: NFA (Neugestaltung des Finanzausgleichs und der Aufgabenteilung zwischen Bund und Kantonen); French: RPT (réforme de la péréquation financière et de la répartition des tâches entre la Confédération et les cantons)]. The Swiss Conference of Cantonal Ministers of Education (EDK) compiled in addition a special concordat (inter-cantonal agreement on the collaboration in the area of the special education)²⁸ in wide consultation with the interested parties, especially the organisations for persons with disabilities. Immigrant organisations were not included. What effects this reorganisation will have on discrimination of immigrant children cannot be estimated at this time.

5.2. Youth unemployment

Switzerland not only has a youth unemployment rate higher than that of adults, there has been a severe lack of apprenticeship positions, which especially affects youth immigrants. They are

²⁵ Decision of the Department for Education and Culture of the Canton of Lucerne (EKD) from 26 June 2000. See in addition VPOD Magazine for School and Kindergarten, No. 117, August 2000.

²⁶ Romano Müller (2006) Choice of Career and Apprenticeship. Professional orientation processes and decision-making processes of foreign and Swiss youngsters in comparison. Final report for the attention of the Research Committee of the Educational College of Bern. Project Nr. 0002w05. Bern: Pädagogische Hochschule.

²⁷ Federal Office for Statistics, Percentages in special schools or classes on www.bfs.admin.ch ⇒ éducation.

²⁸ [Informations to the concordat](http://www.edk.ch) on the Swiss Conference of Cantonal Ministers of Education (EDK) website www.edk.ch ⇒ domaines d'activités ⇒ autres thèmes et projets ⇒ pédagogie spécialisée.

clearly penalised and discriminated against due to their background.²⁹ For this reason, there is an urgent need for action (addressed in the official report, article 339).

5.3. Undocumented children

A further structural problem is the education of undocumented children (covered in article 190, only addressed in a subordinate clause in chapter 4.3.4, articles 79-82), even though their right to attend public school during the required age of attendance is today hardly being contested. In individual cases that have become well known, where local school authorities did not want to comply with the laws, the EDK also immediately intervened. Despite this, an intensification of these problems has to be anticipated. As a consequence of the amendment of the asylum laws and the new Aliens Act, the number of undocumented persons and the corresponding number of children will increase.³⁰ The number of children not attending school will increase due to the fear of being discovered and the resulting deportation from Switzerland. Geneva is the only canton in all of Switzerland that has been active in having undocumented children also attend school³¹. On the contrary, there are municipalities that refuse to allow children, e.g. children of asylum seekers whose attempt at asylum was denied, to start school.

When compulsory education is finished, there are, as a rule, no further educational possibilities available. Only in a few exceptional cases is attending an advanced school possible and vocational training is completely closed to them, because training contracts (as a form of employment contract) are connected to legal status.³²

6. Police violence (Article 5 (b) and Article 6 RDK, Committee recommendations section 12)

Allegations of police abuse and excessive use of force against persons of foreign origin during arrest or in the course of deportations were also of concern. The Committee noted that many cantons do not have independent mechanisms for investigation of complaints regarding violence and abuse by the police, and that sanctions against responsible officers had been rare. The State party should ensure that independent bodies with authority to investigate complaints against police officers are established in all cantons. Efforts should also be made to recruit members of minority groups into the police and to provide sensitization and training of police officers on issues of racial discrimination (section 12 of the concluding remarks).

6.1. Degree of police violence

Numerous reports³³ of alleged acts of racial discrimination by the police during police operations show that the situation has not improved over the past six years. Based on many years of research, Amnesty International published a report in 2007 documented with numerous cases, in which the degree of disproportionate use of violence, the use of dangerous

²⁹ The study ROSITA FIBBI/BÜLENT KAYA/ETIENNE PIGUET, «Le passeport ou le diplôme ? Etude des discriminations à l'embauche des jeunes issus de la migration» proven within the framework of the research programme 43.

³⁰ See also chapter 8 below.

³¹ Geneva has given to the Centre de Contacts Suisses-Immigrés CCSI an official order as a place of information and advice centre for these questions.

³² Also see: Pierre-Alain Niklaus und Hans Schäppi (Hrsg.), Zukunft der Schwarzarbeit. Jugendliche Sans-Papiers in der Schweiz. Edition 8, 2007.

³³ See the cases in [Amnesty International, Polizei, Justiz und Menschenrechte, Bern, 2007](#) (pdf, 185 S.). [En Français: [Amnesty International, Police, justice et droits humains](#), Berne, 2007 (pdf, 180 S.).] Further violence is also reported by CRAN and ggfon. The EKR also received several reports from probable victims and witnesses from 2002 – 2007.

means and methods – face-down position, taser guns, life-threatening stranglehold for the purpose of confiscating heroin balloons – as well as racist and discriminating behaviour.

Based on reported and verified incidents the Amnesty report concluded that Black people as well as asylum-seekers and female asylum-seekers in particular face arbitrary treatment by police officers.³⁴ Blacks are already generally checked more often by the police due only to their appearance. The fact that these checks are also performed by private security firms is also critically examined in the report.

6.2. Lack of statistical details about complaints against the police

The NGOs are worried that there is still no statistical report and analysis of complaints brought against the police. Among other human rights bodies, CAT requested in 2005 that Switzerland compile such statistics³⁵. The few numbers available badly reflect the actual ratios and can hardly be interpreted. The delegate for complaints in the military and the police of canton Basel Stadt³⁶ only reports one case of police force in two years. The independent ombudsman of Basel, on the other hand, processed 22 cases in 2006 and 24 cases between 1 January and 15 August 2007, whereby not all inquiries had references to violence assaults, but were on conflict situations with the police. The others did not concern migrants in all cases³⁷.

6.3. Missing independent investigative institutions in the case of police violence

Amnesty International assesses in its report that the fallible police officers were practically never punished, because there either was not or not a thorough and impartial investigation. The report shows also the mechanisms how the accused police members systematically protect themselves against complaints and/or criminal proceedings.³⁸ A counter complaint, for example, was regularly filed by the police against the resisting victims.

Switzerland meanwhile has standardised criminal law proceedings. In the autumn session of the National Council and the Council of States a code of criminal procedure³⁹ was adopted and will enter into force in 2010. It replaces the 26 different cantonal codes of criminal procedure in effect today. According to the new law criminal offences should be pursued and judged throughout Switzerland along to the same rules. The law stipulates – which is to be mentioned positively – among other things, the introduction of a so-called "lawyer of the first hour" which must already be present at the first examination of a suspect. It is incomprehensible, however, that the demand of the CERD as well as other international bodies, to establish an independent investigation authority or a special public prosecutor's office which should become automatically active in cases of police brutality, could not be implemented.

³⁴ Amnesty International (a.a.O.), p 76 ff.

³⁵ See: [Concluding Observations of the Committee against Torture](#), 21/06/2005, Par. 4 e

³⁶ Switzerland's official report does not give information on ombudsmen who could mediate conflict situations: The responsible authority for complaints in the Police and Military Departments of Canton Basel-Stadt is neither a neutral nor independent complaint authority, but rather an internal department (Security Department). This is also thusly communicated by the Basel Canton Police on their own homepage. See <http://www.polizei.bs.ch/ueberuns/ueberuns-beschwerden.html>.

³⁷ The questioning of the existing ombudsmen would be very informative with regard to racist incidents in general, although also they are mostly confronted with controversial statements and can often do no unequivocal fact clarification. But, at least, the persons seeking help feel the ombudsmen take them seriously and can count on a careful as well as impartial clarification.

³⁸ Amnesty International (a.a.O.), S. 128 ff.

³⁹ Swiss criminal procedure from 5 October 2007, [BBl 2007 6977](#) (pdf, 172 S.). [franz. : Code de procédure pénale suisse du 5 Octobre 2007, [FF 2007 6583](#) (pdf, 170 S.).]

6.4. Protection against police violence through offices of the ombudsman

Unfortunately, since the last report on Switzerland the number of local ombudsmen responsible for cases of violence by security firms has not increased. New ombudsmen were only hired in the canton of Zug and in the city of St. Gallen (see official report section 278).

6.5. Treatment of witnesses by the police

The NGOs are concerned about known cases of intimidation of witnesses with police violence. The administration of justice, independent ombudsmen and human rights organisations rely on the statements of witnesses in the clarification of complaints of police violence. If, however, the police gets rid of possible witnesses by sending them away or even either fine them or threaten them with fines, as is known from Basel-Stadt, fair clarification of police violence (on racist or other motives) is impossible.⁴⁰ The police justifies this practise with the argument that this is in the interest of the affected persons and protects their privacy. It is not right, however, that potential witnesses, like in Basel, are intimidated by the police. Some decline to testify against the police anyway, particularly if they possess only a precarious residence status.

6.6. Situation in the deportation prisons

Independent controls would be particularly important in deportation prisons, in which persons without residence permits are more or less at the mercy of police authorities. Human rights activists who voluntarily visit deportation detainees to cover in the best way possible this serious gap⁴¹ hear over and over again from insulting terms of abuse during the police questionings and from disproportionate punishments (revoking of visitor privileges, locking up in the "bunker", etc.). The visiting hours of the Basel deportation centre (N.B. for administrative detainees), for example, are very limited (8.00 am to 10.00 am daily). This makes it impossible to the foreign partners, in particular to partners with small children from other cantons, to visit their partners and fathers.⁴²

The maximum duration of the custody on warrant of deportation as well as the preparatory custody which precedes the custody on warrant of deportation was doubled by the revision of the Alien and Asylum Act of 2005 from 9 to 18 or from 3 to 6 months.⁴³ In addition, custody was introduced for the enforcement of the duty to leave the country (coercive detention) of maximum 18 months. At the moment the different measures together may not exceed 24 months (because of EU regulations, Switzerland will have to fix the duration again to max. 18 months). The living conditions in deportation centres usually are not suited to such long periods in custody. Complaints have been made that the deportation centres are often not to the same standard as a "normal" prison.⁴⁴ The deportation centre in Basel, for example, has only a small courtyard for walking and there are activities only three times a week for a couple of hours.

There is a disproportionate amount of deportation detainees from Africa.

⁴⁰ See Tangram Nr 18, EKR bulletin, p.79, „Sich wehren gegen behördliche Willkür“; Basler Zeitung BAZ from 18.3.06: „Kontrolle der Kontrolle ist verboten“, Jugement of Appellate Court BS from 7.9.06.

⁴¹ Such as the solidarity network in the Basel region, for example

⁴² Deportation detainees from other cantons (Ticino, Aargau, Bern, etc) are to be found in Basel.

⁴³ Art. 75 ff. Federal law on foreign nationals from 16.12.2005 ([SR 142.20](#)). [franz.: Art. 75 pp. loi fédérale sur les étrangers (LEtr) du 16 décembre 2005 ([RS 142.20](#)).]

⁴⁴ It is reported that administrative prisoners who were previously in penitentiaries wished to return to the more humane and better organised conditions there.

6.7. Adolescents in detention

Not in line with the human rights obligations is the practise by different cantons of placing *minors* in deportation custody. According to the valid Aliens Act, adolescents from 15 years of age can be taken into preparatory and deportation custody for up to 12 months, as long as there is reason for being taken into custody. This normally has to do with the danger of the detainee going into hiding.⁴⁵ The National Council Control Committee has discovered that underage persons are held on average longer in detention than adults, although according to arrangement about the rights of the child the imprisonment may be arranged with persons under age only as a last resort and only “for the briefest amount of time”.⁴⁶ The Committee also determined that there are great differences in the executive code of practice between the cantons. While in some cantons detention for minors is forbidden, others treat them with the same measures as adults.⁴⁷ Special support for the minor is normally not guaranteed.

6.8. Outstanding ratification of the optional protocol of the UN Anti-Torture Convention of 2002 by Switzerland

It is unfortunate that Switzerland still has not ratified the optional protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment from 18 December 2002⁴⁸, while Switzerland was considerably involved in its drawing up. The protocol envisages the creation of a system that enables regular visits of all detention locations for the purpose of preventing torture and other ill-treatment. This visiting system is based on two pillars: an international mechanism, the United Nations sub-committee for prevention, and the "national prevention mechanism" to be created by the states parties. An independent national mechanism, as required by the convention under article 19, would be an important step in the guaranteeing of the right to security according to article 5 (b) CAT, because it would permit the continuous examination of all places where people are being detained.

At the end of 2006, the Federal Council released the ratification message,⁴⁹ however, only suggested a minimum variation of a national mechanism, namely the creation of an independent committee of twelve experts whom, according to the Federal Council's guidelines, should fulfil their task without a professional secretariat and without claim to compensation. Only travel and accommodation expenses would be reimbursed for the committee members. If the “Committee on the Prevention of Torture” were not able to fulfil tasks on this volunteer basis, a daily remuneration could be introduced at a later stage. The Federal Council's suggestions on the implementation were unanimously criticised by human rights organisations, but have been approved by the Council of States in the suggested form. The deliberations by the National Council are still pending.⁵⁰

⁴⁵ Art. 13c Par. 3 Federal law on habitation and settlement of foreign nationals from 26.3.1931. The clause is found in the new Aliens' Act in Art. 80 par. 4 ([SR 142.20](#) / ([RS 142.20](#)))

⁴⁶ [Art. 37 lit. b CRC](#).

⁴⁷ Child protection in compulsory measures in alien's law, report by the Business Audit Commission of the National Assembly from 7.11.2006 (BBl 2007 2521. Comments on the report by the Federal Council can be found in BBl 2007 2539.

⁴⁸ Text of the Convention see <http://www2.ohchr.org/english/law/cat-one.htm>.

⁴⁹ Statement from 8 December 2006 on the federal resolution on the approval and implementation of optional protocols on the United Nations treaty against torture and other cruel, inhumane or degrading treatment or punishment (BBl 2007 265).

⁵⁰ See documentation of business [06.105](#) - Bundesrate, United Nations business. Optional protocol against torture, on the parliament webset [www.parlament.ch](#). [franz.: [06.105](#) - Objet du Conseil fédéral, Nations Unies. Protocole facultatif contre la torture.]

6.9. Training and recruiting of police officers

The official report mentions in paragraph 275 that subjects like xenophobia and police exercise of power are given increased attention in police basic training as well as in advanced training. However, after an examination of basic and advanced police training programmes and inquiries at the police schools, it is doubtful whether there really are practical trainings which focus on these issues are in place. At the recently opened inter-cantonal police schools the human rights concerns like awareness raising on issues such as racism and racial discrimination have been missed out in the school curricula. In the course of the regionalisation the cantons have agreed on the smallest common denominator, a very time-limited, theoretical standard training on human rights and ethics. Hence, the responsibility for further training and advanced training, in particular awareness raising training, still lies with the individual police forces. Apart from a few exceptions (cantonal police of Basel-Stadt, cantonal police of Neuenburg and recently also the city police of Zurich and the city police of Lausanne) they are not willing to treat the subjects of human rights, migration and racism in a praxis-oriented manner. It is disconcerting that the cantonal police of Geneva intends to even reduce its awareness raising training in this area next year. The demand to include human rights issues in the basic training as well as in advanced training across the country and effectively in the sense of the recommendations by CERD is therefore still relevant.

Exemplary is the education that has been carried out in the canton of Basel-Stadt in collaboration with the anthropological institute, the integration delegate as well as the CRAN (Carrefour de Reflexion et d'Action contre le Racisme Anti-Noir) and has led to a strong awareness raising of the Basel police officers. Roundtable discussions together with informative meetings have been organised on the country of origin situation of young black Africans from West Africa and their cultural background, which led to direct discussions between police officers and Black people. This training was compulsive for the entire force, while corresponding training sessions in some other cantons remain optional.

Regrettably, only a few cantons (as far as is known these are Basel-Stadt, Schwyz, Geneva, Bern and Neuchâtel) have complied with CERD's demands to recruit and hire police officers from minority groups. There are legal obstacles to hiring people with a migration background in many cantons. The cantons require Swiss citizenship as well as a low maximum age. Basel-Stadt's policies can be mentioned positively, as the police law has allowed the possibility of recruiting migrants without Swiss nationality for some time now. Additionally, the recruitment age was raised to 40 years old and part-time employment will be permitted. A targeted campaign will be undertaken next year to recruit migrants in Basel-Stadt.

7. Independent human rights organisations (article 2 (1) ICERD and closing remarks section 13)

While commending the important work undertaken by the Federal Commission against Racism, the Committee noted in 2002 that the Commission has limited powers of action. The State party was invited to strengthen the powers and means of the Federal Commission against Racism. The present exercise to consider setting up a national human rights institution should take note of the criteria for setting up such institutions established by the General Assembly in its resolution 48/134 (the Paris Principles).

The mandate of the Federal Commission Against Racism has remained unchanged over the last five years. The resources of the Commission have not been expanded; on the contrary, they have been reduced.⁵¹

⁵¹ The budget was reduced from CHF 180,000 to CHF 155,000.

Until today, Switzerland has still not spoken out in favour of an independent institution of human rights in accordance with the Paris Principles. Both initiatives mentioned in the official report (section 285) in the National Council and Council of States from 2001 have remained without a concrete result, even though the study mentioned in the report confirmed the necessity of an independent institution in Switzerland. At the beginning of 2007, the Federal Council set up a task force – yet again – to clarify the question of appropriateness of such an institution in Switzerland.⁵² The results of the task force have been expected since the beginning of 2008.

8. Aliens' legislation (article 2, closing remarks section 14)

In its closing remarks, the committee called upon Switzerland, in view of the abandonment of its "three-circle" immigration policy to withdraw its reservation to article 2 (1) (a) of the convention.

8.1. The new Aliens' Act Overview

Switzerland has not withdrawn its reservation to article 2 ICERD. In the time since 2002, it has, however, re-written the Aliens' Act. The most important element of the new act, which came into effect at the beginning of 2008,⁵³ is legislating the dual admittance system for foreign workers. On the one hand no licensing restrictions count for members of the EU after a temporary arrangement, on the other hand access to the job market by non-EU foreigners is complicated. Only highly qualified or specialised workers are admitted in limited numbers. A "liberalisation of the admittance regulations for third-country nationals" (members of non-EU states) has been postponed and will only be carried out, if it should turn out that the labour requirements cannot be covered solely by EU citizens (Sec. 287 of the official report).

Beside the requirements for admission the legal position of non-EU foreigners (so-called third country foreigners) in comparison to EU citizen seems to be considerably worse. The original draft by the Federal Council⁵⁴ contained improvements for foreigners who have lived in Switzerland for a long time, but these have been almost completely discarded in the course of the deliberations; the main measures accepted are in the area of reduction of abuse and crime.

In summary, today's foreign policy contains, more than even five years ago, the fear of being smothered by foreigners and is far from withdrawing the reservation to article 2, even in mentality. Foreigners are also increasingly criminalised. A federal popular initiative "for the deportation of criminal foreigners" (so-called deportation initiative) put out by a right-wing party whose compatibility with international law is currently being discussed is particularly unsettling, because it even flouts rights arising from international law (see above ch. 2.2.).

8.2. The right to marriage and the free choice of partner and family (article 5 (b) sec. iv ICERD)

The measures undertaken by Switzerland in the last few years for the *fight against marriage of conveniences* makes marriage to foreigners very difficult, to such an extent that the human and fundamental rights-based right to marriage (Art.13 Federal Constitution) is no longer given. Marriages between Swiss persons, persons stemming from the EU and other foreigners with permanent residence and non-EU members are under the suspicion to be entered abusively and must go through special examinations. The papers have to meet high and, depending on the country of origin, difficult to meet demands, so that months and even years

⁵² Refer to the Födervereins Menschenrechtsinstitut website at <http://www.foerderverein-mri.ch/> as well as documentation at www.humanrights.ch "Creation of a National Human Rights Institution in Switzerland" at <http://humanrights.ch/home/en/Switzerland/National-Institution/content.html>.

⁵³ SR 142.20 / RS 142.20.

⁵⁴ Comment on federal law on foreign nationals from 8 March 2002, [BB1 2002 3709](#).

can pass before a marriage can take place in Switzerland.⁵⁵ If the foreign marriage partner is already in a deportation process, it is always assumed to be a marriage of convenience and the aliens' police then tries to deport the foreign partner – against the will of both marriage partners.⁵⁶

The difficulties with the marriage for all binationals – 40% of marriage ceremonies are binational – or foreign married couples⁵⁷ is particularly objectionable since the success rate of discovering marriage of conveniences is low.

With the introduction of the Aliens' Act of 2008, civil servants were given the power to prevent the marriage if a marriage is clearly only entered in for the associated residence permit. If an office involved into the marriage procedure uncovers such evidence, the other involved offices and the Swiss representation in the country of origin of the foreign spouse are notified. If a child has resulted from the marriage, the assumed paternity of the husband is then nullified so that the child from the alleged marriage of convenience is suddenly fatherless.⁵⁸

Further limitations on the right to marriage are planned. Rejected asylum seekers and persons living illegally in Switzerland will not be allowed to get married in Switzerland anymore, even if they have lived in a relationship in Switzerland for many years. The Swiss civil code and the federal law of registered partnership for same-sex partners⁵⁹ are supposed to be changed so that foreign partners in the preparation procedure must prove they can legally stay and the registry offices must notify the foreigner authorities, if the future bride or groom lived illegally in Switzerland.⁶⁰ With these laws a disproportionate limitation on the right to marriage and family for Swiss nationals is also accepted. A further proposed revision is to prevent people from acquiring Swiss citizenship through the marriage of a Swiss national. The draft wants to expand the time period for the annulment of naturalisations from the current five years to eight years in the citizenship law.⁶¹

⁵⁵ See also reports in IG Binational, Verein für binationale Partnerschaften und Familien, Autumn 2007, Bulletin issue 108.

⁵⁶ Example: At the end of 2004, the asylum request of Mr Y from Afghanistan, more than two years after his request submission, was legally turned down and his deportation was ordered. His presence was temporarily tolerated, nevertheless, the procurement of his travel papers was already taken up. In summer 2005, Mr Y married a German national resident in Switzerland with whom he had lived before getting married. They wanted to raise children together and because his wife did not fall pregnant, Mr Y underwent a medical procedure to improve his fertility. After the couple tried to have a family reunion after the marriage, both partners were separately interrogated (the usual questioning procedure on the knowledge of the spouse history, their meeting, the wedding and the reason for marrying). The aliens police saw the marriage of Mr and Mrs Y as a clear case of marriage of convenience and the remained adamant about the deportation of Mr Y. The pressure was so great that Mr Y had to receive treatment at a psychiatric clinic. The family immigration request was turned down in November 2006 supported on the ininterrogation protocols from 2005. The fact that the couple had lived together since summer 2005 was not taken into consideration, neither were the couple granted a legal hearing on the accusation. Mr Y was put into detention at the beginning of 2007, then released by the custodial judge. The aliens police justifies their deliberate deportation execution with the fact that also the proven desire to have child children by Mr and Mrs Y did not change the matter of fact of the marriage of convenience. "Following the behaviour of the suspect, it has to be assumed that the only purpose of the claimed desired child is to guarantee Mr Y residence." The case is currently pending at the ECHR.

⁵⁷ From 39,817 registered marriages in 2006, 20,032 were marriages between Swiss nationals, 15,066 marriages were between a Swiss and foreign national and 4,719 marriages were between two foreign nationals. See the current numbers on the Federal Office of Statistic's website www.bfs.admin.ch ⇒ Bevölkerung ⇒ Bevölkerungsbewegung.

⁵⁸ Changes to the accused marriage of convenience in the Civil Code: Art. 97a, Art. 105 par. 4, Art. 109 Sec. 3 (SR 210) / (RS 210).

⁵⁹ SR 211.231 / RS 211.231.

⁶⁰ 05.463 - Parliamentary initiative Toni Brunner. Preventing marriages of convenience. [franz. : 05.463 - Initiative parlementaire Toni Brunner. Empêcher les mariages fictifs.]

The new Aliens Act does, however, expand the possibility to have family members move to Switzerland to short-term residents from non-EU countries.⁶² The subsequent immigration of family members with persons from non-EU countries is, however, dependent on whether the spouses live together among other things. This applies now also to Swiss nationals⁶³ who are married to a spouse of a third country, but not for EU citizens. The cohabitation requirement is not only problematic for women, some of whom experience violence in the marriage, but also for the children. Their right to remain in contact with the parents is not usually paid attention to in practice. If the parents separate and no longer live together, the authorities may withdraw the foreign parent's residence permission, even in cases where the marriage produced children. The mothers are usually deported together with the children – even Swiss children – while foreign fathers are deported without children. In each of these cases the children are separated from their father. The father-child relationship is given only minor importance by the authorities and judges. Expulsions of a separated parent take place even before custody and visiting rights are cleared under civil law for the children and without clarifying the interests of the children according to the Convention on the Rights of the Child.⁶⁴ Foreign fathers whose residence permits were taken away often sit for many months in deportation custody, because the home authorities do not want to assist in tearing families apart⁶⁵.

What has been disturbing over the last few months is the practices of certain cantonal migration offices who have not given residence or work permits to persons married to and cohabiting with Swiss partners, because the authorities suspect a marriage of convenience despite evidence to the contrary.⁶⁶

Subsequent immigration of family members for third country foreigners has been given a time limit: any demand has to be made within five years. Children over twelve years have to immigrate within twelve months.⁶⁷ The migration authorities may determine the approval of additional family immigration and is only granted if important family-related reasons can be brought forward.

8.3. Situation of undocumented persons

In its concluding remarks in 2002, the CERD does not especially mention the difficult situation of undocumented persons (people who live without residence permits) in Switzerland. However, the UN special correspondent on contemporary forms of racism, Doudou Diène, paid much attention to Switzerland⁶⁸ in his report from January 2007. Because of two reasons: the problems of undocumented persons was only put on the political agenda in 2007, when undocumented persons in Switzerland began, like their counterparts in France, to organise themselves and openly demand for more rights. Then a new category of illegals which had previously been excluded from the asylum category was created by a regulation brought into force on the 1 April 2004 in the asylum law and Aliens' Act.

⁶¹ [06.414](#) - Parliamentary initiative Rüdi Lustenberger. Change to civil rights law. Rescissory action. Term expansion. [franz : [06.414](#) - Initiative parlementaire Ruedi Lustenberger. Loi sur la nationalité. Délai plus long pour annuler une naturalisation.]

⁶² Art. 44 AuG ([SR 142.20](#) / ([RS 142.20](#)).

⁶³ Art. 42 AuG ([SR 142.20](#) / ([RS 142.20](#)).

⁶⁴ See Marc Spescha: Migrationsabwehr im Fokus der Menschenrechte, DIKE-Verlag Zürich/St. Gallen 2007, S.64-91.

⁶⁵ There are different Federal Court judgments in which it is determined, that the father can maintain his relationship with the child via telephone calls or letters, as in BGE 2A.240/2006, 2C_274/2007, BVGE C-359/2006.

⁶⁶ Amnesty International currently possesses the files of two such cases from GR and TG cantons.

⁶⁷ Art. 47 AuG ([SR 142.20](#)) [Art. 47 LEtr ([RS 142.20](#))]. The decision is not valid for EU nationals.

⁶⁸ See note 2.

At the end of 2001 the director at that time of the justice department, federal council member Ruth Metzler, published for the first time guidelines that allowed legalisation in special cases of undocumented persons. 3,000 undocumented persons, more than the remaining asylum seekers in the country, had registered with the authorities by September 2005.⁶⁹ Over 1,800 people were legalised. After September 2005, when this guideline was tightened under Federal Council member Blocher, there were hardly anymore registrations. Only a further 432 legalisation attempts were made up to May 2007 (in the Canton of Geneva there were 227 and in the Canton of Waadt there were 120 legalisation attempts to the Federal Office of Migration). In these two cantons the base movements in favour of undocumented persons are more lasting and the policy on foreigners are more open. The majority of the remaining 35 attempts came from undocumented persons who were caught in a police operation. Only a mere 240 undocumented persons were legalised between May 2005 and May 2007, even though some cantons wanted to offer a somewhat more generous hand.⁷⁰ The Federal Office for Migration, the Federal Court and the Federal Administrative Court developed an extremely restrictive approval practise contrary to the recommendations of the Federal Foreigners Commission task force on undocumented persons. The parliament ruled out the possibility of regulating undocumented persons in 2006 within the framework of the discussion of the new federal law on foreigners.

The number of undocumented persons from asylum seekers will continue to increase in the coming years, because all legally valid refused asylum seekers have been locked out of social benefits since 1 January 2008.⁷¹ Statistics now show 20,801 people⁷² who have lived for more than five years as asylum seekers in Switzerland and who would therefore fulfill the requirements to receive a regular residence permit as a *hardship case*.⁷³ "Hardship case" defines the situation of persons with precarious status whose return would signify a serious, personal predicament because of the successful integration in the Swiss society. The cantons have been able to make use of this hardship case rule since 1st January 2007. The Swiss refugee aid concludes in a study relating to this practice that the cantons not only manage the hardship case rules within an absence in uniform guidelines, but also that many cantons generally do not use the legalisation possibility at all. This threatens to create a lottery out of the hardship case rule for applicants, particularly as they are assigned to specific cantons completely randomly.

8.4. Asylum seekers following rejection of the asylum attempt: Virtual loss of rights

The NGOs are disturbed about the treatment of asylum seekers who are excluded from social help on account of a rejection decision or a negative asylum decision.⁷⁴ The authorities as well as a part of the population are only partly aware that human rights count for all people, thus also for the rejected asylum seekers. According to article 12 of the Federal Constitution, these people have a right to be helped, to be cared of and to the means that are essential to a humane existence. Nevertheless, the assistance provided in many cases, does not allow for a humane life. In some cantons the money allocated for the everyday survival are barely enough for sufficient food (e.g., Solothurn canton pays 24 CHF per day for a 5-member family). Above

⁶⁹ There are broadly divergent estimates in different studies, from 90,000 (BFM study from autumn 2004) to 300,000 undocumented persons in Switzerland.

⁷⁰ From unpublished BFM statistics „Cas de rigueur présentés par les cantons depuis 2002“.

⁷¹ Art. 82 Sec. 1 AsylG (([SR 142.31](#))).

⁷² See Swiss refugee support, statistical information on the hardship case rule for asylum seekers from 15.11.2007 at http://www.osar.ch/2007/11/15/statistik_haertefallregelung. [franz.: Voir Organisation Suisse d'aide aux réfugiés, Données statistiques relatives aux cas de rigueur dans le domaine d'asile du 15.11.2007 sur le site www.osar.ch.]

⁷³ Art. 14 Sec. 2 Bst. c AsylG ([SR 142.31](#)).

⁷⁴ Art. 82 Sec. 1 AsylG ([SR 142.31](#)).

all families and children suffer from the minimum everyday support and the often very precarious lodgings assigned to them, e.g. small, or remote and difficult to reach. Nevertheless, it is alarming that legally introduced possibility to exclude asylum seekers from the social benefits, has led to the fact that these persons are generally treated as without any rights. They are looked at as burdensome, controlled and moved around by the authorities. A string of cantons (Solothurn, Zurich, Waadt, Bern, Graubünden) have gone over – as an other example – to refusing the basic services of the health insurance schemes to rejected asylum seekers and they have asked hospitals and doctors to assist legally rejected asylum seekers only in emergencies⁷⁵. As the Federal Office for Health also confirmed, this practise stands in contradiction to the health insurance law that requires insurance obligation for all persons resident in Switzerland.⁷⁶

9. The situation of the Yenish, Sinti and Romanies (articles 2, 5 and 6 RDK, closing remarks section 15)

9.1. A lack of awareness of the problem on the side of the authorities

The official report by Switzerland estimates the number of Yenish at around 35,000 people and those that cultivate a travelling lifestyle at around 3,000 (Sec. 19). The report concentrates on the following situations of the travellers; there is little to infer regarding the situation of the sedentary Yenish from the report (see official report, Sec. 288 ff. There are no remarks on the Sinti or Romanies to be found). The foreign members living in Switzerland of the concerning groups, in particular Romanies are not mentioned at all.

The use of the term “traveller” in the report is also problematic. The Sinti are unique among this group who because of a centuries of systematic rejection at the Swiss border, especially at the time of the Nazi Holocaust, live in very small numbers in Switzerland. The travellers are compared to settled people in the majority. In the case of the Yenish and the Romanies on the other hand, the vast majority are settled. While the minority rights of these groups are discussed under the title “travellers”, the concerns of the settled members of these groups fall to the wayside.⁷⁷ It has been the wish of the subsumed “travellers” that the Swiss authorities take increasingly the names given by ethnic and linguistic groups themselves into consideration (Yenish, Sinti and Roma, and in cases where this is relevant also names the sub-groups).⁷⁸

No details are to be taken from the official report on racist infringements against Yenish, Sinti and Romanies in Switzerland (see also previous Ch. 2). Shots taken at caravans have been reported by the press several times, on 2 July 2005 in Horgen, Canton of Zurich and in June 2006 in San Vittore, Canton of Graubünden, as well as in Chiasso, Canton of Ticino. The police investigated only the case in Horgen and only in this case did a judicial conviction result.

Race discrimination behaviour by the Swiss population towards Roma recently appear also in connection with the expansion of the bilateral freedom of movement agreements with the EU

⁷⁵ [NZZ am Sonntag, 25. Mai 2008](#) (pdf, 1 S.).

⁷⁶ Art. 3 Federal law on health insurance ([SR 832.10](#)) [franz.: Art. 3 Loi fédérale sur l’assurance-maladie ([RS 832.10](#))]. See document „[Krankenkassenobligatorium gilt auch für abgewiesene Asylsuchende](#)“ at [www.humanrights.ch](#).

⁷⁷ See also the consultation of “schäft qwant” [http://home.balcab.ch/venanz.nobel/qwant/berichtEuroparat2006.html](#)

⁷⁸ With Roma, e.g. Kalderascha, Lovara or Gurbeti. A summary appeared in Switzerland in 2004 that shows these groups, their different cultural and linguistic characteristics, etc. in detail and can be helpful: STÉPHANE LAEDERICH, LEV TCHERENKOV, The Roma, Otherwise know as Gypsies, Gitanos, Tsiganes, Tigani, cingene, Zigeuner, Bohemiens, Travellers, Fahrende, etc., 2 Bde., Basel 2004

(Bulgaria and Romania) and an increasing fuelling of the prejudices and the hatred is to be feared compared with the population group Roma from these lands⁷⁹.

9.2. Lack of representation and support for the Yenish, Sinti and Romanies in Switzerland

Only the Yenish have thus far been recognised as a national minority in Switzerland, as an independent group with its own language. Given the size of the population group and compared to other Swiss minorities (e.g. Rhaeto-Romanic speakers), they receive, however, disproportionately less support, as far as financing of cultural institutions, language promotion, support of magazines and newspapers, radio and television broadcasts, for example.

As opposed to other minorities in Switzerland, they are not represented in parliament.

In order to accelerate the sluggish implementation of travellers' rights, the "Future for the Travellers Foundation" was created by parliament in 1994 and funded with CHF 1 million of capital as well as an annual allocation of CHF 150,000. The travellers that are represented in it, nevertheless, are not in the majority and the endowment hits on the occasion of decisions against the distinct will of the minority of its travelling foundation board members. This also reflects more the marginalisation by the settled population's stance on the travellers in Switzerland than their acceptance as equals.

Lastly, it must be mentioned that the amount mentioned in the report to the Radgenossenschaft der Landstrasse (see official report, sec. 291) has been lessened. The Romany organisations, which have only existed since 1998, or the Sinti, which there is only in attempts, have hardly been noticed by officials as representatives of independent ethnic groups with travellers and settled members.

9.3. Shortage of stopping places and transit sites for Travellers

Hope expressed by the CERD that the efforts for the improvement of living conditions will be started has not improved with regard to the stopping places and transit sites, but has worsened. For over 30 years now, the representatives of the travellers point to the shortage of stopping places and transit sites as well as to the increasing restriction of the customary law on spontaneous stopping in most regions in Switzerland. Task forces, various foundations as well as cantons have confirmed this lack and also the report of the Federal Council to the situation of the travellers of 2006 recognises the problems⁸⁰. Nevertheless, neither the Federal Council nor the Swiss lawmakers show a consistent will to confront this situation with effective measures. The Federal Council promised to clarify whether earlier military areas of the Federal Department for Defence, Population Protection and Sport cannot be used as stopping places and transit sites (see official report, sec. 313) in the next few years. However, otherwise it refers to the fact that measures in the area of spatial planning are the responsibility of the cantons.

Barring for a few exceptions, the cantons and municipalities lack the will to leverage according to the Federal Court decision of 2003 (official report sec. 294) the rights of the travellers. It is partly stated that there is not enough space available for travellers, what is unequal in this respect is that space is made available for the leisure facilities of other groups, such as golfers, glider pilots and campers. Partly the municipalities explain their idleness with

⁷⁹ Within the scope of the [parliamentary debates](#) to the freedom of movement agreement with Romania and Bulgaria were demanded in the National Assembly by the right for the return of Roma's special regulations. See in addition on the website of the parliament www.parlament.ch 08.029 - business of the Bundesrat. Freedom of movement agreements. Continuation as well as expansion on Bulgaria and Romania.

⁸⁰ [Bericht des Bundesrates über die Situation der Fahrenden in der Schweiz](#) (October 2006) at www.bak.admin.ch (see part II).

the fact that it is difficult to persuade the population to make zoning and building adjustments, so that travellers have a stopping place and transit site. Also financial arguments are brought forward and demanded that the creation of places must be cost-neutral. There are, however, positive examples, such as the Canton of Graubünden or the City of Zurich. They established and are establishing these places generally without the polarising referendums about whether the settled majority of the travelling minority should concede a place in the whole territory or not. Majority votes about the rights of minorities can probably help these with positive course to better legal statute, as for example of the Jura people which could become thus from a minority in a canton to an own canton. On the other hand, such votes run the risk to affect the fundamental rights of minorities, possibly of the equal and free religious practice (cp. kosher ban, minaret ban). Where the non-transient majority votes on the right of the transient minority to stay in the municipal, regional or whole-state territory, the existence right of this minority is questioned and negated with negative vote. In most regions where a satisfying regulation of the claim of the transient minority to minimum spatial resources could be found, this was reached without referendum. There was a case in 2006 in the Canton of Aargau, Municipality of Spreitenbach, where a Yenish family had to give up a pitch to a department store. But with the help of the Radgenossenschaft and the canton, they were able to find a new place, although two municipal votes had rejected a zone for such a pitch before. It was helpful that there was a passage concerning transient ethnic minorities in the Canton of Aargau's Constitution (as mentioned in the official report).⁸¹ A similar passage is found only in the Basel Country's Constitution. For the new Canton of Zurich's Constitution, it was rejected by the Constitutional Council in December 2002. The mention is also absent in the current Federal Constitution of 1999. It is desirable that the existence and the rights of the transient are explicitly mentioned in all canton's as well as in the Federal Constitution.

It must be summarised that Switzerland has not succeeded during the last six years to create a logical policy with which the structural discriminations of the travellers can be reduced.

10. Race discrimination in the private sector (article 5 and 6 RDK, closing remarks section 16)

In the closing remarks of its last state report, the Committee requested information about the legislation in force prohibiting racial discrimination within the private sector in fields such as employment, housing, education, health and access to public places.

The statements, which the Federal Council makes with respect the current state report (Sec. 318 ff.), are to be welcomed. Nevertheless, they are incomplete. Indeed, it calls the most different regulations that protect against race discrimination; nevertheless, it omits to explain the individual regulations explicitly. A differentiated view above all concerning the effective implementation of the races discrimination ban is offered: Article 6 RDK requires that the signatories have to guarantee effective protection and effective legal remedies. Obviously, the Federal Council has not yet carried out analysis of the current materials and formal laws. It possesses no systematic data.

On account of experiences of the NGOs and in consideration of only too few judgments the suspicion insists that the existing regulations are barely effective and the legal instruments are underdeveloped. There is in contrast to the EU States and other countries such as the USA and Canada no general anti-discrimination law in Switzerland⁸². Regulations scattered in different edicts must be referred back to. Indeed, these norms already implied a substantial arsenal

⁸¹ § 48 Canton of Aargau's Constitution ([SR 131.277](#))

⁸² Switzerland has already been urged by various international bodies to create a general discrimination law. More on this at [Zusammenstellung auf der Website von humanrights.ch](#).

against race discrimination; nevertheless, on account of missing practise a lot of uncertainty exists. It is doubtful, for example, when a discriminating contract refusal is allowed and when not. Besides, it is unclear which consequences a possible legal offence is involved in. Finally, there is a large amount of structural obstacles: The fear of negative social consequences (just with long-term obligations or contractual relationships with which a narrow relation is between the parties to a contract and, therefore, the supposed discrimination victim is dependent on the goodwill of the contracting partner) and the mistrust of the judicial system hinder many from putting through existing claims. Partially there come high process hurdles such as long procedure duration or procedural costs. If the legal way is destroyed, the burden of proof unilaterally pressing on the victims is another stumbling block in search of legal protection. To receive sensible information about the existing legislation, there urgently needs to be an effectiveness analysis.⁸³

11. Conclusion

In summary, it can be said that Switzerland has made no considerable efforts in the last report period in order to provide a agreement for the removal of every type of racial discrimination nationally and to guarantee its effective adaption. In the past 15 years, since it has started to ratify the universal contracts of human rights, Switzerland has compiled no draft to implement the recommendations of the international contract supervision organs and the human rights at all three levels (confederate, cantonal, municipal). Besides, the measures which would be necessary for an effective monitoring were not seized till this day. On the contrary, the means of the existing institutions – confederate professional place for racism prevention and confederate committee against racism – were shortened. The demand of the NGOs for the creation of an independent institution of human rights, as the UN it recommends urgently to the states as an instrument for the protection of the human rights, is pending with the parliament and the is Federal Council now since December 2001.

The Swiss NGOs ask the question if Switzerland is finally willing to work seriously together with the contractual institutions and to take their work seriously.

⁸³ The Bundesrat has continued to this day to always reject the necessity expansion of discrimination protection. See in addition [04.3791](#) – Green fraction motion from 17.12.2004. Law against racist discrimination in the workplace. See also [03.3372](#) – interpellation Cécile Bühlmann from the 19.6.2003. Racist discrimination in the workplace; [07.422](#) – parliamentary initiative Paul Rechsteiner from 23.3.2007. General Equal Treatment Act (not yet addressed). See also arrangement on the [website from humanrights.ch](#) [French.: [04.3791](#) – Motion Groupe des Verts du 17.12.2004. Loi contre la discrimination raciale dans le monde du travail. See also [03.3372](#) – interpellation Cécile Bühlmann from 19.6.2003. Discrimination raciale dans le monde du travail; [07.422](#) – Initiative parlementaire Paul Rechsteiner from 23.3.2007. Loi sur l'égalité de traitement (Non encore traité au conseil). [See the also summary on the humanrights.ch website (http://humanrights.ch/home/fr/Suisse/Politique/Interieur/idart_5163-content.html).

Annex

Poster of the Party SVP for the elections

Mass-Naturalizations STOP – yes for the initiative of naturalizations



For more security – Initiative popular for the expulsion of criminal foreigners

