



Berne, 29 July 2008

Replies to the questions by the rapporteur in connection with the consideration of the fourth to sixth periodic reports of Switzerland (CERD C/CHE/6)

General remarks

Switzerland considers that racial discrimination constitutes a serious breach of human rights. In view of this principle, racism cannot be eliminated by simply ratifying international agreements; a constant effort embodied in the policies of each country is necessary. Consequently, the current combined fourth, fifth and sixth national reports from Switzerland and the answers given below to the questions put by the country rapporteur represent only momentary images in an on-going process. This process is fuelled by open, constructive dialogue between all the players involved. Should certain questions raised by the rapporteur remain open or be only partially answered, the Swiss delegation will of course be pleased to provide further information when they present the report on 8 and 11 August next.

Composition of the population

Question 1: Please provide an update of the statistics on foreign persons living in Switzerland, linguistic and religious minorities and the Travellers (State report, paragraphs 15 to 19). What percentage of foreign persons resident in Switzerland acquires Swiss citizenship each year? Do the percentages in this regard differ among the various nationalities of origin? Do the percentages of foreigners granted citizenship vary widely between cantons, or are acceptance rates relatively uniform?

1. Preliminary remark

The following data concerning demographic trends refer to the first question in the questionnaire and are at the same time an update of paragraphs 8 to 19 of the national report.

2. Demographic trends

2.1. Resident foreign population

At the end of 2006, Switzerland had a permanent population of 7,508,739, of which 21% were not of Swiss nationality¹. In 2006, the resident foreign population in Switzerland rose by 12,615 (0.8%) in comparison with the previous year to reach a total of 1,554,527. It should be noted that the proportion of foreigners with a short-term residence permit for 12 months or over rose by 39.5% and that of foreigners with a short-term residence permit for up to 12 months rose by 14.3%, while the proportion of foreigners with a long-term or permanent residence permit remained more or less unchanged². The ratio of men to women among the foreign population was 53:47³.

2.1.1. Permanent foreign population by nationality, 2001 - 2006

Country of origin	2001	2002	2003	2004	2005	2006	%
Italy	315,619	309,913	305,371	301,736	297,917	293,273	18.9
Serbia and Montenegro	195,436	198,700	200,349	199,739	196,833	191,515	12.3
Portugal	136,135	141,696	150,448	160,249	167,857	174,198	11.2
Germany	117,656	126,048	134,681	145,967	158,651	173,908	11.2
Turkey	79,990	79,330	78,120	77,058	75,903	74,342	4.8
Spain	81,806	79,729	77,578	75,085	72,167	69,071	4.4
France	63,329	65,113	66,917	68,850	70,901	73,521	4.7
Macedonia	58,549	59,926	60,676	61,008	167,857	60,362	3.9
Bosnia-Herzegovina	45,913	46,138	45,554	44,872	43,354	41,395	2.7
Croatia	44,035	43,510	42,852	41,908	40,709	39,270	2.5
Other	305,739	323,459	334,952	348,191	249,763	363,672	23.4

(Source: Swiss Federal Statistical Office, statistics on the foreign population resident in Switzerland, as at 31 December)

¹ Source: Swiss Federal Statistical Office, annual population statistics, Neuchâtel, 2007.

² Source: Swiss Federal Statistical Office, statistics on foreigners resident in Switzerland, Neuchâtel, 2007.

³ Source: Swiss Federal Statistical Office, annual population statistics, Neuchâtel, 2007.

2.1.2. Origin by continent

Continent	2001	2002	2003	2004	2005	2006	%
Europe	1,272,457	1,288,587	1,304,169	1,321,981	1,334,590	1,344,846	86.5
of which EU and EFTA	838,557	850,106	864,985	884,877	903,535	923,820	59.4
Africa	38,785	41,676	44,326	46,578	48,081	49,775	3.2
America	53,268	55,875	57,560	59,325	61,732	63,371	4.1
Asia	79,609	87,260	91,369	93,275	94,009	92,951	6.0
Australia, Oceania	3,180	3,317	3,259	3,278	3,242	3,328	0.2
Stateless or origin unknown	254	251	224	226	258	256	0.02
Total	1,447,553	1,476,966	1,500,907	1,524,663	1,541,912	1,554,527	100%

(Source: Swiss Federal Statistical Office, statistics on the foreign population resident in Switzerland, Neuchâtel, as at 31 December)

2.2. Immigration

2.2.1. Immigration by nationality

In 2006, the total number of foreign immigrants rose by 8.2% over the previous year (+8,086)⁴.

Immigrants by nationality	2001	2002	2003	2004	2005	2006
Europe						
Germany	14,121	15,574	15,133	18,221	20,460	24,899
Portugal	4,347	9,005	12,228	13,539	12,138	12,441
Ex-Yugoslavia	11,628	11,609	9,705	8,906	7,802	7,586
France	6,491	6,936	6,865	6,936	7,114	7,867
Italy	4,625	5,961	5,820	5,859	5,622	5,689
United Kingdom	3,948	3,248	2,980	3,069	3,189	3,569
Turkey	2,858	3,063	2,806	2,467	2,227	2,111
Austria	2,350	2,629	2,046	2,273	1,957	2,031
Spain	1,540	1,833	1,819	1,752	1,639	1,669
Netherlands	1,322	1,209	1,100	1,137	1,276	1,275
Other European countries	10,348	9,481	8,776	9,050	9,175	10,374
Other continents						
Asia	18,189	16,486	12,911	11,569	10,665	10,612
America	10,750	10,604	9,697	9,582	9,799	10,162
Africa	6,265	6,536	6,254	5,800	5,352	6,176
Australia, Oceania	943	814	652	637	651	693
Stateless or origin unknown	21	26	20	37	25	23
Total	99,746	105,014	98,812	100,834	99,091	107,177

(Source: Office fédéral de la statistique, Statistique de la population résidente de nationalité étrangère (PETRA). Sans les titulaires d'un permis de courte durée et sans les personnes séjournant en Suisse en vertu du droit d'asile)

⁴ Source: Swiss Federal Statistical Office, statistics on the foreigners resident in Switzerland, Neuchâtel, 2007

2.2.2. Reasons for immigrating

The trend towards a marked change in reasons for immigrating observed since the beginning of the 1990s was confirmed yet again in 2007. The number of long-term immigrants arriving in Switzerland as part of foreign labour quotas fell from roughly a third (31.7%) in 2004 to 14.4% in 2007. The principle of free circulation for members of the European Union was probably the cause of the rise in the number of foreigners outside the quotas who came to work in Switzerland. From 3.8% in 2004, they now represent 34%. In 32.3% of cases, the reason for coming to Switzerland was connected with family (joining family members already here, marriage to a Swiss citizen)⁵.

	2004		2007	
Immigration by motive				
Total	96,270	100%	139,685	100%
To join other family members	38,836	40.3	45,160	32.3
Foreign labour within quotas	30,487	31.7	20,169	14.4
Foreign labour outside quotas	3,633	3.8	47,439	34.0
Foreigners not in gainful employment	4,765	4.9	4,930	3.5
Returning to Switzerland	148	0.2	92	0.1
Vocational training	13,003	13.5	14,628	10.5
Recognised refugees	1,007	1.0	1,154	0.8
Emergency cases	3,344	3.5	4,271	3.1
Other reasons	1,047	1.1	1,842	1.3

(Source: Federal Office of Migration, Berne, 2008)

⁵ Source: Federal Office of Migration, statistics on foreigners and asylum, Berne, 2008.

2.3 Acquiring Swiss nationality

Einbürgerungen seit 1983

Jahr	Total	Einbürgerungen		Ordentliche	Erleichterte	Wieder-
		In der Schweiz wohnhaft	Im Ausland wohnhaft			
1983	9 062	8 722	340	8 034	636	392
1984	9 088	8 593	495	7 821	734	533
1985	9 380	8 803	577	8 331	435	614
1986	8 092	7 531	561	7 423	85	584
1987	7 552	6 909	643	6 781	121	650
1988	7 595	6 689	906	6 558	126	911
1989	7 718	6 863	855	6 445	402	871
1990	6 183	5 497	686	5 127	337	719
1991	5 872	5 346	526	4 994	329	549
1992	10 203	9 830	373	5 380	4 500	323
1993	12 902	11 920	982	6 216	6 373	313
1994	15 258	12 959	2 299	8 340	6 575	343
1995	17 453	15 865	1 588	11 257	5 942	254
1996	20 077	18 426	1 651	12 548	7 203	326
1997	19 460	18 325	1 135	12 912	6 260	288
1998	21 705	20 501	1 204	14 278	7 179	248
1999	21 698	19 539	2 159	14 634	6 818	246
2000	30 452	27 893	2 559	20 418	9 759	275
2001	30 075	26 860	3 215	19 239	10 563	273
2002	38 833	35 754	3 079	27 216	11 400	217
2003	37 070	34 602	2 468	27 015	9 865	190
2004	36 957	34 877	2 080	27 342	9 460	155
2005	39 753	37 704	2 049	31 737	7 893	123
2006	47 607	45 987	1 620	38 031	9 468	108
2007	45 042	43 269	1 773	34 879	9 987	176
Total	515 087	479 264	35 823	372 956	132 450	9 681

Gross rate of naturalisation (in ‰) by country of origin	2001	2002	2003	2004	2005	2006
Europe	1.69	2.23	2.16	2.15	2.30	2.73
Germany	0.54	0.70	0.54	0.48	0.53	0.73
Portugal	0.58	0.68	0.83	0.80	0.94	1.42
Serbia and Montenegro 2)	1.93	2.98	3.20	3.93	4.77	6.00
Croatia	2.39	3.73	3.61	3.78	4.03	4.53
Bosnia and Herzegovina	2.55	4.08	4.93	5.22	6.23	7.28
Macedonia	1.83	2.81	3.01	3.27	3.57	4.27
France	2.18	2.22	1.92	1.82	1.52	1.83
Italy	1.69	2.11	1.65	1.38	1.34	1.52
United Kingdom	1.49	1.58	1.34	1.24	1.19	1.30
Turkey	3.92	5.19	5.35	4.59	4.52	4.58
Austria	0.81	0.76	0.62	0.47	0.51	0.53
Spain	0.84	0.85	1.01	1.07	1.31	1.80

(Source: Swiss Federal Statistical Office, statistics on foreigners resident in Switzerland)

Overall, the gross rate of naturalization in Switzerland increased in two stages between 2001 and 2006 (from 2‰ to around 2.5‰ in 2002 and then to 3.1‰ in 2006). Taking each continent individually, it can be seen that this trend is not identical in every case. While there is a growing number of people from Europe, Oceania and Asia who are acquiring Swiss nationality, the rates for people from Africa and Latin America, as well as for stateless persons, remain higher but are stable or even falling

slightly⁶.

**Einbürgerungen
nach den 20 wichtigsten Staaten
Jahr 2007**

Staatencode Staatsangehörigkeit	Total	Einbürgerungen				
		In der Schweiz wohn- haft	Im Ausland wohn- haft	Ordent- liche	Erleich- terte	Wieder-
Gesamttotal	45 042	43 269	1 773	34 879	9 987	176
248 Serbien	10 428	10 426	2	10 100	328	0
218 Italien	4 759	4 588	171	3 529	1 220	10
239 Türkei	3 046	3 035	11	2 812	234	0
252 Bosnien-Herzogo.	3 008	3 008	0	2 933	75	0
255 Mazedonien	2 206	2 205	1	2 120	86	0
506 Sri Lanka	2 206	2 205	1	2 176	30	0
231 Portugal	2 192	2 183	9	2 008	184	0
250 Kroatien	1 659	1 658	1	1 547	112	0
207 Deutschland	1 334	1 290	44	650	681	3
236 Spanien	1 267	1 234	33	1 020	246	1
212 Frankreich	1 891	1 205	686	723	1 104	64
406 Brasilien	536	470	66	94	436	6
542 Thailand	465	441	24	44	420	1
264 Russland	360	350	10	157	202	1
331 Marokko	358	353	5	146	212	0
348 Somalia	333	333	0	327	6	0
215 Grossbritannien	353	313	40	201	151	1
439 USA	382	297	85	167	205	10
357 Tunesien	287	285	2	182	105	0
510 Indien	248	246	2	206	42	0
Übrige	7 724	7 144	580	3 737	3 908	79

2001 2002 2003 2004 2005 2006

**Gross rate of naturalisation (in ‰) by continent
of origin**

	2001	2002	2003	2004	2005	2006
All countries	1.99	2.57	2.45	2.43	2.57	3.09
Europe	1.69	2.23	2.16	2.15	2.30	2.73
Africa	5.94	6.23	5.24	4.64	4.91	6.02
America	4.05	4.41	4.11	3.69	3.31	3.97
North America	1.87	2.08	2.03	1.86	1.87	2.18
Latin America	5.35	5.77	5.24	4.63	4.02	4.83
Asia	4.50	5.48	4.60	4.80	5.06	6.50
Oceania	1.11	1.27	2.35	2.63	2.12	2.25
Stateless, origin unknown	5.60	6.84	5.24	5.83	4.39	4.95

(Source: Swiss Federal Statistical Office, statistics on resident foreigners)

In Switzerland, the gross rate of naturalisation is clearly rising (from 16.9‰ in 2001 to 31.5‰ in 2006). If the figures are broken down by canton, it can be seen that the trend is not identical throughout the country. While the number of foreigners naturalised in the cantons of Aargau, Bern, Vaud, Valais, Zurich, Lucerne and Glarus has risen, the rate in the cantons of Fribourg and Schaffhausen has fallen. As for Nidwalden, Basle-Stadt and the Tessin, here the rate has remained more or less stable⁷.

2001 2002 2003 2004 2005 2006 | 2001 2002 2003 2004 2005 2006

⁶ Source: Swiss Federal Statistical Office, statistics on the resident population of Switzerland

⁷ Source: Swiss Federal Statistical Office, statistics on foreigners resident in Switzerland, as at 31 December.

By canton	Gross rate of naturalisation (in ‰)						No. of people acquiring Swiss nationality					
	19.6	25.4	24.3	24.2	25.9	31.5	27,583	36,515	35,424	35,685	38,437	46,711
Zurich	26.4	28.6	31.6	29.5	32.3	41.6	7,011	7,801	8,683	8,209	9,000	11,494
Bern	18.3	42.1	28.1	37.3	34.5	51.8	2,037	4,720	3,182	4,255	3,937	5,802
Lucerne	14.3	29.8	22.7	23.5	23.1	30.5	753	1,596	1,219	1,266	1,242	1,640
Uri	23.4	27.9	28.7	16.9	38.7	21.1	64	79	81	48	106	57
Schwyz	10.2	12.8	10.1	5.5	17.7	20.4	207	266	215	120	395	458
Obwald	20.4	34.6	19.3	27.8	20.5	14.8	71	123	70	99	74	56
Nidwald	20.9	26.1	42.8	35.9	30.0	20.3	75	94	154	130	109	75
Glarus	16.9	30.4	22.4	20.5	31.8	40.1	129	231	173	158	239	292
Zug	23.8	22.2	22.8	23.2	29.8	22.5	466	448	470	492	643	494
Fribourg	21.5	23.2	28.3	23.9	18.8	17.3	727	819	1,023	884	715	675
Solothurn	8.9	12.1	10.7	10.4	17.7	12.8	368	516	461	456	787	576
Basle-Stadt	22.2	27.7	23.5	23.7	23.7	20.8	1,124	1,443	1,248	1,272	1,268	1,121
Basle-Land	16.9	20.2	25.2	29.0	28.2	25.1	757	933	1,171	1,351	1,321	1,179
Schaffhausen	26.5	20.1	24.1	22.9	14.6	20.2	384	301	367	348	223	311
Appenzell AR	38.0	35.3	39.7	32.9	72.8	34.8	275	255	281	229	480	226
Appenzell IR	28.5	27.1	31.7	26.6	32.8	33.0	43	40	46	38	47	46
St. Gallen	15.9	19.0	18.4	19.3	25.9	21.9	1,416	1,726	1,695	1,791	2,395	2,037
Grisons	14.3	21.3	44.3	43.4	22.6	19.3	343	529	1,099	1,077	562	480
Aargau	12.2	21.0	19.3	19.5	16.9	32.2	1,280	2,262	2,124	2,184	1,918	3,664
Thurgau	10.2	22.4	18.3	20.9	23.4	23.3	440	980	822	943	1,054	1,046
Tessin	21.3	33.7	25.2	24.6	19.0	24.1	1,667	2,633	1,973	1,930	1,509	1,918
Vaud	14.4	25.0	16.3	16.9	22.9	23.5	2,339	4,174	2,818	2,994	4,107	4,279
Valais	11.9	12.8	13.7	12.8	13.0	18.4	541	594	646	617	649	939
Neuchâtel	17.4	17.2	24.9	23.7	29.2	29.0	653	651	940	898	1,117	1,121
Geneva	31.5	22.1	30.8	27.0	30.6	47.7	4,244	3,026	4,259	3,745	4,232	6,489
Jura	20.4	33.5	25.0	18.6	38.9	30.1	169	275	204	151	308	236

(Source: Swiss Federal Statistical Office, statistics on foreigners resident in Switzerland, as at 31 December)

2.4. Asylum

The decrease in the number of applications for asylum that was first seen throughout Europe in 2003 was still evident in 2006. The total number of 10,537 new applications was in fact the second lowest since 1987 (in 2005 the total was 10,061). South-eastern Europe remains the most common origin of asylum seekers, even if their numbers too have fallen. Between 2000 and 2006 there was a 33% rise in the proportion of asylum seekers from West Africa (from 10% to 15%) compared with the total number of requests received, while the proportion for Central Africa doubled over the same period to reach 12.6%. In contrast, the proportion of asylum seekers from Southern Asia fell from 26.7% to 12%⁸.

Asylum seekers by nationality (as at 31.12, in ‰)	2001	2002	2003	2004	2005	2006
Total	65.7	66.5	64.6	55.1	48.2	44.9
Serbia and Montenegro	17.0	15.3	13.4	11.4	10.5	9.5
Bosnia-Herzegovina	5.5	5.6	5.0	4.0	3.4	2.7
Turkey	3.6	4.0	3.8	3.2	2.7	2.3
Sri Lanka	9.7	5.6	3.9	3.0	2.5	2.3
Somalia	4.3	3.9	3.8	4.0	3.8	3.5
Iraq	3.0	3.1	3.8	3.7	3.4	3.6
Angola	2.8	3.3	3.2	2.9	2.7	2.5
Ethiopia	1.4	1.6	1.8	1.7	1.6	1.5
Algeria	1.1	1.5	1.6	1.1	0.8	0.7
Iran	1.1	1.2	1.2	1.2	1.1	1.2

(Source: Swiss Federal Statistical Office, statistics on foreigners resident in Switzerland; excluding recognised refugees)

⁸ Source: Federal Office of Migration, statistics on foreigners and asylum, Bern, 2008.

At the end of 2007, there were 63,554 asylum seekers living in Switzerland, of which 22,901 (36.1%) were refugees, 22,753 (35.8%) had been allowed into Switzerland on a temporary basis and 8.5% were waiting for the processing of their application to be completed after having obtained a final decision. As far as concerns the remaining cases, 6,305 applications were pending further processing and 6,170 cases were awaiting implementation of the decision (19.6% asylum seekers).

In 2007, decisions were taken on 9,577 requests for asylum, which was only half of the number for 2004, a total of 2,644 applications were rejected and asylum was granted to 1,561 people (2006: 1,857). Moreover, 1,054 cases were handed over by the federal authorities to the cantonal authorities.

During 2007, the monthly total number of requests for asylum varied from 688 (June) to 1,122 (January). The monthly range was similar to that seen in 2006, namely between 657 (April) and 1,230 (October)⁹.

2.5. Linguistic minorities

According to the 2000 national census, the most frequently spoken languages in Switzerland remain German (63.7%), French (20.4%), Italian (6.5%) and Romansch (0.5%). The proportion of people who speak another language is 9.0%. These percentages have remained more or less unchanged since 1990. What has changed, however, is that the number of people who speak Serbo-Croat, Albanian, Portuguese, Spanish, English or Turkish was far higher in 2000 than the number who speak Romansch.

In contrast to the percentages for each of the Swiss national languages, those for other languages have changed. While the proportion has also remained stable overall, the number of people who speak a Slav language has risen while the number who speak a Latin language has fallen: according to the latest figures available, 1.5% of the population speak a Slav language from ex-Yugoslavia, 1.3% speak Albanian, 1.2% speak Portuguese, 1.1% speak Spanish, 1% speak English and 2.8% speak another language. A large majority of foreigners in Switzerland also speak one of the national languages and use it as their main means of communication¹⁰.

2.6. Religious minorities

Members of the Roman Catholic and Reformed Evangelical churches still constitute the two principal religious groups in Switzerland (41.8% and 33.0% respectively). In the 1990s, religious adherence was characterised by two clear trends: firstly, the marked rise in the proportion of the population who did not belong to any religious community (from 7.4% to 11.1%), and secondly the expansion of the Orthodox Christian and Islamic communities.

The number of Moslems in particular more than doubled between 1990 and 2000, rising from 152,200 to 310,800 (4.3% of the resident population). The speed of this increase is due principally to the influx of people from Kosovo, Bosnia-Herzegovina, Macedonia and Turkey. Immigrants from Serbia and Montenegro, Bosnia-Herzegovina, Macedonia and other countries of Central and Eastern Europe have also helped to expand the Christian Orthodox communities. At the dawn of the 21st century they numbered some 130,000 people (1.8%) and have now become the third largest Christian community in Switzerland. The proportion of Jews (0.2%) has remained unchanged.

2.7. Ethnic minorities

In its report on spatial development and the legal status of travellers published in 2001, the "Ensuring the Future for Swiss Travellers" Foundation estimated that there were around 35,000 travellers in Switzerland, of whom roughly 3,000 still pursue a nomadic lifestyle¹¹. According to the Federal Office of Culture, they totalled 30,000 in 2006, of whom 2,500 were not sedentary¹².

⁹ Source: Federal Office of Migration, statistics on foreigners and asylum, Bern, 2008.

¹⁰ Source: Swiss Federal Statistical Office, Neuchâtel, 2003 – 2000 National census – Structure of the Population, first language and religion.

¹¹ Source: "Ensuring the Future for Swiss Travellers" Foundation, 2006 Annual Report

¹² Source: Federal Office of Culture – Travellers in Switzerland - 2008

Institutional Framework

Question 2: *In light of the Committee's recommendation in its previous concluding observations (CERD/C/60/CO/14, paragraph 13), please provide information on efforts to strengthen the mandate, composition, independence, resources, activities and results of the activities of the Federal Commission against Racism. Please provide information on recent developments in the debate on the establishment of an independent national human right institution in accordance with the Paris principles (General Assembly Resolution 48/134 of 20 December 1993). How do the efforts to create such institution blend with, or enhance the work of the Swiss Commission against Racial Discrimination? Please also provide statistical data on the activities of the Federal Commission against Racism, including with regard to its advisory role and its role as a mediator (paragraph 210 of the State report). At what level (communal, cantonal or federal) would government bodies have the ability to enforce findings of any discrimination-monitoring body?*

1. Federal Commission against Racism (FCR)/Service for Combating Racism (SCRA)

The Federal Council has always expressly defended the mandate and activities of the FCR against petitions to Parliament, and expressly praised its critical role.

The importance attached to the FCR has also been emphasised through the confirmation it received within the scope of the most recent reform of the federal administration, in which all federal commissions were subjected to a full review. 54 of the previously existing 199 commissions were abolished, and the general conditions for the other commissions were standardised. This concerned the number of members (which was standardised at 15), as well as their remuneration. Budget reductions that also affect the Commission do not concern specific tasks, but rather they apply to all areas of activity of the federal administration.

With respect to the duties of the FCR it should also be noted here that its mandate includes advising victims. However, the FCR defines this mandate rather narrowly due to the lack of resources and the difficulties associated with advising victims. As a rule it prefers to pass on cases to external consultants. On average, the Commission receives two cases a day. 40% of these can be dealt with by providing basic information, while 50% are passed on to external consultants and the secretariat deals with the remaining 10%. The first data set resulting from a periodical collection of statistics will be available at the end of 2008. This question will be answered in greater detail in the separate report to the Committee by the FCR.

It should also be noted that the Service for Combating Racism has assumed a large proportion of the tasks previously carried out by the secretariat of the Federal Commission against Racism, and this has resulted in an increase in the working capacity of the secretariat.

2. Creation of a national institution for human rights

On 8 May last, at a meeting of the United Nations Human Rights Council devoted to adopting a report on Switzerland, our country made the following voluntary undertaking: "Switzerland is prepared to consider setting up a national institution for human rights". The creation of a national institution for human rights aimed at promoting all human rights is currently being discussed in our country.

In 2003 the two chambers addressed the issue. The lower chamber, namely the National Council, approved an initiative which is still pending; the upper chamber (the Council of States) asked the government (the Federal Council) to draw up a report on the appropriateness and form of such an institution. Since then, the Federal Department of Foreign Affairs, which was mandated to ensure that this request be followed up, has carried out studies and outlined several models which could be used. It has also consulted a broad range of bodies in order to elucidate the various points of view and the needs of interested parties: ministries, cantonal authorities, civilians and the private sector (multinationals, small and medium-sized companies, commercial associations, etc.).

In January 2007 the Federal Council set up a working group made up of representatives of the federal and cantonal authorities to look into the issue in more detail (appropriateness, needs, models and funding for such a national institution). The working group has now completed its task and will submit a report to the government by the end of the year.

Implementation of the Convention

Question 3: *In light of its previous recommendations (paragraphs 8, 10), and while noting that the implementation of some of the Convention's provisions falls in the competency of the cantons, the Committee would like to know whether the adoption of comprehensive, including with appropriate remedies, is being considered.¹³ Please clarify the exact status of the Convention in the domestic legal order of the State party and indicate which provisions of the Convention can be directly invoked before a federal or cantonal court. Please provide examples of such cases, if any.*

1. Federal legislation on racial discrimination

Article 8 of the federal constitution forbids numerous discriminatory grounds while Article 28 of the Swiss Civil Code (SCC) and Article 6 of the Labour Act ensure full protection for people, and notably employees, whose personal rights are breached. Moreover, Articles 328 and 336 of the Swiss Code of Obligations (SCO) offer employees protection against racial harassment or dismissal.

In addition, there are various general stipulations in private contractual law which set limits for racial discrimination. In this context, the bona fide principle (Art. 2, para. 1 of the SCC), the ban on the abuse of rights (Art. 2, para. 2 of the SCC) and the stipulations concerning the limitations of contractual autonomy (in particular freedom to enter into a contract, freedom in the choice of partners, freedom to decide contractual content and freedom to annul a contract) (Art. 19 and 20 of the SCO in combination with Art. 27 ff. of the SCC) deserve particular mention.

Finally, there are many stipulations under criminal law that offer protection against racial discrimination (see Art. 261bis of the Swiss Penal Code, Art. 171c of the Military Penal Code, 264) and are applied in cases of racial discrimination (e.g. in the case of racial violence Art. 111 – 113, 129, 133, 134, 221, 223, 224, 122, 126, 123, 285, 180, 181) and thus have the effect of increasing penalties.

At a legislative level, specific measures aimed at promoting equality between the different social groups have been adopted in the form of special laws (federal Gender Equality Act of 24 March 1995, federal Elimination of Discrimination against People with Disabilities Act of 13 December 2002). This enables the different problems faced by each social group that is likely to suffer discrimination to be taken into account. As a country with monistic traditions, in which all international agreements that are ratified are integral part of the Swiss legal system, Switzerland nevertheless tends to “monitor how things develop in Europe [...] in order to be able to take the necessary measures...” (Federal Council's reply to the motion “Racial discrimination in the work-place” of 16.6.2003). It is for this reason that a day of reflection is being organised in December 2008 by three federal bodies: the Service for Combating Racism, the Federal Bureau for the Equality of People with Disabilities and the Federal Office for Gender Equality. The title of the event is “Legislative measures against discrimination: what can we learn from Europe?”. The aim is to encourage in-depth reflection on the question of anti-racism legislation in the work-place by bringing together a large portion of the players concerned. In 2008 and 2009 the Federal Committee against Racism will be examining the issue of reinforcing legislation concerning the fight against racial discrimination.

2. Status of the Convention in relation to the Swiss legal system and application of individual stipulations

The International Convention on the elimination of all forms of racial discrimination is an integral part of the Swiss legal system as soon as it comes into force.

According to the Federal Council, it is in essence a programme, with the exception of Art. 2 para. 1a and Art. 5, which are more general (Federal Council's message concerning Switzerland's adherence to the Convention on the elimination of all forms of racial discrimination and the corresponding revision of the Swiss Penal Code, FF1992 III 265, 284).

In principle, it is the task of the bodies responsible for implementing the law, in particular the courts, however, to decide in each case as to the direct applicability of any particular stipulation of international law.

In this connection, the jurisprudence of the Federal Court is the deciding factor. As far as we know, this court has not yet handed down a decision on whether certain stipulations of the Convention are directly applicable (cf. Federal Court ruling 123 II 472 in which “the question as to whether and to what extent the guarantees given by the Convention against Racial Discrimination are directly justiciable

¹³ CERD/C/304/Add.44

and therefore applicable” is left unclear (Journal des Tribunaux 1999 I pp. 414-521 [520-521]), see also Federal Court ruling 129 I 217).

In a court case concerning popular voting on applications for naturalisation, the Constitutional Court in the canton of Basel-Land permitted recourse by people whose application had been rejected in a discriminatory manner but refused them the right to apply Art. 1 of the Convention, in particular: “Art. 1 point 3 of the Convention on Racial Discrimination includes exclusively the obligations pertaining to the national legislative body, since the Convention is not intended to constitute a sufficient basis for implementation of legislation. It is therefore a stipulation that cannot be applied directly” (judgement handed down by the Constitutional Court of the canton of Basel-Land on 29 March 2000, 98/324-98/328). As far as guiding principles are concerned, certain authors are of the opinion that Art. 6 can be applied directly (R. Strauss, Banning Racial Discrimination, Zurich 1991, pp. 292-293, (in German), quoted in H. P. Sambuc and J. Sambuc Bloise, The right of nomadic travellers to set up temporary camps in Switzerland (in French), RDAF 2004 I pp. 1-29).

Article 1

Question 4: *Please provide information on legislative provisions, in addition to the provisions in article 8 of the Swiss constitution, which define the understanding of racial discrimination at the federal and cantonal levels, and explain the extent to which such provisions correspond to the definition in article 1, paragraph 1 of the Convention.*

Apart from Art. 261bis of the Swiss Penal Code, there are a series of civil law stipulations that may be applied in cases of racial discrimination. Art. 28 of the SCC protects the personal rights of the individual as well as the personal rights of those applying for jobs. Art. 328 of the SCO protects the personal rights of workers during their employment. Art. 2, para. 1, of the SCC requires employers to exercise their rights in good faith, i.e. to behave with sincerity towards their employees and not to undermine the confidence of those seeking employment. During the application and interview process, the employer must respect and protect the personal rights of the candidate. The federal Data Protection Act forbids the use of personal data not required for determining an applicant's suitability (e.g. ethnic origin or religious beliefs). According to the federal law on the responsibility of the Confederation and federal employees (Responsibility Act; there are also cantonal laws on responsibility), any person employed by the administration must respect the values set out in the Swiss constitution, such as the ban on discrimination, in the work-place. (cf. reply to question 3 too)

Article 2

Question 5: *Please provide information on legislative provisions on the prohibition of racial discrimination in the cantonal constitutions and legislation (paragraph 52 of the State report).*

A number of cantons include a prohibition of racial discrimination in their constitution: Aargau (Article 10), Appenzell Ausserrhoden (Article 5), Basel-Stadt (Article 8), Basel-Land (Article 7), Bern (Article 10), Glarus (Article 4), Jura (Article 6), Neuchâtel (Article 8), Uri (Article 11), Ticino (Article 7). And cantonal constitutions that have been revised in recent years, e.g. those of Zurich, Bern, Basel-Stadt and St Gall, also contain a prohibition of racial discrimination.

Since Article 8, paragraph 2 of the Federal Constitution expressly prohibits racial discrimination, the provisions in cantonal constitutions primarily have a declaratory effect.

At the legislative level, several cantons (Appenzell Ausserrhoden, Bern, Fribourg, Nidwalden, Schaffhausen, Zurich) stipulate in their data protection laws that race is among the sensitive personal data that need to be protected. In their legislation governing the enforcement of the Swiss Federal Aliens Act, various cantons (Basel-Stadt, Geneva, Solothurn, Vaud) rely on certain committees to intervene and to prevent and combat racism. Certain other cantonal laws contain provisions prohibiting racial discrimination, e.g. in the areas of education (Nidwalden), criminal law relating to minors (Valais), and care of infants (Neuchâtel and Geneva).

Question 6: Please provide information on the practical outcome of studies and projects to prevent racial discrimination and combat xenophobia and racial discrimination (State party report, paragraphs 241 to 248). Please also provide further information on measures undertaken to protect ethnic minorities (paragraph 60 of the State report). Please also provide information on the impact of the activities of the “media observation centre” of the Swiss Federation of Jewish Communities (paragraph 63 of the report).

Some examples of projects are described below.

The national research programme entitled “Right-wing extremism: causes and counter-measures” (NRP 40+) was intended as a scientific study of the origins of the phenomenon and the possible measures that could be taken to eliminate it. The programme offers the possibility of funding pilot projects and drawing up a procedure and outline conditions for carrying out regular, long-term surveys of racist and xenophobic attitudes within the population. The results of NRP 40+ have been published and were distributed to many recipients by the Service for Combating Racism at the end of 2007 (“Xenophobia and racism among football and ice-hockey supporters”, “Young people and right-wing extremism” and “Fighting right-wing extremism”). NRP 51, entitled “Integration and exclusion” concentrates on key issues concerning the state and society in Switzerland. Over 100 researchers involved in 37 projects are studying the social, institutional, cultural and economic mechanisms of integration and exclusion in relation to a concrete problem.

Apart from a series of studies concerning the integration of immigrants and “foreigners”, the history of discrimination in Switzerland against the Yenish people is being examined in three specific studies. In this connection, the Yenish organisations allowed researchers access to documents in the federal archives concerning the “Children of the highways” campaign:

- File management and stigmatisation. Institutional exclusion procedures: the example of “Children of the highways” between 1926 and 1973 (in French),
- The Yenish people in Grisons communities in the 19th and 20th centuries (in French),
- Between persecution and recognition: ways in which Roms, Sinti and Yenish people have been integrated and excluded in Switzerland from the 19th century to the present day (in French).

The research culminated in publications and a travelling exhibition aimed at a broad general public.

The new National Research Programme entitled “Religions in Switzerland” (NRP 58) started in 2007. Over the following three years, 28 research projects involving 13 different disciplines will examine how the religious environment has developed in Switzerland. Over the last few decades, the religious landscape in Switzerland has undergone some radical changes. As a result of immigration, a large number of new religions have appeared in this country. NRP 58 is intended as a scientific study of this evolution and should provide useful results for the authorities, political circles, schools and religious communities. The aim is to encourage understanding between the various religious communities, but also the understanding of those with no faith among religious communities.

In 2006 The Federal Commission for Foreigners published a report entitled “Living as a Moslem in Switzerland”. The principal aim of this study was to enable Moslems to voice their opinions, which has rarely been the case so far, and to start building up a picture of the Moslem population’s view of the world. The results have clearly shown that a large section of the Moslem population does not support the claims made by community or religious leaders in their name. Far from being a homogeneous social group, Moslems in Switzerland are characterised by strongly differing view on Islam, Islamic practice and the position of Islam vis-à-vis the secularisation of Swiss society. Contrary to the simplistic claims made in Switzerland that the Moslem community share common values and practices, it would appear that there exist sociological groups and types of Moslems who have different viewpoints and see Islam quite differently.

The report drawn up by the Federal Committee against Racism (FCR) entitled “Relations with the Moslem minority in Switzerland” focuses on the relations between the non-Moslem majority and the Moslem minority. In it the Commission analyses the public debate which tends to make Moslems collectively responsible for everything that happens throughout the world. The publication reveals the discriminatory mechanisms used against Moslems on an everyday level, be it in relation to employment, housing or planning permission, i.e. in areas where religion should not constitute grounds for exclusion. The FCR proposes measures to remedy this situation. The aim is not to

emphasise cultural or religious particularities nor specific demands, but rather to encourage tolerance in everyday life.

On behalf of the Federal Committee against Racism, the Research Department on Public Opinion and Society of the University of Zurich analysed the electoral communications relating to the 2007 federal elections as conveyed in the media. The main finding was that the issue of foreigners became the focus of attention in the 2007 election campaign. The SVP, in particular, used to a great extent forms of typing which generate distance between foreign nationals and ethnic minorities and the rest of the population. Owing to the fact that large sections of the media and political actors such as the SP responded to this typing, such labels were in fact corrected, but became a feature of reporting as a result. Furthermore, some of the negative depictions of foreigners were left unrefuted, meaning that the association of foreign nationals and ethnic minorities with certain negative subject contexts was seldom corrected. Generally speaking, a highly dichotomous image was produced in which foreign nationals and ethnic minorities were portrayed either as perpetrators or victims.

A study entitled "Criticism of Israel does not equal anti-semitic attitudes" carried out in 2007 by the gfs.bern research institute under the auspices of the Federal Committee against Racism and in collaboration with the Jewish weekly magazine Tachles produced the following results. Basically, the Swiss population are respectful of the Jewish minority in the country. So far, the critical public debate on Israeli policy in the Middle East seems to have had no far-reaching effects on the population's attitude towards Jews:

- 10% of the respondents have systematic anti-Semitic attitudes
- 28% have selective anti-Semitic attitudes related to stereotypes or to their attitude towards Israel
- 15% are disappointed because of Israel, but have no other anti-Semitic attitude
- 37% have mainly positive attitudes towards the Jewish population
- 10% cannot be clearly classified. The majority of the Swiss population is in favour of combating anti-Semitic currents in the Swiss population and supports criminal sanctions for anti-Semitic actions as well as anti-racism legislation.

Question 7: *Please provide information on legislative measures taken or intended to be taken, at the federal and cantonal level, to end indirect discrimination against Travellers (paragraph 287 of the State report). Please provide information on zones and areas identified as suitable for occupation by Travellers. Please provide information on policies and practices applicable to Travellers who are not of Swiss nationality.*

On 18 September 2006, Parliament resolved to support the "Ensuring the Future of Swiss Travellers" foundation with a credit facility totalling 750,000 Swiss francs for the period from 2007 to 2011 (i.e. 150,000 Swiss francs per annum).

On 7 July 2003 the National Council Committee for Social Security and Health submitted a postulate ("Elimination of discrimination against travellers in Switzerland", 03.3426) that supported the ruling of the Federal Supreme Court dated 28 March 2003. In this postulate, the Federal Council was asked to prepare a report on the situation of travellers in Switzerland and the various forms of discrimination to which they are exposed, and to list potential nation-wide measures for eliminating discrimination and improving the living conditions for travellers. With respect to zones identified as suitable for occupation by travellers, the postulate addressed the issue of federal legislative measures or financial incentives that would be necessary and feasible. The Federal Council adopted the postulate. The draft of its report was posted on the web site of the Federal Office of Culture, and the associated consultation procedure ran from 22 June to 1 November 2005. In line with the provisions of the Swiss Federal Law dated 18 March 2005 on the Consultation Procedure, this procedure promotes the involvement of the cantons, political parties and interest groups. Here it was important to consult the cantons, since many of the issues dealt with in the report fell under their area of responsibility. But it was also necessary to consult the travellers via the various associations and advisory bodies that represent their interests, so that their needs could be sufficiently taken into account. A total of 70 organisations of various kinds were consulted, and the revised report was adopted by the Federal Council on 18 October 2006 and subsequently released for publication.

The issue of suitable stopping places and transit sites was the subject of a second report ("Options for the federal government regarding the creation of stopping places and transit sites for travellers in Switzerland"), which was debated by the National Council Committee for Science, Education and Culture on 12 January 2007. In spring 2009 the Federal Council is expected to inform the above Committee about the status of implementation of the measures proposed in this report.

The main conclusions and measures cited in the report are as follows:

- The existing area planning legislation provides sufficient options for creating sites for use by travellers. The Swiss Federal Department of the Environment, Transport, Energy and Communications (DETEC) and the Swiss Federal Department of Home Affairs (FDHA) will draw the attention of the cantons to these options as the opportunity arises.
- DETEC has been instructed to adequately take the needs and interests of travellers into account when approving cantonal spatial planning projects and guidelines.
- Based on the findings obtained from the consultation procedure for the new federal legislation on the promotion of culture, the FDHA is to take the interests and needs of travellers into account in the draft of the new Act.
- The option of using sites formerly used for military purposes by the Swiss Federal Department of Defence, Civil Protection and Sport (DDPS) for occupation by travellers is to be examined. As a result of the "XXI" army reform process, approximately 10,000 sites are to be listed for sale in a special inventory upon consultation with the involved cantons. Since the federal government is also obliged to contribute towards the implementation of the ruling by the Swiss Federal Supreme Court dated 28 March 2003, the DDPS is to draw the attention of the cantons to sites listed in the inventory that would be suitable for use by travellers, and where possible to sell these to the cantons and municipalities for this purpose.
- The federal government will campaign for the implementation of these measures, as long as they do not lead to additional expenditure at the federal level. An evaluation of the proposed measures has not yet been made. As already noted, this will only be carried out for the attention of the National Council Committee for Science, Education and Culture in spring 2009.

However, the following points can already be ascertained today:

- With reference to the expertise, "Travellers and area planning", which the "Ensuring the Future of Swiss Travellers" foundation published in 2001, in its revision and adaptation of the cantonal area planning guidelines over the past few years the Swiss Federal Office for Spatial Development (ARE) constantly drew the attention of the cantons – wherever applicable and necessary – to the lack of sites available for use by travellers.
- Article 15 of the draft version of the proposed federal law on the promotion of culture, which is currently being debated by the National Council Committee for Science, Education and Culture, states that the federal government may take measures to ensure that travellers are able to live a lifestyle in keeping with their own traditions and culture.
- Use of former military sites by travellers: A workgroup has been formed for the implementation of this mandate, comprising representatives from the DDPS and the "Ensuring the Future of Swiss Travellers" foundation. Its main task is to examine which of these sites would be suitable for use by travellers. Thanks to the composition of the foundation, this procedure makes it possible to take into account the stances of the various involved players (travellers, the involved cantons and municipalities, and the relevant federal authorities) right from the start.

The "Ensuring the Future of Swiss Travellers" foundation held a conference in Bern on 18 April 2008 that was attended by cantonal officials responsible for spatial development together with representatives of the involved federal authorities, travellers and municipalities. Here the main focus was on best practices with respect to the creation of sites for use by travellers, as well as on available options for the cantons to place former military sites at the disposal of travellers, and the associated difficulties that have to be overcome. At the conference the DDPS announced that, for the time being, it does not intend to sell sites from its inventory that are identified by the cantons and municipalities as suitable for use by travellers. This means the local authorities will have the necessary time at their

disposal to prepare their planning provisions. The DDPS will take the restrictions (stopping place or transit site) arising from these planning provisions into account for pricing purposes.

It should be noted here that, generally speaking, no distinction is made between sites for Swiss and foreign travellers. The existing 44 transit sites are either on the outskirts of residential zones, or outside developed areas altogether. Most of them can accommodate between 3 and 25 caravans, and there are one or two in the French-speaking part of the country that can accommodate between 35 and 50. Unlike their Swiss counterparts, foreign travellers traditionally pass through Switzerland in sizeable groups and use large transit sites, but only one site is used exclusively by such groups, namely Donat/Ems in the canton of Grisons. As a report released by the foundation in 2006 points out, in 2005 foreign traveller groups also called in at 20 other transit sites throughout Switzerland.

Ongoing measures and planned solutions at the cantonal level

A number of projects aimed at creating sites for use by travellers are currently being implemented. Since most sites for travellers have tended to be of a provisional nature in the past, and often had to subsequently make way for residential development, the cantons are now focusing on securing new sites through spatial planning provisions. The following projects are especially worthy of mention:

- The canton of Fribourg has for many years been endeavouring to create two transit sites within its sovereign territory, but each proposed site has met with strong resistance both by the local population and by the municipal authorities. Negotiations are currently being carried out with the municipal authorities, and options are being examined to provide compensation in some form for amendments to local spatial planning provisions. If no agreement should be reached, the canton would be able to overcome the resistance of the municipal authorities through area planning legislation, namely by drawing up a cantonal development plan that is binding for the municipal authorities.
- In the canton of Geneva, the cantonal parliament adopted a law in May 2003 governing the modification of zoning perimeters in the municipality of Versoix. The general zoning plan of the canton of Geneva was modified in that it includes a new zone that is intended for use by travelling peoples. The area concerned (La Bécassière) was originally included in the agricultural zone. The aim is to develop La Bécassière into a site measuring 12,500 square metres for use by travellers (40 caravan parking spaces). The law was not subject to a referendum, but the owners of the neighbouring plots of land contested it right up to the highest level (Swiss Federal Supreme Court), arguing that the creation of new development zones would infringe against the provisions of federal legislation relating to the protection of the environment, and especially noise thresholds (unacceptable noise levels for residents due to trains travelling on the nearby railway line). The Federal Supreme Court rejected the appeals on 31 May 2005, and the new site is expected to be ready for use in 2008 or 2009.
- In the canton of St. Gall, after creating a site in the Linth zone in 2005, the cantonal authorities presented a concept according to which 6 transit sites were to be included in the cantonal area planning. For this purpose the canton drew up a specimen agreement for regulating the problems relating to the financing, development and operation of the sites with the involved municipalities. Depending on the chosen model, the canton would provide the land and bear the development costs, while the municipalities would be responsible for the operation of these sites. They would also benefit from a deficit guarantee by the canton for any uncovered social insurance and healthcare costs. The municipalities have to work together with the canton to draw up regulations governing issues relating to use, leasing, supplementary costs, waste disposal charges, etc.
- Like the canton of St. Gall, the canton of Aargau has also developed a concept for creating transit sites for travellers. On 27 November 2007, the cantonal parliament approved a credit facility amounting to 2.1 million Swiss francs for the development of one new stopping place and two additional transit sites.
- At the beginning of 2008, the canton of Zug approved a budget of 830,000 Swiss francs for the creation of a transit site for at least 10 caravans. The new site should be ready for use in 2009.
- The canton of Jura is also pushing ahead with its efforts to create a transit site for 30 caravans on the outskirts of the town of Delémont.

- On 13 February 2008, the cantonal council of Zurich announced its intention to submit a proposal for changing the development planning guidelines so that it can create at least one additional stopping place and five more transit sites.

Yenish: On 26 April 2007, with the support of the Swiss Federal Office of Culture, the national association of Swiss travellers ("Radgenossenschaft der Landstrasse") launched a project to promote the Yenish language. The objectives here are to trace and preserve the linguistic heritage of Yenish, to revitalise the language and create the basis for promoting its use among travelling peoples. For this purpose plans have been drawn up to produce a dictionary (Yenish-German and Yenish-French), record around 10 audiovisual interviews in Yenish, and produce material for teaching Yenish.

Question 8: *Please indicate whether any measures have been taken to restrict the use of racial profiling, including in airports, identified as an issue of concern in the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/4/19/Add.2, paragraph 52) and other sources before the Committee.*

In addition to the cantonal police corps, the federal criminal police carries out investigations against organised criminal or terrorist groups. It has no authority over the cantonal police, however, and therefore cannot issue orders to the cantonal police authorities. Moreover, it has no competency to answer this question on their behalf. Besides coordinating investigations in cases where two or more cantons are involved, the federal criminal police also carries out its own investigations. The information about suspects received by the cantonal authorities is analysed with a view to finding possible links with organised criminal groups. The federal criminal police does not carry out profiling in the sense described by the special rapporteur. In general, however, the members of organised criminal groups often come from the same country or region or have other characteristics in common. The nationality, skin colour or religion (in the case of investigations against Islamist terrorism) are therefore indicators (but not the only ones) which are taken into consideration while trying to understand the extent and influence of the group. Although these indicators can be correlated with race, they are not a priori the basic criteria for the identification of eventual members of a criminal group, nor are they the primary criteria for controlling or searching suspects. With regard to searching and checking people, the members of the federal criminal police have strict internal regulations as to how to present themselves (internal regulation 1.2 of 10.8.2006) and how to carry out person and vehicle checks (order of service 3.1.1 of 31.1.2007). They should introduce themselves by name whenever possible and be cordial but firm. Moreover, they are required to be reasonable in how they carry out checks, as well as remaining correct and as unobtrusive as possible.

Question 9: *Please provide information on the number of members of national minority groups and foreign nationals working in the civil service. (State report, paragraph 128.) What policies does the civil service follow to prevent discrimination in selection and recruitment practices? Please provide information on the number of members of national minority groups working in the police force throughout the State party. Please indicate the number of non-citizens serving in the police forces in Basel-Stadt, Schwyz and Geneva, where nationality is no longer a criterion of admission to the police (State report, paragraph 274). Please indicate if other cantons are considering adopting such policy.*

As of January 2008, a total of 33,788 Swiss citizens and 2,375 foreign nationals were employed by the federal administration (including local FDFA personnel).

Of the 33,788 Swiss citizens, 9,079 belonged to one of the three language minorities (6,950 French-speaking, 2,038 Italian-speaking and 91 Romansh-speaking). In accordance with the directives of the Federal Council governing the employment of personnel from the country's language groups (BBI 2003 1441), for job recruitment purposes these language minority groups have to be supported through a variety of measures, the most important of which are as follows: job vacancies must be advertised in all four language regions; applicants must possess at least basic skills in a second official language (i.e. at least the ability to understand it in spoken and written form); applications that meet the objective requirements must be closely examined, regardless of the applicant's mother

tongue; and if the applicants from the French-speaking, Italian-speaking and Romansh-speaking regions have the same qualifications, their applications must be given priority until such time as the proportion of representation of their language group is equivalent to that of the national distribution of languages.

Since for data protection reasons the federal administration does not record details relating to the religious and ethnic backgrounds of its employees, we are unable to comment on these aspects.

Question 10: *Please indicate whether Switzerland intends to maintain its reservation to article 2 of the Convention.*

At the time it ratified the Convention, Switzerland felt that a reservation concerning legislation permitting access to the labour market was appropriate.

Switzerland's current policy is based on a dual system that distinguishes between citizens of EU member states and those from other countries. This distinction is not in contradiction to the Convention as long as it is based on an agreement with the countries concerned. Since the bilateral agreement on the free movement of persons meets these requirements, Switzerland could in fact withdraw this reservation. However, in order to ensure that Switzerland continues to have a certain amount of room for manoeuvre in the future, it seems appropriate to maintain the reservation at this time.

It should also be noted here that too many questions remain unresolved in association with the agreement on free movement of persons, and on its current and future extensions. Switzerland can only consider easing the restrictions on access to the labour market for persons from other countries once the impacts of the agreement on free movement of persons have been identified and the options for recruiting professionally less-qualified personnel from within the member states of the EU and EFTA at fair salaries and working conditions have in fact been exhausted.

Article 4

Question 11: *Please indicate if Switzerland is considering withdrawing its reservation to article 4 of the Convention, bearing in mind that the Swiss Penal Code, article 261bis, already criminalises acts and conduct described in article 4 of the Convention. Please provide statistical data on criminal prosecutions and convictions under article 261bis of the Penal Code. Please also indicate whether, in addition to the provisions criminalizing the conduct of individuals under article 261bis of the Swiss Penal Code, the State party intends to enact legislative provisions prohibiting organizations promoting racial discrimination. Have any preventive measures been taken under article 386 of the Penal Code with regard to offences punishable under article 261bis or related to it (State report, paragraph 21)?*

1. Withdrawal of reservation to Article 4

It is true that Article 261bis of the Swiss Penal Code penalises the behaviour described in Article 4a of the Convention, and this essentially also applies to Articles 4b and c. Nonetheless, the reference to taking sufficient account of the freedoms of expression and assembly guaranteed in the Swiss Federal Constitution is still justified, including in association with the criminalisation of racist activities of individuals or groups.

2. Statistical data on criminal prosecutions and convictions under Article 261bis of the Swiss Penal Code

The Federal Commission against Racism (FCR) recorded a total of 431 rulings (355 cases) in the period from 2004 to 2007, and documented them in its database (www.ekr-cfr.ch). These rulings are evaluated on the basis of their classification into three groups: perpetrators, victims and methods used. In addition, the FCR operates a FAQs page on its web site (cf. reply to question 17) in order to reach out to a broader public.

3. Legal provisions prohibiting organisations promoting racial discrimination

In spring 2003, the Federal Council entrusted the Federal Department of Justice and Police (FDJP) with the task of initiating the consultation procedure concerning the draft of the federal law on measures against racism, hooliganism and propaganda aimed at inciting violence. The draft contained two new legal provisions: Article 261ter (symbols of a racist nature) and Article 261quater (racist groups) of the Penal Code.

In December 2004, having taken note of the results of the consultation procedure, the Federal Council resolved to proceed with its efforts aimed at including a ban on the use of racist symbols in the Penal Code and Military Penal Code, and inserting Article 261quater of the Penal Code in the list of offences under the federal law dated 6 October 2000 on surveillance of correspondence by mail and telecommunications (RS 780.1). Since that time, Article 261bis of the Penal Code has been integrated into the list of offences under Article 269 of the Code of Criminal Procedure dated 5 October 2007, which replaces the corresponding provision in the law on the surveillance of correspondence by mail and telecommunications.

On the other hand, the Federal Council resolved not to criminalise racist groups as originally foreseen in Article 261quater of the Penal Code. In 2005, Parliament adopted motion 04.3224 of the National Council Judicial Affairs Committee dated 29 April 2004, which petitions the Federal Council to submit draft legislation to Parliament that outlaws the use of symbols in public that defend extremist movements inciting violence and racial discrimination. The activities relating to this motion are still in progress.

4. Preventive measures under Article 386 of the Penal Code

The original reason for the introduction of Article 386 of the Penal Code was the need to create a legal basis for federal government campaigns against drink driving, violence and drug use. In other words, the objective was to create competencies for the federal government in the area of conventional crime prevention.

Measures in accordance with Article 386 of the Penal Code are neither urgent nor do they conceal any immediate threats. They take the form of education, information and sensitisation campaigns and programmes that in the long term are intended to prevent criminal acts. The wording of Article 386, paragraph 1 clearly indicates that the measures must target the prevention of crime. The Federal Council enacted Article 386 of the Penal Code prematurely on 2 December 2005 so that it could serve as the legal basis for the ordinance on human rights and anti-racism projects, which entered into force on 1 January 2006.

Article 5

Question 12: *How does the State party fulfill its obligations under the Convention relating to the absence of discrimination in the right to work, to housing and to access any place or services intended for use by the general public? Please provide information on measures to prevent such discrimination, including measures taken by the Federal Commission against Racism to seek an “explicit ban on discrimination between private individuals” in the areas of employment and housing (paragraph 207 of the State report).*

Apart from the regulations mentioned under points 164 ff. of the last report, Switzerland considers that the general stipulations of private law guarantee adequate protection against racial discrimination with regard to employment, housing or services intended for the general public. The Federal Council actually intends to give priority to the tools agreed jointly by the social players before considering the adoption of other legal measures. It closely monitors developments in Europe, however, and in particular their impact on the Swiss economy, in order to be in a position to take the necessary measures at the appropriate time.

The following initiatives should be mentioned in this context, however:

a) motion 04.3791 (Greens lobby) bill against racial discrimination in the work-place, pending before parliament, which demands that legislation on gender equality be extended to cover racial discrimination;

b) parliamentary initiative 07.422 (Rechtsteiner) bill on equal treatment, which proposes that legislation on gender equality and equality for disabled people be extended to cover all forms of discrimination. Swiss law of contract is obviously based on contractual freedom, but several regulations restrict this freedom: the protection of personal rights (Art. 28 of the SCC), the principle of good faith (Art. 2 of the SCC), the obligation to contract in certain situations and the ban on illicit or socially unacceptable content in contracts (Art. 19 and 20 of the SCO). These regulations apply to all types of contracts. They are set out in law for certain special types of contracts, as described below. Their relevance and the way in which they are applied in cases of racial discrimination are clearly indicated in the explanations and examples given below.

Art. 28 of the SCC entitles any person whose personal rights are breached to take action. Under the terms of Art. 28a of the SCC the victim may demand that such a breach be forbidden, stopped or reported and that damages and compensation be paid out for moral wrong.

The principle of good faith imposes obligations on contractual partners before a contract is signed which, if they are not respected, put the onus of responsibility on the offender.

Moreover, according to Art. 19 para. 2 and Art. 20 para. 1 of the SCO, all content of a contract which is illicit or socially unacceptable shall be deemed null and void.

Finally, jurisprudence has developed the obligation to act in compliance with what is socially acceptable into a general obligation to conclude a contract under private law if certain conditions are met: the transaction aims to satisfy current requirements, the goods or services cannot reasonably be obtained elsewhere owing to the provider's strong market position, and the provider has no objective motive that justifies his refusal to conclude the contract (Federal Court ruling 129 III 35, cons. 6.3). Acquisition of the goods or services from a different provider cannot be demanded if no other provider is easily accessible or if all other potential providers may be expected to refuse the transaction. As far as concerns private insurance, the insurance monitoring body may intervene in cases where insurance companies or intermediaries abuse their position (Art. 46 of the federal Insurance Companies Monitoring Act; RS 961.01). Art. 117 para. 2 of the Ordinance on the monitoring of insurance companies (RS 961.011) defines an abuse of position as any action that is detrimental to the interests of a person who is insured or a person who has the same entitlement through markedly different treatment that is legally or actuarially unjustified, which includes unjustified discrimination on the basis of racial criteria. With regard to labour laws, under Art. 328 of the Swiss Code of Obligations, an employer is obliged to respect the personal rights of the worker and to take measures to protect his or her personal integrity. The employer is therefore not allowed to give orders or apply decisions that would entail racial discrimination. He must also ensure that no behaviour occurs in the work-place that could be perceived as racial discrimination. Dismissing an employee on the basis of his or her race is a breach of good faith and thus an abuse of position under the terms of Art. 336 para. 1 a) of the SCO. The dismissal shall stand but shall entail compensation of a maximum of six months' salary. With regard to property leases, under Art. 271 para. 1 of the SCO, if notice is given in a way that contravenes the rules of good faith, such notice can be cancelled. According to jurisprudence and guiding principles, this includes notice for purposes that are unworthy of defence and in particular notice based on the race of the tenant (see for example David Lachat, French-language commentary, note 7 on Art. 271 of the SCO).

These are some examples in law of how Art. 2 and 28 of the SCC, and Art. 20, 328 and 336 para. 1 a) of the SCO can be applied. On 10 October 2005 the Lausanne Industrial Tribunal ruled that a company's refusal to hire a person because he was black constituted a breach of Art. 328 of the SCO and ordered the company concerned to pay compensation of Fr. 5,000 to the victim for moral tort. The application of Art. 328 of the SCO in the case of discrimination in connection with hiring an applicant is controversial but Art. 28 of the SCC can be taken as a legal basis to obtain the same result.

On 13 January 2006 the Zurich Industrial Tribunal also ruled that a cleaning firm should pay out compensation of Fr. 5,000 after refusing to take on a Swiss applicant originally from the Balkans. In this case the court based its decision on Art. 2 and 28 of the SCC. It sanctioned both the racist

remarks made to the candidate and his exclusion from the selection procedure because of his racial origins.

The court also considered that the inclusion of “No applicants from the Balkans” in the advertisement was in breach of the Convention and was thus illicit and invalid, and therefore did not prevent candidates from Balkan countries entering into contractual negotiations with the firm. Here the court based its reasoning on Art. 20 of the SCO.

With regard to dismissal, the Federal Court ruled that an employer may not dismiss a worker because he suspects the worker of committing a theft purely because he is black (Semaine judiciaire 1995, p. 798).

The St. Gallen District Court also sanctioned an employer who dismissed a Jewish member of his staff for asking that the habit of calling a badly painted surface “Jewish”, which is common practice among painters, be forbidden (Jahrbuch für Arbeitsrecht 2000, p. 178). The court allowed that Art. 328 of the SCO obliged the employer to ban such customs within his company.

Question 13: *With reference to the Federal Supreme Court decisions referred to in paragraphs 250 and 251 of the State report, please indicate how many cantons or communes apply popular ballots on naturalization applications. In light of the recent referendum abolishing citizenship votes by secret ballot, please provide information on how the State party intends to increase transparency in the citizenship approval process. Please provide information on any appeal processes available to a would-be citizen if his or her application is rejected at the communal level. Is appeal at the cantonal or federal level available? Does the federal government have plans to implement standards and practices for the approval of citizenship applications, or will that power remain at the communal level? What powers do the federal and/or government or courts have to enforce anti-discrimination policy at the communal level regarding the citizenship approval process?*

Prior to 2003, approximately 90 municipalities in 8 cantons applied popular ballots. This practice was prohibited in 2003 as the result of rulings by the Swiss Federal Supreme Court, and this meant that the municipalities concerned had to introduce new citizenship procedures. The majority of these municipalities transferred responsibility to the municipal assembly. Today, around 60% of citizenship applications are dealt with by executive committees or specialised commissions, and the remaining 40% by municipal assemblies or councils. With respect to the specification or amendment of citizenship competencies, the trend is in the direction of executive committees, especially in larger municipalities.

In the new draft legislation, which is expected to enter into force in 2009, the cantons will be responsible for regulating citizenship procedures at the municipal and cantonal levels. Furthermore, the proposed legislation stipulates that a reason must be given for each rejection of a citizenship application. This means that a municipal assembly that has been empowered to decide on a citizenship application can only reject it if a corresponding petition has been submitted together with a valid reason for rejection. The new legislation also stipulates that the cantons have to ensure that the private sphere of applicants is duly respected. Finally, the cantons are obliged to call on the relevant courts of law as final cantonal instances for ruling on appeals against rejected applications for citizenship. Thus an applicant can appeal against a rejection of an application to independent cantonal courts – and in certain circumstances to the Federal Supreme Court – and request an examination of the case from the point of view of possible violations of procedural rights.

Question 14: *Please provide information on the reasons for the decrease of the number of asylum applications by nearly one third (32.3%) between 2003 and 2004, as cited in paragraph 11 of the State Party Report. In the light of the amendments to the Asylum Act adopted in 2005, please provide statistical data on how the new, stricter provisions of this Act are applied across different ethnic groups or nationalities (State report, paragraph 38). What has been the impact of these amendments in practice? Aside from the harmonization of the time limit on holding a person for the purpose of establishing his or her identity, in what other areas is the federal government working to harmonise cantonal execution of asylum policies? Please provide information on the content of the recommendations issued by the Conference of Cantonal Directors of Social Affairs that services are provided to asylum-seekers according to uniform criteria throughout the country (paragraph 40 of the State report).*

1. Reduction in the number of asylum applications

In the course of 2007, the number of asylum applications fell by 150 versus 2006 (minus 1.4%) – the situation thus remained relatively stable. For the first time in several years, the highest number of applications did not come from Serbia, but from Eritrea (1,662 applicants, or 16% of the total – this was 461 higher than in 2006).

For a more detailed reply to this question, please refer to paragraph 71 of the report, where the reasons are presented exhaustively.

2. Application of the new revised Asylum Act in relation to the various ethnic groups and nationalities

Every application for asylum or appeal is examined individually by the Federal Office of Migration regardless of ethnicity or nationality. On the other hand, ethnicity and nationality are taken into account in cases where persecution is based on either of these factors, as set out in the Convention on Refugee Status and the Asylum Act, insofar as such persecution is likely. Ethnicity or nationality may also be considered when possible obstacles to repatriation are examined, depending on the situation prevailing in the applicant's country of origin. Cases are also handled individually when applications are refused owing to a lack of identity papers, as well as in cases where an application is re-examined or an advance on costs or payment is to be set.

3. Content of the recommendations issued by the Conference of Cantonal Directors of Social Affairs

The revised Asylum Act, which entered into force on 1 January 2008, stipulates that rejected asylum applications (i.e. persons who have received a legally binding negative decision and deportation order) are to be excluded from the social assistance scheme cited in the Asylum Act. This means they are required to move out of the accommodation allocated to them during the asylum procedure, and to independently leave the country. If necessary, such persons may apply for emergency aid in accordance with Article 12 of the Swiss Federal Constitution. Here the cantons are responsible for specifying the nature and extent of social assistance and emergency aid. This provision has been effective since 1 April 2004 for people whose application has been rejected. On 24 February 2006, the Conference of Cantonal Directors of Social Affairs issued recommendations concerning the granting of emergency aid to such persons. These recommendations were subsequently modified on 3 May 2007, and now also apply to rejected asylum applications. They cover the following aspects: 1. Formal requirements (identification of applicant, local and practical responsibility); 2. Responsibility for securing guardians for unaccompanied minors; 3. Education obligation; 4. Definition of emergency aid, prerequisites for emergency aid; 5. Nature, extent and duration of emergency aid; 6. Social insurance situation.

Question 15: *Please provide information on cases of police violence in connection with the expulsion of foreigners, including in connection with the two cases of death that occurred in 1999 and 2001, and on the content of the CCJDP guidelines on the use of force (State report, paragraph 124). Please provide information on the status of the draft legislation on the use of coercion against foreigners/the use of constraints (State report, paragraphs 48, 125 of the State report). Please provide statistical data on complaints, prosecutions and convictions relating to police violence in all cantons. Do ombudsmen institutions and independent police complaints units exist in all cantons?*

In the case of compulsory repatriation, the use of force by the authorities has on occasion had tragic consequences. In 1999 and 2001 two people died during the preparatory stages of their repatriation. In both cases the victims died of asphyxia owing to being forced into a position by the police officers in which they could not breathe.

Following these tragic events, the Conference of Directors of Cantonal Justice and Police Departments issued directives concerning forced repatriation by air. One particular aim of these directives was to set out clearly what kind of methods of restraint are acceptable and to stipulate how escort teams should be trained. As soon as it was issued this directive became only a temporary measure to be applied until legislation on the use of methods of restraint comes into force.

The federal law on the use of restraint was drawn up at the demand of the cantons and passed on 20 March 2008. It is expected to come into force on 1 January 2009 and will apply to the federal authorities that have to use physical restraint and police support to carry out their work. As far as concerns asylum rights and the rights of foreigners, it will also apply to cantonal authorities. This will also be the case when cantonal authorities act on behalf of a federal authority or as part of a mission ordered by the Federal Criminal Investigation Department. The new legislation is harmonised and clear, and is intended to guarantee that authorities that have to use physical restraint respect the principle of reasonable force. Recourse to physical force, additional means or arms must be appropriate to the circumstances and must cause the person concerned as little physical harm as possible. Additional means that may affect the victim's breathing or harm him or her in any other serious way are strictly forbidden. The law on the use of physical restraint also covers medical treatment and the use of medication. Drugs may only be given for medical purposes; they may not be used instead of police restraining methods for calming or tranquilising a person. Finally, under the terms of the new law, the authorities may only allot tasks that may involve the use of police restraining methods to people who have received appropriate training.

Question 16: *Please provide detailed statistical data and information on foreign nationals participating in cantonal voting, standing for election to communal commissions of experts, and being elected to rent tribunals and labour courts in the cantons and communes where voting rights have been granted to foreign nationals. (State report, paragraphs 127 and 147.)*

The situation with respect to statistical data in cantons that grant political rights to foreign nationals can vary considerably.

However, the following tendencies are apparent:

The number of foreign nationals participating in voting and elections is lower than that of Swiss citizens.

In the canton of Vaud, the average level of participation in municipal elections in 2006 in which foreign nationals were able to participate for the first time, was 27% (figure for Swiss citizens, 44%), which is a higher level than in other cantons such as Neuchâtel and Fribourg (average = around 20%). In the canton of Vaud, 310 candidates were elected to a municipal function. A total of 710 foreign nationals (6% of all candidates) stood for election.

At the March 2007 municipal elections in Geneva, the level of participation by foreign nationals was 27% (figure for Swiss citizens, approximately 40%).

The various cantons underscore the fact that granting extended political rights tends to mean that participation is becoming more important. In a number of cantons, measures aimed at informing

foreign nationals about, and sensitising them to, their political rights are currently being implemented. Access to administrative functions, e.g. the judicial authorities, is handled very differently in legislation at the cantonal level. In Geneva, for example, it is possible to be elected to the industrial relations court, and in Neuchâtel, foreign nationals can be elected to the rental tribunal, guardianship authorities, etc. Various consultative bodies that deal with integration issues and on which foreign nationals can serve have been deployed in 21 cantons (as of January 2008), most of which were established in the past 5 years.

Article 6

Question 17: *Please provide detailed statistical data and information on ethnically motivated violence and other related acts, including hate speech, during the reporting period, especially against members of the African, Muslim and Jewish communities and against Roma and Travellers (State report, paragraphs 57 and 59). According to paragraph 99 the State report, half of the 212 acts of racial discrimination brought before the judicial authorities from 1995 to 2002 led to criminal proceedings. Please update these data for the reporting period and indicate the penalties applied. Please also provide statistical data on cases of extremism and racist acts in the Swiss army (State report, paragraph 110) and provide information on their investigation and prosecution.*

1. Statistical data on ethnically motivated violence and other related acts

The decision to carry out a thorough review of the statistics was taken on 6 April 2006. The new statistics will contain detailed data on denunciations due to racial discrimination (Article 261bis), and will also enable the inclusion of a racist motivation in the commission of an(other) offence, as well as data concerning the victim. The initial publication of the new statistics is scheduled for 2010.

As before, the Swiss Federal Office of Police (Fedpol) operates a documentation centre for the registration of material inciting racism or violence. This centre supports criminal or administrative proceedings that deal with propaganda material of this nature. It examines propaganda material such as CDs, flyers, etc., and either places its findings at the disposal of the relevant prosecution authorities, or instigates criminal proceedings itself. In case of doubt, the cantons responsible for prosecution are recommended to instigate criminal proceedings so that the judicial authorities can pronounce the necessary judgements.

In the private sector, a non-governmental organisation – Foundation against Racism and Anti-Semitism – publishes an annual “Chronology of Racism in Switzerland”, which presents a large number of cases that have been recorded on the basis of media and personal reports. Many of the listed cases did not have legal consequences, which is the reason why the question whether they truly concerned racism has not been definitively clarified.

The Chronology and the assessment of the situation in its introduction nonetheless provide a sound impression of the social situation.

In 2006 a total of 117 cases were listed

Verbal racism: 31

Distribution of racist material (in written form and on sound media): 2

Denial of the Holocaust and the Armenian genocide: 4

Right-wing extremist marches, meetings, etc.: 18

Threats, harassment: 7

Material damage, activities of sprayers: 10

Attacks against physical integrity: 11

Arson, use of firearms: 0

Discrimination: 3

Refusal of citizenship: 3

Racism by authorities: 2

Miscellaneous: 26

In 2007, it listed 118 cases

Verbal racism: 37
Distribution of racist material (in written form and on sound media): 1
Denial of the Holocaust and the Armenian genocide: 3
Right-wing extremist marches, meetings, etc.: 23
Threats, harassment: 6
Material damage, activities of sprayers: 12
Attacks against physical integrity: 15
Arson, use of firearms: 5
Discrimination: 1
Refusal of citizenship: 5
Racism by authorities: 1
Miscellaneous: 9

It should also be noted that the Service for Combating Racism (SCRA) is currently developing a system for monitoring racism, xenophobia and discrimination. In order to provide a range of instruments for observing the phenomenon of racism as exhaustively as possible, a monitoring system of this type needs to combine a variety of elements:

- Structured data (integration indicators, inventory of cases of racism);
- Opinion polls (public and private sources);
- An evaluation of the impacts of measures taken to combat racism and promote integration.

It thus relies on data, instruments and methods that the public authorities, international organisations and civil society already have at their disposal, and calls for the development of new instruments in close collaboration with various involved partners.

2. Criminal proceedings

In 2006, the Cybercrime Coordination Unit Switzerland (SCOCI) handled more than 6,300 communications and passed on 627 dossiers (based on its own investigations) to Swiss and foreign authorities for criminal prosecution. 93 dossiers on suspected cases were passed on to the prosecuting authorities on the basis of communications submitted by users. 2.1% of communications were made in connection with Article 261bis of the Penal Code.

In 2007, SCOCI received 34 reports under the heading of racism, the majority of which cannot be subsumed under Article 261bis of the Swiss Penal Code since they are not strictly of criminal relevance. Some take the form of insults, while others concern reports about discriminatory or derogatory comments on homosexuality, and pages posted on the Internet containing material against foreigners or programmes of right-wing nationalist parties, etc. Of the 34 reports that were submitted, closer examination revealed that only 4 cases are of relevance in accordance with Article 261bis of the Penal Code. 2 of these are of relevance with respect to Switzerland, 1 concerns racism against black people, and 1 concerns anti-Semitism. In 2 cases involving the USA, no report of suspicion was made and the cases were not pursued further since they are not punishable in accordance with US law (free speech). 1 case concerned general racism, the other anti-Semitism. No reports were made to other countries.

2.1. Criminal proceedings on the basis of Article 261bis of the Penal Code

The search function of the database of the Federal Commission against Racism (FCR) concerning criminal proceedings on the basis of Article 261bis of the Penal Code can be used for filtering out cases of racism involving the incitement of hatred or discrimination. There are also various options for combining these search criteria with others. Between 1995 and 2006, 36 investigations were carried out, which led to a total of 29 criminal law judgements: in 14 cases the victims were Jews, 1 case involved a Moslem, 4 cases involved black people, and there were no cases involving travellers. Below is an overview of cases in the period under review (2002 to 2006) (status: 31 December 2006):

2.1.1. General information

The FCR is aware of a total of 355 cases that were reported to the relevant authorities in the period from 1995 to 2006. In roughly half these cases the investigating authorities did not instigate criminal proceedings, closed the proceedings after a summary investigation of the case, or did not admit the report at all. In the other half of the cases, the matter was pursued and the case concluded with a

legally binding judgement. In 31 of these cases (close to 20%) the court concerned acquitted the defendant of the accusation of racial discrimination, while in 152 cases (80% of the judgements) the accused was found guilty. The rulings and judgements were made by the prosecuting authorities or courts at various levels. As of the end of 2006, the FCR recorded 57 cases that were referred to higher courts, 24 of which were taken to the Federal Supreme Court. There are also 6 cases that were judged on the basis of other legal proceedings, i.e. not in accordance with Article 261bis of the Penal Code, but have a close connection with racism or racial discrimination.

2.1.2 Perpetrator groups

Neo-Nazis and skinheads account for 14% of the perpetrators, and 7.5% of the perpetrators are active in a services industry. No other general tendency is identifiable with respect to another group of perpetrators. Overlaps are of course conceivable from case to case, for example where a right-wing extremist youth has been reported for racial discrimination ("right-wing extremists" and "youths").

2.1.3 Victim groups

As far as victim groups are concerned, more than 25% of persons affected by racial discrimination are members of the Jewish religious community. These thus represent the most frequently identified victim group. The large number of attacks against people of the Jewish faith cannot solely be attributed to the activities of a few particularly fanatical activists, but rather are a reflection of numerous everyday attacks. Other frequently involved groups include foreign nationals (22.4%), people with dark skin (16%), and asylum seekers (4.6%). These figures should be placed in perspective, however, in that they only include cases of racial discrimination that have resulted in criminal proceedings. Furthermore, no details about the victims were publicised in around 24% of the court decisions.

2.1.4 Methods

An overview of methods clearly reveals that verbal (25%) and written (almost 29%) attacks are the most commonly used methods, followed by the distribution of racist material (more than 9%). Only 3.3% of all methods take the form of acts of violence, 3.5% concern gestures and gesticulations, and roughly 3% concern the refusal to provide a service. Since 1999 we have also witnessed attacks via electronic media. It should also be noted here that more than one method may be used in a given case, for example a discriminatory e-mail (= electronic communication) combined with a written attack.

2.2. Note on investigation and criminal proceedings by the military judicial authorities in association with racial discrimination (Article 171c of the Military Penal Code), racism and extremism.

As a rule, such cases do not come to the attention of the military court and the military judicial authorities if the local commanding officer classifies them as minor cases of racial discrimination or regards them as disciplinary offences in accordance with Article 180, paragraph 1 of the Military Penal Code (offending against public decency, violation of decent behaviour, creating a public nuisance), and the matter is dealt with directly within the scope of disciplinary proceedings, without the involvement of a military judge. In view of the increased media interest in recent years, however, instructors and other military personnel have been sensitised to the need to first check with the examining magistrate or legal service of the military court whether or not to involve a military judge.

As far as can be gleaned from the records of military legal chancelleries, since 1998 the military judicial authorities have investigated 24 cases with a suspected racism or extremism background, 6 of which are still pending (2 dating from 2007 and the other 4 from 2008). 4 of these proceedings resulted in judgements based on Article 171c of the Military Penal Code (in some cases with several judgements per case). In 2 further cases the proceedings were dismissed, though the court ordered disciplinary sanctions since it assumed a minor violation of Article 171c of the Military Penal Code, respectively a disciplinary offence in accordance with Article 180, paragraph 1 of the Military Penal Code. 1 case was dismissed without further examination.

In addition, after concluding his investigations, in 2 cases the military judge ascertained a minor violation of Article 171c of the Military Penal Code, and ordered the relevant commanding officer to instigate disciplinary proceedings.

In 9 cases, the military judge found that no offence under the Military Penal Code had been committed.

Question 18: *Please provide an overview of all complaints mechanisms for racial discrimination in the State party, and indicate the number of complaints registered during the reporting period. Please indicate how many complaints concerning racial discrimination were received by the Independent Complaints Authority for Radio and Television (paragraph 225 of the State report). What action has been taken in response to such complaints?*

1. Specific mechanisms:

The following mechanisms are used:

- Criminal proceedings based on the Swiss Code of Criminal Procedure due to violations of racial discrimination provisions
- Administrative proceedings due to violations of the prohibition of discrimination under federal or cantonal constitutional law, depending on jurisdiction (federal government, canton, municipality)
- Petition for administrative review due to violations of the prohibition against discrimination under federal or cantonal constitutional law, depending on jurisdiction (federal government, canton, municipality)
- Final instance appeal in matters governed by public law, criminal law, civil law, and subsidiary complaint about infringement of constitutional law on the basis of the legislation governing the Swiss Federal Supreme Court.

2. Non-specific mechanisms:

- Civil law proceedings (based on cantonal codes of civil procedure) due to violations of the Code of Obligations and Civil Code
- Criminal proceedings on the basis of the Swiss Code of Criminal Procedure due to offences against protection of persons, protection of property, protection of ownership, etc.)
- Appeals to the federal or cantonal data protection authority within the scope of data protection violations
- Appeals to cantonal and municipal authorities (with the possibility of bringing about non-binding recommendations)

With respect to consulting in particular, the following points should again be noted (cf. question 2):

The mandate of the Federal Commission against Racism (FCR) includes the authority to advise victims of racial discrimination. On average, two cases a day are referred to the FCR. Approximately 40% of requests for advice can be answered in the form of basic information, while around 50% are referred to a support and advisory body. The remaining 10% are dealt with by the secretariat of the FCR. The Service for Combating Racism (SCRA) financially supported the creation of a database that lists cases of discrimination handled by the ten most important consulting bodies for victims of racial discrimination. An initial evaluation of the recorded cases is expected to be published in 2009. This measure is also being actively supported by the Federal Commission against Racism (FCR). It should be noted here that the absolute majority of cases of racism and discrimination that are not of relevance under criminal law occur in the sphere of responsibility of the cantons and municipalities. In these cases, a supervisory authority at the federal level has no power to intervene. The number of such authorities at the cantonal and municipal levels is increasing slowly but surely. Furthermore, an increasing number of integration officers are also assuming an advisory function in the area of racism.

The Swiss Conference of Integration Officers works closely together with the Federal Office of Migration as co-ordinating body, and the FCR is included in these activities. The integration officers also deal with issues relating to discrimination, of course, and in practically every case are expressly responsible for issues relating to racism.

The SLR provides financial support for various advisory bodies as well as for networking, co-ordination and evaluation projects.

Question 19: *Please provide statistical data on the application of the Federal Assistance to Victims of Offences Act and clarify if it has ever been applied to acts of racial discrimination (State report, paragraph 193; Core Document, paragraph 62). According to information before the Committee, associations are not permitted to bring judicial proceeding, whether civil or criminal, on behalf of victims of racial discrimination, except in the Geneva Canton. Please indicate the reasons for this restriction, in light of its potential impact on the effective protection of victims.*

Swiss legislation on legal proceedings grants any legal person the right to institute proceedings. It is this principle that has been applied with regard to the law on assistance for victims of crime.

Under Swiss law, associations may also institute proceedings, however, as was accepted by the Federal Court in 1947 in connection with protection of the individual (Federal Court ruling 73 II 65). While it restricted this right to professional associations, the Cantonal Court of Vaud ruled on 17 April 1968 that the Swiss Federation of Israeli Communities could bring a case against an anti-semitic publication. The court banned the sale of the book and ordered the publishers to pay damages.

The new Swiss Code of Civil Procedure (CCP), which will be passed by parliament this year and is expected to come into force on 1 January 2010, embeds this jurisprudence in law while extending various aspects of the stipulations accepted by the Federal Court. For example, Art. 87 of the CCP, which has been approved by both chambers, entitles associations and other organisations of national or regional importance to bring proceedings in the case of a breach of the personal rights of any member of a given group (women, workers, Jews, etc.). The statutes of the organisation in question must authorise it to represent the interests of the group. They can only act with the aim of achieving a ban, cessation or recognition of a breach and not to obtain damages and compensation. Since racial discrimination falls within the scope of protection of the individual (see Question 12) action taken by associations is possible under these conditions. They may not, however, seek compensation for themselves, for members of the group as an entity or for victims in a definite case without the latter's agreement.

Article 7

Question 20: *In addition to the effort made by the Service for Combating Racism and the Federal Commission for Foreigners (paragraph 194 et seq. of the report), what measures are taken to promote understanding, tolerance and friendship among racial and ethnic groups and to counter trends of xenophobia in Swiss society?*

1. Measures of the federal government

With the new Swiss federal legislation on foreign nationals, integration has become a guiding principle of Switzerland's policy relating to foreigners. For the first time, criteria and objectives have been defined in the form of additional provisions in a section on integration at the legislative level. The fundamental objective of Switzerland's integration policy is to create favourable conditions for equal opportunity and involvement of foreign nationals in public life. Integration is a reciprocal process that requires the readiness of foreign nationals to become integrated into society, as well as open-mindedness on the part of the Swiss population. In order to adequately incorporate the principle of equal opportunity, integration has been defined as a broad-ranging task that has to be carried out via structures such as schools, vocational colleges and the labour market, and at all three political levels (i.e. federal, cantonal and municipal). The aim is to promote aspects such as language learning, career advancement, provision of healthcare and efforts to facilitate mutual understanding and coexistence between Swiss citizens and foreign nationals. In line with a coherent integration policy, it is essential to co-ordinate the various efforts and measures with the federal authorities and the cantons. In order to secure the necessary interaction at the cantonal level, all the cantons have established contact points for integration issues based on existing legislation. Within the scope of defined priorities, the federal government financially supports measures and programmes relating to integration (2002 to 2003, 12.5 million Swiss francs p.a.; 2004 to 2007, 14 million p.a.; 2008, 14 million; 2009 to 2011, 16 million p.a.). Priorities for the period from 2008 to 2011 include language learning and education, especially for target groups that are difficult to reach, as well as support of regional information centres and intercultural translation, and model projects of nation-wide importance. These measures are intended to promote the cohesion of society. With effect from 2008,

the federal government is to pay the cantons lump-sum integration contributions (amounting to approximately 36 million Swiss francs p.a.) for increased social and vocational integration of refugees and persons granted provisional asylum.

Also, in order to ensure integration as a broad-ranging task the federal government approved on 22 August 2007 an integration policy action plan in the form of the 2007 report on integration measures. The report, which was elaborated by the various federal authorities of relevance to integration, contains a package of more than 40 specific measures, primarily relating to language, education, employment and residential development, but also aimed at promoting social integration (e.g. through sport). The main objectives of these measures are to create the necessary conditions for securing the principle of equal right of access for the foreign population to public institutions as defined in the legislation on foreign nationals, to secure the co-ordination of measures at the federal level, and to sensitise the various involved players, e.g. employers, to the topic of integration.

2. The Fund for Anti-Racist Projects and in favour of Human Rights managed by the Service for Combating Racism in particular

During the period 2001 to 2005, the Fund for Anti-Racist Projects and in favour of Human Rights managed by the Service for Combating Racism (SCR) paid out subsidies totalling CHF 15 million for projects involving training, awareness and prevention. Among the 994 applications received, 529 were granted a subsidy (see the Fund's report on projects sponsored from 2001 to 2005). Having observed the success of the work sponsored by the Fund, the Federal Council decided, on 23 February 2005, to instigate a long-term project aimed at preventing as well as creating awareness of racism and xenophobia. To do this it approved a budget of CHF 900,000 per year from 2006 onwards for funding projects carried out by third parties. The sum of CHF 500,000 is reserved for general projects and the remaining CHF 400,000 is to be used specifically for school projects. With the agreement of the Swiss Conference of Cantonal Directors of Education, these projects are assessed and monitored by the Education and Development Foundation (FED). Since this new facility for funding anti-racism projects has been set up, 157 new projects had been funded by the end of 2007 (including 50 school projects), representing total grants of CHF 1.8 million. As with the projects sponsored by the Fund for Anti-Racist Projects and in favour of Human Rights, the projects cover a broad range of sectors and applications come from every corner of Switzerland: schools, the social sector, health, youth, cultural events and further training for people working in this field. This range of innovative projects has led to awareness of racism among a broad general public and has made it possible to adopt different approaches towards preventing racism and xenophobia. Many projects have been devised by groups of people who are especially vulnerable to racism (in particular black communities). The Fund has enabled them to increase the empowerment of potential victims. The European Council's campaign aimed at young people entitled "All different – all the same" was launched in June 2006 and finished in September 2007. Its aim was to promote diversity and equality, human rights and the inclusion of young people in social and political life. In Switzerland this campaign was supported by the Confederation, organisations that work with young people on the street and youth organisations. Project leaders who wanted to take part in the campaign were asked to promote a diverse society in which the rights of each person are respected, be they Swiss or foreign, young or old, disabled or not, female or male, Moslem or Christian, homosexual or heterosexual. Among the 140 proposals put forward in connection with the campaign, 90 (or 64%) were granted funding by the Service for Combating Racism, (the Confederation having provided grants to a total of 130 projects). There was a broad range of highly creative ideas involving everything from football and other sports events to theatre, exhibitions, round-table discussions, workshops or cultural exchanges, open-air concerts, video clips and even rap songs. In 2006 and 2007 a total of CHF 1,137,582 was paid out in sponsorship, representing 26% of the overall cost of the approved projects (CHF 4,441,660). In addition to its publications, the SCR ran around one hundred workshops and seminars on the theme of racism and the fight against discrimination in the three linguistic regions of Switzerland. The purpose of the seminars, which were aimed at either the general public or a specific sector (e.g. social workers, teachers, state employees) was to promote networking and transmit skills.

Question 21: *What are the applicable criteria for the “successful integration” of immigrants devised by the FOM (paragraph 75 of the State report), and what policies does the Swiss Conference of Integration Officers follow to prevent discrimination (paragraph 76 of the State report)? Are there federal guidelines establishing the basic operations and programs of cantonal integration offices (State report, paragraph 74)? Is there a wide disparity in the levels of successful integration between cantons? How influential has the Swiss Conference of communal, regional and cantonal integration officers (CDI) been in harmonizing integration protocol across cantons? What efforts are being made to increase harmonization in this area?*

In accordance with Article 34, paragraph 4 of the Federal Aliens Act and Article 62 of the Ordinance on Entry, Residence and Employment, the criteria for successful integration are as follows:

In the event of successful integration, a residence permit may be granted after 5 years if the following criteria are met:

- a) The applicant respects rule of law and the values of the Swiss Federal Constitution;
- b) The applicant has achieved at least reference level A2 of the joint European reference framework for languages of the Council of Europe in the national language spoken in his or her region of residence (in certain justified cases, another official language may be considered);
- c) The applicant is willing to participate in economic life and acquire education.

In an examination of an application for premature granting of a residence permit, the degree of integration of members of the applicant's family who are over the age of 12 is taken into account.

These criteria were defined in collaboration with the cantonal migration authorities and Integration officers (cf. report, paragraph 77).

Question 22: *Please provide detailed information on any specific training programmes and courses for members of the judiciary, law enforcement officials and other public officials on the provisions of the Convention and their application. Please provide statistical information on the percentage of judiciary and law enforcement officials as well as other public officials who have participated in such programs.*

Human rights form a significant part of training at all police academies in Switzerland, and are normally taught by the commanding officer himself or herself. They are also major examination subjects, and since the last report even greater importance has been attached to them.

An increasing number of cantonal and urban police forces now organise information, networking and educational events with the goal of improving the professional behaviour of law enforcement officials, including in particularly tense situations that can result in discrimination and other acts. The police academies of the canton of Basel-Stadt and the city of Zurich have already successfully organised such events. Within the framework of a pilot phase up to the end of 2009, a variety of specific projects are to be initiated in the police academies of central and northwest Switzerland, eastern Switzerland and the canton of Zurich, as well as in the Swiss Police Institute in Neuchâtel. These pilot programmes have been developed in collaboration with the FCR and are receiving financial support from the SCRA.

A review is to be carried out in 2010, following which corresponding modules will be systematically integrated into the training and further education of police officers at all levels (basic training, further education, advanced training of senior officials) and internal police instructors. The SCRA financially supports the range of training and further education programmes for promoting familiarity with the legal provisions prohibiting discrimination, which are offered by the FCR in collaboration with the human rights organisation, humanrights.ch / MERS. In 2007 and 2008, three further education courses were held in the German-speaking region, and one in the French-speaking region. These were attended by specialists from private contact points, representatives of cantonal and municipal administrative bodies, as well as private individuals. The courses are to be reviewed on an ongoing basis within the scope of the overall project so that they can constantly be improved.