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Federal Commission against Racism FCR

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Report of the Federal Commission against Racism (FCR) to the UN Committee on the Elimination of Racial Discrimination CERD

**in respect of Switzerland's Seventh, Eighth and Ninth Periodic
Reports to the CERD**

on 14 and 17 February 2014

In this report the Swiss Federal Commission against Racism FCR (hereinafter "FCR") will present a political, social and legal assessment of the current state of affairs in line with its own work and its mandate¹ from the Swiss government (Federal Council).

For additional information we refer to Switzerland's detailed Periodic Report to the UN Committee on the Elimination of Racial Discrimination CERD² and to the Civil Society Report (under the coordination of humanrights.ch/MERS)³ to the same body.

► WHERE NO ENGLISH VERSION IS AVAILABLE, THE FOOTNOTES DIRECT THE READER TO THE FRENCH VERSION.

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¹ See the mandate of the FCR at: <http://www.ekr.admin.ch/orgfr/f159.html>

² See Switzerland's report to CERD at:
<http://www.eda.admin.ch/eda/fr/home/topics/human/humri/humrtr/humrep/racism.html>

³ The NGO Report is published by www.humanrights.ch

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1 Key points of FCR's assessment covering the years 2009-2013

1. There are no national educational campaigns against racism.
2. Current legislation against racism and racial discrimination is underdeveloped, which leads to uncertainty and a trivialization of the phenomenon.
3. There are no civil and administrative laws against racial discrimination, and consequently also no definition analogous to Article 1 of ICERD. The anchoring of protection against discrimination in the foreigner integration programmes of the cantons is new (2011).
4. Although the new Swiss Centre of Expertise in Human Rights (SCHR) carries out very good work, it does not comply with the Paris Principles.
5. The dual policy model with respect to foreigners (freedom of movement for EU/EFTA nationals on the one hand and application of the Foreign Nationals Act to other non-citizens on the other hand) creates two unequal legal systems, which leads to discrimination against the nationals of non-EU/EFTA states.
6. Although efforts to educate security and law enforcement personnel with respect to human rights have been stepped up, the police authorities still use racial profiling.
7. The continual tightening up of the provisions of the Asylum Act lead to unjustified restrictions and to racial discrimination against asylum-seekers because of their legal status.
8. The position of Travellers/Yenish/Roma continues to be characterized by discrimination and stereotyping, with perceptions of transient groups of Roma being carried over to Swiss Yenish/Roma/Sinti.
9. Freedom of expression is widely interpreted as taking precedence over protection against discrimination.
10. A new article banning racist insignia has not been added to the article in the Swiss Criminal Code relating to racial discrimination.
11. The principal victims of racial discrimination are currently: people with dark skin and of African origin, Muslims, people from southeastern Europe, the Balkans and Turkey, Roma/Sinti/Yenish people and asylum-seekers (often simply because of their status as such).
12. In 2013 the Federal Council issued a new appointment order for the FCR which confirms its independence. Its remit and its resources remain broadly the same.

2 FCR's position on developments relating to CERD's recommendations for Switzerland

In the points grouped by topics below, the FCR's report follows CERD's concluding observations of 21 August 2008⁴ on the Fourth, Fifth and Sixth Periodic Report on Switzerland, Section C, points 7-19.

Re. 7 Government's obligation to educate and raise awareness about racism

The Service for Combating Racism has continually expanded its activities to combat racism and has also initiated measures in conjunction with the cantonal authorities for **better informing the population**. Campaigns directed at specific target groups have been started in some areas⁵, e.g. in relation to employment.⁶ The Federal Commission against Racism and the Federal Commission on Migration have likewise been active in this way.

In the opinion of the FCR, **in Switzerland there is a deficit of national campaigns** against racism, analogous to those in the field of healthcare which educated citizens about, for example, AIDS, the dangers of tobacco, etc. There is no state funding available for national campaigns against racism.

The FCR itself is planning to run an education and awareness-raising campaign in 2015 to mark the 20th anniversary of the introduction of legislation against racism, Switzerland's accession to the Convention and the founding of the FCR.

Re. 8 Proactive role of the federal government in leading the fight against racism in the cantons and municipalities

The establishment in 2011 of the **Swiss Centre of Expertise in Human Rights SCHR**⁷ created a new body to raise awareness in the cantonal and municipal authorities. The latter are represented on the Advisory Board of the SCHR and are consequently more involved in questions of human rights and their implementation in accordance with international conventions.

⁴ Cf. the concluding observations: <http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD.C.CHE.CO.6.pdf>

⁵ <http://www.edi.admin.ch/frb/00538/00540/index.html?lang=fr>

⁶ See the list of measures adopted in the 2012 baseline report of the Service for Combating Racism at: <http://www.edi.admin.ch/frb/02015/index.html?lang=fr>

⁷ <http://www.skmr.ch/en/home.html>

With the **anchoring of protection against discrimination in the cantonal integration programmes CIP** in 2011, for the first time the federal government made stipulations with respect to combating racism and discrimination. The responsibility for implementation lies to a large extent with the cantonal and municipal authorities. A positive development to note is that the federal government and the cantonal governments have jointly agreed to strengthen protection against discrimination in their work to promote integration. Nevertheless, protection against discrimination is not simply a matter of integrating foreigners, it also represents a challenge to society as a whole. It is still the case that too little attention is being paid to this general aspect.

Apart from the integration ordinance, the **legally binding stipulations** for municipal and cantonal authorities **are extremely weak**. Swiss legislation has large gaps with respect to effective and efficient combating of racial discrimination. There is no comprehensive anti-discrimination law.

In its report on legislation against racial discrimination "Recht gegen rassistische Diskriminierung, Analyse und Empfehlungen" published in 2010⁸, the Federal Commission against Racism FCR called for the **enshrinement of a non-discrimination principle between private citizens in the Federal Constitution**. It also recommended obliging legislators to stipulate the non-discrimination principle and its implementation by means of statutory obligations to protect against racial discrimination in particular, and discrimination in general (analogous to the equal treatment of men and women and disabled people). Since, as is also formulated in the above-mentioned postulate, people nowadays often experience discrimination in multiple ways and it is not always possible to view these separately, the creation of a general law against discrimination would be all the more beneficial.

**Re. 9 A) Lack of civil and administrative legislation
 B) Creation of a national action plan**

A) Lack of civil and administrative legislation

While Article 8 of the Swiss Federal Constitution provides implementing legislation for gender equality (paragraph 3) and the removal of discrimination against people with disabilities (paragraph 4), it does not include any such specific statutory provisions against racial discrimination and other unacceptable forms of discrimination (paragraph 2).

⁸ See the French translation of the FCR's position paper "Recht gegen rassistische Diskriminierung. Analyse und Empfehlungen" [*Legislation against racial discrimination. Analysis and recommendations*] at: <http://www.ekr.admin.ch/services/f115/1073.html>

To date, all political efforts to introduce a general anti-discrimination law have failed. The Swiss Parliament and Government both take the view that the current legal remedies provide adequate protection against discrimination.

- In March 2009, by a margin of 117 to 55 votes, the Swiss Parliament **rejected** the Rechsteiner parliamentary initiative⁹ for a **general equality law** which had been submitted in 2007. The same fate befell two further parliamentary motions¹⁰.
- A new postulate on 14 June 2012¹¹ called for the Federal Council to submit a report setting out the potential for anti-discrimination legislation and the effectiveness of various legal instruments in this area.

In the opinion of the FCR, however, the **lack of civil and administrative legislation against racism and other discrimination has the following consequences:**

- a) Victims of racial discrimination are poorly protected in important areas of their lives. As long as there is no clear legislative framework outside the Criminal Code for combating racism, racial discrimination in society will be downplayed. There are still very few major rulings on racial discrimination.
- b) Access to justice is more difficult for victims of racial discrimination. Recourse has to be taken to other, more broad-based legal remedies, which requires considerable funds, to pay for assistance from lawyers for example.
- c) By virtue of their social position or legal status (e.g. asylum-seekers), entire groups of potential victims have de facto no recourse to justice.

The **Guide juridique**¹² compiled by the FCR and published by the Service for Combating Racism also shows how complex and difficult it is to access some legal remedies for protection against racism.

In this situation, the fight against racial discrimination remains a political issue that can also be exploited. This is evidenced by the reactions to a recent judgement of the European Court of Human Rights relating to the application of racism legislation by Switzerland in December 2013. In the case *Perinçek v. Suisse* (no. 27510/08)¹³, the ECHR found that greater weight should be accorded to freedom of expression than to banning denial of the Armenian genocide, of which Perinçek had been convicted by the Swiss

⁹ Cf. parliamentary initiative 07.422 entitled "Loi sur l'égalité de traitement" submitted by Paul Rechsteiner:

http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20070422

¹⁰ One was the parliamentary initiative 10.523 submitted by Katharina Prelicz-Huber:

http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20100523 and the second was the interpellation 09.3242 submitted by Bea Heim:

http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20093242

¹¹ See postulate 12.3543 entitled "Rapport sur le droit à la protection contre la discrimination" submitted by Martin Naef: http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20123543

¹² http://www.ekr.admin.ch/pdf/SLR_Guide%252Bjuridique%252Bdiscrimination%252BBraciale6419.pdf

¹³ Cf. judgement no. 27510/08 of the ECHR: <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-139276>

Federal Supreme Court. The Court asserted that he had not denied the massacres of the Armenian people, merely questioned their interpretation as genocide. Right-wing political circles responded to this judgement with renewed attacks on the existing racism penal legislation and gave notice of further action.

B) National action plan: With the first baseline report from the Service for Combating Racism and a number of monitoring projects being conducted by this Service and others (including the FCR¹⁴), the efforts being undertaken to combat racism are becoming more transparent and coordination is being intensified. However, there is still no **national action plan** in Switzerland.

Re. 10 Establishment of an independent human rights institution

A first step towards the better implementation of human rights on a national level was taken by the Swiss government with the establishment of the **Swiss Centre of Expertise in Human Rights SCHR** in January 2011. The SCHR is run by a centrally managed network of four universities and four specialist institutions. It is designed to be a service provider for departments and agencies of the Confederation, which provides it with an annual budget of CHF 1 million. The main task of the SCHR is to facilitate the process of implementing international human rights obligations at all levels of the federal system.¹⁵ It has made a successful start to this work with studies, conferences and training courses for public authorities as well as an information platform.

However, the structure of the SCHR does not comply with the UN's Paris Principles for a national human rights institution¹⁶. In particular, it is tied to service mandates from the federal government or to commissions from civil society and business, and is not able to perform any independent monitoring, advisory and opinion-forming function. The Centre of Expertise was set up for a pilot phase of five years, and evaluation of this pilot phase will commence in 2014.

In the opinion of the FCR, following this pilot phase the SCHR should be **transformed into a national human rights institution as defined by the UN**.

Refer to section 4 for strengthening of the **FCR** and its resources.

¹⁴ Cf. FCR's compilation of legal cases: <http://www.ekr.admin.ch/services/f269.html>

¹⁵ Cf. the work plan of the SCHR at: <http://www.skmr.ch/en/about/work-plan/work-plan.html>

¹⁶ Cf. the "Paris Principles":

<http://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfNationalInstitutions.aspx>

Re. 11 Adopting a comprehensive definition of direct and indirect racial discrimination

The definition is created by being stated in a law, but at present there is no such legal basis in Switzerland (see Re. 9). To date there has consequently been no suitable vehicle in the legislation for the racial discrimination definition as per ICERD Article 1, paragraph 1.

The judicial consequences of infringing rights in the area of racial discrimination are often not appropriate and are difficult to predict. The criminal law has a number of deficits, and the existing statutory provisions in public and private law exhibit great weaknesses with respect to both implementation and effectiveness. One issue which is particularly unclear is whether and to what extent indirect forms of discrimination are permissible under private law.

The FCR welcomes the endeavours of the Service for Combating Racism to pay greater attention to definitions in the near future. However, if they are to be effective, definitions must be directly connected to legislation or to interpretation of the law.

Re. 12 Federalism and combating racism

With the anchoring of protection against discrimination in the cantons (see Re. 8 above), the cantons are now called on to implement this.

The Swiss Centre of Expertise in Human Rights has assumed a key role in gathering information from the cantonal and municipal authorities in relation to the implementation of human rights. For instance, one of the first studies carried out by SCHR addresses the issue of federalism in the implementation of human rights.¹⁷ Further studies carried out by SCHR are concerned with protection against discrimination and with racial discrimination – the latter will be published in 2014. The SCHR also follows the UPR process in Switzerland, not least with the intention of pooling information and establishing a certain level of monitoring, which at the same time is also intended to promote the implementation process in the cantons.

It remains a fact, however, that the cantons must resolve various questions relating to the implementation of the ICERD themselves – whether in the areas of healthcare, security and policing – and the federal government has only very limited scope for intervention here.

¹⁷ Cf. SCHR's publications on the implementation of human rights in Switzerland at: <http://www.skmr.ch/frz/portrait/sg/nouvelles/etude-du-csdh.html?zur=5>

Re. 13 **Withdrawing reservation to Article 2, paragraph 1 lit. a of ICERD**

Switzerland had expressed a reservation in order to protect the "three circles model" of Swiss immigration policy being applied at the time. This policy has now been superseded by a dual model: citizens of EU/EFTA countries are treated the same as Swiss citizens, while the Foreign Nationals Act is applied to all other foreign nationals in Switzerland. These are two different legal systems which create two categories of foreign residents with different legal rights. The FCR is of the opinion that Switzerland should seek to **equalize the treatment of everyone living in Switzerland** to the greatest possible extent, which would enable it to withdraw its reservation to Article 2, paragraph 1 lit. a of ICERD.

Re. 14 **Racial profiling and racism in law enforcement and correctional authorities**

Although training measures have been stepped up in the police forces (SCRA's 2012 baseline report)¹⁸, the creation of independent complaint or ombudsmen offices has changed little, that is to say **it continues to be difficult to make complaints against the police**. In TANGRAM 26/2010¹⁹ of the FCR, the ombudswoman of the City of Zurich (one of a total of 11 city and cantonal ombudsmen offices) analysed racial profiling and reported on this phenomenon in detail in her 2011 annual report²⁰.

In TANGRAM 26 "Sécurité - Sûreté", the FCR sought in 2010 to summarize the latest findings and was able to persuade leading police officers to comment. The Commission presented a list of detailed recommendations on combating racism in the security forces to the authorities and politicians, but these were largely disregarded. To date, little has changed as well with respect to recruiting practices in the cantonal police forces – although Zurich did take a step forward in this respect. Here again we see evidence of uneven development as a consequence of federal structures: some cantons are already a few steps ahead with regard to human rights education (SCRA's baseline report, page 58); in a very few cantons the obligations with respect to human rights have already been incorporated in the new police legislation (Zurich), but not in others.

Re. 15 **Withdrawing reservation to Article 4 of ICERD, prohibition of parties and organizations**

Since the 1940s, Switzerland has pursued a policy of not banning organizations and parties. It is therefore not possible to withdraw its reservation to Article 4 of ICERD (prohibition of

¹⁸ <http://www.edi.admin.ch/frb/02015/index.html?lang=fr>

¹⁹ <http://www.ekr.admin.ch/services/f115/1075.html>

²⁰ See the annual reports of the Office of the Ombudsman of the City of Zurich (in German): http://www.stadt-zuerich.ch/content/portal/de/index/politik_u_recht/ombudsstelle/publikationen_u_merkblaetter/jahresberichte.html

racist propaganda and organizations that disseminate it). However, in 2009 the Aarau District Court found the **entire former executive of a party guilty** of publishing a racist manifesto on its website. The manifesto contained a collective denigration of foreigners in which their human rights were denied.²¹

Re. 16 Excessive use of force by the police against black people

This issue overlaps with 14 Racial profiling, see Re. 14 above.

Complaints about police brutality against people with black skin and others with a visibly different appearance have not decreased during the reporting period 2008-2013. This is also regularly shown in the "Incidents racistes traités dans le cadre de consultations" report [Analysis of racist incidents reported in advice centres]. This relates to treatment perceived as discriminatory, racist statements, being picked out for spot checks, and the excessive use of force during police checks. The reports for 2008 to 2012 list the following numbers of reported incidences that cite cantonal police as the perpetrators:

2008: 8 out of a total of 156 racism incidents reported in advice centres
2009: 16 out of a total of 162 racism incidents reported in advice centres
2010: 23 out of a total of 178 racism incidents reported in advice centres
2011: 14 out of a total of 156 racism incidents reported in advice centres
2012: 12 out of a total of 196 racism incidents reported in advice centres.²²

Re. 17 Measures to protect asylum-seekers and foreign nationals

The **rules governing asylum-seekers became increasingly restrictive** during the last reporting period up to 2008. A major cause for concern is the restriction of the freedom of movement of asylum-seekers in public spaces by some municipalities. Some municipalities are also seeking to select asylum-seekers themselves, giving preference to certain places of origin. Politicians also often made discriminatory statements during recent years, especially in the new social media. One can speak of discrimination on the basis of resident status, which is not covered by the concept of racial discrimination focusing on a particular ethnic origin.

As is the logical consequence of Switzerland's dual system with respect to foreign nationals, the victims of racial discrimination and unequal treatment are mainly nationals of non-EU/EFTA countries.

²¹ Cf. FCR 2009-006N at: <http://www.ekr.admin.ch/services/f524/2009-006N.html?db=N&searchindex=2009-006>

²² Monitoring reports for 2008-2012 from the network of advice centres for the victims of racism
<http://www.network-racism.ch/fr/rapports/rapport.html>

The latter form the targets of political campaigns against "foreign criminals", "illegitimate naturalization applications" and the "abuse of social services". By conjuring up threatening scenarios, such campaigns create majorities – for example for the "Initiative to deport criminal foreigners" in November 2010. This initiative calls obligations under international law into question and was conducted using discriminatory political posters. None of these referendum posters were prosecuted under Swiss criminal law:

- Posters with the text "Aarau or Ankara?" and "Baden or Baghdad?": When campaigning for re-election to the National Council, a candidate for one party had posters put up. One of these posters showed a veiled woman with the title "Aarau or Ankara?" plus the tagline "So we will still feel comfortable in the future" (*Damit wir uns auch in Zukunft wohl fühlen*). Another poster showed a minaret with the title "Baden or Baghdad?" plus the tagline "So we will feel at home in future" (*Damit wir uns in Zukunft heimisch fühlen*).²³
- Posters depicting Muslims praying in front of the parliament building: Ahead of the Federal Assembly elections, members of the Swiss People's Party (SVP) put up a poster in various places in Valais. The picture showed Muslims kneeling to pray in front of the parliament building. As a result, the picture mainly showed the posteriors of the people praying. The creators of the poster had also added the text "Use your heads" and the slogan "Vote SVP, Switzerland free forever".²⁴
- Caricatures for the cantonal popular initiative "No naturalization of criminals and welfare recipients!": In connection with a cantonal popular initiative, there were two drawings on the signature sheets. The first page showed a man lying in a Swiss-flag hammock with a drink in his left hand and a Swiss passport in his right hand. He is being showered with banknotes from above. The man was depicted as a caricature of an African smoking a cigar. The drawing on the second page shows a man, also an African with a Swiss passport in his back pocket, who is pointing a pistol at a man wearing a Swiss mountain cap adorned with the Swiss cross.²⁵
- Quiz with the solution "NEGROES": One party issued a flyer for forthcoming Cantonal Parliament elections. Below the title on the first page was a quiz with eight questions. One of the questions was: "It is also better for them to stay on their own continent". The answer was "negroes".²⁶

In recent years the bilateral treaties with the EU and the agreed **free movement of people** **have also been attacked by right-wing politicians**. On 9 February 2014 Switzerland will

²³ <http://www.ekr.admin.ch/services/f524/2008-005N.html?db=N&searchindex=2008-005>

²⁴ <http://www.ekr.admin.ch/services/f524/2008-010N.html>

²⁵ <http://www.ekr.admin.ch/dienstleistungen/d524/2011-015N.html?db=N&searchindex=2011-015&p=1>

²⁶ <http://www.ekr.admin.ch/dienstleistungen/d524/2011-010N.html?db=N&searchindex=2011-010&p=1>

vote on the initiative "against mass immigration"²⁷, and later in the year also on the so-called Ecopop initiative²⁸ which attributes urban sprawl and the destruction of natural resources to immigration. Political campaigns are, however, expressed in more moderate and less discriminatory terms against our treaty partner, the EU. In this case individual people or groups of people are not negatively portrayed in text and images. However, derogatory statements about individual groups of EU immigrants is a recent phenomenon, for example against Germans who represent the biggest group of immigrants in Zurich, and against French and Italian cross-border commuters in Geneva and in Ticino.

Re. 18 Integration standards for successful naturalization

Among other things, the **complete revision of the Swiss Citizenship Act (BüG)** is intended to align the concept of integration with the Foreign Nationals Act. However, the bill is still being debated in Parliament. There are differences of opinion between the National Council and the Council of States regarding the minimum length of stay to qualify for naturalization, the integration criteria, and fast-track naturalization for young people. With the changes to the asylum legislation already decided, however, the normal legislation relating to foreigners will now apply to recognized refugees who have been granted asylum and who are applying for residency permits. This could make it more difficult for refugees to become naturalized in Switzerland. Moreover, the new regulations are in contravention of the 1951 Refugee Convention.

Increasingly restrictive rules at cantonal level are also impending. For instance, in the autumn of 2013 an initiative was accepted in Canton Berne which stipulates that people who have received criminal convictions and recipients of welfare benefits cannot become naturalized citizens.²⁹ The refusal to allow naturalization on the grounds of receiving welfare benefits is particularly reprehensible in the case of recognized refugees, since they may be unable to work for reasons connected with their flight and their traumatic experiences. The compatibility of the initiative with federal legislation must now be examined.

The naturalization process continues to result in instances where naturalization applications are turned down for discriminatory reasons. Although a person has the right to a ruling giving the reasons for a negative decision, and it is possible to appeal against the refusal of an

²⁷ See the website of the initiative at: <http://www.immigration-massive.ch/>

²⁸ See the website of the initiative at: <http://www.ecopop.ch/joomla/index.php/fr/initiative-fr>

²⁹ Cf. the decision of the Cantonal Parliament dated 24.11.2013 regarding the popular initiative "No naturalization for criminals and welfare recipients": <http://www.sta.be.ch/sta/fr/index/gesetzgebung/gesetzgebung/ausserordentlicheveroeffentlichungen.assetref/content/dam/documents/STA/ASR/fr/legislation/2012.0183-publication-rob.pdf>

application for naturalization, the **appeals procedure is still not standardized**. Depending on the canton, the appeal body may have the authority to determine an unlawful discrimination on the one hand, and on the other hand may have the right (and the obligation) to verify whether the naturalization requirements have been met. In other cantons, the appeal body may decide solely on unlawfulness, and must then return the case to the responsible (discriminating) municipality for reconsideration.

Re. 19 Situation of Travellers/Yenish/Roma

Image in the media: A study commissioned by the FCR and carried out by the University of Zurich (fög) in 2013³⁰ shows that media reports on Travellers/Roma/Yenish people in Switzerland are characterized by generalizations and a lack of differentiation. Swiss Yenish people are worried that being associated with these generalized negative images could harm them. By contrast, reports about Roma people in eastern Europe reflect on the social conditions and the discrimination they experience. Roma immigrants who have come to Switzerland from southeastern Europe – the Rroma Foundation talks of some tens of thousands – do not admit to being Roma for fear of being stigmatized and are defined in Switzerland by virtue of their country of origin – which is often associated with stereotypes of its own.

Lack of knowledge about the protection of minorities in public agencies: As the FCR has discovered, many public agencies are unaware that the culture, lifestyle and language of Swiss Travellers/Yenish/Roma people are protected by the **Council of Europe's Framework Convention for the Protection of National Minorities**. The office of the Federal Department of Foreign Affairs responsible for implementing the framework agreement has already invited federal and cantonal offices to several awareness-raising events.

The Federal Office of Culture has launched new projects to **preserve culture and language** as stipulated in the framework agreement.

The **educational situation of young Swiss Yenish/Sinti who go travelling** is very unsatisfactory. Since their parents wish to take them out of school as early as possible to go travelling, they have no opportunity to complete an apprenticeship. Primary schools have hardly any educational programmes that are suitable for a semi-nomadic lifestyle. As a result, young Yenish people often leave compulsory schooling having attained only a minimal level of general education.

³⁰ Cf. the summary of the key results of the study "Qualité de l'information sur les Roms dans les principaux médias de Suisse" at: http://www.ekr.admin.ch/pdf/EKR_20131205_2_f.pdf

Travelling and stopping: Only a single canton (Aargau) has set up an office in its cantonal administration³¹ specifically to deal with Traveller issues. Overall there has been a fall rather than an increase in the number of travellers' sites. Implementing projects to create larger transit sites on former military areas has been rather patchy.

Bans on stopping and on begging: In the western Swiss cantons, larger groups of Roma arriving are usually only dealt with at the level of the police authorities. A ban on begging was introduced in several cities. In its decision BGE 134 I 214, the Federal Supreme Court came to the conclusion that banning begging without exception across the whole canton was an infringement of personal freedom. However, since it had a statutory foundation, was justified on public interest grounds, and complied with the principle of proportionality, this ban was ruled admissible.

→ Documents relating to point 19:

Tangram 30: <http://www.ekr.admin.ch/services/f115/1093.html>

Cooperation with Yenish culture organization: <http://www.jenischekultur.ch/>

Re. 20 ff – No response from FCR

3 Topics not addressed by CERD in the 2008 conclusions

3.1 Freedom of expression widely interpreted as taking precedence over protection against discrimination

When weighing up the balance between the fundamental rights of freedom of expression and protection against racial discrimination, the judicial practice of the Federal Supreme Court has been to **give precedence to freedom of expression**. It takes the view that the direct democratic process requires freedom of expression to be interpreted generously, even if a message may be perceived as provocative. In recent years, witnesses and people affected have lodged many complaints on the basis of Article 261^{bis} of the Criminal Code against the publication of political posters which were perceived as defamatory and which depict minorities such as Muslims, Kosovars and people with black skin. In not one single case was anyone prosecuted.

- In one instance the responsible public prosecutor himself pursued the displaying of a disrespectful poster which used a picture of praying Muslims – photographed from the rear – and provocatively advocated that people would be better off using their heads. In its decision 6B_664/2008, the Federal Supreme Court found that the poster neither violated the human dignity of the Muslims

³¹ https://www.ag.ch/de/bvu/raumentwicklung/projekte_4/fahrende/fachstelle/fachstelle_1.jsp

depicted, nor treated them differently from followers of other religions. Moreover, it argued that no members of the Muslim community had lodged complaints.

- The poster produced by the initiators of the initiative against the building of minarets which showed minarets arrayed like rockets penetrating a Swiss flag, under the angry gaze of a female figure in a black niqab, resulted in nine complaints. The responsible court refused to prosecute. Some Swiss cities asked the FCR whether this poster should be banned in public spaces. The FCR set out the legal situation, which resulted in some cities banning the poster, while others deemed the poster to be discriminatory but nevertheless allowed it to be displayed publicly on the grounds of freedom of expression.

The current interpretation of the law has resulted in a large amount of uncertainty among the minorities affected, who feel they are insufficiently protected in Switzerland. In the view of the FCR, a wide-ranging debate on the application of legislation is required, as well as greater awareness-raising among the judicial authorities regarding the meaning of discrimination.

Refusal to hire out a venue restricts freedom of expression: The preventive restriction of freedom of expression in order to protect against racism – for example by banning a concert by a neo-Nazi rock band – was made more difficult by a decision of the Federal Supreme Court. The latter asserted that such a measure would require concrete evidence of the violation of other fundamental rights. Vague suppositions that songs with racist or anti-semitic lyrics could be played, for example, do not constitute sufficient grounds for a ban. For this reason, planned appearances of the controversial comedian Dieudonné M'Bala M'Bala in Nyon planned for February/March 2014 were not banned –Nyon announced however that they would be observed closely to determine whether they represented a violation of Article 261^{bis} of the Criminal Code³². According to the Federal Supreme Court's ruling, it is only possible to refuse the hire of a venue if it can be proved that the event would constitute a violation, for example, under the terms of prohibition of racial discrimination (Art. 261^{bis} of the Criminal Code) (Federal Supreme Court judgement 1C_312/2010 of 8.12.2010).

Uninhibited expressions of opinion on the Internet and in social media: As the FCR has discovered, uninhibited expressions of racist opinions can be found on blogs on the Internet and in social media. There were some cases where politicians expressed racist views, and fines were also imposed under 261^{bis} of the Criminal Code³³. In some cases the views expressed were played down by claiming that the perpetrators were not aware of how far-reaching their behaviour was in the new media³⁴. The FCR drew up an internal working document on these incidents in 2012. In November 2013, the Zurich Upper Court ruled that

³² <http://www.tagesanzeiger.ch/schweiz/Statt-ueber-Juden-laestert-Dieudonne-in-der-Schweiz-ueber-Afrikaner/story/28361061>

³³ <http://www.tagesanzeiger.ch/schweiz/standard/Urteil-im-RassismusFall-ist-gueltig/story/26935380>

³⁴ <http://www.tagesanzeiger.ch/schweiz/standard/Die-haben-wild-Sachen-vom-Netz-geladen/story/23597846>

all postings on Facebook should be interpreted as public.³⁵ This judgement will also have an impact on racist statements made in social media. Already in 2010 the prosecuting authority in the Canton of Zurich condemned a racist anti-Black picture caption on Facebook³⁶. Suspicious subject matter on the Internet, which includes racism and extremism, can be reported to the Cybercrime Coordination Unit Switzerland CYCO³⁷.

3.2 No extension of the Criminal Code to include an Article 261^{ter} banning racist insignia

After extremist right-wing groups disrupted the Swiss National Day celebrations in the early years of the 21st century, it was widely debated among the responsible federal authorities whether a new article banning racist insignia should be added to the Criminal Code. Following consultations, the Federal Council decided **against extending the Criminal Code to include an Article 261^{ter}**. Several cantons and police forces found that the terms used in the proposed bill such as "racist insignia and variations thereof" were too imprecise and consequently it would be difficult to enforce such legislation.

3.3 Application of the racism provision in Article 261^{bis} of the Criminal Code

The FCR maintains a database of the decisions relating to racism legislation which are made by cantonal bodies and courts as well as by the Federal Supreme Court, which are reported to the federal government. The FCR is of the opinion that, in view of the scale of the phenomenon, the number of cases decided annually is low: 2011 15 cases, of which 7 were material decisions, 7 of which resulted in convictions; 2012 21 cases, of which 17 were material decisions, with 15 convictions³⁸. In the course of this monitoring, it became evident that there was a large discrepancy between the number of complaints recorded in the police statistics and the number of judgements and decisions in the FCR's database.

3.4 Consequences of the weak legal situation and interpretation of the law for the perception of racism in Switzerland

The legislation against racism has been in existence for almost 20 years. In the interpretation of the criminal law, it has become customary for prosecutions to be pursued chiefly in relation to racist insults by private individuals, and occasionally also by people working in the media, extremist right-wing statements and pamphlets, anti-semitic comments and graffiti scrawled by private individuals. Apart from a few exceptions, political discourse has been

³⁵ <http://www.tagesanzeiger.ch/zuerich/region/Zuercher-Obergericht-Eintraege-auf-Facebook-sind-oeffentlich/story/26509452>

³⁶ S. EKR 2010-032N auf: <http://www.ekr.admin.ch/dienstleistungen/d524/2010-032N.html?db=N&searchindex=2010-032N&p=1>

³⁷ <http://www.cybercrime.admin.ch/content/kobik/en/home/meldeformular.html>

³⁸ See <http://www.ekr.admin.ch/services/f277.html>

largely unaffected. Given the lack of anti-discrimination legislation, there is a great deal of discretionary scope when it comes to protection against discrimination. There is as yet no firm **understanding of what racial discrimination really means** and where the limits of what is permissible lie. The longer it goes on, the more clearly this situation in Switzerland differs from developments in the European Union where implementation of the anti-discrimination directive is being increasingly strengthened and reinforced.

3.5 Main victim groups

The climate prevalent in the media and in the political sector towards black people, Muslims and asylum-seekers, and against foreigners in general, has not improved since the time of the last report to CERD. Right-wing populist parties and sections of the media continue to perpetuate xenophobic stereotypes, which are expressed in recurring political demands and referendum campaigns. This was particularly evident in the referendum on banning the building of minarets in 2009³⁹ and in the deportation initiative of 2010⁴⁰ as well as in the political campaigns in the run-up to these. Both initiatives were accepted.

In the view of the FCR, the groups that are currently stigmatized in particular are dark-skinned people, Muslims, people from southeastern Europe and Turkey, plus Yenish/Sinti/Roma people and asylum-seekers. This has been confirmed by studies conducted by FCR and research reports.

Dark-skinned people of African origin: Dark-skinned people of African origin are subject to discrimination. They are also the victims of racial profiling by the police⁴¹ and may additionally be disadvantaged on the labour market. Public debates arose about the use of the term "negro" and about representations of dark-skinned people that have their origins in a colonial context. Black women often experience multiple discrimination of both a racist and sexist nature.

The FCR is devoting the spring 2014 edition of its TANGRAM bulletin to anti-Black racism.

Muslims in Switzerland have been feeling very insecure since the acceptance of the "minaret initiative" in November 2009. Following this, further initiatives and also cantonal directives have been taken against Muslims:

- Headscarf ban⁴²: In the canton of St. Gallen, a Muslim girl wearing a headscarf was excluded from school because the school's regulations forbade the wearing of headscarves.⁴³ The administrative court issued an interim court order which allowed the girl to continue going to school until the case

³⁹ See the website of the initiative: <http://www.minarette.ch/f/index.html>

⁴⁰ See the website of the initiative: <http://www.initiative-pour-le-renvoi.ch/fr/>

⁴¹ Cf. Tangram 26 at: <http://www.ekr.admin.ch/services/f115/1075.html>

⁴² Cf. FCR's position paper of 15.06.2011 on this subject:

http://www.ekr.admin.ch/pdf/110530_CFR_prise_position_foularde1a3.pdf

⁴³ <http://www.tagblatt.ch/ostschweiz/stgallen/kantonstgallen/tb-sg/St-Galler-Gericht-schuetzt-Beschwerde-gegen-Kopftuchverbot:art122380,3610621>

was settled, because the protected rights of religious freedom for the girl took precedence.⁴⁴ In its decision of 11 July 2013 (2C_794/2012)⁴⁵ the Federal Supreme Court ruled that banning the wearing of a headscarf would require a basis in formal legislation. Since no such law existed, the Supreme Court was able to leave open the fundamental question of whether a ban on headscarves in schools was permitted under the constitution or not.

- Ban on face-covering headgear: An initiative for including a ban on face-covering headgear to the canton's constitution was accepted in the canton of Ticino, which is predominantly targeted at banning burqas⁴⁶. The Federal Assembly will have to rule on whether the change to the constitution can be implemented.
- Swimming lessons: In its latest decision regarding mandatory swimming lessons at state schools of 11 April 2013 (2C_1079/2012)⁴⁷, the Federal Supreme Court ruled that important public interests in the integration of people of Islamic faith permitted the fundamental right of religious freedom to be restricted in a proportionate manner.
- At the municipal level, applications of Muslim community groups for club and community rooms are often rejected. In the municipality of Gebenstorf in Aargau, the planning application of an Islamic/Albanian community group for changing the use of an existing restaurant into a clubhouse was turned down.⁴⁸ In Payerne in the canton of Vaud the City Council rejected a planning application for the construction of a mosque for the "Centre culturel islamique de la Broye".⁴⁹ These examples show that it is not just about building prayer rooms and mosques without minarets, but that cultural premises for Muslims in general are being rejected.
- The Federal Council has been engaging in dialogue with Muslims over a number of years and in the spring of 2013 it published a report on the situation of the Muslims.⁵⁰ This report noted that a third of the Muslims living in Switzerland today are Swiss citizens, and that the proportion of secular Muslims was approximately the same as for sections of the population with other religious affiliations. However, the report does not address reform of the relationship between the state and the religious minority of Muslims. Together with the OSCE, in 2010 the FCR organized a

⁴⁴ Cf. the ruling of the administrative court of St. Gallen of 7.11.2013 at:

<http://www.gerichte.sg.ch/home/dienstleistungen/rechtsprechung/verwaltungsgericht/entscheide-2013/b-2013-214--07-11-13-.html>

⁴⁵ Cf. the media release of the Federal Supreme Court dated 11.07.2013 on judgement 2C_794/2012:

http://www.bger.ch/fr/press-news-2c_794_2012-t.pdf

⁴⁶ Cf. the article on swissinfo.ch:

http://www.swissinfo.ch/fre/politique_suisse/Le_Tessin_interdit_le_voile_integral_dans_lespace_public.html?cid=36918074

⁴⁷ Cf. the decision of the Federal Supreme Court dated 11.04.2013:

http://www.izrs.ch/PDF/Urteile/BGE_2c1079_2012.pdf

⁴⁸ <http://www.aargauerzeitung.ch/aargau/baden/muslimische-gemeinschaft-will-gebetszentrum-gemeinde-lehnt-gesuch-ab-127501080>

⁴⁹ <http://www.kipa-apic.ch/index.php?&pw=&na=0,0,0,0,d&ki=226380>

⁵⁰ Cf. the report of the Federal Council on the situation of Muslims of 8.05.2013:

<http://www.ejpd.admin.ch/content/dam/data/pressemitteilung/2013/2013-05-08/ber-f.pdf>

conference for Muslim communities to discuss the question of an umbrella organization for Muslims⁵¹.

People from southeastern Europe and Turkey: The perception of people from southeastern European countries and Turkey is often conflated with Muslims and Roma people. General stereotypes are often projected on to these people, and they experience general rejection for one or more reasons.

- The study on "Highly qualified people with a migration background" and their potential discrimination on the labour market found that people from southeastern Europe and Turkey were disadvantaged. See section 5.3.3 below.
- In March 2009 a postulate⁵² relating to the naturalization of people and names was submitted. The Federal Council was to consider whether and how foreign names could be naturalized on a voluntary basis, either by approximating the sound of an official or national language or by "helvetizing" the meaning of the name. The postulate was rejected the same year.

See Re. 19 for Yenish/Sinti/Roma/Travellers.

See Re. 17 for asylum-seekers.

4 Positioning and work of the FCR

4.1 New appointment order for the FCR from the Swiss Federal Council

On 22 May 2013 the FCR received a new appointment order⁵³ from the Swiss government. No changes were made to its status as an extra-parliamentary commission, the number of members, its core mandate, funding of CHF 200,000 per year, and the size of its secretariat with 2.9 positions.

The changes made relate to:

- a) emphasizing the independence of the FCR in that it is only obliged to inform the Federal Department of Home Affairs about its work;
- b) directly involving the FCR with internal work within the administration which could have an impact on combating racism, by means of the interdepartmental consultation procedure;
- c) closer cooperation with the internal Service for Combating Racism;
- d) establishing independent reporting by the FCR to UN bodies, the Council of Europe, the OSCE and other supranational bodies;
- e) delegating the provision of advice to private individuals who believe they have been the victim of racial discrimination to the secretariat of the FCR.

⁵¹ <http://www.news.admin.ch/message/index.html?lang=fr&msg-id=35840>

⁵² See postulate 09.3160 entitled "Naturalisation et patronyme" submitted by Anita Fetz:

http://www.parlament.ch/f/suche/Pages/geschaefte.aspx?gesch_id=20093160

⁵³ <http://www.ekr.admin.ch/pdf/D%25C3%25A9cision+instituant+de+la+CFRca66.pdf>

Based on this mandate, the FCR will monitor reporting in the media, current events and legal practice. It will analyse social and political developments and make its analyses public. From the advisory services provided to the public, it will draw conclusions about current problem areas. The knowledge acquired will then be used to initiate effective prevention and awareness-raising measures in dialogue with public bodies and private individuals.

4.2 Status of the FCR before the NHRI International Coordinating Committee

In 2010 the NHRI Coordinating Committee ICC relegated the FCR from B status to C status using a more stringent rating process. However, the plenary of the ICC expressly praised the work carried out by the FCR and said it could continue to submit independent reports to the UN Human Rights Council and UN bodies. Between 2009-2013 it did so with the following reports:

2009	Durban World Conference against Racism: Implementation in Switzerland 2001-2009, A statement of the Federal Commission against Racism FCR ⁵⁴
2009	Position paper of the FCR to the UN Committee on Economic, Social and Cultural Rights CESCR, in respect of the meeting of the pre-sessional working group of the CESCR on Switzerland's Second and Third State Report, November 2009
2012	Report of the Federal Commission against Racism FCR on the second Universal Periodic Review of Switzerland ⁵⁵

4.3 FCR products 2008-2013

4.3.1 TANGRAM bulletin

In each edition of its bi-annual TANGRAM bulletin, the FCR focuses on a key topic for analysis and comment and sets out the latest research findings in a single dossier in each case. On the basis of the knowledge gained from these analyses, the FCR then engages in dialogue with opinion-formers in society.

The following topics were addressed from 2008 to 2013:

2008	TANGRAM 21: Internet; TANGRAM 22: Multicultural society
2009	TANGRAM 23: Multiple discrimination; TANGRAM 24: Structural discrimination
2010	TANGRAM 25: Islamophobia; TANGRAM 26: Policing/security
2011	TANGRAM 27: Political discourse; TANGRAM 28: City/country
2012	TANGRAM 29: Employment; TANGRAM 30: Yenish/Sinti/Manush and Roma in Switzerland
2013	TANGRAM 30: Otherness; TANGRAM 31: Extremism

➔ *The bulletin is trilingual German/French/Italian; with the occasional article in English. For downloads see: <http://www.ekr.admin.ch/dokumentation/00138/index.html?lang=fr>*

⁵⁴ http://www.ekr.admin.ch/pdf/Prise+de+position+CFR_Durban+Reviewec23.pdf

⁵⁵ http://www.ekr.admin.ch/pdf/120326_EKR_StellungnahmeUPR_E6802.pdf

4.3.2 Position papers

During the reporting period, three of the four position papers and one edition of TANGRAM were devoted to hostile attitudes towards Muslims in Switzerland, a phenomenon which is still prevalent today. The FCR will continue to address new forms of Islamophobia in future.

Another finding, that highly qualified people with a migration background, especially those from non-EU/EFTA countries, are disadvantaged on the Swiss labour market led to a research study into possible discrimination against highly qualified people with a migration background and to an FCR position paper with recommendations.

- 2008 FCR position paper on the initiative against the construction of minarets
- 2009 FCR position paper on publicly displaying posters for the initiative against the construction of minarets
- 2011 FCR position paper on banning headscarves at state schools
- 2012 Highly qualified people with a migration background, recommendations of the Federal Commission against Racism FCR, Summary of the study into potential discrimination in the Swiss labour market.

➔ For downloads, see the FCR's position papers (in French):
<http://www.ekr.admin.ch/dokumentation/00143/index.html?lang=fr>

4.3.3 Studies and reports

Since 2007, FCR and humanrights.ch, in collaboration with a growing number of advisory centres, have been operating an advice network for victims of racism as a joint venture. Recorded in a standard format and anonymized, the cases then form the basis for monitoring instances of racism which are reported in advice centres. The results of this monitoring have been recorded in a report since 2009. It is regularly shown that racial discrimination is encountered in all areas of life, and that dark-skinned people and foreigners are generally the largest group affected.

To download the annual reports on racist incidents reported in advice centres 2009, 2010, 2011 and 2012 see <http://www.ekr.admin.ch/dokumentation/00139/index.html?lang=fr>

During the reporting period, the FCR published three reports independently and in collaboration with research institutes:

- 2010 Recht gegen rassistische Diskriminierung

In this position paper on legislation against racial discrimination, FCR identified deficits in the protection against racial discrimination in the Swiss legal system.
- 2012 Ganga Jey Aratnam, Hochqualifizierte mit Migrationshintergrund. Studie zu möglichen Diskriminierungen auf dem Schweizer Arbeitsmarkt. Seminar für Soziologie der Universität Basel. Basel 2012

This study co-financed by the FCR investigates the equality of opportunity afforded to highly qualified people with a migration background who completed their education in Switzerland. It compares their situation on the Swiss labour market with those of citizens without a migration background, and with foreigners from EU/EFTA or other countries who were educated abroad. It identifies unequal treatment, especially towards people from non-EU/EFTA countries, leading to the conclusion that discrimination does indeed exist.

2013 Patrik Ettinger, Qualité de l'information sur les Roms dans les principaux médias de Suisse L'essentiel en bref, fög décembre 2013.

While media articles on the situation of Roma people abroad focus on the discrimination suffered and on their efforts to integrate, the reporting about Roma in Switzerland concentrates above all on conspicuous or criminal behaviour. This has a major influence on how Roma, Yenish and Manush/Sinti people are perceived in our country. The generalizations are also associated with negative stereotypes. There are generalizations in around half the articles analysed in connection with Roma and Yenish people in Switzerland, and more than a quarter communicate negative stereotypes.

➔ To download French summaries of the studies see:
<http://www.ekr.admin.ch/dokumentation/00139/index.html?lang=fr>

4.3.4 Media releases

The media releases of the FCR reflect social reality in Switzerland from the standpoint of the FCR and communicate its products.

➔ The media releases of the FCR over all the years of its existence can be found (in French) at: <http://www.ekr.admin.ch/dokumentation/00144/index.html?lang=fr>

5 Concluding remarks

The Federal Commission hopes that this report to the members of the CERD will prove helpful for their evaluation of the situation in Switzerland in respect of the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

The Commission is available at any time to answer questions or to testify before members of the CERD.